

**01/03**  
**21 August 2002**

## **FINAL ASSESSMENT REPORT**

### **PROPOSAL P253**

### **WINE PRODUCTION REQUIREMENTS (AUSTRALIA ONLY)**

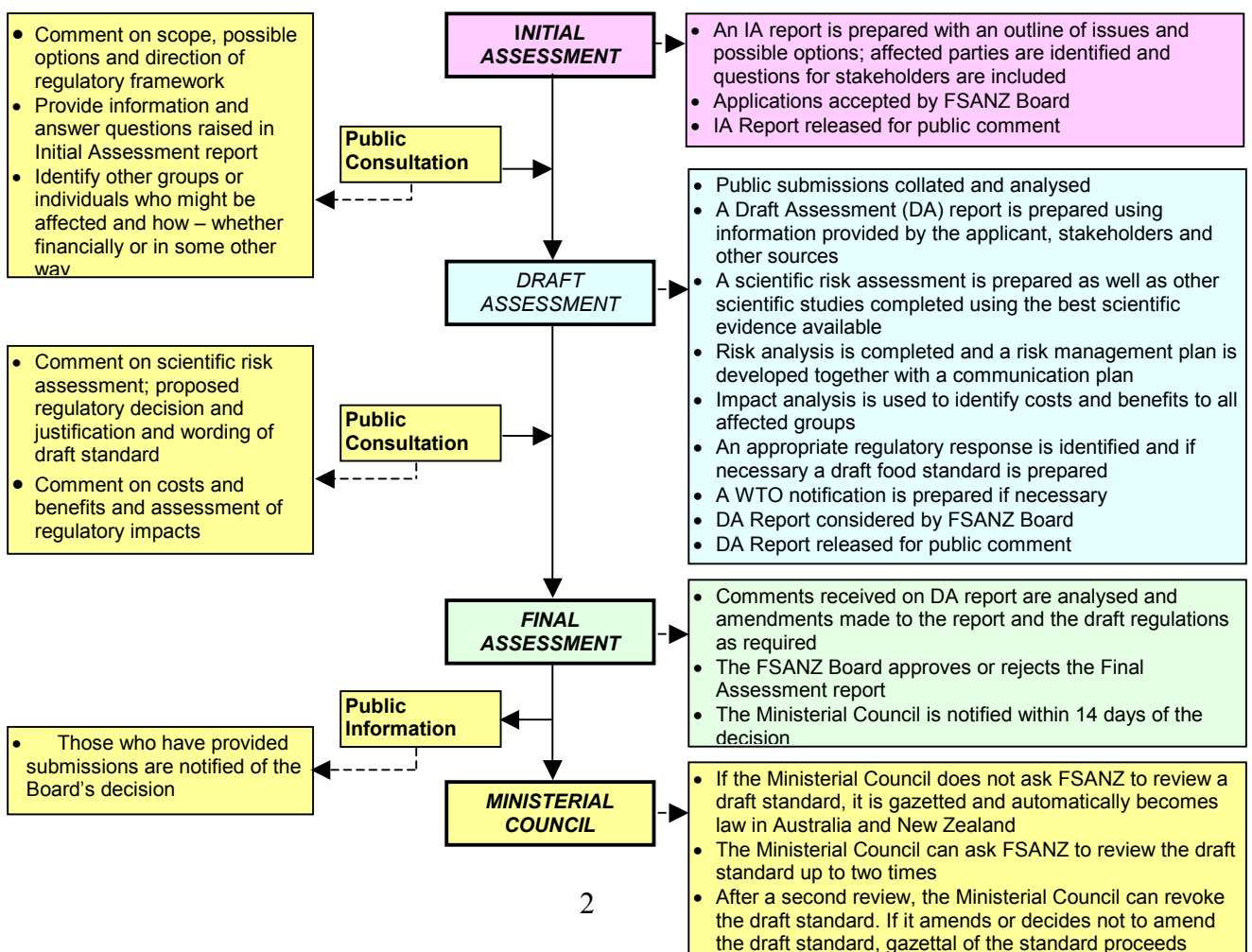
## FOOD STANDARDS AUSTRALIA NEW ZEALAND

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, 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 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 *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.



## **FURTHER INFORMATION**

### **Submissions**

No submissions on this matter are sought as the Authority has completed its assessment and the matter is now with the Australia New Zealand Food Standards Council for consideration.

### **Further Information**

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## EXECUTIVE SUMMARY AND STATEMENT OF REASONS

### *Problem*

Australian wine sales to the European Union (EU) may be jeopardised when, at the end of the two-year transition period, Volume 1 of the *Food Standards Code* is repealed if the provisions of Volume 1 relating to wine are not carried over.

During the Review of the *Food Standards Code*, Australia New Zealand Food Authority (ANZFA) now FSANZ determined that some of the production provisions for wine that underpin Australia's Agreement with the EU (and that are contained in Volume 1 of the *Food Standards Code*) were inappropriate in a joint wine standard because they prescribed practices relating to wine quality that could become technical barriers to trade. ANZFA developed a joint standard on wine, Standard 2.7.4 – Wine and Wine Product, that recognises accepted wine practices throughout the world. Wine made in New Zealand or imported from other wine producing countries need comply only with this Standard. However Australia's Agreement with the EU on trade in wine relies on Australian wine being recognised as wine of designated quality and origin (e.g. *appellation contrôlée*, DOC, *qualitäts wein* etc.) and the provisions in this minimally prescriptive joint standard do not implement these requirements.

