



**FOOD STANDARDS**  
Australia New Zealand  
Te Mana Kounga Kai – Ahitereiria me Aotearoa

8-06

13 December 2006

## **DRAFT ASSESSMENT REPORT**

### **APPLICATION A573**

## **WATER USE IN WINEMAKING – AMENDMENT TO PERMITTED LEVEL**

**DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 7 February 2007**

**SUBMISSIONS RECEIVED AFTER THIS DEADLINE**

**WILL NOT BE CONSIDERED**

*(See 'Invitation for Public Submissions' for details)*

For Information on matters relating to this Assessment Report or the assessment process generally, please refer to <http://www.foodstandards.gov.au/standardsdevelopment/>

## **Executive Summary**

This Application from the Winemakers' Federation of Australia seeks to update Standard 4.5.1 – Wine Production Requirements (Australia only) in the *Australia New Zealand Food Standards Code* (the Code), in order to permit additional water to be present in wine, in conformance with good manufacturing practices.

The only regulatory options considered were to approve or not approve the increase of water use in wine production from 30 mL/L to 70 mL/L, in conformance with good manufacturing practice. A precedent has been set to approve such an increase, by the agreement between the European Community and the United States of America which allows for the upper limit of 70 mL/L of water in winemaking.

The amendments associated with the Application have no public health and safety implications.

The justification for this Application is to recognise that water may already be added to wine at levels in excess of those currently permitted, but for legitimate technical reasons. An amount of added water in excess of the current prescribed level may be necessary to incorporate processing aids and food additives. Furthermore, the manufacture of wine on a larger scale requires the transfer of wine through long pipelines and large volume equipment which can lead to volume change from entrained water in the pipelines and equipment. Wine or grape juice can be used to incorporate some additives and processing aids, but the use of water is necessary for others.

Submissions are now invited to assist FSANZ to complete the Final Assessment.

### **Preferred Approach**

FSANZ has undertaken an assessment and proposes the draft variation to Standard 4.5.1 – Wine Production Requirements (Australia only).

### **Reasons for Preferred Approach**

FSANZ recommends the proposed draft variation to Standard 4.5.1 – Wine Production Requirements (Australia Only) for the following reasons:

- The proposed draft variation does not have any implications for public health.
- The proposed draft variation would permit additional water to be present in wine as a result of good manufacturing practice.
- FSANZ has undertaken a preliminary regulation impact assessment process. That process concluded that the proposed draft variation is necessary, cost-effective and of benefit to both producers and consumers.
- None of FSANZ's section 10 objectives are compromised by the proposed change.

If the draft variation was adopted then it would come into effect upon gazettal.

## Consultation

Public comment on the Initial Assessment Report was sought from 9 August 2006 until 20 September 2006. A total of eight submissions were received during this period and a summary of these can be found in **Attachment 2**. Specific issues relating to water use in winemaking have been addressed in this report.

Eight submissions were received for the Initial Assessment Report of which four supported the Application, three supported progression of the Application to the Draft Assessment stage with some questions raised around labelling, consistency with international legislation and enforcement. One opposed the Application.

One submission objected to the Application on the basis that it is not convinced that the existing limit of water in winemaking is too low, and that the only benefit in increasing the limit would be the economic advantage to the winemakers. This submission also foresees potential adverse implications for Australian wines in international trade.

Public submissions are now invited on this Draft Assessment Report. Responses to this Draft Assessment Report will be used to develop the next stage of the Application and the preparation of the Final Assessment Report.

