



## SUBMISSION

To:  
**Food Standards Australia New Zealand**

In response to:  
Proposal P1025: Code Review

**September 2013**

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## PREFACE

H.J. Heinz Company Australia Limited (“**Heinz Australia**”), Heinz Wattie’s Limited in New Zealand (“**Heinz Wattie’s**”) and Golden Circle Limited are part of the H.J. Heinz global group of companies. Heinz Australia, Heinz Wattie’s and Golden Circle in this submission shall be collectively referred to as “**Heinz**”.

Heinz is one of the world’s leading producers of nutritious, convenient foods for every eating occasion and has been feeding families for more than 100 years. Heinz operates across the retail grocery and out of home channels, including hospitality and healthcare, and maintains #1 or #2 share in key categories including baby food, baked beans, tomato sauce and ‘wet’ soup.

With combined experience of over 140 years, Heinz provides a positive presence in the Australasian grocery products industry.

Heinz offers a diverse portfolio of brands, including:

Heinz	Wattie’s	Golden Circle	La Bonne Cuisine®
HP	Lea & Perrins	Greenseas	PMU
Epicure	Farex	Tom Piper	Hamper
Imperial	Ox & Palm	Petdeli	Cham
Chef	Pacific	Crown	LOL
Craig’s	Oak	Original Juice Co.	Popper
GC Raw	Mediterranean	Little Ripper	Gourmet
Breton	Master Chef	Wild Boy	Ice Magic
The Good Taste Company		Nurture	
Cottee’s (toppings, jelly and jams only)			

Heinz also manufactures and/or distributes products under licence from:

Weight Watchers	Complan
Eta	Rose’s (jams only)

The Heinz product range includes:

infant food	frozen vegetables	baked beans	canned pasta
infant formula	fruit drinks	ketchup & sauces	soup
fruit juice	cordial	bottled water	corned beef
jams, jelly & toppings	frozen meals	canned seafood	canned fruit & vegetables

Heinz Australia and Heinz Wattie's are active members of the Australian Food & Grocery Council (AFGC), the New Zealand Food & Grocery Council (NZFGC) and the Infant Nutrition Council (INC). Positions are held on various working groups, and Heinz contributes towards preparing submissions, opinion and information sharing, and strives to keep abreast of current and upcoming regulatory issues.

## **EXECUTIVE SUMMARY**

Heinz welcomes the opportunity to make comment on Proposal P1025 Code Review.

### **Overall position**

Heinz Australia participated in the AFGC consultation program which included sitting in the working groups, attending industry workshops, as well as reviewing P1025 in detail and assisting in preparing the response. In addition to this Heinz Wattie's position on the NZFGC's Technical Working group allowed Heinz to contribute to their submission.

Heinz supports the AFGC, NZFGC and INC submissions in principle. However there are some aspects of the draft food regulatory measure (proposed Code) which Heinz wishes to make further comment on. These comments make the body of this submission.

### **1. Code clarity**

Heinz supports the intention to improve enforceability and clarity of the Code however in some cases this has not been achieved. It took considerable time by the six regulatory affairs members within Heinz to become familiar with the changes, and the initial attempts required consultation with lawyers to obtain a basic understanding of the proposed Code's new presentation as a single legislative instrument.

A reasonable person with little to no legal background or access to legal advice would find it difficult to locate or interpret some areas of the proposed Code. Some examples include:-

- Uncertainty in how to identify when information is prescribed.
- Changes to basic terminology such as the use of 'must' versus 'are required'.
- Permissions around nutritive substances removed from sections of the proposed Code.
- Juices – still no clarification in terms of 'separated by mechanical means' etc.
- The expression of mathematical formulae is initially daunting. Recommend a written explanation of the formulae is also provided.
- Seemingly ad hoc placement of definitions - Heinz strongly supports the inclusion of definitions at the beginning of the proposed Code, however all definitions need to be positioned in the one place. Definition of "food" and "references to acts" are difficult for a reasonable person with limited legal background to interpret.
- Some terms are not defined (e.g. 'nutritional purpose'), or are simply insufficient (e.g. definitions for young children and children 1-3 years etc.).