As a temporary measure until a more appropriate legislative vehicle is found, Standard 2.7.4 – Wine and Wine Product of Volume 2 of the *Food Standards Code* refers directly to provisions of Standard P4 – Wine, Sparkling Wine and Fortified Wine in Volume 1 of the *Food Standards Code*.

It was intended at the time of the Review that the *Australian Wine and Brandy Corporation Act 1980* (AWBC Act) might incorporate these provisions. However, officers in the Department of Agriculture, Fisheries and Forestry – Australia (AFFA) have since informed FSANZ that there are difficulties associated with placing such provisions in AWBC Act. This is because the AWBC Act did not have coverage of all wine made and sold within Australia, particularly wine manufactured by unincorporated bodies and not traded interstate or internationally.

### *Ministers' strong support for the development of a production standard on wine*

In June 2002 Ministers of the Australia New Zealand Food Standards Council (ANZFSC) approved policy guidelines for the development of primary production and processing standards. These guidelines were notified to ANZFA on 28 June 2002, and FSANZ has had regard to these guidelines in developing this Proposal. However, the guidelines address, primarily, matters relating to food safety and hygiene. This Proposal is driven by trade and market access considerations rather than falling within the model developed for primary production and processing standards.

In their joint communiqué of 24 May 2002, ANZFSC Ministers strongly supported ANZFA's stated intention to proceed urgently with the development of a wine standard for Australia to maintain the requirement of the old *Food Standards Code* and, thus, ensure continuation of the current access of Australian wine to the European Community market.

### *Objective*

The intent of this Proposal (P253) is to carry over the effect of the production provisions for wine made in Australia only, which are currently contained in Volume 1 of the *Food Standards Code*. It is proposed that these provisions be contained in an Australia-only standard, Standard 4.1.1 – Wine Production Requirements (Australia only), in a new Chapter (Chapter 4) of Volume 2 of the *Food Standards Code*. This new chapter will accommodate standards regulating primary production and processing as they are developed.

The minimally prescriptive joint Standard on wine developed during the Review, i.e., Standard 2.7.4 – Wine and Wine Product, in Chapter 2 of Volume 2 of the *Food Standards Code* will remain the compliance standard for wine made in New Zealand and for wine imported into Australia and New Zealand.

### *Regulatory options and impact analysis*

This Proposal involves transfer, without substantive amendment, of wine production provisions from Volume 1 of the *Food Standards Code* to Volume 2 of the *Food Standards Code*. Since there is no regulatory change proposed there will be no change to the impact on stakeholders.

### *WTO notification*

The proposed wine production standard will not apply to wine imported into Australia or New Zealand. It will affect only wine producers in Australia. Therefore no World Trade Organization (WTO) notification is considered necessary.

### *Previous Authority consideration*

ANZFA released the P253 Draft Assessment for public comment on 8 May 2001.

Only one round of public comment was undertaken because the recommendations of this Proposal, if accepted, were considered to have no significant adverse effect on the interests of any person or body; the matter has been recently considered with extensive consultation during the recent Review, so stakeholders are well acquainted with the issues; the stakeholders are highly concentrated (Australian and New Zealand wine industry, Australian government departments with responsibility for agriculture and trade, New Zealand Government) and can be effectively targeted and consulted with one round of public comment; and the provisions in question already exist but will be moved to an Australia-only standard in a new chapter of Volume 2 of the *Food Standards Code*, which is to contain production and processing standards.

Submissions closed on 19 June 2002.

### *Summary of submissions received*

Six submissions were received in response to the P253 Draft Assessment Report: one from the peak industry body representing the Australian wine industry; one from government; one from a state-based food technology association; two from consumer associations; and one from a private company.

Five of the six submissions supported the recommendations of the Draft Assessment. Of these, one submission suggested minor changes to the drafting proposed at Draft Assessment.

The sixth submission was referred to the Project Manager of a scheduled application (A463), as it falls outside the scope of this Proposal.

### *Recommendations made at Draft Assessment*

The Draft Assessment Report for P253 recommended that production provisions for wine, currently in Volume 1 of the *Food Standards Code*, be carried over without substantive amendment into an Australia-only standard, Standard 4.1.1 – Wine Production Requirements (Australia only), in a new chapter (Chapter 4) of Volume 2 of the *Food Standards Code*.

These proposed production provisions for wine in Volume 1 of the *Food Standards Code* are mainly from Standard P4 – Wine, Sparkling Wine and Fortified Wine but also include provisions from other standards (all from Volume 1) for ‘brandy’, ‘grape spirit’, and for specific sugars, as well as provisions restricting the use of food additives and processing aids to those currently permitted for wine in Volume 1.

### *Changes to Draft Assessment resulting from Final Assessment*

The Final Assessment Report for P253 recommends minor changes to the drafting proposed at Draft Assessment. The proposed changes are not substantive and comprise deletion of redundant provisions relating to sugars; correction of typographical errors; and a minor wording change to clarify the intent of proposed subclause 3(1) i.e., that additives may be used throughout the wine production process.

In June 2002 Ministers on ANZFSC approved policy guidelines for the development of primary production and processing standards that address paddock to plate production and processing requirements, focussing primarily on matters relating to food safety and hygiene.

