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26 June 2002

FINAL ASSESSMENT REPORT
(INQUIRY - S.26)

PROPOSAL P248 – DEVELOPMENT OF 'STOCK-IN-TRADE' PROVISIONS
(VOLUME 2 OF THE *FOOD STANDARDS CODE)*

PROPOSAL P252 - TRANSITIONAL ARRANGEMENTS FOR REPEAL OF VOLUME 1 OF THE *FOOD STANDARDS CODE*

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EXECUTIVE SUMMARY

On 24 November 2000, the Australia New Zealand Food Standards Council (ANZFSC) adopted what is currently referred to as Volume 2 of the *Food Standards Code* (Volume 2). At the time of adoption, Ministers agreed (in principle) to a two year 'transition period' in which the new parts of the *Food Standards Code* (known as Volume 2), would operate in parallel with existing provisions at that time. This means that in Australia, Volume 1 of the *Food Standards Code* (Volume 1) would operate in parallel with, and as an alternative to Volume 2 in Australia. In New Zealand food would, during the transitional period, be able to comply with Volume 1, Volume 2 or the New Zealand *Food Regulations* (1984) (NZFR).

ANZFA now proposes that Volume 1 should be repealed on 20 December 2002 and draft Part 1.1A should be included in Volume 2. Part 1.1A transfers matters, currently cross-referenced in Volume 2 (Standard 1.1.3) or included in the New Zealand *Food Regulations 1984*, into Part 1.1A, also retaining parts of Volume 1 for which reviews have not yet been completed. ANZFA is currently considering or has recently finalised a number of Proposals (Infant formula, Health claims, Country of Origin labelling and labelling of Pollen and Royal Jelly). Where these reviews result in a new Standards in Volume 2, it is anticipated that industry will be able to comply with Part 1.1A or the new Standard for a period of two years from the commencement of the new Standard. At the conclusion of this two-year transitional period the alternative standard contained in Part 1.1A will cease to have effect.

The New Zealand standards to be repealed (in accordance with the *Agreement between the Government of Australia and the Government of New Zealand establishing a system for the Development of joint Food Standards* (the Treaty)) are found in the New Zealand *Food Regulations (1984)*. The New Zealand Ministry of Health has consulted on the repeal of relevant aspects of the New Zealand *Food Regulations 1984*, which will take effect upon the expiration of the transition period. Public consultation in relation to the discussion document closed in late May 2002. The Ministry of Health is currently preparing a summary and analysis of submissions and recommendations so that the Minister can decide on the repeal arrangements.

Prior to the issue being raised by Health Ministers in July 2001, little consideration had been given to the issue of 'stock-in-trade' produced lawfully prior to the end of the transition period. In the absence of provisions specifically allowing the continued sale of food lawfully produced in accordance with Volume 1 of the *Food Standards Code* or the New Zealand *Food Regulations 1984*, such food would be illegal to sell following the end of the transition period, as such products would not comply with the standards in place at the time of sale.

In New Zealand, subsection 42(4) of the *Food Act 1981* makes provision for the lawful sale of foods which can be shown to have been 'stock-in-trade' prior to the date of any change to food regulations.

This provision only relates to 'food regulations and not to the 'food standards' contained with the *Food Standards* Code. Furthermore, no such provision exists in the food legislation of the Australian States and Territories.

ANZFA's view is that Volume 1 should be repealed on 20 December 2002, and that food lawfully produced prior to 20 December 2002 with a shelf-life of less than one year, should continue to be able to be sold until 20 December 2003. Food with a shelf life of longer than one year, lawfully produced prior to 20 December 2002, should continue to be able to be sold until 20 December 2004. Furthermore, ANZFA in recognition of the time necessary for retailers, particularly in regional areas, to install the requisite machinery to implement the in-store labelling requirements, proposes to allow a further twelve months from 20 December 2002 before the in-store labelling requirements become mandatory. Given that food that is made and packaged on the premises from which it is sold, and food packaged in the presence of the purchaser is exempt from the labelling requirements of the *Food Standards Code*, it is not envisaged that the delay in imposing the in-store labelling requirements will be substantially wide reaching. ANZFA considers it unreasonable, following 20 December 2002, to require the removal of foods manufactured and packaged in accordance with the requirements in place during the transition period. ANZFA further considers that food lawfully produced prior to an amendment to the *Food Standards Code* after 20 December 2002 taking full effect, should continue to be able to be sold for a twelve months following that amendment.

It is important that all food products manufactured or packaged following the conclusion of the transition period will be required to comply with the requirements of Volume 2 of the *Food Standards Code*.

1. BACKGROUND

On 1 July 1996, an Agreement between Australia and New Zealand (the Treaty) came into force that established a joint Australian New Zealand Food Standards System. This system served to underpin the development of Volume 2 of the *Food Standards Code* (Volume 2). This Joint System includes matters relating to composition and labelling of food products, but does not include maximum residue limits for agricultural and veterinary products, hygiene provisions and matters relating to third country trade.

During the transition period to the Joint System, products sold in New Zealand and Australia could comply with either the New Zealand *Food Regulations 1984* (NZFR), (if manufactured or imported into New Zealand) or Volume 1 of the *Food Standards Code* (Volume 1) (formerly known as the Australian *Food Standards Code*), or Volume 2 of the *Food Standards Code* until such time as Volume 2 became the sole set of regulations (within the scope of the Joint Food Standards System) for the two countries.

On 24 November 2000 ANZFSC adopted what is currently known as 'Volume 2 of the *Food Standards Code'*. At the time of adoption, Ministers agreed 'in principle' to a two year 'transition period' in which the Australian *Food Standards Code*, known as 'Volume 1 of the *Food Standards Code*' would operate in parallel with, and as an alternative to Volume 2. In New Zealand, food could, during the transition period comply with Volume 1 or Volume 2 of the *Food Standards Code* or the New Zealand *Food Regulations 1984*, but not a combination thereof.

In August 2001, ANZFA, in Proposal P248 (Development of 'stock-in-trade' provisions (Volume 2) of the *Food Standards Code*) proposed that food lawfully produced to the provisions in place prior to the conclusion of the transition period should continue to be able to be lawfully sold for a period of twelve months. Following the publication of this consultation document it became clear that the issues raised in Proposal P248 could not be effectively addressed without consideration of the date on which Volume 1 is to be repealed. It was therefore decided that ANZFA would make recommendations to ANZFSC arising out of Proposal P248 and Proposal P252 at the same time.

Volume 2 came into effect in Australia on 20 December 2000 and in New Zealand on 8 February 2001. It was expected that Volume 1 of the *Food Standards Code* and relevant New Zealand *Food Regulations 1984* (other than Volume 2) would be repealed towards the end of 2002 so as to end the transitional period and leave the Joint Code as the sole Code for matters within the Joint Food Standards System.

It was clearly envisioned by the Member States to the Treaty that Volume 1 and the NZFR (as necessary) would be repealed, at which point the Australia New Zealand *Food Standards Code* would apply to both Australia and New Zealand equally (subject to any NZFR that are retained). Clause 4 in Annex D of the Treaty provided that the transition to this joint food system would occur 'on a date to be mutually determined between the Member States'. This mutually agreed date is the date that Volume 1 of the *Food Standards Code* and the New Zealand *Food Regulations 1984* are repealed. Health Ministers when adopting Volume 2 indicated that 'in principle' a two-year transitional period was sufficient for industry to change over to the new Code.

The central issues in this paper are –

(1) The date that Volume 1 of the *Food Standards Code* should be repealed;
(2) Whether food manufactured or packaged to the provisions of Volume 1, or the New Zealand *Food Regulations 1984* should be permitted to be sold after the date of repeal of Volume 1 and the relevant NZFR; and
(3) If so, for how long food manufactured or packaged to the provisions of Volume 1, or the New Zealand *Food Regulations 1984* should continue to be permitted to be sold.

1.1 Regulatory framework

1.1.1 Australia

The Food Acts of the Australian States and Territories and the *Imported Food Control Act 1992 (Commonwealth)* require that food for sale or imported into Australia must comply with the requirements of the *Food Standards Code.*

The practical effect of the adoption by Ministers of Volume 2 (gazetted 20 December 2000), and the agreed transition arrangement, means that food manufacturers in Australia may produce food that complies with Volume 1 or Volume 2 of the *Food Standards Code*, but not a combination of both.

All food manufactured or packaged following the repeal of Volume 1 will be required to comply with Volume 2.

There are no provisions in the Food Acts of the States and Territories, nor in the *Imported Food Control Act 1992* that specifically make allowance for the continued lawful sale of 'stock-in-trade' when changes to food standards are made.

1.1.2 New Zealand

In New Zealand, food for sale, or food imported into New Zealand, must comply with either the *Food Regulations (1984),* or as an alternate the *Food Standards Code* (Volume 1 or Volume 2). On 8 January 2001, the Minister of Health under the *Food Act 1981* (New Zealand) issued the '*New Zealand Food Standard 2001,*' which provided Volume 1 and Volume 2 as alternates to the *Food Regulations*. The 2001 food standard came into legal effect on 8 February 2001.

The practical effect of the adoption by Ministers of Volume 2 (gazetted 20 December 2000) is that for the duration of the transition period, food manufacturers in New Zealand are subject to three alternative sources of regulation in the forms of: the New Zealand *Food Regulations (1984)*; Volume 1 of the *Food Standards Code*; or Volume 2 of the *Food Standards Code,* but not a combination of these.

Subsections 42(4) and 42(5) of the *Food Act 1981* (New Zealand) provide –

> (4) Notwithstanding anything contained in any regulations made under this section, it shall be lawful for any person, at any time within 12 months after the date of the commencement of the regulations, to sell any food of which the sale is otherwise lawful, if he proves that at the said date the food was part of the existing stock-in-trade in New Zealand of any person carrying on business there, and that since the said date no act has been done whereby the food fails to conform to the regulations.
>
> (5) For the purposes of subsection (4) of this section, any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's stock-in-trade in New Zealand.

The effect of subsection 42(4) is to create a defence for stock-in-trade food that is made unlawful by any amendments to the *Food Regulations 1984* or *Dietary Supplements Regulations 1985*. Subsection 42(5) of the Act goes on to provide that, for the purposes of subsection (4), any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's 'stock-in-trade' in New Zealand.

These 'stock-in-trade' provisions do not apply to the *Food Standards Code,* as the Code is issued as a 'food standard', under section 11C of the *Food Act 1981*, rather than as regulations under section 42.

1.2 Concluding the transitional period

In March 2002 ANZFA consulted on the arrangements necessary to conclude the transitional period as agreed to 'in principle' by Health Ministers on 24 November 2000. Proposal P252 discussed the technical mechanisms necessary to conclude the transitional period by varying the *Food Standards Code* to:

- delete Volume 1 of the *Food Standards Code* (previously known as the Australian *Food Standards Code*); and

- delete a number of provisions which established the transitional arrangement, namely, the 'Transitional Standard for the operation of Volume 1 and Volume 2' located at the front of the *Food Standards Code* (the Code), and the 'Transitional and Temporary Standards'- Standard 1.1.3; and

- insert Part 1.1A – Transitional Standards to commence on 20 December 2002 – the proposed date for repeal of Volume 1.

1.3 'Stock-in-trade' provisions

During the 'Stakeholder Forum' discussions held by ANZFA at the time of its Board meeting in May 2001, a number of industry representatives raised the possibility of implementing a 'stock-in-trade' provision for the operation of Volume 2 of the *Food Standards Code*.

The Food Regulation Standing Committee (FRSC) recommended to the ANZFSC meeting of 31 July 2001, that ANZFA be requested to raise a proposal to consider the development of provisions relating to 'stock-in-trade'. This recommendation followed representations from the food industry advising that it was considered necessary to include provisions in the *Food Standards Code* which had the effect of allowing the continued sale of 'stock-in-trade' brought into existence during the transition period.

Of particular concern was whether long shelf life foods produced during the transition period following the conclusion of the transition period. It was argued that an explicit provision in the *Food Standards Code* was necessary to permit products manufactured during or before the transition period, but still available for sale after this date.

In considering the practical implications of the conclusion of the transition period, it is necessary to note that ANZFA in Proposal P248 in August/September 2001 consulted on the need for a 'stock-in-trade' provision. The effect of the amendments proposed at that time would have been to allow for the continued lawful sale of foods lawfully produced during the transition period, for 12 months following the conclusion of the transition period. It was further proposed that for any changes made to the *Food Standards Code* following the conclusion of the transition period, a general 'stock-in-trade' provision for 12 months was also appropriate. The submissions received in this consultation period in relation to Proposal P248 provided little detailed information as to the practical implications for the food industry of a 12-month 'stock-in-trade' provision.

2. OBJECTIVES

2.1 Objectives for the repeal of Volume 1 of the *Food Standards Code*

The development of all food standard(s) is predicated on fulfilling ANZFA's section 10 objectives given below.

ANZFA's statutory objectives in developing food regulatory measures and variations of food regulatory measures

(1) The objectives (in descending priority order) of the Authority in developing food regulatory measures and variations of food regulatory measures are:

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

(2) In developing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:

(a) the need for standards to be based on risk analysis using the best available scientific evidence;
(b) the promotion of consistency between domestic and international food standards;
(c) the desirability of an efficient and internationally competitive food industry;
(d) the promotion of fair-trading in food.

The development of food standard(s) are also carried out in accordance with the competition policy principles which have been adopted by the Council of Australian Governments (COAG) and the draft Code of Good Regulatory Practice (New Zealand). These principles require the review of all business regulation to remove unnecessary obstacles to competition and an assessment of proposed regulation on all affected sectors of the community, and can be encapsulated in the phrase 'minimum effective regulation'.

The specific objectives for this Proposal are:

1. (a) the protection of public health and safety; and
(b) the provision of adequate information relating to food to enable consumers to make informed choices; and
(c) the prevention of misleading or deceptive conduct.

2. The desirability of an efficient and internationally competitive food industry.

An assessment of this proposal must necessarily involve a balancing of these statutory objectives.

3. FOOD STANDARDS SETTING IN AUSTRALIA AND NEW ZEALAND

The Governments of Australia and New Zealand entered an Agreement in December 1995 establishing a system for the development of joint food standards. On 24 November 2000, Health Ministers in the Australia New Zealand Food Standards Council (ANZFSC) agreed to adopt the new *Australian New Zealand Food Standards Code*. The new Code was gazetted on 20 December 2000 in both Australia and New Zealand as an alternate to existing food regulations until December 2002 when it will become the sole food code for both countries. It aims to reduce the prescription of existing food regulations in both countries and lead to greater industry innovation, competition and trade.

Until the joint *Australia New Zealand Food Standards Code* is finalised the following arrangements for the two countries apply:

- **Food imported into New Zealand other than from Australia** must comply with either Volume 1 (known as Australian *Food Standards Code)* or Volume 2 (known as the joint *Australia New Zealand Food Standards Code)* of the Australian *Food Standards Code*, as gazetted in New Zealand, or the New Zealand *Food Regulations 1984*, but not a combination thereof. However, in all cases maximum residue limits for agricultural and veterinary chemicals must comply solely with those limits specified in the New Zealand *(Maximum Residue Limits of Agricultural Compounds) Mandatory Food Standard 1999.*

- **Food imported into Australia other than from New Zealand** must comply solely with Volume 1 (known as Australian *Food Standards Code)* or Volume 2 (known as the joint *Australia New Zealand Food Standards Code)* of the Australian *Food Standards Code*, but not a combination of the two.

- **Food imported into New Zealand from Australia** must comply with either Volume 1 (known as Australian *Food Standards Code)* or Volume 2 (known as *Australia New Zealand Food Standards Code)* of the Australian *Food Standards Code* as gazetted in New Zealand, but not a combination thereof. Certain foods listed in Standard T1 in Volume 1 may be manufactured in Australia to equivalent provisions in the New Zealand *Food Regulations 1984.*

- **Food imported into Australia from New Zealand** must comply with Volume 1 (known as Australian *Food Standards Code)* or Volume 2 (known as *Australia New Zealand Food Standards Code)* of the Australian *Food Standards Code*, but not a combination of the two. However, under the provisions of the Trans-Tasman Mutual Recognition Arrangement, food may **also** be imported into Australia from New Zealand provided it complies with the New Zealand *Food Regulations 1984.*

- **Food manufactured in Australia and sold in Australia** must comply with Volume 1 (known as Australian *Food Standards Code)* or Volume 2 (known as *Australia New Zealand Food Standards Code)* of the Australian *Food Standards Code* but not a combination of the two. Certain foods listed in Standard T1 in Volume 1 may be manufactured in Australia to equivalent provisions in the New Zealand *Food Regulations 1984.*

In addition to the above, all food sold in New Zealand must comply with the New Zealand *Fair Trading Act 1986* and all food sold in Australia must comply with the Australian *Trade Practices Act 1974*, and the respective Australian State and Territory *Fair Trading Acts.*

Any person or organisation may apply to ANZFA to have the *Food Standards Code* amended. In addition, ANZFA may develop proposals to amend the Australian *Food Standards Code* or to develop joint Australia New Zealand food standards. ANZFA can provide advice on the requirements for applications to amend the *Food Standards Code*.

FURTHER INFORMATION

Submissions
No submissions on this matter are sought as the Authority has completed its assessment and the matter is now with the Australia New Zealand Food Standards Council for consideration.

Further Information
Further information on this and other matters should be addressed to the Standards Liaison Officer at the Australia New Zealand Food Authority at one of the following addresses:

Australia New Zealand Food Authority
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2258
email: slo@anzfa.gov.au

Australia New Zealand Food Authority
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942
email: nz.reception@anzfa.gov.au

Assessment reports are available for viewing and downloading from the ANZFA website www.anzfa.gov.au or alternatively paper copies of reports can be requested from the Authorities Information Officer at info@anzfa.gov.au.

4. OPTIONS FOR REGULATION

4.1 Proposal P252 – Transitional arrangements for repeal of Volume 1 of the *Food Standards Code*

Two options available regarding the conclusion of transitional arrangements outlined in this Proposal are:

Option 1 - Adopt the proposed draft variations contained in this Proposal. (Adoption of the draft variations will result in Volume 1, the 'Transitional Standard for the operation of Volume 1 and Volume 2' located at the front of the *Food Standards Code* and Standard 1.1.3 being deleted, and the insertion of Part 1.1A Temporary Standards in Volume 2).

Option 2 - Reject the proposed draft variations contained in this Proposal. (Rejection of the draft variations will result in the continued operation of Volume 1, the 'Transitional Standard for the operation of Volume 1 and Volume 2' and Standard 1.1.3 in Volume 2).

4.2 Proposal P248 – development of 'stock-in-trade' provision (Volume 2 of the *Food Standards Code*)

Option 1- Require all food prepared for sale, packed for sale, or imported for sale before or during the transition period to comply with Volume 2 of the *Food Standards Code* after the end of the transition period.

Option 2 - Develop provisions to allow the continued lawful sale of foods produced prior to or during the transition period, after the end of the transition period.

5. AFFECTED PARTIES

5.1 Consumers in Australia and New Zealand.

Food industry, including New Zealand and Australian manufacturers, exporters to Australia and New Zealand including multi-national manufacturers, and New Zealand and Australian importers.

Governments of New Zealand, the States and Territories and the Commonwealth of Australia.

6. IMPACT ANALYSIS

6.1 Proposal P252 – Transitional arrangements for repeal of Volume 1 of the *Food Standards Code*

6.1.1 Option 1

Adopt the proposed draft variations contained in this Proposal. (Adoption of the draft variations will result in Volume 1, the 'Transitional Standard for the operation of Volume 1 and Volume 2' located at the front of the *Food Standards Code* and Standard 1.1.3 being deleted, and the insertion of Part 1.1A Temporary Standards in Volume 2).

Government

Advantages

- Reduced cost of enforcing a joint food regulatory system rather than the multiple food regulatory system that currently exists.

Disadvantages

- None identified.

Consumers

Advantages

- Personal health benefits associated with greater certainty in decision-making associated with improved access to nutrition and allergen information. (Benefits quantified in attachment to this report).
- Reinforced confidence in government decision-making (i.e. decisions, once taken, will be enacted and enforced, not 'watered down' or subsequently modified).
- More information will be provided about food for sale than previously required providing greater informed consumer choice.

Disadvantages

- Potential for short term additional costs in transferring to the new single system being passed on to consumers.

Industry

Advantages

- Consumer confidence in food for sale increased as a result of additional information provided to consumers through, for example, more extensive labelling.

Disadvantages

- Potential for short term additional costs in transferring to the new single system.

6.6.2 Option 2

Reject the proposed draft variations contained in this Proposal. (Rejection of the draft variations will result in the continued operation of Volume 1, the 'Transitional Standard for the operation of Volume 1 and Volume 2' and Standard 1.1.3 in Volume 2).

Government

Advantages

- None identified

Disadvantages

- Additional costs and complexity of enforcing multiple standards.
- Delay in achieving public health benefits of the new requirements (benefits quantified in the attachments to this report)

Consumers

Advantages

- Avoids the potential for short term additional costs in transferring to the new single system.

Disadvantages

- Food not required to contain additional information that would otherwise be required if Volume 2 was the sole code. Consumers would be denied this information, impairing the ability to make informed choices as to the food they purchase.
- Delay in achieving public health benefits of the new requirements (costs are included in the attachments)

Industry

Advantages

- Those sectors of the food industry that have not already made the changeover to Volume 2 would be able to delay costs of change over to new Standards.

Disadvantages

- Those sectors of the food industry that have already made the changeover to Volume 2 may be disadvantaged in that they may have incurred additional expenditure (to those parts of the food sector that have not made a similar effort) in the expectation that 20 December 2002 was to be the date of conclusion of the transition period.
- Loss of consumer confidence in food manufacturers as public may perceive that industry is trying to avoid providing additional information in relation to the food they produce.

6.2 Proposal p248 – Development of 'stock-in-trade' provision (Volume 2 of the *Food Standards Code*)

6.2.1 Option 1

Require all food prepared for sale, packed for sale, or imported for sale before or during the transition period to comply with Volume 2 of the *Food Standards Code* after the end of the transition period.

Government

Advantages

- Enforcement of single standard less complicated and less costly.

Disadvantages

- Costs of food needing to be recalled to comply with labelling requirements.

- Consumers may be concerned as to the waste where food that is otherwise safe to consumer is forced to be recalled, relabelled or destroyed.

Consumers

Advantages

- Foods available for sale may contain additional information required by Volume 2 of the *Food Standards* Code.

Disadvantages

- Substantial amount of food that is safe to consume may cease to be available due to the recall of such products.
- The costs of recalling and relabelling affected food products is likely to be passed on to consumers.

Industry

Advantages

- None identified.

Disadvantages

- Substantial costs of determining whether foods already packaged for sale comply with Volume 2 of the *Food Standards* Code.
- For non compliant food products, the costs of recalling and re-labelling or destroying these products.
- Potential for significant disruption to the food supply.

6.2.2 Option 2

Develop provisions to allow the continued lawful sale of foods produced prior to or during the transition period, after the end of the transition period.

Government

Advantages

- Avoid costs of conducting recalls of non-compliant products

Disadvantages

- Additional complexity and cost of enforcing multiple standards

Consumers

Advantages

- Food products lawfully produced during and prior to the transition period would remain available for sale.
- Avoiding the additional costs of re-labelling foods that do not comply with Volume 2 of the *Food Standards Code* that were produced during and prior to the transition period.

Disadvantages

- Some foods may remain on the market without the additional information required under Volume 2 of the *Food Standards Code*.

Industry

Advantages

- Food products lawfully produced during and prior to the transition period would remain available for sale.
- Avoiding the additional costs of re-labelling foods that do not comply with Volume 2 of the *Food Standards Code* that were produced during and prior to the transition period.

Disadvantages

- None identified.

7. EVALUATION OF ISSUES RAISED IN SUBMISSIONS

7.1 Proposal P252 – Transitional arrangements for repeal of Volume 1 of the *Food Standards Code*

7.1.1 Overview

Generally those who gave no view on the date of the conclusion of the transition period submitted in relation to the 'stock-in-trade' provision. A number of submissions supported the 20 December 2002 date for conclusion of the transition period. One of the consumer organisations submitted that the food industry has had sufficient notice of the changes and consequently the date should not be changed.

Of the remaining submitters, several indicated that the date for the conclusion of the transition should be extended to taken into account of the issues unresolved as of the date of gazettal of Volume 2. A further number of submitters indicated that for essentially the same reasons, the date of the conclusion of the transition period should be postponed until 20 December 2003.

7.1.2 Amendments to the *Food Standards Code* following the adoption in December 2000

Of those proposing that the transition period should either be extended to 20 December 2003, or at least for a period sufficient to take account of the 'uncertainties' that followed the gazettal of the Joint Code in December 2000, most cited the delays in the publication of the User Guides and subsequent amendments to the Code following gazettal in support of this proposition. The following amendments were made at the indicated dates –

- The icon standards (e.g. ice cream, jam, chocolate), advertised for comment February 2001, **gazetted August 2001**.

- The expansion of dietary fibre to include inulin and fructooligosaccharides, advertised for comment November 2000, **gazetted November 2001**.

- The definition for carbohydrate, which also included a change to the format of the mandatory Nutrition Information Panel (from Carbohydrate, total to Carbohydrate) advertised for comment September 2001, **gazetted November 2001**.

- 'Labelling omnibus' of amendments which impacts on food not for retail sale, labelling of individual portion packs, additional exemptions from nutrition labelling and changes to percentage labelling, advertised for comment December 2001, **not yet recommended to Ministers or gazetted**.

Various submitters argued that it was not possible to commence the process of labelling changes while the above issues remained unresolved as it was not clear what the requirements were going to end up being. Certain parts of the food industry argue that it was not possible to commence the changeover to the new Code until at least the end of 2001 as the provisions of the Code were not finalised until the definition of carbohydrate was amended in November 2001. For this reason it was argued that the transition period has in effect been reduced from two years to one.

Evaluation

ANZFA acknowledges that the definition of carbohydrate gazetted in December 2000 was amended, with effect from November 2001, resulting in an amendment to the text of the nutrition information panel so that any product made to Volume 2 of the Code as of 20 December 2000 would have to be re-labelled as of November 2001. These submissions must also be considered in the light of several admissions that various parts of the food industry spent the majority of 2001 focussing on genetically modified (GM) food labelling requirements and food safety, without placing a great priority on the changes necessary to comply with Volume 2 of the *Food Standards Code*. The Australian Food and Grocery Council AFGC in its submission was firmly of the view that the 'limited resources' of the food industry gave priority to GM labelling, which curtailed the time available to food companies to commit resources to compliance with Volume 2 of the *Food Standards Code* within the two-year period.

The requirements for the declaration of 'Saturated fats' have not changed since the gazettal of the Code in December 2000, and consequently it is not open to the food industry to argue that it was unaware of the requirements in this case.

The requirements in relation to the declaration of dietary fibre and carbohydrate were amended with effect November 2001. This amendment involved replacing the term 'Carbohydrate, total' with the expression 'Carbohydrate'. Industry submissions pointed out that this amendment has caused difficulty in finalising the requisite labelling changes for the new Code. To remedy this difficulty, amendments to Standard 1.2.8 as proposed in this paper would allow the alternate declarations in a nutrition information panel of 'Carbohydrate' or Carbohydrate, total.

ANZFA in Proposal P246 is considering refining the wording of certain aspects of Standard 1.2.10 relating to the declaration of characterising ingredients in a food. ANZFA is not considering amending the underlying policy principles of this Standard and in this light, significant changes are not being considered. Parts of the food industry have claimed that this standard is poorly worded, poorly conceived and poorly understood. The requirements of Standard 1.2.10 are similarly worded to the European Union's Quantitative Ingredient Declaration requirements. ANZFA contends that the similarly worded requirements in the European Union have not caused the same degree of 'confusion' as appears to be the case in Australia and New Zealand.

7.1.3 Delays in the production and publication of the User Guides

ANZFA in the preliminary/draft assessment report stated that the food industry is required to comply with the provisions of the *Food Standards Code* and not the User Guides. Nevertheless, a number of submitters remained of the view that the publication of the User Guides in mid to late 2001 was a contributing factor in the food industry not being able to commence the process of changing over to the provisions of the new Code. Several submissions stated that the meaning of the standards was not apparent, and that it was necessary to wait for the publication of the User Guides in order to be certain as to what the Standards required.

Evaluation

ANZFA remains of the view that it was under no obligation to publish these User Guides and they were intended to provide additional guidance to the standards. The User Guides are not a substitute for compliance with the Standards and industry will need to have regard to the Standards. The User Guides were not the sole source of information in relation to the interpretation of the new Code. ANZFA established an 'Advice line' which was available to the food industry to obtain ANZFA's interpretation of the various standards.

7.1.4 Industry claims as to magnitude and cost of changes

The AFGC claims that the cost of writing off packaging materials for ten of its member companies, if the transition period concludes on 20 December 2002, is in the order of $10 million, with one company writing off packaging materials to the order of $8 million.

