

**Attachment 1: Application to amend the
Australia New Zealand Food Standards Code – General**

PART 1 GENERAL INFORMATION

1.1 Applicant Details (as per section 3.1.2 of the Application Handbook December 2008)

- (a) Winemakers' Federation of Australia (WFA);
- (b) 1/24 Bougainville Street, (PO Box 3891), Manuka, ACT, 2603
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1.2 Nature of application

- (a) This Application is made to vary an existing Standard in the *Australia New Zealand Food Standards Code*; Standard 2.7.1 - Labelling of Alcoholic Beverages and Food Containing Alcohol.
- (b) This Application is made on behalf of the WFA, the peak industry body for the Australian Wine Industry.

PART 2 SPECIFIC INFORMATION

2.1 Executive Summary

This Application is to change the tolerances for variation of the actual alcoholic strength from the stated alcohol content for wine and wine products from 1.5% and for fortified wines from 0.5% to a value of 0.8% by volume to make the Australian requirement consistent with *The 2008 Australia - European Community Agreement on Trade in Wine* (2008 Wine Agreement). The 2008 Wine Agreement was signed in December 2008 and the treaty is expected to take effect in mid-2009, after Australia has amended the *Australian Wine and Brandy Corporation Act 1980* and *Trade Marks Act 1995*.

Under Standard 2.7.1 a statement of alcohol content is required to be provided on labels for wine and wine products.

Subclause 2(2) of Standard 2.7.1 sets the current tolerances:

Fortified wine alcohol/volume	0.5%
Wine and wine products containing more than 6.5% alcohol alcohol/volume	1.5%

These requirements are included in Standard 2.7.1 as follows:

2 Declaration of alcohol by volume

- (1) The label on a package of food listed in column 1 of the Table to this subclause must include a statement of the alcohol content in the corresponding form specified in column 2.

Table to subclause 2(1)

Column 1	Column 2
Food, including alcoholic beverages, containing more than 1.15 % alcohol by volume	Expressed in mL/100 g or mL/100 mL or X% ALCOHOL BY VOLUME or words and expressions of the same or similar effect
Alcoholic beverages containing not more than 1.15 % alcohol by volume Beverages containing no less than 0.5% alcohol by volume	‘CONTAINS NOT MORE THAN X% ALCOHOL BY VOLUME’ or words and expressions of the same or similar effect

- (2) The statement required by subclause (1) must, for the foods specified in column 1 of the Table to this subclause, be accurate to within the limits specified in column 2.

Table to subclause 2(2)

Column 1	Column 2
Beer, cider and perry	0.3% alc/vol
Spirits, liqueurs, fortified wine, fortified fruit or vegetable wine, and all other alcoholic beverages containing more than 1.15 % alcohol by volume	0.5% alc/vol
Wine and fruit wine (including sparkling forms), and wine products and fruit or vegetable wine products containing more than 6.5 % alcohol by volume	1.5% alc/vol

This Application is to change the values in the second and third rows of Column 2 above by decreasing the tolerance for wine and wine products and by increasing the tolerance for fortified wine to a value of 0.8% alc/vol. Harmonising the permitted tolerances for wine in Australia to match those allowed in the EU simplifies the current situation for wines that are exported to our major wine trade destination by rectifying a potential anomaly and harmonising Australia and Europe's oenological practices.

The tolerances for spirits, liqueurs or other alcoholic beverages are not requested to be changed in this Application.

2.2 Purpose this Application (as per section 3.1.3 of the Application Handbook December 2008)

The Application is to provide consistency with the 2008 Wine Agreement between Australia and the EU by amending the tolerance requirements in Standard 2.7.1.

The Protocol to the 2008 Wine Agreement states: *The Community shall authorise the import and the marketing on its territory of wines originating in Australia that have a total alcohol strength by volume not exceeding 20 % vol without any enrichment and, without prejudice to the tolerances set for the reference analysis method used, an actual alcoholic strength by volume that differs by no more than 0,8 % vol from that given by analysis.*

This value of 0.8% applies under the 2008 Wine Agreement to both wine and fortified wine.

2.3 Justification for the Application (as per section 3.1.4 of the Application Handbook December 2008)

The tolerances in alcohol content between stated and values determined by analyses are necessary as there is batch to batch variation in the alcohol content achieved by fermentation of wine grapes and also because labels have to be printed before the final wine is bottled and labelled. Wine can be bottled throughout the year and during this time the alcohol content of the stored wine can change. Restrictions on the composition of wine and grape varietal naming make it more difficult to adjust alcohol contents of wines compared to other alcoholic beverages such as spirits or beer. Improvements in winemaking practices however, allow modern winemakers to achieve less variation in alcohol contents and thus tolerances can be reduced.

