

11 September 2014

Food Standards Australia New Zealand

PO Box 7186

CANBERRA BC ACT 2610

Via email: submissions@foodstandards.gov.au

Dear Food Standards Australia New Zealand,

Submission – Code Revision P1025

The Australian Beverages Council (the Beverages Council) is the peak body representing the \$7 billion non-alcoholic beverage industry. The Beverages Council provides a single, united industry voice to a range of stakeholders including government, non-government organisations, media and general public.

Membership of the Beverages Council comprises over 95% of the non-alcoholic industry's production volume, and is comprised of multi-national companies and small and medium businesses. The Beverages Council has two dedicated category divisions – Fruit Juice Australia and the Australasian Bottled Water Institute, which represent the unique interests of members manufacturing juice and bottled water products respectively.

It is understood that the purpose of the proposal is to revise the *Australia New Zealand Food Standards Code* to improve legal efficacy and for related purposes.

The Australian Beverages Council acknowledges that the primary objective has been met but has concerns that the revision has exceeded its scope. A member based working group has reviewed all relevant sections of the Code and have clearly identified areas of concern in the attached summary.

Many of these alterations, whilst maybe well intentioned, fall outside the terms of reference and have far-reaching consequences for industry if adopted in the presented format.

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We thank FSANZ for the opportunity to provide this submission. If you wish to discuss any aspect of this correspondence in more detail I invite you to contact me directly on 02 9662 2844 or colin.felder@australianbeverages.org.

Yours sincerely,



Colin Felder

Technical and Regulatory Affairs Manager



Code Revision – Australian Beverages Council Review

General Comments

- There is inconsistency in regards to how definitions have been approached. Definitions should have full compositional requirements or refer back to Chapter 1 Part 1.1 Std 1.1.2 Definitions used throughout the Code.
- “Notes” used for guidance throughout the Code should be clearly indicative of no legal consequence or influence. Many instances of the use of “Notes” makes it more confusing and between Food Standard regulation and Fair Trading Laws.
- Identification of change to the definition of a food additive via means of the revision rather than raising of a separate proposal goes against scope of this review.
- Identification of change in the definition of “use-by date” now with “the supplier estimates” clearly changes the legal test consequences as to the assessment of health and safety procedures away from regulators and State bodies and is a change outside the scope of this review.
- New qualifier in relation to a “food for sale” (Std 1.2.10) has large interpretation consequence.
- Concern about the change to the food additive that the extra clause in the definition in (1.1.2-11 (2)(b)

(b) any substance that:

(i) has been selectively concentrated or refined, or synthesised to perform 1 or more of the technological purposes listed in Schedule 14.

The Beverages Council suggests the clause needs to be refined at the very least to clearly delineate between food additives and other foods which may have food additive type properties but are not food additives.

Chapter 1 - Introduction and standards that apply to all foods

Provision	Title	Beverages Council Comments
Part 1.1 –Preliminary		
Chapter 1, Part 1 Std 1.1.1 – Structure of the Code and general provisions		No comments
Chapter 1, Part 1Std1.1.2 – Definitions used throughout the Code		
1.1.2-3	Definition of "juice"	Definition of 'juice' has changed from 'undiluted juice' to 'original juice'. Beverage Council believes this changes the interpretation of the juice. 'Original' juice' may be interpreted as meaning from the original lot of squeezed juice. Juice concentrate may be produced from a blend lots, thus can vary in concentration. Beverages Council requests that 'undiluted juice' should be maintained.

Provision	Title	Beverages Council Comments
1.1.2-4	Definition of characterising component and characterising ingredient	<p>Beverages Council has major concerns regarding the change of definition of characterising component and characterising ingredient. In particular changing the term 'is usually associated with' to 'is likely to be associated with'.</p> <p>Beverages Council believes this substantially changes the definitions and should not proceed.</p> <p>The use of the words "likely to be" broadens the definitions by changing the meaning to provide for something that "is" to something that "could be". In this context, the characterising ingredient could be a component of food where there is a probability that the ingredient could be associated with the food. Extending this definition could unnecessarily capture ingredients that are not intended to be characterising ingredients.</p>
1.1.2-6	Definition of formulated caffeinated beverage	<p>Definition should simply be reference to Standard rather than doubling up with Sect 1.1.2-6. Cross-referencing better option.</p>

