

9-04

15 December 2004

INITIAL ASSESSMENT REPORT

PROPOSAL P272

LABELLING REQUIREMENTS FOR FOOD FOR CATERING PURPOSES & RETAIL SALE

DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 23 February 2005
SUBMISSIONS RECEIVED AFTER THIS DEADLINE
WILL NOT BE CONSIDERED

(See 'Invitation for Public Submissions' for details)

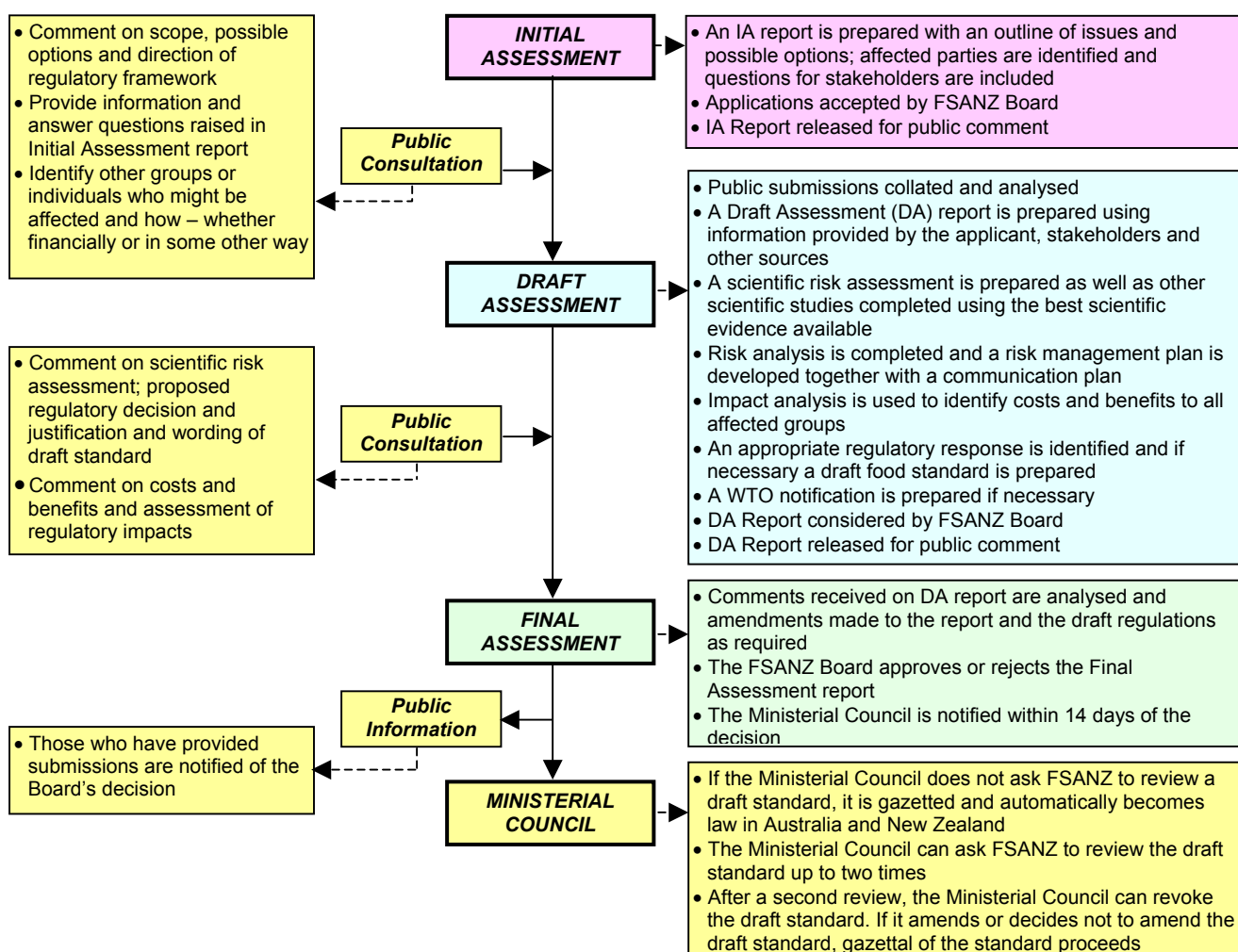
FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

FSANZ's role is to protect the health and safety of people in Australia and New Zealand through the maintenance of a safe food supply. FSANZ is a partnership between ten Governments: the Commonwealth; Australian States and Territories; and New Zealand. It is a statutory authority under Commonwealth law and is an independent, expert body.

FSANZ is responsible for developing, varying and reviewing standards and for developing codes of conduct with industry for food available in Australia and New Zealand covering labelling, composition and contaminants. In Australia, FSANZ also develops food standards for food safety, maximum residue limits, primary production and processing and a range of other functions including the coordination of national food surveillance and recall systems, conducting research and assessing policies about imported food.

The FSANZ Board approves new standards or variations to food standards in accordance with policy guidelines set by the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) made up of Commonwealth, State and Territory and New Zealand Health Ministers as lead Ministers, with representation from other portfolios. Approved standards are then notified to the Ministerial Council. The Ministerial Council may then request that FSANZ review a proposed or existing standard. If the Ministerial Council does not request that FSANZ review the draft standard, or amends a draft standard, the standard is adopted by reference under the food laws of the Commonwealth, States, Territories and New Zealand. The Ministerial Council can, independently of a notification from FSANZ, request that FSANZ review a standard.

The process for amending the *Australia New Zealand Food Standards Code* is prescribed in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The diagram below represents the different stages in the process including when periods of public consultation occur. This process varies for matters that are urgent or minor in significance or complexity.



INVITATION FOR PUBLIC SUBMISSIONS

FSANZ has prepared an Initial Assessment Report of Proposal P272, which includes the identification and discussion of the key issues.

FSANZ invites public comment on this Initial Assessment Report for the purpose of preparing an amendment to the *Australia New Zealand Food Standards Code* for approval by the FSANZ Board.

Written submissions are invited from interested individuals and organisations to assist FSANZ in preparing the Draft Assessment for this application/proposal. Submissions should, where possible, address the objectives of FSANZ as set out in section 10 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). Information providing details of potential costs and benefits of the proposed change to the *Australia New Zealand Food Standards Code* from stakeholders is highly desirable. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc. Technical information should be in sufficient detail to allow independent scientific assessment.

The processes of FSANZ are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of FSANZ and made available for inspection. If you wish any information contained in a submission to remain confidential to FSANZ, you should clearly identify the sensitive information and provide justification for treating it as commercial-in-confidence. Section 39 of the FSANZ Act requires FSANZ to treat in-confidence, trade secrets relating to food and any other information relating to food, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure.

Submissions must be made in writing and should clearly be marked with the word 'Submission' and quote the correct project number and name. Submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2222
www.foodstandards.gov.au

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942
www.foodstandards.govt.nz

Submissions need to be received by FSANZ **by 6pm (Canberra time) 23 February 2005.**

Submissions received after this date will not be considered, unless agreement for an extension has been given prior to this closing date. Agreement to an extension of time will only be given if extraordinary circumstances warrant an extension to the submission period. Any agreed extension will be notified on the FSANZ Website and will apply to all submitters.

While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website using the Standards Development tab and then through Documents for Public Comment.

Questions relating to making submissions or the application process can be directed to the Standards Management Officer at the above address or by emailing slo@foodstandards.gov.au.

Assessment reports are available for viewing and downloading from the FSANZ website or alternatively paper copies of reports can be requested from FSANZ's Information Officer at either of the above addresses or by emailing info@foodstandards.gov.au including other general enquiries and requests for information.

CONTENTS

| | |
|--|-----------|
| EXECUTIVE SUMMARY | 7 |
| 1. INTRODUCTION..... | 9 |
| 2. REGULATORY PROBLEM..... | 9 |
| 2.1 FOOD FOR RETAIL SALE AND FOOD FOR CATERING PURPOSES | 10 |
| 2.2 CURRENT REQUIREMENTS IN CLAUSE 2 IN STANDARD 1.2.1 | 10 |
| 2.3 APPLICATION OF CLAUSE 2 IN STANDARD 1.2.1 | 11 |
| 3. OBJECTIVE | 12 |
| 4. BACKGROUND | 12 |
| 4.1 DEVELOPMENT OF STANDARD 1.2.1 | 12 |
| 4.2 WORKPLAN CLASSIFICATION | 13 |
| 5. RELEVANT ISSUES | 13 |
| 5.1 LABELLING | 13 |
| 6. REGULATORY OPTIONS..... | 14 |
| 7. IMPACT ANALYSIS | 14 |
| 8. CONSULTATION | 15 |
| 8.1 EXTERNAL ADVISORY GROUPS..... | 15 |
| 8.2 INVITATION FOR PUBLIC SUBMISSIONS | 15 |
| 9. WORLD TRADE ORGANIZATION (WTO) | 16 |
| 10. CONCLUSION AND RECOMMENDATION | 16 |
| ATTACHMENT 1 - FOOD FOR RETAIL SALE | 18 |
| 1. BACKGROUND..... | 18 |
| 2. APPLICATION OF CLAUSE 2 | 18 |
| 3. CONCLUSION AND RECOMMENDATION..... | 39 |
| ATTACHMENT 2 - FOOD FOR CATERING PURPOSES..... | 40 |
| 1. BACKGROUND..... | 40 |
| 2. APPLICATION OF CLAUSE 2 | 40 |
| 3. CONCLUSION AND RECOMMENDATION | 52 |
| ATTACHMENT 3 - PACKAGED MEALS PROVIDED BY DELIVERED MEALS ORGANISATIONS (DMOS)..... | 53 |
| 1. BACKGROUND..... | 53 |
| 2. REGULATORY PROBLEM | 55 |
| 3. RELEVANT ISSUES..... | 56 |
| 4. REGULATORY OPTIONS..... | 60 |
| 5. IMPACT ANALYSIS | 61 |
| 6. CONCLUSION AND RECOMMENDATION | 69 |
| 7. REFERENCES | 69 |

| | |
|---|-----------|
| ATTACHMENT 4 - LABELLING OF MEALS PROVIDED IN HOSPITALS AND SIMILAR INSTITUTIONS | 70 |
| 1. BACKGROUND..... | 70 |
| 2. REGULATORY PROBLEM | 72 |
| 3. RELEVANT ISSUES..... | 72 |
| 4. REGULATORY OPTIONS..... | 75 |
| 5. IMPACT ANALYSIS | 76 |
| 6. CONCLUSION AND RECOMMENDATION | 82 |
| ATTACHMENT 5 - STANDARD 1.2.1..... | 84 |
| ATTACHMENT 6 - INTERNATIONAL REGULATIONS | 87 |
| ATTACHMENT 7 - IMPLEMENTATION AND ENFORCEMENT ADVISORY GROUP | 92 |

Executive Summary

The purpose of Proposal P272 is to review and amend where appropriate, certain labelling requirements in clause 2 in Standard 1.2.1 of the *Australia New Zealand Food Standards Code* (the Code). During the transition to the Code, Food Standards Australia New Zealand (FSANZ) has been made aware of a number of issues related to the interpretation and application of certain labelling requirements as they apply to food for retail sale and food for catering purposes. Some of these issues are relatively minor in nature. However, many are significantly more complex and have arisen either as a consequence of the structure of clause 2 in Standard 1.2.1 or because of unintended gaps in the application of the labelling requirements.

The issues considered in this Proposal in relation to clause 2 in Standard 1.2.1, which are discussed in more detail in separate Attachments to this report, fall into four broad categories:

- the labelling of **food for retail sale** including the limitations of the term ‘food for retail sale’ within the context of clause 2; the application of the exemptions in subclause 2(1); and the information requirements in subclause 2(2) which apply when food for retail sale is exempt from labelling (Attachment 1);
- the labelling of **food for catering purposes** including the current definition in clause 1; the requirement for food for catering purposes to bear a label containing the information prescribed in the Code; the appropriateness of the exemptions in subclause 2(1); and the appropriateness of the information requirements in subclause 2(2) (Attachment 2);
- the labelling requirements for **packaged meals provided by delivered meals organisations (DMOs)** (Attachment 3); and
- the labelling requirements for **meals provided in hospitals and similar institutions** (Attachment 4).

These latter two issues, although technically falling within the scope of a review of requirements for food for retail sale, are generally unique to that industry sector and as such are considered separately in this Proposal. FSANZ has been approached on a number of occasions by DMOs seeking clarification of their labelling obligations in respect of Standard 1.2.1 and for this reason FSANZ considers it necessary to keep these two matters separate to facilitate feedback on the regulatory problem and the possible options.

The primary objective of the review is to remove identified barriers to the efficient operation of clause 2 while at the same time maintaining a high level of public health and safety protection and without compromising the ability of consumers to make informed choices. A secondary objective is to provide greater certainty to industry, government and consumers regarding the labelling requirements in clause 2 in Standard 1.2.1. In this review it is FSANZ’s intention to address issues of interpretation and application and not to re-open matters of broad regulatory policy considered during the development of the Standard.

The Initial Assessment Report raises a number of questions in relation to the various regulatory options outlined in separate Attachments to the report. FSANZ encourages your feedback on these questions and the related regulatory options.

Generally, the options are to either:

1. Maintain the status quo and retain the current requirements in clause 2 in Standard 1.2.1; or
2. Amend the requirements to provide greater certainty for the manufacturers and suppliers of food for retail sale and food for catering purposes and to better reflect the circumstances in which these foods are provided.

In relation to the labelling of packaged, delivered meals provided by DMOs (Attachment 3) and the labelling of meals provided in hospitals and similar institutions (Attachment 4) there are several possible regulatory options, each of which are considered in more detail in each of the relevant Attachments to the report.

The progress and direction of Proposal P272 will be guided by information received through the consultation process, where advice will be sought from External Advisory Groups (including the already established Implementation and Enforcement Advisory Group (IEAG)) and through targeted and standard public consultation mechanisms. Public submissions are now invited in response to the matters raised in this Initial Assessment Report.

1. Introduction

Proposal P272 has been prepared by FSANZ to address a number of issues arising from the implementation of certain labelling requirements for food for retail sale and food for catering purposes in the Code. During the transition to the Code, the interpretation and application of certain aspects of clause 2 of Standard 1.2.1 – Application of labelling and other information requirements, were identified by industry and enforcement officers as problematic.

There are several issues identified in this Proposal requiring further consideration and possible amendment in relation to clause 2 in Standard 1.2.1. These issues, considered in detail in separate Attachments to this Proposal, fall into four broad categories:

- the labelling of **food for retail sale** including the limitations of the term ‘food for retail sale’ within the context of clause 2; the application of the exemptions in subclause 2(1); and the information requirements in subclause 2(2) which apply when food for retail sale is exempt from labelling (Attachment 1);
- the labelling of **food for catering purposes** including the current definition in clause 1; the requirement for food for catering purposes to bear a label containing the information prescribed in the Code; the appropriateness of the exemptions in subclause 2(1); and the appropriateness of the information requirements in subclause 2(2) (Attachment 2);
- the labelling requirements for **packaged meals provided by delivered meals organisations (DMOs)** (Attachment 3); and
- the labelling requirements for **meals provided in hospitals and similar institutions** (Attachment 4).

Although these latter two issues technically fall within the scope of a review of the labelling requirements for food for retail sale, the matters raised in relation to these two issues are generally unique to that industry sector and as such are considered separately in this Proposal.

In preparing this Proposal, it is FSANZ’s intention to address issues of interpretation and application and not to re-open matters of broad regulatory policy considered during the development of the Standard.

2. Regulatory Problem

Standard 1.2.1 was developed as part of a general review of the former Australian *Food Standards Code* to provide a common food standards system for Australia and New Zealand. As with other reviews of this kind, a number of issues have emerged during the implementation of the Code, which were not foreseen during the development of the Standard. In particular, placing food for retail sale and food for catering purposes together in clause 2 in Standard 1.2.1 has resulted in a number of unintended difficulties in the application of the current requirements.

2.1 Food for retail sale and food for catering purposes

Food for retail sale means a food that is sold to the public and therefore would be considered to be an end product. Food for catering purposes however, refers to *foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption*. At this point, the food is likely to be subject to further processing before being made available for retail sale. An example of food for catering purposes is pasta that is sold to a restaurant to be used in the preparation of a meal. However, when the meal is sold to the consumer it is considered to be food for retail sale.

2.2 Current requirements in clause 2 in Standard 1.2.1

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

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

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

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

Where food for retail sale or food for catering purposes is exempt from labelling there are certain information requirements set out in subclause 2(2) in Standard 1.2.1, which retailers and suppliers of food must comply with. Although there are some exceptions, generally the required information can either be displayed on or in connection with the display of the food or provided to the purchaser on request.

A copy of Standard 1.2.1 is provided at Attachment 5.

2.3 Application of clause 2 in Standard 1.2.1

For the purposes of labelling, no distinction is made between food for retail sale and foods for catering purposes and due to the difference in where these foods sit in the food transaction chain, difficulties have arisen in the operation of clause 2 particularly in relation to the application of the current exemptions. For example, when the exemption in paragraph 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser*, is applied to food for retail sale, the ‘purchaser’ is clearly the ultimate consumer. However, when the exemption is applied in the context of food for catering purposes, the ‘purchaser’ of the food is potentially the caterer rather than the ultimate consumer. Consequently, as a result of food for retail sale and food for catering purposes being considered in the same clause, the scope of the current exemptions, particularly as they apply to food for catering purposes are potentially much broader than originally intended.

Further, some specific difficulties have arisen as a consequence of the broad definition of ‘package’ in Standard 1.1.1 and its interaction with the requirements in clause 2 in Standard 1.2.1, including the requirement for a package of food to ‘bear’ a label. This is particularly an issue for the labelling of food for catering purposes but also has implications for the retail sale of food from vending machines.

Finally some matters, such as the labelling requirements for packaged meals provided by DMOs and the labelling of meals provided in hospitals and similar institutions were not specifically considered during the development of Standard 1.2.1. As a consequence, the current exemptions in clause 2 in Standard 1.2.1 do not apply in all of the circumstances in which these meals are currently being provided. As a result, DMOs, hospitals and similar institutions are uncertain about their obligations in respect of labelling and there is a need to review and standardise these requirements for consistency in interpretation and application.

As previously indicated, the specific regulatory problems related to the application of clause 2 in Standard 1.2.1, fall into four broad categories.

- the labelling of food for retail sale;
- the labelling of food for catering purposes;
- the labelling of packaged, delivered meals provided by DMOs; and
- the labelling of meals provided in hospitals and similar institutions.

In general terms, this Proposal intends to clarify the labelling requirements in clause 2 in Standard 1.2.1 to:

- reduce uncertainty;
- facilitate consistency in interpretation and application of labelling; and
- increase compliance.

However, the specific regulatory problems and the associated regulatory options are discussed in more detail in each of the separate Attachments to this Proposal.

3. Objective

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives, which are set out in section 10 of the FSANZ Act. These are:

- the protection of public health and safety;
- 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; and
- any written policy guidelines formulated by the Ministerial Council.

The specific objectives for this Proposal are to:

- remove barriers to the efficient operation of Standard 1.2.1 in relation to food for retail sale and food for catering purposes while at the same time maintaining a high level of public health and safety protection;
- ensure that changes in the structure and scope of Standard 1.2.1 in relation to food for retail sale and food for catering purposes do not adversely affect the ability of consumers to make informed choices; and
- provide greater certainty to industry, government and consumers regarding the labelling requirements in clause 2 in Standard 1.2.1.

4. Background

4.1 Development of Standard 1.2.1

There were several Proposals, which resulted in the development of Standard 1.2.1 in the Code. These proposals included:

- Proposal P147 – The review of food not for retail sale;
- Proposal P161 – The review of specific labelling statements; and
- Proposal P175 – Information required for unpackaged food sold by retail.

There were also several other Proposals related to labelling that informed the current requirements in Standard 1.2.1. In essence, Standard 1.2.1 resulted from the consolidation of a number of recommendations from a number of different proposals during the food standards review.

