



Fonterra Co-operative Group Limited
 Private Bag 11029, Palmerston North
 Dairy Farm Road, Fitzherbert
 Palmerston North, New Zealand
 Tel +64 6 350 4649
 Fax +64 6 356 1476
www.fonterra.com

Fonterra Co-operative Group Ltd Submission on:

Proposed Amendments to Australia New Zealand Food Standards Code – Proposal P1025

27 September 2013

Fonterra Co-operative Group Ltd

Fonterra Co-operative Group Ltd is a leading multinational dairy company, owned by 10,500 New Zealand dairy farmers. Exporting 95 per cent of our production, Fonterra is the world's largest exporter of dairy products.

Fonterra's global supply chain stretches from its shareholders' farms in New Zealand through to customers and consumers in 140 countries. Collecting more than 13 billion litres of milk a year, the Company manufactures and markets over 2 million tonnes of product annually, making Fonterra the world's leader in large scale milk procurement, processing and management, with some of the world's best known dairy brands.

General Comments

- 1 Fonterra appreciates the opportunity to provide comments on the proposal.
- 2 Our submission has been prepared to reflect those changes in the proposed Standard where:
 - a) Editorial type issues have occurred; and
 - b) The proposed change allows for a differing interpretation to that of the original Standard and therefore goes beyond the scope of P1025. Where we have identified that such a significant change exists (denoted by the word **significant change** in the table below), we submit that this should either be amended or the subject of a formal consultation process.

If there are any queries relating to this submission, please contact Roger Hall
 (roger.hall@fonterra.com)

Yours sincerely

Roger Hall
 Group Food Regulatory Manager

I. General Comments:

- Fonterra would support a two year+ implementation period;
- We support improved enforceability, legibility and clarity, but not at the cost of user-friendly provisions, such as retention of Standards segmentation and editorial notes.
- There is a need for a Regulatory impact statement (RIS) for defining costs to food industry (i.e. label changes, staff training, export implications).

Format

- The revised format is more suited to an electronic version of the Code with cross referencing/hyperlinks. It is less suited to a printed version of the Code as it requires navigating the entire code rather than relevant sections in day to day use. This is particularly true with the use of Schedules at the end of the proposed document.
- The cross referencing and signposting from Divisions to relevant definitions is not consistent which creates difficulty from a usability point of view.
- The numbering system is confusing due to the Clause number not reflecting the Part or Division number. This will make finding and referencing clauses difficult.
- Useful editorial notes including examples and calculations are not always retained. These are especially useful if user guides will no longer be issued

Terminology

New and differing terminology has been used in several parts of the proposed Code. For example 'foods', 'other foods' 'milk products', 'products', 'products obtained from milk' have been used interchangeably. Similarly the use of 'substances' and 'foods' used as processing aids is not used consistently in some instances (see comments 61, 62, 64 and 48). Need to use consistent terminology.

II. Specific Comments – significant changes

- **Comment 18:** The new definition of 'ingredient' is a **significant change** and should be subject of a formal consultation.
- **Comment 34:** The current requirement that food additives must be *intentionally added to food* (to achieve a technological function) has been omitted from the proposed version.
- **Comment 39:** Nitrates and ferrocyanides have been added to the maximum permitted levels of additives list.
- **Comment 50:** The provision for *foods including water* has been removed from the description of Generally permitted processing aids

- **Comment 59:** Table edible oil spreads and table margarines produced in NZ and exported would need to contain minimum vitamin D requirements.
- **Comment 66:** The provision for the addition of L-amino acids to infant and follow-on formula has been changed
- **Comment 70:** It could be interpreted under the proposed version there are no permitted forms of vitamins and minerals for formulated supplementary foods.
- **Comment 72:** Vitamin and minerals are regarded only as nutritive substances throughout the revised Code and is new text. The current Standard suggests that vitamins and minerals can be added regardless of the nutritional purpose. The new wording infers that vitamin and minerals can only be added for a nutritional purpose. This is a significant change to the meaning of the code and should be the subject of formal consultation.
- **Comment 74:** Vitamin D RDI for infants referred to in Schedule 1 has been changed from 5µg to 10µg and should be reverted to 5µg.

III. Specific Comments. Comparison of proposed version to current version of the FSC.

A. Draft Variation to the ANZFSC (Volume 1, Chapters 1 – 5)

TABLE 1: Chapter 1: Introduction and Standards that apply to all foods

	Proposed Format	Current Version	Issue(s)
	Part 1 - Preliminary	Part 1.1 Preliminary	
1.	Division 2 – Interpretation 1.06– Definitions <i>“used as a nutritive substance”</i> See Chapt 1, Part 2, Div 1, 1.18 for the definition	Standard 1.1.1 Preliminary Provisions – Application, Interpretation and General Prohibitions Revised from current definition: <i>“nutritive substance</i> means a substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which, after extraction and/or	Large number of additional definitions made up of terms defined elsewhere in the existing code as well as new terms. Collates definitions into one place – valuable improvement.

