16 December 2014
[26–14]

Approval Report – Proposal P1025

Code Revision

Food Standards Australia New Zealand (FSANZ) has assessed a proposal prepared by FSANZ to revise the Food Standards Code.

On 10 July 2014, FSANZ sought submissions on a draft variation and published an associated report. FSANZ received 34 submissions.

FSANZ approved the draft variation on 4 December 2014. The Australia and New Zealand Ministerial Forum on Food Regulation[1] (Forum) was notified of FSANZ's decision on 15 December 2014.

This Report is provided pursuant to paragraph 63(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

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

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Separate documents

Attachment A – Approved draft variations to the *Australia New Zealand Food Standards Code*
Attachment B – Explanatory Statements
Attachment C – Draft variations to the *Australia New Zealand Food Standards Code* (call for submissions)
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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/proposalp1025coderev5755.aspx

SD1 Office of Legal Drafting and Publishing, Legal Audit of the Australia New Zealand Food Standards Code, 2009

Executive summary

The *Australia New Zealand Food Standards Code* (the Code) is a legislative instrument made under the provisions of the *Food Standards Australia New Zealand Act 1991*. Food standards, and variations of food standards, are published after consideration by the Australia and New Zealand Ministerial Forum on Food Regulation (Forum) (convening as the Australia and New Zealand Food Regulation Ministerial Council).

Food standards are given force of law by the food legislation of the Commonwealth, the states and territories, and New Zealand (the application Acts). Standards in the Code have no operative effect themselves.

Proposal P1025 was prepared, and has been assessed, with the intention that the Code should more effectively interact with the offence provisions of the application Acts.

Accordingly, the principal changes made by the variation include:

- a clearer statement of the requirements of the Code—to interact with offence provisions that rely on compliance with such requirements
- revision of provisions relating to the addition of food additives, processing aids and nutritive substances—to establish an objectively enforceable requirement
- revision of compositional requirements—to clarify the circumstances in which a compositional requirement is an enforceable requirement for a product for sale and those in which the requirement is a prerequisite to a permission
- creation of a dictionary of defined terms—to facilitate navigation in the Code.

In particular, the revision reduces uncertainty about the permissions to add substances to food that are in the current Code.

The revision is a step in an ongoing process of review and variation of the Code. Significant aspects of the operation of the Code are under review in separate proposals; such as Proposal P1024 which is considering the standards for nutritive substances and novel foods.

The revised Code will commence on 1 March 2016.

1 Introduction

1.1 The Proposal

The Proposal has revised the *Australia New Zealand Food Standards Code* (the Code) to improve legal efficacy and for related purposes.

1.3 The current Standards

The Proposal repeals and replaces all standards in Chapters 1 and 2 of the Code and maintains the provisions in Chapters 3 and 4.

1.4 Reasons for preparing the Proposal

The Proposal was prepared to ensure that the Code is effective as an element of the joint food regulatory system.

1.5 Procedure for assessment

The Proposal was assessed under the Major Procedure.

1.6 Decision

The draft variation as proposed following assessment was approved with substantial amendments. The variation will have effect on 1 March 2016.

The approved draft variation, as varied after consideration of submissions, is at Attachment A.

The current standards in Chapters 1 and 2 will be revoked by the new standard 5.1.1. The revised versions of these standards, and the corresponding Schedules 1–30, will be made as individual legislative instruments, each with a separate cover sheet that states the authority under which it is made.

The standards in Chapters 3 and 4 will not be touched, and will continue to operate as part of the Code.

The explanatory statement that is required to be lodged with the legislative instruments when they are registered on the Federal Register of Legislative Instruments is at Attachment B. The draft variation on which submissions were sought is at Attachment C.

2 Summary of issues raised in submissions

Table 1: Summary of issues

Issue	Raised by	FSANZ response
ABIG sought variation of the lot identification requirement to make explicit a requirement that the lot identification be provided by the manufacturer of a food. ABIG also sought a variation to prohibit the obscuring of a manufacturer's lot identification on a label.	ABIG	FSANZ considers that the labelling changes sought by ABIG are out of scope for P1025. The issue may be considered in an application or in a broader review of traceability requirements.
2.9.1-5 (2) This implements clause 7(2) to std 2.9.1. The purpose of the current Standard 2.9.1 clause 7(2) is to only allow the declaration of added nutritive substances in the ingredient list and the NIP, if minimum levels are met (and maximum levels are not exceeded). The phrase '*...any words indicating, or any other indication, that...."* provides that words or numbers might be used (in the ingredient list and the NIP). It is mandatory to make this declaration, not optional. However, when new clause 2.9.1-5(2) is read, it states 'may', when in fact the ingredient list and NIP must provide the required information about added nutritive substances. A drafting solution would be to expand 2.9.1-5(2) to specify that this is referring to declarations in the ingredient list and NIP. It is not permissible to put this information elsewhere on the label (see also comment below regarding the singular statement). Furthermore, we strongly recommend that 2.9.1-5(2) is linked to the prohibition listed in 2.9.1-24(1) (f). Ideally, they would be in one place in standard 2.9.1, as to separate the provision is confusing and presents as a conflict of requirements.	NZ MPI	Agree.
2.9.1-19(3) The words in brackets, i.e. 'words or pictures' are not consistent with the current Code. This should read 'words and pictures'. It is not an option to provide the information using pictures only.	New Zealand MPI (email in submission period)	Agree.
2.9.1-21 The current standard 2.9.1, clause 16, refers to a 'statement'. In our view, the current requirement clearly points to a singular statement, so that nutrition information can only be in one place (such as the NIP), so that separate statements cannot appear elsewhere on the label.	New Zealand MPI (email in submission period)	Agree.

Issue	Raised by	FSANZ response
However, the DFRM does not limit the provision of the nutrition information to a single statement. This changes the meaning, and opens the door to additional nutrition information being provided elsewhere on the label (which is a change in policy, as additional information on these products can be viewed as nutrition claims, which are not permitted).		
2.9.1-24 (f) There has been a change in meaning, as the current Code refers to 'any nutrient or nutritive substance', whereas this clause refers to 'any nutrient or substance used as nutritive substance'. This appears to mean that the restriction on making claims only applies if the nutritive substance is added, whereas the current Code restricts claims on all nutritive substances (added or naturally occurring). This is a change in policy, so we suggest the reference to 'used as' is removed from clause 2.9.1-24(f).	NZ MPI	Agree.
It has been suggested that the order of references to packaging and labelling provisions should be reversed, as recognition of the greater significance of labelling provisions.	NZMPI	Agree.
The definition of gelatine is very broad in the document; therefore GME suggests replacing it with the definition applied in the European Regulation (EC) No 853/2004, Annex I): ""Gelatine" means a natural soluble protein gelling or non-gelling, obtained by the partial hydrolysis of collagen produced from bones, hides and skins, tendons and sinews of animals".	GME, GMAP	FSANZ considers that it is beyond the scope of P1025 to vary the current definition.
GME proposes the following changes in order to be in line with the European Regulation (EU) No 1169/2011: (1)(a): replace "added sulphites in concentrations of 10 mg/kg or more" by "sulphites in concentrations of more than 10 mg/kg". (1)(c)iii: include fish gelatine in the exemptions as follows: "except for fish gelatin as a carrier for vitamins or carotenoid preparations, and as a fining agent in beer and wine" .	GME, GMAP	FSANZ considers that it is beyond the scope of P1025 to vary the current definition. The first suggestion, if implemented, would vary a labelling requirement by increasing the threshold for labelling. The second suggestion would make a significant change in the mandatory declaration requirement and requires full assessment.
This section contains microbiological limits and processing requirements for foods listed in Schedule 27 (page 533 etc.). As gelatine is not listed there, does this mean that there are no microbiological limits for gelatine in AUS/NZ? GME would like to propose as a limit for Salmonella negative in 25 g (n=5 c=0 and m=0) as mentioned in European Regulation (EC) No 2073/2005.	GME, GMAP	No microbiological limits have been set for gelatine. In the absence of a specific limit food that is sold must be safe and suitable.

Issue	Raised by	FSANZ response
GME proposes to add a definition for "Bovine must be free from bovine spongiform encephalopathy". Does this mean animals tested with negative result (due to the sensitivity of the test kits only possible for animals older than 30 months) or animals from OIE negligible risk countries? A clear definition will avoid further discussions.	GME, GMAP	The revised Australian BSE policy requires that countries seeking to export beef to Australia must be assessed and categorised by FSANZ for BSE risk. The policy does not automatically accept a country based on its OIE BSE status. The FSANZ assessment process therefore establishes whether bovines from a specific country are free of BSE under the Australian policy. An additional definition will not allow countries that have not been assessed by FSANZ to export beef to Australia.
In order to ensure that all processing aids necessary for gelatin and collagen production are included in this chapter, GME would like to provide the following comments: S18-2 Processing aids that can be generally used: This paragraph does not include lime (calcium hydroxide) and cellulose which is used as filtration aid e.g. like perlite. S18-8 Permitted extraction solvents: As gelatin is extracted with water, this paragraph may also contain water as an extraction solvent. S18-9 Processing aids for various purposes: Both hydrogen peroxide and sulphur dioxide are used as well as anti-microbial agents for the manufacture of gelatin and collagen. Therefore, maximum limits of 50 mg/kg (SO2) and 10 mg/kg (H2O2) have been included in European Regulation (EC) No 853/2004. GME would like to propose to include this application for both substances in this paragraph as well.	GME, GMAP	FSANZ considers that it is beyond the scope of P1025 to vary the current list of approved processing aids. Calcium hydroxide (526) and cellulose (460) are both additives permitted at GMP (Schedule S16—2) and, accordingly, are generally permitted processing aids (section 1.3.3—4(2)(a). Water is a food and, accordingly, is a generally permitted processing aid. Sulphur dioxide is a permitted processing aid to treat hides in the manufacture of gelatine and collagen, with maximum permitted level of 750 mg/kg (section S18—9).
A number of submitters expressed an opinion that the revision should have involved a more extensive review of the Code	AFGC, FTAA	See paragraph 2.1.1, below
Many definitions in Chapter 1, Part 1, Section 1.1.2-2 are inadequate and circular whereby a term is defined by use of the same term, i.e. the definition of "flavouring substance" includes the word "flavouring".	FTAA	Noted. The current Code uses the term flavouring. The term 'flavouring substance' is adopted, consistently with international usage, to distinguish substances that flavour from the sense or type of flavour, eg bitter or sweet.
In conjunction with point (i) above, the definition for "permitted flavouring substance" is found under the letter "p", which is unexpected as "permitted" is a descriptive term and this definition should be adjacent to "flavouring substance" and filed under the letter "f".	FTAA	'permitted flavouring substance' is a defined term distinct from the separate defined term 'flavouring substance'. The permitted flavouring substances are a subset of the set of flavouring substances.
Page 11: Re Clause (8) requires editing and simplification as the word "any" is confusing as "alimentary or respiratory passage" would be sufficient and appear to describe normal human anatomy. Possibly reword to read ""swallowed or obstructing the alimentary or respiratory passages".	FTAA	Noted. The provision repeats the content of the current provision. Revision to change the requirement is considered to be beyond the scope of P1025.

Issue	Raised by	FSANZ response
Re definition of 'butter'- the use of 'principally' requires replacement with a more definite non-vague and less difficult to interpret term, especially as this term is used twice in this definition and refers to two completely different situations.	FTAA, NZFGC, Dairy Australia	Agree.
Re definition of 'cream' – the term 'comparatively' is too vague and defies objective interpretation.	FTAA	Noted. The provision repeats the content of the current provision. A plain reading of the provision suggests that the comparison is with other milk products.
(vi). Page 28: Re definition of 'cream' part (b) does not make sense as cream may also contain other substances such as Food Additives.	FTAA	See subsection 1.1.1—10(2) and section 1.3.1—3.
(viii). Page 314: Change "kola" to "cola" or "kola or cola" as there are very few if any beverages produced in Australia/New Zealand or imported that use the "kola" spelling. "Cola" is an accepted generic descriptor.	FTAA	Agree.
The description of Food Additive 472f is not consistent with the current description	FTAA	The current terminology in the labelling list is amended simply by removing unnecessary apostrophes. For labelling purposes there are two options to describe the one food additive.
In Schedule 15 and possibly elsewhere, numbers such as "3 000" appear and should be written as "3,000" or "3000". "3 000" could be interpreted as either a mistake or read as "3.000", etc. I.e. remove the space between the digit and the following three zeroes.	FTAA	This number format is used consistently in modern Commonwealth legislation.
In Section 1.3.3-2, the term "purpose" in relation to "technological purpose" should be clearly defined, as this term may be ambiguous unless given a clear and definite meaning.	FTAA	The context of use of the term is quite clear and requires no further definition.
(xii). In Section 1.2.5-2 and elsewhere: The terms "best-before" and use-by" apply only to the "intact package". These definitions provide guidance from the manufacturer/supplier to the sales outlet provider, provided storage conditions, etc are maintained. However once the consumer purchases the product, these dates are invalidated if storage conditions are not strictly maintained and especially once the package is opened. It is suggested that: (a). FSANZ and/or other authorities use an education program to inform consumers of the associated health and safety problems that could arise if the consumers assume (incorrectly) that the use-by and best-before dates are still applicable after opening.	FTAA	(a) Noted. (b) Out of scope for P1025 (c) It is not accepted that there is legal ambiguity in the terms 'use-by' and 'best-before'.

Issue	Raised by	FSANZ response
(b). Amend the Food Standards Code such that “use-by” and “best-before” dates are accompanied by a term such “when unopened” or “before opening” or something similar. (c). Remove the ambiguity caused by the meaning of “use-by” and “best-before” dates and the legal uncertainty and remedies available to uninformed consumers who should be the main beneficiaries of this section of the Code.		
We submit that the term ‘pear cider’ be added as an alternative name for ‘perry’ to recognise common use and common consumer understanding of this term, as well as conformity to international cider standards, including the UK. The term pear cider is used interchangeably with the term perry to mean a fruit wine made from at least 75% pear and the balance from apples. This is an existing practice and we request that the Code clarify that this is acceptable by making the change requested. This clarification, if made, should be reflected in all associated provisions currently referring to “perry”.	NZ Cider Manufacturers, Redwood Cider	Agree.
We further submit that the definitions of ‘cider’ and ‘perry’/’pear cider’ should be reworded to clarify that ciders (including perry/pear cider) are to be made from the fruits (including juices and juice products) of apples and pears only. The previous wording allowed an interpretation that the juices of other fruits could be added to a cider and the final product still represented as a cider. The signatories to this submission agree that such products would still be classified as a ‘fruit wine’ but should not regarded as a cider. For instance, a cider blended with strawberry juice should be labelled ‘Cider with Strawberry’ [or equivalent] and not Strawberry Cider. We submit that this would assist in consumer understanding of what is a cider as opposed to a fruit wine. Apple and pear juice and juice products could still be added to ciders, consistent with this logic, but not the juices or juice products of other fruits and vegetables. For the same reason, we submit that honey and spices be removed as permitted ingredients for a cider (including pear cider/perry). These ingredients have an accepted use in the preparation of fruit wines, but not ciders where they could be used to flavour a cider away from pear or apple.	NZ Cider Manufacturers, Redwood Cider	This issue is beyond the scope of P1025 and should be the subject of an application.

Issue	Raised by	FSANZ response
Red Bull proposed that the definition of formulated caffeinated beverage should be amended to refer to a function of 'providing energy'.	Red Bull	Not agreed. This matter was considered in Application A394 and a decision made to focus this standard on caffeine and its effect as a mental stimulant.
Red Bull suggested a range of drafting options, which were said to improve readability and interpretation	Red Bull	Not agreed. FSANZ does not consider that the proposed drafting provided an improvement.
Red Bull suggested that the provision giving information about the method of calculating a one day quantity should be located with Schedule S29.	Red Bull	A note has been included with Schedule S29. NB. As a consequence of the removal of the packaged water schedule, Schedules 29 and 30 have been renumbered.
Some submitters expressed an opinion that the current wording of clause 2(3) of Standard 2.6.4 is clearer than the proposed subsection 2.6.4—4.	Red Bull, NZ MPI	FSANZ does not agree. The current provision could be interpreted as prohibiting the addition of, for example, water or juice to a FCB in an amount that ensured that the food for sale was still a compliant FCB. The purpose of the provision is to avoid the indiscriminate mixing of FCBs and soft drink. It is not intended to restrict the sale of compliant FCBs.
MPI queries whether it is necessary to include the commencement note in each standard. It does not appear to be necessitated by any statutory requirement. In addition, while the note is correct, for New Zealand it may give an incorrect impression, as it does not convey the full picture. The date of adoption by New Zealand is not necessarily the same as the commencement date. It is anticipated that for the commencement of this new Code, the commencement date and adoption date will be the same, but for any subsequent amendments, the New Zealand adoption is likely to involve a time lag.	NZ MPI	The inclusion of the commencement note at the beginning of each standard is not essential. The matter could be addressed by a note for the entire Code in Standard 1.1.1. However, having regard to the desire of stakeholders to be able to use the Code as stand-alone standards it was decided to include a note in each Standard. The repetition is acknowledged.
Some submitters suggested that defined terms should be highlighted in the text in order to indicate that the terms are to be interpreted according to a specific definition	NZ MPI	FSANZ considered with the drafters whether it would be practical to provide highlighting of defined terms. Our conclusion was that although it is feasible, the frequency of use of defined terms makes the highlighting impractical and may make the Code less readable. The Office of Parliamentary Counsel has published a guideline on asterisking definitions that has been considered: http://www.opc.gov.au/about/docs/drafting_series/DD1.6.pdf Asterisking of the definitions that are defined in subsection 1.1.2—2(3) has been provided at the Approval stage, in conformity with the OPC guideline.