# CONTENTS

<b>INVITATION FOR PUBLIC SUBMISSIONS</b> .....	<b>2</b>
<b>INTRODUCTION</b> .....	<b>3</b>
<i>Nature of Application</i> .....	3
<i>Summary of Proposed Amendments</i> .....	3
1. BACKGROUND.....	3
1.1 <i>Current Standard</i> .....	3
1.2 <i>Historical Background</i> .....	3
1.3 <i>International Situation</i> .....	4
2. THE ISSUE / PROBLEM.....	4
2.1 <i>Water Retention</i> .....	4
2.2 <i>Water Addition from Food Additives and Processing Aids</i> .....	5
2.3 <i>Limit on Water Addition</i> .....	5
3. OBJECTIVES.....	6
4. KEY ASSESSMENT QUESTIONS.....	6
<b>RISK MANAGEMENT</b> .....	<b>7</b>
5. OPTIONS.....	7
5.1 <i>Option 1 – status quo – no change to Standard 4.5.1</i> .....	7
5.2 <i>Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments</i> .....	7
6. IMPACT ANALYSIS.....	7
6.1 <i>Affected Parties</i> .....	7
6.2 <i>Benefit Cost Analysis</i> .....	8
6.2.1 <i>Option 1 – status quo – no change to the existing Standard 4.5.1</i> .....	8
6.2.2 <i>Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments</i> ....	8
6.3 <i>Comparison of Options</i> .....	9
<b>COMMUNICATION</b> .....	<b>9</b>
7. COMMUNICATION AND CONSULTATION STRATEGY.....	9
8. CONSULTATION.....	9
8.1 <i>Public Consultation at Initial Assessment</i> .....	9
8.1.1 <i>Labelling</i> .....	9
8.1.2 <i>Use of wine to disperse additives and processing aids</i> .....	10
8.1.3 <i>Enforcement of water limit in wine</i> .....	10
8.1.4 <i>Impact in relation to the Trade Practices Act</i> .....	10
8.1.5 <i>Consistency between Standards 4.5.1 and 2.7.4 with no water limit</i> .....	11
8.1.6 <i>Impact of the proposed changes on the New Zealand wine industry</i> .....	11
8.2 <i>Public Consultation at Draft Assessment</i> .....	11
8.3 <i>World Trade Organization (WTO)</i> .....	12
<b>CONCLUSION</b> .....	<b>12</b>
9. CONCLUSION AND PREFERRED OPTION.....	12
9.1 <i>Reasons for Preferred Approach</i> .....	13
10. IMPLEMENTATION AND REVIEW.....	13
ATTACHMENT 1 - DRAFT VARIATION TO THE <i>AUSTRALIA NEW ZEALAND FOOD STANDARDS</i> <i>CODE</i> .....	14
ATTACHMENT 2 - SUMMARY OF PUBLIC SUBMISSIONS.....	15

## **INVITATION FOR PUBLIC SUBMISSIONS**

FSANZ invites public comment on this Draft Assessment Report based on regulation impact principles and the draft variation to the Code for the purpose of preparing an amendment to the Code for approval by the FSANZ Board.

Written submissions are invited from interested individuals and organisations to assist FSANZ in preparing the Final Assessment of this Application. Submissions should, where possible, address the objectives of FSANZ as set out in section 10 of the FSANZ Act. Information providing details of potential costs and benefits of the proposed change to the Code from stakeholders is highly desirable. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc. Technical information should be in sufficient detail to allow independent scientific assessment.

The processes of FSANZ are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of FSANZ and made available for inspection. If you wish any information contained in a submission to remain confidential to FSANZ, you should clearly identify the sensitive information and provide justification for treating it as commercial-in-confidence. Section 39 of the FSANZ Act requires FSANZ to treat in-confidence, trade secrets relating to food and any other information relating to food, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure.

Submissions must be made in writing and should clearly be marked with the word 'Submission' and quote the correct project number and name. Submissions may be sent to one of the following addresses:

**Food Standards Australia New Zealand**  
**PO Box 7186**  
**Canberra BC ACT 2610**  
**AUSTRALIA**  
**Tel (02) 6271 2222**  
**[www.foodstandards.gov.au](http://www.foodstandards.gov.au)**

**Food Standards Australia New Zealand**  
**PO Box 10559**  
**The Terrace WELLINGTON 6036**  
**NEW ZEALAND**  
**Tel (04) 473 9942**  
**[www.foodstandards.govt.nz](http://www.foodstandards.govt.nz)**

**Submissions need to be received by FSANZ by 6pm (Canberra time) 7 February 2007.**

Submissions received after this date will not be considered, unless agreement for an extension has been given prior to this closing date. Agreement to an extension of time will only be given if extraordinary circumstances warrant an extension to the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website using the Standards Development tab and then through Documents for Public Comment. Questions relating to making submissions or the application process can be directed to the Standards Management Officer at the above address or by emailing [slo@foodstandards.gov.au](mailto:slo@foodstandards.gov.au).