Provision	Title	Beverages Council Comments
1.1.2-11 (2)(b)	Definition of a used as a food additive , etc	<p>Improper use of the definition and change to meaning with major consequences to existing formulations. This change should be made under separate FSANZ proposal, not via this revision.</p> <p>The term ‘intentionally added to food’ has been replaced by a new element: ‘has been extracted, refined or synthesised’. The Beverage Council believes that this has resulted in a different meaning to the definition. For example, fruit or vegetable juice is sometimes used as a colouring agent, however, would no longer be permitted as a colouring agent under the new definition. The new term ‘any substance that has been selectively concentrated or refined or synthesised’ has made the situation even less clear and the impact much wider to potentially include ingredients/substances that have never been considered food additives.</p> <p>Use of the term ‘selectively’ is not clear and unnecessarily expands the scope of food additives. If this change is implemented, a wide range of substances would become non-compliant and would all need preapproval. This would have a very significant impact and an immense cost impact for industry while approvals were sought.</p> <p>Secondly, as noted in relation to Standard 1.3.1 below, the term ‘processed food’ has been substituted in a number of places for ‘final food’ yet they are not synonymous terms.</p>

Chapter 1, Part 2 – Labeling and other information requirements

Chapter1, Part 2, Standard 1.2.1 – Requirements to have labels or otherwise provide information

Provision	Title	Beverages Council Comments
		No comments.
Chapter1, Part 2, Standard 1.2.2– Information Requirements – food identification		No comments.
Chapter1, Part 2, Standard 1.2.3 – Information Requirements – warning statement, advisory statement and declarations		No comments.
Chapter1, Part 2, Standard 1.2.4 – Information Requirements – statement of ingredients		No comments.
Chapter1, Part 2, Standard 1.2.5 – Information Requirements – Date marking of food products		
1.2.5-2	Definitions	“Use-by date” new definition emphasis on “the supplier estimates “ completely changes the previous definition with the legal implication outside the scope of this review.
1.2.5-3 (3)	Food for sale must be date marked on labels	Provision for” small package consumption before certain date because of health or safety reasons” has been removed. Beverages Council recommends this be reinstated.

Provision	Title	Beverages Council Comments
Chapter1, Part 2, Standard 1.2. 6– Information Requirements – Directions for use and storage		No comments.
Chapter1, Part2, Standard 1.2. 7 – Nutrition, health and related claims,		No comments.
Chapter1, Part 2, Standard 1.2. 8 – Nutrition information requirements		
1..2.8-8(3) (a)	Reference values for percent daily intake information	Inconsistent inclusion table of reference values into body rather than Scheduling
Chapter1, Part 2, Standard 1.2.9 (obsolete)		
1.2.9		Missing section (inconsistent numbering) Old Std 1.2.9 now included into Std 1.2.1 (div 6)
Chapter1, Part 2, Standard 1.2.10 –Characterising ingredients and components of food		
1.2.10 -2	Definitions	New inclusion of a “qualifier” under the food for sale , narrows the legal effect Refer to comments under 1.1.2–4 Definition of <i>characterising component</i> and <i>characterising ingredient</i>.
1.2.10- 2 (1) (a)	Definitions	Change from “usually” to “likely” stronger and will result in changes. Refer to comments under 1.1.2–4 Definition of <i>characterising component</i> and <i>characterising ingredient</i>.

Provision	Title	Beverages Council Comments
1.2.10- 2 (1) (b)	Definitions	Change from “usually” to “likely” stronger and will result in changes. Refer to comments under 1.1.2–4 Definition of <i>characterising component</i> and <i>characterising ingredient</i>.
1.2.10- 2 (1)-(3)	Definitions	Numbering error not allowing for clear referencing (need (4)).
1.2.10-3 (3)	Requirement to declare characterising ingredients and components	Three categories disappeared in this section.
1.2.10-8 (2)	Declaration of characterising ingredients and components	New inclusion of “the percentage must immediately follow the common, descriptive or generic name of the ingredient” clarifies meaning and may lead to labelling changes.

Chapter1, Part 2, Standard 1.2.11 –Information requirements- country of origin labelling

1.2.11-2 (1)	Labelling requirements – unpackaged food	New wording of “food for sale” rather “ for retail sale” has consequence and broadens scope. No provision for unpackaged for to have a C of O . No clear definition of “country of origin statement “ and is expressed in three different way within three separate clauses within Standard.
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Chapter1, Part 3 Substances added to food