Evaluation

ANZFA views this claim in the context that it has been conducting the review of food standards from at least 1994, and the year 2000 had long been mooted as the date of commencement of the *Food Standards Code*.

The adoption of the *Food Standard Code* in 2000 was foreshadowed some time in advance of that date, and ANZFA therefore questions why any company would hold such quantities of packaging when the question of the duration of the transition period had yet to be determined. The duration of the transition period was the subject of much discussion at the time of adoption by Ministers in November 2000, and Ministers publicly stated that two years was adequate time to change over to the new standards.

7.1.5 Difficulty in obtaining information from suppliers

Various submitters indicated that the burden of obtaining additional information required for labelling especially nutrition and allergen declaration information has been substantial. Often suppliers would take several months to respond especially in regard to allergen information. It was further submitted that in many instances the responses provided were insufficient and that follow-up correspondence was necessary to obtain the required information. Companies producing a large number of products using a large number of ingredients including additives and processing have experienced considerable difficulties in obtaining full and accurate information, causing considerable delays. One submitter stated that –

> *The complexity of the new labelling Standards requires declarations to be provided by suppliers and assurances need to be sought back up the supply chain to the farm gate. Declaration survey requests have been circulating the supply chain for some 9 months now, and with mixed results. A small food manufacturer with limited technical and financial resources relies heavily on the accuracy of a supplier declaration.*
>
> *Caution, in the interests of public health and safety determines that sufficient time is required to ensure the information received from a raw material supplier is reliable. One example of an unreliable declaration was received from a supplier, updating a raw material specification at April 2002 by declaring the presence of traces of gluten when their declaration of 5 months earlier was that the ingredient contained no gluten. This triggers a change to the 'new' labelling program affecting all products using this ingredient, or, a product development program to confirm whether or not the ingredient could be changed.*

Evaluation

The food industry will have had two years to obtain the relevant information from their suppliers. ANZFA therefore does not see this as grounds for extending the duration of the transition period. The requirements in relation to the declaration of allergens has not changed since December 2000, thereby leaving industry with more than adequate time to obtain the relevant declarations from their suppliers.

Moreover, although the new Code was adopted in November 2000, the document as a whole was released for a substantial period of final comment in mid 2000 and was not changed in any significant way after that consultation. Therefore, the food industry had reliable notice of the contents of the new Code many months prior to its adoption, and the general direction of the Code requirements were made known to industry during the course of the document's development.

7.1.6 Dependence on industries outside food industry to make the necessary changes

Various submitters stated that the changeover could only commence from the end of 2001 and consequently it is now necessary to achieve this changeover in approximately 12 months. It was argued that the manufacturers are dependent on other sectors, such as graphic designers and printers. The packaging changes required by the entire food industry places a heavy demand on design and printing companies which are finding it increasingly difficult to addresses industry requirements.

For example the AFGC claims that there are 100,000 products on supermarket shelves. As there are approximately 100 weeks in two years and this would mean that 1000 labels would need to be changed each week. It is claimed by a number of submitters that there is simply not the capacity available to physically make the necessary label changes.

Evaluation

The formatting requirements for a nutrition information panel and the other labelling requirements for the new Code have not changed since gazettal in December 2001. ANZFA does not see why this process could not have commenced, for most food products, immediately following the gazettal of the new Code. Furthermore, ANZFA in developing the nutrition labelling requirements understood that somewhere in the order of sixty to seventy per cent of packaged foods carried nutrition information panels. The changes to the majority of food packages involved the addition of one entry for saturated fat. ANZFA does not consider this to be a major formatting change and has therefore questioned whether the claims that substantial re-design of products labels has been necessary.

ANZFA has conducted its own inquiries with a number of printing companies. The information provided to ANZFA suggests that industry's assertions on this point are exaggerated. For example, Amcor, which holds the largest share of the market in printing boxes/cartons, stated that as of early May 2002 there existed capacity to take on print jobs.

7.1.7 In-store labelling

Several of the large retail chains in Australia have claimed that it will not be physically possible to implement the roll-out of the machinery of necessary to achieve the in-store labelling requirements, particularly in relation to nutrition labelling.

Evaluation

ANZFA accepts that significant difficulties are currently being experienced by food retailers. ANZFA accepts that it will not be possible by 20 December 2002, in particular, in rural Australia, to install the equipment necessary to label products on site. In light of this and the fact that many of the food products packaged in store would in any case, be exempt from the labelling requirements of the *Food Standards Code* by virtue of clause 2 of Standard 1.2.1 (made on the premises exemption), and so as to allow for the roll-out of the equipment necessary to achieve compliance with the Code, therefore proposes not to require in-store labelling until 20 December 2003.

7.2 Stock-in-trade

7.2.1 Overview

There was general support for the proposal to allow the continued lawful sale of 'stock-in-trade' produced prior to the conclusion of the transition period to the standard being repealed. It was clearly stated that it is unreasonable and wasteful to make food that was lawful at the time it was made, and otherwise safe, to be unlawful as of the date of conclusion of the transition period. Many of the same issues that were raised in relation to 'stock-in-trade' and also in relation to the proposed date for conclusion of the transition period. It was argued that the delay in the publication of the User Guides and the subsequent amendments to the Code following gazettal in December 2000 has meant that it has only been possible to commence the changeover to the new standards at the end of 2001. Consequently, a significant proportion of food will still be passing through the distribution chain following the proposed date that Volume 1 and the New Zealand *Food Regulations 1984* will be repealed.

Further to these issues, a number of submissions from the food industry were of the view that twelve months was insufficient for long shelf life food (such as canned products and some frozen products) manufactured or packaged to the provisions of Volume 1 or the New Zealand *Food Regulations 1984* to pass through the distribution chain. It was further submitted that twenty-four months would be sufficient for long shelf life food to pass through the distribution chain. Of special mention were regional centres where such food may remain on the market for a significant period of time.

It was further submitted that not permitting the continued lawful sale of 'stock-in-trade' or twelve months allowance for 'stock-in-trade' would result in the unnecessary withdrawal of stock from the trade after the end of the transition period for non-food safety reasons. It was argued that this was unacceptable to the food industry and would be viewed as wasteful by consumers.

Evaluation

The primary issue in this case concerns the period of time that food produced lawfully during and prior to the transition period should be permitted to be sold following the conclusion of the transition period.

ANZFA agrees that twelve months is probably not sufficient to allow longer shelf life foods (lawfully produced to the requirements of Volume 1 and the New Zealand Food Regulations) to pass through the distribution chain. ANZFA accepts that two years will be sufficient for longer shelf life foods to do so.

7.3 'Stock-in-trade' for amendments to the *Food Standards Code* following the conclusion of the transition period

The South Australian Department of Human Services submitted that Health Ministers in July 2000 requested that ANZFA consider 'stock-in-trade' as it related to food produced during the transition period. It further submitted that the proposed standard to allow for 'stock-in-trade' when changes are made to the *Food Standards Code*, once it becomes the sole Code for both countries, went beyond the issues that Ministers had asked to be considered.

It was further submitted that as 'stock-in-trade' provisions made enforcement more complex and less efficient, that it was not appropriate to continue 'stock-in-trade' provisions beyond the transition period.

Evaluation

While ANZFA accepts the South Australian Department of Human Services' view that 'stock-in-trade' provisions make enforcement more complex and less efficient, ANZFA remains of the view that the implementation of Volume 2 of the *Food Standards* Code raises issues of a general nature in relation to foods produced prior to any amendment. ANZFA understands that enforcement agencies have in the past tended to exercise an administrative discretion in applying the relevant food standards as of the date of manufacture of the food. Consequently, ANZFA proposes to formalise this approach by proposing to allow food manufactured or imported before any amendment to the *Food Standards Code* to lawfully remain on the market after that amendment for a period of twelve months.

7.4. 'Stock-in-trade' for packaging materials

The Chamber of Commerce and Industry (Western Australia) argued against making the 'stock-in-trade' provision dependent on the food being manufactured or packaged during the transition period. It was suggested that, as manufacturers often purchase labels two to three years in advance, the 'stock-in-trade' provisions apply to packaging materials rather than requiring that the food be packaged prior to the relevant date. The submission indicated that significant packaging supplies may have to be written off, as the food products will not be packaged within the necessary timeframe. The AFGC supported this view in its submission in relation to Proposal P252, in detailing packaging write-offs that may result if 20 December 2002 is the date of conclusion of the transition period.

Evaluation

ANZFA while appreciating the issues raised by the Australian Chamber of Commerce and Industry considers that the suggested amendment is not capable of being enforced.

If such an amendment were adopted, enforcement agencies and retailers would need to rely on declarations by the manufacturers of the date that packaging was produced. ANZFA does not consider this to be a reasonable imposition either on enforcement agencies or retailers.

Moreover, although the new Code was adopted in November 2000, the document as a whole was released for a substantial period of final comment in mid 2000 and was not changed in any significant way after that consultation. Therefore, the food industry had reliable notice of the contents of the new Code many months prior to its adoption, and the general direction of the Code requirements were made known to industry during the course of the document's development.

7.5 Standard drink labelling for alcoholic beverages produced in New Zealand

One submitter stated that wine and spirits already packaged (without standard drinks labelling) in New Zealand are likely to be released for sale a number of years into the future.

Evaluation

ANZFA understands that in New Zealand it costs somewhere in the order of $1.80 per carton to apply standard drinks labelling to wine that is already labelled. ANZFA concedes that it is possible that wine has been packaged and labelled to the requirements of the *Food Regulations 1984* and therefore does not include standard drink labelling. ANZFA accepts that it is quite possible that wine produced lawfully in 2002 to the New Zealand Food Regulations will be made available for sale a number of years into the future. Consequently, ANZFA proposes that standard drink labelling only be mandatory in New Zealand for wine and spirits packaged after 20 December 2002.

This approach is consistent with the manner in which standard drink labelling was introduced in Australia in 1995.

7.6 Transitional standard for New Zealand *Food Regulations 1984*

A transitional standard for general special purpose foods is required (refer to regulation 237 (7) of the New Zealand *Food Regulations 1984*).

6.6.1 Infant formula products

In Division 3 of the draft Standard for Infant Formula and Follow-On Formula (New Zealand Only), the following errors were evident:

- Magnesium phosphate monobasic needs to be added to column two for magnesium.
- Several brackets have been inadvertently left off, as indicated on the attached sheet.

6.6.2 Health claims

Clause 2 introduces a new requirement, to that already agreed for New Zealand in Volume 2 of the *Food Standards Code*. We understand that the requirement comes from Volume 1, which is an alternative for New Zealand industry, but not intended to continue.

The discussion document should have made explicit the addition of this clause, drawing New Zealand stakeholders' attention to it. As such, it is doubtful that the clause meets New Zealand's consultation requirements. However, the clause is superfluous, in that the type of claim referred to would be regarded as a therapeutic claim under the Medicines Act in New Zealand. As such, the Ministry of Health will not oppose the inclusion of this clause in the transition standard.

6.6.3 Country of origin labelling requirements

Reference to whitebait and sardines in the purpose needs to be deleted.

6.6.4 Labelling of labelling of pollen and royal jelly

The Ministry of Health recommends an editorial note stating that the requirements for warning statements on dietary supplements containing royal jelly, bee pollen and propolis in New Zealand will be included in the *Dietary Supplement Regulations 1974*.

6.6.5 Modified Milks

The Ministry of Health suggested that the following changes to Division 3 in draft Standard 1.1A.5:

- Reference to pasteurisation and ultra heat treatment in the definition for standardised milks need to be deleted. (These will be covered in New Zealand's proposed standard for the processing of milk and milk products and reference to processing requirements are not given in the other definitions.)

- The standard should include definitions for evaporated skim milk, sweetened condensed milk and skim milk powder. The definitions for evaporated skim milk and skim milk powder may appear to be obvious considering the definition of skim milk provided. But, skimmed sweetened condensed milk is not a term normally used nor is it defined in the dictionary. We feel that it would helpful for definitions to be included for all milk products specified.

6.6.6 Amino Acid Modified Foods

- It is unclear as to whether the standards intention is for amino acid modified foods to be taken to mean a reference to formulated meal replacements or formulated supplementary foods. (Clause 1 (2) states '…a reference to amino acid modified food is taken to be a reference to formulated meal replacement', the editorial note refers to formulated meal replacements, and clause (2) references Division 3, which relates to formulated supplementary foods (rather than formulated meal replacements.)

- Because it is proposed that amino acid modified foods will eventually be classified as medical foods, it is not appropriate for a reference to amino acid modified foods be taken to mean either formulated supplementary foods or formulated meal replacements.

- Amino acid modified foods are foods that have either all or some of one amino acid removed. Amino acid modified foods are generally low protein foods and in New Zealand can be labelled as such. A requirement for formulated meal replacement and formulated supplementary foods is that they have a minimum protein content.

- A brief survey of the nutrient composition of amino acid modified foods currently on the market found that most products contain both nutrients and levels of nutrients that will not comply with either Division 2 or 3 of Standard 2.9.3 - Formulated Meal Replacements and Formulated Supplementary Foods.

- P252 did not include an assessment of amino acid modified foods currently on the market and it is unlikely that Proposal P252 reached the sector of the food industry that deals with this highly specialised food.

- The Ministry of Health recommends that the transitional standard for amino acid modified foods be identical to the current requirements in regulation 239a of the New Zealand *Food Regulations 1984.*

- The removal of amino acid modified foods from the market would have serious health consequences. These products form an essential part of the diet for people with in-borne errors in metabolism (as well as some other conditions).

Evaluation

The Ministry of Health in New Zealand advised ANZFA which provisions of the New Zealand *Food Regulations 1984* needed to be retained pending the development of joint standards. Consequently, ANZFA relies on the judgment of the Ministry of Health in New Zealand and therefore proposes to amend the transitional standard for amino acid modified foods in line with their recommendations.

8. ASSESSMENT

8.1 Proposal P252 – transitional arrangements for repeal of Volume 1 of the *Food Standards Code*

8.1.1 Assessment against objectives set out in subsection 10(1) of the ANZFA Act

ANZFA in developing and ANZFSC in adopting Volume 2, did so with a view primarily, to the protection of public health and safety of the populations of New Zealand and Australia, and the provision of adequate information to enable consumers to make informed choices about the food they eat. Protection of public health and safety issues, and greater consumer choice in relation to food is achieved for instance through: mandatory declarations and warning statements that highlight potential concern for members of the public; increased labelling (ingredient and percentage), among others that provide greater certainty and choice for consumers as to what is permitted to be present in the food they eat.

ANZFA has stated that somewhere in the order of sixty to seventy per cent of packaged foods contained nutrition labelling. Given that, for the most part, this was on a voluntary basis, nutrition labelling would have been predominantly on those foods, where there was benefit in doing so.

ANZFA therefore considers that significant benefits will accrue to consumers when the remaining packaged foods also contain the nutrition information panels. ANZFA (details are at Attachment 5) estimates that a delay of one year in the introduction of mandatory nutrition labelling will have the following adverse health effects:

- Between 320 and 460 people will die from diet-related diseases, every year mandatory labelling is delayed.
- The cost to the health system – expenditure from all sources – is in the range of $47 million to $67 million for every year mandatory labelling is delayed.
- The value of life, as measured by health economists, will diminish by $341 million to $486 million for every year mandatory labelling is delayed – an immense personal cost.
- This methodology has adopted several very conservative assumptions. It indicates the likely minimum costs of delaying mandatory nutrition labelling.
- Diet-related risk factors account for about 25% of Australia and New Zealand's burden of disease.
- From the experience of the US, we expect a significant proportion of currently unlabelled food products to show some poor nutrition qualities when nutrition labelling is mandatory.
- From the US experience, we expect mandatory labelling will result in a significant substitution away from least healthy food products, towards the most healthy food products.
- In addition, delaying mandatory labelling will mean insufficient warning of allergens in food products, placing vulnerable consumers at unnecessary risk.
- Other warnings and advisory statements will be more difficult for consumers to interpret.

8.1.2 Assessment against objectives set out in subsection 10(2) of the ANZFA Act

In developing and adopting Volume 2, regard was had to the section 10 objectives detailed above, and to the fact it was preferable for Standards to be implemented in a manner that did not unnecessarily jeopardise the efficiency and international competitiveness of the food industry of Australia and New Zealand. This proposal advances in particular, paragraph 10(2)(c), which requires ANZFA to have regard to the 'desirability of an efficient and internationally competitive food industry'.

ANZFA acknowledges that Volume 2 represents a significant change in approach and focus to that embodied in Volume 1 and the New Zealand *Food Regulations 1984*. In recognition of this significant change it is necessary to implement a reasonable transition period to allow for an orderly and efficient changeover to the new regulatory system.

In determining what is a 'reasonable' time to changeover to the new system, it is necessary to strike a balance between certain competing interests, namely:

1. the interests of consumers for the additional information that will be required to be provided by food manufacturers when Volume 2 becomes the sole repository of food standards in Australia and New Zealand;

ANZFA and consumers have argued that consumers will benefit significantly from the additional information that food manufacturers will be required to provide in relation to the food they produce when Volume 2 becomes the sole Code, e.g. percentage labelling, nutrition labelling, and mandatory warning statements.

2. the interests of enforcement agencies in reducing the additional costs involved in enforcing the multi-standard system operating in Australia and New Zealand throughout the period of transition;

ANZFA has been advised by a number of enforcement agencies that the enforcement of multiple standards for individual products is less cost effective than where a single standard exists for a given product. This was argued on the basis that multiple standards add another layer of complexity to the enforcement of food regulations. For instance, where two different testing methods are required to enforce the Code, there are additional costs associated with determining compliance or non-compliance with the Standard. For example, the South Australian Department of Human Services submitted 'that 'stock-in-trade' provisions present difficulties for enforcement in that the date of manufacture, packaging or importation needs to be established to determine which standard applies to a particular food'. This comment is equally applicable to the transition period, where multiple standards exist for food products. While, it is also produced to have 'stock-in-trade' provisions, the sooner the transition period concludes, the sooner that multiple standards will cease to exist.

3. the interests of the food industry in having sufficient time to change product formulation, labelling etc in the least costly manner.

Sectors of the food industry argued, prior to the meeting of Health Ministers in November 2000 that at least three years was necessary to changeover to the new Code, without a significant adverse impact on the food industry. The review of the *Food Standards Code* commenced in 1993, and while some issues remain outstanding, was largely finalised, upon the adoption of the Joint Code in November 2000. This means that it can not have been unknown, especially by AFGC members, that significant amendments to the food regulations of both countries were likely to occur some time around the year 2000. ANZFA, therefore questions why any company, following what it understands to be ordinary practice in the management of packaging stocks would continue to hold packaging stocks to the amount being claimed by the AFGC.

ANZFA has undertaken to quantify the costs to the general population and to government (the details of this are included in attachment 5). ANZFA has concluded that delaying the conclusion of the transition period (and in so doing delay, among other things, the introduction of mandatory nutrition labelling) would result in the following -

- Between 320 and 460 people will die from diet-related diseases, every year mandatory labelling is delayed.

- The cost to the health system – expenditure from all sources – is in the range of $47 million to $67 million for every year mandatory labelling is delayed.

- The value of life, as measured by health economists, will diminish by $341 million to $486 million for every year mandatory labelling is delayed – an immense personal cost.

(This methodology has adopted several very conservative assumptions. It indicates the likely minimum costs of delaying mandatory nutrition labelling.)

ANZFA believes the appropriate balance between the interests of consumers, government and those parts of the food industry is to repeal Volume 1 with effect on 20 December 2002. ANZFA believes that this position is appropriate and considers that the interests of consumers, government and those parts of the food industry that have made the necessary effort to be compliant as of 20 December 2002, outweigh those parts of the food industry that have not done so. ANZFA does not consider it reasonable to have delayed starting the process of changing over to Volume 2 of the *Food Standards Code*, until the whole of the Code had been finalised.

8.1.3 In-store labelling

ANZFA accepts that significant efforts are currently being made by food retailers and that it will not be possible, in particular, in rural Australia, for the installation of the equipment necessary to label products on site. In light of the fact that many of the food products packaged in store would in any case, be exempt from the labelling requirements of the *Food Standards Code* by virtue of clause 2 of Standard 1.2.1 (made on the premises exemption), and so as to allow for the roll-out of the equipment necessary to achieve compliance with the Code, therefore proposes not to require in-store labelling until 20 December 2003.

.1.4 Standards not expected to be resolved within the transition period

There are a number of standards matters that have not yet been resolved and may not be resolved prior to the end of the transition period. These include: Health Claims; Country of Origin Labelling Requirements, and the Labelling of Pollen and Royal Jelly.

It is necessary to retain these provisions in what is to be the Joint *Food Standards Code* (Volume 2), as they currently apply, until these matters are resolved. There are two principal reasons for this. First is to maintain those current important provisions in Volume 1 which advance public health and safety, and consumer information matters pending finalisation of the corresponding relevant reviews (i.e. Health claims). Secondly, the retention of these provisions facilitates an orderly and efficient transition to the sole code in the same manner as that established for the Volume 1 and Volume 2 arrangements.

The Ministry of Health has also advised that certain regulations in the New Zealand *Food Regulations 1984* equivalent to the standards proposed for temporary retention from Volume 1 need to be incorporated into the *Food Standards Code*, so as to allow effective transitional arrangements for products in New Zealand such as infant formula, and amino acid modified foods and for certain labelling requirements for bee pollen, propolis, royal jelly, wine and wine products and modified milk products. Joint standards for these products have not yet been finalised and as the Ministry of Health has proposed that it will revoke the food regulations, there may be a regulatory gap until these joint standards are finalised.

8.2 Proposal P248 – Development of 'stock-in-trade' provision (Volume 2 of the *Food Standards Code*)

Volume 2 of the *Food Standards Code* was adopted by ANZFSC with a view to the protection of the public health and safety of the populations of New Zealand and Australia, and to providing information to consumers to enable informed choices about the food they choose to purchase and consume. Subsection 10(2) provides further matters that must also be taken into account when developing food regulatory measures. Of particular note in this instance is paragraph 10(2)(c) which requires ANZFA to have regard to the 'desirability of an efficient and internationally competitive food industry'. The content of Volume 2 has already, for the most part, been adopted by ANZFSC, and at this stage it is merely the implementation of the provisions of Volume 2 that is at issue.

In developing and adopting standards, ANZFA and ANZFSC are obliged to do so in a manner that protects the public health and safety of consumers and provides adequate information to consumers to allow informed choice and prevent false or misleading conduct. This must however be done in a manner that does not unnecessarily impact upon the efficiency and international effectiveness of the food industry in New Zealand and Australia.

It appears that since gazettal of the Standards, the issue of how food products manufactured or imported into Australia or New Zealand prior to and during the transition period, had not been specifically considered. State and Territory enforcement agencies indicated at the time to the food industry that enforcement priorities would be focused upon on the date of manufacture of the product rather than the date of sale of the product. It has become apparent that this approach does not provide the certainty that the food industry requires in order to effectively carry on their business.

ANZFA considers it to be unreasonable to require retailers to remove from their shelves food products produced during and prior to the transition period or where any change to the requirements of the *Food Standards Code* is effected. To do so would potentially mean the removal of substantial quantities of food from retailers' shelves because the labelling requirements have changed from those in effect at the date of manufacture of the food. ANZFA considers this to be an unwarranted and arbitrary imposition on industry and ultimately on consumers to do so.

ANZFA therefore considers that food lawfully produced prior to the conclusion of the transition period should continue to be able to be lawfully sold for the durable shelf life of the product.

Consequently ANZFA considers that a one year 'stock-in-trade' provision for a food with a shelf life of less than one year lawfully produced during the transition period, will be sufficient to allow that food to lawfully pass through the distribution chain.

However, a one year 'stock-in-trade' period is insufficient for food with a shelf life of longer than two years. A one year' stock-in-trade' provision for food with a shelf life of longer than one year, would result, without good reason in the scrapping of hundreds of millions of dollars worth of food such as canned and frozen fruits, vegetables, meat and fish which were both safe and suitable for human consumption.

Various parts of the food industry have advised that that two years would be sufficient for longer shelf life foods produced lawfully during the transition period to pass through the distribution chain.

7.2.1 Stock-in-trade for amendments to the Food Standards Code following 20 December 2002

In recognition that the implementation of Volume 2 of the *Food Standards* Code raises issues of a general nature in relation to foods produced prior to the commencement of any amendment, it is proposed that Standard 1.1.1 also be amended to include a provision which has the effect of allowing food manufactured or imported prior to the commencement of any amendment to the *Food Standards Code* to lawfully remain on the market after the commencement of that amendment for twelve months from that date of commencement.

7.3 Conclusion

ANZFA considers that two years is sufficient for the food industry to make the necessary changes to comply with the provisions of Volume 2. It further considers that further extension will disadvantage consumers, government and those parts of the food industry that have already made the changes in the expectation that Volume 1 would be repealed on 20 December 2002. ANZFA does not consider that the factors cited by some submitters proposing to delay the conclusion of the transition period beyond 20 December 2002 are sufficient to warrant such a delay. ANZFA believes in particular, that the introduction of mandatory nutrition labelling, specifically, in relation to the declaration of saturated fats will significantly benefit consumers. Consequently, ANZFA proposes the repeal of Volume 1 with effect on 20 December 2002.

ANZFA has included at attachment 5 of this Report, an assessment of the costs to consumers and to government of delaying the introduction of mandatory nutrition labelling by twelve months as has been proposed by certain members of the food industry. ANZFA has come to the conclusion, based on quite conservative assessments, that between 320 and 460 people will die from diet-related diseases every year that mandatory nutrition labelling is delayed. Furthermore. the health sector will incur additional expenditure in the range of $47 million to $67 million every year that mandatory nutrition labelling is delayed. ANZFA has concluded that the value of life as measured by health economists, will diminish by $341 million to $486 million for every year mandatory labelling is delayed.

These costs significantly outweigh the costs proposed claimed by certain parts of the food industry in imposing 20 December 2002 as the date of conclusion of the transition period. Consequently, ANZFA proposes that significant benefits will accrue to consumers and to government, the sooner mandatory nutrition labelling is introduced.

ANZFA's view is that Volume 1 should be repealed on 20 December 2002, and that food with a shelf-life of less than one year, should continue to be able to be sold for a period of twelve months, and food with a shelf life of longer than one year should continue to be able to be sold for a period of two years. Furthermore, ANZFA in recognition of the time necessary for retailers, particularly in regional areas, to install the requisite machinery to implement the in-store labelling requirements, proposes to allow a further twelve months from 20 December 2002 before the in-store labelling requirements become mandatory.

Given that food that is made and packaged on the premises from which it is sold, and food packaged in the presence of the purchaser is exempt from the labelling requirements of the *Food Standards Code*, it is not envisaged that the delay in imposing the in-store labelling requirements will be substantially wide reaching. ANZFA considers it unreasonable, following 20 December 2002, to require the removal of foods manufactured and packaged in accordance with the requirements in place during the transition period.

In recognition that the implementation of Volume 2 of the *Food Standards* Code raises issues of a general nature in relation to foods produced prior to the commencement of any amendment, it is proposed that Standard 1.1.1 also be amended to include a provision which has the effect of allowing food lawfully manufactured or imported prior to the commencement of any amendment to the *Food Standards Code* to lawfully remain on the market after the commencement of that amendment for twelve months from that date of commencement.

The Ministry of Health has also advised that certain regulations in the New Zealand *Food Regulations 1984* equivalent to the standards proposed for temporary retention from Volume 1 will need to be incorporated into the *Food Standards Code*, so as to allow effective transitional arrangements for products in New Zealand such as infant formula, and amino acid modified foods. It is also proposed to include transitional standards detailing certain labelling requirements for wine and wine products, royal jelly, bee pollen, and propolis and for modified milk products.

9. WTO NOTIFICATION

Australia and New Zealand are members of the World Trade Organization (WTO) and are bound as parties to WTO agreements. In Australia, an agreement developed by the Council of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the Treaty between the Governments of Australia and New Zealand on joint Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

A notification was made in relation to the matters contained in Volume 2, and consequently none is required in relation to the deletion of Volume 1. The notification in relation to Volume 2 was done so on the basis that Volume 2 would be the sole repository of food standards in Australia and New Zealand.

10. CONSULTATION

10.1 Simplified procedures

ANZFA decided, pursuant to section 36 of the *Australia New Zealand Food Authority Act 1991,* to omit to invite public submissions in relation to the proposals prior to making a draft (full) assessment. ANZFA was satisfied that omitting to invite public submissions prior to making a draft assessment (making a full assessment) was warranted as the proposal deals raises matters of a mechanical nature that are of minor significance or complexity. Furthermore, ANZFA considered that omitting to invite public submissions prior to making a draft assessment, would not significantly adversely affect the interests of any person or body.

ANZFA has completed a final assessment (Inquiry) of Proposal P248 and Proposal P252, and developed draft variations to the *Food Standards Code* set out in attachment 1.