4.2 Work Plan Classification

FSANZ recognised the need for this Proposal in November 2002 when it was placed on the Food Standards Development Work Plan. At that time, the Proposal was provisionally rated as complexity Category 3 (in accordance with the categories of complexity applying prior to 26 August 2004) and placed in Group 2 of the Work Plan. This Initial Assessment indicates that as a consequence of the issues considered in this Report that the complexity category be considered a Category 4 in accordance with those described in the new scheme post 26 August 2004. Further details about the Work Plan and associated classification systems are given in *Information for Applicants* at www.foodstandards.gov.au.

5. Relevant Issues

5.1 Labelling

5.1.1 *The purpose of labelling*

Generally, the information prescribed to be included on a label will address one or more of the following:

- a demonstrated risk to public health and safety; and/or
- a need to ensure the adequacy of information to facilitate informed choice; and/or
- the potential for misleading or deceptive conduct.

5.1.2 *Public health and safety*

The following pieces of prescribed information are generally regarded as necessary to clearly identify a food and to facilitate a food recall should one be required -

- the name of the food;
- lot identification; and
- supplier details.

In certain circumstances, lot identification requirements may be met by the provision of supplier details and date marking information. In this context, these pieces of information can be considered to meet a public health and safety objective.

The following pieces of prescribed information are generally considered necessary to address an identified public health and safety risk -

- the mandatory warning and advisory statements and declarations in Standard 1.2.3;
- date marking information in accordance with Standard 1.2.5; and
- directions for use and storage where required by Standard 1.2.6.

The remaining prescribed information will either meet a consumer information need or will address the potential for misleading or deceptive conduct.

6. Regulatory Options

In this Proposal, the specific regulatory options relevant to the matters being considered in this report are discussed in more detail in a number of separate attachments.

Generally, the options related to the labelling of food for retail sale (Attachment 1) and food for catering purposes (Attachment 2) are to either:

1. Maintain the status quo and retain the current requirements in clause 2 in Standard 1.2.1; or
2. Amend the requirements to provide greater certainty for the manufacturers and suppliers of food for retail sale and food for catering purposes and to better reflect the circumstances in which these foods are provided.

In relation to the labelling of packaged, delivered meals provided by DMOs (Attachment 3) and the labelling of meals provided in hospitals and similar institutions (Attachment 4) there are several possible regulatory options, each of which are considered in more detail in the relevant attachments to the report.

7. Impact Analysis

FSANZ is required in the course of developing or reviewing any food regulatory measure to consider the impact of various options, including non-regulatory options, on all sectors of the community including consumers, the food industry and governments in Australia and New Zealand. The regulatory impact assessment for this Proposal will identify and evaluate, though not be limited to, the advantages and disadvantages of proposed amendments to clause 2 in Standard 1.2.1, in terms of their health, economic and social impacts.

Parties affected by Proposal P272 include:

- users of food including caterers and those in the food service sector; consumers and the recipients of meals provided by DMOs and patients or residents in hospitals and similar institutions;
- industry including suppliers of food for catering purposes; the food service sector; importers; and distributors, wholesalers, manufacturers and retailers of food; and
- government agencies who regulate the food industry in Australia and New Zealand including those with enforcement responsibilities.

It is not intended that any changes to labelling resulting from the recommendations in this Proposal will result in suppliers and manufacturers incurring significantly increased labelling costs. In most cases, the proposed changes are intended to provide greater flexibility and cost savings, particularly to the manufacturers and suppliers of food for catering purposes. However, there is the potential for some cost increases either as a result of addressing some gaps in the current requirements or by clarifying the intent of some provisions in Standard 1.2.1, particularly where industry are currently interpreting the requirements differently. Any changes resulting from this Proposal should reduce uncertainty for industry and for consumers, resulting in increased compliance with the Code and greater confidence in the food regulatory system in Australia and New Zealand.

8. Consultation

FSANZ is committed to actively engaging stakeholders in the review and development of food standards. To achieve this, the following consultation processes have been or will be undertaken.

8.1 External Advisory Groups

Prior to Initial Assessment, FSANZ formed an Implementation and Enforcement Advisory Group (IEAG) to provide advice from an enforcement perspective on the issues included in this Proposal. The IEAG has representation from the Health Departments in New South Wales, Queensland and Western Australia; the New Zealand Food Safety Authority (NZFSA) and from the Australian Quarantine and Inspection Service (AQIS). The terms of reference and membership of this group are included in Attachment 7 to this Report. To date, the IEAG has met on three occasions, twice by teleconference and once at a face-to-face meeting in October 2003.

The issues raised in this Proposal have been brought to our attention as a consequence of a large number of telephone and written enquiries from stakeholders during the transition to the Code. Predominantly these enquiries have come from industry. Therefore, during the first stage of public consultation, FSANZ intends to form another external advisory group with representation from Australian and New Zealand industry and consumers to provide advice on the regulatory options outlined in this Proposal.

8.2 Invitation for Public Submissions

This Proposal has raised a number of questions in relation to the regulatory options for the labelling of food for retail sale (Attachment 1); food for catering purposes (Attachment 2); packaged, delivered meals provided by DMOs (Attachment 3) and meals provided in hospitals and similar institutions (Attachment 4). These are intended to guide comment but should by no means be seen to pre-empt or restrict any views.

Submitters' comments will be taken into account in the development of any regulatory measure arising from this review. Please note that comments on relevant issues not identified in this paper are also welcome. Comments that would be useful could include:

- evidence that would assist in assessing the costs and benefits of the proposed regulatory options outlined in the Attachments to this Report;
- parties that might be affected (either negatively or positively) by the proposed regulatory options;
- the potential impact to consumers, industry and government of the proposed or any alternative regulatory options.

This Initial Assessment Report will be made available for public access via the FSANZ website. In addition, a copy of this Report will be sent to key stakeholders. All stakeholders that make a submission in relation to this Proposal will be included on the mailing list to receive further FSANZ documents in relation to the Proposal.

Other interested parties, as they come to the attention of FSANZ, will also be added to the mailing list for public consultation.

In recognition of the level of stakeholder interest likely to be generated by this review, FSANZ intends to allow a ten-week public consultation period on the Initial Assessment Report.

9. World Trade Organization (WTO)

Australia and New Zealand are members of the World Trade Organization (WTO) and are bound as parties to WTO agreements. In Australia, an agreement developed by Coalition of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory.

Under the Treaty between the Governments of Australia and New Zealand on joint Food Standards, FSANZ is required to ensure that food standards are consistent with the obligations of both countries as members of the 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.

In relation to this Proposal there are several relevant international standards and amending the Code to remove identified barriers to the efficient operation of Standard 1.2.1 in relation to the labelling of food for retail sale and food for catering purposes may have a significant effect on international trade due to changes in the manner in which food may be required to be labelled. This issue will be fully considered at Draft Assessment and, if necessary, notification will be recommended to the agencies responsible in accordance with Australia's and New Zealand's obligations under the WTO Technical Barrier to Trade (TBT) or Sanitary and Phytosanitary Measure (SPS) Agreements. This will enable other WTO member countries to comment on proposed changes to standards where they may have a significant impact on them.

10. Conclusion and Recommendation

This Proposal discusses a range of issues related to the labelling of food for retail sale; the labelling of food for catering purposes; the labelling of packaged meals provided by DMOs; and the labelling of meals provided in hospitals, nursing homes and similar institutions. FSANZ seeks comment from consumers, industry and government on the number of regulatory options considered in this Proposal in relation to each of these matters.

Submissions to this Initial Assessment will be used to further develop Proposal P272 in relation to the preparation of draft regulatory measures, which will be circulated for a second round of public comment in the Draft Assessment Report.

ATTACHMENTS

1. Issues related to the labelling of food for retail sale.
2. Issues related to the labelling of food for catering purposes.
3. Issues related to the labelling of packaged, delivered meals provided by delivered meals organisations (DMOs).
4. Issues related to the labelling of meals provided in hospitals and similar institutions.
5. Standard 1.2.1 – Application of labelling and other information requirements.
6. International regulations for the labelling of packaged food.
7. Membership of the Implementation and Enforcement Advisory Group and their terms of reference.

Food for retail sale

1. Background

Retail sale is defined in Standard 1.2.1 as *sale to the public*. In addition, the definition of ‘sale’ under food legislation is very broad. Therefore where food is sold to the public at a supermarket or in a restaurant setting and even where food is served at a hospital or served on an aeroplane flight, it is considered to be food for retail sale.

Food for retail sale, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code. The intention of the requirement is to ensure that consumers have accurate information about the nature and composition of the food to make an informed choice.

2. Application of Clause 2

Clause 2 of Standard 1.2.1 was drafted with food for retail sale in mind. However, since the Code came into effect, FSANZ has been made aware of a number of problems associated with the application of the clause 2 requirements. In relation to food for retail sale there are several issues, which have been identified as requiring further consideration and possible amendment. These include the appropriateness of:

- the use of the term ‘food for retail sale’;
- the exemptions in subclause 2(1) which apply to food for retail sale;
- the information requirements in subclause 2(2) which apply to food for retail sale when exempt from labelling;
- the labelling requirements for packaged meals provided by delivered meal organisations (DMOs); and
- the labelling requirements for foods served in hospital and similar institutions.

The appropriateness of the labelling requirements for packaged meals provided by DMOs is considered at Attachment 3 and the appropriateness of the labelling requirements for foods served in hospitals and similar institutions is considered at Attachment 4.

2.1 Food for retail sale

2.1.1 *Current requirements*

As clause 2 of Standard 1.2.1 is currently worded, the application of the term ‘food for retail sale’ applies to food at the point of retail sale, rather than at the point where the food is manufactured and packed for retail sale. This means that the onus is on the retailer to ensure that the products sold at the retail level are correctly labelled. Generally, manufacturers will fully label packaged food where the food will ultimately be sold to the public in that form. However, where this does not occur a provision exists in clause 4 of Standard 1.2.1, which allows the retailer to request information to enable the retailer to comply with the compositional requirements and labelling or other declaration requirements of the Code.

2.1.2 Application A496

An Application has been received from NSW Health to amend all Standard 1.2.1 references to 'food for retail sale' to 'food for retail sale and food intended for retail sale'. Work on this Application A496 – Labelling of food intended for retail sale, is not due to commence until the second quarter of 2004. As the labelling requirements for 'food for retail sale' are currently being considered as part of this Proposal, FSANZ considers it appropriate to address the issues raised by A496 as part of this process.

Before Standard 1.2.1 came into effect, manufacturers of retail products carried the onus of responsibility for ensuring that products packed for retail sale were compliant at the point of retail sale. A496 proposes that the Code should place the responsibility on the manufacturer to fully label foods intended for retail sale rather than it being the responsibility of the retailer to ensure labelling is compliant with the Code.

NSW Health considers that large retail chains may have the commercial influence to ensure that suppliers fully and correctly label their product. However, they consider that small business generally do not. Additionally, NSW Health considers that it is not practical to administer and enforce labelling requirements at the retailer level. If at retail sale, a product is missing mandatory labelling information, NSW Health considers that enforcement authorities cannot take action against the manufacturer. Action can only be taken against the retailer and might include a written or verbal warning, seizure and recall or ultimately, prosecution.

NSW Health also considers that small retail businesses are compromised by the current system. NSW Health is of the view that unlike major retailers, small retail businesses do not have the commercial influence to reject insufficiently labelled goods. Although small businesses can request that necessary labelling information accompany the food under clause 4 of Standard 1.2.1, this information does not have to be in the form of a label, and NSW Health believes that small businesses do not have the capacity to convert this information into labels.

2.1.3 Options

There are at least two possible options regarding this issue:

1. Maintain the status quo and retain the current reference to 'food for retail sale' in Standard 1.2.1.
2. Review the references to 'food for retail sale' to ensure that manufacturers bear the responsibility for labelling food manufactured, packaged and intended for retail sale.

FSANZ considers that NSW Health's proposal to amend all references in Standard 1.2.1 from 'food for retail sale' to 'food for retail sale and food intended for retail sale' may create confusion. Currently, there is a clear line drawn between 'food for catering purposes' and 'food for retail sale'.

'Food for catering purpose' is defined in Standard 1.2.1 as *foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption*. This definition is currently under review and is discussed in Attachment 2. Although the definition is under review, the intent will remain the same.

‘Retail sale’ is also defined in Standard 1.2.1 as *sale to the public*. Consequently, food sold at a supermarket or at a restaurant is considered ‘food for retail sale’. If the NSW Health Application is accepted and the Standard amended accordingly, there will no longer be a clear line drawn between ‘food for catering purposes’ and ‘food for retail sale’, as ‘food for catering purpose’ is ultimately intended for retail sale. Consequently, if ‘food for catering purposes’ and ‘food for retail sale and food intended for retail sale’ are separated into separate clauses, ‘food for catering purposes’ could fall under either clause, yet different labelling requirements will most likely apply. While, the proposed amendment may result in some confusion, FSANZ considers that there may be an alternative approach to ensuring that manufacturers bear the responsibility for labelling food manufactured, packaged and intended for retail sale.

Key Questions:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on the suggestion by NSW Health to amend Clause 2 of Standard 1.2.1 so that the onus of responsibility for ensuring products are compliant is placed on the manufacturer.

FSANZ also seeks advice on the costs and benefits of Option 2 for enforcement agencies, manufacturers and retailers.

2.1 Current exemptions for food for retail sale

2.2.1 Current requirements

Subclause 2(1) in Standard 1.2.1 contains a number of exemptions from labelling for food for catering purposes and food for retail sale. The specific exemptions are where:

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

During the development of Standard 1.2.1, it was considered that where a consumer could inspect the food prior to purchase and could seek accurate information regarding the food directly from the persons responsible for making the food, it was not necessary to require information to be provided on a label. As food for retail sale is an end product and clause 2 was originally drafted with foods for retail sale in mind it is considered that all the exemptions in subclause 2(1) be retained. However, there has been some confusion around the interpretation of paragraph 2(1)(b). Additionally FSANZ is aware that there are circumstances where other exemptions or a clarification of current exemptions may be necessary.

2.2.2 *Options*

There are at least two possible options regarding this issue:

1. Maintain the status quo and retain the current exemptions in subclause 2(1) in Standard 1.2.1; or
2. Review the exemptions in subclause 2(1) as they relate to food for retail sale.

2.2.3 *Preferred option*

FSANZ considers that Option 2 is the preferred approach. While it is considered that the current exemptions in subclause 2(1) are relevant to food for retail sale and exemption subclauses 2(1)(a)-2(1)(g) should be retained, Option 2 provides an opportunity to examine situations that are not fully captured by the current exemptions and to clarify problematic exemption subclauses. FSANZ questions whether clarification of the exemption paragraph 2(1)(b) is required and considers that there are circumstances where other exemptions may be necessary. These circumstances include:

- where the food is bite sized confectionery;
- the food is sold or given away for charitable purposes;
- the food is sold in vending machines or sold via other means where the food cannot be examined prior to purchase;
- the food is packaged within a hamper;
- the food is packaged but not made on the premises from which it is sold; and
- where the food is milk sold in glass bottles.

Key Questions:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers regarding the costs and benefits in retaining the current exemptions and developing further exemptions.

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on whether there are any additional situations other than those listed where the labelling requirements are particularly problematic.

2.2.3.1 Paragraph 2(1)(b)

Current requirements

Paragraph 2(1)(b) provides food for retail sale with an exemption from bearing a label setting out all the information prescribed in the Code where *the food is in inner packages not designed for sale without an outer package, other than individual portion packs with a surface area of no less than 30 cm², which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3.*

This means that where an inner package is not designed for sale without an outer package, it is exempt from labelling. In the case of individual portion packs that are not designed for sale without an outer package, the individual portion packs are still required to be allergen labelled in accordance with clause 4 of Standard 1.2.3 where the individual portion packs are 30 cm² or greater. Where the individual portion packs are less than 30 cm², the individual portion packs are exempt from labelling, including allergen labelling.

Background

During the review of the former Australian *Food Standards Code*, the former Australia New Zealand Food Standards Authority (ANZFA), now FSANZ, considered in Proposal P161 – Review of specific labelling statements, that inner packages in the form of individual ready to eat portion packs should be required to declare the presence of substances that may cause severe adverse reactions. It was considered that not all inner packages should be required to declare these substances, only those that are in individual portion packs that may be separated from the outer package and stored or used in isolation.

Consequently, the following exemption clause was included in Standard 1.2.1: *the food is in inner packages not designed for sale without an outer package other than individual portion packs which must bear a label containing a declaration of certain substances in accordance with clause 4 of Standard 1.2.3.*

During the transition period for the Code it became apparent that the above exemption clause required clarification. Consequently, Proposal P246 – Major omnibus amendments, was raised. P246 clarified the terms inner package and individual portion pack as follows: an inner package is considered to include a package or packages of food contained within an outer pack that would not normally be removed from the outer pack and consumed separately, e.g. cellophane wrapped cracker biscuits. An individual portion pack is considered to include single serve packages that would normally be removed from the outer package and consumed separately as an individual serve e.g. muesli bars, fruit bars, cheese sticks and single serve chocolates. It was not considered necessary to define these terms in the Code.

P246 also recognised that providing a declaration of allergens on very small individual portion packs such as confectionery, could be problematic for industry given the limited available space for printing. Therefore, ANZFA considered that individual portion packs with a surface area of not more than 30 cm² should be exempted from allergen labelling. The exemption paragraph was amended to reflect the current requirement.

Issue

Paragraph 2(1)(b) is very lengthy which appears to have resulted in some lack of understanding of how the exemption applies. A possible solution is to reword paragraph 2(1)(b) to reduce the level of confusion in relation to its application, and in the process clarify the principle on which it is based. While, inner packages and individual portion packs are not defined in the Code, the intent of the terms were outlined in P161 and clarified in P246 and therefore FSANZ does not intend to review these terms.

Key Question:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on whether the current paragraph 2(1)(b) requires rewording to clarify the intent of the provision.

2.2.3.2 Wrapped pick ‘n mix confectionery and similar small package items

Current requirements

Wrapped pick ‘n mix confectionery are generally small, loose individual confectionery items which are often novelty shaped and sold out of display or self-serve dispensing units. Currently, in accordance with paragraph 2(1)(a) in Standard 1.2.1, if a pick ‘n mix confectionery item is sold *unpacked* it is not required to bear a label. However, certain information requirements may be required to be displayed on or in connection with the display of the food or provided to the purchaser upon request. For example, if a substance that is listed in the table to clause 4 of Standard 1.2.3 which may cause a severe adverse reaction in certain individuals is present in an unpackaged pick ‘n mix confectionery item, a label declaring the presence of the substance must be displayed on or in connection with the display of the food or provided to the purchaser upon request.

A *packaged* pick ‘n mix confectionery item will in most cases fall within the definition of a small package. A small package is defined under clause 1 of Standard 1.2.1 *as a package with a surface area of less than 100 cm²*. Small packages are exempt from the following core labelling requirements:

- lot identification of food;
- ingredient labelling;
- date marking (except where the food should not be consumed after a certain date because of health and safety reasons);
- nutrition information panels (where no nutrition claim is made in relation to the food); and
- percentage labelling of characterising ingredients or components.

However, a small package must be labelled with:

- the name of the food;
- the name and business address details of the supplier;
- directions for use or storage (where for reasons of public health and safety, consumers need appropriate directions for use or storage of the food);
- mandatory warning and advisory statements and declarations. (In the case of warning statements, the statements must be in a type size not less than 1.5 mm on small packages, rather than the prescribed 3 mm for other packages); and
- in Australia, the country of origin.

Given that pick ‘n mix confectionery items are generally long life, shelf stable foods, it is unlikely that these items require directions for use and storage.

Other regulations

In the United Kingdom (UK), the *Food Labelling Regulations 1996* allow individually wrapped fancy confectionery products which are not enclosed in any further packaging and which are intended for sale as single items to be labelled only with the name of the food. Fancy confectionery product is defined as *any confectionery product in the form of a figure, animal, cigarette or egg or in any other fancy form.*

Issue

The confectionery industry has raised concerns regarding the labelling requirements of packaged pick ‘n mix confectionery items. The confectionery industry considers that small packaged confectionery items should be considered in the same context as unpackaged confectionery items, as many confectionery items are only packaged for hygienic protection. Additionally, the confectionery industry has advised FSANZ that labelling novelty shaped items in a legible and prominent manner is particularly problematic.

