

Dairy Australia
Representing the Australia Dairy Industry

SUBMISSION to
P1025 Code Revision
Second round of public consultation

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Contact

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The Australian Dairy Industry

Australian dairy is a \$13 billion farm, manufacturing and export industry.

Australia's 6400 dairy farmers produce around 9.2 billion litres of milk a year.

The Australian dairy industry directly employs 43,000 Australians on farms and in factories, while more than 100,000 Australians are indirectly employed in related service industries.

Our industry has the potential to grow substantially over the next decade to meet growing domestic and international demand.

Realising this growth potential and expanding the industry's economic, social and environment benefits depends on a positive national and international operating environment.

The dairy industry welcomes the chance to present this submission in response to P1025 - Code Revision.

This submission from Dairy Australia has been prepared in consultation with the dairy industry, including Australian Dairy Industry Council Inc (ADIC), the Australian Dairy Farmers Limited (ADF), the Australian Dairy Products Federation (ADPF) and individual manufacturers.

The ADIC is the national peak policy body for the Australian dairy industry and represents all sectors of the industry on issues of national and international importance. Its constituent organisations – the ADF and the ADPF – represent the interests of dairy farmers, manufacturers, processors and traders across Australia.

Dairy Australia is the dairy industry-owned service company, limited by guarantee, whose members are farmers and industry bodies, including the ADF and the ADPF.

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Summary of major comments:

General comments:

1. The second draft food regulatory measure has taken up many of the comments from the first call for submission particularly related to changes to numbering and format that created a significant change from the current Code. Dairy Australia commends FSANZ for their consideration of the previous submission.
2. Technical changes appear minimal, however there are some changes with a significant impact for the dairy industry, eg the definition of butter, which are outlined in this submission.
3. The key purpose for changing the Code was to clarify the Code and make it more “enforceable”. Dairy Australia questions whether this has been achieved, particularly as there are still many inconsistencies across State and Territory legislation.

Dairy Australia supports:

1. Re-alignment of the draft regulatory measure format with the current Code.
2. Dairy Australia acknowledges the WTO notification by FSANZ as requested in the first submission.
3. The definition of milk has been maintained as in the current Code, and refers to the mammary secretion of milking animals, and therefore clearly excludes soy or other plant extracts. This is strongly supported by Dairy Australia.
4. In the current Code 2.5.7 Clause 2 (1) enables adjustment of ‘the fat, or protein, or both fat and protein’. The proposal refers to the use of ‘adjusted milk’ to which milk components have been added or from which they have been withdrawn. This is a much broader definition and interpretation than the current Code. This gives industry more flexibility whilst maintaining the integrity and identity of dairy and is supported.

Dairy Australia makes the following recommendations:

1. Dairy Australia recommends that clarification be provided around the legal structure of the Code. In the first draft, the Code was structured to be presented as a single legislative instrument. Following first round submissions, FSANZ has decided not to proceed with presenting the Code as a single instrument. It is now presented as a collection of stand-alone standards, substantially as in the current Code. Each Standard is an individual legislative instrument. However Standard 1.1.1-2 (1) states “All the Standards of the Code are read together as a single instrument”. This appears inconsistent with the intention stated above, and is confusing, if not, contradictory.
2. Chapter 2, Part 5 includes a ‘note’ at the start of each Standard to the effect that ...”In Australia, dairy products must be processed in accordance with Standard 4.2.4.” In the current Code, the processing requirements are included in the very first paragraph of the Standard, under “Purpose”, followed by an Editorial Note referencing Standard 4.2.4. It needs to be stated very clearly to users that in Australia the primary production and processing standard applies to each dairy product covered by Part 2.5. Dairy Australia recommends that the “note” be strengthened or highlighted to ensure this very important requirement is understood by all users of the Code and enforced.
3. An implementation period of 12 months following Gazettal of the changes is recommended to allow all industry, particularly small to medium enterprises, and exporters to make the necessary changes to systems and documentation.
4. The inclusion of food names in quotation marks, does not provide the clarity intended. Whilst each dairy food is given a description, the use of quotation marks indicates a food may not fully meet the definition but may be “like” the food defined. This does not provide clarity, and in fact produces confusion, particularly for consumers. It is recommended that this be clarified.
5. This Standard has been revised to provide more clarity and to align with the Agvet Code. It does not appear that the required clarity has been achieved through the inclusion of “active constituent” requirements. This appears to be more difficult to enforce, and less clear for industry to apply. Dairy Australia recommends this be further clarified.
6. In Schedule 27, the microbiological limits for are set for “unpasteurised milk for retail sale”. As the Code requires all milk to be processed in accordance with Standard 4.2.4, there

