

EXPLANATORY STATEMENT

APPLICATION A573

WATER USE IN WINEMAKING – AMENDMENT TO PERMITTED LEVEL

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 (WFA) 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 for technological purposes and in conformance with good manufacturing practice (GMP).

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, with the condition that this level is only permitted where the addition is 'in conformance with good manufacturing practice'. The recommended amendment could thus be seen to strengthen the ability to act against fraudulent practices.

The Applicant states that it is necessary to recognise that water may be added to wine at levels in excess of those currently permitted but for legitimate technical reasons. 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 due to 30 mL/L being an impractical limit. Reality would dictate a 70 mL/L limit which would be reflected in the Code. Therefore, the main objective of the Application is to prevent non-compliance with Standard 4.5.1 of the Code.

Water is used in winemaking primarily to incorporate a range of food additives and processing aids required in the wine production process. Where appropriate the use of wine or grape juice is acceptable to incorporate some additives, however, other additives require water. For example the necessary water contribution accompanying bentonite addition can be substantial.

Water is also 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. Given the volumes involved in transferring wine, it would be reasonable to expect that small amounts of water would be retained in the final product from GMP.

An agreement between the European Community and the United States of America allows for the upper limit of 70 mL/L of water in winemaking. The proposed amendment to Standard 4.5.1 – Wine Production Requirements (Australia Only) would conform to this international agreement.

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 GMP.

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

Decision

Approval is given to increase water use in wine production from 30 mL/L to 70 mL/L in conformance with GMP. Permission is provided by a variation to subclause 5(7) of Standard 4.5.1 – Wine Production Requirements (Australia only).

Reasons for Decision

FSANZ approves the increase of water use in wine production from 30 mL/L to 70 mL/L in conformance with GMP and the proposed draft variation to Standard 4.5.1 – Wine Production Requirements (Australia only) (**Attachment 1**) 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 in conformance with GMP.
- FSANZ has undertaken a full regulation impact assessment process. That process concluded that the proposed draft variation is necessary, cost-effective and of benefit to both producers and consumers.
- FSANZ's objectives outlined in section 10 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), will not be compromised by the proposed changes.

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. Eight submissions were received 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 submitter opposed the Application on the basis that they were 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 submitter also foresaw potential adverse implications for Australian wines in international trade.

Public comment on the Draft Assessment Report was sought from 13 December 2006 to 7 February 2007. Seven submissions were received, with four supporting the Application. Members of one submitter organisation were polarised in their choice of options with a majority supporting, and a strong minority opposing the Application. Another two submitters opposed the Application.

There was opposition to the Application for a range of reasons including issues around deceptive practice, enforcement, labelling, economic advantage to the winemakers and a need for further evidence of technical necessity to justify a change in the standard.

Support for the Application was based on greater wine production flexibility and improved competition prospects with international wines, in both domestic and export markets. It was noted that the amendment would not result in loss of product quality and that there is no public health risk.

These issues have been addressed in this Final Assessment Report.

Attachment 2 is a summary of the submissions received during the first and second round of public comment. Specific issues relating to water use in winemaking have been addressed in this report.