		refinement, or synthesis, is intentionally added to a food to achieve a nutritional purpose, and includes vitamins, minerals, amino acids, electrolytes and nucleotides”	
	Part 2 – Basic Concepts and Basic Requirements		
2.	Division 1– Basic Concepts 1.15 through to 1.19	New	Definitions provide clarity.
	Division 2 – Basic Requirements		
3.	1.21 through to 1.24 Requirements relating to food products for sale	New	Introduces this concept of listing all the requirements under one section. Provides clarity on requirements and improved visibility of what is required. Compositional, packaging, labelling, information provision
4.	1.25 - Identity and Purity 1(c)“a substance (including a vitamin or mineral) that is used as a nutritive substance.”	Standard 1.3.4 - Identity and Purity Clause 1 – Application (c)“vitamins and minerals”	This is a change in wording which implies that only vitamins and minerals used with a nutritional purpose must meet appropriate specifications for identity and purity. We would appreciate clarification on this.
	Part 3 – Labelling and other information requirements	Part 1.2 - Labelling and other Information Requirements	
	Division 1– Requirements to have labels or otherwise provide	Standard 1.2.1 – Application of labelling and other information requirements	

	information.		
5.	Subdivision A – Introductory 1.27 Meaning of <i>label, labelling and bear a label</i> (1)	Standard 1.2.2 – Food Identification Requirements 1 – Name of food (2)	Although there is no change from the current version, there are two issues here: 1) accompanying information described in (b) could include product specifications and; 2) information at point of sale described in (c) may be provided by a retailer, not the manufacturer. In this case it is likely that the requirements for a label in 1.33 would not be met, or would certainly be out of the control of the manufacturer.
6.	1.27 Meaning of <i>label, labelling and bear a label</i> (2)	1 – Name of food (2)	Unclear for the layperson to interpret. We suggest an explanatory note for intention.
7.	1.28 – Meaning of <i>catering sale</i>	Standard 1.2.1 - Application of Labelling and other Information Requirements 1 - Interpretation	Does immediate consumption apply to all institutions or only ‘other institutions?’ We would appreciate clarification on this. It appears the definition of <i>food for retail sale</i> has been omitted and should therefore be reinstated.
	Subdivision B – Retail sales of food	Standard 1.2.1 - Application of Labelling and other Information Requirements	
8.	1.31 – When the food product must bear a label Clause 3 – “ <i>If the food product has more than 1 layer of packaging and Subsection (2) requires it to bear a label, only 1 label is required in relation to the food product:</i> ”	2 – Labelling of food for retail sale (1)(b) “ <i>the food is in an inner package not designed for individual sale...</i> ”	It is not clear whether the proposed 1.31 (3) is new or is a reworded form of 1.2.1 (1)(b). “ <i>If the food product is an inner package...</i> ” is not synonymous with “ <i>if the food product has more than 1 layer of packaging</i> ” and is a potential change in meaning of the Code. We would appreciate clarification on this.

9.	1.31 - When the food product must bear a label <i>(4)(b) have a surface area of 30cm² or greater</i>	2 – Labelling of food for retail sale (1)(b)	Needs to specify that EACH individual portion pack should not have a surface area of 30cm ² or greater (i.e 6 packs of yoghurt where the top of the individual packs constitute the single facing to the consumer at point of sale, but are intended to be used separately (usually different flavour variants).
10	1.32 – Australian only – country of origin labelling requirement (1)		Suggest an explanatory note that this does not prohibit food products sold trans-Tasman from also including the country of origin statement if sold in New Zealand.
11	1.32 – Australian only – country of origin labelling requirement (2)		Could just align this subsection to the definition of ‘1.28 – meaning of catering sale’?
12	1.33 – Information required on general label <i>(4) “... it is an additional requirement that labels clearly and prominently displayed in or on the vending machine state the name and address of the supplier...”</i>		Suggest adding an explanatory note / qualifier to define, in this context, whether “supplier” means the manufacturer of the food or supplier of the vending machine.
13	Subdivision C – Sales of food products to caterers 1.42 – Information that can be requested <i>“that is necessary to enable the purchaser to comply with this Code in a</i>	6 – Provision of information in relation to food for catering purposes	Repetition of the term “food product” twice is confusing in the new version. Suggest: “...sale of the food product or of a food when sold for use as an ingredient”.