Issue	Raised by	FSANZ response
1.1.1—3(1) (a) This refers to 'sold, processed or handled for sale in Australia or New Zealand'. As noted in the draft Explanatory Statement, 'handle' is defined in the Australian legislation, and 'processing and handling' is defined in the New Zealand *Food Act 2014* . Because standard 1.1.1—3(1)(a) is a substantive application provision, MPI submits that the terminology should be changed so that for each Treaty partner there is an exact match with the wording in its application Act. For these purposes, 'processed or handled' does not sufficiently cover 'processed and handled'. Therefore MPI submits that the application provision will need to include the phrase 'processed and handled'. This may necessitate a slight restructure of the application provision into separate paragraphs applicable to each country.	NZ MPI	Agree.
1.1.1—9 This restates the provisions in current subclause 1(2) of Standard 1.1.1 – and is the 'stock in trade' provision. 1.1.1 – 9(2) is new, and defines 'kind of sale'. We note that the wine 'stock in trade' provision in 1.1.1 – 3 (2) uses different language, referring to 'all food standards'. Is there a reason 1.1.1 – 9(2) sets this out by referring in turn to composition, packaging and labelling? Could 'all food standards' be referred to here as well? 'Composition' could be interpreted too narrowly, for example, it is not immediately clear if contaminants and the microbiological standards are included.	NZ MPI, Victorian regulators, Queensland Health	Agree.
The current Code provision in subclause 1.1.1 (10)(3) is clearer, as it states that other foods may be added in cases where no specific foods are authorised for addition. In other words, where specific foods are authorised, but the Code is silent about the permission to also add 'other foods or other ingredients', no other foods may be added. If they are, then they are not that food and the name should be qualified – eg garlic added to butter to make 'garlic butter'. To summarise our comment, new provision 1.1.1 – 10 (2) needs to be clear that some foods have a limited list of ingredients permitted to be added. In other cases, there are no limitations and foods can contain any ingredients (subject to 1.1.1-10 (3) and (4)), and all foods can be mixed to produce "mixed foods" providing the name/descriptor indicates the true nature of the food (and unless the Code specifies otherwise). If 1.1.1-10 (2) is not amended, an unintended (broad) interpretation may be applied. This is a provision that industry should be able to interpret with ease, as it is a basic concept that is key to the Code. The Explanatory Statement could also contain a summary of requirements.	NZ MPI	In the general case, any food may be added to another food to create a food for sale—subsection 1.1.1—10(2). This provision restates subclause 10(3) of Standard 1.1.1. Some foods for sale have a compositional requirement that limits the foods that may be ingredients---subsection 1.1.1—10(3). Clause 14 of Standard 1.1.1 provides that a definition that contains a reference to composition is a substantive requirement for composition and a standard for the composition of the food. The revision identifies composition requirements directly, rather than by reference. If the compositional requirement includes the statement 'other foods' or other ingredients' that statement does not negate an explicit restriction elsewhere in the Code—subsection 1.1.1—10(4). Subsections 1.1.1—10(5) and (6) provide explicit restrictions. A food for sale must be labelled with a name that indicates the true nature of the food—subsection 1.2.2—2(1).

Issue	Raised by	FSANZ response
		Food that has a compositional requirement can only be sold with the name of that food if it meets the compositional requirement. Food that does not meet the compositional requirement can be sold with any other name that indicates the true nature of the food.
A number of submitters suggested that the words 'consist of' should be replaced with 'be'	NZ MPI	This is appropriate in some instances.
1.1.1—10(4) This subsection prohibits the presence of certain types of substances if they are not expressly permitted; because this prohibition is an exception to the general permission in subsection (1), it is important that it be drafted effectively, without potential gaps. The substances regulated under paragraphs (a), (b) and (c) are as defined in sections 1.1.2—11, 1.1.2—12, and 1.1.1—13 (food additives, nutritive substances and processing aids). Those definitions are unusual in combining a list of things and a list (or description) of purposes. In any areas where those lists are finite, there is a risk that section 1.1.1—10(4)(a), (b) and (c) will regulate only the things which are permitted substances used for permitted purposes, leaving other substances unregulated. Possible examples are: Caffeine added as a stimulant A vitamin or mineral added for a non-nutritive purpose A non-listed decolourant. It is probable that some such examples can be regulated under the Code via some other provisions, eg novel foods. It is, however, undesirable for this fundamental "basic requirements" provision to leave such gaps. Nor is it satisfactory for a regulator to have to rely on the concept of unsuitability and argue about what might be foreign to the nature of the food. There is a general problem of intention under the Code: in the absence of a presumption that any substance present was added intentionally, the onus is on the prosecutor to prove intention, rather than on the defendant to disprove intention. A phrase such as "performs a technological purpose in the food" appears more susceptible to objective proof than "was added to the food to perform a technological purpose". The latter focuses more on the manufacturer's actual subjective intent at the time. This raises concerns about enforceability, particularly in the context of strict liability offences, which are also referred to in our comments under 1.1.1—13.	NZ MPI	The finite nature of the lists has been considered in the drafting. The following provisions operate to include substances that are not in the lists but are of relevant interest: 1.1.2—11(2)(b) and 1.1.2—12(2)(c) . In relation to processing aids the list is intended to be closed, as in the current Code provisions.

Issue	Raised by	FSANZ response
Assistance from the labelling requirements in proving intention may be limited: the food additive requirements will only be triggered if something was "used as a food additive" within the definition of that term, and the mere listing of an ingredient would not be sufficient to show a particular purpose was intended. Furthermore, circularity may result from these "used as a …" definitions: the Code defines "used as a food additive" (ie what is in and what is out of the definition) and then effectively states (eg in 1.3.1—3) the circumstances in which a substance may come within that definition. That is unusual and arguably contrary to expected legal use of definitions.		
Suggest changing the heading to "Food sold with a specified name or representation". This change is a better description of the substandard but does not solve the concern with wholegrain and wholemeal, which is explained further in the comments on 1.1.1—13 (1).	MPI, Victorian regulators.	Agree.
1.1.1—13 (1) We recommend changing subsection (1) as follows — "This section applies in relation to a provision of this Code that provides that 'a food that is sold as NN' or 'a food that is sold as being made from NN', where NN is a particular food or ingredient, must satisfy certain requirements (usually that the food being sold must satisfy the definition and any compositional requirements of NN in this Code)." This would help capture all intended uses of a name when selling a food, ingredients in a food (specifically 'wholegrain' and 'wholemeal'), and mixed foods. It would, for example, clarify that wholegrain bread must be, or be made from, wholegrain that meets the definition of wholegrain. A second example that this provision clarifies is that the butter component in 'Garlic Butter' would need to meet the definition and compositional requirements for 'butter', and that cheese in a 'Cheese Roll' would need to meet the definition and compositional requirements for cheese.	NZ MPI	FSANZ does not consider that the changes suggested are necessary. Section 2.1.1—7 provides that food that is sold as being made from wholemeal or wholegrain must be made from grain that meets the relevant definition. FSANZ considers that the concern about, for example, garlic butter, is addressed by the requirement for a statement of ingredients. Garlic butter will require a statement of ingredients that declares butter as the principal ingredient. As butter is a defined food, that component must meet the compositional requirement.
1.1.1—13 (2) Suggest splitting subsection (2) into two separate subsections as shown below, to set out the two different ways that the requirements apply: 1.1.1—13 *(2) If the provision specifies NN in quotation marks, any requirement that must be satisfied applies only if that name (NN) is used in connection with the sale.* *Note 1…*	NZ MPI	Agree.

Issue	Raised by	FSANZ response
Example… *1.1.1—13 (3) If the provision specifies NN without quotation marks, any requirement that must be satisfied applies to any sale in which a purchaser may be expected to assume that the food being sold was NN.* *Note 2…* *Example…* We also suggest the following: Amending the two lists of foods in Note 1 and Note 2 (see below) providing full sentence examples, under both Note 1 and Note 2. We are still concerned that the test to determine that a "purchaser would be led/may be expected to assume" that the food was NN not in quotation marks could be circular and could be subjective, which would make enforcement very difficult. "May be expected to assume" is a rather vague and subjective phrase in this important "basic requirements" provision. "May" is less certain than "would". "Expected" – by whom? "Assume" – some sort of subjective mental element. This provision may also be difficult to enforce where a food definition is not only unused by consumers but is extremely long and complicated. An example is edible oil. It might be difficult for a prosecutor to allege that a consumer may be expected to assume that the food being sold was the triglycerides, diglycerides, or both the triglycerides and diglycerides of fatty acids of plant or animal origin etc etc. The *Food Act 2014* (NZ), like the Australian Model Food Provisions, contains some strict liability offences which do not sit well with this subjective wording. An example is section 243 of the Food Act 2014 (NZ), which provides that it is an offence to breach or fail to comply with a requirement in an adopted joint food standard.		
1.1.1—13 (3) Enforcement of subsection (3) will also be challenging and a subjective assessment may be required to determine if the "context makes it clear that this is not the intention". It is not clear in the section what is meant by "context". In most of the examples provided, it appears to mean when there is a history of use of a name. Product descriptions, product placement, and qualifying names are some examples of "context" that may be considered during an assessment of naming and compositional compliance, but reaching agreement on context and intention could be contentious.	NZ MPI	The context of sale will be provided by a range of factors. Primary contextual indicators might include colocation with similar products, labelling (other than the name), price or promotional material.

Issue	Raised by	FSANZ response
We are also concerned that the 'unhopped beer' example may set a precedent for removing or reducing core compositional requirements, which may or may not be acceptable. We therefore recommend removing this example. We note that enforcement agencies could develop guidance around expectations to help alleviate these concerns. It would also be helpful if the Explanatory Statement provided information on the rationale behind the placement of foods in the two lists.		
1.1.1—13 (4) As noted above, this provision needs to be moved to 1.1.1—10, to follow on from 1.1.1—10 (3), as it is of general application regarding compositional requirements. In 1.1.1 – 13, its application is limited to provisions stating that a food that is sold as NN must satisfy certain requirements, by virtue of 1.1.1 — 13(1). Examples of where this would not apply (unless moved) are packaged water 2.2.2 – 3 (not an NN provision), and electrolyte drinks 2.6.2 – 9 (NN provision separate from permission to add).	NZ MPI	Agree.
1.1.2—2 Definitions 1.1.2—2 (3) sets out definitions, and subsections (1) and (2) provide for further interpretive guidance and the respective priorities. Each of the subsections includes 'unless the contrary intention appears', so as to ensure appropriate interpretation. We query whether the relative priorities have been fully spelled out. The FSANZ Act meaning is expressly subject to the application Act meaning, which is unusual but presumably appropriate for this particular instrument. What are the priorities between the application Act meaning and the Code definitional meaning? If the Code definitions set out in subsection (3) are intended to "trump" the application Act meaning, it may be helpful if subsection (2) referred to terms 'used but not defined in this Code'. Note that this would reflect section 8(2) of the New Zealand Food Act 2014 which provides "To avoid doubt, terms and expressions used, but not defined, in the Code have the same meaning as in this Act". For example, there are different definitions of 'label' in the Code and the New Zealand Food Acts; their application may depend on an analysis of 'unless the contrary intention appears', but it would be helpful if 1.1.2—2 clarified the rules and priorities as much as possible.	NZ MPI	Example inserted after subsection 1.1.2—2(2).

Issue	Raised by	FSANZ response
1.1.2—11 (2) (a) Suggest that after (ii), (iii) and (iv) the S 16 references are provided, consistent with providing S15 after (i). The phrases used are definitions, and there are set lists of approved additives, so for clarity the schedule reference should be included. 1.1.2—11 (2) (b) Suggest that the Exposure Draft wording (which is in current Code Purpose statement) regarding 'not normally consumed as a food in itself and not normally used as an ingredient of food' is retained, as this is Codex wording, and is well understood and provides added clarity. … We note that the wording used to describe extracts refers to three verbs (concentrated, refined, and synthesised), but arguably only the verb "synthesised" is tied to the phrase "to perform 1 or more of the technological purposes listed in Schedule 14". If that phrase colours all three verbs, we suggest it should read "selectively concentrated, refined, or synthesised to perform ...". This comment applies not only to the food additives provision 1.1.2—11(2)(b) but also to the nutritive substances provision 1.1.2—12(2)(c).	NZ MPI, NZFGC, INC	Minor change made to punctuation of the provision.
1.1.2-13 (1) (b) could perhaps refers (sic) to 'final food', not 'food for sale'.	NZ MPI	Not agree. Food for sale is the relevant point for enforcement.
In several places the phrase "displayed in connection with the sale of the food" has replaced the current Code wording "displayed in connection with the display of the food". This attempt to avoid double reference to "display" has changed the meaning, and we submit that it should be changed back to current wording. A consumer makes the decision to purchase at point of display, which may not be the same as the point of sale, eg in a big supermarket.	NZ MPI	Agree.
Ingredient is no longer defined, and this subsection [standard 1.2.4] contains references to ingredients, that are taken to mean the inclusive term as defined in the current Code, i.e. as including food additives and processing aids.	NZ MPI	Ingredient has its common meaning in the absence of a definition. That common meaning is consistent with a meaning that includes additives, which are defined by the application Acts to be foods.
1.2.4—7 (6) This represents a change in wording compared with the current Code and the intent could be misinterpreted. In both the current Code and the DFRM, the heading to the subsection refers only to food additives.	NZ MPI	Although the provision is in a section that relates to food additives the effect of the provision is not limited to food additive uses. The purpose of the provision is to prohibit declaring caffeine under the class name 'flavouring'. However, the requirement to declare caffeine as caffeine applies generally. While the wording is different the outcome is the same.

Issue	Raised by	FSANZ response
The reference to 'otherwise' should be removed, as caffeine added to other foods such as formulated caffeinated beverages (and the labelling) is dealt with under standard 2.6.4. We suggest that this reads along the following lines (possibly also with reference to used as a food additive): *If caffeine is added to a food for sale (as a flavouring), it must be listed in the statement of ingredients as caffeine.*		
On the question of the application of interpretation legislation, the AFGC has considered the advice provided by the Australian Government Solicitor at supporting document 6. While agreeing with that advice as far as it goes, it stops short of analysing how an interpretation provision might operate in the event of a prosecution, given that the relevant offence provision (except in the case of the Imported Food Control Act) is a jurisdictional enactment that would be interpreted under State and Territory laws, irrespective of any provision in the Code. This is also true for procedural matters, statutory presumptions and defence provisions. The AFGC accepts that it is not ideal for the Code to be interpreted on a jurisdictional rather than nationally uniform basis, it seems that either solution carries as many problems as it solves. The AFGC considers that this might be an issue best resolved with the jurisdictional stakeholders who carry responsibility for enforcing the Code.	AFGC	There is little doubt that an offence provision will be interpreted according to the interpretation laws of the jurisdiction that enacted the offence provision. However, the Code does not fall to be interpreted as an element of the offence provisions. To the extent that it is relevant (most offence provisions do not refer to or rely on the Code) the Code is to be interpreted as a Commonwealth legislative instrument. It is considered consistent with the Intergovernmental agreement on Food regulation that it is the intention of the States that the Code should be interpreted consistently.
The AFGC continues to oppose the suggestion that the Code has any operative effect of itself. Clauses 3 and 12 of Standard 1.1.1 serves as an example of a provision that, far from establishing legal clarity and the primacy of the Application Acts, serves to confuse the nature and operative effects of the Code.	AFGC	FSANZ does not assert that the Code has an operative effect—in the sense of being substantive law. Some provisions of the Code are considered to be operative—in the sense that they establish substantive requirements, which are given legal effect by the application Acts. Sections 1.1.1—3 and 1.1.1—12 are not operative. Those clauses do no more than repeat the effect of relevant application Acts. FSANZ accepts the proposition that the provisions are not essential elements of the Code. However, the provision in subsection 1.1.1—3(1) repeats an existing standard. It has been considered inappropriate to remove that statement (subclause 1(1) of Standard 1.1.1) although we have responded to submitter comments to modify the words to more accurately mirror the relevant application Acts.

Issue	Raised by	FSANZ response
		Section 1.1.1-12 is considered necessary to ensure the effective operation of the Imported Food Control Act. At worst, the provision might be considered to be superfluous (as is suggested by MPI in relation to the New Zealand *Food Act 2014*).
Clause 13 of Standard 1.1.1 has good intention, but remain expressed in language that is convoluted and likely unclear to non-legal personnel faced with responsibility for applying the Code in day to day operations. Further, it acknowledges the continued need for common understandings as to what is, and is not, regulated (see the ginger beer example) when Proposal P1025 was intended to remove the need for such common understandings.	AFGC	Expressing the concept concisely is simple—some foods have to comply with compositional requirements. Expressing the application of the concept simply is more difficult. Many foods that have compositional requirements are not sold with the name used in the standard. Also, many names used in standards are also used to describe foods that ae unrelated to the defined food. The policy of the Code is that the use of food names should not be regulated, unless there is a public health and safety reason for doing so.
The AFGC accepts that regulators may face problems in enforcing the current definitional standards and that some reform in this area would improve the legal efficacy of the Code. The issue might best be considered as part of a wider stakeholder engagement process.	AFGC	Agree
The AFGC remains ambivalent in relation to the collation of Schedules at the end of the Code. However, it would be a useful aid to navigation if the name of the Schedule included a reference to the Standard to which the Schedule relates. This would give the reader looking for a Schedule to Standard 1.2.7, for example, who had arrived at Schedule 15, a clear indication as to whether to go forwards or backwards from there.	AFGC	The navigational assistance sought by AFGC is provided in notes at the commencement of each standard and at the commencement of each table. In particular, Note 1 for each standard provides an outline of the connection of the Schedule to the substantive provisions of the Code. Including a reference to the standards in the name of each Schedule might be counterproductive, as many Schedules have links to more than one standard.
The AFGC is concerned that definition in clause 11 of Standard 1.1.2 might capture ingredients such as salt, sugar and vinegar being substances that perform technological functions (flavouring, preservation, acidity regulation) and which are selectively concentrated and/or refined. While it is appreciated that the concept of additive has proven difficult to definitively enunciate in regulatory documents worldwide, the intent of Proposal P1025 to provide clarity and to not rely on implicit understanding is not served by the current language.	AFGC	Salt, sugar and vinegar are not substances that have been selectively concentrated or refined to perform a technological purpose. They each have a long tradition of use as food that is quite independent of any incidental technological purpose. Salt has a long tradition of use as a food. It is found naturally and is produced by simple evaporation. It cannot be said to be selectively extracted, concentrated or refined for a technological purpose, although it is possible that it performs many technological purposes.