Assessment reports are available for viewing and downloading from the FSANZ website. Alternatively, requests for paper copies of reports or other general inquiries can be directed to FSANZ's Information Officer at either of the above addresses or by emailing [info@foodstandards.gov.au](mailto:info@foodstandards.gov.au).

## **INTRODUCTION**

### **Nature of Application**

This Application from the Winemakers' Federation of Australia seeks to update Standard 4.5.1 – Wine Production Requirements (Australia only) in the Code, in order to permit additional water to be present in wine in conformance with good manufacturing practices.

### **Summary of Proposed Amendments**

To remove the potential for non-compliance and to retain a maximum prescribed limit to prevent deliberate dilution, the Applicant has proposed varying subclause 5(7) of Standard 4.5.1 to increase the amount of water that may be added to wine from 30 mL/L to 70 mL/L, but to include the proviso that this level is only permitted where the addition is 'in conformance with good manufacturing practice'.

The proposed amendment has no public health implications.

## **1. Background**

### **1.1 Current Standard**

The current Standard 4.5.1 applies to wine production requirements in Australia only.

Subclause 5(7) of this Standard states:

*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, or where the water is incidental to the winemaking process.*

### **1.2 Historical Background**

Standard 4.5.1 was originally published as Standard 4.1.1 in the *Commonwealth of Australia Gazette* No. FSC 5 on 24 October 2002 and has been amended from time to time, including re-numbering of the Standard, implementation of some editorial changes and to permit the use of some new additives.

The Standard underpins the 'Agreement between the European Community and Australia for Trade in wine'<sup>1</sup>. The provisions of Standard 4.5.1 ensure that all wine in Australia (i.e. wine for export as well as for domestic consumption) is recognised by the European Community as being wine of designated quality and origin (e.g. *appellation contrôlée*, DOC, *qualitätswein* etc.) rather than as table wine. This ensures the continuation of the current access of Australian wine to the European Community market. The Standard has no effect on wine made in New Zealand and has no effect on wine imported into Australia or New Zealand.

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<sup>1</sup> <http://beta.austlii.edu.au/au/other/dfat/treaties/1994/6.html>. Accessed on 9 October 2006.

### **1.3 International Situation**

A side letter to the 'Agreement between the United States of America and the European Community on Trade in Wine'<sup>2</sup> states that 'the amount of water added to wine for reasons of technical necessity within the meaning of Article 3(1)(b) shall not exceed 7% by volume'. This agreement has set a precedent for Australian winemakers, who are presently disadvantaged by the 30 mL/L water allowance restriction placed on them.

## **2. The Issue / Problem**

The Winemakers' Federation of Australia has made an Application to vary Standard 4.5.1 in order to permit additional water to be present in wine as a result of good manufacturing practice. The Applicant states that this is necessary to recognise that water may be added to wine at levels in excess of those currently permitted but for legitimate technical reasons.

Currently, wine may only contain water up to a current maximum limit of 30 mL/L for the purpose of incorporating processing aids and food additives. The Applicant has stated that an amount of added water in excess of the current prescribed level may be necessary to incorporate processing aids and food additives, for reasons discussed below.

In support of their Application, the Applicant has stated that in a review of current practices and typical dose rates for processing aids and food additives:

- the manufacture of wine on a large scale requires the transfer of wine through long pipelines and large volume equipment which can lead to volume change from entrained water in the pipelines and equipment; and
- wine or grape juice can be used to incorporate some additives and processing aids, but the use of water is necessary for others.
- the incorporation of food additives and processing aids at permitted levels may require more than the currently permitted 30 mL/L increment of water.

To correct this potential for non-compliance and to retain a maximum prescribed limit to prevent deliberate dilution, the Applicant has proposed increasing the amount of water that may be added to wine from 30 mL/L to 70 mL/L but to include the proviso that this level is only permitted where the addition is 'in conformance with good manufacturing practice'.

### **2.1 Water Retention**

Water is used to clean and test pipelines at the start and the end of wine transfer. While this water is directed to waste there is the potential for small amounts to be retained in pipes or high volume equipment (e.g. filters) during wine transfer, particularly at the beginning and at the end of batches. There is also the potential for small amounts of water to be added during operations such as bottle rinsing. Given the volumes involved in transferring wine, it would be reasonable to expect that small amounts of water would be added to the final product from generally accepted manufacturing practice.

