

PROPOSAL P1008

CODE MAINTENANCE VIII

EXPLANATORY STATEMENT

Executive Summary

Purpose

The purpose of Proposal P1008 is to assess a range of proposed amendments to the *Australia New Zealand Food Standards Code* (the Code). The proposed amendments are intended to:

- correct minor errors, inconsistencies and ambiguities
- amend food regulatory measures in the Code to clarify a number of requirements, including for food additives, and to address some issues with the Code including issues raised in recent Applications.

FSANZ regularly seeks to amend the Code to maintain its currency and clarity. FSANZ has prepared this Proposal to amend a number of provisions in the Code to ensure it remains current and to address some issues that have recently arisen.

The Proposal was assessed under the General Procedure.

Assessing the Proposal

In assessing this Proposal and the subsequent development of food regulatory measures, FSANZ has had regard to the following matters as prescribed in section 59 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act):

- whether costs that would arise from a food regulatory measure developed or varied as a result of the Proposal outweigh the direct and indirect benefits to the community, Government or industry
- there are no other measures that would be more cost-effective that could achieve the same end
- any relevant New Zealand standards
- any other relevant matters.

Decision

To approve the draft variations to the *Australia New Zealand Food Standards Code*.

Reasons for Decision

This Proposal:

- does not raise any public health and safety concerns
- will ensure that the Code remains current and that regulatory measures in the Code are appropriate
- will strengthen public confidence in the Code
- does not have any costs which are not outweighed by these benefits.

Consultation

Submissions were sought on the Assessment Report from 23 April to 20 May 2009. The issues raised in the submissions were carefully considered by FSANZ.

Individuals and organisations that make submissions on this Proposal will be notified about progress with this Proposal. FSANZ will notify the Ministerial Council of its decision. Stakeholders, including the public and submitters, will be notified of the gazettal of changes to the Code in the national press and on the FSANZ website.

CONTENTS

INTRODUCTION.....	2
1. THE ISSUE / PROBLEM	2
2. OBJECTIVES	2
RISK ASSESSMENT.....	ERROR! BOOKMARK NOT DEFINED.
3. RISK ASSESSMENT SUMMARY	3
4. PROPOSED AMENDMENTS.....	3
4.1 Standard 1.2.3 – Mandatory Warning and Advisory Statement and Declarations.....	4
4.2 Standard 1.2.8 – Nutrition Information Requirements.....	4
4.3 Standard 1.2.10 – Characterising Ingredients and Components of Food.....	4
4.4 Standard 1.2.11 – Country of Origin Requirements.....	4
4.5 Standard 1.3.1 – Food Additives.....	4
4.6 Standard 1.3.2 – Vitamins and Minerals	8
4.7 Standard 1.3.3 – Processing Aids.....	8
4.8 Standard 1.3.4 – Identity and Purity.....	9
4.9 Standard 1.4.1 – Contaminants and Natural Toxicants	10
4.10 Standard 1.4.4 – Prohibited and Restricted Plants and Fungi.....	12
4.11 Standard 1.5.1 – Novel Foods.....	12
4.12 Standard 1.5.2 – Food Produced Using Gene Technology	12
4.13 Standard 1.6.2 – Processing Requirements	12
4.14 Standard 2.1.1 – Cereals and Cereal Products	13
4.15 Standard 2.2.3 –Fish and Fish Products.....	13
4.16 Standard 2.5.1 – Milk	13
4.17 Standard 2.6.3 – Kava.....	13
4.18 Standard 2.6.4 – Formulated Caffeinated Beverages.....	14
4.19 Standard 2.7.4 – Wine and Wine Products.....	14
4.20 Standard 3.1.1 – Interpretation and Application.....	15
4.21 Standard 3.2.3 – Food Premises and Equipment	15
4.22 Standard 4.2.3 – Primary Production and Processing Standard for Meat	15
4.23 Standard 4.2.4A – Primary Production and Processing Standard for Specific Cheeses.....	15
RISK MANAGEMENT	15
5. OPTIONS.....	15
5.1 Option 1 – To reject the Proposal.....	15
5.2 Option 2 – To approve variations to the Code	15
6. IMPACT ANALYSIS.....	15
6.1 Affected Parties	15
6.2 Benefit Cost Analysis	16
6.3 Comparison of Options.....	17
COMMUNICATION AND CONSULTATION STRATEGY	17
7. Communication.....	17
8. Consultation.....	17
8.1 Public Consultation.....	17
8.2 World Trade Organization (WTO)	21
CONCLUSION	21
9. DECISION	21
10. IMPLEMENTATION AND REVIEW	22
ATTACHMENT 1A - DRAFT VARIATIONS TO THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE (AT APPROVAL).....	23
ATTACHMENT 1B - DRAFT VARIATIONS TO THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE (AS CONSULTED ON AT ASSESSMENT)	36
ATTACHMENT 2 - SUMMARY OF ISSUES RAISED IN PUBLIC SUBMISSIONS	50

INTRODUCTION

The *Australia New Zealand Food Standards Code* (the Code) is regularly amended to reflect the changing nature of the food supply and the associated changes to regulatory requirements. On occasions, minor typographical errors or inconsistencies can occur and FSANZ identifies and corrects these to ensure the Code remains as accurate as possible. This Proposal includes variations to the Code to address these matters.

In addition to these minor changes, FSANZ also reviews provisions in the Code to identify outdated or unnecessary provisions. This Proposal includes variations to address these matters.

This Proposal includes some proposed amendments to the Code to address specific issues that have been raised with FSANZ, including in Applications. The relevant Applications relate to the specification for bentonite (A1010), classification of ammonium chloride (A1016) and presence of 4-hexylresorcinol in cooked crustacea (A1020).

FSANZ is proposing to address these issues as part of this Proposal because it represents a more timely and efficient means of amending the Code.

In accordance with the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), this Proposal was assessed in accordance with the General Procedure with one round of public comment.

1. The Issue / Problem

From time to time, FSANZ identifies and addresses issues with provisions in the Code to ensure that requirements are adequately expressed. These issues include inconsistencies, misspellings, grammatical errors, omissions and items requiring updating or clarification along with other matters that under the FSANZ Act only warrant one round of comment under the General Procedure. In addition, there are some issues that arise from time to time (including in Applications) that could more efficiently be considered as part of a Proposal. FSANZ compiled these issues for consideration as part of this Proposal.

2. Objectives

This Proposal includes a number of amendments to the Code which have been identified by FSANZ and other interested parties. In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives which are set out in section 18 of the FSANZ Act. These are:

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

In developing and varying standards, FSANZ must also have regard to:

- the need for standards to be based on risk analysis using the best available scientific evidence
- the promotion of consistency between domestic and international food standards

- the desirability of an efficient and internationally competitive food industry
- the promotion of fair trading in food
- any written policy guidelines formulated by the Ministerial Council.

3. Risk Assessment

The amendments do not raise any public health and safety concerns. The amendments in this Proposal have been provided to FSANZ from internal staff, jurisdictions and other stakeholders. The issues primarily relate to:

- correction of typographical and editorial errors, and addressing anomalies
- updating of specifications and other references
- clarification of the intent and application for a number of clauses.

On this basis, the assessment of the issues does not require a risk assessment.

4. Proposed Amendments

The amendments address minor inconsistencies, amend outdated provisions and include appropriate food regulatory measures arising from issues currently before FSANZ, including Applications on the Work Plan. The amendments are required to ensure that the information contained in the Code is correct and current. Each of these amendments has been assessed by scientific and legal staff to ensure that the recommended solutions are consistent with the intent of the food regulatory measures in the Code.

The following details are provided with regard to each proposed amendment arranged under the relevant Standards:

- Location:** the relevant clause, subclause, paragraph, sub-paragraph or Table where the problem arises or, where relevant, additional details such as the section heading or column
- Issue:** the nature of the inconsistency, error or proposed change and where necessary the rationale for the suggested amendment
- Solution:** the proposed amendment.

There are some specific amendments for which stakeholders may require more detail. For clarity and understanding, FSANZ has provided some additional detail on these issues below.

The amendments to the Code include changes to several editorial notes. Editorial notes are not, by virtue of the definition of 'standard', part of a draft standard and are therefore not subject to the standards development process under Part 3 of FSANZ Act. The Editorial notes have been provided for completeness only. They have been shaded in the draft variations to highlight that they are not part of the approval of the amendments to the Standards.

4.1 Standard 1.2.3 – Mandatory Warning and Advisory Statement and Declarations

Location: Subclauses 2(2) and 3(2).

Issue: The punctuation is inconsistent in the 1st line of each subclause (i.e. a comma after 'clause'). In addition, a comma after the word 'Table' is not required.

Solution: In subclause 3(2), remove the comma after the word 'clause'. In subclauses 2(2) and 3(2), remove the comma after the word 'Table'.

Location: Table to clause 2.

Issue: The entries for foods containing added tall oil phytosterols and foods containing added phytosterol esters could be rationalised into a single table entry of 'Foods containing added tall oil phytosterols or added phytosterol esters'.

Solution: Delete the individual entries for foods containing added tall oil phytosterols and foods containing added phytosterol esters and include a specific entry for 'Foods containing added tall oil phytosterols or added phytosterol esters' in Column 1 with the same Column 2 conditions that apply to each of these individual entries.

4.2 Standard 1.2.8 – Nutrition Information Requirements

Location: Editorial Note following subclause 5(2), second paragraph.

Issue: The reference to 'ml' should be 'mL'.

Solution: Amend the Editorial Note following subclause 5(2) to replace the reference to 'ml' with 'mL'.

4.3 Standard 1.2.10 – Characterising Ingredients and Components of Food

Location: Paragraph 2(4)(g).

Issue: Refers to Standard 1.1A.1 which no longer exists in the Code.

Solution: Remove reference to Standard 1.1A.1.

4.4 Standard 1.2.11 – Country of Origin Requirements

Location: Column 2 of the Table to subclause 2(2).

Issue: In Column 2 against 'Pork, whole or cut.....', paragraph (b) should read 'containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be'. In addition, the two entries that refer to 'pork' should be separated and the table formatted for clarification.

Solution: Add 'be' to the end of the sentence where necessary. Create lines in the Table to clarify the statements.

4.5 Standard 1.3.1 – Food Additives

Location: Subclause 5(2).

Issue: Following a recent survey on colourings in food, FSANZ proposes to amend Standard 1.3.1 to ensure that the water soluble version of annatto extracts, namely norbixin, is included in any calculated result for annatto extracts. More information about bixin and norbixin is at this link¹. This will involve amending the definition for annatto extracts in subclause 5(2) from '**annatto** and annatto extracts shall be calculated as bixin' to '**annatto** and annatto extracts shall include norbixin and bixin, calculated as bixin'.

¹ ftp://ftp.fao.org/ag/agn/jecfa/cta_annatto.pdf

Solution: Replace existing definition with ‘**annatto** and annatto extracts shall include norbixin and bixin, calculated as bixin’.

Location: Clause 6.

Issue: FSANZ considers that clause 6 of Standard 1.3.1 could be made clearer and more consistent with other provisions in the Code that:

1. allow mixtures of related substances to be present in a food
2. apply restrictions such that the presence of these mixtures is no greater than would be permitted if a single substance were present (e.g. a mixture of preservatives may be present but the mixture should be limited to a level that would be consistent with the level used for a single preservative).

To achieve this FSANZ proposes rewording clause 6 and including an example formula.

Solution: Reword clause 6 as indicated in Attachment 1.

Location: Clause 7.

Issue: Application A1020 is an Application seeking to address a perceived ‘oversight’ in the Code for the substance 4-hexylresorcinol in crustacea. 4-hexylresorcinol is currently a food additive permitted to be used at GMP in uncooked crustacea (Schedule 1 of Standard 1.3.1). It is used to prevent enzyme related spoilage of raw crustacea (blackening). The substance is not applied to cooked crustacea because the cooking process destroys the enzymes and therefore the enzyme related spoilage does not occur in cooked product. 4-hexylresorcinol is likely to be present in cooked crustacea if the original raw crustacea were legitimately treated with products containing 4-hexylresorcinol.

According to the Applicant for A1020, Seafarm Pty Ltd, the provisions in the Code for 4-hexylresorcinol do not apply to crustacea that are subsequently cooked. The Applicant’s view is that as the Code stands, ‘uncooked crustacean treated with 4-hexylresorcinol are permitted, but cannot be cooked prior to consumption in Australia’. The Applicant has applied to amend the Code to ‘allow the presence of 4-hexylresorcinol in cooked crustacean, as carryover from treated raw crustaceans’.

The Application raises potential issues for other single ingredient foods which may contain food additives in their raw form and which are subsequently processed without the addition of other ingredients.