	<i>sale of the food product or of another food product using it as an ingredient'</i>		
14	1.45 – Labelling requirements <i>(1) "If the food is not in a package, it is required to bear a label"</i>	<i>Unclear what the corresponding clause is under the current Standard</i>	The intent is unclear here. Is the intent 'food not in a retail package?' As it stands as 'food not in a package' - would a box or carton constitute a "package"? We would appreciate clarification on this.
	Division 2 – Information requirements – food identification	Standard 1.2.2 – Food Identification Requirements	
15	1.52- Name of food <i>(1) "For the labelling provisions, the name of a food is:"</i>	1- Name of food <i>(1)"the label on a package of food must include-"</i>	The previous wording was clearer that the name of the food is a mandatory requirement
	Division 3– Information requirements – warning statements, advisory statements and declarations	Standard 1.2.3 - Mandatory Warning and Advisory Statements and Declarations	
16	1.55 – mandatory advisory statements <i>(1)</i>	2 - Mandatory advisory statements and declarations <i>(2)(a)(b)</i>	'Attachment E' does not seem to outline how the current clauses 2 (a) and (b) are now covered. Are they now covered as part of 1.33(7)? If so this needs to be made clear.
17	<i>Omitted</i>	Editorial note	These examples were useful guidance.
	Division 4 – Information requirements – statement of ingredients	Standard 1.2.4 Labelling of Ingredients	

18	(1.17 – Basic concepts – ingredient and compound ingredient)	1 – Interpretation <i>‘Ingredient means any substance, including a food additive, used in the preparation, manufacture or handling of a food’.</i>	Definitions have now moved to Part 2, 1.17 Basic concepts. The new definition of ingredient is a significant change and should be subject of a formal consultation.
19	<i>Omitted?</i>	1 – Interpretation <i>(2) “Nothing in this Standard affects the mandatory declaration requirements in Standard 1.2.3”</i>	We have had difficulty in finding the note that clarifies this in the proposed version. Was this point omitted unintentionally?
20	<i>Omitted</i>	Editorial notes 4 and 5	Omitted but should be noted that this was useful guidance
21	1.63 – Declaration of substances used as food additives <i>(1)(a) if the substances can be classified into a class of additives listed in schedule 7 (whether prescribed or optional)....</i>	8 – Declaration of food additives <i>(2) ‘...of that class followed by the additives prescribed name or code number in brackets as indicated in..’</i>	Addition of the word “optional” which is a useful addition. Reference to the code number in brackets has been removed which was useful as this is an example how to display on the label.
22	<i>Omitted?</i>	8 – Declaration of food additives 3) Subclause (2) <i>does not apply to the declaration of optional class names</i>	We have had difficulty in finding where this clause is covered in the proposed format
23	1.64 - Declaration of vitamins and minerals <i>‘If a vitamin or mineral is used as nutritive substance in a food</i>	9 - Declaration of vitamins and minerals <i>“Where a vitamin or mineral is added to a food, the vitamin or mineral may be declared in</i>	Proposed format now refers to “food product “not a “food.’ This clause also now states “used as a nutritive substance”. This could be seen as a significant change (refer to our comments regarding vitamins, minerals with respect to their use as nutritive substances).

	<i>product, it may be listed in the statement of ingredients in accordance with section 1.63 using the class name 'vitamin' or 'mineral' as appropriate"</i>	<i>accordance with clause 8 of this Standard using the class name 'vitamin' or 'mineral'</i>	
	Division 5 – Date marking of food products	Standard 1.2.5 Date Marking of Food	
24	1.66 - Food products must be date marked on labels <i>(3)" despite subsection (1), if the food product is in a small package..."</i>	2 - Food must be date marked <i>(1)(d)(ii)" in a small package, except where the food should be consumed before a certain date..."</i>	Clearer now that this clause is referring to the "use-by date" compared to "before a certain date for safety reasons"
	Division 6 – Directions for use and storage	Standard 1.2.6- Directions for use and storage	
25	1.69 Directions for use and statement of storage conditions <i>(c)(i)(ii)</i>	Table to clause 1	Proposed format now includes the statement "or words to that effect" which is boarder and gives more flexibility as to what manufacturers can display on the label
	Division 7 – Nutrition, health and related claims	Standard 1.2.7 – Nutrition, Health and Related Claims	
26	Subdivision B – Definitions that apply to this Division and Division 8 Definitions for Divisions 7 and 8 combined	Part 1 – Purpose and Interpretation Clause 2 - Interpretation	Definitions are included in individual Divisions throughout the Code; Fonterra understands this may aid interpretation of each Division. However Division 8 does not contain any definitions as they are the same as those used in Division 7. If the reader is using Division 8, the expectation is then to navigate between the two Divisions for this purpose. The combining of definitions across two Divisions has affected useability and