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<sup>2</sup> [http://www.ustr.gov/assets/Document\\_Library/Fact\\_Sheets/2005/asset\\_upload\\_file917\\_8030.pdf](http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2005/asset_upload_file917_8030.pdf). Accessed on 9 October 2006.

## 2.2 Water Addition from Food Additives and Processing Aids

Some food additives and processing aids are permitted to be added to wine and some of these additives must be mixed with water before addition. This is the basis of the current 30 mL/L limit. The Applicant has indicated that the existing limit may be too low to allow for the incorporation of processing aids and food additives which may need to be added to wine, especially where these additions may occur at different times during production and where certain additives may need to be added singularly. Given the variety of processing aids and food additives involved in producing wine, it would be reasonable to expect that small amounts of water would need to be added as part of incorporating these products.

## 2.3 Limit on Water Addition

Standard 4.5.1 currently includes a limit of 30 mL/L on water added to wine for a specific purpose (namely for the incorporation of food additives and processing aids). The Applicant is of the view that a limit should be retained to prevent deliberate dilution. Such a limit would not apply to imported wines, on the basis that Standard 4.5.1 only applies to the domestic production of wine. The Applicant also states that the purpose of the addition of water to wine should be stipulated in Standard 4.5.1 to prevent the addition of water other than for good manufacturing practices. This restriction is similarly reinforced in a side letter to the *Agreement between the European Community and the United States of America on Trade in Wine*, where it states that the amount of water added to wine for reasons of “technical necessity” shall not exceed 7% by volume.

Given the existing limit, and that the addition of many food additives and processing aids is currently regulated on a ‘good manufacturing practice’ basis, it is considered appropriate to retain a specific limit for water added to wine and to specify this addition as being permitted only where the addition is consistent with good manufacturing practice. FSANZ understands that there are techniques that could be used to determine the amount of water added to wine.<sup>3</sup>

The Applicant has also stated that the provision relating to added water in Standard 4.5.1 should include the words ‘The incorporation of water may be the unavoidable consequence of the wine production process’. FSANZ is of the view that this is unnecessary as this is already implicit in the expression ‘good manufacturing practice’ and is consistent with the existing provision that the water may be added where it is ‘incidental to the winemaking process’.

On the basis of the above information and the arguments provided by the Applicant, FSANZ proposes to vary the current subclause 5(7) in Standard 4.5.1 from:

- (7) 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, or where the water is incidental to the winemaking process.

to

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<sup>3</sup> Analytical Method - Determination of the Isotopic Ratio <sup>18</sup>O/<sup>16</sup>O of the water content in wines. Environmental Isotopes Pty. Ltd. Sydney, Australia.



- (7) Wine, sparkling wine and fortified wine may contain water in proportion not exceeding 70 mL/L where the water is necessary for the incorporation of any substance specified in clause 3 or clause 4, or where the water is incidental to the winemaking process, and where the presence of water in wine is a result of good manufacturing practice.

The Draft variation to the Code is provided in **Attachment 1**.

### **3. Objectives**

The Winemakers' Federation of Australia seeks, by way of this Application, to permit additional water to be present in wine for legitimate technical reasons.

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 FSANZ Act. 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.

None of FSANZ's section 10 objectives of food regulatory measures are compromised by the proposed draft variation. The Application would ensure that the amendment to the Australian Standard is consistent with the European Community / United States of America wine regulations.

### **4. Key Assessment Questions**

A risk assessment has not been completed on the basis that there is no risk assessment issues related to this Application, though responses are sought to the following questions.

- Does changing the water limit for wine from 30 mL/L to 70 mL/L have any unintended consequences?

- Are there any implications with the proposed change for international wine trade for Australian wines?

## **RISK MANAGEMENT**

### **5. Options**

FSANZ is required to consider the impact of various regulatory (and non-regulatory) options on all sectors of the community, which includes consumers, food industries and governments in Australia.

There are no options other than a variation to Standard 4.5.1 for this Application. Therefore the regulatory options available for this Application are:

#### **5.1 Option 1 – *status quo* – no change to Standard 4.5.1**

Under this option, the *status quo* would be maintained and there would be no changes to the existing Standard 4.5.1.

#### **5.2 Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments.**

Under this option, the proposed amendments to Standard 4.5.1 would be made.