11. CONCLUSION

For the reasons set out above, ANZFA proposes to –

(a) Repeal Volume 1 of the *Food Standards Code* on 20 December 2002; and
(b) Include draft Transitional Standards contained in Part 1.1A; and

(c) Permit the lawful sale of food with a shelf life of less than one year, lawfully produced during the transitional period until 20 December 2003; and

(d) Permit the lawful sale of food lawfully produced during the transitional period with a shelf-life of more than one year until 20 December 2004; and

(e) Allow until 20 December 2003 for the implementation of the in-store labelling requirements of Volume 2 of the *Food Standards Code* and

(f) Permit the lawful sale of food lawfully produced prior to the commencement of any amendment to the *Food Standards Code* following 20 December 2002 for a period of 12 months from the commencement of the relevant amendment.

This Report is accompanied by draft variations to the *Food Standards Code* which will be recommended to the Australia New Zealand Food Standards Council (ANZFSC) for adoption.

SUBMISSIONS

No submissions on this matter are sought as the Authority has completed its assessment and the matter is now with the Australia New Zealand Food Standards Council for consideration.

FURTHER INFORMATION

Further information on this and other matters should be addressed to the Standards Liaison Officer at the Australia New Zealand Food Authority at one of the following addresses:

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PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2258
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Australia New Zealand Food Authority
PO Box 10559
The Terrace WELLINGTON 6036
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Assessment reports are available for viewing and downloading from the ANZFA website www.anzfa.gov.au . People without access to internet facilities may request paper copies of reports from the Information Officer.

ATTACHMENTS

1. Statement of Reasons
2. Draft variations to the *Food Standards Code*
3. Summary of submissions in relation to Proposal P248
4. Summary of submissions in relation to Proposal P252
5. Costing a one-year delay to the introduction of mandatory nutrition labelling

ATTACHMENT 1

`STATEMENT OF REASONS

PROPOSAL P248 – DEVELOPMENT OF 'STOCK-IN-TRADE' PROVISIONS (VOLUME 2 OF THE *FOOD STANDARDS CODE)* PROPOSAL P252 - TRANSITIONAL ARRANGEMENTS FOR REPEAL OF VOLUME 1 OF THE *FOOD STANDARDS CODE*

The Australia New Zealand Food Authority (ANZFA) raised two proposals, Proposal P248 and Proposal P252. Proposal P248 related to the development of 'stock-in-trade' provisions for Volume 2 of the *Food Standards Code*. Proposal P252 related to the Transitional Arrangements for the Repeal of Volume 1 of the *Food Standards Code*.

ANZFA in Proposal P252 proposes that:

- Volume 1 of the *Food Standards Code* be repealed with effect 20 December 2002;
- the in-store labelling requirements as they relate, among other matters, to nutrition labelling should not be mandatory until 20 December 2003;
- Part 1.1A should be inserted in Volume 2 to include transitional standards pending the resolution of standards matters such as health claims, country of origin, infant formula and labelling of royal jelly and other bee products; and
- The expression 'Carbohydrate, total' should be permitted where the expression 'Carbohydrate' is mandated in the nutrition information panel.

ANZFA in Proposal P248 proposes that:

- food with a shelf life of less than one year, if lawfully manufactured or packaged to the provisions of Volume 1 before 20 December 2002, should continue to be lawfully sold until 20 December 2003;
- food with a shelf life of more than one year, if lawfully manufactured or packaged to the provisions of Volume 1 before 20 December 2002, should continue to be lawfully sold until 20 December 2004; and
- Food lawfully manufactured or imported following 20 December 2002 to the provisions of Volume 2 should be able to be lawfully sold for a further period of one year following the commencement of that amendment, unless otherwise specified.

ANZFA recommends the adoption of the draft variation, as amended, for the following reasons:

- On 24 November 2000, the Australia New Zealand Food Standards Council (ANZFSC) adopted what is currently referred to as Volume 2 of the *Food Standards Code* (Volume 2), and Ministers agreed (in principle) to a two year 'transition period' in which the new parts of the *Food Standards Code* (known as Volume 2), would operate in parallel with existing provisions at that time.

- The food industry has known since this date that the 20 December 2002 was the likely date that Volume 1 would be repealed.

- The amendments to the Volume 2 of the Food Standards Code since 24 November 2000 and the User Guides being published in mid to late 2001, do not warrant delaying the repeal of Volume 1 beyond 20 December 2002.

- ANZFA considers it unreasonable, following 20 December 2002, to require the removal of foods lawfully manufactured and packaged in accordance with the requirements in place during the transition period.

- One year is sufficient to allow food (which is otherwise perfectly safe) with a shelf life of less than one year to pass through the distribution chain.

- Two years is sufficient to allow food (which is otherwise perfectly safe) with a shelf life of more than one year to pass through the distribution chain.

- The issues relating to 'stock-in-trade' and food produced lawfully during the transition period raise issues of general application. Consequently, food produced lawfully prior the commencement of amendments to the Code should continue to be able to be lawfully sold for a period of one year from the date of commencement.

- Transitional arrangements are necessary to allow an effective changeover by the food industry to new standards (when they are finalised) for those issues remaining unresolved such as Infant formula, Health claims, Country of Origin labelling and labelling of Pollen and Royal Jelly.

- In recognition of the time necessary for retailers, particularly in regional areas, to install the requisite machinery to implement the in-store labelling requirements, proposes to allow a further twelve months for these labelling requirements.

- The prescribed format for nutrition information panels was amended in late 2001, and should be as an alternate the previous prescribed format.

- Given that food that is made and packaged on the premises from which it is sold, and food packaged in the presence of the purchaser is exempt from the labelling requirements of the *Food Standards Code,* it is not envisaged that the delay in imposing the in-store labelling requirements will be substantially wide reaching.

It is important to that all food products manufactured or packaged following the conclusion of the transition period will be required to comply with the requirements of Volume 2 of the *Food Standards Code*.

REGULATORY IMPACT ASSESSMENT

ANZFA is required to consider the impact of various regulatory (and non-regulatory) options on all sectors of the community, which includes consumers, the food industry and governments in both Australia and New Zealand. The benefits and costs associated with the proposed amendments to the Food Standards Code have been analysed. For the preferred options, the benefits outweigh the costs.

WORLD TRADE ORGANIZATION (WTO) NOTIFICATION

Australia and New Zealand are members of the WTO and are bound as parties to WTO agreements. In Australia, an agreement developed by the Council of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the agreement between the Governments of Australia and New Zealand on Uniform Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

It is not considered that the matters raised in the Final Assessments require consideration under the Technical Barrier to Trade and/or the Sanitary or Phytosanitary Agreements of the WTO and therefore has not been notified to the WTO.

ATTACHMENT 2

DRAFT VARIATIONS TO VOLUME 1 AND VOLUME 2 OF THE *FOOD STANDARDS CODE*

To commence: 20 December 2002

[1] *The **Food Standards Code** is varied by deleting the* Standards *contained in* Volume 1.

[2] *The **Food Standards Code** is varied by deleting* -

[2.1] Transitional Standard for the operation of Volume 1 and Volume 2 of the Food Standards Code; *and*

[2.2] Standard 1.1.3.

[3] *The **Food Standards Code** is varied by –*

[3.1] *deleting clause 1 of Standard 1.1.1, substituting* -

1 Application of this Code

(1) Unless expressly provided elsewhere in this Code, the provisions of this Code apply to food products -

(a) sold or prepared for sale in Australia and/or New Zealand; and/or
(b) imported into Australia and/or New Zealand.

(2) Unless expressly provided elsewhere in this Code, a food product is taken to comply with any variation to this Code made from time to time, for a period of 12 months after the commencement of the variation, if the food product otherwise complied with this Code before the variation commenced.

(3) Subject to subclause (4) and prior to 20 December 2003, subclause (1) does not apply to food products –

(a) manufactured and packaged prior to 20 December 2002; and
(b) which complied with all applicable food standards in the case of Australia and all applicable food standards or New Zealand *Food Regulations (1984)* in the case of New Zealand as of the date of manufacture or packaging of the food product.

(4) Prior to 20 December 2004, subclause (1) does not apply to food products with a shelf life of more than twelve months –

(a) manufactured and packaged prior to 20 December 2002; and
(b) which complied with all applicable food standards in the case of Australia and all applicable food standards or New Zealand *Food Regulations (1984)* in the case of New Zealand, as of the date of manufacture or packaging of the food product.

(5) For the purposes of a Standard in this Code for which a corresponding transitional Standard in Part 1.1A applies, the reference to 'commencement of e the variation' in subclause 2 is a reference to the date when that corresponding Standard in Part 1.1A ceases to have effect.

(6) Prior to 20 December 2003, Part 1.2 does not apply to food packaged on the premises for retail sale from which it is sold.

[4] *The **Food Standards Code** is varied by inserting immediately following Standard 1.1.1 -*

PART 1.1A TRANSITIONAL STANDARDS

STANDARD 1.1A.1

TRANSITIONAL STANDARD FOR INFANT FORMULA PRODUCTS

Purpose

In Australia, this Standard incorporates Standard R7 of the former Australian Food Standards Code, and operates as a transitional alternative standard to Standard 2.9.1 for a period of two years from the commencement of Standard 2.9.1. During this time, infant formula products must comply with Division 2 of this Standard or Standard 2.9.1 of this Code.

In New Zealand, this Standard incorporates Standard R7 of the Australian Food Standards Code and Regulation 242 of the New Zealand *Food Regulations (1984),* and operates to allow Standard R7 and Regulation 242, as transitional alternative standards to Standard 2.9.1 for a period of two years from the commencement of Standard 2.9.1. During this time, infant formula products must comply with Division 2 or 3 of this Standard or Standard 2.9.1 of this Code.

'Stock-in-trade' provisions contained in Standard 1.1.1 should also be referred to.

Clauses

Division 1 - Application

(1A) For the matters regulated in this Standard, food produced in or imported into Australia, must comply with Division 2 of this Standard or Standard 2.9.1, but not a combination of both.

(1B) For the matters regulated in this Standard, food produced in or imported into New Zealand, must comply with Division 2 or 3 in this Standard or Standard 2.9.1, but not a combination of any of these.

(1C) This Standard ceases to have effect two years from the commencement of Standard 2.9.1.

Division 2 – Infant Formula Products in Australia and New Zealand

(1) In this Division -

(a) 'infant' means a person aged up to 12 months;

(b) 'energy value' means energy expressed in kilojoules set out opposite and in relation to each of the following dietary sources -

1 g fat yields	37 kJ
1 g protein yields	17 kJ
1 g carbohydrate, expressed as monosaccharide, yields	16 kJ;

(c) the protein content of a food to which it applies shall be calculated -

(i) in the case of a product in which the major source of protein is cows' milk, by multiplying the nitrogen content by 6.38;

(ii) in any other case, by multiplying the nitrogen content by 6.25.

(2) (a) In this Division, infant formula is any food sold, described or advertised as an alternative to human milk for the feeding of infants. It is a product suitable for infant feeding prepared from milk of cows or other animals or other edible constituents of animal or plant origin or a mixture of all of them, save that infant formula described as 'suitable from birth' shall not contain cereal proteins. In the preparation of infant formula for use, the addition of water only shall be required.

(b) Infant formula may be specifically formulated to satisfy particular well-recognised dietary requirements that are a result of a specific physical or physiological condition, disease or disorder, but in all other respects shall comply with this Standard. All deviations from the requirements of this Standard necessary to suit the condition, disease or disorder shall be declared in the label on or attached to a package containing the food.

(c) A package containing infant formula powder except single serve sachets thereof shall enclose a scoop suitable for use in accordance with the directions contained in the label on or attached to the package.

(3) Infant formula when prepared in accordance with directions contained in the label on or attached to a package containing the food -

(a) shall -

(i) be free of lumps and of large, coarse particles and suitable for being fed through a soft rubber or plastic nipple;

(ii) have an energy value of not less than 2700 kJ/L and not more than 3000 kJ/L;

(iii) have an osmolality not more than 325 mOsm/kg;

(iv) not contain more than 20 mg/100 kJ of carbohydrate, other than lactose;

(v) not contain sesame oil, cottonseed oil or fats containing more than 80 g/kg fat of trans-isomer fatty acids;

(b) shall contain -

(i) protein of one of the following formulations -

(A) not less than 450 mg of protein/100 kJ and not more than 700 mg of protein/100 kJ and not less than the concentrations, expressed in mg/100 kJ, specified opposite and in relation to the following L-amino acids -

cystine	7
histidine	9
isoleucine	19
leucine	35
lysine	26
methionine	6
phenylalanine	14
taurine	1.5
threonine	17
tryptophan	8
tyrosine	11
valine	25;

(B) not less than 700 mg of protein/100 kJ and not more than 1.2 g of protein/100 kJ and not less than the concentrations, expressed in mg/100 kJ, specified opposite and in relation to the following L-amino acids -

cystine	7
histidine	21
isoleucine	38
leucine	70
lysine	56
methionine	20
phenylalanine	37
taurine	1.5
threonine	34
tryptophan	10
tyrosine	31
valine	51;

(ii) not less than 800 mg/100 kJ and not more than 1.5 g/100 kJ of fat. The fat shall contain not more than -

(A) 150 g/kg of lauric acid;
(B) 150 g/kg of myristic acid;

(iii) not less than 70 mg/100 kJ linoleic acid in the form of glycerides, calculated as linoleic acid;

(iv) vitamins as follows -

(A) not less than 18 μg/100 kJ and not more than 37 μg/100 kJ of vitamin A, calculated as retinol equivalents;
(B) not less than 0.25 μg/100 kJ and not more than 0.48 μg/100 kJ of vitamin D, calculated as cholecalciferol;
(C) not less than -

(1) 9 μg/100 kJ of vitamin B_6 save infant formula containing more than 600 mg/100 kJ of protein which shall contain not less than 15 μg/g protein of vitamin B_6;
(2) 0.04 μg/100 kJ of vitamin B_{12}, calculated as cyanocobalamin;
(3) 1.9 mg/100 kJ of vitamin C, calculated as L-ascorbic acid and dehydroascorbic acid;
(4) 150 μg/100 kJ of vitamin E, calculated as dl-α-tocopherol;
(5) 1 μg/100 kJ of vitamin K;
(6) 0.4 μg/100 kJ of biotin;
(7) 1 μg/100 kJ of folate, calculated as pteroyl monoglutamic acid;
(8) 60 μg/100 kJ of niacin, calculated as nicotinamide;
(9) 70 μg/100 kJ of pantothenic acid;
(10) 14 μg/100 kJ of riboflavin;
(11) 10 μg/100 kJ of thiamin;

(v) minerals as follows -

(A) not less than 1.2 μg/100 kJ and not more than 10 μg/100 kJ of iodine;
(B) not less than 100 μg/100 kJ and not more than 480 μg/100 kJ of iron;
(C) not less than 1.4 mg/100 kJ and not more than 3.6 mg/100 kJ of magnesium;
(D) not less than 6 mg/100 kJ and not more than 25 mg/100 kJ of phosphorus, provided that the ratio of calcium to phosphorus is not less than 1.2:1 and not more than 2:1;
(E) not less than -

(1) 12 mg/100 kJ of calcium;
(2) 14 μg/100 kJ of copper;
(3) 1.2 μg/100 kJ of manganese;
(4) 120 μg/100 kJ of zinc;

(vi) electrolytes as follows -

(A) not less than 14 mg/100 kJ and not more than 35 mg/100 kJ of chloride;
(B) not less than 20 mg/100 kJ and not more than 50 mg/100 kJ of potassium;
(C) not less than 5 mg/100 kJ of sodium;

(vii) not less than 0.27 mg/100 kJ of L-carnitine;

(c) may contain -

(i) L-amino acids as specified in clause (3)(b)(i) of this Standard;
(ii) L-carnitine;
(iii) citric acid and L(+)-lactic acid;
(iv) vitamins, minerals and electrolytes as specified in subparagraphs (iv), (v) and (vi) of paragraph (b) of this clause in the forms specified in the Table 1 in this Standard;
(v) not more than -

(A) 5 g/L of lecithin;
(B) 4 g/L in total of mono- and di-glycerides of fat-forming fatty acids;
(C) 1 g/L in total of guar gum and locust bean gum;
(D) 10 mg/L of tocopherols;
(E) in the case of liquid milk-based infant formula and liquid soy-based infant formula, 0.3 g/L of carrageenan;
(F) in the case of liquid hydrolysed protein-based infant formula and liquid amino acid-based infant formula, 1 g/L of carrageenan;
(G) in the case of hydrolysed protein-based infant formula and amino acid-based infant formula, 25 g/L in total of acetylated distarch phosphate, distarch phosphate and phosphated starch phosphate;
(H) in the case of soy-based infant formula, 5 g/L in total of acetylated distarch phosphate, distarch phosphate and phosphated starch phosphate.

(4) **Microbiological standards**. When examined by the methods prescribed by clause (7) of this Standard -

(a) infant formula powder shall -

(i) have a standard plate count not exceeding 1000 micro-organisms per gram;
(ii) be free from coliforms in 1 g;
(iii) be free from coagulase-positive staphylococci in 0.1 g;
(iv) be free from *Salmonella* in 25 g;
(v) have a *Bacillus cereus* count not exceeding 100 micro-organisms per gram;

(b) ultra heat treated liquid infant formula and sterilised liquid infant formula shall show no microbial growth.

(5) There shall be written in the label on or attached to a package containing infant formula -

(a) in standard type of 3 mm, the words -

‘INFANT FORMULA’
immediately followed by -

(i) in the case of infant formula that complies with the protein requirement specified in clause (3)(b)(i)(A) of this Standard the statement -

‘SUITABLE FROM BIRTH’;

(ii) in the case of infant formula that complies with the protein requirement specified in clause (3)(b)(i)(B) of this Standard the statement -

‘SUITABLE ONLY FOR INFANTS AGED OVER 6 MONTHS’;

(b) subject to paragraph (5)(ba), in standard type of 3 mm, the statements -

(i) ‘ATTENTION - BREAST MILK IS BEST FOR BABIES. BEFORE YOU DECIDE TO USE AN INFANT FORMULA, CONSULT YOUR DOCTOR OR CLINIC FOR ADVICE’;

(ii) ‘WARNING - UNBOILED WATER, UNBOILED BOTTLES OR INCORRECT DILUTION CAN MAKE YOUR BABY ILL. PREPARE ONLY ONE BOTTLE AT A TIME. FOLLOW INSTRUCTIONS EXACTLY’;

(iii) ‘USING MORE OR LESS POWDER OR LIQUID CONCENTRATE THAN INDICATED WILL EITHER LEAD TO DEHYDRATION OR DEPRIVE YOUR BABY OF PROPER NUTRITION. DO NOT CHANGE PROPORTIONS WITHOUT MEDICAL ADVICE’;

(iv) ‘AFTER 4-6 MONTHS OF AGE YOUR BABY MAY NEED ADDITIONAL NOURISHMENT. CONSULT YOUR DOCTOR’;

(v) in the case of infant formula powder, except when sold in single serve sachets -

‘USE ONLY THE ENCLOSED SCOOP’;

(ba) in the case of infant formula in packages having a net weight of less than 1 kg - the statements referred to in subparagraphs (5)(b)(ii), (5)(b)(iii), (5)(b)(iv) and (5)(b)(v) in standard type of 1.5 mm;

(c) in standard type -

(i) directions as to its preparation and use using pictograms and -

(A) in the case of infant formula powder or infant formula liquid concentrate with a protein content of not more than 700 mg/100 kJ a feeding table in the form -

FEEDING TABLE

Age of infant	Quantities per feed		Feeds per day
	Previously boiled water in mL	Level measuring scoops or number of sachets or, as the case may be, volume of liquid concentrate in mL	
up to 2 weeks up to 1 month up to 2 months up to 4 months up to 6 months over 6 months			

(B) in the case of ready-to-feed liquid infant formula with a protein content of not more than 700 mg/100 kJ, a feeding table in the form -

FEEDING TABLE

Age of infant	Volume per feed in mL	Feeds per day
up to 2 weeks up to 1 month up to 2 months up to 4 months up to 6 months over 6 months		

(C) in the case of infant formula powder or infant formula liquid concentrate with a protein content of more than 700 mg/100 kJ, a feeding table in the form -

FEEDING TABLE

Age of infant	Quantities per feed		Feeds per day	
	Previously boiled water in mL	Level measuring scoops or number of sachets or, as the case may be, volume of liquid concentrate in mL	Formula	Other feeds
over 6 months				

(D) in the case of ready-to-feed liquid infant formula with a protein content of more than 700 mg/100 kJ, a feeding table in the form -

FEEDING TABLE

Age of infant	Volume per feed in mL	Feeds per day	
		Formula	Other feeds
over 6 months			

(E) in the case of other infant formula, information on the quantity of formula required per feed and the number of feeds of formula required per day;

(ii) a nutrition information table, for infant formula prepared in accordance with the directions contained in the label in the form -

NUTRITION INFORMATION

	Per 100 mL as prepared
Energy	kJ
Protein	g
Fat	g
Carbohydrate	g
Vitamin A	µg
Vitamin B_6	µg
Vitamin B_{12}	µg
Vitamin C	mg
Vitamin D	µg
Vitamin E	µg
Vitamin K	µg
Biotin	µg
Niacin	µg
Folate	µg
Pantothenic acid	µg
Riboflavin	µg
Thiamin	µg
Calcium	mg
Copper	µg
Iodine	µg
Iron	mg
Magnesium	mg
Manganese	µg
Phosphorus	mg
Zinc	µg
Chloride	mg
Potassium	mg
Sodium	mg

(iii) the statement -

‘IF CORRECTLY STORED AND MADE UP IN ACCORDANCE WITH THE DIRECTIONS CONTAINED IN THE LABEL, NO FURTHER VITAMIN OR MINERAL PREPARATIONS ARE NECESSARY’;

(iv) storage instructions covering both the period before and after it is opened;
(v) the source of protein in the product.

(6) There shall not be written in the label on or attached to a package containing infant formula -

(a) a pictorial representation of an infant;
(b) a pictorial representation that idealises the use of infant formula;
(c) the word 'humanised' or 'maternalised' or any word or words having the same or a similar effect;
(d) information relating to the nutrient content of human milk;
(e) a reference to the presence of vitamins, minerals, electrolytes or L-amino acids except in the statement of ingredients or in the nutrition information table;
(f) words claiming that the product is suitable for all infants from birth.

(6A) Notwithstanding paragraph (6)(e), where the iron content of infant formula is not less than 0.25 mg per 100 kJ, the label may include the words 'infant formula with iron'.

(6B) The statement 'infant formula with iron' is not a nutrition claim for the purpose of Standard 1.2.8 of this Code.

(7) **Methods of microbiological analysis.** The methods set out in this clause are the prescribed methods with respect to the microbiological analysis of infant formula.

(a) *Standard plate count*. Proceed in accordance with the current standard method in AS 1766 *Food microbiology*, save that for the purpose of this method when 5 sample units each consisting of at least 100 g or more of infant formula powder are examined as detailed, the result shall be reported as 'not exceeding 1000 micro-organisms per gram of the food' when at least 3 of the 5 sample units have a standard plate count not exceeding 1000 micro-organisms per gram and any remaining sample units have a standard plate count not exceeding 10 000 micro-organisms per gram.

(b) *Coliforms*. Proceed in accordance with the current standard method in AS 1766 *Food microbiology*, save that for the purpose of this method when 5 sample units each consisting of at least 100 g or more of infant formula powder are examined as detailed using an incubation temperature of 30^{o}C the result shall be reported as 'coliforms not detected in 1 gram of the food' when at least 3 of the 5 sample units are free from coliforms in 1 g and any remaining sample units are free from coliforms in 0.1 g.

(c) *Coagulase-positive staphylococci*. Proceed in accordance with the current standard method in AS 1766 *Food microbiology*, save that for the purpose of this method when 5 sample units each consisting of at least 100 g or more of infant formula powder are examined as detailed, the result shall be reported as 'coagulase-positive staphylococci not detected in 0.1 gram of the food' when at least 4 of the 5 sample units are free from coagulase-positive staphylococci in 0.1 g and any remaining sample units are free from coagulase-positive staphylococci in 0.01 g.

(d) *Salmonella*. Proceed in accordance with the current standard method in AS 1766 *Food microbiology*, save that for the purpose of this method when 30 sample units each consisting of at least 100 g or more of infant formula powder are examined as detailed, the result shall be reported as '*Salmonella* not detected in 25 g of the food' when no *Salmonella* has been detected in 25 g of each of the 30 sample units. For the purposes of this method, the sample units may be examined individually or pooled.

(e) *Bacillus cereus*. Proceed in accordance with the current standard method in AS 1766 *Food microbiology*, save that for the purposes of this method when 5 sample units each consisting of at least 100 g or more of infant formula powder are examined as detailed, the result shall be reported as 'not exceeding 100 micro-organisms per gram of the food' when at least 4 of the 5 sample units have a *Bacillus cereus* count not exceeding 100 micro-organisms per gram and the remaining sample unit has a *Bacillus cereus* count not exceeding 1000 micro-organisms per gram.

Division 3 - Infant Formula and Follow-On Formula (New Zealand Only)

(8) In this Division, infant formula shall be a food in liquid or powdered form intended for use as a substitute for human milk as the sole source of nutrition for an infant.

(9) In this Division, follow-on formula shall be a food in a liquid or powdered form intended for use as a substitute for human milk by infants and young children who are in good health and who are aged over 6 months, and constituting the principal liquid element in a progressively diversified diet.

(10) Infant formula and follow-on formula shall be nutritionally adequate to promote normal growth and development when used in accordance with the directions for use on the label.

(11) Infant formula and follow-on formula may contain any of the following -

(a) the following thickening agents -

Carrageenan
Casein and its sodium, calcium, and potassium compounds
Distarch phosphate
Acetylated distarch phosphate
Phosphated distarch phosphate
Guar gum
Hydroxypropyl starch
Locust bean gum

(b) the following emulsifiers -

Lecithin
Monoglycerides
Diglycerides

(c) the following acidity regulators -

Sodium hydroxide
Sodium bicarbonate
Sodium carbonate
Potassium bicarbonate
Sodium citrate
Potassium citrate
Lactic acid
Lactic acid producing cultures
Potassium hydroxide
Potassium carbonate
Calcium hydroxide
Citric acid

(d) the following antioxidants -

Mixed tocopherols
L-ascorbyl palmitate

neither of which shall be present in a proportion exceeding 10 ppm, calculated, in the case of an infant formula or follow-on formula that requires dilution or preparation before consumption, after such dilution or preparation;

(e) vitamins and minerals specified in Column 1 of Table 2 in the form specified in relation to that vitamin or mineral, and choline;

(f) the following amino acids -

L-methionine
Taurine

(g) The amino acid carnitine, if the protein sources of the infant formula or follow-on formula do not contain carnitine.

(12) No food additives except those specified in clause (11) shall be present in an infant formula or follow-on formula as a result of carry over from raw materials or other ingredients.

(13) The name of the food shall be either ‘infant formula’ or ‘follow-on formula’, as the case may be, or any appropriate designation indicating the true nature of the food.

(14) The label on each package of an infant formula or follow-on formula shall bear a statement of -

(a) The quantity of carbohydrate, protein, and fat in the food, expressed in g; and

(b) The energy content of the food, expressed in kJ; and

(c) The quantity of each vitamin and mineral in the food expressed in mg or mcg.

(15) The particulars required by clause (14) shall be stated -

(a) Per 100 g or 100 ml of infant formula or follow-on formula as sold; and
(b) Per stated volume of infant formula or follow-on formula when prepared according to the directions on the label.

(16) The label on each package of infant formula shall bear the words ‘An infant being fed this formula does not require additional vitamin or mineral supplements’, or words of similar meaning.

(17) The label on each package of follow-on formula shall bear the words ‘An infant or young child being fed this formula does not require additional vitamin or mineral supplements’, or words of similar meaning.’

(18) Each package of an infant formula or follow-on formula shall be labelled or embossed with a date mark, which shall be in the form ‘best before (followed by a date)’, or in the form ‘use by (followed by a date)’, in accordance with Standard 1.2.5.

(19) In the case of an infant formula or follow-on formula that has a shelf life of more than 90 days, the date used in the date mark shall state at least the month in the year expressed as a numeral or an abbreviation of the month using a minimum of 3 letters, followed by the year expressed as a numeral using either 2 digits or 4 digits.

(20) The label on each package of infant formula or follow-on formula shall bear a statement of the storage directions for the food before and after opening the package, and clear directions for the use of the food.

(21) In the case of an infant formula or follow-on formula that is a powder to be reconstituted and is not packaged in a single-serving sachet bearing a statement of the weight of the contents, a scoop or measure shall be included in the product container.

