

EXPLANATORY STATEMENT

PROPOSAL P272

LABELLING REQUIREMENTS FOR FOOD FOR CATERING PURPOSES & RETAIL SALE

For information on matters relating to this Assessment Report or the assessment process generally, please refer to <http://www.foodstandards.gov.au/standardsdevelopment/>

Executive Summary

The purpose of Proposal P272 is to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements by amending Standard 1.2.1 – Application of labelling and other information requirements of the *Australia New Zealand Food Standards Code* (the Code) and other Standards with clauses connected to Standard 1.2.1.

During the transition to the Code, the interpretation and application of the standard relating to exemptions from labelling and information requirements for foods were identified by industry and enforcement officers as problematic. Proposal P272 has been prepared by FSANZ to address a number of issues arising from the implementation of labelling requirements for food for retail sale and food for catering purposes.

The approach taken by FSANZ in this Proposal is to provide clarity and greater certainty on existing labelling requirements, without mandating additional labelling requirements. Industry, governments, non-government organisations and consumers will benefit as a result of improved regulations regarding labelling of food.

The outcomes of the changes to the Code proposed by FSANZ are predominantly technical in nature and generally require little or no change to current requirements. There are little or no additional costs.

In preparing this Proposal, it is FSANZ's intention to address issues of interpretation and application, and not to re-open matters of broad regulatory policy considered during the development of Standard 1.2.1.

There are several issues identified in this Proposal that have required consideration and amendments. These include:

- the labelling of **food for retail sale** including the definition of the term 'food for retail sale'; the application of exemptions; and the information requirements which apply when food for retail sale is exempt from labelling;
- the definition and labelling of **food for catering purposes**; the requirement for food for catering purposes to bear a label containing the information prescribed in the Code; the application of exemptions and application of information requirements;
- the labelling requirements for **meals provided by delivered meals organisations (DMOs)**; and
- the labelling requirements for **meals provided by hospitals and similar institutions and prisons**.

Over the course of this Proposal, FSANZ undertook two rounds of public consultation and held detailed discussions with external advisory groups. This included the already established Implementation and Enforcement Advisory Group (IEAG) and targeted consultation mechanisms. The Final Assessment report provides amendments to Standard 1.2.1 and consequential amendments to other Standards in the Code, summarises submissions received in response to the Draft Assessment, and outlines the responses to those submissions.

Decision

FSANZ has undertaken a Final Assessment and has prepared variations to Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5 and Standard 1.2.11 in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations,, hospitals and similar institutions and prisons.

The prepared amendments to the Code include the following:

- New definition of food for retail sale to clarify that appropriate labelling requirements apply to all food sold to the public as well as food intended to be sold to the public without further processing.
- Reworded inner portion packs exemption to reduce the confusion in relation to its application, and to clarify the principle on which it is based.
- Editorial note to ensure fund raising event organisers are aware of State, Territory and New Zealand legislative requirements when conducting a fund raising event.
- Improved labelling requirements for vending machines to clarify requirements for industry and enforcement officers and to assist in food recalls
- Improved labelling requirements and a definition of ‘hamper’ to assist consumers in making informed purchasing decisions.
- New exemption to allow food wrapped for hygienic purposes to be exempt from labelling where the consumer can ask for information required for safety and informed choice
- More user-friendly list of information requirements
- Additional information (date marking, food identification) for purchasers of unpackaged food with little or no additional costs to industry.
- New definition of foods for catering purposes to provide greater clarity and certainty whilst maintaining the current level of information provisions.
- Separate, more relevant and appropriate exemptions and information requirements for food for catering.
- Substantial reduction of regulatory burden placed on DMOs, with prescribed information limited to information necessary for food recalls and health and safety.
- Better and cost effective labelling of meals provided in hospitals and similar setting resulting from excluding plated covered meals from the definition of package and from more appropriate application of exemptions.

Reasons for Decision

- The decision will provide clarity and greater certainty on existing labelling requirements without mandating additional labelling requirements. Industry, governments, non-government organisations and consumers will benefit as a result of improved regulations regarding labelling of food.
- The impact analysis indicates that the outcome of the proposed changes to the Code are predominantly technical in nature and generally require little or no change to current requirements, resulting in little or no additional cost to those currently complying with the Code. In the case where there may be some minor costs associated with the proposed amendments these are commensurate with the risk that is being managed.
- The amendments to the Code will allow enforcement officers to enforce labelling requirements more effectively by providing legal clarity regarding the responsibilities of food manufacturers and retailers in complying with the Code.
- The decision provides clarity for enforcement officers and various sectors of the food industry by removing ambiguities in the current labelling requirements in Standard 1.2.1. In addition, the uncertainties surrounding the labelling requirements of meals provided in hospital and similar institutions will be addressed.
- The decision provides more appropriate and less onerous labelling requirements for the food industry, particularly where a strict interpretation of the current requirements is taken.

Consultation

FSANZ received 56 written submissions in response to the Initial Assessment Report and 26 written submissions in response to the Draft Assessment Report for this Proposal.

Overall, the majority of submitters were in support of a review and amending the labelling requirements in clause 2 in Standard 1.2.1 of the Code. Issues identified from submissions formed the basis of targeted consultation with key stakeholder groups.

Prior to the Initial Assessment, FSANZ formed an IEAG to provide advice from an enforcement perspective on issues included in this Proposal. The IEAG had representation from the Health Departments in New South Wales, Western Australia, Queensland and the New Zealand Food Safety Authority (NZFSA) and the Australian Quarantine and Inspection Service (AQIS). The IEAG met on three occasions in 2003.

During Draft Assessment, FSANZ reformed the IEAG with representation from the NSW Food Authority, the NZFSA, and from the Health Departments in Queensland and Western Australia. The IEAG met twice in October 2006.

FSANZ also provided further advice on the regulatory options being considered in this Proposal to Australian and New Zealand stakeholders. In a series of meetings convened in October and November 2006, FSANZ consulted with DMOs, with providers of meals in hospitals and similar institutions, and with interested food industry representatives.

Issues raised as part of group discussions in these sessions have been taken into consideration in developing the amendments to the Code.

During the Final Assessment, FSANZ reconvened with the IEAG with representation from the NSW Food Authority, the NZFSA, and from the Health Departments in Queensland and Western Australia. The IEAG met once in June 2007.

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INTRODUCTION

Proposal P272 has been prepared by FSANZ to address a number of issues arising from the implementation of certain labelling requirements for food for retail sale and food for catering purposes in the Code. During the transition to the Code, the interpretation and application of certain aspects of clause 2 of Standard 1.2.1 – Application of Labelling and Other Information Requirements were identified by industry and enforcement officers as problematic. Clause 2 of Standard 1.2.1 provides exemptions from the general labelling requirements for food for retail sale and food for catering purposes and provides information requirements where a food is exempt.

In preparing this Proposal, it is FSANZ's intention to address issues of interpretation and application and not to re-open matters of broad regulatory policy considered during the development of the Standard.

There are several issues identified in this Proposal which required further consideration and amendment in relation to clause 2 in Standard 1.2.1. These issues are considered in detail as four separate parts to this Proposal:

- the labelling of food for retail sale including the limitations of the term 'food for retail sale' within the context of clause 2; the application of the exemptions in subclause 2(1); and the information requirements in subclause 2(2) which apply when food for retail sale is exempt from labelling;
- the labelling of food for catering purposes including the current definition in clause 1; the requirement for food for catering purposes to bear a label containing the information prescribed in the Code; the appropriateness of the exemptions in subclause 2(1); and the appropriateness of the information requirements in subclause 2(2);
- the labelling requirements for packaged meals supplied to, and provided by delivered meals organisations (DMOs); and
- the labelling requirements for meals provided in hospitals, prisons and similar institutions.

Although the last two issues fall within the scope of a review of the labelling requirements for food for retail sale, the matters raised in relation to these two issues are generally unique to that industry sector and are considered separately in this Proposal.

The proposed amendments to the Code are given in Attachment 1. An overview of labelling requirements for food for retail sale and food for catering purposes including amendments made at final assessment are given in Attachment 2. Attachment 3 summarises the preliminary assessment of cost impacts and the business cost calculator report. Submissions are summarised in Attachment 4, and Attachment 5 provides details of the Implementation and Enforcement Advisory Group.

1. Background

1.1 Current Standard

Food for retail sale and food for catering purposes, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code. This means that food for retail sale or food for catering purposes unless exempt, must bear a label, which includes the following prescribed information:

- name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in accordance with Standard 1.2.3;
- a list of ingredients;
- date marking information in accordance with Standard 1.2.5;
- directions for use and storage (where required for health & safety reasons);
- nutrition labelling (unless specifically exempt);
- percentage labelling; and
- country of origin (in Australia only).

To determine if a food for retail sale or a food for catering purposes is exempt from labelling, it is important to consider the specific exemptions in subclause 2(1) in Standard 1.2.1. The specific exemptions apply where:

- the food is other than in a package (paragraph 2(1)(a));
- the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3 (paragraph 2(1)(b));
- the food is made and packaged on the premises from which it is sold (paragraph 2(1)(c));
- the food is packaged in the presence of the purchaser (paragraph 2 (1)(d));
- the food is whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables (paragraph 2(1)(e));
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser (paragraph 2(1)(f)); and
- the food is sold at a fund raising event (paragraph 2(1)(g)).

Where food for retail sale or food for catering purposes is exempt from labelling there are certain information requirements set out in subclause 2(2) in Standard 1.2.1, which retailers and suppliers of food must comply with. Although there are some exceptions, generally the required information can either be displayed on or in connection with the display of the food or provided to the purchaser on request.

1.2 Historical Background

There were several Proposals, which resulted in the development of Standard 1.2.1 in the Code. These Proposals included:

- Proposal P147 – Food not for Retail Sale;
- Proposal P161 – Specific Labelling Statements; and
- Proposal P175 – Information required for Unpackaged Food sold by Retail.

There were also several other Proposals related to labelling that informed the current requirements in Standard 1.2.1. In essence, Standard 1.2.1 resulted from the consolidation of a number of recommendations from a number of different proposals during the food standards review.

2. The Regulatory Problem

Standard 1.2.1 was developed as part of a general review of the former Australian *Food Standards Code* to provide a joint food standards system for Australia and New Zealand. As with other reviews of this kind, a number of issues which were not foreseen during the development of the Standard have emerged during the implementation of the Code. In particular, placing food for retail sale and food for catering purposes together in clause 2 in Standard 1.2.1 has resulted in a number of unintended difficulties in the application of the current requirements.

Food for retail sale means a food that is sold to the public and therefore is considered to be an end product. However, *food for catering purposes* refers to *foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption*. At this point, the food is likely to be subject to further processing before being made available for retail sale. An example of food for catering purposes is pasta that is sold to a restaurant to be used in the preparation of a meal. However, when the meal is sold to the consumer it is considered food for retail sale.

For the purposes of labelling, no distinction is made between food for retail sale and foods for catering purposes. Due to the difference in where these foods sit in the food transaction chain, difficulties have arisen in the operation of clause 2, particularly in relation to the application of the current exemptions. For example, when the exemption in paragraph 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser*, is applied to food for retail sale, the ‘purchaser’ is clearly the ultimate consumer. However, when the exemption is applied in the context of food for catering purposes, the ‘purchaser’ of the food is potentially the caterer rather than the ultimate consumer. Consequently, because of food for retail sale and food for catering purposes being considered in the same clause, the scope of the current exemptions, particularly as they apply to food for catering purposes are potentially much broader than originally intended.

Further, some specific difficulties have arisen as a consequence of the broad definition of ‘package’ in Standard 1.1.1 and its interaction with the requirements in clause 2 in Standard 1.2.1, including the requirement for a package of food to ‘bear’ a label. This is particularly an issue for the labelling of food for catering purposes, but also has implications for the retail sale of food sold from vending machines, food sold in hampers and food wrapped on premises for food hygiene reasons.

Finally, matters such as the labelling requirements for packaged meals provided by DMOs and the labelling of meals provided in hospitals and similar institutions and prisons were not specifically considered during the development of Standard 1.2.1. Therefore, the current exemptions in clause 2 in Standard 1.2.1 do not apply in all of the circumstances in which these meals are currently being provided. In particular, DMOs, hospitals and similar institutions and prisons are uncertain about their obligations in respect of labelling and there is a need to review and standardise these requirements for consistency in interpretation and application.

In summary, the following specific regulatory problems related to the application of clause 2 in Standard 1.2.1 have been addressed by this Proposal:

- the current definition of food for retail sale does not provide certainty that labelling requirements apply to food sold to the public as well as food intended for sale to the public;
- the inner portion packs exemption is considered to be unclear in relation to its application, and to the principle on which it is based;
- clarification is required on the labelling requirements when conducting a fund raising event;
- current labelling requirements for vending machines are impractical;
- the labelling current requirements for hampers are considered to be impractical;
- currently, food wrapped for hygienic purposes is not exempt from labelling, even where the consumer can ask for information required for safety and informed choice;
- the list of information requirements in the Code is difficult to use;
- currently, the Code does not require date marking and food identification information on unpackaged food to be made available to purchasers on request, even though this could be done with little or no additional cost to industry;
- the definition of catering purposes does not provide sufficient clarity and certainty to industry;
- some of the current exemptions and information requirements for food for catering are inappropriate and impractical;
- currently, the Code places a substantial regulatory burden on DMOs, with prescribed information not limited to information necessary for food recalls and health and safety.

Since the release of the Initial Assessment Report, FSANZ has become aware of further issues in relation to the labelling of internet food. Internet labelling is a highly complex area and as such, FSANZ does not intend to address these issues in Proposal P272.

Furthermore, submissions in response to the Initial Assessment Report requested a review of the ingredient labelling exemption for the declaration of certain food additives in compound ingredients when the compound ingredient makes up less than 5% of the final food. This exemption applies only to ingredient labelling outlined in Standard 1.2.4 and is therefore outside the scope of Proposal P272 which is to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements outlined in Standard 1.2.1. Consequently, a review of the compound ingredient exemption has not been considered in this Proposal.

3. Objectives

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives, which are set out in section 18 of the FSANZ Act. These are:

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

In developing and varying standards, FSANZ must also have regard to:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food; and
- any written policy guidelines formulated by the Ministerial Council.

The specific objectives for this Proposal are to:

- remove barriers to the efficient operation of Standard 1.2.1 in relation to food for retail sale and food for catering purposes while at the same time maintaining a high level of public health and safety protection;
- ensure that changes in the structure and scope of Standard 1.2.1 in relation to food for retail sale and food for catering purposes do not adversely affect the ability of consumers to make informed choices;
- provide greater certainty to industry, government, consumers and non-government organisations such as delivered meal organisations and health care sectors regarding the labelling requirements in clause 2 in Standard 1.2.1; and
- provide clarity in order to promote consistent enforcement.

4. Food for Retail Sale

4.1 Background

Retail sale is defined in Standard 1.2.1 as *sale to the public*. In addition, the definition of ‘sale’ under food legislation is very broad. Therefore, wherever food is sold to the public from any retail outlet, supermarket or in a restaurant setting and even where food is served at a hospital or served on an aeroplane flight, it is considered to be food for retail sale.

It is important to note that where food not intended for retail sale, or intended for catering purposes, is nevertheless sold to the public, this food, at the point of sale, falls under the definition of food for retail sale. In this case, all the labelling requirements of food for retail sale apply, and any exemptions that may apply to food not for retail sale or food for catering become void. Suppliers of food should ensure that all food sold to the public is fully labelled according with the requirements of the Code.

Food for retail sale, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code. The intention of the requirement is to ensure that consumers have accurate information about the nature and composition of the food to make an informed choice.

Clause 2 of Standard 1.2.1 was drafted with food for retail sale in mind. The following exemptions are provided in subclauses 2(1):

- (a) the food is other than in a package.
- (b) the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area of no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3.
- (c) the food is made and packaged on the premises from which it is sold.
- (d) the food is packaged in the presence of the purchaser.
- (e) the food is whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables.
- (f) the food is delivered packaged, and ready for consumption, at the express order of the purchaser.
- (g) the food is sold at a fund raising event.

Since the Code came into effect, FSANZ has become aware of a number of problems associated with the application of these exemptions. In the case of food for retail sale, it is suggested that the exemptions provided in subclauses 2(1) should be retained, however, where possible the exemptions should be clarified. Issues, which have been identified as requiring further consideration, include:

- the use of the term ‘food for retail sale’;
- the current exemptions in subclause 2(1) which apply to food for retail sale, including:
 - clarification of exemption clause 2(1)(b); and
 - food sold at a fund raising event.
- circumstances where other exemptions are considered:
 - wrapped ‘pick’n’mix’ foods;
 - food sold in vending machines;
 - food sold in hampers;
 - food items wrapped at the retail outlet;
 - food items intra-company transferred; and
 - milk sold in glass bottles.
- the information requirements in subclause 2(2) which apply to food for retail sale when exempt from labelling;
- the labelling requirements for packaged meals provided by DMOs; and
- the labelling requirements for foods served in hospital and similar institutions.

The difficulties with the current labelling requirements for packaged meals provided by DMOs and the appropriateness of the labelling requirements for meals served in hospitals, prisons and similar institutions are considered separately in sections 6 and 7.

As outlined, currently food for retail sale and food for catering purposes are considered together in clause 2 of Standard 1.2.1. However, clause 2 of Standard 1.2.1 was originally drafted with food for retail sale in mind. Given, the significant variation in the nature of food for retail sale to that of food for catering purposes, these foods will now be addressed separately in Standard 1.2.1.

4.2 The Use of the Term ‘Food for Retail Sale’

4.2.1 Background

Clause 2 of Standard 1.2.1 implies that the application of the term ‘food for retail sale’ applies to food at the point of retail sale, rather than at the point where the food is manufactured and packed for retail sale. This means that the onus is on the retailer to ensure that the products sold at the retail level are correctly labelled. Generally, manufacturers will fully label packaged food where the food will ultimately be sold to the public in that form. Where this does not occur a provision exists in clause 4 of Standard 1.2.1, which allows the retailer to request information to enable the retailer to comply with the compositional requirements and labelling or other declaration requirements of the Code.

4.2.2 The issue

An Application (A496) from NSW Health was received on 28 March 2003. This Application is to amend the Code to place responsibility to fully label foods intended for retail sale on the manufacturer rather than it only being the responsibility of the retailer to ensure labelling is compliant with the Code. Before Standard 1.2.1 came into effect, manufacturers of retail products carried the onus of responsibility for ensuring that products packed for retail sale were compliant at the point of retail sale. As the labelling requirements for ‘food for retail sale’ are currently being considered as part of this Proposal, FSANZ considers it appropriate to address the issues raised by Application A496 as part of the Proposal P272 process.

The Applicant claims that it is not always practical to administer and enforce labelling requirements at the retail level and suggests all Standard 1.2.1 references to ‘food for retail sale’ be replaced with ‘food for retail sale and food intended for retail sale’, placing the onus on the manufacturer as well as the retailer.

The Applicant considers that large retail chains may have the commercial influence to ensure that suppliers fully and correctly label their product; however, small businesses may not. Small retail businesses do not have the commercial influence to reject insufficiently labelled goods. Although small businesses can request that necessary labelling information accompany the food under clause 4 of Standard 1.2.1, this information does not have to be in the form of a label, and small businesses may not have the capacity to convert this information into labels. If at retail sale, a product is missing mandatory labelling information, enforcement authorities cannot take action against the manufacturer. Action can only be taken against the retailer, and this might include a written or verbal warning, seizure and recall or ultimately, prosecution.

4.2.3 *Submitter comments*

All submitters that commented on this issue supported the principle behind the proposed new definition, that is that the onus of labelling lies with the both the retailer and the manufacturer.

It was noted that the proposed definition is consistent with the requirements under the New Zealand *Food Act 1981* and that the potential for any confusion is unlikely to arise with the New Zealand *Fair Trading Act 1986*. However, some submitters considered the proposed definition to be overly complex.

On the other hand, there were suggestions that the words ‘prior to retail sale’ should be placed at the end of the definition so that it is clear that further processing in a purchaser’s residence is not included. This might be thought to apply to products such as flour.

It was noted that there may be implications associated with the labelling of small packaged items sold at certain outlets, such as confectionery sold at conferences that has been supplied in larger fully labelled packaging. The manufacturer has provided the labelling information but the retailer may not have the capacity to comply with the requirements of the Code when the items are sold individually.

4.2.4 *Decision*

It was always intended and generally understood that the expression ‘food for retail sale’ would cover the stages leading up to the point of the retail sale. It was also understood that it is the responsibility of the manufacturer to fully label packaged foods that are intended for retail sale.

To ensure the manufacturer of a food that is intended for retail sale is responsible for the labelling of the food, FSANZ has developed the following definition of food for retail sale:

food for retail sale means food for sale to the public and includes food prior to retail sale which is –

- (a) *manufactured or otherwise prepared, or distributed, transported or stored; and*
- (b) *not intended for further processing, packaging or labelling*

In this definition the expression ‘includes’ is used to enlarge the ordinary meaning of the term ‘food for retail sale’¹. The ordinary meaning of ‘food for retail sale’ is *food that is sold to the public*. The expression ‘includes’ extends the ordinary meaning of food for retail sale to food prior to retail sale with (a) and (b) only applying to the extended meaning. In other words, any food sold to the public is ‘food for retail sale’, regardless to whatever happens to it after purchase, because that is the ordinary meaning of ‘food for retail sale’. In addition to *food sold to the public*, the definition extends the ordinary meaning of the term to include *food intended for sale to the public*, which was the objective of redefining food for retail sale.

¹ Pearce, D. C.; Geddes, R. S. 2006 *Statutory Interpretation in Australia*. [6.56], p 239f

This definition places responsibility for labelling all food for retail sale in accordance with the Code on the manufacturer or importer of the food as well as the retailer, where the food is not intended for further processing, packaging or labelling prior to retail sale. Where a food is manufactured and packaged for retail sale and the food is not intended to undergo further manufacturing, the manufacturer at this point is responsible for the correct labelling of the food.

If, however, a retailer or middleman alters the food, the packaging or labelling, this person will then be responsible for the labelling of the product in accordance with the Code. For example, if a retailer removes the exterior packaging of a food intended for retail sale and sells the individual items within that package separately, the retailer is then responsible for the labelling of these individual items.

As raised in submissions, FSANZ is aware that small confectionery items are sold within larger packages to restaurants and conferences and these items are then removed from their larger packaging and provided individually to patrons. These small confectionery items are considered food for retail sale and will need to be individually labelled in accordance with the Code. If they are not intended for retail sale, it is up to the retail outlet i.e. the restaurant or conference operator to label these items correctly. Where this is problematic, the restaurateur or conference operator will need to order food items that are clearly intended for retail sale. The manufacturer may wish to label the inner packages in order to meet the needs of their clients.

4.3 Inner Portion Packs Exemption

4.3.1 Background

During the review of the former Australian *Food Standards Code*, the then Australia New Zealand Food Standards Authority (ANZFA), now FSANZ, considered in Proposal P161 – Review of Specific Labelling Statements, that inner packages in the form of individual ready to eat portion packs should be required to declare the presence of substances that may cause severe adverse reactions. It was considered that not all inner packages should be required to declare these substances, only those that are in individual portion packs that may be separated from the outer package and stored or used in isolation.

Consequently, the following exemption clause was included in Standard 1.2.1: *the food is in inner packages not designed for sale without an outer package other than individual portion packs which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3.*

During the transition period for the Code it became apparent that the above exemption clause required clarification. Consequently, Proposal P246 – Labelling Amendments Omnibus, was prepared. Proposal P246 clarified the terms ‘inner package’ and ‘individual portion pack’ as follows: an ‘inner package’ is considered to include a package or packages of food contained within an outer pack that would not normally be removed from the outer pack and consumed separately, e.g. cellophane wrapped cracker biscuits. An ‘individual portion pack’ is considered to include single serve packages that would normally be removed from the outer package and consumed separately as an individual serve e.g. muesli bars, fruit bars, cheese sticks and single serve chocolates. It was not considered necessary to define these terms in the Code.

Proposal P246 also recognised that providing a declaration of allergens on very small individual portion packs (such as confectionery) could be problematic for industry given the limited available space for printing. Therefore, ANZFA considered that individual portion packs with a surface area of not more than 30 cm² should be exempt from allergen labelling. The exemption paragraph was amended to this effect.

Consequently, paragraph 2(1)(b) of Standard 1.2.1 provides food for retail sale with an exemption from bearing a label setting out all the information prescribed in the Code where *the food is in an inner packages not designed for sale without an outer package, other than individual portion packs with a surface area of no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3.*

In summary, this means that where an inner package is designed for sale with an outer package, it is exempt from labelling.

In the case of individual portion packs that are designed for sale with an outer package, the individual portion packs are still required to be allergen labelled in accordance with clause 4 of Standard 1.2.3 where the individual portion packs have a surface area of 30 cm² or greater. Where the individual portion packs are less than 30 cm² in surface area, the individual portion packs are exempt from labelling, including allergen labelling.

4.3.2 *The issue*

Paragraph 2(1)(b) as currently written is very lengthy which appears to have resulted in some lack of understanding of what is covered by the exemption and how the exemption applies.

4.3.3 *Submitter comments*

The proposed wording for labelling of inner packages at draft assessment was deemed clearer and supported by all those who submitted on this item. Furthermore, most submitters agreed that warning statements should also be provided on inner portion packs. It was suggested by one submitter that FSANZ define the terms ‘inner package’ and ‘individual portion packs’ in the Code in order to retain the intent.

4.3.4 *Decision*

FSANZ has reworded the exemption to reduce confusion in relation to its application, and to clarify the principle on which it is based. In addition, FSANZ requires mandatory warning statements and declarations under clause 3 of Standard 1.2.3 to be on the label of inner portion packs with a surface area of 30 cm² or greater. FSANZ has reworded the exemption to:

- (b) *the food is in an inner package not designed for individual sale. Despite this, individual portion packs in a container or wrapper with a surface area of 30 cm² or greater must bear a label containing information in accordance with clauses 3 and clause 4 of Standard 1.2.3*

Inner packages and individual portion packs are not defined in the Code, although the intent of the terms was outlined in P161 – Review of specific labelling statements are clarified in Proposal P246. Therefore FSANZ does not intend to review these terms. A description of the terms ‘inner package’ and ‘individual portion packs’ will be addressed in the user guide.

FSANZ considers that it is necessary to require on the label of inner portion packs that have a surface area of 30 cm² or greater, mandatory warning statements and declarations listed under clause 3 of Standard 1.2.3 in addition to the mandatory declarations required under clause 4 of Standard 1.2.3 (presence of allergens and sulphites). A warning statement is a prescribed statement which must be expressed on a label in the exact words and format specified. Currently, there is only one warning statement required under clause 3 of Standard 1.2.3: ‘this product contains royal jelly which has been reported to cause severe allergic reactions and in rare cases, fatalities, especially in asthma and allergy sufferers’.

4.4 **Wrapped Pick ‘n Mix Small Package Items**

4.4.1 Background

Wrapped Pick ‘n Mix Small Package Items (e.g. confectionery) are generally small, loose individual items that may be novelty shaped and sold out of display or self-serve dispensing units. Currently, in accordance with paragraph 2(1)(a) in Standard 1.2.1, if a food item is sold *unpacked* it is not required to bear a label. However, certain information requirements may need to be displayed on or in connection with the display of the food or provided to the purchaser upon request.

For example, if a substance that is listed in the table to clause 4 of Standard 1.2.3 which may cause a severe adverse reaction in certain individuals is present in an unpackaged Pick’n Mix confectionery item, a label declaring the presence of the substance must be displayed on or in connection with the display of the food or provided to the purchaser upon request.

A *packaged* Pick ‘n Mix Small Package Item will, in most cases, fall within the definition of a small package. A small package is defined under clause 1 of Standard 1.2.1 *as a package with a surface area of less than 100 cm²*. Currently, small packages are exempt from a number of labelling requirements and need only to be labelled with:

- the name of the food;
- the name and business address details of the supplier;
- mandatory warning and advisory statements; and
- in Australia, the country of origin.

In some circumstances, small packages need also to be labelled with the following:

- lot identification (only where the bulk package or container in which the food is contained does not provide this information);
- directions for use and storage (only where for reasons of public health and safety, consumers need appropriate directions for use or storage of the food); and
- date marking (only where the food should be consumed before a certain date because of health and safety reasons i.e. use-by-date).

Given that Wrapped Pick ‘n Mix Small Package Items (such as confectionery) are generally long-life, shelf-stable foods, it is unlikely that these items require directions for use and storage. However, other small package items may require directions for use and storage.

4.4.2 *The issue*

The confectionery industry has raised concerns regarding the labelling requirements of packaged Pick'n'Mix confectionery items. The confectionery industry considers that small packaged confectionery items should be considered in the same context as unpackaged confectionery items, as many confectionery items are only packaged for hygienic protection. Additionally, the confectionery industry has advised FSANZ that labelling novelty shaped items in a legible and prominent manner is particularly problematic.

In order to prevent confusion and provide adequate information to consumers to make informed choices it is important to ensure that all labelling standards are applied consistently. The confectionery industry has provided comment on the special issues surrounding small package confectionery items. However, when considering regulatory approaches to Wrapped Pick'n'Mix Small Package Items FSANZ must take account of the wide variety of small packaged items currently in the marketplace. The Standards contained in Part 1.2 of the Code operate as horizontal standards in that they apply across all categories of food. The advantage of horizontal standards is that specific principles, such as providing adequate information to consumers to make informed choices, can be applied across all foods, not just those specific commodities described within a Standard.

4.4.3 *Submitter comments*

Regulatory authorities supported FSANZ's proposed approach of the *status quo*, that is, that small packaged items (including 'bite sized' confectionery items) continue to be regulated as small packages. Some other submitters were opposed to this approach.

Submitters opposed to FSANZ's proposed approach highlighted the impracticalities of the current labelling requirements in particular to very small packaged items. These included; difficulties in labelling small confectionery items which are flow wrapped; impracticalities of providing larger packaging in order to comply with the current requirements; difficulties in labelling lot identification on very small packages; and costs associated with the current labelling requirements. Alternative labelling requirements were proposed by submitters. These ranged from a complete exemption for very small packaged items to a requirement that very small packages be labelled with certain prescribed information with other information provided in connection with the food or provided on request.

4.4.4 *Decision*

FSANZ continues to propose the *status quo* and not to reduce the labelling requirements for small packages. In order to prevent confusion and provide adequate information to consumers to make informed choices it is important to ensure that all labelling standards are applied consistently.

FSANZ provides the following reasons for maintaining the status quo for labelling of small packages such as 'bite size' confectionery items:

- FSANZ considers packaged items cannot be considered in the same context as unpackaged items. Packaged products should carry sufficient information to carry out effective food recalls. Recalls are part of risk mitigation and protection of consumers.

Effective recalls also assist manufacturers in resolving product failures in a speedy and cost-efficient manner. FSANZ does not currently have sufficient evidence to show that effectiveness of recalls and the safety of consumers would not be compromised with the removal of information considered essential for food recalls or that effective, alternative risk management options are available.

- The declaration of the presence of certain substances and if applicable, warning and advisory statements, are particularly important information as confectionery items can contain substances that may cause severe adverse reactions in sensitive individuals. FSANZ does not have evidence to show that the safety of consumers would not be compromised with the removal of this information from packages or that alternative effective risk management strategies are available.
- The labelling of small packages is a broad regulatory issue, in which confectionery items cannot be considered in isolation. Any change to small packages would affect a number of product types and this would require a full evaluation and extensive risk assessment. In particular, the preferred approach by the confectionery industry that “one bite” size items be considered as very small packages, with no or very limited information on the label, raises issues of significant complexity.
- In order to fully evaluate the risks and benefits of amending the existing provisions FSANZ would require supporting evidence, including a full risk assessment; consideration of consumer needs and understanding; consideration of the impact on product types other than confectionery; impacts on the catering trade; extensive consultation and a benefit cost analysis. This falls outside the scope of this Proposal.

4.5 Fundraising Events

4.5.1 Background

Standard 1.1.1 defines fundraising events as *events that raise funds solely for community or charitable purposes and not for personal gain*. Currently under subclause 2(1)(g) of Standard 1.2.1, food sold at a fundraising event is exempt from general labelling.

4.5.2 The issue

The current exemption subclause 2(1)(g), together with the definition of a fundraising event, provides food sold at fundraising events with an exemption from labelling only where:

- the food is sold at an event; and
- the funds raised at that event are solely for community or charitable purposes and not for personal financial gain.

Concerns have been raised by charitable organisations and enforcement officers on the difficulties in interpreting the current requirements as they apply to continuous fund raising activities and where only a portion of the proceeds go to charitable purposes. Another matter of concern with the current exemption is where food is given away for community or charitable causes, for example at soup kitchens or food banks, the food may still require full labelling given the broad definitions of the term ‘sell’ in food legislation.

4.5.3 *Submitter comments*

Most submitters who commented on this item supported FSANZ's approach to maintain the current labelling exemption for food sold at fund raising events. There was also support for the development of a guide to labelling as suggested at draft assessment.

It was noted that these foods should not be exempt from declaring information required for the protection of public health and safety, e.g. allergen declarations, as there seems to be a potential risk to third parties consuming unlabelled food, where the third party was not involved in the purchase of the food.

4.5.4 *Decision*

FSANZ proposes that there will be no changes to the requirements of the Code pertaining to fund raising events. However, in order to clarify the application of the exemption to fund raising events, FSANZ will provide the following Editorial note in Standard 1.2.1:

Editorial note:

Fund raising events organisers should be aware that there may be New Zealand, State, Territory or Commonwealth legislative requirements that need to be complied with in order to conduct the event.

FSANZ is aware that each jurisdiction has its own regulations for the conduct of fund raising events, including limitations on the number of events that can take place within a year. Fundraising organisers must ensure that they are compliant with State, Territory and New Zealand requirements when conducting a fund raising event.

FSANZ will provide further guidance on the labelling requirements that apply to fund raising events in a fact sheet or user guide. This guidance will include the requirements under the Code with links to jurisdiction legislation. FSANZ will work with the jurisdictions in the development of this guide.

As is the case with all food items that are exempt from labelling, allergen information must be provided in connection with the display of the food or provided to the purchaser upon request. The same risks apply in all cases where third parties are provided with food, and who were not involved in its purchase.

4.6 **Vending Machines**

4.6.1 *Background*

Under the current definition of package in Standard 1.1.1, a vending machine can be considered a package. Vending machines may contain individual food products on which the labels are obscured by virtue of being contained within the outer package i.e. the vending machine.

Currently, a package is defined in Standard 1.1.1 as *any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package, but does not include –*

- (a) *bulk cargo containers; or*
- (b) *pallet overwraps; or*
- (c) *crates and packages which do not obscure labels on the food; or*
- (d) *transportation vehicles.*

In accordance with the Code, labels on food packages must be visible to the consumer at the time of purchase.

Subclause 11(1) of Standard 1.1.1 states *subject to subclause (2), the label on a package of food must not be altered, removed, erased, obliterated or obscured except with the permission of the relevant authority.*

Subclause 2(1) of Standard 1.2.9 states *unless otherwise expressly permitted by this Code, each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.*

4.6.2 *The issue*

4.6.2.1 Exterior of vending machine

Under the current definition of ‘package’ in Standard 1.1.1, a vending machine can be considered to be a package and therefore should be labelled in accordance with the requirements of the Code. However, it is not practical to require all the labelling information of the Code to be displayed on the outside of the vending machine: in most cases the packages within are fully labelled and accessible once the product has been purchased. In addition, many enforcement agencies and vending machine operators are unaware of, or disagree with, this requirement.

4.6.2.2 Food items within vending machines

Having a label obscured within the vending machine means that at the time of sale, the information on the label is not set out legibly or prominently in the view of the prospective purchaser.

Furthermore, it is possible that food sold in vending machines may meet the requirements of the exemption: subclauses 2(1)(d) *the food is packaged in the presence of the purchaser* or 2(1)(f) *the food is delivered packaged and ready for consumption, at the express order of the purchaser* or perhaps the exemption subclause 2(1)(c) *the food is made and packaged on the premises from which it is sold.*

4.6.2.3 Express provision for labelling of vending machines where exemptions apply

Some information requirements, such as mandatory warning and advisory statements and declarations, apply to food that is exempt from bearing a label. Currently, Standard 1.2.3 requires that this important information is displayed on or in connection with the display of the food or provided to the purchaser on request.

In case of vending machines, information usually cannot be requested by the purchaser at the point of sale. In addition, it may not be possible or practical to display information on, or in connection with, the *display* of the food, as the food may not be displayed before it is dispensed from a vending machine.

4.6.3 Submitter comments

4.6.3.1 Exterior of vending machine

Most submitters who commented on this matter agreed that full labelling should not be required on the exterior of a vending machine. Some submitters noted that their current understanding of the definition of package did not include vending machines.

It was suggested that it might be useful to include an editorial note in Standard 1.1.1 to make it clear that vending machines are not considered packages. This submitter further noted that the inclusion of vending machines in clause 2, might lead to an interpretation that appliances other than vending machines that dispense food (such as closed containers of nuts, confectionery in supermarkets) are packages.

There was support for supplier details to be provided on the outside of vending machines. It was suggested that supplier information should be limited to the vendor as manufacturer information would be of little assistance if the manufacturer were located in another country. However, one submitter noted that such a requirement is already covered by Fair Trading legislation and therefore should not be duplicated in the Code.

4.6.3.2 Food items within vending machines

There was support for packaged food items within the vending machine to comply with the requirements of the Code in their own right. However, it was also considered by a submitter that for packaged items within the vending machine, not all information required by the Code may be visible at the time of purchase, thereby being in breach of the legibility requirements. This submitter suggested an exemption be provided from the legibility requirements of Standard 1.2.9, providing that the package once dispensed, complied in all respects to the Code.

It was considered by a submitter that where a food item within a vending machine is normally exempt (i.e. not in a package, such as coffee) that the vending machine should still be labelled with information important for public health and safety (e.g. allergen information) and that the alternative of providing this information on request is not practical. It was further noted, that the new information requirements for unpackaged food i.e. product name and use-by-date need to be also carefully considered.

4.6.4 Decision

4.6.4.1 Exterior of vending machine

FSANZ has reworded the definition of package to exclude vending machines. The new definition of package is:

package means any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package, but does not include –

- (a) *bulk cargo containers; or*
- (b) *pallet overwraps; or*
- (c) *crates and packages which do not obscure labels on the food; or*
- (d) *transportation vehicles; or*
- (e) *a vending machine; or*
- (f) *a hamper; or*
- (g) *food served on a covered plate, cup, tray or other food container in prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1.*

To assist industry and enforcement officers in interpreting this definition, a description of a vending machine will be provided in a user guide on food labelling.

FSANZ considers it necessary to provide supplier details on the outside of the vending machine to assist in a food recall should one be necessary. Supplier is defined in Standard 1.1.1 as *the packer, manufacturer, vendor or importer of the food in question*. The vending machine operator is considered to be the vendor and therefore, vending machine operator details would meet the requirements of the Code. A clause has been created in Standard 1.2.2 – Food Identification Requirements, requiring a vending machine from which food is sold to clearly display the name and business address in Australia or New Zealand of the supplier of the food.

There is no consistency in jurisdictional fair trading legislation governing vending machines in relation to the provision of vending machine operator details. Therefore, it remains necessary to require this information in the Code.

Furthermore, FSANZ considers it not necessary to include an editorial note in Standard 1.1.1 to make it clear that vending machines are not considered packages, given the definition of package now clearly excludes vending machines. Guidance will also be provided in the user guide on appliances other than vending machines which are not considered packages but do dispense food. Examples of appliances include closed dispensing containers of nuts or confectionery dispensing units.

Food items within a vending machine must comply with the Code in their own right. Where food items within the vending machine are fully labelled, information required by the Code is not practical or necessary on the outside of the vending machine, as details would need to be updated regularly as new stock is added.

4.6.4.2 Food items within vending machines

As mentioned, food items within a vending machine must comply with the Code in their own right. There are circumstances where a food within a vending machine cannot be labelled at the time at which the vending machine is stocked. For example, hot drinks such as hot chocolate, coffee and tea dispensed from a vending machine where the purchaser chooses the addition of milk or sugar. In this circumstance it is not possible to fully label the packaging i.e. paper cup, at the time of stocking the vending machine as it is not possible to determine what ingredients the purchaser will choose. Furthermore, it is likely that the food item within the vending machine will meet the requirements of an exemption for food for retail sale. Such as:

- 2(1)(a) *the food is other than in a package;*
- 2(1)(c) *the food is made and packaged on the premises from which it is sold;*
- 2(1)(d) *the food is packaged in the presence of the purchaser; and*
- 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser.*

However, as exemption clause 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser,* may apply to food sold in vending machines in all circumstances which is clearly not the intent, a clause has been added to Standard 1.2.1 to specify that this exemption does not apply.

FSANZ undertakes to consider an exemption from the legibility requirements for food items sold from vending machines, providing that the package once dispensed, complies with all aspects of the Code. FSANZ has undertaken to review Standard 1.2.9 – Legibility requirements. Consequently, such an exemption will be considered as part of this process.

4.6.4.3 Express provision for labelling of vending machines where exemptions apply

Where food sold from a vending machine is exempt from labelling requirements, the information requirements outlined in section 4.11 (below) will still apply, including the declaration of certain substances in food that may cause severe adverse reactions in sensitive individuals. In general, the information requirements may be displayed on or in connection with the display of the food or provided to the purchaser upon request. However, these options are not always appropriate or practical in the case of vending machines.

To provide clarity, FSANZ has varied Standard 1.2.3 so that where food is exempt from labelling, and sold from a vending machine, and is required to disclose:

- mandatory advisory statements and declarations;
- mandatory warning statements and declarations;
- mandatory declaration of certain substances in food;
- advisory statements in relation to polyols or polydextrose;

This information must be *displayed on or in connection with food dispensed from a vending machine.*

4.7 Hampers and Similar Packages

4.7.1 Background

Under the current definition of ‘package’ in Standard 1.1.1, a hamper, like a vending machine is considered a package and therefore requires full external labelling. In addition, the legibility requirements of subclause 11(1) of Standard 1.1.1 and subclause 2(1) of Standard 1.2.9, require the information on labels on food packages within a hamper to be legible and visible to the consumer at the time of purchase. Refer to section 4.6.1 for the definition of package and the legibility requirements of Standards 1.1.1 and 1.2.9.