### **6. Impact Analysis**

The impact analysis considers the likely impacts based on available information. The impact analysis is designed to assist in the process of identifying the affected parties, any alternative options consistent with the objective of the Application, and the potential impacts of any regulatory or non-regulatory provisions. The information needed to make a Final Assessment of this Application will include information from public submissions.

#### **6.1 Affected Parties**

The parties affected by this Application include the following:

- consumers;
- domestic winemakers; and
- Australian Government, State and Territory agencies involved in monitoring and enforcing the Code.

Given the nature of the proposed amendments, and that the Standard only applies to domestically produced wine, FSANZ is of the view that for importers, there are no discernible costs or benefits associated with the proposed amendments. New Zealand winemakers are not affected by the proposed change since the Standard is an ‘Australia Only’ Standard.

## 6.2 Benefit Cost Analysis

### 6.2.1 Option 1 – status quo – no change to the existing Standard 4.5.1

#### 6.2.1.1 Benefits

- for consumers, the adoption of this option could, in theory, result in less water in wine (compared to Option 2), although this benefit is unlikely to materialise or be discernible;
- for winemakers, the adoption of this option would not result in any discernible benefits;
- for Australian Government, State and Territory agencies, the adoption of this option would not result in any discernible benefits, although there may be a minor benefit resulting from the Standard remaining unchanged.

#### 6.2.1.2 Costs

- for winemakers, the adoption of this option would result in some costs resulting from their products potentially being non-compliant with Standard 4.5.1, even though they have been produced in accordance with good manufacturing practice; and
- for Australian Government, State and Territory agencies, the difficult situation remains where adherence to GMP means potential non-compliance with the Code.
- for winemakers, the adoption of this option would result in a competitive disadvantage compared to winemakers in other countries that have more liberal permissions for water use in winemaking for both the domestic and export markets.

### 6.2.2 Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments

#### 6.2.2.1 Benefits

- for winemakers, the adoption of this option would result in a benefit of more flexible production requirements in Standard 4.5.1; and
- for winemakers, the adoption of this option would align winemaking practices with those in other countries that have more liberal permissions for water use.
- for Australian Government, State and Territory agencies, the adoption of this option would reduce the potential for non-compliance and reduce the need for regulatory action against winemakers using good manufacturing practices for winemaking.

#### 6.2.2.2 Costs

- for consumers, the adoption of this option could, in theory, result in more water in wine, although this cost is unlikely to be discernible and may already be incurred;
- for winemakers, the adoption of this option is unlikely to result in any costs, as the changes would recognise more flexible production requirements; and
- for Australian Government, State and Territory agencies, the adoption of this option would not result in any discernible costs, although there would need to be an awareness of changes in Standard 4.5.1.

## 6.3 Comparison of Options

Option 1 is a viable option but its adoption would result in:

- some costs to winemakers and potentially to consumers of reduced wine production in accordance with the current less flexible production requirements in Standard 4.5.1; and
- costs for government agencies in enforcing the current Standard 4.5.1 to ensure compliance with the current limit for water in wine.

FSANZ's preferred approach is to adopt Option 2 to vary Standard 4.5.1 of the Code to include the proposed amendments.

## **COMMUNICATION**

### 7. Communication and Consultation Strategy

This is a standard FSANZ Application with two rounds of public consultation calling for submissions to assist FSANZ toward a Final Assessment. FSANZ will ensure that relevant stakeholders and other interested parties are made aware of the Application, and their comments sought, particularly those of wine producers and jurisdictions which enforce the Code.

### 8. Consultation

#### 8.1 Public Consultation at Initial Assessment

The Initial Assessment was advertised for public comment between 9 August 2006 and 20 September 2006.

Eight submissions were received during this period and a summary of the submissions is included in **Attachment 2** to this report.

FSANZ has taken the submitters comments into account in preparing the Draft Assessment of this Application. Specific issues relating to water use in winemaking have been addressed in this report. The major issues raised are discussed below.

##### *8.1.1 Labelling*

The NSW Food Authority and the South Australian Department of Health, have both raised the issue as to whether labelling of wine would be required with the potential increase of water in the final product, thus enabling consumers to make informed choices.

##### 8.1.1.1 Response

As outlined in the benefit cost analysis for Option 2, it is unlikely that a slight increase in water usage in wine production is discernible to the consumer, and may have already occurred due to the fact that compliance with the 30m L/L limit of water is proving difficult for winemakers. It is very difficult to accurately calculate the water inclusion, given the large volume of transfer based operations.