When wine is exported its composition and labeling must comply with the *Australia New Zealand Food Standards Code* (the Code); or if the grape product is to be exported to a country that imposes requirements for wine that conflict with the Code, the product must comply with the requirements of the other country that conflict with the Code; and comply with the Code in any other respect.

In the European Union, import requirements are established by the Wine Agreement and put into law under the *Australian Wine and Brandy Corporation Act 1980* (as amended) and associated Regulations. The requirement for the tolerance between the alcohol content provided by analysis and the total alcoholic strength is 0.8% alcohol by volume under the 2008 Wine Agreement. The current European Union requirement for labelling total alcohol content of wines is limited to stating whole or half percentages, although under the 2008

Wine Agreement, wine is permitted to be labelled so as to have a total alcohol strength expressed as a percentage by volume to a tenth of a unit. Harmonising the permitted tolerances in Australia to match those allowed in the EU would simplify the currently complicated situation.

Under the 2008 Wine Agreement Australia is obliged to accept wine from Europe that is labelled in accordance with the Wine Agreement. Consequently having a lower tolerance for fortified wine in Australia than in Europe provides a potential anomaly, where European fortified wine can be imported that exceeds the legal limit in Australia, but is still legally allowed to be sold. Domestic sales of wine over the past 12 months were around 430,000 litres. Of these sales, fortified wine sales were 3.7% of total sales – down 8% from the previous year.

In summary, under the 2008 Wine Agreement wine and fortified wine produced in Australia will be allowed a tolerance of 0.8% of alcohol content by volume between the actual alcoholic strength and that provided by analysis in the European Community. The agreement also allows for the total alcohol content to be expressed as a percentage to a tenth of a unit.

The current Australian tolerances for the difference between the stated alcohol content and the actual value determined by analysis are 1.5% for wine and wine products and 0.5% for fortified wine.

Setting a value of 0.8% in Standard 2.7.1 will provide consistency in tolerance requirements for domestically produced wine and for wines exported to the European Union.

2.4 Information to Support the Application (as per section 3.1.5 of the Application Handbook December 2008)

WFA as the peak industry body representing the Australian producers of wine and wine products is putting forward this Application. The New Zealand wine industry supports this Application.

2.4.1 FSANZ objectives

Section 18 of the FSANZ Act sets out FSANZ's objectives (in descending priority order) in developing food regulatory measures and variations of food regulatory measures as:

- (a) the protection of public health and safety; and
- (b) the provision of adequate information relating to food to enable consumers to make informed choices; and
- (c) the prevention of misleading or deceptive conduct.

This Application is to change the alcohol tolerances rather than the alcohol content and does not raise any public health and safety issues. The reduction in the tolerance from 1.5% to 0.8% alcohol by volume for most wines would mean that the stated alcohol content on the label of the wines would be required to be more accurate. The industry does not consider that this will mean any operational change for most producers in Australia as they are already producing wine within this tolerance if they are producing for the export market.

In developing food regulatory measures and variations of food regulatory measures, FSANZ

must also have regard to the following:

- (a) the need for standards to be based on risk analysis using the best available scientific evidence;
- (b) the promotion of consistency between domestic and international food standards;
- (c) the desirability of an efficient and internationally competitive food industry;
- (d) the promotion of fair trading in food; and
- (e) any written policy guidelines formulated by the Ministerial Council.

This Application proposes to promote consistency with Europe as the United Kingdom is Australia's major trading partner in wine. Europe has also completed bilateral wine agreements with its other major trading partners including South Africa, Canada, United States, and Chile. All initiatives to harmonise wine regulations internationally reduce complexity and enhance international trade.

2.4.2 Australian Wine and Brandy Corporation Objectives

The Australian Wine and Brandy Corporation (AWBC) has the following objectives under the *Australian Wine and Brandy Corporation Act 1980*:

- (a) to promote and control the export of grape products from Australia; and
- (b) to promote and control the sale and distribution, after export, of Australian grape products; and
- (c) to promote trade and commerce in grape products among the States, between States and Territories and within the Territories; and
- (d) to improve the production of grape products, and encourage the consumption of grape products, in the Territories; and
- (e) to enable Australia to fulfil its obligations under prescribed wine-trading agreements; and
- (f) for the purpose of achieving any of the objects set out in the preceding paragraphs:
 - (i) to determine the boundaries of the various regions and localities in Australia in which wine is produced; and
 - (ii) to give identifying names to those regions and localities; and
 - (iii) to determine the varieties of grapes that may be used in the manufacture of wine in Australia.