4.7.2 The issue

As with vending machines, labels on food packages within hampers may be not visible to the consumer at the time of purchase. A hamper is a package, and therefore should be labelled with the contents of the hamper. However, feedback from industry suggests that due to the large number of products within hampers it is difficult to label the outside with all the required information without affecting the presentation. As hampers are usually purchased as a gift, the presentation is of importance to the consumer. Additionally, products within hampers will in most cases also be sold individually, and therefore these products are fully labelled.

4.7.3 Submitter comments

4.7.3.1 Exterior of hampers

Most submitters supported the exclusion of hampers from the definition of package as proposed at Draft Assessment. There was also support for the proposal that supplier details be provided on the outside of the hamper and that items within be fully labelled.

In a supermarket, most items sold within a hamper will be offered separately for individual sale and a literal interpretation of the definition would exclude any hamper sold by supermarkets. It was queried whether other bundled product presentations (not commonly referred to as hampers) used by supermarkets would meet the definition of a hamper. These include:

- snack packs e.g. bag or packaging containing packaged drink, nuts and raisins, for example used for children’s morning teas;
- meal packs e.g. packaging containing packaged products used to make a meal like meat, onions, breadcrumbs, sauce;
- cheese boards e.g. individually wrapped and labelled cheeses packaged on a tray;
- bulk packs e.g. multiple packs of products wrapped together for bulk sales.

There was some support for the above items to be exempt from labelling where the items within are fully labelled.

It was suggested the term ‘decorative’ be removed from the definition of hamper, as the hamper may not be decorative and function only as a container and that further consideration be given to labelling the outside of the hamper with a date mark of the least durable item.

There was general support for labelling the outside of the hamper with supplier details. However, it was questioned whether supplier details are required for food businesses that prepare the hamper but purchase the items from another food business. For example, it is common for a bed and breakfast to purchase breakfast items from a supermarket and prepare a hamper and in doing this; the bed and breakfast is not required to obtain a food licence from their local council.

4.7.3.2 Food items within hampers

While there was general support for the proposal that items within the hamper be fully labelled, comments in relation to unpackaged items within the hamper were mixed with some support and some opposition for unpackaged items within a hamper to be fully labelled.

It was noted, that the editorial note could clarify that the prescribed information referred to for the unpackaged items, is that which is normally required on the item were it packaged. Furthermore, it was suggested that this requirement could be extended to partially labelled or unlabelled packaged items.

One submitter considered it an onerous requirement that unpackaged food items require documentation to accompany the food and that this would not easily be enforced. It was further noted that there does not appear to be any public health and safety benefits requiring documentation to accompany the foods that justify the costs to industry.

4.7.4 Decision

4.7.4.1 Exterior of hampers

FSANZ will exclude hampers from the definition of package. The amended definition of package is:

***package** means any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package, but does not include –*

- (a) bulk cargo containers; or*
- (b) pallet overwraps; or*
- (c) crates and packages which do not obscure labels on the food; or*
- (d) transportation vehicles; or*
- (e) a vending machine; or*
- (f) a hamper; or*
- (g) food served on a covered plate, cup, tray or other food container in prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1.*

The following definition of a hamper will be provided in Standard 1.1.1:

***Hamper** means a decorative basket, box or receptacle containing any number of separately identifiable food items.*

As raised in submitter comments, in a supermarket context, most items sold within a hamper will be offered separately for individual sale. Consequently, a literal interpretation of the definition proposed at draft assessment which included the words ‘that are not offered for individual sale’ at the end of the definition, would exclude any hamper sold by supermarkets. The definition of hamper has therefore been amended to rectify this issue.

FSANZ does not intend to capture other food packages in the definition of hamper, such as snack packs, meal packs, cheese boards or bulk packs. The current labelling issues for hampers are unique in that hampers are usually purchased as a gift and the presentation is of importance to the consumer. If the definition of hamper is broadened, it could potentially capture any bulk package that is clearly not the intent of the proposal.

The following Editorial note will also be provided in association with the definition of hamper:

Editorial note:

A hamper may also contain non - food items such as decorative cloths, glasses and dishes.

A clause in Standard 1.2.2 will require a hamper to be labelled with the name and business address of the supplier of the food in Australia or New Zealand. This is necessary for traceability purposes. Supplier details will provide a point of contact for enforcement officers and for the public.

Supplier is defined in Standard 1.1.1 as *the packer, manufacturer, vendor or importer of the food in question*. Therefore in the case of a food business, such as a bed and breakfast that prepares a hamper but purchases items from another business, the food business that prepares the hamper will provide their details on the outside of the hamper, thereby providing a point of contact for enforcement officers and for the general public.

Date marking on the outside of the hamper is not considered warranted by FSANZ when the items within are labelled with this information. Such a requirement is double labelling and is likely to confuse consumers when items within have various date marks. Further complications arise with the use of best before dates versus use by dates on the outside of the hamper. In most circumstances, the retailer will put the hamper together and should note the date by which the hamper should be consumed by as it is illegal to sell an item where its use by date has expired. Where the retailer is not the packer, date marking information should be provided to the retailer.

These amendments mean that the exterior package of a hamper is no longer considered a package. However, supplier details are required on the exterior. FSANZ is aware that in the current market place, hampers may be fully labelled on the exterior in accordance to the current requirements of the Code by means of a pamphlet. This practice can continue under the amended Code. FSANZ supports any initiative that assists consumers in making informed purchasing decisions.

4.7.4.2 Food items within hampers

The labelling requirements of food items within a hamper will be outlined in subclause 4(2) of Standard 1.2.1.

This clause would state that the exemptions in subclause 2(1) of Standard 1.2.1 would not apply to food items within a hamper. It would also require that all items within the hamper bear a label setting out all the information prescribed in the Code. In the case of unpackaged items within a hamper, these items would have to be accompanied with documentation setting out the information prescribed in the Code. This could be achieved by the inclusion of a pamphlet within the hamper.

The following editorial note will also be provided.

Editorial note:

For the purposes of paragraph 2(4)(c) the information may be within, or attached to the outer packaging of the hamper.

FSANZ considers items within a hamper should be labelled in accordance with the Code. Therefore, where an item is a small package, the item need only be labelled with small package information. However, where the item is unpackaged, it should be accompanied with the information required if it were a packaged item. Further guidance on these labelling requirements will be provided in a user guide.

As is the case with food items within a vending machine, labels on items within a hamper need to be set out legibly and prominently in the view of the prospective purchaser. FSANZ undertakes to consider an exemption from the legibility requirements for food items sold within hampers, providing that the package within the hamper, complies with all aspects of the Code. FSANZ has undertaken to review Standard 1.2.9 – Legibility requirements. Consequently, such an exemption will be considered as part of this process.

4.8 Food Items Wrapped at the Retail Outlet

4.8.1 Background

Where products are sold packaged, unless an exemption in subclause 2(1) of Standard 1.2.1 applies, the food must be fully labelled. If the food is displayed unpackaged however, the exemption subclause 2(1)(a) *the food is other than in a package* of Standard 1.2.1 would apply.

Queensland Health has informed FSANZ that a common practice for small and medium sized food businesses is to purchase unpackaged food and then package the food in clear, plastic food wrap and display the food for self-service, e.g., a whole cake purchased by a cafe, cut into portions, wrapped in a material approved for food use and displayed on a counter for retail sale. Other examples include doughnuts, slices, sandwiches, rolls and other similar items that are purchased by the retailer and not made on site. This practice is widely undertaken in order to comply with the food safety requirements.

In Australia, this practice complies with Standard 3.2.2 – Food Safety Practices and General Requirements, in particular subclauses 8(1) and 8(4):

8(1) *A food business must, when displaying food, take all practicable measures to protect the food from the likelihood of contamination.*

8(4) *A food business must not display for sale on any counter or bar, any ready-to-eat food that is not intended for self-service unless it is enclosed, contained or wrapped so that the food is protected from likely contamination.*

4.8.2 *The issue*

The labelling requirements of the products mentioned above were raised at a Technical Advisory Group (TAG) meeting in April 2003 attended by representatives of the jurisdictions, FSANZ, the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Quarantine and Inspection Service (AQIS). Some jurisdictions considered that it was not appropriate that such products are required to be fully labelled because they were presented packaged, in order to comply with food hygiene requirements. The development of a 'guidance note' indicating that 'wrapping' for the purposes of complying with the Food Safety Standards does not of itself constitute a package, was discussed. However, certain jurisdictions noted that there might be a risk of such an exemption picking up a broader range of products than was intended.

4.8.3 *Submitter comments*

Most submitters who commented on this item did not support FSANZ's proposed approach of the status quo at draft assessment, that is, not to provide an exemption for food wrapped at the retail outlet for food safety purposes.

It was suggested that FSANZ reconsider the proposed approach. Many retail businesses are not equipped to generate labels, and where retailers do generate labels, errors in re-keying of data may occur. It was noted that full product information as supplied by the manufacturer is held on the premises and is therefore able to be provided to the consumer or the regulator on request. It was noted that the intention of providing labelling information to consumers is to assist them to make informed choices and is not necessary at café and delicatessen counters, where consumers can obtain the required information directly from the person handling the food.

Whether or not a food is self selected or served by the retailer at the time of purchase is a possible option for differentiation between foods wrapped for the purpose of food safety at cafes etc, to foods wrapped and sold in supermarkets such as meat trays. It was suggested that an exemption to labelling could apply to wrapped food that is served across the counter where enquiries can be made to the vendor before purchase.

4.8.4 *Decision*

FSANZ will provide an exemption for wrapped food items which are provided to the consumer in an assisted service style such as where the retailer provides the food to consumer over a deli counter or café counter. An assisted service display cabinet is defined as follows:

assisted service display cabinet means an enclosed or semi-enclosed display cabinet which requires a person to serve the food as requested by the purchaser.

The following exemption is provided in subclause 2(1) of Standard 1.2.1:

- (1) *Subject to subclauses (2) and (4), food for retail sale must bear a label setting out all the information prescribed in this Code, except where – ...*
- (h) *the food is packaged and displayed in an assisted service display cabinet.*

Where the food meets the requirements of this exemption, the information requirements for food for retail sale will apply, including the declaration of certain substances in food that may cause severe adverse reactions in sensitive individuals. In general the information requirements may be displayed on or in connection with the display of the food or provided to the purchaser upon request.

This exemption addresses the issue allowing food that is wrapped for hygienic purposes to remain exempt from labelling, yet the proposed exemption does not capture other products wrapped at retail that are not intended to be captured. For example, the exemption will not capture meat trays displayed in a refrigerated cabinet in a supermarket setting where there is no assisted service. Furthermore, the exemption does not refer to wrapping for the purpose of compliance with food safety standards, as most packaging fulfils some food safety function and it would be difficult for enforcement officers to enforce such a requirement.

4.9 Food Items Intra-Company Transferred

4.9.1 Background

Food that is made and packaged from the premises from which it is sold is currently exempt from full labelling under subclause 2(1)(c) *the food is made and packaged on the premises from which it is sold*, on the basis that consumers can ask retailers questions about the composition of the food.

4.9.2 The issue

The labelling requirements of food items that are made and packaged at one site then intra-company transferred to another location for sale, was raised at a TAG meeting in April 2003 attended by representatives of the jurisdictions, FSANZ, DAFF and AQIS and it was agreed that this issue required further consideration.

During the review of the former *Australian Food Standards Code*, the exemption in paragraph 2(1)(c) *the food is made and packaged from the premises from which it is sold* was included on the basis that consumers could ask retailers specific questions about the composition of the food where this situation applied. Paragraph 2(1)(c) was intended to apply in the situations where food was made and weighed, dispensed, counted, measured into a pack by the customer or retailer on the premises where the retail sale took place e.g. bakeries, butchers, take away food outlets and sandwich bars. However, food items that are made and packaged at a site, for example at a bakery, that are then intra company transferred to satellite bakeries, no longer meet the requirements of the exemption and consequently these food items must be fully labelled. Where the food is intra-company transferred, retailers may request information that may be requested by consumers.

4.9.3 *Submitter comments*

There were mixed views amongst submitters who commented on this issue, with some opposition to the status quo proposed by FSANZ, that is the exemption ‘made and packaged on the premises from which it is sold’ not being extended to satellite retail outlets, and some support of FSANZ’s approach.

The current situation was considered inconsistent and illogical, with different labelling required at satellite outlets even though the information can be made available at the retail sale. However, support for the status quo was noted as information may not always be available at these remote sites or may be less available, for example via a phone call.

4.9.4 *Decision*

FSANZ’s decision is the *status quo* which is not to broaden the exemption 2(1)(c) *the food is made and packaged on the premises from which it is sold* to apply to food transferred to satellite retail outlets. This exemption was devised taking into account that the purchaser can seek information regarding the food direct from the manufacturer/retailer responsible for making the food. It was considered that where a purchaser can do this, they can obtain relevant information to make an informed purchasing choice by questioning and so do not necessarily need such information provided by food labels.

FSANZ considers that the labelling information of the food may not always be disseminated to satellite outlets and that for such a system to work up to date manuals at the point of sale would need to be maintained and these could be difficult to manage.

The labelling information may only be a phone call away, but that is also the case for any food sold at retail, where the retailer can contact the manufacturer for further information.

To broaden the exemption to apply to food sold at satellite outlets would defeat the intention of the exemption. It is worth noting that in many cases, in particular in relation to many bakery/patisserie items, where the exemption for food *made and packaged on the premises from which it is sold* does not apply, other exemptions, such as *the food is packaged in the presence of the purchaser*, may apply.

4.10 Milk Sold in Glass Bottles

4.10.1 *Background*

Currently, milk sold in glass bottles is exempt from only ingredient labelling and a statement of storage conditions relevant to date marking. Therefore, the Code requires that the following be displayed on the label:

- the name of the food;
- lot identification (a lot identification can be met by date marking and supplier details);
- the name and business address of the supplier;
- an NIP; and
- a date mark.

As these products are in most cases home delivered, in these circumstances the exemption in paragraph 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser* may apply. If this exemption applies the bottled milk is only required to comply with the mandatory warning and advisory statements and declarations in Standard 1.2.3. This requirement would need to be met by having the declaration of ‘milk’ displayed on or in connection with the display of the food or provided to the purchaser upon request.

Even where paragraph 2(1)(f) does apply, if the manufacturer of bottled milk makes a nutrition claim, e.g. low fat milk, a nutrition information panel (NIP) is required to be displayed on or in connection with the display of the food or provided to the purchaser upon request. However, the exemption in paragraph 2(1)(f) will not apply to bottled milk in all circumstances, for example if sold from a retail outlet.

4.10.2 *The issue*

Milk sold in glass bottles has limited available space on the foil cap and consequently, not all the required information will fit. The labelling requirements for milk sold in glass bottles were previously considered in relation to date marking, storage conditions relevant to date marking and ingredient labelling. Other labelling exemptions including the name of the food, the name and business address of the supplier, lot identification and NIP were not considered.

At the time of this Final Assessment, the labelling of milk sold in glass bottles no longer appears to be an issue. However, for completeness the analysis of the consideration of labelling of milk bottles has been presented here.

4.10.3 *Submitter comments*

No comments were received in relation to this matter.

4.10.4 *Decision*

FSANZ’s decision is the *status quo* which is not to provide an exemption for milk sold in glass bottles.

4.11 Information Requirements in Subclause 2(2)

4.11.1 *Background*

Subclause 2(2) in Standard 1.2.1 sets out the information requirements which apply to food for retail sale when exempt from bearing a label. In subclause 2(2), the information required relates to:

- mandatory warning and advisory statements and declarations in Standard 1.2.3 (paragraph 2(2)(a));
- directions for use and storage (where applicable)(paragraph 2(2)(b));
- nutrition labelling when nutrition claims are made (paragraph 2(2)(c));
- percentage labelling (paragraph 2(2)(d));
- country of origin labelling (paragraph 2(2)(e));
- genetically modified food (paragraph 2(2)(f));
- irradiation (paragraph 2(2)(g));

- the presence of offal, fat content in minced meat, formed and joined meat and fermented comminuted meat products (paragraph 2(2)(h));
- formed and joined fish (paragraph 2(2)(i));
- statements on the use of kava (paragraph 2(2)(j));
- advisory statements on formulated caffeinated beverages (paragraph 2(2)(k)); and
- statements on formulated supplementary sports foods (paragraph 2(2)(l)).

These information requirements were included on the basis that the availability of information at the point of sale is necessary to protect public health and safety, and to facilitate informed choice.

Although there are some exceptions, generally, the required information can either be displayed on or in connection with the display of the food or provided to the purchaser upon request. Consequently, there is considerable flexibility where an information requirement applies.

4.11.2 *The issue*

There are certain requirements for unpackaged not captured by the current information requirements listed in subclause 2(2) and refining the list of references in subclause 2(2) is required. The current list is not user friendly requiring referencing to other parts of the Code. The list can therefore be simplified.

In addition, some labelling information that FSANZ considers will be useful to the consumer where the food is exempt from labelling is omitted from the list. This information includes a use-by-date where the food should be consumed before a certain date because of health or safety reasons and a name or description of the food sufficient to indicate the true nature of the food. The latter was raised because of the potential for unlabelled food items to be described to consumers in a way that is not in accordance with the true nature of the food.

4.11.3 *Submitter comments*

There was support for FSANZ's preferred approach at draft assessment which included refining the list, providing the standard name along side the standard number and additional requirements including the name of the food and a use-by date. However, it was suggested that supplier details and lot identification should also be an information requirement where a food is exempt from labelling.

4.11.4 *Decision*

To make the list more user friendly, the name of the Standard referenced in the information requirements in association with the Standard number will be provided. For example:

- subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3 – *Mandatory Warning and Advisory Statements and Declarations*;

In addition, the list will be refined. For example, references to subclause 3(3) and 3(4) of Standard 2.6.4 will be replaced with a reference only to subclause 3(5) of Standard 2.6.4.

Furthermore, additions to the list will be made, including:

- Standard 1.2.2 – Food Identification Requirements, so that a name or description of the food sufficient to indicate the true nature of the food is displayed on or in connection with the display of the food or provided to the purchaser on request; and
- Standard 1.2.5 – Date Marking of Packaged Food, so that where the food should be consumed before a certain date because of health or safety reasons, the use-by date is provided on or in connection with the display of the food or provided to the purchaser on request.

The following list of information requirements will apply to food for retail sale exempt from bearing a label:

- (2) *Despite subclause (1), food for retail sale must comply with any requirements specified in –*
- (a) *subclauses 1(1) and (2) of Standard 1.2.2 – Food Identification Requirements; and*
 - (b) *subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3 – Mandatory Warning and Advisory Statements; and*
 - (c) *paragraph 2(1)(a) and subclause 2(2) of Standard 1.2.5 – Date Marking of Food; and*
 - (d) *Standard 1.2.6 – Directions for Use and Storage; and*
 - (e) *subclauses 4(2) and 4(3) of Standard 1.2.8 – Nutrition Information Requirements; and*
 - (f) *subclause 2(3) of Standard 1.2.10 – Characterising Ingredients and Components of Food; and*
 - (g) *subclauses 2(2) and 2(3) of Standard 1.2.11 – Country of Origin Requirements (Australia only); and*
 - (h) *subclause 4(3) of Standard 1.5.2 – Food produced using Gene Technology; and*
 - (i) *clause 6 of Standard 1.5.3 – Irradiation of Food; and*
 - (j) *subclause 4(3) and clauses 5, 6, and 10 of Standard 2.2.1 – Meat and Meat Products; and*
 - (k) *clause 3 of Standard 2.2.3 – Fish and Fish Products; and*
 - (l) *subclause 3(2) of Standard 2.6.3 – Kava; and*
 - (m) *subclause 3(5) of Standard 2.6.4 – Formulated Caffeinated Beverages; and*
 - (n) *subclauses 3(1), 3(2), 3(3) and 3(4) of Standard 2.9.4 – Formulated Supplementary Sports Foods.*

5. Food for Catering Purposes

There is a clear distinction in nature and purpose between food supplied to food businesses such as restaurants and caterers for further preparation and processing (*food for catering purposes*) and food sold to the public by restaurants, caterers and other retailers of food (*food for retail sale*). Wherever food is sold to the public it is defined as food for retail sale, and the labelling requirements of food for retail sale apply.

Given the different nature and purpose of food for catering purposes and food for retail sale, FSANZ proposes that the labelling requirements of foods for catering purposes be considered separately from food for retail sale. Some clauses of Standard 1.2.1 were originally drafted in the context of food for retail sale.

Separate, more relevant and appropriate exemptions and information requirements specifically for food for catering in conjunction with an improved definition would further clarify the application of labelling requirements to food for catering purposes. This would lead to more practical labelling requirements for food for catering purposes.

5.1 Background

Foods for catering purposes² is defined in Standard 1.2.1 as *foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption*. Consequently, food for catering purposes may either be a food ingredient, such as wheat flour or shortening, which will be used in the manufacture of another food, or a fully prepared food product, such as a baked dessert or a bread roll, which requires little or no preparation prior to food service. Food for catering purposes is likely to be supplied in bulk to the food service sector and may be packaged or unpackaged depending on the nature of the food.

In the context of clause 2 in Standard 1.2.1, food for catering purposes, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code.

Since the Code came into effect, FSANZ has been made aware of a number of problems associated with the application of the clause 2 requirements in Standard 1.2.1 as they apply to food for catering purposes. Several issues have been identified as requiring further consideration in relation to food for catering purposes.

These issues include:

- the definition of food for catering purposes;
- the requirement for food for catering purposes to bear a label containing the information prescribed in the Code;
- the appropriateness of the exemptions in subclause 2(1) which apply to food for catering purposes; and
- the appropriateness of the information requirements in subclause 2(2) which apply to food for catering purposes when exempt from labelling (e.g. allergen labelling).

5.2 The Definition of ‘Food for Catering Purposes’

5.2.1 Background

As mentioned the current definition of food for catering purposes in the Code is *those foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption*.

Codex contains a definition of food for catering purposes that is very similar to the definition in clause 2 in Standard 1.2.1. The Codex definition is *those foods for use in restaurants, canteens, schools, hospitals and similar institutions where food is offered for immediate consumption*.

² While Standard 1.2.1 uses the plural ‘foods for catering purposes’, it is intended in this paper to use the term singularly i.e. ‘food for catering purposes’, other than when quoting the requirements of the Standard.

5.2.2 *The issue*

There has been some confusion as to whether food supplied to a hospital, restaurant or another institution is considered ‘food for catering purposes’ or ‘food not for retail sale’ and consequently there has been confusion about which labelling requirements apply. Some consider that ‘food for catering purposes’ is food provided to a patient or a customer in a hospital, restaurant or other institution, whereas, the food in these circumstances is in fact ‘food for retail sale’. The lack of clarity in the current definition of food for catering purposes in Standard 1.2.1, in part, contributes to the confusion regarding the application of the labelling requirements.

When considering the definition of food for catering purposes, it is important to consider the definition of food for retail sale discussed in section 4.2, as both these definitions impact on where a food fits within the food transaction chain i.e. whether it is considered to be food for retail sale, food for catering purposes or food not for retail sale and consequently which labelling requirements apply.

5.2.3 *Submitter comments*

All submitters that commented on this issue supported the proposed definition of food for catering purposes provided at Draft Assessment which is *‘food supplied to catering establishments, restaurants, canteens, schools, hospitals and institutions where food is prepared or offered for immediate consumption.’*

It was agreed that the proposed definition would address the shortfalls in the current definition, more broadly capturing institutions, such as prisons and hospitals and that the definition would broadly capture prepared meals distributed to other remote facilities or supplied to delivered meals organisations.

5.2.4 *Decision*

The following definition of food for catering purposes is provided:

food for catering purposes means *food supplied to catering establishments, restaurants, canteens, schools, hospitals and institutions where food is prepared or offered for immediate consumption.*

This definition aligns the Code with the Codex definition of food for catering purposes. The new definition replaces the word ‘use’ with the word ‘supplied’ to make it clear that food for catering purposes applies to the sale of food to restaurants and other institutions and to caterers who subsequently prepare and/or serve food for immediate consumption.

FSANZ considers it necessary to include in the proposed definition a reference to food being ‘prepared or offered’ for immediate consumption rather than being ‘offered’ for immediate consumption, as reflected in the current definition. This would capture the situation where food may be prepared on a site other than where it is ultimately offered for immediate consumption. For example, where food is sold to a catering establishment, which prepares the food, then sells it to another catering institution where the food is offered for immediate consumption, both these transactions are considered food for catering purposes.

5.3 Labelling requirements for food for catering purposes

5.3.1 Background

Unless exempt, food for catering purposes must bear a label setting out all the information prescribed in the Code. In practice this means that all the required information must be on a label firmly attached to the package containing food for catering purposes. Consequently, unless an exemption applies, food for catering purposes must be labelled with the:

- name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in Standard 1.2.3;
- a list of ingredients;
- date marking information as required by Standard 1.2.5;
- directions for use and storage where required by Standard 1.2.6;
- nutrition labelling (unless specifically exempt); and
- country of origin (in Australia only).

There are also additional labelling requirements that may apply to food for catering purposes, for example, if the food or ingredients in the food are genetically modified or have been irradiated.

5.3.1.1 Supplier details

In Proposal P246 – Major Omnibus amendments, the former ANZFA outlined a problem in relation to the labelling of imported bulk foods not intended for retail sale with ‘supplier details’. In certain circumstances, the ‘supplier details’ i.e. the importer details for imported bulk foods may not be known at the time of export.

The manufacturer of the foods in another country does not always know the importer and is therefore not in a position to provide information such as the name and address details in Australia or New Zealand of the supplier when assembling a load for shipping. Consequently, clause 3 in Standard 1.2.1 was amended to permit the supplier details to be provided in documentation accompanying that food.

5.3.1.2 Commercial documentation

Allowing certain prescribed information to be permitted in written commercial documentation raises two additional issues. Firstly, what constitutes commercial documentation and secondly, what relationship will exist between the food and the commercial documentation.

Currently, under clause 3 of Standard 1.2.1, information prescribed in clause 3 of Standard 1.2.2, that is the name and address of the supplier, is not required to be on the label on a food not for retail sale where that information is provided in documentation accompanying that food.

The Code remains silent on what constitutes this commercial documentation and the relationship that exists between the food and the commercial documentation, only that it must accompany the food.

5.3.2 *The issue*

Unlike the requirements in clauses 3 & 4 in Standard 1.2.1, clause 2 does not currently provide an option for any prescribed information to be provided in accompanying documentation. Taking into account the significant variation in the nature of food for catering purposes to that of food for retail sale, FSANZ considers that it is possible to allow greater flexibility in the means by which certain information is provided while still ensuring that all required information is available. It is also necessary to consider whether supplier details may be provided in accompanying documentation as is the case in relation to food not for retail sale under clause 3 of Standard 1.2.1.

There is currently no universal definition or descriptor of accompanying documentation. In the course of business, written commercial documents may be provided either electronically or in hard copy. Consequently, written commercial documents could potentially be provided to the purchaser prior to delivery, at the time of delivery or possibly even after delivery. In addition, it is possible that information on a manufacturer's website will be considered by some to be commercial documentation.

5.3.3 *Submitter comments*

The majority of submitters who commented on this issue supported the proposed amendments, to only require country of origin labelling and information necessary for public health and safety on a label with remaining information provided in documentation. The new approach was noted:

- provides flexibility with some information allowed in attached documentation;
- protects public health and safety; and
- recognises that food for catering purposes requires a different strategy to food for retail sale.

No submitters rejected the proposed approach entirely, but rather took issue with one or two points. It was considered by a submitter that country of origin labelling does not need to be included as it is not necessary for public health and safety. There was some disapproval expressed due to a perceived reduction of labelling requirements for irradiated and genetically modified ingredients. Standard 1.5.2 – Food Produced using Gene Technology and Standard 1.5.3 – Irradiation of Food, are quite specific on the labelling requirements for food so treated and do not allow alternative means of providing labelling information. Furthermore, it was noted by a submitter that all ingredient information should be provided on labels (outer and inner packs) rather than only mandatory allergen declarations.

There was agreement not to introduce a definition of commercial documentation into the Code as it will provide greater flexibility without compromising public health and safety. In relation to supplier details, one submitter considered the proposed approach to have the potential to interfere with traceability as it relies on caterers being highly administrative and organised.

5.3.4 *Decision*

FSANZ proposes that the label on food for catering purposes include the following prescribed information:

- The name of the food
- Lot identification
- Mandatory warning and advisory statements and declarations
- Date marking
- Directions for use and storage
- Country of origin labelling (in Australia only)
- Labelling requirements for genetically modified food
- Labelling requirements for irradiated food

FSANZ further proposes that:

- supplier details can be provided on the label or in accompanying documentation with each delivery; and
- any remaining prescribed information, such as ingredient labelling, nutrition labelling, and any other information required by the Code, could be provided either on a label or in some other documentation.

The name of the food and lot identification is necessary to clearly identify the food and to facilitate a food recall should one be necessary. FSANZ considers it necessary to provide date marking and directions for use and storage on the label of food for catering purposes. Catering establishments need to know how to treat and store foods particularly as they may store foods for extended periods.

In addition, the ability of the restaurateur or caterer to provide mandatory warning and advisory statements on request can be rendered more difficult if foods sold to them are not labelled with this information.

Hence, FSANZ considers it necessary that mandatory warning and advisory statements and declarations be provided on the label of food for catering purposes. In Australia, food for catering purposes is required to include country of origin information on the label.

FSANZ has proposed to include Standard 1.5.2 and Standard 1.5.3 in the list of requirements for food for catering purposes in Standard 1.2.1, as there has been some confusion around the labelling requirements for food for catering purposes that has been irradiated or genetically modified. This will make it clear that food for catering purposes that is irradiated or genetically modified will continue to require this information on the label attached to the food rather than in documentation.

FSANZ considers the same principle that applies to food not for retail sale should apply to the labelling of bulk food for catering purposes. Consequently, it is proposed that supplier details may be provided in accompanying documentation for food for catering purposes. As supplier details may be necessary for a recall, FSANZ proposes that details must be provided with each delivery.

Generally, suppliers are encouraged to place supplier details on the label and only resort to providing supplier details in accompanying documentation when direct labelling of the food is impractical. This has been discussed with AQIS who support such an approach.

FSANZ proposes that any remaining prescribed information, such as ingredient labelling and nutrition labelling, as well as any other information required by the Code, be permitted either on a label or in some other documentation. This information does not have to accompany the food at each delivery, but rather need only be provided once with the sale of several batches of the same food item. Suppliers may choose to provide this information electronically, in written documentation or again if they wish this information may be placed on the label. This provides suppliers of food for catering purposes greater flexibility while still ensuring caterers have sufficient information to meet the requirements of the Code.

Further guidance will be provided in a user guide on what may constitute documentation in these circumstances, and how to provide a clear link between the commercial documentation and the food for traceability purposes.

5.4 Exemptions to Apply to Food for Catering Purposes

5.4.1 Background

Subclause 2(1) in Standard 1.2.1 contains a number of exemptions from labelling for food for catering purposes and food for retail sale. The specific exemptions are where:

- the food is other than in a package (paragraph 2(1)(a));
- the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3 (paragraph 2(1)(b));
- the food is made and packaged on the premises from which it is sold (paragraph 2(1)(c));
- the food is packaged in the presence of the purchaser (paragraph 2 (1)(d));
- the food is whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables (paragraph 2(1)(e));
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser (paragraph 2(1)(f)); and
- the food is sold at a fund raising event (paragraph 2(1)(g)).

5.4.2 The issue

During the development of Standard 1.2.1, it was considered that where a consumer could inspect the food prior to purchase and could seek accurate information regarding the food directly from the persons responsible for making the food, it was not necessary to require information to be provided on a label. These exemptions were initially developed in the context of food for retail sale. However, currently clause 2 makes no distinction between these two food categories for the purposes of the exemptions. Consequently, the current wording of the exemptions is problematic when considered in relation to food for catering purposes.

By way of example, it is possible that a reasonable volume of food for catering purposes could be exempt from labelling by application of certain exemptions. Exemptions, such as those in paragraphs 2(1)(b), 2(1)(d) and 2(1)(g) appear to be specific to food for retail sale and do not appear to be relevant to food for catering purposes. It is important to note, however, that where an exemption does apply, there are currently information requirements in subclause 2(2), such as the mandatory warning and advisory statements and declarations in Standard 1.2.3, which must be complied with.

5.4.3 *Submitter comments*

Submitters that commented on this issue supported FSANZ proposed approach to remove exemptions that were not relevant to food for catering purposes and retain the exemptions for *unpacked foods and whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetable.*

Other submitters did not support the removal of exemption clause 2(1)(b) *the food is in an inner package not designed for individual sale. Despite this, individual portion packs in a container or wrapper with a surface area of 30 cm² or greater must bear a label containing information in accordance with clauses 3 and 4 of Standard 1.2.3.* It is noted that whilst ‘an inner package not designed for individual sale’ is specific to food for retail sale, food for catering purposes may also be supplied as individual portions within outer packages and such an exemption should apply in these circumstances. It was recommended that exemption 2(1)(b) for food for retail sale be reworded so that it is relevant to both food for retail sale and food for catering purposes.

5.4.4 *Decision*

In relation to food for catering purposes, FSANZ proposes to remove the following exemptions because they are either not relevant or are not appropriate:

- the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area of no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3 (paragraph 2(1)(b));
- the food is made and packaged on the premises from which it is sold (paragraph 2(1)(c));
- the food is packaged in the presence of the purchaser (paragraph 2(1)(d));
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser (paragraph 2(1)(f)); and
- the food is sold at a fund raising event (paragraph 2(1)(g)).

FSANZ considers that an exemption from the information considered necessary for the protection of public health and safety for inner packages is particularly problematic in the food service sector as food items may be stored in a kitchen for sometime without their outer package. Therefore, FSANZ will not be providing an exemption for inner packages where the outer package is fully labelled as suggested by some submitters.

Consequently, the following two exemptions will be retained for food for catering purposes:

- the food is other than in a package; and
- the food is whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables.

FSANZ considers that where the inner packages are correctly labelled only the name of the food, lot identification and supplier details need be provided on the outer package for recall purposes. Consequently, the following clause is provided in subclause 5(2) of Standard 1.2.1:

- (2) *Subclause (1) does not apply to –*
- (c) *an outer package where the –*
- (i) *label on the outer package includes the information prescribed in Standard 1.2.2.; and*
- (ii) *food in the inner package is labelled in accordance with subclause 5(1).*

Where any exemption from labelling applies to food for catering purposes, FSANZ considers that certain information requirements are still necessary. However, the current information requirements as they relate to food for catering purposes are also being considered in this review and a discussion regarding these requirements is set out in section 5.5 below.

5.5 Information Requirements to Apply to Food for Catering Purposes

5.5.1 Background

Subclause 2(2) in Standard 1.2.1 sets out the information requirements, which apply both to food for retail sale and to food for catering purposes when exempt from bearing a label. In subclause 2(2), the information requirements relate to:

- mandatory warning and advisory statements and declarations in Standard 1.2.3 (paragraph 2(2)(a));
- directions for use and storage (where applicable)(paragraph 2(2)(b));
- nutrition labelling when nutrition claims are made (paragraph 2(2)(c));
- percentage labelling (paragraph 2(2)(d));
- country of origin labelling (paragraph 2(2)(e));
- genetically modified food (paragraph 2(2)(f));
- irradiation (paragraph 2(2)(g));
- the presence of offal, fat content in minced meat, formed and joined meat and fermented comminuted meat products (paragraph 2(2)(h));
- formed and joined fish (paragraph 2(2)(i));
- statements on the use of kava (paragraph 2(2)(j));
- advisory statements on formulated caffeinated beverages (paragraph 2(2)(k)); and
- statements on formulated supplementary sports foods (paragraph 2(2)(l)).

Although there are some exceptions, generally the required information can either be displayed on or in connection with the display of the food or provided to the purchaser upon request. Consequently, there is considerable flexibility provided where an information requirement applies to a food otherwise exempt from bearing a label.

5.5.2 *The issue*

In most cases, the information requirements in subclause 2(2) of Standard 1.2.1 are specific to food for retail sale. During the development of Standard 1.2.1, it was considered that where a consumer could inspect the food prior to purchase and could seek accurate information regarding the food directly from the persons responsible for making the food, it was not necessary to require information to be provided on a label.

In relation to food for catering purposes, many of the information requirements in subclause 2(2) are not relevant. For example, food for catering purposes is not currently required to be percentage labelled, so the information requirement in subclause 2(2)(d) is superfluous.

5.5.3 *Submitter comments*

No comments were received in relation to this item.

5.5.4 *Decision*

There will be very limited circumstances where food for catering purposes would be exempt from bearing a label. In these cases, the information which otherwise would be provided on the label may instead be provided in documentation accompanying the food. The information must be traceable to the food in question.

Supplier details can also be provided in accompanying documentation, but the documentation must be provided with each individual delivery to assist in traceability.

Only two exemptions are now proposed to apply to food for catering purposes. That is:

- (a) other than in a package; or
- (b) whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables.

Carcasses of meat are likely to be exempt from labelling under paragraph 2(1)(a) when provided as food for catering purposes. In addition, whole or cut fresh fruit and vegetables may be exempt from labelling under paragraph 2(1)(b).

The information needs of food handlers or food service operators are likely to vary depending on the nature of the food and whether the food will be subject to further handling or processing and whether there are other systems in place for accessing information which may ultimately be requested by either enforcement agencies or by the final consumer.

Therefore, when food for catering purposes is exempt from bearing a label, it is not relevant to retain the information requirements as currently specified in subclause 2(2), as these information requirements do not include the name of the food, supplier details or date marking, pieces of information that would appear to be necessary for the appropriate handling of food for catering purposes or to facilitate a food recall, should one be required.

In summary, information required to be provided in accompanying documentation includes:

- The name of the food
- Lot identification

- Supplier details
- Mandatory warning and advisory statements and declarations
- Date marking
- Directions for use and storage
- Country of origin labelling (in Australia only)

In addition, where a purchaser or relevant authority has so requested, food which is for catering purposes must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the:

- compositional requirements of this Code; and
- labelling or other declaration requirements of this Code.

This ensures the relevant information for food handlers and food service operators is provided. Mandatory warning and advisory statements will be provided ensuring the restaurateur or caterer has the necessary information to provide a customer if requested. In addition, this approach allows further information when requested to be provided to food handlers and food service operators and to the ultimate consumer.

6. Packaged Meals Provided by Delivered Meal Organisations

6.1 Background

Throughout Australia and New Zealand, DMOs supply a wide variety of packaged meals to the elderly and frail; convalescing and chronically ill, and those with disabilities. Although commercial operators and some private facilities produce some DMO meals, meals are usually prepared in hospital or community kitchens and delivered by volunteers affiliated with particular DMOs, such as the Red Cross or Meals on Wheels (MoWs).

6.1.1 Delivered Meal Organisations in Australia

There are currently over 900 DMOs in Australia. Most of these employ staff to manage the production and delivery of packaged meals, but also rely on a large number of volunteer staff to successfully run the service. In Australia, in 1999-2000 there were over 68000 clients receiving meals in their home each month and over 36000 meals on average were delivered daily³, usually by volunteers.

In Australia, a large percentage of delivered meals are prepared in hospital kitchens. Kitchens catering exclusively to DMOs are the next largest provider of delivered meals. In total, the majority of all delivered meals in Australia are produced in recognised commercial establishments. FSANZ is aware that a number of rural DMOs obtain their meals from small rural hospitals, local pubs, or road houses.

6.1.2 Delivered Meal Organisations in New Zealand

The New Zealand Ministry of Health administers a National Service Specification for the Meals on Wheels (MoWs) service throughout the country. MOW providers are required to comply with this specification.

³ Home and Community Care (HACC): HACC Service Provision 1999 – 2000

The specification includes various aspects of the MoWs service including processes to be used in the preparation of the meals, quality requirements, safety and efficacy and reporting requirements. Meals can be delivered hot (main meal), frozen (in rural areas only) or chilled (dessert only). Although there is no direct reference to the labelling of meals, 'guidance to clients regarding the storage, defrosting and cooking of frozen meals' and instructions for 'reheating methods used by the individual client' should be provided.

There is no umbrella organisation for the MOWs service in New Zealand. There are a large number of service providers including hospital catering companies, hospital kitchens, rest homes, hotels, and Presbyterian Support. Volunteers organised by organisations such as the New Zealand Red Cross and Age Concern deliver the meals. During 2002, the Red Cross in New Zealand delivered 1.2 million meals.

6.2 Current Requirements for Food for Retail Sale

Under the Model Food Act in Australia and the New Zealand *Food Act 1981*, the term 'sell' is broadly defined and includes *supply under a contract together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment.*

Reading the broad definition of 'sell' together with the definition of 'retail sale' in Standard 1.2.1, packaged meals provided by DMOs are considered to be 'food for retail sale' and therefore fall within the scope of the requirements in clause 2 in Standard 1.2.1.

Currently, food for retail sale, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code. This means that food for retail sale must bear a label that includes the following prescribed information:

- name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in Standard 1.2.3;
- a list of ingredients;
- date marking information in accordance with Standard 1.2.5;
- directions for use and storage (where required for health & safety reasons);
- nutrition labelling (unless specifically exempt);
- percentage labelling; and
- country of origin (in Australia only).

To determine if a food for retail sale is exempt from labelling, it is important to consider the specific exemptions in subclause 2(1) in Standard 1.2.1. The specific exemptions are where:

- the food is other than in a package (paragraph 2(1)(a));
- the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3 (paragraph 2(1)(b));
- the food is made and packaged on the premises from which it is sold (paragraph 2(1)(c));
- the food is packaged in the presence of the purchaser (paragraph 2 (1)(d));

- the food is whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables (paragraph 2(1)(e));
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser (paragraph 2(1)(f)); and
- the food is sold at a fund raising event (paragraph 2(1)(g)).