Table 1

Forms of vitamins, minerals and electrolytes that may be added to Formula

Ascorbic acid
Biotin
β-Carotene
Calcium ascorbate
Calcium pantothenate
Folic acid (folate)
Hydroxocobalamin
Niacinamide
Dexpanthenol
Phylloquinone (vitamin K_1)
Pyridoxine hydrochloride
Riboflavin
Riboflavin 5'-phosphate sodium
Sodium ascorbate
Thiamin hydrochloride
dl-α-Tocopherol
d-α-Tocopherol concentrate
Tocopherols concentrate mixed
d-α-Tocopheryl acetate
dl-α-Tocopheryl acetate
d-α-Tocopheryl acetate concentrate
d-α-Tocopheryl acid succinate
Vitamin A (retinol)
Vitamin A acetate
Vitamin A palmitate
Vitamin A propionate
Vitamin B_{12} (cyanocobalamin)
Vitamin D_2
Vitamin D_3

Calcium carbonate
Calcium chloride
Calcium gluconate
Calcium hydroxide
Calcium lactate
Calcium phosphate, dibasic
Calcium phosphate, monobasic
Calcium phosphate, tribasic
Calcium sulphate
Copper gluconate
Cupric sulphate
Ferrous fumarate
Ferrous gluconate
Ferrous succinate
Ferrous sulphate
Magnesium chloride
Magnesium phosphate, dibasic
Magnesium phosphate, monobasic
Magnesium sulphate
Potassium bicarbonate
Potassium carbonate
Potassium chloride
Potassium citrate
Potassium iodate
Potassium iodide
Potassium phosphate, monobasic
Potassium phosphate, dibasic
Potassium phosphate, tribasic
Sodium bicarbonate
Sodium carbonate
Sodium citrate
Sodium iodide
Sodium phosphate, dibasic
Sodium phosphate, monobasic
Sodium phosphate, tribasic
Zinc chloride
Zinc gluconate
Zinc sulphate

Table 2
Vitamins, minerals and electrolytes that may be added to Formula

Vitamin or Mineral	Permitted form
Vitamin A	Retinol forms vitamin A (retinal) vitamin A acetate (retinyl acetate) vitamin A palmitate (retinyl palmitate) vitamin A propionate (retinyl propionate) Carotenoid forms beta-carotene

Thiamin (Vitamin B1)	thiamin hydrochloride thiamin mononitrate
Riboflavin (Vitamin B2)	riboflavin riboflavin 5'-phosphate sodium
Niacin	niacinamide (nicotinamide) nicotinic acid
Folate	folic acid
Vitamin B6	Pyridoxine hydrochloride pyridoxine-5'-phosphate
Vitamin B12	cyanocobalamin hydroxocobalamin
Vitamin C	L-ascorbic acid ascorbyl palmitate calcium ascorbate potassium ascorbate sodium ascorbate
Vitamin D	Vitamin D2 (ergocalciferol) vitamin D3 (cholecalciferol)
Vitamin E	dl-alpha-tocopherol d-alpha-tocopherol concentrate tocopherols concentrate, mixed d-alpha-tocopheryl acetate dl-alpha-tocopheryl acetate d-alpha-tocopheryl acid succinate
Biotin	d-biotin
Pantothenic Acid	d-calcium pantothenate dexpanthenol d-sodium pantothenate
Vitamin K	vitamin K1 (phylloquinone/phytomenadione)
Calcium	calcium carbonate calcium chloride calcium citrate calcium gluconate calcium glycerophosphate calcium hydroxide calcium lactate calcium oxide calcium phosphate, dibasic calcium phosphate, monobasic calcium phosphate, tribasic calcium sulphate
Copper	copper gluconate copper-lysine complex cupric carbonate cupric citrate cupric sulphate

Iron	ferric ammonium citrate - brown ferric ammonium citrate - green ferric citrate ferric pyrophosphate ferrous carbonate ferrous citrate ferrous fumarate ferrous gluconate ferrous lactate ferrous succinate ferrous sulphate (dried and iron II sulphate)
Iodine	potassium iodate potassium iodide sodium iodide
Magnesium	magnesium carbonate magnesium chloride magnesium citrate magnesium gluconate magnesium hydroxide magnesium oxide magnesium phosphate, dibasic magnesium phosphate, monobasic magnesium phosphate, tribasic magnesium sulphate
Manganese	manganese carbonate manganese chloride manganese citrate manganese sulphate manganese gluconate
Phosphorus	calcium glycerophosphate calcium phosphate, dibasic calcium phosphate, monobasic calcium phosphate, tribasic magnesium phosphate, dibasic magnesium phosphate, monobasic magnesium phosphate, tribasic phosphoric acid potassium glycerophosphate potassium phosphate, dibasic potassium phosphate, monobasic potassium phosphate, tribasic sodium phosphate, dibasic sodium phosphate, monobasic sodium phosphate, tribasic
Potassium	potassium bicarbonate potassium carbonate potassium chloride potassium citrate potassium gluconate potassium glycerophosphate potassium hydroxide potassium iodide potassium lactate solution potassium phosphate, dibasic potassium phosphate, monobasic potassium phosphate, tribasic
Selenium	selenomethionine sodium selenate sodium selenite

Sodium	sodium bicarbonate sodium carbonate sodium chloride sodium citrate sodium gluconate sodium hydroxide sodium iodide sodium lactate sodium phosphate, dibasic sodium phosphate, monobasic sodium phosphate, tribasic sodium sulphate sodium tartrate
Zinc	zinc acetate zinc chloride zinc citrate zinc gluconate zinc oxide zinc sulphate

STANDARD 1.1A.2

TRANSITIONAL STANDARD – HEALTH CLAIMS

Purpose

This Standard incorporates clause (19) of Standard A1 of the Australian Food Standards Code, and operates as a transitional alternative standard to Standard 1.2.7 for a period of two years from the commencement of Standard 1.2.7. During this time, food must comply with this Standard or Standard 1.2.7 of the Code. After the two-year transition period, Standard 1.2.7 will exclusively apply. 'Stock-in-trade' provisions contained in Standard 1.1.1 should also be referred to, along with Standard 1.2.8 and 1.3.2.

Clauses

(1A) For the matters regulated in this Standard, food must comply with this Standard or Standard 1.2.7, but not a combination of both.

(1B) Subject to clause (1D), this Standard ceases to have effect two years from the commencement of Standard 1.2.7.

(1C) Subclauses (3)(e), (f), (g), (h) and (i) cease to have effect on 13 February 2004.

(2) The label on or attached to a package containing or an advertisement for food shall not contain a claim or statement that the food is a slimming food or has intrinsic weight-reducing properties.

(3) (a) Save where otherwise expressly prescribed by this Code, any label on or attached to a package containing or any advertisement for food shall not include a claim for therapeutic or prophylactic action or a claim described by words of similar import.

(b) Any label on or attached to a package containing or an advertisement for a food shall not include the word 'health' or any word or words of similar import as a part of or in conjunction with the name of the food.

(c) Save where otherwise expressly prescribed by this Code, any label on or attached to a package containing or any advertisement for food shall not contain any word, statement, claim, express or implied, or design that directly or by implication could be interpreted as advice of a medical nature from any person.

(d) Save where otherwise expressly prescribed by this Code, the label on or attached to a package containing or any advertisement for food shall not contain the name of or a reference to any disease or physiological condition.

(e) Subject to subclauses (3)(f), (g) and (h), a food listed in column 1 of the Table to this subclause may have a health claim listed in column 3 of the Table made in respect of that food, provided that the food meets the relevant eligibility criteria in column 2 of the Table.

Table to subclause (3)(e)

Permitted Health Claims

Column 1	**Column 2**	**Column 3**
Food	**Eligibility Criteria** **Amounts specified are per each serving as specified in the nutrition information panel**	**Permitted Claim**
PRIMARY FOODS Eggs Eggs Fruit Avocado Grapefruit Orange Legumes McKenzie's Borlotti Beans McKenzie's Cannellini Beans McKenzie's Chick Peas McKenzie's Dried (Whole Green) Peas McKenzie's Green Split Peas McKenzie's Haricot Beans McKenzie's Italian Style Soup Mix McKenzie's Lima Beans McKenzie's Red Kidney Beans McKenzie's Red Split Lentils McKenzie's Soya Beans McKenzie's Whole Green Lentils McKenzie's Yellow Split Peas Mellow Yellow Red Kidney Beans Mellow Yellow Soya Beans Mellow Yellow Chick Peas Sanitarium Red Kidney Beans Nuts Peanuts Vegetables Beetroot Broccoli Brussels Sprouts Cabbage Cauliflower English Spinach Green beans Harvest FreshCuts Vegetable Medley	**Primary foods as defined in Standard 1.3.2** Contains at least 40 micrograms folate **Other foods** Contains at least 40 micrograms folate and not more than – (A) 14 g fat, of which no more than 5 g is saturated fat; (B) 500 mg sodium; and (C) 10 g in total of added sugars and honey.	A claim which states – (a) that increased maternal folate consumption in at least the month before and 3 months following conception may reduce the risk of fetal neural tube defects; and (b) the recommendation that women consume a minimum of 400 micrograms folate per day in at least the month before and at least the first 3 months following conception.

Table to subclause (3)(e)

Permitted Health Claims (continued)

Column 1 **Food**	Column 2 **Eligibility Criteria** **Amounts specified are per each serving as specified in the nutrition information panel**	Column 3 **Permitted Claim**
Leeks Lettuce Mushrooms Parsnip Sweet corn Watties Garden Peas Watties Baby Peas Watties Choice Cut Green Beans Watties Supersweet Corn Zucchini <u>PROCESSED FOODS</u> <u>Bread</u> Burgen Sunflower Barley and Sunflower Seed Load Burgen High Bake Heritage Rye Burgen High Bake Heritage White Burgen High Bake Heritage Granary Malt Burgen High Bake Heritage Soy and Linseed Burgen High Bake Heritage Wholemeal Burgen Mixed Grain Loaf Burgen Mixed Grain Fruit Loaf Burgen Oat Bran and Honey Loaf Burgen Traditional Rye Loaf Burgen Soy-Lin Loaf Pro-Rol Swiss Maid Tip Top English Muffins Tip Top Holsom's Wholemeal Tip Top Holsom's Wholemeal Toast Tip Top Holsom's Wholemeal with Wheatgerm Tip Top Holsom's Wholemeal with Wheatgerm Toast Tip Top Hyfibe White Tip Top Hyfibe White Muffins Tip Top Hyfibe White Thick Tip Top Multigrain Tip Top Multigrain 9 Grain Tip Top Multigrain 9 Grain Muffins Tip Top Multigrain 9 Grain Toast Tip Top Multigrain Muffins Tip Top Multigrain Toast Tip Top Pro-Rol Thick	**Primary foods as defined in Standard 1.3.2** Contains at least 40 micrograms folate **Other foods** Contains at least 40 micrograms folate and not more than – (A) 14 g fat, of which no more than 5 g is saturated fat; (B) 500 mg sodium; and (C) 10 g in total of added sugars and honey.	A claim which states – (a) that increased maternal folate consumption in at least the month before and 3 months following conception may reduce the risk of fetal neural tube defects; and (b) the recommendation that women consume a minimum of 400 micrograms folate per day in at least the month before and at least the first 3 months following conception.

Table to subclause (3)(e)

Permitted Health Claims (continued)

Column 1	Column 2	Column 3
Food	**Eligibility Criteria** **Amounts specified are per each serving as specified in the nutrition information panel**	**Permitted Claim**
Tip Top Sunblest Thick Tip Top Sunblest Sandwich Tip Top The White Stuff Tip Top The White Stuff Muffins Uncle Toby's Vitagold Bread Uncle Toby's Energy White Bread Uncle Toby's GrainsPlus Bread <u>Cereals</u> Goodman Fielder Nature's Gold Jackaroo Flour Kellogg's All Bran Kellogg's All Bran Fruit 'n Oats Kellogg's Bran Flakes Kellogg's Corn Flakes Kellogg's Golden Wheats Kellogg's Guardian Kellogg's Just Right Kellogg's Mini-Wheats Apricot Kellogg's Mini-Wheats Blackcurrent Kellogg's Mini-Wheats Strawberry Kellogg's Mini-Wheats Whole Wheat Kellogg's Special K Kellogg's Sultana Bran Lowan Flake Medley with Wild Berries Sanitarium Cornflakes* Sanitarium Fruity Bix – Apricot* Sanitarium Fruity Bix – Tropical* Sanitarium Fruity Bix – Wild Berry* Sanitarium Good Start* Sanitarium Light 'n Tasty Sanitarium Lite-Bix* Sanitarium Soy Tasty Sanitarium Weet-Bix Sanitarium Weet-Bix HiBran Soy & Linseed Sanitarium Weet-Bix plus Oat Bran Uncle Toby's Lite Start Breakfast Bars Uncle Toby's Lite Start Breakfast Cereal <u>Fruit/Vegetables</u> Golden Circle Kernel Corn Golden Circle Sliced & Baby Beetroot	**Primary foods as defined in Standard 1.3.2** Contains at least 40 micrograms folate **Other foods** Contains at least 40 micrograms folate and not more than – (A) 14 g fat, of which no more than 5 g is saturated fat; (B) 500 mg sodium; and (C) 10 g in total of added sugars and honey.	A claim which states – (a) that increased maternal folate consumption in at least the month before and 3 months following conception may reduce the risk of fetal neural tube defects; and (b) the recommendation that women consume a minimum of 400 micrograms folate per day in at least the month before and at least the first 3 months following conception.

Table to subclause (3)(e)

Permitted Health Claims (continued)

Column 1	Column 2	Column 3
Food	**Eligibility Criteria** **Amounts specified are per each serving as specified in the nutrition information panel**	**Permitted Claim**
Juices Berri Orange Juice (Long Life) – No Added Sugar Berri Orange Juice (Long Life) – Premium Berri Pure N' Fresh (Chilled Orange Juice) Citrus Tree Orange Juice Coles Apple Juice – No Added Sugar (Sourced from Berri Ltd)Coles Apple and Blackcurrant Juice - No Added Sugar (Sourced from Berri Ltd) Coles Orange Juice – No Added Sugar (Sourced from Berri Ltd) Coles Orange and Mango Juice – No Added Sugar (Sourced from Berri Ltd) Coles Viten Fernland Balance Orange Juice Golden Circle Cloudy Apple Juice Golden Circle Orange Juice Golden Circle Pineapple Juice Just Juice Apple Just Juice Orange McCoy Orange Juice Quelch Just Squeezed Orange Stefans Orange Juice Soy Products Soy Feast Soy & Corn Fritters Extracts Sanitarium Marmite Kraft Vegemite Supplementary Foods National Foods Edge *approved pending folate fortification	**Primary foods as defined in Standard 1.3.2** Contains at least 40 micrograms folate **Other foods** Contains at least 40 micrograms folate and not more than – (A) 14 g fat, of which no more than 5 g is saturated fat; (B) 500 mg sodium; and (C) 10 g in total of added sugars and honey.	A claim which states – (a) that increased maternal folate consumption in at least the month before and 3 months following conception may reduce the risk of fetal neural tube defects; and (b) the recommendation that women consume a minimum of 400 micrograms folate per day in at least the month before and at least the first 3 months following conception.

(f) A health claim must not be made in respect of the following foods -

(i) food standardised in Part 2.7 of this Code;
(ii) food standardised in Standards 2.9.1, 2.9.2 and 2.9.4 of this Code; and
(iii) soft cheeses and pâté; and

(iv) formulated meal replacements standardised in Standard 2.9.3.

(g) The label on or attached to a package of food, in respect of which a health claim set out in the Table has been made, must include -

(i) a nutrition information panel in accordance with Standard 1.2.8, which additionally includes the average quantity of folate in one serving of the food, beside the proportion of the RDI of folate contributed by one serving of the food;
(ii) an asterisk accompanying the word 'folate' in the nutrition information panel which refers to a footnote advising that the RDI of 200 micrograms referred to is for adults, whereas for women, at least one month before and during pregnancy, the recommended folate intake is 400 micrograms per day;
(iii) an accompanying statement that it is important to maintain a varied diet; and
(iv) a statement of particular storage, handling or cooking requirements, where the ability of a food to contain at least 40 micrograms folate per each serving depends on those requirements.

(h) Where a label, in respect of which a health claim set out in the Table has been made, is displayed on or in connection with a food which is displayed for retail sale other than in a package, the label must include -

(i) a nutrition information panel in accordance with Standard 1.2.8, which additionally includes the average quantity of folate in one serving of the food, beside the proportion of the RDI of folate contributed by one serving of the food; and
(ii) an asterisk accompanying the word 'folate' in the nutrition information panel which refers to a footnote advising that the RDI of 200 micrograms referred to is for adults, whereas for women, at least one month before and during pregnancy, the recommended folate intake is 400 micrograms per day.
(iii) an accompanying statement that it is important to maintain a varied diet; and
(iv) a statement of particular storage, handling or cooking requirements, where the ability of a food to contain at least 40 micrograms folate per each serving depends on those requirements.

(i) Where a health claim may be made in relation to a food in accordance with this Standard the same claim in relation to that food may be made in an advertisement, provided the advertisement includes a statement that it is important to maintain a varied diet.

STANDARD 1.1A.3

TRANSITIONAL STANDARD FOR COUNTRY OF ORIGIN LABELLING REQUIREMENTS

Purpose

This Standard incorporates the various country of origin requirements contained in the former Australian *Food Standards Code* and certain requirements in the New Zealand *Food Regulations (1984).* These requirements operate for a period of two years from the commencement of any corresponding alternative country of origin provisions elsewhere in this Code. This Standard does not apply in New Zealand, other than certain requirements as they relate to wine and wine products.

Table of Provisions

Clauses

1 Application

(1) For the matters regulated in this Standard, food must comply with this Standard or any alternative country of origin provisions elsewhere in this Code, but not a combination of, or parts of, both.

(2) Subject to subclause (1), food produced in or imported into New Zealand must only comply with clause 11.

(3) Subject to subclause (1), food produced in or imported into Australia must comply with this Standard, other than clause 11.

(4) This Standard ceases to have effect two years from the commencement of any country of origin provisions elsewhere in this Code.

Drafting note:

At the time of drafting this transitional standard, the review of country of origin labelling requirements for food has not been finalised. If this review concludes that there is no need for country of origin declarations on food, then this transitional standard may need to be repealed.

2 General requirements

(1) The label on a package containing food shall include a statement that identifies the country in which the food was made or produced.

(2) If the label on a package containing food includes:

(a) a statement that identifies the country in which the food was packed for retail sale; and

(b) if any of the ingredients of the food does not originate in the country in which the food was packed for retail sale, a statement -

(i) identifying the country or countries of origin of the ingredients of the food; or

(ii) to the effect that the food is made from ingredients imported into that country or from local and imported ingredients, as the case requires;

the label shall be taken to comply with subclause (1).

(3) The material included on a label under this clause may include a comment on or explanation of that material.

(4) Where the name and address of the manufacturer are set out on the label and the address contains the name of the country in which the food was made or produced, the name and address shall be taken to satisfy the requirements of subclause (1).

(5) In this clause, 'ingredient' does not include food additives.

3 Country of origin requirements for fish

(1) In this clause -

fish means a fish or part of a fish ordinarily used for consumption by humankind and includes a crustacean or mollusc.

(2) Subject to subclause (3), if fish, other than fish the country of origin of which is Australia or New Zealand, is displayed for retail sale other than in a package, there must be displayed on or in connection with the display of the fish a label containing, in type of 9 mm, a statement indicating the country of origin of the fish or a statement indicating that the fish is imported.

(3) Subclause (2) does not apply to fish which has been coated with or mixed with one or more other foods, or to cooked fish other than cooked prawns.

4 Country of origin requirements for vegetables

If vegetables, other than frozen, dehydrated or preserved vegetables or vegetables grown in Australia or New Zealand, are displayed for retail sale otherwise than in a package, there must be displayed on or in connection with the display of the vegetables, a label containing, in standard type of 9 mm, a statement indicating the country of origin of the vegetables or a statement indicating that the vegetables are imported.

5 Country of origin requirements for nuts

(1) In this clause -

nuts includes peanuts and coconuts.

(2) If nuts other than nuts grown in Australia or New Zealand are displayed for retail sale otherwise than in a package, there must be displayed on or in connection with the display of the nuts a label containing, in standard type of 9 mm, a statement indicating the country or countries of origin of the nuts or a statement indicating that the nuts are imported.

6 Country of origin requirements for fruit

(1) In this Standard -

fruit means the edible, fleshy fructification of plants, distinguished by their sweet, acid and ethereal flavours.

(2) If fruit, other than preserved fruit or fruit grown in Australia or New Zealand, is displayed for retail sale otherwise than in a package, there must be displayed on or in connection with the display of the fruit a label containing, in standard type of 9 mm, a statement indicating the country of origin of the fruit or a statement indicating that the fruit is imported.

7 Labelling of fruit juices containing imported fruit ingredients

(1) For the purpose of subclause (2), fruit juice, concentrated fruit juice, reconstituted fruit juice, sweetened fruit juice or sweetened reconstituted fruit juice contains an imported fruit ingredient if an ingredient of the food is -

(a) fruit juice or concentrated fruit juice that was imported into Australia; or
(b) a food referred to in paragraph (a) that was prepared in whole or in part from fruit that was imported into Australia.

(2) If fruit juice, concentrated fruit juice, reconstituted fruit juice, sweetened fruit juice or sweetened reconstituted fruit juice offered for sale contains one or more imported fruit ingredients, the label on or attached to a package containing the food must, unless the label expressly indicates that the food is a product of a country other than Australia, include, otherwise than in the ingredient list -

(a) a statement identifying each country of origin of the imported fruit ingredients; or
(b) a statement to the effect that the food is made from -

(i) imported fruit ingredients; or
(ii) imported fruit ingredients and local fruit ingredients;

as the case requires.

8 Country of origin requirements for orange juice

(1) In this clause

orange juice means the liquid portion with or without pulp expressed from the endocarp of sound, mature oranges (*Citrus sinensis* (L.) Osbeck).

(2) For the purposes of subclause (3), orange juice, reconstituted orange juice, concentrated orange juice or sweetened orange juice contains an imported fruit ingredient if an ingredient of the food is -

(a) orange juice, concentrated orange juice or sweetened orange juice that was imported into Australia; or
(b) a food referred to in paragraph (a) that was prepared in whole or in part from oranges that were imported into Australia.

(3) Where orange juice, reconstituted orange juice, concentrated orange juice or sweetened orange juice offered for retail sale, contains one or more imported fruit ingredients, the label on or attached to a package containing the food must, unless the label expressly indicates that the food is a product of a country other than Australia, include other than in the ingredient list -

(a) a statement identifying each country of origin of the imported fruit ingredients; or
(b) a statement to the effect that the food is made from:

(i) imported oranges, imported orange juice, imported orange juice concentrate or imported sweetened orange juice; or
(ii) imported fruit ingredients and local fruit ingredients ;

as the case requires.

9 Country of origin requirements for fruit drinks

(1) In this clause -

comminuted fruit means the comminuted product prepared from that portion of whole fruit which is normally used for human consumption but does not include the peel of citrus fruit.

concentrated fruit puree means the product obtained by removing some of the water from fruit puree.

fruit drink means a product (other than a fruit juice) prepared from one or more of fruit juice, fruit puree, concentrated fruit juice, concentrated fruit puree, comminuted fruit and orange peel extract and one or more of the following -

(a) water;
(b) mineral water;
(c) mineralised water.

fruit puree means the product obtained by sieving the edible part of whole or peeled fruit without removing the juice.

orange peel extract means the water extract of orange peel, with or without the pulp.

(2) For the purposes of this clause, fruit drink contains an imported fruit ingredient if the fruit drink contains -

(a) fruit juice, concentrated fruit juice, orange peel extract, concentrated orange peel extract that was imported into Australia; or
(b) a food referred to in paragraph (a) that was prepared in whole or in part from fruit that was imported into Australia.

(3) Subclause (4) applies only to fruit drink that -

(a) subject to paragraphs (b) and (c), contains at least 350 mL/L of the fruit or fruits after which it is named; or
(b) in the case of lemon fruit drink, blackcurrant fruit drink, or guava fruit drink - contains at least 250 mL/L of lemon juice, blackcurrant juice or guava juice, as the case may be; or
(c) in the case of pineapple fruit drink, pear fruit drink or apple fruit drink or a mixture of those - contains at least 500 mL/L of pineapple juice, pear juice or apple juice or of a mixture of those juices, as the case may be.

(4) If fruit drink offered for sale contains one or more imported fruit ingredients, the label on a package containing the fruit drink must, unless the label expressly indicates that the fruit drink is a product of a country other than Australia, include, otherwise than in the ingredient list -

(a) a statement identifying each country of origin of the imported fruit ingredients; or
(b) a statement to the effect that the fruit drink was made from -

(i) imported fruit ingredients; or
(ii) imported fruit ingredients and local fruit ingredients;

as the case requires.

10 Country of origin requirements for spirits

(1) Products consisting of imported spirits to which only water or caramel or both has or have been added in Australia shall be considered as wholly produced in the country of origin of the spirit.

(2) There shall be written in the label on or attached to a package containing spirit bottled in Australia from imported bulk spirit, in standard type, the words - 'BOTTLED IN AUSTRALIA'.

(3) There shall be written in the label on a package containing a blend of spirits produced in more than one country, in standard type, the name of every such country in descending order of proportion, and the proportion of the blend from each of the countries with a deviation from the stated proportion of not more than 10 mL/L by volume.

(4) Save for the purposes of compliance with subclause (2) or (3), the word 'Australia' or 'Australian' shall not be used in the label on or attached to a package containing spirits the contents of which were not produced wholly in Australia.

11 Country of origin requirements in New Zealand for wine and wine products

(1) There shall be borne on the label on each package of wine or wine product words that clearly indicate the country of origin of the wine or wine product.

(2) If any of the grape juice, concentrated grape juice, potable spirit, or wine spirit used in any wine product originates in a country other than the country of origin of the wine, that country shall be named on the label as a source of ingredients used in the manufacture of the wine product.

STANDARD 1.1A.4

TRANSITIONAL STANDARD FOR THE LABELLING OF POLLEN AND ROYAL JELLY

Purpose

This Standard incorporates the labelling requirements for pollen products and royal jelly from Standard K2 of the former Australian *Food Standards Code*, and operates as a transitional alternative to the labelling requirements for those products in clause 3 of Standard 1.2.3 of this Code. This Standard also incorporates the requirements of the mandatory food standard in New Zealand relating to royal jelly and pollen products which will be rescinded upon issue of this Standard in New Zealand.

This Standard ceases to have effect two years from the commencement of alternative requirements contained in the Table to clause 3 of Standard 1.2.3. In Australia and New Zealand this means that during that two-year period, bee pollen and royal jelly must comply with the labelling requirements in this Standard (albeit different in the two countries) or those contained in clause 3 of Standard 1.2.3. 'Stock-in-trade' provisions contained in Standard 1.1.1 should also be referred to.

Table of Provisions

Clauses

1 Application

(1) For the matters regulated in this Standard, food produced in or imported into Australia must comply with clause 3 and clause 4 of this Standard or Standard 1.2.3, but not a combination of both.

(2) For the matters regulated in this Standard, food produced in or imported into New Zealand must comply with clause 5 of this Standard or Standard 1.2.3, but not a combination of both.

(3) This Standard ceases to have effect two years from the commencement of those parts of Standard 1.2.3 regulating royal jelly.