Issue	Raised by	FSANZ response
		Sugar is a simple extract from a range of whole foods using basic methods such as crystallisation or diffusion. There is a long tradition of use of sugar as a food. Vinegar is a fermented beverage that can be used for acidity regulation, but is not selectively extracted, concentrated or refined for that purpose. It has a wide variety of food uses.
There is also concern that the new language seems in many cases to have as many issues as the old. Take as an example the provision relating to the 'unity sum' rule for additives performing the same function (clause 1.3.1-6). The language of the 'old' clause is now expressed as a mathematical formula which is to the same effect, and improves on the 'old' version by explicitly omitting substances that may be used according to GMP. However, the new language refers to the *concentration* of the substance in the food but to the maximum permitted *level* (not concentration) when referring to the regulatory limit. Further, the omission of substances that may be used according to GMP should be part of the calculation provision in subclause (2) but actually appears as a separate stand-alone enactment in subclause (3), which in legal terms means subclauses (2) and (3) are in conflict.	AFGC	The mathematical formula adopts the terminology used in the current standard; substituting level for limit. Inclusion of the exception that is in subsection (3) in the formula would be unnecessarily complex. For a technical audience the section is simply a statement of a well understood concept—the unity sum rule. In enforcement proceedings the concepts should be expressed simply, although accurately. Subclauses (2) and (3) are not in conflict, unless (3) is read without its introductory clause. The alternative would be to qualify the definitions of $\boldsymbol{Conc_i}$ and $\boldsymbol{MPL_i}$ The use of the terms 'concentration' and 'maximum permitted limit' is unchanged.
The proposals relating to the commencement of a revised Code, while achieving their intended effect, are not particularly amenable to practical implementation in day to day operations, where a food technologist must be aware of, and refer to, Code provisions in three different places (the current Code, the P1025 'frozen' Code and the P1025 updating document) during the implementation period.	AFGC	See paragraph 2.2.2, below In the transition period the only relevant text is the current Code. Industry and other stakeholders need only be aware of external changes as matters that will be relevant on a future date. Given the intention that the requirements of the Code not be changed by Code Revision there is no requirement to deal with multiple versions of the same document.

Issue	Raised by	FSANZ response
In national jurisdictional fora FSANZ indicated that the revision process was one focussed on legal drafting. This approach by FSANZ has limited the scope of P1025. The limited scope has, in turn, had the effect of transferring the costs and initiative for future Code reform to businesses and regulators, through raising Applications to address flaws that should properly have been considered, prioritised and scheduled as part of this work. Pursuing this course will result in an *ad-hoc* and uncoordinated Code revision process.	Victorian regulators	See paragraph 2.2.1 below.
1.1.1 – 3 Application of Code The draft now includes 'handled' for sale as requested in earlier submissions. However this amendment has not been addressed under *Standard 1.1.1 – 14 Other requirements for food*, which remains in the draft as for *preparation* only and does not include *handled*.	Victorian regulators	Agree.
However, there are other current standards which prescribe statements and wording (usually in quotation marks), distinguished from the more common 'must include words to the effect that'. It is clear that the intent is that those precise words should be used (the statements often appear to read as warnings). *Standard 1.1.1 – 8* should recognise these statements as well as designated warning statements.	Victorian regulators, Queensland Health, South Australia	Not agree. Both the current Code and the revision draft identify a limited group of statements that must be made in the form set out in the Code. The interpretation suggested by Victoria is not provided for in either the substantive provisions of the Code or implicitly. Variation of the Code to expand the category of mandatory statements is beyond the scope of P1025. The objective sought by Victorian regulators could be achieved by adding to the list of warning statements. Provisions such as Standard 1.2.5, arguably, establish their own mandatory requirements.
Standard 1.1.1 – 10 – Requirements relating to food for sale then sets out compositional requirements and *cl 6* the requirement states: *Compositional requirements* *Food for sale must comply with any provisions of this Code relating to the composition of, or the presence of other substances in, food of that kind.* This Clause is accompanied by a note that states: *see for example Standard 1.4.1 (which deals with contaminants and natural toxicants)*. There is potential for ambiguity in the presentation of these requirements as *composition* is presented as separate from *the presence of other substances*. […] *Microbiological requirements for a lot of food.* This could be resolved by amending *cl 6* to read:	Victorian regulators	FSANZ has removed the navigational note. The provision has been revised to make it clear that a provision related to the presence of a substance in food for sale is a compositional requirement.

Issue	Raised by	FSANZ response
..*relating to the composition of, including the presence of other substances in*,…, and by adding a reference to Standard 1.6.1 in the 'note'.		
1.1.1 – 10 Compositional requirements and 1.4.2 – Agvet chemicals Victoria does not support the change to the scope and enforceability of the current *Standard 1.4.2 Maximum residue limits*, created by both the introduction of the term *active constituent* and the attempt to consolidate the current three categories of requirements into one. The proposed Code introduces the definition: *active constituent of an agvet chemical: means the substance that is, or one of the substances that together are, primarily responsible for the biological or other effect of the agvet chemical* *Active constituent* is both relevant and required under Agvet regulations for usage and labelling but is not relevant for the enforcement of MRLs in the Code. The introduction of this term changes the effect of the current Standard and adds complexity to enforcement.	Victorian regulators, South Australia	The provision has been revised, to remove references to the concept of active constituent.
It is understood that where there are definitions for foods that include references to composition, but no Chapter 2 requirement exists for those foods (that is, there is no *food sold as NN requirement*), the only effect of those definitions is to trigger the application of other Standards (such as a food additive permission). The application of the other standards would only be triggered if those 'compositions' are met.	Victorian regulators	Agree that this is the outcome.
Meat pie is listed in Note 1 and is drafted in quotation marks. We conducted a scan of such products at retail, and the results indicated that the majority of single meat species products are labelled as such (that is, as a steak pie, beef pie, pork pie, or lamb pie) and the words *meat pie* are not on the label. The generic brands and other multi meat species products generally were labelled as *meat pie*, although there were other labelling variations. In light of the results of this scan, we recommend that *meat pie* should be drafted in the revised Code without quotation marks, and moved to Note 2.	Victorian regulators, NZ MPI	Agree.

Issue	Raised by	FSANZ response
Cl 4 refers to where the compositional requirements permit the use of *other foods* or *other ingredients*. This replaces current *Standard 1.1.1 10* which only refers to the addition of *other foods*. The OLDP report stated that the principle of 'one term, one meaning' was a goal of good drafting practice. Permission to add *other foods* does not include food additives, food processing aids and the like, and this concept is well understood by both industry and regulators. The proposed change is to the permission from *contain other foods* to *other ingredients* for four foods: bread (*Std 2.1.1*); processed meat (*Std 2.2.1-2*); sausage (*Std 2.2.1-2*); and fermented milk desserts (*Std 2.5.3-3*). However, the current permission is retained for five foods: fish (Table, *Std 1.2.11*); ice cream (*Std 2.5.6-2*); formulated caffeine beverages (*Std 2.6.4 -2*); fruit wine (*Std 2.7.3-2*); and spirits (*Std 2.7.5-2*) and this appears to be inconsistent with the stated OLDP principle. We are unsure as to the reason for these distinctions and thus the changes. If there is no underlying reason for this distinction then we recommend that only one term, *other foods*, should be used.	Victorian regulators, South Australia, NZ MPI, Queensland	Agree, in relation to bread, sausage and fermented milk mixed foods. The definition of processed meat currently refers to ingredients and is not changed. It is recognised that this could be anomalous, although inconsequential.
1.1.1 – 14 Other requirements relating to food *Requirements for preparation of food* should be amended to *preparation and handling of food*, both in the sub-heading and in *subclause (1)* in line with the changes previously recommended in *1.1.1 – 3.*	Victorian regulators, Western Australia, South Australia	Agree.
We believe that it would also be more logical to move the definition for *special purpose food* from *1.1.2 – 2 to 1.1.2 – 3*.	Victorian regulators	Agree.
However, under *1.1.2 – 3 Definitions – particular foods*, there is also a definition for *fruit and vegetables.* In our view the definitions, and exceptions, should all be set out under *1.1.2 – 3* as both fruit and vegetables are particular foods, and a similar approach to that is used for *sugars* under *1.1.2 – 2* should be taken.	Victorian regulators	Agree.

Issue	Raised by	FSANZ response
We recommend that the same approach should apply to the definition of *fish* which is currently defined as: *a cold- blooded aquatic vertebrate or aquatic invertebrate including shellfish, but not including amphibians or reptiles*. The current Code, and the draft revised Code, are inconsistent in the application of this definition. For example, *Standard 1.4.1* sets out mercury level requirements for fish, molluscs and crustacea. It is recommended that where the broader definition is to apply that this should be explicit. Otherwise the specific terminology, as used in Standard 1.4.1 should be applied.	Victorian regulators	FSANZ considers that the definition is applied consistently. It is recognised that the use of the words 'crustacea and molluscs' in Standard 1.4.1 may be unnecessary. However, that use in the contaminants standard operates to highlight the different levels applicable to separate categories of fish.
Even where definitions were initially intended to be descriptive or characterising, the gazettal of *Standard 1.1.1 cl 14* effectively changed these to compositional requirements. That is: *where a definition for a food in the Code contains a reference to the composition of the food, the definition is to be taken as a* - 10 *(a) substantive requirement for the composition of the food; and* *(b) standard for the composition of the food.* Any attempt to 'restore' a descriptive status to these definitions would change the effect of the Code, which we have been led to believe by FSANZ to be outside the scope of the Code Revision proposal.	Victorian regulators	Clause 14 of Standard 1 1 1 refers to 'a reference to the composition of a food'. What is a reference to the composition of a food will be a question of fact and law. The history of regulation might be a relevant factor where that history is clear and unambiguous. FSANZ considers, based on a careful interpretation of the relevant application and proposal documentation, that some definitions in the current Code are wholly characterising and contain no 'references to the composition of a food'.
Cured and/or dried meat in whole cuts and pieces should be set out with a minimum compositional requirement. That is, these products must contain not less than 160 g/kg meat flesh on a fat free basis (equivalent to a meat content of ~ 77%). The risk of not setting out these requirements is that products pumped with more water will not meet the definition of a cured and dried meat, and so will not be required to meet the microbiological limits set out for cured meat in Standard 1.6.1.	Victorian regulators	Agree.
Dried meat has historically been required to have a water activity of not more than 0.85. This is a food safety requirement and is not descriptive. For enforcement purposes it is clearer to establish that a product does not meet a safety requirement (water activity in this case) rather than it being falsely described.	Victorian regulators	Agree.

Issue	Raised by	FSANZ response
Spirits and liqueurs were originally set out with minimum alcohol contents which were intended for consumer protection and not differentiation. Individual spirits were separately defined, often with separate compositional requirements. The names of the spirits were prescribed names. The removal of other elements of a standard of identity (see above) created problems for enforcement in the existing Code. Methanol is regarded as a contaminant formed in spirits. Currently there are requirements for maximum levels of methanol set out in the Table to Clause 3 of *Standard 1.4.1*: that is, 0.4 g of methanol per litre of ethanol in *Whisky*, *Rum, Gin* and *Vodka*; and 8 g methanol per litre of ethanol in *Other Spirits, fruit wine, vegetable wine* and *mead*. Where spirits are watered down, they would that fail to meet compositional requirements, and thus the methanol requirement would not apply. The inapplicability of this food safety requirement reinforces our view that the compositional requirements must be stated separately to protect health.	Victorian regulators	Agree.
Jurisdictions require additional clarification about which offences have been drafted with model offence section 18 in mind.	Victorian regulators	The Code does not contain offence provisions.
The definitions of RDI and ESADDI appear only as a 'Note' to this Standard, that is there is no legal definition. We recommend that these be defined and included as part of *Standard 1.1.2 – 2*. The current Code provides definitions in *Standard 1.1.1 cl 2*.	Victorian regulators, NZ MPI	Agree.
1.1.2 – 13 Definition of used as a processing aid The distinction between a processing aid and a food additive is based on whether or not the substance has an ongoing technological function in the final food. This is presented generically in the current definition of processing aid, and is also part of the rationale for the exemption from ingredient labelling requirements for processing aids. The application of the current definition considers whether or not the processing aid has an ongoing technological function in the final food. The proposed drafting (under *1.1.2 – 13 (1) (b)*) changes the effect of the current Standard by restricting ongoing technological functions to those listed in the *food additive* Schedule 14. There are many processing aids performing functions not listed in Schedule 14 which are removed or deactivated, once their role is completed, to ensure compliance with the Code. The proposed change would have the effect of permitting these substances to remain active in food for sale.	Victorian regulators, NZ MPI, South Australia	Agree.

Issue	Raised by	FSANZ response
It would allow some processing aids, with functions not listed in Schedule 14 and with no permissions as food additives, to operate as food additives. We recommend that the definition of processing aid should revert to: *does not perform a technological purpose in a food for sale*.		
1.1.2 – 4 Calculation and expression of amount of a vitamin or mineral The Code includes provisions in various Standards where a number of related chemical entities are permitted to be added to, or be present in food. The Code sets maximum levels for additives such as preservatives, maximum residue limits (MRLs) for agvet chemicals, and in this case RDIs or ESADDIs for vitamins and minerals. Where there are multiple forms of a vitamin permitted to be added, or naturally present, it is a fundamental principle that it must be made clear how the RDI is expressed and how the level of vitamin present (in whatever permitted forms) is to be calculated to test for compliance. This matter has been discussed with FSANZ. While some changes have been made to provide the same clarity in this respect as in the current Code, the treatment of vitamin C has not been addressed. We recommend that this discrepancy be addressed by deleting the proposed 1.1.2 – 14 (3) (c), that is: *for vitamin C, add the amounts of L-ascorbic acid and dehydroascorbic acid* (as this is interpreted as excluding the other permitted forms) and inserting in columns 3, 4 and 5 of Schedule S1-2 the *form*; total of L-ascorbic acid and dehydroascorbic acid. This change would allow *1.1.2 13 (1)* to operate as intended. For Vitamin C, column 3 would then read: *40mg total of L-ascorbic acid and dehydroascorbic acid*. Thus the RDI for Vitamin C is read as 40 mg calculated and expressed as the total of L-ascorbic acid and dehydroascorbic acid.	Victorian regulators, Dairy Australia, South Australia	Agree.
Retail sales 1.2.1 – 4 When this division applies In 1.2.1 – 4 the wording is unnecessarily complicated, where it describes *(b); if the food is sold as suitable for sale from a retail outlet….* We propose that it would be clearer if the expression - *if the food is sold as suitable for retail sale* is used, as there is no definition of a retail outlet, and that sales from street vendors are considered to be retail sales.	Victorian regulators	Agree.

Issue	Raised by	FSANZ response
The phrase which describes food being *offered* for retail sale is included in *Standard 1.1.1 – 10 (3)(b)* and *(4) (f)*. It is unclear as to how the *offering* differs to *for sale* (as the latter is broadly defined in the application Acts to include display or possession for sale). It is not clear that it is intended to be narrower than the definition of *for sale*. If, on the other hand, this is *intended to be any retail sale*, it is suggested that *offered* be deleted, to avoid uncertainty.	Victorian regulators	Agree.
Whilst the reason for the addition of the words *for sale* in *Standard 1.2.1* are understood, and are necessary in key application/requirement sections (such as sections *1.2.1-4* and *1.2.1-5*), it is unclear whether the numerous additions are always necessary in the associated detailed Standards such as *1.2.1-6*. Sometimes they appear to be unnecessary, as is the case in *Standard 1.2.1-9 (2) (b)*.	Victorian regulators	Agree.
Section 2.2.2-4 refers to eggs *intended for* retail sale or sale to a caterer being stamped. This arguably broadens the scope of the equivalent clause in the current *Standard 2.2.2* which focuses on eggs for sale. Is this obligation meant to arise at an earlier point of time (that is, not just to food in possession for sale and the like)? We are unclear as to why this is necessary.	Victorian regulators	Agree.
The definitions of *label* and *labelling* in *Standard 1.1.2-2* refer to food *being sold* rather than *for sale*. Amending these definitions to refer to *for sale* would improve consistency and clarity.	Victorian regulators, Western Australia	Agree.
The definition of *package* in *Standard 1.1.2-2* refers to for *intended for sale*. Is this deliberate, or should it be “for sale”?	Victorian regulators	Agree. The phrase repeated the words of the current Standard. The word ‘intended ‘ is superfluous given the broad definition of ‘sell’.
2.2.1 – 3 Requirement for food sold as sausage. Sausage should not be in quotation marks.	Victorian regulators, NZ MPI	Agree.
2.2.1 – 4 Requirements for food sold as meat pie Meat pie should not be in quotation marks. See comments under *1.1.1 – 13*.	Victorian regulators, NZ MPI	Agree.