It has always been assumed that the ‘carry over’ provisions in Standard 1.3.1 (clause 7) apply in these circumstances – allowing a food additive to be present in a processed food where the food additive may legally be present or used in a raw material or ingredient of this processed food.

However, the existing clause 7 only refers to ‘ingredients’ as a potential source of carry over additives in a ‘final food’. There is therefore doubt as to whether the existing clause 7 of Standard 1.3.1 allows additives to be present in a cooked or processed single ingredient food, where the presence of these additives is as a result of the use of an additive in uncooked or unprocessed raw material. Given this doubt, it is considered that the Code should be amended to address this anomaly.

Consistent with the approach used in the international Codex General Standard for Food Additives², FSANZ proposes to amend clause 7 of Standard 1.3.1 (new proposed text is underlined) to state that:

Other than by direct addition, an additive may be present in any food as a result of carry-over from a raw material or an ingredient, provided that the level of the additive in the final food is no greater than would be introduced by the use of the raw material or ingredient under proper technological conditions and good manufacturing practice.

Given the minor technical nature of this Application and for efficiency, FSANZ has included this issue as part of this Proposal. If the proposed amendment associated with the presence of food additives by carry over is approved and gazetted in this Proposal then the application would need to be withdrawn by the applicant or rejected on the grounds that the issues are resolved by this Proposal.

Solution: Amend clause 7 as indicated in Attachment 1.

Location: Section '0' of Schedule 1.

Issue: Currently refers to 'ANZFA' guide and this should be deleted.

Solution: Delete the word 'ANZFA' and insert in its place the word 'the'.

Location: Section 1.1.3 and 1.1.4 of Schedule 1.

Issue: The categories for liquid milk to which tall oil phytosterols and phytosterol esters have been added could be rationalised into a single entry. This would reflect international practice where these substances are considered collectively.

Solution: Create a single category of '1.1.3 Liquid milk to which phytosterols or phytosterol esters have been added' and group all the currently permitted additives and their limits under it.

Location: Section 2.2.2 of Schedule 1.

Issue: Section 2.2.2 for oil emulsions (<80% oil) has an '*' missing.

Solution: Add an '*' to the heading of 'oil emulsions (<80% oil)'.

Location: Sections 6.4 and 7 of Schedule 1.

Issue: The terms for propionates could be consolidated into a single entry and made more consistent with the expressions used for sorbates and benzoates.

Solution: For sections 6.4 and 7, generalise the entry in the 'Additive Name' column of Schedule 1 to 'Propionic acid and sodium and potassium and calcium propionates' and generalise the associated entry in the 'INS Number' column to '280 281 282 283'. The limits in the 'Maximum Permitted Level' column to be generalised to a single entry that is the same as that which is already in this column.

Location: Section 8.1 of Schedule 1.

Issue: There is an entry for 'fresh poultry' and this is not considered an appropriate descriptor.

Solution: Delete the word 'fresh' in the entry.

² <http://www.codexalimentarius.net/gsfaonline/index.html?lang=en>

Location: Section 13 of Schedule 1.

Issue: This category uses the term 'sulphur dioxide' instead of the more general term 'sulphur dioxide and sodium and potassium sulphites'.

Solution: Replace the term 'sulphur dioxide' with the term 'sulphur dioxide and sodium and potassium sulphites' and the entry for '220' with the entry '220 221 222 223 224 225 228' in sections 13.4.1 and 13.4.2.

Location: Schedule 2 – both the alphabetical and numeric listing.

Issue: Ammonium chloride is currently a generally permitted processing aid listed in the Table to clause 3 of Standard 1.3.3 – Processing Aids. In addition, a number of ammonium and chloride salts are generally permitted food additives in Schedule 2 of Standard 1.3.1.

According to the Applicant for Application A1016, International Flavours & Fragrances (Australia) Pty Ltd, this Application is required because ammonium chloride is generally permitted as a flavouring or food additive internationally and this is not currently the case in Australia and New Zealand.

The Applicant has also noted that until 2002, ammonium chloride was permitted in salt substitutes under the food legislation that existed at that time, but was not included as a permitted additive in salt substitutes in the Code when it was originally gazetted. Given the minor technical nature of this Application and for efficiency, FSANZ has included this issue as part of this Proposal. If the proposed amendment associated with this use of ammonium chloride is approved and gazetted in this Proposal then this would mean that Application A1016 would need to be withdrawn by the applicant or rejected on the grounds that the issues are resolved by this Proposal.

FSANZ has noted that ammonium chloride is:

1. a generally permitted food additive in the Codex General Standard for Food Additives
2. a generally permitted food additive in the USA
3. excluded from the definition of food additive in Europe (including the UK)³.

Application A1016 relates to a minor technical amendment to the Code to allow ammonium chloride as a generally permitted food additive, in addition to its current use as a generally permitted processing aid. Application A1016 seeks to align the Code with the relevant international standard and the regulation of ammonium chloride in other countries. It also serves to address what appears to be an oversight during the development of the Code where the use of ammonium chloride in salt substitutes was not continued into the Code.

Ammonium chloride is already a generally permitted processing aid with no specific limits in food. Given the historical and international status of ammonium chloride, a safety, dietary exposure and food technology report are not considered necessary to amend the Code.

FSANZ proposes to amend the Code to delete the entry for 'ammonium chloride' from the Table to clause 3 of Standard 1.3.3 and include an entry for 'ammonium chloride' in Schedule 2 of Standard 1.3.1.

³ This is because ammonium chloride has traditionally been used as a specific ingredient in certain foods of cultural significance.

All the substances included in Schedule 2 of Standard 1.3.1 are also generally permitted processing aids for the purposes of Standard 1.3.3. Therefore, the proposed amendment would ensure that the use of ammonium chloride as a generally permitted processing aid is retained but that this is extended to its use as a generally permitted food additive.

Solution: Add 'Ammonium chloride (510)'.

Location: Schedule 4.

Issue: Following a recent survey on colourings in food, FSANZ proposes to amend Standard 1.3.1 to ensure that the limits for Schedule 4 colourings are clarified such that where specified in Schedule 1, the total maximum permitted amount of colourings in Schedule 4 is 290 mg/kg in processed foods and 70 mg/L in beverages. This will involve amending the heading for Schedule 4 to 'Colours permitted to a total maximum level of 290 mg/kg in processed foods and to a total maximum level of 70 mg/L in beverages other than beverages specified in Schedule 1'.

Solution: Amend the heading by replacing it with 'Colours permitted to a total maximum level of 290 mg/kg in processed foods and to a total maximum level of 70 mg/L in beverages other than beverages specified in Schedule 1'.

4.6 Standard 1.3.2 – Vitamins and Minerals

Location: Clause 1.

Issue: The definition of 'claimable food' is unclear and ambiguous due to a formatting error.

Solution: The numbering has been simplified to provide for greater comprehension.

- (a) primary foods; or
- (b) foods listed in the Table to clause 3; or
- (c) a mixture of –
 - (i) primary foods; and/or
 - (ii) water; and/or;
 - (iii) foods listed in the Table to clause 3 excluding butter, cream and cream products, edible oils, edible oil spreads and margarine.

4.7 Standard 1.3.3 – Processing Aids

Location: Clause 1 and the Table to clause 3.

Issue: There are some anomalies with the current entries in the Standard for silica and silicates. These anomalies include:

1. The 'double-mentioning' of some silicates as generally permitted processing aids in Standard 1.3.3 when they are already generally permitted food additives in Schedule 2 of Standard 1.3.1.
2. The lack of certainty as to whether the term 'silicates' covers silica as distinct from silicon dioxide, the latter which is a generally permitted food additive in Schedule 2 of Standard 1.3.1.

To address this, FSANZ proposes to:

1. Amend the existing entry in clause 1 of Standard 1.3.3. for 'silicates' to 'silica or silicates includes sodium calcium polyphosphate silicate, sodium hexafluorosilicate, sodium metasilicate, sodium silicate, silica and modified silica that complies with a monograph specification in clause 2 or clause 3 of Standard 1.3.4'.
2. Amend the existing entry for 'silicates' to 'silica or silicates' in the Table to clause 3 of Standard 1.3.3.

This would remove calcium aluminium silicate, calcium silicate, magnesium silicate and sodium aluminosilicate from the list of 'silicates' as these are already generally permitted processing aids by virtue of their inclusion in Schedule 2 of 1.3.1. It also includes 'silica' and all modified forms of silica provided that there is a specification for this modified silica in one of the primary or secondary specification sources in Standard 1.3.4.

Solution: Amend the existing entry in clause 1 for 'silicates' to 'silica or silicates includes sodium calcium polyphosphate silicate, sodium hexafluorosilicate, sodium metasilicate, sodium silicate, silica and modified silica that complies with a monograph specification in clause 2 or clause 3 of Standard 1.3.4' and amend the existing entry for 'silicates' to 'silica or silicates' in the Table to clause 3 of Standard 1.3.3.

Location: Table to clause 3.

Issue: Delete 'Ammonium chloride' entry (See item on ammonium chloride above).

Solution: Delete 'Ammonium chloride' entry.

Location: Table to clause 17.

Issue: There is a duplication of rows for the entry for asparaginase.

Solution: Merge the two rows into a single entry by deleting:

Asparaginase EC 3.5.1.1	<i>Aspergillus niger</i>
Asparaginase EC 3.5.1.1	<i>Aspergillus oryzae</i>

and adding:

Asparaginase EC 3.5.1.1	<i>Aspergillus niger</i> <i>Aspergillus oryzae</i>
----------------------------	---

4.8 Standard 1.3.4 – Identity and Purity

Location: The references in clauses 2 and 3.

Issue: This Standard requires updating to more contemporary editions and publications.

Solution: It is proposed to omit the existing clause 2 and clause 3 as indicated in Attachment 1.

Location: Schedule.

Issue: Bentonite is approved as a generally permitted food additive listed in Schedule 2 of Standard 1.3.1, so it has approval as a generally permitted processing aid (via subclause 3(b) of Standard 1.3.3). Bentonite is permitted as a processing aid in the Table to clause 4 of Standard 4.5.1 – Wine Production Requirements (Australia Only) and can currently be used at a level necessary to achieve a specific function in the processing of food.

A specification for bentonite is currently in the sixth edition of the (FCC), one of the primary sources of specifications for substances added to food. The current FCC specification stipulates that the pH range for bentonite dispersions should be in the range of 8.5 to 10.5.

The Applicant for Application A1010, Arumpo Bentonite Pty Ltd, has requested an extension of the pH range for bentonite dispersions from the 8.5 to 10.5 range to a range of 4.5 to 10.5. Given the minor technical nature of this Application and for efficiency, FSANZ has included the pH modification for bentonite in A1010 as part of this Proposal. If the proposed amendment associated with this pH modification is approved and gazetted in this Proposal the application would need to be withdrawn by the applicant or rejected on the grounds that the issues are resolved by this Proposal.

The Applicant for A1010 has requested this change to ensure that the bentonite from a particular deposit in Australia can be used in food, including the use of this bentonite in wine processing. The bentonite dispersion from the particular deposit has a pH of approximately 4.7 and this is outside the current pH range for bentonite in the FCC. The other primary source for specifications (the Food and Agriculture Organization, Combined Compendium of Food Additive Specifications) does not include a specific specification for bentonite.

FSANZ has no safety concerns with the minor modification to the pH range for bentonite, particularly given that the other aspects of the FCC bentonite specification would continue to apply.

The Applicant for A1010 has indicated that the bentonite which is the subject of their Application complies with the other specification requirements for bentonite.

Similarly, and as bentonite is already generally permitted as a processing aid/food additive, FSANZ has no food technology concerns with bentonite of a slightly different pH profile being used in food.

In summary, FSANZ considers that there are no safety or technological reasons why the specification for bentonite should not be modified to extend the pH range for bentonite dispersions, while ensuring that the other aspects of the bentonite specification continue to apply. FSANZ proposes that Standard 1.3.4 be amended to indicate that the pH range for bentonite dispersions should be no less than 4.5 and no more than 10.5.

Solution: Include an entry for Bentonite in the Schedule as indicated in Attachment 1.

4.9 Standard 1.4.1 – Contaminants and Natural Toxicants

Location: Table of provisions.

Issue: The name of clause 6 does not match the name in the body of the Standard.

Solution: Amend the Table of provisions to clause 6 as the 'Sampling plan for mercury in fish, fish products, crustacea and molluscs'.

Location: Subclause 1(6).

Issue: The prescribed formula could be made clearer.

Solution: Amend subclause 1(6) as indicated in Attachment 1.

Location: Editorial Note to clause 1.
Issue: The Editorial note could be simplified in relation to cadmium or lead limits of reporting.
Solution: Amend the Editorial note as indicated in Attachment 1.