2 Labelling of pollen products in Australia

The label on or attached to a package containing a pollen product must include, immediately following the name of the product, and in 3 mm type the following statement –

'THIS PRODUCT MAY CAUSE SEVERE ALLERGIC REACTIONS'

3 Labelling of royal jelly in Australia

The label on or attached to a package containing royal jelly, or a food containing royal jelly, must include, immediately following the name of the food, and in type of 3 mm, the statement –

'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 Labelling of royal jelly, bee pollen and propolis in New Zealand

(1) In relation to royal jelly, the label on or attached to a package of a food containing royal jelly, must include, in a prominent position so that it can be easily seen by the consumer when purchasing the product, in a standard type of not less than 3 mm, the statement -

(a) in the case of a product that is comprised solely of royal jelly -

'WARNING - THIS PRODUCT IS NOT RECOMMENDED FOR ASTHMA AND ALLERGY SUFFERERS AS IT CAN CAUSE SEVERE ALLERGIC REACTIONS'; or

(b) in the case of a product that contains royal jelly (but is not solely comprised of royal jelly) –

'WARNING - THIS PRODUCT CONTAINS ROYAL JELLY AND IS NOT RECOMMENDED FOR ASTHMA AND ALLERGY SUFFERERS AS IT CAN CAUSE SEVERE ALLERGIC REACTIONS'

(c) instead of the statements in paragraphs 5(1)(a) and 5(1)(b), in the case of a product that is comprised solely of royal jelly, or a product that contains royal jelly (but is not solely comprised of royal jelly) -

'WARNING - THIS PRODUCT CONTAINS ROYAL JELLY WHICH HAS BEEN REPORTED TO CAUSE ALLERGIC REACTIONS AND IN RARE CASES, FATALITIES, ESPECIALLY IN ASTHMA AND ALLERGY SUFFERERS'

(2) In relation to bee Pollen, the label on or attached to a package of a food containing bee pollen, must include, in a prominent position so that it can be easily seen by the consumer when purchasing the product, in a standard type of 3 mm, the statement -

'THIS PRODUCT MAY CAUSE SEVERE ALLERGIC REACTIONS'

(3) In relation to propolis, the label on or attached to a package of a food containing propolis, must include, in a prominent position so that it can be easily seen by the consumer when purchasing the product, in a standard type of 3 mm, the statement -

'PROPOLIS MAY CAUSE SEVERE ALLERGIC REACTIONS'

(4) If the size of package of any product referred to in this clause is so small as to prevent the use of letters in 3 mm type, a reduced type height may be used, but no letter may have a letter height of less than 1.5 mm

Editorial note:

New Zealand Ministry of Health has advised that the requirements for warning statements on dietary supplements containing royal jelly, bee pollen, and propolis are included in the *Dietary Supplements Regulations 1985.*

STANDARD 1.1A.5

TRANSITIONAL STANDARD FOR THE WARNING STATEMENT FOR CONDENSED MILK, MODIFIED MILK AND SKIM MILK

Purpose

This Standard incorporates the warning statement requirements for condensed milks, modified milk and skim milk contained in Standard H1, Standard H3 and Standard H4 of the former Australian *Food Standards Code* and certain provisions in the New Zealand *Food Regulations (1984)*. During that two-year period, modified milks such as skim milk must comply with the labelling requirements in this Standard or those contained in Standard 1.2.3. 'Stock-in-trade' provisions contained in Standard 1.1.1 should also be referred to. This Standard ceases to have effect two years from the commencement of alternative requirements elsewhere in this Code.

Clauses

Division 1 – Application

1 Application

(1) Milk products specified in this Standard, produced or imported into Australia must comply with Division 1 of this Standard or Standard 1.2.3 but not a combination of both.

(2) Milk products specified in this Standard, produced or imported into New Zealand must comply with Division 2 of this Standard or Standard 1.2.3 but not a combination of both.

(3) This Standard ceases to have effect two years from the commencement of any alternative provisions in Standard 1.2.3.

Division 2 – Australian *Food Standards Code*

(1) In this Division -

modified milk means a liquid mixture of any two or more of the following -

(a) milk;
(b) concentrated milk;
(c) dried full cream milk;
(d) skim milk;
(e) concentrated skim milk;
(f) dried skim milk;
(g) cream;
(h) buttermilk;
(i) dried buttermilk;
(k) milk fat;

(l) water.

(2) There shall be written in the label on a package containing skim milk, in standard type of 3 mm, immediately following the name of the food -

'SEEK MEDICAL ADVICE BEFORE USE IN INFANT FEEDING' or
'UNSUITABLE FOR INFANTS EXCEPT ON MEDICAL ADVICE'.

(3) There shall be written in the label on a package containing modified milk which has a milk fat content less than 21 g/kg, in standard type of 3 mm, the words -

'SEEK MEDICAL ADVICE BEFORE USE IN INFANT FEEDING' or
'UNSUITABLE FOR INFANTS EXCEPT ON MEDICAL ADVICE'.

(4) There shall be written in the label on a package containing sweetened condensed milk, in standard type of 3 mm, the words -

'UNSUITABLE FOR INFANTS EXCEPT ON MEDICAL ADVICE'.

Those words shall be the first words in the label and no other words shall be written in the same line or lines.

(5) There shall be written in the label on a package containing unsweetened or sweetened condensed skim milk or unsweetened or sweetened condensed separated milk or reduced fat unsweetened condensed milk, in standard type of 3 mm, the words -

'UNSUITABLE FOR INFANTS EXCEPT ON MEDICAL ADVICE'.

Those words shall be the first words in the label and no other words shall be written in the same line or lines.

(6) There shall be written in the label on or attached to a package containing dried skim milk or skim milk powder in standard type of 3 mm, the words -

'UNSUITABLE FOR INFANTS EXCEPT ON MEDICAL ADVICE'.

Division 3 – New Zealand *Food Regulations 1984*

(7) In this Division -

evaporated skim milk means the liquid product obtained by the partial removal of water only from skim milk and which contains no less than 20% milk solids.

reduced-fat milk means –

(a) milk from which milk fat or cream has been partially removed; or
(b) a mixture of non-fat milk with milk or standard milk; or
(c) the product produced from a combination of the products specified in subparagraphs (a) and (b); and

which contains –

(d) no less than 1.5% and no more than 2.5% milk fat; and

(e) no less than 8.5% non-fat milk solids.

skim milk powder means the product obtained by removing water from skim milk which contains -

(a) no more than 5% water; and
(b) no more than 1.5% milk fat.

skimmed sweetened condensed milk means the milk product obtained by the partial removal of water only from skim milk, and which contains -

(a) no less that 24% total milk solids; and
(b) no more than 0.5% milk fat.

standardised milk means milk –

(a) from which no substance has been removed except milk fat or cream; and
(b) to which no substance has been added except non-fat milk or non-fat milk solids

(8) The label on each package of skim milk or non-fat milk shall bear, in 3 mm lettering, in the principal display panel, the words ‘not suitable as a complete milk food for infants’; and those words shall form the first line or lines in the panel, and no other word shall appear in the same line or lines.

(9) The label on each package of reduced-fat milk shall bear, in 3 mm lettering, in the principal display panel, the words ‘not suitable as a complete milk food for infants’; and those words shall form the first line or lines in the panel, and no other word shall appear in the same line or lines.

(10) The label on each package of evaporated skim milk shall bear, in 3 mm lettering, in the principal display panel, the words ‘not suitable as a complete milk food for infants’; and those words shall form the first line or lines in the panel, and no other word shall appear in the same line or lines.

(11) The label on each package of skimmed sweetened condensed milk shall bear, in 3 mm lettering, in the principal display panel, the words ‘not suitable as a complete milk food for infants’; and those words shall form the first line or lines in the panel, and no other word shall appear in the same line or lines.

(12) The label on each package of skim milk powder shall bear, in 3 mm lettering, in the principal display panel, the words ‘not suitable as a complete milk food for infants’; and those words shall form the first line or lines in the panel, and no other word shall appear in the same line or lines.

STANDARD 1.1A.6

TRANSITIONAL STANDARD FOR SPECIAL PURPOSES FOODS (INCLUDING AMINO ACID MODIFIED FOODS) (NEW ZEALAND ONLY)

Purpose

This Standard incorporates the provisions of Regulations 237 and 239A of the former New Zealand *Food Regulations (1984)*, in so far as they relate to special purpose foods and amino acid modified foods. It is anticipated that this Standard will be repealed upon the development of Standards regulating medical foods and food type dietary supplements. This Standard operates solely in relation to food sold or imported into New Zealand.

Clauses

1 Interpretation

(1) In this Standard -

amino acid modified food means a special purpose food that in the preparation of which there has been a restriction in the use of ingredients containing one or more particular amino acids or a reduction of the content of one or more particular amino acids in any of the ingredients.

special purpose food means a food specially processed or formulated to satisfy particular dietary requirements that exist because of –

(a) a particular physical or physiological condition; or
(b) a specific disease or disorder; or
(c) both such a condition and a disease or disorder;

and are presented as such.

(2) Other than in Division 2 in Standard 2.9.3, a reference in this Code to a special purpose food is taken to be a reference to formulated meal replacement.

Editorial note:

The effect of subclause 1(2) is to permit all additives permitted in formulated meal replacements in special purpose foods. Subclause 1(2) exempts special purpose foods from the requirements for minimum levels for protein, kJ; and the minimum and maximum levels for vitamins and minerals. The definition of formulated meal replacements should not be taken literally in relation to special purpose foods. i.e. special purpose foods are not necessarily intended as a meal replacement.

2 Application

(1) Subject to subclause (2), for the matters regulated in this Standard, food produced in or imported into New Zealand must comply with this Standard.

(2) This Standard does not apply to food produced in or imported into Australia.

(3) This Standard ceases to have effect two years from the commencement of any alternative applicable provisions elsewhere in this Code.

3 Composition

Special purpose foods may contain any of the vitamins and minerals specified in column 1 of Table 1 and column 1 of Table 2 in Standard 2.9.3.

Editorial note:

The maximum quantities specified in column 2 of Table 1 and Table 2 do not apply to special purposes foods.

4 Labelling of special purpose foods

Every label used in connection with a special purpose food must state the special purpose of the food.

5 Labelling of amino acid modified foods

(1) The label on each package of amino acid modified food shall bear one or more of the following -

(a) the words ‘amino acid modified food’;
(b) the name of the amino acid or amino acids that have been restricted;
(c) the name of the disease, or a name describing the condition of the group of people, for which the product is intended;
(d) the words ‘low protein’, where applicable.

(2) The label on each package of amino acid modified food shall bear, in the nutrition information panel, a statement of -

(a) the quantity of carbohydrate, protein, and fat in the food, expressed in g; and
(b) the energy content of the food, expressed in kJ; and
(c) the quantity of sodium, and of potassium, in the food, expressed in mg; and
(d) the quantity of the particular amino acid or protein present in the food, or both, as appropriate for the intended use of the food.

(3) The label on each package of amino acid modified food shall bear, in the principal display panel, in 3 mm lettering, the words ‘Take only on medical advice’.

[5] *Standard 1.2.8 is varied by inserting immediately after subclause 5(3) -*

(3A) The word 'Carbohydrate' may be replaced in the nutrition information panel by 'Carbohydrate, total'.

[6] *deleting subclause 3(2) of Standard 2.7.1 substituting –*

(2) Subclause (1) does not apply to beverages packaged prior to 20 December 2002.

ATTACHMENT 3

Submissions in relation to Proposal P248

Submitter	Submission
Regal Cream Products	Endorses proposed option as 'it is probable that product already made and packaged under the 'old' regulations will still be on sale after 20 December 2002. As 'icon foods' were only finalised last month (and have not at this time been included in the Code), it is likely that our company will not have achieved total packaging compliance of our considerable range until well in the following year, therefore increasing the amount of product complying with the 'old' regulations that will be available for sale after the proposed deadline. It is critical to the viability of our company that we are able to legally sell this product which was legitimately produced.
National Meat Association of Australia	Supported option 2 as - • To do otherwise may result in food that is safe to consume being recalled for labelling purposes, this will cause undue expense to manufacturers; • Industry would avoid additional costs of re-labelling foods produced prior to or during the transitional period of Volume 2 of the Code • Foods produced lawfully prior to or during the transitional period of Volume 2 would remain available for sale.
Goodman Fielder	Supports concept of allowing a period for full compliance with the provisions of Volume 2 for stock produced during the transition period up to the proposed implementation date of 20 December 2002, particularly the labelling provisions, but believes that 12 months may still not be adequate for some seasonal and long shelf life products. Taking into account the fact that we are already 9 months into the transition period and labelling guidance documents have just been released and are still not available for some topics, and also the fact that some standards are still under review, it may well be impossible to have fully compliant labelling for all products towards the end of the transition period. This means that products with reasonably long shelf life will still be potentially in trade for well after the implementation date. In particular, some of our New Zealand businesses are faced with new labelling requirements such as country of origin labelling, and will be unable to make label changes until the outcome of the review of this requirement and its subsequent approval which has been foreshadowed as towards mid 2002. Propose that a 2 year (until 20 December 2004) stock in trade provision be adopted for compliance with Volume 2 labelling and other requirements
Heinz Watties Australasia	Supports option 2 but seeks longer period for all foods and specifically for infant formula products. Seeks a 2-year time period from 20 December 2002 which is a realistic timeframe for manufacturers to sell out of stock that may have accumulated prior to 20 December 2002. HW manufactures a wide range of shelf-stable (baked beans, spaghetti, soups, vegetables, fruit and tuna) and frozen vegetables and meals. Many of these shelf-stable and frozen products have a shelf (or freezer) life in excess of 2 years. Number of changes to draft Code before gazettal on 20 December 2000 resulted in general industry uncertainty about the draft new Code. Once gazetted, industry was not in a position to be certain that the content of the new Code will be final version that becomes the sole Code on 20 December 2002. This uncertainty was exacerbated by the significant delay in publishing the User Guidelines and reinforced by the proposed omnibus amendments being proposed.

	For shelf-stable and frozen manufacturers such as HW, there may still be significant product withdrawals on 20 December 2003 if the current proposal is accepted. This proposal places manufacturers of shelf-stable products at a disadvantage compared to producers of products with relatively short shelf lives. Such producers may not have difficulties in complying with a 12-month limit as their stock may have shorter turnover period than a number of Haw's shelf-stable and frozen products. It is further submitted that as a number of crucial areas of the Code in relation to labels are yet to be determined, adding to further uncertainty, that an extended time period is justifiable – • Country of origin • Nutrient and other claims • Health claims • Infant formula. At the ANZFA proposal is to amend Volume 2, the references to the 12-month exemption in New Zealand is not relevant. It must be remembered that the changes in Volume 2 are the most complex and wide-ranging changes to food law attempted.
George Weston Foods Limited	Supports proposal as this is the most appropriate approach which will allow manufacturers to • Manage run out and change over of packaging to ensure that there is no unnecessary write off of packaging materials; and • Manage stock in trade to avoid the need for a potential product recall.
Schweppes Cottee's	Supports proposal but consideration needs to be given to the period of time of this extension. This is particularly relevant to the Icon foods which have just been finalised in regards to composition (August). Some of these products have a shelf life of 2 years (eg. Jams) and therefore even if label changes are made now printing, production and trade run-out could the labels into 2004. Hence a 12-month extension may not be enough.
Wyeth Nutritionals	Wyeth supports the exemption, but does not support the 12-month limitation on this exemption and submits that a provision which considers shelf-life of a product is appropriate. Wyeth opposes proposal to allow 12 month limitation. Food produced according to Volume 1 during the transition period is lawfully produced and does not pose a public health and safety risk through the duration of its shelf life To render products manufactured to Volume 1 during the transition period, illegal after one year without public health and safety risk, may alarm consumers, involve additional costs to industry and potentially disrupt the food supply. In addition, if the recalls at 12 months are restricted to wholesalers and the grocery sectors, consumers may still have 'illegal' yet safe to consumer products in their homes. Consumers who want product with additional information (one of the main results of the new standards) will be able to obtain products manufactured after December 2002. The efficiency and effectiveness of the food industry in New Zealand and Australia would be compromised by enforcing a total recall after 12 months, of all foods proposed to Volume 1 during the transitional period. Referred to the ANZFA conclusion that it is not reasonable to provide an open-ended exemption for food produced or imported into Australia or New Zealand prior to 20 December 2002. The new standards affect the total food industry and flexibility is need to contend with issues and inherent difficulties associated with commercialisation of complex specialty foods, such as infant formulas, that require extensive reformulation and labelling changes. These difficulties include the reformulation and subsequent verification of manufacturing processes (including stability trials and analytical data to support labelling changes). Infant formulae are the sole source of nutrition for formula fed infants and have unique distribution channels which will be disrupted if recalls are enforced, irrespective of shelf-life, without public health and safety reasons. Infant formulas are highly regulated and already contain a large amount of information for the consumer, which is equivalent to information required in the draft Standard 2.9.1. Given that Guidelines produced by ANZFA were released well into the transition period (27 August 2001), this reduces the timeframe for industry to comply before the transition period ends. If an open ended exemption on the basis of shelf life is possible, then a 3 year exemption may provide for a majority of food products.

Unilever Australasia	Supports proposed drafting but requests that exemption apply for a period of 2 years rather than 12 months for the following reasons – • Guidelines to assist industry in interpreting standards have only just been released • Some of the Standards in Volume 2 have only just been gazetted (eg 'icon' foods) • Other standards are not finalised (infant formula and sports foods) • The Guideline for nutrition information panels has not yet been finalised • Requirement for other labelling issues are still under review (country of origin and Code of Practice on Nutrient Claims)
Coles Myer	Supports exemption but proposes that it should be for 24 months, rather than 12 months. Some long shelf life products may only be produced once per year due to seasonal factors, and there is likelihood for such products that 12 months may have already elapsed before some stock of the product is offered for sale. Clarification was sought as to whether the 'stock-in-trade' is intended to include products which have been packaged or partly manufactured in some way, but not labelled. For example a seasonal canned product is often 'bright stacked' without a label and then labelled at a later date. A clear definition and or explanatory notes are need to clarify what is intended by 'stock-in-trade' for all stakeholders. The drafting in this case should be such that as many imported products have long shelf-lives they should be included in the coverage of the drafting.
Golden Circle	GC supported exemption but stated that the 12 month limitation period was not acceptable. GC has only now commenced the massive task of changing all of our 500 labelled products to conform to the new Code. Nine months after the transition phase have been lost due to delays in producing the guidelines and changes in interpretation of the new Code. The cost of the label changes would have been compounded if they had to be amended a second time. GC believes that the transition period needs to be extended by at least nine months which have been lost to date. Some guides are still not available. The exemption period is inadequate for long life shelf products which have a durable life of well in excess of 2 years. GC manufactures canned products which are seasonal in raw material supply, such as pineapple, beetroot, corn and other vegetable products. Stock manufactured in the latter part of 2002 will be warehoused for at least 12 months. There is an allowance for sales variability and buffer stock levels would most likely hold until 2004 before distribution commences. We consider that a minium exemption period to be 3 years for products with a durable life in excess of 2 years. These are traditional products which will not change in composition under the new code and will only require to conform with the labelling requirements. They are well known by consumers. All new products are formulated and labelled to conform with the new code at the time of launch. Products with a best before date will be limited by that date if under the 2 years shelf life.
Nestle Australia	Agrees with exemption, but should be for 2 years rather than 12 months. Manufacturers are in the process of working through the necessary changes to their products and are aware of the necessity to progress the changes in a timely manner to ensure that all products comply with the requirements of Volume 2. Some products have already been changed to the new requirements. The finalisation of some of the new standards has only just occurred, so those manufacturers that have been awaiting the outcome of these standards will welcome some relief from the shorter time available to manage the label changes in a more cost-effective manner. We recommend that 2 years would be more sensible. Due to late timing of the finalisation of the 'icon' standards and the release of the guidelines some manufacturers would not have commenced the necessary steps to make the label changes until these were released. Some products also have a longer than 2 years shelf life and these could conceivably

	be in the marketplace after the proposed 12 month period. Slow moving products with a shelf life of longer than 12 months and products that are seasonally produced could also be in the retail stores at the end of the 12 month period proposed. The introduction of such a provision allows a uniform approach in Australia and New Zealand for food already manufactured and packaged to the relevant standards prior to final implementation of the labelling requirements. The infant formula standard is not yet finalised and will not be until the end of 2001 at the very least. Manufacturers of infant formula products need to be given the same time frame for implementing the necessary changes as manufacturers of other foods. Depending on the outcome of the standard, manufacturers will need a minimum of 2 years to make the necessary changes. Subclause 2(b) needs to refer to the specific names of the food standards for Australia, rather than 'all relevant standards'. The New Zealand food regulations are referred to by name and so should those of Australia.
Department of Human Services (South Australia)	It appears from the drafting that the 12 month limit has not applied to stock-in-trade during the transition period and no provision has been made for imported products. While we do not oppose the above allowance for stock-in-trade during the transition period, we are unable to support subclause 3 which applies this principle to any amendments made to the joint Code after December 2002. This goes beyond the instructions of the Food Standards Council and provides an extra 12 months before products that are made, packed or imported during the implementation period must comply with an amendment. For example, most labelling amendments provide 12 months after gazettal for implementation of the change. If the proposed 12 month extension was then applied it may be 2 years before some foods comply with the requirement. Our understanding is that implementation periods are intended to provide industry with sufficient time to change product formulation, labelling etc as necessary to comply with changes with legislation. Stock-in-trade provisions present difficulties for enforcement in that the date of manufacture, packaging or importation needs to be established to determine which standard applies to a particular food. The circumstances that have led Ministers to support stock-in-trade provisions for GM labelling and transition to the joint Code such as the delay in the availability of User Guides are specific to these particular changes to the legislation. More justification is needed as to why stock-in-trade provisions are need for all future amendments to the joint Code ant appropriate implementation periods that are determined on the circumstances are relevant to each amendment are not sufficient. Should this amendment proceed, the effect on urgent changes to the Code should be considered. A statement that allows this 12 month extension for stock-in-trade to be overridden may be necessary.
Food Technology Association of Victoria Inc	Supported exemption but submitted that the exemption should not be limited to 12 months. Long shelf life products such as canned foods would be forced off the shelves even though they are still viable products without any risk on consumption and they were permitted when produced. It is possible that some foods made under Volume 1 during 2002 which has used up label stock or raw materials prior to any reformulation could still be available after 2 years. The current draft would impose restrictions and monetary losses on manufacturers who could be forced to destroy label stock during 2002 and also conduct a product recall.

National Foods	Throughout the course of the review of the Code, we advocated a 2 year transition period as an absolute minimum. At that time we, like many in the industry, assumed that when gazetted the Code and its associated Code of Practice would be complete. The associated delays resulting from the so called 'icon standards' have significantly reduced the lead time for companies in the transition period, irrespective of whether the products have short, intermediate or long shelf life. NF supports the proposal.
Department of Agriculture Fisheries and Forestry Australia	AFFA supports the proposal and the premise that consumers should be provided with information to make informed choices about food, whilst not unnecessarily jeopardising the efficiency and international competitiveness of the food industry in Australia and New Zealand. The proposed approach serves to provide a realistic approach to implementation of amended standards. It allows industry the maximum time possible to accurately implement the new requirements, whilst not imposing undue cost on industry and ultimately consumers through product recalls. AFFA's preference for stock-in-trade provisions is based on several factors – The cost to industry associated with the removal of goods which are safe but do not meet new labelling requirements from the marketplace in December 2002; The possible misconception that food products that are the subject of recalls for non-compliance with the new Code are in someway unsafe for consumption; The disadvantage to consumers of waste and disrupt of availability and sales brought about by removing the products from shelves immediately at the commencement of the Joint Code; The delay in the availability of ANZFA Compliance Guidelines required by industry to assist them in implementing changes required to their products by the new Joint Code. AFFA is of the view that it would not be realistic to expect the distribution chain to be of non-compliant products by December 2002, particularly in light of the fact that many businesses will not have implemented the changes to date without access to Compliance Guidelines. The introduction of new provisions of the Joint Code will ensure that consumers will have access to the information they need to make informed choices about the food that they purchase. However, AFFA believes that there is no need to remove food products from sale for consumers to see the benefits of the new standards. AFFA notes that consumers are under no obligation to purchase foods that do not display the new labelling requirements and will be able to make this decision without industry recalling products. There is likely to be considerable consumer driven pressure on industry to display newly required information, and it likely that industry will move to provide this information as quickly as possible. AFFA also notes that in addition to the disruption in availability of products, consumers would also be disadvantaged by the cost of having to remove large numbers of products from shelves would be passed on to them. Many of the changes under the Joint Code are complex and AFFA believes that these guidelines are vital to assist industry in successfully implementing the changes required to labelling and composition of food products. By going ahead with the changes before these guidelines were available, businesses ran the risk of incorrectly labelling food products despite their best efforts, which would lead to their recall if they were still present on the supermarket shelves at the end of next year. These Guidelines were only released on 27 August, nine months after the gazettal of the new standard. Although they were available in draft form, industry feedback has indicated that these were of limited value in assisting them to implement the changes.

Confectionery Manufacturers of Australasia	A number of transition implementation concerns have been raised by the confectionery industry on various occasions. These principally surround the actual change from one system to the next. They include the coordination of formulation changes with new packaging, sale of longer shelf life foods (beyond the transition period) and the challenges and delays associated with the interpretation of the new requirements and the imperative to minimise the loss of unused packaging. The CMA therefore strongly supposed the proposal as this will go someway towards minimising the cost of compliance with the requirements of Volume 2. As similar provisions as in place in New Zealand, it would be inappropriate and unfair to Australian business not to provide equivalent provisions in Australia. The alternative will unnecessarily add further costs, such as recalling and re-labelling food, where clearly there is little advantage to the consumer. (The food remains safe, despite the absence of additional information required under the new Code, i.e. nutrition information and percentage labelling).
Queensland Government (Public Health)	QH supports option 2 in full assessment report. QH has generally allowed foods manufactured and packed prior to an amendment date to continue to be sold after that date provided they complied with the legislative requirements that applied prior to such date. After all, amendments to food legislation are not normally made retrospective. It would seem that QH has been operating contrary to the option 1 as stated in the report, as would be case with most other jurisdictions. A period of 12 months for such stock to be legally sold seems appropriate and would align with the position in New Zealand. One disadvantage to this approach is that distributors and retailers will probably be the ones to bear the loss if the they possess such stock after the 12 month exemption period. With regard to the draft variations, it is noted that the only reference to the 12 month exemption period is in subclause (3) relative to variations to the Code after 20 December 2002. The way subclause (2) is drafted, there is an open-ended exemption with ANZFA claimed in the report was unreasonable. QH point out that ANZFA should consider the impact of such variations to recent scenarios involving beef products emanating from BSE affected countries and sauces containing excess levels of 3-MCPD and 1, 3-DCP.
Australian Food and Grocery Council	The AFGC supports the requirement for all foods produced packaged and labelled on and from the day of changeover to comply with the new Code, and considers that a period of one year for the stock in trade is insufficient for long life and seasonal products and would discriminate against them and companies who make them. The AFGC, therefore, recommends that the stock in trade period proposed be extended to two years either generally or for products having a shelf life of more than one year. In addition, the AFGC considers that ANZFA is either unaware of' or has totally underestimated, the sheer logistical problems of changing the label of almost every food product in the marketplace. The AFGC recommends increasing the transition period by one year to allow for the delay in the release of the User Guides, the changes to the new Code that have been made since it was first gazetted, and the changes that are yet to come with Proposal P247 - Definition of Carbohydrate and the yet to be published Proposal P246, dealing with labelling issues. The AFGC also recommends increasing the proposed stock in trade provisions by one year to allow for this and the logistical difficulties of changing nearly all labels and clearing stock throughout the chain of **production, distribution and sale.**

	4.1.1 Public health and safety **There is an absolute requirement on food manufacturers to produce safe food; a responsibility the food industry accepts and takes very seriously.** Neither the length of the transition period, nor the length of the stock in trade period, will remove or alter this requirement. Thus, public health and safety will be maintained if ANZFA progresses this Proposal and it will also be maintained if ANZFA approves the AFGC's recommendation to extend the period of time for the transition period and for the stock in trade period. It could be argued that the requirements for allergen labelling provide added protection of health and safety for certain individuals and the AFGC would not dispute this, and indeed argued in support of the Proposal when it was advertised for comment. However, this is not so much public health and safety as individual health and safety. Notwithstanding this, neither the ANZFA Proposal nor the AFGC recommendation to extend the transition period and the stock in trade provisions will reduce the current level of protection of health and safety for these individuals or the community generally. It must be accepted that food manufacturers are changing, and will continue to change, labels to comply with the new Code throughout the transition period as circumstances permit. Thus, a considerable number of labels, but not all, will be changed by December 2003 (See later discussion), affording improved health and safety protection even with an extension of the transition period and stock in trade period. ***4.1.2 Provision of information*** The AFGC accepts that the new Code will require more information to be provided on food labels. Whether this added information will improve the consumers' ability to chose is, however, a matter of debate. Nevertheless, as stated in 4. 1.1 the information provided to consumers will be no less than they are receiving now and, in fact, will increase gradually even with an extension of the transition period and stock in trade period. ***4.1.3 Prevention of misleading or deceptive conduct*** There are overarching prohibitions on misleading or deceptive conduct in the various Food Acts and fair trading legislation throughout Australia and New Zealand. These exist now and will continue to exist. The new Code does not give any added protection over and above this legislation. Thus, the ANZFA Proposal and the AFGC recommendation for an extension of time will not decrease consumer protection in this regard. Thus, the costs of label change for nearly every package of food in the marketplace due to the extended ingredient labelling and nutrition labelling requirements and the new allergen and 'characterising ingredient and component' labelling requirements of the new Code, have been imposed on industry for almost no benefit to industry This cost has been estimated independently as up to $400 million. When the new Code was introduced ANZFA announced it would allow a period of time for industry to comply with the new Code to minimise the cost to industry. Irrespective of the period of time, this is still a considerable cost impost on industry and two years is insufficient time to change the in excess of 100,000 food labels which ANZFA admits are on supermarket shelves.