			completeness and presents an unnecessary challenge that is inconsistent with the rest of the Code.
27	Beneath the definition of 'health claim' the Note: <i>"See also subsection 2.163(3)."</i>		Would be helpful to explain what the subsection relates to.
28	1.72 - Meaning of nutrition content claim. Additional note re 2.47(4) and 2.163(3) (statements not considered nutrition content claims)		Difficult to use. Would be helpful if the actual statement were included in Division 7.
	Division 8 – Nutrition Information Requirements	Standard 1.2.8 Nutrition Information Requirements	
29	Subdivision B – Nutrition Information Panels 1.100 - When nutrition information panel is not required (a) (x)	Division 2 – Nutrition information panels Clause 3 – Nutrition information requirements and exemptions (l)	1.100 - In removing some of the terminology, the terms 'ice' and 'water' have been combined to read 'ice water'. This is a change and needs to revert to 'ice' and 'water'.
30	Division 9 – Characterising ingredients and components of food 1.110 – Definitions 'Characterising ingredient' and 'characterising component'	Standard 1.2.10 – Characterising ingredients and components of food 1 – Interpretation 'Characterising ingredient' and 'characterising component' (b) <i>"is usually associated with the name of the food by a consumer"</i>	A change in wording. The terms ' <i>likely to be</i> ' and ' <i>usually</i> ' are not synonymous and could potentially increase the number of ingredients/components required to have percentages declared.

	(b) <i>“is likely to be associated with the name of the food by a consumer”</i>		
31	1.111 – Requirement to declare characterising ingredients and components (3)	2 – Declaration of characterising ingredients and characterising components (4)	List of exceptions no longer includes a few examples including “foods for catering purposes” which are clearly exempt in the current Standard. Labelling requirements for foods for catering sale is covered in Division 1 of this Part; however, its removal from Division 9 causes confusion. Full list of exceptions should be reinstated to this Division.
32	Division 10 – Country of origin labelling requirements	Standard 1.2.11 – Country of Origin Labelling (Australia only)	This Division as outlined in the proposed code revision is based on an out of date version of Standard 1.2.11. (Standard was revised in July 2013).
33	<i>Omitted</i>	3– Country of origin labelling for certain unpackaged food Table to sub clause 3(1)	Does not reflect the addition of Beef, Veal, Lamb, Hogget, Mutton, Chicken or mix of food - mentioned in Table to subclause 3(1) of the original Standard.
	Part 4 – Substances added to or present in food	Part 1.3 Substances Added to Food	
	Division 2 – Food Additives	Standard 1.3.1 Food Additives	
34	Meaning of <i>‘used as a food additive’</i>	Purpose <i>“.. which is intentionally added to food”</i>	The current requirement that food additives must be <i>intentionally added to food</i> (to achieve a technological function) has been omitted from the proposed version. This is a significant change and should be either amended or addressed in a separate consultation.
35	1.122 - Interpretation <i>(2)(b)(ii)“is not normally</i>	Purpose <i>“Normally consumed as a food</i>	There is a difference between ‘consumed’ and ‘sold’ with respect to food. The change in wording impacts the meaning of <i>used as a food additive</i> . This is because manufacturers may use an ingredient that a consumer

	<i>sold as a food product:</i> <i>(2)(b)(iii) “is not normally used as an ingredient by consumers”</i>	<i>in itself...”</i> <i>“Not normally used as an ingredient of food...”</i>	would not have access to. Fonterra understands that this change in wording may be an attempt to differentiate between ingredients used by consumers and those used by food manufacturers. We would appreciate your clarification on this issue please.
36	1.122 – Interpretation	New	
37	1.2.2 – Interpretation <i>2(b) “any substance that (i) has been extracted, refined or synthesised; and...”</i>	New	This clause is new which is a significant change and should be either amended or addressed in a separate consultation.
38	1.124 - Maximum permitted levels of food additives in foods	Clause 5 - Maximum permitted levels of additives	Clause 5 of the current Code allows for the maximum amount that may be present in the food as sold . These words ‘as sold’ are not included in the proposed corresponding section 1.124(2).
39	1.124 - Maximum permitted levels of food additives in food <i>(6) (e) nitrates refers to the total....’</i> <i>(6) (f) ‘ferrocyanides are calculated as the total of sodium.....’</i>	Clause 5 - Maximum permitted levels of additives (2) list of definitions	Nitrates and ferrocyanides appear to be new additions to the list. This is a significant change .
40	1.124 - Maximum permitted levels of food additives in food <i>(7) ‘To calculate the</i>	Clause 5 - Maximum permitted levels of additives (3) ‘ <i>to calculate steviol equivalent...’</i>	The calculation has been changed from that of estimating total steviol equivalent for a food to that of calculating individual steviol glycoside. Useful example has been deleted. Recommend providing an example.

