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SECOND REVIEW REPORT

PROPOSAL P272

LABELLING REQUIREMENTS FOR FOOD FOR CATERING PURPOSES & RETAIL SALE

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

Executive Summary

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

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

In general, the approach taken by FSANZ in this Proposal was to provide clarity and greater certainty on existing labelling requirements, without mandating additional labelling requirements. Re-opening matters of broad regulatory policy considered during the development of Standard 1.2.1 fell outside the scope of Proposal P272.

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

On 8 October 2007, the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) requested a First Review of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale. FSANZ re-affirmed the decision to amend Standards 1.1.1, 1.2.1, 1.2.2, 1.2.3, 1.2.5, and 1.2.11 in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations.

On 11 February 2008, the Ministerial Council requested a Second Review of Proposal P272 on the grounds that:

- it placed unreasonable cost burdens on industry and consumers;
- it was difficult to enforce or comply with in both practical or resource terms; and
- these grounds were made in relation to the following:
 - labelling requirements for delivered meals supplied by Delivered Meals Organisations (DMOs);
 - date marking of foods exempt from bearing a label setting out all the information requirements prescribed in the Code;
- other issues:
 - new exemption for food packaged and displayed in assisted service display cabinets;
 - provision of information in relation to food for catering purposes; and
 - description of the food on foods exempt from bearing a label.

FSANZ has prepared a review. A summary of the issues addressed in the Second Review of Proposal P272 is detailed in Table 1.

Decision

FSANZ re-affirms the decision to amend Standards 1.1.1, 1.2.2, 1.2.3 and 1.2.11 in relation to food for catering purposes and food for retail sale, subject to drafting amendments specified in this Second Review.

The reasons for the decision are:

- Overall, Proposal P272 has provided clarity and greater certainty on the interpretation and application of labelling and information requirements by amending Standard 1.2.1-Application of Labelling and Other Information Requirements and other Standards with clauses connected to Standard 1.2.1.
- FSANZ proposes to modify the amendments that require disclosure of the name or description of a food exempt from bearing a label such that suppliers of food have more flexibility on how to provide this information. This will lower any costs that may be incurred by food suppliers, but ensures that consumers are entitled to request key information about the food they are purchasing.
- FSANZ proposes to further clarify the information requirements for food for catering purposes by a minor amendment to paragraph 5(1)a of Standard 1.2.1. This technical amendment does not change the proposed requirements for food for catering purposes.
- FSANZ has excised from the proposed legal drafting those amendments concerned with labelling meals supplied by Delivered Meal Organisations and date marking of food for retail sale exempt from bearing a label.

The issues in point 4 will be addressed as new Proposals for which FSANZ will undertake supplementary work, such as additional risk assessments, further consideration of consumer needs and understanding, more consideration of the impact on a range of product types, additional consultations, and supplementary benefit cost analyses.

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

(A) DELIVERED MEALS

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council considered that the proposed changes would result in new requirements and costs to DMOs that deliver meals that would outweigh the benefit from managing the perceived risk.</p> <p>Further points raised by the Ministerial Council were:</p> <ul style="list-style-type: none"> • There is ambiguity around the labelling requirements for chilled and frozen meals delivered at the express order of the purchaser • There is a risk that increased labelling requirements may lead to a reduction in service or increased cost to consumers. • There are processes already in place to ensure allergies are managed • Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments. 	<p>After further consultation with representatives of the jurisdictions, FSANZ has excised those amendments from Standard 1.2.1 that are concerned with labelling meals supplied by Delivered Meal Organisations for the following reasons:</p> <ul style="list-style-type: none"> • Excising the amendments effectively restores the <i>status quo</i> until further work can be carried out to resolve the issues. • FSANZ will develop a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultations, and a benefit cost analysis. • The Proposals will address the ambiguities around the labelling of chilled and frozen delivered meals and will include a review of how allergies are managed by DMOs • Based on the evidence available at Final Assessment, FSANZ considered that the costs of the proposed labelling requirements were in proportion to the risks and provided access to important safety information. However, further consideration should be given to the benefits and cost of labelling of delivered meals. • The amendments proposed by FSANZ were intended to create regulatory certainty and to meet the needs of recipients of the service. On available evidence, this would have constituted an overall benefit to delivered meals services in Australia and New Zealand. This benefit may still be realised by considering further options.

(B) DATE MARKING OF FOODS EXEMPT FROM BEARING A LABEL

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council had significant concerns with the scope, enforcement, and application of the proposed requirement to provide use-by dates for food exempt from bearing a label.</p> <p>In particular the Ministerial Council noted that:</p> <ul style="list-style-type: none"> • There is a lack of clarity; by definition, a use-by date has no meaning under the Code except for packaged food. • Use-by dates might be required for common take-away foods and this is an onerous requirement for food suppliers. • It is difficult to determine the use-by date on food once removed from a package. • Food suppliers may lack the necessary expertise to provide accurate information. Inaccuracies may confuse consumers. • Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments. 	<p>After further consultation with representatives of the jurisdictions, FSANZ has excised those amendments from Standards 1.2.1 and 1.2.5 that are concerned with date marking of food for retail sale that is exempt from bearing a label for the following reasons:</p> <ul style="list-style-type: none"> • It was the intention of the Proposal that a use-by date be provided on unpackaged food (when required), and that this could be done verbally on-request. Excising the amendments effectively restores the <i>status quo</i> until further work can be carried out to resolve the issues. • FSANZ will develop a proposal to address this matter and during assessment will collect supplementary evidence, including additional risk assessments, consultations, and a benefit cost analysis. • FSANZ is of the opinion that further consideration should be given to allow suppliers of food more flexibility on how to provide information that clearly indicates how long a food exempt from labelling can be expected to remain safe for consumption. • During Final Assessment, FSANZ considered the impact of the amendments on business would be minor. However, after further consultation FSANZ considers this conclusion should be reviewed after collecting more evidence. • FSANZ agrees there are some remaining ambiguities and uncertainties in the drafting of Standard 1.2.1, as well as a potential issue with the definition of ‘use-by’ date in Standard 1.2.5. These issues have been temporarily resolved by excising the relevant amendments. FSANZ will consider the drafting issues raised in the Review further if the outcome of future work shows that amendments to the Code are necessary • During consultation following completion of Final Assessment, Industry has raised further issues, in particular their dissatisfaction with the use-by date provision of the Code <i>per se</i>. These issues extend beyond the scope of the current Proposal and would require a complete review of date marking requirements.

