PROPOSAL P1025 – CODE REVISION
SA HEALTH SUBMISSION
SEPTEMBER 2014

Thank you for the opportunity to provide comment to inform the revision of the Australia New Zealand Food Standards Code (the Code).

OVERARCHING COMMENTS

SA Health recognises the significant effort put into this review by FSANZ however retains some concerns about the lack of collaboration in developing an implementation plan from the start of this process. Any change to the Code, and especially the breadth of change proposed by this Proposal, impacts on enforceability of jurisdictional law and therefore made it imperative that jurisdictions be consulted from the beginning to inform the best and most practical outcome.

SA Health in its previous submission (September 2013) had requested FSANZ to convene the jurisdictions together (rather than individual meetings with FSANZ) to discuss the revision of the Code and discuss resolution of issues with FSANZ. This did not happen until late in the process at the urging of jurisdictions.

The provided explanation of the drafting changes in P1025 paper is minimal and often insufficient to understand the implications of the change for enforcement purposes.

It is agreed that this revision of the Code - Proposal P1025 should not cover more significant changes other than minor editorial changes to address identified legal drafting issues and that they would be better considered in other proposals. It is however questioned how the outstanding issues raised by the OLDP and jurisdictions and not addressed by P1025 will proceed and what the plan and timing is for the proposals. It should not be left to an ad hoc approach of jurisdictions raising applications to address individual issues as this may create further inconsistencies in the Code.

The Proposal does not clearly explain the intent of some of the new drafting, and as this is then the only reference jurisdictions have for the reasoning behind the development of their food and primary production laws, it would assist with interpretation and enforcement. There may be a need for an education program (e.g. workshop) to explain the changes to the revised Code to the food industry and enforcement agencies.

There needs to be clear recognition that the Code only has force where adopted under State, Territory and New Zealand Food and Primary Production Acts (jurisdictional legislation) and that these Acts take legal precedence over the Code. It is therefore extremely important that anything contained in the Code is not in direct conflict with State and Territory and NZ legislation.

COMMENTS

Food definitions and composition provisions

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.

The use of editorial notes or providing guidance documents would assist in understanding the definitions. Where the Code is to be read as a stand-alone document, there would be no awareness by industry and retailers that a term may be slightly different under State legislation and could therefore inadvertently be misapplied by industry. Consideration should therefore be given to using the Application Acts wherever possible.

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.

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.

Food additive definition

The proposed definition of food additive is narrowing the purposes for which food additives may be used, thus restricting innovation.

The Schedule 14 is not a list of technological purposes but are 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.

How are other technological purposes not included in the table to be handled? If an existing approved food additive is used for a new purpose (i.e. not listed in schedule), it may need to have the purpose listed in the schedule 14 before it can be

used as a food additive. This became apparent in the consideration of A1088 – Sodium Hydrosulphite as a Food Additive where the applicant requested permission for a bleaching agent but the technological purpose assigned was as an antioxidant, since bleaching agent is not listed in schedule 14.

Another consequence of modifying Schedule 14 from functional class names to be 'purposes' is that the Schedule 7 which is used for labelling class names no longer has definitions for the class names that were provided in Schedule 14. So the prescribed class names have no explanation about what they are intended to cover.

The Codex definition for food additives defines food additives to have a technological purpose but does not define what the technological purposes are to be. Codex provides (attached) functional class names for the use of food labelling, but does not link the functional classes to the food additive definition. The P1025 definition of food additive is not consistent with the Codex definition.

> *'Food additive'* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The term does not include contaminants.

SA Health supports the detailed comments provided by Vic Health in their submission on P1025 for the following issues –

1.1.1 – 8 Compliance with requirements for mandatory statements

There are other current standards which prescribe statements and wording (usually in quotation marks), as distinct 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 read as warnings), and 1.1.1 – 8 should recognise this as well as designated warning statements.

1.1.1 – 9 Effect of variations to Code

There is ambiguity in the presentation of these requirements as composition is presented as separate from 'the presence of other substances'. This also brings into question whether or not a food is compliant under 1.1.1 – 9 if it fails Standard 1.1.1 – 11 Microbiological requirements for a lot of food.

This could be resolved by amending clause 6 to read; '…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

'Active constituent' is required under agvet regulations around usage and labelling but not for the enforcement of MRLs in the Code. For agvet chemicals in the schedules the listing of the specific chemical entities is all that is required regardless of how they are described. The introduction of ‘active constituent’ expands the scope of the current Standard 1.4.2 2 (2) and creates additional unnecessary proofs, beyond the expertise of the analyst.

1.1.1 – 13 Use of food with a specified name or nature

Clause (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 ‘one term one meaning’ was a goal of good drafting practice.

The concept that ‘other foods’ did not include food additives, food processing aids etc. is well understood by industry and regulators. To change the permission to contain ‘other foods’ to ‘other ingredients’ for four foods but retain the permission for five foods makes no sense. It could be inferred that there was a reason for the distinction and therefore the change. If there is no reason then only one term; “other foods’ should be used.

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 to 1.1.1 – 3.

1.1.2 – 13 Definition of used as a processing aid

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 not active, 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. 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. 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

Where there are multiple forms of a vitamin permitted to be added, or naturally present, it is important that it is 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 is important for Vitamin C. It is proposed to: *delete* 1.1.2 – 14 (3) (c) for vitamin C, add the amounts of L-ascorbic acid and dehydroascorbic acid (this is interpreted as excluding the other permitted forms) and *inserting* in in columns 3, 4 and 5 of Schedule S1-2 the 'form'; total of L-ascorbic acid and dehydroascorbic acid. This allows 1.1.2 13 (1) to operate as intended. i.e. Column 3 would read, in relation to Vitamin C – 40mg total of L-ascorbic acid and dehydroascorbic acid. So the RDI for Vitamin C is read as 40 mg calculated and expressed as the total of L-ascorbic acid and dehydroascorbic acid.

Chapter 2 Food standards for specific foods

Until all definitions and interpretations are reviewed, all definitions that still contain references to the composition of the food should have those references stated separately as compositional requirements. This is consistent with the effect created by the introduction of Standard 1.1.1 14 – Interpretation of definitions, and with the recommendations of the OLDP. The exception is Sweet Cassava which illustrates the problems associated with providing for the cooperation of standards while providing a distinction between permitted and prohibited forms of cassava.

2.2.1 – 3 Requirement for food sold as sausage.
Sausage should not be in quotation marks.

2.2.1 – 4 Requirements for food sold as meat pie
Meat pie should not be in quotation marks.

2.2.1 Cured meat and dried meat
These products are defined under 1.1.2 – 3 but, in the absence of 'any provision that provides that a food sold as cured meat or dried meat must satisfy certain requirements' (1.1.1 – 13), it would appear that the consequence of not meeting the meat protein or water activity (for dried meat only) minimums in the definitions, would be that certain food additives would not be permitted and the microbiological limits would not apply. The definitions should be redrafted as compositional requirements and set out under 2.2.1 to protect public health and safety.

2.7.5 Spirits
The definitions and compositional requirements should be stated separately to allow the methanol requirements to apply.

Summary of key issues

- SA Health appreciates the effort that FSANZ has made to improve consistency in the definitions throughout the Code. However, there remain definition issues that were not addressed by P1025 that need to be identified and addressed in the future.

- What is the plan and timing for the proposals examining broader issues not addressed by P1025?
- The provided explanation of the drafting changes in P1025 paper is minimal and often insufficient to understand the implications of the change for enforcement purposes.
- There may be a need for an education program (e.g. workshop) to explain the changes to the revised Code to the food industry and enforcement agencies.