In most cases only the name of the food, supplier details, mandatory warning and advisory statements and declarations in Standard 1.2.3 and the country of origin (for those items sold in Australia) is required on packaged pick ‘n mix confectionery items. This raises the question as to whether this is an overly onerous requirement. The name of the food and the supplier details are considered necessary to clearly identify the food and to facilitate a food recall should one be required. Additionally, mandatory warning and advisory statements and declarations are considered necessary on the basis of the protection of public health and safety. Until the review of country of origin is completed all packaged foods sold in Australia, including pick ‘n mix confectionery, is required to include country of origin information on the label.

Other small packaged items must also be taken into account when considering the labelling requirements for these items. Manufacturers of small packages of cheeses and spreads may also be experiencing difficulties in labelling these items with all the required information.

Key Questions:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on whether the current labelling requirements are particularly problematic for pick ‘n mix confectionery items sold in small packages and why.

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on whether the current labelling requirements for other small package items are problematic and why.

2.2.3.3 Fundraising events

Current requirements

Under subclause 2(1)(g) of Standard 1.2.1, food sold at a fund raising event is exempt from general labelling. Clause 2 of Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions defines fundraising events as *events that raise funds solely for community or charitable purposes and not for personal financial gain.*

Other requirements

In the UK, the *Food Labelling Regulations 1996* provide a general labelling exemption for any food prepared on a domestic premises for sale for the benefit of the person preparing it by a society registered under the *Industrial and Provident Societies Act 1965*.

Issue

The current exemption subclause 2(1)(g) together with the definition of a fundraising event, provides food sold at fundraising events with an exemption from labelling only where:

- the food is sold at an event; and
- the funds raised at that event are solely for community or charitable purposes and not for personal financial gain.

The Macquarie and Oxford Dictionaries define ‘event’ in several ways:

- in a general way (anything that happens or is regarded as happening, an occurrence);
- in a philosophical way (something which occurs in a certain place during a particular interval of time); and
- in a sporting sense (each of the events in a program of one sport or a number of sports).

The general sense seems to imply that an event is a singular occurrence. The philosophical sense implies that an event has a clearly defined start and finish, that an event takes place during a particular time. A continuous activity without end (or with only temporary interruptions) would not seem to be an ‘event’.

Therefore, where food is sold for community or charitable purposes and not for personal financial gain, yet is sold on a continual basis, it is not exempt under this subclause.

In addition, where food is sold at a fundraising event and only a portion of the proceeds go to the community or to charitable purposes, the food will not fall under this exemption. As a result many organisations that produce food for charitable and community purposes must fully label their products.

Concerns have been raised by enforcement agencies on the difficulties in establishing what funds are *solely for community or charitable purposes and not for personal financial gain*. Many operations contribute funds to charitable organisations but take a commission in order to cover expenses. It is questionable in these circumstances whether the funds raised are considered to be solely for community or charitable purposes and not for personal financial gain. In addition, it is difficult to determine that where cash is raised by certain ‘charitable’ organisations that none of the cash raised contributes to personal financial gain.

Another matter of concern with the current exemption subclause is that where food is given away for community or charitable purposes, for example at soup kitchens or food banks, the food may still require full labelling. The term ‘retail sale’ must be read in the context of food legislation, which contains very broad definitions of the term ‘sell’. The Model Food Act defines sell as including, amongst other things:

- disposing of by any method for valuable consideration;
- providing under a contract of service;
- dispose of by way of raffle, lottery or other game of chance;
- offer as a prize or reward;
- giving away for the purpose of advertisement or in furtherance of trade or business;
- supplying under a contract (whether or not the contract is made with the consumer of the food), together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment;
- supplying food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions, or
- selling for the purpose of resale.

This encompasses activities with a commercial flavour, as well as those that appear less commercially focussed. For instance, the supply of food to a patient in a public hospital, would still be considered to be selling food. A contract under which a charitable organisation received government funding or otherwise received consideration to supply meals to destitute people, may result in the food being considered to be ‘sold’. Therefore, if an activity falls within the scope of the definition of ‘sell’ and happens in a public context, the food is required to be fully labelled. That is, unless the food is given away at a fundraising ‘event’ or otherwise meets the requirements set out in one of the other exemptions outlined in subclause 2(1) of Standard 1.2.1.

FSANZ has considered the option of providing an exemption for foods sold for charitable and community purposes. However, to provide an exemption for foods sold for charitable purposes or by a charity is likely to result in confusion as there is no single legal meaning of what a charity is. Additionally technical legal meanings of the term are quite different to the popular use of the word, and may encompass quite large scale quasi-commercial operations.

Key Questions:

FSANZ seeks advice from charity and community care organisations and individuals selling goods at fundraising events on whether the current exemption in paragraph 2(1)(g) and the definition of fundraising event has resulted in any confusion regarding their labelling obligations.

FSANZ seeks advice from enforcement agencies, charity and community care organisations and individuals selling goods at fundraising events on whether there are other situations that are unclear if the exemption in paragraph 2(1)(g) applies.

FSANZ seeks advice from charities and community care organisations on whether they have encountered specific problems in complying with the current regulations.

FSANZ seeks feedback from enforcement agencies on whether they have encountered any difficulties with the current requirements.

2.2.3.4 Packages obscuring food labels

Current requirements

A package is defined in Standard 1.1.1 as *any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package, but does not include –*

- (a) bulk cargo containers; or*
- (b) pallet overwraps; or*
- (c) crates and packages which do not obscure labels on the food; or*
- (d) transportation vehicles.*

In accordance with legal interpretation of the term ‘label’, labels on food packages must be visible to the consumer at the time of purchase.

Subclause 11(1) of Standard 1.1.1 states ‘*subject to subclause (2), the label on a package of food must not be altered, removed, erased, obliterated or obscured except with the permission of the relevant authority*’.

Subclause 2(1) of Standard 1.2.9 states ‘*unless otherwise expressly permitted by this Code, each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.*’

The above requirements are relevant to the labelling of vending machines and hampers. Both vending machines and hampers can be considered to be ‘packages’ in the context of the definition of ‘package’ in Standard 1.2.1 and both contain individual food products on which the labels are obscured by virtue of being contained within the outer package.

Consequently, having the label obscured means that at the time of sale, the information on the label does not appear to be set out legibly or prominently in the view of the prospective purchaser.

Given the requirements of subclause 11(1) of Standard 1.1.1 and subclause 2(1) of Standard 1.2.9, information on labels on food packages within a vending machine or hamper should be visible to the consumer at the time of purchase.

Key Question:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on whether there are any additional situations where the labels on food packages cannot be examined prior to purchase.

2.2.3.4.1 Vending Machines

Other regulations

Under Standard 10 of the former New Zealand *Food Regulations (1984)*, automatic vending machines were required to bear a notice of all the labelling requirements of the foods within, in addition to the labelling requirements on the packaging of the foods within the automatic vending machine.

In the UK, the *Food Labelling Regulations 1996* require a notice to appear on the vending machine indicating the name of the food, unless that name appears on the label of the food within and it is clearly visible and legible through the vending machine. Additionally, a notice must appear on the vending machine or in close proximity to the vending machine in the following situations:

- where the food is unpackaged and a nutrition claim is made, the notice must display prescribed nutrition labelling information; and
- where the food requires reheating before the food is eaten and suitable instructions are not given on the package of food, the notice must provide suitable instructions for reheating.

Issue

As discussed, food labels on packages in a vending machine are partially obscured and therefore not all prescribed labelling information is accessible to the consumer at the point of sale. Furthermore, a vending machine can be considered a package and therefore should be labelled in accordance with the requirements of the Code. However, it does not appear to be practical to require all the labelling information of the Code to be displayed on the outside of the vending machine where the packages within are fully labelled and accessible once the product has been purchased.

Fully labelled products within the vending machine

FSANZ is of the view that the protection of public health and safety should be considered when determining what information should be on the outside of a vending machine when the packages within are fully labelled.

The name of the food, lot identification and supplier details are considered vital to facilitate a food recall should one be required and date marking and mandatory warning and advisory statements and declarations are considered necessary for the protection of public health and safety.

FSANZ recognises that including certain items of information such as a date mark may not be practicable or necessary on vending machines, given that these details would need to be updated regularly as new stock is added and this information is available on the package within the vending machine. While allergen labelling on the outside of the vending machine may be useful to consumers with sensitivities to allergenic substances, it may not be necessary as sensitive individuals will know what type of foods to avoid and allergen labelling will be available to the consumer when they have purchased the food. Additionally, it may not be necessary to provide lot identification and supplier details on the outside of a vending machine when this information is available on the food packages within and will be available if a recall is required. Consequently FSANZ considers it may be possible to exempt the vending machine from bearing a label on the exterior where the packages within are fully labelled.

Key Questions:

FSANZ seeks feedback from enforcement agencies, manufacturers, retailers and consumers on the proposed option to exempt vending machines from bearing a label on the exterior where the packages within are fully labelled.

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on the costs and benefits in exempting vending machines from bearing a label on the exterior where the packages within are fully labelled.

Unlabelled products within the vending machine

There are circumstances where a food within a vending machine cannot be labelled at the time at which the vending machine is stocked. For example, vending machines that dispense hot drinks such as hot chocolate, coffee and tea where the purchaser chooses the addition of milk or sugar. In this circumstance it is not possible to fully label the packaging i.e. paper cup, at the time of stocking the vending machine as it is not possible to determine what ingredients the purchaser will choose. FSANZ considers that in these circumstances, information should be provided at the point of sale and with increasing technology, labelling of these products at the point of purchase should not be problematic. Additionally, manufacturers have the option of providing the labelling of all ingredient combinations on a poster on the outside of the vending machine.

Currently, it is possible that food sold in vending machines may meet the requirements of the exemption subclauses 2(1)(d) *the food is packaged in the presence of the purchaser* or 2(1)(f) *the food is delivered packaged and ready for consumption, at the express order of the purchaser* or perhaps the exemption subclause 2(1)(c) *the food is made and packaged on the premises from which it is sold*. In addition, in the case of a bubble-gum dispensed by a machine, the food is exempt under subclause 2(1)(a) *the food is other than in a package*. However, this was not the intention of these exemption subclauses.

Also, there are information requirements, which apply to food that is exempt from bearing a label and the way vending machines are currently set up, that information cannot be requested by the purchaser at the point of sale.

Key Questions:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on whether there are any additional circumstances where it is not possible to fully label a package within a vending machine at the time of stocking due to the purchaser selecting the ingredients.

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on what information requirements should be required on the exterior of a vending machine, where the packages within are not labelled.

2.2.3.4.2 Hampers and similar packages

Other regulations

In the UK, the *Food Labelling Regulations 1996* provide an exemption from labelling of seasonal selection packs where the products within are fully labelled according to the regulations. Seasonal selection packs are defined as *a pack consisting of two or more different items of food which are wholly or partly enclosed in outer packaging decorated with seasonal designs*. However, a provision does not exist for non-seasonal hampers.

Issue

As with vending machines, labels on food packages within hampers may be obscured and are therefore not visible to the consumer at the time of purchase. A hamper is also considered a package and therefore the outer package should be labelled with the contents of the hamper. However, feedback from industry suggests that due to the large number of products within hampers it is difficult to label the outside with all the required information without affecting the presentation. As hampers are usually purchased as a gift, the presentation is of importance to the consumer. Additionally, products within hampers will in most cases also be sold individually and therefore these products will be fully labelled.

As with fully labelled products within vending machines as outlined in Section 2.2.3.4.1, FSANZ considers that when the packages within the hamper are fully labelled, the protection of public health and safety should be the criteria for determining which information is prescribed on the outside of the hamper. This information would include the mandatory warning and advisory statements and declarations as well as date marking, and the name of the food, lot identification and supplier details to facilitate a food recall should one be required. However, given that date marking, lot identification and supplier details are ordinarily provided on the packages within the hamper and will be available if required, it may not be necessary to provide this information on outside of the hamper.

The New Zealand and State representatives on the Implementation and Enforcement Advisory Group had no concerns in exempting hampers where the packages within are fully labelled.

However, AQIS is of the view that full labelling should be required on the packages within the hamper as well as on the hamper itself, otherwise hampers will be required to be opened at the point of import to ensure the contents are compliant with the Code. However, FSANZ considers that this would be required regardless of whether the outside of the hamper is labelled as the packages within must also be labelled with certain information in accordance with the Code. As a minimum, AQIS considers that the name of the food, lot identification and supplier details (which in the case of imported food will be the importer's details) should be provided on the hamper for traceability purposes.

Additional items of information could be included on the outside of the hampers to assist consumers in making an informed choice. However, it is acknowledged that the information desired by a consumer may vary depending on whether the hamper is being purchased as a gift or for direct use by the consumer.

One approach would be to require the outside of hampers as well as the packages within hampers to be fully labelled.

Key Question:

FSANZ seeks feedback from enforcement agencies, manufacturers, retailers and consumers on the proposal to require hampers as well as the packages within the hampers to be fully labelled.

Another possibility is to allow partial labelling, that is the name of the food, lot identification and supplier details to be provided on the outside of the hamper where the packages within to be fully labelled.

Key Question:

FSANZ seeks feedback from enforcement agencies, manufacturers, retailers and consumers on the proposal to require the name of the food, lot identification and supplier details to be displayed on hampers and the packages within the hampers to be fully labelled.

Another approach is to exempt the hamper from labelling and require the packages within to be fully labelled.

Key Question:

FSANZ seeks feedback from enforcement agencies, manufacturers, retailers and consumers on the proposal to exempt hampers from labelling and to require the packages within the hampers to be fully labelled.

2.2.3.5 Food items wrapped at the retail outlet

Background

Queensland Health has informed FSANZ that a common practice for small and medium sized food businesses is to purchase unpackaged food and then package the food in clear, plastic food wrap and display the food for self-service.

In Australia, this practice is undertaken in order to comply with the food safety requirements of Standard 3.2.2 – Food safety practices and general requirements, in particular subclauses 8(1) and 8(4). The types of food packaged in this way includes doughnuts, cakes, slices and similar products.

Current requirements

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

Under Clause 4 of Standard 1.2.1, where a purchaser requests, a package of food that is not for retail sale, not for catering purposes or supplied as an intra company transfer must be accompanied by sufficient information to allow the purchaser to comply with the labelling and compositional requirements of the Code.

Issue

The labelling requirements of the above products were raised at a Technical Advisory Group (TAG) meeting on 9 and 10 April 2003 attended by representatives of the jurisdictions, FSANZ, the Department of Agriculture Forestry and Fisheries (DAFF) and AQIS. Some jurisdictions considered that it was not appropriate that the above food products be required to be fully labelled because they were presented packaged, in order to comply with the hygienic practices requirements of Standard 3.2.2. The development of a ‘guidance note’ indicating that ‘wrapping’ for the purposes of complying with the Food Safety Standards does not of itself constitute a package, was discussed. However, certain jurisdictions noted that there might be a risk of such an exemption picking up a broader range of products than intended.

Queensland Health has raised the issue that in some cases there are problems with food manufacturers refusing or being reluctant to divulge the composition of the food items described, in order for food retailers to comply with the Code. However, the Queensland Baking Industry Association have since been informed about their obligation to provide this information.

Key Questions:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on the costs and benefits of providing a guidance note under Clause 2 of Standard 1.2.1 that wrapping solely for the purposes of complying with the Food Safety Standards does not of itself constitute a package.

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on whether there are any other additional situations where food is wrapped at the premises from which it is sold for the purpose of complying with the Food Safety Standards.

2.2.3.6 Food items intra-company transferred

Current requirements

Food items that are made and packaged at one site then within the company are transferred to another location for sale, do not meet the requirements of any of the exemptions in clause 2 and consequently are required to be fully labelled.

Issue

The labelling requirements of food items that are made and packaged at one site then intra company transferred to another location for sale, was raised at a Technical Advisory Group (TAG) meeting on 9 and 10 April 2003 attended by representatives of the State and Territory Health Departments and it was agreed that this issue required further consideration.

During the review of the former Australian *Food Standards Code*, the exemption in paragraph 2(1)(c) *the food is made and packaged from the premises from which it is sold* was included on the basis that consumers could ask retailers specific questions about the composition of the food where this situation applied. Paragraph 2(1)(c) was intended to apply in the following situations i.e. where food was made and weighed, dispensed, counted, measured into a pack by the customer or retailer on the premises where the retail sale took place e.g. bakeries, butchers, take away food outlets and sandwich bars. However, food items that are made and packaged at a site, for example at a bakery that are then intra company transferred to satellite bakeries, no longer meet the requirements of the exemption paragraph 2(1)(c) or any other exemptions in clause 2 and consequently these food items must be fully labelled. Although, where the food is intra company transferred, retailers will have direct access to information that may be requested by consumers.

Key Question:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on the costs and benefits of exempting food items that are made and packaged at one site then intra company transferred to another location for sale.

2.2.3.7 Milk sold in glass bottles

Background

In New Zealand, milk in glass bottles is currently produced only for the South Island market. Mainland Products Ltd is the last remaining New Zealand producer of milk in glass bottles and produces a total of 200,000 to 220,000 litres of milk per day. Twenty percent of this daily volume is produced in glass bottles, i.e. approximately 40,000 litres of milk per day. This percentage is only very slowly declining and therefore it is likely that these products will continue to be sold for some time. Mainland products produces whole milk (non homogenised, 3.9% fat), standard homogenised (3.3% fat) and trim milk (0.5% fat, 3.9% protein) in glass bottles. In most cases these products are home-delivered. However, dairy outlets sell a small proportion of milk in glass bottles.

These products are currently labelled with the following information:

- the glass bottles are embossed with a statement regarding storage conditions relevant to date-marking i.e. keep refrigerated; and
- the foil caps are embossed with a date mark i.e. best before date and in some cases the name of the food i.e. Trim – Low Fat Milk. The foil caps are different colours for each variety of milk, which is traditionally how consumers have differentiated between the varieties.

In Western Australia, cows milk is sold in glass bottles which use imported Canadian glass bottles and plastic recyclable caps, which can be colour coded. There are no directions for use and storage on the bottle, but there is a use-by date. The dairy only produces whole milk at this time, however they have indicated that should they decide to produce flavoured milks in the future that the nutrition information panel (NIP) could be displayed as a slide on collar on the neck of the bottle.

Review of the Australian Food Standards Code

During the review of the former Australian *Food Standards Code* (Proposal P139 – Date marking) it was agreed that these products be granted an exemption from the need to bear a statement regarding storage conditions relevant to date marking as it was considered that this information would be difficult to include on the foil cap and it would be costly to require all bottles to be replaced with new bottles that have the storage directions embossed on the bottle. Additionally, it was considered that consumers were reasonably aware that these products required refrigeration.

In relation to date marking, it was considered that a ‘packing date’ on its own does not provide the consumer with information about the expected shelf life of the product and that if a ‘packing date’ is included then a ‘best before’ or ‘use by’ date should also be included.

Under Proposal P142 - Print size and quality, an exemption from labelling for soft drinks in unlabelled reusable glass bottles was considered. It was established that soft drinks are no longer sold in reusable glass bottles and are unlikely to be in the future, yet milk in reusable glass bottles continues to be sold in New Zealand and Western Australia. It was therefore considered that soft drinks sold in glass bottles should no longer be exempt from ingredient labelling. However, it was concluded that a specific exemption from ingredient labelling should be provided for milk products in reusable glass bottles. It was noted at Full Assessment (now Draft Assessment) that if an exemption from ingredient labelling is provided, it may be necessary to review this in the future as the use of these products is declining.

It appears that the labelling requirements for milk sold in glass bottles were considered in relation to date marking, storage conditions relevant to date marking and ingredient labelling and that other labelling exemptions including the name of the food, the name and business address of the supplier, lot identification and the nutrition information panel (NIP) were not considered.