should be no microbiological limits set in the Code for unpasteurised milk for retail sale. Dairy Australia recommends these limits be deleted from Schedule 27.

7. The definition of butter has significantly changed. Butter is defined in the current Standard 2.5.5 as: “**butter** means a product derived **exclusively** from milk and products obtained from milk, principally in the form of an emulsion of the type water-in-oil.” The proposal now is that the definition read: “*butter* means

(a) a food that is derived **principally** from milk and products obtained from milk ...,

The use of the term “principally” rather than “exclusively” has a significant impact and opens the product up to be derived from other, non-dairy ingredients (eg 90% from milk ingredients, 8% vegetable fats and 2% other permitted ingredients eg salt). Also, the term “exclusively” is used in Codex. Dairy Australia recommends the term ‘exclusively’ should be retained in the definition of butter.

8. There is currently significant development work being undertaken in many Standards relevant to the dairy industry. Dairy Australia recommends the establishment of industry working groups with FSANZ, for the development and review of Standards.
9. Dairy Australia recommends FSANZ develop User Guides to support industry to understand and apply the Code.

1 General comments

The second draft food regulatory measure has taken up many of the comments from the first call for submission particularly related to changes to numbering and format that created a significant change from the current Code. The second draft has reverted to a format more consistent with the current Code and will be easier for users to manage and understand, and require less change to implement.

With the intention of the changes being to “... *modernise how the Code is presented to create an instrument that better meets the needs of ... stakeholders in industry, commerce and enforcement*”, Dairy Australia questions whether this has been fully achieved.

1.1 Purpose of review

The overriding purpose of the review of the Code was to modernise the Code to meet the needs of the broad range of stakeholders by:

- More clearly presenting requirements that impose an obligation to the food industry
- Greater reliance on definitions already present in the food acts of New Zealand, the states and territories; and
- Presenting the Code as a unified instrument.

It was also a stated intention that this Proposal should not alter the effect of provisions that impose regulations or obligations.

This draft food regulatory measure has streamlined the Code, incorporating many amendments, and restructured some areas for ease of use, however it is unclear and unproven that these changes will make the Code more enforceable, and provide the clarity required.

1.2 Format

The inclusion of the comprehensive list of definitions in Standard 1.1.2 is helpful and a beneficial improvement.

There are still many instances when frequent cross-referencing is required to obtain the full information about an issue, however this probably cannot be avoided in a document of this size and scope. The format and “organisation” of the draft Code is manageable for every day users once users become familiar with the format.

Dairy Australia re-states that there is a need for electronic presentation of the Code as the main format utilised by every day users. Electronic signposting and structuring could be used to make the Code easier to use. For example it should be possible to download and print all parts of the Code relevant to MRLs, or caffeine, in a single step. It is unclear at this stage whether this will be the case.

1.3 Code structure

In the first draft, the Code was structured to be presented as a single legislative instrument. Following first round submissions, FSANZ has decided not to proceed with presenting the Code as a single instrument. It is now presented as a collection of stand-alone standards, substantially as in the current Code. Each Standard is an individual legislative instrument. However Standard 1.1.1-2 (1) states “All the Standards of the Code are read together as a single instrument”. This appears inconsistent with the intention stated above, and is confusing, if not, contradictory. This needs to be clarified for “every day” users.

