

**PROPOSAL P1025 – CODE REVISION
SA HEALTH SUBMISSION
27 SEPTEMBER 2013**

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

OVERARCHING COMMENTS

The P1025 paper is difficult to navigate and does not make it easy for the reader to readily distinguish the new changes to regulations in the Code. The provided explanation of the drafting changes is minimal and often insufficient to understand the implications of the change for enforcement purposes.

It is agreed that this revision of the Code - Proposal P1025 should not cover more significant changes other than minor editorial changes to address identified legal drafting issues and that they would be better considered in other proposals. However there is drafting in the P1025 that is considered to be significant changes (for example the definition of “used as a food additive” (refer to comments on section 3.2.5 below). There are many new definitions provided in the revision that have to be found within the document amongst definitions that are only structurally rewritten and therefore may not be a substantive change. There are definitions relating to microbiological criteria that have been removed without explanation as for example Section 1.57 (refer to comments on Section 3.2.10).

Wherever possible the definitions provided in the State and Territory Application Acts should be used to provide consistency in interpretation. It is unclear how it is decided that a new definition is required to be included in the Code. What are the drafting principles for deciding that a new definition is needed? For example a new definition is provided for “used as a food additive” but “technological purpose” is not defined. Other similar terms such as “technological reason” and “technological conditions” are also not provided definitions. However a definition of “technological purpose” may be needed for interpretation of the definition of a food additive but is not provided. There is a need to improve the clarity in the divisions of substances added to food using the provided definitions. FSANZ should provide examples of substances that fall within the divisions so that jurisdictions are clear that the definitions are in fact enforceable.

Where standards have changed it is important that guidance material be provided to assist in interpretation, enforcement and the transition to the new standards.

SA Health is concerned that there may be significant changes in the proposed Code that we have yet to identify that other jurisdictions have discovered. The jurisdictions should be convened together to discuss the revision of the Code and discuss resolution of issues with FSANZ. This will ensure that there is consideration of the impact on jurisdictions and enabling State and Territory legislation (such as enforceability and integration with enabling legislation). SA Health has the strong view that this is critical because the Code forms part of the South Australian Food

Regulations 2002 and amendments to the Code are adopted in South Australia without the scrutiny of Parliamentary. Proposed changes to the structure of the Code (comment provided at Section 3.2.8 below) will require a transition period to allow changes to be made to South Australia legislation.

COMMENTS

3.2.1 Application of rules of statutory interpretation

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

3.2.2 Consistent interpretation of words in state and territory legislation and the Code

The Proposal should clearly explain the intent of the new drafting as this is then the only reference jurisdictions have for the reasoning behind the development of their food and primary production laws and will assist with interpretation and enforcement.

3.2.3 Integration of obligation and offence provisions

Greater consideration of the enforceability of Standards is needed during the development of Standards and as part of this revision of the Code.

3.2.4 Accessibility of definition provision

SA generally supports providing definitions at the front of the Code. However, the complete definition should be provided not just a reference number that directs the reader to another part of the Code.

3.2.5 Food definition and composition provisions

Lack of clarity around definitions can cause problems from an enforcement perspective. The use of editorial notes or providing guidance documents would assist in understanding the definitions. Where the Code is to be read as a stand-alone document, there would be no awareness by industry and retailers that a term may be slightly different under State legislation and could therefore inadvertently be misapplied by industry. Consideration should therefore be given to using the Application Acts wherever possible for example the definition of sell (refer to comments in the table below).

The Code classifies food as an ingredient, food additive, processing aid, nutritive substance, novel food or genetically modified food, food component, flavouring, and food product. Food within each category may be assessed differently but there is often significant interface between groups. A guidance document providing examples of substances that fall within the category would be useful to understand the differences and overlaps. This would be an important resource for enforcement

officers. Consideration needs to be given to how different food categories are defined and how they interface so that clear, agreed decisions are made regarding the category and assessment path to be used.

Table of “new” definitions identified in P1025 with comment provided.