Current requirements

Currently, milk sold in glass bottles is exempt from only ingredient labelling and a statement of storage conditions relevant to date marking. Therefore, the Code requires that the following be displayed on the label:

- the name of the food;
- lot identification (a lot identification can be met by date marking and supplier details);
- the name and business address of the supplier;
- a NIP; and
- a date mark.

As these products are in most cases home delivered, in these circumstances the exemption in paragraph 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser* may apply. If this exemption applies the bottled milk is only required to comply with the mandatory warning and advisory statements and declarations in Standard 1.2.3. This requirement would need to be met by having the declaration of ‘milk’ displayed on or in connection with the display of the food or provided to the purchaser upon request.

Even where paragraph 2(1)(f) does apply, if the manufacturer of bottled milk makes a nutrition claim, e.g. trim milk, a NIP is required to be displayed on or in connection with the display of the food or provided to the purchaser upon request. However, the exemption in paragraph 2(1)(f) will not apply to bottled milk in all circumstances.

Other regulations

Under the former *New Zealand Food Regulations 1984*, milk sold in glass bottles, sealed with a foil cap, labelled or embossed in accordance with regulation 105 (labelling of milk and milk products) and which had no other labelling or embossing, was exempt from the requirement to include storage directions and the requirement to include the shelf life of the product when a ‘packing date’ was used.

In the UK, the *Food Labelling Regulations 1996*, require that milk sold in indelibly marked glass bottles intended for reuse and having no label need only be labelled with the name of the food and the place of origin, where failure to provide this information may mislead a purchaser as to the true origin of the food. Additionally, where the milk is raw, the name or business address of the manufacturer or packer is required.

Issue

Bottled milk home delivered

In the majority of cases, milk sold in glass bottles is home delivered and therefore is likely to meet the requirements of paragraph 2(1)(f) *the food is delivered packaged, and ready for consumption, at the express order of the purchaser* and therefore is only required to comply with the mandatory warning and advisory statements and declarations in Standard 1.2.3 which can be met by having the declaration of ‘milk’ displayed on or in connection with the display of the food or provided to the purchaser upon request. However, in the case of trim milk, the term trim is considered to be a nutrition claim and a NIP is required to be displayed on or in connection with the display of the food or provided to the purchaser upon request. An option for Mainland Products is to develop a pamphlet with the NIP details of trim milk to accompany the delivery of these products.

Bottled milk is sold at a retail outlet

In the small proportion of cases where bottled milk is sold from retail outlets, the Code requires that the name of the food, the name and business address of the supplier, a nutrition information panel and a date mark be displayed on the label. Lot identification is also required but can be met by the date-mark and supplier details. Milk sold in glass bottles has limited available space on the foil cap and consequently, not all the required information will fit. Currently, milk sold in glass bottles is labelled with a date mark and in some cases, the name of the food.

While different coloured foil caps have traditionally enabled consumers to differentiate between whole milk and standard homogenised and trim milk varieties, FSANZ considers that the name of the milk should continue to be required on the label. This does not appear to be problematic, as this information will fit on the foil cap.

FSANZ proposes that milk sold in glass bottles should continue to be required to be labelled with the name and business address of the supplier. The lack of supplier details has not been an enforcement issue to date, as there is only one manufacturer producing these products, although this may change in the future. It is likely that supplier details will fit on the foil cap. However, if this is not the case, an option for Mainland Products is to emboss these details onto the bottle.

It appears that the nutrition information panel is the only problematic requirement as this information is unlikely to fit on a foil cap. Again, an option for Mainland Products would be to emboss a nutrition information panel on the bottle. However, this is likely to be costly and unlike supplier details, a different nutrition information panel would be required for each of the three milk variations. Another option would be to provide this information on a slide on collar or on an accompanying pamphlet.

Key Questions:

FSANZ seeks views from enforcement agencies, manufacturers, retailers and consumers on whether a nutrition information panel should be required on the small proportion of whole milk (non homogenised, 3.9% fat), standard homogenised (3.3% fat) and trim milk (0.5% fat, 3.9% protein) milk that are currently sold in glass bottles in New Zealand's South Island.

FSANZ seeks views from enforcement agencies, manufacturers, retailers and consumers on whether a nutrition information panel can be provided by other means, such as a pamphlet accompanying the milk.

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on the costs and benefits of a nutrition information panel being embossed on the bottle, provided on slide on collar and/or provided in a pamphlet accompanying the bottled milk.

2.3 Information requirements in subclause 2(2)

2.3.1 Current requirements

Subclause 2(2) in Standard 1.2.1 sets out the information requirements, which apply to food for retail sale when exempt from bearing a label. In subclause 2(2), the information required relates to:

- mandatory warning and advisory statements and declarations in Standard 1.2.3 (paragraphs 2(2)(a) – (d));
- directions for use and storage (where applicable)(paragraph 2(2)(e);
- nutrition labelling when nutrition claims are made (paragraphs 2(2)(f) – (g));
- genetically modified food (paragraph 2(2)(h);
- irradiation (paragraph 2(2)(i));
- percentage labelling (paragraph 2(2)(j));
- the presence of offal, fat content in minced meat, formed and joined meat and fermented comminuted meat products (paragraphs 2(2)(k) – (l));
- formed and joined fish (paragraph 2(2)(m));
- statements on the use of kava (paragraph 2(2)(n));
- advisory statements on formulated caffeinated beverages (paragraphs 2(2)(o) –(p)).

Although there are some exceptions, generally, the required information can either be displayed on or in connection with the display of the food or provided to the purchaser upon request. Consequently, there is considerable flexibility where an information requirement applies.

These information requirements were included on the basis that the availability of information at the point of sale is necessary for the protection of public health and safety and to facilitate informed choice.

2.3.1.1 Other regulations

Standard 7 of the former *New Zealand Food Regulations (1984)* stated that where any food is displayed for sale otherwise than in a package capable of bearing a label, the person displaying the food for sale shall keep posted conspicuously, as close to the food as practicable a notice in 4 mm lettering the particulars required by the regulations to be borne on a package.

2.3.2 Issue

Clause 2 was originally drafted with foods for retail sale in mind. However, there are certain requirements for unpackaged food that are not captured by the current information requirements listed in subclause 2(2). In addition, refining the list of references in subclause 2(2) may be required.

Formulated caffeinated beverages (subclause 3(3) and 3(4) of Standard 2.6.4)

Subclause 2(2) of Standard 1.2.1 makes two references to Standard 2.6.4 – Formulated Caffeinated Beverages, however only one reference is required. Paragraph 2(2)(o) of Standard 1.2.1 refers to subclause 3(3) of Standard 2.6.4, and paragraph 2(2)(p) of Standard 1.2.1 refers to subclause 3(4) of Standard 2.6.4. A reference is only required for subclause 3(5) of Standard 2.6.4, as subclause 3(5) of Standard 2.6.4 states that *where a formulated caffeinated beverage is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the advisory statements under subclauses 3(3) and 3(4) must be –*

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

Therefore, it is proposed that subclause 3(5) of Standard 2.6.4 is only referenced in the information requirements of subclause 2(2) of Standard 1.2.1 rather than both subclause 3(3) and 3(4) of Standard 2.6.4. This proposed amendment will not alter the information that is currently required by the Code when formulated caffeinated beverages are exempt from labelling.

2.3.3 Options

There are at least two possible options regarding this issue:

1. Maintain the status quo and retain the current information requirements in subclause 2(2) in Standard 1.2.1;
2. Review the current information requirements in subclause 2(2) in Standard 1.2.1 by updating the list to reflect the current requirements of the Code.

2.3.4 Preferred option

FSANZ considers that Option 2 is the preferred approach. Option 2 provides an opportunity to include any additional information requirements for food for retail sale that is exempt from bearing a label and to refine the current list of requirements.

In reviewing the current information requirements, a possible outcome may be to remove the references to subclauses 3(3) and 3(4) of Standard 2.6.4 and replacing these references with a reference to subclause 3(5) of Standard 2.6.4.

However, a simpler approach may be to provide a similar provision to what was in the former *New Zealand Food Regulations 1984*, that is a statement to the effect that where the food is exempt from labelling all the information that is required by the Code, must be displayed on or in connection with the display of the food or provided to the purchaser on request. This will eliminate the problem of the list of information requirements becoming too long with the addition of further requirements over time. It should be noted, however, that this approach is more onerous than the current requirement, as more information than that currently required by subclause 2(2) will need to be displayed on or in connection with the display of the food or provided to the purchaser upon request.

Under this approach, the requirement for certain information to always be provided to the purchaser (irrespective of whether they request it) or to be displayed on or in connection with the food, will not be altered. For example, the current requirement to include a statement in connection with the display of irradiated food not required to bear a label (to the effect that the food has been treated with ionising radiation), will not be modified.

Key Question:

FSANZ seeks advice from enforcement agencies, manufacturers, retailers and consumers on the costs and benefits of amending the information requirements listed in subclause 2(2) of Standard 1.2.1 by:

- **removing the references to subclauses 3(3) and 3(4) of Standard 2.6.4 and replacing these references with a reference to subclause 3(5) of Standard 2.6.4; or**
- **removing the current information requirements and include a general requirement to the effect that where the food is exempt from labelling all the information that is required by the Code, must be displayed in connection with the food or provided to the purchaser on request.**

3. Conclusion and recommendation

This Attachment to Proposal P272 discusses a number of issues in relation to the labelling of food for retail sale. FSANZ seeks comment on the issues raised and the options provided, from all sectors of the community including consumers, industry and government.

Included in this Attachment are a number of questions in relation to the options for the labelling of food for retail sale and while these are intended to guide comment they should in no way be seen to pre-empt or restrict views. Submitter's comments will be taken into account in the development of any measures arising from this Proposal. Consequently FSANZ would appreciate the provision of any qualitative or quantitative data, including cost benefit data, which would assist in analysing the preferred regulatory options.

Finally, issues related to the labelling of food for retail sale must also be considered in the context of the total review of clause 2 in Standard 1.2.1. Therefore, submitters are encouraged to familiarise themselves with the other issues being considered in this Proposal and to provide comment on those aspects of the review which may impact on the labelling of food for retail sale.

Information regarding how to make a submission to Proposal P272 is included in the section 'Invitation for Public Submissions' on page 3 of the full report.

FOOD FOR CATERING PURPOSES

1. Background

Foods for catering purposes¹ is defined in Standard 1.2.1 as *foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption*. Consequently, food for catering purposes may either be a food ingredient, such as wheat flour or shortening, which will be used in the manufacture of another food, or a fully prepared food product, such as a baked dessert or a bread roll, which requires little or no preparation prior to food service. Food for catering purposes is likely to be supplied in bulk to the food service sector and may be packaged or unpackaged depending on the nature of the food.

In the context of clause 2 in Standard 1.2.1, food for catering purposes, unless otherwise exempt, is required to bear a label setting out all the information prescribed in the Code. The intention of the requirement is to ensure that restaurants, caterers and food service operators have accurate information about the nature and composition of the food should consumers request it.

2. Application of Clause 2

Since the joint Code came into effect, FSANZ has been made aware of a number of problems associated with the application of the clause 2 requirements in Standard 1.2.1. There are several issues, which have been identified as requiring further consideration and possible amendment in relation to food for catering purposes. These issues include:

- the definition of food for catering purposes;
- the requirement for food for catering purposes to bear a label containing the information prescribed in the Code;
- the appropriateness of the exemptions in subclause 2(1) which apply to food for catering purposes; and
- the appropriateness of the information requirements in subclause 2(2) which apply to food for catering purposes when exempt from labelling (e.g. allergen labelling).

2.1 Definition of food for catering purposes

2.1.1 Current requirements

Codex contains a definition of food for catering purposes that is very similar to but different from the definition in clause 2 in Standard 1.2.1. The Codex definition is ***'foods for catering purposes means those foods for use in restaurants, canteens, schools, hospitals and similar institutions where food is offered for immediate consumption'***.

¹ While Standard 1.2.1 uses the plural 'foods for catering purposes', it is intended in this paper to use the term singularly i.e. 'food for catering purposes', other than when quoting the requirements of the Standard.

The current definition of food for catering purposes in the Code was originally developed in Proposal P147, the review of labelling of food not for retail sale. At Inquiry, now referred to as Final Assessment, the recommendation in Proposal P147 was for the following definition – ***food for catering purposes means those foods for use in restaurants, or by caterers or self catering institutions where food is offered for immediate consumption.***

There has been some confusion as to whether food supplied to a hospital, restaurant or another institution is considered ‘food for catering purposes’ or ‘food not for retail sale’ and consequently there has been confusion about which labelling requirements apply. Some consider that ‘food for catering purposes’ is food provided to a patient or a customer in a hospital, restaurant or other institution, whereas, the food in these circumstances is in fact ‘food for retail sale’. The lack of clarity in the current definition of food for catering purposes in Standard 1.2.1, in part, contributes to the confusion regarding the application of the labelling requirements.

2.1.2 Options

There are at least three possible options regarding the issue:

1. maintain the status quo and retain the current definition of food for catering purposes;
or
2. amend the current definition of food for catering purposes to provide greater clarity and certainty; or
3. do not define food for catering purposes.

2.1.3 Preferred Option

In reviewing the definition of food for catering purposes, it is not FSANZ’s intention to remove the requirement for food for catering purposes to be labelled. Therefore, FSANZ considers that Option 2 is the preferred option because it provides an opportunity to clarify the scope of the definition and to maintain the current level of information provision prescribed in the Code.

Option 1 does not address the current confusion arising from the definition of food for catering purposes, despite the fact that the current level of information provision prescribed in the Code would be maintained. The outcome of not defining food for catering purposes as per Option 3 would be that food for catering purposes would be considered ‘food not for retail sale’ and therefore would fall within the scope of clauses 3 & 4 in Standard 1.2.1 rather than clause 2. Option 3, would therefore result in a lessening of the current labelling requirements for food for catering purposes.

In relation to Option 2, one possible approach to amending the current definition is to replace the word ‘use’ with the word ‘supplied’ to make it clearer that food for catering purposes applies to the sale of food to restaurants, institutions and to caterers who subsequently prepare and serve food for immediate consumption.

FSANZ also considers it may be necessary to include in the proposed definition a reference to food being ‘prepared or offered’ for immediate consumption rather than being ‘offered’ for immediate consumption, as reflected in the current definition.

This proposed change is intended to address the situation where food may be prepared on a site other than where it is ultimately offered for immediate consumption. It is also proposed that this definition be based on the singular i.e. food for catering purposes rather than the plural i.e. foods for catering purposes.

A possible definition could be *food for catering purposes is food supplied to catering establishments, restaurants, canteens, schools, hospitals and institutions where food is prepared or offered for immediate consumption.*

Key Question:

FSANZ seeks advice on the proposed options in relation to the definition of food for catering purposes, including feedback on the wording of the proposed definition in Option 2.

2.2 Requirement to bear a label containing prescribed information

2.2.1 Current requirements

Unless exempt, food for catering purposes must bear a label setting out all the information prescribed in the Code. In practice this means that all the required information must be born on a label firmly attached to the package containing food for catering purposes. Consequently unless an exemption applies, food for catering purposes must be labelled with the:

- name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in Standard 1.2.3;
- a list of ingredients;
- date marking information as required by Standard 1.2.5;
- directions for use and storage where required by Standard 1.2.6;
- nutrition labelling (unless specifically exempt); and
- country of origin (in Australia only).

There are also additional labelling requirements that may apply to food for catering purposes, for example, if the food or ingredients in the food are genetically modified or have been irradiated.

Unlike the requirements in clauses 3 & 4 in Standard 1.2.1, clause 2 does not currently provide an option for any prescribed information to be provided in accompanying documentation. Taking into account the significant variation in the nature of food for catering purposes, FSANZ considers that it may be possible to allow greater flexibility in the means by which certain information is provided while still ensuring that all required information is available.

2.2.2 Options

There are at least two possible options regarding the issue:

1. maintain the status quo and require food for catering purposes unless exempt to bear a label containing all the prescribed information; or
2. amend clause 2 to require certain prescribed information to be provided on a label attached to food for catering purposes with the remaining prescribed information to be provided by another means such as commercial documentation.

2.2.3 Preferred Option

FSANZ considers that Option 2 offers greater flexibility for manufacturers and suppliers of food for catering purposes without compromising or diminishing the level of information being provided. Under this option, it is proposed to retain the current prescribed information for food for catering purposes but permit certain prescribed information to be provided in commercial documentation rather than on the label. In practice, this would also mean separating the requirements for food for catering purposes from the requirements of food for retail sale to clarify the labelling requirements and the exemptions.

As a minimum, FSANZ proposes that the label on food for catering purposes include the following prescribed information: the name of the food, lot identification and supplier details. This minimum information is considered necessary to clearly identify the food and to facilitate a food recall should one be required. These are also the pieces of information currently required by clause 3 in Standard 1.2.1 to be on the label of food not for retail sale, not for catering purposes and food supplied as an intra-company transfer. In Australia, these foods must also be labelled with the country of origin.

In Proposal P246, the former ANZFA outlined a problem in relation to the labelling of imported bulk foods not intended for retail sale with ‘supplier details’. In certain circumstances, the ‘supplier details’ i.e. the importer details for imported bulk foods may not be known at the time of importation. As a consequence, clause 3 in Standard 1.2.1 was amended to permit the importer details to be provided in documentation accompanying that food. If FSANZ were to amend the labelling requirements in relation to food for catering purposes as outlined in Option 2, it may be necessary to permit importer details to be provided in documentation accompanying the food.

Key Question:

FSANZ seeks feedback on the need for importer details to be provided in documentation accompanying food for catering purposes when imported into Australia and New Zealand.

In addition to the proposed minimum requirements outlined above, there may be a need to require the label on food for catering purposes to also include information such as the mandatory warning and advisory statements and declarations in Standard 1.2.3; date marking information in accordance with Standard 1.2.5 and additional directions for use and storage in accordance with Standard 1.2.6. FSANZ considers that the protection of public health and safety should be the criteria for determining which prescribed information (in addition to the name of the food, lot identification, supplier details and in Australia, the country of origin) should be required on the label of food for catering purposes.

In summary, FSANZ proposes that food for catering purposes must bear a label setting out the following prescribed information:

- the name of the food;
- lot identification;
- supplier details;
- the mandatory warning and advisory statements and declarations in Standard 1.2.3;
- date marking information as required by Standard 1.2.5; and
- directions for use and storage where required by Standard 1.2.6.

In addition, until the review of country of origin is completed, food for catering purposes in Australia is required to include country of origin information on the label.

It is also important to note that although lot identification is one of the prescribed information requirements proposed to be included on the label of food for catering purposes, the requirements for lot identification may be met by the provision of supplier details and date marking information.

FSANZ proposes that any remaining prescribed information, such as ingredient labelling and nutrition labelling, as well as any other information required by the Code, be permitted either on a label or in some other written commercial documentation. This approach appears to facilitate an effective information flow between the manufacturers and suppliers of food for catering purposes and the end user i.e. the caterer.

Key Questions:

FSANZ seeks feedback on:

- **the proposal to utilise public health and safety as the criteria for determining which pieces of prescribed information must be included on the label of food for catering purposes; and**
- **whether the pieces of prescribed information proposed to be included on the label of food for catering purposes are consistent with this criteria.**

In relation to this proposal, FSANZ seeks advice on the costs and benefits for enforcement agencies, the food service sector and for consumers in providing a more flexible approach to the labelling of food for catering purposes in the manner described.

2.2.3.1 Commercial documentation

Other regulations

Previously in the former Australian *Food Standards Code*, **associated documentation** was defined as ‘*documents, including delivery dockets and specification sheets, relevant to a package of food which are provided by the supplier and may or may not be attached to that package*’.

Previously in the former New Zealand *Food Regulations (1984)* when food was sold other than at retail, there was a requirement for a person selling the food, to provide at the time of sale, any information requested by the purchaser. This information was required to be provided in writing.

