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[8-07]

FIRST 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.

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

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

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

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

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

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

Decision

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

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

(A) DELIVERED MEALS

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

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

(B) SMALL PACKAGES

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

ISSUE RAISED IN REVIEW REQUEST	FSANZ RESPONSE
<p data-bbox="188 232 719 297">Does not provide adequate information to enable informed choice</p> <p data-bbox="188 331 783 389">The information provided on small packages is of little benefit to consumers.</p>	<p data-bbox="809 338 1394 546">FSANZ reaffirms that the current labelling requirements for small packages are essential for protecting health and safety, to provide consumers with valued information and provides the framework for efficiency in the market place. The outcome of the Proposal meets FSANZ objective to provide adequate information to enable informed choice.</p> <p data-bbox="809 584 1385 943">The labelling of small packages is a broad regulatory issue. Any change to small packages would affect a number of product types and this would require a full evaluation and extensive risk assessment, a benefit cost analysis and consideration of appropriate risk management measures. Enforceability could also be considered. In particular, the preferred approach by the confectionery industry that size items be considered as very small packages, with no or very limited information on the label, raises issues of significant complexity beyond the scope of Proposal P272.</p>

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INTRODUCTION

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

1. Grounds for the Review Requested by the Ministerial Council

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

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

2. Background

2.1 Purpose and Scope of the Proposal

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

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

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

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

2.2 Current Standard

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

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

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

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

3. The Issues

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

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

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

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

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

3.1 Delivered Meals

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

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

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

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

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

3.2 Small Packages

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

REVIEW ON GROUNDS REQUESTED BY THE MINISTERIAL COUNCIL

4. Meals provided by Delivered Meal Organisations (DMOs)

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

4.1 DMOs in Australia

There are currently over 900 DMOs in Australia. Most of these employ staff to manage the production and delivery of packaged meals, but also rely on a large number of volunteer staff to successfully run the service. In Australia, in 1999-2000, there were over 68,000 clients receiving meals in their home each month and over 36,000 meals on average were delivered daily¹, largely by volunteers.

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

From submissions, targeted stakeholder consultations and information from labelling surveys undertaken in Australia^{2,3}, it is clear that there are a range of services and labelling practices amongst DMOs. Some DMOs provide comprehensive labelling on meals provided to consumers, whereas others provide no labelling at all. Some DMOs label meals with directions for use and storage for hot and frozen meals, for example many hot delivered meals include the day the meal was produced and instructions for consumers to 'eat now'. Many frozen meals are labelled with storage and handling/preparation information including thawing and reheating instructions (oven and microwave), the use-by date and also the content or name of the meal.

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

¹ Home and Community Care (HACC): HACC Service Provision 1999 – 2000

² NSW Meals on Wheels Association (2003) The NSW Meals on Wheels Association – Labelling Survey Report, June 2003.

³ WA Meals on Wheels Association (2002) Survey of all Meals On Wheels Services in Western Australia, May 2002.

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

In Victoria, local government is subsidised to supply 88% of delivered meals. The remainder are provided by non-government organisations. The Australian and Victorian Governments jointly provide this subsidy to the amount of A\$1.20 per meal through the Home and Community Care (HACC) program. Meal prices charged to consumers range from A\$5.00 to A\$9.00. The number of delivered meals is currently estimated at 4 million a year⁴ at a cost of A\$33.2 million⁵. In the main, the local government organisations manufacture their own meals while others source prepared meals from the commercial sector. In the late 1990's many kitchens operated by local government were closed as a result of local government amalgamations and the compulsory competitive tendering introduced by the Victorian Government. Subsequently, this has increased sourcing meals from the commercial sector, but the delivery of meals is still carried out by the DMOs. According to a service profile survey⁶ over 50% of service providers use volunteers to deliver meals, 14% use paid staff, while the remainder use a combination of both.

4.2 DMOs in New Zealand

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

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

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

⁴ State Vignette Victoria, National Meals on Wheels Conference, 9-11 September 2007, Adelaide, South Australia.

⁵ HDG Consulting Group (2004) Review of Home and Community Care (HACC) Program Food Services Final Report and Recommendation.