Water is listed in the Code as a permitted food processing aid in clause 3(a) of Standard 1.3.3 – Processing Aids; clause 2(d) of Standard 2.7.4 – Wine and Wine Product and in an editorial note in Standard 4.5.1 – Wine Production Requirements. As water is used as a processing aid in winemaking and not an ingredient in the final product, there is no requirement for identifying water on the label.

#### *8.1.2 Use of wine to disperse additives and processing aids*

The NSW Food Authority raised the question whether there is technological justification to use water, rather than a portion of the wine to disperse additives and processing aids.

##### 8.1.2.1 Response

The Applicant has stated that the use of a portion of the wine as a carrier to introduce additives and processing aids into the bulk wine is inadvisable. In the case of reactive fining agents, side reactions would occur, with loss of activity and possible deleterious effects on wine quality. Furthermore, necessary additives have differing solubility properties and some may not readily dissolve in wine. Where appropriate the use of wine or grape juice is acceptable to incorporate some additives, however, other additives require water.

#### *8.1.3 Enforcement of water limit in wine*

The South Australian Department of Health raises concerns that winemakers are unable to adhere to the amount of water used in winemaking to that currently prescribed in the Code i.e. 30 mL/L. They question the frequency of breaches, the magnitude of the problem and the ability to adhere to good manufacturing practice (GMP) with respect to water levels in wine.

##### 8.1.3.1 Response

In the absence of a monitoring program the NSW Food Authority has stated that it does not actively enforce compliance with the water limit in wine, however, it would take appropriate action in response to consumer or industry complaints. This response is likely to be representative of all jurisdictions, as continuous monitoring of water use in winemaking would be unrealistic. For this reason the proposed drafting of the Standard states that the addition of water up to a maximum of 70 mL/L be in conformance with good manufacturing practice. The recommended amendment could thus be seen to strengthen the ability to act against fraudulent practices.

Winemakers state that it is difficult to adhere to the 30 mL/L limit of water and that there may already have been unavoidable breaches. Therefore, the main objective of the Application is to prevent non-compliance with Standard 4.5.1 of the Code, and to conform to international legislation.

#### *8.1.4 Impact in relation to the Trade Practices Act*

The Department of Human Services of Victoria is concerned that wine containing 7% water and labelled as wine may be inconsistent with the principle of avoiding deceptive or misleading conduct under the *Trade Practices Act 1974* (TPA).

#### 8.1.4.1 Response

The amendment to Standard 4.5.1 of the Code is concerned with setting a maximum allowable limit of residual water in wine. The limit of 70 mL/L is an upper limit, and with good manufacturing practice it is possible that this amount may not be reached as different wines have varying requirements for additives and processing aids. Food containing alcoholic beverages is required under subclause 2(1) of Standard 22.7.1 to have a declaration concerning alcohol by volume. This is the information that a consumer would be relying upon in relation to the alcohol content of the wine and this is also the information that, if it was alleged to be misleading or deceptive would be subject to claims that the wine manufacturer was acting inconsistently with the TPA.

#### *8.1.5 Consistency between Standards 4.5.1 and 2.7.4 with no water limit.*

The New Zealand Food Safety Authority (NZFSA) recommends deleting the reference to added water in Standards 4.5.1 and 2.7.4 and adding an editorial note in each Standard, referring to Standard 1.3.3 for guidance on added water. NZFSA recommends such guidance to mean added water within the scope of ‘good manufacturing practice’.

#### 8.1.5.1 Response

Standard 2.7.4 applies to both Australia and New Zealand, whereas Standard 4.5.1 is a stand alone Standard (Australia only). The Applicant has requested a change to Standard 4.5.1 only. The Winemakers’ Federation of Australia is specifically seeking an upper limit of water used in winemaking, and such a limit is also consistent with international standards.

#### *8.1.6 Impact of the proposed changes on the New Zealand wine industry.*

The Environmental Health Unit of Queensland Health has questioned whether New Zealand winemakers are also increasing the water limit, and if not, do they have concerns with the proposed Australian changes; and would a change in the Australian food legislation affect the New Zealand food legislation?