The WFA contends that this Application is needed under AWBC objectives (a), (b) and in particular (e) above. The AWBC supports this application.

2.4.3 Nutritional implications

Not applicable

2.4.4 Dietary implications

Not applicable

2.4.5 Advantage to the consumer

The effects of this requested change are minimal for both Australian and European consumers. The changes negotiated in the Agreement are to facilitate wine exports to the EU by more closely aligning the tolerance requirements in Australia with those in the EU.

Lowering the tolerances for wine and wine products will provide more consistency between the alcohol content stated on the label and that provided by analysis. Australian wine producers can meet the new requirements without change to the actual products other than adjustments to stated alcohol contents on labels if this is necessary.

For fortified wines the tolerances are requested to be relaxed marginally from 0.5% to 0.8% but neither the products nor the labels actually need to be changed to meet the new requirement. This is required for consistency with the 2008 Wine Agreement, but will have minimal impact due to the relatively low sales levels of fortified wine in Australia, at less than 4% of domestic wine sales.

2.4.6 Assessment Procedure (as required by section 3.1.6 of the Application Handbook December 2008)

This Application is unpaid and if accepted by the Administrative Assessment, it should be placed on the FSANZ Work Plan. The Application is expected to follow the general procedure when activated.

2.4.7 Confidential Commercial Information (as required by section 3.1.7 of the Application Handbook December 2008)

There is no confidential commercial information in this Application.

2.4.8 Exclusive Capturable Commercial Benefit (as required by section 3.1.8 of the Application Handbook December 2008)

There will not be any exclusive capturable commercial benefit resulting from the progression of this Application.

PART 3 REGULATORY/LEGISLATIVE IMPLICATIONS

The Agreement between Australia and the European Community on Trade in Wine in the Protocol at Annex I.1 (d) includes that wine originating in Australia have a total alcoholic strength not exceeding 20% vol without any enrichment and, without prejudice to the tolerances set for the reference analysis method used, an actual alcoholic strength by volume that differs by no more than 0.8% vol from that given by analysis. The total alcohol strength is required by Annex I.1 (e) to be expressed as a percentage by volume to a tenth of a unit.

3.1 International standards (as per section 3.1.9 of the Application Handbook December 2008)

3.1.1 Europe

The EU currently requires tolerances 0.8% for wine and fortified wines with less than 20% alcohol by volume, but the restriction on labelling of alcoholic strength to using whole or half percentages means that the EU tolerance for some wines is effectively 0.5%.

For example, the United Kingdom's Food Safety Authority (UKFSA) provides the following advice in a Guide to EU Wine Regulations:

Actual Alcoholic Strength

This must be indicated in units or half units, using the symbol 'XX% vol'. The strength shown may not be more than 0.8% higher or lower than the strength determined by analysis.

Consider a wine with an actual alcohol content of 12% by volume.

Applying a tolerance of 0.8% allows for a range from 11.2% to 12.8%.

The UKFSA Guide however, provides for only two alternatives for alcohol content declaration of 12% on the label, ie 11.5% or 12.5%.

3.1.2 United States of America

The United States Code of Federal Regulations (CFR), Title 27, Laws and Regulations under the Federal Alcohol Administration Act contains regulation 4.30 – Labelling Requirements for Wine with tolerances either above or below the stated percentage specifically provided by regulation 4.36.

In the USA the current tolerance is 1% for wine containing more than 14% alcohol by volume and the tolerance is 1.5% for wine containing less than 14% alcohol by volume.

Under CFR Title 27, under regulation 24.257 there is also a tolerance of 0.75% for wines containing less than 7% alcohol by volume and these products are subject to different labelling requirements.

Wine exported to the USA must meet the requirements in the CFR, so the change to 0.8% tightens the tolerances for most Australian produced wines.

The specific US regulations are as follows:

TITLE 27 - ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

**CHAPTER I - ALCOHOL AND TOBACCO TAX AND TRADE BUREAU,
DEPARTMENT OF THE TREASURY**

SUBCHAPTER A - LIQUORS

PART 4 - LABELING AND ADVERTISING OF WINE

subpart d - LABELING REQUIREMENTS FOR WINE

4.36 - Alcoholic content.

(a) Alcoholic content shall be stated in the case of wines containing more than 14 percent of alcohol by volume, and, in the case of wine containing 14 percent or less of alcohol by volume, either the type designation table wine (light wine) or the alcoholic content shall be stated. Any statement of alcoholic content shall be made as prescribed in paragraph (b) of this section.