In the United Kingdom (UK) when packaged food is not intended for the consumer, the *Food Labelling Regulations 1996* allow labelling particulars to be provided in ‘commercial documents’ which may either accompany the food or may be sent before or at the same time as the delivery of the food. It is interesting to note that in the UK even where this option applies, the food must still be labelled with the name of the food, date marking and supplier details.

Issue

Allowing certain prescribed information to be permitted in written commercial documentation raises two additional issues. Firstly, what constitutes commercial documentation and secondly, what relationship will exist between the food and the commercial documentation.

In the course of business, written commercial documents may be provided either electronically or in hard copy. Consequently, written commercial documents could potentially be provided to the purchaser prior to delivery, at the time of delivery or possibly even after delivery.

The intention of modifying the current labelling requirements is to provide greater flexibility for the manufacturers and suppliers of food for catering purposes without diminishing the level of information provided and without compromising public health and safety. Therefore, FSANZ considers that commercial documents (whether provided in hard copy or electronically) must either precede or accompany each delivery of food for catering purposes and there should be a clear link between the commercial documentation and the package of food for catering purposes for traceability purposes. This link could be facilitated by the addition of the following information on the commercial documentation; the name of the food; lot identification and supplier details.

Key Questions

FSANZ seeks feedback on the proposal for certain prescribed information to be provided in commercial documentation, which should either precede or accompany each delivery of food for catering purposes, including whether there is a need to define the term ‘commercial documentation’.

FSANZ seeks information from the suppliers and purchasers of food for catering purposes regarding the costs and benefits of current methods of information provision, storage and retrieval as well as the costs and benefits of the proposed approach.

FSANZ seeks feedback on the need for ‘commercial documentation’ to include the name of the food; lot identification and supplier details as a means of establishing a link between the commercial documentation and the food for traceability purposes.

2.3 Current exemptions for food for catering purposes

2.3.1 Current requirements

Subclause 2(1) in Standard 1.2.1 contains a number of exemptions from labelling for food for catering purposes and food for retail sale. The specific exemptions are where:

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

During the development of Standard 1.2.1, it was considered that where a consumer could inspect the food prior to purchase and could seek accurate information regarding the food directly from the persons responsible for making the food, it was not necessary to require information to be provided on a label. These exemptions were initially developed in the context of food for retail sale. However, the current drafting in clause 2 makes no distinction between these two food categories for the purposes of applying the exemptions. Consequently, the current wording of the exemptions is somewhat problematic when considered in relation to food for catering purposes.

By way of example, it is possible that a reasonable volume of food for catering purposes could be exempt from labelling as a consequence of the application of certain exemptions. Exemptions, such as those in paragraphs 2(1)(b), 2(1)(d) and 2(1)(g) appear to be specific to food for retail sale and do not appear to be relevant to food for catering purposes. It is important to note, however, that where an exemption does apply, there are currently information requirements in subclause 2(2), such as the mandatory warning and advisory statements and declarations in Standard 1.2.3, which must be complied with.

Currently, Standard 1.1.1 defines package as *'any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged, and in the case of food carried or sold or intended to be carried and in more than one package, includes every such package, but does not include –*

- (a) *bulk cargo containers; or*
- (b) *pallet overwraps; or*
- (c) *crates and packages that do not obscure labels on the food; or*
- (d) *transportation vehicles'.*

The broad definition of ‘package’ in Standard 1.1.1 and its interaction with the definition of ‘food for catering purposes’ has resulted in a number of enquiries about the labelling of food for catering purposes in certain circumstances. Food service operators have sought advice regarding the labelling of trolleys and similar equipment used to transport prepared but separately packaged and/or labelled meals within and possibly between hospitals, aged care facilities and other institutions and onto aircraft; and about the labelling of other bulk packages of food for catering purposes (such as gastronome trays) used to contain and carry large quantities of prepared food for food service. Clearly, it was not intended that food trolleys and gastronome trays be required to be fully labelled. As a consequence, FSANZ is of the view that it may be necessary to develop other labelling exemptions to address particular circumstances such as these.

2.3.2 *Options*

There are at least two possible options regarding this issue:

1. maintain the status quo and retain the current exemptions in subclause 2(1) in Standard 1.2.1; or
2. amend the exemptions in subclause 2(1) to better take account of the circumstances in which food for catering purposes is likely to be presented and supplied.

2.3.3 *Preferred Option*

FSANZ considers that Option 2 is the preferred approach as it presents an opportunity to re-examine the current exemptions and to make them relevant, practical, and specific to food for catering purposes.

In relation to food for catering purposes, FSANZ proposes not to retain the following exemptions because they are either not relevant or are not appropriate:

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

FSANZ has reviewed the definition of ‘package’ in relation to the circumstance where prepared food for catering purposes is transported on a trolley or similar mobile unit and considers that a trolley or similar mobile unit could potentially constitute a ‘transportation vehicle’. ‘Transportation vehicles’ are specifically excluded from the definition of ‘package’ in Standard 1.1.1 and as such the trolley or similar mobile unit would not be required to be labelled. Consequently, FSANZ is of the view that in this particular case it may not be necessary to develop an exemption from labelling for food trolleys or similar mobile units.

However, the matter of prepared food for catering purposes contained and carried in a gastronome tray or a similar ‘package’ remains outstanding. FSANZ is aware that a gastronome tray is essentially a multi-use stainless steel container which may or may not be covered and which is intended for food service purposes and although technically a ‘package’ is not intended to be taken away by the consumer at the point of retail sale. Furthermore, as a reusable food service item it is not practical to apply a label to a gastronome tray. Any information that may be required by either a food handler or food service operator could potentially be provided by another means, such as in commercial documentation. FSANZ is considering the need to develop an exemption from labelling for gastronome trays and similar packages.

In the context of food for catering purposes, it may also be relevant to include an exemption similar to that included in paragraph 3(1)(f) in Standard 1.2.1. This exemption currently applies only to food not for retail sale, food not for catering purposes and food supplied as an intra-company transfer. Paragraphs 3(1)(f) exempts ‘transportation outers’ from labelling where the information otherwise required on the transportation outer is clearly discernible through the transportation outer on the labels of the packages within. If such an exemption was extended to food for catering purposes, a bulk package of food for catering purposes packaged in a transparent transportation outer would not need to bear a label on the outer, provided the required information was discernible through the transportation outer on the packages within.

In summary, it is proposed that the exemptions from labelling in subclause 2(1) would be limited to when food for catering purposes is:

- other than in a package (currently paragraph 2(1)(a));
- whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables (currently paragraph 2(1)(e));
- carried and/or contained in a gastronome tray or a similar package (a proposed new exemption); and
- in a transportation outer and the information otherwise required is clearly discernible through the transportation outer on the labels of the packages within (currently an exemption which applies in paragraph 3(1)(f) in Standard 1.2.1).

Where any exemption from labelling applies to food for catering purposes, FSANZ considers that certain information requirements may still be necessary. However, the current information requirements as they relate to food for catering purposes are also being considered in this review and a discussion regarding these requirements is set out in section 2.4 in this Attachment.

Key Questions:

FSANZ seeks advice from enforcement agencies, the food service sector and consumers regarding the costs and benefits in

- **not retaining subclauses 2(1)(b), 2(1)(c), 2(1)(d), 2(1)(f) and 2(1)(g) in relation to food for catering purposes; and**
- **developing an exemption from labelling when food for catering purposes is contained and/or carried in a gastronome tray or a similar package and where the food is in a transportation outer and the information otherwise required is clearly discernible through the transportation outer on the labels of the packages within.**

FSANZ seeks information that would assist in the development of a suitable exemption from labelling for gastronome trays and similar packages including:

- **information on the nature and the circumstances of use of gastronome trays and similar packages; and**
- **any existing methods of information transfer between food handlers, food service operators and consumers where food for catering purposes is contained and/or carried in packages such as gastronome trays.**

FSANZ also seeks advice on whether there are any other circumstances regarding the manufacture, packaging and distribution of food for catering purposes that may require special consideration in the context of the proposed labelling exemptions.

2.4 Information requirements in subclause 2(2)

2.4.1 Current requirements

Subclause 2(2) in Standard 1.2.1 sets out the information requirements, which apply both to food for retail sale and to food for catering purposes when exempt from bearing a label. In subclause 2(2), the information requirements relate to:

- mandatory warning and advisory statements and declarations in Standard 1.2.3 (paragraphs 2(2)(a) – (d));
- directions for use and storage (where applicable)(paragraph 2(2)(e);
- nutrition labelling when nutrition claims are made (paragraphs 2(2)(f) – (g));
- genetically modified food (paragraph 2(2)(h);
- irradiation (paragraph 2(2)(i));
- percentage labelling (paragraph 2(2)(j));
- the presence of offal, fat content in minced meat, formed and joined meat and fermented comminuted meat products (paragraphs 2(2)(k) – (l));
- formed and joined fish (paragraph 2(2)(m));
- statements on the use of kava (paragraph 2(2)(n));
- advisory statements on formulated caffeinated beverages (paragraphs 2(2)(o) –(p)).

Although there are some exceptions, generally the required information can either be displayed on or in connection with the display of the food or provided to the purchaser upon request. Consequently, there is considerable flexibility provided where an information requirement applies to a food otherwise exempt from bearing a label.

In most cases, the information requirements previously outlined are specific to food for retail sale. For example, food for catering purposes is not currently required to be percentage labelled, so the information requirement in paragraph 2(2)(h) is superfluous.

2.4.2 *Options*

There are at least two possible options regarding this issue:

1. maintain the status quo and retain the current information requirements in subclause 2(2) in Standard 1.2.1;
2. amend the current information requirements in subclause 2(2) to better reflect the information needs of caterers and food service operators when preparing and serving food.

2.4.3 *Preferred option*

If Option 2 in section 2.3 is agreed to, there will be very limited circumstances where food for catering purposes would be exempt from bearing a label and where the information requirements in subclause 2(2) would apply. In this paper, it is proposed that the exemptions from labelling would be limited to where food for catering purposes is:

- other than in a package (paragraph 2(1)(a));
- whole or cut fresh fruit or vegetables, except sprouting seeds or similar products, in packages that do not obscure the nature or quality of the fruit or vegetables (paragraph 2(1)(e));
- carried and/or contained in a gastronome tray or similar package; and
- in a transportation outer and the information otherwise required is clearly discernible through the transportation outer on the labels of the packages within.

Carcases of meat are likely to be exempt from labelling under paragraph 2(1)(a) when provided as food for catering purposes. It is proposed that food for catering purposes carried and/or contained in a gastronome tray or a similar package would be exempt from bearing a label under a proposed new exemption. With the exception of carcasses of meat and fruits and vegetables (currently exempt under paragraph 2(1)(e)), the proposed exemptions appear to be limited to food which is most often, fully prepared and which is being contained and or carried for the purposes of food service.

When food for catering purposes is exempt from bearing a label, it is important to firstly establish what the information requirements of the purchasers or users of the food are likely to be and secondly, the means by which any required information could be provided.

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

Furthermore, there may be other provisions, which require food businesses to have adequate information systems in place for traceability purposes. For example, in Australia, in accordance with subclause 5(2) in Standard 3.2.2, where requested by an authorised officer, food businesses must be able to provide the following information in relation to any food on the premises:

- supplier details; and
- the name of the food.

Therefore, when food for catering purposes is exempt from bearing a label, it does not seem relevant to retain the information requirements as currently specified in subclause 2(2), as these information requirements do not include the name of the food, supplier details or date marking, pieces of information that would appear to be necessary for the appropriate handling of food for catering purposes or to facilitate a food recall should one be required.

With this in mind, there may be two possible approaches to consider. One approach could be to limit the requirement to those pieces of information necessary for the protection of public health and safety and to facilitate a food recall should one be required. This would potentially include:

- the name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in accordance with Standard 1.2.3;
- date marking information in accordance with Standard 1.2.5; and
- directions for use and storage where required by Standard 1.2.6 for reasons of public health and safety.

Consistent with the current requirements in clause 4 in Standard 1.2.1 this information could be required in writing where requested by a relevant authority or by the purchaser of the food.

The limitation of this approach is that while the information may be of relevance to food handlers and food service operators, other than for the information related to the presence of substances likely to cause severe adverse reactions, consumer information needs do not seem to be taken fully into account.

The second approach could be to require that the purchaser or a relevant authority could request any information from the supplier of food for catering purposes, sufficient to enable them to comply with the compositional and labelling or other declaration requirements in the Code. This approach is the same as that taken in clause 4 in Standard 1.2.1 in relation to food not for retail sale, not for catering purposes and food supplied as an intra-company transfer. The advantage of this approach is that the information is not limited and the requested information is more likely to be relevant to both the food handler or food service operator and to the ultimate consumer.

Key Question:

FSANZ seeks advice from enforcement agencies, the food service sector and consumers regarding the costs and benefits of either:

- **limiting the information requirements for food for catering purposes when exempt from bearing a label to the name of the food, lot identification, supplier details, allergen labelling, date marking information in accordance with Standard 1.2.5 and directions for use and storage where required by Standard 1.2.6 for the protection of public health and safety and requiring the information to be provided in writing on request; or**
- **developing a general requirement where a relevant authority or the purchaser of the food can request any information to enable the purchaser to comply with the compositional and labelling or other declaration requirements in the Code.**

3. Conclusion and Recommendation

This Attachment to Proposal P272 discusses a number of options in relation to the labelling of food for catering purposes. FSANZ seeks comment on these options from all sectors of the community including consumers, industry (particularly those in the food service sector) and government.

Included in this Attachment are a number of questions in relation to the options for the labelling of food for catering purposes and while these are intended to guide comment they should in no way be seen to pre-empt or restrict views. Submitter's comments will be taken into account in the development of any measures arising from this Proposal. Consequently FSANZ would appreciate the provision of any qualitative or quantitative data, including cost benefit data, which would assist in analysing the preferred regulatory options.

Finally, issues related to the labelling of food for catering purposes must also be considered within the context of the broader review of clause 2 in Standard 1.2.1. Therefore, submitters are encouraged to familiarise themselves with the other issues being considered in this Proposal and to provide comment on those aspects of the review which may impact on the labelling of food for catering purposes.

Information regarding how to make a submission to Proposal P272 is included in the section '**Invitation for Public Submissions**' on page 3 of the full report.

PACKAGED MEALS PROVIDED BY DELIVERED MEALS ORGANISATIONS (DMOs)

1. Background

Throughout Australia and New Zealand, delivered meals organisations (DMOs) supply a wide variety of packaged meals to the elderly and frail; convalescing and chronically ill, and those with disabilities. These organisations provide an essential and invaluable service to the community. Although commercial operators produce some DMO meals, such meals are usually prepared in hospital or community kitchens and are delivered by volunteers affiliated with particular DMOs such as the Red Cross or Meals on Wheels (MOWs). Despite working under considerable constraints and with limited physical, monetary and human resources, DMOs have over a long period of time demonstrated a strong commitment to the provision of low cost, safe and nutritious meals.

1.1 Food for retail sale

Under the Model Food Act in Australia² and the New Zealand *Food Act 1981* the term ‘sell’ is broadly defined and includes *supply under a contract together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment*. Reading the broad definition of ‘sell’ together with the definition of ‘retail sale’ in Standard 1.2.1, packaged meals prepared and delivered by DMOs are considered to be ‘food for retail sale’ and therefore fall within the scope of the requirements in clause 2 in Standard 1.2.1.

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

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

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

² All States and Territories have implemented or are in the process of implementing Annex A of the Model Food Act. Western Australia and the Northern Territory have yet to pass implementing legislation but are in the process of doing so.

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

1.2 Application of clause 2 to packaged delivered meals

During the transition to the Code, FSANZ has advised that with some exceptions, packaged meals provided by DMOs are generally considered to be exempt from labelling under paragraph 2(1)(f) of Standard 1.2.1 as *the food is delivered packaged and ready for consumption at the express order of the purchaser*. Other delivered food provided unpackaged, for example loose fruit, is considered exempt from labelling under paragraph 2(1)(a) of Standard 1.2.1 as *the food is other than in a package*.

Where these exemptions apply to delivered meals, DMOs must still comply with the information requirements in subclause 2(2) in Standard 1.2.1. In the context of subclause 2(2), DMOs particularly need to be able to provide information in relation to:

- the presence of substances in meals which have the potential to cause a severe adverse reaction such as cereals containing gluten; milk; eggs; fish and crustacean; peanuts and soybeans; tree nuts; sesame seeds; and added sulphites; and
- the nutritional composition of the food where a nutrition claim, such as low fat, is made.

1.3 Interpretative issues

Since the Code came into effect, FSANZ has received a number of telephone and written enquiries from DMOs predominantly in New South Wales, seeking clarification and confirmation of their obligations regarding the labelling of packaged delivered meals. DMOs have often approached FSANZ because they were receiving inconsistent advice when they sought information separately from food consultants, regulatory affairs specialists and enforcement agencies.

While in most cases, packaged delivered meals are considered exempt from labelling under paragraph 2(1)(f), the application of the exemption is dependent upon each of the following criteria being satisfied:

- the food is ‘delivered packaged’; and
- ‘ready for consumption’; at

- the ‘express order’ of the purchaser.

Considering the varying circumstances in which packaged meals are provided by DMOs, it is possible that in certain situations not all of these criteria will be satisfied. Where this is the case, packaged meals would not be exempt from labelling.

1.3.1 Delivered, packaged

Prepared food provided by DMOs is in a packaged form to facilitate delivery. Consequently, prepared food will meet the criterion that it be delivered, packaged. Of course, loose fruit that is unpackaged would remain exempt from labelling under paragraph 2(1)(a).

1.3.2 Ready for consumption

When packaged meals are delivered to recipients of the service at the temperature at which they are designed to be consumed and do not require further preparation, these meals are clearly ‘ready for consumption’. However, because of the need to supply meals to clients in rural and remote locations or due to the timing of deliveries it is not always possible or practical to provide meals in a ready to eat form. Consequently, packaged meals may also be provided to clients in a chilled or frozen state, where further handling, storage and preparation is necessary. Where the latter is the case, these packaged delivered meals are unlikely to meet this criterion and as a result, the exemption may not apply.

1.3.3 Express order

Generally speaking, the recipients of meals provided by DMOs, register for the service and at the time of registering indicate any special dietary needs they have which need to be taken into account by the providers of the service. Consequently, while there is a general order for meals, some might consider that this does not constitute ‘express order’. Advice from a provider of delivered meals indicates that clients do select their meal choices on a weekly, fortnightly or monthly basis. However, as this is likely to vary from provider to provider, the applicability of this criterion may be uncertain.

In summary, there are at least two elements of the current exemption in paragraph 2(1)(f), which creates uncertainty for the providers of packaged, delivered meals in relation to their labelling obligations.

2. Regulatory Problem

An on going reliance on the current exemption in paragraph 2(1)(f) will continue to create uncertainty, leading to inconsistent interpretation and application of the requirements in Standard 1.2.1.

DMOs have significantly limited resources. As ‘not for profit’ enterprises they cannot afford to pass on the full costs of labelling to recipients of the service in the circumstances where the current exemption does not apply. In fact, from a practical perspective, DMOs may feel compelled to label all packaged meals to prevent any inadvertent omissions and possible enforcement action resulting from a failure to correctly label packaged meals not covered by the exemption in paragraph 2(1)(f). This may result in significant price increases for the recipients of the service or a reduction in the level of service provided or both.

Consequently, it is necessary to review the current requirements in clause 2 in Standard 1.2.1 with a view to ensuring that the information needs of the recipients of the service are met and that the provision of low cost, nutritious and safe meals by DMOs is assured.

3. Relevant Issues

3.1 Delivered meals organisations

There are currently over 900 DMOs in Australia. Most of these employ staff to manage the production and delivery of packaged meals. In Australia, there are over 68 000 clients receiving meals in their home each month and over 36 000 meals on average are delivered daily³, usually by volunteers. During 2002, the Red Cross in New Zealand delivered 1.2 million meals.

In Australia, a large percentage (40%) of delivered meals are prepared in hospital kitchens. Kitchens catering exclusively to DMOs (15%) are the next largest provider of delivered meals. In total, 69% of all delivered meals in Australia are produced in recognised commercial establishments⁴.