(C) NEW EXEMPTION FOR FOOD PACKAGED AND DISPLAYED IN ASSISTED SERVICE DISPLAY CABINETS

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council considers that it is unclear what the proposed new exemption relates to and that there are enforcement and compliance difficulties with the exemption.</p>	<p>After further consultation with representatives of the jurisdictions, FSANZ re-affirms the amendment to Standards 1.2.1 in relation to food packaged and displayed in assisted service display cabinets for the following reasons:</p> <ul style="list-style-type: none"> • The purpose and application of the amendment has been clarified in this report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1. • The proposed exemption is underpinned by a workable and clear definition of ‘assisted service display cabinet’ provided in the draft Standard. A similar definition has worked well in regards to country of origin labelling. • It is a common practice for food businesses to purchase food and then package portions of the food for hygienic display and sale. FSANZ considers it inappropriate that such products must be fully labelled. • The new exemption allows food wrapped for hygienic purposes to be exempt from labelling where the consumer can ask for information required for safety and informed choice.

(D) PROVISION OF INFORMATION IN RELATION TO FOOD FOR CATERING PURPOSES

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council considers there are conflicts between the subclauses of clause 6 of Standard 1.2.1 and that this causes enforcement and compliance difficulties. The Ministerial Council also considers that some of the requirements place an unreasonable cost burden on industry.</p>	<p>After further consultation with representatives of the jurisdictions FSANZ re-affirms the amendments to Standards 1.2.1 in relation to provision of information in relation to food for catering purposes set out in clauses 5 and 6 with minor amendments for the following reasons:</p> <ul style="list-style-type: none"> • The purpose and application of Clause 6 of Standard 1.2.1 has been clarified in this Report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1 • FSANZ proposes to further clarify the information requirements for food for catering purposes by a minor amendment to paragraph 5(1)a of Standard 1.2.1. This technical amendment does not change the proposed requirements for food for catering purposes. • The approach taken by FSANZ provides greater certainty on labelling and information requirements of food for catering purposes without mandating additional requirements. Therefore, there are no unreasonable cost burdens to industry.

Issue Raised in Review Request	FSANZ Response
	<ul style="list-style-type: none"> • The new clause 6 clearly sets out the information requirements for foods for catering purposes. • Subclauses 6(1) ensures that retailers of food have the information needed to meet their obligations under the Code, but are flexible in how this information may be provided by the caterer, i.e. documentation rather than on the label. • Subclause 6(2) gives the supplier of the food intended for catering the option to provide the information required by Standard 1.2.2 in documentation accompanying the food, rather than on the label. This is consistent with the requirements that apply to food not intended for retail sale, e.g. foods delivered to a factory for further processing. • In some circumstances, food for catering purposes is exempt from labelling. In these cases, subclause 6(3) requires information which otherwise would be provided on the label to be provided in documentation. This is a reasonable and practical provision. • Subclause 6(4) is intended to cover situations where information would not as a matter of course be included on the label or in documentation, but would need to be specifically requested by the food handlers or food service operators to enable them to comply with the Code.

(E) DESCRIPTION OF THE FOOD ON FOODS EXEMPT FROM BEARING A LABEL

Issue Raised in Review Request	FSANZ Response
<p>The Ministerial Council expressed concern about the requirement to provide the name of a food on a package if the food is exempt from bearing a label. It was argued that to require labelling of common take-away foods (e.g. ready to eat hamburgers) would be an onerous obligation for food suppliers.</p>	<p>After further consultation with representatives of the jurisdictions FSANZ:</p> <ol style="list-style-type: none"> 1. re-affirms the decision to amend Standard 1.2.1 in relation to providing the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food, and 2. proposes to modify the amendments to Standard 1.2.2 so that wherever a food is exempt from bearing a label this information can be displayed on or in the connection with the display of the food, or provided to the purchaser on request. <p>The reasons are as follows:</p> <ul style="list-style-type: none"> • Under the approach put forward at Final Assessment, for unpackaged food and food displayed unpackaged before sale the name of the food already can be made available on request rather than displayed on the food. FSANZ is proposing to extend this flexible approach to all food exempt from bearing a label under Standard 1.2.1.

Issue Raised in Review Request	FSANZ Response
	<ul style="list-style-type: none"> <li data-bbox="651 275 1385 472">• The modified approach gives suppliers of food more flexibility. As a result, any possible cost that may be incurred will be lower, but the approach ensures that consumers are entitled to request information sufficient to indicate the true nature of the food they are purchasing. <li data-bbox="651 477 1390 674">• Packaged foods exempt from bearing a label are often provided in an assisted service environment and consumers have reasonable opportunity to request more information on the food. In the case of the name of the food, food suppliers would have this information readily available to pass onto consumers if asked to do so.

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INTRODUCTION

On 11 February 2008, the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) requested a Second Review of Proposal P272 – Labelling Requirements for Food for Catering Purposes & Retail Sale.

1. Grounds for the Review Requested by the Ministerial Council

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

- it placed unreasonable cost burdens on industry and consumers
- it was difficult to enforce or comply with in both practical or resource terms

2. Background

2.1 Purpose and Scope of the Proposal

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

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

2.2 Information requirements and labelling requirements

The Code sets out *information requirements* for food. Not all food has to provide all the information requirements mentioned in the Code, but some information, such as information on allergens, applies in almost all circumstances. The Code allows information to be provided in a number of way including:

- on a food label
- in documentation
- in documentation accompanying the food
- with the display of the food
- verbally or in writing on request.

In some circumstances, information requirements are triggered by the way the food is represented to the final consumer of the food e.g., where there are characterising ingredients or the food carries a nutrition claim. This may trigger information requirements down the supply chain, even though the foods that were the ingredients of the final food did not themselves carry the representation or claim.

The Code also sets out *labelling requirements* as distinct from information requirements.

A food may be exempt from bearing a label, but that does not necessarily provide an exemption from providing this information. This information may still be required by the Code, but in a format other than a food label.

2.4 Current Standard

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

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

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

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

3. The Issues

The purpose of Proposal P272 was to provide clarity and greater certainty on the interpretation and application of labelling and other information requirements by amending Standard 1.2.1 and other Standards with clauses connected to Standard 1.2.1.

In the context of this Review, the Ministerial Council raised concerns about two major issues addressed in Proposal P272, and three other minor issues:

1. labelling requirements for delivered meals supplied by Delivered Meals Organisations (DMOs);
2. date marking of foods exempt from bearing a label setting out all the information requirements prescribed in the Code; and
3. other issues:
 - new exemption for food packaged and displayed in assisted service display cabinets
 - provision of information in relation to food for catering purposes
 - description of the food on foods exempt from bearing a label

3.1 Labelling requirements for meals delivered by Delivered Meals Organisations (DMOs)

Since the Code came into effect in December 2002, FSANZ has received a number of inquiries seeking clarification and confirmation regarding the labelling of delivered meals.