ANZFA to FSANZ transitional requirements for a proposal at full (draft) assessment have been followed and no additional submissions have been received. The full (draft) assessment that was carried out by ANZFA has been reviewed having regard to the policy guidelines notified to ANZFA on 28 June 2002.

It should be noted that, as the focus of this Proposal is maintenance of market access for Australian wine to key markets in the EU, it is not fully consistent with the Ministerial policy guideline for development of primary production and processing standards. The Ministerial policy guideline is advisory in nature.

### *Statement of Reasons*

In order to underpin Australia's agreement with the EU on trade in wine the Final Assessment Report for P253 recommends that production provisions for wine made in Australia only, which are in Volume 1 of the *Food Standards Code*, be placed in an Australia-only standard in a new chapter (Chapter 4) of Volume 2 of the *Food Standards Code*. This chapter is to accommodate standards regulating primary production and processing as they are developed.

The inclusion of the wine production provisions in Volume 2 of the *Food Standards Code* will continue the current regulatory *status quo* for wine made in Australia only, when Volume 1 of the *Food Standards Code* is repealed at the end of the transition period and will have no effect on wine made in New Zealand or on imported wine.

### *Recommendations*

Specifically, the recommendations of P253 are:

- that production provisions for wine, currently in Standard P4 – Wine, Sparkling Wine and Fortified Wine of Volume 1 of the *Food Standards Code*, be carried over without substantive amendment into an Australia-only standard, Standard 4.1.1 – Wine Production Requirements (Australia only), in a new chapter (Chapter 4) of Volume 2 of the *Food Standards Code*;
- that the provisions defining 'brandy' and 'grape spirit', referred to in Standard P4 and contained in Standard P3 – Spirits and Liqueurs of Volume 1 of the *Food Standards Code*, be carried over without substantive amendment into Standard 4.1.1 – Wine Production Requirements (Australia only) of Volume 2 of the *Food Standards Code*;
- that provisions be placed in Standard 4.1.1 – Wine Production Requirements (Australia only) of Volume 2 of the *Food Standards Code* that restrict the use of food additives and processing aids to those that are currently listed in Standard P4; and
- that consequential amendments be made to Standard 2.7.4 – Wine and Wine Product of Volume 2 of the *Food Standards Code*, removing references to Volume 1 of the *Food Standards Code* (viz: references to Standard P4 – Wine, Sparkling Wine and Fortified Wine, Standard P3 – Spirits and Liqueurs and Standard P6 – Wine Products and Reduced Alcohol Wine).



## 1. INTRODUCTION

The intent of this Proposal (P253) is to continue the effect of the production provisions for wine made in Australia, which are currently contained in Volume 1 of the *Food Standards Code*. The wine production provisions in Volume 1 of the Code will cease to exist formally when Volume 1 is repealed at the end of the transition period. FSANZ proposes to place these provisions, without substantive amendment, into an Australia-only standard in a new chapter (Chapter 4) of Volume 2 of the *Food Standards Code* (the Joint Code). This new chapter of the joint Code is to accommodate standards regulating primary production and processing as they are developed.

The continuation of the wine production provisions in Volume 2 of the *Food Standards Code* will:

- continue the current regulatory *status quo* in Australia and New Zealand;
- underpin Australia's agreement with the EU on trade in wine;
- have no effect on wine made in New Zealand; and
- have no effect on wine imported into Australia or New Zealand.

This Proposal involves transfer, without substantive amendment, of existing wine production provisions from Volume 1 of the *Food Standards Code* to an Australia-only standard in Volume 2 of the *Food Standards Code*. It is not a review of any of these provisions.

It is important that the production provisions for wine extend also to wine made in Australia but not intended for export. This is because regulatory authorities in EU member states remain wary of wines made with different processes or which have compositional differences when compared to EU wines from comparable vine varieties.

The general requirement under the EU Wine Agreement is for wine produced and exported from Australia to meet certain standards reflected in Standard P4. Theoretically, it could be argued that this Standard should only concern requirements for export. However, the language in the EU Agreement does not necessarily support such an argument. The EU Agreement requires that 'all wines originating in Australia' [see Article 4(1)] be produced in accordance with specified standards consistent with those contained in Standard P4. The Agreement does not draw any distinction between (a) all wines produced in Australia for domestic consumption and (b) all wines produced for export. The logic behind this is that wine production, be it for domestic consumption or for export, is inseparably integrated. Put another way, it would be at best impractical, and at worse, impossible, for a producer to identify which wine is being produced strictly for export and which wine is being produced entirely for the domestic market.

An Australia-only wine production standard, that covers all wine made in Australia, will underscore in the minds of international regulators and consumers that all Australian wine, not just that exported to the EU, meets exacting standards.

Since the EU Wine Agreement was put in place, production standards for wine have covered all wine produced in Australia whether intended for domestic consumption or for export. Australian wine producers have been fully compliant with these requirements and this proposal is intended to continue the arrangement that is already in place. Since there is no regulatory change proposed there will be no change to the impact on Australian wine producers.

It is noteworthy that New Zealand is currently developing a new Wine Act, which is intended to cover wine made in New Zealand only. The exact details are not yet known however it is likely that issues related to those in the proposed Australia-only wine production standard are being addressed in the proposed New Zealand Wine Act. Differences in wine making practices in Australia and New Zealand, to a large extent governed by geographical differences between the two countries, mean that wine production provisions would be different in each country.