Chapter1, Part 3, Standard 1.3.1 –Food additives

Provision	Title	Beverages Council Comments
1.3.1-2	Definitions	<p>“used as a food additive “ Correct in new use of term but confusing.</p> <p>We also note the use of term ‘processed food’ which is undefined.</p>
1.3.1-4 (3)	Maximum permitted level of food additives in foods	<p>Should be Schedule “16” not “15”</p> <p>Sch 16-3 should have GMP</p> <p>Sch 16-4 should have max limit within schedule</p> <p>Use of “ permitted flavouring substances” now move to Std 1.1.2 Definitions and hence difficult to reference and should be returned to this Std.</p> <p>We also note the use of term ‘processed food’ which is undefined, has replaced ‘final food. Beverages Council believes that clarity currently delivered by the term ‘final food’ has been lost by the term ‘processed food’.</p> <p>The term ‘final food’ is more closely aligned with ‘food for sale’ and ‘retail food’ which both have elements of the food presented to the consumer with no further processing. The term ‘processed food’ can be applied to any substance during the processing process.</p>
Chapter1, Part 3, Standard 1.3.2 –Vitamins and minerals		
1.3.2-3(c)	Listed vitamins and minerals may be used as nutritive substance in foods	Definition need to be clearer by reference to max permitted amount “column”
1.3.2-5(2)	Calculation of maximum amount of a vitamin or mineral which may be claimed in a reference quantity of food.	Equation should be moved to Schedules

Provision	Title	Beverages Council Comments
Chapter1, Part 3, Standard 1.3.3 –Processing aids		No comments.
		Old Std1.3.4 now within Std 1.1.15 S3
Chapter 1, Part 4 Contaminants and residues		
Chapter 1, Part 4, Standard 1.4.1 – Contaminants and natural toxicants		No comments.
Chapter 1, Part 4 , Standard 1.4.2– Agvet chemicals		No comments.
		Disappearance of Standard 1.4.3 (confusion) Packaging requirement now included in Std 1.1.1-10 . Beverage Council recommends that 1.4.3 be reinstated to avoid confusion in break of numbering.
Chapter 1, Part 4, Standard 1.4.4 Prohibited and restricted plants and fungi		No comments.
Chapter 1, Part 5 Foods requiring pre-market clearance		
Chapter1, Part 5, Standard 1.5.1 Novel Foods		No comments.
Chapter1, Part 5, Standard 1.5.2 Food produced using gene technology		No comments.

Provision	Title	Beverages Council Comments
Chapter1, Part 5, Standard 1.5.2	Irradiation of Food	No comments.
Chapter1, Part 6	Microbiological limits and processing requirements	
Chapter1, Part 6 Standard 1.6.1	Microbiological limits for food	New AS-5013 from AS- 1766
Chapter1, Part 6, Division 2 – Processing requirements for meat		Not reviewed.

Chapter 2

Provision	Title	Beverages Council Comments
Chapter 2, Part 1, Cereals		Not reviewed
Chapter 2, Part 2, Meat, eggs and fish		Not reviewed
Chapter 2, Part 3, Fruit and vegetables		Not reviewed
Chapter 2, Part 1, Cereals		Not reviewed
Chapter 2, Part 4, Edible Oils		Not reviewed
Chapter 2, Part 5, Dairy Products		Not reviewed
Chapter 2, Part 6, Non-alcoholic Beverages		
Chapter 2, Part 6, Non-alcoholic beverages, Standard 2.6.1 – Fruit juice and vegetable juice		
2.6.1-2	Definitions	JUICE : Changing “undiluted juice from which it was made” to “original juice” should not be progressed as definition and consequences are far reaching from intent. See comments under 1.1.2-3 Definition of “juice”.
Chapter 2, Part 6, Non-alcoholic beverages, Standard 2.6.2 – Non-alcoholic beverages and brewed soft drinks		
2.6.2-	Definitions	Highly inconsistent with listing compositional requirements between categories. For example - compositional requirements for Formulated Beverages are listed in the definition, while for Electrolyte Drinks are listed in the body of the Standard. To avoid confusion, a consistent approach should be undertaken.

Provision	Title	Beverages Council Comments
2.6.2-	Note	Typing Error “ section 5.1.1-6 “ should be” 5.1.1-4”
Chapter 2, Part 6, Non-alcoholic beverages, Standard 2.6. 3 – Kava		No Comments
Chapter 2, Part 6, Non-alcoholic beverages, Standard 2.6.4 – Formulated Caffeinated Beverages		
2.6.4-2	Definitions	Notes should not include compositional requirements, if they are to have no legal effect.
2.6.4-4	Prohibition on mixing formulated caffeinated beverages	“food” should be change to “beverage”
2.6.4-5 (2)(c)	Labelling requirements – formulated caffeinated beverage- Required declarations	“clearly “ should be removed as is redundant
2.6.4-5(3)	Labelling requirements – formulated caffeinated beverage- Required advisory statements	New “or” at the end of (i) and (ii) should revert to the “and”. A clear mandatory statement should be quoted.
2.6.4-5(5)(a)	Labelling requirements – formulated caffeinated beverage- Required advisory statements	“the beverage “ should be changed to “the formulated caffeinated beverage” , for clarification of meaning.
2.6.4-5(6)	Calculation	“permitted amount “ from previous “maximum permitted one-day quantity” , clarification is sort as to meaning and consequence.
2.6.4-5(6)	Calculation	Calculation show be moved to Schedules as S29-3 with other relevant information.
Chapter 2, Part 7 – Alcoholic Beverages		Not reviewed