The labelling requirements for meals provided by DMOs were not specifically considered during the development of Standard 1.2.1. Inconsistent interpretation and application of the requirements in Standard 1.2.1 led to a range of practices and associated costs. DMOs are uncertain about their obligations in respect of labelling and some stakeholders, including some jurisdictions, argued that there is a need for consistency in interpretation and application of labelling requirements for delivered meals.

Consequently, the current requirements of Standard 1.2.1 were reviewed to ensure the essential information needs of the recipients of the service are met and that DMOs continue to provide an efficient service. Several issues were considered in Proposal P272 including:

- the current labelling requirements for delivered meals
- exemptions which may apply to delivered meals
- nutrition labelling and health claims on delivered meals

3.2 Date marking

Currently, some of the key safety information available to consumers from labels on packaged food does not have to be disclosed by food suppliers if similar foods meet one of the exemptions under subclause 2(2) of Standard 1.2.1. This includes a use-by-date where the food should be consumed before a certain date because of health or safety reasons. FSANZ considered that the use-by date of unpackaged food was important information for consumers of such foods.

3.3 Other Issues

3.3.1 New exemption for food packaged and displayed in assisted service display cabinets

It is a common practice for food businesses to purchase food and then package portions of the food for hygienic display and sale. FSANZ considers it inappropriate that such products must be fully labelled because they were presented packaged in order to comply with food hygiene requirements.

The new exemption proposed allows food wrapped for hygienic purposes to be exempt from labelling where the consumer can ask for information required for safety and informed choice.

3.3.2 Provision of information in relation to food for catering purposes

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

Wherever food is sold to the public it is defined as food for retail sale, and the labelling requirements of food for retail sale apply.

Currently, Standard 1.2.1 sets out information requirements that apply equally to food for retail sale and to food for catering purposes. However, in many cases, the information requirements are more relevant to food for retail sale. Stakeholders considered that separate, more relevant and appropriate exemptions and information requirements specifically for food for catering would be more practical. FSANZ has therefore reviewed Standard 1.2.1 to develop provisions that are better suited to food for catering purposes.

3.3.3 Description of the food on foods exempt from bearing a label

Currently, some of the information available to consumers from labels on packaged food is not required to be disclosed by food suppliers under subclause 2(2) of Standard 1.2.1. This includes a name or description of the food sufficient to indicate the true nature of the food. FSANZ considered that this information was important for consumers of such foods and therefore reviewed the information requirements of Standard 1.2.1 and any consequential amendments to Standard 1.2.2 – Food Identification Requirements

REVIEW ON GROUNDS REQUESTED BY THE MINISTERIAL COUNCIL

4. Meals provided by Delivered Meal Organisations (DMOs)

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

4.1 Current Requirements

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

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

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

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

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

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

Considering the varying circumstances in which packaged meals are provided by DMOs, in certain situations not all of these criteria can be satisfied. For example, meals may not be ready for consumption when they reach the recipient. Where these conditions are not met, packaged meals provided by DMOs require full labelling.

4.2 Proposed Requirements

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

This exemption would apply to meals provided to DMOs (for example, from a third party such as a rural kitchen) as well as meals provided by DMOs to clients. In other words, FSANZ proposed that meals delivered to DMOs for distribution have less stringent labelling requirements than meals supplied by caterers to hospitals or similar institutions. This takes account of the practical limitations that exist in the delivered meals sector and minimises costs.

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

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

4.3. Review on Grounds Requested by the Ministerial Council: Unreasonable cost burden on industry and consumers and difficult to enforce or comply with in both practical or resource terms

In the Ministerial Council Review request, the issue was raised that current labelling requirements can be interpreted to provide exemption from labelling to almost all meals delivered by DMOs. It was argued that on this basis, the proposed changes would result in new requirements and costs to DMOs that deliver meals that are not ready for immediate consumption (e.g. foods that need reheating) and that there would be significant additional costs to DMOs that would outweigh the benefit in managing the perceived risk. Furthermore the Ministerial Council stated that processes are already in place to ensure allergies are managed by DMOs.

The Review request also suggested there is a risk that cost of the proposed labelling requirements may lead to a reduction in service or increased cost to consumers. The Ministerial Council was of the opinion that any extra cost is likely to be passed onto the consumer, the majority of whom are pensioners.

The Ministerial Council stated that there is ambiguity around the labelling requirements for chilled and frozen meals delivered at the express order of the purchaser. The Ministerial Council commented that Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments.

4.4 FSANZ response

The amendments proposed by FSANZ were intended to create regulatory certainty and to ensure that the information needs of the recipients of the service are met. On available evidence, this would have constituted an overall benefit to delivered meals services in Australia and New Zealand. This benefit may still be realised by considering further options.

There are currently no exemptions specific to meals supplied by DMOs: the Code required foods (including meals delivered by DMOs) that are delivered packaged at the express order of the purchaser, but are not ready for consumption, to be fully labelled unless another exemption applies.

Paragraph 2(1)(f) of Standard 1.2.1 provides exemptions if *the food is delivered packaged and ready for consumption at the express order of the purchaser*. There have been several issues related to this paragraph and an ongoing reliance by DMOs on this exemption would maintain the current uncertainty about the labelling requirements for delivered meals. In contrast, an amendment setting out information and labelling requirements specific to meals delivered by DMOs would create certainty for DMOs and enforcement agencies and would ensure that the information needs of the recipients of the service are met. FSANZ proposes to address the ambiguities around the labelling of chilled and frozen delivered meals further in a new proposal.

In the First Review, FSANZ emphasised that information on allergens is a critical issue for delivered meals. Like other foods, delivered meals may contain substances that may cause severe adverse reactions in sensitive individuals. It is also possible that the meal will not always be consumed by the intended recipient. FSANZ is aware that not all DMOs may have adequate systems in place to manage allergens. FSANZ therefore proposes that a review of how allergies are managed by DMOs should be part of any new Proposal dealing with labelling of delivered meals.

Based on the evidence available at Final Assessment, FSANZ considered that the costs of the health and safety related labelling requirements for delivered meals were commensurate with the public health risks, and provided ready access to important safety information. In the Final Assessment report, FSANZ argued where food is delivered ready for consumption, information could be provided by the person delivering the meal if requested by the recipient. FSANZ also argued that where the meal is designed to be stored and eaten later, key information should be provided on the label given there would be no one present the recipient could ask for information. However, FSANZ agrees that further consideration should be given to the benefits and cost of labelling of delivered meals.

4.5 Conclusion

In consultation with representatives of the jurisdictions, FSANZ has decided to excise the amendments regarding delivered meals, which effectively restores the *status quo* until further work can be carried out to resolve the issues. FSANZ will prepare a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultation, and a benefit cost analysis.

5. Date Marking

Subclause 2(2) in Standard 1.2.1 sets out the information requirements that apply to food for retail sale when exempt from bearing a label. Although there are some exceptions, generally, the required information can either be displayed on or in connection with the display of the food, or alternatively, provided to the purchaser upon request.