	<i>steviol equivalent...'</i>		
41	1.126 - Food Additives performing the same purpose	Clause 6 - Food Additives performing the same function (1), (2) (a) & (b)	Useful example has been deleted. Recommend providing an example.
42	Schedule 16 – Definitions for certain types of substances that may be used as food additives S16.01(2)	Clause 11 – Permitted flavouring substances	The text <i>“that is a single chemical entity”</i> has been inserted into the proposed Code. This is a significant change and should either be amended or the subject of a separate consultation.
	Division 3 – Vitamins and Minerals	Standard 1.3.2 - Vitamins and Minerals	
43	Note 1. <i>“Subsection 1.21(3) provides that a food must not ... a nutritive substance”</i>		This reference should read <i>“Subsection 1.21(4)...”</i>
44	Note 1. <i>“this division deals with vitamins and minerals used as nutritive substances”</i>	Purpose <i>“this Standard regulates the addition of vitamins and minerals to food”</i>	This Note is new and changes the scope of this Section so that only those vitamins and minerals which are used as nutritive substances are included in this Section. This is a significant change and should either be amended or the subject of a separate consultation.
45	Omitted	Editorial note re. NZ Mandatory Fortification of Bread with Folic acid	It is useful to state that folic acid fortification applies to bread sold in NZ only. This is missing in the proposed Code. Perhaps this could be included in the ‘Notes’ section
46	Omitted	Editorial note – Example calculation	Useful example now gone. Need to include an example of how to calculate.
	Division 4 – Processing aids	Standard 1.3.3 – Processing Aids	

47	Subdivision A - Interpretation <i>Omitted</i>	Clause 1 - Interpretation Definitions	A definition for dairy ingredient should be retained and we suggest it should be defined as being derived from milk or milk products.
48	1.131 – Meaning of <i>used as a processing aid</i> (2) “....reference to a food that is used....”	Clause 1 – Interpretation <i>“processing aid means a substance...”</i>	<p>The distinction between ‘foods used as processing aids’ and ‘substances used as processing aids’ has been emphasised and made clear. Previously the inclusion of ‘food’ and water as generally permitted processing aids was included in Clause 3 (a) We support this clarity and addition.</p> <p>However we would ask that consistency is applied in when referring to processing aids throughout the document e.g. ‘processing aids’ rather than either ‘foods as processing aids’ or ‘substances used as processing aids.’</p> <p>Example: under <i>1.59 Requirement to list all ingredients</i>, both ‘substances’ and ‘foods’ that are used as processing aids are exempt from inclusion in an ingredients list. However, <i>1.100 When nutrition information panel is not required</i>, only ‘substance’s approved for use as a processing aid’ is mentioned.</p>
49	1.131 References to substances that are used as a processing aid (1)(c) <i>‘does not perform a technological purpose....in the processed food</i>	Interpretation - Processing aid definition (a) <i>...but does not perform a technological function in the final food....</i>	The original wording <i>‘in the final food’</i> has been changed to <i>‘in the processed food.’</i> Fonterra would appreciate some clarity as to the intent of this change. Suggested wording is either ‘the food as consumed’ or revert to the current wording ‘final food.’
50	1.133 Generally permitted processing aids for all foods - (2) (a) <i>an additive permitted at GMP; or</i> (b) <i>not present in the food at a level greater than the</i>	Clause 3 - Generally permitted processing aids (a) <i>“foods including water; and..”</i>	<p>The rewording makes it clear that it applies to all foods however ‘foods including water’ has been deleted.</p> <p>This is a significant change and should be amended.</p>

	<i>maximum permitted level.....</i>		
51	<i>Omitted</i>	Clause 17 – Permitted enzymes of microbial origin – Table to clause 17 - Editorial Note	Providing the former names and synonyms of certain strains was useful and should be reinstated
52	Division 6 – Agvet chemicals		Note 2: States that MRL's in NZ are issued under section 11C of the Food Act 1981 – is this the correct section / Act? 11C of the Food Act is about the power to issue food standards.
	Part 1.3 Substances Added to Food	Part 1.5 Foods requiring pre-market clearance	
	Division 9 – Food produced using gene technology	Standard 1.5.2 – Food produced using gene technology	
53	1.156 – Requirement to label food as 'genetically modified food' (2)(b) (ii) – changed to " <i>novel DNA or protein</i> "	Division 2 - Labelling etc of food produced using gene technology Clause 4 – Interpretation and Application (1) novel DNA and/or novel protein definition includes: " <i>novel DNA and/or novel protein</i> "	The amendment "and/or" to "or" has changed the meaning of the clause. Fonterra recognises that the intent is to exclude both novel DNA and novel protein. This could be an editorial error, but if a deliberate amendment it should be the subject of a separate consultation.
54	1.56 - Requirement to label food as 'genetically modified food' (6) – definition of novel	Clause 4 - Novel DNA and/or novel protein definition	The purpose and implications of including the words "in the case of a substance used as a processing aid" is queried. We would appreciate clarity on the intent of this change.

	protein: novel protein means protein encoded from novel DNA and, in the case of a substances used as a processing aid, which has a different amino acid sequence from that found in nature.		
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TABLE 2: Chapter 2: Food Standards