1.4 Trade implications

Dairy Australia has requested at the first call for submissions that a WTO notification be provided to ensure the changes and the purpose behind them are communicated to trading partners to avoid any misconceptions or any disruption to trade. FSANZ have responded that notifications have been made to the WTO under Australia’s and New Zealand’s obligations under the WTO Technical Barriers to

Trade and Sanitary and Phytosanitary Measures Agreement to enable other WTO member countries to comment on the proposed changes.

Dairy Australia acknowledges and appreciates that this request has been considered and actioned by FSANZ.

1.5 Cost-benefit analysis and implementation

Costs to industry to re-align documentation and systems with mass changes to the Code need to be considered in terms of implementation and financial costs.

Whilst we recognise that a RIS is not being undertaken, it still needs to be acknowledged that there will be transitional costs associated with the implementation of the FSC for industry.

An implementation period of 12 months following Gazettal of the changes is requested to allow all industry, particularly small to medium enterprises, and exporters to make the necessary changes to systems and documentation.

1.6 Outcome based standards and user guides

FSANZ have indicated that part of the review to come will include a move away from supplying user guides to assist users of the Code. Australia's food standards system is built on a philosophy of outcome based standards, which provide maximum flexibility, but also rely on providing useful information about how to comply.

This will be particularly important for Chapters 3 and 4, which have not yet been looked at. The dairy industry's experience of successfully introducing a Primary Production and Processing Standard has shown that the accompanying user guides have been essential. Industry finds User Guides very helpful and would like to see them maintained.

1.7 "User-friendliness"

Some general comments about user-friendliness" of the draft"

- Numbering has been significantly maintained, which helps transition.
- The inclusion of comprehensive Schedules at the end simplifies each Section, and is easier for the User to manage in hard copy form. This will be easier to amend in future, than within the body of the Standards.
- The addition of a Table of Contents, including page numbers at the start of the document would be useful, rather than users need to go to Clause 1.1.1-2 to find this.
- Good numbering of Chapter, Part and Standard, but "Division" between Standard and Section is not numbered, nor identified in a Table of Contents, so doesn't help with navigation, and is confusing. Either number it, or remove it. eg
 - i. Chapter1
 - ii. Part 1.1
 - iii. Standard 1.1.1
 - iv. Division Not numbered
 - v. Section 1.1.1-1
- Hard copy format is quite manageable for the size of the document. Need to ensure on-line format is easy to navigate, as this will be the most common format by day to day users.
- The SD 4 is a useful document, and will be valuable for industry to assist with implementation. It should be extended to include the Schedules.

1.8 Minor edits

- In definitions, include full wording for acronyms eg p 18 ESADDI, p 24 RDI.
- Page 22 nutritive substance – reference should be 1.1.2-12, not 1.1.2-10.
- Page 34 infant formula product – delete repeated words "adequate to serve by itself".
- Page 314 - Schedule 9 Mandatory advisory statements

- a. Column 2, phrases in Items 8, 9, 10, 11 should not start with the word “that”, as it duplicates the heading.

2 Comments on specific provisions

The comments below focus on specific provisions of most concern to the dairy industry.

2.1 Chapter 1 Introduction and standards that apply to all foods

There remains a lack of clarity and lack of consistency around the definitions of ‘food’. The definition reverts to the Application acts, which have slight variations. This has implication for businesses operating across multiple states and territories. It is acknowledged that this is beyond the scope of this Proposal, but needs to be noted as an ongoing inconsistency in legislation.

The terminology of ‘food item’ has been removed since the first draft, and is now referred to as ‘food for sale’.