Some key information about unpackaged food is currently not captured by the information requirements. This includes a use-by-date where the food should be consumed before a certain date because of health or safety reasons.

5.1 Current Requirements

There are currently no requirements in the Code that suppliers of food for retail sale exempt from bearing a label must provide consumers with date marking information.

In the case of foods that must be labelled, the food supplier is responsible for determining where a 'use-by' date should be used.

Most raw foods such as meat, chicken, and fish where there is a later cooking process to kill food poisoning bacteria that may be present do not require a use-by date. Ready-to-eat chilled foods may need to be date-marked with a 'use-by' date.

This applies mainly to foods that may contain food poisoning bacteria that will grow at refrigeration temperatures, will support the growth of food poisoning bacteria that may be present to dangerous levels before the food has noticeably spoiled; and that will not be cooked or otherwise processed to make it safe before being eaten.

5.2 Proposed Requirements for date marking of food for retail sale when exempt from bearing a label

FSANZ proposed a new information requirement for a use-by date where food exempt from labelling should be consumed before a certain date because of health or safety reasons. FSANZ intended that the use-by date could be provided on or in connection with the display of the food or provided to the purchaser on request. The draft amendments required that where the food is exempt from labelling but is displayed and sold in a package the use-by date must be on the label.

5.3 Review on Grounds Requested by the Ministerial Council: Unreasonable cost burdens on industry and consumers and difficult to enforce or comply with in both practical or resource terms

The Ministerial Council raised a number of issues regarding the proposed requirements. These included concerns about the enforceability of the proposed drafting, the need to provide use-by dates for food exempt from bearing a label, insufficient flexibility on how such information can be provided by food suppliers and the range of foods that may be required to provide this information.

The Ministerial Council considered that the proposed amendments lack clarity, and the current definition of use-by date in Standard 1.2.5 only refers to packaged foods and was not amended to be consistent with the proposed requirements for unpackaged foods.

Furthermore, under the amendments, use-by dates might be required for common take-away foods and the Ministerial Council considered this an onerous requirement for food suppliers. They also felt that it would be difficult to determine the use-by date for food that has been removed from a package prior to retail sale, and that food suppliers may lack the expertise to determine use-by dates in such circumstances. Inaccurate use-by dates may then be confusing to consumers.

The Ministerial Council commented that Proposal P272 did not provide a cost benefit analysis or comprehensive risk assessment on the proposed amendments.

5.4 FSANZ response

Consumers need date marking at the point of sale to decide if a food is safe to eat (use-by date) or if it has retained all of its quality attributes (best-before date). FSANZ is of the opinion that the approach taken in Proposal P272 would provide important information to consumers in relation to the use-by date of foods that do not need to be labelled.

FSANZ agrees further consideration should be given to allow suppliers of food more flexibility on how to provide information that clearly indicates how long a food exempt from labelling can be expected to remain safe for consumption.

FSANZ will prepare a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultations, and a benefit cost analysis.

FSANZ agrees there are some remaining ambiguities and uncertainties in the drafting of Standard 1.2.1, as well as a potential issue with the definition of ‘use-by’ date in Standard 1.2.5. These issues have been temporarily resolved by excising the relevant amendments. FSANZ will consider the drafting issues raised in the Review further if the outcome of future work shows amendments to the Code are necessary.

It was always the intention that a use-by date be provided *on-request*, but the current drafting requires it to be *on the label of the food*. To clarify, the problem arises in situations where the food is exempt from general labelling requirements but is displayed and sold in a package. In such cases, the use-by date would have to be provided on the label. FSANZ agrees that consideration should be given to allow suppliers of food more flexibility on how to provide the name of the food and information that clearly indicates how long a food can be expected to remain safe for consumption.

FSANZ acknowledges that where labelling is not mandated under the *status quo*, the additional information requirements would have an impact on food suppliers. During Final Assessment, FSANZ considered that the impact on business would be minor. However, after further consultation with food suppliers FSANZ considers that this conclusion should be reviewed after collecting additional evidence and economic analysis.

During consultation following completion of Final Assessment, industry raised further issues, in particular their dissatisfaction with the use-by date provisions of the Code *per se*. A voluntary approach of providing consumers with ‘consume within’ information (72 hours has generally been used) has been widely used in the absence of other date marking requirements, and industry would like the flexibility to maintain this approach. Unfortunately, these concerns were not raised during the standard consultation processes. This issue extends beyond the scope of Proposal P272, which was restricted to reviewing the application of existing labelling requirements. To address this issue would require a complete review of the date marking requirements of the Code, including a comprehensive risk assessment, cost benefit analysis and consumer research.

5.5 Conclusion

After further consultation with representatives of the jurisdictions, FSANZ has excised those amendments from Standards 1.2.1 and 1.2.5 that are concerned with date marking of food for retail sale that is exempt from bearing a label for the following reasons:

It was the intention of the Proposal that a use-by date be provided on unpackaged food (when required) and that this could be done verbally on-request. Excising the amendments effectively restores the status quo until further work can be carried out to resolve the issues. FSANZ will prepare a proposal to resolve the issues and during assessment will collect supplementary evidence, including additional risk assessments, consultations and a benefit cost analysis.

6. Other issues

6.1 New exemption for food packaged and displayed in assisted service display cabinets

Where products are sold packaged, unless an exemption in Standard 1.2.1 applies, the food must be fully labelled. It is a common practice for food businesses to purchase food and then package portions of the food in clear, plastic food wrap for display and sale.

This occurs when larger items such as cheeses and pates are cut into smaller ready to sell/serve portions, and these portions are then wrapped to maintain freshness and for easy handling. Such products are generally sold by weight and weighed in front of the purchaser. Currently, the complete uncut item is exempt from bearing a label. However, once cut or portioned and wrapped is considered to be packaged and required to be fully labelled. In this situation (under the requirements before Proposal P272) all relevant information must still be provided by the supplier of the product, but it may be more practical that all relevant information is available to the purchaser on request or displayed within connection to the food rather than on the label.

FSANZ does not consider it necessary for such products to be fully labelled when they are presented packaged, simply in order to comply with food hygiene requirements.

However, providing drafting that explicitly exempts packaging for reasons of food hygiene is not feasible for a number of reasons:

- most packaging fulfils some food safety function in addition to providing information, maintaining quality and serving marketing purposes
- it would be difficult for enforcement officers to enforce such a requirement
- it would exempt too broad a range of products from labelling requirements
- the core issue is not about the packaging *per se*, but about how best to provide consumers with information without being impractical or placing an unreasonable cost burden on food suppliers.