6.2.1 *The regulatory problem*

Since the Code came into effect in December 2002, FSANZ has received a number of enquiries from DMOs, predominantly in New South Wales, seeking clarification and confirmation of their obligations regarding the labelling of packaged delivered meals. There are several issues, which have been identified as requiring further consideration in relation to food provided by DMOs. These issues include:

- the current labelling requirements for packaged meals provided by DMOs;
- the appropriateness and application of the exemptions in subclause 2(1) which may apply to packaged meals provided by DMOs;
- nutrition labelling and health claims; and
- the appropriateness of country of origin labelling for meals provided by DMOs.

There have been several interpretation issues related to subclause 2(1)(f) of Standard 1.2.1 *the food is delivered packaged and ready for consumption at the express order of the purchaser* and an ongoing reliance on this exemption in this subclause will continue to create uncertainty of the labelling requirements of DMOs.

An inconsistent interpretation and application of the requirements in Standard 1.2.1 may compel DMOs to fully label all packaged meals to prevent any inadvertent omissions or possible enforcement action that may result from a failure to correctly label packaged meals not covered by the exemption in paragraph 2(1)(f). This may result in significant price increases for the recipients of the service or a reduction in the level of service provided or both. As 'not for profit' enterprises, DMOs cannot afford to pass on the full costs of labelling to recipients of the service in the circumstances where the current exemption does not apply.

Consequently, the current requirements in clause 2 in Standard 1.2.1 should be reviewed to ensure that the information needs of the recipients of the service are met and that DMOs continue to provide low cost, nutritious and safe meals.

6.3 **Relevant Issues**

6.3.1 *Current labelling practices*

6.3.1.1 Delivered Meal Organisations in Australia

From the submissions to the Initial Assessment Report and from information collected via labelling surveys undertaken in various States in Australia, it is clear that there is diversity in the provision of services, including labelling practices, amongst DMOs.

It is evident that some DMOs provide comprehensive labelling on meals provided to consumers, whereas others provide no labelling at all.

A survey undertaken by the NSW Meals on Wheels Association (the Association) in 2003 (sample size of 114), revealed that most NSW MOWs services have some form of labelling. The Association recommends five key labelling components on delivered meals: the name of the meal, general components of ingredients of the meal, use by date, name and address of the kitchen that has produced the meal and instructions on the correct heating/storage of the meal. However, of these key labelling components, only the use by date, the name of the meal and heating and storage instructions were included by more than half of the services that completed the survey.

It was stated in submissions that some DMOs label meals with directions for use and storage for hot and frozen meals. It was stated that labels for hot delivered meals include the day the meal was produced and instructions for consumers to 'eat now'. Some providers indicated that frozen meals are labelled with storage and handling/preparation information including thawing and reheating instructions (oven and microwave), the use-by-date and also the content or name of the meal.

DMOs currently use a variety of methods to ensure the correct meal is delivered to the client. Some of these strategies include:

- writing client's name and special request on the box lid and filling the order from the lid;
- filling the order from a running sheet of clients' information; and
- producing in-house labels of client name, food name, allergens contained etc that go on the lid.

The majority of DMOs identify clients' special dietary needs, including allergies and food preferences at an assessment for eligibility, although it was acknowledged that this information may not always be clearly outlined on the label of the delivered meal.

6.3.1.2 Delivered Meal Organisations in New Zealand

There are no national data available on current labelling practices of MOWs in NZ. However from some targeted interviews carried out by FSANZ in 2006, it appears there is a range of labelling practices. Food for people on special diets are labelled on the meal e.g. diabetic, soft food, allergy and this is the most common information put on meals. Some providers put a date stamp, client's name or some reference to reheating (for example 'not suitable for reheating in microwave'). It is evident that MOWs providers tend to provide clients with written information on use and storage of the meals when they join the service. In addition, any foods clients wish to avoid including allergenic foods, are noted when the client joins the service and it is acknowledged that some service providers also supply the clients with a copy of the menu.

6.3.1.3 Types of packaged meals delivered by DMOs

The types of packaged meals provided by DMOs vary between services. Meals can be delivered to clients hot and ready for consumption, or chilled or frozen requiring reheating. Delivered meals usually consist of a soup; a main meal such as meat or fish and vegetables; and fruit or dessert. Main meals are usually packed in foil packs with cardboard lids and desserts and tinned fruit may be packed in round plastic containers with soups in Styrofoam cups.

Beverages, such as juice or cordial, are provided in single use retail packs such as plastic containers or 'tetra packs'. FSANZ is aware that some DMOs also provide their clients with an evening meal pack (sandwiches) and breakfast packs (bread, cereal, milk, jam, butter).

6.3.1.4 Food Safety Programs for Food Service to Vulnerable Persons

FSANZ prepared Proposal P288 – Food Safety Programs for Food Service to Vulnerable Populations in response to a decision of the Ministerial Council, to mandate Standard 3.2.1 – Food Safety Programs to food service, whereby potentially hazardous food is served to vulnerable populations.

The Ministers' decision was partly based on the National Validation Project which concluded that food service, where potentially hazardous food is served to vulnerable populations, was a potential high-risk sector.

Standard 3.3.1 – Food Safety Programs for Food Service to Vulnerable Persons, which applies in Australia only, was gazetted on October 5, 2006. This Standard requires DMOs to comply with Standard 3.2.1. There is a two-year implementation period for this Standard which allows DMOs time to prepare food safety programs. The proposed labelling requirements for delivered meals outlined in Proposal P272 are separate to the requirements of Standard 3.3.1 and apply in both Australia and New Zealand

The Australian Department of Health and Ageing has been developing 'tools' to assist food businesses implement food safety programs. The DMO food safety program tool is in its final stages of completion and will provide DMOs with assistance and guidance to develop food safety programs.

Part of the process of developing a food safety program involves DMOs assessing the hazards that arise in their food handling processes. Depending on the nature of food preparation and the clients of a DMO, a hazard that may arise could involve clients consuming a meal with an ingredient that triggers an allergic reaction.

A control measure for this may be to provide allergen labelling. This may not be applicable for all DMOs, depending on their processes; however, it means the proposed allergen labelling requirement could be used as a control to address a hazard.

6.4 Purpose of Labelling

6.4.1 The purpose of labelling

Generally, the information required to be included on a label will address one or more of the following:

- a demonstrated risk to public health and safety; and/or
- a need to ensure the adequacy of information to facilitate informed choice; and/or
- the potential for misleading or deceptive conduct.

As outlined in section 6.2 of this Report, there are several pieces of prescribed information that must be included on a label. Not all of these pieces of prescribed information are linked to the protection of public health and safety.

6.4.2 *Public health and safety*

The following pieces of prescribed information are generally regarded as necessary on packaged food to clearly identify a food and to facilitate a food recall should one be required:

- the name of the food;
- lot identification; and
- supplier details.

The following pieces of prescribed information are generally considered necessary to address an identified public health and safety risk:

- the mandatory warning and advisory statements and declarations in Standard 1.2.3;
- date marking information in accordance with Standard 1.2.5; and
- directions for use and storage where required by Standard 1.2.6 for the protection of public health and safety

6.5 Labelling Requirements for Delivered Meal Organisations

6.5.1 *The issue*

Packaged meals prepared by DMOs are considered to be ‘food for retail sale’ and therefore fall within the scope of clause 2 of Standard 1.2.1. Food for retail sale, unless exempt, is required to bear a label setting out all the information prescribed in the Code.

Since the transition to the Code, FSANZ has advised that with some exceptions, packaged meals provided by DMOs are generally considered to be exempt from labelling under paragraph 2(1)(f) of Standard 1.2.1 as *the food is delivered packaged and ready for consumption at the express order of the purchaser*.

Other delivered food provided unpackaged, for example loose fruit, is considered exempt from labelling under paragraph 2(1)(a) of Standard 1.2.1 as *the food is other than in a package*.

Where these exemptions apply to delivered meals, DMOs must still comply with the information requirements in subclause 2(2) in Standard 1.2.1. In the context of subclause 2(2), DMOs particularly need to be able to provide information in relation to:

- the presence of substances in meals which have the potential to cause a severe adverse reaction such as cereals containing gluten; milk; eggs; fish and crustacean; peanuts and soybeans; tree nuts; sesame seeds; and added sulphites; and
- the nutritional composition of the food where a nutrition claim, such as low fat, is made.

To qualify for an exemption from general labelling under subclause 2(1)(f) of Standard 1.2.1 the packaged delivered meal must satisfy each of the following criteria:

- the food is delivered packaged; and
- ready for consumption; and

- at the ‘express order’ of the purchaser.

Considering the varying circumstances in which packaged meals are provided by DMOs, it is possible that in certain situations not all of these criteria will be satisfied. In practice this would mean that packaged meals provided by DMOs would require full labelling, as outlined in section 6.2 of this Report.

6.5.2 Submitter comments

All DMOs who commented on this subject considered the FSANZ’s proposed approach that all packaged DMO food be labelled with certain prescribed information, to be onerous for their organisations. The main concerns expressed were increased costs to DMOs and impractical issues in regards to attachment of labels. Most submitters agreed that DMO foods should, in some capacity, continue to be exempt under clause 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser..*

The majority of submitters commented that changes to labelling requirements would result in increased costs for many DMOs and ultimately consumers of DMO services. Submitters indicated that increased costs may lead to a reduction in services provided by DMOs, especially in rural and remote areas and therefore could threaten the long-term viability and volunteer nature of DMOs and may involve significant cost for local governments. Submitters, other than DMOs, generally agreed with FSANZ’s proposed label changes but also highlighted costs to DMOs as an issue.

Some DMOs commented that label adhesion to different containers would be difficult especially where food is transported from a container to the client’s bowl/plate. Other submitters were concerned that there is no provision for additional information other than that prescribed to be provided if requested. This was considered particularly an issue for clients with food intolerances, cultural preferences and those requiring special diets.

Some submitters considered mandatory warning and advisory statements not to be necessary for freshly cooked and immediately delivered meals as meal recipients will already be identified as requiring an allergen-free meal.

Submitters suggested that all DMO foods should continue to be exempt under clause 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser*, and that where there is confusion regarding the application of this exemption, consideration should be given to broadening the exemption or creating a new one.

Concerns regarding font size were raised. One submitter recommended that a minimum font size be considered for labelling information. Current requirements of the Code, state that labelling must be legible. However, the majority of the target market may be visually impaired and may require a larger font size to be readable. Home and Community Care recommend a 14 point font.

6.5.3 *Decision*

To address many of the concerns raised by the DMO industry regarding the costs of compliance with the proposed requirements at Draft Assessment, and the concerns raised by the DMO industry regarding the difficulties in adhering labels to certain packages containing freshly cooked meals, FSANZ proposes to create exemption from most labelling requirements for delivered ready to eat meals.

Wherever a DMO delivers a meal that is ready for immediate consumption only mandatory declarations of certain substances in food outlined in Standard 1.2.3 (i.e. allergen information) need be displayed on or in connection with the food or provided to the purchaser upon request. This exemption will apply to meals provided to DMOs (for example, from a third party such as a rural kitchen) as well as meals provided by DMOs to clients.

Where the DMO meal does not meet the requirements of the exemptions (for example it is a frozen meal), the packaged meal must be labelled with the minimum prescribed information necessary to facilitate a food recall and to protect public health and safety:

- the name of the food;
- supplier details
- date marking information in accordance with Standard 1.2.5;
- directions for use and storage where required by Standard 1.2.6; and
- mandatory warning and advisory statements and declarations in Standard 1.2.3.

The name of the food, supplier details and lot identification are generally regarded as necessary on packaged food to clearly identify a food and to facilitate a food recall should one be required. Lot identification requirements may be met by the provision of supplier details and date marking information.

Mandatory warning and advisory statements and declarations, date marking information and directions for use and storage are generally considered necessary to address an identified public health and safety risk.

Date marking information, usually in the form of a 'best before' date is considered necessary information to clearly alert the consumer when the packaged meal should be consumed. This information is especially important if a number of packaged meals are provided to a consumer in one delivery, or alternatively the delivered meals are not for immediate consumption and placed in the refrigerator freezer for longer storage periods.

Directions for use and storage information is also considered important to inform the consumers of delivered meals of the directions of use and/ instructions to store the meal appropriately.

The recipients of DMOs can represent a sensitive and vulnerable population. In the absence of ingredient and nutrition labelling, FSANZ considers that DMOs should provide mandatory warning and advisory statements and declarations. This information is particularly important, as delivered meals may contain substances that may cause severe adverse reactions in sensitive individuals and it is feasible that the meal may not always be consumed by the intended recipient, and therefore these substances should be clearly identified on the label.

It is considered by FSANZ that where the meal is intended to be eaten on delivery, information that is pertinent to stored meals is not necessary for ready to eat meals. DMOs have highlighted that mandatory warning and advisory statements are not necessary for freshly cooked and immediately delivered meals as meal recipients will already be identified as requiring an allergen-free meal. The approach taken by FSANZ allows allergen information to be provided if requested by the recipient of the meal, where the food is delivered ready for consumption. Where the meal is designed to be stored and eaten later, mandatory warning and advisory statements must be provided on the label.

As identified by submitters, the best means of ensuring safe and suitable delivered meals is via a food safety programme that identifies all risks and suitable controls. FSANZ has developed Standard 3.3.1 – Food Safety Programs for Food Service to Vulnerable Persons, which applies in Australia only. This Standard requires DMOs to comply with Standard 3.2.1. Part of the process of developing a food safety program involves DMOs assessing the hazards that arise in their food handling processes. Depending on the nature of food preparation and the clients of a DMO, a hazard that may arise could involve clients consuming a meal with an ingredient that triggers an allergic reaction. A control measure for this may be to provide allergen labelling. This may not be applicable for all DMOs, depending on their processes. However, it means the proposed allergen-labelling requirement could be used as a control to address a hazard.

FSANZ is aware that many DMOs received prepared packaged meals for delivery to clients from hospitals, pubs and even roadhouses.

Packaged meals supplied by hospitals are captured in the proposed definition of food for retail sale, and would require labelling accordingly. FSANZ is aware that this may be considered an onerous labelling requirement, especially for remote hospitals and other establishments supplying a small number of meals to DMOs. A subclause has been created in Standard 1.2.1, outlining that packaged meals prepared by food businesses and supplied to DMOs will only be required to bear a label with the minimum prescribed information required on the label of a packaged meal delivered by a DMO.

DMOs that currently do not label meals could take the opportunity to meet the proposed reduced labelling requirements. This would result in some adjustments and cost, but would ensure that clients of DMOs get the appropriate information on their food.

FSANZ is aware that a significant proportion of packaged delivered meals are currently labelled and it appears that in many cases labels include the name of the food, supplier details, lot identification, date marking information and directions for use and storage. With this in mind, the proposed option, for some DMOs may require a minimal change to current practices. However, there are a proportion of DMOs that do not label meals.

While it is acknowledged that the proposed option would have some financial impositions on some organisations, it will have much less of an impact to the industry in comparison to the proposed approach at draft assessment. This new approach helps assure the DMO service to the needy and vulnerable groups is not compromised.

6.6 Nutrition Labelling and Health Claims

6.6.1 The issue

The current prohibition on health claims on food means that foods must not be labelled with the name of, or a reference to, any disease or physiological condition⁴. Consequently, the use of a term such as ‘diabetic’ on the label of a food would constitute a breach of the current health claims standard. FSANZ is aware that DMOs often use this type of labelling to facilitate meal delivery to clients.

In the circumstances where the current exemption in paragraph 2(1)(f) in Standard 1.2.1 does apply to packaged delivered meals, a voluntary nutrition claim such as ‘low fat’ or ‘low sodium’ will trigger the information requirements under subclauses 4(2) & 4(3) of Standard 1.2.8 (referenced in paragraphs 2(2)(e) & (f) of Standard 1.2.1).

In practice this means that nutrition information in relation to the claim must either be;

- provided in a NIP on or in connection with the display of the food; or
- provided to the purchaser on request.

In addition, FSANZ is aware that some DMOs are using acronyms⁵ to identify some meals rather than using a term that may constitute a breach of the current standard.

6.6.2 Submitter comments

One submitter commented on this item and agreed that an exemption from the nutrition and health claims standard is warranted.

6.6.3 Decision

Exemptions for DMOs from some of the requirements of the proposed Standard 1.2.7 – Health and Nutrition Claims will be considered as part of Proposal P293 – Nutrition, Health and Related Claims. FSANZ considers that the label on a delivered meal is one avenue for patients/clients who receive the meals and staff members who deliver meals, to assess the suitability of the food delivered.

FSANZ also considers that some provisions of the provisional Standard 1.2.7 may not be relevant for delivered meals. It is acknowledged that Standard 1.1A.2 – Transitional Standard for Health Claims, may have to be amended to provide exemption, if Standard 1.2.7 is not gazetted prior to this Proposal.

6.7 Country of Origin Labelling

6.7.1 The issue

Country of origin labelling is considered an onerous labelling requirement for DMOs.

⁴ subclause 3(d) in Standard 1.1A.2

⁵ NAS (no added sugar) is used by some providers to identify foods which may be suitable for diabetics

6.7.2 *Submitter comments*

There was no reference to Country of Origin Labelling in submissions to the Draft Assessment Report.

6.7.3 *Decision*

The information requirements that apply to DMOs will be considered separately to food for retail sale. As a result, country of origin labelling will not be required for packaged meals provided by DMOs.

It should be acknowledged, however, that other pre-packaged components of a meal intended to be generally available for retail sale (such as a tub of yoghurt or fruit juice) would be required to be fully labelled, and this includes country of origin labelling where required.

6.8 **Transition time**

It is proposed that DMOs will have a 12-month lead in time to implement the amendments outlined in this Proposal.

7. **Labelling of meals provided in hospitals and similar institutions and prisons**

7.1 **Background**

In Australia and New Zealand, meals plated in commercial kitchens and covered by plastic, foil or hard covered domes are provided to patients in hospital settings.

The meals may either be ordered by the patient, ordered by a dietician or may be provided as a default meal when the patient is not present at the time of ordering. A similar practice occurs in nursing homes and other facilities such as prisons. In most cases the meals are prepared and plated at the site on which they are provided. However, in some circumstances the meals are prepared at another location and transported to the hospital or similar institution. In these circumstances, the meals are plated either where they are prepared or plated at the location in which they are provided to the recipient of the meal.

FSANZ acknowledges that hospitals, prisons and similar institutions provide low cost, safe and nutritious meals, while in some cases working under considerable constraints and with limited resources.

7.2 **Labelling Requirements**

7.2.1 *The Issue*

Under the Model Food Act in Australia and the New Zealand *Food Act 1981*, the term ‘sell’ is broadly defined and includes *the supply of food to patients in hospitals and supply under a contract together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment.*

Reading the broad definition of ‘sell’ together with the definition of ‘retail sale’ in Standard 1.2.1, meals provided in hospitals and similar institutions and prisons are considered to be ‘food for retail sale’ and therefore fall within the scope of the requirements in clause 2 in Standard 1.2.1.

Since the joint Code came into effect, FSANZ has been made aware of a number of problems associated with the application of clause 2 requirements in Standard 1.2.1 as they apply to meals provided by hospitals and similar institutions and prisons. There are several issues which have been identified as requiring further consideration. These issues include:

- the definition of a package;
- the appropriateness and application of the exemptions in subclause 2(1) which apply to meals provided by hospitals and similar institutions and prisons;
- nutrition labelling and health claims;
- mandatory warning and advisory statements and declaration; and
- the appropriateness of country of origin labelling for meals provided in hospitals and similar institutions and prisons.

Food for retail sale, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code. During the transition to the Code, FSANZ advised that meals delivered to inmates in prisons and patients in hospitals or similar institutions are considered exempt from labelling under either:

- paragraph 2(1)(c) the food is made and packaged on the premises from which it is sold; or
- paragraph 2(1)(f) the food is delivered packaged and ready for consumption, at the express order of the purchaser.

Other food, for example loose fruit, is considered exempt from labelling under paragraph 2(1)(a) *as the food is other than in a package*.

Food presented on a plate is considered to be ‘*food other than in a package*’ and is exempt from labelling under paragraph 2(1)(a). However, by virtue of the broad definition of ‘package’ in Standard 1.1.1, once the food is covered by plastic, foil or a hard covered dome, the food is considered ‘packaged’ and the exemption in paragraph 2(1)(a) no longer applies. Given that in most circumstances the meals provided in hospitals and similar institutions and prisons are covered in some way to maintain food at the correct temperature for food safety, the only remaining exemptions which may apply are those in paragraphs 2(1)(c) and 2(1)(f).

Where meals are prepared and served on site, service providers can rely on the labelling exemption in paragraph 2(1)(c). Where patients or inmates pre-select a meal from a menu, service providers can rely on the exemption in paragraph 2(1)(f). However, the meal would be required to be fully labelled with all the information prescribed in the Code in the circumstances where the meals provided within a prison, hospital or similar settings are:

- covered and contained in some way i.e. are ‘packaged’; and
- have not been prepared and served on site; and
- the patient or inmate has not expressly ordered the food by pre-selecting from a menu (default meals are provided or institutions do not provide patients with any meal choices).

Hospitals and similar institutions and prisons must still comply with the information requirements in subclause 2(2) in Standard 1.2.1. In the context of subclause 2(2), these institutions particularly need to be able to provide information in relation to:

- the presence of substances in meals which have the potential to cause a severe adverse reaction such as cereals containing gluten; milk; eggs; fish and crustacean; peanuts and soybeans; tree nuts; sesame seeds; and added sulphites; and
- the nutritional composition of the food where a nutrition claim, such as low fat, is made.

Given that the current exemptions in subclause 2(1) in Standard 1.2.1 do not apply in every circumstance in which meals are prepared and served in hospitals and similar institutions and prisons, an ongoing reliance on these labelling exemptions will continue the uncertainty for these service providers and enforcement agencies.

It is necessary to review the current requirements in clause 2 in Standard 1.2.1, whilst ensuring that labelling is consistent to the varying circumstances in which meals are provided in hospitals and similar institutions and prisons. At the same time, the provision of low cost, nutritious and safe meals in these institutions should be assured, and the information needs of patients and inmates should be met.

7.2.2 *Submitter comments*

There was support for the recommendations concerning labelling provisions for foods provided by hospitals and similar institutions and prisons. It was noted that it is inappropriate for a covered tray or cup to require labelling and that information may be provided through other means and still meet general requirements under the Code. There was also support for the pre-packaged food items provided in hospitals normally available for retail sale to be fully labelled. Some questions were raised about the labelling requirements of prepared ready to eat meals as well as frozen meals provided to hospitals and similar institutions.

One submitter noted that the table to clause 8 of Standard 1.2.1 ought to cover establishments that provide food for families accompanying hospital patients (such as Ronald McDonald House).

7.2.3 *Decision*

FSANZ proposes to redefine the definition of ‘package’ in Standard 1.1.1 to indicate that a package does not include a covered plate or a tray when used in a prison, hospital or similar institution. It is envisaged that this will also apply to covered cups and bowls when used in these institutions. The proposed definition is as follows:

Package means any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package, but does not include –

- (a) *bulk cargo containers; or*
- (b) *pallet overwraps; or*
- (c) *crates and packages which do not obscure labels on the food; or*

- (d) *transportation vehicles; or*
- (e) *a vending machine; or*
- (f) *a hamper; or*
- (g) *food served on a covered plate, cup, tray or other food container in prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1.*

Under this option, meals provided by hospitals and similar institutions and prisons presented on a plate, bowl, cup or tray covered by plastic, foil or a hard covered dome would not be considered to be packaged. Therefore, the meal component would be exempt from labelling under the exemption in paragraph 2(1)(a) *the food is in other than a package*. Information requirements

It should be noted that pre-packaged components of meals served in prisons, hospitals or similar institutions that are generally available for retail sale, such as packaged breakfast cereals, yoghurt or fruit juice, would be required to be fully labelled.

Further guidance will be provided in a user guide on the labelling requirements of meals provided in or to hospitals and similar institutions and prisons.

For example, where a meal is provided to prisons, hospitals or similar institutions and whether it be in the frozen state and require further processing or whether it be in a ready to eat state, the meal is in fact ‘food for catering purposes’ and requires full labelling (although some information may be provided in documentation). Where the food is plated and provided to the patient, it is exempt from labelling.

FSANZ does not intend to broaden the facilities listed in the table to clause 8 to include establishments which provide food for families accompanying hospital patients, such as Ronald McDonald House, as such establishments may not receive their meals from the hospital kitchen.

7.3 Nutrition Labelling and Health Claims

7.3.1 The issue

FSANZ is aware that hospitals and similar institutions label meals (this includes tray tickets accompanying a meal) making reference to disease states and/or making voluntary nutrition claims to facilitate meal delivery to clients.

The current prohibition on health claims on food means that foods must not be labelled with the name of, or a reference to, any disease or physiological condition (Subclause 3(d) in Standard 1.1A.2). Consequently, the use of a term such as ‘diabetic’ or ‘cardiac’ on the label of a meal would constitute a breach of the current health claims standard.

A voluntary nutrition claim such as ‘low fat’ or ‘low sodium’ will trigger the information requirements under subclauses 4(2) & 4(3) of Standard 1.2.8 – Nutrition Information Requirements (referenced in paragraphs 2(2)(e) & (f) of Standard 1.2.1).

In practice this means that nutrition information in relation to the claim must either be:

- provided in a NIP on or in connection with the display of the food; or
- provided to the purchaser on request.

7.3.2 *Submitter comments*

No comments were received in relation to this matter.

7.3.3 *Decision*

Exemptions for hospitals and similar institutions and prisons from some of the requirements of the proposed Standard 1.2.7 – Health and Nutrition Claims will be provided as part of Proposal P293 – Nutrition, Health and Related Claims. FSANZ considers that the label on a meal provided by hospitals and similar institutions is one avenue for patients/clients who receive the meals, and also staff members who provide meals, to assess the suitability of the food provided. FSANZ also considers that some requirements of the provisional Standard 1.2.7 may not be relevant for hospitals and similar institutions and prisons. It is acknowledged that Standard 1.1A.2 – Transitional Standard for Health Claims, may have to be amended to provide exemption, if Standard 1.2.7 is not gazetted prior to this Proposal.

7.4 Mandatory Warning and Advisory Statements and Declarations

7.4.1 *The issue*

Mandatory warning and advisory statements and declarations are required to be supplied in accordance with Standard 1.2.3.

Despite meals provided by hospitals and similar institutions and prisons being unlabelled, consumers who are concerned about the potential adverse reactions from food can request information about the food (including mandatory warning and advisory statements and declarations) from the provider of the service either at the time the meal is ordered or when the meal is delivered.

It is evident that any special dietary conditions including food allergies or intolerances are taken into account during the selection and preparation of the meal prior to food service in hospitals and similar institutions. In the case of a default meal, it appears that there are systems in place to ensure the provision of information, when the patient requests it. Some institutions have computerised software management systems that identify patients that have particular dietary requirements, and subsequently they are only offered and served foods compliant with their diet.

7.4.2 *Submitter comments*

One submitter did not support the proposed approach to allergen labelling, suggesting that mandatory allergen declarations should be attached to the meal being delivered so the patient is assured that the food has been prepared according to their elimination diet. It was further noted that it should not be assumed that staff that handle or deliver the meal will have access to the necessary information about the meal.

7.4.3 *Decision*

Redefining the definition of a package in Standard 1.1.1, to exclude covered plates, bowls, cups and trays, enables all meals provided in hospitals and similar institutions and prisons to qualify for a labelling exemption under paragraph 2(1)(a) *the food is in other than a package*. In practice, mandatory warning and advisory statements and declarations will not need to be provided on the label of meals provided in hospitals and similar institutions and prisons. Instead, this information must be declared on or in connection with the food or provided to the purchaser upon request.

Prisons, hospitals and similar institutions particularly need to be able to provide information in relation to the presence of substances in meals which have the potential to cause a severe adverse reaction such as cereals containing gluten; milk; eggs; fish and crustacean; peanuts and soybeans; tree nuts; sesame seeds; and added sulphites.

FSANZ considers the current hospital system of identifying patients with special dietary needs, including allergies, together with the availability of suitably trained staff on the site of food preparation to provide the necessary information, is sufficient to address public health and safety requirements.

7.5 **Country of Origin Labelling**

7.5.1 *The issue*

As is the case for DMOs, Country of Origin Labelling is considered an onerous labelling requirement for hospitals and similar institutions and prisons.

7.5.2 *Submitter comments*

There was no reference to Country of Origin Labelling in relation to hospital or similar institution meals in submissions to the Draft Assessment Report.

7.5.3 *Decision*

Prisons, hospitals and similar institutions will be provided with an exemption from Standard 1.2.11 – Country of Origin Requirements (Australia only). It should be acknowledged, however, that other pre-packaged components of a meal intended to be generally available for retail sale, such as a packaged breakfast cereal, yoghurt or fruit juice, would be required to be fully labelled, and this includes country of origin labelling where required.

8. **Summary of Decisions to amend the Code**

In previous sections, the details of the issues considered in this proposal have been discussed. In some cases, it was proposed was to maintain the *status quo*, however, in some cases it was proposed to amend the Code. Table 1 compares lists issues who were addressed by amending the Code, briefly compares the status quo to the suggested amendments and summarises the implication of the proposed amendments.

In most cases, consequential amendments have not been listed. For a more complete list of labelling requirements, including existing requirements and amended requirements, refer to Attachment 2.

Table 1: Summary of proposed changes to the Code

Issue	Status quo	Amendments Proposed at FAR	Implications of changes at FAR
FOOD FOR RETAIL SALE			
Definition of the term 'food for retail sale'	retail sale means sale to the public.	<i>Food for retail sale includes food prior to retail sale which-</i> <i>(a) is manufactured or otherwise prepared, or distributed, transported or stored; and</i> <i>(b) the food is not intended for further processing, packaging or labelling</i>	New definition clarifies that appropriate labelling requirements apply to all food sold to the public as well as food intended to be sold to the public without further processing.
Inner portion packs exemption	<i>the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area of no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3</i>	<i>the food is in an inner package not designed for individual sale. Despite this, individual portion packs in a container or wrapper with a surface area of 30 cm² or greater must bear a label containing information in accordance with clauses 3 and clause 4 of Standard 1.2.3</i>	The reworded exemption reduces the confusion in relation to its application, and clarifies the principle on which it is based.
Food sold at fundraising events	exemption from labelling where: <ul style="list-style-type: none"> • the food is sold at an event; and • the funds raised at that event are solely for community or charitable purposes and not for personal financial gain. 	Editorial note: Fund raising events organisers should be aware that there may be New Zealand, State, Territory or Commonwealth legislative requirements that need to be complied with in order to conduct the event	Ensures fund raising event organisers are aware of other State, Territory and New Zealand legislative requirements when conducting a fund raising event.
Food sold in vending machines Food sold in vending machines (continued)	The definition of package in Standard 1.1.1 considers a vending machine to be a package	<ul style="list-style-type: none"> • Reworded definition of package to exclude vending machine • Requiring a vending machine from which food is sold to clearly display the name and business address of the supplier of the food. • A clause has been added to specify that the exemption <i>the food is delivered packaged, and ready for consumption, at the express order of the purchaser</i>, does not apply. 	Clarifies labelling requirements of vending machines for industry and enforcement officers and assists in a food recall should one be necessary.

Issue	Status quo	Amendments Proposed at FAR	Implications of changes at FAR
		<ul style="list-style-type: none"> • Where food sold from a vending machine is exempt from labelling requirements, key information requirements still apply and this information must be displayed on or in connection with food dispensed from a vending machine. 	
Food sold in hampers	Under the current definition of ‘package’ in Standard 1.1.1, a hamper, like a vending machine is considered a package and therefore requires full external labelling. In addition, the Code requires the information on labels on food packages within a hamper to be legible and visible to the consumer at the time of purchase.	<ul style="list-style-type: none"> • Definition Hamper means a decorative basket, box or receptacle containing any number of separately identifiable food items. • Hamper excluded from definition of package • If foods are already labelled, the labelling does not have to be repeated on the outside of the hamper • items within a hamper that are not labelled would have to be accompanied with documentation setting out the information prescribed in the Code. 	Clarifies labelling requirements and the definition of a hamper and assists consumers in making informed purchasing decisions.
Food items wrapped at the retail outlet	Where products are sold packaged, unless an exemption applies, the food must be fully labelled. This includes food wrapped for hygiene purposes, i.e. at a delicatessen counter.	<ul style="list-style-type: none"> • Exemption provided for food packaged and displayed in an assisted service display cabinet. • assisted service display cabinet means an enclosed or semi-enclosed display cabinet which requires a person to serve the food as requested by the purchaser. 	Allows food which is wrapped for hygienic purposes to remain exempt from labelling where the consumer can ask for information required for safety and informed choice
Information requirements	Information requirements are listed in Standard 1.2.1	<ul style="list-style-type: none"> • The list has been refined and expanded. • The name of the Standard referenced in the information requirements in association is provided. 	The list is more user-friendly. Information requirements for unpackaged food have been extended with little or no additional costs to industry.

Issue	Status quo	Amendments Proposed at FAR	Implications of changes at FAR
		<ul style="list-style-type: none"> The information requirements for unpackaged food have been extended so that use-by date and the true name of the food must be provided on request or on and in connection with the food 	
FOOD FOR CATERING PURPOSES			
Definition of foods for catering purposes	<i>foods for catering purposes means those foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption</i>	<i>food for catering purposes means food supplied to catering establishments, restaurants, canteens, schools, hospitals and institutions where food is prepared or offered for immediate consumption.</i>	Provides greater clarity and certainty and maintains the current level of information provision prescribed in the Code.
Exemptions to apply to food for catering purposes Exemptions to apply to food for catering purposes (continued)	Exemptions for food for catering purposes are outlined in Standard 1.2.1 and are the same as those for food for retail sale	<ul style="list-style-type: none"> The following two exemptions will be retained: <ul style="list-style-type: none"> the food is other than in a package; the food is whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables. Additional exemption provided for an outer package where the label on the outer package adequately identifies the food and the food in the inner package is already adequately labelled 	More relevant and appropriate exemptions for food for catering purposes.
Information requirements to apply to food for catering purposes	The information requirements that apply to food for catering purposes are outlined in Standard 1.2.1 and are the same as those for food for retail sale	<ul style="list-style-type: none"> Only two exemptions apply to food for catering purposes: <ul style="list-style-type: none"> other than in a package whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables. 	Relevant information for food handlers and food service operators is provided

Issue	Status quo	Amendments Proposed at FAR	Implications of changes at FAR
MEALS SUPPLIED BY DMOS AND HOSPITALS			
DMO labelling requirements DMO labelling requirements (continued)	All the labelling requirements that apply to food for retail sale apply to DMO, except where existing exemptions apply (e.g. supplied on express request by the purchaser)	<ul style="list-style-type: none"> • A DMO delivered meal that is ready for immediate consumption requires only mandatory declarations (i.e. allergen information) on or in connection with the food or provided upon request. • Where the DMO meal is not for immediate consumption (for example it is a frozen meal), the packaged meal must be labelled with: <ul style="list-style-type: none"> - the name of the food - supplier details - date marking; - directions for use and storage where required - mandatory warning and advisory statements and declarations 	Substantial reduction of regulatory burden placed on DMOs. Prescribed information is limited to information necessary for a food recall and health and safety.
Labelling of meals provided in hospitals and similar settings	All the labelling requirements that apply to food for retail sale apply to hospitals, except where existing exemptions apply (e.g. supplied on express request by the purchaser) Food served on a covered plate qualify as a package and must be fully labelled	<ul style="list-style-type: none"> • meals provided by prisons, hospitals and similar institutions presented on a plate, bowl, cup or tray covered by plastic, foil or a hard covered dome are not considered to be packaged • meals provided are exempt from most labelling requirements because the food is in other than in a package 	A more appropriate application of the exemption and the definition of package.

9. Regulatory Options

The regulatory options considered for this Proposal are as follows:

Option 1 – Maintain the *status quo* and retain the current requirements in clause 2 in Standard 1.2.1.

Under this option the *status quo* will remain. That is food for retail sale and food for catering purposes will continue to be considered together in clause 2 of Standard 1.2.1, with the same application of exemptions and application of information requirements where the food is exempt from labelling.

Option 2 – Amend the requirements in clause 2 of Standard 1.2.1 and other Standards with clauses connected to Standard 1.2.1, in relation to food for catering purposes and food for retail sale (including meals provided by delivered meal organisations and prisons, hospitals or similar institutions) to provide greater certainty for manufacturers and suppliers, by better reflecting the circumstances in which these foods are provided.

Under this option food for retail sale and food for catering purposes will be considered separately in Standard 1.2.1 with relevant exemptions and information requirements applying to each. Furthermore, packaged meals provided by delivered meal organisations will be considered separately in Standard 1.2.1 and requirements regarding the labelling requirements of meals provided in prisons, hospital and similar institutions will be addressed.

10. Impact Analysis

FSANZ is required, in the course of developing regulations suitable for adoption in Australia and New Zealand, to consider the impact of various options on all sectors of the community, including consumers, the food industry and governments in both countries. Where medium to significant competitive impacts or compliance costs are likely, FSANZ will use the Office of Best Practice Regulation Business Cost Calculator (BCC) to calculate the compliance cost of regulatory options. The regulatory impact assessment identifies and evaluates the advantages and disadvantages of amendments to the standards, and their health and economic impacts.

10.1 Affected Parties

Parties affected by this Proposal include:

1. Government agencies that regulate and enforce the Code in Australia and New Zealand.
2. Industry: manufacturers, processors, caterers, hospitality, retailers and the health care sector.
3. Non-government Organisations: delivered meal organisations, health care sector, community based organisations and institutions and fund-raising bodies.
4. Government organisations: delivered meal organisations; health care sectors; and institutions.
5. Consumers: all consumers, including vulnerable populations.

10.2 Benefit Cost Analysis

FSANZ has collected information following the Initial and Draft Assessment Reports that has been used to develop a regulatory impact analysis for this Final Assessment Report. Stakeholders have been encouraged to present data in response to the key issues of this Proposal, giving consideration to all affected parties wherever possible.

10.3 Enforcement Agencies in Australia and New Zealand

There are a number of benefits to enforcement agencies resulting from the proposed changes to the Code. The amended Code will allow enforcement officers to enforce labelling requirements more effectively by providing legal clarity regarding the responsibilities of food manufacturers and retailers in complying with the Code. Ambiguities have been removed, and this provides a direct benefit by reducing enforcement costs and more indirect benefits by generally increasing the effectiveness of the food regulatory system at the enforcement level.

There are no increased costs to enforcement agencies as a result of the proposed amendments. The regulatory option proposed has no or a low impact on enforcement agencies.

10.4 Industry

It was highlighted in submissions that any major extension of labelling requirements would lead to significant costs to Industry. However, the proposed amendments would at most require minimal changes to current practice, and therefore would incur little or no additional costs to industry. They would provide a tangible benefit to industry by providing more user friendly labelling requirements and reducing ambiguity. Generally, the same information would be required, but the provision of some of that information would be more suited to industry needs, reducing compliance costs.

Some additional labelling requirements are proposed in cases where serious food safety risks have been identified, and where FSANZ considers the requirements of the Code to be inadequate to manage those risks. The costs associated with those amendments would most likely be low and commensurate with the risk that is being managed:

- Manufacturers would need to label inner packages with the royal jelly warning statement when the package has a surface area of 30 cm² or greater.
- For unpackaged food, the name of the food and a use-by-date (where the food should be consumed before a certain date because of health or safety reasons) would be required on or in connection with the display of the food or provided to the purchaser on request.

There are also some proposed minor reductions in labelling requirements that may result in a reduction in cost to industry:

- Less restrictive requirements for labelling of foods sold from vending machines. Currently, vending machines require full labelling.
- Less restrictive requirement for labelling of hampers. Not all information would be required on the outside of the hamper which is impractical. Currently, the Code requires full labelling of hampers.

- Less restrictive labelling requirements for food wrapped at a retail outlet for hygienic purposes.

Overall, the proposed option predominantly maintains the regulatory *status quo* and there are only low competitive impacts on industry.

10.5 Non-Government Organisations (NGOs)

The Proposal aims to clarify a number of issues in regards to labelling of meals provided by DMOs. There are clear benefits to such an approach to enforcement agencies. The amendments provide further clarification for enforcement officers and for consumers as they provide more appropriate information on delivered meals.

The approach proposed by FSANZ would provide DMOs with greater freedom to operate by excluding delivered packaged meals from many of the labelling requirements that currently apply. This takes into consideration that small NGOs may not have the technical expertise to comply with these labelling requirements. Some packaged meals which currently require full labelling would be largely exempt, and any requirements that remain are commensurate to food safety risks posed to consumers.

NGOs would benefit from these exemptions by a significant reduction in compliance costs. Furthermore, NGOs will benefit from a broad exemption to labelling where a DMO meal is provided for immediate consumption

Where the health and safety of consumers is at risk, FSANZ believes that appropriate risk management measures should be taken by the regulators. By appropriate labelling, the consumer, their carers and the person delivering the food will be provided with important information to assist them in reducing the risk of food-borne illness or adverse reactions to food components.

In general terms, the approach taken by FSANZ may require a minimal change to current practice. Only where DMOs are currently not following current requirements would some low additional cost be incurred, but this cost would be significantly lower than compliance with existing regulation. Submissions support the view that increased costs for local government and other relevant bodies will not be significant, given the requirements only apply to foods intended to be stored.

Furthermore, the Proposal provides clarification on the labelling requirements of food sold at fundraising events by the means of an editorial note. This will assist fundraising event organisers in interpreting the current labelling requirements that apply to fundraising activities.

In conclusion, compliance costs for NGOs are low, although some low to medium additional cost could be incurred where NGOs had previously little experience with food regulation. This cost would be significantly lower than compliance costs to existing requirements that apply to NGOs.

10.6 Government Organisations

The Proposal aims to clarify a number of issues in regards to labelling of meals provided by hospitals and similar institutions and prisons. As with DMOs, there are clear benefits to such an approach to enforcement agencies and for consumers.