	This figure does not take into account for the additional number of general and speciality products that are sold through outlets other than supermarkets. To change a label requires: • the company to determine what must go into the label, including the requirements of the new Code; • the graphic artist to design the label; • the printer to manufacture the plates from the graphic design; and • the physical printing of the label. If it is assumed that a printer can manufacture plates and print the required production run for four labels per day (and this is very generous), this equates to 25,000 days for 100,000 labels. Assuming there are 25 companies capable of carrying out this work, and it must be remembered that in many cases this is not the simple production of a label but production of the complete package as the label is often inseparable from the package, then this equates to 1,000 days to produce the 100,000 labels required to change the labels on all stock in supermarkets. As can be seen**,** this is a period of roughly three years, provided there are no untoward or unexpected delays. **The AFGC therefore recommends that ANZFA reconsider the proposed two-year transition period for the introduction of the new Code and extend this period by one year.** In support of this argument it must be remembered that the User Guides produced by ANZFA to assist companies in developing labels in compliance with the requirements of the new Code have only just been released, some eight to nine months into the current two-year transition period. Whilst **it** may be argued that the Standards have been in place since December 2000, many companies have delayed the designing of new labels pending the release of these User Guides. Many have done this because of the complexity of the new Standards and the subjective interpretation that can be given to them, particularly in relation to the labelling of characterising ingredients and components. A further delay has been caused by the reconsideration of the 'icon Standards' jam, ice cream, peanut butter, fruit drink, etc.), which again has only just been finalised. This has caused delays in determining the composition of some of these foods, particularly jams, which may have changed more in line with the New Zealand Standard, had the Standard not been re-introduced, a fact which would have significantly changed the nutrition panel of these products. One further delay in being able to determine nutrition panels has been the redefinition of dietary fibre (again, just concluded) and the proposed method of calculation for carbohydrate, which is currently out for comment and is unlikely to be decided before the end of this year. This means that it cannot be determined with certainty, for many products, the exact form that a nutrition panel will take until this revised method of calculation is gazetted, leaving only one year of the currently proposed two-year transition period to run. **The 12-month exemption for stock-in-trade is insufficient.** ANZFA is proposing a stock in trade period of one year during which food labelled in compliance with the old Code can be sold when the new Code is the only one in force. This would be consistent with the stock in trade provisions in New Zealand legislation. However, the New Zealand provision was not designed to accommodate a total change of almost every food label, but to accommodate intermittent changes to individual food regulations. Thus, consistency with New Zealand cannot be argued in support of a proposed stock in trade provision designed to accommodate totally different circumstances.

	A stock in trade provision of one year is insufficient to accommodate products with a long shelf life as these can remain in trade for prolonged periods well in excess of the proposed 12 months. These products include foods such as canned, frozen and dehydrated foods. A stock in trade provision of one year is insufficient to accommodate products such as fruit and vegetables which are processed during a short growing season, in sufficient quantities to supply the market for at least a year. This means that product on the supermarket shelf has, in many cases, been produced up to 18 months prior to placement on the shelf. A stock in trade provision of one year is insufficient to accommodate products which have low or slow turnover. This would not be the case with supermarkets, but would apply to corner stores, speciality stores and country stores where stock may well be held in excess of the 12 month period. Because of the delays surrounding the introduction of the new Code and concomitant uncertainty, the labels for many of these long shelf life, seasonal and speciality products have not been changed, and may not be changed until next year. This means that they will remain in the food supply labelled in compliance with the old Code well in excess of the proposed one-year stock in trade. The argument that manufacturers will deliberately produce large quantities of stock immediately prior to the introduction of the stock in trade provision does not stand up to careful analysis. Finished stock represents capital. Companies will not tie up capital unnecessarily by producing and holding large quantities of stock and, with the exception of seasonal products, operate on a minimum stock holding within the JIT (just in time) operation of the supply chain. This is one factor contributing to an 'out of stock' level of 5% - 10% at the retail level. Apart from tying up capital, large stock holdings are costly to maintain as storage of finished product requires space, which is limited and carries a cost to hire and maintain. In addition, large volumes of storage space are not readily available. Large quantities of stock in trade cannot be produced for foods having a short shelf life as these products are perishable and must be sold within a short period after production. There is a considerable disincentive, therefore, for manufacturers to produce large quantities of stock in trade except where this is essential. Extending the stock in trade provisions will only affect products having a long shelf life - that is, products with a shelf life in excess of one year. Restricting the stock in trade provisions to one year, however, has the potential to affect those companies which produce long shelf life products. In some cases this can represent in excess of 90% of a single company's products. It is discriminatory in the extreme to place an added burden of compliance, albeit inadvertently, on companies producing these long life products. The stock in trade provisions do not affect the legal requirement for all companies to manufacture, pack and label in compliance with the new Code at the date on which it becomes the sole Food Standards Code. The AFGC is not recommending any change to this requirement, although it is recommending an extension of time for the transition period. The AFGC is arguing for an extension to the stock in trade provision so that stock that is legal on one day can remain legal until the end of its shelf life. To fulfil ANZFA's stated intention to minimise the cost to industry of changing to the new Code, ANZFA must reconsider the two-year transition period and extend this to three years, and also extend the stock in trade provisions from one to two years.

	The extension of the stock in trade provisions could either be by way of a generic extension of the time period to two years, or could be of a more restricted nature applying the two-year stock in trade provision only to foods having a shelf life in excess of 12 months.
Australian Chamber of Commerce and Industry	CCI welcomes ANZFA's proposal to allow foods produced during and prior to the transition period of a new standard to remain lawfully on the market for a further period of 12 months after the end of the transition period for the commencement of the New Food Standards Code. We suggest, however that it does not go far enough. Manufacturers often purchase labels two to three years in advance. A change in a Standard could be applied for and agreed within 12 months. This would leave manufacturers with obsolete labels that they can no longer use even though at the time they were purchased they were legal. Further, in the 12 months transition period labels may also be purchased based on anticipated demand for their products within the balance of that 12 months. If the demand in that transition period drops then manufacturers could be left with unusable labelling which would have to be destroyed. We suggest that in the above circumstances unused labelling bought should also be considered 'stock in trade' and exempt from the provisions of the new Standards until they have been depleted from a manufacturers stocks. We therefore propose that the wording in Clause 1 of Standard 1. 1. 1 in Volume 2 of the Food Standards Code be deleted and substituted with: 1. **Application of this Code** **(1)** Unless expressly provided elsewhere in this Code, the provisions of this Code apply to food which is sold or prepared for sale in Australia and/or New Zealand; and/or imported into Australia and/or New Zealand. (2) Subclause (1) does not apply to food which - (a) is manufactured and packaged prior to 20 December 2002; and (b) complied with all relevant food standards in the case of Australia and all relevant food standards or New Zealand Food Regulation in the case of New Zealand. (3) Subclause (1) does not apply to labelling and packaging which - (a) Were bought prior to the date of Gazettal of the new Standards or after this date but prior to 20 December 2002 in such quantity as it was estimated to last until 20 December 2002; (b) Are remnant from those bought in (a) above; and (c) Complied with all relevant Food Standards in the case of Australia and all relevant Food Standards or New Zealand Food Regulations in the case of New Zealand. (4) Food is taken to comply with variations to this Code, made from time after 20 December 2002, for a period of 12 months after the commencement of those variations, if the food otherwise complied with this Code before those specific variations commenced.

ATTACHMENT 4

Submissions in relation to Proposal P252

Brian Wailes on behalf of Young District Producers and Wailes and Associates

I wish to submit a recommendation that the transition period for 'stock-in-trade' of durable long shelf life foods packaged and labelled compliant with Volume 1 of the Food Standards Code be extended to reflect the durable shelf life of this class of food products.

The background and reasons are based on observations resulting from present assignments assisting mainly small and medium manufacturers (SMEs) of durable foods. These foods include canned, sugar preserves, and dry blends and have shelf lives from 12 months to greater than 2 years. It is the expectation of the industry that 'stock-in-trade' should be permitted for the durable life of the food.

Progress with transition to labelling requirements of the new Code (Vol 2) indicates that labels are being scheduled by manufacturers for the changeover from around mid-year 2002. Durable foods packed now and up to the changeover will have Best Before dates reflecting the shelf life, i.e. 12 months to 2 years depending on the product. This changeover may appear late in the 2 year transition period ending December 2002 but there are a number of causes for this situation.

Skills and resources needed by SMEs
At December 2000 manufacturers had a 2 year period to implement the changes. SMEs with whom I have been involved needed an upgrading of skills, technical resources and funding. The details of these needs were not well appreciated and implementation plans were generally not prepared until the latter half of 2001. It should be appreciated that acquisition of additional resources are the real cost in the changeover to the new Code, and these costs are an additional impost on manufacturing budgets.

Reliance on suppliers declarations
The complexity of the new labelling Standards requires declarations to be provided by suppliers and assurances need to be sought back up the supply chain to the farm gate. Declaration survey requests have been circulating the supply chain for some 9 months now, and with mixed results. A small food manufacturer with limited technical and financial resources relies heavily on the accuracy of a supplier declaration.

Caution, in the interests of public health and safety determines that sufficient time is required to ensure the information received from a raw material supplier is reliable. One example of an unreliable declaration was received from a supplier, updating a raw material specification at April 2002 by declaring the presence of traces of gluten when their declaration of 5 months earlier was that the ingredient contained no gluten. This triggers a change to the 'new' labelling program affecting all products using this ingredient, or, a product development program to confirm whether or not the ingredient could be changed.

Chain of product distribution
Many SMEs manufacture and pack foods under their own brand and also co-pack for larger food companies and/or private label for supermarket chains. At the present time manufacturers report the larger company and supermarket customers are progressing but have not finalised labelling specifications to comply with Volume 2 of the Code. Co-packers generally need to have labelling approved by their corporate customers. ANZFA should be aware of this situation as it was raised in presentations by large corporates at a recent seminar 'Tell us about Labelling', AIFST, Melbourne, 12 February. ANZFA representatives presented papers on the labelling issue at this seminar.

Delayed release of User Guides
Final issue of User Guides was in July 2001. In P252 at paragraph 7.2, 3., page 9 ANZFA states 'The Authority does not accept that this is a cogent reason for delaying the finalisation of the transition period, as industry is required to comply with the Standards and not the User Guides.' The supporting argument for the position of the Authority in this statement can not be substantiated in a practical sense. Clients and an industry group I participate with were of one voice that until the final User Guides were released no progress can be made. One reason for this is that the User Guides are seen as integral to the interpretation of the relevant Standard both for manufacturers and enforcement agencies. It follows that the mechanism for implementing the changes to comply with the Standard can only proceed after the final User Guides are in the hands of the industry.

In effect the transition period has been shortened by around 8 months due to the delayed release of the User Guides.
In summary, the present position with the industry is that new labelling can be expected to be released on products prior to December 2002. Up to that time durable foods with Best Before dates from 12 months to greater than 2 years will be labelled to the current (Vol 1) Code. It is the expectation of the industry that 'stock-in-trade' should be permitted for the durable life of the food.

Tony Battaglene on behalf of Winemakers Federation of Australia

Requested that the production provisions relating to wine currently contained in Standard P4 be retained in Volume 2 until the Production Standard is in place. This will ensure that the production provisions remain in force for Australian producers in case of unforeseen delays occurring in the finalisation of the Production Standard and to allow Australia to continue to meet its international obligations under the Australian – European Union Bilateral Agreement on Wine

Goodman Fielder

GF supports the transitional standards for inclusion in Volume 2 and the commencement date being the date finalised for the repeal of Volume 1. Submitted that a 'stock-in-trade' provision was necessary for the following reasons-

- There was a need for a concentrated focus on GM labelling throughout 2001 which meant resources were applied to this process in precedence over the general labelling changes.
- Updating labels in the middle of 2001 when most new requirements were known and understood. Due to later changes in the code some of the labels already thought to be compliant required further updating.
- The User Guides developed to assist labelling changes were not issued until at least mid to late 2001.
- The burden of obtaining additional information required for labelling especially nutrition and allergen declaration information has been substantial. Often suppliers would take several months to respond especially in regard to allergen information.
- Longer shelf life products (18, 24 months) would need to have changed their labels back in January 2001 to be compliant by 20 December 2002. Most requirements were not well understood at that stage.
- Ongoing changes to the Code that directly affect labelling were still being considered well after the gazettal of the new Code (December 2000). Some of the ongoing changes to the Code were, icon standards, dietary fibre, definition of carbohydrate.
- The unnecessary withdrawal of stock from the trade after the end of the transition period for non-food safety reasons.
- The packaging changes required by the entire food industry places a heavy demand on design and printing companies which are finding it increasingly difficult to addresses industry requirements.

The withdrawal and destruction costs incurred by Goodman Fielder if not 'stock-in-trade' provision were granted are approximately $A32 and $NZ22 million. The rational behind this being that there would be approximately 30% of retail stock and 20% commercial stock in Australia and approximately 50% of stock in New Zealand that would still be in trade with old packaging. There is approximately 4-6 weeks of stock in the trade at any one time. Even if a 'stock-in-trade' is granted, Goodman Fielder spend approximately $160 million on packaging every year. It is estimated that as much as 5% of this packaging may have to be written off due to the inability to run out all of the current packaging before the December 2002 deadline.

Unilever

New labels prepared from August 2000 were reviewed in light of proposed changes, with inclusion of mandatory allergens in ingredient lists, percentage characterising ingredients, and the proposed mandatory nutrition information panel format. As the format for the mandatory Nutrition Information Panel was revised at a late stage to include Saturated Fat, these labels now need to be revised again.

Our label changes from December 2000 were prepared using the information in the Standards at that time, however there have still been significant changes (as listed below) to both the Standards and also the interpretation used in the User Guides (although not legally enforceable). This, along with a number of inquiries to ANZFA seeking clarification of particular sections of the Standards, have resulted in ANZFA proposing a number of subsequent changes (the Labelling omnibus) to the Standards for clarification. In some cases, this has resulted in an extension in application over what is currently stated in the Standards.

For these reasons of uncertainty, both before and after the gazettal of ANZFSC Vol 2, food companies have hesitated in making expensive changes to existing food labels until issues of potential uncertainty were resolved.
The list of issues still under consideration by ANZFA during 2001/2002 include:

- The icon standards, advertised for comment February 2001, gazetted August 2001.

- The expansion of dietary fibre to include inulin and fructooligosaccharides, advertised for comment November 2000, gazetted November 2001.
- The definition for carbohydrate, which also included a change to the format of the mandatory Nutrition Information Panel (from Carbohydrate, total to Carbohydrate) advertised for comment September 2001, gazetted November 2001.
- User Guides to assist in the interpretation of the new code were not published until October 2001.
- 'Labelling omnibus' of amendments which impacts on food not for retail sale, labelling of individual portion packs, additional exemptions from nutrition labelling and changes to percentage labelling, advertised for comment December 2001, not yet recommended to Ministers or gazetted.

This proposal states 'The authority does not accept that this is a cogent reason for delaying the finalisation of the transition period, as industry is required to comply with the Standards and not the User Guides. Furthermore, the 'icon standards' were for the most part, retained from similar provisions in Volume 1, thereby not involving any change from Volume 1. In the absence of any robust data, it is difficult to justify any extension of the transition period beyond the currently envisaged two years.'

We maintain that since mid 2000 food manufacturers have, in good faith, attempted to prepare labels to comply with the new Code, only to find that subsequent changes to the proposed and/or gazetted Standards have resulted in these attempts being a costly waste of time as these labels now have to be revised again to comply with the current Standards which include the above named amendments.

For many manufacturers, the task of revising existing labels with no planned changes to comply with the new Code has been held off until some of these issues under review had been resolved. There still remains a number of issues such as Country of Origin, Health Claims, Code of Practise for Nutrient Claims to name a few, however these have not been resolved in a timeframe to allow for one round of change to affected food labels, and manufacturers now face a subsequent round of label changes for selected products, depending on the outcomes of the reviews.

We therefore recommend that the transition arrangements for the new Code take into consideration the unresolved issues at the time of gazettal for ANZFSC Vol 2 and the timings of the amendments to the Standards affecting the mandatory labelling provisions for all products, as changes made after the gazettal of ANZFSC Vol 2 and prior to the subsequent amendments are not in compliance with the current Standards. A stock-in-trade provision is necessary for the implementation of any new food regulatory measure to allow for products that are legally manufactured prior to the implementation of the measure to be sold, preventing disruption to the availability of food products.

Unilever Australasia continues its support of a stock-in-trade provision from Proposal P248. We supported the proposed drafting in P248 that applied to product manufactured and packaged prior to the date to be set for the repeal of ANZFSC Vol 1. The new Code has required all food product labels to be changed. This is a major undertaking within a food business with the following implications:

- careful management of the supply chain prior to the label change to minimise stock losses and costs to manufacturers (and ultimately consumers);
- resource to collect the additional required information for labelling from ingredients suppliers or other sources;
- resource to revise all product information to be on the product label;
- resource from an arthouse to prepare artwork;
- resource to manage and check the artwork;
- a printer to print the label;
- supply chain management to ensure the label is available for use when required.

For food manufacturers to manage this process within the specified timeframe and manufacture a product legally and then discover that the manufactured product, while still within its shelf life, can no longer be sold because it does not meet a specified stock-in-trade requirement is creating a situation whereby the transition period is effectively shortened, depending upon the shelf life of the product. This could result in retailers specifying their own requirements over and above those of ANZFA to ensure they are not left holding stock. There are particular products that do not have as much flexibility within their supply chain and require longer timeframes to manage change, such as:

- products with a shelf life in excess of two years;
- products that are only produced during a specific season;

- products that are being phased out and replaced by new products that can only be accepted by the trade within a specific timeframe;
- products having packaging with long lead times.

For all products, and particularly those named above, a stock-in-trade period is essential to facilitate availability of supply during the transition period. For products with a shelf life of one year or less, a 12 month stock-in-trade provision is sufficient, as this allows for products to be manufactured prior to the changeover and sold by the end of the product shelf life.

For products with a longer shelf life (over one year), a longer stock-in-trade provision is required to allow products manufactured prior to the changeover to be legally sold, and we recommend a stock-in-trade of a minimum of two years. This effectively allows products manufactured prior to the changeover to be sold either up to the end of their shelf life (if between one and two years) or for two years. Finally, the transition period and stock-in-trade arrangements to be made for the ANZFSC Vol 2 must be consistent between Australia and New Zealand to ensure that manufacturers in either country are not disadvantaged.

This proposal states 'The Authority has been advised that the Ministry of Health will be consulting on the revocation of the Food Regulations 1984 in March/April 2002.' There is, as yet, no notice of what is proposed for the New Zealand Food Regulations and as a food manufacturer who markets products in Australia and New Zealand under the transitional arrangements in place for both countries, it is essential that the changeover does not create further discrepancies between what is permitted in each of these countries.

Fonterra

What is the envisaged date of repeal of the New Zealand Food Regulations as this is not mentioned in this proposal. Will it be the same as for Volume 1. Should Part 1.1A be included prior to Part 1.1.2 to be in chronological order. The column heads should include 'Column 1' and 'Column 2'. Is paragraph (3)(a) of Standard 1.1A.2 able to be enforced. If 'health or any other words of similar import' are included in a trademark wouldn't this trademark be able to appear in conjunction with the name of the food?

David Jones

The estimated costs for setting up compliance with Volume 2 of the Food Standards Code for David Jones are about $5,000,000 and involves a dedicated team of the equivalent of 10 full time staff for a period of 8 months. David Jones submits that the transition period should be extended for the following reasons –

- The new food labelling requirements are currently proposed to be introduced on 20 December which is right in the middle of the busiest trading time for food retailers in the entire calendar year, Christmas. This places an additional operational burden on both suppliers and retailers in the lead up to and during their busiest trading time.
- It would be more appropriate for the new labelling requirements to be introduced at another time of year, no later than 4 months prior to Christmas. This will allow the industry to sort out compliance issues with minimum disruption to business which will be beneficial for consumers and retailers and suppliers.
- In recognition of the fact that Christmas is its busiest trading period, David Jones imposes an IT system freeze during the entire Christmas period to ensure that there is a minimal opportunity for disruption to the business. This means that extensive upgrading activity of its IT systems that David Jones is having to undertake will actually need to be completed by early at the latest.
- David Jones is ordering its products for Christmas at present and all orders will be finalised buy the end of May. It is requiring that suppliers comply with the new

Confectionery Manufacturers of Australasia

CMA generally supports proposal to repeal Volume 1 in line with the Ministers 'in-principle' agreement to conclude the transition period two years from the time Volume 2 was adopted, on the proviso that a 12 month stock-in-trade provisions is also granted. CMA supports the 20 December 2002 with a 12 month stock in trade provision as –

- The absence of a 12 month stock-in-trade provision will be a major deviation from past practices in New Zealand.
- Compliance with the new Code is complex in itself and is further complicated by subsequent changes.
- Approximately $140m of finished stock is estimated to be in the marketplace post December 2002 that would be deemed non-compliant at the conclusion of the transition period.
- A significant proportion of unused packaging materials from previous years are also expected to be dumped.
- Surplus Easter 2002 production will have to be illegal to sell.
- Surplus Christmas 2001 packaging materials will not be able to be committed to production for Christmas 2002.

CMA understands that 2 year transition period was provided to allow manufactures to comply with the new Code. While this may have appeared sufficient at the time, a number of subsequent issues have complicated things for the food industry, namely –

- Some labelling changes were resolved after the date of the new Code (eg chocolate definition was adopted in August 2001). While this might appear minor, compound chocolate under Volume 1 could be marketed as chocolate under Vol 2.
- Interpretation of other labelling requirements varied from the time the new Code was adopted (eg characterising ingredients).
- User Guides have become progressively available – some do not reflect current ANZFA interpretation (eg characterising ingredients), while others remain unavailable (nutrition information).
- Other regulatory changes are now being dealt with outside of the review (country of origin and health claims). While these may be considered to be non core, with respect to country of origin food labelling is not mandatory in New Zealand and is a fundamental change.
- A number of significant amendments are also continuing to be put forward (eg definition for carbohydrate, changes to the nutrition information panel format and the latest allergen labelling of inner portion packs greater than 30 cm^2 where contained in a retail pack)

ANZFA will appreciate that while uncertainty remains, interpretations being clarified, and continuing amendments are proposed, the food industry has been somewhat cautious and reluctant about it transition to the new Code. This is for fear of further variations impacting on their labelling changes and the obvious subsequent financial burden associated with another round of labelling changes.

Impact for the food industry of not having a stock-in-trade provision

The absence of a stock-in-trade provision will mean that overnight product that complied with Volume 1 or the NZFR will become illegal beyond the conclusion of the transition period. It will be impossible and impractical (due to costs) for the confectionery industry to ensure that products in the marketplace beyond the 2 year transition period. These targets are not achievable for the following reasons –

- The cost of bringing packaging production schedules forward to comply with Volume 2, prior to the end of the transition period to ensure that there is no food manufactured and labelled in accordance with Volume 1 or NZFR in the marketplace post December 2002.
- The inability of commercial packaging designers, film makers, plate makers, printers etc to deal with the volume of work with the timeframe (this process takes up to 8-12 weeks for each line).
- The expense of wasted products made in compliance with Volume 1 or the NZFR that will no longer be deemed legal post December 2002.
- The subsequent cost of food recalls to retrieve non-compliant product at enormous and unnecessary expense.
- The cost of re-labelling product to bring it into compliance with Volume 2.
- The cost of dumping product where it is not manufactured in compliance with Volume 2.
- That multiple levels of packaging need to be co-ordinated (i.e. Inner packs, consumer packs, outers and shippers).

The Australian confectionery industry alone has more than 3500 different products, this does not account for the numerous product extensions and New Zealand product lines. Some products may have up to 5 or 6 line extensions of various packaging configurations. This represents a significant number of packages that will need to be modified for compliance with Volume 2 by any one company – it may be as much as 500 to 750 product lines per company and it is not just multi-nationals that have a large number of product lines.

Warehoused and seasonal stock

It is estimated that the warehoused finished goods will have passed through the trade by December 2003. Products are warehoused to account for seasonal variations, factory closures, maintenance, refurbishments etc. Ordering schedules peculiar ti novelty shaped, foil-wrapped confectionery commonly used for seasonal confectionery production (Valentines Day, Easter, Christmas) will experience significant losses. The packaging material are costly and usually ordered 2 to 3 years in advance - most companies in the seasonal confectionery market will be carrying packaging from 2 to 3 years ago. Surplus finished Easter production from this year, manufactured and labelled in compliance with Volume 1 or the NZFR will not lawfully be permitted in the marketplace without modification, unless a stock-in-trade provision allows it to be sold lawfully at Easter 2003. At the present time, due to the uncertainty with the proposed stock-in-trade provision, confectioners are unable to commence Easter 2003 production with confidence.

Frequency of labelling changes

The CMA understand that ANZFA's research has indicated that food manufacturers generally change their packaging designs every 2 years. In the case of confectionery this may occur for impulse short life runs that are put into the market place to stimulate consumer interest, and may be variations of flagship brads.

However the packaging designs on major brands on the other hand may change every 6 to 10 years. The cost of making the labelling changes to comply with Volume 2 of the Code has been estimated to be in excess of $5m in Australia and $2.5m in New Zealand over and above regular market driven changes. The CMA anticipate that most of the industry's products labelled to Volume 1 or NZFR will be in trade in the first half of 2003 and estimate that the majority to have been sold by the end of the third quarter of 2003. Some slow moving stock and outlets may extend beyond this time. The estimated value of the stock affected in Australia and New Zealand is in the vicinity of $140m. By December 2001, industry would have changed 7-15% of food labels with the aim for full compliance by December 2002.

Shelf life

The shelf life of confectionery varies from very short self life to in excess of 2 years. On this basis it may be possible that small volumes of stock will still be in trade beyond December 2003. Due to the relatively stable shelf life of a wide range of confectionery products, it is guaranteed that there will be product manufactured to Volume 1 or NZFR in the marketplace after December 2001.

The absence of a stock-in-trade provision would constitute a cost burden on industry where product that is safe to consume is required to be recalled. The 12 month stock-in-trade provision will defray costs to industry and consumers. The food industry is required to sell safe food and this will not be compromised irrespective of the standards that are in place.

Golden Circle

Golden Circle does not consider that a 2 year transition period is sufficient and regards the 3 year period originally considered by the Health Ministers to be appropriate for the following reasons –

Size of the task

To comply with the labelling requirements of Volume 2 of the Food Standards Code it has been necessary to change every label. The resources to make a complete change across the entire range is well outside the resources of most companies and is dependent on the a number of suppliers who may not have sufficient resources to cope with the demands of many companies applying these changes at the one time.

Delayed commencement

Golden Circle has only commenced the label changes in earnest this year for the following reasons –

- Golden Circle has always seen the implementation an, maintenance and accreditation of its Food Safety Programs as a major priority for its Technical Staff. The reallocation of limited resources to the provision of information required to make label changes of questionable value has been given a lower priority to date.
- Signification resources were employed during 2001 to ensure compliance with the GM and allergen labelling regulations. This included the GMO and allergen status of all ingredients, additives and processing aids. This was given priority as the effective date was 7 December 2001.
- Doubt over the interpretation of the new Code and conflicting opinions on its application resulted in label changes being delayed until the requirements because clearer. This situation was compounded by ongoing changes to Volume 2, such as -
  - Icon standard gazetted August 2001
  - Dietary fibre gazetted September 2001.
  - Definition of carbohydrate gazetted November 2001.
  - User Guides published October 2001
  - Labelling omnibus in relation to food not for retail sale, individual portion packs, exemptions from nutrition labelling and percentage labelling not yet recommended to Ministers.
- The high cost of label changes highlighted the need to get it right the first time.
- Delaying the start of the label changes effectively reduced the transitional period from 2 years to 1.

Stock losses

If the 20 December 2002 deadline is not achieved there will be significant costs incurred in the write-off of non-conforming labels and packaging. The more time available for the changes to be implemented the lower the costs will be.

Current progress

The Company has committed to compliance with Volume 2 and significant progress is being made. The smoothest transition at least cost will be achieved if sufficient time is allowed for the changeover.

Stock-in trade

The 12 months stock-in-trade provision will be insufficient for food products with a shelf life of greater than 2 years.

Nutricia

Supports the 'stock-in-trade' provision but wants the repeal date for Volume 1 extended as –

- Nutricia markets a range of 30 infant foods under the Robinsons brand in jars or dried cereal form.
- Due to seasonal variability of ingredients and minimum batch sizes Nutricia is currently holding about $1.7m worth of product.
- Nutricia have delayed reformulation and re-labelling to meet Volume 2 requirements for the following reasons –
- The WHO has been considering a resolution on the ages at which various supplements and solids should be introduced. This resolution will effect the labelled age recommendations for the products.
- We expected to have a stock-in-trade provision from December 2002 to December 2003.
- Golden Circle has introduced a large range of infant foods into the Australian market, and Woolworths and Codes have reduced the number of Robinsons products they stock from 30 to 12.
- The products not stocked by Woolworths and Coles can be sold through by small grocery groups, pharmacy or sent to New Zealand. This takes about 18 months.
- If the stock-in-trade provisions are not agreed then Nutricia is facing a potential write-off of $A800,000.

Food and Beverage Importers Association

Extending the transition period by a further 12 months will allow an orderly and efficient transfer to the new Code. The problem for industry is the physical task of preparing new labels.