6.1.1 Current Requirements

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

It is a common practice for small and medium sized food businesses to purchase unpackaged food and then package the food in clear, plastic food wrap and display the food for self-service. In Australia, this practice complies with Standard 3.2.2 – Food Safety Practices and General Requirements, in particular, subclauses 8(1) and 8(4):

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

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

6.1.2 Proposed Requirements

In the Final Assessment Report, FSANZ proposed to provide an exemption for wrapped food items that are sold to the consumer in an assisted service style such as a deli or café counter. An assisted service display cabinet is defined as follows:

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

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

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

(h) the food is packaged and displayed in an assisted service display cabinet.

The approach taken is consistent with the other exemptions provided in the Standard, e.g. the exemptions that apply for unpackaged foods. As for the other exemptions, where the food meets the conditions set out, it does not have to be labelled. However, similar to other exemptions, some key information must still be provided (e.g. information about allergens) to the purchaser upon request or with the display of the food.

6.1.3 Review on Grounds Requested by the Ministerial Council

The Ministerial Council considered that it was unclear what the proposed new exemption related to, and that there are practical enforcement and compliance difficulties with implementing the exemption.

6.1.4 FSANZ response

The new exemption provided by FSANZ in the amended Standard 1.2.1 relates directly and exclusively to wrapped food items that are provided to the consumer in an assisted service style e.g., a delicatessen or café counter. Where a consumer can seek accurate information regarding the food directly from the persons responsible for supplying the food, it is not necessary to require that information to be provided on a label.

As was outlined in the Final Assessment Report, the new exemption is underpinned by a workable and clear definition of ‘assisted service display cabinet’ provided in the amended Standard 1.2.1. A similar definition has worked well in regards to country of origin labelling of unpackaged food set out in Standard 1.2.11 – Country of Origin Requirements.

The approach taken provides for food wrapped for hygienic purposes to remain exempt from labelling, while not capturing other products not intended to be captured. This is an outcome-based approach that is effective and practical. For example, the new exemption will not capture meat trays displayed in a refrigerated cabinet in a supermarket setting: there is no assisted service and consumers cannot request information. In this situation, the information must be on the label.

However, if the same product were sold in an assisted service setting, the new provision would exempt this food from labelling because the information can be provided to the consumer as part of the service. This merely provides consistent requirements where food is purchased with assistance: products displayed unpackaged before sale and products displayed wrapped before sale are treated the same.

The core issue is not about the packaging *per se*, but about how best to provide consumers with information, without being impractical or placing an unreasonable cost burden on food suppliers.

FSANZ's approach comprehensively addresses the issues raised at a Technical Advisory Group (TAG) meeting in April 2003 attended by representatives of the jurisdictions, the Department of Agriculture, Fisheries and Forestry and the Australian Quarantine and Inspection Service. At the meeting, some jurisdictions proposed it was not appropriate that the foods in question must be fully labelled. There were concerns about such an exemption picking up a broader range of products than was intended.

6.1.5 Conclusion

After further consultation with representatives of the jurisdictions, FSANZ re-affirms the amendment to Standards 1.2.1 in relation to food packaged and displayed in assisted service display cabinets. The purpose and application of the amendment has been clarified in this report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1.

The new exemption allows food wrapped for hygienic purposes to be exempt from labelling where the consumer can ask for information required for safety and informed choice without being impractical or placing an unreasonable cost burden on food suppliers. The proposed exemption does not capture other products where the consumer cannot request information to assist with the purchase.

6.2 Information Requirements for Food for Catering Purposes

Many of the requirements that are appropriate for food for retail sale are not relevant to food for catering purposes. In most cases, the information requirements in Standard 1.2.1 are specific to food for retail sale: where food is sold to the public, consumers can inspect the food prior to purchase and get accurate information from the persons supplying the food, it is therefore not necessary for such foods to be labelled.

This situation does not apply to food for catering purposes, where food handlers and food service operators must have access to information on the label or from associated documentation. This allows food service operators to provide relevant information to consumers in turn, if requested to do so.

6.2.1 Current Requirements

Standard 1.2.1 sets out the information requirements, which apply both to food for retail sale and to food for catering purposes exempt from bearing a label.

Generally, the required information can be displayed on or in connection with the display of the food or provided to the purchaser upon request. In subclause 2(2), the information requirements relate to the following:

- mandatory warning and advisory statements and declarations in Standard 1.2.3
 - directions for use and storage (where applicable)
 - nutrition labelling when nutrition claims are made
 - percentage labelling
 - country of origin labelling
 - genetically modified food
 - irradiation
-
- the presence of offal, fat content in minced meat, formed and joined meat and fermented comminuted meat products
 - formed and joined fish
 - statements on the use of kava
 - advisory statements on formulated caffeinated beverages
 - statements on formulated supplementary sports foods.

Clauses 3 and 4 of Standard 1.2.1 deal with labelling of 'food not for retail sale'. Clause 3(2) provides that the information prescribed in clause 3 of Standard 1.2.2 is not required on the label of the food where that information is provided in documentation accompanying that food.

6.2.2 Proposed Requirements

In the Final Assessment Report, the labelling requirements for food for catering purposes were set out in a separate clause (clause 5 of Standard 1.2.1). Unless there is a relevant exemption, where required, food for catering must be labelled with the following:

- the name of the food
- lot identification
- supplier details
- mandatory warning and advisory statements and declarations
- date marking
- directions for use and storage
- country of origin labelling (in Australia only)
- food produced using gene technology
- food treated with ionising radiation

Foods for catering purposes are exempt from bearing a label if they are unpackaged or whole, or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables. In addition, an outer package is exempt from labelling other than food identification requirements if the foods within the package are already adequately labelled.

The information requirements for food for catering purposes are set out in clause 6 of the amended Standard 1.2.1. As applies to ‘food not for retail sale’, for food for catering purposes the name and address of the supplier in Australia or New Zealand may be provided in documentation accompanying the food.

The other key information listed above must be on a label unless an exemption applies. However, additional information required to enable the purchaser to comply with all the requirements of the Code (e.g. a list of ingredients) may be provided in accompanying documentation instead of a label.

Where food for catering purposes is exempt from bearing a label, all the key information outlined above must be provided in accompanying documentation.

Where a purchaser or relevant authority has so requested, food that is for catering purposes must be accompanied by sufficient information in relation to that food to enable the purchaser to comply with the compositional, labelling, or other declaration requirements of the Code.

6.2.3 Review on Grounds Requested by the Ministerial Council

The Ministerial Council considered there were conflicts between the subclauses of clause 6 of Standard 1.2.1 (in particular between 6(1) and 6(4)) and that this caused enforcement and compliance difficulties. The Ministerial Council further considered that the information requirements of Clause 6 placed an unreasonable cost burden on industry.

6.2.4 FSANZ response

The purpose of FSANZ’s approach to labelling and information requirements of food for catering purposes was to provide clarity and greater certainty without mandating additional requirements.