Issue	Raised by	FSANZ response
There are also food safety consequences associated with the changes that are in the proposed draft to definitions of, and standards applicable to, *manufactured meat* and *processed meat products.* It would be difficult to address those matters without a review of both definitions and *Standard 2.2.1.*	Victorian regulators	A requirement has been included in section 2.2.1—5.
2.10.2 – 3 Requirement for food sold as salt Victoria supports the change in drafting for *salt* from that of the previous draft Code. That is, splitting the compositional requirements from the definition. The expression of the maximum levels of metal contaminants as compositional requirements (*2.10.2 – 3 (b)*) now allows for these to be included, for consistency, in *Schedule S19 – 4 Maximum levels of metal contaminants*. This is the logical repository for all such maximum levels (MLs).	Victorian regulators	Agree.
It is noted that the proposal has removed mercury from *Schedule S19 - 4* and created a new schedule (*Schedule 19 -7*) to deal with the levels of mercury in fish, crustacea and molluscs, and the associated sampling plans. This has the potential to create confusion as users would expect that mercury would be referenced in a schedule titled *Maximum levels of metal contaminants*.16 It is recommended that mercury be reinstated in *Schedule 19 – 4* to allow for the listing for 'salt', and that there also be a sign post to *Schedule 19 – 7* for mercury in fish, crustacea and molluscs. This will also allow for the inclusion of MLs for mercury in other foods in the future, should this become necessary.	Victorian regulators	Agree, in principle. A note in the mercury entry in S19-4 addresses the issue.
1.1.1—10 Novel foods The requirement in 1.1.1-10 in relation to novel foods are obviously meant to mirror the requirement of the existing Standard 1.5.1 2, which states "A novel food must not be sold by way of retail sale as food or for use as a food ingredient unless…" However, officers from Food Safety Standards and Regulation interpretation of the requirement in relation to ingredients is that a novel food must not be sold for use as a food ingredient regardless of whether it is sold by retail or not, for example, sold by a caterer.	Queensland Health	The proposed provision reflects the current Code.

Issue	Raised by	FSANZ response
1.1-10 (4) states “food for sale must not have as an ingredient or component…” In relation to novel foods, this appears to be an extension to the current requirement which only relates to the sale of a novel food and use of a novel food as an ingredient; and not as a component. For example, resveratrol is regarded as a novel food and may not be sold as a novel food or included as an ingredient. However, resveratrol naturally exists as a component of wine. Therefore the proposed requirement may legally prevent the sale of wine, which is not the intention.		Subsection 1.1.1—10(5) provides that subsection 1.1.1—10(4) does not apply to a naturally occurring substance.
1.1.1—10 (4) and 1.1.1—10 (5) Additives and processing aids present by natural occurrence This section prohibits the sale of food containing ingredients or components that contain substances such as food additives and processing aids that are not permitted by the Code. However, under section 1.1.1—10 (5) it does not apply if it is in the food or an ingredient by natural occurrence. Concern is expressed that this requirement may be harder to prove than expressing the prohibition in terms of the final state of the food that is for sale. For example: Analysis of a food that has been sold detects a food additive such as a preservative. To undertake enforcement action against a business it would need to be proven it was an ingredient or component of the food rather than just prove it is present. A range of microbial ingredients for food are now available that generate an additive during preparation of the food. It appears these have been developed partly to circumvent labelling requirements that require the declaration of additives. Examples of such products include: o Cultured wheat flour, which produces propionic acid. o Cultured sugar products, which can produce substance such as benzoates. Therefore, consideration could be given to amending 1.1.1—10 (4) to extend the prohibitions to also include the substances or foods listed in the final food, for example (amended as underlined), “Unless expressly permitted by this Code, food for sale must not contain, or must not have as an ingredient or a component, any of the following…”	Queensland Health	It is beyond the scope of P1025 to address issues related to the use of ingredients that can perform a technological function in a food for sale.

Issue	Raised by	FSANZ response
1.1.1—10 (8) Articles and materials in contact with food Concern is expressed about the new wording of 1.1.1—10 (8) which replaces Standard 1.4.3 – *Articles and Materials in Contact with Food*. The main problem is with the use of the word 'it', that is, "Any packaging and any article or material with which it is in contact, must not if taken into the mouth…" The new wording is not as clear as the old. It reads as if the article or material needs to be in contact with the packaging. Also, the reference to packaging in the existing Standard 1.4.3 refers to packaging material enclosing articles or material and not to packaging enclosing food. Therefore, consideration could be given to the following alternative wording: "Any article or material, or packaging material that may enclose such article or material, which is in contact with food, must not, if taken into the mouth…"	Queensland Health	The provision has been revised to clarify that the article or material may be inside the packaging or in contact with the food for sale.
1.1.1—10 (9) Inclusion in Standard 1.1.1 of the application of labelling requirements to advertising The prohibitions for labelling also apply to the advertising of food. This is in Standard 1.1.1, 13 of the current version of the Code and has been reproduced in Standard 1.2.1—23. It would be helpful if the obligations in regard to advertising were explicit in Division 4 of Chapter 1 (Basic requirements) under 1.1.1—10 (Requirements relating to food for sale). This would sign post the requirements for those not familiar with the requirement and would probably strengthen the link back to the offence requirements in State and Territory Food Acts. As such, consideration could also be given to the following amendment (as underlined) to 1.1.1—10 (9) "If a labelling or advertising requirement of this Code applies to the sale of food, the labelling or advertising must comply with the requirement".	Queensland Health	Agree in-principle. However, the suggested amendment could have unintended consequences. The requirement in relation to advertising is just one labelling requirement.
1.1.1—10 (10) Information provision requirements Section 1.1.1—10 (10) states "If an information provision requirement of this Code…" The terms 'information provision' and 'information provision requirement' are not used elsewhere in the Code. However, the term 'information requirements' has been used many times. It would be more consistent if the word 'provision' was deleted from 1.1.1—10 (10). For example, 1.1.1—10 (9) does not refer to a 'labelling provision requirement' or 1.1.1—10 (7) does not refer to a 'packaging provision requirement'.	Queensland Health	Agree.

Issue	Raised by	FSANZ response
1.1.1—13 Use of food with specified name or nature This section should clarify a number of interpretational issues concerning the application of various requirements in the Code related to the names of various foods. However, it is still appears somewhat uncertain how the section applies to the naming of analogue foods (i.e. food alternatives, imitation food and food substitutes), such as soy cheese, soy ice cream, coconut ice cream, coconut yoghurt, etcetera, as well as foods that have well recognised names such as coconut cream and coconut milk.	Queensland Health, Dairy Australia	The Code requires that food for sale be labelled with a name that is either a relevant prescribed name or a name that is sufficient to indicate the true nature of the food. Analogue foods should be given names that indicate that their true nature is as an analogue of another food. For example, the name soy cheese indicates that the product is not a dairy product and is an indication that a dairy standard is not applicable. Names such as coconut cream or coconut milk are not analogue names, but traditional names. Coconut ice cream might be ice cream that contains coconut flesh or milk as an ingredient, or might be a frozen dessert made primarily from coconut milk or coconut cream. Section 1.1.1—13 has an application only to the foods for which a standard has been made, eg those in Chapter 2. The provision operates to ensure that if a food for which there is a standard is sold the compositional requirements will apply to that food. The complexity of the provision arises because many of the foods for which there is a standard are sold with other names and some of the names are commonly used with other foods.
Under section 1.2.2—2 the name or description of a food has to indicate the true nature of the food, and the compositional requirements describe the intended 'true nature' of some foods, for example, yogurt is a fermented milk product. However, there appears there may be valid alternative interpretations of the overall requirements, for example, a product described 'coconut yoghurt' may be a fermented milk product flavoured with coconut or an analogue of yoghurt made from coconut. In this case the compositional requirements clearly apply to fermented milk products but the application of 1.2.2—2 is less clear. Standard 1.1.1—13 (3) by stating "the sale is taken to be a sale of the food as the named food unless the context makes it clear this is not the intention" could possibly clarify the application of the compositional and naming requirements. For example, if elsewhere on a label of 'coconut yoghurt' there were statements that provide a context for the name of it such as 'dairy free'. 5 It would be helpful to consumers, industry and enforcement agencies if the application of the code to analogue foods was explicit. At a minimum, the inclusion of an example in section 1.1.1—13 related to analogue foods may help.	Queensland Health	Expansion, or enhancement, of labelling requirements is beyond the scope of P1025.

Issue	Raised by	FSANZ response
1.1.1—13 (2) The first example provided has potential to be confusing in relation to water-based beverages because it reads like it is linked to the example for cocoa based confectionery. Consideration could be given to placing a comma after 'chocolate confectionery' to separate the examples.	Queensland Health	Agree.
1.1.2—2 Definition of Comminuted There is a need for the term 'comminuted' to be defined in the Code because the dictionary definition does not provide sufficient certainty of the meaning and the subsequent application of various requirements in the Code such as food additive requirements. However, the proposed meaning "chopped, diced or minced" is clearly not the originally intended meaning when the term was incorporated into the Code. Preservatives such as sulphites, nitrites and nitrates are not permitted to be added to meat which has just been boned, sliced, diced, chopped or minced. Under Schedule S15—5, 8 nitrites and sulphur dioxide/sulphites may be added to 'processed comminuted meat, poultry and game products', nitrates may be added to 'fermented, uncooked processed comminuted meat products', and sulphur dioxide/sulphites may be added to 'sausage and sausage meat containing raw, unprocessed meat.' Defining comminuted as "chopped, diced or minced" will in effect legally extend the permission for nitrites and sulphur dioxide/sulphites to be added to mince and cuts of meat. Because comminuted has not be defined in the current version of the Code, there has been some uncertainty about the different types of meat products to which these additives can be included. This has potentially contributed to some large retailers selling products described by terms such as burgers and rissoles that contain sulphur dioxide/sulphites and which apparently are not sausage meat. Since the main objective of defining comminuted is to make it clear which additive permissions apply, it may be better to define the actual term used in Schedule S15—5, that is 'processed comminuted meat, poultry and game products'. Consideration could be given to in this meaning excluding boned, sliced, diced, and chopped meat products as well as mince and mixed foods containing mince such as rissole.	Queensland Health	***comminuted*** means chopped, diced or minced. This definition was previously in Australian Food Standards Code Standard C1. That standard also noted that mechanical separation results in comminuted meat. Minced meat is a form of comminuted meat to which food additives may not be added. This was overt in Standard C1. In the current Standard and the revision there is no permission to use a substance as a food additive in minced meat. Sausage meat is minced meat or comminuted meat, or a combination of both, which may (or may not) be mixed with other foods. It is implicit that the purpose of the mixing is to use the sausage meat in the production of sausage. The definition of comminuted is not determinative of the question whether food additives can be added, since there is no permission to use additives in minced meat. The definition of sausage meat is determinative as there is permission for additives in sausage meat. The question is—when does minced meat become sausage meat? This question is beyond the scope of P1025. However, the policy intention appears to be that minced meat is a fresh product that has no food additives. On the other hand, it is anticipated that sausage meat will require some additives, such as preservatives, and will be sold in a casing in circumstances in which the visual appearance of the meat is obscured. The Code is silent on the question whether sausage meat may be mixed with other foods and formed into patties, such as burgers or rissoles. As food for sale, both mince meat and sausage meat must be described sufficiently to indicate the true nature of the food.

Issue	Raised by	FSANZ response
1.1.2—2 No definition of Ingredient The term 'ingredient' is not defined in the draft Code despite it being a key term crucial to accurately interpreting some requirements. Without being defined in the Code, the Australian Macquarie dictionary definition should be applied, which defines it as "n. 1. Something that enters as an element into a mixture; *the ingredients of a cake.* 2. A constituent element of anything" (Macquarie Concise Dictionary 5th edition). However, this definition is not particularly helpful in relation to interpreting the Code. Though it is acknowledged that a general meaning is probably most relevant to the Code, that is, an ingredient is anything added to food, whether intentionally or unintentionally added.	Queensland Health	In the current Code there is a definition of ingredient that is relevant to the labelling provisions only. The dictionary definition applies for all other purposes. It is FSANZ's opinion that the dictionary definition is appropriate for all purposes.
1.2.1—22 Prohibition on altering labels This section makes it an offence to deface a label. The current wording would make it an offence for a retailer to apply a sticker, such as a price label, on any part of the label even those parts which do not contain information required by the Code. Consideration could be given to clarifying in the Code that this requirement only applies to information prescribed by the Code. The section could possibly be amended as indicated by underlining: "A person who sells a food for sale that is packaged, or deals with a packaged food for sale, must not deface any part of the label on the package that is required by this Code unless…"	Queensland Health	It will be a question for enforcement agencies to determine whether an action taken by a person selling food amounts to the alteration, removal, erasure, obliteration or obscuring of a label.
1.2.1—24 General legibility requirements Note that 1.50 (1)(c) of the previous draft has been removed in the current revision i.e. be large enough so that it can be read easily. The editorial note in the current Standard 1.2.9 states that "The requirements of this Standard will also not be met where prescribed information is printed in a small font so that the statement cannot be read easily." As size of the font is not being prescribed (except for warning statements) adding this statement is considered to be an example of clarification and is not a change. It is also probably a substantive requirement that probably should have been included in the requirements and not included as an editorial note. It is considered that legibility is not necessarily the same as able to be read easily.	Queensland Health, NZFGC	FSANZ has determined that this is a matter that is beyond the scope of P1025 to resolve. Consultation on the revision of this clause has revealed a broad range of interpretations of the requirements as to prominence and readability. It is beyond the scope of P1025 to provide greater clarity about the requirement, because of the probability that revision would inadvertently result in a change in labelling practices that have been allowed. The provision has been revised to set out the three requirements of the current provision; that any words be in English, or if in a foreign language not in contradiction with the English words; that the content of the label is legible; and that the content be prominent, ie distinct from any background.

Issue	Raised by	FSANZ response
1.2.5—3 (3) Date marking of small packages Standard 1.2.5 of the current Code provides an exemption for small packages from bearing a best-before date, unless a use-by date is required because of health or safety reasons. It is noted the current exemption from date marking small pages with a best-before date does not appear to have been included in the proposed draft of the Code.	Queensland Health	This exemption is expressed in subsection 1.2.5—3(3).
1.2.1—2 Definitions—general (Page 22) Used as a nutritive substance, section 1.1.2—10 should read section 1.1.2—12	Queensland Health	Agree.
1.2.7—22 Statement for claims about phytosterols, phytostanols and their esters, (Page 83) Line 2 should read 1.2.7—20(4)(a) not 1.2.7—21(4)(a)	Queensland Health	Agree.
1.2.8—6 (1)(d)(ii) Declaration of saturated fat in a nutritional information panel The requirement for the average quantity of saturated fat to be declared in nutritional information panels appears to have been omitted from the draft and should be corrected. This requirement is currently set out in the current Code under Standard 1.2.8 5(1)(e) and the example of a nutrition information panel.	Queensland Health	See subparagraph 1.2.8—6(1)(d)(ii) and subsection 1.2.8—6(4).
Schedule abbreviations It is common when quoting sections in legislation to abbreviate the word section to ‘s’, for example Section 3(1) would be abbreviated as ‘s3(1)’. The revised version of the Code, including the schedules includes sections. Also, in the draft the sections within the schedules have been similarly abbreviated with a capital S, for example S11—3. As such, there is potential for confusion between referring to sections with a lower case s and an upper case S. Furthermore, an abbreviation of a section from a schedule may be confusing, for example ‘s S6—2 (a)’.	Queensland Health	Noted.
Schedules 8 and 16 Food Additives There is potential for confusion to arise between Schedules 8 and 16 due to their similarity and the further consideration may need to be given to whether they can be combined.	Queensland Health	FSANZ agrees that the schedules should be combined. However, it has not been practical to achieve this in P1025 as the schedules have different purposes and are not co-extensive..

Issue	Raised by	FSANZ response
NZFGC recommends that more definitions be included in the primary definitions section in Standard 1.1.2—2 Definitions—general, rather than less and that inconsistencies in treatment where identified in this Submission and other submissions be addressed.	NZFGC, NZ MPI	Noted.
NZFGC recommends that, in 1.1.2—4 Definition of *characterising component* and *characterising ingredient*, the phrase 'is likely to be associated with' is replaced by the currently used phrase 'is usually associated with'.	NZFGC, INC, Beverages Council, Heinz	The use of the word 'likely' permits a supplier, regulator or a court to form a view about the likelihood of a relationship being made by consumers. The current words require evidence that consumers actually make that relationship. AGS has advised FSANZ in the following terms: The current definitions in St 1.2.10 refer to 'usually associated with' rather than 'likely to be associated with', and the comments were that this change makes the definitions potentially unenforceable for uncertainty, and that it is likely to increase the number of ingredients required to have percentages declared. The draft was based on the OLDP report (but is a modified form of the OLDP suggestions), which commented as follows: 'Our view is that there are problems with Standard 1.2.10. The concepts for "characterising component" and "characterising ingredients" are not very robust. Those definitions rely heavily on the notes to import meaning. This is risky because notes are not legislative and will only be taken into account for the interpretation of the text if a court goes to extrinsic materials. . . . [both the words usually and likely may be problematic because they are subjective. The word usually is worse because it assumes there is an objective state of affairs. . . .' We share OLDP's concerns, and we think that legitimate criticisms could be made of both the current Code definitions and the current draft definitions. In relation to the current Code definition, how will anyone will know whether an ingredient or category 'is usually associated' with the name of the food by consumers? Would they have to undertake a survey? Is the aim that the prosecution would need to lead survey evidence in a prosecution?