(b) Alcoholic content shall be stated in terms of percentage of alcohol by volume, and not otherwise, as provided in either paragraph (b)(1) or (2) of this section: (1) Alcohol ___ % by volume, or similar appropriate phrase; Provided, that if the word alcohol and/or volume are abbreviated, they shall be shown as alc. (alc) and/or vol. (vol), respectively. Except as provided in paragraph (c) of this section, a tolerance of 1 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of 1.5 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted either above or below the stated percentage.

(2) Alcohol ___ % to ___ % by volume, or similar appropriate phrase; Provided, that if the word alcohol and/or volume are abbreviated, they shall be shown as alc. (alc) and/or vol. (vol), respectively. Except as provided in paragraph (c) of this section, a range of not more than 2 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of not more than 3 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted between the minimum and maximum percentages stated, and no tolerances will be permitted either below such minimum or above such maximum.

(c) Regardless of the type of statement used and regardless of tolerances normally permitted in direct statements and ranges normally permitted in maximum and minimum statements, alcoholic content statements, whether required or optional, shall definitely and correctly indicate the class, type and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcoholic content statement in terms of maximum and minimum percentages which overlaps a prescribed limitation on the alcoholic content of any class, type, or taxable grade of wine, or a direct statement of alcoholic content which indicates that the alcoholic content of the wine is within such a limitation when in fact it is not.

TITLE 27 - ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

CHAPTER I - ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, DEPARTMENT OF THE TREASURY

SUBCHAPTER A - LIQUORS

PART 24 - WINE

subpart 1 - STORAGE, TREATMENT AND FINISHING OF WINE

24.257 - Labeling wine containers.

(a) The proprietor must label each bottle or other container of beverage wine prior to removal for consumption or sale. The minimum type size for information required by this

section is: 2 millimeters for containers of more than 187 milliliters and 1 millimeter for containers of 187 milliliters or less. The maximum type size for alcohol content statements is 3 millimeters unless the container is larger than 5 liters. The label must be securely affixed and show: (1) The name and address of the wine premises where bottled or packed; (2) The brand name, if different from above; (3) The alcohol content as percent by volume or the alcohol content stated in accordance with 27 CFR part 4. For wine with less than 7 percent alcohol by volume stated on the label there is allowed an alcohol content tolerance of plus or minus .75 percent by volume; and (4) The kind of wine, shown as follows: (i) If the wine contains 7 percent or more alcohol by volume and must have label approval under 27 CFR part 4, the kind of wine is the class, type, or other designation provided in that part.

The United States industry has advised they will have no problems in meeting the new tolerance.

3.1.3 International legislation

There is no Codex standard for wine. The Codex Alimentarius Commission does not set tolerances for alcohol contents in wine.

Part 4 Regulatory Impact Statement

There are no regulatory impediments to this requested change to tolerances for wine and wine products or for fortified wines as the effects on consumers, government and industry are minimal.

Reducing the tolerance for wine and wine products from 1.5% to 0.8% will reduce the potential for variation between stated and actual alcohol contents, although in practice neither the actual alcohol content nor the stated alcohol content will be changed for most Australian produced wines that are sold in Australia. The relaxing of the EU requirement for only whole or half percentages will allow for labelling of Australian produced wines for export to the EU with alcohol content stated to the nearest one tenth of a percent which is the usual practice in Australia.

The marginal increase from 0.5% to 0.8% for fortified wines is also unlikely to result in any changes for Australian produced fortified wines apart from labelling for fortified wines exported to the EU.

Wines and fortified wines imported into Australia from other countries, such as the USA, will be required to meet the new tolerances. The expected effects, if there are any, will be changes to labelling of alcohol contents rather than any changes to the actual alcohol contents. This will provide additional consumer certainty.

As most major exporters of wine are required to make wine to meet the importing country's laws and regulations, the changes proposed should have no international impact. Europe has also completed bilateral wine agreements with its other major trading partners including South Africa, Canada, United States, and Chile. All initiatives to harmonise wine regulations internationally reduce complexity and enhance international trade.

Exports of Australian wines reached a peak of about 800 million litres in 2007. Wine exports stabilised at about 730 million litres during 2008 and dropped to about 725 million litres by April 2009. The value of Australian wine exports also fell from \$A2.8 billion in 2008 to \$A2.4 billion in 2009 mainly due a 13.6% drop in the price of Australia's export wines. More than half of Australia's exported wine goes to Europe so the 2008 Wine Agreement with the EU is very important to the Australian economy.