Term	Definition	Comment
Agvet chemical see section 1.144	agvet chemical means an agricultural chemical product or a veterinary chemical product, within the meaning of the Agvet Code. Note: The Agvet Code is the Code set out in the Schedule to the <i>Agricultural and Veterinary Chemicals Code Act 1994</i> (Cth). See subsection 4(1) of the FSANZ Act.	
application Acts	application Act means an or Ordinance of a jurisdiction under which the requirements of this Code are applied in the jurisdiction.	Where this is mentioned does it include the Commonwealth and NZ as well? Might be amended to include both.
Authorised officer	authorised officer , in relation to a jurisdiction, means a person authorised or appointed under an application Act or other legislation of the relevant jurisdiction for the purposes of enforcement of a provision of the relevant application Act, or for purposes that include that purpose.	This definition may be limiting the purposes of the authorised officer by including the phrase “for the purposes of enforcement” as an authorised officer may serve other purposes such as inspection and sample collection, monitoring research and other duties that may not be captured by “purposes that include that purpose”. It is important that this definition does not call into question any of the powers of an authorised officer as this is fundamental to the administration of the Act. Suggest remove from definition” for the purpose” and replace with “as defined in the Application Act”.
Bear a label see section 1.27	(a) a food product is taken to bear a label of a specified kind or with specified content if either of the following are part of or attached to the packaging of the food product: (i) a label of that kind or with that content; or (ii) labels that together are of that kind or have that content; and (b) a requirement for the labelling of a food product to include specified content is a requirement for at least one of the labels to have that content.	

comminuted	comminuted means chopped, diced or minced.	Is a definition required when the dictionary would provide definition?
Flavouring substance	flavouring substance means a substance that is used as a food additive to perform the technological purpose of a flavouring in accordance with this Code.	Technological purpose is undefined in the Code, is a definition needed? Is the phrase “in accordance with this Code” necessary? If it is, then it would require many other terms to add it to the end of definition.
FSANZ	FSANZ means Food Standards Australia New Zealand.	
import	import includes: (a) in Australia—import from New Zealand; and (b) in New Zealand—import from Australia.	
Jurisdiction	means a State or Territory of Australia, or New Zealand.	
kava see section 2.55	In this Code: kava means plants of the species <i>Piper methysticum</i> . kava root means the peeled root or peeled rootstock of kava.	Does this definition provide for products derived from kava ie Kava product? Or is a separate definition of ‘kava product’ needed?
Standardised alcoholic beverage	standardised alcoholic beverage means beer, brandy, cider, fruit wine, fruit wine product, liqueur, mead, perry, spirit, vegetable wine, vegetable wine product, wine or wine product.	
Relevant authority	relevant authority means an authority responsible for the enforcement of the relevant application Act.	The proposed definition is too limiting as relevant authority has broad powers that protect public health, no just enforcement. Suggest remove from the definition “responsible for enforcement” and replace with “as defined in Application Act”.
food additive—see <i>used as a food additive</i> , section 1.122.	Meaning of used as a food additive (1) For this Code, a substance is used as a food additive in relation to food if: (a) it is a substance identified in subsection (2); and (b) it is added to the food to perform 1 or more of the technological purposes listed in Schedule 14. (2) For subsection (1), the substances are: (a) any of the following: (i) a substance that is listed in Schedule 15; (ii) an additive permitted at GMP;	This definition is not supported in the proposed drafting. A definition of food additive is provided by Codex that refers to technological purpose but The General Standard for Food Additives (GSFA) does not define “technological purpose”. The current Code does not define food additive but the purpose statement explains that - A food additive is any substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which is intentionally added to a food to achieve one or more of the technological functions specified in Schedule 5. “technological function” means a function