## **1.2 Transitional requirements**

This Proposal reached full (draft) assessment stage under the operation of the *Australia New Zealand Food Authority Act 1991* (ANZFA Act), and will be finalised in accordance with the provisions of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act).

FSANZ has therefore been required to:

1. give notice under section 14A of the FSANZ Act; and
2. review the full (draft) assessment having regard to any new submissions received in response to the above notice as well as any written policy guidelines that have been notified by the Ministerial Council.

## **2. REGULATORY PROBLEM**

During the Review, ANZFA determined that some of the production provisions that underpin Australia's Agreement with the EU were inappropriate in a joint wine standard because they prescribed practices relating to wine quality that could become technical barriers to trade. Negotiations with the New Zealand Government at the time made it clear that a dual standard (i.e., a standard with some provisions applying in Australia only or in New Zealand only) was not acceptable within Chapter 2 of the Code. ANZFA developed a joint standard on wine, Standard 2.7.4 – Wine and Wine Product, that recognises accepted wine practices throughout the world. Wine made in New Zealand, or imported into Australia or New Zealand, need comply only with this Standard.

As a temporary measure until a more appropriate legislative vehicle is found, Standard 2.7.4 – Wine and Wine Product refers directly to provisions of Standard P4 – Wine, Sparkling Wine and Fortified Wine in Volume 1 of the *Food Standards Code*. This ensures the integrity of Australia's 1994 Agreement with the EU on trade in wine over the transition period, but not beyond December 2002 when Standard P4 will be repealed along with the rest of Volume 1 of the *Food Standards Code*.

In order to find an appropriate legislative location for these provisions, to continue their effect after December 2002, ANZFA entered into discussions with representatives of the Department of Agriculture, Fisheries and Forestry – Australia (AFFA), the Wine Federation of Australia, and the Australian Wine and Brandy Corporation to determine whether the *Australian Wine and Brandy Corporation Act 1980* (AWBC Act) was a suitable vehicle for the production requirements for Australian wine.

AFFA has since informed FSANZ that there are difficulties associated with placing such provisions in the AWBC Act because the AWBC Act does not have coverage of all wine made and sold within Australia, particularly wine manufactured by unincorporated bodies and not traded interstate or internationally.

### **3. OBJECTIVES**

#### **3.1 FSANZ's statutory objectives**

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 *Food Standards Australia New Zealand Act 1991*. 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.

#### **3.2 Assessment of this Proposal against statutory objectives**

The joint wine standard, Standard 2.7.4 – Wine and Wine Product, was developed against ANZFA's three primary section 10 objectives relating to:

- the protection of public health and safety;
- the provision of adequate consumer information; and
- the prevention of misleading or deceptive conduct.

Consistent with the Review's general approach to remove unjustified prescription and to develop standards with provisions focussed on achieving these primary objectives, the joint standard on wine (Standard 2.7.4 – Wine and Wine Product) recognises accepted wine practices throughout the world. Wine imported into Australia need comply only with the joint standard, thus fulfilling Australia and New Zealand WTO obligations by recognising wine produced in other wine producing countries.

However Australia's Agreement with the EU on trade in wine, relies on Australian wine being recognised as wine of designated quality and origin (e.g. *appellation contrôlée*, DOC, *qualitäts wein* etc.) and the provisions in this minimally prescriptive joint standard do not implement these requirements.

ANZFA previously developed the joint wine standard (Standard 2.7.4 – Wine and Wine Product) against its primary section 10 objectives, and found that there was no suitable location for the production provisions for wine, which are necessary to underpin Australia's Agreement with the EU on trade in wine. This Proposal recommends that the necessary production provisions for Australian wine be placed together in an Australia-only standard in a new chapter of the Code, Chapter 4, which will contain production and processing standards. In proposing this solution to the regulatory problem outlined earlier, FSANZ has regard to its other objectives, especially that of promoting an efficient and internationally competitive food industry.

### **3.3 Ministerial policy guidelines**

In their joint communiqué of 24 May 2002, Ministers of the Australia New Zealand Food Standards Council strongly supported ANZFA's stated intention to proceed urgently with the development of a wine standard for Australia to maintain the requirement of the old *Food Standards Code* and, thus, ensure continuation of the current access of Australian wine to the European Community market. The Ministers agreed that the new standard be an Australia only standard to be incorporated in the new Chapter 4 of the joint Code, with a view to its adoption no later than November 2002.

At their teleconference on 28 June 2002 Ministers of the Australia New Zealand Food Standards Council agreed to the *Overarching Policy Guideline on Primary Production and Processing Standards*. This policy guideline is primarily concerned with new primary production and processing standards which are to have a broad coverage of the whole of the food chain and to focus, for the most part, on food safety and hygiene issues. The guideline was notified to ANZFA on 28 June 2002.

This Proposal involves retaining existing production requirements for wine made in Australia. The focus of this Proposal is primarily on retaining trade and market access to key EU markets, rather than food hygiene / safety matters in the whole of the food chain approach as addressed in the Ministerial guideline.

## 4. BACKGROUND

Australian wine sales to the European Union (EU) may be jeopardised when, at the end of the two-year transition period, Volume 1 of the *Food Standards Code* is repealed, should the current requirements in Standard P4 (and others) not be carried over.