Issue	Raised by	FSANZ response
		The examples in the editorial note in the current Code provisions explain how to work out whether ingredients are 'usually associated', and this involves considering 'what an appropriate descriptive name for the product might be, were this to be given'. We can see no clear connection between what is described in the editorial note and what we understand by the expression 'usually associated', which leads us to wonder whether 'usually associated' is really the correct concept in any event. Regarding uncertainty, the test for uncertainty of delegated legislation goes to whether a certain, objective standard has been specified. However, the word 'likely' is quite commonly used as a standard in other legislation, and courts are usually able to find a meaning for it in the particular context. We think that there is likely to be, in at least some cases, some room for difference of opinion as to which ingredients and components comprise the characterising ingredients and components, but that does not of itself render the provision void for uncertainty. Further, it seems to us that there is some unavoidable degree of 'fuzziness' around these concepts, and that any statutory formulation will leave similar room for a difference of view in specific cases.' In the draft food regulatory measure FSANZ has determined that 'usually' should remain as the test, notwithstanding the legal advice. This has been determined on the basis of the strong representations of industry and enforcement agencies that 'usually' provides a more practical test.
NZFGC recommends the definition of 'used as a food additive' not proceed as proposed because the impact will remove products from manufacture and be very costly to address. NZFGC recommends reverting to the narrower 'has been extracted, refined or synthesised' as a starting point for further analysis in collaboration with industry experts. NZFGC recommends the definition of 'used as a nutritive substance' not proceed as proposed because the impact will remove products from manufacture and be very costly to address. NZFGC recommends reverting to the narrower 'has been extracted, refined or synthesised' as a starting point for further analysis in conjunction with industry experts.	NZFGC, Heinz, INC	Not agree. FSANZ does not understand how it might be argued that a class of substances that is selectively identified can be broader than a class to which no process of selection has been applied. The purpose of requiring a selective process is to limit the number of substances that are considered as food additives but have not been listed as food additives. The wording is intended to exclude extracts or refinery products that have other, non-food additive or non-nutritive, purposes, and are foods themselves.

Issue	Raised by	FSANZ response
NZFGC recommends that, in section 1.1.2—11 Definition of *used as a food additive* etc, the term 'processed food' be removed and the terms 'food' or food for sale' be used as the context demands.	NZFGC, INC, Beverages Council,	Agree. Read in context, 'food' appropriately describes the intended concept. Note: This recommendation also applied in similar circumstances.
NZFGC recommends that the definition of *used as a processing aid* not proceed until further work has been undertaken to ensure unintended consequences of ingredients and food additives being construed as processing aids is addressed.	NZFGC, Heinz, INC	Not agree.
NZFGC recommends that clarity is required in section 1.2.1—8 Information required on general label, to ensure the requirement to label is related only to the vending machine and not to the food in the vending machine. This can be achieved by recasting the section along the following lines: "(4) For food sold from a vending machine, it is an additional requirement that labels clearly and prominently displayed in or on the vending machine be labelled and that the vending machine label state the name and business address of the supplier of the vending machine."	NZFGC	The standard has been revised to clarify the status of the requirement to identify the vendor as an additional requirement, ie additional to the labelling requirements applicable to the food sold from the vending machine..
NZFGC recommends that the current phrasing in the Code in Standard 1.2.9, section 2(1), be retained and that, until a Proposal is raised to make a change, section 1.2.1—24(1) read: "1.2.1—24(1) If this Code requires a word, statement, expression or design to be contained, written or set out on a label, the word, statement, expression or design must, wherever occurring: (a) be legible; and (c) prominent such as to afford contrast distinctly with the background of the label; and (d) be in English."	NZFGC, Brewers Association	At Approval the draft provision has been revised along the lines that are suggested in the submissions; so as to avoid any inference that the labelling requirement is changed.
1.3.1—4(6)(e) FGC is unsure where this provision originated but would suggest that, if new, it is beyond the scope of P1025.	NZFGC	The provision expresses a restriction that is currently expressed in a column of schedules to Standard 1.3.1.
NZFGC recommends that in subsection 1.3.3—4(2)(a), the term 'processed foods' be replaced by 'foods' such that the subsection reads: "(2)(a) an additive permitted in processed foods; or"	NZFGC, INC	The term has been replaced with the term 'additive permitted at GMP'

Issue	Raised by	FSANZ response
NZFGC recommends that in subsection 1.3.3—5(b), the term 'processed foods' be replaced by 'food for sale' such that the subsection reads: "(b) not present in the food for sale at a level greater than the maximum permitted level indicated in the corresponding row of the table."	NZFGC	Agree. However, In context, we do not consider it necessary to repeat 'for sale'. This also applies to other provisions in relation to which NZFGC has suggested addition of the words 'for sale'.
NZFGC recommends that in section 1.3.3—7 Microbial nutrients and microbial nutrient adjuncts, the phrase 'in the course of manufacture' be replaced with 'in the course of processing any food' such that the section reads: "A substance listed in section S18—5 may be used as a processing aid to perform the technological purpose of a microbial nutrient or a microbial nutrient adjunct in the course of processing any food." NZFGC recommends that in 1.3.3—12 Microbial control agent – dimethyl dicarbonate, the phrase 'during the manufacture a food for sale' in this section be replaced with 'in the course of processing a food'.	NZFGC	FSANZ considers that the current words of the Code are appropriate and that change is not required within the scope of P1025.
NZFGC recommends that the current section 3 in Standard 1.5.1 be retained to give visibility and clarity around the application of the exclusive use of novel foods especially for New Zealand users of the Code for which the FSANZ Act, as a Commonwealth Act, has no application in New Zealand.	NZFGC	The current section does no more than identify the capacity to designate a period in which a novel food may be used exclusively in a brand of food and to apply other conditions. The revised provision achieves the same outcome.
NZFGC recommends that sections 2.5.3—3 and 2.5.3—4 be recast to remove the doubt that section 2.5.3—3 currently raises about a composite food needing to meet the provisions listed in 2.5.3—3 that are applicable only to the fermented milk or yoghurt. This can be easily effected by reverting to the form of the current Standard such that section 2.5.3—3 states: "Fermented milk or yoghurt may contain other foods" and section 2.5.3—4 states: "the fermented milk or yoghurt portion of a food must comply with [paragraphs (a) to (d)]".	NZFGC	Yoghurt can be plain yoghurt or yoghurt with other foods, eg strawberry yoghurt containing strawberries. The yoghurt component of both foods must comply with the acidity, microorganism and protein requirements. The history of development of Standard 2.5.3 demonstrates that subclause 2(1) is intended to permit the range of ingredients in yoghurt, other than milk or milk products, which had previously been permitted under the Australian Food Standards Code and any other food, such as inulin. Subclause 2(2) is intended to deal with two distinct foods. The first is a fermented milk that is not a mixed food, ie the food referred to in subclause (1); and the second is a 'composite' fermented milk product, such as a combination of fruit and yoghurt. The revised provisions reflect that history. Paragraph 2.5.3—3(a) permits the use of other foods as ingredients in fermented milk. Section 2.5.3—4 provides a requirement in relation to 'composite' foods.

Issue	Raised by	FSANZ response
NZFGC recommends, for clarity and consistency, the definition of 'one-day quantity' for caffeinated beverages be treated the same as the similar definition in Standard 2.9.4: ☐ a definition be included at the start of Standard 2.6.4 along the lines of: "*one day quantity, in relation to a formulated caffeinated beverage,* means the maximum amount of formulated caffeinated beverage that should be consumed in a day and does not contain more of the listed substances than the amount in the corresponding row of the table to section S29—2 and calculated in accordance with subsection(5) of this Standard". Note 3 to section 2.6.4—5(3) can then be deleted". ☐ the same definition described above for Standard 2.6.4 be included in the primary definitions in Standard 1.1.2.	NZFGC	The formulated caffeinated beverages standard does not rely on a definition of one day quantity. Accordingly, there is no need to provide one.
NZFGC recommends that subsections 2.7.1—3 (2) and (3) both have added to them the phrase: "or words and expressions of the same or similar effect".	NZFGC	The suggested additional words are not necessary.
NZFGC recommends that in section 2.7.2—3 Requirement for food sold as a beer, the current "reference to beer" remains unchanged and that the reference continue to read: "A reference to beer includes a reference to 'ale', 'lager', 'pilsener', 'porter' and 'stout'.	NZFGC	The term is not required in the revision.
NZFGC recommends that the definitions of 'cider' and 'perry' in section 2.7.3—2 remain as presented in CFS2 Attachment A, that is, no change from the definitions in the current Standard 2.7.3.	NZFGC	Noted. FSANZ considers that issues related to the naming of cider and perry are outside the scope of P1025.
We submit that the term 'pear cider' be added as an alternative name for 'perry' to recognise common use and common consumer understanding of this term, as well as conformity to international cider standards, including the UK. The term pear cider is used interchangeably with the term perry to mean a fruit wine made from at least 75% pear and the balance from apples. This is an existing practice and we request that the Code clarify that this is acceptable by making the change requested. This clarification, if made, should be reflected in all associated provisions currently referring to "perry".	Redwood Cider	Noted. FSANZ considers that issues related to the composition of cider and perry are outside the scope of P1025. However, FSANZ agrees that the standard should be varied to validate us of the name pear cider for the fruit wine that is otherwise known as perry.

Issue	Raised by	FSANZ response
We further submit that the definitions of 'cider' and 'perry'/'pear cider' should be reworded to clarify that ciders (including perry/pear cider) are to be made from the fruits (including juices and juice products) of apples and pears only. The previous wording allowed an interpretation that the juices of other fruits could be added to a cider and the final product still represented as a cider. The signatories to this submission agree that such products would still be classified as a 'fruit wine' but should not be regarded as a cider. For instance, a cider blended with strawberry juice should be labelled 'Cider with Strawberry' [or equivalent] and not Strawberry Cider. We submit that this would assist in consumer understanding of what is a cider as opposed to a fruit wine. Apple and pear juice and juice products could still be added to ciders, consistent with this logic, but not the juices or juice products of other fruits and vegetables. For the same reason, we submit that honey and spices be removed as permitted ingredients for a cider (including pear cider/perry). These ingredients have an accepted use in the preparation of fruit wines, but not ciders where they could be used to flavour a cider away from pear or apple.	Redwood Cider	Noted. FSANZ considers that issues related to the naming of cider and perry are outside the scope of P1025.
NZFGC recommends that the table in S29—17 have added to it the third column that lists the intake amounts titled 'Column 3' together with the specific intake amounts for each of the vitamins and minerals listed in Columns 1 and 2.	NZFGC	The intake amounts are set out in Schedule 1.
NZFGC recommends that the following Standards should be marked by the notation "(Australia only)" after the title as shown: Standard 1.2.11 Country of origin labelling requirements (Australia only) Standard 1.4.2 Agvet chemicals (Australia only) Standard 1.6.2 Processing requirements for meat (Australia only) Standard 2.2.2 Eggs (Australia only) Similarly, the following should also be amended: Standard 2.9.6 Transitional standard for special purpose foods (including amino acid modified foods) (New Zealand only).	NZFGC	See section 1.1.1—3 and notes in relevant standards.
NZFGC recommends that in section 1.1.2—2 Definitions—general, the note to the definition of 'fund raising event' referring to New Zealand be completed.		The draft note is not to be provided. NZ MPI has advised that the definition is not inconsistent with the New Zealand legislation.

Issue	Raised by	FSANZ response
NZFGC recommends, for consistency, that in section 1.2.1—17 Information that can be requested, suppliers may be requested by a caterer to provide information in writing.	NZFGC	This would change an existing requirement and is out of scope for P1025.
NZFGC recommends that a note be added to section 1.2.10—3 Requirement to declare characterising ingredients and components, to indicate that other exceptions are: 'food packaged in the presence of the purchaser', 'foods for catering purposes' and 'food delivered packaged	NZFGC	Provision of this note would repeat the content of other standards and is not proportionate to any need to provide navigational assistance through the use of notes.
NZFGC recommends that a Note be added to Standard 1.3.1—Food Additives identifying the existence of Schedules 7 and 8.	NZFGC	Not agreed. Schedules 7 and 8 are not relevant to Standard 1.3.1.
NZFGC recommends that Outlines be added to Standard 1.3.3—Processing aids, Part 4—Contaminants and residues, Part 5—Foods requiring pre-market clearance and Part 6—Microbiological limits and processing requirements	NZFGC	Noted. FSANZ does not consider that outlines are required in these standards.
NZFGC recommends that in section 2.4.2—3 Requirements for sale as edible oil spread or margarine, the application of the section relevant to New Zealand appear as the first subsection so that application in New Zealand is clear up front. The section would then read: 2.4.2—3 Requirements for sale as edible oil spread or margarine *Application of section to New Zealand* (1) Subsections (3) and (5) do not apply to edible oil spread or margarine produced in, or imported into, New Zealand. *Requirement for food sold as edible oil spread* (2) A food that is sold as an edible oil spread must consist of edible oil spread etc	NZFGC	Agree.
NZFGC recommends that in subsection 2.6.4—5(3)(c), for clarity and the avoidance of doubt, 'beverage' be replaced with 'formulated caffeinated beverage' such that the subsection reads: "(c) if the formulated caffeinated beverage contains a listed substance—no more than a one-day quantity should be consumed per day." Similarly, the reference to 'beverage' in subsection 2.6.4—5(5)(a) is not any beverage but is a reference to a formulated caffeinated beverage.	NZFGC Beverages Council expressed a different opinion; that 'beverage' should replace 'food'.	Substitute 'food' for 'beverage' in each provision.

Issue	Raised by	FSANZ response
NZFGC recommends that in section 2.7.1—2 Definitions, the phrase 'for a beverage' in the definition of '*standard drink*' be deleted such that the definition reads: "*standard drink* means the amount of a beverage which contains 10 grams of ethanol when measured at 20°C." Should some qualification be required, NZFGC recommends the inclusion of the phrase 'for an alcoholic beverage' such that the definition would read: "*standard drink*, for an alcoholic beverage, means the amount of a beverage which contains 10 grams of ethanol when measured at 20°C	NZFGC	The provision has been revised to provide: ***standard drink***, for a beverage containing alcohol, means the amount that contains 10 grams of ethanol when measured at 20°C. The standard drink labelling requirement, in section 2.7.1—4, applies to foods that contain alcohol that are not generally described as alcoholic drinks, ie those that contain more than 0.5% but less than 1.5% alcohol by volume.
NZFGC recommends that the terms 'fruit juice products' and 'vegetable juice products' be defined.		Not agreed. FSANZ does not consider that additional definitions are required.
Definition of 'juice' has changed from 'undiluted juice' to 'original juice'. Beverage Council believes this changes the interpretation of the juice. 'Original' juice' may be interpreted as meaning from the original lot of squeezed juice. Juice concentrate may be produced from a blend lots, thus can vary in concentration. Beverages Council requests that 'undiluted juice' should be maintained.	Beverages Council, Heinz	The current provision is nonsense, as the process of concentrating and rehydrating juice does not have 'undiluted juice' at any stage—except, perhaps, prior to rehydration. The provision was originally drafted to provide for a return to the 'essential character' of the juice prior to concentration, but varied at the Inquiry stage of Proposal P190 to the current wording, in response to industry submissions,
"Use-by date" new definition [in 1.2.5—2] emphasis on "the supplier estimates" completely changes the previous definition with the legal implication outside the scope of this review.	Beverages Council	Reference to supplier has been removed.
Provision for" small package consumption before certain date because of health or safety reasons" has been removed. Beverages Council recommends this be reinstated.	Beverages Council	Not agreed. The effect of 2(1)(d)(ii) of Standard 1.2.5 is set out in subsection 1.2.5—3(3).
[In 2.6.2—3 note], "5.1.1-6 " should be" 5.1.1-4"	Beverages Council	Agree.
In 2.6.4—5(2)(c), "clearly " should be removed as it is redundant	Beverages Council	Replace 'clearly distinguished' with 'separate'.

Issue	Raised by	FSANZ response
Improper use of the definition and change to meaning with major consequences to existing formulations. This change should be made under separate FSANZ proposal, not via this revision. The term 'intentionally added to food' has been replaced by a new element: 'has been extracted, refined or synthesised'. The Beverage Council believes that this has resulted in a different meaning to the definition. For example, fruit or vegetable juice is sometimes used as a colouring agent, however, would no longer be permitted as a colouring agent under the new definition. The new term 'any substance that has been selectively concentrated or refined or synthesised' has made the situation even less clear and the impact much wider to potentially include ingredients/substances that have never been considered food additives. Use of the term 'selectively' is not clear and unnecessarily expands the scope of food additives. If this change is implemented, a wide range of substances would become non-compliant and would all need preapproval. This would have a very significant impact and an immense cost impact for industry while approvals were sought. Secondly, as noted in relation to Standard 1.3.1 below, the term 'processed food' has been substituted in a number of places for 'final food' yet they are not synonymous terms.	Beverages Council	FSANZ does not agree that there is a substantial change or that a separate proposal is required. This proposal has been conducted under the major procedure. In the example provided by Beverages Council the fruit or vegetable juice would not be prohibited in the manner suggested as fruit juice is a food itself and is not a substance that has been concentrated, refined or synthesised to perform a technological purpose. It is simply a food ingredient that incidentally performs a technological purpose. The term selective indicates that the process of concentration refining or synthesis is a selective process that has the purpose of providing a substance that ca**n** perform a technological purpose.
New inclusion [in 1.2.10—8(2)] of "the percentage must immediately follow the common, descriptive or generic name of the ingredient" clarifies meaning and may lead to labelling changes.	Beverages Council	This requirement is currently expressed in subclause 5(1)(a) of Standard 1.2.10, in relation to characterising ingredients.
In 1.3.1—4(3) should be Schedule "16" not "15"	Beverages Council	Not agreed. Schedule 15 sets out permissions. Schedule 16 is merely a list of some food additives, and is not permissive.
Schedule 16—3 should have GMP and Schedule 16—4 should have maximum limit within the schedule.	Beverages Council	Not agreed. This is dealt with in section 1.3.1—4. Schedule 16 is not permissive.
[In 1.3.2—3(c)]: Definition need to be clearer by reference to max permitted amount "column"	Beverages Council	Not agreed. The context is clear.
The equation [in 1.3.2—5] should be moved to Schedules	Beverages Council	Not agreed.