For labels prepared in Australia, there are now considerable delays with design agencies, photographers, and printers owing to the volume of work. In the case of labels for brands that are not owned by the importer, label changes have to wait on the timing of the overseas supplier.

A 2 year transition period is far too brief for such a significant change. Companies could not start changing until the new Code was agreed on by Ministers. Companies then had to digest and fully understand the new requirements before beginning the task of changing labels.

Applying the new changes is not an easy matter in many cases especially in relation to percentage labelling. There have been changes to the requirements initially gazetted (eg definition of carbohydrate) and to rush changes is likely to increase the number of mistakes and thus lead to the need for later relabelling.

If the transition period ends on 20 December 2002, food made or imported after that date will have to comply with Volume 2. The result of that will be that where complying labels have not yet been prepared, the food will either have to not be put on the shells until a complying label is prepared or non complying labels will remain on retail shelves. If the former, consumers will have reduced choice in foods until new labels are prepared. The advantage of additional information would be offset by the loss of choice.

A single standard may be less costly than dual standards to administer but if there are non-complying labels then presumably the agencies will enforce the single system and the costs of enforcement will rise.

The main areas requiring changes are the addition of nutrition information panels which are not public health and safety issues. Delay for another 12 months will not put the community at risk.

In summary FBIA believes;

- that the 2 year transition period is too brief.
- Such an extension would–
  - not put the community at risk
  - allow for increasing volume of labels complying with the Volume 2 onto the market.
  - have the advantage of not reducing the range of foods available
  - not impose significantly increased costs on government

CSIRO Health Sciences and Nutrition

Supports proposal

Coles Myer Ltd

Having conducted a thorough investigation into our store systems, it has been identified that our current store administration system (SAM) is operating at near maximum capacity and it is not feasible to increase database volume. We have commenced an accelerated rollout of a new store system which is designed to print products in-store with the additional labelling information. The conversion schedule will mean a significant proportion will have been converted by the end of 2002 with completion due mid 2003.

Given the small number of units of products affected the business risk and the significant costs involved in replacing legacy technology in all stores by the end of the transition period, Coles would appreciate it if ANZFA would allow an exemption under the Transitional Arrangements for the Repeal of Volume 1. The company intends to advise each of the enforcement agencies and provide a list of affected stores and their conversion status.

National Foods

This submission should be read in conjunction with that of the AFGC and is to the effect that 2 years is insufficient for the following reasons –

- Costs associated with the change to every piece of packaging in the industry.
- Logistics within manufacturing plants in managing packaging write-offs and synchronising the changeover.
- Logistics related to design houses and printers as there is limited capability within Australia and New Zealand.
- Need to recognise that food products have shelf lives between 5 days and several; years (in the case of some cheeses, dry goods and canned goods).

It is recognised that changes from Volume 1 to Volume 2 have significantly reduced the number of prescriptive standards but it has been overlaid with the introduction of complex and prescriptive general or horizontal standard (eg percentage and nutrition labelling). Volume 2 is vastly different in structure format and interpretation from Volume 1 particularly in relation to horizontal standards difficult to interpret and user unfriendly that ANZFA developed 'User Guidelines' for industry (which were not released until October 2001).

ANZFA has introduced a raft of changes since gazettal in 2000 –

- The move from the prescribed standard for cream being a minimum to 35% milk fat to 18% milk fat in the first release of Volume 2 and then a return to 35% milk fat,
- The alteration of the protein level in milk from 3.2%m/m to 3.1%m/m.
- These changes to icon food standards were not gazetted until 8 months after the release of Volume 2.
- Definition of carbohydrate gazetted in November 2001
- Dietary fibre gazetted in September 2001.

The new Code represents massive and unprecedented change reaching every product and formulation. The actual time available for industry to comply with the new Code has been significantly reduced from 2 years to a little over 12 months due to the constant and significant changes to the Volume 2 which are not yet completed. Sections of the Code will require further changes such as country of origin and representations about food. To expect industry to make a series of rolling changes to comply with major rolling changes is unrealistic. NFL currently carries in excess of 1500 Stock Keeping Units (SKUs) sold via retail, food service and international agencies which does not represent merely 1500 artwork items. Each SKU can have up to 4 pieces of associated packaging eg. yoghurt which may have up to 4 pieces of associated packaging. There are minimum order quantities for packaging. It is estimated that NFL will be changing approximately 2000 pieces of artwork to comply with the new Code and the majority of these changes will not take place as 'marketing' during a 12 month period.

The costs of label changes is very expensive and will be passed on to the consumer as part of product costs. It is estimated that the costs of changing NFL packaging to the new Code is in excess of $2.5 m dollars.

A single artwork change of a minor nature such as alteration to an existing nutrition information panel requires an average of 12 weeks from design to delivery to the manufacturer. Many labels will require a complete redesign in order to incorporate the mandatory nutrition information panel which will extend the time to the factory to at least 14 weeks. Specialised packaging such as a printed yoghurt tub, requires up to 16 weeks regardless of the degree of change. It is estimated that 31% of SKU's carried by NFL will require a complete redesign to incorporate all changes, 30% require significant alterations.

The practical implications of not permitting stock-in-trade are enormous. The shelf life of NFL products range from 11 days to 2 years and given the reduction in available transition time, it is likely that products will not comply by 20 December 2002. Observation at retail outlets shows that few labels have converted to Volume 2 and it is clear that many foods will not comply by 20 December 2002. The consequence of repealing Volume 1 on 20 December 2002 without permissions for stock-in-trade has the potential to result in the biggest recall in Australia's food history.

It is likely that consumers realising that withdrawn food is safe would have a greater concern for unnecessary waste and environmental impacts (of the dumping of non-complying packaging) during a season of heightened sensitivity than the lack of a nutrition information panel.

Nestle

Agrees with Australian Food and Grocery Council (AFGC). Nestle has made the decision to ensure that all of the necessary changes are made our labels to ensure that products on the shelf from 20 December 2002 will be labelled to the requirements of the new food standards, but Nestlé recommend that the transition period be extended for another year and that the stock-in-trade provision should also be extended by a year. This will be at significant cost to the company (both in New Zealand Australia) requiring a write-off of labels to the order of $325,000 in order to achieve this.

If there is no stock in trade we expect to have to withdraw and destroy product worth $8800 and if there is a 1 year stock-in-trade we will need to destroy product worth $1000 (stock within Nestlé's control).

ANZFA states that it does not accept the delay in the finalisation of the icon standards and the delay in the publication of the User Guides as a reason for extending the transition period. Given the cost of making the necessary label changes (in the range of $8-10 million) we could not justify making multiple changes of our labels that would have implicated in the delay of the finalisation of the icon standards. Other changes occurring during the transitional period with some of these still not being finalised which included –

- Changes to dietary fibre.
- Definition of carbohydrate.
- Declaration of carbohydrate as just carbohydrate, not total carbohydrate.
- Labelling omnibus that includes amendments to food not for retail sale, exemptions from nutrition labelling, changes to percentage labelling and labelling of individual portion packs (not yet gazetted).
- Change to warning statement on milk products and milk substitutes with a fat content of less than 2.5% (not yet gazetted).
- Nutrient claims.
- Country of origin

All of these proposed changes and implementation of changes only serves to create uncertainty for the manufacturer about when to change their labels which is a special concern for small-medium business. ANZFA is critical of the industry in not providing empirical evidence of the cost of implementing standards and the difficulties in implementing the requirements of the new food standards within the timeframe provided, yet has never attempted to quantify the cost of enforcing the food standards. Nor does ANZFA provide evidence of the increased confidence in the food supply brought about by these changes. It seems reasonable to expect that there would be consumer concern if there were a need to destroy food that was perfectly legal and safe one day and perfectly safe and illegal the next day by virtue of its label and in some circumstances the compositional aspects.

Apart from the difficulties with the implementation of the food standards dues to uncertainty of standards, the main difficulty is the seer volume of work necessary to actually change nearly all of our food labels. We have one factory with 250 labels to change and if we had commenced on day 1, the factory would have had to change 2.5 labels every week. It was not possible to commence the changes to the labels from day one because of the need to digest and understand the standards and plan for implementation – including the need to have the nutrition information determined and verified (many times by analysis).

In the meantime the people responsible for driving the changes also had to meet the needs of their normal responsibilities. The information also had to be obtained from raw material suppliers in relation to the allergens. This was not often easy as some suppliers did not understand the intricacies of the standards especially where the suppliers did not have English as first language. The confusion surrounding the percentage labelling and the lack of a user guide also held up some label changes, It was simple where ANZFA's position was quite clear but in some of the complex food products, it was difficult sometimes to decide was actually characterising, indeed anything at all.

Nestle in Australia and New Zealand have in the order of 1900 raw material suppliers that needed to be contacted to obtain information in relation to allergens and nutritional breakdown. Many of these raw materials do not come directly from the manufacturer but from distributors who had to contact the manufacturers. Another obstacle was that raw material suppliers were unable to provide saturated fat information for inclusion in the nutrition information panel which created time lags in the development of the nutrition information. When importing product it took between 1 to 3 months to obtain the necessary information to commence making the changes for the labels. Similar timeframes were experienced obtaining the information from domestic suppliers.

In the period of April to September we still have 859 labels on which to complete the changes, and these changes are mostly underway and we expect that these will be completed by our internal deadlines, however, this will be at a cost to the business for the write-off of labels.

The above estimates are based on the general stock turns of our major customers and some turns may be greater for some product lines. It is much more difficult to estimate the amount of product that will be on the shelves from 20 December 2002 in the small retail operations and in the regional stores. We have estimated that amount of product that might still be on the shelf due to small and regional retailers and slower moving stock is 0.5-1 % pf what we produce. Based on the total amount of product that we sell this can in the region of $10-20 million.

If no stock-in-trade for infant formula is permitted, we estimate that we will have to destroy infant formula product valued at $86,000. Due to the small volumes of the market for these products, there is a need for manufacturers to carry larger than normal stocks of labels for economic reasons in relation to the run sizes of the products, particularly for the non-standard products. It is expected that the timing for the changeover of labels will be in the order of 6 months, especially so for imported products.

ANZFA has not acknowledged that after the changes to the labels are effected by industry there still will be major changes to packaging required due to the incompletion of major proposals under discussion. (country of origin and nutrient claims) There is no evidence or estimate provided that the cost of imposing additional labelling changes will outweigh the benefits to the community at this stage.

Heinz Watties

•This submission has a twofold purpose:

- To present a case that a zero or one year stock in trade provision will disadvantage shelf stable companies, such as HWA. HWA seeks an exemption from the proposed 12 month stock in trade to cover long life shelf stable products.
- To demonstrate the difficultly in complying with the proposed end of transition date (20/12/02) and advocate a case for an extension of this date for a further limited period.

HWA have -

- Small internal team set up 18 months ago, comprising of logistics, procurement, marketing, technical, corporate affairs and legal
- 1500+ labels to change
- Approximately 20% of products require reformulation
- Many different types of labels/packaging
- The team has been increased and began intensive work late last year to push changes through now that the business is satisfied that the Joint Code is in a near final form and user guides are published.

Whilst HWA has moved forward on the change over project, a number of external events has slowed the process down:

- **Delays in the production of ANZFA User Guides**
- **Icon standards delays - jam for HWA**
- **Changes to the Code (with further changes proceeding now)**
- **This led to uncertainty amongst industry as to final form of the Joint Code**
- **Awaiting supplier specifications for ingredients**
- **GM project (completed prior to 7/12/01, but is ongoing)**
- **Health Claims review**
- **Country of origin review**
- Especially for HWA, review of infant formula standard

Cerebos ANZ

- Cerebos supports the process for the repeal of Volume 1 of the Food Standards Code and the New Zealand Food Regulations.
- We recommend an extension to the transition phase until 20th December 2003, due to the practical implications that industry has experienced during the transition phase, which have impacted on its ability to effectively use the 2 years to the full
- These implications relate to availability of all the information requirements as well as supplier, packaging, system development and resourcing implications.
- Potential costs to industry of retaining the current transition period and the potential for a number of products to be non-compliant on 20th December 2002 will be significant. We have provided detailed information to the AFGC for inclusion in their submission
- We recommend a one year stock in trade provision, together with an extension to the transition period, to accommodate product lawfully on sale at the end of the transition period.
- As a member of the AFGC we support their detailed submission on this Proposal on behalf of their

members companies.
However, we do not support the transition period ending on 20th December 2002. There have been a number of practical implications, which have impacted on the 2-year transition period being insufficient to ensure that all products will be on shelf labelled with the new provisions of Volume 2 at this time.
The transition period commenced when many issues were still unresolved, and support services were not established to provide direction and clarification on many of the requirements of the code. Manufacturers were unable to seek clear direction and guidance on the process. We support an extension of the transition period to 20 December 2003 with a 1-year stock in trade provision, to minimise the cost of product and packaging write-off.
Although Cerebos documented a detailed project implementation plan 2 years ago, and has also taken pro-active steps to ensure the change of labels across the business, we will have difficulty implementing all product label change requirements by 20th December 2002.

Additionally, there will be enormous cost associated with the write off of non-compliant packaging and product, at the current proposed implementation date. Outlined below are some of the practical implications experienced as part of the change process, which provide an overview of why the transition period of 2 years is insufficient to enable all stock to be changed with minimum costs in the market place.
ANZFA Issues
Although Volume 2 was gazetted in December 2000, it was not 100% complete. Changes to key standards or issues were still under review.

- 'Icon' standards gazetted in August 2001
- Dietary Fibre gazetted September 2001
- Definition of Carbohydrate gazetted November 2001
- Omnibus of Changes to Volume 2 of the Food Standards Code not yet gazetted.

Manufacturers attempting to implement packaging changes at one time have been affected by not knowing the final requirements at the time of Gazettal of Volume 2 and have lost available time in actioning the revised requirements of these key areas and this has effectively reduced the transition period from 2 years to 1 year for actioning many elements of the change-over process.

We experienced the need to review all progress previously made with Nutrition Information Panels and to update them accordingly, in line with the new definition of carbohydrate. This resulted in duplication of this process taking longer time then scheduled in the project plan.

While we acknowledge ANZFA's comment that the manufacturer has an obligation to comply with the Standard not the User Guide, the User Guides are valuable tools for providing clarification on the interpretation of the Code. As a business, our intent was to ensure that we complied with the interpretation of the Code, as outlined in the User Guides. It must be recognised that this was a period of steep learning for those involved in the application of the new Code and there was a definite need to seek clarification on new issues prior to undertaking audits, so as to ensure that a consistent approach was undertaken.
Supplier Issues
Major issues and time delays were experienced in obtaining updated information from suppliers, to enable audits to commence on the manufactured product. It was essential to conduct a full supplier audit of the content of all raw materials for allergens, as well as to obtain additional information such as percentage labelling of compound ingredients.

Problems were encountered with supplier knowledge, technical expertise, and co-operation as well as major delays in the receipt of this information. Manufacturers were left waiting, while suppliers sourced and built their own systems and information bases to manage these new requests.

The supply network was not adequately prepared. Suppliers needed to source the information and develop their own audit pathways, prior to being able to provide the necessary information to our company. Our supplier audit process commenced prior to the gazettal of Volume 2, and it took approximately 8 months to have the necessary information completed for 90% of all raw materials and purchased finished goods. This presented an unexpected delay in the commencement of the product audits. These response times reflect the simultaneous demand being placed on suppliers for compliance with the GM standard.

Upon receipt, it was found that much of the information was inappropriately presented, incomplete or incorrect, which resulted in ongoing follow up down complex supply chains.
On occasions, information was provided in accordance with the requirements of different legislative

jurisdictions. Difficulties were also experienced in communicating through the exact requirements. This was particularly the case with overseas supply sources.

Continual updates from suppliers, due to new knowledge, formulation changes or production changes without appreciation for the impact, has resulted in an increasing number of changes to the initial information and the subsequent need to revisit product audits which had previously been completed. This resulted in yet another unplanned drain on the limited resource base as well as duplication of tasks. Supplier changes have impacted on over 10% of total reviews needing to be redone, due to changes in the status of the information provided.

More recently, we are becoming concerned regarding the change-over of labels on product procured internationally. There is concern regarding the ability to convince many overseas manufacturers to commit to running small runs of new labels to accommodate the changes in Volume 2, when our orders are relatively small in volume. This is compounded by communication barriers in some of these countries. We procure a significant number of products internationally and from different suppliers and, as we enter into the next phase, this is causing practical implications; specifically, where the percentage of an ingredient differs between suppliers or there is a variation in the nature of the oil. Subtle differences are now resulting in the need for 2 different labels. All of these resultant issues need addressing, as part of the practical implementation.

System Development

Due to both the critical nature of the information that needed to be sourced and the implementation of this on food labels (via allergen statements, percentage labels etc), there has been a need for smaller to medium sized companies to develop appropriate systems to be able to more efficiently and accurately manage this data. Subsequently, we have needed to develop and commission two modifications to our main operating system, to be able to capture and manage this data. This development took 12 months from the initial briefing through development and commissioning, until full implementation. It also utilised some of the same resources allocated for the review process. In addition, there has been the need to commission a nutrient database program to minimise the cost of analysis, as part of the implementation of nutrition labelling. Although ANZFA nutrition calculator is now available, its delayed introduction meant that it was not available as a practical option early on, at the time when it was necessary to implement resources into the establishment of a system for reviewing the nutrient status of products.

The infrastructure required to be built for some businesses. to implement and maintain changes and compliance, has been significant. This was not factored adequately into the transition time frame. There has also been the need to review and update all internal documentation, including audit checklist, design brief, and artwork checking guides, to incorporate the new requirements. Subsequently, time was needed for training of personnel, to ensure they became conversant and skilled in the knowledge base needed to conduct the audits of products for compliance.

Resourcing & Training

Personnel responsible for the review of products for compliance with the requirements of Volume 2 were also required to focus on the compliance of products with the requirements for the labelling of GM foods. This was also an enormous task that required full compliance audits of complex supply chains, resulting yet again in difficulties with obtaining the information on the status of all raw materials and procured goods. Consequently, available resources were unable to focus solely on the task required for compliance with the full requirements of Volume 2 of the *Food Standards Code*.

The enormity of the task of reviewing products, as well as the resource drain, has resulted in the need to share focus on developing and marketing existing and new products, whilst also trying to commission changes to every product label. We have estimated that the change process from start to finish per SKU takes 5 hours: encompassing sourcing information, conducting audits, preparing information for artwork changes, approving artwork and updating records. To manage this transition, across our product range and within the allocated time, would equate to a dedicated resource base, which is not provided for.

In practice, a number of difficult issues have arisen which have not been easily resolved and thus resulted in delays, especially in relation to percentage labelling and the declaration of particular ingredients in the ingredient listing. For example, we experienced difficulty in trying to obtain percentage information of characterising ingredients that may be added via a compound ingredient purchased from a supplier.

In several instances, suppliers have indicated this information is proprietary and this has resulted in

subsequent delays. In other instances, the auditing has identified issues that need to result in reformulation and shelf life testing, due to the use of additives at non-permitted levels.

Packaging Supplies

On slower moving stock, packaging cover is purchased to cover 12 –18 months' supply. The lack of information from suppliers during the early stages of the transition has resulted in some packaging orders needing to be placed which will provide cover beyond the implementation date. Despite our best efforts, this situation is unavoidable, due to the large number of products that need to be managed at any given time. Short runs are usually not a viable alternative, and significant costs will be incurred due to the need to dump non-compliant packaging in December.

Cerebos has contributed more detailed information, specifically related to the cost implications, which has been presented in the submission made by the AFGC on behalf of the food industry. We are currently in the artwork change-over phase and predict that there are a number of products that will provide cover in excess of the implementation date, resulting in a significant stock write-off, if the transition period remains unchanged.

Limited Number of Design Agencies and Packaging Suppliers

While to date we have not encountered significant delays, we are being advised of the potential difficulty in securing change-over times on artwork changes, due to the potential rush on these services during the later stages of implementation. We are raising our concern about the limited number of agencies and supplies of packaging being able to meet the demands about to be placed on them by the food industry.

Progress To Date

The issues outlined above have been documented to provide an overview of the practical implications being experienced as part of the implementation of the Code, and their subsequent impact on timings and the transition phase. Despite these issues, Cerebos has been focused and committed to the change process for the last 18 months. Despite this commitment, there is still concern regarding not only our ability to implement product label changes on all products by the 20th December 2002 but also subsequent concern regarding:

- cost of recalling product from the market place;
- excessive write-off costs of packaging and products;
- removal and non-supply of a number of items in the marketplace; and
- impact on the viability of sectors of the food industry.

We therefore support the extension of the transition period to 20th December 2003, and the introduction of a 12 month stock in trade provision to handle in a cost-effective manner the completion of remaining products, in line with the new requirements of the code.

Standards Under Part 1.1A Under review

Cerebos support the position presented by the AFGC in relation to the transition period to be applied upon gazettal of these standards. We recommend that no firm commitment to a provision date be recorded, but rather that each instance be reviewed on a case by case evaluation of the issues.

Maltra Foods

Supports stock-in-trade provision for the following reasons –

- Acquisition of technical resources to undertake the implementation of the changeover to the new Code. These resources had had to be fitted with the budgetary constraints of a small manufacturing business and most of this activity has been proceeding since mid 2001.
- Our business relies heavily on the declarations of suppliers for all aspects relevant to the new Code. This has been time consuming activity and there are instances of unreliable responses that need a second or third round of survey.
- We manufacture products under the Malta label and also co-pack for large corporates. One of our main customers has set August 2002 for the changeover to the new Code.
- The delayed release of the User Guides meant in effect we and our customers could not progress with surety of the details of labelling until around August 2001 which has in effect shorted the transition period by 8 months.

Consumers Association of South Australia Inc

Supports option to repeal volume 1 in December 2002.

National Council of Women of Australia

Supports proposal and not does not support an extension to the transition period of two years. This is more than adequate for industry to make the necessary adjustments. Industry should have been preparing for the phase out of the transition period from its commencement, if not before, as it was widely canvassed and known that there would be a new Code. Consumers should not have to wait another 12 months for the labelling they have been promised as a compromise for loss of compositional standards. Similarly we do not see the need for a stock-in-trade provision as industry have had ample time to prepare for the changes.

Australian Food and Grocery Council

There are four key issues included in this Proposal, each of which impinges on the others:

- the 'mechanical' changes necessary to operate under Volume 2 of the Food Standards Code as the sole Code;
- •the appropriateness of the proposed two-year transition period for Volume 2 generally;
- the appropriateness of a one-year year stock in trade provision once Volume 2 becomes the sole Code; and
- the appropriateness of a two- transition period for the new Standards dealing with infant formula, health claims, country of origin labelling and labelling of pollen and royal jelly.

The AFGC supports the mechanical changes necessary to operate under Volume 2 of the Food Standards Code as the sole Code. With regard to the transition period and stock in trade, ANZFA has not followed the COAG Policies and Principles for Good Regulation, which place the onus of proof on the proponent of the regulatory measures - namely, ANZFA. Instead, ANZFA has reversed the onus of proof onto the industry to demonstrate that what ANZFA is proposing is inappropriate.

Although the two-year transition period to Volume 2 of the Food Standards Code on 20 December 2002 was agreed 'in principle' by Ministers on 24 November 2000, this period was selected arbitrarily and not based on any sound evidence that it was achievable. Although Volume 2 of the Food Standards Code was gazetted on 20 December 2000, it was not 100% complete. Changes to key provisions were still under discussion and to be decided, namely:

- icon standards, advertised for comment in February 2001, gazetted August 2001;
- dietary fibre, advertised for comment November 2000, gazetted September 2001
- definition of carbohydrate, advertised for comment September 2001, gazetted November 2001; and
- 'labelling omnibus' of amendments in relation to food not for retail sale, labelling of individual portion packs, exemptions from nutrition labelling and changes to percentage ingredient labelling, advertised for comment December 2001 - not yet recommended to Ministers or gazetted

In addition, ANZFA had promised 'User Guides' to assist in the interpretation of the new food standards. These were not published until October 2001 and, in the case of the 'User Guide' for nutrition labelling, not until one month later. These delays have impinged upon industry's ability to set in train the action necessary to revise product labels to comply with Volume 2 of the Food Standards Code.

The sheer magnitude of the task of changing almost every food label in a two-year period has been severely underrated and simple mathematics show that it would be necessary to change 1000 labels per week every week to ensure completing the task over the proposed two-year period. The limited resources of the food industry, whose primary role is to make and sell food products, not change its entire stock of labels over a period of two years, has not been considered. This is particularly the case when in that two-year period it has been necessary to trace and secure official confirmation of the GMO status of every single ingredient, ingredient of a compound ingredient, food additive and processing aid used throughout the food industry. Similarly, the resources required to secure confirmation of the allergenic status of these ingredients, ingredients of compound ingredients, food additives and processing aids during that same time has not been considered.

Notwithstanding all of the above difficulties and obstacles, the food industry has made considerable progress to date. The criticism that industry is seeking an extension to the transition period because it does not want to comply with the new standards is fallacious. Figures provided from a range of companies show that by 20 December 2002, 98.5% of food should be labelled in accordance with the provisions of Volume 2 of the Food Standards Code. These figures also show that despite this significant compliance, the cost to industry, and hence to consumers, of requiring the last 1.5% of products to comply by that date - $9.64M for ten companies and at least 10 to 100 times that much across the whole of the food industry - would grossly outweigh any perceived benefits.

The question of allowing a period for the sale of stock in trade is inextricably linked to the length of the transition period. It has been suggested no stock in trade provisions are to be permitted. Extrapolated costs show that such a move could cost up to $18 billion. Clearly, this is untenable.

Even the proposed one-year period for the sale of stock in trade has the potential to cost up to $1.9 billion. This cost can be avoided by allowing either a stock in trade period of two years or by allowing a stock in trade period of one year for most foods while exempting from any restrictions those foods not required to be date marked.

The proposal by the AFGC to extend the transition period to 20 December 2003, together with a one-year stock in trade period, would also avoid these costs.

The proposed two-year transition period for new standards currently under consideration (Infant formula, Health claims, Country of Origin labelling, and Labelling of Pollen and Royal jelly) once they have been gazetted is too general. The AFGC recommends that due to the different circumstances applicable to each of these, the transition period for them and associated stock in trade provisions be considered on a case-by-case basis.

Food Technology Association of Victoria Inc

Strongly suggested that the 2 year transitional period be permitted for all Standards that will be added to Volume 2. This will obviate the need for label changes are each standard is gazetted. The costs to manufacturers would be excessive and without withdrawal of old stock therefore could be several label versions of the same product available to consumers. This would be confusing. Requests that a stock-in-trade provision of 24 months in place of 12 months.

New Zealand Ministry of Health

As previously discussed, a transitional standard for general special purpose foods might be required (refer to regulation 237 (7) of the New Zealand Food Regulations 1984). We will consult directly with food industry organisations that may rely on the general provisions of New Zealand's regulation for special purpose foods to determine whether revocation of this regulation will cause any foods to become unlawful. Due to the time that this may take, it may be prudent for ANZFA to include a transitional standard on general special purpose foods for New Zealand.

Infant formula products

Division 3 – Infant Formula and Follow-On Formula (New Zealand Only)

- Magnesium phosphate monobasic needs to be added to column two for magnesium.
- Several brackets have been inadvertently left off, as indicated on the attached sheet.

Health claims

- Clause 2 introduces a new requirement, to that already agreed for New Zealand in Volume 2 of the Australia New Zealand Food Standards Code. We understand that the requirement comes from Volume 1, which is an alternative for New Zealand industry, but not intended to continue. The discussion document should have made explicit the addition of this clause, drawing New Zealand stakeholders' attention to it. As such, it is doubtful that the clause meets New Zealand's consultation requirements. However, the clause is superfluous, in that the type of claim referred to would be regarded as a therapeutic claim under the Medicine Act in New Zealand. As such, the Ministry of Health will not oppose the inclusion of this clause in the transition standard.

Country of origin labelling requirements

- Reference to whitebait and sardines in the purpose needs to be deleted.

Labelling of labelling of pollen and royal jelly

- A definition for bee propolis should be included.
- The Ministry of Health recommends an editorial note stating that the requirements for warning statements on dietary supplements containing royal jelly, bee pollen and propolis in New Zealand will be included in the Dietary Supplement Regulations 1974.

Modified Milks Division 3 – New Zealand Only

- Reference to pasteurisation and ultra heat treatment in the definition for standardised milks need to be deleted. (These will be covered in New Zealand's proposed standard for the processing of milk and milk products and reference to processing requirements are not given in the other definitions.)
- We recommend that the standard includes definitions for evaporated skim milk, sweetened condensed milk and skim milk powder. The definitions for evaporated skim milk and skim milk powder may appear to be obvious considering the definition of skim milk provided. But, skimmed sweetened condensed milk is not a term normally used nor is it defined in the dictionary. We feel that it would helpful for definitions to be included for all milk products specified.