- Some new terms are defined (e.g. individual portion packs).
- Insufficient signposting - Heinz strongly supports the signposting format, and recommends that more signposting is incorporated into the proposed Code.
- Ineffective relocation of some tables from the main body of the Code into the second volume of the proposed Code.
- Unfamiliar terminology such as ‘kind of sale’, ‘sold on the basis of a representation that...’

## 2. Code structure

Heinz is of the view that an electronic version of the Code is useful especially if its layout allows the user to conduct a search for key words. Heinz recommends that hyperlinks are included. In addition to this Heinz recommends that the formatting is such that sections can be printed as individual packages.

## 3. Further discovery

It is important for FSANZ to note that comparing the proposed Code against the current Code for differences is not the same as applying individual ingredients/foods to the proposed Code for compliance. Heinz anticipates that it will identify more differences between the two Codes as more products are reviewed and this is likely to occur after this submission.

## 4. Commentary about specific sections of the proposed Code

### CHAPTER 1 – INTRODUCTION AND STANDARDS THAT APPLY TO ALL FOODS

#### *Part 1 — Preliminary*

#### *Division 2 – Interpretation*

**Section 1.06:** All definitions listed throughout the proposed Code should be included in this section. Although the AFGC and the NZFGC have provided comprehensive analysis of the definitions, Heinz would like to emphasise the following:-

- The mandatory warning statement definition provides no signposting to size of type requirements in section 1.51 and vice versa. Also, strongly recommend a signpost to section 1.12.
- The definitions of ‘food’, ‘ingredient’, ‘processing aid’ and ‘food additive’ need to be reworked, as the definitions in the proposed Code are likely to impact labelling. This is explained further in the AFGC and the NZFGC submissions.
- The definition for ‘outer package’ should be included (see section 1.40 (2))
- Heinz suggests that ‘nutritional purpose’ be defined.

- Clarification is required in relation to the definition for young children as there is inconsistent (and therefore unclear) information throughout the Code.
  - Section 2.124 Formulated supplementary foods for young children defines ‘young children as children aged 1-3 years’.
  - The Schedule S1.02 RDIs and ESADDIs for minerals, column 4 use the description ‘for children aged 1-3 years’. No mention is made about ‘young children’.
  - Schedule S4.03 Conditions for permitted general level health claims the relevant population (column 3) makes various references including ‘children’, ‘young children aged 1-3 years’ and ‘children aged 4 years and over’.

### *Division 3 – Application of the Code and effect of variations to Code.*

**Section 1.11:** Heinz supports the NZFGC commentary on this provision.

**Section 1.12 (2):** This subsection should not fall under the header as currently named as this provision is for statements other than warning statements. Also it is unclear if this provision applies to all other areas within the proposed Code. For example section 1.68 states that date marking information “must be expressed in accordance with this section” which can be interpreted by a reasonable person that the statement may not be modified. Further clarification is needed.

## *Part 2 Basic concepts and basic requirements*

### *Division 2 – Basic requirements*

**Section 1.21:** Overall section 1.21 appears to be more complicated in the proposed Code.

Table to subsection (4) - possible typographical error.

## *Part 3 Labelling and other information requirements*

### *Division 4 – Information requirements – statement of ingredients*

**Sections 1.61 & 1.63:** Changing the term ‘brackets’ to ‘parenthesis’ means that products would have to be relabelled in the instances where round brackets have not been used. Standard 1.2.4 6 (1)(a) of the current Code requires the list of ingredients within a compound ingredient to be in brackets. By definition, brackets may be a variety of shapes including round or square. The proposed Code has replaced the word brackets with parenthesis i.e. round brackets, the word ‘brackets’ must be maintained as per the current Code.

### *Division 5 – Date marking of food products*

**Section 1.68:** Date marking information has partially changed from capitals to lowercase. For example standard 1.2.5 (4) date marking has the prescribed form and must use the following words – ‘Best Before’. The proposed Code has changed this to ‘must be expressed’ as lower case ‘Best before’. Heinz recommends for

consistency that date marking be maintained as 'Best Before' to minimise unnecessary label changes.