	<p>(iii) a colouring permitted at GMP;</p> <p>(iv) a colouring permitted to a maximum level; and</p> <p>(b) any substance that:</p> <p>(i) has been extracted, refined, or synthesised; and</p> <p>(ii) is not normally sold as a food product; and</p> <p>(iii) is not normally used as an ingredient by consumers</p>	<p>set out in Schedule 5.</p> <p>The proposed definition refer to “ 1(b)it is added to the food to perform 1 or more of the technological purposes listed in Schedule 14.</p> <p>There is a difference in the meaning of technological “purpose” and “functions”. Schedule 14 although titled “purposes” is a list of “functional classes” which is not the same as a “purpose”.</p> <p>The definition does not work in its current form as it restricts the additives to a functional class. There may be other functional classes that are able to perform a technological function, but these are not listed. This definition may have the effect of limiting food additives to only the listed functional classes. The functional classes purpose in the current standard was intended for labelling purposes and not to define a food additive or limit them to only certain functional classes. The proposed definition may restrict industry innovation of new food additives.</p> <p>In the clause 2(ii) and (ii) what is the meaning of “not normally sold” and “not normally used”. If Lecithin is a food additive but used as an ingredient normally by consumers, is it not considered a food additive by the proposed definition? Similarly for an intense sweetener that may be used as a food additive, as a table top sweetener or ingredient in other foods by a consumer.</p>
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3.2.6 Relationship between permissions and general prohibitions

FSANZ has indicated that the detailed policy principles are implemented in the current Code through standards that regulate the addition or use of food additives, vitamins and minerals, processing aids, and certain plants and fungi by imposing a series of general prohibitions on the addition of those substances and then specifying permissions for their addition.

The provided definition for food additives (see comments on 3.2.5) is not supported. There is a need to improve the clarity in the divisions of substances added to food using the provided definitions. FSANZ should provide examples of substances that fall within the divisions so that jurisdictions are clear that the definitions are in fact enforceable.

3.2.7 Incorporation of documents by reference

SA Health supports the FSANZ approach to incorporation of documents by reference in to the Code and recognises that it is not feasible, under current Australian legislation, to provide in the Code that external documents shall be incorporated by reference to their most recent version as that would involve an unlawful delegation of legislative authority and be inconsistent with the Commonwealth Acts Interpretation Act.

3.2.8 Structure of the Code

It is understood that FSANZ will be looking at the viability of moving to a single Code given recent changes in the charging regime for lodging legislative instruments, and that FSANZ have not made any decisions about this yet and are consulting on the version that is in the P1025. A single Code with its provisions numbered in sequence will require updating South Australian Regulations and publications (Table of Legal documents requiring amendments) and guides that reference standards. This will require significant time and resources of jurisdictions to amend these documents. A transition time is required to make these amendments before the revised Code is operational.

Table of South Australia Legal documents requiring amendments to references to the Food Standards Code.

South Australia

Food Regulations 2002

under the Food Act 2001

Part 3—Adoption of Food Standards Code

9—Adoption of Food Standards Code

(1) Subject to subregulation (2), the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth (as that code is in force from time to time) is adopted for the purposes of the definition of **Food Standards Code** under the Act.

(2) The code referred to in subregulation (1) is adopted with the following modifications:

(a) **Standard 2.5.1**, clause 4—after subclause (2) insert:

(2a) However, clause 15 of Standard 4.2.4 does not apply in relation to goat's milk that is intended to be sold as unpasteurised goat's milk.

(b) **Standard 3.1.1**, clause 3—after the present contents of clause 3 insert:

(2) However, this Chapter does not apply to a food business to the extent that the food business is constituted by—

(a) an activity or process that is regulated by or under the *Primary Produce (Food Safety Schemes) Act 2004*; or

(b) an activity or process that is exempt from the operation of Parts 5, 7 and 8 of the *Food Act 2001* by virtue of the operation of regulation 13 of the *Food Regulations 2002*,

(even if the activity or process involves the substantial transformation of food).

(c) **Standard 3.2.1**, clause 2(2)—delete subclause (2) and substitute:

(2) This Standard applies—

(a) to food businesses that are determined by the appropriate enforcement agency to have a priority classification in a manner consistent with a priority classification system determined by the relevant authority under section 79(2) of the Act; or

(b) if another Standard specifically requires food businesses to which that other Standard applies to comply with **Standard 3.2.1**.