Data provided by stakeholders suggest that if the *status quo* is maintained, the majority of meals provided in hospitals would be required to be fully labelled. According to data provided in submissions, the estimated cost for labelling hospital meals to comply with the regulatory *status quo* is estimated to be \$AUD300,000-400,000 per annum in large hospitals. This cost would no longer be incurred if the preferred regulatory option was implemented.

The approach proposed by FSANZ reflects current practice in most hospitals and similar institutions and prisons but provides greater certainty surrounding the labelling requirements. Little or no additional costs to hospitals and similar institutions and prisons have been identified, and potentially there is a substantial cost saving for some institutions.

10.7 Consumers

The amendments provide greater clarity and certainty on existing labelling requirements, mostly without mandating additional labelling requirements. Most consumers are unlikely to notice any significant changes with the proposed option, but would indirectly benefit from increased compliance with the Code.

In the cases where there are some low additional costs, these may be passed on to the consumer.

As discussed above, consumers will benefit from some additional information provided on food labels. In particular, consumers of delivered meals and their carers (where applicable) will benefit from improved labelling requirements. FSANZ acknowledges the right of all consumers, including consumers that require assistance when purchasing food, to make informed purchasing decisions.

- inner packages with a surface area of 30 cm² or greater would be labelled with the royal jelly warning statement where applicable, which is of benefit to consumers who suffer from allergic reactions to this food;
- hampers will be more presentable and better meet consumer needs without excessive labelling on the outside;
- for unpackaged food, consumers will be provided with a name of the food that indicates its true nature; and
- use-by-date information now required for some foods previously exempt from labelling. This will assist consumers in using the food before its use-by-date.

In the cases where there are some low additional costs to industry, NGOs or governments, these may be passed on to the consumer. FSANZ proposes that any low additional costs are offset by the benefits to consumers discussed above.

In some cases it is possible that a low cost (i.e. loss of information) will be incurred by consumers due to a decrease in labelling requirements. In particular:

- In the case of hampers, not all information will be provided on the outside of the product, although items within will be fully labelled.
- Not all information that is required on packaged food will be provided on the outside of vending machines.

10.8 Summary

The approach taken by FSANZ in Proposal P272 is to provide clarity and greater certainty on existing labelling requirements without mandating additional labelling requirements. Industry, governments, NGOs and consumers will benefit as a result of improved regulations regarding labelling of food.

The outcome of the changes to the Code proposed by FSANZ are predominantly technical in nature, and generally require, little or no change to current practice, resulting in little or no additional costs. In cases where there may be some low costs associated with the proposed amendments these are commensurate with the risk that is being managed.

Following best practice regulation⁶ FSANZ has undertaken a comprehensive assessment of the impacts of the regulatory options on business, government and individuals and found that the preferred regulatory option has only low competitive impact and compliance costs.

11. Comparison of Options

Two regulatory options have been identified at Draft Assessment:

11.1 Option 1

Maintain the *status quo* and retain the current requirements in clause 2 in Standard 1.2.1.

11.1.1 Benefits

- Industry will be able to continue to label foods according to the *status quo* and no additional costs will be incurred.
- There will be no changes to current labelling requirements; therefore consumers will not have to adjust to any new labelling information.

11.1.2 Disadvantages

- Impracticalities of the current labelling requirements will not be resolved.
- Clarification of ambiguous or confusing regulatory requirements will not be provided.
- Confusion and unnecessary costs associated with the current labelling requirements for meals provided by delivered meal organisations and meals provided in prisons, hospital and similar settings will remain.
- The application of exemptions in Standard 1.2.1 would not be clarified. These uncertainties may result in cost increases for some providers of packaged meals who may feel compelled to label all meals to comply with labelling requirements.

⁶ Office of Best Practice Regulation (2006) Best Practice Regulation Handbook.

- Interpretation and consequential enforcement difficulties which arise from the current standards will continue.

11.2 Option 2

Amend the requirements in clause 2 of Standard 1.2.1 and other Standards with clauses connected to Standard 1.2.1, in relation to food for catering purposes and food for retail sale (including meals provided by delivered meal organisations and prisons, hospitals or similar institutions) to provide greater certainty for manufacturers and suppliers, by better reflecting the circumstances in which these foods are provided.

11.2.1 Benefits

- Provides clarity of regulatory requirements for industry and enforcement officers, allowing enforcement officers to enforce labelling requirements more effectively by providing legal clarity regarding the responsibilities of food manufacturers and retailers in complying with the Code.
- More appropriate and less onerous labelling requirements and associated cost savings will apply to different sectors of industry including: vending machine operators, hamper suppliers, suppliers of foods for catering purposes and non-government organisations including delivered meal organisations, health care sectors and institutions.
- Provides clarity and greater certainty on existing labelling requirements. Industry, governments, non-government organisations and consumers will benefit as a result of improved regulations regarding labelling of food.
- Provides a tangible benefit to industry by providing more user friendly labelling requirements and reducing ambiguity.

11.2.2 Disadvantages

- Some labelling amendments will require modifications to current practice and therefore some additional costs may occur.
- Minor cost increases may be passed on to the consumer.

11.3 Preferred Approach

FSANZ recommends Option 2 (amending clause 2 of Standard 1.2.1 and other Standards with clauses connected to Standard 1.2.1 in relation to food for catering purposes and food for retail sale to provide greater certainty and to better reflect the circumstances in which foods are provided). Attachment 2 provides a summary of the labelling requirements proposed under Option 2.

The proposed amendment to the Standard:

- is consistent with FSANZ's objectives;
- benefits industry, governments, non-government organisations and consumers as a result of improved regulations for labelling of food; and
- provides clarity and certainty for enforcement officers by removing ambiguities from current labelling requirements.

The labelling requirements for food for retail sale, food for catering purposes and packaged meals provided by DMOs will be considered separately in Standard 1.2.1, eliminating much of the current confusion that has resulted with these food items being considered together in clause 2 of Standard 1.2.1. In addition, uncertainties regarding the labelling requirements of meals provided in hospital and similar institutions will be addressed. Furthermore, given the uniqueness of these industry sectors more relevant labelling requirements are provided for each.

COMMUNICATION

12. Communication and Consultation Strategy

FSANZ has prepared a strategy to guide communication and consultation initiatives to raise awareness and understanding of the proposed amendments to Standard 1.2.1 – Application of Labelling Requirements and Other Information Requirements by targeting key stakeholders.

Following the strategy, invitations were extended to key stakeholders and interested parties to participate in a series of information sessions outlining the proposed approach for each of the topics covered in this proposal. A similar series of information sessions could be held, as required, if the proposed amendments to the Code are implemented.

As part of this strategy, a guide to the Standard will be prepared to assist manufacturers, retailers, delivered meal organisations, hospitals and enforcement officers with interpreting and applying the amended Standards. This guide will incorporate interpretation and compliance advice for manufacturers and retailers on Standard 1.2.1, including worked examples.

It is also envisaged that a number of fact sheets targeted at groups with a direct interest in the application of labelling requirements will be developed as part of the communication strategy. Fact sheets that will be developed will include: labelling of vending machines, labelling at fundraising events and meals provided by Deliver Meals Organisations.

13. Consultation

FSANZ received a total of 56 written submissions in response to the Initial Assessment Report for this Proposal during the public consultation period of 15 December 2004 to 23 February 2005.

FSANZ received 26 written submissions in response to the Draft Assessment Report. The public consultation period was 13 December 2006 to 21 February 2007. Overall, the majority of submitters were in support of a review and amendment of labelling requirements in clause 2 in Standard 1.2.1 of the Code.

Issues raised in submissions to the Draft Assessment are addressed throughout this Report and a full summary is provided in Attachment 2.

Issues identified from submissions formed the basis of targeted consultation with key stakeholder groups. Information from stakeholders has informed FSANZ's approach for determining the appropriate regulatory option for the labelling requirements for each aspect of this Proposal, the impact analysis and the recommendation for the implementation phase.

Issues addressed in this report were raised at a Technical Advisory Group (TAG) meeting in April 2003 attended by representatives of the jurisdictions, FSANZ, the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Quarantine and Inspection Service (AQIS).

Prior to the Initial Assessment, FSANZ formed an Implementation and Enforcement Advisory Group (IEAG) to provide advice from an enforcement perspective on issues included in this Proposal. Details on the role, purpose and membership of the IEAG can be found in Attachment 5.

The IEAG had representation from the Health Departments in New South Wales, Western Australia, Queensland and the New Zealand Food Safety Authority (NZFSA) and AQIS. The IEAG met on three occasions in 2003.

During Draft Assessment, FSANZ reformed the IEAG with representation from NSW Food Authority, NZFSA, and from the Health Departments in Queensland and Western Australia. The IEAG met twice in October 2006. During the Final Assessment, the reformed IEAG met on one occasion in June 2007.

FSANZ also provided further advice on the regulatory options being considered in this Proposal to Australian and New Zealand stakeholders. In a series of meetings convened in October and November 2006, FSANZ consulted with DMOs, with providers of meals in hospitals and similar institutions, and with interested food industry representatives. Issues raised as part of group discussions in these sessions have been incorporated into this report where possible.

13.1 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.

The aim of this Proposal is to refine an existing standard in the Code without significantly altering regulatory requirements. FSANZ considered that the proposed amendments are unlikely to have any foreseeable impact on international trade and therefore notification of the WTO under either the Technical Barriers to Trade or Sanitary and Phytosanitary Agreements was not required.

CONCLUSION

14. Conclusion and Decision

FSANZ recommends the amendment of Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5 and Standard 1.2.11 in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations, hospitals and similar institutions and prisons.

FSANZ concludes that this option (Option 2) is the final decision for the following reasons:

- The approach will provide clarity and greater certainty on existing labelling requirements without mandating additional labelling requirements. Industry, governments, non-government organisations and consumers will benefit as a result of improved regulations regarding labelling of food.
- The impact analysis indicates that the outcome of the changes to the Code proposed by FSANZ are predominantly technical in nature and intend, and generally require, little or no change to current practice, and therefore incur little or no additional cost. In the case where there may be some minor costs associated with the proposed amendments these are commensurate with the risk that is being managed.
- The labelling requirements for food for retail sale, food for catering purposes and packaged meals provided by delivered meal organisations will now be considered separately in Standard 1.2.1, eliminating the current confusion that has resulted with these food items being considered together in clause 2 of Standard 1.2.1.
- The amendments to the Code will allow enforcement officers to enforce labelling requirements more effectively by providing legal clarity regarding the responsibilities of food manufacturers and retailers in complying with the Code.
- The amendments to the Code provide clarity for enforcement officers and various sectors of the food industry by removing ambiguities in the current labelling requirements in Standard 1.2.1. In addition, the uncertainties surrounding the labelling requirements of meals provided in prisons, hospital and similar institutions will be addressed.

15. Implementation and Review

Following the preparation of the Final Assessment Report and consideration by the FSANZ Board, a notification will be made to the Ministerial Council.

Subject to any request from the Ministerial Council for a review, it is proposed that the amendments will commence on gazettal, other than clause 7 of Standard 1.2.1 – Labelling of packaged meals supplied to, or by delivered meal organisations, which would commence 12 months from gazettal. This would allow DMOs a 12-month lead in time to familiarise themselves with and implement the new requirements.

ATTACHMENTS

1. Draft variations to the *Australia New Zealand Food Standards Code*
2. Overview of proposed labelling requirements for food for retail sale and food for catering purposes
3. Summaries of issues raised in public submissions in the second round
4. Membership of the Implementation Enforcement and Advisory Group in 2007

Draft Variations to the *Australia New Zealand Food Standards Code*

To commence: On gazettal, other than clause 7 of Standard 1.2.1, which commences 12 months from gazettal

[1] *Standard 1.1.1 of the Australia New Zealand Food Standards Code is varied by –*

[1.1] *inserting in clause 2, after the definition of fund raising events –*

Editorial note:

Fund raising event organisers should be aware that there may be New Zealand, State Territory or Commonwealth legislative requirements that need to be complied with in order to conduct the event.

[1.2] *inserting in clause 2 –*

hamper means a decorative basket, box or receptacle containing any number of separately identifiable food items.

Editorial note:

A hamper may also contain non - food items such as decorative cloths, glasses and dishes.

handling of food includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

[1.3] *omitting from clause 2, paragraph (d) in the definition of package, substituting –*

- (d) transportation vehicles; or
- (e) a vending machine; or
- (f) a hamper; or
- (g) food served on a covered plate, cup, tray or other food container in prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1.

[2] *Standard 1.2.1 of the Australia New Zealand Food Standards Code is varied by substituting –*

STANDARD 1.2.1

APPLICATION OF LABELLING AND OTHER INFORMATION REQUIREMENTS

Purpose

This Standard sets out the application of general labelling and other information requirements contained in Part 1.2 and labelling and information requirements specific to certain foods in Chapter 2 of this Code. This Part sets out the labelling requirements for food for sale and information that must be provided in conjunction with the sale of certain foods, where labelling is not required. Food Product Standards in Chapter 2 may impose additional labelling and information requirements for specific classes of food.

Table of Provisions

1	Interpretation
1A	Application
2	Labelling of food for retail sale
3	Labelling of food not for retail sale etc.
4	Provision of information in relation to food etc.
5	Labelling of food for catering purposes
6	Provision of information in relation to food for catering purposes
7	Labelling of packaged meals supplied to, or by delivered meals organisations
8	Types of other similar institutions

Clauses

1 Interpretation

In this Part –

assisted service display cabinet means an enclosed or semi-enclosed display cabinet which requires a person to serve the food as requested by the purchaser.

food for catering purposes includes food supplied to catering establishments, restaurants, canteens, schools, hospitals, and institutions where food is prepared or offered for immediate consumption.

food for retail sale means food for sale to the public and includes food prior to retail sale which is –

- (a) manufactured or otherwise prepared, or distributed, transported or stored; and
- (b) not intended for further processing, packaging or labelling.

intra company transfer means a transfer of food between elements of a single company, between subsidiaries of a parent company or between subsidiaries of a parent company and the parent company.

small package means a package with a surface area of less than 100 cm².

transportation outer means a container or wrapper which encases packaged or unpackaged foods for the purpose of transportation and distribution and which is removed before the food is used or offered for retail sale or which is not taken away by the purchaser of the food.

1A Application

Despite subclause 1(2) of Standard 1.1.1, the definition of ‘food for retail sale’ commences and applies exclusively from the date of gazettal.

2 Labelling of food for retail sale

(1) Subject to subclauses (2) and (4), food for retail sale must bear a label setting out all the information prescribed in this Code, except where –

- (a) the food is other than in a package; or
- (b) the food is in an inner package not designed for individual sale. Despite this, individual portion packs in a container or wrapper with a surface area of 30 cm² or greater must bear a label containing information in accordance with clauses 3 and 4 of Standard 1.2.3; or
- (c) the food is made and packaged on the premises from which it is sold; or
- (d) the food is packaged in the presence of the purchaser; or
- (e) the food is whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables; or
- (f) the food is delivered packaged, and ready for consumption, at the express order of the purchaser; or
- (g) the food is sold at a fund raising event; or
- (h) the food is packaged and displayed in an assisted service display cabinet.

(2) Despite subclause (1), food for retail sale must comply with any requirements specified in –

- (a) subclauses 1(1) or (2) of Standard 1.2.2 – Food Identification Requirements; and
- (b) subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations; and
- (c) paragraph 2(1)(a) or subclause 2(2) of Standard 1.2.5 – Date Marking of Packaged Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage; and
- (e) subclauses 4(2) and 4(3) of Standard 1.2.8 – Nutrition Information Requirements; and
- (f) subclause 2(3) of Standard 1.2.10 – Characterising Ingredients and Components of Food; and

- (g) subclauses 2(2) and 2(3) of Standard 1.2.11 – Country of Origin Requirements (Australia only); and
- (h) subclause 4(3) of Standard 1.5.2 – Food produced using Gene Technology; and
- (i) clause 6 of Standard 1.5.3 – Irradiation of Food; and
- (j) subclause 4(3) and clauses 5, 6, and 10 of Standard 2.2.1 – Meat and Meat Products; and
- (k) clause 3 of Standard 2.2.3 – Fish and Fish Products; and
- (l) subclause 3(2) of Standard 2.6.3 – Kava; and
- (m) subclause 3(5) of Standard 2.6.4 – Formulated Caffeinated Beverages; and
- (n) subclauses 3(1), 3(2), 3(3) and 3(4) of Standard 2.9.4 – Formulated Supplementary Sports Foods.

(3) Paragraph 2(1)(f) of this Standard does not apply to food sold from a vending machine.

(4) Where food is sold in a hamper –

- (a) subclause 2(1) does not apply; and
- (b) a package of food must bear a label setting out all of the information prescribed in this Code; and
- (c) unpackaged food must be accompanied with documentation setting out the information prescribed in this Code.

Editorial note:

For the purposes of paragraph 2(4)(c) the information may be within, or attached to the outer of the hamper.

3 Labelling of food not for retail sale etc.

(1) Subject to subclause (2), food other than food for–

- (a) retail sale; or
- (b) catering purposes; or
- (c) supplied as an intra company transfer;

must bear a label containing the information prescribed in Standard 1.2.2, except where the –

- (d) food is other than in a package; or
- (e) food is in an inner package or packages contained in an outer package where the label on the outer package includes the information prescribed in Standard 1.2.2; or
- (f) food is in a transportation outer and the information prescribed in Standard 1.2.2 is clearly discernable through the transportation outer on the labels on the packages within.

(2) The information prescribed in clause 3 of Standard 1.2.2 is not required to be on the label on a food where that information is provided in documentation accompanying that food.

4 Provision of information in relation to food not for retail sale etc.

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

- (a) retail sale; or
- (b) catering purposes; or
- (c) supplied as an intra company transfer;

must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the –

- (d) compositional requirements of this Code; and
- (e) labelling or other declaration requirements of this Code.

(2) The information referred to in subclause (1) must be supplied in writing where the relevant authority or purchaser has so requested.

5 Labelling of food for catering purposes

(1) Subject to subclause (2), food for catering purposes must bear a label setting out all of the information prescribed in –

- (a) clauses 1 and 2 of Standard 1.2.2 – Food Identification Requirements; and
- (b) Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations; and
- (c) Standard 1.2.5 – Date Marking of Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage; and
- (e) Standard 1.2.11 – Country of Origin Requirements (Australia only); and
- (f) Standard 1.5.2 – Food produced using Gene Technology; and
- (g) Standard 1.5.3 – Irradiation of Food.

(2) Subclause (1) does not apply to –

- (a) food not in a package; or
- (b) whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables; or
- (c) an outer package where the –
 - (i) label on the outer package includes the information prescribed in Standard 1.2.2; and
 - (ii) food in the inner package is labelled in accordance with subclause (1).

6 Provision of information in relation to food for catering purposes

(1) Subject to subclause (2), information prescribed in this Code, other than that prescribed in subclause 5(1), is not required to be on the label of food for catering purposes where that information is provided in documentation.

(2) The information prescribed in clause 3 of Standard 1.2.2 is not required to be on the label of food for catering purposes where that information is provided in documentation accompanying that food.

(3) Where food for catering purposes is not required to bear a label, that food must be accompanied by documentation containing all of the information prescribed in subclause 5(1) and clause 3 of Standard 1.2.2.

(4) Where a purchaser or relevant authority has so requested, food which is for catering purposes, must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the –

- (a) compositional requirements of this Code; and
- (b) labelling or other declaration requirements of this Code.

7 Labelling of packaged meals supplied to, or by delivered meal organisations

(1) Clauses 2 and 5 of this Standard do not apply to packaged meals supplied to, or by delivered meal organisations.

(2) Packaged meals supplied by delivered meal organisations and ready for immediate consumption must comply with the requirements in subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3.

(3) Packaged meals supplied by delivered meal organisations and not ready for immediate consumption must bear a label setting out all the information prescribed in –

- (a) Standard 1.2.2 – Food Identification Requirements; and
- (b) Standard 1.2.3 – Mandatory Advisory Statements and Declarations; and
- (c) Standard 1.2.5 – Date Marking of Packaged Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage.

(4) Packaged meals prepared by food businesses and supplied to delivered meal organisations must comply with the requirements in subclauses (2) and (3).

(5) For the purposes of subclause (4), a food business means a business, enterprise or activity that involves –

- (a) the handling of food intended for sale; or
- (b) the sale of food;

regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion.

8 Types of other similar institutions

(1) The facilities listed in Column 1 of the Table to this clause are ‘other similar institutions’ for the purposes of Standard 1.1.1 and Part 1.2 of this Code.

Table to clause 8

Column 1	Column 2
Facility	Definition
Acute care hospitals	<p>Establishments which provide at least minimal medical, surgical or obstetric services for inpatient treatment or care, and which provide round-the-clock comprehensive qualified nursing services as well as other necessary professional services. Most patients have acute conditions or temporary ailments and the average stay per admission is relatively short. Acute care hospitals include:</p> <p>(a) Hospitals specialising in dental, ophthalmic aids and other specialised medical or surgical care;</p> <p>(b) Public acute care hospitals;</p> <p>(c) Private acute care hospitals;</p> <p>(d) Veterans' Affairs hospitals.</p>
Psychiatric hospitals	<p>Establishments devoted primarily to the treatment and care of inpatients with psychiatric, mental or behavioural disorders including any:</p> <p>(a) Public psychiatric hospital;</p> <p>(b) Private psychiatric hospital.</p>
Nursing homes for the aged	<p>Establishments which provide long-term care involving regular basic nursing care to aged persons and including any:</p> <p>(a) Private charitable nursing home for the aged;</p> <p>(b) Private profit nursing home for the aged;</p> <p>(c) Government nursing home for the aged.</p>
Hospices	<p>Freestanding establishments providing palliative care to terminally ill patients, including any:</p> <p>(a) Public hospice;</p> <p>(b) Private hospice.</p>
Same day establishments for chemotherapy and renal dialysis services	<p>Including both the traditional day centre/hospital that provides chemotherapy and/or renal dialysis services and also freestanding day surgery centres that provide chemotherapy and/or renal dialysis services including any:</p> <p>(a) Public day centre/hospital</p> <p>(b) Public freestanding day surgery centre</p> <p>(c) Private day centre/hospital</p> <p>(d) Private freestanding day surgery centre that provides those services.</p> <p>Day centres/ hospitals are establishments providing a course of acute treatment on a full-day or part-day non- residential attendance basis at specified intervals over a period of time.</p> <p>Freestanding day surgery centres are hospital facilities providing investigation and treatment for acute conditions on a day-only basis.</p>
Respite care establishments for the Aged	<p>Establishments which provide short-term care including personal care and regular basic nursing care to aged persons.</p>
Same-day aged care establishments	<p>Establishments where aged persons attend for day or part-day rehabilitative or therapeutic treatment.</p>
Low care aged care establishments	<p>Establishments where aged persons live independently but on-call assistance, including the provision of meals, is provided if needed.</p>

[3] **Standard 1.2.2 of the Australia New Zealand Food Standards Code is varied by –**

[3.1] *omitting the Purpose, substituting –*

This Standard requires that certain information must be included on the label on a food in order to be able to identify the food in question. Where the food is unpackaged it is required to be displayed on or in connection with the food, or provided to the purchaser upon request. The labels on a package of food for retail sale, other than in the circumstances listed in Standard 1.2.1 must include, in addition to the information prescribed in this Standard, the information prescribed elsewhere in Part 1.2 of this Code.

[3.2] *omitting subclause 1(2) and the Editorial note, substituting –*

(2) Where the food is displayed for retail sale other than in a package –

- (a) the prescribed name of the food, where the name of a food is declared in this Code to be a prescribed name; and
- (b) in any other case, a name or a description of the food sufficient to indicate the true nature of the food;

must be –

- (c) displayed on or in connection with the display of the food; or
- (d) provided to the purchaser upon request.

(3) For the purposes of paragraphs (1)(b) and 2(b), the definitions of certain foods as set out in Chapter 2 of this Code, do not of themselves establish the name of the food.

Editorial note:

For example, the definitions for –

- 1. Bread in Standard 2.1.1
- 2. Fermented milk in Standard 2.5.3
- 3. Ice cream in Standard 2.5.6

[3.3] *omitting clause 3 and the Editorial note, substituting –*

(1) The label on a package of food must include the name and business address in Australia or New Zealand, of the supplier of the food.

(2) A vending machine from which food is sold must clearly display in a prominent place on, or in the vending machine, the name and business address in Australia or New Zealand, of the supplier of the food.

(3) The label on a hamper must include the name and business address in Australia or New Zealand, of the supplier of the food.

Editorial note:

‘Supplier’ is defined in Standard 1.1.1 to include the packer, manufacturer, vendor or importer of the food in question.

[4] *Standard 1.2.3 of the Australia New Zealand Food Standards Code is varied by –*

[4.1] *omitting subclause 2(2), substituting –*

(2) Where a food listed in column 1 of the Table to this clause is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the advisory statement listed in relation to that food in column 2 of the Table, must be –

- (a) displayed on or in connection with the display of the food; or
- (b) provided to the purchaser upon request; or
- (c) displayed on or in connection with food dispensed from a vending machine.

[4.2] *omitting subclause 3(2), substituting –*

(2) Where a food listed in column 1 of the Table to this clause, is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the warning statement listed in relation to that food in column 2 of the Table, must be –

- (a) displayed on or in connection with the display of the food; or
- (b) displayed on or in connection with food dispensed from a vending machine.

[4.3] *omitting subclause 4(2), substituting –*

(2) The presence of the substances listed in the Table to this clause must be –

- (a) declared on the label on a package of the food; or
- (b) where the food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 –
 - (i) declared on or in connection with the display of the food; or
 - (ii) declared to the purchaser upon request; or
- (c) displayed on or in connection with food dispensed from a vending machine.

[4.4] *omitting subclause 5(2), substituting –*

(2) Where food containing any of the substances referred to in subclause (1) is not required to bear a label pursuant to clause 2 of Standard 1.2.1, an advisory statement to the effect that excess consumption of the food may have a laxative effect, must be –

- (a) displayed on or in connection with the display of the food; or
- (b) provided to the purchaser upon request; or
- (c) displayed on or in connection with food dispensed from a vending machine.

[5] *Standard 1.2.5 of the Australia New Zealand Food Standards Code is varied by –*

[5.1] *omitting the heading and Purpose, substituting –*

STANDARD 1.2.5

DATE MARKING OF FOOD

Purpose

This Standard prescribes a date marking system for food and the form in which those foods must be date marked. The Standard requires food, with some exceptions, to be date marked, and prohibits the sale of food after the expiration of the use-by date, where such a date mark is required. In particular, clause 2 of this Standard sets out the circumstances in which a use-by date must be used instead of a best-before date.

[5.2] *omitting the Editorial note immediately after subclause 2(1), and subclause 2(2), substituting –*

- (2) Where the food is displayed for retail sale other than in a package its use – by date must be –
- (a) displayed on, or in connection with the display of the food; or
 - (b) provided to the purchaser upon request.

Editorial note:

FSANZ's *Guide to the Use of 'Use-by' and 'Best-Before' Dates for Food Manufacturers* provides guidance on paragraphs 2(1)(a) and (b).

Standard 1.2.1 sets out the exemptions to the general labelling requirements in this Code, and provides a definition of 'small package'.

- (3) The label on a package of bread with a shelf life less than 7 days, may include instead of a best-before date –
- (a) its baked-on date; or
 - (b) its baked-for date.

[6] **Standard 1.2.11** of the *Australia New Zealand Food Standards Code* is varied by –

[6.1] *omitting subclause 1(3), substituting –*

(3) This Standard does not apply to food sold to the public by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1 where the food is offered for immediate consumption.

[6.2] *omitting paragraph 2(3)(b), substituting –*

- (b) where the food is in a refrigerated assisted service display cabinet, the size of type on the label must be at least 5 mm.

[6.3] *omitting subclause 2(4)*

[6.4] *inserting in the Editorial note immediately following subclause 2(4) –*

‘Assisted service display cabinet’ is defined in Standard 1.2.1.
--

Overview of labelling requirements for food for retail sale and food for catering purposes including amendments made at Final Assessment.

Table 2.1: Food for Retail sale

	Name of the food	Lot id	Supplier details	Mandatory warning & advisory statements & declarations	Ingredient list	Date marking	Directions for use and storage	Nutrition labelling	Percentage Labelling	Country of origin labelling (in Australia)
Inner Portion Packs	No	No	No	Yes, where an inner portion pack is 30 cm ² or greater, declarations in accordance to clause 3 & 4 of Standard 1.2.3 required.	No	No	No	No	No	No
Wrapped small package items	Yes	No ^b	Yes	Yes	No	Yes, only where a use-by-date is required.	Yes, where applicable	Only if a nutrition claim is made.	No	Yes
Food sold at fundraising events ^a	No	No	No	No	No	No	No	No	No	No

^a This is not taking into account the information requirements for these foods when the exemption applies; see the information requirements for food for retail sale for more information. Fund raising event organisers should be aware that there may be New Zealand, State Territory or Commonwealth legislative requirements that need to be complied with in order to conduct the event

^bStandard 1.2.2 clause 2 Lot identification. The label on a package of food must include its lot identification, unless the food is – (b) in small packages, and the bulk packages and the bulk container in which the food is stored or displayed for sale includes lot identification.

	Name of the food	Lot id	Supplier details	Mandatory warning & advisory statements & declarations	Ingredient list	Date marking	Directions for use and storage	Nutrition labelling	Percentage Labelling	Country of origin labelling (in Australia)
Vending machine: outside	No	No	Yes	No	No	No	No	No	No	No
Within a vending machine ^{b, c}	Yes	Yes	Yes	Yes	Yes	Yes	Yes, where applicable	Yes	Yes, where applicable	Yes
Outside a hamper ^d	No	No	Yes	No	No	No	No	No	No	No
Within a hamper ^b	Yes	Yes	Yes	Yes	Yes	Yes	Yes, where applicable	Yes	Yes, where applicable	Yes
Food wrapped at retail ^{b, e}	Yes	Yes	Yes	Yes	Yes	Yes	Yes, where applicable	Yes	Yes, where applicable	Yes
Packaged food sold at satellite retail outlet ^b	Yes	Yes	Yes	Yes	Yes	Yes	Yes, where applicable	Yes	Yes, where applicable	Yes
Information requirements where exempt	Yes	No	No	Yes	No	Yes, where normally required	Yes, where applicable	In case of nutrition claim	Yes	Yes
Milk sold in glass bottles ^b	Yes	Yes	Yes	Yes	Met by name of food	Yes	No	Yes	No, not applicable	Yes [#]

^b where the food does not meet the requirements of an exemption

^c Where food is exempt from labelling, and sold from a vending machine, and is required to disclose: mandatory advisory statements and declarations, mandatory warning statements and declarations, mandatory declaration of certain substances in food, advisory statements in relation to polyols or polydextrose. This information must be displayed on or in connection with food dispensed from a vending machine.

^d hamper means a decorative basket, box or receptacle containing any number of separately identifiable food items

^e Exemption also apply for wrapped food items which are provided to the consumer in an assisted service style such as where the retailer provides the food to consumer over a deli counter or café counter.

Table 2.2: Food for Catering purposes

	Name of the food	Lot id	Supplier details	Mandatory warning & advisory statements & declarations	Ingredient list	Date marking	Directions for use and storage	Nutrition labelling	Percentage Labelling	Country of origin labelling (in Australia)
General labelling requirements	Yes ^f	Yes ^f	Yes ^g	Yes ^f	Yes ^g	Yes ^f	Yes ^f	Yes ^g	No.	Yes ^f
Information requirements where exempt from bearing a label	Yes ^f	Yes ^f	Yes ^f	Yes ^f	No, unless requested.	Yes ^f	Yes ^f	No, unless requested.	No.	Yes [*]

Table 2.3: Meals supplied by DMOs and Hospitals

	Name of the food	Lot id	Supplier details	Mandatory warning & advisory statements & declarations	Ingredient list	Date marking	Directions for use and storage	Nutrition labelling	Country of origin labelling (in Australia)
DMO meals not for immediate consumption	Yes	No	Yes	Yes	No	Yes	Yes	No	No
DMO meals for immediate consumption	No	No	No	Yes	No	No	No	No	No
Meals supplied by hospitals and similar institutions and prisons	No	No	No	No	No	No	No	No	No

^f This information must be born on the label attached to the food

^g This information may be provided in documentation

Best Practice Regulation – Preliminary Assessment and Business Cost Calculator Report

During the assessment of proposals and applications, FSANZ gives due regard to the Office of Best Regulation (OBPR) *Best Practice Regulation Handbook* (November 2006) which contains a full outline of the requirements for developing regulatory proposals. This Attachment provides an assessment of the potential impact of a regulatory proposal on business and individuals or the economy, and determines what level of regulatory analysis is required. If a regulatory option is likely to have a significant impact on business and individuals *or* restricts competition FSANZ may be required to prepare a RIS. Restrictions on competition can include a limitation being placed on entry to a market, price, output or production methods.

The following checklist provided by the OBPR has been used to assist FSANZ in identifying compliance costs that may result from the amendments to the Code proposed in this report and whether the proposed amendments to the Code restrict competition (Section 1).

This list only addresses the impact of proposed amendment to the Code; it does not take account of costs which are incurred from compliance with existing regulatory requirements.

FSANZ uses the Business Cost Calculator (BCC) Quickscan for proposed amendments to the Code to identify whether there will be business compliance costs. The results of the Analysis are given in Section 2.

Section 1 Best Practice Regulation – Preliminary Assessment Checklists

Business Compliance Costs Checklist

Will businesses incur costs when they are required to report certain events?

No

Will costs be incurred by business in keeping abreast of regulatory requirements?

Yes, but negligible

Are costs incurred in seeking permission to conduct an activity?

No

Are businesses required to purchase materials or equipment?

No

Are businesses required to keep records up-to-date?

No

Will businesses incur costs when cooperating with audits or inspections?

No

Will businesses incur costs when producing documents for third parties?

No

Will business incur costs that are of a non-administrative nature?

No

Are there any other compliance costs associated with the regulatory proposal?

Yes, but negligible

Business Compliance Cost Summary

The proposed amendments to the Cost will have a low impact on business.

Explanation

The approach taken by FSANZ in Proposal P272 is to provide clarity and greater certainty on existing labelling requirements without mandating additional labelling requirements. Industry, governments, NGOs and consumers will benefit as a result of improved regulations regarding labelling of food.

The outcome of the changes to the Code proposed by FSANZ are predominantly technical in nature, and generally require, little or no change to current practice, resulting in little or no additional costs. In cases where there may be some low costs associated with the proposed amendments these are commensurate with the risk that is being managed.

Following best practice regulation¹⁴ FSANZ has undertaken a comprehensive assessment of the impacts of the regulatory options on business, government and individuals and found that the preferred regulatory option has only negligible impacts and compliance costs.

Other impacts on business and individuals, including restrictions on competition Checklist

Would the regulatory proposal affect the number and range of suppliers?

No

Would the regulatory proposal change the ability of suppliers to compete?

No

Would the regulatory proposal alter suppliers' incentives to compete vigorously?

No

¹⁴ Office of Best Practice Regulation (2006) Best Practice Regulation Handbook.

Summary of other impacts

The proposed amendments to the Code have no other impacts on business and individuals, including restrictions on competition.

Section 2 Best Practice Regulation – Business Cost Calculator Report

The regulatory Problem

Proposal P272 has been prepared by FSANZ to provide clarity and greater certainty on existing labelling requirements, without mandating additional labelling requirements. This addresses a number of issues arising from the implementation of the Code which are considered problematic by industry and enforcement agencies:

- the current definition of food for retail sale does not unequivocally determine if labelling requirements apply to food sold to the public as well as food intended for sale to the public;
- the inner portion packs exemption is considered to be confusing in relation to its application, and to the principle on which it is based;
- clarification is required on the labelling requirements when conducting a fund raising event;
- current labelling requirements for vending machines are impractical;
- the labelling current requirements for hampers are impractical;
- currently food wrapped for hygienic purposes is not exempt from labelling, even where the consumer can ask for information required for safety and informed choice;
- the list of information requirements in the Code is difficult to use;
- currently, the Code does not require date marking and food identification information on unpackaged food to be made available to purchasers on request, even though this could be done with little or no additional costs to industry;
- the definition of catering purposes does not provide sufficient clarity and certainty to industry;
- some of the current exemptions and information requirements for food for catering are inappropriate and impractical;
- currently, the Code places a substantial regulatory burden on DMOs, with prescribed information not limited to information necessary for food recalls and health and safety.

Objectives

In addition to the Objectives of the FSANZ Act (see main body of the Final Assessment Report), the specific objectives for this Proposal are to:

- remove barriers to the efficient operation of the Code in relation to food for retail sale and food for catering purposes while at the same time maintaining a high level of public health and safety protection;
- ensure that changes in the structure and scope of the Code in relation to food for retail sale and food for catering purposes do not adversely affect the ability of consumers to make informed choices;

- provide greater certainty to industry, government, consumers and non-government organisations such as delivered meal organisations and health care sectors regarding labelling requirements; and
- provide clarity to promote consistent enforcement.

Options

Option	Quickscan Result
Maintain the <i>status quo</i> and retain the current requirements in clause 2 in Standard 1.2.1.	No cost impacts
Amend the requirements in clause 2 of Standard 1.2.1 and other Standards with clauses connected to Standard 1.2.1	No cost impacts

Compliance Cost Summary

Option Name:	Maintain the <i>status quo</i> and retain the current requirements in clause 2 in Standard 1.2.1.	
Businesses Affected:	N/A	
Type	Cost per Business	Total Cost of Regulation
1. Food Industry: manufacturers, processors, caterers, hospitality, retailers and the health care sector. 2. NGO and Government: delivered meal organisations, health care sector, community based organisations and institutions and fund-raising bodies.	none	none

Option Name:	Amend the requirements in clause 2 of Standard 1.2.1 and other Standards with clauses connected to Standard 1.2.1	
Businesses Affected:	N/A	
Type	Cost per Business	Total Cost of Regulation
3. Food Industry: manufacturers, processors, caterers, hospitality, retailers and the health care sector. 4. NGO and Government: delivered meal organisations, health care sector, community based organisations and institutions and fund-raising bodies.	none	none

Summary of submissions from the Draft Assessment Report

FSANZ received 26 submissions in response to the Draft Assessment Report on Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale during the public consultation period from 13 December 2006 to 21 February 2007.

A submitter list and summary of submitter comments are provided in the tables below.

The issues considered in this Proposal, fall into four broad categories:

- the labelling of **food for retail sale** including the definition of the term ‘food for retail sale’; the application of exemptions; and the information requirements which apply when food for retail sale is exempt from labelling;
- the definition and labelling of **food for catering purposes**; the requirement for food for catering purposes to bear a label containing the information prescribed in the Code; the application of exemptions and application of information requirements;
- the labelling requirements for **meals provided by delivered meals organisations (DMOs)**; and
- the labelling requirements for meals provided by hospitals and similar institutions and prisons.