**Section 1.68 (4):** The current Code allows the best before or use-by date to be conveyed with the month (expressed in letters) and day in any order, irrespective of the shelf life being less than or more than 3 months. However, the proposed Code limits this to only products with less than 3 months shelf life. The specific permission is listed under 4(a) but not under 4(b). Clarification is required.

### ***Division 7 – Nutrition, health and related claims***

Heinz suggests relocating the 33 definitions at the beginning of Division 7 to section 1.06 of Division 2 for improved useability and to reduce the need for excessive signposting.

The health claim definition and nutrition content claim section (1.72) both have signposted notes to section 2.163(3) and 2.47 (4). This directs the user to the reduced sodium salt mixtures/ salt substitutes and fluoride in packaged water sections, highlighting they are not a nutrition content or a health claim. This information is already captured in the relevant subsection, therefore question if this specific signposting is required.

### ***Division 8 – Nutrition information requirements***

**Section 1.101:** The header would be better phrased 'What must be on a nutrition information panel'.

### ***Division 9 – Characterising ingredients and components of food***

**Section 1.110:** Heinz does not support changing the term 'usually' to 'likely'. The meaning of these terms is different with the potential to change (increase) the number of characterising ingredients that must be labelled.

## CHAPTER 2 – FOOD STANDARDS

### *Part 9 – Special purpose foods*

#### *Division 1 – Infant formula products*

**Section 2.82:** The ‘infant formula product’ definition has changed from the current Standard:

Current Code wording:

‘infant formula product means a product based on milk or other edible food constituents of animal or plant origin which is nutritionally adequate to serve as the principal liquid source of nourishment for infants’

Proposed Code wording:

‘infant formula product means a product based on milk or other edible food constituents of animal or plant origin which is nutritionally adequate to serve by itself as the sole or principal liquid source of nourishment for infants’.

Infant formula must be able to serve as the sole source of nutritional requirements of infants aged up to 4 to 6 months. Beyond this age infant formula products serve as the principal liquid source of nourishment, alongside a progressively diversified diet. Therefore the definition would be clearer, if the last part of the definition reads as:

‘which is nutritionally adequate to serve by itself as either the sole or principal liquid source of nourishment for infants depending on the age of the infant’.

**Section 2.89:** In Subsection (3) the wording has changed for L-amino acids:

Current Code wording:

‘must be added to infant formula or follow-on formula only in an amount necessary to improve protein quality’

Proposed Code wording:

‘may be added to infant formula or follow-on formula only in an amount necessary to meet the minimum amino acid requirements’.

The proposed code wording removes the link between L-amino acids and protein quality. The proposed wording ‘to meet the minimum amino acid requirements’ would increase the precision of L-amino acid addition required by industry. Heinz recommends this wording be kept as per the wording in the current Code.

**Section 2.90:** Subsection (1) (ii) refers to “the table to section S30.07”, Heinz suggests that this requires amendment to “the table to section S30.06”.

**Section 2.98:** In Subsection (1) (d) the heading ‘Important Notice’ does not include the option to use ‘any word or words having the same or similar effect’ as per the



current standard. For consistency with the current standard, recommend these words are included in the subsection, or signposting to 1.12(2) be inserted.

**Section 2.100:** Subsection (1)(a)(iii) the wording for the average amount, 'whether added or naturally occurring', for each vitamin, mineral and any other substance used as a nutritive substance is new. This does not necessarily make this section clearer, suggest the wording remains as per the current Code i.e. 'average amount'.

## *Division 2 – Food for infants*

**Section 2.106:** The permission to add (or not to add) nutritive substances and food additives to infant food has been removed from the proposed infant Division. Strongly suggest signposting in a prominent position within the infant Division to S15.04 of Schedule 15 and Section 1.21(5) Nutritive Substances. There is currently no direction of where to find the removed information.

**Section 2.106(e):** There is some ambiguity around the term 'sugars'. The definition of sugars has been removed from the infant Division and inconsistencies within the Division have been identified in relation to sugars:

2.106 (e) references monosaccharide and disaccharide content and is silent on honey, whereas 2.110 (d) references monosaccharide, disaccharide content and includes honey in relation to the product being considered 'sweetened'. Clarification about honey is needed.