Packaged meals may consist of soup; a main meal such as meat or fish and vegetables; and fruit or dessert. Beverages, such as juice or cordial; and snacks such as muffins or biscuits may also be provided.

Main meals are usually packed in foil packs with cardboard lids. Desserts and tinned fruit may be packed in round plastic containers with soups in Styrofoam cups. Beverages are provided in single use retail packs such as plastic containers or 'tetra paks'.

3.2 Food safety

Food borne illness imposes costs on consumers, government and the food industry. Certain sectors of the population such as the very young, the elderly, people in ill health and those who are immuno-compromised are more susceptible to food borne illness and are more likely to suffer extreme consequences.

In Australia, there have been several recent studies examining the extent of food borne illness and high risk foods and businesses; including food safety issues for DMOs.

3.2.1 National Risk Validation Project in Australia

In Australia, the National Risk Validation Project funded by the NSW Department of Health and the Commonwealth Department of Health and Ageing included a risk assessment of high-risk food businesses and a cost benefit evaluation of the implementation of food safety plans by those high-risk businesses.

Relevant to the labelling of packaged meals provided by DMOs are the conclusions from Part 1 of the project, which noted that the food businesses ranked as highest risk in order of priority were:

³ Home and Community Care. 1999 - 2000

⁴ *Food Safety Issues for Delivered Meals in Australia*. E H Service Pty Ltd. 2002

- food service for sensitive populations;
- producers, harvesters, processors and vendors of raw ready to eat seafood;
- catering operations serving food to the general population;
- eating establishments; and
- producers of manufactured and fermented meats.

Interestingly, the report also noted that some industries were considered high risk because of the populations they served, while others were high risk because of inherent risks with the foods they produced or the nature of their distribution and production processes.

3.2.2 *Delivered Meals Organisations (Meals on Wheels) Food Safety Project*

Between September 2001 and May 2002, an Australian project ‘*Delivered Meals Organisations (Meals on Wheels) Food Safety Project*’ was undertaken by the Tasmanian State Department of Health and Human Services. The project resulted in a study being conducted to gain an understanding of the management of food safety issues by DMOs and to indicate how DMOs could modify existing practice to meet the requirements of the new food safety standards in Australia.

The results from the study indicated a high level of awareness concerning the implementation of the food safety standards among DMOs. DMOs that were well resourced had the capability of implementing best practice food safety and many were already doing so. However, the survey did note that this was not consistent across all service providers.

There were several recommendations from that study including the need to develop and make available in each State and Territory resources to support and assist DMOs. It was suggested that these resources include:

- a nationally consistent induction pack for volunteers;
- a best practice guide for meal packages and labelling; and
- a recall protocol that aligns with the FSANZ Food Industry Recall Protocol.

A Delivered Meals Organisation (DMOs) Food Safety Project Steering Committee coordinated by the Commonwealth Department of Health and Ageing is currently addressing the recommendations from that report.

3.2.3 *Food safety in New Zealand*

The *Food Hygiene Regulations 1974* presently prescribe minimum standards for registration/construction and conduct for the processing, storage and sale of food.

Compliance with prescriptive food hygiene legislation is recognised by the New Zealand Government and industry as not effectively addressing all the actual food safety hazards associated with different businesses.

The *Food Amendment Act No 2 1996* taking effect from 1 July 1997 provides for a voluntary transition process where food businesses may apply for an exemption from the requirements of the Food Hygiene Regulations where the business has an appropriate Food Safety Program in place.

It is intended that the Food Hygiene Regulations will eventually be revoked and food safety programs will be fully implemented and in due course be mandatory in all food businesses.

3.3 Labelling

3.3.1 The purpose of labelling

Generally, the information required to be included on a label will address one or more of the following:

- a demonstrated risk to public health and safety; and/or
- a need to ensure the adequacy of information to facilitate informed choice; and/or
- the potential for misleading or deceptive conduct.

As outlined in section 1.1 in this Attachment, there are several pieces of prescribed information that must be included on a label. Not all of these pieces of prescribed information are linked to the protection of public health and safety.

3.3.2 Public health and safety

The following pieces of prescribed information are generally regarded as necessary on packaged food to clearly identify a food and to facilitate a food recall should one be required:

- the name of the food;
- lot identification; and
- supplier details.

In certain circumstances, lot identification requirements may be met by the provision of supplier details and date marking information. In this context, these pieces of information are considered to meet a public health and safety objective.

The following pieces of prescribed information are generally considered necessary to address an identified public health and safety risk –

- the mandatory warning and advisory statements and declarations in Standard 1.2.3;
- date marking information in accordance with Standard 1.2.5; and
- directions for use and storage where required by Standard 1.2.6 for the protection of public health and safety.

In the context of prepared meals delivered by DMOs, it is important to establish the extent of any risks, particularly public health and safety risks, should the meals not be labelled and where a risk has been identified to determine what prescribed information would mitigate against that risk.

If it is determined that certain prescribed information is required on packaged delivered meals another important consideration will be whether any of this information can be provided by a means other than a label. For example, certain information may be able to be supplied in a pamphlet or a leaflet that accompanies the food or alternately information could be provided verbally upon request. Whatever approach is taken, it is important to ensure that the labelling outcome is commensurate with the nature of the risk.

3.3.3 *Mandatory vs. voluntary labelling*

When food is required to bear a label, the information required on a label must be set out in the manner prescribed in the Code. Any labelling prohibitions, such as those relating to health claims, must also be complied with.

Where a general exemption from labelling applies, information provided voluntarily (with the exception of date marking information) is usually not subject to the prescribed requirements of the Code. However, Standard 1.2.5 in the Code currently prohibits the use of a date marking system different from that set out in the Code. Consequently, if date marking information is provided voluntarily on a food exempt from bearing a label, that information would be required to comply with the Code.

Where a general labelling exemption such as that in paragraph 2(1)(f) in Standard 1.2.1 applies to a packaged, delivered meal, DMOs have greater flexibility in the presentation of any information provided voluntarily. However, this would not apply to the provision of date marking information which must comply with the requirements in the Code as outlined above.

3.3.4 *Health and nutrition claims*

The current prohibition on health claims on food means that foods must not be labelled with the name of or a reference to any disease or physiological condition⁵. Consequently, the use of a term such as ‘diabetic’ on the label of a food would constitute a breach of the current health claims standard. DMOs need to be aware of this prohibition in relation to packaged delivered meals. FSANZ is aware that some DMOs are using acronyms⁶ to identify these meals rather than using a term, which may constitute a clear breach of the current prohibition.

In relation to nutrition labelling, it is mandatory in the Code to provide a nutrition information panel (NIP) on most packaged food. In certain circumstances, a nutrition claim may trigger a requirement for an extended NIP. Nutrition claims may also trigger nutrition information requirements in relation to foods not otherwise required to bear a label. In relation to packaged, delivered meals, in the circumstances where the general labelling exemption in paragraph 2(1)(f) in Standard 1.2.1 does not apply, the meals would be required to be labelled with a NIP.

In the circumstances where the current exemption in paragraph 2(1)(f) in Standard 1.2.1 does apply to packaged delivered meals, a voluntary nutrition claim such as ‘low fat’ or ‘low sodium’ will trigger the information requirements under subclauses 4(2) & 4(3) of Standard 1.2.8 (referenced in paragraphs 2(2)(e) & (f) of Standard 1.2.1). In practice this means that nutrition information in relation to the claim must either be –

- provided in a NIP on or in connection with the display of the food; or
- provided to the purchaser on request.

⁵ subclause 3(d) in Standard 1.1A.2

⁶ NAS (no added sugar) is used by some providers to identify foods which may be suitable for diabetics

Where DMOs wish to rely on the provision of information on request, there would need to be a system in place to supply the volunteers who deliver the packaged meals with this information or to supply customers with this information directly, such as through a telephone information or helpline.

3.4 Co-regulation

In the interests of minimum effective regulation where an objective can be achieved by a means other than setting a food standard, an alternate response such as the development of a Code of Practice or a Guideline may be appropriate.

A Code of Practice or a Guideline could be developed where:

- the public health and safety impacts of not developing a food standard are not significant;
- there is little or no evidence of market failure, which would warrant the development of a food standard;
- there is a high degree of industry cohesion and commitment; and
- the issue is sector specific and does not have broad or universal application.

A Code of Practice is usually developed and endorsed by government in concert with industry but requires on-going management by industry and the imposition of sanctions where breaches occur.

A Guideline is essentially advisory or explanatory, and aims to assist business in understanding and meeting its obligations, rather than adding another layer of regulation. Guidelines suggest particular actions or procedures not specified in law that business should adopt and businesses generally have a strong incentive to comply.

4. Regulatory Options

There are several possible options in relation to the labelling of packaged meals provided by DMOs.

4.1 Option 1 – Maintain the status quo and rely on the current exemptions from labelling set out in subclause 2(1) in Standard 1.2.1

Under this option, a labelling exemption would only apply in the circumstances where the meals were delivered, packaged and ready for consumption at the express order of the purchaser i.e. paragraph 2(1)(f). Where this was not the case, packaged delivered meals would be required to be fully labelled. Consequently, not all packaged delivered meals would be exempt from labelling.

4.2 Option 2 – Amend clause 2 in Standard 1.2.1 and provide an express exemption for all packaged meals provided by DMOs from labelling.

Under this option, no packaged meals provided by DMOs would be required to be labelled. Although exempt from labelling, there would be certain information requirements as currently set out in subclause 2(2) in Standard 1.2.1, such as the mandatory warning and advisory statements and declarations in Standard 1.2.3 and NIP requirements where nutrition claims are made, which DMOs would need to comply with.

4.3 Option 3 – Amend clause 2 in Standard 1.2.1 to require all packaged meals provided by DMOs to be fully labelled.

Under this option all packaged meals provided by DMOs would be required to bear a label setting out all the information prescribed in the Code. This would, as a minimum, include all the information outlined in section 1.1 in this Attachment.

4.4 Option 4 – Amend clause 2 in Standard 1.2.1 to require all packaged meals to be labelled with certain minimum prescribed information.

Under this option all packaged meals provided by DMOs would be required to bear a label but the prescribed information would be limited to certain pieces of information necessary to facilitate a food recall and to protect public health and safety. These pieces of information could include the name of the food; lot identification; supplier details; the mandatory warning and advisory statements and declarations in Standard 1.2.3; date marking information as required by Standard 1.2.5; and directions for use and storage where required by Standard 1.2.6 for reasons of public health and safety.

4.5 Option 5 – Amend clause 2 in Standard 1.2.1 and exempt packaged delivered meals from labelling but develop a Code of Practice for the provision of information on packaged delivered meals.

Under this option, FSANZ could work with the DMOs and the enforcement agencies to develop a Code of Practice for the labelling of packaged meals. In practice this would mean that DMOs would agree to voluntarily label packaged delivered meals with certain information. However, there would be no legislated requirement for these foods to be labelled and there could be no enforcement by government of the Code of Practice.

5. Impact Analysis

5.1 Maintain the status quo and rely on the current exemptions from labelling set out in subclause 2(1) in Standard 1.2.1

5.1.1 Consumers of packaged delivered meals

There is unlikely to be any change for consumers resulting from the maintenance of the status quo. Any meals, which fall within the scope of the current exemption in paragraph 2(1)(f) in Standard 1.2.1, will be exempt from labelling. Despite the existence of the current exemption, it appears that a significant proportion of packaged, delivered meals are being labelled.

Key Questions:

What would be the impact, both positive and negative, of maintaining the status quo?

If you are currently receiving labelled and unlabelled meals, to what extent do you find this situation confusing?

How useful is the information provided on any packaged meals?

To what extent do you consider the current labelling inadequate?

5.1.2 Commercial suppliers and DMOs

DMOs are not in favour of the maintenance of the status quo as the current exemption does not apply in all the circumstances in which packaged, delivered meals are provided. Consequently, adoption of this option would perpetuate the uncertainty regarding the labelling of packaged, delivered meals. As a result of this uncertainty, there may be a cost increase for commercial suppliers and DMOs who may feel compelled to label all packaged, delivered meals to prevent any potential enforcement action in the circumstances where the current exemption in paragraph 2(1)(f) does not apply.

Key Questions:

What would be the impact, both positive and negative, of maintaining the status quo and relying on the current exemption in paragraph 2(1)(f) in Standard 1.2.1?

What proportion of packaged, delivered meals currently being provided by your organisation would fall within the scope of the current exemption? Are you currently labelling any of these packaged meals and if so, what information is being provided and why?

What is the effect on your organisation arising from the current uncertainty in the labelling requirements?

5.1.3 Government

During the transition to the Code, the interpretation of the current exemption in Standard 1.2.1 in the context of packaged delivered meals provided by DMOs has not been consistent across all jurisdictions. DMOs operate in all jurisdictions in Australia and New Zealand and the maintenance of the status quo would not resolve these differences.

Key Questions:

What would be the impact, both positive and negative, of maintaining the status quo and relying on the current exemption in paragraph 2(1)(f) in Standard 1.2.1?

What approach has been taken in your jurisdiction in relation to the labelling of packaged, delivered meals in the context of the current exemption?

To what extent are current uncertainties in the labelling requirements leading to enforcement difficulties? Please illustrate with examples.

5.2 Option 2 – Amend clause 2 in Standard 1.2.1 and provide an express exemption for all packaged meals provided by DMOs from labelling.

Although exempt from labelling, there would be certain information requirements as currently set out in subclause 2(2) in Standard 1.2.1, such as the mandatory warning and advisory statements and declarations in Standard 1.2.3 and nutrition claims, which DMOs would need to comply with. However, where these information requirements apply the information is generally only provided to the ‘purchaser’ on request.

5.2.1 Consumers of packaged delivered meals

The outcome of this option for consumers of packaged delivered meals would be that there would be no mandatory requirement for information on the package of any delivered meal. As an increasing number of meals are being provided with the intention of further processing such as storing and reheating by the consumer the absence of certain information may compromise the correct or safe use of the food. Consumers would, however, still have the option of requesting information about the food from the provider of the service.

Key Questions:

What would be the impacts, both positive and negative, on consumers of packaged delivered meals should they be exempt from labelling?

If you currently receive packaged, delivered meals that are not labelled to what extent have you found it difficult to identify and use the food?

What information has your service provider given you about how to use packaged, delivered meals when they are not labelled?

Have you ever requested any information about your meals from your service provider?

5.2.2 Commercial suppliers and DMOs

Currently, packaged delivered meals in certain circumstances are exempt from labelling. The outcome of Option 2 is that there would be no mandatory requirement for any packaged meals to be labelled. A recent study in Australia indicated that about 20% of packaged delivered meals are not currently labelled⁷.

The outcome of this option for commercial suppliers and DMOs is a potential reduction in costs. However, commercial suppliers and DMOs may continue to label packaged, delivered meals to meet their food safety obligations and to meet the information needs of their clients, as well as for other commercial reasons.

Key Questions:

What would be the impact, both positive and negative, of the option to exempt packaged delivered meals from labelling?

If you are currently labelling packaged delivered meals, to what extent would you change your current labelling practice if an express exemption was provided?

What volume of packaged meals are you currently providing and what proportion of these packaged meals would be unlabelled vs. labelled?

What systems do you currently have in place to (i) identify and handle unlabelled meals prior to delivery and (ii) provide information to the users of any packaged, delivered meals should they request it?

5.2.3 Government

Key Questions:

What would be the impact, both positive and negative, of the option to exempt all packaged delivered meals from labelling?

How would current enforcement activity be affected should all packaged, delivered meals not be labelled?

5.3 Option 3 – Amend clause 2 in Standard 1.2.1 to require all packaged meals provided by DMOs to be labelled with all the information prescribed in the Code

⁷ *Food Safety Issues for Delivered Meals in Australia*. E H Services. 2002

5.3.1 Consumers of packaged delivered meals

Under this option all packaged delivered meals would be required to be fully labelled. This would mean that it would be mandatory for all packaged meals to be labelled with the prescribed information in the Code such as a full list of ingredients, mandatory nutrition information panels, percentage labelling as well as other information such as date marking information, directions for use and storage and the mandatory warning and advisory statements and declarations in Standard 1.2.3. A full list of the prescribed information is set out in section 1.1 in this Attachment.

It has been suggested that under Option 3 recipients of packaged, delivered meals are likely to be confused by the provision of all the information prescribed in the Code. The provision of too much information may compromise the use of key pieces of information, such as date marking and directions for use and storage, which if used, would enable the correct use of the food.

Key Questions:

What would be the impact, both positive and negative, of requiring all packaged delivered meals to be labelled with all the information prescribed in the Code?

If packaged delivered meals were fully labelled what information on the label would you find useful?

To what extent may consumers of packaged, delivered meals be confused by the provision of all the prescribed information?

5.3.2 Commercial suppliers and DMOs

There is evidence that a large proportion of packaged, delivered meals are already labelled. However, the labelling currently being provided is not standardised and does not include all the information currently prescribed by the Code. A requirement for packaged delivered meals to be labelled with all the information prescribed in the Code could impose significant costs on commercial suppliers and DMOs which may result in price increases for the recipients of the service or a reduction in the level of service provided, or both. From a practical perspective, requiring packaged, delivered meals to be fully labelled is probably unachievable.

Key Questions:

What would be the impact, both positive and negative, of requiring all packaged delivered meals to be labelled with all the information prescribed in the Code?

If packaged delivered meals were required to be labelled with all the information prescribed in the Code (i) what would be the cost to your organisation and how does this cost compare to your current labelling cost and (ii) how would these costs be incurred?

To what extent may these costs impact on the availability of product lines or on the provision of your current service?

5.3.3 Government

Key Questions:

What would be the impact, both positive and negative, of requiring all packaged delivered meals to be labelled with all the information prescribed in the Code?

How would current enforcement activity be affected should all packaged, delivered meals be required to be fully labelled?

Would this level of information provision be necessary for enforcement purposes?

5.4 Option 4 – Amend clause 2 in Standard 1.2.1 to require all packaged meals to be labelled with certain minimum prescribed information

5.4.1 Consumers of packaged delivered meals

Under this option all packaged delivered meals would be required to be labelled with certain prescribed information. This information is likely to be limited to the information necessary to facilitate a food recall should one be required and to protect public health and safety. These pieces of information could include the name of the food; lot identification; supplier details; the mandatory warning and advisory statements and declarations in Standard 1.2.3; date marking information as required by Standard 1.2.5; and directions for use and storage where required by Standard 1.2.6 for reasons of public health and safety.

A benefit of this option over Option 3 is that the information provided is more likely to be directly relevant to the safe use of the food by the consumer and is more likely to be easily located on the package and understood by the consumer. However, when assessing the merits of this option it will be important to not only consider what information should be provided but whether the current requirements in the relevant labelling standards are appropriate for packaged, delivered meals. For example, it will be important to assess whether the current date marking requirements in Standard 1.2.5 are appropriate in all of the circumstances in which these foods are provided.

Key Questions:

What would be the impact, both positive and negative, of requiring all packaged delivered meals to be labelled with certain prescribed information?

Of the prescribed information listed in section 5.4.1 above, which pieces of information (i) do you think you need and (ii) would you use most often?

Are you currently being provided with this information on packaged, delivered meals?

5.4.2 *Commercial suppliers and DMOs*

There is evidence that a significant proportion of packaged delivered meals are already being labelled and it appears that in many cases the labels include the name of the food, supplier details, lot identification, date marking information and directions for use and storage. The outcome of this option for some commercial suppliers and DMOs may be a minimal change in current practice. However, there is a proportion of packaged delivered meals which are not being labelled currently and where this is the case, significant costs are likely to be incurred.

Key Questions:

What would be the impact, both positive and negative, of requiring all packaged delivered meals to be labelled with certain prescribed information as outlined in section 5.4.1?

If packaged delivered meals were required to be labelled with certain prescribed information what would be the cost to your organisation and how does this cost compare to your current labelling cost?

To what extent may these costs impact on the availability of product lines or on the provision of your current service?