Following further consultation with the jurisdictions, FSANZ has reviewed the legal drafting pertaining to food for catering purposes. FSANZ proposes a technical amendment (to paragraph 5(1)a of the amended Standard 1.2.1) to further clarify the food identification requirements for food for catering purposes. It should be noted that this amendment does not change the outcome of the Proposal: this is a technical amendment only¹.

Industry stakeholders strongly supported more appropriate labelling of packaged food intended for catering purposes and the flexibility to provide information in associated documentation. There is widespread support for providing the minimum labelling information necessary to identify the supplier of the product with each delivery, and for increased flexibility to provide additional information required by the Code but not required on the label of food for catering purposes.

¹ By removing the references to clauses 1 and 2 of Standard 1.2.2 from the paragraph, the labelling requirements are extended to include all the requirements of Standard 1.2.2; however, the information required in clause 3 of the Standard is not required to be on the label of the food where the information is provided in documentation accompanying the food. This exemption is set out in subclause 6(2).

The proposed amendments provide separate, more relevant and appropriate exemptions and information requirements for food for catering without additional costs to industry. The new definition of foods for catering purposes provides greater clarity and certainty whilst maintaining the current level of information provisions.

In most cases, the current information requirements of Standard 1.2.1 are not ideally suited to food for catering purposes. Where a consumer can inspect the food prior to purchase and can seek accurate information regarding the food directly from the persons responsible for making the food, it is not necessary to require information to be provided on a label. However, the person that supplies the food at retail sale must have the necessary information to discharge their obligation to the customer.

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

The amended Standard allows information to be provided in three ways:

1. on the label
2. in ‘documentation accompanying the food’
3. ‘in documentation’

Where information must be provided in ‘documentation accompanying the food’, all details must accompany each delivery. Where the information can be provided ‘in documentation’, it does not have to accompany the food at each delivery, but need only be provided once with the sale of several batches of the same food item. Food suppliers can provide information electronically or in written form. This provides suppliers of food for catering purposes with greater flexibility while still ensuring food service operators have sufficient information to meet the requirements of the Code.

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

The purpose of clause 6 of the amended Standard 1.2.1 is to set out the information requirements for food for catering purposes. It is designed to allow caterers sufficient flexibility in providing information to food handlers and food service operators who must be able to provide this information to enforcement agencies and the retail consumer, if requested to do so:

- Subclause 6(1) provides an exemption from labelling (except for key requirements²) where this information is provided in documentation³

² the requirements set out in subclause 5(1)

³ It should be understood this is only relevant where there is no total exemption from providing the information, rather than providing the information on a label. For example, nutrition information is not required on standardised alcoholic beverages; therefore, if the beverage were a food for catering purposes, it still would not require a nutrition information panel either on the label or in documentation.

- Subclause 6(2) gives the supplier of the food intended for catering the flexibility to provide the name and address of the food supplier in ‘documentation accompanying the food’, rather than on the label.
- Subclause 6(3) concerns food for catering purposes exempt from labelling. It requires such foods to provide key details in ‘documentation accompanying the food’ instead of on the label
- Subclause 6(4) ensures that retailers of food have all the information needed to meet their obligations under the Code, but is flexible in how this information can be provided by the caterer.

Subclause 6(1) ensures that key information is provided on the label of food for catering purposes. Any additional information must be provided in documentation or on the label.

Subclause 6(2) addresses the issue that, unlike food not for retail sale, the Code does not currently provide an option for food for catering purposes to provide supplier details in documentation accompanying the food instead of on the label.

The manufacturer of the foods in another country does not always know the importer and cannot provide the name and address details in Australia or New Zealand of the supplier when assembling a load for shipping. Consequently, the Code permits supplier details to be provided in documentation accompanying ‘food not for retail sale’. The same circumstance applies to food for catering. Therefore, taking into account the significant similarity in the nature of food for catering purposes to that of food not for retail sale, FSANZ considers it prudent to provide equal flexibility in providing supplier details for both types of food.

In some circumstances, food for catering purposes is exempt from labelling. In these cases, subclause 6(3) requires information which otherwise would be provided on the label to be provided in documentation accompanying the food. There will be very limited circumstances where food for catering purposes would be exempt from bearing a label (e.g. some carcasses of meat). In this situation, the information which otherwise would be provided on the label must instead be provided in ‘documentation accompanying the food’, i.e. the information must be traceable to the food in question.

Subclause 6(4) is intended to cover situations where food for catering purposes purchased by food handlers or food service operators is exempt from certain labelling and information requirements under the Code. That is, it concerns information that would not be included as a matter of course on the label or in documentation, but would need to be specifically requested by the food handlers or food service operators to enable them to comply with the requirements of the Code.

For example, a restaurant owner may wish to make a nutrition content claim about a food containing apples. There is no requirement to provide nutrition information about the apples. However, the restaurant owner now can request that information, because the Code requires this information to be available to the consumer on request. Similarly, enforcement officers can request this information should they require it to enforce the Code.

6.2.5 *Conclusion*

After further consultation with representatives of the jurisdictions, FSANZ re-affirms the amendments to Standards 1.2.1 in relation to provision of information in relation to food for catering purposes set out in 6. The purpose and application of clauses 6 of Standard 1.2.1 has been clarified in this report and in discussions with the jurisdictions. Further explanation will be provided in the user guide to Standard 1.2.1. FSANZ will further clarify the information requirements for food for catering purposes by a minor amendment to paragraph 5(1)a of Standard 1.2.1.

The approach taken by FSANZ provides greater certainty on labelling and information requirements of food for catering purposes without mandating additional requirements. It allow caterers flexibility in providing information to food handlers and food service operators, who must be able to provide this information if requested to do so.

These are reasonable and practical provisions. Therefore, FSANZ considers it unlikely that there are unreasonable cost burdens to industry.

6.3 Food Identification Requirements for food exempt from bearing a label

Currently, suppliers of food exempt from bearing a label are not required to disclose the name or description of the food sufficient to indicate the true nature of the food when requested to do so. FSANZ considers this information useful to consumers and that there is a risk for unlabelled food items to be described in a way that is not in accordance with the true nature of the food. Examples of food that may be sold unpackaged and where a true description of the food is important include moisture-enhanced pork, manufactured meat products, fish treated with flavourless smoke, and mixed foods where the true nature of the food is not immediately apparent.

6.3.1 *Current Requirements*

Clause 1 of Standard 1.2.2 sets out the requirements of the Code regarding naming of food. The label on a package of food must include the prescribed name of the food where applicable and in any other case a name or description of the food sufficient to indicate the true nature of the food.

Subclause 2(2) in Standard 1.2.1 sets out the information requirements that apply to food for retail sale when exempt from bearing a label. A prescribed name or the name or description of the food sufficient to indicate the true nature of the food is not required.