AMINO ACID MODIFIED FOODS

- It is unclear as to whether the standards intention is for amino acid modified foods to be taken to mean a reference to formulated meal replacements or formulated supplementary foods. (Clause 1 (2) states '…a reference to amino acid modified food is taken to be a reference to formulated meal replacement', the editorial note refers to formulated meal replacements, and clause (2) references Division 3, which relates to formulated supplementary foods (rather than formulated meal replacements.)

- Because it is proposed that amino acid modified foods will eventually be classified as medical foods, it is not appropriate for a reference to amino acid modified foods be taken to mean either formulated supplementary foods or formulated meal replacements.
- Amino acid modified foods are foods that have either all or some of one amino acid removed. Amino acid modified foods are generally low protein foods and in New Zealand can be labelled as such. A requirement for formulated meal replacement and formulated supplementary foods is that they have a minimum protein content.
- A brief survey of the nutrient composition of amino acid modified foods currently on the market found that most products contain both nutrients and levels of nutrients that will not comply with either division 2 or 3 of Standard 2.9.3 Formulated Meal Replacements and Formulated Supplementary Foods.
- P252 did not include an assessment of amino acid modified foods currently on the market and it is unlikely that proposal 252 reached the sector of the food industry that deals with this highly specialised food.
- The Ministry of Health recommends that the transitional standard for amino acid modified foods be identical to the current requirements in regulation 239a of the New Zealand Food Regulations 1984.
- Please note that removal of amino acid modified foods from the market would have serious health consequences. These products form an essential part of the diet for people with in-borne errors in metabolism (as well as some other conditions).

Conclusion

We agree with ANZFA's proposal to conclude the 'two year transition period' on 20 December 2002.

Grocery Industry Council of New Zealand

The industry has supported and been a strong advocate for the implementation of the Australia New Zealand Food Standards Code (the Code). It submits however that a stock in trade provision for at least a twelve month period is essential. In December 2002 products leaving manufacturers and importers premises will be compliant with the Code. Until December 2002 however, as it will be legal to manufacture and label products in compliance with the current legislation, these products will remain in the supply chain for varying periods of time for the reasons advanced below. It has been suggested that as the industry has known for two years the Code would be operative from December 2002, it had sufficient time to ensure all stock in the supply chain at that date would be compliant with the new regulations. This is neither a fair nor reasonable assumption. The industry is seeking approval of the stock in trade proposal for the following reasons.

INFORMATION AND COMMUNICATIONS CONCERNING THE CODE

Companies began addressing the required changes necessitated by the Code upon its Gazettal. It soon became evident however that clarification of many of the complex provisions was required. In addition a number of amendments were made to the Code after its Gazettal. As labelling and reformulation changes are very costly it is essential to ensure that the labelling is correct. The majority of companies were reluctant to initiate label changes until all the information required was available and assurances obtained that no further amendments would be made.

The useful Ministry of Health and ANZFA Roadshows which assisted in the interpretation of the Code, did not take place until mid 2001 at which time some of the User Guides and finalisation of definitions in the Code were still not available. The following are examples of some of the outstanding issues that were only resolved at the end of 2001 or later.

The inclusion of nutritional information on a label is now mandatory under the Code. Considerable complexity surrounds provision of accurate nutritional information on a label. The User Guide on Nutritional Information was not issued until 18 December 2001 and not finalised until 14 March 2002 and yet nearly all labels are required to contain this information. Given the complexity of calculating nutritional information manufacturers had to be assured their calculations would be correct.

- The definition of carbohydrate was not gazetted until November 2001. It is essential for companies to have carbohydrate clearly defined in order to calculate values for the nutritional information panel. Furthermore the manner in which this definition should be interpreted was only clarified by ANZFA early this year.
- The definition of compound ingredients was only recently resolved.
- The form of type for allergy statements has only been resolved recently.
- The manner in which percentage labelling should be calculated and depicted has only recently been clarified.

· New Zealand companies have experienced considerable difficulties in deciding the methodology to use in making the requisite calculations for the nutrition information panel.

While the ANZFA Nutritional Panel Calculator is a useful tool New Zealand manufacturers have been in a dilemma because:

i) They have either to rely on the ANZFA Calculator which is based on Australian data and hence could put them in breach of the Fair Trading Act; or

ii) Use the calculations provided by Crop and Food which is based on New Zealand data and hence would ensure compliance with the Fair Trading Act but New Zealand manufacturers would then be in breach of the Food Standards Code as Crop and Food did not include fibre in the energy calculations. It was not until August 2001 that ANZFA finally resolved the definition of 'dietary fibre' which now includes lignin. While Crop and Food now include dietary fibre in their energy calculations, the model used to make these calculations is not the same model as used in the ANZFA Nutritional Panel Calculator and hence the calculations will still not comply with the Food Standards Code.

In order to ensure compliance with the Food Standards Code and the Fair Trading Act companies are therefore obtaining an independent laboratory analysis. It is taking a lengthy period of time to obtain these energy calculations, many of which are still awaited.

COSTS

As noted above it has been essential to ensure all statements on the label are correct before it is finally printed because of the extremely high costs that are involved in ensuring compliance with the Code and printing the labels. There are 35,000 food and beverage stock units (SKUS) in the grocery supply chain; nearly all of which require reformulation or re labelling. Smaller sized companies have to change between fifty and one hundred labels with larger sized companies having to change up to 1,500 labels. The cost of these labelling changes range from approximately $50,000.00 for a small company to over $1.5 million for a larger sized company. The minimum cost for the set up for the printing of a new label is $1,000.00 for the printing plate and film. This is just one of the costs involved.

There are companies which made changes upon gazettal of the Code but because of the many changes that have been made subsequently, these companies have now incurred the added costs of re labelling. One member company has had to re label four hundred SKUs at substantial cost.

It is therefore understandable why the majority of companies have awaited final clarification of the Code before undertaking the costly task of printing new labels.

SCALE OF UNDERTAKING COMPLIANCE WITH THE CODE

The process in implementing the requisite changes involves a significant amount of time and research involving a large team of logistical, procurement, marketing, technical, corporate affairs and legal staff. The scale of the task has been monumental. The process involves:

- Analysis of the Code (this had to await completion of amendments and finalisation of interpretation of the definitions).
- Review of all SKUs to identify where changes are needed.
- Research of all ingredients.
- Companies have had to obtain detailed information about ingredients, nutritional and allergen data from their suppliers. Food manufacturers use thousands of ingredients in the course of production which has involved contacting hundreds of suppliers, the majority of whom are overseas as most ingredients are imported.

Obtaining information from ingredient suppliers is a lengthy protracted task. Manufacturers are still awaiting this information, having requested it many months ago. Some overseas suppliers are most reluctant to provide full ingredient listings for confidentiality reasons. It has taken time to convince suppliers that, for legislative reasons, the information must be made available. One major New Zealand manufacturer, for example, has received the required information from less than 70% of its suppliers.

· Calculations for nutritional and percentage labelling information.

· Reformulation of products to ensure compliance with the Code.

· Development of nutritional information has involved each manufacturing company in hundreds of hours of work. Once the calculations are made of individual ingredients, the product itself then has to be audited to ensure compliance.

PRINTING OF LABELS

Given the scale of re labelling and the fact final information about the Code has only recently come to hand it is only now manufacturers are ascertaining with certainty what should be included on the labels.

Under normal circumstances there is at least a six to ten week notice period which has to be given in respect of new products but as nearly all SKUs have to be re labelled a backlog is occurring in respect of the printing of labels.

The number of printing companies with sufficient quantity and capacity is creating peak demand and limited supply. Thus new labels will be being printed right up until the December deadline. In the meantime current labelling stock is being used and thus it is inevitable product that complies with the current law will be entering the supply chain right up until December 2002.

The following example is indicative of the pressure under which film houses are placed. One member company has allocated one of its own packaging technology staff to proof on site at the film house otherwise it would have added at least another six months to the time of implementation of new labels.

BARCODES

There is a mandatory industry requirement that barcodes on all new and re labelled product must be verified by EAN NZ (the International Product Numbering organisation that has responsibility for the administration of EAN barcodes which are affixed to all fast moving consumer goods in New Zealand).

The Code has resulted in the inclusion of a far greater amount of information on labels which affects the size and positioning of many barcodes on products. Some manufacturers have been changing the size of the barcode to accommodate the labelling requirements with the result that many new barcodes are failing to obtain verification approval as truncated barcodes cannot be scanned.

Thus manufacturers are being required to re design their new labels to ensure the barcode meets EAN NZ's verification requirements. This will further delay the introduction of the new labels.

PACKAGING AND LABEL IMPLICATIONS

Because of the high cost of packaging it is cost effective and the usual practice of many manufacturers to purchase large quantities of packaging (frequently up to two years supply) much of which is pre-printed. Where large quantities of such packaging exists, manufacturers are utilising these stocks for cost efficiency reasons otherwise hundreds of thousands of dollars worth of packaging will have to be dumped.

EFFECT OF GENETICALLY MODIFIED FOOD LABELLING REQUIREMENTS

For those companies for which Standard 1.5.2 (Foods Produced Using Gene Technology) has relevance, the need to ensure compliance with the Standard required a significant amount of time, effort and resource expenditure. This took priority over the implementation of other provisions of the new Code as Standard 1.5.2 took effect in December 2001.

LONGER SHELF LIFE STOCK

If a stock in trade provision is not approved there will be serious implications for longer self life stock as the following examples show:

Seasonal stock

All tinned salmon imported into New Zealand comes from the Northern Hemisphere which is canned in the Northern Hemisphere's late spring early summer season. This stock will not be imported into New Zealand until Autumn where it is warehoused for a twelve month period. Because of the small size of the New Zealand market the suppliers of salmon to New Zealand are not yet prepared to label specifically for the New Zealand market. Tinned salmon being imported later this year which will be on shelf next year will be compliant with the current law, not the new Code. If no stock in trade provision is granted tinned salmon, which is in high consumer demand, will not be available on shelf next year.

There is a substantial range of seasonal product in the supply chain. Large stocks of seasonal products are built up to ensure there is an adequate supply to meet demands as ‘out of stocks’ is a major cause of consumer frustration, particularly in respect of seasonal product. It is difficult assessing consumer demands for seasonal products and hence a build up of stock is usually produced. When there is an oversupply and the product has a long shelf life it will again be marketed tile following year. If no stock in trade provision was permitted one member company has advised that 100,000 products would either have to be re labelled or dumped (a hugely costly undertaking). Another company has advised that 30 lines out of the 260 lines it supplies would also have to be dumped or re labelled.

Wine

Many wines are aged before release. Thus many wines produced before 2000 will not be on shelf until after 2002. It would be very wasteful to have to withdraw such a high value product.

Production Cycles

products are made on a one cycle basis a year. This applies particularly to specially niche market stock, high value and low volume products. Many products have already had their production run this year whose labels do not comply with the Code for the reasons advanced above. These products will be on shelf until the next cycle of manufacture.

The Supply Chain

The time frame involved in taking a raw product from harvesting and processing to consumption by the consumer is very dependent on shelf stability. When considering the changes required to implement the new Code it must be put into the context of the supply chain. In order for retailers to be certain that all products

sold by December 2002 are compliant with the Code they require that all fast moving lines are received into warehouses no later than three months prior to the December 2002 deadline. In the case of slower moving lines this time frame will of necessity need to be moved much further ahead of December 2002. In the case of smaller regional retailers, where stock turnover is slower than in larger markets', compliance will simply not occur as the retailer may be holding long shelf life products purchased the previous year.

The effect on the supplier is that the production of non label compliant goods must cease well before September 2002 dependent on their internal warehousing and market supply practices. Many supplier companies have an internal distribution provision of four weeks and a warehousing provision of anywhere between four to fifty two weeks dependent on the product and thus they will have lines, particularly longer shelf life lines, in the supply chain well after December 2002.

The following is an example provided by a large size manufacturing company of an inventory of its stock.

Holding At	Inventory
Own warehouse	40 days average maybe up to 60 days
Consumer warehouses	21 days
If retail stores investment buy	Up to 4 months
Sell through in store	Some less than 1 week, usually 3 - 4 weeks average. Up to 9 months in smaller route stores

Total stock in trade can be anything from sixty days to one year.

The above shows that unless the company had all its labelling amendments completed before the end of 2001 there is no chance of having 100% conforming product in the trade at the end of 2002. The company in question will have all product complying with the Code in December 2002 but from the above it is obvious old stock will take time to flow through the system.

Monitoring Implications of Stock in Trade Proposal if not Approved

There will be a huge monetary loss if stock already in the supply chain in December 2002 has to be withdrawn because it does not comply with the Code.

The majority of manufacturers and importers, except those that produce short shelf life products, will have products in the Australia and New Zealand supply chains in December 2002 that conform with the current legislation. It has been estimated that smaller size companies will each have on average $50,000.00 of stock in the system that would have to be withdrawn if there was no stock in trade provision. A large manufacturer has advised stock to the value of $22 million will have to be withdrawn.

When this is extrapolated over the 120 major suppliers of processed food and beverage to the grocery industry it will be seen the size of the monetary loss is exceedingly high, in addition to the major disruption it would cause to the grocery industry.

SUMMARY

- The industry supports the implementation of the new Code. Suppliers are giving compliance with the Code the highest priority. Product manufactured from December 2002 will be compliant with the Code.
- Due to the factors outlined above however there will inevitably be product in the supply chain after December 2002 that does not comply with the new Code
- It is only within the last few weeks when final clarification was obtained concerning the interpretation of the many complex provisions of the Code that manufacturers could begin instituting implementation of new labels.
- Obtaining the requisite information and making the necessary calculations in respect of provisions such as nutrition information, percentages of characterising ingredients and ingredients within compound ingredients is a complex and time consuming exercise. (Some suppliers are still awaiting the necessary information before they can begin printing labels).
- If a stock in trade provision is not permitted a huge responsibility will be placed on retailers to monitor for non complying product. In addition there will be a major disruption to the supply of stock as thousands of SKUs will have to be withdrawn from shelf in the busy pre Christmas period. The out of stock situation will have adverse consequences for consumers.
- The removal of substantial quantities of foods from shelves is untenable and unjustified when no health and safety issues are at stake particularly when the New Zealand legislation has always made provision for stock in trade.

Prenzel Distilling Co

1. **Easily Solved Problem Items.** The following items, which are currently non-conforming, should sell out all existing stock before the new legislation comes in. Provided new labels are ordered with the required amendments, the problem will be overcome. **700 ml Prenzel Cream; 500 ml Butterscotch Schnapps; Sour Apple Schnapps; 50 ml Black Sambuca; White Sambuca; Butterscotch Schnapps.** Adjusting the dies and artwork will cost approx $500 in each instance - Total cost $3000.
2. **Bottled Stock with Non-conforming Labels.** Before the legislation comes into force we will have to make special efforts to sell non-conforming product that is already labelled. We might have to discount heavily - depending on how short notice we are given. The following items in this category are likely to be remaining on our hands at year's end if we make no unusual efforts to move them. **500 ml Kirsch x 500; Marc x 250; 50 ml Crème de Cassis x 2000**; **Kirsch x 100**; **White Sambuca x 200; Apricot Schnapps x 1000**. I do not consider this a problem - we can just special it off. The 500 ml Kirsch could be a problem - but a simple individual standard drink stickers could easily be added to a 500 ml bottle - such a sticker will be more difficult with miniature 50 ml.
3. **Surplus Labels on Rolls.** The following items are likely to be left on our hands at the end of the year: **500 ml Gin x 3000; Kirsch x 7000; Marc x 10000; Pear William x 7000; Sangria x 9000; Apricot Schnapps x 8000; 50 ml Prenzel Cream x 17000; Black Sambuca x 300; Blizzard x 20500; Crème de Cassis x 5500; Citron Ice x 12500; Kirsch x 10000; Pear William x 10000; White Sambuca x 2500; Apricot Schnapps x 6000.** The above represents 44000 back labels at an average cost of $0.09 = $4000 and approx 85000 miniature labels at an average cost of $0.07 = $6000. In addition we will face a further cost of approx $7000 in artwork and associated printer's charges.
4. **Total Cost of Conformity.** Total cost of conformity this year for our company will be in the region of $20000. It could be considerably less than this if we are allowed to spread conformity over the 12 months following the introduction of the legislation for stock which is already printed by the date on which firm dates and details of the legislation are announced.

ATTACHMENT 5

Costing a one-year delay to the introduction of mandatory nutrition labelling

Overall, a delay of one year to the introduction of mandatory nutrition labelling will have significant adverse impacts on health in the community.

This methodology has adopted several very conservative assumptions. It indicates the likely minimum costs of delaying mandatory nutrition labelling.

- Between **320** and **460 people will die** from diet-related diseases, every year mandatory labelling is delayed.
- The **cost to the health system** – expenditure from all sources – is in the range of **$47 million to $67 million** for every year mandatory labelling is delayed.
- Based on the value that members of the community assign to a year of life, the **value of life years lost** will diminish by **$341 million to $486 million** for every year mandatory labelling is delayed – an immense personal cost.
- Diet-related risk factors account for about **25%** of Australia and New Zealand's **burden of disease**.
- From the experience of the US, we expect a **significant proportion of currently unlabelled food products to show some poor nutrition qualities** when nutrition labelling is mandatory.
- From the US experience, we expect **mandatory labelling will result in a significant substitution away from least healthy food products**, towards the most healthy food products.
- In addition, delaying mandatory labelling will mean insufficient warning of **allergens** in food products, placing vulnerable consumers at unnecessary risk.
- Other **warnings and advisory statements** will be more difficult for consumers to interpret.

Methodology

The methodology comprised two steps. First, identifying risk factors of diet-related disease and measuring their impact on health systems expenditure and the value of life. Second, estimating the likely reduction in risk factors associated with the introduction of mandatory nutrition labelling. Data from both steps combine to indicate the health costs from a one-year delay in mandatory labelling.

1. Identifying risk factors and measuring their health impact

Diet-related diseases are principally associated with three risk factors:

- Obesity
- Hypertension
- High blood cholesterol

The Australian Institute of Health and Welfare (AIHW) has calculated the contribution of these risk factors to the burden of disease in Australia.[1] This work identifies the diseases associated with each risk factor, and calculates the impact on Australia's burden of disease in terms of Disability Adjusted Life Years (DALYs). A DALY measures a year of life lost to a person from disability and/or death, as a consequence of each disease. Thirteen diseases were associated with the risk factors. The contribution of the risk factors was calculated as a percentage of total DALYs for each disease. Overall, the diet-related risk factors accounted for 25% of Australia's burden of disease.

Australian data were more comprehensive than that data from New Zealand, hence the analysis was based on this data. Key assumptions were extrapolated to New Zealand, such as it would have the same risk profile and health system costs as Australia.

An issue within the epidemiological and health economist professions is whether DALYs are additive across risk factors, which implies that these calculations over-state the true attributable costs.

> On the one hand, the calculations by the AIHW contain an explicit attempt to de-confound each risk factor from the influence of the others. The AIHW was conservative and it is likely that the calculations understate the contribution of each risk factor. However, for this group of risk factors, it is also likely that the interactions between them were not wholly excluded, leading overall to a modest over-statement where the impact of the three risk factors are combined. The calculations remain a reasonable guide to the combined impact of the three risk factors.
>
> On the other hand, the difficulty of distinguishing between these particular risk factors in the primary data means that multiple interactions cannot be eliminated. The risk factors should not be added. The effect of combining the risk factors could lead to an over-statement by a factor of 100%.

Taking a conservative approach to costing, this analysis accepts a possible 100% over-statement of the combined impact of all three risk factors. All totals that derive from the risk factor analysis have been adjusted to remove any suggestion of over-statement.

A further issue within the epidemiological and health economist professions is the robustness of DALYs as a measure the impact of disease. The core of the issue is the extent of subjectivity in estimating disability weights, which means that adding morbidity to a mortality-based measure reduces its overall usefulness. Another view within the profession is that morbidity is a significant impact of disease and should not be ignored; and to adopt better quality data when it becomes available. This analysis accepts the significance of morbidity, and regards the DALY as a reasonable overall measure of the impact of disease. In addition, this analysis uses AIHW data on DALYs that have been discounted at 5% p.a.

[1] AIHW (1999) *The Burden of Disease and Injury in Australia*.

Health System Expenditure

The latest expenditure data for Australia was collected by AIHW in 1993-94. Comparable New Zealand data was not available in the short time frame of this paper, hence it has been assumed that New Zealand's cost of treating disease is the same as Australia's. The risk profile (DALYs of risk factors as a percentage of total DALYs, for each disease) was applied to the cost of treatment data collected by the AIHW. The total expenditure in 1993-94 was adjusted to 2000-01 expenditure levels, on the basis of the 1998-99 *Health Expenditure Bulletin* and historic growth rates to project expenditure from 1998-99 to 2000-01.

Value of Life Years Lost

The value of life-years lost is a subject of considerable research in the health economics literature. The approach is to estimate the willingness to pay for a year of human life. A recent article published by the Australian Health Economics Society examines international benchmarks, and recommends a conservative valuation of $60,000 per DALY.[2] This valuation is very conservative and a value of around double that is regarded by other health economists as more appropriate. The personal cost of disease arising from the risk factors was obtained by summing the total DALYs associated with them, then applying to the sum the value of $60,000.

2. Estimating the reduction in risk factors

Surveys of Australian consumers show high awareness and use of nutrition information on labels. Nutrition information influences consumer choice. From one major survey, consumers focus on one or two negative nutrition factors, such as sugar and fat content.

These results are reinforced by an American study of the impact of the introduction of mandatory nutrition labelling in 1994.[3] The study examined the composition of consumer purchases of a benchmark product, pre and post implementation. It, too, found that consumers principally respond to negative nutrition information. At pre-implementation, many products voluntarily provided nutrition information, but this information showed the products to be quite healthy (measured by fat content). Of the products that did not voluntarily provide nutrition information, none were in the healthiest quadrant, the majority were in the least healthy category, while there was a sizeable minority in the moderate range. Post-implementation of mandatory labelling, consumers substituted the best and moderate healthy products for the least healthy. Market share of the least healthy products declined by 4.0% in well-educated neighbourhoods, and by 5.7% in the lesser-educated neighbourhoods.

Measurement of actual consumer behaviour is much more robust than surveys of consumer attitudes in assessing how consumers will respond to mandatory nutrition labelling. Hence data in the American study has been used to estimate the reduction in risk factors in Australia and New Zealand. In Australia, most products that voluntarily carry nutrition information on their labels would be regarded as healthy. From the American experience, it would be fair to assume that the majority of products that do not voluntarily disclose nutrition information do so for good reason – it would be negative and reduce sales.

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[2] Peter Abelson, *Economic Evaluation of Public Health Programs in Australia from 1970 to 2000*, presented to the Australian Health Economics Society, 28 September 2001.

[3] Alan Mathios, *The impact of mandatory disclosure laws on product choices: an analysis of the salad dressing market*, in the Journal of Law & Economics, October 2000.

Also from the American experience, mandatory labelling would provide important negative information to consumers about the least healthy products and there would be a substitution away from them, towards healthier products.

This analysis assumes that introducing mandatory labelling in Australia and New Zealand would result in the market share of least healthy products declining in the range: 4.0 % to 5.7 %. The extent of substitution depends on the level of education, which is a proxy for the level of awareness of nutrition in food. These rates are drawn from the American study, on the assumption that the US experience is relevant to Australia and New Zealand, and that the results from one product can be generalised to all labelled products, on average. All least-healthy food purchased for cooking and consumption in the home is assumed to lose market share by this amount. The impact on total food consumption will be less that these rates, because about 75% of food is prepared in the home, of which only 80% will be required to carry nutrition labelling. The decline in consumption of least healthy foods is assumed to equal the decline in diet-related risk factors, on average over all labelled foods, in the range 2.4% to 3.5%.

The assumed 1-1 relationship between a decline in consumption of least healthy food, and the decline in diet-related risk factors, is very simple, and reflects an absence of information. It is probable that the impact on hypertension would be less than 1-1, but that the impact on obesity would be greater than 1-1.

3. Impact of Mandatory Labelling

The estimated decline in risk factors is applied to the estimates of annual health system expenditure and value of life. See attached spreadsheet

Consultation

This study has benefited from advice and comments from the Australian Institute of Health and Welfare, the Ministry of Health in New Zealand and the Commonwealth Department of Health and Ageing.

Table 1: Impact of diet-related risks on disease

	(Australia) *Diet Risk Factors*						
	Obesity	Hyper-tension	High Blood Choles'ol	Diet Risks - total	Diet Risks adjusted*	All risk factors (diet & non-diet)	Share of Diet Risks to All Risks
	(DALYs)	(DALYs)	(DALYs)	(DALYs)	(DALYs)	(DALYs)	(%)
Ischaemic heart disease	33,458	71,923	61,150	166,531	71,923	311,330	23%
Hypertensive heart disease		13,041		13,041	13,041	13,041	100%
Peripheral arterial disease		1,730	3,472	5,202	3,472	18,333	19%
Stroke	5,743	43,730		49,473	43,730	136,579	32%
Colorectal cancer	10,221			10,221	10,221	66,951	15%
Uterus cancer	742			742	371	4,866	8%
Kidney cancer	511			511	511	11,412	4%
Type 2 diabetes mellitus	30,729			30,729	15,365	67,487	23%
Osteoarthritis	18,038			18,038	18,038	56,305	32%
Post-men. breast cancer	3,550			3,550	3,550	32,157	11%
Nephritis and nephrosis		5,646		5,646	5,646	12,503	45%
Gall bladder disease	1,023			1,023	1,023	3,239	32%
Back problems	981			981	981	7,324	13%
TOTAL	**104,996**	**136,070**	**64,622**	**305,688**	**187,872**	**741,527**	
Weighted Average							**25%**

* Total Diet Risks were adjusted to avoid double counting of multiple interactions, where this occurred.
DALYs = Disability adjusted life years, affected by rates of morbidity and mortality.
Source: AIHW (1999) "The Burden of Disease and Injury in Australia"

Table 2: Impact of diet-related disease on health system costs

			(Australia)		
	Health system costs 1993-94	Impact attributable to diet-risks	Health costs attributable to risks: 1993-94	Growth in health costs: 1993-94 to 00-01	Health system costs 2000-01
	($m)	(%)	($m)	(%)	($m)
Ischaemic heart disease	894	23%	207		
Hypertensive heart disease	16	100%	16		
Peripheral arterial disease	*131*	19%	25		
Stroke	630	32%	202		
Colorectal cancer	205	15%	31		
Uterus cancer	86	8%	7		
Kidney cancer	26	4%	1		
Type 2 diabetes mellitus	217	23%	49		
Osteoarthritis	624	32%	200		
Post-men. breast cancer	*109*	11%	12		
Nephritis and nephrosis	*335*	45%	151		
Gall bladder disease	*187*	32%	59		
Back problems	552	13%	74		
TOTAL	**4,012**	**25%**	**1,034**	**51%**	**1,556**

Table 3: Extension to New Zealand*

Impact of all risks on selected diseases - New Zealand (DALYs)**	175,355
Impact of all risks on selected diseases - Australia (DALYs)	741,527
Share of disease impact in New Zealand (reflects relative population to Australia) (%)	24%
Australian attributable health system costs ($m)	1,556
Estimated New Zealand attributable costs ($m)	368
Total attributable costs - Australia & New Zealand ($m)	**1,924**

* Australian data was more comprehensive that from New Zealand, hence the analysis was based on this data and key assumptions were extrapolated to New Zealand; i.e. that it would have the same risk profile and health system costs as Australia.

** Source: NZ MoH (1999) "Our Health, Our Future". Data for some minor diseases were unavailable, and had to be estimated.

Table 4: Personal cost of diet-related diseases*

Diet Risks, adjusted - Australia (DALYs)	187,872
% total disease impact in New Zealand (reflects relative population to Australia) (%)	24%
Diet Risks, adjusted - New Zealand (DALYs)	44,428
Diet Risks, adjusted - Australia & New Zealand (DALYs)	232,299
Value of life years lost to disability or death ($m per DALY)	0.060
Total value of life years lost from diet-related diseases ($m)	**13,938**

* The personal cost of years of life lost as a result of disability or death is a real cost to the individual. It is quite proper to estimate this cost, based on the health economics literature.

Table 5: Impact of labeling

	Change in market share of unhealthy products*	Share of labelled products in total food consumed**	Reduction: unhealthy foods consumed	Reduction in diet-risks	**Health Cost**	**Personal Cost**
	(%)	(%)	(%)	(%)	($m)	($m)
Nutritionally aware*	4.0%	61.2%	2.4%	2.4%	**47**	**341**
Less nutritionally aware*	5.7%	61.2%	3.5%	3.5%	**67**	**486**

* Drawn from A. Mathios, "The impact of mandatory disclosure laws on products choices: an analysis of the salad dressing market" in Journal of Law & Economics, Oct 2000.

** Source: National Nutrition Survey, 1995. Combination of: 75.6% of food prepared in the home and 80.9% of such food being subject to nutrition labeling.