**Section 2.106(4)(b):** The newly introduced provision - subsection (4)(b) is an editorial note in the current Code and has transferred into the proposed Code as a provision. By changing an editorial note into a provision, it has significantly changed the meaning from the current consistency requirement. Heinz have two concerns with this change:

1. There is no clear definition of a "lump" provided. Commercial infant foods that contain small, soft particulates that do not pose as a choking hazard will no longer comply.
2. The new provision prevents industry from mimicking the texture of "homemade" baby food, such as fork mashed banana.

**Section 2.113 (2):** Heinz strongly recommends that infant RDIs & ESADDIs- S1.01 of Schedule 1 are signposted in the infant Division. Suggest that this be placed directly after section 2.113, Claims about vitamins and minerals, where the RDI's have been removed.

**Section 2.114:** Recommend this section (Nutrition Information) have signposting to 1.100 (b). Section 1.100 lists when a nutrition information panel is not required, paragraph 1.100(b) states that a nutrition information panel is not required for '*a food product in a small package, other than food for infants*'. There is currently no reference to section 1.100(b) anywhere in the proposed infant Division, therefore this exemption is very difficult to locate. Alternatively, suggest moving this exemption (currently located in Division 8 - Nutrition Information Requirements), to a more prominent location within the infant Division.



**Section 2.116:** Currently the Code states that the label on food for infants must contain instructions covering the period after it is opened:

Current Code wording:

*'The label on a package of food for infants must contain storage instructions covering the period after it is opened'*

Interpretation: A label on a food for infants must contain the instructions after it is opened, regardless of other storage instructions required.

Proposed Code wording:

*'For the labelling provisions, the storage instructions must cover the period after the package is opened'*

Interpretation:

The new wording suggests that if there are storage instructions required, then those instructions must cover the period after the package is opened. Therefore, if storage instructions are not required on a particular product, then information covering the period after the product is opened is now not required.

Most infant foods are shelf stable and therefore not requiring storage instructions. This requirement is now less strict. Heinz recommends this wording be kept as per the wording in the current Code.

Recommend improving the signposting- *'the labelling provisions are set out in Division 1 of Part 3 Chapter 1.'* as this note is not helpful. Suggest directing straight to section 1.69 instead

## **Part 6 – Non alcoholic beverages**

### **Division 1 – Fruit juice and vegetable juice**

**Section 2.43:** The requirement to declare *'the name and percentage by volume of each juice in the blend'* of a juice blend, is now found within the labelling provisions – 1.33, rather than within the fruit juice and vegetable juice Division (juice Division). This requirement is now very difficult to locate, even with signposting. Heinz recommends relocating this back into the juice Division to avoid the requirement being missed and maintaining the useability of the Code.

### **Division 2 – Non-alcoholic beverages and brewed soft drinks**

**Section 2.45:** The permission to add carbon dioxide to packaged water has been removed. It could be questioned whether carbonated spring water would still be permitted? In the current Code, the permission is listed under Clause 2, Composition of packaged water and reads *'Water presented in packaged form may or may not contain added carbon dioxide'*. This option can no longer be located in the Proposed Code, within the Division or within the Schedules. To avoid any doubt or confusion, Heinz strongly recommends this option for carbon dioxide be placed back into the Division.

## **Volume 2 – Schedules S1 to S30**

### ***Schedule 1 — RDIs and ESADDIs***

**S1.01:** The RDI for Vitamin D in infants has changed in the proposed Code, the value is double that of the RDI in the current Code (5ug compared to 10ug). Heinz will assume FSANZ would not double the RDI without consultation, and the reason for this value change would simply be a typographical error. Please review.

### ***Schedule 4 — Nutrition, health and related claims***

**S4.01:**

- Typographical error identified under Low Energy Column 4(b) "170 kJ/00g for solid food".
- Inconsistent use of the word 'per' and symbol '/'. Please review
- Under the No Added Sugars Column 4(b) 'an electrolyte juice blend', 'a formulated beverage fruit juice' and 'fruit drink vegetable juice', have been listed incorrectly. 'Juice blend', 'Fruit juice' and 'Vegetable juice' should be listed as separate foods in this list.