	Proposed Format	Current Version	Issue(s)
	Part 4 – Edible Oils	Part 2.4 - Edible Oils	
	Division 2 – Edible oil spreads	Standard 2.4.2 Edible Oil Spreads	
55.	Deleted. Contains Note pointing to the Standard for Butter	Purpose	Minimal impact. Note pointing the reader to Standard for Butter was helpful but not essential
56.	Removed definition of margarine	Clause 1 -Interpretation	No impact. Compositional requirements cover information given in the definition in the current Standard
57.	2.26 - Compositional requirements now split into 'edible oil spreads', 'table edible oil spreads', 'margarine' and 'table margarine'		Intention and definitions are the same however it is confusing as to whether margarines are included in other parts of the Code which reference "edible oil spreads". To avoid this confusion, the heading of the Division could be "Edible oil spreads and margarine."
58.	2.26 - Compositional requirement for edible	Clause 2 (1) - Composition of edible oil spreads and	Seems to be made clearer that it must contain edible oils and water (as a defined edible oil spread). However it then states you can optionally add

	oil spreads Contains prescription that edible oil spreads must consist of edible oil spread alone or edible oil spread plus any of the listed ingredients.	margarine	water. Confusing.
59.	2.26 - Compositional requirement for edible oil spreads Subsection (5) Application of section to New Zealand – <i>Subsections (2) and (4) (table edible oil spread and table margarine) do not apply to sales in NZ.</i>	Clause 2 (2) - <i>“Subclause (3) does not apply to table edible oil spreads and table margarine produced in, or imported into, New Zealand”</i>	Major impact. Current standard would allow table spreads produced in NZ and exported to Australia to not contain minimum vitamin D requirements. Proposed Division changes this. Table edible oil spreads and table margarines produced in NZ and exported would need to contain minimum vitamin D requirements. This is a significant change to the meaning of the Code and should therefore be either amended or the subject of a separate consultation. Definition of ‘table’ would be helpful.
60.	The Note: <i>“Under Section 1.06, edible oil spread is defined for the rest of this Code as a food that may be sold as edible oil spread under this section”</i>		Helpful.
	Part 5 – Dairy Products	Part 2.5 – Dairy Products	
	Division 3 – Fermented Milk Products	Standard 2.5.3 – Fermented Milk Products	
61.	2.3.2 – Compositional requirement for fermented milk and	Clause 1 – Interpretation <i>‘Fermented milk means a milk</i>	The term used to describe fermented milk has changed from ‘food’ to ‘milk product.’ Fermented milk is a milk product. To describe it as a food may

	yoghurt. (3) <i>'Fermented milk means a food obtained by fermentation of milk or products derived from milk...'</i>	product obtained by fermentation of milk or products derived from milk...'	infer that it has significant ingredients that are not of dairy origin.
62.	2.32 - Compositional requirement for fermented milk and yoghurt (1) (a) ...with the addition of other ingredients' and (2) <i>"If a food contains fermented milk or yoghurt as an ingredient, that ingredient must comply with paragraphs (1)(a) to (d)"</i>	Clause 2 - Composition of fermented milk, including yoghurt (1) <i>"Fermented milk may contain other foods"</i> New	'Other foods' has changed to 'other ingredients'. This provides more clarity around foods containing fermented foods or yoghurts. We agree with this change in wording and addition.
	Division 4 – Cheese	Standard 2.5.4 – Cheese	
63.	2.35- Addition of tall oil phytosterol esters (a), (b) & (c) (b) states that <i>'the cheese or processed cheese is supplied in an individual portion, the weight of which is no</i>	Clause 3 - Tall oil phytosterol esters (a) & (c)	The proposed Section 2.35 (b) has been added back in after it was deleted from Standard 2.5.4 last year. It should therefore be deleted.

	<i>more than 50g'</i>		
	Division 7 – Dried Milk, Evaporated Milk and Condensed milk	Standard 2.5.7 - Dried Milks, Evaporated Milks Condensed Milks	
64.	<p>2.38 – Compositional requirements for condensed milk</p> <p><i>Condensed milk means:</i></p> <p><i>a) a food obtained by the partial removal of water from milk with the addition of sugars; or</i></p> <p><i>b) a food of the same composition obtained by any other process</i></p>	<p>Clause 1 – Interpretation</p> <p><i>'Condensed milks mean either, milk products obtained by the partial removal of water from milk.....obtained by any other process'</i></p>	<p>The proposed version no longer refers to condensed milk as a milk product; it has been changed to 'food'. Condensed milk is a milk product. To describe it as a food may infer that it has significant ingredients that are not of dairy origin. Please clarify the rationale for this proposed change.</p>
	Part 9 – Special Purpose Foods	Part 2.9 – Special Purpose Foods	
	Division 1 – Infant Formula Products	Standard 2.9.1 -Infant Formula Products	
		Division 1 – General Provisions	
65.	<p>Subdivision A – Preliminary</p> <p>2.8.2 - Definitions</p>	<p>Subdivision 1 - Interpretation</p> <p>Subclause 1 - Definitions</p>	<p>Definition of Infant formula product has been amended. No substantive impact for Fonterra, but consider that the definition could be further revised to provide clarity in the use of the words – sole and principal. Suggest the following amendment:</p> <p>Infant formula product means a product based on milk or other edible food constituents of animal or plant origin which is nutritionally adequate to serve <u>by itself</u> as <u>either</u> the <u>sole</u> or principal liquid source of</p>