2.2 Standard 1.1.1-13 Use of food with a specified name or nature

The inclusion of food names in quotation marks, does not provide the clarity intended. Whilst each dairy food is given a description, the use of quotation marks indicates a food may not fully meet the definition but may be “like” the food defined. This does not provide clarity, and in fact produces confusion, particularly for consumers.

2.3 Part 1.2 Labelling and other information requirements

The inclusion of all labelling information in one place, Chapter 1, Part 2, with the addition of Schedules to contain large amounts of information that needs only be referenced, such as Food Additive Code Numbers is an improvement, and whilst there is lots of cross referencing within the Standards, it is manageable for users.

Again, the provision of User Guides would support users and assist with practical application by users.

2.3 Part 1.3 Substances added to or present in food

Standard 1.3.1 Food additives

There remains significant changes to format of Schedules, however content seems to remain the same.

2.4 Standard 1.4.2 Agvet chemicals

This Standard has been revised to provide more clarity and to align with the Agvet Code. It does not appear that the required clarity has been achieved through the inclusion of “active constituent” requirements. This appears to be more difficult to enforce, and less clear for industry to apply.

The concern for the dairy industry is with MRL’s as this is where there is potential impact for trade.

2.5 Standard 1.5.1 Novel foods

No change to technical content. This Standard is currently under review in P1024. The dairy industry will be interested in reviewing changes to this Standard.

2.6 Standard 1.5.2 Food produced using gene technology

No significant changes for dairy.

2.7 Standard 1.6.1 Microbiological limits for food Standard

Schedule 27 reflects the current microbiological limits in Standard 1.6.1.

In Schedule 27, the microbiological limits for are set for “unpasteurised milk for retail sale”. As the Code requires all milk to be processed in accordance with Standard 4.2.4, there should be no microbiological limits set in the Code for unpasteurised milk for retail sale. These limits should be deleted from Schedule 27.

There remains a number of issues that are being dealt with through separate Proposals eg P1017 for ready to eat foods and listeria, and P1022 for raw milk products. These changes will need to be incorporated into the proposed Code. This transition period will need to be managed carefully.

2.8 Chapter 2 Food standards for specific foods

The title of this chapter has changed from ‘Food product standards’ to ‘Food standards for specific foods’. This change is noted, and it is assumed that the change is to bring the language more in line with other changes.

2.9 Chapter 2, Part 5 – Dairy Products

- **Overarching**

There are some shifts in how the Dairy Primary Production and Processing Standard (4.2.4) is referenced, and the need to comply with these processing requirements. Part 5 includes a ‘note’ at the start of each Standard to the effect that ...”In Australia, dairy products must be processed in accordance with Standard 4.2.4.”

In the current Code, the processing requirements are included in the very first paragraph of the Standard, under “Purpose”, followed by an Editorial Note referencing Standard 4.2.4. It needs to be stated very clearly to users that in Australia the primary production and processing standard applies to each dairy product covered by Part 2.5

The Dairy Australia questions whether the “note” is strong enough and recommends this very important requirement be highlighted, or strengthened.

Within individual dairy standards, for the most part redrafting changes maintain the essential wording from the current Code and so changes are minor.

- **Standard 2.5.1 Milk**

The wording and format is significantly different to the current Code, however the requirements are clear and of the same technical content.

The definition of milk has been maintained as in the current Code, and refers to the mammary secretion of milking animals, and therefore clearly excludes soy or other plant extracts. **This is strongly support by Dairy Australia.**

- **Standard 2.5.2 Cream**

There is a change to wording in the definition of cream from “... separation from milk “ ... and “ ... may be adjusted by the addition of milk or products obtained from milk” to “separation from milk and the addition of milk or **milk** products obtained from milk”. Whilst a slight change, there seems to be no significant change to intention.

- **Standard 2.5.3 Fermented milk products**

The changes to wording have improved clarity.

- **Standard 2.5.4 Cheese**

The amendment requested in the first round submission has been corrected, with the wording returned to the wording in the current Code around Standard 2.5.4 Clause 3(b) restricting addition of phytosterol esters to individual portions of cheese no more than 50g.