(d) **Standard 3.2.2**, clause 4—after subclause (4) insert:

(5) This clause operates in the State of South Australia subject to the provisions of regulation 14 of the *Food Regulations 2002*.

10A—Disclosure of information for standardised food sold at multiple-site food businesses

(1) For the purposes of section 112 of the Act—

(a) the following are matters of a prescribed class under section 112(1)(c):

(i) the energy content of items of standardised food;

(ii) the average adult daily energy intake;

(b) the information relating to those matters is to comprise—

(i) the average energy content of each item of standardised food expressed in kilojoules (*nutritional information*); and

(ii) a statement that the average adult daily energy intake is 8 700 kilojoules (*average intake information*); and

(c) nutritional information for each item of standardised food must be calculated in kilojoules in accordance with **Standard 1.2.8** of the Food Standards Code, making necessary adjustments to ensure that the calculation is undertaken in relation to the whole of the item rather than per 100 grams; ...

South Australia

Primary Produce (Food Safety Schemes) (Egg)

Regulations 2012

under the *Primary Produce (Food Safety Schemes) Act 2004*

Part 2—Compliance with Food Standards Code

5 Compliance with **Standard 4.2.5 of Food Standards Code**

South Australia

Primary Produce (Food Safety Schemes) (Seafood)

Regulations 2006 under the *Primary Produce (Food Safety Schemes) Act 2004*

Part 2—Obligations relating to Food Standards Code

4A All licensees must comply with Division 2 of **Standard 4.2.1**

PRIMARY PRODUCE (FOOD SAFETY SCHEMES) (DAIRY INDUSTRY)

REGULATIONS 2005 under the *Primary Produce (Food Safety Schemes) Act 2004*

PART 4--Accreditation

18. Compliance with **Standard 4.2.4** of Food Standards Code

3.2.9 The use of purpose and outline statements and editorial notes

The number of editorial notes and their purpose is to be reduced in the draft food regulatory measure. Although editorial notes are not legally binding for the Code they are considered useful for assisting Environmental Health Officers in clarifying the intent of the regulation when enforcing and should be retained. Where editorial notes have been removed a guidance document should be made available to assist in the understanding of the regulation.

3.2.10 Microbiological limits for food—Standard 1.6.1

SA Health understands that we will be given opportunity to provide comments to Proposal P1017, which is examining criteria for listeria and a review of microbiological limits.

There have been many definitions removed from the Standard 1.6.1 including the terms “c”, “defective sample unit”, “M”, “m”, “microorganism”, and “n”. It is not understood why these definitions were removed. A check of the new listing of definitions at the front of the Code shows they are not included. They were considered necessary for the interpretation of the schedule to Standard 1.6.1. The row containing the descriptors for n, c, m and M have not been provided in Schedule 27 making the table difficult to interpret. Schedule 27 has the foods identified in italics with the microorganisms in non-italic font. It is usually the convention that microorganisms’ names are provided in italics and the foods in non-italic font unless the name of an organism.

The drafting of section 1.158 Maximum microbiological levels in foods making reference to rows of various column numbers is very difficult to read. The current drafting in Standard 1.6.1 is preferred as it simply refers to the c and M terms which are readily understood by microbiologists. Section 1.158 (a) uses the term “activity” to describe the number of sample units which is a new term with no meaning, the term “levels” as used in the title of section 1.1.58 Maximum microbiological levels in foods” is preferred.

3.2.11 Nutritive substances

SA Health understands that we will be given opportunity to provide comments to Proposal P1024, to review the regulatory approach to nutritive substances and novel foods.

3.2.12 Novel foods

SA Health understands that we will be given opportunity to provide comments to Proposal P1024, to review the regulatory approach to nutritive substances and novel foods.

3.2.13 Packaging standards

SA Health provides no comment as there is no change to current regulation proposed in this Proposal.

3.2.14 Issues concerning infant formula products

SA Health understands that we will be given opportunity to provide comments to a Proposal to review and potentially revise Standard 2.9.1 and other standards that regulate infant formula products.