Table 3.1 List of submitters (second round of consultation)

Number	Submitters	Name
1	Private	Ivan Jeray
2	Meals on Wheels (WA)	Katie Hill
3	New Zealand Retailers Association	Barry Hellberg
4	New Zealand Dietetic Association	Jan Milne
5	Meals-on-Wheels	Leon Holmes
6	Food Technology Association of Victoria Inc	David Gill
7	Queensland Meals on Wheels Association	David Harrison
8	Department of Human Services Victoria	Victor Di Paola
9	Meals on Wheels SA Incorporated	Cam Pearce
10	HACC Outcomes	David Gower
11	Allergy New Zealand	Sara-Jane Murison
12	Chamber of Commerce and Industry (WA)	Karen Hall
13	Foodstuffs (NZ) Ltd	Melissa Hodd
14	Department of Health SA	Eleanor Schmedemann
15	Cerebos Australia Pty Ltd	Alison Edler
16	Healthcare Otago Ltd	Lynette Finnie
17	New Zealand Food Safety Authority	Carole Inkster
18	Queensland Health	Gary Bielby
19	Food & Beverage Importers' Association	Tony Beaver
20	Meals Victoria	Nelson Mathews
21	Australian Food & Grocery Council	Kim Leighton
22	Unilever Australasia	Julie Newlands
23	NSW Food Authority	Bill Porter
24	Coles Myer Ltd	Neil McSkimming
25	Confectionery Manufacturers of Australasia Ltd	Jennifer Thompson
26	Australian Pork Ltd	Heather Channon

Table 3.1: Submitters comments: Food for Retail sale

Issue	Submitter Comments
<p>The use of the term ‘food for retail sale’</p>	<ul style="list-style-type: none"> • Supports the principle behind the proposed change to the definition for “Food for retail sale’ however does not support the proposed wording as this is overly complex and introduces uncertainties into the definition. <i>Food and Beverage Importers Association, Unilever.</i> • The suggested wording by NSW Health for ‘food for retail sale and food intended for retail sale’ clarifies the intent of this change without going to unnecessary detail as to points in the supply chain that may be included. <i>Unilever.</i> • Supports the proposed definition of food for retail sale which will ensure that importers and manufacturers bear responsibility for the accuracy of labelling of food products destined for retail sale. <i>Foodstuffs (NZ) Ltd, New Zealand Retailers Association, Australian Food and Grocery Council.</i> • Supports the definition proposed and accept that when a retailer or middleman alters the food, the packaging or labelling, this person will then be responsible for the labelling of the product in accordance with the Code. <i>Foodstuffs (NZ) Ltd. New Zealand Retailers Association, New Zealand Food Safety Authority, Confectionery Manufacturers of Australasia Ltd.</i> • It should be noted that under Standard 1.1.1 clause 11, permission is required from the relevant authority before altering a label. <i>New Zealand Food Safety Authority.</i> • Pleased to note the proposed definition is consistent with the requirements under the New Zealand Food Act 1981 and that the potential for any confusion is unlikely to arise with the New Zealand Fair Trading Act 1986. <i>New Zealand Retailers Association.</i> • Supports proposed definition of food for retail sale. However, notes that small individually wrapped foods that are provided in a larger fully labelled package by a manufacturer may be removed from the package and offered for individual ‘sale’ by the retailer or third party, for example confectionery supplied in self-serve containers at conferences. The display of small individually wrapped foods would be considered as ‘repackaging’, given the proposed definition of package covers the container in which the food is wholly or partly encased. Recommends that where exemptions apply to the labelling of individually wrapped confectionery due to their small size, the retailer or third party should only be required to provide additional labelling information on request. <i>Australian Food and Grocery Council.</i> • Believes the revised definition for ‘food for retail sale’ needs to have the words ‘prior to retail sale’ at the end so it is clear that further processing in a purchaser’s residence is not included. <i>Queensland Government, NSW Food Authority.</i> • Agrees that the supplier bears responsibility for the labelling of any food that it supplies to a retailer. This is already the case with imports as the Imported Food Control Act requires imported food to comply with the Code at the time of importation. In practical terms, this means at the time of inspection by an AQIS officer. <i>Food and Beverage Importers Association.</i>

Issue	Submitter Comments
The use of the term 'food for retail sale' (continued)	<ul style="list-style-type: none"> • Considers that if there is a problem with enforcing the labelling requirements of the Code then it might be more effective to seek clarification of, or amendments to, the legislation under which enforcement action might be taken. As noted in the DAR, the New Zealand Food Act 1981 places the onus for compliance with all parties (page 12). Therefore suggest that the applicability of the New Zealand approach should be undertaken before the definition of 'retail sale' in the Code is changed. <i>Food and Beverage Importers Association.</i> • Particularly supportive of the proposed change to the definition of 'food for retail sale' as it provides much needed legal clarity regarding the responsibilities of food manufacturers and retailers in complying with the Code. <i>Coles Group Ltd.</i> • The implications associated with labelling pick n mix and other similarly configured products come into play. A manufacturer may sell a 5 kg bag of individually twist wrapped, foil wrapped or a pillow pack configured confectionery items each with a very small surface area – these may range from approx 10 cm² to 50 cm². In all cases the manufacturer has provided the labelling information, either affixed to or by way of accompanying documentation, to enable the on seller to comply with the requirements of the Code, but from a practical sense, as P272 notes that 'retailer' may not have the capacity to comply with requirements of the Code this situation creates, e.g. conference mints. <i>Confectionery Manufacturers of Australasia Ltd.</i>
Inner Portion Packs exemption	<ul style="list-style-type: none"> • Supports simplification and clarification of this clause, in addition to the new requirement to also declare mandatory warning statements and declarations under clause 3 Standard 1.2.3. <i>Confectionery manufacturers of Australasia Ltd, Unilever, Food and Beverage Importers Association, NSW Food Authority.</i> • Disagrees with suggestion to not define the terms 'inner package' and 'individual portion packs'. It is insufficient to provide clarification of these terms in a former FSANZ proposal – P246. Recommend these terms should be embodied in the Code to retain the intent in perpetuity. <i>Confectionery manufacturers of Australasia Ltd.</i> • Supports the position that where food is in individual packages contained with a fully labelled outer package, and not designed for sale without an outer package, then inner packages that are 30 cm² or greater only require allergen labelling, packages of less than 30 cm² are exempt from labelling. <i>Australian Food and Grocery Council, NSW Food Authority.</i>
Wrapped Pick'n'Mix Confectionery and Similar Small Package Items	<ul style="list-style-type: none"> • The current labelling requirements for small packages, if applied to packaged pick n mix confectionery are overly onerous. There are practical limitations on the ability to provide legible information on small individually wrapped confectionery, and that there are practical limitations on the provision of information in association with the display of such confectionery.

Issue	Submitter Comments
<p>Wrapped Pick'n'Mix Confectionery and Similar Small Package Items (continued)</p>	<p>This may lead to the non-achievement of the desired outcome, particularly in relation to public health and safety. <i>Coles Group Ltd, Australian Food and Grocery Council, Confectionery Manufacturers of Australasia Ltd.</i></p> <ul style="list-style-type: none"> • Supports FSANZ's intention to maintain current labelling requirements for pick 'n mix confectionery items (or other food items considered to be a small package – less than 100 cm²). Supports the consumer's right to request information from the retailer at the point of sale concerning these and other aspects of a food. <i>NSW Food Authority, New Zealand Food Safety Authority.</i> • Agrees that the mandatory information must be provided to the consumer but suggest that consideration might be given to allowing flexibility in the provision of the information. In the circumstance of 'bite sized confectionery' and 'similar single serve items', information such as allergen and nutrition being displayed in connection with or upon request of the purchaser, may be a more effective means of providing important health information to the consumer and also facilitate sufficient space on the packaging for labelling of information necessary for food recall or withdrawal purposes. <i>Food and Beverage Importers Association, Coles Group Ltd, Australian Food and Grocery Council.</i> • It was recommended that if the mandatory requirements were not able to fit on certain products consideration should be made on the basis of the size of the package. Recommendations for further exemptions were made and included; An exemption in Subclause 2(1) in Standard 1.2.1 where the food is 'bite size confectionery' and 'similar sized single serve items' and that packaged pick 'n mix confectionery with a surface area of less than 30 cm² be exempt from all labelling. <i>Australian Food and Grocery Council, Coles Group Ltd, Unilever, Confectionery Manufacturers of Australasia Ltd.</i>
<p>Fundraising events</p>	<ul style="list-style-type: none"> • Supports the proposal that food, regardless of the reason for its sale, should be fully labelled with the elements critical to provide enough information for the final consumer to make an informed and safe purchase choice. <i>Unilever.</i> • Suggests foods sold at fund raising events not be exempt from declaring information required for the protection of public health and safety, e.g. allergen declarations. <i>NSW Food Authority.</i> • Supports the position that charitable events that raise funds solely for community or charitable purposes and not for personal gain are exempt from certain labelling requirements and that only mandatory warning and allergen labelling applies. <i>Australian Food and Grocery Council.</i> • Recommends that where commercially manufactured food is donated to charitable organisation with no contribution provided to the manufacturer to cover expenses, that only minimum labelling requirements to ensure public health safety apply, namely allergen labelling, lot number or relevant date marking. <i>Australian Food and Grocery Council.</i> • Supports the development of a guide to food labelling at fundraising events. <i>New Zealand Food Safety Authority.</i>

Issue	Submitter Comments
Vending machines	<ul style="list-style-type: none"> • Agrees with FSANZ’s intention to clarify the definition of package within Standard 1.1.1 of the Code to exclude the exterior of vending machines from the full labelling requirements of the Code. <i>NSW Food Authority, Australian Food and Grocery Council, Confectionery Manufacturers of Australasia Ltd.</i> • Considers that labelling of vending machines with sufficient supplier information to assist in the recall of dispensed, pre-packaged food items is sufficient as packaged food items within machines will still require labelling as per the normal requirements of the Code. <i>NSW Food Authority.</i> • Considers that the issue of labelling information on prepacked items visible and on display in vending machines does not appear to have been sufficiently resolved. Whilst the package may be visible at the time of purchase, the labelling information required by the Code is often obscured. <i>NSW Food Authority.</i> • Notes that hot drinks (e.g. coffee) dispensed from vending machines will be exempt from labelling requirements, but machines dispensing these foods should still require labelling with health and safety information (e.g. allergen information) on the front of the machine. This may however be problematic as Standard 1.2.3 refers to the display of the food, and in the case of hot drinks, the food is not actually on display. The alternative of supplying the information on request is not practical. FSANZ are requested to consider the implications of this scenario. <i>NSW Food Authority.</i> • Further suggests that the implications of the new requirements for exempt foods, i.e. product name and use-by dates, also need to be carefully considered. <i>NSW Food Authority.</i> • The Authority would support the requirement for supplier information to be limited to the vendor. Information such as manufacturer would be of little assistance if the manufacturer were located in another country. <i>NSW Food Authority.</i> • <i>Standard 1.1.1, clause 2, vending machines.</i> It may be useful to include an editorial note in Standard 1.1.1 to the effect that it is clear that vending machines are not to be considered as packages. In addition, the inclusion of vending machines in clause 2 may lead to an interpretation that appliances other than vending machines which dispense food are packages, and should be labelled accordingly. The Authority assumes this is not the intention of the revised definition for ‘package’ in P272. <i>NSW Food Authority.</i> • Recognises that if a consumer purchases a product and wishes to make a complaint, this would be facilitated by providing the vending machine operators contact details including their name, address and phone number on the outside of the vending machine. Such a requirement is already covered by Fair Trading legislation and that vending machines already carry this information. <i>Australian Food and Grocery Council.</i> • Recommends that FSANZ not duplicate legislative requirements and that provision of vending machine operator contact details are not required in the Code. <i>Australian Food and Grocery Council.</i>

Issue	Submitter Comments
Vending machines (continued)	<ul style="list-style-type: none"> • Supports the requirement that packaged food items contained within the vending machine comply with the requirements of the Code in their own right, either as fully labelled or labelled according to exemptions under Clause 2 of Standard 1.2.1. <i>Australian Food and Grocery Council.</i> • Supports the requirement that vending machines provide the supplier’s name and address. <i>New Zealand Food Safety Authority.</i>
Hampers and similar packages	<ul style="list-style-type: none"> • Supports the proposal to include hampers in the list of containers which are excluded from the definition of a package, provided the individual component parts meet the requirement of the Code. <i>Foodstuffs (NZ) Ltd, Unilever, NSW Food Authority, Confectionery Manufacturers of Australasia Ltd, Food and Beverage Importers Association, New Zealand Retailers Association, Australian Food and Grocery Council.</i> • Notwithstanding this, we see two problems with the proposed definition. The definition of hamper “means a decorative basket, box or receptacle containing any number of separately identifiable food items that are not offered for individual sale”. In a supermarket context, most if not all of the individual items in a hamper will be offered, separately, for individual sale. A literal interpretation of the definition would exclude any hamper sold by supermarkets and these would continue to require external labelling in addition to labelling of the constituent parts. Second, a hamper is one of a number of bundled product presentations used by supermarkets. <i>Foodstuffs (NZ) Ltd.</i> • It is unclear whether the Code’s definition extends to the following: Snak Packs, Meal pack, Cheese Boards, Bulk-packs. Provisions for snack packs should be considered with those proposed for hampers. <i>New Zealand Food Safety Authority, Foodstuffs (NZ) Ltd.</i> • Recommends that item (f) under the definition of a package be amended to “a hamper or other similar package” and that a definition of hamper on page 23 be replaced with a definition of “hamper and other similar packages” that is sufficiently broad to capture the full range of cross-merchandised products offered by the retailers, provided the individual components are wrapped and labelled in accordance with the Code, or specifically exempted from bearing a label e.g. onion. <i>Foodstuffs (NZ) Ltd.</i> • Supports recommendation for the supplier’s contact details to appear on the hamper/package. <i>Foodstuffs (NZ) Ltd, New Zealand Food Safety Authority.</i> • Agrees with FSANZ’s proposal to have traceability information provided on the outside of a hamper to assist with product recall. <i>NSW Food Authority.</i> • Seeks clarification of the intent of the proposed clause 2(4) of Standard 1.2.1, and in particular clause (c) “unpacked food must be accompanied with documentation setting out the information prescribed in the Code”. <i>New Zealand Food Safety Authority.</i> • Considers it would be useful to clarify in the editorial note that the prescribed information referred to is that normally required on the item were it fully labelled.

Issue	Submitter Comments
Hampers and similar packages (continued)	<p>This is because exemptions from labelling under clause 2(1), including that for unpackaged food, do not apply to hampers; however, any exemptions under specific standards would apply. <i>New Zealand Food Safety Authority.</i></p> <ul style="list-style-type: none"> • It would be useful to extend clause 2(4)(c) to allow accompanying documentation to be used for partially labelled or unlabelled packaged items. <i>New Zealand Food Safety Authority.</i> • Consideration should be given to further amending Standard 1.2.5 to require hampers to include the date mark of the least durable item. <i>New Zealand Food Safety Authority.</i> • Considers the word “decorative” should be removed from the definition proposed for hamper, as the hamper basket box etc may not be decorative and function only as a container. <i>New Zealand Food Safety Authority.</i> • Considers minimum safety related information could be considered for inner packages, in particular allergen declaration. <i>New Zealand Food Safety Authority.</i> • Considers it is not clear whether the new drafting in Standard 1.2.2 in relation to supplier details being required on a hamper, includes hampers that are made by a business which purchases pre-packaged food products from another business. <i>Queensland Government.</i> • The proposal to require hampers containing unpackaged food to have documentation setting out the information prescribed in the Code either within or attached to the hamper is not supported as it is considered to be an onerous requirement that could not be easily enforced. <i>Department of Human Services Victoria.</i> • Supports the requirements that individual items in the hamper be fully labelled. Also supports the recommendation that the outside of the hamper be required to provide the name and business address in Australia or New Zealand of the supplier of the hamper in order that consumers may direct complaints or queries about the hamper to the supplier. <i>Australian Food and Grocery Council, Confectionery Manufacturers of Australasia Ltd.</i> • In order for consumers to make an informed choice we consider a list of food products should also be available on the exterior of the hamper. <i>Allergy New Zealand.</i> • Agrees that ingredient information is not necessary as long as all products within the hamper are labelled according to the Code. <i>Allergy New Zealand.</i>
Food Items Wrapped at the Retail Outlet	<ul style="list-style-type: none"> • Does not support the proposal to maintain the <i>status quo</i>, whereby food wrapped at the retail outlet to comply with food safety standards is not exempted from labelling. <i>Chamber of Commerce and Industry – WA.</i> • Strongly supports a more realistic approach to this situation – wrapping for the purposes of complying with the safety requirements of the Code should not of itself constitute a ‘package’. <i>Chamber of Commerce and Industry – WA.</i> • Would like FSANZ to re-consider the maintenance of the status quo for food wrapped for food safety compliance at retail outlets. <i>Chamber of Commerce and Industry – WA.</i>

Issue	Submitter Comments
Food Items Wrapped at the Retail Outlet (continued)	<ul style="list-style-type: none"> • While FSANZ concern re differentiating between meat trays and plastic wrapped slices of cake is understood, labelling of these usually single portion items in small retail businesses such as corner delis and sandwich bars still presents some significant enforcement issues. <i>Chamber of Commerce and Industry – WA.</i> • One possible form of differentiation that could be considered is whether or not the food is self selected or served by the retailer at the time of purchase. <i>Chamber of Commerce and Industry – WA.</i> • Wrapped food which is selected by the consumer before it is taken to a counter or check out for purchase should be labelled to ensure that the objective of provision of adequate information to enable consumers to make informed choices is met. Food that is served across the counter where inquiries can be made to the vendor before purchase could be exempt from labelling, even though plastic wrapped. <i>Chamber of Commerce and Industry – WA.</i> • Generally speaking, because of the sophistication of our in-store scale systems, we are able to include basic label requirements in price tickets generated by the scale systems. <i>Foodstuffs (NZ) Ltd.</i> • However, errors in the re-keying of data do occur and we would therefore continue to support the proposal of Queensland Health for the development of a guidance note indicating that “wrapping for the purposes of complying with food safety requirements, would not in itself constitute a package.” <i>Foodstuffs (NZ) Ltd.</i> • We note that in virtually all instances, full product information, as supplied by the manufacturer, is held on premise and is therefore able to be provided to consumer on request. <i>Foodstuffs (NZ) Ltd.</i> • Recommends that FSANZ should amend the Code to allow a labelling exemption for foods wrapped at retail outlets for compliance with food safety standards, ease of handling and retaining quality such as freshness i.e. ‘the wrapping does not in itself constitute a package’. <i>Coles Group Ltd.</i> • Supports the decision not to exempt food wrapped at the retail outlet, thereby avoiding the potential to capture a wide range of packaged foods. <i>New Zealand Food Safety Authority.</i>
Food items intra-company transferred	<ul style="list-style-type: none"> • Does not support the proposal to maintain the status quo. <i>Chamber of Commerce and Industry – WA.</i> • Current situation is inconsistent and illogical. If a food business manufactures, packages and retails at a single site, exemption 2(1)(c) applies. If that same food business were to open a satellite retail outlet, it would be faced with the anomalous situation of having to comply with different labelling requirements for the same food product, depending on the point of sale. <i>Chamber of Commerce and Industry – WA.</i> • Recommends that exemption 2(1)(c) should be extended to cover packaged foods that are intra-company transferred to satellite retail outlets, on the basis that information be made available at the point of retail sale. <i>Chamber of Commerce and Industry – WA.</i>

Issue	Submitter Comments
Food items intra-company transferred (continued)	<ul style="list-style-type: none"> • Supports proposal that food which is packaged in the presence of the purchaser, irrespective of whether it was made on the premises in which it is sold, be exempt from labelling provided information is available at the point of sale concerning the ingredients and allergens that may be present. <i>Australian Food and Grocery Council.</i> • Supports the decision not to extend the current ‘made and packaged’ labelling exemption to food sold at satellite retail outlets as information may not always be available at these remote sites or be less available e.g. via a phone call. <i>New Zealand Food Safety Authority.</i>
Information requirements	<ul style="list-style-type: none"> • Has no objection to the addition of clause 2(2)(a) (c) and (m) to Standard 1.2.1. However, it is considered that clause 2(2)(a) should include all the current requirements of the Standard i.e. subclause (2) and (3), i.e. lot id and supplier details as well; <i>Department of Human Services Victoria.</i>
Information Requirements in Subclause 2(2)	<ul style="list-style-type: none"> • Foodstuffs support the proposal. <i>Foodstuffs (NZ) Ltd.</i>
Drafting – Definition of package	<ul style="list-style-type: none"> • Supports the proposed definition of a package which excludes vending machines, hampers, and food served on a covered plate, cup, tray etc in prisons, hospitals or similar institutions. <i>New Zealand Food Safety Authority.</i>
Other comments	<ul style="list-style-type: none"> • Notes the needs of pork industry to ensure there is no potential for differing ‘interpretations of labelling requirements for MI Pork’ between the various State regulatory agencies. <i>Australian Pork Limited.</i> • We note that the proposed amendments would at most require minimal changes to current practice, and would therefore incur no or minor additional costs to industry. <i>New Zealand Retailers Association.</i> • We further note the comment that they would provide a tangible benefit to industry by providing more friendly labelling requirements and reducing ambiguity. <i>New Zealand Retailers Association.</i> • We would commend NZFSA to look towards an education campaign to make medium and small business fully aware of these changes. <i>New Zealand Retailers Association.</i> • A joint campaign in New Zealand to coincide with the implementation of the new food safety regulatory regime may be desirable, and, in particular, it may be useful to consider making advice of these changes available in duality of languages to ensure that all interested parties are aware of their legal requirements in this area. <i>New Zealand Retailers Association.</i>

Issue	Submitter Comments
Other comments (continued)	<ul style="list-style-type: none"> <li data-bbox="496 237 1380 604">• Food for retail sale should be fully labelled with all the current requirements, unless there are specific exemptions. Food for sale other than retail sale should be labelled with identification and traceability requirements and information requirements should be available on demand. Any food that is packaged in the form that it is to reach the ultimate consumer should have full labelling whereas products that are to be further processed or packaged should have the information provided. It then becomes the responsibility of each person within the food chain to pass on the information that needs to be available either on the packaged food when it is sold to the consumer or if unpackaged, on request. <i>Unilever</i>.

Table 3.2: Submitters comments: Food for catering Purposes

Issue	Submitter Comments
Definition of food for catering purposes	<ul style="list-style-type: none"> • Supports the FSANZ proposed modifications to this definition which more clearly identifies the types of products and their potential uses within this area. <i>NSW Food Authority, Unilever, New Zealand Food Safety Authority, Queensland Government, Food and Beverage Importers Association, Australian Food and Grocery Council.</i>
Requirement to bear a label containing certain prescribed information	<ul style="list-style-type: none"> • Supports reduced labelling requirements and agree with FSANZ recommendations that packaged food for catering purposes be labelled with sufficient information to protect consumer health and safety, enable a product recall, advice on the effective use and storage of a food and list country of origin labelling information, with the flexibility of providing the information with associated documentation. <i>Australian Food and Grocery Council, NSW Food Authority.</i> • Does not support the removal of labelling requirements for irradiated or genetically modified food. <i>NSW Food Authority.</i> • Suggested that clause 6(1) be amended and that the exclusion of labelling requirements of Part 2 of the Code be considered separately in the context of those standards e.g. for irradiated food. <i>NSW Food Authority.</i> • We consider all ingredient information should be on the label of all packages (outer and inner packs) rather than only mandatory allergen declarations. This ensures the vendor providing the food to the end-consumer has access to all ingredient information. <i>Allergy New Zealand.</i>
Requirement to bear a label containing certain prescribed information and other information in commercial documentation	<ul style="list-style-type: none"> • Supports the approach proposed by FSANZ to simplify the labelling requirements for food for catering purposes with information for health and safety required on the label. <i>New Zealand Food Safety Authority, Queensland Government, Food and Beverage Importers Association.</i> • Not in support of the removal of labelling requirements for genetically modified food and irradiated food since the Standards for these foods are specific on the labelling requirements and do not permit alternative means of providing the information. <i>Queensland Government.</i> • However, believes Country of origin information not to be necessary for public health & safety, and considers it would be sufficient for origin information to be supplied by documentation. <i>Food and Beverage Importers Association.</i>

Issue	Submitter Comments
Supplier Details	<ul style="list-style-type: none"> • Supports FSANZ’s proposal, however suggests that 5(1)(a) should include clause 3 of standard 1.2.2 for traceability purposes. <i>Department of Human Services Victoria.</i> • Does not support the proposal to allow food for catering purposes to provide the name and address of the supplier (Clause 3 of standard 1.2.2) on commercial documentation rather than on the package of the food. <i>Department of Human Services Victoria.</i>
Exemptions to apply	<ul style="list-style-type: none"> • Supports FSANZ’s intention to withdraw the labelling exemptions for food for catering purposes for unpackaged foods, and whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables. <i>Australian Food and Grocery Council, NSW Food Authority.</i> • Supports the separation of food for catering purposes and retail sale. <i>Cerebos Foods.</i> • FSANZ’s proposal remains confusing and we consider clarification of labelling requirements for inner packaging of food for retail sale or catering purposes is needed. There are instances where food may be considered food for retail sale and catering purposes. <i>Allergy New Zealand.</i> • Does not support the proposed removal of exemptions 2(1)(b). <i>Chamber of Commerce and Industry – WA, Cerebos Foods.</i> • Supports the rewording of exemption 2(1)(b) such that it is relevant to both food for retail sale and to food for catering purposes. <i>Chamber of Commerce and Industry – WA.</i> • Submits that removal of exemption 2(1)(f) will lead to significant increases in labelling costs for some food producers. <i>Chamber of Commerce and Industry – WA.</i> • Agrees that gastronome trays should be labelled with information necessary to adequately protect public health and safety (e.g. allergen declaration). <i>NSW Food Authority.</i> •
Commercial documentation	<ul style="list-style-type: none"> • Supports FSANZ’s approach not to introduce a definition of commercial documentation in the Code but to provide guidance in a user guide. <i>Food and Beverage Importers Association.</i>
Other comments	<ul style="list-style-type: none"> • The Authority notes that Standard 1.2.1 clause 4 does not provide a comparable exemption for “food not for retail sale etc”, and the Authority supports that position. <i>NSW Food Authority.</i>

Table 3.3: Submitters comments: Meals provided by Delivered Meal Organisations (DMOs)

Issue	Submitter Comments
<p>Labelling of certain prescribed minimum information</p>	<ul style="list-style-type: none"> • Agrees with FSANZ’s recommendations regarding labelling provisions for foods provided by DMOs. The minimal information on packages supplied by DMOs to adequately protect consumer health and safety, effect a product recall and provide advice on the preparation and storage of a food is sufficient for meals provided by DMOs and is supported. <i>NSW Food Authority, Te Waka Haura Public Health South (Healthcare Otago), New Zealand Food Safety Authority, New Zealand Dietetic Association, Queensland Government.</i> • More onerous labelling can be justified on public health grounds. <i>Chamber of Commerce and Industry – WA, Meals Victoria Incorporated.</i> • Although there was support for FSANZ proposal, all DMOs considered it would be onerous several issues were raised; • Concern over the additional labelling costs to DMO s. These increased costs would far outweigh the benefit in providing this service to needy and vulnerable groups, and ultimately lead to increased costs for the consumer. <i>Chamber of Commerce and Industry – WA, Queensland Meals on Wheels Association, Department of Human Services Victoria, Meals Victoria Incorporated, Home and Community Care (HACC) Outcomes.</i> • Another concern was difficulties with label adherence to food containers and font size. The proposal to have labels on all food containers supplied by DMOs will create difficulties for many services. Particularly in regard to label size, label type font size (e.g. 14 point is recommended by HACC for client information i.e. large enough for the frail aged client base to read), and label adhesion to different containers all present significant day to day operational issues for many services. <i>Australian Meals on Wheels Association (AMOWA), Queensland Meals on Wheels Association, Home and Community Care (HACC) Outcomes. NZ Dietetic Association, Te Waka Haura Public Health South (Healthcare Otago).</i> • Concerns regarding compliance by DMOs to FSANZ proposal. Agree that less onerous labelling than proposed is required to ensure compliance and the existence of services are maintained. <i>Queensland Meals on Wheels Association, Meals Victoria Incorporated, Home and Community Care (HACC) Outcomes, New Zealand Food Safety Authority.</i> • Concerns regarding the minimum prescribed information requirements for packaged meals supplied to DMOs as there is no equivalent to clause 6(4) whereby additional information can be requested. This may have particular significance for food intolerances, diet control, and food cultural issues. <i>NSW Food Authority.</i> • Do not support the proposed changes to the labelling requirements for DMO meals to be labelled with minimum prescribed information. <i>Chamber of Commerce and Industry – WA, Department of Human Services Victoria.</i>

Issue	Submitter Comments
Labelling of certain prescribed minimum information (continued)	<ul style="list-style-type: none"> • Several recommendations for exemptions included: • DMOs to continue to claim an exemption from labelling under subclause 2(1)(f) the food is delivered packaged and ready for consumption at the express order of the purchaser <i>Chamber of Commerce and Industry – WA</i>. • Supports the proposal to redefine the definition of package in Standard 1.1.1 to exclude meals served in hospital and other institutions to enable an exemption from the requirement to be labelled. <i>Department of Human Services Victoria</i>. • Requests that FSANZ review the requirement for labelling meals provided by DMOs and consider a full exemption for DMOs on food labelling requirements including for those meals sourced from third parties, particularly in rural and remote parts of regional Australia. <i>Home and Community Care (HACC) Outcomes</i>. • Mandatory warning and advisory statements are necessary for frozen meals but not considered necessary for freshly cooked delivered meals intended for immediate consumption. <i>New Zealand Dietetic Association, Te Waka Haura Public Health South (Healthcare Otago), New Zealand Food Safety Authority, Meals on Wheels (SA) Inc.</i> • Supports a minimalist approach given the exemplary food safety track record of DMOs and that concerns associated with recalls are not considered an issue. This can be attributed to food safety programs. <i>Meals on Wheels (SA) Inc, Department of Human Services Victoria, New Zealand Food Safety Authority</i>.
Nutrition labelling and health claims	<ul style="list-style-type: none"> • Agrees that an appropriate exemption for health and nutrition claims to help identify and facilitate meal delivery is warranted. <i>New Zealand Food Safety Authority</i>.
Other comments	<ul style="list-style-type: none"> • Supports a minimalist and carefully tailored approach which gives due recognition to the diversity of service provided which considers the volunteer nature of these services and the impact of increased labelling costs. <i>Australian Meals on Wheels Association (AMOWA), Queensland Meals on Wheels Association</i>. • Concerns regarding non-compliance and enforcement. Is it proposed that local Government would enforce labelling requirements? Some services are operated by Local Government, would they be policing themselves? <i>Queensland Meals on Wheels Association</i>. • Considers the definition of what constitutes “a packaged meal” and “at the express wish of the client” needs more clarification, as in some cases some services may be exempt. <i>Queensland Meals on Wheels Association</i>. • The definition of ‘express order’ should be expanded to clearly include the ‘Meals on wheels’ client base. <i>Meals on Wheels (SA) Inc</i>. • Proposes that Food Safety or Food Control Plans (FCP) is the best means of ensuring safe and suitable delivered meals and they identify all risks and suitable controls.

Issue	Submitter Comments
Other comments (continued)	<p>Compliance with suitability issues such as labelling would be part of a FCP proposed. It is recommended that guidance material be made available to be included in the proposed template FCP to assist with compliance. <i>New Zealand Dietetic Association, New Zealand Food Safety Authority, Te Waka Haura Public Health South (Healthcare Otago), Queensland Meals on Wheels Association.</i></p> <ul style="list-style-type: none"> • Recommends that a minimum font size be considered for the labelling information. Current requirements of the Code, state that labelling must be legible. However, the majority of the target market are visually impaired and will require a larger font size to be readable. <i>Te Waka Haura Public Health South (Healthcare Otago).</i>

Table 3.4: Submitters comments: Meals provided by hospitals and similar institutions.

Issue	Submitter Comments
General requirements	<ul style="list-style-type: none"> • Supports recommendations concerning labelling provisions for foods provided by hospitals and similar institutions. In this circumstance, information required to protect consumer health and safety and effect a product recall may be provided through other means. <i>Queensland Government, NSW Food Authority.</i> • Agrees with FSANZ’s recommendations that pre-packaged food items provided in hospitals, prisons and similar institutions which remain packaged until opened by the consumer should remain subject to normal ‘retail’ labelling. The drafting should ensure that covering a meal tray which includes pre-packaged items with alfoil does not provide a labelling exemption for those foods. <i>NSW Food Authority.</i>
Definition of a package	<ul style="list-style-type: none"> • Supports the exclusion from the definition of package where food served on a covered plate, cup, tray or other food container in prisons, hospitals or other similar institutions listed in clause 8 of Standard 1.2.1. However, this change as drafted appears to apply to food produced by any food business and not necessarily by the institution itself. <i>New Zealand Food Safety Authority.</i> • Considered the exemption needs to be more specific. Some pre-packaged foods purchased are not intended for individual retail sale, but also do not fall within the definition proposed under Standard 1.1.1 subclause (g). <i>Chamber of Commerce and Industry – WA, New Zealand Food Safety Authority.</i> • Proposes that where individually served meals are provided by an externally based caterer, they be exempted as is the case for fresh meals delivered ready to eat on delivery. <i>New Zealand Food Safety Authority.</i> • Proposes minimum labelling for the purpose of health and safety be required for meals that are intended to be stored and eaten later e.g. frozen meals. <i>New Zealand Food Safety Authority.</i>
Table to clause 8	<ul style="list-style-type: none"> • The table to Clause 8 defines a number of facilities. However, it does not appear to define establishments that provide food for families accompanying people in hospital or care. An example might be premises like the Ronald McDonald Houses. <i>Queensland Government.</i>
Mandatory warning and advisory statements	<ul style="list-style-type: none"> • We do not agree with the proposed approach and consider mandatory allergen declarations should be attached to the meal being delivered. • We understand that voluntary allergen warning statements are not addressed by the Australia New Zealand Food Standards Code. However, we take this opportunity to point out that despite regulatory labelling in the catering and manufacturing sector, contamination of food by allergens remains one of the most serious and difficult issues for the sector and consumers alike. <i>Allergy New Zealand.</i>

Table 3.5: Submitters' comments: Miscellaneous

Issue	Submitter Comments
Comments on Options	<ul style="list-style-type: none"> • Supports Option Two to amend the Code to provide greater clarity on the interpretation of labelling requirements. <i>Australian Pork Limited, Confectionery Manufacturers of Australasia Ltd, Food Technology Association of Victoria, Cerebos Foods, New Zealand Food Safety Authority, Queensland Government, Coles Group Ltd.</i> • Does not support Option 2 as it does not require the labelling of irradiated and genetically modified food. Strongly opposes amendment and requests compulsory labelling requirements for irradiated and genetically modified food including the source of origin. <i>Ivan Jeray (Private – Australia).</i> • Offers qualified support for Option 2. Does not support a number of the amendments proposed under regulatory option two. <i>Chamber of Commerce and Industry – WA.</i>
Drafting issues	<ul style="list-style-type: none"> • Standard 1.2.2 and amendment [3.2] needs to identify the clause to which the subclause belongs. • Standard 1.2.2 subclause (3) should presumably now refer to paragraph (1)(b) and new paragraph (2)(b). <i>NSW Food Authority.</i> • <i>Standard 1.2.1 clause 3(1)(c)</i>; the Authority notes that the clause has not been changed, however some concerns remain. First, an intra company transfer would not usually be regarded as a sale of food. Second, the provision would seem to impact unnecessarily on the practices such as bright-stacking canned foods for labelling at a later time in a different location. <i>NSW Food Authority.</i> • While implied, clause 6 does not clearly specify that information can be provided on the label instead of via accompanying documentation. It is recommended that the provision of information on the label, as an alternative to accompanying documentation, be described as meeting the requirements of clause 6, and/or the whole of standard 1.2.1. <i>Cerebos Foods.</i> • Subclause 6(1) includes the phrase 'subject to subclause (2)'. It is not clear whether this includes or excludes those foods in subclause 5(2). It is recommended that this phrase be reworded. <i>Cerebos Foods.</i> • Subclause 6(3) includes the phrase 'not required to bear a label'. It is assumed that this relates directly to subclause 5(2), however it is not clear. It is recommended that this phrase be reworded to 'not required to bear a label pursuant to subclause 5(2)', if this is the intended meaning. <i>Cerebos Foods.</i> • If inner packages/portion packs are added to the list of exemptions for food for catering purposes (as suggested) then subclause 6(3) should allow the additional information to be provided on the outer label / package rather than just accompanying documentation. <i>Cerebos Foods.</i>

Issue	Submitter Comments
Drafting issues (continued)	<ul style="list-style-type: none"> • Recommends that a consistent approach be used to describe requirements and exemptions in each section i.e. for food for retail sale and food for catering purposes. Currently, the drafting of inclusions/exclusions of requirements for standard 1.2.1 is not consistent between food for retail sale and food for catering purposes, as follows: • Clause 2 (food for retail sale) firstly describes exemptions, followed by requirements for these foods. <i>Cerebos Foods</i>. • Cause 5 (food for catering purposes) firstly describes requirements for all foods, followed by exemptions. Further details about requirements for exempt foods are included in the next clause. <i>Cerebos Foods</i>. • Notes that the table of provisions in the proposed Standard 1.2.1 in some cases are not consistent with the headings to the relevant clauses. <i>Queensland Government</i>.
Other Comments	<ul style="list-style-type: none"> • Fully supports the submissions of the AFGC's and the FBIA. <i>Unilever</i>. • We support the proposal to simplify the number of categories of food by dividing into two – food for retail sale and other sales. <i>Unilever</i>. • Concerned that FSANZ has not provided sufficient public consultation regarding the proposed labelling exemptions for genetically modified ingredients/irradiated food on food for catering purposes. <i>NSW Food Authority</i>. • Standards 1.5.2 and 1.5.3 are quite specific, with the consequence that alternative means of providing labelling information for these labelling elements is not provided. The Authority considers that changes to the Code of this nature should entail sufficient public consultation, for example by raising a separate proposal so that due consideration of the broader effect of these changes may be considered. <i>NSW Food Authority</i>.

Implementation and Enforcement Advisory Group

Role

The role of the Implementation and Enforcement Advisory Group (IEAG) is to provide an informal forum to discuss issues of enforcement and implementation related to the review of clause 2 in Standard 1.2.1.

Purpose

The purpose of the proposed IEAG is to:

- assist FSANZ in clarifying the scope of the review of clause 2 in Standard 1.2.1;
- provide information on current enforcement issues relating to compliance with clause 2 of Standard 1.2.1; and
- consider, provide feedback and discuss the proposed regulatory changes to clause 2 of Standard 1.2.1 from both an enforcement and implementation perspective.

Membership of the Committee since 2006

Membership of the IEAG since November 2006 is shown below. It should be noted that AQIS were no longer available to participate in the IEAG.

Mr Bill Porter	New South Wales Health Department
Mr Walter Arrow	Health Department of Western Australia
Ms Tenille Fort	Queensland Department of Health
Mr John van den Beuken	New Zealand Food Safety Authority

First Review Report

Executive Summary

The purpose of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale was to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements by amending Standard 1.2.1 – Application of Labelling and Other Information Requirements of the *Australia New Zealand Food Standards Code* (the Code) and other Standards with clauses connected to Standard 1.2.1.

In order for industry, governments, non-government organisations and consumers to benefit from improved regulations regarding labelling of food it is important to ensure that all labelling standards are applied consistently. In preparing this Proposal, it was FSANZ's intent to address issues of interpretation and application.

The approach taken by FSANZ in this Proposal was to provide clarity and greater certainty on existing labelling requirements, without mandating additional labelling requirements. The outcomes of the changes to the Code proposed by FSANZ are predominantly technical in nature and generally require little or no change to current requirements. There are few or no additional costs.

Re-opening matters of broad regulatory policy considered during the development of Standard 1.2.1 falls outside the scope of Proposal P272. Full evaluation of the risks and benefits of amending existing provisions that relate to matters of public health and safety requires comprehensive supporting evidence, including a full risk assessment; consideration of consumer needs and understanding; consideration of the impact on a range of product types; impacts on the catering trade; extensive consultation and a benefit cost analysis.

The FSANZ Board made a Final Assessment on this Proposal on 25 July 2007.

On 8 October 2007, the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) requested a First Review of Proposal P272 on the grounds that:

- it places unreasonable cost burdens on industry and consumers;
- it is difficult to enforce or comply with in both practical or resource terms; and
- it does not provide adequate information to enable informed choice

These grounds were made in relation to the labelling requirements for meals supplied by Delivered Meals Organisations (DMOs) and for small packages. FSANZ has prepared a review. A summary of the issues addressed in the First Review of Proposal P272 is detailed in Table 1.

Decision

FSANZ re-affirms the decision to amend Standards 1.1.1, 1.2.1, 1.2.2, 1.2.3, 1.2.5 and 1.2.11 in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations, hospitals and similar institutions and prisons.

Table 1. Issues addressed in the First Review of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale

(A) DELIVERED MEALS

ISSUE RAISED IN REVIEW REQUEST	FSANZ RESPONSE
<p>Unreasonable cost burdens on industry and consumers</p> <p>Current labelling requirements exempt meals delivered by DMOs from carrying a label. Proposed changes would result in new requirements and costs to DMOs that deliver meals that require reheating or thawing.</p> <p>There would be significant additional labelling costs to DMOs that provide chilled or frozen meals that would outweigh the benefit in managing the perceived risk.</p> <p>There is a risk that the cost of the proposed labelling requirements may lead to a reduction in service or increased cost to consumers. Any extra cost is likely to be passed onto the consumer.</p> <p>FSANZ is not proposing to introduce the same requirements on delivered meals as those for meals that are delivered to age care facilities or hospitals. This is inconsistent.</p>	<p>During the assessment of Proposal P272, FSANZ gave due regard to the potential impact of the proposed regulation on business and individuals and the economy. FSANZ found that the proposed amendments to the Code will have a low impact on business, including DMOs. The outcome of the Proposal meets FSANZ objectives. Proposal P272 does not add to the regulatory burden of DMOs, and, in many cases, reduces regulatory requirements.</p> <p>FSANZ considers that the costs of the health and safety related labelling requirements that remain for those delivered meals are commensurate with the public health risks they are intended to manage.</p> <p>There are currently no exemptions specific to meals supplied by DMOs: the Code requires foods (including meals delivered by DMOs) that are delivered packaged at the express order of the purchaser, but are not ready for consumption, to be fully labelled unless another exemption applies.</p> <p>FSANZ maintains that Proposal P272 would not result in additional labelling requirements for delivered meals. The current requirements have been reviewed to create certainty, to ensure that the information needs of the recipients of the service are met. This constitutes an overall benefit to delivered meals in Australia and New Zealand.</p> <p>Where DMOs are meeting requirements of the Code and not relying on an exemption, the Proposal significantly reduces labelling requirements on delivered meals and, therefore, delivers potential cost savings. Some cost would be incurred by DMOs that deliver meals not ready for immediate consumption, and are not complying with current labelling requirements.</p> <p>In relation to the point raised by the Ministerial Council – that the requirements for DMOs differ from those for meals that are delivered to age care facilities or hospitals – the requirements for DMOs are less demanding than those for these other facilities.</p>

ISSUE RAISED IN REVIEW REQUEST	FSANZ RESPONSE
<p>Difficult to enforce or comply with in both practical or resource terms</p> <p>Majority of consumers of meals supplied by DMOs would be unable to understand or read the information</p>	<p>While FSANZ acknowledges that, potentially, small fonts and lack of contrast can make it difficult for older persons to read labels, the legibility standard (Standard 1.2.9) requires that labels are legible. There are no documented issues relating to the readability of labels on delivered meals. The outcome of the Proposal meets FSANZ objectives and does not result in undue difficulties to enforce or comply with the Code in both practical or resource terms. A revision of generic readability requirements is outside the scope of Proposal P272 and will be handled as part of the proposed review of labelling.</p>
<p>Does not provide adequate information to enable informed choice</p> <p>There is little value in providing the required information on delivered meals because firstly, there is no known incidence of anaphylaxis caused by a delivered meal; secondly, there are systems in place to manage allergies in customers of DMOs; and lastly the system has worked well, i.e. there is no evidence of market failure</p>	<p>FSANZ reaffirms that the current labelling requirements for delivered meals are essential for protecting health and safety and to provide consumers with valued information. FSANZ considers that vulnerable populations, just as the general population, require adequate information to make choices. The outcome of the Proposal meets the FSANZ objective to provide adequate information to enable informed choice.</p>

(B) SMALL PACKAGES

ISSUE RAISED IN REVIEW REQUEST	FSANZ RESPONSE
<p>Unreasonable cost burdens on industry and consumers</p> <p>The Proposal adds to minimum labelling requirements of small packages, adding cost to industry. In regards to labelling of small packages, the Proposal will place an unreasonable cost burden on industry, as new packaging equipment will be required to fit additional information that is of little benefit to consumers.</p>	<p>P272 did not set out to consider amendment to labelling requirements for small packages. The current requirements for labelling small packages have been in effect for many years. Proposal P272 maintains the <i>status quo</i> and does not add to the regulatory burden of suppliers of food sold in small packages.</p>
<p>Difficult to enforce or comply with in both practical or resource terms</p> <p>The packages of very small articles of food are too small to make compliance with the standard possible without printing in an illegible font. The Proposal forces suppliers of food in small packages into non-compliance with Standard 1.2.9 – Legibility Requirements. The Proposal adds to minimum labelling requirements of small packages, increasing the difficulty of compliance.</p>	<p>Any food product on the market in Australia and New Zealand must be made and sold in a manner that meets the essential objective of a safe food supply. The labelling requirements for small packages have been in place for many years. The outcome of the Proposal meets FSANZ objectives and does not result in undue difficulties to enforce or comply with the Code in both practical or resource terms. FSANZ is aware of small packages that are currently complying with the requirements without compromising legibility.</p>

ISSUE RAISED IN REVIEW REQUEST	FSANZ RESPONSE
<p data-bbox="188 232 719 293">Does not provide adequate information to enable informed choice</p> <p data-bbox="188 331 783 392">The information provided on small packages is of little benefit to consumers.</p>	<p data-bbox="809 338 1394 546">FSANZ reaffirms that the current labelling requirements for small packages are essential for protecting health and safety, to provide consumers with valued information and provides the framework for efficiency in the market place. The outcome of the Proposal meets FSANZ objective to provide adequate information to enable informed choice.</p> <p data-bbox="809 584 1385 943">The labelling of small packages is a broad regulatory issue. Any change to small packages would affect a number of product types and this would require a full evaluation and extensive risk assessment, a benefit cost analysis and consideration of appropriate risk management measures. Enforceability could also be considered. In particular, the preferred approach by the confectionery industry that size items be considered as very small packages, with no or very limited information on the label, raises issues of significant complexity beyond the scope of Proposal P272.</p>

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INTRODUCTION

On 8 October 2007, the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) requested a First Review of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale.