⁶ *ibid*

4.3 Current Requirements for Food provided by DMOs

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

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

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

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

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

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

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

4.4 Proposed Requirements for Food provided by DMOs

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

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

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

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

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

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

4.5. Review on Grounds Requested by the Ministerial Council:

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

4.5.1 Unreasonable cost burdens on industry and consumers

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

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

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

4.5.1.1 FSANZ response

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

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

- must be delivered packaged
- must be ready for consumption

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

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

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

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

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

In a recent survey of Victorian service providers, the need for improved packaging and labelling was generally accepted⁷.

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

Table 2. Benefits and Costs of the Proposed Labelling Requirements

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

⁷ HDG Consulting Group (2004) Review of Home and Community Care (HACC) Program Food Services Final Report and Recommendation.

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

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

The Bethwaite Review - Issues Paper states that progress has been made towards a more consistent legislative approach to food regulation⁸. This follows previous reviews that have pointed out the problems and costs associated with inconsistent food regulation and inconsistent enforcement of food regulations. Such uncertainties pose a major problem to food businesses and voluntary organisations alike.

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

It recommended that high-risk activities undertaken by community groups, such as catering to vulnerable populations, should follow the same approach as their commercial equivalent⁹.

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

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

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

⁸ Department of Health and Ageing (2007) Issue Paper - The Bethwaite Review. An Independent review commissioned by the Australian Government to identify how the food regulatory framework can be streamlined and made nationally consistent to improve the competitiveness of the Australian food industry.

⁹ Victorian Competition and Efficiency Commission (2007) Simplifying the menu: food regulation in Victoria. Draft Report April 2007.

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

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

4.5.1.2 Conclusion

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

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

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

4.5.2.1 FSANZ response

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

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

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

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

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

FSANZ also acknowledges that depending on the older person's level of function, it may be appropriate to provide information about food, or to simply reinforce important food related behaviours. The *Well for Life* guide of Victorian Department of Human Services suggests that simplified label reading activities should be undertaken by community workers to improve the nutritional quality and variety of food eaten by older persons¹⁰. Such activities can increase the understanding of DMOs' client bases in regards to labelling and further assist DMOs in improving their service to meet the needs of their clients better.

4.5.2.2 Conclusion

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

4.5.3 Does not provide adequate information to enable informed choices

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

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

4.5.3.1 FSANZ response

There are few studies on the incidence or recurrence of anaphylaxis in Australia but incidences are most likely under reported. Estimates are that up to 1/1000 adults experience at least one episode of anaphylaxis, 61% are food related¹¹. Death from anaphylaxis and related conditions is rare. Between 1997 and 2004, six deaths involved anaphylaxis attributed to an adverse food reaction¹² and 5515 hospital admissions occurred in Australia because of food related anaphylaxis. Over this time, admissions for anaphylaxis increased by 13% annually¹³. FSANZ is of the opinion that the absence of evidence of anaphylaxis does not negate the necessity for appropriate risk management.

¹⁰ Department of Human Services, Aged Care Branch and Public Health Group (2003) *Well for life* – Section 2: Help sheet 7: Nutrition related activities in group settings

¹¹ Mullins R.J. (2003) Anaphylaxis: risk factors for recurrence. *Clin. Exp. Allergy* 33: 1033-40

¹² Poulos L.M et al (2007) trends in hospitalisation for anaphylaxis, angioderma, and urticaria in Australia, 1993-1994 to 2004-2005 *J. Allergy Clin. Immunol.* 120:4, 878-84.

¹³ .ibid.

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

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

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

HACC consumers’ key rights within the HACC Program include the right to be informed and consulted about available services and other relevant matters, and the right to choose from available alternatives¹⁴.

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

For example, the major contractor to the Inner Metropolitan council in Victoria lists good quality product labelling incorporating a list of ingredients and instructions as one of the considerations for the future¹⁵.