Issue	Raised by	FSANZ response
1.1.1—6 How average quantity is to be calculated Subsection 1.1.1—6(3)(c) adds a phrase to the methods for the calculation of average quantity that reads “relevant to that manufacturer or producer and the food”. The current provision does not limit the data to ‘relevant to that manufacturer or producer and the food’. The phrase narrows the generally accepted data unnecessarily and further complicates an otherwise clearly understood concept of ‘generally accepted data’. INC recommends that section 1.1.1—6(3)(c) read “the calculation from generally accepted data” and that it not be limited to data relevant to that manufacturer or producer and the food	INC	Agree, in part. The data should be relevant to the food.
INC recommends that the term ‘purpose’ in reference to processing aids be replaced by the term ‘function’.	INC	Not agreed. The use of ‘purpose’ is in accord with international practice.
A submitter suggested that a substance that is concentrated, refined or synthesised and used as a nutritive substance performs a nutritional purpose only when added to a food, and does not perform such a purpose on its own.	INC	Agree.
INC recommends the reference in subsection 2.9.1—11(1)(a)(ii) should be to S29—7.	INC, Heinz, NZ MPI	Not agreed. Schedule S29—7 is a list of permitted forms of vitamins and minerals and has no direct relationship with section 2.9.1—11, which relates to the presence of fatty acids in infant formula and follow-on formula. S29—8 is the equivalent of the table to Clause 23 in the current Standard 2.9.1.
The words ‘used as a nutritive substance’ have been added when compared to the current provisions in the Food Standards Code. It is not clear whether the phrase ‘used as a nutritive substance’ only qualifies ‘any other substance’ or not. If it does, then INC has no issue. If it does not, this could be read as implying that only the average amount of vitamins and minerals, when added as a nutritive substance, need to be declared on the label. Practically, manufacturers would consider the total amount of vitamins and minerals in the product for label declaration whether added as nutritive substances or as food additives. For example, tocopherols used as antioxidants are also a source of vitamin E and ascorbic acid can be used as an antioxidant and also a source of vitamin C.	INC	Read plainly, the phrase ‘used as a nutritive substance’ qualifies ‘any other substance’. Accordingly, the alternative interpretation is speculative.

Issue	Raised by	FSANZ response
The same approach to 'total amount' is taken when considering compliance against compositional minimum and maximum requirements. In subsection 2.9.1—12(1), vitamins, minerals and electrolytes are, INC believes correctly, not qualified by the words 'used as a nutritive substance'. Notes 2 and 3 under section 1.1.1—10 (Requirements relating to food for sale) might have been expected to have assisted with clarifying subsection 2.9.1—21(1)(a)(iii). However, Note 3 refers to 'total amount added' provisions not 'average amount' provisions when it states: "In some cases, a provision refers to the total amount of a substance added to a food. In these cases, the total amount applies irrespective of whether the substance was used as a food additive, used as a processing aid or used as a nutritive substance." Accordingly, it is possible that adding a comma after the phrase 'each vitamin or mineral' might clarify subsection 2.9.1—21(1)(a)(iii) such that it would read '(iii) the average amount of each vitamin or mineral, and any other substance used as a nutritive substance permitted by this Standard …'. INC recommends that subsection 2.9.1—21(1)(a)(iii) be reconsidered in relation to total amounts and average amounts to be expressed.		
INC recommends that, for completeness and to remove doubt that these substances are still permitted to be used, Schedule 17 include the terms 'Biotin', 'Vitamin K', 'Chromium', 'Copper', 'Manganese' and 'Molybdenum'.	INC	Not agreed. The schedule is a list of permitted forms. If no forms are permitted it would be confusing to list the vitamin or mineral.
INC recommends the following correction be made in S29--5: Inositol change the value from 1 mg to 1.0 mg. In S29—10: Vitamin K change the value from 5 µg to 5.0 µg Chromium change the value from 2 µg to 2.0 µg	INC	Agree.
INC recommends that 'calcium lactateerte' be corrected to 'calcium lactate' and that Biotin and its permitted form, d-Biotin, be reinserted in section S29—07	INC	Agree.
INC recommends that the columns in S29—08 that refer to 'no less than x% total fatty acids' or 'no more than x% total fatty acids' revert to the current much clearer terminology of columns titled minimum and maximum % of fatty acids.	INC	Not agreed.

Issue	Raised by	FSANZ response
[In 2.2.3—Note 3], the reference in dot point 1 of Note 3 be changed from AS SSA 5300 to AS 5300.	FRDC	Change made to note in reliance on FRDC advice.
Use of the names defined in the AFNS be prescribed through an amendment to the Standard 2.2.3 of the Food Standards Code making the AFNS mandatory rather than an advisory note.	FRDC	This is a matter that is outside the scope of P1025 and should be the subject of an Application.
Change the proposed wording in Standard 1.4.1 to clarify that the requirements for mercury in seafood are a combination of mean and maximum levels. Change Schedule S19-7 so that no maximum level be set when only 5 sample units are available. Change Schedule S19-7 so that a maximum level is listed for lots were there are insufficient samples available to analyse in accordance with the sample plan.	FRDC SafeFish	Agree.
It was suggested that the specification for tall oil phytosterols esters be removed from the Code	Raisio Nutrition	Agree. However, this will be the subject of a proposal to be prepared in 2015.
It was suggested that the definitions of 'food group' and 'fruit and vegetables' should be reviewed, with the aim of avoiding inconsistency.	DAA	The definition of 'food group' relies on the separate definitions of 'fruit' and 'vegetables' and not on the broader definition of 'fruit and vegetables'.
It was suggested that the description of the physiological effects of dietary fibre in the definition of dietary fibre should be moved to Standard 1.2.7.	DAA	FSANZ considers that it is outside the scope of P1025 to make that variation in this Proposal.
While NZW accepts that the proposed amendment clarifies what was an ambiguity between wine and fruit wine, the change in definition could be seen as a substantive change rather than a clarification and so should be the subject of a proper consultative process. We make this observation based on the stated purpose of the review being to clarify and improve the efficacy of the legislation. It could be said that this amendment is a de facto interpretation of the Wine Act without full consideration of the impact that the change in definition would bring about.	New Zealand Winegrowers	P1025 is a 'proper consultative process', conducted under the major procedure. The current Code is quite clear, as is the revision, that wine is a food made solely from grapes and fruit wine is a food made from fruits that might include grapes. Accordingly, wine is a distinct category of fruit wine, with its own standard.

Issue	Raised by	FSANZ response
Reconstituted juice currently has most additives permitted via the sidebar comment. This remains the case; however, the sidebar remains confusing and is open to multiple interpretations.	NZJBA	The 'sidebar' qualification in Standard 1.3.1 relating to mechanical separation of fruit qualifies the specific permissions to use some food additives that are in item 14.1.2.1. There is no general permission to use the food additives in Schedules 2, 3 or 4 of Standard 1.3.1 in the foods listed under item 14. The effect of the provision is that additives 270, 290, 296, 330, 334,335, 336, 337, 353 and 354 are permitted only in juices separated by mechanical means.
[In S15 item 14.1.14], 950, 951, 954 have had the 'See notes' removed from Conditions column Note: Section 1.3.1-5 does not apply	NZBJA	Agree.
When carrot juice is used as a colour, it would still be defined as a food. If it was further refined then would it become a food additive. Impact: is it an approved food additive? - magnifies the ambiguity. If becomes an additive then it would be required to meet the identity and purity standard (which it would not currently meet until it was taken back to a carotenoid)	NZBJA	Carotene is a good example of a substance that is synthesised for use as a colouring. Carrot juice contains natural carotene and is not a food additive. It satisfies none of the criteria set out in subsection 1.1.2—11(2).
1.3.1-2 definitions it (*sic*) refers to1.1.2-11 the new definition of used as a food additive on page 103 is now confusing. The current code under 1.3.1 as part of the food additive definition states that a food additive is…. "intentionally added to a food to achieve one or more of the technological functions specified in schedule 5" This has been replaced with "any substance that has been "selectively concentrated or refined or synthesised to perform one or more of the technological purposes listed in schedule 14" This new definition will gather in potential products that were not previously considered food additives but will now need preapproval to be used. For	NZBJA	There is no definition of food additive in the current Code. There is a statement in a purpose statement about what is intended to be understood when that term is used. There is some potential for paragraph 1.1.2—11(2)(b) to apply to substances that are, first, concentrated, refined or synthesised so that they can perform a food additive technological function and, second, have not been formally recognised as food additives. Having regard to the history of development of the Codex list of food additives it is likely that this class of substances will be very small. The provision does not capture foods simply because they are concentrated, refined or synthesised or because they have an incidental technological purpose. For example, refined sugar is a food even though it performs a flavouring function.
S29.17 – Missing column 3, Intake amounts	NZBJA	This information is in Schedule 1 (in sections S1—2 and S1—3). The ESADDI limits for biotin and pantothenic acid have been corrected, to align with ESADDIs set for other foods.

Issue	Raised by	FSANZ response
No statement of permitted maximum level [in section S16--4]. Previously was 70mg/L for beverages. Now in Chapter 1, 1.3.1-4, page 104. It would be helpful to companies to include the permitted maximum level also in the Schedule.	NZBJA, FFAANZ	Navigational note inserted in Schedule 16.
Dairy Australia recommends that clarification be provided around the legal structure of the Code. In the first draft, the Code was structured to be presented as a single legislative instrument. Following first round submissions, FSANZ has decided not to proceed with presenting the Code as a single instrument. It is now presented as a collection of stand-alone standards, substantially as in the current Code. Each Standard is an individual legislative instrument. However Standard 1.1.1-2 (1) states "All the Standards of the Code are read together as a single instrument". This appears inconsistent with the intention stated above, and is confusing, if not, contradictory.	Dairy Australia	The Australia New Zealand Food Standards Code is defined in the FSANZ Act as the code made on 27 August 1987 together with any amendments of the standards in that code. The revision will be such an amendment. Subsection 1.1.1—2(1) simply states the fact that the Code is a collection of standards. Each of the Standards is a Commonwealth legislative instrument. The application Acts refer to the Code, rather than individual standards.
Chapter 2, Part 5 includes a 'note' at the start of each Standard to the effect that …"In Australia, dairy products must be processed in accordance with Standard 4.2.4." In the current Code, the processing requirements are included in the very first paragraph of the Standard, under "Purpose", followed by an Editorial Note referencing Standard 4.2.4. It needs to be stated very clearly to users that in Australia the primary production and processing standard applies to each dairy product covered by Part 2.5. Dairy Australia recommends that the "note" be strengthened or highlighted to ensure this very important requirement is understood by all users of the Code and enforced.	Dairy Australia	Noted
An implementation period of 12 months following Gazettal of the changes is recommended to allow all industry, particularly small to medium enterprises, and exporters to make the necessary changes to systems and documentation.	Dairy Australia	Following discussion with jurisdictions and industry representatives it is recommended that the commencement date be deferred to 1 March 2016.
In Schedule 27, the microbiological limits for are set for "unpasteurised milk for retail sale". As the Code requires all milk to be processed in accordance with Standard 4.2.4, there should be no microbiological limits set in the Code for unpasteurised milk for retail sale. Dairy Australia recommends these limits be deleted from Schedule 27.	Dairy Australia	State or territory laws can provide for the sale of unpasteurised milk. The microbiological limit for unpasteurised milk has been established to apply to milk sold under such a law.

Issue	Raised by	FSANZ response
There remains a lack of clarity and lack of consistency around the definitions of 'food'. The definition reverts to the Application acts, which have slight variations. This has implication for businesses operating across multiple states and territories. It is acknowledged that this is beyond the scope of this Proposal, but needs to be noted as an ongoing inconsistency in legislation.	Dairy Australia	FSANZ noted this outcome in the 2nd call for submissions. The outcome reflects the strong preference of food regulators, and some submitters from industry, that the application Act definitions should apply.
A significant change to the definition of ice cream appears to limit the scope of products with varying percentages of 'cream' which can be labelled as ice cream. This is not supported by Dairy Australia and would be somewhat confusing to the consumer if implemented.	Dairy Australia	The definitions of ice cream in the current Code and the revision are identical.
P1030 Health Claims – Formulated Supplementary Sports Foods & Electrolyte Drinks is currently calling for submissions, closing 30th September 2014. This consultation outlines that the FSANZ Board is expected to consider P1025 and the proposed changes to the Code in late 2014, with the expectation that the new Code will commence replacing the current Code in 2015. This new Code may not capture the amendments in the draft variation of P1030, which will then require further amendment to the new Code to capture the P1030 amendments after the new Code comes into effect at a later date. Dairy Australia suggests that the timing of any new Code and P1030 Code amendments are aligned and captured at the one time.	Dairy Australia	Arrangements are proposed to ensure that all variations made between publication of the revised Code and its commencement are captured.
Definitions are critical in providing clarity around requirements and around precisely what foods are subject to those requirements. It is clear from comments made by jurisdictions (in response to FSANZ's request in 2009) and made in the OLDP's Code Audit report, that definitions needed to be reviewed. Principles around the drafting of definitions should have been developed prior to raising proposal P1025. SA Health appreciates the effort that FSANZ has made to improve consistency in the definitions throughout the Code. However, there remains definition issues brought to the attention of FSANZ by the jurisdictions in the 90s review of the Code that were not addressed by P1025.	South Australia	FSANZ has approached assessment of the proposal on the basis that suggestions made prior to 2000 were addressed, and should not be revisited, in the development of the Joint Food Standards Code in 2000. FSANZ has not undertaken a major review of all definitions in this proposal as resources for that exercise were not available. FSANZ's responses to the suggestions made by jurisdictions in response to the OLDP report were provided in the first call for submissions.

Issue	Raised by	FSANZ response
The Code classifies food as an ingredient, food additive, processing aid, nutritive substance, novel food or genetically modified food, food component, flavouring, and food product. Food within each category may be assessed differently but there is often significant interface between groups. A guidance document providing examples of substances that fall within the category would be useful to understand the differences and overlaps. This would be an important resource for enforcement officers. Consideration needs to be given to how different food categories are defined and how they interface so that clear, agreed decisions are made regarding the category and assessment path to be used.	South Australia	Guidance for enforcement officers should be provided by enforcement agencies (or the Implementation Sub-Committee for Food Regulation). The approach adopted in the revision aims to reduce the scope for overlap that is described in the submitter's comment.
There is a need to improve the clarity in the divisions of substances added to food using the provided definitions. FSANZ should provide examples of substances that fall within the divisions so that jurisdictions are clear that the definitions are in fact enforceable.	South Australia	Substances that are used as food additives are used to perform a limited range of described technological purposes. Substances that are used as processing aids can perform any technological purpose, other than a food additive purpose, in processing and perform no technological purpose in the food for sale. Substances that are used as nutritive substances perform a nutritional purpose in food for sale. FSANZ considers that these descriptors are mutually exclusive.
The Schedule 14 is not a list of technological purposes but are (*sic*) a list of functional classes. The functional classes were created to assist with labelling, (not to define a food additive purpose). There are many technological purposes that are not included in the table. So if a definition of use of a food additive restricts the purposes to those in the schedule 14, then some food additives would not be food additives when they perform a technological purpose other than those listed in the schedule.	South Australia	This comment is inconsistent with the purpose statement in Standard 1.3.1 of the current Code. The current Code only purports to regulate food additives that are added for the purposes, described as functions, listed in Schedule 5 of Standard 1.3.1. A substance that is added to achieve a purpose that is not listed in Schedule 14 is not being used as a food additive. Accordingly, for example, a vitamin that has an antioxidant function may be added to perform a nutritional purpose. The food additive provisions are only relevant if the purpose of the addition is as an antioxidant. It is beyond the scope of P1025 to expand the list of purposes for which a food additive might be used.