6.3.2 *Proposed Requirements*

FSANZ proposes that an information requirement for the prescribed name of a food, or in any other case, for a name or description sufficient to indicate the true nature of the food be added to subclause 2(2) of Standard 1.2.1.

FSANZ further intends that Standard 1.2.2 – Food Identification Requirements be amended so that the relevant information can be provided on or in connection with the display of the food or provided to the purchaser on request.

It should be noted, the draft amendments provide that where food is displayed for retail sale other than in a package, this information can be made available on request. However, where the food is exempt from general labelling requirements but is displayed and sold in a package the amendments require the information to be provided on the label.

6.3.3 Review on Grounds Requested by the Ministerial Council

The Ministerial Council expressed concern with the requirement to provide the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food for food exempt from bearing a label. The Ministerial Council stated that the drafting would require labelling of common take-away foods and considered this an onerous requirement and an unnecessary cost-burden for food suppliers.

6.3.4 FSANZ response

FSANZ maintains its approach that the information requirements for food for retail sale in Standard 1.2.1 should include Standard 1.2.2 – Food Identification Requirements, so that a name or description of the food sufficient to indicate the true nature of the food is displayed on or in connection with the display of the food or provided to the purchaser on request. FSANZ is of the opinion that the proposed approach provides important information to consumers. However, FSANZ agrees to the Ministerial Council’s request to allow suppliers of food more flexibility on how to provide such information.

The Code requires the label on a package of food to include a name or description of food sufficient to indicate the true nature of the food. A name or description of the food must be accurate and sufficiently detailed such that it is not misleading or deceptive, or likely to mislead or deceive. The absence of information on a label regarding the true nature of a food may constitute misleading or deceptive conduct. Where a food is exempt from bearing a label, either in a food service environment or in a retail establishment such as a butchery, a food should not be presented for sale in a way which is misleading or deceptive or likely to mislead or deceive. Consumers should be made aware of the true nature of the product when offered for sale.

Under the approach put forward in Proposal P272, for unpackaged food and food displayed unpackaged before packaging prior to sale, the name of the food can be made available on request rather than displayed on a label. FSANZ is proposing to extend this flexible approach to all food exempt from bearing a label under clause 2 of Standard 1.2.1.

In the Final Assessment Report, FSANZ considered that the impact of extending the information requirements for the name of the food for food suppliers would be minor. However, after further consultation FSANZ considers that providing greater flexibility on how this information may be provided would reduce the cost burden to food suppliers even further, without compromising the information needs of consumers. Packaged foods exempt from bearing a label are often provided in an assisted service environment and consumers have reasonable opportunity to request more information on the food. In the case of the name of the food, food suppliers would have this information readily available to pass onto consumers if asked to do so.

6.3.5 *Conclusion*

After further consultation with representatives of the jurisdictions, FSANZ re-affirms the decision to amend Standard 1.2.1 in relation to providing the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food. FSANZ considers this information useful to consumers and that there is a risk for unlabelled food items to be described in a way that is not in accordance with the true nature of the food.

In response to the current review request, FSANZ also proposes to modify the amendments to Standard 1.2.2 so that wherever a food is exempt from bearing a label this information can be displayed on or in the connection with the display of the food, or provided to the purchaser on request.

This modified approach gives suppliers of food more flexibility and therefore will lower any possible cost that may be incurred, but ensures that consumers are entitled to request information sufficient to indicate the true nature of the food they are purchasing.

7. Consultation

7.1 Consultation with Jurisdictions

On Monday 31 March 2008, FSANZ hosted a teleconference with representatives from the jurisdictions. The meeting agreed on FSANZ's proposed approach to resolve the issues raised in the Second Review. The conference was attended by representatives from New Zealand, Northern Territory (NT), New South Wales (NSW), South Australia (SA), Victoria, and Western Australia (WA). Representatives from the Australian Capital Territory (ACT), Queensland, and Tasmania offered apologies, but were consulted by email.

During the teleconference, FSANZ suggested excising those amendments from Standard 1.2.1 that are concerned with labelling meals supplied by Delivered Meal Organisations and those concerned with date marking of food for retail sale that is exempt bearing a label. At the meeting, FSANZ's approach was agreed to. It was also agreed that these issues should be addressed in separate proposals. FSANZ should collect additional evidence, and based on this new evidence should consider if further amendments to the Code are required.

During the meeting, FSANZ also suggested retaining the amendments in relation to food packaged and displayed in assisted service display cabinets and food for catering purposes but to clarify the purpose of the exemption further in the review report and the user guide. Finally, FSANZ suggested retaining the amendments in Standards 1.2.1 in relation to providing the prescribed name of a food, or in any other case, a name or description sufficient to indicate the true nature of the food. FSANZ also suggested that it could modify the amendments to Standard 1.2.2 so that wherever a food is exempt from bearing a label this information can be displayed on or in the connection with the display of the food, or provided to the purchaser on request.

The meeting generally agreed to FSANZ's approach and requested that FSANZ should clearly set out the purpose and intent of the amendments in the review report and provide adequate guidance on this issue in the user guide.

Prior to the Initial Assessment, FSANZ formed an Implementation and Enforcement Advisory Group (IEAG) to provide advice from an enforcement perspective on issues included in this Proposal.

The IEAG had representation from the Health Departments in NSW, WA, Queensland and the New Zealand Food Safety Authority (NZFSA) and the Australian Quarantine and Inspection Service (AQIS). The IEAG met on three occasions in 2003.

During Draft Assessment, FSANZ reformed the IEAG with representation from the NSW Food Authority, NZFSA, and from the Health Departments in Queensland and WA. The IEAG met twice in October 2006. During the Final Assessment, FSANZ reconvened with the IEAG with representation from the NSW Food Authority, NZFSA, and from the Health Departments in Queensland and WA. The IEAG met once in June 2007.

7.2 Consultation with Industry Stakeholders

Following concerns raised in a letter, FSANZ met with the Australian Food and Grocery Council on the 14 November 2007 to discuss issues regarding date marking requirements. At the meeting, FSANZ outlined further steps or options available to address the issues raised. Following Final Assessment, FSANZ engaged in additional discussions with DMOs. FSANZ attended the Meals on Wheels National Conference, gave a presentation on the labelling requirements for DMOs, and provided a fact sheet on labelling.

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

7.3 Submissions

FSANZ received 56 written submissions in response to the Initial Assessment Report and 26 written submissions in response to the Draft Assessment Report for this Proposal. Overall, the majority of submitters were in support of a review and amending the labelling requirements in clause 2 in Standard 1.2.1 of the Code. Issues identified from submissions formed the basis of targeted consultation with key stakeholder groups.