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

¹⁴ Victorian HACC Program Manual, February 2003. 5. Rights and Responsibilities Statement

¹⁵ HDG Consulting Group (2004) Review of Home and Community Care (HACC) Program Food Services Final Report and Recommendation

4.5.3.2 Conclusion

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

5. Small packages

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

5.1 Current Requirements and Requirements under Proposal P272

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

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

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

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

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

5.2 Review on Grounds Requested by the Ministerial Council

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

5.2.1 *Unreasonable cost burdens on industry and consumers*

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

5.2.1.1 FSANZ response

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

Following best practice regulation¹⁶ FSANZ has undertaken a comprehensive assessment of the impacts of the regulatory options on business, government and individuals and found that the preferred regulatory option has only negligible impacts and compliance costs¹⁷. This indicates that even where there are proposed changes to the Code because of Proposal P272, these are predominantly technical in nature and generally require little or no change to current requirements, resulting in little or no additional cost to those currently complying with the Code. In the case where there may be some minor costs associated with the proposed amendments these are commensurate with the risk that is being managed. The Office of Best Practice Regulation reviewed the Final Assessment Report and the impact analysis and supports FSANZ's view.

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

5.2.1.2 Conclusion

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

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

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

¹⁶ Office of Best Practice Regulation (2006) Best Practice Regulation Handbook.

¹⁷ Final Assessment Report, Section 10 Impact Analysis and Attachment 3 - Best Practice Regulation – Preliminary Assessment and Business Cost Calculator Report

The Ministerial Council was concerned that the Proposal would add to minimum labelling requirements of small packages, increasing the difficulty of compliance.

5.2.2.1 FSANZ response

In submissions to the P272 Draft Assessment Report, FSANZ received details on the technical challenges in complying with the *status quo* labelling requirements including:

- for flow wrapped confectionery, where wrapping is rolled out through a machine on a continuous basis, it is difficult to determine where a cut will occur and consequently it is difficult to ensure that the appropriate elements are represented on individual labels ;
- labelling lot identification takes up one quarter of the wrapper and needs to be done by an in line high speed labelling system;
- twist wrap and novelty shaped items are difficult to label;
- it is impossible/difficult to conform to both the legibility requirements and requirements for small packages

While FSANZ recognises that there may be challenges in meeting the labelling requirements on some products, including those sold in small packages, FSANZ maintains that any food product on the market in Australia and New Zealand must be made and sold in a manner that ensures a safe food supply.

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

5.2.2.2 Conclusion

Any food product on the market in Australia and New Zealand must be made and sold in a manner that meets the essential objective of a safe food supply. The labelling requirements for small packages have been in place for many years and industry has had the opportunity to adapt.

The outcome of the Proposal meets FSANZ objectives and does not change the current situation with respect to enforcement or compliance with the Code in both practical or resource terms. A revision of generic labelling requirements relating to small packages is outside the scope of P272 which was intended to clarify current requirements. This matter would be best dealt with separately, where full consideration can be paid to health and safety aspects on the basis of a comprehensive risk assessment.

5.2.3 Does not provide adequate information to enable informed choice

The Ministerial Council was concerned that the information provided on small packages is of little benefit to consumers.

5.2.3.1 FSANZ response

FSANZ maintains that the current labelling requirements for small packages are of benefit in providing consumers with valued information. Consumers generally have a good appreciation of the range of information that is available on packaged foods¹⁸. They use this information primarily to assist in determining product choice while shopping to make judgements about products based on the brand, price/value, ingredient and nutritional content versus taste and to learn more about the product, in order to seek reassurance that it is a 'safe' choice.

At an individual level, when reading labels consumers may assess the country of origin, date mark, how the food has been produced or treated, and whether the ingredient and nutritional content meets their needs.

Currently, all small packages are exempt from a number of labelling requirements and need only to be labelled with the name of the food, the name and business address details of the supplier, mandatory warning and advisory statements and, in Australia, the country of origin.

In some circumstances, small packages need also to be labelled with lot identification (only where the bulk package or container in which the food is contained does not provide this information), date marking (only where the food should be consumed before a certain date because of health and safety reasons i.e. use-by date) and directions for use and storage (where for reasons of public health and safety, consumers need appropriate directions for use or storage of the food). Given that pick 'n' mix confectionery items are generally long-life, shelf-stable foods, it is unlikely that these items require directions for use and storage.