3.2.15 Issues concerning infant foods

SA Health understands that we will be given opportunity to provide comments on the labelling of the age of introduction of infant food (Proposal P274).

3.2.16 Issues concerning formulated meal replacements and supplementary foods

SA Health supports including reference to the permitted forms of vitamin K in the Standard.

3.2.17 Issues concerning formulated sports foods

SA Health understands that we will be given opportunity to provide comments on Standard 2.9.4 when it is to be reviewed. It would be useful if the P1025 final report could include a table of proposals and expected timing that addresses the issues identified in the revision of the Code.

3.2.18 Issues concerning nutrient reference values

SA Health understands that the nutrient reference values in the Code are used in nutrition labelling but they are not consistently aligned with the most recent nutrient intake reference values of the Australian and New Zealand governments. SA Health understands that we will be given opportunity to provide comments when it is reviewed. Information on the timing of further work would be of assistance.

3.2.19 Issues concerning maximum residue limits

SA Health understands that Standard 1.4.2, which is referred to as the Maximum Residue Limits Standard, is varied regularly by FSANZ and, pursuant to Division 2A of Part 3 of the FSANZ Act, by the Australian Pesticides and Veterinary Medicines Authority (APVMA) and that In the draft food regulatory measure, Standard 1.4.2 is restated substantially in its current form.

3.2.20 Issues concerning labelling

SA Health understands that in the draft food regulatory measure FSANZ have avoided drafting that changes the labelling requirement and that is a matter that will be considered by FSANZ in another proposal. SA Health understands that we will be given the opportunity to provide comment on the new proposal. SA Health supports improving the presentation of the current labelling requirements in this revision.

3.2.21 Basic concepts—definitions of food, food product, ingredient and component

Basic concept	Definition	SA Health Comment
<p>Food —see section 1.15.</p>	<p>Part 2—Basic concepts and basic requirements Division 1—Basic concepts 1.15 Basic concepts—food In this Code, for the purposes of application of the Code by an application Act, food has the same meaning as in the application Act. Note 1: For Australia the various application Acts each include a definition of food. These have essentially the same effect, and give ‘food’ a very broad meaning, but the wording differs slightly. This section ensures that when the Code is applied by an application Act, there is no doubt that the meaning is the same as in that Act. The text of section 3 of the Model Food Provisions, on which the provisions in the Australian application Acts are based, is as follows: (1) In this Act, food includes: (a) any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared), or (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a), or (c) any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes in direct contact with the substance or thing referred to in that paragraph, such as a processing aid, or (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum, or (e) any substance or thing declared to be a food under a declaration in force under [section 6 of the <i>Food Standards Australia New Zealand Act 1991</i> of the Commonwealth] [and prescribed by the regulations for the purposes of this paragraph], whether or not the substance, thing or chewing gum is in a condition fit for human consumption. (2) However, food does not include a therapeutic good within the meaning of the <i>Therapeutic Goods Act 1989</i> of the</p>	<p>SA Health supports Option 2: to provide, in the Code, that the definition in an application Act should apply. This approach operates to apply the relevant local law to any enforcement action and avoids the possibility of doubt in enforcement action about which definition should apply.</p> <p>SA Food Act 2001 5—Meaning of food (1) In this Act— food includes— (a) any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared); or (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a); or (c) any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as a processing aid; or (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; or (e) any other substance or thing declared to be food under a declaration in force under section 3B of the <i>Australian New Zealand Food Authority Act 1991</i> of the Commonwealth and prescribed by the regulations for the purposes of this paragraph, whether or not the substance, thing or chewing gum is in a condition fit for human consumption. (2) However, food does not include a therapeutic good within the meaning of the <i>Therapeutic Goods Act 1989</i> of the Commonwealth. (3) To avoid doubt, food may include live animals and plants.</p>