Issue	Raised by	FSANZ response
This new definition [of used as a food additive] fails to recognise the nuances between: Concentrated or refined substance that are generally recognised to be safe as unstandardized food ingredients, despite being used to perform food additive type technological purposes; and Those that are considered to be food additives. In many cases the differences are not that the latter group of substance are more concentrated and/or extracted but, rather, that the former group have a history of use in western food production that pre-dates the development of modern food additive regulation.	Brewers Association of A&NZ	Substances that are recognised as food additives in international or domestic standards are within the scope of the standard by reason of paragraph 1.1.2—11(2)(a). It is acknowledged that there is a small group of foods that have a traditional use in brewing, where the concentrated or refined foods perform a technological function, eg extracts of coloured malt used as a colouring, or clouding agents derived from yeast or pectin. FSANZ considers that such products are ingredients as they are not selectively concentrated or refined to perform a technological function, although they can perform a range of functions related to colouring and flavouring.
The Brewers Association recommends that *Standard 1.1.2 – 11 Definition of used as a food additive* should remove the wording "selectively concentrated" and revert to "extracted, refined, or synthesised".	Brewers Association of A&NZ	This suggestion would have the effect of expanding the number of substances for which approval would be required.
Furthermore, we also suggest that FSANZ seek to qualify the provision in terms of: (i) the prior history of use of the source as a food; and/or, (ii) the extent of concentration and/or refining required, and whether chemical or enzymatic modification is also necessary, before the specific substance is considered to be a food additive	Brewers Association of A&NZ	FSANZ agrees that, depending on the experience of use of the proposed provision, factors such as those mentioned could be considered in a proposal to review the standard. However, at present, FSANZ considers that expansion of the definition to include those factors is outside the scope of P1025. On the other hand, the proposed definition is based closely on the current description of food additive in the purpose statement.
The current Code does not contain a definition of "ingredient" but uses the term throughout and, in places, inconsistently. In the first draft of the Code revision a definition of "ingredient" was proposed but the inconsistencies remained. The 2nd revision draft does not contain a definition of ingredient but seeks to classify what may be used as an "ingredient" in a food for sale, including identifying those substances that are subject to specific approval in the Code and those that are not permitted to be used as "ingredients". A problem exists with the inconsistent use of "ingredient" within the Code. In addition to the common meaning, being *anything intentionally added during manufacturing*, the term is on occasions used in a way that is similar to the use in the Food Act, i.e. to differentiate between "ingredients" and other substances added to food, such as food additives, nutritive substances and processing aids.	Brewers Association of A&NZ	Removal of any definition of ingredient ensures that the term will be applied consistently in the Code. That consistent interpretation will also be consistent with the application Acts, which also do not contain a definition of ingredient.

Issue	Raised by	FSANZ response
There is a benefit in a clear means of differentiating between: 1. Ingredients in a food that are intrinsic its nature and are allowed provided they are not unsafe or unsuitable. In the case of beer these might include hops, barley and other cereals, yeast, sugars, honey, fruits etc., and products prepared from them, including clouding agents; and, 2. Substances that are added solely for technological or processing purposes, i.e. food additives and processing aids, and are subject to premarket approval. In the case of beer these might include mash enzymes etc.	Brewers Association of A&NZ	This is a policy issue that is beyond the scope of P1025. While there might be a benefit in making the distinction that is suggested, that is not the policy that is implemented in the application Acts. The Code must be drafted in the context of a legislative framework in which the concept of food includes both categories identified by the Brewers Association.
The Brewers Association recommends that for clarification of the Food Code, the ambiguity surrounding the status of "light alcohol" claims be addressed by modifying *Section 1.1.2 – 9 (1) (b)*) to read "*does not refer to the presence, absence or reduction of alcohol*".	Brewers Association of A&NZ	As previously advised, it is beyond the scope of P1025 to vary the conditions under which nutrition content claims might be made. A nutrition content claim may not be made about a beverage that contains more than 1.15% alcohol. Light beer is understood to be beer with higher alcohol content, although lower than the content of regular strength beer. A claim that refers to the presence or absence of alcohol is not a nutrition content claim, as the definition excludes such claims. FSANZ considers a light alcohol claim to be a claim about the presence of alcohol.
The draft standard [in section 1.2.3—4] now divides those substances into "foods or substances" for no apparent or helpful reason. According to the relevant State and Territory Food Acts, every substance in draft subsections (1)(a), (b) or (c) is a food. But the draft Code seems to infer that some are foods and some are substances.	Allergy & Anaphylaxis Australia	The provision has been reordered. Sulphites are treated as substances. The current Code treats both foods and substances as substances.
The provisions relating to cereals containing gluten have been placed in a separate paragraph (b) under section 1.2.3—4 (1). Section 1.2.3—4 (1) now segregates paragraphs (a) sulphites, paragraph (b) cereals containing gluten and paragraph (c) allergens. A&AA maintains that this creates potential confusion with respect to wheat allergens, and in support cites the FSANZ position on this matter, as follows.	Allergy & Anaphylaxis Australia	The drafting has been amended and repeats the current requirement to declare the presence of the food or substance and, in the case of the substances listed under paragraph (c) [now (b)], products of those foods.

Issue	Raised by	FSANZ response
The FSANZ “Review of the regulatory management of food allergens” acknowledges that the mandatory declaration of gluten containing cereals addresses “two distinct types of immunologically mediated adverse reactions caused by dietary intake of cereals, i.e. coeliac disease, and immunoglobulin (Ig) E-mediated food allergy. The pathogenic mechanisms underlying these types of adverse reactions are different.” See section 5.3 of the review. The review goes on to recommend at section 5.3.6 that “FSANZ to consult with allergy experts on the current state of knowledge in relation to wheat allergy, including cross-reactivity with other cereals, and if necessary, develop options to improve the clarity of the declaration requirements in relation to coeliac and wheat allergic patients.” A&AA submits that the segregation of cereals containing gluten is not only contrary to the established FSANZ position of improving the clarity of these declaration requirements, but also creates potential confusion by inferring that the standard does not address wheat allergens in the same way as other allergens. A&AA recommends that either the provisions for cereals containing gluten be included in the same paragraph as other allergens, or that wheat be listed along with the other allergens in paragraph (c) of Standard 1.2.3—4 (1).		
In order for industry to supply the consumer demand for healthier or non-dairy ice cream variants, we urge FSANZ to either: - Remove ice cream as a specified name; or - Include a section in either the Standard 1.1.1 or Standard 2.5.6 of the Food Standards Code that acknowledges the existence of “modified” or “adjusted” or “fat reduced” or “non-dairy” ice cream products.	Food Legal for The Australasian Food Group Ltd.	A product sold as ice cream must comply with the compositional requirement, including the milkfat requirement. FSANZ considers that a product that is sold as reduced fat ice cream is not being sold as ice cream and is not required to comply with the compositional requirement. However, the product may include as ingredients substances that are permitted to be used as food additives in ice cream.
I believe that manufacturers should have to declare which countries Imported Ingredients come from on labels. Also, in the 70s we had an alphabetical code system to identify factory number and state location - why not now? Eg D12074.	Howard	These suggestions, to broaden the scope of country of origin labelling requirements and the business address requirements, are outside the scope of P1025.

The following amendments were made to the draft food regulatory measure.

Table 2: Table of amendments to drafting

Amendment	Reason
In section 1.1.2—2, insert '*Note* There is no Standard 1.2.9' after 'Part 1.2 Labelling and other information requirements'	Aid to navigation
In section 1.1.2—2, insert '*Note* There is no Standard 1.4.3' after 'Part 1.4 Contaminants and residues'	Aid to navigation
In subsection 1.1.1—3(1), insert '(b) processed and handled in' after 'Australia' and renumber	Align with new Zealand law
In subsection 1.1.1—3(1), reverse the order of paragraphs (vi) and (vii)	Order of presentation of references
In subsection 1.1.1—6, delete the reference to the 'manufacturer or producer' of the food.	Simplify drafting
In section 1.1.1—8, insert words to make it clear that some required words are mandatory	Simplify drafting
In section 1.1.1—9(b) substitute 'complies with the requirements of the Code' for ' was complaint, In subsection 1.1.1—3(1),delete subsection (2) and renumber	Simplify drafting
In subsection 1.1.1—10, move subsection (6) to (2); move subsection 1.1.1—13(5) to (3); move (9) to (8); move (10 to (9) and renumber	Simplify drafting
In 1.1.1—12, change order of subsections	Consistency with other drafting
In 1.1.1—13, substitute as heading 'Food sold with a specified name or representation' for 'Use of food with a specified name or nature'; revise (1) to remove references to NN; delete from (2) '; otherwise the requirement applies to any sale in which a purchaser would be led to assume that the food being sold was NN'; delete meat pie from note 1 and insert in Note 2; insert, (3) 'If the provision specifies the name of the food without quotation marks, any requirement that must be satisfied applies to any sale in which a purchaser may be expected to assume that the food being sold was the food.'; in Note 2 substitute 'is likely to assume' for 'would be led'; insert new example after Note 2 and expand example after subsection (4); renumber.	Simplify drafting and enhance navigation
In 1.1.1—14, substitute 'handling' or 'handled' for 'preparation' or 'prepared'; insert Note	Align drafting with model food legislation and enhance navigation
Insert 1.1.1—16 to indicate how asterisking of some definitions works	Enhance navigation
After 1.1.1—2(2), add *Example* A contrary intention is apparent in the definition of *label* in subsection 1.1.2—2(2); insert definitions for *additive permitted at GMP, colouring permitted at GMP, colouring permitted to a maximum level, listericidal process, peanut butter* and *ready-to-eat food;* renumber *bulk cargo container*; substitute 'handles' for 'prepare' in caterer; revise *RDI* and *ESADDI*; substitute 'for sale' for 'being sold' in *label* and *labelling*; correct cross-reference in *nutritive substance*; delete 'intended' in *package*; move *special purpose food*; substitute 'that is' for 'consists of' in *unit quantity*; insert *listericidal process* and *ready-to-eat food*; amend *use-by date*	Simplify drafting and enhance navigation

Amendment	Reason
In 1.1.2-3, substitute ‘foods’ for ‘ingredients’ and ‘added’ for ‘the addition of’ in *bread*; substitute ‘exclusively’ for ‘principally’ in *butter*; include paragraph (b) in *butter*; insert ‘from which most of the caffeine has been removed’ in *decaffeinated coffee* and *decaffeinated tea*; delete water activity specification from *dried meat*; delete ‘by itself’ and repeated words in *infant formula product* and *mead*; substitute ‘added’ for ‘the addition of’ in *milk* and *fruit wine or vegetable wine*; substitute ‘foods’ for ‘ingredients’ in *sausage*; delete ‘which contains at least 37% alcohol by volume’ from *spirit*; insert note after *fruit and vegetables*; delete compositional element from *processed meat*;	Enhance navigation and simplify expression
In 1.1.2—9(1)(b), insert ‘, reduction’ after ‘presence	To clarify the application of the standard in relation to reduced alcohol alcoholic beverages.
In 1.1.2—11(2), insert ‘listed in Schedule 16 as’ in the Note to (a), insert ‘non-traditional’ requirement in (b)	Enhance navigation and simplify expression
In 1.1.2—12(2)(c), insert reference to GOS and ‘when added to a food’ at end of paragraph	Clarification
In 1.1.2—4, substitute ‘likely to be’ for ‘usually”	Simplify expression
In 1.1.2—14, delete entry for Vitamin C	Simplify expression
In 1.2.1—6, substitute ‘is’ for ‘consists of’	Simplify expression
In 1.2.1—8, substitute ‘food that is required to bear a’ for ‘general’ in heading; amend subheadings; some consequential renumbering of cross-references	Enhance navigation
In 1.2.1—9, substitute ‘is not required’ for ‘does not need’ in heading; delete ‘for sale’ from (2)(b) and (4)(a); some consequential renumbering of cross-references; delete (5) and transfer content to (3)	Simplify expression and enhance navigation
In Chapter 1 Part 2 substitute ‘sold to a caterer’ for ‘for sale’	Simplify expression
In 1.2.1—12(3)(b), substitute ‘is’ for ‘consists of’	Simplify expression
In 1.2.1—13, substitute ‘caterer’ for ‘purchaser’	Simplify expression
In 1.2.1—16, update cross-reference	Enhance navigation
In 1.2.1—17, substitute ‘caterer’ for ‘purchaser of the food’ and ‘purchaser’	Simplify expression
In 1.2.1—21, delete ‘of the food for sale’ and ‘for sale’	Simplify expression
In 1.2.1—24, revise order of provisions and reference to ‘prominent’.	Simplify expression
In 1.2.3—4, restructure (1)(c); include ‘ingredient’ in (2)	Simplify expression
In 1.2.4—4, consequential renumbering of cross-reference; reorder alternatives	Enhance navigation and simplify expression
In 1.2.5—5 clarify that date-marking system is the only system to be used; clarify purpose of separation of elements of best-before or use-by date.	Simplify expression
In 1.2.7—2, reorder list alphabetically; update cross-reference and insert Note 3; insert ‘vegetable’ definition reference;	Correct error and enhance navigation
In 1.2.7—20, reorder subsections	Enhance navigation

Amendment	Reason
In 1.2.8—2, insert 'Information provided voluntarily in a nutrition information panel is a nutrition content claim.' in Note 1	Enhance navigation
In 1.2.8—3, correct typo and add *Note* see Standard 2.9.1.	Correct error and enhance navigation
In 1.2.8—4, delete duplication of definition	Correct error
In 1.2.8—5, insert new subsection to explain when NIP is required	Simplify expression
In 1.2.8—8(3)(a), revise text, insert column header and amend dietary fibre condition	Simplify expression
In 1.2.8—9, add *Note* see Standard 2.9.1.	Enhance navigation
In 1.2.10--1, amend the heading	Enhance navigation
In 1.3.1—4(6), substitute 'code number' for INS number'; insert 'hydrosulphites' in (j)	Enhance navigation and update
In 1.3.2—3, insert 'Unless this Code provides otherwise,'	Clarification
In 1.3.3—2, delete 'listed in Schedule 14'	Clarify that no technological purpose can be performed by a processing aid in food for sale
In 1.3.3-5(b), delete 'processed'	Simplify expression
In 1.3.3-9(e), delete 'processed'	Simplify expression
In 1.3.3-10(b), delete 'processed'	Simplify expression
In 1.3.3-11(c), delete 'processed'	Simplify expression
In 1.4.1—3, Substitute 'Levels' for 'Maximum levels' in heading; amend list in Note; insert reference to fish products.	Simplify expression
In Standard 1.4.2, delete Note 3 and correct error in Note 5	i) Not a relevant statement in relation to New Zealand ii) Correct error
In 1.4.2—1, delete New Zealand reference in Note; replace references to 'active constituent' with reference to 'agvet chemical'	Not a relevant statement in relation to New Zealand; clarify scope of requirement
In 1.5.2, correct subsection numbering, revise definitions for novel DNA and novel protein; replace definition of 'relevant food' with 'genetically modified food'	Correct error and simplify expression
In Standard 1.6.1, substitute 'in' for 'for' in heading	Simplify expression
In 1.6.1—3, insert variations made in Amendment 149	Update—Amendment 149
In 1.6.2, delete provisions relating to crocodile meat	Update—Amendment 149
In 2.1.1—2, update definition of *bread*	Consequential
In 2.2.1—2, update list of definitions; amend *processed meat* definition	Consequential
In 2.2.1, insert 2.2.1—5 and renumber; insert reference to amended definition of *cured and/or dried meat flesh in whole cuts or pieces* and *dried meat*	Provide requirements for dried, manufactured or processed meats
In 2.2.1—9, delete 'on a package referred to in subsection (1) or (2)'	Simplify expression
In 2.2.2—4, delete 'intended'	Simplify expression
In 2.3.1—2, insert Note about definition of fruit and vegetables.	

Amendment	Reason
In 2.2.3, update Note 3	Update
In 2.4.2—2, substitute ‘added’ for ‘the addition of’	Simplify expression
In 2.4.2—3, reorder subsections	Simplify expression
In 2.5.1—2, update list of definitions	Consequential
In 2.5.3—3(a), substitute ‘foods’ for ‘ingredients’ and ‘added’ for ‘the addition of’	Simplify expression
In 2.5.5—2, update list of definitions	Consequential
In 2.6.3—3, delete the reference to 1.1.1—10(4)(e)	Correct error
In 2.6.4—5 substitute ‘separate’ for ‘ clearly distinguished’; substitute ‘food’ for ‘beverage’	Simplify expression
In 2.7.2—2, update list of definitions	Consequential
In 2.7.3—2, update list of definitions	Consequential
In 2.7.5—2, update list of definitions	Consequential
In 2.7.5—3, Substitute ‘be a spirit and contain at least 37% alcohol by volume’ for ‘consist of that spirit’.	Enhance enforceability
In 2.9.1—6(2), remove (a)	Correct error
In 2.9.1—(3), substitute ‘and’ for ‘or	Correct error
In 2.9.1—21, insert ‘statement of the’	Simplify expression
In 2.9.1—24(1)(f), insert ‘that may be’ after substance	Clarification
In 2.9.2—7 and 2.9.2—8, and 2.9.4—4, insert ‘warning’	Enhance navigation
In 2.9.3—2, insert Note 2	Enhance navigation
In 2.9.3—8, insert ‘for young children’; edit to remove ‘claimable vitamin or mineral’	Simplify expression
In Standard 2.9.4, insert Division heading	Correct omission
In 2.9.4—2, insert Note 2	Enhance navigation
In 2.9.4—7, delete first ‘to’	Simplify expression
In 2.9.4—8, substitute ‘food’ for ‘product’	Simplify expression
In 2.9.6—3, insert Note	Simplify expression
In 2.10.3—2, update definition list	Enhance navigation
In 2.10.4—2, update list of definitions	Consequential; remove contaminant levels to S19--4
In Chapter 4, update heading	Enhance navigation
In Chapter 5, delete Division 3	There are no provisions with delayed commencement dates after 1 March 2016
In S1—2, insert form in which Vitamin C is to be calculated and expressed	Consequential
In S1—5, correct subsection numbering	Correct error
In S2—2, correct section numbering and typos	Correct error

Amendment	Reason
In S3—2, insert new primary source	update
In S5—3, reformat table heading and correct typos	Correct error
In S8—2, update table	Consequential (with effect in current Code on 21 February 2015); substitute 'cola' for 'kola';
In S9—2, insert 'also' in item 8; delete duplication in items 9, 10 and 11	Simplify expression
In S10—2, insert '(if any)'; delete duplication	Simplify expression
In S14—2, insert 'Purpose' as column heading	Simplify expression
In S15—2, use different references in Example	Simplify expression
In S15—3, substitute 'category' for 'class'	Simplify expression
In S15—5, update; correct formatting; alter presentation of ferrocyanide condition; insert 'not assigned' entries	Consequential, minor correction, substitute 'cola' for 'kola'; and enhanced navigation
In Schedule 16, amend the title	Simplify expression
In S16—4, insert note	Enhance navigation
In S19—4, insert salt contaminant levels	Enhance navigation and simplify expression
In S19—6, split the table into two subsections and delete tutin entries	Correct error and consequential (with effect in current Code on 31 March 2015)
In S19—7, insert 'and maximum levels' in heading; modify table for levels where there are insufficient samples	Simplify expression
In S20—2 and S2—2, insert Note	Enhance navigation
In S26—3, insert 'and conditions' at end of heading	Enhance navigation
In S27—3, insert variations made in Amendment 149	Update—Amendment 149
S29 and S29 renumbered as S28 and S29	Update—delayed commencement provision
In new S29—7, insert entry for biotin	Correct omission
In new S29—10, insert decimal entries	Correct omission
globally	Remove 'express or implied' after 'claim'
globally	Insert asterisks to identify some defined terms

2.1 Discussion of principal issues raised in consultation

2.1.1 Scope of the Proposal

Proposal P1025 has a limited objective—to address issues of legal uncertainty that were identified in the OLDP legal audit and subsequent consultation with enforcement agencies. Deliberately, the Proposal is not intended to review the requirements of the Code to change the obligations on food sellers that are imposed by the application Acts.