**S4.03:** Under Part 4 (Fruits and Vegetables), the spelling of 'electrolyte' is incorrect. Also within Part 4 (Fruits and Vegetables), an 'electrolyte drink base' appears to be missing in the list under (a), recommend this be reinserted.

**S4.04:** Under column 2, the category 3 score has changed from 28 to 26. This could potentially disadvantage any food manufacturer using the manual method for calculating a Nutrient Profiling score, who would be complying with the current Code and targeting 28.

### ***Schedule 12 — Nutrition information panels***

**S12.01:** The format for a nutrition information panel (NIP) has been set out in schedule 12 without a hyphen preceding 'sugars'. This is consistent with the current Code based on the NIP displayed in the Comlaw version. Heinz queries if this is an error.

### ***Schedule 15 — Substances that may be used as food additives***

**S15.04:** Section 14.1.2 Infant formula products for specific dietary use based on a protein substitute, 1413 Phosphated distarch phosphate 25000mg/L is missing 'Section 1.126 applies' as per current code.

### ***Schedule 17— Vitamins and Minerals***

**S17.01:** Vitamin A 'Carotenoid forms' has been replaced with 'Carotene forms'. Recommend this is listed as the previous term 'Carotenoid forms'.

Biotin and Vitamin K have not been included on the list, but were previously listed as 'no permitted form specified'. Recommend Biotin and Vitamin K remain on the list with 'no permitted form specified' for reference.

**S17.02:** Iron – Permitted form 'Ferric sodium edetate<sup>4</sup>' is missing a footnote to the 4 as previously included in the schedule (footnote: This form of iron is not permitted to be added to breakfast cereals, as purchased under Standard 1.3.2 and to formulated supplementary foods for young children as regulated in Standard 2.9.3.).

Chromium, Copper, Manganese, Molybdenum have not been included on the list, but were previously listed as 'no permitted form specified'. Recommend they remain on the list with 'no permitted form specified' for reference, this provides clarity on the permission to add these minerals.

### *Schedule 30 — Special purpose foods*

**S30.04:** The order of the columns for minimum and maximum amounts per 100kJ has been swapped to maximum and then minimum amounts. For consistency with the current code and other formatting recommend the minimum column is listed first.

**S30.05:** In the heading and the title of the table the word 'may' has replaced 'must'. This is inconsistent with current code wording; therefore recommend this is changed to 'Infant formula products – L-amino acids that must be present in infant formula and follow-on formula'.

**S30.06:** Vitamin A 'Carotenoid forms' has been replaced with 'Carotene forms'. Recommend this is listed as the previous term 'Carotenoid forms'. Biotin and the permitted form d-biotin are missing from the table and need to be included.

Vitamin E – the alpha symbol in the permitted forms requires updating from "a" to "α"

**S30.09:** The table heading within Subsection (3) has changed from 'Nutrition Information' to 'Nutrition Information Panel'. Also, the correct selenium unit is missing, updating to "µg" is required.

**S30.12:** At the end of the sentence in subclause (2), recommend reinserting '(unless stated otherwise)'. The mineral Selenium is not an ESSADI but rather an RDI quantity. Also, 'ESSADI' has been incorrectly listed and should read "ESADDI" where there is one 'S' and two 'D's'.

**S30.13:** (1) Refers to sections 2.122 and 2.122(2)(c). Suggest this be updated to 2.122 and 2.123 for the relevant sections.

**S30.16:** The following changes have been identified in this schedule and require amending in order to match the current Code:

- Biotin - the amount was 100µg, but has been listed as 30µg
- Pantothenic acid – the permitted forms d-calcium pantothenate, dexpanthenol are missing. The amount was 7mg, but is now listed as 5µg
- Calcium – the permitted forms Calcium oxide and Calcium sulphate are missing
- Phosphorus – the permitted forms Potassium phosphate dibasic and Sodium phosphate dibasic are missing
- Selenium – both the inorganic forms Sodium selenate and Sodium selenite and the organic form Selenomethionine and amount of 70µg have been from the table.

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