	<p>Commonwealth.</p> <p>(3) To avoid doubt, food may include live animals and plants.</p> <p>Note 2: For New Zealand, food is defined in section 2 of the <i>Food Act 1981</i> (NZ) as follows:</p> <p>food means anything that is used or represented for use as food or drink for human beings; and includes—</p> <p>(a) any ingredient or nutrient or other constituent of any food or drink, whether that ingredient or nutrient or other constituent is consumed or represented for consumption by human beings by itself or when used in the preparation of or mixed with or added to any food or drink; and</p> <p>(b) anything that is or is intended to be mixed with or added to any food or drink; and</p> <p>(c) chewing gum, and any ingredient of chewing gum, and anything that is or is intended to be mixed with or added to chewing gum.</p>	
<p>Food product—see section 1.16.</p>	<p>1.16 Basic concepts—food product</p> <p>For this Code, a food product is a quantity of a food, whether or not in a package, that is:</p> <p>(a) sold to a consumer on the basis of a representation that it is suitable for human consumption, whether:</p> <p>(i) in the form in which it is sold; or</p> <p>(ii) after preparation by cooking or another basic or traditional process on its own or with other foods; or</p> <p>(b) sold to a person other than a consumer:</p> <p>(i) on the basis of a representation that is suitable for sale to a consumer under paragraph (a); or</p> <p>(ii) on the basis of a representation that it is suitable for sale to a consumer after preparation by cooking or another basic or traditional process on its own or with other foods.</p> <p>Note: The definition of sell in this Code is very broad; it includes offer for sale—see section 1.20.</p> <p>The Code refers to final food, again without definition, when food product might be a more appropriate term. The use of the term food product makes it clear, for labelling purposes, that enforcement action is relevant at the stage of production when a food is</p>	<p>SA Health is unclear of the enforcement implications of the proposed definition.</p> <p>The use of the term “food product” has not replaced all references in the Code to “final food” (as highlighted below) which is frequently still used in the proposed drafting. To make interpretation more difficult the term “final food product” is also used in the Code. What is the difference in meaning of “food product” and “final food product”?</p> <p>1.23 Operation of compositional requirements</p> <p>(5) A compositional requirement for a food applies to the final food irrespective of any permission to add other foods.</p> <p>1.101 What must be on nutrition information panel</p> <p>Declarations about certain substances</p> <p>(9) If:</p> <p>(a) one or more components (other than organic acids) listed in subsection S11.01(3) of Schedule 11 is present in the final food, Section 1.102 How to express particular matters in nutrition information panel singly or in combination, in an amount of no less than 5 g/100 g;</p> <p>1.113 Calculating proportion of characterising ingredients where moisture loss occurs</p> <p>If moisture loss occurs in the processing of a food product, the proportion of a</p>

	intended for sale, whether at retail, for catering purposes or for other purposes	characterising ingredient in a food product may be calculated taking into account any such moisture loss, on the basis of the weight of the characterising ingredient in the final food product . 1.114 Calculating proportion of characterising ingredient where proportion is declared in nutrition information panel Unless otherwise specified, where the proportion of a characterising ingredient is declared in a nutrition information panel, the amount declared must be the average quantity of the characterising ingredient present in the final food product .
ingredient —see section 1.17.	<p>The concept of ingredient is essential for an understanding of many standards, including those that concern the labelling of ingredients. <i>Ingredient</i> is defined in the current Code in standard 1.2.4, in a definition that is expressed to apply only to that standard. In all other places the term is given its dictionary meaning. In that definition an ingredient is described as any substance used in the preparation, manufacture or handling of a food. In the draft food regulatory measure the term is defined consistently, in a revised form, for all purposes in the Code.</p> <p>1.17 Basic concepts—<i>ingredient and compound ingredient</i></p> <p>(1) For this Code, a food is an ingredient of a second food if:</p> <p>(a) on its own or added to other foods, it is processed into the second food, including:</p> <p>(i) by coming into contact with the substance or mixture of the second food as it is being processed, if any traces are left in the second food or are likely to be consumed with it; or Example: cooking oil, flour dusted on bread dough, rice-paper wrappings, substances or foods used as processing aids.</p> <p>(ii) by being added into the substance or mixture of the second food, whether or not any traces are left in it; or Example: alcohol that completely evaporates during cooking; baking powder that is completely transformed into other substances.</p> <p>(b) it comes into contact with the second food after processing, and</p>	<p>The drafting is cumbersome and is difficult to readily understand. A guidance document with clear examples may be of better assistance rather than the examples provided as part of the definition. It is not clear how the basic concepts of ingredient and compound fit with the other basic concepts and whether there are enforcement gaps created by these definitions.</p>