8. Options

There are three options proposed for consideration under this review:

1. Re-affirm the prepared variations to the Code in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations; or
2. Re-affirm prepared variations to the Code in relation to food for catering purposes and for retail sale, subject to the following amendments:
 - (a) excise the requirements for labelling of meals delivered by delivered meal organisations and reserve the relevant clause; and

- (b) excise the date marking requirements for meals exempt from bearing a label and reserve the relevant clauses; and
 - (c) change the information requirements for food exempt from bearing a label so this information can be displayed in connection with the food or provided to the purchaser on request.
 - (d) a technical amendment to paragraph 5(1)a of Standard 1.2.1 to further clarify the identification requirements for food for catering purposes.
3. Withdraw approval of the draft variation to Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5, and Standard 1.2.11.

CONCLUSION AND RECOMMENDATION

The Second Review concludes that the preferred option is Option 2: to excise the requirements for labelling of meals delivered by delivered meal organisations and reserve the relevant clause, and to excise the date marking requirements for meals exempt from bearing a label and reserve the relevant clauses, and to change the information requirements for food exempt from bearing a label so that this information can be displayed in connection with the food or provided to the purchaser on request.

FSANZ further recommends that:

1. where FSANZ has re-affirmed prepared variations to the Code further clarification is to be provided in a user guide; and
2. a proposal should be prepared to address the issue of information requirements for foods supplied by delivered meals organisations; and
3. a proposal should be prepared to consider how to provide information that clearly indicates how long a food that is not required to be labelled can be expected to remain safe for consumption.

FSANZ makes these recommendations because, overall, Proposal P272 has provided clarity and greater certainty on the interpretation and application of labelling and information requirements by amending Standard 1.2.1 – Application of Labelling and Other Information Requirements and other Standards with clauses connected to Standard 1.2.1.

However, further consideration should be given to the information requirements for foods supplied by DMOs on how to provide information that clearly indicates how long a food that is not required to be labelled can be expected to remain safe for consumption.

The minor amendments and recommendations proposed after the Second Review provide further clarity on the application of labelling and information requirements.

Attachments

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

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

Standards or variations to standards are considered to be legislative instruments for the purposes of the Legislative Instruments Act (2003) and are not subject to disallowance or sunseting.

To commence: On gazettal

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

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

Editorial note:

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

[1.2] *inserting in clause 2 –*

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

Editorial note:

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

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

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

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

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

STANDARD 1.2.1

APPLICATION OF LABELLING AND OTHER INFORMATION REQUIREMENTS

Purpose

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

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Clauses

1 Interpretation

In this Part –

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

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

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

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

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

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

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

1A Application

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

2 Labelling of food for retail sale

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

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

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

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

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

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

(4) Where food is sold in a hamper –

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

Editorial note:

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

3 Labelling of food not for retail sale etc.

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

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

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

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

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

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

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

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

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

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

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

5 Labelling of food for catering purposes

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

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

(2) Subclause (1) does not apply to –

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

6 Provision of information in relation to food for catering purposes

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

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

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

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

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

7 Reserved

8 Types of other similar institutions

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

Table to clause 8

Column 1	Column 2
Facility	Definition
Acute care hospitals	Establishments which provide at least minimal medical, surgical or obstetric services for inpatient treatment or care, and which provide round-the-clock comprehensive qualified nursing services as well as other necessary professional services. Most patients have acute conditions or temporary ailments and the average stay per admission is relatively short. Acute care hospitals include: <ul style="list-style-type: none"> (a) Hospitals specialising in dental, ophthalmic aids and other specialised medical or surgical care; (b) Public acute care hospitals; (c) Private acute care hospitals; (d) Veterans’ Affairs hospitals.
Psychiatric hospitals	Establishments devoted primarily to the treatment and care of inpatients with psychiatric, mental or behavioural disorders including any: <ul style="list-style-type: none"> (a) Public psychiatric hospital; (b) Private psychiatric hospital.
Nursing homes for the aged	Establishments which provide long-term care involving regular basic nursing care to aged persons and including any: <ul style="list-style-type: none"> (a) Private charitable nursing home for the aged; (b) Private profit nursing home for the aged; (c) Government nursing home for the aged.

Hospices	Freestanding establishments providing palliative care to terminally ill patients, including any: (a) Public hospice; (b) Private hospice.
Same day establishments for chemotherapy and renal dialysis services	Including both the traditional day centre/hospital that provides chemotherapy and/or renal dialysis services and also freestanding day surgery centres that provide chemotherapy and/or renal dialysis services including any: (a) Public day centre/hospital (b) Public freestanding day surgery centre (c) Private day centre/hospital (d) Private freestanding day surgery centre that provides those services. Day centres/ hospitals are establishments providing a course of acute treatment on a full-day or part-day non- residential attendance basis at specified intervals over a period of time. Freestanding day surgery centres are hospital facilities providing investigation and treatment for acute conditions on a day-only basis.
Respite care establishments for the Aged	Establishments which provide short-term care including personal care and regular basic nursing care to aged persons.
Same-day aged care establishments	Establishments where aged persons attend for day or part-day rehabilitative or therapeutic treatment.
Low care aged care establishments	Establishments where aged persons live independently but on-call assistance, including the provision of meals, is provided if needed.

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

[3.1] *omitting the Purpose, substituting –*

This Standard requires that certain information must be included on the label on a food in order to be able to identify the food in question. Where the food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 that same information is required to be displayed on or in connection with the food, or provided to the purchaser upon request. The labels on a package of food for retail sale, other than in the circumstances listed in Standard 1.2.1 must include, in addition to the information prescribed in this Standard, the information prescribed elsewhere in Part 1.2 of this Code.

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

(2) Where a food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 –

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

must be –

- (c) displayed on or in connection with the display of the food; or

(d) provided to the purchaser upon request.

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

Editorial note:

For example, the definitions for –

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

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

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

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

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

Editorial note:

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

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

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

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

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

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

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

- (a) displayed on or in connection with the display of the food; or

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

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

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

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

- (2) Where food containing any of the substances referred to in subclause (1) is not required to bear a label pursuant to clause 2 of Standard 1.2.1, an advisory statement to the effect that excess consumption of the food may have a laxative effect, must be –
 - (a) displayed on or in connection with the display of the food; or
 - (b) provided to the purchaser upon request; or
 - (c) displayed on or in connection with food dispensed from a vending machine.

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

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

STANDARD 1.2.5

DATE MARKING OF FOOD

Purpose

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

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

- (2) Reserved.

Editorial note:

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

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

(3) The label on a package of bread with a shelf life less than 7 days, may include instead of a best-before date –

- (a) its baked-on date; or
- (b) its baked-for date.

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

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

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

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

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

[6.3] *omitting subclause 2(4)*

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

'Assisted service display cabinet' is defined in Standard 1.2.1.