The old Code has provisions for wine made in Australia that underpin the 1994 treaty between Australia and the EU (*Agreement between the EC and Australia on trade in wine*). These provisions ensure that all wine made in Australia (i.e., wine for export as well as for domestic consumption) is recognised by the EU as being wine of designated quality and origin (e.g. *appellation contrôlé*, DOC, *qualitäts wein* etc.) rather than as table wine. This simplicity results in an easier access of Australian-made wines into the European market because the EU recognises that all wine made in Australia, even wine intended only for domestic consumption, is made to acceptable standards.

In March 1995, ANZFA gazetted substantive changes to Standard P4 – Wine, Sparkling Wine and Fortified Wine of Volume 1 of the *Food Standards Code*. These provisions underpinned the 1994 Agreement on wine between Australia and the EU.

Standard P4 largely regulates production processes rather than the final food and prohibits winemaking practices more usually associated with lower quality table wine (for example, the production of wine from carbohydrate sources other than fresh grapes, the use of reconstituted grape juice concentrate and the addition of spirit other than brandy and grape spirit).

In addition, Standard P4:

- restricts the use of food additives and processing aids that can be used in the production of wine;
- restricts the addition of sugar to adjust alcohol levels in fermentation; and
- also has some additional compositional requirements for wine and provisions for labelling.

## 5. ASSESSMENT OF ISSUES RAISED IN PUBLIC SUBMISSIONS

Submissions were received from: Agriculture, Fisheries and Forestry – Australia (AFFA); Consumers Association of South Australia Inc (CASA); Food Technology Association of Victoria (FTAV); National Council of Women of Australia Limited (NCWA); Swift and Company; and the Wine Federation of Australia (WFA).

Summaries of submissions are at Attachment 2.

### 5.1 Standard 4.1.1 – Wine production requirements (Australia only)

Five of the six submissions supported the recommendations proposed at Draft Assessment (AFFA, CASA, FTAV, NCWA and WFA). The sixth submission, from Swift and Company, did not specifically comment on the proposed standard (see **5.3 Other comments**, below).

The AFFA submission pointed out:

- that although Australia signed a bilateral wine agreement with the EU in order to gain some flexibility from EU regulation in relation to approved winemaking practices and certification procedures for wine exports, regulatory authorities in EU member states remain wary of wines made with different processes or which have compositional differences when compared to EU wines from comparable vine varieties;
- over the year to 31 May 2002 Australian wine exports reached 400 million litres worth over \$1.9 billion and have now surpassed the sale of Australian wine domestically; and
- the proposed standard will assist the domestic wine industry to maintain and build on its reputation for technically sound, quality assured wines. A production standard, for wines made in Australia only, that is consistent with but more restrictive than the joint wine standard in Part 2 of the *Food Standards Code* will underpin the reputation of Australian wine in international markets.

The WFA submission suggested that:

- the specific provisions relating to sugars in the drafting proposed at Draft Assessment (in subclause 6(1) and the Schedule) could be deleted because any reference to ‘sugars’ automatically refers to ‘sugars’ as defined in Standard 2.8.1 – Sugars of Volume 2 of the *Food Standards Code*;
- subclause 5(6) incorrectly referred to ‘clause 2 or clause 3’ instead of ‘clause 3 or clause 4’; and
- a minor wording change would clarify the intent of subclause 3(1) and make it consistent with similar wording in clause 4. That is, in subclause 3(1), replace ‘...any of the substances specified in the Table to this clause may be added to wine, sparkling wine or fortified wine’ with ‘...any of the substances specified in the Table to this clause may be used in the production of wine, sparkling wine or fortified wine.’

### 5.1.1 Assessment

The Final Assessment Report for P253 proposes minor changes to the drafting proposed at Draft Assessment to remove redundant provisions relating to sugars, to correct typographical errors, and to clarify the intent of the drafting for subclause 3(1) that additives may be used throughout the wine production process.

## 5.2 Inclusion of provisions from Standard P6 – Wine Products and Reduced Alcohol Wine

The drafting at Draft Assessment did not include any provisions relating to wine products. The P253 Draft Assessment specifically sought public comment on whether provisions in Standard P6 – Wine Products and Reduced Alcohol Wine needed to be carried forward into Volume 2 of the Code.

The WFA submission noted that there were no such provisions in the proposed drafting and did not request that they be added. The NCWA submission suggested it would be prudent to include such provisions and delete them from Volume 1. None of the other submissions commented on this issue.

#### *5.2.1 Assessment*

Provisions relating to wine products are contained in Standard 2.7.4 – Wine and Wine Product of Volume 2 of the *Food Standards Code*. There are no requirements for separate Australia-only provisions for wine products. Therefore no provisions from Standard P6 – Wine Products and Reduced Alcohol Wine will be included in the proposed Standard 4.1.1.

### **5.3 Other comments**

The submission from Swift and Company provided details of a proposed new processing aid for use during wine making, which is the subject of scheduled application (A463).

#### *5.3.1 Assessment*

The submission from Swift and Company was referred to the Project Manager for A463, as it falls outside the scope of this Proposal.