CONTENTS

INTRODUCTION.....	2
<i>Nature of Application.....</i>	<i>2</i>
<i>Summary of Proposed Amendments.....</i>	<i>2</i>
1. BACKGROUND.....	2
1.1 <i>Current Standard.....</i>	<i>2</i>
1.2 <i>Historical Background.....</i>	<i>2</i>
1.3 <i>International Situation.....</i>	<i>3</i>
2. THE ISSUE / PROBLEM.....	3
2.1 <i>Water Retention.....</i>	<i>3</i>
2.2 <i>Water Addition from Food Additives and Processing Aids.....</i>	<i>4</i>
2.3 <i>Limit on Water Addition.....</i>	<i>4</i>
3. OBJECTIVES.....	5
RISK MANAGEMENT.....	5
4. OPTIONS.....	5
4.1 <i>Option 1 – status quo – no change to Standard 4.5.1.....</i>	<i>6</i>
4.2 <i>Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments.....</i>	<i>6</i>
5. IMPACT ANALYSIS.....	6
5.1 <i>Affected Parties.....</i>	<i>6</i>
5.2 <i>Benefit Cost Analysis.....</i>	<i>6</i>
5.2.1 <i>Option 1 – status quo – no change to Standard 4.5.1.....</i>	<i>6</i>
5.2.2 <i>Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments....</i>	<i>7</i>
5.3 <i>Comparison of Options.....</i>	<i>7</i>
COMMUNICATION.....	8
6. COMMUNICATION AND CONSULTATION STRATEGY.....	8
7. CONSULTATION.....	8
7.1 <i>Public Consultation at Initial and Draft Assessments.....</i>	<i>8</i>
7.1.1 <i>Labelling.....</i>	<i>8</i>
7.1.2 <i>Use of wine to disperse additives and processing aids.....</i>	<i>9</i>
7.1.3 <i>Enforcement of water limit in wine.....</i>	<i>9</i>
7.1.4 <i>Impact in relation to the Trade Practices Act.....</i>	<i>10</i>
7.1.5 <i>Consistency between Standards 4.5.1 and 2.7.4 with no water limit.....</i>	<i>11</i>
7.1.6 <i>Impact of the proposed changes on the New Zealand wine industry.....</i>	<i>11</i>
7.1.7 <i>Suggested change to the legal drafting of the amendment.....</i>	<i>11</i>
7.1.8 <i>Economic advantage to winemakers.....</i>	<i>12</i>
7.2 <i>World Trade Organization (WTO).....</i>	<i>12</i>
CONCLUSION.....	13
8. CONCLUSION AND DECISION.....	13
8.1 <i>Reasons for Decision.....</i>	<i>13</i>
9. IMPLEMENTATION AND REVIEW.....	13
ATTACHMENT 1 - DRAFT VARIATION TO THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE.....	14
ATTACHMENT 2 - SUMMARY OF PUBLIC SUBMISSIONS.....	15

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 practice (GMP).

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, with the condition 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 *Food Standards 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 and processing aids.

The Standard underpins the 'Agreement between the European Community and Australia for Trade in Wine'¹. 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*, *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.

¹ <http://beta.austlii.edu.au/au/other/dfat/treaties/1994/6.html>. Accessed on 12 February 2007.

1.3 International Situation

A side letter to the 'Agreement between the United States of America and the European Community on Trade in Wine'² 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 (3% by volume) 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, in conformance with GMP. The Applicant states that it 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 added 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.

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
- 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 on the condition that this level is only permitted where the addition is 'in conformance with GMP'.

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.

² http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2005/asset_upload_file917_8030.pdf. Accessed on 12 February 2007.

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 for technical reasons 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 expected that small amounts of water would need to be added as part of incorporating these products. In many instances wine is an inappropriate carrier of these food additives and processing aids, since side reactions are probable with loss of activity and possible deleterious effects on wine quality.

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 Australian 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 GMP. 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 GMP 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 GMP. FSANZ understands that there are techniques that could be used to determine the amount of water added to wine.³

The Applicant has 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

³ Analytical Method - Determination of the Isotopic Ratio ¹⁸O/¹⁶O of the water content in wines. Environmental Isotopes Pty. Ltd. NSW, Australia. Rafter Stable Isotope Laboratory, Lower Hutt, New Zealand.

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

RISK MANAGEMENT

4. 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:

4.1 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.

4.2 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.

5. 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 used to make the Final Assessment of this Application includes information from public submissions.

5.1 Affected Parties

The parties affected by this Application include the following:

- consumers;
- Australian 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 Australian 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.

5.2 Benefit Cost Analysis

5.2.1 Option 1 – status quo – no change to Standard 4.5.1

5.2.1.1 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; and
- 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 from the Standard remaining unchanged.

5.2.1.2 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 GMP;
- for Australian Government, State and Territory agencies, the difficult situation remains where adherence to GMP means potential non-compliance with the Code; and
- 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.

5.2.2 Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments

5.2.2.1 Benefits

- for winemakers, the adoption of this option would result in a benefit of more flexible production requirements in Standard 4.5.1;
- for winemakers, the adoption of this option would align winemaking practices with those in other countries that have more liberal permissions for water use; and
- 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.

5.2.2.2 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.