1. Grounds for the Review Requested by the Ministerial Council

The Ministerial Council requested FSANZ review the Proposal P272 on the grounds, that:

- it places unreasonable cost burdens on industry and consumers;
- it is difficult to enforce or comply with in both practical or resource terms; and
- it does not provide adequate information to enable informed choice.

2. Background

2.1 Purpose and Scope of the Proposal

The purpose of Proposal P272 was to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements by amending Standard 1.2.1 – Application of Labelling and Other Information Requirements of the *Australia New Zealand Food Standards Code* (the Code) and other Standards with clauses connected to Standard 1.2.1.

In order for industry, governments, non-government organisations and consumers to benefit from improved regulations regarding labelling of food it is important to ensure that all labelling standards are applied consistently. In preparing this Proposal, it was FSANZ's intent to address issues of interpretation and application.

The approach taken by FSANZ in this Proposal was to provide clarity and greater certainty on existing labelling requirements, without mandating additional labelling requirements. The outcomes of the changes to the Code proposed by FSANZ are predominantly technical in nature and generally require little or no change to current requirements. There are few or no additional costs.

Re-opening matters of broad regulatory policy considered during the development of Standard 1.2.1 falls outside the scope of Proposal P272. Full evaluation of the risks and benefits of amending existing provisions that relate to matters of public health and safety requires comprehensive supporting evidence, including a full risk assessment; consideration of consumer needs and understanding; consideration of the impact on a range of product types; impacts on the catering trade; extensive consultation and a benefit cost analysis.

2.2 Current Standard

Food for retail sale and food for catering purposes, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code. This means that such food, must bear a label, which includes the following prescribed information:

- name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in accordance with Standard 1.2.3;
- a list of ingredients;
- date marking information in accordance with Standard 1.2.5;
- directions for use and storage (where required for health & safety reasons);
- nutrition labelling (unless specifically exempt);
- percentage labelling; and
- country of origin (in Australia only).

To determine if a food for retail sale or a food for catering purposes is exempt from labelling, it is important to consider the specific exemptions in subclause 2(1) in Standard 1.2.1. The specific exemptions apply where:

- the food is other than in a package (paragraph 2(1)(a));
- the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3 (paragraph 2(1)(b));
- the food is made and packaged on the premises from which it is sold (paragraph 2(1)(c));
- the food is packaged in the presence of the purchaser (paragraph 2 (1)(d));
- the food is whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables (paragraph 2(1)(e));
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser (paragraph 2(1)(f)); and
- the food is sold at a fund raising event (paragraph 2(1)(g)).

3. The Issues

Standard 1.2.1 was developed as part of a general review of the former *Australian Food Standards Code* within the context of a joint food standards system for Australia and New Zealand. As with other reviews of this kind, a number of issues, which were not foreseen during the development of the Standard, have emerged during the implementation of the Code.

In order to prevent confusion and provide adequate information to consumers to make informed choices it is important to ensure that all labelling standards are applied consistently.

Throughout the development of Proposal P272, stakeholders have provided comment on issues of particular concern to them, such as labelling of meals delivered by DMOs and labelling of confectionery items sold in small packages.

In the context of this Review, the Ministerial Council has raised concern about two distinct issues addressed in Proposal P272:

1. labelling requirements for meals delivered by Delivered Meals Organisations (DMOs); and
2. labelling of small packages, in particular confectionary items.

3.1 Delivered Meals

Matters such as the labelling requirements for packaged meals provided by DMOs and the labelling of meals provided in hospitals and similar institutions were not specifically considered during the development of Standard 1.2.1. Therefore, the current exemptions in Standard 1.2.1 do not apply in all of the circumstances in which these meals are currently being provided. In particular, DMOs are uncertain about their obligations in respect of labelling and there was a need to review and standardise these requirements for consistency in interpretation and application.

Since the Code came into effect in December 2002, FSANZ has received a number of enquiries from DMOs, predominantly from New South Wales, seeking clarification and confirmation of their obligations regarding the labelling of packaged delivered meals. There are several issues, which required further consideration in Proposal P272. These issues included:

- the current labelling requirements for packaged meals provided by DMOs;
- the appropriateness and application of exemptions which may apply to packaged meals provided by DMOs;
- nutrition labelling and health claims; and
- the appropriateness of country of origin labelling for meals provided by DMOs.

Paragraph 2(1)(f) of Standard 1.2.1 provides exemptions if *the food is delivered packaged and ready for consumption at the express order of the purchaser*. There have been several issues related to this paragraph and an ongoing reliance on this exemption creates uncertainty regarding the labelling requirements for delivered meals.

An inconsistent interpretation and application of the requirements in Standard 1.2.1 gives rise to a range of practices and associated compliance costs. Consequently, the current requirements in clause 2 in Standard 1.2.1 were reviewed to ensure that the essential risk management information needs of the recipients of the service are met and that DMOs continue to provide low cost, nutritious and safe meals.

3.2 Small Packages

The confectionery industry has raised concerns regarding the current labelling requirements for small packages arguing that labelling legibly and prominently is problematic. Objections to the *status quo* include the difficulties in labelling small confectionery items that are flow wrapped; impracticalities of providing larger packaging, difficulties in providing lot identification, and costs associated with compliance. Other manufacturers of small packages have not raised these concerns.

REVIEW ON GROUNDS REQUESTED BY THE MINISTERIAL COUNCIL

4. Meals provided by Delivered Meal Organisations (DMOs)

Throughout Australia and New Zealand, DMOs supply a wide variety of meals to the elderly and frail, convalescing and chronically ill, and those with disabilities. Meals are prepared in hospital or community kitchens or by commercial operators and delivered by volunteers affiliated with particular DMOs, such as the Red Cross or Meals on Wheels. The types of packaged meals provided by DMOs vary between services. Meals can be delivered to clients hot and ready for consumption, or chilled or frozen requiring reheating.

4.1 DMOs in Australia

There are currently over 900 DMOs in Australia. Most of these employ staff to manage the production and delivery of packaged meals, but also rely on a large number of volunteer staff to successfully run the service. In Australia, in 1999-2000, there were over 68,000 clients receiving meals in their home each month and over 36,000 meals on average were delivered daily¹⁵, largely by volunteers.

A large percentage of delivered meals are prepared in hospital kitchens. Kitchens catering exclusively to DMOs are the next largest provider of delivered meals. In total, the majority of all delivered meals in Australia are produced in recognised commercial establishments. FSANZ is aware that a number of rural DMOs obtain their meals from small rural hospitals, local pubs, or roadhouses.

From submissions, targeted stakeholder consultations and information from labelling surveys undertaken in Australia^{16,17}, it is clear that there are a range of services and labelling practices amongst DMOs. Some DMOs provide comprehensive labelling on meals provided to consumers, whereas others provide no labelling at all. Some DMOs label meals with directions for use and storage for hot and frozen meals, for example many hot delivered meals include the day the meal was produced and instructions for consumers to 'eat now'. Many frozen meals are labelled with storage and handling/preparation information including thawing and reheating instructions (oven and microwave), the use-by date and also the content or name of the meal.

The majority of DMOs are aware of clients' special dietary needs, including allergies and food preferences, although this information may not always be clearly outlined on the label of the delivered meal. DMOs currently use a variety of methods to ensure the correct meal is delivered to the client including producing in-house labels of client name, name of the food, allergens and other details.

¹⁵ Home and Community Care (HACC): HACC Service Provision 1999 – 2000

¹⁶ NSW Meals on Wheels Association (2003) The NSW Meals on Wheels Association – Labelling Survey Report, June 2003.

¹⁷ WA Meals on Wheels Association (2002) Survey of all Meals On Wheels Services in Western Australia, May 2002.

A survey undertaken by the NSW Meals on Wheels Association (NSW MOW) in 2003 revealed that most NSW MOW's services have some form of labelling. NSW MOW recommends five key labelling components on delivered meals: the name of the meal, general components of ingredients of the meal, use by date, name and address of the kitchen that has produced the meal and instructions on the correct heating/storage of the meal. However, of these key labelling components, only the use by date, the name of the meal and heating and storage instructions were included by more than half of the services that completed the survey.

In Victoria, local government is subsidised to supply 88% of delivered meals. The remainder are provided by non-government organisations. The Australian and Victorian Governments jointly provide this subsidy to the amount of A\$1.20 per meal through the Home and Community Care (HACC) program. Meal prices charged to consumers range from A\$5.00 to A\$9.00. The number of delivered meals is currently estimated at 4 million a year¹⁸ at a cost of A\$33.2 million¹⁹. In the main, the local government organisations manufacture their own meals while others source prepared meals from the commercial sector. In the late 1990's many kitchens operated by local government were closed as a result of local government amalgamations and the compulsory competitive tendering introduced by the Victorian Government. Subsequently, this has increased sourcing meals from the commercial sector, but the delivery of meals is still carried out by the DMOs. According to a service profile survey²⁰ over 50% of service providers use volunteers to deliver meals, 14% use paid staff, while the remainder use a combination of both.

4.2 DMOs in New Zealand

The New Zealand Ministry of Health administers a National Service Specification for the Meals on Wheels (MoWs) service throughout the country. The specification includes various aspects of the service, including processes to be used in the preparation of the meals, quality requirements, safety and efficacy and reporting requirements. Meals can be delivered hot (main meal), frozen (in rural areas only) or chilled (dessert only). Although there is no direct reference to the labelling of meals, 'guidance to clients regarding the storage, defrosting and cooking of frozen meals' and instructions for 'reheating methods used by the individual client' should be provided.

There is no umbrella organisation for the MOW service in New Zealand. There are a large number of service providers including hospital catering companies, hospital kitchens, rest homes, hotels, and Presbyterian Support. Volunteers organised by organisations such as the New Zealand Red Cross and Age Concern deliver the meals. During 2002, the Red Cross in New Zealand delivered 1.2 million meals.

From some targeted interviews carried out by FSANZ in 2006, it appears there is a range of labelling practices in New Zealand. Food for people on special diets is labelled on the meal and some providers put a date stamp, client's name or some reference to reheating. It is evident that MOW providers tend to provide clients with written information on use and storage of the meals when they join the service. In addition, any foods clients wish to avoid including allergenic foods, are noted when the client joins the service and some service providers also supply the clients with a copy of the menu.

¹⁸ State Vignette Victoria, National Meals on Wheels Conference, 9-11 September 2007, Adelaide, South Australia.

¹⁹ HDG Consulting Group (2004) Review of Home and Community Care (HACC) Program Food Services Final Report and Recommendation.

²⁰ *ibid*

4.3 Current Requirements for Food provided by DMOs

Due to the broad definition of ‘sell’ in the Model Food Act together with the definition of ‘retail sale’ in Standard 1.2.1, packaged meals provided by DMOs are considered to be ‘food for retail sale’. This means that food delivered by DMOs must bear a label that includes the following prescribed information:

- name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in Standard 1.2.3;
- a list of ingredients;
- date marking information in accordance with Standard 1.2.5;
- directions for use and storage (where required for health & safety reasons);
- nutrition labelling (unless specifically exempt);
- percentage labelling; and
- country of origin (in Australia only).

To determine if a food for retail sale is exempt from labelling, it is important to consider the specific exemptions in subclause 2(1) in Standard 1.2.1. The specific exemptions that are most relevant to delivered meals are:

- the food is other than in a package
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser

To qualify for an exemption from general labelling under paragraph 2(1)(f) of Standard 1.2.1 the delivered meal must satisfy *all* of the following criteria:

- must be delivered packaged
- must be ready for consumption
- must be at the ‘express order’ of the client

Considering the varying circumstances in which packaged meals are provided by DMOs, it is possible that in certain situations not all of these criteria will be satisfied. In practice this would mean that packaged meals provided by DMOs would require full labelling, as outlined in section 6.2 of this Report.

4.4 Proposed Requirements for Food provided by DMOs

FSANZ proposes that wherever a DMO delivers a meal that is ready for immediate consumption only mandatory declarations of certain substances in food outlined in Standard 1.2.3 (i.e. allergen information) need be displayed on or in connection with the food or provided to the purchaser upon request.

This exemption will apply to meals provided to DMOs (for example, from a third party such as a rural kitchen) as well as meals provided by DMOs to clients. In other words, FSANZ is proposing that meals delivered to DMOs for distribution have less stringent labelling requirements than meals supplied by caterers to hospitals or similar institutions.

This takes account of the practical limitations that exist in the delivered meals sector and minimises costs.

Where it is required, packaged meals supplied by DMOs and not ready for immediate consumption (e.g. a frozen meal) must bear a label setting out all the information prescribed in –

- (a) Standard 1.2.2 – Food Identification Requirements; and
- (b) Standard 1.2.3 – Mandatory Advisory Statements and Declarations; and
- (c) Standard 1.2.5 – Date Marking of Packaged Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage

This approach is consistent with the overall approach taken by FSANZ to limit labelling requirements on delivered meals.

4.5. Review on Grounds Requested by the Ministerial Council:

The cost impacts of Proposal P272 are discussed in Section 5.5.1. Issues of the practicality of packaging and compliance are addressed in Section 5.5.2. Consumer information needs are addressed in Section 5.5.3.

4.5.1 Unreasonable cost burdens on industry and consumers

The Ministerial Council review request raised the issue that current labelling requirements exempt meals delivered by DMOs from carrying a label. It argues that proposed changes would result in new requirements and costs to DMOs that deliver meals that require reheating or thawing and that there would be significant additional labelling costs to DMOs that provide chilled or frozen meals that would outweigh the benefit in managing the perceived risk.

The review request also suggested that there is a risk that cost of the proposed labelling requirements may lead to a reduction in service or increased cost to consumers. While the Ministerial Council was of the opinion that it is impossible to quantify the cost of labelling to DMOs as there are too many variables it argued that any extra cost is likely to be passed onto the consumer.

The Ministerial Council was of the opinion that FSANZ is not proposing to introduce the same requirements on delivered meals as those for meals that are delivered to age care facilities or hospitals. The Ministerial Council felt that this approach is inconsistent.

4.5.1.1 FSANZ response

FSANZ maintains that Proposal P272 would not result in additional labelling requirements for delivered meals.

To qualify for an exemption from general labelling under paragraph 2(1)(f) of Standard 1.2.1 the delivered meal must satisfy *all* of the following criteria:

- must be delivered packaged
- must be ready for consumption

- must be at the ‘express order’ of the client

There are currently no exemptions specific to meals supplied by DMOs: the Code required foods (including meals delivered by DMOs) that are delivered packaged at the express order of the purchaser, but are not ready for consumption, to be fully labelled unless another exemption applies. Paragraph 2(1)(f) of Standard 1.2.1 provides exemptions if *the food is delivered packaged and ready for consumption at the express order of the purchaser*. There have been several issues related to this paragraph and an ongoing reliance on this exemption creates uncertainty regarding the labelling requirements for delivered meals.

Consequently, the current requirements in clause 2 in Standard 1.2.1 have been reviewed to create certainty and to ensure that the information needs of the recipients of the service are met. This constitutes an overall benefit to delivered meals in Australia and New Zealand.

Where DMOs are meeting requirements of the Code and not relying on an exemption, the Proposal significantly *reduces* labelling requirements on delivered meals and therefore delivers potential cost savings to any DMOs that are currently fully compliant with the Code. Significant proportions of packaged delivered meals are currently already labelled, in many cases with information exceeding that required by the Proposal. Some cost would be incurred by DMOs that deliver meals not ready for immediate consumption, and are not complying with current labelling requirements.

FSANZ understands that there are particular concerns in Victoria, where food services are provided from a diverse mix of service models with some providers providing hot meals ready for consumption, some providing chilled meals, and some a combination of both. As a general trend, Victorian food service providers are moving away from hot delivered meals to introduce broader delivery timeframes and greater flexibility.

In a recent survey of Victorian service providers, the need for improved packaging and labelling was generally accepted²¹.

For those providers that are already planning to improve the labelling of their meals there would be no added cost and the Proposal would provide incentives for service providers to improve their service further, benefiting clients and related stakeholders. The benefits and costs of the proposed labelling requirements for the different kind of delivered meals supplied by providers are summarised in Table 2.

Table 2. Benefits and Costs of the Proposed Labelling Requirements

Type of delivered meals	Benefits	Costs
hot only	Reduced labelling requirements and costs	No added cost
hot and chilled	Some reduced labelling requirements and costs. Incentive to provide better service and to innovate	Some added cost, only for chilled meals that are not already fully labelled
chilled only	Incentive to provide better service and to innovate	Some added cost where not already fully labelled

²¹ HDG Consulting Group (2004) Review of Home and Community Care (HACC) Program Food Services Final Report and Recommendation.

The total estimated expenditure (direct costs) for delivered meals in Victoria in 2003 was A\$33.2 million, with the majority of this cost expended by local government. Under the current financial structure for delivered meals in Victoria, the majority of direct costs are met by the agency and their clients. Most increases in costs are most likely to be absorbed by the agency and to a smaller degree by their clients. This is supported by the recent review of the Victorian HACCC program food services, which found that the additional costs and administrative burden for implementing food safety regulations have been largely funded through agency resources.

In this context, it also needs to be considered that most of the possible labelling costs are one-off costs, and that there would be few ongoing costs once a labelling regime is in place. In addition, labelling for delivered meals does not require complete product packaging, label design and marketing. In many cases, simple stick-on labels would be sufficient and for small-scale operators hands written labels are adequate, as long as they are legible. In the case of warning statements (i.e. allergen labelling), for organizations that are determining individual patients needs already there are no additional costs relating to information needs, such as traceability of allergens.

The Bethwaite Review - Issues Paper states that progress has been made towards a more consistent legislative approach to food regulation²². This follows previous reviews that have pointed out the problems and costs associated with inconsistent food regulation and inconsistent enforcement of food regulations. Such uncertainties pose a major problem to food businesses and voluntary organisations alike.

This Victorian Competition and Efficiency Commission recommended that community groups should be subject to the same food regulation as other businesses, based on the general principle that regulations should focus on areas of high risk of health and safety, regardless of the type of business.

It recommended that high-risk activities undertaken by community groups, such as catering to vulnerable populations, should follow the same approach as their commercial equivalent²³.

It should be noted that Meals Victoria had a representative on the Commission's Round Table on Food Regulation and was one of seven community-based organizations that provided feedback on the impact of food regulation in the community sector.

Overall, FSANZ considers that the costs of the health and safety related labelling requirements that remain for those delivered meals that are not ready for immediate consumption are commensurate with the public health risks they are intended to manage and specifically provide ready access to important safety information.

In relation to the second point raised by the Ministerial Council – that the requirements for DMOs differ from those for meals that are delivered to age care facilities or hospitals – the requirements for DMOs are less demanding than those for these facilities.

²² Department of Health and Ageing (2007) Issue Paper - The Bethwaite Review. An Independent review commissioned by the Australian Government to identify how the food regulatory framework can be streamlined and made nationally consistent to improve the competitiveness of the Australian food industry.

²³ Victorian Competition and Efficiency Commission (2007) Simplifying the menu: food regulation in Victoria. Draft Report April 2007.

Under the Proposal, unless a specific exemption applies, meals delivered to hospitals and similar institutions must meet the more comprehensive labelling requirements of food for catering, or in some cases, the full requirements of food for retail sale, including:

- name of the food
- lot identification
- mandatory warning and advisory statements and declarations
- date marking
- directions for use and storage
- country of origin labelling (in Australia only)
- labelling requirements for genetically modified food
- labelling requirements for irradiated food
- supplier details must be provided on the label or in accompanying documentation with each delivery; and
- any remaining prescribed information, such as ingredient labelling, nutrition labelling, and any other information required by the Code, must be provided either on a label or in some other documentation.

4.5.1.2 Conclusion

During the assessment of this Proposal FSANZ gave due regard to the potential impact of the proposed regulation on business and individuals and the economy. FSANZ found that the proposed amendments to the Code will have a low impact on business, including DMOs. The outcome of the Proposal meets FSANZ objectives and Proposal P272 does not add to the regulatory burden of DMOs, and in many cases reduces regulatory requirements.

4.5.2 Difficult to enforce or comply with in both practical or resource terms

The Ministerial Council was concerned that the majority of consumers of meals supplied by DMOs would be unable to understand or read the information.

4.5.2.1 FSANZ response

The old *Australian Food Standards Code* and the *New Zealand Regulations 1984* contained many provisions specifically identifying and regulating key legibility criteria, such as standard type and type size, placement of information, uniform colour and type of font.

These criteria are no longer specifically prescribed in the Code except for warning statements. Instead, the Code requires that each word, statement, expression, or design ('information') required to be contained, written or set out in a label must be legible and prominent such as to afford a distinct contrast to the background and must be in English.

This requirement equally applies to all food labels and enforcement of readability on delivered meals would follow the same approach as on other foods sold to the public.

Small fonts can make it difficult for older or visually impaired persons to find needed information. FSANZ acknowledges that such persons require larger size fonts when reading and also might find it difficult to read writing with little contrast at any size font. This problem is not restricted to food labels.

A revision of generic readability requirements relating to delivered meals and other food for retail sale is outside the scope of P272 which was intended to clarify current requirements. This important and wide-ranging issue would be best addressed outside this Proposal where full consideration can be paid to age related impairment of vision and its effect on the readability of food labels.

FSANZ also acknowledges that depending on the older person's level of function, it may be appropriate to provide information about food, or to simply reinforce important food related behaviours. The *Well for Life* guide of Victorian Department of Human Services suggests that simplified label reading activities should be undertaken by community workers to improve the nutritional quality and variety of food eaten by older persons²⁴. Such activities can increase the understanding of DMOs' client bases in regards to labelling and further assist DMOs in improving their service to meet the needs of their clients better.

4.5.2.2 Conclusion

While FSANZ acknowledges that small fonts and lack of contrast can make it difficult for older or visually impaired persons to read labels, there are no documented issues relating to the readability of labels on delivered meals. DMOs are likely to provide their clients with appropriate labels, or provide additional assistance if needed. The outcome of the Proposal meets FSANZ objectives and does not result in undue difficulties to enforce or comply with the Code in both practical or resource terms. A revision of generic readability requirements is outside the scope of Proposal P272.

4.5.3 Does not provide adequate information to enable informed choices

The Ministerial Council argued that there is little value in providing the required information on delivered meals because firstly, there is no known incidence of anaphylaxis caused by a delivered meal and secondly, there are systems in place to manage allergies in customers of DMOs, and lastly the system has worked well, i.e. there is no evidence of market failure.

The Ministerial Council was of the opinion that the majority of consumers of meals supplied by DMOs would be unable to understand or read the information provided on the label.

4.5.3.1 FSANZ response

There are few studies on the incidence or recurrence of anaphylaxis in Australia but incidences are most likely under reported. Estimates are that up to 1/1000 adults experience at least one episode of anaphylaxis, 61% are food related²⁵. Death from anaphylaxis and related conditions is rare. Between 1997 and 2004, six deaths involved anaphylaxis attributed to an adverse food reaction²⁶ and 5515 hospital admissions occurred in Australia because of food related anaphylaxis. Over this time, admissions for anaphylaxis increased by 13% annually²⁷. FSANZ is of the opinion that the absence of evidence of anaphylaxis does not negate the necessity for appropriate risk management.

²⁴ Department of Human Services, Aged Care Branch and Public Health Group (2003) *Well for life* – Section 2: Help sheet 7: Nutrition related activities in group settings

²⁵ Mullins R.J. (2003) Anaphylaxis: risk factors for recurrence. *Clin. Exp. Allergy* 33: 1033-40

²⁶ Poulos L.M et al (2007) trends in hospitalisation for anaphylaxis, angioderma, and urticaria in Australia, 1993-1994 to 2004-2005 *J. Allergy Clin. Immunol.* 120:4, 878-84.

²⁷ .ibid.

Information on allergens is particularly important as with other foods, delivered meals may contain substances that may cause severe adverse reactions in sensitive individuals. It is also feasible that the meal may not always be consumed by the intended recipient, and this adds to the need to identify these substances clearly on the label. At present, the only way to prevent allergic reactions to foods is to avoid ingestion. Therefore, it is essential that allergy information is available to all consumers.

FSANZ is aware that not all DMOs have adequate systems in place to manage allergens and therefore labelling of allergens is considered an appropriate risk management measure. In the recent review, the capacity of HACCC food services to meet special dietary requirements in some areas and for some segments is listed as a weakness of the program. The largest segment of clients of DMOs in Victoria is short stay and low use clients (26% of those using the service). For this consumer segment, providing a professional assessment of dietary requirements may be difficult, and measures such as labelling play an important part in risk management.

The recipients of DMOs can represent a sensitive and vulnerable population. FSANZ considers that vulnerable populations, just as the general population, require adequate information to make choices. This view is reflected in the Rights and Responsibilities Statement of the HACCC program. The HACCC Program Statement of Rights and Responsibilities recognises that ‘Consumers of HACCC funded services retain their status as members of Australian society and enjoy the rights and responsibilities consistent with this status.’

HACCC consumers’ key rights within the HACCC Program include the right to be informed and consulted about available services and other relevant matters, and the right to choose from available alternatives²⁸.

Variety in diet is associated with better health in the elderly. It has been reported that by using descriptive menus unfamiliar foods are chosen more frequently and people reported more frequently that they had eaten well when they knew what they were eating. This is reflected in the increasing importance of packaging and labelling of delivered meals and shows that information provided on labels is valued by clients of DMOs.

For example, the major contractor to the Inner Metropolitan council in Victoria lists good quality product labelling incorporating a list of ingredients and instructions as one of the considerations for the future²⁹.

FSANZ does not currently have sufficient evidence to show that effectiveness of recalls and the safety of DMO clients would not be compromised with the removal of information considered essential for food recalls. Sufficient information identifying delivered meals is essential to facilitate food recalls, should they be required. The increased use of packaged meals not ready for consumption to vulnerable populations increases the need for such information on delivered meals to be available in the case of an emergency. The ability to carry out effective recalls might assist DMOs in resolving problems with meals in a speedy and cost-efficient manner.

²⁸ Victorian HACCC Program Manual, February 2003. 5. Rights and Responsibilities Statement

²⁹ HDG Consulting Group (2004) Review of Home and Community Care (HACCC) Program Food Services Final Report and Recommendation

4.5.3.2 Conclusion

FSANZ reaffirms that the current labelling requirements for delivered meals are essential to provide consumers with valued information. FSANZ considers that vulnerable populations, just as the general population, require adequate information to make choices. The outcome of the Proposal does meet FSANZ objective to provide adequate information to enable informed choice.

5. Small packages

A small package is defined under clause 1 of Standard 1.2.1 *as a package with a surface area of less than 100 cm²*. Many small packages are small, loose individual confectionery items that may be novelty shaped, and are sold out of display or self-serve dispensing units. However, many other foods are also sold in small packages, including cheeses and other dairy products, edible oil spreads, sauces and condiments, beverage whiteners and sugars and sweeteners.

5.1 Current Requirements and Requirements under Proposal P272

Proposal P272 maintains the *status quo* for labelling small packages, i.e. there has been no change in the labelling requirements for small packages. Currently, small packages are exempt from a number of labelling requirements and need only to be labelled with:

- the name of the food;
- the name and business address details of the supplier;
- mandatory warning and advisory statements; and
- in Australia, the country of origin.

In some circumstances, small packages need also to be labelled with the following:

- lot identification (only where the bulk package or container in which the food is contained does not provide this information);
- directions for use and storage (only where for reasons of public health and safety, consumers need appropriate directions for use or storage of the food); and
- date marking (only where the food should be consumed before a certain date because of health and safety reasons i.e. use-by-date).

Given that small package confectionery items are generally long-life, shelf-stable foods, it is unlikely that these items require directions for use and storage. However, other small package items, such as cheeses, may require directions for use and storage.

5.2 Review on Grounds Requested by the Ministerial Council

The cost impacts of Proposal P272 are discussed in Section 6.2.1. Issues of the practicality of packaging and compliance are addressed in Section 6.2.3. Consumer information needs are addressed in Section 6.3.4.

5.2.1 *Unreasonable cost burdens on industry and consumers*

The Ministerial Council argued that Proposal P272 would add to minimum labelling requirements of small packages, adding cost to industry. In regards to labelling of small packages, the Ministerial Council was of the opinion that the Proposal will place an unreasonable cost burden on industry, as new packaging equipment would be required to provide additional information of little benefit to consumers.

5.2.1.1 FSANZ response

It was highlighted in submissions to Proposal P272 that any major extension of labelling requirements would lead to significant costs to Industry. Proposal P272 retains the *status quo* for labelling of small packages; therefore, there are no added costs because there are no additional regulatory measures.

Following best practice regulation³⁰ FSANZ has undertaken a comprehensive assessment of the impacts of the regulatory options on business, government and individuals and found that the preferred regulatory option has only negligible impacts and compliance costs³¹. This indicates that even where there are proposed changes to the Code because of Proposal P272, these are predominantly technical in nature and generally require little or no change to current requirements, resulting in little or no additional cost to those currently complying with the Code. In the case where there may be some minor costs associated with the proposed amendments these are commensurate with the risk that is being managed. The Office of Best Practice Regulation reviewed the Final Assessment Report and the impact analysis and supports FSANZ's view.

The labelling of small packages is a broad regulatory issue, in which confectionery items cannot be considered in isolation. Any change to small packages would affect a number of product types and this would require a full evaluation and extensive risk assessment, a benefit cost analysis and consideration of appropriate risk management measures. In particular, the preferred approach by the confectionery industry that "one bite" size items be considered as very small packages, with no or very limited information on the label, raises issues of significant complexity beyond the scope of Proposal P272.

5.2.1.2 Conclusion

Proposal P272 maintains the *status quo* and does not add to the regulatory burden of suppliers of food sold in small packages. The outcome of the Proposal meets FSANZ objectives and does not place unreasonable cost burdens on industry and consumers.

5.2.2 *Difficult to enforce or comply with in both practical or resource terms*

The Ministerial Council submitted that the packages of very small articles of food are too small to make compliance with the standard possible without printing in an illegible font. It was argued that the Proposal would force suppliers of food in small packages into non-compliance with Standard 1.2.9 Legibility Requirements.

³⁰ Office of Best Practice Regulation (2006) Best Practice Regulation Handbook.

³¹ Final Assessment Report, Section 10 Impact Analysis and Attachment 3 - Best Practice Regulation – Preliminary Assessment and Business Cost Calculator Report

The Ministerial Council was concerned that the Proposal would add to minimum labelling requirements of small packages, increasing the difficulty of compliance.

5.2.2.1 FSANZ response

In submissions to the P272 Draft Assessment Report, FSANZ received details on the technical challenges in complying with the *status quo* labelling requirements including:

- for flow wrapped confectionery, where wrapping is rolled out through a machine on a continuous basis, it is difficult to determine where a cut will occur and consequently it is difficult to ensure that the appropriate elements are represented on individual labels ;
- labelling lot identification takes up one quarter of the wrapper and needs to be done by an in line high speed labelling system;
- twist wrap and novelty shaped items are difficult to label;
- it is impossible/difficult to conform to both the legibility requirements and requirements for small packages

While FSANZ recognises that there may be challenges in meeting the labelling requirements on some products, including those sold in small packages, FSANZ maintains that any food product on the market in Australia and New Zealand must be made and sold in a manner that ensures a safe food supply.

The labelling of small packages is a broad regulatory issue, in which confectionery items cannot be considered in isolation. Any change to small packages would affect a number of product types and this would require a full evaluation and extensive risk assessment, a benefit cost analysis and consideration of appropriate risk management measures. Enforceability could also be considered. In particular, the preferred approach by the confectionery industry that 'one bite' size items be considered as very small packages, with no or very limited information on the label, raises issues of significant complexity beyond the scope of Proposal P272.

5.2.2.2 Conclusion

Any food product on the market in Australia and New Zealand must be made and sold in a manner that meets the essential objective of a safe food supply. The labelling requirements for small packages have been in place for many years and industry has had the opportunity to adapt.

The outcome of the Proposal meets FSANZ objectives and does not change the current situation with respect to enforcement or compliance with the Code in both practical or resource terms. A revision of generic labelling requirements relating to small packages is outside the scope of P272 which was intended to clarify current requirements. This matter would be best dealt with separately, where full consideration can be paid to health and safety aspects on the basis of a comprehensive risk assessment.

5.2.3 Does not provide adequate information to enable informed choice

The Ministerial Council was concerned that the information provided on small packages is of little benefit to consumers.

5.2.3.1 FSANZ response

FSANZ maintains that the current labelling requirements for small packages are of benefit in providing consumers with valued information. Consumers generally have a good appreciation of the range of information that is available on packaged foods³². They use this information primarily to assist in determining product choice while shopping to make judgements about products based on the brand, price/value, ingredient and nutritional content versus taste and to learn more about the product, in order to seek reassurance that it is a 'safe' choice.

At an individual level, when reading labels consumers may assess the country of origin, date mark, how the food has been produced or treated, and whether the ingredient and nutritional content meets their needs.

Currently, all small packages are exempt from a number of labelling requirements and need only to be labelled with the name of the food, the name and business address details of the supplier, mandatory warning and advisory statements and, in Australia, the country of origin.

In some circumstances, small packages need also to be labelled with lot identification (only where the bulk package or container in which the food is contained does not provide this information), date marking (only where the food should be consumed before a certain date because of health and safety reasons i.e. use-by date) and directions for use and storage (where for reasons of public health and safety, consumers need appropriate directions for use or storage of the food). Given that pick 'n' mix confectionery items are generally long-life, shelf-stable foods, it is unlikely that these items require directions for use and storage.

There are a number of key items that allow consumers to make informed decisions:

- Where a label on a package of food includes a name or description of the food sufficient to indicate the true nature of the food, consumers can make an informed purchasing decision.
- The declaration of the presence of certain substances and if applicable, warning and advisory statements, are particularly important information as many food items including confectionery can contain substances that may cause severe adverse reactions in sensitive individuals. As was discussed above, the incidence of food related anaphylaxis is on the increase. Presently, the only way susceptible consumers can prevent allergic reactions to foods is to avoid them. On the other hand, allergy sufferers also risk having to avoid foods that pose no risk to them. Having to avoid foods can have a significant effect on individuals and their families and can result in emotional distress and disrupt social interaction.
- The presence of date marking is to provide a guide to consumers on the shelf life of a food in terms of food quality. This means the length of time a food should keep before it begins to deteriorate. In some circumstances, date marking may also indicate how long a food can be expected to remain safe. While a date mark may not be required on a confectionery item, it constitutes essential consumer information for perishable food sold in small packages.

³² FSANZ (2001) Food Labelling Issues: Consumer Qualitative Research Report

- In October 2005, the Ministerial Council decided to introduce country of origin labelling on packaged food to achieve more balanced information flows so consumers can make better-informed purchasing decisions when purchasing foods. There is no evidence to suggest that this decision does not extend to small packages.

There are also some key issues regarding information necessary to carry out effective food recalls:

- Information identifying the food (lot identification number and/or date mark and name and address of supplier) is essential to assist in food recalls. There have been a number of recalls on confectionery items and there is no evidence that small packages are less likely to be recalled than larger packages. This supports the need for such information on packaged confectionery, including those sold in small packages.
- Effective recalls also assist manufacturers in resolving product failures in a speedy and cost-efficient manner. There have been a number of recalls on confectionery items, including cases where allergens have not been declared. This support the need for such information on packaged confectionery. FSANZ does not currently have sufficient evidence to show that effectiveness of recalls and the safety of consumers would not be compromised with the removal of information considered essential for food recalls or that effective, alternative risk management options are available.
- The labelling of small packages is a broad regulatory issue, in which confectionery items cannot be considered in isolation. Any change to small packages would affect a number of product types and this would require a full evaluation and extensive risk assessment, a benefit cost analysis and consideration of appropriate risk management measures. Enforceability could also be considered. In particular, the preferred approach by the confectionery industry that 'one bite' size items be considered as very small packages, with no or very limited information on the label, raises issues of significant complexity beyond the scope of Proposal P272.

5.2.3.2 Conclusion

FSANZ re-affirms that the current labelling requirements for small packages are essential to provide consumers with valued information and provides the framework for efficiency in the market place. The outcome of the Proposal meets FSANZ objective to provide adequate information to enable informed choice.

6. Consultation

FSANZ received 56 written submissions in response to the Initial Assessment Report and 26 written submissions in response to the Draft Assessment Report for this Proposal. Overall, the majority of submitters were in support of a review and amending the labelling requirements in clause 2 in Standard 1.2.1 of the Code. Issues identified from submissions formed the basis of targeted consultation with key stakeholder groups.

Prior to the Initial Assessment, FSANZ formed an Implementation and Enforcement Advisory Group (IEAG) to provide advice from an enforcement perspective on issues included in this Proposal.

The IEAG had representation from the Health Departments in New South Wales, Western Australia, Queensland and the New Zealand Food Safety Authority (NZFSA) and the Australian Quarantine and Inspection Service (AQIS). The IEAG met on three occasions in 2003.

During Draft Assessment, FSANZ reformed the IEAG with representation from the NSW Food Authority, the NZFSA, and from the Health Departments in Queensland and Western Australia. The IEAG met twice in October 2006.

FSANZ also provided further advice on the regulatory options being considered in this Proposal to Australian and New Zealand stakeholders. In a series of meetings convened in October and November 2006, FSANZ consulted with DMOs, with providers of meals in hospitals and similar institutions, and with interested food industry representatives. Issues raised as part of group discussions in these sessions have been taken into consideration in developing the amendments to the Code.

During the Final Assessment, FSANZ reconvened with the IEAG with representation from the NSW Food Authority, the NZFSA, and from the Health Departments in Queensland and Western Australia. The IEAG met once in June 2007.

Following Final Assessment, FSANZ engaged in further discussions with DMOs. FSANZ attended the Meals on Wheels National Conference, gave a presentation on the labelling requirements for DMOs and provided a fact sheet on labelling which is now also available from the FSANZ website.

FSANZ has undertaken discussion with the confectionery industry regarding the labelling of small packages throughout the development of this proposal. This included several teleconferences and face-to-face meetings with the Confectionery Manufacturers of Australasia (CMA). As an outcome of these meetings, FSANZ advised the CMA that a revision of the requirements for small packages was not within the scope of Proposal P272. FSANZ further explained that when considering regulatory approaches to small packages, FSANZ takes account of the wide variety of small packaged items currently in the marketplace.

The Standards contained in Part 1.2 of the Code operate as ‘horizontal’ Standards that apply across all categories of food. The advantage of horizontal standards is that specific principles, such as providing adequate information to consumers to make informed choices, can be applied across all foods, not just those specific commodities described within a Standard.

7. Options

There are three options proposed for consideration under this review:

1. re-affirm the prepared variations to the Code in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations; or
2. re-affirm prepared variations to the Code in relation to food for catering purposes and food for retail sale, subject to amendments to labelling of meals provided by delivered meal organisations and labelling of small packages as considered necessary by FSANZ; or

3. withdraw approval of the draft variation to Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5 and Standard 1.2.11.

CONCLUSION AND RECOMMENDATION

The First Review concludes that the preferred option is Option 1, which is to reaffirm the decision at Final Assessment to amend Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5 and Standard 1.2.11 in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations.

Attachments

1. Draft Variations to the *Australia New Zealand Food Standards Code*

Draft Variations to the *Australia New Zealand Food Standards Code*

Standards or variations to standards are considered to be legislative instruments for the purposes of the Legislative Instruments Act (2003) and are not subject to disallowance or sunseting.

To commence: On gazettal, other than clause 7 of Standard 1.2.1, which commences 12 months from gazettal

[1] *Standard 1.1.1 of the Australia New Zealand Food Standards Code is varied by –*

[1.1] *inserting in clause 2, after the definition of fund raising events –*

Editorial note:

Fund raising event organisers should be aware that there may be New Zealand, State Territory or Commonwealth legislative requirements that need to be complied with in order to conduct the event.

[1.2] *inserting in clause 2 –*

hamper means a decorative basket, box or receptacle containing any number of separately identifiable food items.