In the course of consultation, it has been made apparent that some food sellers have interpreted the requirements of the Code in a manner that is inconsistent with the purpose of the current standard. It has not been an objective of P1025 to refine the statements of purpose, although in some case that is a result of the variation that has been approved. Some submitters have suggested that this is inappropriate, and that a separate proposal should be raised for every such variation. That submission has not been accepted. P1025 has been conducted under the major procedure, with two rounds of public consultation. In the limited number of provisions where greater clarity of regulatory intent is achieved, there has been as much consultation, if not more, than would be the case in a separate proposal. Addressing these issues in P1025 is a proportionate response as it is unlikely that the resource allocation required for a separate proposal could be justified for many minor variations.

Broader issues are being considered in other proposals, such as the current proposals to consider standards for novel foods and nutritive substances and for low level residues of agvet chemicals in some foods. FSANZ has a work plan and can, when appropriate and proportionate to the level of risk, include other proposals in that work plan.

2.2.2 Commencement and transition

In the consultation there has been considerable discussion about the timing of commencement of a revised Code and transitional arrangements.

In 2000, when the joint food standards code was established, a two year transitional period was allowed. During that period, the new Code operated side-by-side with the old Code. That was considered to be appropriate because the two Codes established quite different requirements.

The current revision does not establish substantially different requirements. Any change, even in relation to provisions such as those relating to substances added to foods, is marginal. For example, while the new provisions for food additives are quite different in form, the changes have no practical effect on the use of currently permitted food additives. At worst, the food regulators, industry and FSANZ might have to consider whether some substances that are used in food processing, but have not been identified as food additives, should be the subject of the standard in order to assure their lawful use.

FSANZ has proposed a clean break, where the old Code ceases and the new Code operates on the same day. The suggested date is 1 March 2016. The standard stock-in-trade provision, allowing a 12 month stock-in-trade allowance, will apply, if required.

The work of varying standards continues during the period between approval and commencement. The approved revision reflects the Code as at Amendment 152 on 3 December 2014. After the revised Code has been published, under section 92 of the FSANZ Act, a proposal under the minor procedure will make changes to the revised Code that are consequences of changes made to the operative Code. Subsequent changes to the operative Code will be made, contemporaneously, to the revised Code so that both documents are synchronised. This will permit commencement of the revised Code on the commencement date without a requirement for any other transitional arrangements.

2.2.3 Standards for substances added to foods

The purpose of the standards for substances added to foods (Standards in Part 1.3 of the current Code) is to provide limited permissions to add substances to foods to perform technological or nutritional purposes.

The standards operate in the context of application Act provisions that prohibit the addition of substances that are foreign to the nature of the food unless the Code permits the addition. The standards provide the relevant permissions.

The revision makes no change to the current permissions for food additives, processing aids or nutritive substances (including vitamins and minerals). It does provide new definitions to ensure that substances that have not been identified in the current Code as food additives or nutritive substances are brought within the scope of the relevant standards. This ensures that substances that are added to foods to perform a technological or nutritive function have some assessment of their safety.

2.2.3.1 Food additives

Standard 1.3.1 was developed to ensure that the dietary exposure to food additives in the food supply does not present an unacceptable risk to public health and safety and that consumers are not exposed unnecessarily to high levels of food additives[2]. It is proposed that the use of food additives be regulated by reference to the technological purpose being performed[3].

The purpose statement for Standard 1.3.1 describes a food additive as:

> *any substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which is intentionally added to a food to achieve one or more of the technological functions specified in Schedule 5. It or its by-products may remain in the food.*

Clause 2 of Standard 1.3.1 provides that food additives may not be added to food, unless expressly permitted in the Standard.

These provisions are restated in the revision. First, the purpose statement is expressed as an operative provision, in section 1.1.2—11. That section addresses the concept of a food additive being a substance that is added to food to achieve one or more of the relevant technological purposes in paragraph 1.1.2—11(1)(a). That paragraph provides that a substance is used as a food additive if it is added to perform one or more of the technological purposes listed in Schedule 14.

The concept of a food additive being a 'substance not normally consumed as a food in itself and not normally used as an ingredient of food" is addressed by paragraph 1.1.2—11(1)(b), which provides that the substances of interest are those substances that have previously been recognised as food additives and any other substance that is not a traditional food, (that is, it does not have a history of safe use in Australia or New Zealand) that has been concentrated, refined, or synthesised, to achieve one or more of the technological purposes listed in Schedule 14. The term 'substance' is not defined. It should be given its dictionary meaning of 'a species of matter of definite chemical composition'. A substance that is concentrated for other purposes, including as an ingredient in food, is not a substance that has been concentrated to achieve a technological purpose and is not caught by the provision.

The change is necessary because the concept of a substance being not normally consumed as a food in itself and not normally used as an ingredient of food is considered too uncertain to be effective in enforcement of the Code.

[2] Final Assessment Report for P150, 1999, p1
[3] Final Assessment Report for P150, 1999, p2.

The scope of paragraph 1.1.2—11(1)(b) is less than the broad range of substances 'not normally consumed as a food [by themselves] and not normally used as an ingredient of food'. To avoid the possibility, raised by some submitters, that the scope would include some traditional ingredients that can be used to achieve a technological purpose, the scope is limited to non-traditional foods—by sub-paragraph (1)(b)(ii). That limitation has also permitted removal of the concept of selective concentration or refining. The effect is to apply the food additive provisions, in addition to their primary application to identified food additives, to any novel substance used for a relevant technological purpose.

2.2.3.2 Nutritive substances

In the current Code, nutritive substances are defined in Standard 1.1.1 as:

> ***nutritive substance*** *means a substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which, after extraction and/or refinement, or synthesis, is intentionally added to a food to achieve a nutritional purpose, and includes vitamins, minerals, amino acids, electrolytes and nucleotides.*

Clause 9 of the Standard provides that nutritive substances must not be added to foods unless expressly permitted. Clause 9A declares that inulin-type fructans are not nutritive substances for the Code.

The Code's treatment of nutritive substances is under review in Proposal P1024. Revision of the provisions in relation to nutritive substances has raised many of the same issues as food additives, because the provisions rely on the same uncertain concept of a food that is 'not normally consumed as a food in itself and not normally used as an ingredient of food'.

The revision addresses the concept of a nutritive substance being a substance that is added to food to achieve a nutritional purpose in paragraph 1.1.2—12(1)(a). The range of substances that might be considered to be nutritive substances is addressed in paragraph 1.1.2—12(1)(b) and subsection 1.1.2—12(2). Paragraph (a) of subsection 1.1.2—12(2) operates to include a range of substances that are specifically referred to in the Code as nutritive substances. Paragraph (b) refers to vitamins and minerals and paragraph (c) addresses the concept of concentration, refining or synthesis of nutritive substances to achieve a nutritive purpose.

The concept of a nutritive substance being one that is not normally used as a food in itself and not normally used as an ingredient of food has not been repeated. It is considered to be superfluous as the nutritive substances of principal interest are described in paragraphs (a) and (b). Paragraph (c) operates as a catch-all, with a limited scope that will not inadvertently include normal food ingredients.

2.2.3.3 Processing aids

In the current Code, a processing aid is a substance that is listed in one of clauses 3 to 19 of Standard 1.3.3 (including additives permitted at GMP). A substance that is not listed is not a subject of the standard. The same approach is adopted in the revision. The standard applies to the substances listed in Schedule 18 and additives permitted at GMP.

2.2.4 Agvet chemicals

The application Acts provide that a food is not unsuitable if, when the food is sold for human consumption, it contains an agricultural or veterinary chemical (agvet chemicals), so long as it does not contain the chemical in an amount that contravenes the Food Standards Code[4]. Application Acts also contain offences that require food to comply with requirements of the Code. As a result, agricultural or veterinary chemicals are dealt with in the Code in two ways. First, limits that should not 'be contravened' are established in order to establish whether or not a food is suitable for human consumption. Second, the Code establishes a requirement that there be no detectable presence of certain residues.

2.2.4.1 Limits that should not be contravened

The current Code establishes limits in clause 2 of Standard 1.4.2. That provision states:

> ***2 Maximum residue limits***
>
> *(1) The permitted MRL for a residue of a chemical in food is listed in Schedule 1, and is expressed in milligrams per kilogram of food.*
>
> *(2) If an MRL for a chemical is not listed in this Standard there must be no detectable residue of that chemical in that food.*
>
> *(3) If a chemical is not listed in this Standard there must be no detectable residue of –*
>
> *(a) that chemical in food (whether or not the food is listed in Schedules 1, 2 or 4); and*
> *(b) metabolites of that chemical in food (whether or not the food is listed in Schedules 1, 2 or 4).*

Chemical is defined as an agricultural or veterinary chemical. There is no definition of agricultural or veterinary chemical.

It must be inferred that a residue of a listed chemical that is in excess of the permitted amount is in contravention of the Standard. There is no express prohibition for listed agricultural or veterinary chemicals, other than when there is a residue in a food that is not listed for that residue: when there must be no detectable residue.

For unlisted agvet chemicals, the position is clearer. There must be no detectable residue.

In either case, the chemical must be an agvet chemical. Neither the Code nor the application Acts define what an agricultural or veterinary chemical is; so it must be proved that the chemical is in fact an agricultural or veterinary chemical. For listed chemicals, this can be done by inference. If a chemical is listed in the schedule to Standard 1.4.2 it is an agricultural or veterinary chemical and the MRL will apply to the chemical entities described in the residue definition.

That inference cannot be made for unlisted chemicals. Other Commonwealth, state and territory legislation provide definitions for agricultural or veterinary chemicals, but the current Code does not directly reference those definitions.

The revision resolves any uncertainty in identifying the chemicals that are the subject of the standard by adopting the definition in the Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994*.

[4] For example, section 4E of the *Food Act 198*4 (Vic)

The revision provides in paragraph 1.1.1—10(4)(d) that a food for sale must not contain a detectable amount of an agricultural or veterinary chemical or a metabolite or degradation product of the agvet chemical.

For unlisted chemicals it will be necessary, as now, to prove that the chemical is an agricultural or veterinary chemical. The standard does not apply to chemicals that are not agricultural or veterinary chemicals.

2.2.4.2 Code requirement for no detectable residue

The Code currently provides a requirement that there be no detectable residue of either an agricultural or veterinary chemical that is not listed in the schedule or an agricultural or veterinary chemical that is listed but for which no residue is permitted in the food. That requirement is restated in section 1.1.1—10 as a requirement that there be no residue of an agvet chemical, unless expressly permitted.

2.4 Risk communication

2.4.1 Consultation

Consultation is a key part of FSANZ's standards development process. FSANZ conducted two formal rounds of consultation on this Proposal.

Preparation of the Proposal was preceded by consultation with the states and territories following receipt of a report from the Office of Legislative Drafting and Publication in the Attorney-General's Department.

FSANZ also consulted informally with key stakeholders throughout the Proposal's development, including with jurisdictions (the states, territories and New Zealand) and with industry representatives.

While the revised Code is a primary outcome of consultation, it was apparent in consultation with both industry and jurisdictions that there is a demand for wider reform of the instruments of food regulation, including the Code. In relation to the Code, there was support for further work to be done to modernise the technical language of the Code, which does not always reflect the current market or international regulation; to conduct a major review of the food additive and processing aids standards; to address the issue of traceability through chain to expedite incident management; and a desire to review the application of labelling requirements. FSANZ will work, initially, with jurisdictions to prioritise future work on the modernisation of the Code.

In total, 39 formal submissions were received in response to the first formal call for submissions and 34 submissions were received in response to the second call for submissions.

FSANZ acknowledges the time taken by individuals and organisations to make submissions on this Proposal and the desire for more far-reaching reform. FSANZ also acknowledges that many stakeholders sought specific variations that were considered to be out of scope for this Proposal. The scope of the Proposal was limited because resources were not available in the agency to undertake a comprehensive review of all standards. In some cases, it will be more appropriate to progress a variation through a formal application.

Every submission on an application or proposal has been considered by the FSANZ Board. All comments are valued and contribute to the rigour of our assessment.

2.4.2 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obligated 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.

FSANZ made a notification to the WTO for this Proposal in accordance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and on Technical Barriers to Trade. No WTO member nation provided comment on this Proposal.

2.5 FSANZ Act assessment requirements

2.5.1 Section 59

2.5.1.1 Cost benefit analysis

The direct and indirect benefits that would arise from the food regulatory measure developed or varied as a result of the proposal outweigh the costs to the community, government or industry that would arise from the development or variation of the food regulatory measure.

The Office of Best Practice Regulation has advised that, based on the information provided by FSANZ, a Regulation Impact Statement is not required as the Proposal appears to have only a minor regulatory impact on businesses and the non-profit sector since the Proposal does not alter the intention of the Code but, instead, ensures that the intention is better communicated.

Industry stakeholders advised, in response to the first round of consultation, that a cost benefit analysis would be desirable having regard to what were then perceived to be changes in the requirements that might be imposed on industry. In subsequent consultation it has been acknowledged that it is not a purpose, or effect, of the variation to change requirements in any significant way such as to impose additional costs. It is recognised that there will be some transitional costs associated with implementation of the varied Code, eg updating Code references in compliance documentation. FSANZ was advised that the adjustment to the revision of the Code, to restore the current numbering system, would not alter the estimate of industry costs associated with the modification of internal systems that refer to Code provisions.

The OBPR's reference is 14493.

2.5.1.2 Other measures

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

2.5.1.3 Any relevant New Zealand standards

The variation includes variation for relevant New Zealand Standards.

2.5.2. Subsection 18(1)

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

2.5.2.1 Protection of public health and safety

The current provisions of the Food Standard Code have been developed with regard to the objective of protecting public health and safety. FSANZ considers that the variations in the draft food regulatory measure provide at least the same level of protection.

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

The variations enhance the provision of information by simplifying the statement of labelling requirements with the objective of achieving a higher level of compliance.

2.5.2.3 The prevention of misleading or deceptive conduct

The variations enhance the prevention of misleading or deceptive conduct by simplifying requirements with the objective of achieving a higher level of compliance.

2.5.3 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 variations rely on the scientific analysis that supported the making of current Code provisions. Changes to current requirements have been recommended on the basis of the best available scientific evidence.

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

The variations reflect requirements in the current Code. Inconsistency with international food standards is permitted in the Code when there is an evidence-based need to adopt a different risk management response.

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

The variations reflect requirements in the current Code, which have been made with regard to the desirability of promoting an efficient and internationally competitive food industry. Peak industry representatives have been consulted in the assessment of the Proposal.

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

The variations reflect requirements in the current Code.

- **any written policy guidelines formulated by the Ministerial Council[5].**

The variations reflect requirements in the current Code and are consistent with current policy guidelines.

[5] Now known as the Australia and New Zealand Ministerial Forum on Food Regulation

3 Transitional arrangements

The draft food regulatory measure will replace the current *Australia New Zealand Food Standards Code*. The proposed date of effect is 1 March 2016.

During the period between approval of the draft food regulatory measure in December 2014 and commencement in March 2016 (the transition period), it is anticipated that the Code will be varied at least 4 times. Each variation will amend numerous provisions of the current Code.

To ensure that the Code that commences on 1 March 2016 is consistent with the current Code, the FSANZ Board will, in the transition period, approve variations for both the current Code and the approved replacement Code.

Variations that are to commence after 1 March 2016 will be approved for the approved replacement Code alone.

The FSANZ Board will be advised, at its March 2015 meeting, to approve a draft food regulatory measure to vary the approved replacement Code to include any measures that have not been included. This will, be, essentially, the measures that are approved, other than the approved replacement Code, at the December 2014 meeting of the FSANZ Board.

It is proposed that there will be a clean break at 1 March 2016. That is, there will be no phase-in period during which both the current code and the replacement Code operate in parallel and there will be no stock-in-trade provision (unless a stock in trade provision is established for a specific provision).

4 Evaluation

FSANZ intends to conduct an evaluation of the P1025 variation of Chapters 1 and 2 of the Code in 2018–19.

Attachments

A Approved draft variations to the *Australia New Zealand Food Standards Code*.
B Explanatory Statements
C Draft variations to the *Australia New Zealand Food Standards Code* (call for submissions)