#### 8.1.6.1 Response

Standard 4.5.1 Wine Production Requirements is an ‘Australia only’ Standard, and does not affect wine production in New Zealand. The New Zealand Food Safety Authority, in its submission do not support the inclusion of a maximum water content in Standard 2.7.4, but recommend best management being through ‘good manufacturing practice’ as is currently the case in New Zealand.

## **8.2 Public Consultation at Draft Assessment**

Public comment is again sought by FSANZ to assist in assessing the Application and further comments on, but not limited to, the following would be useful:

- |  |
|--|
| <ul style="list-style-type: none"><li>• Is there any evidence indicating that consumers will be disadvantaged or misled by the proposed change?</li><li>• Is there any evidence indicating that the Australian or New Zealand wine industries will be negatively impacted by the proposed changes?</li></ul> |
|--|

Are there any other considerations which may affect the outcome of the Application?

### **8.3 World Trade Organization (WTO)**

As members of the World Trade Organization (WTO), Australia and New Zealand are obligated to notify WTO member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

While there are relevant international standards for the production of wine, amending the Code as proposed is unlikely to have a significant effect on international trade as the Standard does not apply to imported wine. After consideration of this matter at Draft Assessment, notification under neither the WTO Technical Barriers to Trade (TBT) nor Sanitary and Phytosanitary Measure (SPS) Agreements is therefore not required.

## **CONCLUSION**

### **9. Conclusion and Preferred Option**

The Draft Assessment Report is based on information provided by the Applicant and submissions received in response to the Initial Assessment. Having regard to the requirements for Draft Assessment as prescribed in section 15 of the FSANZ Act, FSANZ has decided to accept the Application for the following reasons:

- The Application seeks approval to increase the limit of water from 30 mL/L to 70 mL/L added to wine during the wine production process. Such an approval would warrant a variation to Standard 4.5.1 – Wine Production Requirements (Australia Only).
- There is currently no permission in the Code for allowing up to 70 mL/L of water to be added to wine during the wine production process.
- The Application is not so similar to any previous application that it ought not to be accepted.
- There are no other measures that would be more cost-effective than a variation to Standard 4.5.1 that could achieve the same end.
- At this stage no other relevant matters are apparent.

Responses to this Draft Assessment Report will be used to develop the next stage of the Application and the preparation of the Final Assessment Report.

## **Preferred Approach**

FSANZ has undertaken an assessment and proposes the draft variation to Standard 4.5.1 – Wine Production Requirements (Australia Only).

### **9.1 Reasons for Preferred Approach**

FSANZ recommends the proposed draft variation to Standard 4.5.1 – Wine Production Requirements (Australia Only) for the following reasons:

- The proposed draft variation does not have any implications for public health.
- The proposed draft variation would permit additional water to be present in wine as a result of good manufacturing practice.
- FSANZ has undertaken a preliminary regulation impact assessment process. That process concluded that the proposed draft variation is necessary, cost-effective and of benefit to both producers and consumers.
- None of FSANZ's section 10 objectives are compromised by the proposed changes.

## **10. Implementation and Review**

If the draft variation was adopted then it would come into effect upon gazettal.

### **ATTACHMENTS**

1. Draft variation to the Australia New Zealand Food Standards Code.
2. Summary of issues raised in public submissions in response to the Initial Assessment Report.



**Draft variation to the *Australia New Zealand Food Standards Code***

**To commence: On gazettal**

[1] *Standard 4.5.1 of the Australia New Zealand Food Standards Code is varied by omitting subclause 5(7) and substituting –*

(7) Wine, sparkling wine and fortified wine may contain water in proportion not exceeding 70 mL/L where the water is necessary for the incorporation of any substance specified in clause 3 or clause 4, or where the water is incidental to the winemaking process, and where the presence of water in wine is a result of good manufacturing practice.