Editorial note:

A hamper may also contain non - food items such as decorative cloths, glasses and dishes.

handling of food includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

[1.3] *omitting from clause 2, paragraph (d) in the definition of package, substituting –*

- (d) transportation vehicles; or
- (e) a vending machine; or
- (f) a hamper; or
- (g) food served on a covered plate, cup, tray or other food container in prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1.

[2] *Standard 1.2.1 of the Australia New Zealand Food Standards Code is varied by substituting –*

STANDARD 1.2.1

APPLICATION OF LABELLING AND OTHER INFORMATION REQUIREMENTS

Purpose

This Standard sets out the application of general labelling and other information requirements contained in Part 1.2 and labelling and information requirements specific to certain foods in Chapter 2 of this Code. This Part sets out the labelling requirements for food for sale and information that must be provided in conjunction with the sale of certain foods, where labelling is not required. Food Product Standards in Chapter 2 may impose additional labelling and information requirements for specific classes of food.

Table of Provisions

1	Interpretation
1A	Application
2	Labelling of food for retail sale
3	Labelling of food not for retail sale etc.
4	Provision of information in relation to food etc.
5	Labelling of food for catering purposes
6	Provision of information in relation to food for catering purposes
7	Labelling of packaged meals supplied to, or by delivered meals organisations
8	Types of other similar institutions

Clauses

1 Interpretation

In this Part –

assisted service display cabinet means an enclosed or semi-enclosed display cabinet which requires a person to serve the food as requested by the purchaser.

food for catering purposes includes food supplied to catering establishments, restaurants, canteens, schools, hospitals, and institutions where food is prepared or offered for immediate consumption.

food for retail sale means food for sale to the public and includes food prior to retail sale which is –

- (a) manufactured or otherwise prepared, or distributed, transported or stored; and
- (b) not intended for further processing, packaging or labelling.

intra company transfer means a transfer of food between elements of a single company, between subsidiaries of a parent company or between subsidiaries of a parent company and the parent company.

small package means a package with a surface area of less than 100 cm².

transportation outer means a container or wrapper which encases packaged or unpackaged foods for the purpose of transportation and distribution and which is removed before the food is used or offered for retail sale or which is not taken away by the purchaser of the food.

1A Application

Despite subclause 1(2) of Standard 1.1.1, the definition of ‘food for retail sale’ commences and applies exclusively from the date of gazettal.

2 Labelling of food for retail sale

(1) Subject to subclauses (2) and (4), food for retail sale must bear a label setting out all the information prescribed in this Code, except where –

- (a) the food is other than in a package; or
- (b) the food is in an inner package not designed for individual sale. Despite this, individual portion packs in a container or wrapper with a surface area of 30 cm² or greater must bear a label containing information in accordance with clauses 3 and 4 of Standard 1.2.3; or
- (c) the food is made and packaged on the premises from which it is sold; or
- (d) the food is packaged in the presence of the purchaser; or
- (e) the food is whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables; or
- (f) the food is delivered packaged, and ready for consumption, at the express order of the purchaser; or
- (g) the food is sold at a fund raising event; or
- (h) the food is packaged and displayed in an assisted service display cabinet.

(2) Despite subclause (1), food for retail sale must comply with any requirements specified in –

- (a) subclauses 1(1) or (2) of Standard 1.2.2 – Food Identification Requirements; and
- (b) subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations; and
- (c) paragraph 2(1)(a) or subclause 2(2) of Standard 1.2.5 – Date Marking of Packaged Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage; and
- (e) subclauses 4(2) and 4(3) of Standard 1.2.8 – Nutrition Information Requirements; and
- (f) subclause 2(3) of Standard 1.2.10 – Characterising Ingredients and Components of Food; and

- (g) subclauses 2(2) and 2(3) of Standard 1.2.11 – Country of Origin Requirements (Australia only); and
- (h) subclause 4(3) of Standard 1.5.2 – Food produced using Gene Technology; and
- (i) clause 6 of Standard 1.5.3 – Irradiation of Food; and
- (j) subclause 4(3) and clauses 5, 6, and 10 of Standard 2.2.1 – Meat and Meat Products; and
- (k) clause 3 of Standard 2.2.3 – Fish and Fish Products; and
- (l) subclause 3(2) of Standard 2.6.3 – Kava; and
- (m) subclause 3(5) of Standard 2.6.4 – Formulated Caffeinated Beverages; and
- (n) subclauses 3(1), 3(2), 3(3) and 3(4) of Standard 2.9.4 – Formulated Supplementary Sports Foods.

(3) Paragraph 2(1)(f) of this Standard does not apply to food sold from a vending machine.

(4) Where food is sold in a hamper –

- (a) subclause 2(1) does not apply; and
- (b) a package of food must bear a label setting out all of the information prescribed in this Code; and
- (c) unpackaged food must be accompanied with documentation setting out the information prescribed in this Code.

Editorial note:

For the purposes of paragraph 2(4)(c) the information may be within, or attached to the outer of the hamper.

3 Labelling of food not for retail sale etc.

(1) Subject to subclause (2), food other than food for–

- (a) retail sale; or
- (b) catering purposes; or
- (c) supplied as an intra company transfer;

must bear a label containing the information prescribed in Standard 1.2.2, except where the –

- (d) food is other than in a package; or
- (e) food is in an inner package or packages contained in an outer package where the label on the outer package includes the information prescribed in Standard 1.2.2; or
- (f) food is in a transportation outer and the information prescribed in Standard 1.2.2 is clearly discernable through the transportation outer on the labels on the packages within.

(2) The information prescribed in clause 3 of Standard 1.2.2 is not required to be on the label on a food where that information is provided in documentation accompanying that food.

4 Provision of information in relation to food not for retail sale etc.

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

- (a) retail sale; or
- (b) catering purposes; or
- (c) supplied as an intra company transfer;

must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the –

- (d) compositional requirements of this Code; and
- (e) labelling or other declaration requirements of this Code.

(2) The information referred to in subclause (1) must be supplied in writing where the relevant authority or purchaser has so requested.

5 Labelling of food for catering purposes

(1) Subject to subclause (2), food for catering purposes must bear a label setting out all of the information prescribed in –

- (a) clauses 1 and 2 of Standard 1.2.2 – Food Identification Requirements; and
- (b) Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations; and
- (c) Standard 1.2.5 – Date Marking of Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage; and
- (e) Standard 1.2.11 – Country of Origin Requirements (Australia only); and
- (f) Standard 1.5.2 – Food produced using Gene Technology; and
- (g) Standard 1.5.3 – Irradiation of Food.

(2) Subclause (1) does not apply to –

- (a) food not in a package; or
- (b) whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables; or
- (c) an outer package where the –
 - (i) label on the outer package includes the information prescribed in Standard 1.2.2; and
 - (ii) food in the inner package is labelled in accordance with subclause (1).

6 Provision of information in relation to food for catering purposes

(1) Subject to subclause (2), information prescribed in this Code, other than that prescribed in subclause 5(1), is not required to be on the label of food for catering purposes where that information is provided in documentation.

(2) The information prescribed in clause 3 of Standard 1.2.2 is not required to be on the label of food for catering purposes where that information is provided in documentation accompanying that food.

(3) Where food for catering purposes is not required to bear a label, that food must be accompanied by documentation containing all of the information prescribed in subclause 5(1) and clause 3 of Standard 1.2.2.

(4) Where a purchaser or relevant authority has so requested, food which is for catering purposes, must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the –

- (a) compositional requirements of this Code; and
- (b) labelling or other declaration requirements of this Code.

7 Labelling of packaged meals supplied to, or by delivered meal organisations

(1) Clauses 2 and 5 of this Standard do not apply to packaged meals supplied to, or by delivered meal organisations.

(2) Packaged meals supplied by delivered meal organisations and ready for immediate consumption must comply with the requirements in subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3.

(3) Packaged meals supplied by delivered meal organisations and not ready for immediate consumption must bear a label setting out all the information prescribed in –

- (a) Standard 1.2.2 – Food Identification Requirements; and
- (b) Standard 1.2.3 – Mandatory Advisory Statements and Declarations; and
- (c) Standard 1.2.5 – Date Marking of Packaged Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage.

(4) Packaged meals prepared by food businesses and supplied to delivered meal organisations must comply with the requirements in subclauses (2) and (3).

(5) For the purposes of subclause (4), a food business means a business, enterprise or activity that involves –

- (a) the handling of food intended for sale; or
- (b) the sale of food;

regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion.

8 Types of other similar institutions

(1) The facilities listed in Column 1 of the Table to this clause are ‘other similar institutions’ for the purposes of Standard 1.1.1 and Part 1.2 of this Code.

Table to clause 8

Column 1	Column 2
Facility	Definition
Acute care hospitals	<p>Establishments which provide at least minimal medical, surgical or obstetric services for inpatient treatment or care, and which provide round-the-clock comprehensive qualified nursing services as well as other necessary professional services. Most patients have acute conditions or temporary ailments and the average stay per admission is relatively short. Acute care hospitals include:</p> <ul style="list-style-type: none"> (a) Hospitals specialising in dental, ophthalmic aids and other specialised medical or surgical care; (b) Public acute care hospitals; (c) Private acute care hospitals; (d) Veterans' Affairs hospitals.
Psychiatric hospitals	<p>Establishments devoted primarily to the treatment and care of inpatients with psychiatric, mental or behavioural disorders including any:</p> <ul style="list-style-type: none"> (a) Public psychiatric hospital; (b) Private psychiatric hospital.
Nursing homes for the aged	<p>Establishments which provide long-term care involving regular basic nursing care to aged persons and including any:</p> <ul style="list-style-type: none"> (a) Private charitable nursing home for the aged; (b) Private profit nursing home for the aged; (c) Government nursing home for the aged.
Hospices	<p>Freestanding establishments providing palliative care to terminally ill patients, including any:</p> <ul style="list-style-type: none"> (a) Public hospice; (b) Private hospice.
Same day establishments for chemotherapy and renal dialysis services	<p>Including both the traditional day centre/hospital that provides chemotherapy and/or renal dialysis services and also freestanding day surgery centres that provide chemotherapy and/or renal dialysis services including any:</p> <ul style="list-style-type: none"> (a) Public day centre/hospital (b) Public freestanding day surgery centre (c) Private day centre/hospital (d) Private freestanding day surgery centre that provides those services. <p>Day centres/ hospitals are establishments providing a course of acute treatment on a full-day or part-day non- residential attendance basis at specified intervals over a period of time.</p> <p>Freestanding day surgery centres are hospital facilities providing investigation and treatment for acute conditions on a day-only basis.</p>
Respite care establishments for the Aged	<p>Establishments which provide short-term care including personal care and regular basic nursing care to aged persons.</p>
Same-day aged care establishments	<p>Establishments where aged persons attend for day or part-day rehabilitative or therapeutic treatment.</p>
Low care aged care establishments	<p>Establishments where aged persons live independently but on-call assistance, including the provision of meals, is provided if needed.</p>

[3] **Standard 1.2.2 of the Australia New Zealand Food Standards Code is varied by –**

[3.1] *omitting the Purpose, substituting –*

This Standard requires that certain information must be included on the label on a food in order to be able to identify the food in question. Where the food is unpackaged it is required to be displayed on or in connection with the food, or provided to the purchaser upon request. The labels on a package of food for retail sale, other than in the circumstances listed in Standard 1.2.1 must include, in addition to the information prescribed in this Standard, the information prescribed elsewhere in Part 1.2 of this Code.

[3.2] *omitting subclause 1(2) and the Editorial note, substituting –*

(2) Where the food is displayed for retail sale other than in a package –

- (a) the prescribed name of the food, where the name of a food is declared in this Code to be a prescribed name; and
- (b) in any other case, a name or a description of the food sufficient to indicate the true nature of the food;

must be –

- (c) displayed on or in connection with the display of the food; or
- (d) provided to the purchaser upon request.

(3) For the purposes of paragraphs (1)(b) and 2(b), the definitions of certain foods as set out in Chapter 2 of this Code, do not of themselves establish the name of the food.

Editorial note:

For example, the definitions for –

- 1. Bread in Standard 2.1.1
- 2. Fermented milk in Standard 2.5.3
- 3. Ice cream in Standard 2.5.6

[3.3] *omitting clause 3 and the Editorial note, substituting –*

(1) The label on a package of food must include the name and business address in Australia or New Zealand, of the supplier of the food.

(2) A vending machine from which food is sold must clearly display in a prominent place on, or in the vending machine, the name and business address in Australia or New Zealand, of the supplier of the food.

(3) The label on a hamper must include the name and business address in Australia or New Zealand, of the supplier of the food.

Editorial note:

‘Supplier’ is defined in Standard 1.1.1 to include the packer, manufacturer, vendor or importer of the food in question.

[4] *Standard 1.2.3 of the Australia New Zealand Food Standards Code is varied by –*

[4.1] *omitting subclause 2(2), substituting –*

(2) Where a food listed in column 1 of the Table to this clause is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the advisory statement listed in relation to that food in column 2 of the Table, must be –

- (a) displayed on or in connection with the display of the food; or
- (b) provided to the purchaser upon request; or
- (c) displayed on or in connection with food dispensed from a vending machine.

[4.2] *omitting subclause 3(2), substituting –*

(2) Where a food listed in column 1 of the Table to this clause, is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the warning statement listed in relation to that food in column 2 of the Table, must be –

- (a) displayed on or in connection with the display of the food; or
- (b) displayed on or in connection with food dispensed from a vending machine.

[4.3] *omitting subclause 4(2), substituting –*

(2) The presence of the substances listed in the Table to this clause must be –

- (a) declared on the label on a package of the food; or
- (b) where the food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 –
 - (i) declared on or in connection with the display of the food; or
 - (ii) declared to the purchaser upon request; or
- (c) displayed on or in connection with food dispensed from a vending machine.

[4.4] *omitting subclause 5(2), substituting –*

(2) Where food containing any of the substances referred to in subclause (1) is not required to bear a label pursuant to clause 2 of Standard 1.2.1, an advisory statement to the effect that excess consumption of the food may have a laxative effect, must be –

- (a) displayed on or in connection with the display of the food; or
- (b) provided to the purchaser upon request; or
- (c) displayed on or in connection with food dispensed from a vending machine.

[5] *Standard 1.2.5 of the Australia New Zealand Food Standards Code is varied by –*

[5.1] *omitting the heading and Purpose, substituting –*

STANDARD 1.2.5

DATE MARKING OF FOOD

Purpose

This Standard prescribes a date marking system for food and the form in which those foods must be date marked. The Standard requires food, with some exceptions, to be date marked, and prohibits the sale of food after the expiration of the use-by date, where such a date mark is required. In particular, clause 2 of this Standard sets out the circumstances in which a use-by date must be used instead of a best-before date.

[5.2] *omitting the Editorial note immediately after subclause 2(1), and subclause 2(2), substituting –*

(2) Where the food is displayed for retail sale other than in a package its use – by date must be –

- (a) displayed on, or in connection with the display of the food; or
- (b) provided to the purchaser upon request.

Editorial note:

FSANZ's *Guide to the Use of 'Use-by' and 'Best-Before' Dates for Food Manufacturers* provides guidance on paragraphs 2(1)(a) and (b).

Standard 1.2.1 sets out the exemptions to the general labelling requirements in this Code, and provides a definition of 'small package'.

(3) The label on a package of bread with a shelf life less than 7 days, may include instead of a best-before date –

- (a) its baked-on date; or
- (b) its baked-for date.

[6] **Standard 1.2.11** of the *Australia New Zealand Food Standards Code* is varied by –

[6.1] *omitting subclause 1(3), substituting –*

(3) This Standard does not apply to food sold to the public by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1 where the food is offered for immediate consumption.

[6.2] *omitting paragraph 2(3)(b), substituting –*

- (b) where the food is in a refrigerated assisted service display cabinet, the size of type on the label must be at least 5 mm.

[6.3] *omitting subclause 2(4)*

[6.4] *inserting in the Editorial note immediately following subclause 2(4) –*

‘Assisted service display cabinet’ is defined in Standard 1.2.1.
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Second Review Report

Executive Summary

The purpose of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale was to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements by amending Standard 1.2.1 – Application of Labelling and Other Information Requirements of the *Australia New Zealand Food Standards Code* (the Code) and other Standards with clauses connected to Standard 1.2.1.

In order for industry, governments, non-government organisations and consumers to benefit from improved regulations regarding labelling of food it is important to ensure that all labelling standards are applied consistently. In preparing this Proposal, it was FSANZ's intent to address issues of interpretation and application.

In general, the approach taken by FSANZ in this Proposal was to provide clarity and greater certainty on existing labelling requirements, without mandating additional labelling requirements. Re-opening matters of broad regulatory policy considered during the development of Standard 1.2.1 fell outside the scope of Proposal P272.

The FSANZ Board made a Final Assessment on this Proposal on 25 July 2007.

On 8 October 2007, the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) requested a First Review of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale. FSANZ re-affirmed the decision to amend Standards 1.1.1, 1.2.1, 1.2.2, 1.2.3, 1.2.5, and 1.2.11 in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations.

On 11 February 2008, the Ministerial Council requested a Second Review of Proposal P272 on the grounds that:

- it placed unreasonable cost burdens on industry and consumers;
- it was difficult to enforce or comply with in both practical or resource terms; and
- these grounds were made in relation to the following:
 - labelling requirements for delivered meals supplied by Delivered Meals Organisations (DMOs);
 - date marking of foods exempt from bearing a label setting out all the information requirements prescribed in the Code;
- other issues:
 - new exemption for food packaged and displayed in assisted service display cabinets;
 - provision of information in relation to food for catering purposes; and
 - description of the food on foods exempt from bearing a label.

FSANZ has prepared a review. A summary of the issues addressed in the Second Review of Proposal P272 is detailed in Table 1.

Decision

FSANZ re-affirms the decision to amend Standards 1.1.1, 1.2.2, 1.2.3 and 1.2.11 in relation to food for catering purposes and food for retail sale, subject to drafting amendments specified in this Second Review.

The reasons for the decision are:

- Overall, Proposal P272 has provided clarity and greater certainty on the interpretation and application of labelling and information requirements by amending Standard 1.2.1-Application of Labelling and Other Information Requirements and other Standards with clauses connected to Standard 1.2.1.
- FSANZ proposes to modify the amendments that require disclosure of the name or description of a food exempt from bearing a label such that suppliers of food have more flexibility on how to provide this information. This will lower any costs that may be incurred by food suppliers, but ensures that consumers are entitled to request key information about the food they are purchasing.
- FSANZ proposes to further clarify the information requirements for food for catering purposes by a minor amendment to paragraph 5(1)a of Standard 1.2.1. This technical amendment does not change the proposed requirements for food for catering purposes.
- FSANZ has excised from the proposed legal drafting those amendments concerned with labelling meals supplied by Delivered Meal Organisations and date marking of food for retail sale exempt from bearing a label.

The issues in point 4 will be addressed as new Proposals for which FSANZ will undertake supplementary work, such as additional risk assessments, further consideration of consumer needs and understanding, more consideration of the impact on a range of product types, additional consultations, and supplementary benefit cost analyses.

Table 1. Issues addressed in the Second Review of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale

(A) DELIVERED MEALS

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council considered that the proposed changes would result in new requirements and costs to DMOs that deliver meals that would outweigh the benefit from managing the perceived risk.</p> <p>Further points raised by the</p>	<p>After further consultation with representatives of the jurisdictions, FSANZ has excised those amendments from Standard 1.2.1 that are concerned with labelling meals supplied by Delivered Meal Organisations for the following reasons:</p> <ul style="list-style-type: none"> • Excising the amendments effectively restores the <i>status quo</i> until further work can be carried out to resolve the issues.

Issue Raised in Review Request	FSANZ Response
<p>Ministerial Council were:</p> <ul style="list-style-type: none"> • There is ambiguity around the labelling requirements for chilled and frozen meals delivered at the express order of the purchaser • There is a risk that increased labelling requirements may lead to a reduction in service or increased cost to consumers. • There are processes already in place to ensure allergies are managed • Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments. 	<ul style="list-style-type: none"> • FSANZ will develop a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultations, and a benefit cost analysis. • The Proposals will address the ambiguities around the labelling of chilled and frozen delivered meals and will include a review of how allergies are managed by DMOs • Based on the evidence available at Final Assessment, FSANZ considered that the costs of the proposed labelling requirements were in proportion to the risks and provided access to important safety information. However, further consideration should be given to the benefits and cost of labelling of delivered meals. • The amendments proposed by FSANZ were intended to create regulatory certainty and to meet the needs of recipients of the service. On available evidence, this would have constituted an overall benefit to delivered meals services in Australia and New Zealand. This benefit may still be realised by considering further options.

(B) DATE MARKING OF FOODS EXEMPT FROM BEARING A LABEL

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council had significant concerns with the scope, enforcement, and application of the proposed requirement to provide use-by dates for food exempt from bearing a label.</p> <p>In particular the Ministerial Council noted that:</p> <ul style="list-style-type: none"> • There is a lack of clarity; by definition, a use-by date has no meaning under the Code except for packaged food. • Use-by dates might be required for common take-away foods and this is an onerous requirement for food suppliers. • It is difficult to determine the use-by date on food once removed from a package. • Food suppliers may lack the necessary expertise to provide accurate information. 	<p>After further consultation with representatives of the jurisdictions, FSANZ has excised those amendments from Standards 1.2.1 and 1.2.5 that are concerned with date marking of food for retail sale that is exempt from bearing a label for the following reasons:</p> <ul style="list-style-type: none"> • It was the intention of the Proposal that a use-by date be provided on unpackaged food (when required), and that this could be done verbally on-request. Excising the amendments effectively restores the <i>status quo</i> until further work can be carried out to resolve the issues. • FSANZ will develop a proposal to address this matter and during assessment will collect supplementary evidence, including additional risk assessments, consultations, and a benefit cost analysis. • FSANZ is of the opinion that further consideration should be given to allow suppliers of food more flexibility on how to provide information that clearly indicates how long a food exempt from labelling can be expected to remain safe for consumption. • During Final Assessment, FSANZ considered the impact of the amendments on business would be minor. However, after further consultation FSANZ considers this conclusion should be reviewed after collecting more evidence.

Issue Raised in Review Request	FSANZ Response
<p>Inaccuracies may confuse consumers.</p> <ul style="list-style-type: none"> • Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments. 	<ul style="list-style-type: none"> • FSANZ agrees there are some remaining ambiguities and uncertainties in the drafting of Standard 1.2.1, as well as a potential issue with the definition of ‘use-by’ date in Standard 1.2.5. These issues have been temporarily resolved by excising the relevant amendments. FSANZ will consider the drafting issues raised in the Review further if the outcome of future work shows that amendments to the Code are necessary • During consultation following completion of Final Assessment, Industry has raised further issues, in particular their dissatisfaction with the use-by date provision of the Code <i>per se</i>. These issues extend beyond the scope of the current Proposal and would require a complete review of date marking requirements.

(C) NEW EXEMPTION FOR FOOD PACKAGED AND DISPLAYED IN ASSISTED SERVICE DISPLAY CABINETS

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council considers that it is unclear what the proposed new exemption relates to and that there are enforcement and compliance difficulties with the exemption.</p>	<p>After further consultation with representatives of the jurisdictions, FSANZ re-affirms the amendment to Standards 1.2.1 in relation to food packaged and displayed in assisted service display cabinets for the following reasons:</p> <ul style="list-style-type: none"> • The purpose and application of the amendment has been clarified in this report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1. • The proposed exemption is underpinned by a workable and clear definition of ‘assisted service display cabinet’ provided in the draft Standard. A similar definition has worked well in regards to country of origin labelling. • It is a common practice for food businesses to purchase food and then package portions of the food for hygienic display and sale. FSANZ considers it inappropriate that such products must be fully labelled. • The new exemption allows food wrapped for hygienic purposes to be exempt from labelling where the consumer can ask for information required for safety and informed choice.

(D) PROVISION OF INFORMATION IN RELATION TO FOOD FOR CATERING PURPOSES

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council considers there are conflicts between the subclauses of clause 6 of Standard 1.2.1 and that this causes enforcement and compliance difficulties. The Ministerial Council also considers that some of the requirements place an unreasonable cost burden on industry.</p>	<p>After further consultation with representatives of the jurisdictions FSANZ re-affirms the amendments to Standards 1.2.1 in relation to provision of information in relation to food for catering purposes set out in clauses 5 and 6 with minor amendments for the following reasons:</p> <ul style="list-style-type: none"> • The purpose and application of Clause 6 of Standard 1.2.1 has been clarified in this Report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1 • FSANZ proposes to further clarify the information requirements for food for catering purposes by a minor amendment to paragraph 5(1)a of Standard 1.2.1. This technical amendment does not change the proposed requirements for food for catering purposes. • The approach taken by FSANZ provides greater certainty on labelling and information requirements of food for catering purposes without mandating additional requirements. Therefore, there are no unreasonable cost burdens to industry. • The new clause 6 clearly sets out the information requirements for foods for catering purposes. • Subclauses 6(1) ensures that retailers of food have the information needed to meet their obligations under the Code, but are flexible in how this information may be provided by the caterer, i.e. documentation rather than on the label. • Subclause 6(2) gives the supplier of the food intended for catering the option to provide the information required by Standard 1.2.2 in documentation accompanying the food, rather than on the label. This is consistent with the requirements that apply to food not intended for retail sale, e.g. foods delivered to a factory for further processing. • In some circumstances, food for catering purposes is exempt from labelling. In these cases, subclause 6(3) requires information which otherwise would be provided on the label to be provided in documentation. This is a reasonable and practical provision. • Subclause 6(4) is intended to cover situations where information would not as a matter of course be included on the label or in documentation, but would need to be specifically requested by the food handlers or food service operators to enable them to comply with the Code.

(E) DESCRIPTION OF THE FOOD ON FOODS EXEMPT FROM BEARING A LABEL

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council expressed concern about the requirement to provide the name of a food on a package if the food is exempt from bearing a label. It was argued that to require labelling of common take-away foods (e.g. ready to eat hamburgers) would be an onerous obligation for food suppliers.</p>	<p>After further consultation with representatives of the jurisdictions FSANZ:</p> <ol style="list-style-type: none"> 1. re-affirms the decision to amend Standard 1.2.1 in relation to providing the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food, and 2. proposes to modify the amendments to Standard 1.2.2 so that wherever a food is exempt from bearing a label this information can be displayed on or in the connection with the display of the food, or provided to the purchaser on request. <p>The reasons are as follows:</p> <ul style="list-style-type: none"> • Under the approach put forward at Final Assessment, for unpackaged food and food displayed unpackaged before sale the name of the food already can be made available on request rather than displayed on the food. FSANZ is proposing to extend this flexible approach to all food exempt from bearing a label under Standard 1.2.1. • The modified approach gives suppliers of food more flexibility. As a result, any possible cost that may be incurred will be lower, but the approach ensures that consumers are entitled to request information sufficient to indicate the true nature of the food they are purchasing. • Packaged foods exempt from bearing a label are often provided in an assisted service environment and consumers have reasonable opportunity to request more information on the food. In the case of the name of the food, food suppliers would have this information readily available to pass onto consumers if asked to do so.

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INTRODUCTION

On 11 February 2008, the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) requested a Second Review of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale.

1. Grounds for the Review Requested by the Ministerial Council

The Ministerial Council requested FSANZ review the Proposal P272 on the grounds that:

- it placed unreasonable cost burdens on industry and consumers
- it was difficult to enforce or comply with in both practical or resource terms

2. Background

2.1 Purpose and Scope of the Proposal

The purpose of Proposal P272 was to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements by amending Standard 1.2.1 – Application of Labelling and Other Information Requirements of the *Australia New Zealand Food Standards Code* (the Code) and other Standards with clauses connected to Standard 1.2.1.

In order for industry, governments, non-government organisations and consumers to benefit from improved regulations regarding labelling of food it is important to ensure that all labelling standards are applied consistently. In preparing this Proposal, it was FSANZ's intent to address issues of interpretation and application.

2.2 Information requirements and labelling requirements

The Code sets out *information requirements* for food. Not all food has to provide all the information requirements mentioned in the Code, but some information, such as information on allergens, applies in almost all circumstances. The Code allows information to be provided in a number of way including:

- on a food label
- in documentation
- in documentation accompanying the food
- with the display of the food
- verbally or in writing on request.

In some circumstances, information requirements are triggered by the way the food is represented to the final consumer of the food e.g., where there are characterising ingredients or the food carries a nutrition claim. This may trigger information requirements down the supply chain, even though the foods that were the ingredients of the final food did not themselves carry the representation or claim.

The Code also sets out *labelling requirements* as distinct from information requirements.

A food may be exempt from bearing a label, but that does not necessarily provide an exemption from providing this information. This information may still be required by the Code, but in a format other than a food label.

2.4 Current Standard

Food for retail sale and food for catering purposes, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code, which includes the following prescribed information:

- name of the food
- lot identification
- supplier details
- mandatory warning and advisory statements and declarations in accordance with Standard 1.2.3
- a list of ingredients
- date marking information in accordance with Standard 1.2.5
- directions for use and storage (where required for health & safety reasons)
- nutrition labelling (unless specifically exempt)
- percentage labelling
- country of origin (in Australia only)

To determine if a food for retail sale or a food for catering purposes is exempt from labelling, it is important to consider the specific exemptions in subclause 2(1) in Standard 1.2.1. The specific exemptions apply where:

- the food is other than in a package (paragraph 2(1)(a))
- the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3 (paragraph 2(1)(b))
- the food is made and packaged on the premises from which it is sold (paragraph 2(1)(c))
- the food is packaged in the presence of the purchaser (paragraph 2 (1)(d))
- the food is whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables (paragraph 2(1)(e))
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser (paragraph 2(1)(f))
- the food is sold at a fund raising event (paragraph 2(1)(g))

3. The Issues

The purpose of Proposal P272 was to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements by amending Standard 1.2.1 and other Standards with clauses connected to Standard 1.2.1.

In the context of this Review, the Ministerial Council raised concerns about two major issues addressed in Proposal P272, and three other minor issues:

1. labelling requirements for delivered meals supplied by Delivered Meals Organisations (DMOs);
2. date marking of foods exempt from bearing a label setting out all the information requirements prescribed in the Code; and
3. other issues:
 - new exemption for food packaged and displayed in assisted service display cabinets
 - provision of information in relation to food for catering purposes
 - description of the food on foods exempt from bearing a label

3.1 Labelling requirements for meals delivered by Delivered Meals Organisations (DMOs)

Since the Code came into effect in December 2002, FSANZ has received a number of inquiries seeking clarification and confirmation regarding the labelling of delivered meals.

The labelling requirements for meals provided by DMOs were not specifically considered during the development of Standard 1.2.1. Inconsistent interpretation and application of the requirements in Standard 1.2.1 led to a range of practices and associated costs. DMOs are uncertain about their obligations in respect of labelling and some stakeholders, including some jurisdictions, argued that there is a need for consistency in interpretation and application of labelling requirements for delivered meals.

Consequently, the current requirements of Standard 1.2.1 were reviewed to ensure the essential information needs of the recipients of the service are met and that DMOs continue to provide an efficient service. Several issues were considered in Proposal P272 including:

- the current labelling requirements for delivered meals
- exemptions which may apply to delivered meals
- nutrition labelling and health claims on delivered meals

3.2 Date marking

Currently, some of the key safety information available to consumers from labels on packaged food does not have to be disclosed by food suppliers if similar foods meet one of the exemptions under subclause 2(2) of Standard 1.2.1. This includes a use-by-date where the food should be consumed before a certain date because of health or safety reasons. FSANZ considered that the use-by date of unpackaged food was important information for consumers of such foods.

3.3 Other Issues

3.3.1 New exemption for food packaged and displayed in assisted service display cabinets

It is a common practice for food businesses to purchase food and then package portions of the food for hygienic display and sale. FSANZ considers it inappropriate that such products must be fully labelled because they were presented packaged in order to comply with food hygiene requirements.

The new exemption proposed allows food wrapped for hygienic purposes to be exempt from labelling where the consumer can ask for information required for safety and informed choice.

3.3.2 Provision of information in relation to food for catering purposes

There is a clear distinction in nature and purpose between food supplied to food businesses such as restaurants and caterers for further preparation and processing (*food for catering purposes*), and food sold to the public by restaurants, caterers and other retailers of food (*food for retail sale*).

Wherever food is sold to the public it is defined as food for retail sale, and the labelling requirements of food for retail sale apply.

Currently, Standard 1.2.1 sets out information requirements that apply equally to food for retail sale and to food for catering purposes. However, in many cases, the information requirements are more relevant to food for retail sale. Stakeholders considered that separate, more relevant and appropriate exemptions and information requirements specifically for food for catering would be more practical. FSANZ has therefore reviewed Standard 1.2.1 to develop provisions that are better suited to food for catering purposes.

3.3.3 Description of the food on foods exempt from bearing a label

Currently, some of the information available to consumers from labels on packaged food is not required to be disclosed by food suppliers under subclause 2(2) of Standard 1.2.1. This includes a name or description of the food sufficient to indicate the true nature of the food. FSANZ considered that this information was important for consumers of such foods and therefore reviewed the information requirements of Standard 1.2.1 and any consequential amendments to Standard 1.2.2 – Food Identification Requirements

REVIEW ON GROUNDS REQUESTED BY THE MINISTERIAL COUNCIL

4. Meals provided by Delivered Meal Organisations (DMOs)

Throughout Australia and New Zealand, DMOs supply a wide variety of meals to the elderly and frail, convalescing and chronically ill, and those with disabilities. Meals are prepared in hospital or community kitchens or by commercial operators and delivered by volunteers affiliated with particular DMOs, such as the Red Cross or Meals on Wheels. The types of packaged meals provided by DMOs vary between services. Meals can be delivered to clients hot and ready for consumption, or chilled or frozen requiring reheating.

4.1 Current Requirements

Due to the broad definition of ‘sell’ in the Model Food Act, together with the definition of ‘retail sale’ in Standard 1.2.1, packaged meals provided by DMOs are considered to be ‘food for retail sale’. This means that currently food delivered by DMOs must bear a label that includes the following prescribed information:

- name of the food
- lot identification
- supplier details
- mandatory warning and advisory statements and declarations in Standard 1.2.3
- a list of ingredients
- date marking information in accordance with Standard 1.2.5
- directions for use and storage (where required for health & safety reasons)
- nutrition labelling (unless specifically exempt)
- percentage labelling
- country of origin (in Australia only)

To determine if a food for retail sale is exempt from labelling, it is important to consider the specific exemptions in subclause 2(1) in Standard 1.2.1. The specific exemptions that are most relevant to delivered meals are:

- the food is other than in a package
- the food is delivered packaged, and ready for consumption, at the express order of the purchaser

To qualify for an exemption from general labelling under paragraph 2(1)(f) of Standard 1.2.1 the delivered meal must satisfy *all* of the following criteria:

- must be delivered packaged
- must be ready for consumption
- must be at the 'express order' of the client

Considering the varying circumstances in which packaged meals are provided by DMOs, in certain situations not all of these criteria can be satisfied. For example, meals may not be ready for consumption when they reach the recipient. Where these conditions are not met, packaged meals provided by DMOs require full labelling.

4.2 Proposed Requirements

FSANZ proposed that wherever a DMO delivers a meal that is ready for immediate consumption only mandatory declarations of certain substances in food outlined in Standard 1.2.3 (i.e. allergen information) need be displayed on or in connection with the food or provided to the purchaser upon request.

This exemption would apply to meals provided to DMOs (for example, from a third party such as a rural kitchen) as well as meals provided by DMOs to clients. In other words, FSANZ proposed that meals delivered to DMOs for distribution have less stringent labelling requirements than meals supplied by caterers to hospitals or similar institutions. This takes account of the practical limitations that exist in the delivered meals sector and minimises costs.

However, where it is required, packaged meals supplied by DMOs and not ready for immediate consumption (e.g. a frozen meal) must bear a label setting out all the information prescribed in:

- (a) Standard 1.2.2 – Food Identification Requirements; and
- (b) Standard 1.2.3 – Mandatory Advisory Statements and Declarations; and
- (c) Standard 1.2.5 – Date Marking of Packaged Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage.

4.3. Review on Grounds Requested by the Ministerial Council: Unreasonable cost burden on industry and consumers and difficult to enforce or comply with in both practical or resource terms

In the Ministerial Council Review request, the issue was raised that current labelling requirements can be interpreted to provide exemption from labelling to almost all meals delivered by DMOs. It was argued that on this basis, the proposed changes would result in new requirements and costs to DMOs that deliver meals that are not ready for immediate consumption (e.g. foods that need reheating) and that there would be significant additional costs to DMOs that would outweigh the benefit in managing the perceived risk. Furthermore the Ministerial Council stated that processes are already in place to ensure allergies are managed by DMOs.

The Review request also suggested there is a risk that cost of the proposed labelling requirements may lead to a reduction in service or increased cost to consumers. The Ministerial Council was of the opinion that any extra cost is likely to be passed onto the consumer, the majority of whom are pensioners.

The Ministerial Council stated that there is ambiguity around the labelling requirements for chilled and frozen meals delivered at the express order of the purchaser. The Ministerial Council commented that Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments.

4.4 FSANZ response

The amendments proposed by FSANZ were intended to create regulatory certainty and to ensure that the information needs of the recipients of the service are met. On available evidence, this would have constituted an overall benefit to delivered meals services in Australia and New Zealand. This benefit may still be realised by considering further options.

There are currently no exemptions specific to meals supplied by DMOs: the Code required foods (including meals delivered by DMOs) that are delivered packaged at the express order of the purchaser, but are not ready for consumption, to be fully labelled unless another exemption applies.

Paragraph 2(1)(f) of Standard 1.2.1 provides exemptions if *the food is delivered packaged and ready for consumption at the express order of the purchaser*. There have been several issues related to this paragraph and an ongoing reliance by DMOs on this exemption would maintain the current uncertainty about the labelling requirements for delivered meals. In contrast, an amendment setting out information and labelling requirements specific to meals delivered by DMOs would create certainty for DMOs and enforcement agencies and would ensure that the information needs of the recipients of the service are met. FSANZ proposes to address the ambiguities around the labelling of chilled and frozen delivered meals further in a new proposal.

In the First Review, FSANZ emphasised that information on allergens is a critical issue for delivered meals. Like other foods, delivered meals may contain substances that may cause severe adverse reactions in sensitive individuals. It is also possible that the meal will not always be consumed by the intended recipient. FSANZ is aware that not all DMOs may have adequate systems in place to manage allergens. FSANZ therefore proposes that a review of how allergies are managed by DMOs should be part of any new Proposal dealing with labelling of delivered meals.

Based on the evidence available at Final Assessment, FSANZ considered that the costs of the health and safety related labelling requirements for delivered meals were commensurate with the public health risks, and provided ready access to important safety information. In the Final Assessment report, FSANZ argued where food is delivered ready for consumption, information could be provided by the person delivering the meal if requested by the recipient. FSANZ also argued that where the meal is designed to be stored and eaten later, key information should be provided on the label given there would be no one present the recipient could ask for information. However, FSANZ agrees that further consideration should be given to the benefits and cost of labelling of delivered meals.

4.5 Conclusion

In consultation with representatives of the jurisdictions, FSANZ has decided to excise the amendments regarding delivered meals, which effectively restores the *status quo* until further work can be carried out to resolve the issues. FSANZ will prepare a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultation, and a benefit cost analysis.

5. Date Marking

Subclause 2(2) in Standard 1.2.1 sets out the information requirements that apply to food for retail sale when exempt from bearing a label. Although there are some exceptions, generally, the required information can either be displayed on or in connection with the display of the food, or alternatively, provided to the purchaser upon request.

Some key information about unpackaged food is currently not captured by the information requirements. This includes a use-by-date where the food should be consumed before a certain date because of health or safety reasons.

5.1 Current Requirements

There are currently no requirements in the Code that suppliers of food for retail sale exempt from bearing a label must provide consumers with date marking information.

In the case of foods that must be labelled, the food supplier is responsible for determining where a 'use-by' date should be used.

Most raw foods such as meat, chicken, and fish where there is a later cooking process to kill food poisoning bacteria that may be present do not require a use-by date. Ready-to-eat chilled foods may need to be date-marked with a 'use-by' date.

This applies mainly to foods that may contain food poisoning bacteria that will grow at refrigeration temperatures, will support the growth of food poisoning bacteria that may be present to dangerous levels before the food has noticeably spoiled; and that will not be cooked or otherwise processed to make it safe before being eaten.

5.2 Proposed Requirements for date marking of food for retail sale when exempt from bearing a label

FSANZ proposed a new information requirement for a use-by date where food exempt from labelling should be consumed before a certain date because of health or safety reasons. FSANZ intended that the use-by date could be provided on or in connection with the display of the food or provided to the purchaser on request. The draft amendments required that where the food is exempt from labelling but is displayed and sold in a package the use-by date must be on the label.

5.3 Review on Grounds Requested by the Ministerial Council: Unreasonable cost burdens on industry and consumers and difficult to enforce or comply with in both practical or resource terms

The Ministerial Council raised a number of issues regarding the proposed requirements. These included concerns about the enforceability of the proposed drafting, the need to provide use-by dates for food exempt from bearing a label, insufficient flexibility on how such information can be provided by food suppliers and the range of foods that may be required to provide this information.

The Ministerial Council considered that the proposed amendments lack clarity, and the current definition of use-by date in Standard 1.2.5 only refers to packaged foods and was not amended to be consistent with the proposed requirements for unpackaged foods.

Furthermore, under the amendments, use-by dates might be required for common take-away foods and the Ministerial Council considered this an onerous requirement for food suppliers. They also felt that it would be difficult to determine the use-by date for food that has been removed from a package prior to retail sale, and that food suppliers may lack the expertise to determine use-by dates in such circumstances. Inaccurate use-by dates may then be confusing to consumers.

The Ministerial Council commented that Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments.

5.4 FSANZ response

Consumers need date marking at the point of sale to decide if a food is safe to eat (use-by date) or if it has retained all of its quality attributes (best-before date). FSANZ is of the opinion that the approach taken in Proposal P272 would provide important information to consumers in relation to the use-by date of foods that do not need to be labelled.