Currently, are your packaged delivered meals labelled and if so, what information are you providing and why?

5.4.3 *Government*

Key Questions:

What would be the impact, both positive and negative, of requiring all packaged delivered meals to be labelled with certain prescribed information?

Are there any deficiencies in the prescribed information requirements currently proposed in section 5.4.1 from an enforcement perspective?

5.5 Option 5 – Amend clause 2 in Standard 1.2.1 and exempt packaged delivered meals from labelling but develop a Code of Practice for the provision of information on packaged delivered meals.

Under this option there would be no legislated requirement for packaged, delivered meals to be labelled but commercial suppliers and DMOs would agree to label in accordance with the agreed requirements in a Code of Practice. Option 5 is an extension of Option 2.

5.5.1 Consumers of packaged, delivered meals

There is evidence that despite an exemption from labelling in certain circumstances, a significant proportion of packaged, delivered meals are already being labelled. This demonstrates a strong commitment by DMOs to meet the health and safety and information needs of their clients.

The outcome of this option for consumers may be greater consistency in the presentation and format of information and consequently a higher degree of use of information. However, equally there is the potential for a lack of consistency arising from the huge variability in structure, resources and service capabilities among DMOs in Australia and New Zealand.

Key Questions:

What would be the impact, both positive and negative, of exempting packaged, delivered meals from labelling but developing a Code of Practice for the provision of information?

Were a Code of Practice to be developed, what information would you expect to see included on a label?

5.5.2 Commercial suppliers and DMOs

The benefit of Option 5 over Option 4, would be that commercial suppliers and DMOs would have greater flexibility in the provision of information to their clients but would be confident that they were adequately meeting the expectations of the enforcement agencies regarding their health and safety obligations. There may also be cost savings for DMOs in developing uniform labelling resources, which are standardised and can be utilised and reproduced in all jurisdictions. However, Option 5 is dependent on commercial suppliers and DMOs being committed to the development and application of a Code of Practice and being able to sustain and execute the requirements of a Code of Practice over the long term. There is a risk that Australia and New Zealand will develop different guidelines, which may result inconsistent labelling on DMO meals between the two countries.

Key Questions:

What would be the impact, both positive and negative, of exempting all packaged, delivered meals from labelling but developing a Code of Practice for the provision of information?

What is the makeup of delivered meals organisations in Australia and New Zealand and how cohesive are they?

If a Code of Practice were to be developed would your organisation be willing to participate in its development and what would you expect to be included in such a Code a Practice?

Is it likely that commercial suppliers and DMOs would comply with a voluntary Code of Practice?

5.5.3 Government

Key Questions:

What would be the impact, both positive and negative, of exempting packaged, delivered meals from labelling but developing a Code of Practice for the provision of information?

Were a Code of Practice to be developed, what role would enforcement agencies have?

Are there existing Codes of Practice in your jurisdiction that you consider are a suitable model for circumstances such as this?

6. Conclusion and Recommendation

This paper discusses a range of regulatory options in relation to the labelling of packaged, delivered meals provided by DMOs. FSANZ seeks comment on these regulatory options from all sectors of the community including the consumers of packaged, delivered meals; commercial suppliers and DMOs; and Government.

Submissions to this Initial Assessment will be used to further develop Proposal P272 in relation to the labelling of packaged, delivered meals provided by DMOs, including the preparation of draft regulatory measures, which will be circulated for a second round of public comment in the Draft Assessment Report. It is likely that the Draft Assessment Report will be available for comment in mid 2004.

Information regarding how to make a submission to Proposal P272 is included in the section **‘Invitation for Public Submissions’** on page 3 of the full report.

7. References

E H Services Pty Ltd: Food Safety Issues for Delivered Meals in Australia. 2002

Food Science Australia and Minter Ellison Consulting: National Risk Validation Project. Final Report 2002

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

Labelling of meals provided in hospitals and similar institutions

1. Background

In Australia and New Zealand, meals plated in commercial kitchens and covered by plastic, foil or hard covered domes are provided to patients in hospital settings. The meals may either be ordered by the patient, ordered by a dietitian or may be provided as a default meal when the patient is not present at the time of ordering. A similar practice occurs in nursing homes and other institutions such as prisons. In most cases the meals are prepared and plated at the site on which they are provided. However in some circumstances the meals are prepared at another location and transported to the hospital or similar institution. In these circumstances, the meals are either plated where they are prepared or plated at the location in which they are provided to the recipient of the meal. Hospitals, nursing homes and similar institutions provide low cost, safe and nutritious meals while in some cases working under considerable constraints and with limited resources.

1.1 Food for retail sale

Under the Model Food Act in Australia⁸ and the New Zealand *Food Act 1981* the term ‘sell’ is broadly defined and includes *supply under a contract together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment*. Reading the broad definition of ‘sell’ together with the definition of ‘retail sale’ in Standard 1.2.1, meals provided in hospitals and similar institutions are considered to be ‘food for retail sale’ and therefore fall within the scope of the requirements in clause 2 in Standard 1.2.1.

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

- name of the food;
- lot identification;
- supplier details;
- mandatory warning and advisory statements and declarations in Standard 1.2.3;
- a list of ingredients;
- date marking information in accordance with Standard 1.2.5;
- directions for use and storage where required by Standard 1.2.6;
- nutrition labelling (unless specifically exempt);
- percentage labelling; and
- country of origin (in Australia only).

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

⁸ All States and Territories have implemented or are in the process of implementing Annex A of the Model Food Act. Western Australia and the Northern Territory have yet to pass implementing legislation but are in the process of doing so.

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

1.1 Application of Clause 2 to the labelling of meals in hospitals and similar institutions

During the transition to the Code, FSANZ has advised that meals delivered to patients in a hospital or similar institution are considered to be exempt from labelling under either:

- paragraph 2(1)(c) *the food is made and packaged on the premises from which it is sold;*
or
- paragraph 2(1)(f) *the food is delivered packaged and ready for consumption, at the express order of the purchaser.*

Other food, for example loose fruit, is consider exempt from labelling under paragraph 2(1)(a) *as the food is other than in a package.*

Food presented on a plate is considered to be ‘*food other than in a package*’ and is exempt from labelling under paragraph 2(1)(a). However, by virtue of the broad definition of ‘package’⁹ in Standard 1.1.1, once the food is covered by plastic, foil or a hard covered dome, the food is considered packaged and the exemption in paragraph 2(1)(a) no longer applies. Given that in most circumstances the meals provided in hospitals and similar institutions are covered in some way to maintain food at the correct temperature for food service, the only remaining exemptions which may apply are those in paragraphs 2(1)(c) and 2(1)(f).

Where hospital meals are prepared and served on site, service providers can rely on the labelling exemption in paragraph 2(1)(c). Where patients pre-select a meal from a menu, service providers can rely on the exemption in paragraph 2(1)(f). However, in the circumstances where the meals provided within a hospital or similar setting are:

⁹ Standard 1.1.1 defines package as ‘*any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged, and in the case of food carried or sold or intended to be carried and sold or intended to be carried and sold in more than one package, includes every such package, but does not include –*

- (a) *bulk cargo containers; or*
- (b) *pallet overwraps; or*
- (c) *crates and packages that do not obscure labels on the food; or*
- (d) *transportation vehicles’.*

- covered and contained in some way i.e. are ‘packaged’; and
- have not been prepared and served on site; and
- the patient has not expressly ordered the food by pre-selecting from a menu,

none of the exemptions would apply and the meal would be required to be fully labelled with all the information prescribed in the Code. This situation is likely to arise when default meals are provided (usually because patients were not admitted when the meal selections were made) or when the hospital or similar institution does not provide patients with any meal choices.

2. Regulatory Problem

Given that the current exemptions in subclause 2(1) in Standard 1.2.1 do not apply in every circumstance in which meals are prepared and served in hospitals and similar institutions, an ongoing reliance on these exemptions will continue the uncertainty for these service providers. This may result in cost increases where providers choose to label all meals to ensure compliance and avoid enforcement action or a reduction in the level of service or both.

In the event that certain meals provided in a hospital or similar institution are not covered by any of the current exemptions, a requirement for those meals to be fully labelled is not practical and will result in significant cost increases for service providers. Meals provided in these circumstances are ready for immediate consumption and are not intended to be stored or further prepared and are in fact taken away at the conclusion of each meal whether consumed or not. Consequently, in most circumstances it is unnecessary that these meals be fully labelled.

Therefore, it is necessary to review the current requirements in clause 2 in Standard 1.2.1. When reviewing the current requirements it is important to ensure that consistency in labelling is applied to the varying circumstances in which meals are provided in hospitals and similar institutions, that the provision of low cost, nutritious and safe meals in hospitals is assured, and that the information needs of patients are met.

3. Relevant Issues

3.1 Food safety

Food-borne illness imposes costs on consumers, government and the food industry. Certain sectors of the population such as the very young, the elderly, people in ill health and those who are immuno-compromised are more susceptible to food borne illness and are more likely to suffer extreme consequences.

In Australia, there have been several recent studies examining the extent of food borne illness, high risk foods and businesses; including food safety issues in catering operations.

3.1.1 National Risk Validation Project in Australia

In Australia, the National Risk Validation Project funded by the NSW Department of Health and the Commonwealth Department of Health and Ageing included a risk assessment of high-risk food businesses and a cost benefit evaluation of the implementation of food safety plans by those high-risk businesses.

Relevant to the labelling of meals provided in hospitals and similar institutions are the conclusions from Part 1 of the project, which noted that the food businesses ranked as highest risk in order of priority were:

- food service for sensitive populations;
- producers, harvesters, processors and vendors of raw ready to eat seafood;
- catering operations serving food to the general population;
- eating establishments; and
- producers of manufactured and fermented meats.

Interestingly, the report also noted that some industries were considered high risk because of the populations they served, while others were high risk because of inherent risks with the foods they produced or the nature of their distribution and production processes.

3.1.2 Food Safety in New Zealand

The *Food Hygiene Regulations 1974* presently prescribe minimum standards for registration/construction and conduct for the processing, storage and sale of food.

Compliance with prescriptive food hygiene legislation is recognised by the New Zealand Government and industry as not effectively addressing all the actual food safety hazards associated with different businesses.

The *Food Amendment Act No 2 1996* taking effect from 1 July 1997 provides for a voluntary transition process where food businesses may apply for an exemption from the requirements of the Food Hygiene Regulations where the business has an appropriate Food Safety Program in place.

It is intended that the Food Hygiene Regulations will eventually be revoked and food safety programs will be fully implemented and in due course be mandatory in all food businesses.

3.2 Labelling

3.2.1 The purpose of labelling

Generally, the information prescribed to be included on a label will address one or more of the following:

- a demonstrated risk to public health and safety; and/or
- a need to ensure the adequacy of information to facilitate informed choice; and/or
- the potential for misleading or deceptive conduct.

As outlined in section 1.1 in this Attachment there are several pieces of prescribed information, which must be included on a label. Not all of these pieces of prescribed information are linked to the protection of public health and safety.

3.2.2 *Public health and safety*

The following pieces of prescribed information are generally regarded as necessary on packaged food to clearly identify the food and to facilitate a food recall should one be required –

- the name of the food;
- lot identification; and
- supplier details.

In certain circumstances, lot identification requirements may be met by the provision of supplier details and date marking information. In this context, these pieces of information can be considered to meet a public health and safety objective.

The following pieces of prescribed information are generally considered necessary to address an identified public health and safety risk –

- the mandatory warning and advisory statements and declarations in Standard 1.2.3;
- date marking information in accordance with Standard 1.2.5; and
- directions for use and storage where required by Standard 1.2.6 for the protection of public health and safety.

In the context of meals provided in hospitals or similar institutions, it is important to establish the extent of any risks, particularly public health and safety risks, should the meals not be labelled and where a risk has been identified to determine what prescribed information, if any, would mitigate against that risk. Indeed, it is important to establish whether any risk is more apparent when the current labelling exemptions do not apply (which would support the need for labelling) or whether the nature of the risk is similar regardless of the circumstances.

If it is determined that certain prescribed information is required on meals provided in hospitals or similar institutions, another important consideration will be whether any of this information can be provided by a means other than a label. For example, certain information may be able to be supplied in a pamphlet or a leaflet that accompanies the meal or alternately information could be provided verbally upon request. Whatever approach is taken, it is important to ensure that the labelling outcome is commensurate with the nature of the risk.

3.2.3 *Current labelling exemptions*

During the development of Standard 1.2.1, it was considered that where a consumer pre-ordered a food or could inspect the food prior to purchase and could seek accurate information regarding the food directly from the persons responsible for making that food, it was not necessary to require prescribed information to be provided on a label. It is on this basis, that the labelling exemptions in subclause 2(1) and the information requirements in subclause 2(2) were developed.

The problem with the provision of meals in a hospital or similar institution, is that the current exemptions do not apply in all of the circumstances in which meals are provided. It is also possible that in some circumstances the food may not be prepared on the site from which it is served, potentially resulting in an information gap where a patient requests information about a meal from food service staff.

4. Regulatory Options

There are several possible options in relation to the labelling of packaged meals provided by hospitals and similar institutions.

4.1 Option 1 – Maintain the status quo and rely on the current exemptions from labelling set out in clause 2(1) in Standard 1.2.1.

Under this option, default packaged meals that are not currently exempt under paragraph 2(1)(c) or 2(1)(f) will continue to be required to be fully labelled.

4.2 Option 2 - Amend clause 2 in Standard 1.2.1 and exempt all packaged meals provided by hospitals and similar institutions from labelling

Under this option, no meals provided by hospitals or similar institutions would be required to be labelled. Although exempt from labelling, there would be certain information requirements as currently set out in clause 2(2) in Standard 1.2.1, such as the mandatory warning and advisory statements and declarations in Standard 1.2.3, which hospitals or similar institutions would need to comply with.

4.3 Option 3 – Amend clause 2 in Standard 1.2.1 to require all packaged meals provided by hospitals and similar institutions to be fully labelled.

Under this option all packaged meals provided by hospitals and similar institutions would be required to bear a label setting out all the information prescribed in the Code.

4.4 Option 4 – Amend clause 2 in Standard 1.2.1 to require all packaged meals to be labelled with certain minimum prescribed information.

Under this option all packaged meals provided by hospitals and similar institutions would be required to bear a label but the prescribed information would be limited to certain pieces of information necessary to facilitate a food recall and to protect public health and safety. These pieces of information could include the name of the food; lot identification; supplier details; the mandatory warning and advisory statements and declarations in Standard 1.2.3; date marking information as required by Standard 1.2.5; and directions for use and storage where required by Standard 1.2.6 for reasons of public health and safety.

4.5 Option 5 – Amend clause 2 in Standard 1.2.1 to indicate that for the purposes of labelling, a package does not include a plate or a tray covered by plastic, foil or a hard covered dome.

Under this option, meals provided by hospitals and similar institutions presented on a plate or a tray covered by plastic, foil or a hard covered dome would not be considered to be packaged. Therefore the meal component would be exempt from labelling under a clarification of the current requirements in paragraph 2(1)(a).

5. Impact Analysis

5.1 Option 1 – Maintain the status quo and rely on the current exemptions from labelling set out in clause 2(1) in Standard 1.2.1.

Under this option, packaged meals that are not currently exempt under either paragraph 2(1)(c) or 2(1)(f) will continue to be required to be fully labelled.

5.1.1 Consumers of hospital meals

There is unlikely to be any change for consumers resulting from the maintenance of the status quo. Any meals, which fall within the scope of the current exemptions, would be exempt from labelling. In the circumstances where the exemptions do not apply, the meal should be labelled. It is not clear to what extent the latter may already be occurring.

Key Question:

What would be the impact, both positive and negative, of maintaining the status quo and relying on the current exemptions?

5.1.2 Commercial suppliers and providers of hospital meals

Service providers are unlikely to be in support of the status quo as the current exemptions do not apply in all of the circumstances in which meals are provided in hospitals and similar institutions. Consequently, this option continues the uncertainty of whether meals provided in hospitals and similar institutions are always exempt from labelling. As a result of this uncertainty there may be cost increases for the providers of hospital meals who may feel compelled to label all meals to prevent potential enforcement action in the circumstances where the current exemptions do not apply.

Key Questions:

What would be the impact, both positive and negative, of maintaining the status quo and relying on the current exemptions?

What proportion of meals currently being provided by your organisation would fall within the scope of the current exemptions?

Should a consumer request information about a meal, what systems do you have in place to make this information available?

What is the effect on your organisation arising from the current uncertainty in the labelling requirements?

5.1.3 Government

Key Question:

What would be the impact, both positive and negative, of maintaining the status quo and relying on the current exemptions?

5.2 Option 2 - Amend clause 2 in Standard 1.2.1 and exempt all meals provided by hospitals and similar institutions from labelling

Under this option, meals provided by hospitals or similar institutions would not be required to be labelled. Although exempt from labelling, there would be certain information requirements as currently set out in subclause 2(2) in Standard 1.2.1, such as the mandatory warning and advisory statements and declarations in Standard 1.2.3, which hospitals or similar institutions would need to comply with. It is not intended under this option that certain pre-packaged food components, such as single use containers of juice or yoghurt pre-packaged for retail sale, would be exempt from labelling under the operation of this proposed exemption.

5.2.1 Consumers of hospital meals

The outcome of this option for the consumers of hospital meals would be that all plated meals would not be required to be labelled. This is unlikely to have a significant impact on consumers, as a large proportion of meals already being provided in hospitals and similar institutions would be exempt from labelling as a result of the current exemptions. However, despite meals being unlabelled, consumers can request information about the food from the provider of the service either at the time the meal is ordered (where this would apply) or when the meal is delivered.

Key Questions:

What would be the impact, both positive and negative, on the consumers of meals provided in hospitals and similar institutions should they be exempt from labelling?

If you have received unlabelled meals in a hospital or similar setting, to what extent, if any, were you concerned by the absence of information on the food?

Should there be certain information provided in association with the supply of meals in a hospital or similar institution and if so, what information should be provided and why?

5.2.2 Commercial suppliers and providers of hospital meals

Currently, a large proportion of plated meals provided in hospitals and similar institutions are exempt from labelling as a result of the current exemptions in subclause 2(1) in Standard 1.2.1. The outcome of Option 2 for the providers of hospital meals is the standardisation of requirements to the varying circumstances in which meals are prepared and delivered.

Key Questions:

What would be the impact, both positive and negative, on the providers of hospital meals should the meals be exempt from labelling?

What volume of meals are you currently providing and what proportion of these meals are labelled?

What systems do you currently have in place to (i) identify and handle unlabelled meals prior to delivery to the patient and (ii) provide information to the consumers of any meals should they request it?

5.2.3 *Government*

Key Questions:

What would be the impact, both positive and negative, of the option to exempt meals provided in hospitals and similar institutions from labelling?

How would current enforcement activity be affected should all meals provided in a hospital or similar institution be exempt from labelling?

5.3 Option 3 – Amend clause 2 in Standard 1.2.1 to require all packaged meals provided by hospitals and similar institutions to be fully labelled.

Under this option all packaged meals provided by hospitals and similar institutions would be required to bear a label setting out all the information prescribed in the Code.

5.3.1 *Consumers of hospital meals*

Under this option all meals provided in a hospital or similar institution would be required to be fully labelled. This would mean that it would be mandatory for all the components of the meal to be labelled with all the information prescribed in the Code. A full list of the prescribed information requirements is set out in section 1.1 in this Attachment.

Consumers in this situation are likely to be confused by the provision of all the prescribed information and are unlikely to use much of the information provided. Those consumers who are concerned about the potential for adverse reactions from food may find the mandatory warning and advisory statements and declarations relevant. However, it is likely that these patients will already be on restricted diets particularly where intolerances or allergies or special dietary conditions are known. However, were allergen labelling information provided it may be used by the consumer.

Key Questions:

What would be the impact, both positive and negative, of requiring all meals provided in hospitals or similar institutions to be fully labelled with all the information prescribed in the Code?

Where a meal was fully labelled, what information on the label, would a consumer find useful?