Provision	Title	Beverages Council Comments
Chapter 2, Part 8 – Sugars and honey		
Chapter 2, Part 8, Standard 2.8.1	Sugar and Sugar products	No comments
Chapter 2, Part 8, Standard 2.8.2	Honey	No comments
Chapter 2, Part 9 – Special purpose foods		
Chapter 2, Part 9, Standard 2.9.1	Infant Formula Products	Not reviewed
Chapter 2, Part 9, Standard 2.9.2	Food for Infants	Not reviewed
Chapter 2, Part 9, Standard 2.9.3	Formulated meal replacement and formulated supplementary foods – Division 1	Not reviewed
Chapter 2, Part 9, Standard 2.9.3	Formulated meal replacement and formulated supplementary foods – Division 2 - Formulated meal replacements	Not reviewed
Chapter 2, Part 9, Standard 2.9.3	Formulated meal replacement and formulated supplementary foods – Division 3 - Formulated supplementary foods	Not reviewed
Chapter 2, Part 9, Standard 2.9.3	Formulated meal replacement and formulated supplementary foods – Division 4 - Formulated supplementary foods for young children	Not reviewed
Chapter 2, Part 9, Standard 2.9.4	Formulated supplementary sports foods – Division 2 - Formulated supplementary sports foods generally	
2.9.4-2	Definitions	No Division 1 !!
Chapter 2, Part 9, Standard 2.9.4	Formulated supplementary sports foods – Division 3 – Particular formulated supplementary sports foods	

Provision	Title	Beverages Council Comments
		No Comment
Chapter 2, Part 9, Standard 2.9.5	Food for special medical purposes	Not reviewed
Chapter 2, Part 9, Standard 2.9.6	Transitional standards for special purpose foods	Not reviewed
Chapter 2, Part 10	Standards for other foods	
Chapter 2, Part 10, Standard 2.10.1	Vinegar and related products	Not reviewed
Chapter 2, Part 10, Standard 2.10.2	Salt and salt products	Not reviewed
Chapter 2, Part 10, Standard 2.10.3	Chewing gum	Not reviewed
Chapter 2, Part 10, Standard 2.10.4	Miscellaneous standards for other foods	Not reviewed
Chapter 3	Food safety standards (Australia only)	Not reviewed
Chapter 4	Primary production standards (Australia only)	Not reviewed
Chapter 5	Revocation, transitions etc. (Australia only)	Not reviewed

Schedules

Provision	Title	Beverages Council Comments
Schedule 1 – RDIs and ESADDIs		No comments.
Schedule 2 – Units of measurement		No comments.
Schedule 3 – Identify and purity		No comments.
Schedule 4 – Nutrition, health and related claims		No comments.
Schedule 5	Nutrient Profile scoring method	No comments.
Schedule 6	Required elements of a systematic review	No comments.
Schedule 7	Food additive class names (for statement of ingredients)	No comments.
Schedule 8	Food additive names and code numbers (for statement of ingredients)	No comments.
Schedule 9	Mandatory Advisory Statements	No comments.
Schedule 10	Generic names of ingredients and conditions for their use	No comments.
Schedule 11 – Calculation of values for nutrition information panel		No comments.
Schedule 12	Nutrition Information Panels	No comments.
Schedule 13	Nutrition information required for food in small packages	No comments.
Schedule 14	Technological purposes performed by food additives	No comments.

Provision	Title	Beverages Council Comments
Schedule 15 – Substances that may be used a food additives		Beverages Council recommends that where additives may be added at GMP this be stated in the Schedule and where there is a maximum limit (eg S16-4), the maximum limit be stated. This will enhance the use of the Code.
Schedule 16 – Definitions for certain types of substances that may be used as food additives		No comments.
Schedule 17 – Vitamins and minerals		No comments.
Schedule 18 – Processing aids		No comments.
Schedule 19 – Maximum levels of contaminants and natural toxicants		No comments.
Schedule 20 – Maximum residue limits		No comments.
Schedule 21 – Extraneous residue limits		No comments.
Schedule 22	Foods and classes of foods	No comments.
Schedule 23	Prohibited plants and fungi	No comments.
Schedule 24	Restricted plants and fungi	No comments.
Schedule 25 – Permitted novel foods		No comments.
Schedule 26 – Food produced using gene technology		No comments.
Schedule 27	Microbiological limits for foods	No comments.
Schedule 28	Composition of packaged water	No comments.
Schedule 29	Formulated caffeinated beverages	No comments.
Schedule 30 – Special Purpose Foods		No comments.

Provision	Title	Beverages Council Comments
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