Location: Various references throughout the Standard.
Issue: References to 'Column 1' or 'Column 2' in the Standard should be capitalised.
Solution: Capitalise all relevant references to 'Column 1' and 'Column 2'.

Location: Table to clause 5.
Issue: A Food Standard for Tutin in honey and comb honey came into force in New Zealand on 25 January 2009⁴. That Standard had been developed to ensure that dangerous levels of Tutin do not occur in honey sold in New Zealand or exported from New Zealand. Information about Tutin is contained in a consultation document released by the New Zealand Food Safety Authority (NZFSA)⁵. NZFSA has also produced a compliance guide with details about Tutin⁶.

Under the Treaty, New Zealand authorities have informed authorities in Australia of this food standard as required under Annex DIII of the Treaty.

FSANZ proposes to align the Code with the Food (Tutin in Honey) Standard 2008 (*New Zealand*) as an interim measure to advance the objectives of the *Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System* (the Treaty).

The alignment can be readily achieved by including the same limits in the Code as those that are in the New Zealand Food Standard. FSANZ therefore proposes to include a limit of 2 mg/kg for Tutin in honey and 0.1 mg/kg for Tutin in comb honey in the Table to clause 5. As this is an interim measure, FSANZ also proposes that these limits cease to have effect after 31 March 2011, pending further review.

These limits are proposed as a joint standard because:

- these limits are already in effect in New Zealand
- the identified plant source of Tutin, namely *Coriaria arborea*, is not endemic to Australia and therefore no impacts on honey producers in Australia are expected
- the limits are also not expected to impact on importers of honey and in any case, for the protection of public health and safety all honey should comply with these limits.

⁴ <http://www.nzfsa.govt.nz/policy-law/legislation/food-standards/tutin-standard-final.pdf>

⁵ <http://www.nzfsa.govt.nz/animalproducts/subject/bee-products/tutin-discussion/tutin-in-honey-discussion-paper-final-for-web.pdf>

⁶ <http://www.nzfsa.govt.nz/animalproducts/publications/manualsguides/tutin-standard-compliance-guide/index.htm>

FSANZ understands that capability for measuring Tutin in honey has been developed and details of approved laboratories in New Zealand are available from the NZFSA.

Solution: Include a limit of 2 mg/kg for Tutin in honey and 0.1 mg/kg for Tutin in comb honey in the Table to clause 5 with these limits to cease to have effect after 31 March 2011.

4.10 Standard 1.4.4 – Prohibited and Restricted Plants and Fungi

Location: Schedule 1.

Issue: The entry for '*Ammi visnaga*' was deleted as part of P1001 when the entry for 'Ammi species' should have been deleted.

Solution: Delete the entry for 'Ammi species' and add '*Ammi visnaga*'.

4.11 Standard 1.5.1 – Novel Foods

Location: Table of Provisions.

Issue: The Table does not include clause 3 – Exclusive use of novel foods.

Solution: Add clause 3 to the list in Table of Provisions.

Location: Entry for diacylglycerol oil (DAG-Oil) in the Table to clause 2.

Issue: Column 2 – Conditions of Use states that 'Diacylglycerol oil' is a prescribed name. This is inconsistent with the conditions of use for other novel foods such as α -cyclodextrin, γ -cyclodextrin and phytosterol esters where the name is not prescribed. The rationale for originally prescribing the name 'diacylglycerol oil' was to ensure that consumers could easily identify diacylglycerol oil in the ingredient list and that it was different to other generic oils in the Code. This does not require the use of a prescribed name and can be achieved by one condition of use that requires that the name diacylglycerol oil be used in the ingredient list, in accordance with Standard 1.2.4.

Solution: Amend the entry for DAG-Oil as indicated in Attachment 1.

4.12 Standard 1.5.2 – Food Produced Using Gene Technology

Location: Editorial note after clause 7.

Issue: The reference to the user guide should be deleted as a user guide is no longer available as a FSANZ document.

Solution: Delete the Editorial note.

4.13 Standard 1.6.2 – Processing Requirements

Location: Table of Provisions.

Issue: Clauses 1 and 2 and the Schedule were deleted on 5 October 2008 but the clause list was not updated.

Solution: Amend the Table of Provisions to list clauses 1 and 2 as deleted and to remove reference to the Schedule.

Location: Editorial note following clause 8.

Issue: Clause 9 is referenced, but has been deleted.

Solution: Delete the reference to clause 9 from the Editorial Note.

4.14 Standard 2.1.1 – Cereals and Cereal Products

Location: New clause 1A.

Issue: The current definition of 'bread' needs to be amended to make it clear that in relation to mandatory fortification of bread, bread does not include pizza bases, bread – crumbs, pastries, cakes (including brioche, panettone and stollen), biscuits or crackers. After giving careful consideration to issues raised in submissions (see section 8.1.8) the drafting variation proposed at Assessment has been changed to include a new clause to make it clear that certain products are not considered bread for the purposes of the mandatory addition of folic acid, thiamin and iodised salt.

Solution: Amend the Standard to include a new clause as indicated in Attachment 1. It is proposed that this amendment commence on 13 September 2009 to reflect the commencement date of other variations to Standard 2.1.1.

Location: Editorial Note after subclause 4(2) of Standard 2.1.1.

Issue: The word 'Note' is used instead of 'Editorial note'.

Solution: Add the word 'Editorial'.

4.15 Standard 2.2.3 – Fish and Fish Products

Location: Editorial Note following clause 1

Issue: Reference to the Australia Fish Name Standard AS SSA 5300 – 2007 is missing. See section 8.1.9 below.

Solution: Insert the reference

4.16 Standard 2.5.1 – Milk

Location: Clauses 5 and 6 and the Table of Provisions.

Issue: The two specific clauses for milk containing added tall oil phytosterols and milk containing added phytosterol esters could be rationalised into a single clause for 'Tall oil phytosterols and added phytosterol esters'.

Solution: Amend the clauses and the Table of Provisions as indicated in Attachment 1.

4.17 Standard 2.6.3 – Kava

Location: Purpose section and clauses 1 and 2.

Issue: The Standard needs to be updated to remove the reference to the National Code of Kava Management, and to refer to the wider regulatory framework for kava (e.g. *Customs (Prohibited Imports) Regulations 1956* and other restrictions on the supply of kava in Australia) and to include a more explicit definition of the derivatives of the *Piper methysticum* plant that may be sold under food legislation.

The requirements for kava were developed as part of Proposal P256⁷ in which the intent of the Standard was to:

- exclude the use in food of kava extracts prepared by organic solvent extraction because such extracts raise safety concerns with hepatotoxicity; and

⁷<http://www.foodstandards.gov.au/standardsdevelopment/proposals/proposalp256reviewofkavastandardso10263/index.cfm>

- restrict kava to the peeled root and/or peeled rootstock of the plant because these plant parts have a tradition of safe use in the preparation of the kava beverage.

The Standard in its current form could make these exclusions and restrictions more explicit. FSANZ proposes to amend the Standard to more clearly apply this intent and to state that *Piper methysticum* (kava) or any derived substance must not be sold or present in a food unless it is:

- (a) a beverage obtained by cold water extraction; or
- (b) the dried or raw form of the peeled root and/or peeled rootstock of plants of the species *Piper methysticum*.

In relation to additional regulatory requirements, there is other legislation that applies in relation to kava supply, including restrictions under *Customs (Prohibited Imports) Regulations 1956* on the importation of kava into Australia⁸. The existing Standard does not override this legislation but it does complement it. The most effective way of providing this context to the existing Standard is by amendment of the Purpose to reflect recent legislative changes. This approach would place the Standard in the correct context given the other controls that are in place. It would also ensure that the Standard reflects the use of kava in New Zealand (under dietary supplements regulations) and that there are provisions in place should cultivation and commercial supply of kava occur in Australia.

Solution: Amend the Standard to indicate that the Standard only applies where kava is permitted to be supplied i.e. that any other restrictions on supply take precedence over anything in the Standard. To achieve this:

- the Purpose to be amended as indicated in Attachment 1
- clauses 1 and 2 should be amended to delete the definition of 'kava' and exclude the use in food of kava extracts prepared by organic solvent extraction and to restrict kava to the peeled root and/or peeled rootstock of the plant because these plant parts have a tradition of safe use in the preparation of the kava beverage.

4.18 Standard 2.6.4 – Formulated Caffeinated Beverages

Location: Editorial note following subclause 2(3).

Issue: The reference to 'Food Standards Code' should be to the 'Australia New Zealand Food Standards Code'.

Solution: Amend the reference.

4.19 Standard 2.7.4 – Wine and Wine Products

Location: Table of Provisions.

Issue: There is no longer a clause 3, so reference should be removed from the Table.

Solution: Delete reference to clause 3 – Wine and wine product produced in Australia.

Location: Definition of 'wine product' in clause 1.

Issue: The definition is missing the word 'it'.

Solution: Add the word 'it' such that the definition reads 'mixed with other foods such that it is not wine'.'

⁸ <http://www.health.gov.au/internet/main/publishing.nsf/Content/importation-of-kava>.

4.20 Standard 3.1.1 – Interpretation and Application

Location: Subclause 2(5).

Issue: There are four mentions of '*Food Standards Code*' which should be '*Australia New Zealand Food Standards Code*'.

Solution: Amend all references.

4.21 Standard 3.2.3 – Food Premises and Equipment

Location: Editorial Notes following subclauses 4(1) and 13(1).

Issue: The word 'Clause' in these editorial notes should be 'clause' in lower case.

Solution: Amend all references.

4.22 Standard 4.2.3 – Primary Production and Processing Standard for Meat

Location: Table of Provisions and the Schedule.

Issue: The Table of Provisions does not include any mention of the Schedule to this Standard and the Schedule could be made more specific as to the method.

Solution: Amend the Schedule heading and add it to the Table of Provisions.

4.23 Standard 4.2.4A – Primary Production and Processing Standard for Specific Cheeses

Location: First paragraph of the Editorial Note.

Issue: The word 'paragraph' is repeated.

Solution: Delete the superfluous word 'paragraph'.

RISK MANAGEMENT

5. Options

FSANZ is required to consider the impact of various regulatory (and non-regulatory) options on all sections of the community, including consumers, food industries and governments. The regulatory options available for this Proposal are:

5.1 Option 1 – To reject the Proposal

This option maintains the *status quo* by retaining the existing provisions in the Code.

5.2 Option 2 – To approve variations to the Code

This option would require the preparation of amendments to the Code to incorporate the proposed changes.

6. Impact Analysis

6.1 Affected Parties

The parties affected by this Proposal include:

1. Industry which would need to comply with any amendments to the Code.
2. Consumers who may have concerns about amendments to the Code and the implications of these amendments.

3. Government agencies in Australia and New Zealand which, among other activities, ensure compliance with the Code.

6.2 Benefit Cost Analysis

6.2.1 Option 1

6.2.1.1 Benefits

- there are no perceived or discernable benefits for affected parties.

6.2.1.2 Costs

- for consumers, there are unlikely to be any discernable costs
- for industry, there are unlikely to be any discernable costs
- for New Zealand and Australian Government, State and Territory agencies, this option would be unlikely to result in any specific costs, although the uncertainty associated with some existing regulatory measures may be an inconvenience.

6.2.2 Option 2

6.2.2.1 Benefits

- for consumers, the major benefit is to maintain existing confidence in the food supply in relation to improving regulatory requirements in the Code
- for some members of industry, the amendments will clarify regulatory measures (e.g. juice industry) and allow certain substances to be used that are not currently the case (e.g. ammonium chloride, bentonite with a greater pH range)
- for New Zealand and Australian Government, State and Territory agencies, this option will foster community confidence that regulatory authorities are regularly maintaining Standards to ensure clarity and consistency.

In relation to the amendments for kava and Tutin, there is the added benefit of aligning the Code with other national regulations.

6.2.2.2 Costs

- for consumers, there are unlikely to be any costs associated with the amendments to the Code
- for industry, complying with the amendments should not result in any additional costs, because the measures only institute procedures and practices which they already follow
- for New Zealand and Australian Government, State and Territory agencies, this option would be unlikely to result in any specific costs, although there may be a need for these agencies to acquaint themselves with any changes to the Code.

6.3 Comparison of Options

In assessing proposals, FSANZ considers the impact of various regulatory (and non-regulatory) options on all sectors of the community, including consumers, food industries and governments in Australia and New Zealand.

For this Proposal, Option 1 was not regarded as viable or desirable because it would perpetuate errors, inconsistencies and outdated provisions in the Code. While the costs to the community of adopting this Option are low, the lack of credibility associated with retaining provisions that are known to be inadequate means that this Option was not considered appropriate.