	traces of it are left in the second food. (2) For this Code, an ingredient is a compound ingredient if it is an ingredient that is itself made from two or more ingredients.	
component — see section 1.18.	<p>Component is defined in the Code as a substance that is used in the preparation of an ingredient that is present in the final food in a primary or modified form. In the revision, component is redefined as a substance that is a constituent part of a food.</p> <p>1.18 Basic concepts—<i>component</i></p> <p>In this Code:</p> <p><i>component</i>: a <i>component</i> of a food is a substance that can be identified as a constituent part of the food.</p> <p>Example: If sodium bicarbonate is used as an ingredient to produce a food, it will be changed by the cooking into carbon dioxide and salts, which are identifiable as components of the food.</p>	<p>Note – the consultation paper discusses “food component” but drafting defines “component”.</p> <p>Consideration needs to be given to how different food categories are defined and how they interface so that clear, agreed decisions are made regarding the category and assessment path to be used.</p>
nutritive substance	<p>1.19 Basic concepts—<i>used as a nutritive substance</i></p> <p>(1) For this Code, a substance is <i>used as a nutritive substance</i> in relation to a food if:</p> <p>(a) it is a substance identified in subsection (2); and</p> <p>(b) it is added to the food to achieve a nutritional purpose.</p> <p>(2) For subsection (1), the substances are:</p> <p>(a) any substance that is identified in this Code as one that may be used as a nutritive substance; and</p> <p>(b) a vitamin or a mineral; and</p> <p>(c) any substance (other than an inulin-derived substance) that:</p> <p>(i) has been extracted, refined, or synthesised; and</p> <p>(ii) is not normally sold as a food product; and</p> <p>(iii) is not normally used as an ingredient by consumers.</p> <p>Note: Provisions that control use of substances as nutritive substance are in Division 3 of Part 4 (general provisions on use of vitamins and minerals), various Parts of Chapter 2 (use of vitamins and minerals in specific foods) and Part 9 of Chapter 2 (other substances used in special purpose foods). Substances referred to in paragraph 1.19(2)(a) include those that are identified</p>	<p>Meaning of “Not normally” is undefined and needs clarity for enforcement purposes.</p> <p>Drafting “or” should be “and”</p> <p>(2) For subsection (1), the substances are:</p> <p>(a) any substance that is identified in this Code as one that may be used as a nutritive substance; ‘and’ replace with ‘or’</p> <p>(b) a vitamin or a mineral; ‘and’ replace with ‘or’</p> <p>(c) any substance (other than an inulin-derived substance) that:</p>