## **6. CHANGES TO DRAFTING PROPOSED AT DRAFT ASSESSMENT**

The P253 Final Assessment recommends only minor changes to the drafting proposed at Draft Assessment. These minor drafting changes are needed to remove redundant provisions, to correct typographical errors, and to clarify the intent of the drafting.

At P253 Final Assessment, the recommended changes to the drafting proposed at Draft Assessment are:

- deletion of the proposed specific provisions relating to ‘sugars’ in the Table to subclause 6(1) and in the Schedule to the proposed Standard because any reference to ‘sugars’ in the proposed standard will automatically refer to ‘sugars’ as defined in Standard 2.8.1 – Sugars of Volume 2 of the *Food Standards Code* and so specific provisions in the proposed standard are unnecessary;
- correction of references to two clause numbers in subclause 5(6), which were referred to by wrong numbers in the drafting proposed at Draft Assessment; and
- a minor wording change to clarify the intent of subclause 3(1), i.e., that the substances referred to in the subclause may be used throughout the winemaking process in material such as grapes, grape juice and fermenting wine.

## **7. REGULATORY OPTIONS AND IMPACT ANALYSIS**

This Proposal involves transfer without substantive amendment of wine production provisions from Volume 1 of the *Food Standards Code* to Volume 2 of the *Food Standards Code*. Since there is no regulatory change proposed there will be no change to the impact on stakeholders.

## **8. CONSULTATION**

ANZFA consulted extensively during the Review on matters relating to wine regulation in Australia and New Zealand, resulting in the development of the joint wine standard, Standard 2.7.4 – Wine and Wine Product. Because of the consultation on these matters during and since the Review, this Proposal has been progressed under s.36 (identical in both ANZFA and FSANZ Acts), omitting one round of public comment. This approach is warranted because if the Proposal is accepted:

- there will be no significant adverse effect on the interests of any party;
- the matter has been recently considered with extensive consultation during the recent Review, so stakeholders are well acquainted with the issues;
- the stakeholders are highly concentrated (Australian and New Zealand wine industry, Australian government departments with responsibility for agriculture and trade, New Zealand Government) and can be effectively targeted and consulted with one round of public comment; and
- the provisions in question already exist but will be moved to an Australia-only standard in a new chapter of Volume 2 of the *Food Standards Code*, which is to contain production and processing standards.

No additional submissions were received in response to the section 14A notice required under the ANZFA to FSANZ transitional provisions.

### **8.1 World Trade Organization (WTO) notification**

The proposed wine production standard will not apply to wine imported into Australia or New Zealand. It will affect only wine producers in Australia. Therefore no WTO notification is considered necessary.

## **9. TRANSITIONAL ISSUES**

In accordance with the transitional requirements for a proposal which has reached full (draft) assessment prior to the commencement of the FSANZ Act, the full (draft) assessment has been reviewed having regard to the policy guidelines notified by the Ministerial Council on 28 June 2002. No additional submissions were received in response to the notice given under section 14A.



## 10. RECOMMENDATIONS

The Final Assessment for P253 recommends:

- that production provisions for wine, currently in Standard P4 – Wine, Sparkling Wine and Fortified Wine of Volume 1 of the *Food Standards Code*, be placed without substantive amendment into an Australia-only standard, Standard 4.1.1 – Wine Production Requirements (Australia only), in a new chapter (Chapter 4) of Volume 2 of the *Food Standards Code*;
- that the provisions defining ‘brandy’ and ‘grape spirit’, referred to in Standard P4 and contained in Standard P3 – Spirits and Liqueurs of Volume 1 of the *Food Standards Code*, be placed without substantive amendment into Standard 4.1.1 – Wine Production Requirements (Australia only) of Volume 2 of the *Food Standards Code*;
- that provisions be placed in Standard 4.1.1 – Wine Production Requirements (Australia only) of Volume 2 of the *Food Standards Code* that restrict the use of food additives and processing aids to those that are currently listed in Standard P4; and
- that consequential amendments be made to Standard 2.7.4 – Wine and Wine Product of Volume 2 of the *Food Standards Code*, removing references to Volume 1 of the *Food Standards Code* (viz: references to Standard P4 – Wine, Sparkling Wine and Fortified Wine, Standard P3 – Spirits and Liqueurs and Standard P6 – Wine Products and Reduced Alcohol Wine).

## ATTACHMENTS

- 1 Draft variation to the *Food Standards Code*.
- 2 Summary of submissions received in response to P253 Draft Assessment.

**DRAFT VARIATION TO THE *FOOD STANDARDS CODE***

**To commence:        On Gazettal**

*Volume 2 of the Food Standards Code is varied by-*

[1]        *inserting immediately following CHAPTER 3 in the TABLE OF CONTENTS –*

**CHAPTER 4 - PRIMARY PRODUCTION STANDARDS (AUSTRALIA ONLY)**

**PART 4.1**

**Standard 4.1.1        Wine Production Requirements (Australia only)**

[2]        *omitting clause 3 and the following Editorial note in Standard 2.7.4; and*

[3]        *inserting immediately after Standard 3.2.3 –*

***STANDARD 4.1.1***

***WINE PRODUCTION REQUIREMENTS***

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**(Australia only)**

**Purpose**

This Standard includes requirements for the production of wine in Australia only.

**Table of Provisions**

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- 5        Composition
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**Clauses**

**1        Interpretation**

In this Standard –

**brandy** means the spirit obtained by the distillation of wine in such a manner as to ensure that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy, in accordance with the requirements set out in the Schedule to this Standard.