Option 2 is the preferred option, as overall it was considered that the benefits to the community of amending the Code would outweigh any costs.

COMMUNICATION AND CONSULTATION STRATEGY

7. Communication

This Proposal includes amendments to a number of food regulatory measures in the Code and was therefore of interest to a broad range of stakeholders. As FSANZ did not believe that these amendments would be of major significance and applied a basic communication strategy to this Proposal. This involved notifying stakeholders of the availability of the Assessment Report via the Notification Circular and making the Report available on the FSANZ website.

8. Consultation

8.1 Public Consultation

Public comment on the Assessment Report for this Proposal was sought from 23 April to 20 May 2009. A total of 13 submissions were received. A summary of these is provided in Attachment 2 to this Report.

Overall, many of the amendments that FSANZ put forward were supported. Most of the submitters did not wish to comment on the merits of all the proposed changes and restricted their comments only to those issues in which they had issues of concern.

8.1.1 Standard 1.2.11

The NSW Food Authority (NSWFA) concurred that the Table needed clarification, however, suggested creating lines in Column 1, as well as Column 2, to clarify the Table further.

8.1.1.1 FSANZ Response

FSANZ is retaining the drafting as proposed at Assessment.

8.1.2 Standard 1.3.1

The NSWFA concurred with the need to clarify the purpose of the Standard. However, it believed that the proposed change went significantly beyond Code maintenance and had the potential to create significant enforcement issues unless considered in more detail and discussed with the enforcement agencies, industry and other stakeholders.

FoodLegal held a similar view. FoodLegal also believed that the proposed amendments should introduce a definition of 'food additive' into clause 1, as opposed to the Purpose section, as the insertion of a definition would give the amendment appropriate further legal weight. FoodLegal believed that the current lack of clarification in the Code as to what legally constituted a 'food additive' had resulted in severe adverse consequences for companies importing, manufacturing and selling food products in Australia.

There was general support from submitters including the New Zealand Juice & Beverages Association and the Australian Beverages Council for the clarification of 14.1.2.1 and 14.1.2 in Schedule 1. These submitters believed that, whilst the proposed amendments went part way to addressing the anomalies in 14.1.2, they raised a number of issues not supported by the NSWFA, including: vastly extending the number of additive permissions for juice not made from concentrate; permitting the use of additives not allowed in concentrate, in particular phosphoric acid.

The Australian Food and Grocery Council (AFGC) did not consider it necessary to specify 'raw material' in clause 7, but suggested that the meaning of the term 'ingredient' was clearer. It was concerned that ingredients included 'raw materials' and that the proposed amendment might result in further misunderstanding, rather than providing clarification.

8.1.2.1 FSANZ Response

FSANZ noted that there was strong opposition from certain submitters with some of the proposal changes. FSANZ also noted that there was strong support principally from producers and distributors. Ultimately, however, FSANZ has decided not to proceed with the proposed amendments at this stage. Therefore items 5.1, 5.14 and 5.15 have been removed from the drafting.

The NSWFA submitted that this proposed amendment went beyond rationalisation and appeared to permit a wider range of additives. FSANZ was of the view that there were no safety concerns with rationalising the food additive entries for liquid milk containing tall oil phytosterols and phytosterol esters. FSANZ noted that these additives were all additives permitted at GMP levels in other foods and did not consider that there was sufficient justification to restrict their use in liquid milk containing tall oil phytosterols and phytosterol esters solely on the basis of the form of phytosterols that was added. This amendment should proceed as originally proposed.

In relation to clause 7, FSANZ considered this amendment should proceed as originally proposed but, as suggested by the New Zealand Food Safety Authority (NZFSA), with the word 'food' added in front of the word 'additives' in the heading for this clause. FSANZ noted that the AFGC did not consider this amendment necessary. FSANZ considered that this amendment ensured that legitimate additives in raw materials might be present in a processed food. This approach also aligns the Standard with the international Codex Standard (see Attachment 1).

For additives performing the same function, FSANZ considered this amendment should proceed as originally proposed but, as suggested by the NZFSA, with the word 'food' added in front of the word 'additives' in the heading for this clause. FSANZ noted the submission from NZFSA stating that the words 'unless specifically permitted in the Code' be added to this clause. FSANZ was not aware of where this situation would apply and therefore did not believe that there was a need to include these words at this time.

8.1.3 Standard 1.3.2

NZFSA agreed with the proposed changes, with the following suggested amendments i.e. the addition of the word 'either' after (a), and deletion of the punctuation mark at the end of (b)(ii).

The NSWFA was concerned with the interpretation of this clause which did not appear to have been addressed by this amendment. In particular, a food containing 90% butter would seem to be a claimable food by virtue of paragraph (a)(ii), but would not by virtue of clause (b)(iii).

8.1.3.1 FSANZ Response

FSANZ noted the concerns relating to the anomalies in the current definition in Standard 1.3.2. Although this problem was too complex to be addressed in a Code maintenance proposal, it would be given further consideration in the First Review of the Health Claims Proposal (P293), currently under consideration. The formatting change as consulted on was therefore retained. However, the numbering has been simplified to provide for greater comprehension (see Attachment 1).

8.1.4 Standard 1.3.3

NZFSA commented that this amendment only referred to the *insertion* of the definition. It also needed to state that the existing definition needed to be *omitted*. NZFSA also considered that the entries for calcium aluminium silicate, calcium silicate, and magnesium silicate and sodium aluminosilicate should remain in the definition, as users of the Code might not realise that there was a further permission in Standard 1.3.1, Schedule 2.

8.1.4.1 FSANZ Response

FSANZ considered this amendment should proceed as originally proposed. NZFSA suggested that certain silicates remain in the definition of silicates, even though these were already in Schedule 2 of Standard 1.3.1 (and were therefore also able to be used as processing aids under Good Manufacturing Practice). Retaining these entries would represent duplication which has the potential to cause confusion regarding status in the Code.

8.1.5 Standard 1.3.4

Arumpo Bentonite strongly supported this amendment. They suggested it would have the affect of allowing an Australian supplier, strategically placed, to offer a competing product to the Australian wine and juice production industry, which currently imported all their bentonite requirements.

8.1.5.1 FSANZ Response

FSANZ noted these comments.

8.1.6 Standard 1.4.1

NZFSA welcomed this amendment, but suggested that the last entry should read 'Tutin in comb honey', rather than 'Tutin in honey comb'.

8.1.6.1 FSANZ Response

FSANZ supported the change suggested as it will align the Code with the relevant New Zealand Food Standard.

8.1.7 Standard 1.5.2

The NSWFA would like to see the User Guide updated and re-released. However, in the meantime, the Editorial Note should indicate that not only was the Guide unavailable, but existing copies no longer applied for the interpretation of the Standard.

8.1.7.1 FSANZ Response

This issue of amending the Editorial Note has been considered by FSANZ. However, FSANZ remained of the view that the Editorial Note following clause 7 be deleted as originally proposed.

The next meeting of the Implementation Sub-Committee would consider the issue of a revised protocol for compliance and on this basis FSANZ did not intend to revise the Guide. In relation to retaining the Editorial Note and amending it in relation to the status of the User Guide, FSANZ considered that this would be inconsistent with the approach taken for other user guides and therefore FSANZ did not consider this was necessary.

8.1.8 Standard 2.1.1

NSW raised a concern that the proposed amendment might apply to the mandatory addition of iodised salt to bread, but would not apply to folate or thiamin, as the mandatory fortification with folic acid and thiamin applies instead to flour. It suggested that it might be preferable from an enforcement viewpoint to amend specific clauses (clauses 4 and 5) to specifically exempt these products from the fortification requirements so as to address any doubt as to whether and when other provisions relating to bread apply.

The AFGC was concerned that the proposed amendment had the potential to create confusion for industry and enforcement agencies, in relation to permissions for voluntary fortification and labelling by virtue of carry-over from the source material (i.e. fortified bread-making flour).

George Weston Foods (GWF) also expressed concern that the proposed change to the definition for bread might cause confusion as it was not consistent with wording in other parts of the Code or industry User Guides. GWF was concerned that FSANZ had included this matter in a Code Maintenance Proposal where there was only one round of public comment, rather than including the issue in a separate document for comment as GWF believed that such a change to the Code impacted on more than one section of the Code (and two industry User Guides).

8.1.8.1 FSANZ Response

FSANZ has noted the concerns raised in relation to the proposed drafting. In response, FSANZ has revised the proposed amendments by including a separate clause in the Standard, rather than amend the definition of bread. This will provide clarity so that the mandatory requirement for the addition of folic acid, thiamin and iodised salt to bread or wheat flour for making does not apply to pizza bases, breadcrumbs, pastries, cakes (including brioche, panettone and stollen), biscuits or crackers. It should not, however, change existing voluntary permissions. In addition, FSANZ will revise the relevant User Guides to reflect the changes proposed to ensure consistency.

8.1.9 Standard 2.2.3

Seafood Services noted in a recent letter to FSANZ that the reference to the Australian Fish Name Standard AS SSA 5300 – 2007 in the Editorial Note in the Standard appeared to have been inadvertently omitted during consideration of Proposal P1001 – Omnibus VII.

8.1.9.1 FSANZ Response

This issue has been considered by FSANZ. FSANZ noted that the Australian reference was included in the list of the description of the proposed amendments in Attachment 3 to the Assessment Report which was released for public consultation. However, due to an oversight, the specific reference to the Australian Standard was omitted from the drafting. No concerns were raised during the consultation period.

To correct this oversight the omitted words, intended for Proposal P1001, have been inserted into the Editorial Note as part of this Proposal.

8.1.10 Standard 2.6.3

NZFSA was supportive of the intent of the proposed amendments, but had concerns with the wording as it believed there was a conflict between the new clauses. Reference to the Dietary Supplements Regulations was not relevant.

8.1.10.1 FSANZ Response

FSANZ supported the change to the draft variation as suggested by NZFSA.

8.2 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obligated to notify WTO member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

There are relevant international standards and the proposed amendments to the Code are unlikely to have a significant effect on international trade as they relate to the correction of errors, clarification of the intent of certain provisions and in some cases amendments to the Code to align with international standards.

On this basis, a notification was not made under either the WTO Technical Barriers to Trade (TBT) or Sanitary and Phytosanitary Measures (SPS) Agreements.

CONCLUSION

9. Decision

In assessing this Proposal and the subsequent development of food regulatory measures, FSANZ has had regard to the following matters as prescribed in section 59 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act):

- whether costs that would arise from a food regulatory measure developed or varied as a result of the Proposal outweigh the direct and indirect benefits to the community, Government or industry

- there are no other measures that would be more cost-effective that could achieve the same end
- any relevant New Zealand standards
- any other relevant matters.

Decision

To approve the draft variations to the *Australia New Zealand Food Standards Code*.

Reasons for Decision

This Proposal:

- does not raise any public health and safety concerns
- will ensure that the Code remains current and that regulatory measures in the Code are appropriate
- will strengthen public confidence in the Code
- does not have any cost which are not outweighed by these benefits.

10. Implementation and Review

It is proposed that the variations in this Proposal should take effect on gazettal except for the definition of bread (item 14.1 in Attachment 1) which is proposed to take effect on 13 September 2009.

ATTACHMENTS

- 1A. Variations to the *Australia New Zealand Food Standards Code* (at Approval)
- 1B. Variations to the *Australia New Zealand Food Standards Code* (as consulted on at Assessment)
2. Summary of issues raised in public submissions

Attachment 1A

Draft variations to the *Australia New Zealand Food Standards Code* (at Approval)

Section 87(8) of the FSANZ Act provides that standards or variations to standards are legislative instruments, but are not subject to disallowance or sunseting

The Editorial notes below have been provided for completeness only. They have been shaded to highlight that they are not part of the approval of the amendments to the Standards.

Editorial notes are not, by virtue of the definition of ‘standard’ part of a draft standard and therefore not subject to the standards development process under Part 3 of Food Standards Australia New Zealand Act 1991.

To commence: on gazettal, except for Item [14.1] which commences on 13 September 2009

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

[1.1] *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.**

[1.2] *omitting from the Table to clause 2 –*

Foods containing added phytosterol esters	Statements to the effect that – 1. when consuming this product, it should be consumed as part of a healthy diet; 2. this product may not be suitable for children under the age of five years and pregnant or lactating women; and 3. plant sterols do not provide additional benefits when consumed in excess of three grams per day.
Foods containing added tall oil phytosterols	Statements to the effect that – 1. when consuming this product, it should be consumed as part of a healthy diet; 2. this product may not be suitable for children under 5 years and pregnant or lactating women; and 3. plant sterols do not provide additional benefits when consumed in excess of three grams per

	day.
--	------

substituting –

Foods containing added tall oil phytosterols or added phytosterol esters	Statements to the effect that – 1. when consuming this product, it should be consumed as part of a healthy diet; 2. this product may not be suitable for children under the age of five years and pregnant or lactating women; and 3. plant sterols do not provide additional benefits when consumed in excess of three grams per day.
--	---

[1.3] *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 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) displayed on or in connection with food dispensed from a vending machine.