			nourishment for infants <u>depending on the age of the infant</u> .
66.	Subdivision C – Infant Formula and Follow-on Formula 2.89 - Infant formula and follow-on formula – protein 2.89(3) states that L-amino acids may be added ‘ <i>only in an amount necessary to meet the minimum amino acid requirements.</i> ’	Division 2 – Infant Formula Follow On Formula Subclause 22(3) – Protein Provides that L-amino acids must be added ‘ <i>only in an amount necessary to improve protein quality</i> ’.	Fonterra is concerned that this amendment not only removes the link between L-amino acids and protein quality, but more significantly, it makes addition of L-amino acids an absolute amount (depending on the initial protein quality). We are concerned about the impact of this revision on enforceability and believe that this amendment is a significant change and should be either amended or the subject of a separate consultation.
	Division 2 – Food for Infants	Standard 2.9.2 Food for Infants	
67.	<i>Omitted</i>	Purpose Includes intention of the Standard and clarity that it does not apply to infant formula or formulated meal replacements/ supplementary foods, directing to the relevant Standards. Recognises special needs of infants	Likely no impact from an enforcement perspective but the information in the Purpose was useful for clarity.
68.	2.105 – Definitions “Cereal based food means food for infants that is based on cereal.”	Clause 1 - Interpretation	The only change in this definition is the removal of the word ‘a’. This is however the same definition as at the front of the Code and applies to the whole Code. Also, this term is used in the main body of the standard, followed by “for infants” – unnecessary repetition. Recommend a change to the definition: “a food that is based on cereal” and quantify with “for infants” through the body of the Standard, as required.

	Division 3 – Formulated meal replacements and formulated supplementary foods	Standard 2.9.3 Formulated meal replacements and formulated supplementary foods	
69.	Subdivision B – Formulated meal replacements 2.120 Labelling of formulated meal replacements (3)(c) <i>“where the vitamin or mineral has been used as a nutritive substance in the food, the claimed quality of that vitamin or mineral in a serving is no more than the quantity set out in column 3 of the table to section S30.11 or S30.12 of schedule 30”</i>	Division 2 – Formulated meal replacements Clause 3 - Labelling of formulated meal replacements. Subclause 2A(c) <i>“where the vitamin or mineral has been added to the food, the claimed quantity of that vitamin or mineral in a serving is no more than the quantity set out in column 3 of table 1 or 2.”</i>	This is confusing and it appears to significantly change the meaning. S30.11 refers to vitamins and mineral that are <u>present in the food</u> . S30.12 refers to vitamins and mineral that have been <u>used as nutritive substances</u> . However this clause 3(c) now infers that table S30.11 vitamins and minerals may be naturally present OR used as nutritive substances. Seems to be inconsistent. This should be either amended or the subject of a separate consultation.
	Subdivision C – Formulated supplementary foods		
70.	2.122 – Compositional requirements for formulated supplementary foods and; 2.125 - Compositional	Division 3 – Formulated supplementary foods and Division 4 - Formulated supplementary foods for young children	In the proposed version it could be interpreted that there are no permitted forms for formulated supplementary foods. S17.01 and S17.02 only reference 1.128 and 1.129 (general foods) and S30.16 references use in only formulated sports foods or formulated meal replacements. There needs to be more clarity in terms of these tables being appropriate

	<p>requirements for formulated supplementary foods for young children</p> <p>Both state under their respective (2)(c) “ the vitamin or mineral is in a specified form specified in</p> <p>(i) the table in section S17.01 or S17.02 of schedule 17; or</p> <p>(ii) the table to section S30:16 of schedule 30.”</p>	<p>Under their respective Compositional requirements (Div 3, 4(3) and Div 4, 6(3))</p> <p>Vitamins and minerals added to formulated supplementary foods and formulated supplementary foods for young children must be in the permitted form.</p> <p>The permitted forms are listed in the Schedule to Std 1.1.1. In the case where there is no specified form (Biotin, Vitamin K, Chromium, Copper, Manganese & Molybdenum) the schedule stated 'no permitted form specified'.</p>	<p>for clauses 2.122 and 2.125.</p> <p>This appears to be a significant change to the requirements contained in the current Code and this should be amended or addressed in a separate consultation</p>
71.	<p>2.123 – Labelling of formulated supplementary foods</p> <p>(1) (a) is listed in column 1 of the table to S30.13 of schedule 30; and</p> <p>(b) <i>has been used as a nutritive substance in the food</i></p>	<p>Division 3 – Formulated Supplementary Foods</p> <p>Clause 5 Labelling of formulated supplementary foods</p> <p>(1) subject to subclause (2), the nutrition information panel on the label on a package of formulated supplementary food must include a declaration of the average quantity of a vitamin or mineral present in the food where that vitamin or mineral is listed in column 1 of table 3 to the schedule and has</p>	<p>The current Standard suggests that vitamins and minerals can be added regardless of the nutritional purpose. The new wording infers that vitamin and minerals can only be added for a nutritional purpose.</p> <p>Additionally, it is unclear as to how this impacts the labelling of a) naturally present vitamins and minerals in the ingredient; and b) vitamins and minerals which have been added.</p> <p>This appears to be a significant change to the requirements contained in the current Code and as such should be addressed in a separate consultation.</p>