Imports of wine into Australia doubled from about 27 million litres in 2005-6 to 53 million litres in 2007-8. Almost half of the wine imported to Australia in 2007-8 was from New Zealand. New Zealand's biggest export market for wine is Australia and not far behind in second place is the United Kingdom. New Zealand wine exporters have to comply with the 0.8% tolerance requirements to export wines to Europe.

4.1 Consumers

Consumers will not be disadvantaged by the proposed changes to tolerances for wines or fortified wines. Consumers may be able to have more confidence in the stated alcohol content for wines due to lower tolerances for variation but in practice there will be little or no change. This Application will put into force the 2008 Wine Agreement with the EU and more than half of Australia's exported wine goes to Europe. Improving the balance of trade in wine will be important for maintaining the lifestyle of Australian consumers.

4.2 Industry

Winemakers in Australia can produce wines within the tolerance of 0.8% alcohol/volume as required in Europe by using modern winemaking practices. The current allowance for 1.5% tolerance allows for poorer winemaking practices to be continued and potentially disadvantages consumers. Both the Australian and New Zealand peak bodies support this Application.

4.3 Government

General changes to the actual and stated alcohol contents for wines and fortified wines are not expected to result from this Application except for wines and fortified wines produced in Australia for export to Europe.

Wines imported from Europe already have these tolerances and wines imported from other countries will have to comply with the new requirements, which are consistent with those required for export to Europe.

Enforcement agencies will not be required to alter the current testing for compliance with stated alcohol contents.

PART 5 ANALYTICAL PROCEDURES

No changes to analytical procedures for alcohol determination in wine or wine products are required as this Application only affects the differences in stated and analytically determined values. Analytical procedures currently in use such as gas chromatography allow for accurate testing of fortified wines and spirits with 0.5% tolerances and for beer or cider at 0.3% tolerances.

PART 6 DETAILS OF REASONING

This Application is to bring the Australian regulations for tolerances for the difference between the stated and analytically determined alcohol contents of wine closer in line with the requirements in the EU in order to facilitate trade.

This change together with the concession negotiated in the Agreement to allow for more accurate disclosure of alcohol contents in the EU to one tenth of a unit will overcome a current trade problem.

PART 7 MANUFACTURING AND PUBLIC HEALTH

7.1 Manufacturing process

During the manufacture of wine, grapes are crushed and the resulting juice is fermented.

Alcohol is produced from fruit sugars by the action of yeast and there are variations in the quantity of alcohol produced due to differences in batches for grape sugar contents and also due to seasonal differences in grape production from year to year.

Alcohol content will also change after a wine has been bottled.

Labels for wines are usually printed prior to bottling and the alcohol content has to be determined before bottles can be labelled, so there is a need for tolerances to allow for differences between the stated alcohol content and the actual alcohol content determined by analysis.

This Application is to tighten the tolerances for most Australian produced wine, although there is a marginal relaxation of tolerance for fortified wines to simplify the requirements for all wine and wine products.

7.2 Public health and safety

Not applicable

PART 7 STATUTORY DECLARATION - AUSTRALIA

(as required by section 3.1.10 of the Application Handbook December 2008)

I,, do solemnly and sincerely declare that the information provided in this application fully sets out the matters required and that this information is true to the best of my knowledge and belief and that no information has been withheld which might prejudice this application.

And I make this solemn declaration by virtue of the *Statutory Declarations Act 1959* and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at

the day of20.....

Signature

before me*.....

Title:

*a list of persons who may witness statutory declarations under the *Statutory Declaration Act 1959* is contained in the *Statutory Declarations Regulations 1993*, available online at <http://scaleplus.law.gov.au/>

PART 7 STATUTORY DECLARATION - NEW ZEALAND

The information you provided in Parts 1 to 6 must be attested to be a statutory declaration in a suitable form along the following lines:

I, of

..... solemnly and sincerely declare that the information provided in this application fully sets out the matters required and that the information is true to the best of my knowledge and belief and that no information has been withheld which might prejudice this application.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths and Declarations Act 1957*.

Declared at

the day of20.....

Signature

before me*.....

Title:

*a list of persons who may witness statutory declarations under the *Oaths and Declarations Act 1957* is contained in that Act, available online at <http://www.legislation.govt.nz/>

Application to develop or vary the *Australia New Zealand Food Standards Code*

Checklist (as required by section 3.1.11 of the Application Handbook December 2008)

General Requirements (3.1)

- ☐ Form of application
- ☐ Assessment procedure
- ☐ Applicant details
- ☐ Confidential Commercial Information
- ☐ Purpose of the Application
- ☐ Exclusive Capturable Commercial Benefit
- ☐ Justification for the Application
- ☐ International standards
- ☐ Information to support the Application
- ☐ Statutory Declaration