[2] **Standard 1.2.8** of the Australia New Zealand Food Standards Code is varied by omitting the Editorial note to subclause 5(2), substituting –

Editorial note:

‘Average quantity’ is determined in accordance with the definition set out in clause 2 of Standard 1.1.1. Average quantities may be indicated, for example, by inserting the word ‘Average’ or an abbreviation for average at the beginning of ‘Quantity per Serving’ and the ‘Quantity per 100 g (or 100 mL)’ columns, or including a note at the end of the panel stating that all specified values are averages.

No format is prescribed for the indication of minimum and maximum quantities. They may be indicated, for example, by inserting the bracketed abbreviations ‘(min)’ and ‘(max)’ immediately after the relevant quantities in the Quantity per Serving column and the Quantity per 100 g (or 100 mL) column.

Clause 12 explains when minimum and maximum quantities may be indicated.

[3] **Standard 1.2.10** of the Australia New Zealand Food Standards Code is varied by omitting paragraph 2(4)(g), substituting –

- (g) food standardised in Standard 2.9.1; or

[4] **Standard 1.2.11** of the Australia New Zealand Food Standards Code is varied by omitting the Table to subclause 2(2), substituting –

Table to subclause 2(2)

Column 1	Column 2
Food	Labelling requirement
Where the food is displayed for retail sale other than in a package	
Fish, including cut fish, filleted fish, fish that has been mixed with one or more other foods and fish that has undergone any other processing including cooking, smoking, drying, pickling or coating with another food	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Fresh pork, whole or cut, except where the product has been mixed with food not regulated by this subclause	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Pork, whole or cut, that has been preserved by curing, drying, smoking or by other means, except where that product has been mixed with food not regulated by this subclause (other than those foods used in the preserving)	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Fresh whole or cut fruit and vegetables	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Whole or cut fruit and vegetables where that produce has been preserved, pickled, cooked, frozen or dehydrated except where that produce has been mixed with food not regulated by this subclause (other than with those foods used in the preserving, pickling or cooking as the case may be)	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.

Where the food is displayed for retail sale in a package that does not obscure the nature or quality of the food Fresh whole or cut fruit and vegetables	A label on the package or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
---	--

[5] **Standard 1.3.1** of the Australia New Zealand Food Standards Code is varied by –

[5.1] *omitting the definition of **annatto** in subclause 5(2), substituting –*

annatto and annatto extracts shall include norbixin and bixin, calculated as bixin.

[5.2] *omitting clause 6, substituting –*

Food additives performing the same function

(1) Where a food contains a mixture of food additives that perform the same technological function, the sum of the proportion of these additives in the food must not be more than 1.

(2) The sum of the proportion of food additives in a food is calculated by:

- (a) dividing the concentration of each food additive in a food by the maximum permitted limit for that additive in that food; and
- (b) adding the proportions together for each of the food additives performing the same technological function.

Example Formula for Food Additives Performing the Same Function

$$\text{Sum of the proportion of food additives} = \frac{\text{Conc A}}{\text{MPLA}} + \frac{\text{Conc B}}{\text{MPLB}} + \frac{\text{Conc C}}{\text{MPLC}}$$

In this formula –

MPLA = Maximum permitted limit for food additive A in mg/kg

MPLB = Maximum permitted limit for food additive B in mg/kg

MPLC = Maximum permitted limit for food additive C in mg/kg

Conc A = concentration of food additive A in the food in mg/kg

Conc B = concentration of food additive B in the food in mg/kg

Conc C = concentration of food additive C in the food in mg/kg

[5.3] *omitting clause 7, substituting –*

7 Carry-over of food additives

Other than by direct addition, a food additive may be present in any food as a result of carry-over from a raw material or an ingredient, provided that the level of the food additive in the final food is no greater than would be introduced by the use of the raw material or ingredient under proper technological conditions and good manufacturing practice.

[5.4] *omitting from Schedule 1, under item 0 General Provisions the reference to ANZFA, substituting –*

the

[5.5] *omitting from Schedule 1, the heading and entry for item 1.1.3 Liquid milk to which phytosterol esters have been added, substituting –*

1.1.3 Liquid milk to which phytosterols or phytosterol esters have been added

401	Sodium alginate	2	g/kg
407	Carrageenan	2	g/kg
412	Guar gum	2	g/kg
471	Mono- and diglycerides of fatty acids	2	g/kg
460	Microcrystalline cellulose	5	g/kg

[5.6] *omitting from Schedule 1, the heading and entry for item 1.1.4. Liquid milk to which tall oil phytosterols have been added*

[5.7] *omitting from Schedule 1, the heading for item 2.2.2, substituting –*

2.2.2 Oil emulsions (<80% oil)*

[5.8] *omitting from Schedule 1, the entry for item 6.4 Flour products (including noodles and pasta)*, substituting –*

6.4 Flour products (including noodles and pasta)*

160b	Annatto extracts	25	mg/kg
200 201 202 203	Sorbic acid and sodium, potassium and calcium sorbates	1000	mg/kg
220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	300	mg/kg
234	Nisin	250	mg/kg
280 281 282 283	Propionic acid and sodium and potassium and calcium propionates	2000	mg/kg
950	Acesulphame potassium	200	mg/kg
956	Alitame	200	mg/kg
962	Aspartame-acesulphame salt	450	mg/kg

Flour products that are cooked on hot plates only e.g. crumpets, pikelets, flapjacks, etc.

[5.9] *omitting from Schedule 1, the entry for item 7, substituting –*

7 BREADS AND BAKERY PRODUCTS*

200 201 202 203	Sorbic acid and sodium, potassium and calcium sorbates	1200	mg/kg
280 281 282 283	Propionic acid and sodium and potassium and calcium propionates	4000	mg/kg

[5.10] *omitting from Schedule 1, the heading fresh poultry for item 8.1, substituting –*
poultry

[5.11] *omitting from Schedule 1, under entry for item 13.4.1 Solid formulated supplementary sports foods*, substituting –*

220	Sulphur dioxide	115	mg/kg
-----	-----------------	-----	-------

substituting –

220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	115	mg/kg
--------------------------------	--	-----	-------

[5.12] *omitting from Schedule 1, the entry for item 13.4.2 Liquid formulated supplementary sports foods*,*

220	Sulphur dioxide	115	mg/kg
-----	-----------------	-----	-------

substituting –

220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	115	mg/kg
--------------------------------	--	-----	-------

[5.13] *inserting in the Alphabetical Listing of Schedule 2 –*

510	Ammonium chloride
-----	-------------------

[5.14] *inserting in the Numeric Listing of Schedule 2 –*

510	Ammonium chloride
-----	-------------------

[5.15] *omitting the heading to Schedule 4 wherever appearing, substituting –*

Colours permitted singly or in combination to a total maximum level of 290 mg/kg in processed foods and to a total maximum level of 70 mg/L in beverages other than beverages specified in Schedule 1

[6] **Standard 1.3.2** of the Australia New Zealand Food Standards Code is varied by omitting from clause 1 the definition of **claimable food**, substituting –

claimable food means a food which consists of at least 90% by weight of –

- (a) primary foods; or
- (b) foods listed in the Table to clause 3; or
- (c) a mixture of –
 - (i) primary foods; and/or

- (ii) water; and/or;
- (iii) foods listed in the Table to clause 3 excluding butter, cream and cream products, edible oils, edible oil spreads and margarine.

[7] **Standard 1.3.3** of the Australia New Zealand Food Standards Code is varied by –

[7.1] 1 omitting from clause 1 the definition of **silicates**, substituting –

silica or silicates includes sodium calcium polyphosphate silicate, sodium hexafluorosilicate, sodium metasilicate, sodium silicate, silica and modified silica that complies with a monograph specification in clause 2 or clause 3 of Standard 1.3.4.

[7.2] omitting from the Table to clause 3 –

Ammonium chloride

[7.3] omitting from the Table to clause 3 –

Silicates

substituting –

Silica or silicates

[7.4] omitting from the Table to clause 17 the entries for Asparaginase EC 3.5.1.1, substituting –

Asparaginase EC 3.5.1.1	<i>Aspergillus niger</i> <i>Aspergillus oryzae</i>
----------------------------	---

[8] **Standard 1.3.4** of the Australia New Zealand Food Standards Code is varied by –

[8.1] omitting clause 2, substituting –

2 Substances with specifications in primary sources

A substance must comply with a relevant monograph (if any) published in one of the following –

- (a) Combined Compendium of Food Additive Specifications, FAO JECFA Monograph 1 (2005) as superseded by specifications published in FAO JECFA Monographs 3 (2006) and FAO JECFA Monographs 4 (2007) and FAO JECFA Monographs 5 (2008), Food and Agriculture Organisation of the United Nations. Rome; or
- (b) *Food Chemicals Codex* (6th Edition) published by United States Pharmacopoeia (2008); or
- (c) the Schedule to this Standard.

[8.2] omitting clause 3, substituting –

3 Substances with specifications in secondary sources

If there is no monograph applying to a substance under clause 2, the substance must comply with a relevant monograph (if any) published in one of the following –

- (a) the *British Pharmacopoeia* 2009, TSO, Norwich (2008); or
- (b) *The United States Pharmacopeia*, 32nd Revision and *The National Formulary*, 27th Edition; or
- (c) *The Pharmaceutical Codex*, 12th Edition, Council of the Pharmaceutical Society of Great Britain. The Pharmaceutical Press, London (1994); or
- (d) *Martindale; The Complete Drug Reference*. The Pharmaceutical Press London (2007); or
- (e) the *European Pharmacopoeia* 6th Edition, Council of Europe, Strasbourg (2007); or
- (f) the *International Pharmacopoeia* 4th Edition, World Health Organization, Geneva (2006); or
- (g) *The Merck Index*, 14th Edition, (2006); or
- (h) Code of Federal Regulations of the United States of America, 1 April, 2008; or
- (i) the *Specifications and Standards for Food Additives*, 7th edition (2000), Ministry of Health and Welfare (Japan).

[8.3] inserting in the Schedule an entry for **bentonite**

Specification for bentonite

Bentonite must comply with a monograph specification in clause 2 or clause 3 of this Standard, except that the pH determination for a bentonite dispersion must be no less than 4.5 and no more than 10.5.

[9] **Standard 1.4.1** of the Australia New Zealand Food Standards Code is varied by –

[9.1] omitting Clause 6 from the Table of Provisions, substituting –

6 Sampling plan for mercury in fish, fish products, crustacea and molluscs

[9.2] omitting subclause 1(6), substituting –

(6) For a mixed food, the prescribed formula for the purposes of this Standard is –

$$ML1 = \frac{(MLA \times Total\ A)}{Total} + \frac{(MLB \times Total\ B)}{Total} + \frac{CF \times (Total - (Total\ A + Total\ B))}{Total}$$

Where –

ML1 = ML which applies to the contaminant or natural toxicant in the mixed food (mg/kg)

MLA = ML for contaminant or natural toxicant in food A (mg/kg)

MLB = ML for contaminant or natural toxicant in food B (mg/kg)

Total = total weight of mixed food (g)

Total A = total weight of food A in the mixed food (g)

Total B = total weight of food B in the mixed food (g)

CF = Background Calculation Factor where, in the case of –

- (a) lead, CF = 0.01 mg/kg; and

- [9.3] *omitting the Editorial Note to clause 1, substituting –*

It is recognised both lead and cadmium are ubiquitous in the environment and occur at low levels in foods other than those listed in this Standard. Therefore, in order to assist with the enforcement of MLs in mixed foods which may contain these contaminants, the calculation requires the inclusion of a representative contaminant level for those foods that do not have an allocated ML. In the past, an ML was set for 'all other foods'. As the category for 'all other foods' was discontinued, a representative level is selected for the contaminants cadmium and lead. These levels are set at the limit of quantification (LOQ), and are 0.01 mg/kg for lead and 0.005 mg/kg for cadmium.