FSANZ agrees further consideration should be given to allow suppliers of food more flexibility on how to provide information that clearly indicates how long a food exempt from labelling can be expected to remain safe for consumption.

FSANZ will prepare a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultations, and a benefit cost analysis.

FSANZ agrees there are some remaining ambiguities and uncertainties in the drafting of Standard 1.2.1, as well as a potential issue with the definition of ‘use-by’ date in Standard 1.2.5. These issues have been temporarily resolved by excising the relevant amendments. FSANZ will consider the drafting issues raised in the Review further if the outcome of future work shows amendments to the Code are necessary.

It was always the intention that a use-by date be provided *on-request*, but the current drafting requires it to be *on the label of the food*. To clarify, the problem arises in situations where the food is exempt from general labelling requirements but is displayed and sold in a package. In such cases, the use-by date would have to be provided on the label. FSANZ agrees that consideration should be given to allow suppliers of food more flexibility on how to provide the name of the food and information that clearly indicates how long a food can be expected to remain safe for consumption.

FSANZ acknowledges that where labelling is not mandated under the *status quo*, the additional information requirements would have an impact on food suppliers. During Final Assessment, FSANZ considered that the impact on business would be minor. However, after further consultation with food suppliers FSANZ considers that this conclusion should be reviewed after collecting additional evidence and economic analysis.

During consultation following completion of Final Assessment, industry raised further issues, in particular their dissatisfaction with the use-by date provisions of the Code *per se*. A voluntary approach of providing consumers with ‘consume within’ information (72 hours has generally been used) has been widely used in the absence of other date marking requirements, and industry would like the flexibility to maintain this approach. Unfortunately, these concerns were not raised during the standard consultation processes. This issue extends beyond the scope of Proposal P272, which was restricted to reviewing the application of existing labelling requirements. To address this issue would require a complete review of the date marking requirements of the Code, including a comprehensive risk assessment, cost benefit analysis and consumer research.

5.5 Conclusion

After further consultation with representatives of the jurisdictions, FSANZ has excised those amendments from Standards 1.2.1 and 1.2.5 that are concerned with date marking of food for retail sale that is exempt from bearing a label for the following reasons:

It was the intention of the Proposal that a use-by date be provided on unpackaged food (when required) and that this could be done verbally on-request. Excising the amendments effectively restores the status quo until further work can be carried out to resolve the issues. FSANZ will prepare a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultations and a benefit cost analysis.

6. Other issues

6.1 New exemption for food packaged and displayed in assisted service display cabinets

Where products are sold packaged, unless an exemption in Standard 1.2.1 applies, the food must be fully labelled. It is a common practice for food businesses to purchase food and then package portions of the food in clear, plastic food wrap for display and sale.

This occurs when larger items such as cheeses and pates are cut into smaller ready to sell/serve portions, and these portions are then wrapped to maintain freshness and for easy handling. Such products are generally sold by weight and weighed in front of the purchaser. Currently, the complete uncut item is exempt from bearing a label. However, once cut or portioned and wrapped is considered to be packaged and required to be fully labelled. In this situation (under the requirements before Proposal P272) all relevant information must still be provided by the supplier of the product, but it may be more practical that all relevant information is available to the purchaser on request or displayed within connection to the food rather than on the label.

FSANZ does not consider it necessary for such products to be fully labelled when they are presented packaged, simply in order to comply with food hygiene requirements.

However, providing drafting that explicitly exempts packaging for reasons of food hygiene is not feasible for a number of reasons:

- most packaging fulfils some food safety function in addition to providing information, maintaining quality and serving marketing purposes
- it would be difficult for enforcement officers to enforce such a requirement
- it would exempt too broad a range of products from labelling requirements
- the core issue is not about the packaging *per se*, but about how best to provide consumers with information without being impractical or placing an unreasonable cost burden on food suppliers.

6.1.1 Current Requirements

Where products are sold packaged, unless an exemption in subclause 2(1) of Standard 1.2.1 applies, the food must be fully labelled. If the food is displayed unpackaged however, the exemption subclause 2(1)(a) *the food is other than in a package* of Standard 1.2.1 will apply.

It is a common practice for small and medium sized food businesses to purchase unpackaged food and then package the food in clear, plastic food wrap and display the food for self-service. In Australia, this practice complies with Standard 3.2.2 – Food Safety Practices and General Requirements, in particular, subclauses 8(1) and 8(4):

8(1) *A food business must, when displaying food, take all practicable measures to protect the food from the likelihood of contamination.*

8(4) *A food business must not display for sale on any counter or bar, any ready-to-eat food that is not intended for self-service unless it is enclosed, contained or wrapped so that the food is protected from likely contamination.*

6.1.2 Proposed Requirements

In the Final Assessment Report, FSANZ proposed to provide an exemption for wrapped food items that are sold to the consumer in an assisted service style such as a deli or café counter. An assisted service display cabinet is defined as follows:

assisted service display cabinet means an enclosed or semi-enclosed display cabinet which requires a person to serve the food as requested by the purchaser.

The following exemption is provided in subclause 2(1) of Standard 1.2.1:

(1) Subject to subclauses (2) and (4), food for retail sale must bear a label setting out all the information prescribed in this Code, except where – ...

(h) the food is packaged and displayed in an assisted service display cabinet.

The approach taken is consistent with the other exemptions provided in the Standard, e.g. the exemptions that apply for unpackaged foods. As for the other exemptions, where the food meets the conditions set out, it does not have to be labelled. However, similar to other exemptions, some key information must still be provided (e.g. information about allergens) to the purchaser upon request or with the display of the food.

6.1.3 Review on Grounds Requested by the Ministerial Council

The Ministerial Council considered that it was unclear what the proposed new exemption related to, and that there are practical enforcement and compliance difficulties with implementing the exemption.

6.1.4 FSANZ response

The new exemption provided by FSANZ in the amended Standard 1.2.1 relates directly and exclusively to wrapped food items that are provided to the consumer in an assisted service style e.g., a delicatessen or café counter. Where a consumer can seek accurate information regarding the food directly from the persons responsible for supplying the food, it is not necessary to require that information to be provided on a label.

As was outlined in the Final Assessment Report, the new exemption is underpinned by a workable and clear definition of ‘assisted service display cabinet’ provided in the amended Standard 1.2.1. A similar definition has worked well in regards to country of origin labelling of unpackaged food set out in Standard 1.2.11 – Country of Origin Requirements.

The approach taken provides for food wrapped for hygienic purposes to remain exempt from labelling, while not capturing other products not intended to be captured. This is an outcome-based approach that is effective and practical. For example, the new exemption will not capture meat trays displayed in a refrigerated cabinet in a supermarket setting: there is no assisted service and consumers cannot request information. In this situation, the information must be on the label.

However, if the same product were sold in an assisted service setting, the new provision would exempt this food from labelling because the information can be provided to the consumer as part of the service. This merely provides consistent requirements where food is purchased with assistance: products displayed unpackaged before sale and products displayed wrapped before sale are treated the same.

The core issue is not about the packaging *per se*, but about how best to provide consumers with information, without being impractical or placing an unreasonable cost burden on food suppliers.

FSANZ's approach comprehensively addresses the issues raised at a Technical Advisory Group (TAG) meeting in April 2003 attended by representatives of the jurisdictions, the Department of Agriculture, Fisheries and Forestry and the Australian Quarantine and Inspection Service. At the meeting, some jurisdictions proposed it was not appropriate that the foods in question must be fully labelled. There were concerns about such an exemption picking up a broader range of products than was intended.

6.1.5 Conclusion

After further consultation with representatives of the jurisdictions, FSANZ re-affirms the amendment to Standards 1.2.1 in relation to food packaged and displayed in assisted service display cabinets. The purpose and application of the amendment has been clarified in this report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1.

The new exemption allows food wrapped for hygienic purposes to be exempt from labelling where the consumer can ask for information required for safety and informed choice without being impractical or placing an unreasonable cost burden on food suppliers. The proposed exemption does not capture other products where the consumer cannot request information to assist with the purchase.

6.2 Information Requirements for Food for Catering Purposes

Many of the requirements that are appropriate for food for retail sale are not relevant to food for catering purposes. In most cases, the information requirements in Standard 1.2.1 are specific to food for retail sale: where food is sold to the public, consumers can inspect the food prior to purchase and get accurate information from the persons supplying the food, it is therefore not necessary for such foods to be labelled.

This situation does not apply to food for catering purposes, where food handlers and food service operators must have access to information on the label or from associated documentation. This allows food service operators to provide relevant information to consumers in turn, if requested to do so.

6.2.1 Current Requirements

Standard 1.2.1 sets out the information requirements, which apply both to food for retail sale and to food for catering purposes exempt from bearing a label.

Generally, the required information can be displayed on or in connection with the display of the food or provided to the purchaser upon request. In subclause 2(2), the information requirements relate to the following:

- mandatory warning and advisory statements and declarations in Standard 1.2.3
 - directions for use and storage (where applicable)
 - nutrition labelling when nutrition claims are made
 - percentage labelling
 - country of origin labelling
 - genetically modified food
 - irradiation
-
- the presence of offal, fat content in minced meat, formed and joined meat and fermented comminuted meat products
 - formed and joined fish
 - statements on the use of kava
 - advisory statements on formulated caffeinated beverages
 - statements on formulated supplementary sports foods.

Clauses 3 and 4 of Standard 1.2.1 deal with labelling of 'food not for retail sale'. Clause 3(2) provides that the information prescribed in clause 3 of Standard 1.2.2 is not required on the label of the food where that information is provided in documentation accompanying that food.

6.2.2 Proposed Requirements

In the Final Assessment Report, the labelling requirements for food for catering purposes were set out in a separate clause (clause 5 of Standard 1.2.1). Unless there is a relevant exemption, where required, food for catering must be labelled with the following:

- the name of the food
- lot identification
- supplier details
- mandatory warning and advisory statements and declarations
- date marking
- directions for use and storage
- country of origin labelling (in Australia only)
- food produced using gene technology
- food treated with ionising radiation

Foods for catering purposes are exempt from bearing a label if they are unpackaged or whole, or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables. In addition, an outer package is exempt from labelling other than food identification requirements if the foods within the package are already adequately labelled.

The information requirements for food for catering purposes are set out in clause 6 of the amended Standard 1.2.1. As applies to ‘food not for retail sale’, for food for catering purposes the name and address of the supplier in Australia or New Zealand may be provided in documentation accompanying the food.

The other key information listed above must be on a label unless an exemption applies. However, additional information required to enable the purchaser to comply with all the requirements of the Code (e.g. a list of ingredients) may be provided in accompanying documentation instead of a label.

Where food for catering purposes is exempt from bearing a label, all the key information outlined above must be provided in accompanying documentation.

Where a purchaser or relevant authority has so requested, food that is for catering purposes must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the compositional, labelling, or other declaration requirements of the Code.

6.2.3 Review on Grounds Requested by the Ministerial Council

The Ministerial Council considered there were conflicts between the subclauses of clause 6 of Standard 1.2.1 (in particular between 6(1) and 6(4)) and that this caused enforcement and compliance difficulties. The Ministerial Council further considered that the information requirements of Clause 6 placed an unreasonable cost burden on industry.

6.2.4 FSANZ response

The purpose of FSANZ’s approach to labelling and information requirements of food for catering purposes was to provide clarity and greater certainty without mandating additional requirements.

Following further consultation with the jurisdictions, FSANZ has reviewed the legal drafting pertaining to food for catering purposes. FSANZ proposes a technical amendment (to paragraph 5(1)a of the amended Standard 1.2.1) to further clarify the food identification requirements for food for catering purposes. It should be noted that this amendment does not change the outcome of the Proposal: this is a technical amendment only³³.

Industry stakeholders strongly supported more appropriate labelling of packaged food intended for catering purposes and the flexibility to provide information in associated documentation. There is widespread support for providing the minimum labelling information necessary to identify the supplier of the product with each delivery, and for increased flexibility to provide additional information required by the Code but not required on the label of food for catering purposes.

³³ By removing the references to clauses 1 and 2 of Standard 1.2.2 from the paragraph, the labelling requirements are extended to include all the requirements of Standard 1.2.2; however, the information required in clause 3 of the Standard is not required to be on the label of the food where the information is provided in documentation accompanying the food. This exemption is set out in subclause 6(2).

The proposed amendments provide separate, more relevant and appropriate exemptions and information requirements for food for catering without additional costs to industry. The new definition of foods for catering purposes provides greater clarity and certainty whilst maintaining the current level of information provisions.

In most cases, the current information requirements of Standard 1.2.1 are not ideally suited to food for catering purposes. Where a consumer can inspect the food prior to purchase and can seek accurate information regarding the food directly from the persons responsible for making the food, it is not necessary to require information to be provided on a label. However, the person that supplies the food at retail sale must have the necessary information to discharge their obligation to the customer.

The information needs of food handlers or food service operators vary depending on the nature of the food and whether the food will be subject to further handling or processing and whether there are other systems in place for accessing information which may ultimately be requested by either enforcement agencies or by the final consumer.

The amended Standard allows information to be provided in three ways:

1. on the label
2. in ‘documentation accompanying the food’
3. ‘in documentation’

Where information must be provided in ‘documentation accompanying the food’, all details must accompany each delivery. Where the information can be provided ‘in documentation’, it does not have to accompany the food at each delivery, but need only be provided once with the sale of several batches of the same food item. Food suppliers can provide information electronically or in written form. This provides suppliers of food for catering purposes with greater flexibility while still ensuring food service operators have sufficient information to meet the requirements of the Code.

Further guidance will be provided in a user guide on what may constitute documentation in various circumstances, and how to provide a clear link between the commercial documentation and the food for traceability purposes.

The purpose of clause 6 of the amended Standard 1.2.1 is to set out the information requirements for food for catering purposes. It is designed to allow caterers sufficient flexibility in providing information to food handlers and food service operators who must be able to provide this information to enforcement agencies and the retail consumer, if requested to do so:

- Subclause 6(1) provides an exemption from labelling (except for key requirements³⁴) where this information is provided in documentation³⁵

³⁴ the requirements set out in subclause 5(1)

³⁵ It should be understood this is only relevant where there is no total exemption from providing the information, rather than providing the information on a label. For example, nutrition information is not required on standardised alcoholic beverages; therefore, if the beverage were a food for catering purposes, it still would not require a nutrition information panel either on the label or in documentation.

- Subclause 6(2) gives the supplier of the food intended for catering the flexibility to provide the name and address of the food supplier in ‘documentation accompanying the food’, rather than on the label.
- Subclause 6(3) concerns food for catering purposes exempt from labelling. It requires such foods to provide key details in ‘documentation accompanying the food’ instead of on the label
- Subclause 6(4) ensures that retailers of food have all the information needed to meet their obligations under the Code, but is flexible in how this information can be provided by the caterer.

Subclause 6(1) ensures that key information is provided on the label of food for catering purposes. Any additional information must be provided in documentation or on the label.

Subclause 6(2) addresses the issue that, unlike food not for retail sale, the Code does not currently provide an option for food for catering purposes to provide supplier details in documentation accompanying the food instead of on the label.

The manufacturer of the foods in another country does not always know the importer and cannot provide the name and address details in Australia or New Zealand of the supplier when assembling a load for shipping. Consequently, the Code permits supplier details to be provided in documentation accompanying ‘food not for retail sale’. The same circumstance applies to food for catering. Therefore, taking into account the significant similarity in the nature of food for catering purposes to that of food not for retail sale, FSANZ considers it prudent to provide equal flexibility in providing supplier details for both types of food.

In some circumstances, food for catering purposes is exempt from labelling. In these cases, subclause 6(3) requires information which otherwise would be provided on the label to be provided in documentation accompanying the food. There will be very limited circumstances where food for catering purposes would be exempt from bearing a label (e.g. some carcasses of meat). In this situation, the information which otherwise would be provided on the label must instead be provided in ‘documentation accompanying the food’, i.e. the information must be traceable to the food in question.

Subclause 6(4) is intended to cover situations where food for catering purposes purchased by food handlers or food service operators is exempt from certain labelling and information requirements under the Code. That is, it concerns information that would not be included as a matter of course on the label or in documentation, but would need to be specifically requested by the food handlers or food service operators to enable them to comply with the requirements of the Code.

For example, a restaurant owner may wish to make a nutrition content claim about a food containing apples. There is no requirement to provide nutrition information about the apples. However, the restaurant owner now can request that information, because the Code requires this information to be available to the consumer on request. Similarly, enforcement officers can request this information should they require it to enforce the Code.

6.2.5 *Conclusion*

After further consultation with representatives of the jurisdictions, FSANZ re-affirms the amendments to Standards 1.2.1 in relation to provision of information in relation to food for catering purposes set out in 6. The purpose and application of clauses 6 of Standard 1.2.1 has been clarified in this report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1. FSANZ will further clarify the information requirements for food for catering purposes by a minor amendment to paragraph 5(1)a of Standard 1.2.1.

The approach taken by FSANZ provides greater certainty on labelling and information requirements of food for catering purposes without mandating additional requirements. It allows caterers flexibility in providing information to food handlers and food service operators, who must be able to provide this information if requested to do so.

These are reasonable and practical provisions. Therefore, FSANZ considers it unlikely that there are unreasonable cost burdens to industry.

6.3 Food Identification Requirements for food exempt from bearing a label

Currently, suppliers of food exempt from bearing a label are not required to disclose the name or description of the food sufficient to indicate the true nature of the food when requested to do so. FSANZ considers this information useful to consumers and that there is a risk for unlabelled food items to be described in a way that is not in accordance with the true nature of the food. Examples of food that may be sold unpackaged and where a true description of the food is important include moisture-enhanced pork, manufactured meat products, fish treated with flavourless smoke, and mixed foods where the true nature of the food is not immediately apparent.

6.3.1 *Current Requirements*

Clause 1 of Standard 1.2.2 sets out the requirements of the Code regarding naming of food. The label on a package of food must include the prescribed name of the food where applicable and in any other case a name or description of the food sufficient to indicate the true nature of the food.

Subclause 2(2) in Standard 1.2.1 sets out the information requirements that apply to food for retail sale when exempt from bearing a label. A prescribed name or the name or description of the food sufficient to indicate the true nature of the food is not required.

6.3.2 *Proposed Requirements*

FSANZ proposes that an information requirement for the prescribed name of a food, or in any other case, for a name or description sufficient to indicate the true nature of the food be added to subclause 2(2) of Standard 1.2.1.

FSANZ further intends that Standard 1.2.2 – Food Identification Requirements be amended so that the relevant information can be provided on or in connection with the display of the food or provided to the purchaser on request.

It should be noted, the draft amendments provide that where food is displayed for retail sale other than in a package, this information can be made available on request. However, where the food is exempt from general labelling requirements but is displayed and sold in a package the amendments require the information to be provided on the label.

6.3.3 Review on Grounds Requested by the Ministerial Council

The Ministerial Council expressed concern with the requirement to provide the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food for food exempt from bearing a label. The Ministerial Council stated that the drafting would require labelling of common take-away foods and considered this an onerous requirement and an unnecessary cost-burden for food suppliers.

6.3.4 FSANZ response

FSANZ maintains its approach that the information requirements for food for retail sale in Standard 1.2.1 should include Standard 1.2.2 – Food Identification Requirements, so that a name or description of the food sufficient to indicate the true nature of the food is displayed on or in connection with the display of the food or provided to the purchaser on request. FSANZ is of the opinion that the proposed approach provides important information to consumers. However, FSANZ agrees to the Ministerial Council’s request to allow suppliers of food more flexibility on how to provide such information.

The Code requires the label on a package of food to include a name or description of food sufficient to indicate the true nature of the food. A name or description of the food must be accurate and sufficiently detailed such that it is not misleading or deceptive, or likely to mislead or deceive. The absence of information on a label regarding the true nature of a food may constitute misleading or deceptive conduct. Where a food is exempt from bearing a label, either in a food service environment or in a retail establishment such as a butchery, a food should not be presented for sale in a way which is misleading or deceptive or likely to mislead or deceive. Consumers should be made aware of the true nature of the product when offered for sale.

Under the approach put forward in Proposal P272, for unpackaged food and food displayed unpackaged before packaging prior to sale, the name of the food can be made available on request rather than displayed on a label. FSANZ is proposing to extend this flexible approach to all food exempt from bearing a label under clause 2 of Standard 1.2.1.

In the Final Assessment Report, FSANZ considered that the impact of extending the information requirements for the name of the food for food suppliers would be minor. However, after further consultation FSANZ considers that providing greater flexibility on how this information may be provided would reduce the cost burden to food suppliers even further, without compromising the information needs of consumers. Packaged foods exempt from bearing a label are often provided in an assisted service environment and consumers have reasonable opportunity to request more information on the food. In the case of the name of the food, food suppliers would have this information readily available to pass onto consumers if asked to do so.

6.3.5 *Conclusion*

After further consultation with representatives of the jurisdictions, FSANZ re-affirms the decision to amend Standard 1.2.1 in relation to providing the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food. FSANZ considers this information useful to consumers and that there is a risk for unlabelled food items to be described in a way that is not in accordance with the true nature of the food.

In response to the current review request, FSANZ also proposes to modify the amendments to Standard 1.2.2 so that wherever a food is exempt from bearing a label this information can be displayed on or in the connection with the display of the food, or provided to the purchaser on request.

This modified approach gives suppliers of food more flexibility and therefore will lower any possible cost that may be incurred, but ensures that consumers are entitled to request information sufficient to indicate the true nature of the food they are purchasing.

7. Consultation

7.1 Consultation with Jurisdictions

On Monday 31 March 2008, FSANZ hosted a teleconference with representatives from the jurisdictions. The meeting agreed on FSANZ's proposed approach to resolve the issues raised in the Second Review. The conference was attended by representatives from New Zealand, Northern Territory (NT), New South Wales (NSW), South Australia (SA), Victoria, and Western Australia (WA). Representatives from the Australian Capital Territory (ACT), Queensland, and Tasmania offered apologies, but were consulted by email.

During the teleconference, FSANZ suggested excising those amendments from Standard 1.2.1 that are concerned with labelling meals supplied by Delivered Meal Organisations and those concerned with date marking of food for retail sale that is exempt bearing a label. At the meeting, FSANZ's approach was agreed to. It was also agreed that these issues should be addressed in separate proposals. FSANZ should collect additional evidence, and based on this new evidence should consider if further amendments to the Code are required.

During the meeting, FSANZ also suggested retaining the amendments in relation to food packaged and displayed in assisted service display cabinets and food for catering purposes but to clarify the purpose of the exemption further in the review report and the user guide. Finally, FSANZ suggested retaining the amendments in Standards 1.2.1 in relation to providing the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food. FSANZ also suggested that it could modify the amendments to Standard 1.2.2 so that wherever a food is exempt from bearing a label this information can be displayed on or in the connection with the display of the food, or provided to the purchaser on request.

The meeting generally agreed to FSANZ's approach and requested that FSANZ should clearly set out the purpose and intent of the amendments in the review report and provide adequate guidance on this issue in the user guide.

Prior to the Initial Assessment, FSANZ formed an Implementation and Enforcement Advisory Group (IEAG) to provide advice from an enforcement perspective on issues included in this Proposal.

The IEAG had representation from the Health Departments in NSW, WA, Queensland and the New Zealand Food Safety Authority (NZFSA) and the Australian Quarantine and Inspection Service (AQIS). The IEAG met on three occasions in 2003.

During Draft Assessment, FSANZ reformed the IEAG with representation from the NSW Food Authority, NZFSA, and from the Health Departments in Queensland and WA. The IEAG met twice in October 2006. During the Final Assessment, FSANZ reconvened with the IEAG with representation from the NSW Food Authority, NZFSA, and from the Health Departments in Queensland and WA. The IEAG met once in June 2007.

7.2 Consultation with Industry Stakeholders

Following concerns raised in a letter, FSANZ met with the Australian Food and Grocery Council on the 14 November 2007 to discuss issues regarding date marking requirements. At the meeting, FSANZ outlined further steps or options available to address the issues raised. Following Final Assessment, FSANZ engaged in additional discussions with DMOs. FSANZ attended the Meals on Wheels National Conference, gave a presentation on the labelling requirements for DMOs, and provided a fact sheet on labelling.

Previously, FSANZ provided advice on the regulatory options being considered in this Proposal to Australian and New Zealand stakeholders. In a series of meetings convened in October and November 2006, FSANZ consulted with DMOs, with providers of meals in hospitals and similar institutions, and with interested food industry representatives. Issues raised as part of group discussions in these sessions have been taken into consideration in developing the amendments to the Code.

7.3 Submissions

FSANZ received 56 written submissions in response to the Initial Assessment Report and 26 written submissions in response to the Draft Assessment Report for this Proposal. Overall, the majority of submitters were in support of a review and amending the labelling requirements in clause 2 in Standard 1.2.1 of the Code. Issues identified from submissions formed the basis of targeted consultation with key stakeholder groups.

8. Options

There are three options proposed for consideration under this review:

1. Re-affirm the prepared variations to the Code in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations; or
2. Re-affirm prepared variations to the Code in relation to food for catering purposes and for retail sale, subject to the following amendments:
 - (a) excise the requirements for labelling of meals delivered by delivered meal organisations and reserve the relevant clause; and

- (b) excise the date marking requirements for meals exempt from bearing a label and reserve the relevant clauses; and
 - (c) change the information requirements for food exempt from bearing a label so this information can be displayed in connection with the food or provided to the purchaser on request.
 - (d) a technical amendment to paragraph 5(1)a of Standard 1.2.1 to further clarify the identification requirements for food for catering purposes.
3. Withdraw approval of the draft variation to Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5, and Standard 1.2.11.

CONCLUSION AND RECOMMENDATION

The Second Review concludes that the preferred option is Option 2: to excise the requirements for labelling of meals delivered by delivered meal organisations and reserve the relevant clause, and to excise the date marking requirements for meals exempt from bearing a label and reserve the relevant clauses, and to change the information requirements for food exempt from bearing a label so that this information can be displayed in connection with the food or provided to the purchaser on request.

FSANZ further recommends that:

1. where FSANZ has re-affirmed prepared variations to the Code further clarification is to be provided in a user guide; and
2. a proposal should be prepared to address the issue of information requirements for foods supplied by delivered meals organisations; and
3. a proposal should be prepared to consider how to provide information that clearly indicates how long a food that is not required to be labelled can be expected to remain safe for consumption.

FSANZ makes these recommendations because, overall, Proposal P272 has provided clarity and greater certainty on the interpretation and application of labelling and information requirements by amending Standard 1.2.1 – Application of Labelling and Other Information Requirements and other Standards with clauses connected to Standard 1.2.1.

However, further consideration should be given to the information requirements for foods supplied by DMOs on how to provide information that clearly indicates how long a food that is not required to be labelled can be expected to remain safe for consumption.

The minor amendments and recommendations proposed after the Second Review provide further clarity on the application of labelling and information requirements.

Attachments

1. Draft Variations to the *Australia New Zealand Food Standards Code*

Draft Variations to the *Australia New Zealand Food Standards Code*

Standards or variations to standards are considered to be legislative instruments for the purposes of the Legislative Instruments Act (2003) and are not subject to disallowance or sunseting.

To commence: On gazettal

[1] *Standard 1.1.1 of the Australia New Zealand Food Standards Code is varied by –*

[1.1] *inserting in clause 2, after the definition of fund raising events –*

Editorial note:

Fund raising event organisers should be aware that there may be New Zealand, State Territory or Commonwealth legislative requirements that need to be complied with in order to conduct the event.

[1.2] *inserting in clause 2 –*

hamper means a decorative basket, box or receptacle containing any number of separately identifiable food items.

Editorial note:

A hamper may also contain non-food items such as decorative cloths, glasses and dishes.

handling of food includes the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

[1.3] *omitting from clause 2, paragraph (d) in the definition of package, substituting –*

- (d) transportation vehicles; or
- (e) a vending machine; or
- (f) a hamper; or
- (g) food served on a covered plate, cup, tray or other food container in prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1.

[2] *Standard 1.2.1 of the Australia New Zealand Food Standards Code is varied by substituting –*

STANDARD 1.2.1

APPLICATION OF LABELLING AND OTHER INFORMATION REQUIREMENTS

Purpose

This Standard sets out the application of general labelling and other information requirements contained in Part 1.2 and labelling and information requirements specific to certain foods in Chapter 2 of this Code. This Part sets out the labelling requirements for food for sale and information that must be provided in conjunction with the sale of certain foods, where labelling is not required. Food Product Standards in Chapter 2 may impose additional labelling and information requirements for specific classes of food.

Table of Provisions

1	Interpretation
1A	Application
2	Labelling of food for retail sale
3	Labelling of food not for retail sale etc.
4	Provision of information in relation to food etc.
5	Labelling of food for catering purposes
6	Provision of information in relation to food for catering purposes
7	Reserved
8	Types of other similar institutions

Clauses

1 Interpretation

In this Part –

assisted service display cabinet means an enclosed or semi-enclosed display cabinet which requires a person to serve the food as requested by the purchaser.

food for catering purposes includes food supplied to catering establishments, restaurants, canteens, schools, hospitals, and institutions where food is prepared or offered for immediate consumption.

food for retail sale means food for sale to the public and includes food prior to retail sale which is –

- (a) manufactured or otherwise prepared, or distributed, transported or stored; and
- (b) not intended for further processing, packaging or labelling.

intra company transfer means a transfer of food between elements of a single company, between subsidiaries of a parent company or between subsidiaries of a parent company and the parent company.

small package means a package with a surface area of less than 100 cm².

transportation outer means a container or wrapper which encases packaged or unpackaged foods for the purpose of transportation and distribution and which is removed before the food is used or offered for retail sale or which is not taken away by the purchaser of the food.

1A Application

Despite subclause 1(2) of Standard 1.1.1, the definition of ‘food for retail sale’ commences and applies exclusively from the date of gazettal.

2 Labelling of food for retail sale

(1) Subject to subclauses (2) and (4), food for retail sale must bear a label setting out all the information prescribed in this Code, except where –

- (a) the food is other than in a package; or
- (b) the food is in an inner package not designed for individual sale. Despite this, individual portion packs in a container or wrapper with a surface area of 30 cm² or greater must bear a label containing information in accordance with clauses 3 and 4 of Standard 1.2.3; or
- (c) the food is made and packaged on the premises from which it is sold; or
- (d) the food is packaged in the presence of the purchaser; or
- (e) the food is whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables; or
- (f) the food is delivered packaged, and ready for consumption, at the express order of the purchaser; or
- (g) the food is sold at a fund raising event; or
- (h) the food is packaged and displayed in an assisted service display cabinet.

(2) Despite subclause (1), food for retail sale must comply with any requirements specified in –

- (a) subclauses 1(1) or (2) of Standard 1.2.2 – Food Identification Requirements; and
- (b) subclauses 2(2), 3(2), 4(2) and 5(2) of Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations; and
- (c) Reserved; and
- (d) Standard 1.2.6 – Directions for Use and Storage; and
- (e) subclauses 4(2) and 4(3) of Standard 1.2.8 – Nutrition Information Requirements; and
- (f) subclause 2(3) of Standard 1.2.10 – Characterising Ingredients and Components of Food; and

- (g) subclauses 2(2) and 2(3) of Standard 1.2.11 – Country of Origin Requirements (Australia only); and
- (h) subclause 4(3) of Standard 1.5.2 – Food produced using Gene Technology; and
- (i) clause 6 of Standard 1.5.3 – Irradiation of Food; and
- (j) subclause 4(3) and clauses 5, 6, and 10 of Standard 2.2.1 – Meat and Meat Products; and
- (k) clause 3 of Standard 2.2.3 – Fish and Fish Products; and
- (l) subclause 3(2) of Standard 2.6.3 – Kava; and
- (m) subclause 3(5) of Standard 2.6.4 – Formulated Caffeinated Beverages; and
- (n) subclauses 3(1), 3(2), 3(3) and 3(4) of Standard 2.9.4 – Formulated Supplementary Sports Foods.

(3) Paragraph 2(1)(f) of this Standard does not apply to food sold from a vending machine.

(4) Where food is sold in a hamper –

- (a) subclause 2(1) does not apply; and
- (b) a package of food must bear a label setting out all of the information prescribed in this Code; and
- (c) unpackaged food must be accompanied with documentation setting out the information prescribed in this Code.

Editorial note:

For the purposes of paragraph 2(4)(c) the information may be within, or attached to the outer of the hamper.

3 Labelling of food not for retail sale etc.

(1) Subject to subclause (2), food other than food for–

- (a) retail sale; or
- (b) catering purposes; or
- (c) supplied as an intra company transfer;

must bear a label containing the information prescribed in Standard 1.2.2, except where the –

- (d) food is other than in a package; or
- (e) food is in an inner package or packages contained in an outer package where the label on the outer package includes the information prescribed in Standard 1.2.2; or
- (f) food is in a transportation outer and the information prescribed in Standard 1.2.2 is clearly discernable through the transportation outer on the labels on the packages within.

(2) The information prescribed in clause 3 of Standard 1.2.2 is not required to be on the label on a food where that information is provided in documentation accompanying that food.

4 Provision of information in relation to food not for retail sale etc.

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

- (a) retail sale; or
- (b) catering purposes; or
- (c) supplied as an intra company transfer;

must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the –

- (d) compositional requirements of this Code; and
- (e) labelling or other declaration requirements of this Code.

(2) The information referred to in subclause (1) must be supplied in writing where the relevant authority or purchaser has so requested.

5 Labelling of food for catering purposes

(1) Subject to subclause (2), food for catering purposes must bear a label setting out all of the information prescribed in –

- (a) Standard 1.2.2 – Food Identification Requirements; and
- (b) Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations; and
- (c) Standard 1.2.5 – Date Marking of Food; and
- (d) Standard 1.2.6 – Directions for Use and Storage; and
- (e) Standard 1.2.11 – Country of Origin Requirements (Australia only); and
- (f) Standard 1.5.2 – Food produced using Gene Technology; and
- (g) Standard 1.5.3 – Irradiation of Food.

(2) Subclause (1) does not apply to –

- (a) food not in a package; or
- (b) whole or cut fresh fruit and vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables; or
- (c) an outer package where the –
 - (i) label on the outer package includes the information prescribed in Standard 1.2.2; and
 - (ii) food in the inner package is labelled in accordance with subclause (1).

6 Provision of information in relation to food for catering purposes

(1) Subject to subclause (2), information prescribed in this Code, other than that prescribed in subclause 5(1), is not required to be on the label of food for catering purposes where that information is provided in documentation.

(2) The information prescribed in clause 3 of Standard 1.2.2 is not required to be on the label of food for catering purposes where that information is provided in documentation accompanying that food.

(3) Where food for catering purposes is not required to bear a label, that food must be accompanied by documentation containing all of the information prescribed in subclause 5(1).

(4) Where a purchaser or relevant authority has so requested, food which is for catering purposes, must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the –

- (a) compositional requirements of this Code; and
- (b) labelling or other declaration requirements of this Code.

7 Reserved

8 Types of other similar institutions

(1) The facilities listed in Column 1 of the Table to this clause are ‘other similar institutions’ for the purposes of Standard 1.1.1 and Part 1.2 of this Code.

Table to clause 8

Column 1	Column 2
Facility	Definition
Acute care hospitals	Establishments which provide at least minimal medical, surgical or obstetric services for inpatient treatment or care, and which provide round-the-clock comprehensive qualified nursing services as well as other necessary professional services. Most patients have acute conditions or temporary ailments and the average stay per admission is relatively short. Acute care hospitals include: <ul style="list-style-type: none"> (a) Hospitals specialising in dental, ophthalmic aids and other specialised medical or surgical care; (b) Public acute care hospitals; (c) Private acute care hospitals; (d) Veterans’ Affairs hospitals.
Psychiatric hospitals	Establishments devoted primarily to the treatment and care of inpatients with psychiatric, mental or behavioural disorders including any: <ul style="list-style-type: none"> (a) Public psychiatric hospital; (b) Private psychiatric hospital.
Nursing homes for the aged	Establishments which provide long-term care involving regular basic nursing care to aged persons and including any: <ul style="list-style-type: none"> (a) Private charitable nursing home for the aged; (b) Private profit nursing home for the aged; (c) Government nursing home for the aged.

Hospices	Freestanding establishments providing palliative care to terminally ill patients, including any: (a) Public hospice; (b) Private hospice.
Same day establishments for chemotherapy and renal dialysis services	Including both the traditional day centre/hospital that provides chemotherapy and/or renal dialysis services and also freestanding day surgery centres that provide chemotherapy and/or renal dialysis services including any: (a) Public day centre/hospital (b) Public freestanding day surgery centre (c) Private day centre/hospital (d) Private freestanding day surgery centre that provides those services. Day centres/ hospitals are establishments providing a course of acute treatment on a full-day or part-day non- residential attendance basis at specified intervals over a period of time. Freestanding day surgery centres are hospital facilities providing investigation and treatment for acute conditions on a day-only basis.
Respite care establishments for the Aged	Establishments which provide short-term care including personal care and regular basic nursing care to aged persons.
Same-day aged care establishments	Establishments where aged persons attend for day or part-day rehabilitative or therapeutic treatment.
Low care aged care establishments	Establishments where aged persons live independently but on-call assistance, including the provision of meals, is provided if needed.

[3] *Standard 1.2.2 of the Australia New Zealand Food Standards Code is varied by –*

[3.1] *omitting the Purpose, substituting –*

This Standard requires that certain information must be included on the label on a food in order to be able to identify the food in question. Where the food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 that same information is required to be displayed on or in connection with the food, or provided to the purchaser upon request. The labels on a package of food for retail sale, other than in the circumstances listed in Standard 1.2.1 must include, in addition to the information prescribed in this Standard, the information prescribed elsewhere in Part 1.2 of this Code.

[3.2] *omitting subclause 1(2) and the Editorial note, substituting –*

(2) Where a food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 –

- (a) the prescribed name of the food, where the name of a food is declared in this Code to be a prescribed name; and
- (b) in any other case, a name or a description of the food sufficient to indicate the true nature of the food;

must be –

- (c) displayed on or in connection with the display of the food; or

(d) provided to the purchaser upon request.

(3) For the purposes of paragraphs (1)(b) and 2(b), the definitions of certain foods as set out in Chapter 2 of this Code, do not of themselves establish the name of the food.

Editorial note:

For example, the definitions for –

1. Bread in Standard 2.1.1
2. Fermented milk in Standard 2.5.3
3. Ice cream in Standard 2.5.6

[3.3] *omitting clause 3 and the Editorial note, substituting –*

(1) The label on a package of food must include the name and business address in Australia or New Zealand, of the supplier of the food.

(2) A vending machine from which food is sold must clearly display in a prominent place on, or in the vending machine, the name and business address in Australia or New Zealand, of the supplier of the food.

(3) The label on a hamper must include the name and business address in Australia or New Zealand, of the supplier of the food.

Editorial note:

‘Supplier’ is defined in Standard 1.1.1 to include the packer, manufacturer, vendor or importer of the food in question.

[4] *Standard 1.2.3 of the Australia New Zealand Food Standards Code is varied by –*

[4.1] *omitting subclause 2(2), substituting –*

(2) Where a food listed in column 1 of the Table to this clause is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the advisory statement listed in relation to that food in column 2 of the Table, must be –

- (a) displayed on or in connection with the display of the food; or
- (b) provided to the purchaser upon request; or
- (c) displayed on or in connection with food dispensed from a vending machine.

[4.2] *omitting subclause 3(2), substituting –*

(2) Where a food listed in column 1 of the Table to this clause, is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the warning statement listed in relation to that food in column 2 of the Table, must be –

- (a) displayed on or in connection with the display of the food; or

- (b) displayed on or in connection with food dispensed from a vending machine.

[4.3] *omitting subclause 4(2), substituting –*

- (2) The presence of the substances listed in the Table to this clause must be –
 - (a) declared on the label on a package of the food; or
 - (b) where the food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 –
 - (i) declared on or in connection with the display of the food; or
 - (ii) declared to the purchaser upon request; or
 - (c) displayed on or in connection with food dispensed from a vending machine.

[4.4] *omitting subclause 5(2), substituting –*

- (2) Where food containing any of the substances referred to in subclause (1) is not required to bear a label pursuant to clause 2 of Standard 1.2.1, an advisory statement to the effect that excess consumption of the food may have a laxative effect, must be –
 - (a) displayed on or in connection with the display of the food; or
 - (b) provided to the purchaser upon request; or
 - (c) displayed on or in connection with food dispensed from a vending machine.

[5] *Standard 1.2.5 of the Australia New Zealand Food Standards Code is varied by –*

[5.1] *omitting the heading and Purpose, substituting –*

STANDARD 1.2.5

DATE MARKING OF FOOD

Purpose

This Standard prescribes a date marking system for food and the form in which those foods must be date marked. The Standard requires food, with some exceptions, to be date marked, and prohibits the sale of food after the expiration of the use-by date, where such a date mark is required. In particular, clause 2 of this Standard sets out the circumstances in which a use-by date must be used instead of a best-before date.

[5.2] *omitting the Editorial note immediately after subclause 2(1), and subclause 2(2), substituting –*

- (2) Reserved.

Editorial note:

FSANZ's *Guide to the Use of 'Use-by' and 'Best-Before' Dates for Food Manufacturers* provides guidance on paragraphs 2(1)(a) and (b).

Standard 1.2.1 sets out the exemptions to the general labelling requirements in this Code, and provides a definition of 'small package'.

(3) The label on a package of bread with a shelf life less than 7 days, may include instead of a best-before date –

- (a) its baked-on date; or
- (b) its baked-for date.

[6] **Standard 1.2.11** of the *Australia New Zealand Food Standards Code* is varied by –

[6.1] *omitting subclause 1(3), substituting –*

(3) This Standard does not apply to food sold to the public by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1 where the food is offered for immediate consumption.

[6.2] *omitting paragraph 2(3)(b), substituting –*

- (b) where the food is in a refrigerated assisted service display cabinet, the size of type on the label must be at least 5 mm.

[6.3] *omitting subclause 2(4)*

[6.4] *inserting in the Editorial note immediately following subclause 2(4) –*

'Assisted service display cabinet' is defined in Standard 1.2.1.