		been added to the food	
72.	<p>Subdivision D – Formulated supplementary foods for young children</p> <p>2.123 – Labelling of formulated supplementary foods for young children</p> <p><i>(2) (b) for a vitamin or mineral that has been used as a nutritive substance in the food, the claimed quantity of that vitamin or mineral in a serving of the food is no more than the quantity set out in column 3 of the table.</i></p> <p><i>(3) (c) where the vitamin or mineral has been used as a nutritive substance in the food, the claimed quantity of that vitamin or mineral in a serving is no more than the quantity set out in column 3 of the table to section S30.14</i></p>	<p>Division 4 – Formulated supplementary foods for young children</p> <p>Clause 7 – Labelling of formulated supplementary foods for young children</p> <p>(2) (c) where a vitamin or mineral has been added to the food, the claimed quantity of that vitamin or mineral in a serving of the food is no more than the quantity set out in column 3 of Table 3.</p>	<p>The text “<i>a vitamin or mineral that has been used as a nutritive substance</i>” has been used throughout the revised Code and is new text.</p> <p>It is assumed that the use of this wording is to prevent occasions where a vitamin or mineral has been used as a processing aid to then infer nutritive benefits via label declaration. However this Standard is not a Standard for general foods and the Standard permits a large number of vitamin and minerals to be added. The wording in this Standard may be interpreted that the natural vitamin and mineral content are not able to be claimed.</p> <p>This appears to be a significant change to the requirements contained in the previous FSC and this should be amended or addressed in a separate consultation.</p> <p>We note that the text “<i>vitamin or mineral used as a nutritive substance</i>” is not used in the formulated supplementary sports foods section and suggest that the handling of the compositional requirements for formulated supplementary foods and formulated supplementary sports foods is inconsistent. We prefer the references used in the formulated supplementary sports foods Standard.</p>

	in Schedule 30.		
	Division 4 – Formulated supplementary sports foods	Standard 2.9.4 Formulated supplementary sports foods	
73.	Subdivision A – Formulated supplementary sports foods generally 2.131 vitamin and mineral claims		We note that the term nutritive substance is not used in relation to vitamins and minerals in section 2.131. We support this approach.

Draft Variation to the ANZFSC (Volume 2, Schedules S1 to S30)

TABLE 3: Schedules S1 to S30

	Proposed Format	Current Version	Issue(s)
	Schedule 1 – RDIs and ESADDIs		
74.	S 1.10 – RDIs and ESADDIs <i>RDI for Vitamin D for infants = 10 µg.</i>	Standard 2.9.2 – Foods for Infants Clause 8 – Claims about vitamins and minerals Table 2 to Clause 8 – Recommended Dietary Intake for infants. <i>RDI for Vitamin D = 5µg cholecalciferol</i>	RDI for Vitamin D for infants should revert to 5 µg.
75.	S 1.10 – RDIs and ESADDIs	Standard 1.1.1 Schedule – Permitted forms of	RDI for niacin for adults should revert to 10 mg niacin.

	<i>RDI for niacin for adults = 1.1mg niacin</i>	RDI and ESADDIs for Vitamins and Minerals <i>RDI for niacin for adults = 10 mg niacin</i>	
	Schedule 4 – Nutrition, health and related claims	Schedules 1-3 to Standard 1.2.7	
76.	S4.01 – Conditions for nutrient content claims S4.02 – Conditions for permitted high level health claims; and S4.03 – Conditions for permitted general level health claims	Schedule 1 - conditions for nutrition content claims Schedule 2 – conditions for permitted high level health claims; and Schedule 3 – Conditions for permitted general level health claims	Lack of horizontal lines makes it difficult to interpret where conditions relate to individual or multiple claims. Recommend reinsertion of horizontal lines for improved usability.
	Schedule 30 – Special purpose foods.	Schedule 1 to Standard 2.9.1	
77.	S30.06 - Permitted forms of vitamins, minerals and electrolytes in infant formula products, food for infants and food for special medical purposes		The changes are: <ul style="list-style-type: none"> • ‘Carotenoid Forms’ to ‘Carotene forms’ • Biotin and its permitted form, d-Biotin, has been omitted, and • a form of Selenium, ‘sodium selenate’, has been added possibly correcting an error in Schedule 1 which lists the form ‘sodium selenite’ twice. Biotin needs to be added to the table in S30.06. Reference to ‘Carotene forms’ is limited alpha and beta forms. Fonterra understands ‘Carotenoid forms’ is the correct technical term to use as it is the internationally accepted term for the group.