[9.4] inserting in the Table to clause 5, in alphabetical order –

[9.5] *omitting wherever appearing –*

substituting –

[10] *Standard 1.4.4 of the Australia New Zealand Food Standards Code is varied by –*

Ammi spp. Bishops weed, Khella

Ammi visnaga Bisnaga, Khella

[11.1] *inserting in the Table of Provisions –*

[11.2] *omitting from the Table to clause 2 the entry for Diacylglycerol oil (DAG-Oil) substituting –*

Diacylglycerol oil (DAG-Oil)	The name 'Diacylglycerol oil' must be used when declaring the ingredient in the ingredient list, as prescribed in Standard 1.2.4.
------------------------------	---

[12] *Standard 1.5.2 of the Australia New Zealand Food Standards Code is varied by omitting the Editorial Note at the end of clause 7.*

[13] *Standard 1.6.2 of the Australia New Zealand Food Standards Code is varied by –*

[13.1] *omitting the Table of Provisions, substituting –*

Table of Provisions

- | | |
|---|-------------------------------------|
| 1 | Reserved |
| 2 | Reserved |
| 3 | Processing of egg products |
| 4 | Eviscerated poultry |
| 5 | Dried meat |
| 6 | Crocodile meat |
| 7 | Game meat |
| 8 | Fermented comminuted processed meat |

[13.2] *omitting the Editorial note at the end of clause 8, substituting –*

Editorial note:

Processed meat in this clause includes processed meat and manufactured meat in accordance with Standard 2.2.1, irrespective of the prescribed names set out in that Standard.

Guidelines for the Safe Manufacture of Smallgoods published by Meat and Livestock Australia, will assist manufacturers and appropriate enforcement agencies to give effect to the provisions in this clause.

[14] *Standard 2.1.1 of the Australia New Zealand Food Standards Code is varied by –*

To commence on: 13 September 2009

[14.1] *inserting after clause 1 –*

1A Definition of bread for certain purposes

The definition of bread for the purposes of the mandatory addition of folic acid, thiamin and iodised salt to bread or wheat flour for making bread, does not include –

- (a) pizza bases;
- (b) breadcrumbs;
- (c) pastries;
- (d) cakes, including but not limited to brioche, panettone and stollen;
- (e) biscuits; or
- (f) crackers.

- [14.2] *inserting in the heading to the Note under entry Wheat flour for making bread, after subclause 4(2) –*

Editorial

- [15] **Standard 2.2.3** of the Australia New Zealand Food Standards Code is varied by *inserting immediately before the first paragraph in the Editorial Note following clause 1 –*

This Standard does not define specific names for fish. An Australian Fish Names Standards (AS SSA 5300 – 2007) has been published.

- [16] **Standard 2.5.1** of the Australia New Zealand Food Standards Code is varied by –

- [16.1] *omitting from the Table of Provisions, clause 5 and clause 6, substituting –*

5 Tall oil phytosterols and added phytosterol esters

- [16.2] *omitting clause 5, Phytosterol esters*

- [16.3] *omitting clause 6, Tall oil phytosterols, substituting –*

5 Tall oil phytosterols and added phytosterol esters

Tall oil phytosterols or phytosterol esters may only be added to milk –

- (a) that contains no more than 1.5 g total fat per 100 g; and
- (b) that is supplied in a package, the labelled volume of which is no more than 1 litre; and
- (c) where the total phytosterol ester added is no less than 5.2 g/litre of milk and no more than 6.4 g/litre of milk; and
- (d) where the total tall oil phytosterol added is no less than 3.2 g/litre of milk and no more than 4.0 g/litre of milk.

- [17] **Standard 2.6.3** of the Australia New Zealand Food Standards Code is varied by –

- [17.1] *omitting the Purpose, substituting –*

Purpose

This Standard regulates the sale and distribution of *Piper methysticum* (kava) in Australia and New Zealand. It also provides for labelling requirements and restrictions on the parts of the *Piper methysticum* (kava) plant which may be sold under food legislation.

In Australia, this Standard should be considered in conjunction with the *Customs (Prohibited Imports) Regulations 1956* and certain State and Territory restrictions on the supply of kava which seek to minimise the detrimental effects associated with kava abuse. Where kava is permitted for supply, the requirements in this Standard complement those restrictions.

- [17.2] *omitting the definition of **kava** in clause 1.*

- [17.3] *omitting clause 2, substituting –*

2 Prohibition

- (1) *Piper methysticum* (kava) or any derived substance must not be sold unless it is –

- (a) a beverage obtained by cold water extraction; or
- (b) the dried or raw form

of the peeled root and/or peeled rootstock of plants of the species *Piper methysticum*.

- (2) Kava must not be used as an ingredient in foods.

[18] **Standard 2.6.4** of the Australia New Zealand Food Standards Code is varied by omitting the words Food Standards Code in the Editorial Note at the end of subclause 2(3), substituting –

Australia New Zealand Food Standards Code

[19] **Standard 2.7.4** of the Australia New Zealand Food Standards Code is varied by –

[19.1] omitting clause 3 from the Table of Provisions

[19.2] omitting the definition of **wine product** from clause 1, substituting –

wine product means a food containing no less than 700 mL/L of wine as defined in this Standard, which has been formulated, processed, modified or mixed with other foods such that it is not wine.

[20] **Standard 3.1.1** of the Australia New Zealand Food Standards Code is varied by omitting the following words wherever appearing in the subclause 2(5) –

Food Standards Code

substituting –

Australia New Zealand Food Standards Code

[21] **Standard 3.2.3** of the Australia New Zealand Food Standards Code is varied by –

[21.1] omitting the word Clause wherever appearing in the Editorial Note to subclause 4(1), substituting –

clause

[21.2] omitting the word Clause wherever appearing in the Editorial Note to subclause 13(1), substituting –

clause

[22] **Standard 4.2.3** of the Australia New Zealand Food Standards Code is varied by –

[22.1] inserting in the Table of Provisions, after Division 3 – Production of ready-to-eat meat –

Schedule	Method for measuring pH
----------	-------------------------

[22.2] omitting the heading to the Schedule, substituting –

Method for measuring pH

[23] *Standard 4.2.4A of the Australia New Zealand Food Standards Code is varied by omitting the first paragraph from the Editorial Note after the Table to clause 1, substituting –*

Editorial note:

Legislation or documentation will only be listed in the Table to clause 1 if it incorporates or provides for methods which provide a level of safety protection equivalent to that provided by a process that includes treatment of the milk or milk product in accordance with paragraph 2(1)(a) of Standard 1.6.2 before 5 October 2008 and then with paragraphs 16(a) and (b) of Standard 4.2.4 after 5 October 2008, and has adequate hazard identification and process controls.

Attachment 1B

Draft variations to the *Australia New Zealand Food Standards Code* (As consulted on at Assessment)

Section 87(8) of the FSANZ Act provides that standards or variations to standards are legislative instruments, but are not subject to disallowance or sunseting

To commence: on gazettal, except for Item [14.1] which commences on 13 September 2009

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

[1.1] *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.

[1.2] *omitting from the Table to clause 2 –*

Foods containing added phytosterol esters	Statements to the effect that – 1. when consuming this product, it should be consumed as part of a healthy diet; 2. this product may not be suitable for children under the age of five years and pregnant or lactating women; and 3. plant sterols do not provide additional benefits when consumed in excess of three grams per day.
Foods containing added tall oil phytosterols	Statements to the effect that – 1. when consuming this product, it should be consumed as part of a healthy diet; 2. this product may not be suitable for children under 5 years and pregnant or lactating women; and 3. plant sterols do not provide additional benefits when consumed in excess of three grams per day.

substituting –

Foods containing added tall oil phytosterols or added phytosterol esters	Statements to the effect that – 1. when consuming this product, it should be consumed as part of a healthy diet; 2. this product may not be suitable for children under the age of five years and pregnant or lactating women; and 3. plant sterols do not provide additional benefits when consumed in excess of three grams per day.
--	--

[1.3] *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 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) displayed on or in connection with food dispensed from a vending machine.

[2] **Standard 1.2.8** of the Australia New Zealand Food Standards Code is varied by omitting the Editorial note to subclause 5(2), substituting –

Editorial note:

‘Average quantity’ is determined in accordance with the definition set out in clause 2 of Standard 1.1.1. Average quantities may be indicated, for example, by inserting the word ‘Average’ or an abbreviation for average at the beginning of ‘Quantity per Serving’ and the ‘Quantity per 100 g (or 100 mL)’ columns, or including a note at the end of the panel stating that all specified values are averages.

No format is prescribed for the indication of minimum and maximum quantities. They may be indicated, for example, by inserting the bracketed abbreviations ‘(min)’ and ‘(max)’ immediately after the relevant quantities in the Quantity per Serving column and the Quantity per 100 g (or 100 mL) column.

Clause 12 explains when minimum and maximum quantities may be indicated.

[3] **Standard 1.2.10** of the Australia New Zealand Food Standards Code is varied by omitting paragraph 2(4)(g), substituting –

- (g) food standardised in Standard 2.9.1; or

[4] **Standard 1.2.11** of the Australia New Zealand Food Standards Code is varied by omitting the Table to subclause 2(2), substituting –

Table to subclause 2(2)

Column 1	Column 2
Food	Labelling requirement
Where the food is displayed for retail sale other than in a package	
Fish, including cut fish, filleted fish, fish that has been mixed with one or more other foods and fish that has undergone any other processing including cooking, smoking, drying, pickling or coating with another food	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Fresh pork, whole or cut, except where the product has been mixed with food not regulated by this subclause	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Pork, whole or cut, that has been preserved by curing, drying, smoking or by other means, except where that product has been mixed with food not regulated by this subclause (other than those foods used in the preserving)	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Fresh whole or cut fruit and vegetables	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
Whole or cut fruit and vegetables where that produce has been preserved, pickled, cooked, frozen or dehydrated except where that produce has been mixed with food not regulated by this subclause (other than with those foods used in the preserving, pickling or cooking as the case may be)	A label on or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.

Where the food is displayed for retail sale in a package that does not obscure the nature or quality of the food Fresh whole or cut fruit and vegetables	A label on the package or in connection with the display of the food – (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.
---	--

[5] **Standard 1.3.1 of the Australia New Zealand Food Standards Code is varied by –**

[5.1] *omitting the Purpose, substituting –*

Purpose

A food additive is any substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which is intentionally added to a food to achieve one or more of the technological functions specified in Schedule 5 of this Standard. Food additives or their by-products may remain in the food to which they have been added. Unless specifically mentioned in this Standard, the following substances are not generally considered food additives:

1. foods in dried or concentrated form
2. aqueous extracts of foods
3. substances derived from foods through physical, enzymatic or mechanical processes (e.g. juicing, cooking) provided that these processes do not result in the selective extraction or selective production of a specific chemical substance that has a technological function in food.

Additives can only be added to food in order to achieve an identified technological function according to Good Manufacturing Practice. This Standard includes limits and requirements for food additives in food. A food additive may only be added to food where expressly permitted in this Standard.

Food additives are distinguishable from processing aids (see Standard 1.3.3) and vitamins and minerals added to food for nutritional purposes (see Standard 1.3.2).

Standard 1.3.4 prescribes standards for the identity and purity of food additives.

Standard 1.4.4 includes requirements for prohibited and restricted plants and fungi.

Standard 1.5.1 includes requirements for novel food and novel food ingredients.

[5.2] *omitting the definition of **annatto** in subclause 5(2), substituting –*

annatto and annatto extracts shall include norbixin and bixin, calculated as bixin.

[5.3] *omitting clause 6, substituting –*

6 Additives performing the same function

- (1) Where a food contains a mixture of food additives that perform the same technological function, the sum of the proportion of these additives in the food must not be more than 1.
- (2) The sum of the proportion of food additives in a food is calculated by:
- (a) dividing the concentration of each food additive in a food by the maximum permitted limit for that additive in that food; and
 - (b) adding the proportions together for each of the food additives performing the same technological function.

Example Formula for Additives Performing the Same Function

$$\text{Sum of the proportion of food additives} = \frac{\text{Conc A}}{\text{MPLA}} + \frac{\text{Conc B}}{\text{MPLB}} + \frac{\text{Conc C}}{\text{MPLC}}$$

In this formula –

MPLA = Maximum permitted limit for food additive A in mg/kg

MPLB = Maximum permitted limit for food additive B in mg/kg

MPLC = Maximum permitted limit for food additive C in mg/kg

Conc A = concentration of food additive A in the food in mg/kg

Conc B = concentration of food additive B in the food in mg/kg

Conc C = concentration of food additive C in the food in mg/kg

[5.4] *omitting clause 7, substituting –*

7 Carry-over of additives

Other than by direct addition, an additive may be present in any food as a result of carry-over from a raw material or an ingredient, provided that the level of the additive in the final food is no greater than would be introduced by the use of the raw material or ingredient under proper technological conditions and good manufacturing practice.