To what extent may the consumers of labelled meals be confused by the provision of all the prescribed information?

5.3.2 *Commercial suppliers and providers of hospital meals*

Hospital meals may be comprised of a number of individual pre-packaged food components such as single serves of breakfast cereal, fruit juice, yoghurt or milk, which are intended for retail sale in a number of situations. Consequently, these products are not unique to the provision of meals in hospitals and similar institutions and therefore would generally be fully labelled in accordance with clause 2 in Standard 1.2.1. The manufacturers and suppliers of these components are therefore unlikely to be impacted on by Option 3, as these products should already be labelled.

However, the providers of the plated component of hospital meals are likely to be significantly impacted upon by the requirements in this option because in most circumstances these plated components would not currently be labelled.

Key Questions:

What would be the impact, both positive and negative, of requiring all meals provided in hospitals or similar institutions to be fully labelled with all the information prescribed in the Code?

If meals were required to be labelled with all the information prescribed in the Code (i) what would be the cost to your organisation and how does this cost compare to your current labelling cost and (ii) how would these costs be incurred?

To what extent may these costs impact on the availability of particular meals or meal components or on the provision of your current service?

5.3.3 *Government*

Key Questions:

What would be the impact, both positive and negative, of requiring all meals provided in hospitals or similar institutions to be fully labelled with all the information prescribed in the Code?

How would current enforcement activity be affected should all meals in hospitals or similar institutions be required to be fully labelled?

Would this level of information be necessary for enforcement purposes?

5.4 Option 4 – Amend clause 2 in Standard 1.2.1 to require all packaged meals to be label with certain minimum prescribed information.

Under this option all packaged meals provided by hospitals and similar institutions would be required to bear a label but the prescribed information would be limited to certain pieces of information necessary to facilitate a food recall and to protect public health and safety.

These pieces of information could include the name of the food; lot identification; supplier details; the mandatory warning and advisory statements and declarations in Standard 1.2.3; date marking information as required by Standard 1.2.5; and directions for use and storage where required by Standard 1.2.6 for reasons of public health and safety.

5.4.1 *Consumers of hospital food*

A benefit of this option over option 3 is that the prescribed information is more likely to be relevant to the consumer and would be more readily located on the food and understood by the consumer. However, it is questionable whether a patient in a hospital or similar institution would use this information, in particular lot identification, supplier details, date marking and directions for use and storage given that the meal is intended for immediate consumption. In addition, given that the meal is likely to have been selected from a menu, the name of the food is unlikely to be useful. Although it is possible that patients may use the information prescribed in accordance with Standard 1.2.3, any special dietary conditions including food allergies or intolerances would have been taken account of during the selection and preparation of the meal prior to food service. In the case of a default meal, it appears that there are systems in place to ensure the provision of information, when the patient requests it.

Key Questions:

What would be the impact, both positive and negative, of requiring all meals provided in hospitals or similar institutions to be labelled with certain prescribed information?

Of the information prescribed in section 5.4, what pieces of information (i) do you think you need and (ii) what information would you find most useful?

5.4.2 *Commercial suppliers and providers of hospital meals*

Certain packaged food components such as single serves of breakfast cereal, fruit juice, yoghurt or milk, which are intended to be generally available for retail sale (but which could be included as part of a hospital meal) are usually fully labelled in accordance with clause 2 in Standard 1.2.1. It may be perceived that less information is required on these packages when provided as part of a hospital meal. However, where these products are available in other retail settings, the packages would be required to be labelled with all the information prescribed in the Code. As a consequence manufacturers will continue with their current labelling practice rather than having different labels for the same product, when available in different settings.

The providers of the plated meal components of hospital meals would incur the costs of labelling under Option 4, although it would be less than the costs of Option 3.

Key Questions:

What would be the impact, both positive and negative, of requiring all meals provided in hospitals or similar institutions to be labelled with certain prescribed information?

If hospital meals were required to be labelled with certain prescribed information what would be the cost to your organisation and how does this compare to your current labelling cost?

To what extent would these costs impact on the availability of particular meals or meal components or on the provision of your current service?

Are you currently supplying any information (whether on a label or not) in relation to the composition of hospital meals and does that information include any of the information prescribed in section 5.4?

5.4.3 Government

Key Questions:

What would be the impact, both positive and negative, of requiring all meals provided in hospitals or similar institutions to be labelled with certain prescribed information?

Are there any deficiencies in the prescribed information requirements currently proposed in section 5.4 from an enforcement perspective?

5.5 Option 5 – Amend clause 2 in Standard 1.2.1 to indicate that for the purposes of labelling, a package does not include a plate or a tray covered by plastic, foil or a hard covered dome when used for food service in a hospital or similar institution.

Under this option, meals provided by hospitals and similar institutions presented on a plate or on a tray covered by plastic, foil or a hard covered dome would not be considered to be in a package. Therefore the meal component would be exempt from labelling under a clarification of the current requirements in paragraph 2(1)(a).

5.5.1 Consumers of hospital meals

The outcome of this option for consumers would be that plated components of a meal when provided in a hospital or a similar institution would not be required to be labelled. However, other pre-packaged components intended to be generally available for retail sale, such as yoghurt or fruit juice, would be. This would be a more balanced option for consumers, as information will be on products for which they may require information because they were not prepared immediately before food service but exempting those foods where the information is unlikely to be relevant or useful. In real terms, this option is likely to reflect current practice in most hospitals and similar institutions and consumers are potentially unlikely to notice any significant changes arising from this option.

Key Questions:

What would be the impact, both positive and negative, of clarifying for the purposes of labelling that a plate or a tray covered by plastic, foil or a hard covered dome when used in a hospital or a similar institution for food service, would not constitute a package?

5.5.2 Commercial suppliers and providers of hospital meals

The real benefit of this option for providers of hospital meals is greater certainty around the application of the current exemptions in subclause 2(1) in Standard 1.2.1. This option is likely to reflect current practice and should therefore not impose any additional costs.

Key Questions:

What would be the impact, both positive and negative, of clarifying for the purposes of labelling that a plate or a tray covered by plastic, foil or a hard covered dome when used in a hospital or a similar institution for food service, does not constitute a package?

If such a clarification were provided would there still be circumstances where none of the exemptions in clause 2 in Standard 1.2.1 would apply to provision of meals by your service?

5.5.3 Government

Information received from the Implementation and Enforcement Advisory Group (IEAG) indicates that historically enforcement agencies have taken the view that covered plated meals are not considered packaged and were therefore exempt from labelling. However, the IEAG recognises that the current definition of ‘package’ in Standard 1.1.1 is not unambiguously consistent with this view and unless the food falls within the scope of any of the current exemptions in subclause 2(1) in Standard 1.2.1, the food would be required to be labelled. A clarification of the type proposed in Option 5 appears to reflect the approach taken by enforcement agencies historically. However, there may be some unintended consequences of this approach to other industry sectors. There may also be concerns about the appropriateness of this approach in view of the definition of ‘package’ adopted in both the Code and the Model Food Act.

Key Questions:

What would be the impact, both positive and negative, of clarifying for the purposes of labelling that a plate or a tray covered by plastic, foil or a hard covered dome when used in a hospital or a similar institution for food service, does not constitute a package?

What approach has been taken in your jurisdiction in relation to the labelling of meals provided in hospitals and similar institutions?

6. Conclusion and Recommendation

This paper discusses a range of regulatory options in relation to the labelling of meals provided in hospitals and similar institutions. FSANZ seeks comment on these regulatory options from all sectors of the community including consumers, industry and government.

Submissions to this Initial Assessment will be used to further develop P272 in relation to the labelling of meals provided in hospitals and similar institutions, including the preparation of draft regulatory measures, which will be circulated for a second round of public comment in the Draft Assessment Report. It is likely that the Draft Assessment Report will be available for comment in mid 2004.

Information regarding how to make a submission to Proposal P272 is included in the section **'Invitation for Public Submissions'** on page 3 of the full report.

STANDARD 1.2.1**APPLICATION OF LABELLING AND OTHER INFORMATION REQUIREMENTS**

Purpose

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

Table of Provisions

- 1 Interpretation
- 2 Labelling of food for retail sale or for catering purposes
- 3 Labelling of food not for retail sale etc.
- 4 Provision of information in relation to food etc.

Clauses**1 Interpretation**

In this Part -

foods for catering purposes means those foods for use in restaurants, canteens, schools, caterers or self catering institutions, where food is offered for immediate consumption.

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

retail sale means sale to the public.

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

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

2 Labelling of food for retail sale or for catering purposes

(1) Subject to subclause (2), food for retail sale or for catering purposes must bear a label setting out all the information prescribed in this Code, except where –

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

(2) Notwithstanding subclause (1), food for retail sale or for catering purposes must comply with any requirements specified in –

- (a) subclause 2(2) of Standard 1.2.3; and
- (b) subclause 3(2) of Standard 1.2.3; and
- (c) subclause 4(2) of Standard 1.2.3; and
- (d) subclause 5(2) of Standard 1.2.3; and
- (e) clause 2 of Standard 1.2.6; and
- (f) subclause 4(2) of Standard 1.2.8; and
- (g) subclause 4(3) of Standard 1.2.8; and
- (h) subclause 4(3) of Standard 1.5.2
- (i) clause 6 of Standard 1.5.3; and
- (j) subclause 2(3) of Standard 1.2.10; and
- (k) subclause 4(3) of Standard 2.2.1; and
- (l) clauses 5, 6, and 10 of Standard 2.2.1; and
- (m) clause 3 of Standard 2.2.3; and
- (n) subclause 3(2) of Standard 2.6.3; and
- (o) subclause 3(3) of Standard 2.6.4; and
- (p) subclause 3(4) of Standard 2.6.4.

3 Labelling of food not for retail sale etc.

(1) Subject to subclause (2), food –

- (a) not for retail sale; or
- (b) not for catering purposes; or
- (c) supplied as an intra company transfer;

must bear a label containing the information prescribed in clauses 1, 2 and 3 of Standard 1.2.2, except where the –

- (d) food is other than in a package; or
- (e) food is in an inner package or packages contained in an outer package where the label on the outer package includes the information prescribed in clauses 1, 2 and 3 of Standard 1.2.2; or
- (f) food is in a transportation outer and the information prescribed in clauses 1, 2 and 3 of Standard 1.2.2 is clearly discernable through the transportation outer on the labels on the packages within.

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

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

(1) Where a purchaser or relevant authority has so requested, a package of food which is –

- (a) not for retail sale; or
- (b) not for catering purposes; or
- (c) supplied as an intra company transfer;

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

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

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

INTERNATIONAL REGULATIONS

1. Labelling requirements in the United Kingdom

The principal provisions of the *Food Labelling Regulations 1996*, which implement the Council Directives¹⁰ in the European Community, are that all pre-packaged food that is ready for delivery to the ultimate consumer or to a catering establishment, subject to certain exceptions, will be marked or labelled with:

- the name of the food (regulations 5(a), 6 –11, and Schedules 1 & 2);
- a list of ingredients (regulations 5(b), 12-18, and Schedules 3 &4);
- the appropriate durability indication i.e. a ‘best before date’ or ‘use-by date’(regulations 5(c), 20-22);
- any special storage instructions or conditions of use (regulations 5(d));
- the name or business name and an address or registered office of the manufacturer or packer, or of the seller established within the European Community (regulation 5 (e));

and in certain circumstances:

- particulars of the place of origin of the food, if failure to give such particulars might mislead (regulation 5(f)), and;
- instructions for use if it would be difficult to make appropriate use of the food in the absence of such instructions (regulation 5(g)).

Prepacked food means ‘food put into packaging before being offered for sale in such a way that the food, whether wholly or only partly enclosed, cannot be altered without opening or changing the packaging and is ready for sale to the ultimate consumer or to the catering establishment, and includes a food which is wholly enclosed in packaging before being offered for sale and which is intended to be cooked without opening the packaging and which is ready for sale to the ultimate consumer or to a catering establishment, but does not include individually wrapped sweets or chocolates which are not enclosed in any further packaging and which are not intended for sale as individual items’.

It does not include fruit and vegetables individually wrapped in plastic film wrap, provided that the plastic film wrap is used for the purposes of individual protection.

Ultimate consumer is defined as ‘any person who buys otherwise than –

- (a) for the purpose of resale;
- (b) for the purpose of a catering establishment, or
- (c) for the purposes of a manufacturing business.

¹⁰ Directive 79/112/EEC (OJ No. L33, 8.2.79) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (excluding the provisions relating to net quantity, and except in relation to certain additives), as now amended by Council Directives 85/7/EEC (OJ No L2, 3.1.85), 86/197/EEC (OJ No. 144, 29.5.86) and 89/395/EEC (OJ No. L186, 30.6.89); Commission Directives 91/72/EEC (OJ No. L42, 15.2.91) and 93/102/EEC (OJ No. L291, 25.11.93) and European Parliament and Council Directive 97/4/EC (OJ No. L43, 14.2.97).

Catering establishment is defined as ‘a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stand) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation’.

There is also a general requirement regarding the manner of marking or labelling which specifies that required information shall appear –

- (a) on the packaging; or
- (b) on a label attached to the packaging, or
- (c) on a label that is clearly visible through the packaging

when the sale is to the ultimate consumer. However, where the sale is otherwise than to the ultimate consumer, the required information may appear only on commercial documents relating to the food where it can be guaranteed that such documents either accompany the food or were sent before or at the same time as delivery of the food, provided that the name of the food, date marking and supplier details are marked or labelled on the outer most packaging (regulation 35).

2. Labelling Requirements in the United States (US)

In the US the labelling requirements for food are set out in Title 21 – Food and Drugs, Chapter I, Part 101 – Food Labelling of the US Code of Federal Regulations.

In this chapter, ‘Food in packaged form’ is required to bear on its principal display panel:

- (a) a statement of the identity of the commodity (subject to specific exemptions and modifications – see 101.100 – e.g. if the food is displayed to the purchaser with its interstate labelling clearly in view, or a sign bearing the common or usual name of the food, or if the common or usual name of the food is clearly revealed by its appearance; if fresh fruit or vegetables of no more than 1 dry quart are in an open container which may be closed by an uncoloured transparent wrapper which does not obscure the contents);
- (b) in certain circumstances – percentage of characterising ingredient/s or information about the presence or absence of an ingredient;
- (c) ingredients listing (subject to specific exemptions and modifications – see 101.100 – e.g. an assortment of different items of food where ingredients vary must be labelled with a list of ingredients that will be present, along with a list of those that may be present; a food received in bulk containers at a retail establishment is exempt from ingredient labelling provided that it is displayed to the purchaser with labelling of the bulk container including ingredient labelling in view or a sign bearing ingredient labelling information) ;
- (d) name and place of business of the manufacturer, packer or distributor (subject to specific exemptions and modifications – see 101.100 – e.g. a food repackaged in a retail establishment);
- (e) nutrition labelling, subject to numerous qualifications and exemptions, including the following exemptions;
 - (i) food offered for sale by a person who makes direct sales to consumers and whose annual gross sales generally are not more than \$500,000 or whose annual gross sales of food to consumers are not more than \$50,000, **provided that** –

1. it is ready for human consumption,
 2. offered for sale to consumers but not for immediate human consumption,
 3. processed and prepared primarily in a retail establishment
 4. not offered for sale outside of that establishment, and
 5. no nutrition claims are made or nutrition information offered in relation to the food (by label or advertisement);
- (ii) food served or sold in restaurants or in other establishments in which food is served for immediate human consumption;
 - (iii) food used only in such facilities and not served to the consumer in the package i.e. individual serving container, in which they are received; or
 - (iv) food sold by a distributor who principally sells to such facilities;
 - (v) foods containing insignificant amounts of nutrients and components requiring nutrition labelling;
 - (vi) medical foods;
 - (vii) foods shipped in bulk form, not for distribution to consumers in that form, and for use solely in the manufacture of other foods or to be processed, labelled or repacked at a site other than where originally processed or packed;
 - (viii) raw fruits, vegetables and fish;
 - (ix) packaged single ingredient fish or game meat products;
 - (x) food in small packages that have a total surface area available to bear labelling of less than 12 square inches;
 - (xi) eggs packaged in a carton with a top lid shaped to the eggs (allowed nutrition labelling inside lid or on an insert);
 - (xii) unit containers in a multi-unit retail food package, **where** –
 1. unit containers are securely enclosed within and not intended to be separated from the retail package under conditions of retail sale;
 2. unit containers are labelled ‘not labelled for retail/individual sale’;

Exemptions to nutrition labelling generally do not apply if nutrition claims are made in relation to the food. (refer to 101.9);

- (f) warning, notice and safe handling statements as applicable (101.17) (e.g. warning statements required on self-pressurised containers, unpasteurised juices);
- (g) declaration of the net quantity of contents (101.105).

There are, in addition, specific exemptions from certain labelling provisions for various products, including, for example, soft drinks in certain types of bottles (101.2, (c)).

3. Labelling Requirements in Codex Alimentarius

Codex Standard 1-1985 (Rev. 1-1991) applies to the labelling of all pre-packaged food to be offered to the consumer or for catering purposes.

In accordance with this Standard, the following information is required to appear on the label of pre-packaged food –

- the name of the food;
- a list of ingredients;

- net contents and drained weight;
- name and business address of the manufacturer, packer, distributor, importer, exporter or vendor;
- country of origin where its omission would mislead or deceive;
- lot identification;
- date marking and storage instructions; and
- instructions for use.

Where the labelling of food places special emphasis in the presence of one or more valuable ingredients or where a description of the food has the same effect, the ingoing percentage of the ingredient at the time of manufacture shall be declared.

In relation to these requirements, the following definitions apply:

Consumer is defined as ‘persons and families purchasing and receiving food in order to meet their personal needs’.

Pre-packaged means ‘packaged or made up in advance in a container, ready to offer to the consumer or for catering purposes’.

Foods for catering purposes is defined as ‘those foods for use in restaurants, canteens, schools, hospitals and similar institutions where food is offered for immediate consumption’.

4. Labelling Requirements in Canada

There are several pieces of legislation dealing with the labelling of food in Canada, specifically the Food and Drugs Act (FDA) and Food and Drug Regulations (FDR) and the Consumer Packaging and Labelling Act (CPLA) and Regulations (CPLR).

The FDR prescribe the labelling of all pre-packaged foods, including requirements for ingredient labelling, durable life dates, nutrient content claims, mandatory nutrients declarations and foods for special dietary needs.

In section 2 of the FDA –

sell includes ‘offer for sale, expose for sale, have in possession for sale and distribute, whether or not the distribution is made for consideration;’ and

pre-packaged means ‘any food that is contained in a package in manner in which it is ordinarily sold to or used or purchased by a person.’

In Section B.01.003 in the FDR all pre-packaged products require a labelling unless the product is:

- one-bite confectionery, such as a candy or a stick of chewing gum, sold individually; and
- fresh fruits or vegetables packaged in a wrapper or confining band or less than ½ inch.

Clerk-served foods, which are packaged at the time of sale are not considered to be pre-packaged foods and are therefore exempt from having a label.

In some circumstances, certain pre-packaged foods are exempt from some individual labelling requirements in the FDR.

Implementation and Enforcement Advisory Group

Role

The role of the Implementation and Enforcement Advisory Group (IEAG) is to provide an informal forum to discuss issues of enforcement and implementation related to the review of clause 2 in Standard 1.2.1.

Purpose

The purpose of the proposed IEAG is to:

- assist FSANZ in clarifying the scope of the review of clause 2 in Standard 1.2.1;
- provide information on current enforcement issues relating to compliance with clause 2 of Standard 1.2.1; and
- consider, provide feedback and discuss the proposed regulatory changes to clause 2 of Standard 1.2.1 from both an enforcement and implementation perspective.

Membership of the Committee in 2003

| | |
|------------------------|--|
| Mr Bill Porter | New South Wales Health Department |
| Mr Kim Leighton | Health Department of Western Australia |
| Mr James Stephanos | Queensland Department of Health |
| Ms Sophe Williamson | Australian Quarantine and Inspection Service |
| Mr John van den Beuken | New Zealand Food Safety Authority |