## Summary of Public Submissions

### Round one

Submitter organisation	Name
Food Technology Association of Victoria Inc.	David Gill
NSW Food Authority	Bill Porter
Australian Food and Grocery Council	Kim Leighton
Country Women's Association of NSW	Erin Robison
Department of Health, SA	Joanne Cammans
The New Zealand Food Safety Authority	Carole Inkster
Department of Human Services, Victoria	Victor Di Paola
Environmental Health Unit of Queensland Health	Gary Bielby

Submitter	Position	Comments
Food Technology Association of Victoria Inc.	Supports	<ul style="list-style-type: none"> <li>Supports Option 2, to vary Standard 4.5.1 to incorporate the proposed amendments.</li> </ul>
NSW Food Authority	Supports progression of the Application to the Draft Assessment stage.	<ul style="list-style-type: none"> <li>Need to examine relevant legislation in other jurisdictions, to promote consistency with international food standards, and identify potential trade issues.</li> <li>Considers declaration of added water on the label to enable consumers to make informed choices.</li> <li>Investigate technological justification for the use of water rather than a portion of the wine to disperse additives and processing aids.</li> <li>Advises that NSWFA does not currently monitor the amount of added water entrained into wine.</li> <li>Advises that in the absence of a monitoring programme, the Authority does not proactively enforce compliance with the water limit in wine, but would take appropriate action in the event of consumer or industry complaints.</li> </ul>
Australian Food and Grocery council	Supports	<ul style="list-style-type: none"> <li>Does not consider that the proposed amendment would impose any significant costs, or losses in product quality that would affect consumers.</li> <li>Considers that improved flexibility of production will result in potential savings in production costs, reduced labour costs and improved efficiencies and effectiveness in the use of permitted additives.</li> <li>The primary impact of the proposed amendments is on improving the opportunity and competitiveness of Australian winemakers in the Australian marketplace, particularly in comparison to imported wines which are not subject to the same restrictions.</li> </ul>
Country Women's Assoc of NSW	Supports	<ul style="list-style-type: none"> <li>It supports Option 2, to vary Standard 4.5.1 to incorporate the proposed amendments.</li> </ul>

Submitter	Position	Comments
Department of Health, SA	Supports progression of the Application to the Draft Assessment stage.	<ul style="list-style-type: none"> <li>• Conformance with good manufacturing practice is difficult to enforce i.e. the level of water in wine may be difficult to attribute to GMP vs. deliberate or careless addition.</li> <li>• Draft assessment should investigate how often the current limit of 30 mL/L is breached, and whether it is a widespread problem.</li> <li>• Would labelling changes be required with increased water use in the final product?</li> </ul>
The New Zealand Food Safety Authority.	Supports	<ul style="list-style-type: none"> <li>• Notes that added water during processing is not exclusive to winemaking, and that Standard 1.3.3 regulates processing aids, and water is a permitted processing aid. The amount of water allowed is set at ‘good manufacturing practice’ (GMP).</li> <li>• Recommends deleting the reference to added water in Standard 4.5.1 and 2.7.4, and add an editorial note in each Standard referring to Standard 1.3.3 for guidance on added water.</li> <li>• Takes the view that consistency is necessary between Standards 4.5.1 and 2.7.4, regarding added water.</li> <li>• Does not support the inclusion of a maximum water content in Standard 2.7.4, with best management being through GMP with reference to Standard 1.3.3 if necessary.</li> </ul>
Department of Human Services, Victoria	Supports progression of the Application to the Draft Assessment stage.	<ul style="list-style-type: none"> <li>• Acknowledges that the Application has merit, however,</li> <li>• Is of the opinion that wine which contains 7% water and which is labelled as wine, may contravene the principle of deceptive or misleading conduct under the Trade Practices Act. As such Option 2 may contravene a principle of the FSANZ Act 1991. Clarity on this issue is requested in the Draft Assessment Report.</li> </ul>
Environmental Health Unit of Queensland Health	At this point does not support.	<ul style="list-style-type: none"> <li>• Notes economic benefits for wine manufacturers in being able to more than double the amount of water permitted to be added to their products.</li> <li>• Notes that cleaning and testing procedures of large volume equipment is not unique to the winemaking industry e.g. milk industry.</li> <li>• Unconvinced that the existing limit of water addition is too low for the addition of additives and processing aids.</li> <li>• -Raises the question whether New Zealand is also increasing the water limit, and if not, does the New Zealand wine industry have an issue with this?</li> <li>• How would a change in the Australian food legislation affect the New Zealand food legislation, and would New Zealand wines become more desirable for consumers?</li> </ul>

<b>Submitter</b>	<b>Position</b>	<b>Comments</b>
		<ul style="list-style-type: none"><li>• Foresees potential adverse implications for Australian wines in international wine trade.</li></ul>