[5.5] *omitting from Schedule 1, under item 0 General Provisions the reference to ANZFA, substituting –*

the

[5.6] *omitting from Schedule 1, the heading and entry for item 1.1.3 Liquid milk to which phytosterol esters have been added, substituting –*

1.1.3 Liquid milk to which phytosterols or phytosterol esters have been added

401	Sodium alginate	2	g/kg
407	Carrageenan	2	g/kg
412	Guar gum	2	g/kg
471	Mono- and diglycerides of fatty acids	2	g/kg
460	Microcrystalline cellulose	5	g/kg

[5.7] *omitting from Schedule 1, the heading and entry for item 1.1.4. Liquid milk to which tall oil phytosterols have been added*

[5.8] *omitting from Schedule 1, the heading for item 2.2.2, substituting –*

2.2.2 Oil emulsions (<80% oil)*

[5.9] *omitting from Schedule 1, the entry for item 6.4 Flour products (including noodles and pasta)*, substituting –*

6.4 Flour products (including noodles and pasta)*

160b	Annatto extracts	25	mg/kg	Flour products that are cooked on hot plates only e.g. crumpets, pikelets, flapjacks, etc.
200 201 202 203	Sorbic acid and sodium, potassium and calcium sorbates	1000	mg/kg	
220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	300	mg/kg	
234	Nisin	250	mg/kg	
280 281 282 283	Propionic acid and sodium and potassium and calcium propionates	2000	mg/kg	
950	Acesulphame potassium	200	mg/kg	
956	Alitame	200	mg/kg	
962	Aspartame-acesulphame salt	450	mg/kg	

[5.10] *omitting from Schedule 1, the entry for item 7, substituting –*

7 BREADS AND BAKERY PRODUCTS*

200 201 202 203	Sorbic acid and sodium, potassium and calcium sorbates	1200	mg/kg
280 281 282 283	Propionic acid and sodium and potassium and calcium propionates	4000	mg/kg

[5.11] *omitting from Schedule 1, the heading fresh poultry for item 8.1, substituting –*

poultry

[5.12] *omitting from Schedule 1, under entry for item 13.4.1 Solid formulated supplementary sports foods*, substituting –*

220	Sulphur dioxide	115	mg/kg
-----	-----------------	-----	-------

substituting –

220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	115	mg/kg
--------------------------------	--	-----	-------

[5.13] *omitting from Schedule 1, the entry for item 13.4.2 Liquid formulated supplementary sports foods*,*

220	Sulphur dioxide	115	mg/kg
-----	-----------------	-----	-------

substituting –

220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	115	mg/kg
--------------------------------	---	-----	-------

[5.14] *omitting from Schedule 1, under item 14.1.2 Fruit and vegetable juices and fruit and vegetable juice products, the entry in the Qualifications column.*

[5.15] *omitting from Schedule 1, the entry for item 14.1.2.1, substituting –*

14.1.2.1 Fruit and vegetable juices (including juices containing or made from concentrates)

***Additives in Schedules 2,3
& 4 must not be added to
fruit and vegetable juices
unless expressly permitted
below***

160a	Carotenes	GMP	
160e	Carotenal, b-apo-8'	GMP	
270	Lactic acid	GMP	
290	Carbon dioxide	GMP	
296	Malic acid	GMP	
330	Citric acid	GMP	
334 335 336 337 353 354	Tartaric acid and sodium, potassium and calcium tartrates	GMP	
338	Phosphoric acid	GMP	
339 340 341	Sodium, potassium and calcium phosphates	GMP	
342	Ammonium phosphates	GMP	
343	Magnesium phosphates	GMP	
339 340 341	Sodium, potassium and calcium phosphates	GMP	
440	Pectin	GMP	
450	Pyrophosphates	GMP	
451	Triphosphates	GMP	
452	Polyphosphates	GMP	
542	Bone phosphate	GMP	
960	Steviol glycosides (calculated as steviol equivalents)	50	mg/kg
	Flavourings, excluding quinine and caffeine	GMP	

[5.16] *inserting in the Alphabetical Listing of Schedule 2 –*

510 Ammonium chloride

[5.17] *inserting in the Numeric Listing of Schedule 2 –*

510 Ammonium chloride

[5.18] *omitting the heading to Schedule 4 wherever appearing, substituting –*

Colours permitted to a total maximum level of 290 mg/kg in processed foods and to a total maximum level of 70 mg/L in beverages other than beverages specified in Schedule 1

[6] **Standard 1.3.2** of the Australia New Zealand Food Standards Code is varied by omitting from clause 1 the definition of **claimable food**, substituting –

claimable food means a food which consists of at least 90% by weight of –

- (a)
 - (i) primary foods; or
 - (ii) foods listed in the Table to clause 3; or
- (b) a mixture of –
 - (i) primary foods; and/or
 - (ii) water; and/or;
 - (iii) foods listed in the Table to clause 3 excluding butter, cream and cream products, edible oils, edible oil spreads and margarine.

[7] **Standard 1.3.3** of the Australia New Zealand Food Standards Code is varied by –

[7.1] inserting, following the definition of **processing aid**, in clause 1 –

silica or silicates includes sodium calcium polyphosphate silicate, sodium hexafluorosilicate, sodium metasilicate, sodium silicate, silica and modified silica that complies with a monograph specification in clause 2 or clause 3 of Standard 1.3.4.

[7.2] omitting from the Table to clause 3 –

Ammonium chloride

[7.3] omitting from the Table to clause 3 –

Silicates

substituting –

Silica or silicates

[7.4] omitting from the Table to clause 17 the entries for Asparaginase EC 3.5.1.1, substituting –

Asparaginase EC 3.5.1.1	Aspergillus niger Aspergillus oryzae
----------------------------	---

[8] **Standard 1.3.4** of the Australia New Zealand Food Standards Code is varied by –

[8.1] omitting clause 2, substituting –

2 Substances with specifications in primary sources

A substance must comply with a relevant monograph (if any) published in one of the following –

- (a) Combined Compendium of Food Additive Specifications, FAO JECFA Monograph 1 (2005) as superseded by specifications published in FAO JECFA Monographs 3 (2006) and FAO JECFA Monographs 4 (2007) and FAO JECFA Monographs 5 (2008), Food and Agriculture Organisation of the United Nations. Rome; or
- (b) *Food Chemicals Codex* (6th Edition) published by United States Pharmacopoeia (2008); or
- (c) the Schedule to this Standard.

[8.2] *omitting clause 3, substituting –*

3 Substances with specifications in secondary sources

If there is no monograph applying to a substance under clause 2, the substance must comply with a relevant monograph (if any) published in one of the following –

- (a) the *British Pharmacopoeia* 2009, TSO, Norwich (2008); or
- (b) *The United States Pharmacopoeia*, 32nd Revision and *The National Formulary*, 27th Edition; or
- (c) *The Pharmaceutical Codex*, 12th Edition, Council of the Pharmaceutical Society of Great Britain. The Pharmaceutical Press, London (1994); or
- (d) *Martindale; The Complete Drug Reference*. The Pharmaceutical Press London (2007); or
- (e) the *European Pharmacopoeia* 6th Edition, Council of Europe, Strasbourg (2007); or
- (f) the *International Pharmacopoeia* 4th Edition, World Health Organization, Geneva (2006); or
- (g) *The Merck Index*, 14th Edition, (2006); or
- (h) Code of Federal Regulations of the United States of America, 1 April, 2008; or
- (i) the *Specifications and Standards for Food Additives*, 7th edition (2000), Ministry of Health and Welfare (Japan).

[8.3] *inserting in the Schedule an entry for bentonite*

Specification for bentonite

Bentonite must comply with a monograph specification in clause 2 or clause 3 of this Standard, except that the pH determination for a bentonite dispersion must be no less than 4.5 and no more than 10.5.

[9] **Standard 1.4.1** of the Australia New Zealand Food Standards Code is varied by

[9.1] *omitting Clause 6 from the Table of Provisions, substituting –*

6 Sampling plan for mercury in fish, fish products, crustacea and molluscs

[9.2] *omitting subclause 1(6), substituting –*

(6) For a mixed food, the prescribed formula for the purposes of this Standard is –

$$ML1 = \frac{(MLA \times Total\ A)}{Total} + \frac{(MLB \times Total\ B)}{Total} + \frac{CF \times (Total - (Total\ A + Total\ B))}{Total}$$

Where –

ML1 = ML which applies to the contaminant or natural toxicant in the mixed food (mg/kg)

MLA = ML for contaminant or natural toxicant in food A (mg/kg)

MLB = ML for contaminant or natural toxicant in food B (mg/kg)

Total = total weight of mixed food (g)

Total A = total weight of food A in the mixed food (g)

Total B = total weight of food B in the mixed food (g)

CF = Background Calculation Factor where, in the case of –

- (a) lead, CF = 0.01 mg/kg; and
- (b) cadmium, CF = 0.005 mg/kg; and
- (c) other contaminants, CF = 0

[9.3] *omitting the Editorial Note to clause 1, substituting –*

Editorial note:

It is recognised both lead and cadmium are ubiquitous in the environment and occur at low levels in foods other than those listed in this Standard. Therefore, in order to assist with the enforcement of MLs in mixed foods which may contain these contaminants, the calculation requires the inclusion of a representative contaminant level for those foods that do not have an allocated ML. In the past, an ML was set for 'all other foods'. As the category for 'all other foods' was discontinued, a representative level is selected for the contaminants cadmium and lead. These levels are set at the limit of quantification (LOQ), and are 0.01 mg/kg for lead and 0.005 mg/kg for cadmium.

The calculation for mixed food for all other contaminants with an ML will assume that the contributing commodity, e.g. peanuts in peanut sauce, contains all of the contaminant.

[9.4] *inserting in the Table to clause 5, in alphabetical order –*

The ML for Tutin to cease on 31 March 2011	
Tutin	
Tutin in honey	2
Tutin in honey comb	0.1

[9.5] *omitting wherever appearing –*

column

substituting –

Column

[10] **Standard 1.4.4** of the Australia New Zealand Food Standards Code is varied by –

[10.1] *omitting from Schedule 1 the following entry –*

Ammi spp.

Bishops weed, Khella

[10.2] *inserting in Schedule 1 the following entry –*

Ammi visnaga

Bisnaga, Khella

[11] **Standard 1.5.1** of the Australia New Zealand Food Standards Code is varied by –

[11.1] *inserting in the Table of Provisions –*

3 Exclusive use of novel foods

[11.2] *omitting from the Table to clause 2 the entry for Diacylglycerol oil (DAG-Oil) substituting –*

Diacylglycerol oil (DAG-Oil)	The name 'Diacylglycerol oil' must be used when declaring the ingredient in the ingredient list, as prescribed in Standard 1.2.4.
------------------------------	---

[12] **Standard 1.5.2** of the Australia New Zealand Food Standards Code is varied by *omitting the Editorial Note at the end of clause 7.*

[13] **Standard 1.6.2** of the Australia New Zealand Food Standards Code is varied by –

[13.1] *omitting the Table of Provisions, substituting –*

Table of Provisions

- 1 Reserved
- 2 Reserved
- 3 Processing of egg products
- 4 Eviscerated poultry
- 5 Dried meat
- 6 Crocodile meat
- 7 Game meat
- 8 Fermented comminuted processed meat

[13.2] *omitting the Editorial note at the end of clause 8, substituting –*

Editorial note:

Processed meat in this clause includes processed meat and manufactured meat in accordance with Standard 2.2.1, irrespective of the prescribed names set out in that Standard.

Guidelines for the Safe Manufacture of Smallgoods published by Meat and Livestock Australia, will assist manufacturers and appropriate enforcement agencies to give effect to the provisions in this clause.

[14] **Standard 2.1.1** of the Australia New Zealand Food Standards Code is varied by –

To commence on: 13 September 2009

[14.1] *omitting the definition of bread from clause 1, substituting –*

bread means the product made by baking a yeast – leavened dough prepared from one or more cereal flours or meals and water, but in relation to mandatory fortification of bread, does not include –

- (a) pizza bases;
- (b) breadcrumbs;

- (c) pastries;
- (d) cakes, including but not limited to brioche, panettone and stollen;
- (e) biscuits; or
- (f) crackers.

[14.2] *inserting in the heading to the Note under entry Wheat flour for making bread, after subclause 4(2) –*

Editorial

[15] **Standard 2.5.1** of the Australia New Zealand Food Standards Code is varied by –

[15.1] *omitting from the Table of Provisions, clause 5 and clause 6, substituting –*

5 Tall oil phytosterols and added phytosterol esters

[15.2] *omitting clause 5, Phytosterol esters*

[15.3] *omitting clause 6, Tall oil phytosterols, substituting –*

5 Tall oil phytosterols and added phytosterol esters

Tall oil phytosterols or phytosterol esters may only be added to milk –

- (a) that contains no more than 1.5 g total fat per 100 g; and
- (b) that is supplied in a package, the labelled volume of which is no more than 1 litre; and
- (c) where the total phytosterol ester added is no less than 5.2 g/litre of milk and no more than 6.4 g/litre of milk; and
- (d) where the total tall oil phytosterol added is no less than 3.2 g/litre of milk and no more than 4.0 g/litre of milk.