**fortified wine** means the product consisting of wine to which has been added grape spirit, brandy or both.

**grape spirit** means the spirit obtained from the distillation of wine or the by-products of wine making or the fermented liquor of a mash of dried grapes and contains methanol in a proportion not exceeding 3 g/L at 20 °C of the ethanol content.

**sparkling wine** means the product consisting of wine that by complete or partial fermentation of contained sugars has become surcharged with carbon dioxide.

**wine** means the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes.

## 2 Application

This Standard applies to the production of wine in Australia only, notwithstanding any provisions to the contrary elsewhere in this Code.

## 3 Substances used in production

(1) Subject to any limits imposed by clause 5 of this Standard, any of the substances specified in the Table to this clause may be used in the production of wine, sparkling wine or fortified wine.

(2) In this clause -

**mistelle** means grape must or grape juice prepared from fresh grapes to which grape spirit has been added to arrest fermentation and which has an ethanol content between 120 mL/L and 150 mL/L at 20°C.

**prepared cultures** means cultures of micro-organisms including yeast ghosts used in wine manufacture with or without the addition of any one or more of thiamine hydrochloride, niacin, pyridoxin, pantothenic acid, biotin and inositol.

**Table to clause 3**

Additive
Ascorbic acid
Calcium carbonate
Citric acid
Diammonium hydrogen phosphate
Erythorbic acid
Grape juice including concentrated grape juice

Lactic acid
Malic acid
Metatartaric acid
Mistelle
Prepared cultures
Potassium carbonate
Potassium hydrogen carbonate
Potassium hydrogen tartrate
Potassium metabisulphite
Potassium sorbate
Sorbic acid
Sulphur dioxide
Tannin
Tartaric acid
Thiamin hydrochloride*
Uncharred oak

\*Thiamin hydrochloride may only be added to wine, sparkling wine and fortified wine to facilitate the growth of micro-organisms.

#### 4 Processing aids

Subject to any limits imposed by clause 5 of this Standard, any of the substances specified in the Table to this clause may be used in the production of wine, sparkling wine or fortified wine.

**Table to clause 4**

Processing aid
Activated carbon
Agar
Bentonite
Calcium alginate
Carbon dioxide
Casein
Copper sulphate
Diatomaceous earth
Egg white
Enzymes
Evaporated milk
Gelatine
Hydrogen peroxide
Ion exchange resins
Isinglass
Milk
Nitrogen
Oxygen
Phytates
Polyvinyl polypyrrolidone
Potassium alginate
Potassium caseinate
Potassium ferrocyanide
Silicon dioxide

#### 5 Composition

(1) Wine and sparkling wine must contain no less than 80 mL/L of ethanol at 20 °C.

- (2) Fortified wine must contain no less than 150 mL/L and no more than 220 mL/L of ethanol at 20 °C.
- (3) Wine, sparkling wine and fortified wine must not contain methanol –
- (a) in proportion exceeding 2 g/L of ethanol content at 20 °C in the case of white wine and white sparkling wine; and
  - (b) in the case of other products, in proportion exceeding 3 g/L of ethanol content at 20 °C.
- (4) Wine, sparkling wine and fortified wine must contain no more than –
- (a) 250 mg/L in total of sulphur dioxide in the case of products containing less than 35 g/L of sugars, or 300 mg/L in total of sulphur dioxide in the case of other products; and
  - (b) 200 mg/L of sorbic acid or potassium sorbate expressed as sorbic acid; and
  - (c) 100 mg/L of polyvinyl pyrrolidone; and
  - (d) 1 g/L of soluble chlorides expressed as sodium chloride; and
  - (e) 2 g/L of soluble sulphates expressed as potassium sulphate; and
  - (f) 400 mg/L of soluble phosphates expressed as phosphorus; and
  - (g) 1.5 g/L of volatile acidity excluding sulphur dioxide, expressed as acetic acid; and
  - (h) 0.1 mg/L of cyanides and complex cyanides expressed as hydrocyanic acid.
- (5) If potassium ferrocyanide has been used as a processing aid in the manufacture of a wine, sparkling wine or fortified wine, the final product must have residual iron present.
- (6) Wine, sparkling wine and fortified wine may contain water in proportion not exceeding 30 mL/L where the water is necessary for the incorporation of any substance specified in clause 3 or clause 4.

## **6 Sparkling wine**

- (1) In addition to the substances permitted by clauses 3 and 4 of this Standard, sparkling wine may also contain –
- (a) grape spirit containing no less than 740 mL/L of ethanol at 20 °C; and
  - (b) brandy containing no less than 571 mL/L of ethanol at 20 °C; and
  - (c) sugars.
- (2) The addition of those foods specified in paragraphs (1)(a), (b) and (c) to sparkling wine must not increase its ethanol content by more than 25 mL/L at 20 °C.
- (3) Sparkling wine must contain no less than 5 g/L of carbon dioxide at 20°C.

## **7 Fortified wine**

- (1) Grape spirit used to make fortified wine must contain no less than 740 mL/L of ethanol at 20 °C.

(2) Brandy used to make fortified wine must contain no less than 571 mL/L of ethanol at 20°C.

(3) In addition to the substances permitted by clauses 3 and 4 of this Standard, fortified wine may also contain caramel.