	in the tables to sections S17.01 and S17.02 in Schedule 17 (vitamins and minerals) and to sections S30.04 and S30.18 in Schedule 30 (other substances).	
Sell	<p>1.20 Basic concepts—sell</p> <p>In this Code, for the purposes of application of the Code by an application Act, <i>sell</i> has the same meaning as in the application Act.</p> <p>Note 1: For Australia, the various application Acts each include a definition of <i>sell</i>. These have essentially the same effect, and give it a very broad meaning, but the wording differs slightly. This section ensures that when the Code is applied by an application act, there is no doubt that the meaning is the same as in the Act.</p> <p>The definition of <i>sell</i> in section 2 of the Model Food Provisions, on which the provisions in the Australian application Acts are based, is as follows:</p> <p><i>sell</i> includes:</p> <ul style="list-style-type: none"> (a) barter, offer or attempt to sell, or (b) receive for sale, or (c) have in possession for sale, or (d) display for sale, or (e) cause or permit to be sold or offered for sale, or (f) send, forward or deliver for sale, or (g) dispose of by any method for valuable consideration, or (h) dispose of to an agent for sale on consignment, or (i) provide under a contract of service, or (j) supply the food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work, or (k) dispose of by way of raffle, lottery or other game of chance, or (l) offer as a prize or reward, or (m) give away for the purpose of advertisement or in furtherance of trade or business, or (n) supply the food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment, or (o) supply food (whether or not for consideration) in the course of providing services to patients in or inmates in public institutions, or 	<p>The definition provided of “sell” appears to be consistent with the SA Food Act 2001 definition of sell. However given that the definition of sell is fundamental to the operation of Food Acts it is suggested that a reference to the Application Act is used to ensure there is no uncertainty created.</p> <p>Is note1 and note 2 necessary? Could they be put in new user guides to assist with understanding of the Code?</p> <p>SA Food Act 2001 <i>sell</i> includes—</p> <ul style="list-style-type: none"> (a) barter, offer or attempt to sell; or (b) receive for sale; or (c) have in possession for sale; or (d) display for sale; or (e) cause or permit to be sold or offered for sale; or (f) send, forward or deliver for sale; or (g) dispose of by any method for valuable consideration; or (h) dispose of to an agent for sale on consignment; or (i) provide under a contract of service; or (j) supply food as a meal or part of a meal to an employee, in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for consumption by the employee at the employee's place of work; or (k) dispose of by way of raffle, lottery or other game of chance; or (l) offer as a prize or reward; or (m) give away for the purpose of advertisement or in furtherance of trade or business; or (n) supply food under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or

	<p>(p) sell for the purpose of resale.</p> <p>Note 2: For New Zealand, sell is defined in section 4 of the <i>Food Act 1981</i> (NZ) as follows:</p> <p>(1) In this Act, unless the context otherwise requires, sell means sell for human consumption or use; and includes—</p> <p>(a) selling for resale for human consumption or use; and</p> <p>(b) offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or exposed for sale; and</p> <p>(c) barter; and</p> <p>(d) supplying under a contract, together with accommodation, service, or entertainment, in consideration of an inclusive charge for the article supplied and the accommodation, service, or entertainment;—</p> <p>and sale and sold have corresponding meanings.</p> <p>(2) For the purposes of this Act, any article of food that is part of, or supplied with, any meal or food for which payment is made or required to be made, and that is supplied for consumption in any shop, hotel, restaurant, or eating-house, or at any stall or other place, or in any vehicle, shall be deemed to have been sold or offered or exposed for sale.</p> <p>(3) For the purposes of this Act, every person shall be deemed to sell or to intend to sell any food if he sells or intends to sell for human consumption or use any article of which the food is a constituent.</p> <p>(4) When any food is sold or offered or exposed for sale, it shall be deemed to be sold or offered or exposed for sale for human consumption or use, unless the contrary is proved.</p> <p>(5) For the purposes of this Act, the sale of any food for the purpose of being mixed with any other food, or with a food of the same kind, shall be deemed to be a sale for human consumption or use if the bulk or product produced by the mixing, or any part of the bulk or product, is intended to be sold for human consumption or use.</p> <p>(6) The purchase and sale, under the provisions of this Act, of a sample of any food for the purpose of analysis shall be deemed to be a purchase and sale of the food for human consumption or use, unless the seller proves that the bulk from which the sample was taken was offered, exposed, or intended for sale for purposes other than human consumption or use.</p> <p>(7) When a sample of any milk is taken</p>	<p>entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment; or</p> <p>(o) supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions; or</p> <p>(p) sell for the purpose of resale;</p>
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	<p>from a package, the sample shall be deemed for the purposes of this Act to be a sample of any bulk of which the milk in that package forms part notwithstanding that the milk was intended to be mixed with milk in any other package or packages before being sold.</p> <p>(8) For the purposes of this Act, a person packs any food or appliance for sale whether he packs the food or appliance for sale by himself or by any other person.</p> <p>(9) In this section the term use means any use in connection with the preparation or packing of food for human consumption.</p>	
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