There are a number of key items that allow consumers to make informed decisions:

- Where a label on a package of food includes a name or description of the food sufficient to indicate the true nature of the food, consumers can make an informed purchasing decision.
- The declaration of the presence of certain substances and if applicable, warning and advisory statements, are particularly important information as many food items including confectionery can contain substances that may cause severe adverse reactions in sensitive individuals. As was discussed above, the incidence of food related anaphylaxis is on the increase. Presently, the only way susceptible consumers can prevent allergic reactions to foods is to avoid them. On the other hand, allergy sufferers also risk having to avoid foods that pose no risk to them. Having to avoid foods can have a significant effect on individuals and their families and can result in emotional distress and disrupt social interaction.
- The presence of date marking is to provide a guide to consumers on the shelf life of a food in terms of food quality. This means the length of time a food should keep before it begins to deteriorate. In some circumstances, date marking may also indicate how long a food can be expected to remain safe. While a date mark may not be required on a confectionery item, it constitutes essential consumer information for perishable food sold in small packages.

¹⁸ FSANZ (2001) Food Labelling Issues: Consumer Qualitative Research Report

- In October 2005, the Ministerial Council decided to introduce country of origin labelling on packaged food to achieve more balanced information flows so consumers can make better-informed purchasing decisions when purchasing foods. There is no evidence to suggest that this decision does not extend to small packages.

There are also some key issues regarding information necessary to carry out effective food recalls:

- Information identifying the food (lot identification number and/or date mark and name and address of supplier) is essential to assist in food recalls. There have been a number of recalls on confectionery items and there is no evidence that small packages are less likely to be recalled than larger packages. This supports the need for such information on packaged confectionery, including those sold in small packages.
- Effective recalls also assist manufacturers in resolving product failures in a speedy and cost-efficient manner. There have been a number of recalls on confectionery items, including cases where allergens have not been declared. This support the need for such information on packaged confectionery. FSANZ does not currently have sufficient evidence to show that effectiveness of recalls and the safety of consumers would not be compromised with the removal of information considered essential for food recalls or that effective, alternative risk management options are available.
- The labelling of small packages is a broad regulatory issue, in which confectionery items cannot be considered in isolation. Any change to small packages would affect a number of product types and this would require a full evaluation and extensive risk assessment, a benefit cost analysis and consideration of appropriate risk management measures. Enforceability could also be considered. In particular, the preferred approach by the confectionery industry that 'one bite' size items be considered as very small packages, with no or very limited information on the label, raises issues of significant complexity beyond the scope of Proposal P272.

5.2.3.2 Conclusion

FSANZ re-affirms that the current labelling requirements for small packages are essential to provide consumers with valued information and provides the framework for efficiency in the market place. The outcome of the Proposal meets FSANZ objective to provide adequate information to enable informed choice.

6. Consultation

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

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

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

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

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

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

Following Final Assessment, FSANZ engaged in further discussions with DMOs. FSANZ attended the Meals on Wheels National Conference, gave a presentation on the labelling requirements for DMOs and provided a fact sheet on labelling which is now also available from the FSANZ website.

FSANZ has undertaken discussion with the confectionery industry regarding the labelling of small packages throughout the development of this proposal. This included several teleconferences and face-to-face meetings with the Confectionery Manufacturers of Australasia (CMA). As an outcome of these meetings, FSANZ advised the CMA that a revision of the requirements for small packages was not within the scope of Proposal P272. FSANZ further explained that when considering regulatory approaches to small packages, FSANZ takes account of the wide variety of small packaged items currently in the marketplace.

The Standards contained in Part 1.2 of the Code operate as 'horizontal' Standards that apply across all categories of food. The advantage of horizontal standards is that specific principles, such as providing adequate information to consumers to make informed choices, can be applied across all foods, not just those specific commodities described within a Standard.

7. Options

There are three options proposed for consideration under this review:

1. re-affirm the prepared variations to the Code in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations; or
2. re-affirm prepared variations to the Code in relation to food for catering purposes and food for retail sale, subject to amendments to labelling of meals provided by delivered meal organisations and labelling of small packages as considered necessary by FSANZ; or

3. withdraw approval of the draft variation to Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5 and Standard 1.2.11.