## SCHEDULE

### SPECIFICATIONS FOR THE PURPOSES OF THIS STANDARD

#### Brandy

(1) Brandy -

- (a) must be matured in wooden containers for no less than 2 years; and
- (b) must contain no less than 250 mL/L of the spirit distilled at a strength of no more than 830 mL/L at 20°C of ethanol; and
- (c) may contain -
  - (i) water; and
  - (ii) caramel; and
  - (iii) sugars; and
  - (iv) grape juice and grape juice concentrates;
  - (v) wine; and
  - (vi) prune juice; and
  - (vii) honey; and
  - (viii) flavourings; and
- (d) must not contain methanol in a proportion exceeding 3 g/L at 20°C of the ethanol content thereof.

### SUMMARY OF SUBMISSIONS RECEIVED IN RESPONSE TO P253 DRAFT ASSESSMENT

#### List of submitters:

- 1 Agriculture, Fisheries and Forestry – Australia (AFFA)
- 2 Consumers Association of South Australia Inc (CASA)
- 3 Food Technology Association of Victoria (FTAV)
- 4 National Council of Women of Australia Limited (NCWA)
- 5 Swift and Company (Swift&Co.)
- 6 Wine Federation of Australia (WFA)

#### AFFA

Supported all recommendations of P253 Draft Assessment.

In 1994, Australia signed a bilateral wine agreement with the EU in order to gain some flexibility from EU regulation in relation to approved winemaking practices and certification procedures for wine exports. Nevertheless, regulatory authorities in EU member states remain wary of wines made with different processes or which have compositional differences when compared to EU wines from comparable vine varieties.

Over the year to 31 May 2002 Australian wine exports reached 400 million litres worth over \$1.9 billion and have now surpassed the sale of Australian wine domestically.

The proposed standard will assist the domestic wine industry to maintain and build on its reputation for technically sound, quality assured wines. A production standard, for wines made in Australia only, that is consistent with but more restrictive than the joint wine standard in Part 2 of the *Food Standards Code* will underpin the reputation of Australian wine in international markets.

#### CASA

Supported the submission of the NCWA.

#### FTAV

Supported all the recommendations of the P253 Draft Assessment, i.e., the proposed drafting for Standard 4.1.1 – Wine Production Requirements (Australia only). Made no comment on whether provisions relating to wine products or reduced alcohol wine were required in proposed Standard 4.1.1.

#### NCWA

Supported the recommendations for placing wine production provisions in a new proposed Australia-only Standard 4.1.1 – Wine Production Requirements (Australia only), including the provisions relating to brandy, grape spirit, sugars and the restriction of processing aids and food additives.

Noted with regret that, justified in the name of trade, Proposal P253 would result in a situation where countries importing Australian wine would enjoy a higher quality product than consumers in the country that produced it, and conversely that wine imported into Australia need only comply with the 'lowest common denominator' conditions of the joint Code's Standard 2.7.4 – Wine and Wine Product.

#### **Swift & Co.**

Provided details of a proposed new processing aid for use during wine making, which is the subject of an already scheduled Application (A463). This submission was referred to the Project Manager for A463, as it falls outside the scope of this Proposal.

#### **WFA**

WFA is the peak industry body for the Australian Wine Industry. WFA members produce approximately 92% of Australian wine and approximately 98% of Australian wine exports.

WFA fully supports the recommendations of the P253 Draft Assessment.

Members believe that market access and quality maintenance are the keys to the survival and growth of the Australian wine industry and that these factors are as important to the small boutique producers throughout Australia as they are to the export-dominated global companies. The potential loss of major offshore markets due to access or quality issues would have an adverse impact on all operators.

The provisions of Standard 2.7.4 – Wine and Wine Product of Volume 2 of the *Food Standards Code* allow free market access to the Australian and New Zealand market for imported wine. However WFA members believe that a domestic production standard is also needed to satisfactorily protect the reputation for quality currently maintained by Australian wine in key export markets. The proposed Australia-only production standard for wine will enable the Australian wine industry to satisfy key international markets of its quality credentials and preserve the quality premium it is seeking in those markets. In a world where most countries rely on positive regulation as a guarantee of quality, this is seen as a necessary measure to preserve access, especially to the EU market.

WFA noted that there were no proposed provisions relating to wine products and reduced alcohol wine (i.e., provisions from Standard P6 – Wine Products and Reduced Alcohol Wine).

WFA suggested a minor drafting change to subclause 3(1) that would clarify the intent of the subclause 3(1), i.e., that the substances may be used throughout the winemaking process in material such as grapes, grape juice and fermenting wine and would also make the drafting consistent with the clause referring to processing aids.

WFA advised of a typographical error in subclause 5(6), where the references to clauses 2 and 3 should in fact refer to clauses 3 and 4.

WFA advised that provisions proposed in the Draft Assessment that would define the sugars suitable for use in the manufacture of sparkling wine and fortified wine were not necessary and that replacing these with the word 'sugars' as defined in Standard 2.8.1 – Sugars of Volume 2 of the *Food Standards Code* would have the same effect on wine production.



WFA advised that in the near future the Australian wine industry would be proposing a number of minor amendments to the production standard to ensure that Australian wine producers could comply with international import requirements. However these changes would be requested in a formal application, separate from P253.