[16] **Standard 2.6.3** of the Australia New Zealand Food Standards Code is varied by –

[16.1] *omitting the Purpose, substituting –*

Purpose

This Standard regulates the sale and distribution of *Piper methysticum* (kava) in Australia and New Zealand. It also provides for labelling requirements and restrictions on the parts of the *Piper methysticum* (kava) plant which may be sold under food legislation.

In Australia, this Standard should be considered in conjunction with the *Customs (Prohibited Imports) Regulations 1956* and certain State and Territory restrictions on the supply of kava which seek to minimise the detrimental effects associated with kava abuse. Where kava is permitted for supply, the requirements in this Standard complement those restrictions.

[16.2] *omitting the definition of **kava** in clause 1.*

[16.3] *omitting clause 2, substituting –*

2 Prohibition

(1) *Piper methysticum* (kava) or any derived substance must not be sold or present in a food unless it is:

- (a) a beverage obtained by cold water extraction; or
 - (b) the dried or raw form (run on sentence here?)
- of the peeled root and/or peeled rootstock of plants of the species *Piper methysticum*.

(2) Kava must not be used as an ingredient in foods other than those products regulated under the *Dietary Supplements Regulations* (1985) in New Zealand as in force on 1 January 2000.

[17] **Standard 2.6.4** of the Australia New Zealand Food Standards Code is varied by omitting the words Food Standards Code in the Editorial Note at the end of subclause 2(3), substituting –

Australia New Zealand Food Standards Code

[18] **Standard 2.7.4** of the Australia New Zealand Food Standards Code is varied by –

[18.1] omitting clause 3 from the Table of Provisions

[18.2] omitting the definition of **wine product** from clause 1, substituting –

wine product means a food containing no less than 700 mL/L of wine as defined in this Standard, which has been formulated, processed, modified or mixed with other foods such that it is not wine.

[19] **Standard 3.1.1** of the Australia New Zealand Food Standards Code is varied by omitting the following words wherever appearing in the subclause 2(5) –

Food Standards Code

substituting –

Australia New Zealand Food Standards Code

[20] **Standard 3.2.3** of the Australia New Zealand Food Standards Code is varied by –

[20.1] omitting the word Clause wherever appearing in the Editorial Note to subclause 4(1), substituting –

clause

[20.2] omitting the word Clause wherever appearing in the Editorial Note to subclause 13(1), substituting –

clause

[21] **Standard 4.2.3** of the Australia New Zealand Food Standards Code is varied by –

[21.1] inserting in the Table of Provisions, after Division 3 – Production of ready-to-eat meat –

Schedule Method for measuring pH

[21.2] *omitting the heading to the Schedule, substituting –*

Method for measuring pH

[22] **Standard 4.2.4A** of the Australia New Zealand Food Standards Code is varied by *omitting the first paragraph from the Editorial Note after the Table to clause 1, substituting –*

Editorial note:

Legislation or documentation will only be listed in the Table to clause 1 if it incorporates or provides for methods which provide a level of safety protection equivalent to that provided by a process that includes treatment of the milk or milk product in accordance with paragraph 2(1)(a) of Standard 1.6.2 before 5 October 2008 and then with paragraphs 16(a) and (b) of Standard 4.2.4 after 5 October 2008, and has adequate hazard identification and process controls.

Attachment 2

Summary of issues raised in public submissions

Submitter	Issues raised	FSANZ response
Seafarm Pty Ltd Eric Bogio	Supports Option 2 Comments specifically relate to clause 7 of Std 1.3.1.	Noted
Arumpo Bentonite Pty Ltd Alan Reid	Supports Option 2 Comments specifically relate to Specification for Bentonite in the Schedule in Std 1.3.4	Noted
DIC Lifetec Takaaki Onon	Supports Option 2 Comments specifically relate to purpose in Std 1.3.1	Noted
FTA Australia Rob Richards	Supports Option 2 Without further comments	Noted
International Flavours & Fragrances Pty Ltd Antoinena Mayhill	Supports Option 2 Comments are positive and advantageous to the food industry	Noted
New Zealand Juice & Beverage Association John R Robertson	Supports Options 2 Comments specifically relate to schedule 1, fruit & Vegetable juices 14.1.2.1 Std 1.3.1	Noted
Redox Pty Ltd John Hudson	Supports Option 2 Comments specifically relate to Specification for Bentonite in the Schedule in Std 1.3.4	Noted
The Australian Beverages Council Ltd Lucy Pearson	Supports Option 2 Comments specifically relate to schedule 1, fruit & Vegetable juices 14.1.2.1 Std 1.3.1	Noted
NSW Food Authority Bill Porter, Alan Edwards & Craig Sahlin	Supports Option 2 with the exception of the following: Std 1.2.11 Creating lines in Column 1 as well as Column 2. Std 1.3.1 Proposed amendments go beyond Code Maintenance and this has the potential to create enforcement issues. Meaning of a food additive should have a specific definition not in the purpose, but in the Standard. Schedule 1 Liquid milk to which phytosterols or phytosterol esters have been added appears to permit a wide ranges of food additives	FSANZ will give further consideration to this matter, however it is beyond the scope of this Proposal FSANZ has given this issue consideration and decided that it is appropriate to address this amendment with this Proposal.

Submitter	Issues raised	FSANZ response
	Schedule 1 Juices, concentrates & juice products not supported due to extending the number of additive permission Std 1.3.2 Concern over the interpretation of this clause Std 1.5.2 Concern many stakeholders still have copies & may use for interpretation. The view is that the User Guide should be revised and the Editorial Note be retained or amended. Std 2.1.1 Concern this amendment might apply to the mandatory addition of iodised salt to bread, but would not apply to folate or thiamin, as the mandatory fortification with folic acid and thiamin applies instead to flour.	Remove items [5.14] and [5.15] from the draft variation FSANZ notes the concerns relating to the anomalies of the current definition. The formatting change as consulted is therefore retained however the numbering has been simplified to provide for greater comprehension. Noted FSANZ considers that this would be inconsistent with the approach taken for other user guides and therefore FSANZ does not consider this is necessary. The drafting has been revised to reflect that the mandatory requirements relate to the addition of folic acid, thiamin and iodised salt to bread and bread-making flour.
New Zealand Food Safety Authority Jenny Reid	Supports Option 2 with the exception of the following: Std 1.3.1 Suggests restriction on the extent of extraction or selective production. Should also apply to aqueous extracts of foods. Suggests: •foods in dried or concentrated form •aqueous extracts of foods and/or substances derived from foods through physical, enzymatic or mechanical processes (e.g. juicing, cooking); provided that these processes do not result in the selective extraction or selective production of a specific chemicals or compounds that have a food additive technological function in food Std 1.3.1 clause 7 Supports the change, but suggests in bold and underlined, <u>unless specifically permitted in the Code.</u>	Noted Remove items [5.1] from the draft variation It does make sense to provide a definition, however, it is beyond the scope of this Proposal. FSANZ considers that this amendment ensures that legitimate additives in raw materials may be present in a processed food. This approach also aligns the Standard with the international Standard (Codex

Submitter	Issues raised	FSANZ response
	Also suggests Colours permitted singularly or in combination to a total maximum level of 290 mg/kg in processed foods and to a total maximum level of 70 mg/L in beverages other than beverages Std 1.3.2 Agrees with the changes, however suggested amendments shown in bold and underlined, i.e. the addition of the word 'either' after (a), and deletion of the punctuation mark at the end of (b)(ii). Std 1.3.3 Comments that this amendment only refers to the <i>insertion</i> of the above definition. It also needs to state that the existing definition needs to be <i>omitted</i>. NZFSA also considers that the entries for calcium aluminium silicate, calcium silicate, and magnesium silicate and sodium aluminosilicate should remain in the above amended definition, as users of the Code may not realise that there is a further permission in standard 1.3.1, schedule 2 Std 1.4.1 Welcomes this amendment, however suggest that the last entry should read 'Tutin in comb honey', rather than 'Tutin in honey comb' Std 2.1.1 . Welcomes this proposed amendment, however it should be noted that the spelling is 'stollen' and not 'stolen'. Std 2.6.3 Agrees with the modified purpose statement, and agree with removing the reference to the New Zealand Dietary Supplements Regulations The prohibition in existing Standard 2.6.3 currently provides that 'Kava must not be used as an ingredient in foods. This is a change in policy as it was previously not allowed.	Amend item [5.18] of the draft variation accordingly FSANZ notes the concerns relating to the anomalies of the current definition. The formatting change as consulted is therefore retained, however the numbering has been simplified to provide for greater comprehension. FSANZ has considered this amendment should proceed as originally proposed. Retaining these entries would represent duplication which has the potential to cause confusion regarding status in the Code. Amend item [9.4] of the draft variation accordingly. Noted and amended. Amend item [16.3] of the draft variation accordingly

Submitter	Issues raised	FSANZ response
	The words 'other than those products regulated under the <i>Dietary Supplements Regulations</i> (1985) in New Zealand are not relevant and do not have any effect. Words should be deleted from the revised Standard 2.6.3.	
George Weston Foods Ltd Fiona Fleming	Supports Option 2 with the exception of the following: Std 2.1.1 Believes that change to the definition for bread is not consistent with wording in other parts of the Code or industry User Guide. They also have concerned that: • the wording of the definition may cause confusion for some people. • FSANZ have not discussed change to the definition of bread with industry. • has issues with one round of public comments. • impacts more than one section of the Code & should have been submitted as a separate document for comment.	The drafting has been revised to be more consistent with wording in the Code to lessen the potential for confusion. The User Guides will also be revised to reflect this change. P1008 is being progressed under a General Procedure, involving one round of public comment, which is the default procedure for all proposed changes to the Code. As this matter was raised following completion of work on the mandatory fortification Proposals, using a Code Maintenance Proposal provides an efficient and appropriate mechanism to address this matter.
Food Legal Joe Lederman	Supports Option 2 with the exception of the following: Std 1.3.1 Believes that the amendments to clause 1 ought to introduce a definition of 'food additive'. Believes also that there seems to be no reason to include the definition in the Purpose as this could lead to further confusion	It does make sense to provide a definition, however it is beyond the scope of this Proposal. Noted Remove items [5.1] from the draft variation
Australia Food & Grocery Council Kim Leighton	Supports Option 2 with the exception of the following: Is concerned that some of the items are more than a simple item of minor significance and the drafting also suggests more than a simple change. In particular, amendments to Std 1.3.1 to clarify the scope of the standard and how food additives should be considered. The amendment to the definition of bread is more than a minor change and has the potential for significant impact.	FSANZ will give further consideration to this matter, however it is beyond the scope of this Proposal P1008 is being progressed under a General Procedure, involving one round of public comment, which is the default procedure for all proposed changes to the Code.

Submitter	Issues raised	FSANZ response
	The concern is with ‘hiding’ these two amendments within a consultation paper on Code Maintenance is that some stakeholders may not pay close attention to the issues These two issues should be dealt with through either an alternative to using Code Maintenance; or an alternative to amending the Standard. Std 1.3.1 Supports the suggestion by FSANZ that there is a need for clarification to the purpose and explaining what is not intended to be covered as a food additive. Agrees that the purpose section seeks to provide context to the Standard and some ambiguity exists concerning the use of extracts derived from foods that may be considered to be an ingredient. Also notes that ingredients perform a technological function, in food. However, these are not considered to be food additives since they are not foods or ingredients in their own right. Suggests three alternative approaches for consideration of this issue, which are listed in there submission Clause 7 Std 1.3.1 Does not consider it is necessary to specify ‘raw material’ in the context of this clause, suggest that an editorial note or the amendment of Clause 1 of Std 1.2.4 to ensure that the meaning of the term ‘ingredient’ is clearer. They are also concerned that amendment may result in further misunderstanding, rather than providing clarification. Section 14.1.2.1 & 14.1.2 Sch 1 Std 1.3.1 Does not opposed the amendments, however questions whether this should be considered under Code Maintenance and whether due consideration has been given to introducing additives previously not permitted to be used in juice and reconstituted juice.	Noted Remove items [5.1] from the draft variation FSANZ considers that this amendment ensures that legitimate additives in raw materials may be present in a processed food. This approach also aligns the Standard with the international Standard (Codex). Remove items [5.14] and [5.15] from the draft variation

Submitter	Issues raised	FSANZ response
	Std 2.1.1 Is concerned that the amendment has the potential to create confusion for industry and enforcement agencies.	The drafting has been revised to be more consistent with wording in the Code to lessen the potential for confusion. The User Guides will also be revised to reflect this change.