- **Standard 2.5.5 Butter**

The definition of butter has significantly changed. Butter is defined in the current Standard 2.5.5 as:

“butter means a product derived **exclusively** from milk and products obtained from milk, principally in the form of an emulsion of the type water-in-oil.”

The proposal now is that the definition read

“butter means

- (a) a food that is derived **principally** from milk and products obtained from milk, principally in the form of an emulsion of the type water-in-oil; or
- (b) such a food with the following added”

The use of the term “principally” rather than “exclusively” has a significant impact and opens the product up to be derived from other, non-dairy ingredients (eg 90% from milk ingredients, 8% vegetable fats and 2% other permitted ingredients eg salt). Also, the term “exclusively” is used in Codex. The term ‘exclusively’ should be retained in the definition of butter. Other products not derived exclusively from milk and products obtained from milk are not butter and would be regulated as edible spreads or similar

- **Standard 2.5.6 Ice cream**

A significant change to the definition of ice cream appears to limit the scope of products with varying percentages of ‘cream’ which can be labelled as ice cream. This is not supported by Dairy Australia and would be somewhat confusing to the consumer if implemented.

- **Standard 2.5.7 Dried milk, evaporated milk and condensed milk**

As commented in the first draft the wording in the title and throughout this standard has changed to drop the plural (dried milks, evaporated milks and condensed milks). While this should have no practical implications, it does make the Code slightly less consistent with the relevant Codex standards. **For this reason the title ‘Dried milks, evaporated milks and condensed milks’ should be retained.**

Condensed milk, dried milk and evaporated milk are now all referred to as ‘food’, (not milk products). This is consistent with bakery products, meat products. The significance of this is not clear.

In the current Code 2.5.7 Clause 2 (1) enables adjustment of ‘the fat, or protein, or both fat and protein’. The proposal refers to the use of ‘adjusted milk’ to which milk components have been added or from which they have been withdrawn. This is a much broader definition and interpretation than the current Code. This gives industry more flexibility whilst maintaining the integrity and identity of dairy and is supported.

2.10 Special purpose foods

Recognising that these standards are currently under review, any notable changes should be delayed until these reviews are finalised.

- **Standard 2.9.1 Infant formula products**

Comments submitted in the first call for submissions have been taken up and the wording has now been amended to more closely replicate the current Code.

- **Standard 2.9.4**

P1030 Health Claims – Formulated Supplementary Sports Foods & Electrolyte Drinks is currently calling for submissions, closing 30th September 2014. This consultation outlines that the FSANZ Board is expected to consider P1025 and the proposed changes to the Code in late 2014, with the expectation that the new Code will commence replacing the current Code in 2015. This new Code may not capture the amendments in the draft variation of P1030, which will then require further amendment to the new Code to capture the P1030 amendments after the new Code comes into effect at a later date.

Dairy Australia suggests that the timing of any new Code and P1030 Code amendments are aligned and captured at the one time.

3 Other chapters not yet covered

Chapter 3 - Food Safety Standards, and Chapter 4 Primary Production Standards

Dairy Australia restates its comments that it is important that the principles of standards that are outcomes based, nationally consistent and proportionate to risk are maintained. The dairy industry will be very interested to review how this new approach is applied to the revision of these Chapters.

Chapter 4 should be referred to as 'Primary Production and Processing Standards' not just 'Primary Production Standards' as they cover both food safety/hygiene requirements for primary production and elements of processing.

4 Industry consultation and future Standards development

There is currently significant development work being undertaken in many Standards relevant to the dairy industry. Dairy Australia encourages the establishment of industry working groups with FSANZ, for the development and review of Standards to increase industry engagement in Standards development, and ensure industry's knowledge, views and expertise are utilised, and that Standards are relevant for the current future needs of industry.