CONCLUSION AND RECOMMENDATION

The First Review concludes that the preferred option is Option 1, which is to reaffirm the decision at Final Assessment to amend Standard 1.1.1, Standard 1.2.1, Standard 1.2.2, Standard 1.2.3, Standard 1.2.5 and Standard 1.2.11 in relation to food for catering purposes and food for retail sale, including meals provided by delivered meal organisations.

Attachments

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

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

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

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

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

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

Editorial note:

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

[1.2] *inserting in clause 2 –*

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

Editorial note:

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

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

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

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

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

STANDARD 1.2.1

APPLICATION OF LABELLING AND OTHER INFORMATION REQUIREMENTS

Purpose

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

Table of Provisions

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

Clauses

1 Interpretation

In this Part –

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

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

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

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

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

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

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

1A Application

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

2 Labelling of food for retail sale

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

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

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

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

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

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

(4) Where food is sold in a hamper –

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

Editorial note:

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

3 Labelling of food not for retail sale etc.

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

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

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

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

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

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

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

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

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

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

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

5 Labelling of food for catering purposes

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

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

(2) Subclause (1) does not apply to –

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

6 Provision of information in relation to food for catering purposes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Types of other similar institutions

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

Table to clause 8

Column 1	Column 2
Facility	Definition
Acute care hospitals	<p>Establishments which provide at least minimal medical, surgical or obstetric services for inpatient treatment or care, and which provide round-the-clock comprehensive qualified nursing services as well as other necessary professional services. Most patients have acute conditions or temporary ailments and the average stay per admission is relatively short. Acute care hospitals include:</p> <p>(a) Hospitals specialising in dental, ophthalmic aids and other specialised medical or surgical care;</p> <p>(b) Public acute care hospitals;</p> <p>(c) Private acute care hospitals;</p> <p>(d) Veterans' Affairs hospitals.</p>
Psychiatric hospitals	<p>Establishments devoted primarily to the treatment and care of inpatients with psychiatric, mental or behavioural disorders including any:</p> <p>(a) Public psychiatric hospital;</p> <p>(b) Private psychiatric hospital.</p>
Nursing homes for the aged	<p>Establishments which provide long-term care involving regular basic nursing care to aged persons and including any:</p> <p>(a) Private charitable nursing home for the aged;</p> <p>(b) Private profit nursing home for the aged;</p> <p>(c) Government nursing home for the aged.</p>
Hospices	<p>Freestanding establishments providing palliative care to terminally ill patients, including any:</p> <p>(a) Public hospice;</p> <p>(b) Private hospice.</p>
Same day establishments for chemotherapy and renal dialysis services	<p>Including both the traditional day centre/hospital that provides chemotherapy and/or renal dialysis services and also freestanding day surgery centres that provide chemotherapy and/or renal dialysis services including any:</p> <p>(a) Public day centre/hospital</p> <p>(b) Public freestanding day surgery centre</p> <p>(c) Private day centre/hospital</p> <p>(d) Private freestanding day surgery centre that provides those services.</p> <p>Day centres/ hospitals are establishments providing a course of acute treatment on a full-day or part-day non- residential attendance basis at specified intervals over a period of time.</p> <p>Freestanding day surgery centres are hospital facilities providing investigation and treatment for acute conditions on a day-only basis.</p>
Respite care establishments for the Aged	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 unpackaged it is required to be displayed on or in connection with the food, or provided to the purchaser upon request. The labels on a package of food for retail sale, other than in the circumstances listed in Standard 1.2.1 must include, in addition to the information prescribed in this Standard, the information prescribed elsewhere in Part 1.2 of this Code.

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

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

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

must be –

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

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

Editorial note:

For example, the definitions for –

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

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

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

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

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

Editorial note:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STANDARD 1.2.5

DATE MARKING OF FOOD

Purpose

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

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

(2) Where the food is displayed for retail sale other than in a package its use – by date must be –

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

Editorial note:

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

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

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

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

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

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

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

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

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

[6.3] *omitting subclause 2(4)*

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

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