5.3 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

6. Communication and Consultation Strategy

FSANZ has applied a basic communication strategy to Application A573. This involved advertising the availability of assessment reports for public comment in the national press and making the reports available on the FSANZ website. The Applicant, individuals and organisations that made submissions on this Application were notified at each stage of the Application. Given that the FSANZ Board has approved the Final Assessment Report, FSANZ will notify the Ministerial Council. The Applicant and stakeholders, including the public, will be notified of the gazettal changes to the Code in the national press and on the website.

FSANZ provides an advisory service to the jurisdictions on changes to the Code.

7. Consultation

7.1 Public Consultation at Initial and Draft Assessments

The Initial Assessment was advertised for public comment between 9 August 2006 and 20 September 2006, and the eight submissions received were taken into account when preparing the Draft Assessment of this Application.

The Draft Assessment was advertised for public comment between 13 December 2006 and 7 February 2007. Seven submissions were received during this period. A summary of both rounds of submissions is included in **Attachment 2** to this Report.

At Draft Assessment some submitters sought further information on issues raised. FSANZ has expanded some of the earlier comments in this Final Assessment Report to accommodate these. Specific issues relating to water use in winemaking have been addressed in this Report. The major issues raised are discussed below.

7.1.1 Labelling

The NSW Food Authority, South Australian Department of Health and the Food Technology Association of Victoria have 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.

7.1.1.1 Response

The Code at subclause 2(d) of Standard 2.7.4 – Wine and Wine Product, states that added water is permitted in wine during production, where it is necessary to incorporate any permitted food additive or processing aid.

In the winemaking process, water is predominantly used as a carrier to incorporate additives and processing aids into the wine and is not an ingredient in the final product. Although this leads to the unintentional but technically unavoidable presence of water in the final product, it is unlikely to be detectable by the majority of consumers.

Therefore there is no requirement for identifying the small residual amounts of water on the label, regardless of whether the water limit is 30 mL/L or 70 mL/L.

7.1.2 Use of wine to disperse additives and processing aids

The NSW Food Authority raised the question as to whether there is technological justification to use water, rather than a portion of the wine to disperse additives and processing aids. At Draft Assessment further concerns were raised by submitters regarding a lack of evidence for the need to use water as a carrier for additives.

7.1.2.1 Response

The use of a portion of the wine as a carrier to introduce additives and processing aids into the bulk wine is not always possible. Many proteinaceous fining agents must be hydrated in water because they are reactive in wine which partially destroys the fining agent's activity, resulting in localized over-finishing. An example of this is casein which must be hydrated in water, never juice or wine.

Bentonite, another fining agent should be hydrated by very slow addition to water. Zoecklein (1988)⁴ states, 'The method of preparation significantly affects bentonite's ability to remove proteins. Bentonite is made up of small platelets that are separated by a layer of water molecules. During hydration, the charged platelets repel each other and pop apart. As this occurs, swelling begins. Water molecules partially neutralise the exposed surfaces holding them apart, thus exposing the large reactive surfaces.'

Water contribution from bentonite alone can be substantial. Factors affecting this may include the hydration rate which depends on the bentonite preparation, and the individual winery operating procedure. High nitrogen fertilizer applications in the vineyard may necessitate greater fining requirements and ultimately introduce more water into the final product. For example, some Muscat varieties require water addition in the range of 3.6% - 6.25%, whereas Semillon exposed to high nitrogen exposure described above has been known to require between 5.8% - 7% water.

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.

7.1.3 Enforcement of water limit in wine

The South Australian Department of Health and the Department of Human Services of Victoria have raised 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 GMP with respect to water levels in wine. The Food Technology Association of Victoria comments that the quantity of water addition to wine is not provable.

⁴ Zoecklein, B. (1988) "Bentonite Fining of Juice and Wine" Virginia Cooperative Extension Service Publication 463 - 014. <http://www.fst.vt.edu/extension/enology/downloads/bentonite01.pdf>

7.1.3.1 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, and regardless of the final amount of permitted residual water in wine the enforcement practicalities remain unchanged. 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 GMP. 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 due to 30 mL/L being an impractical limit. Reality would dictate a 70 mL/L limit which would be reflected in the Code. 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.

FSANZ understands that there are analytical techniques that could be used to determine the amount of water added to wine. Stable isotope ratio measurements of wine include oxygen $^{18}\text{O}/^{16}\text{O}$ which is able to determine among other things, water adulteration of wine. The other alternative available to jurisdictions to assess compliance with the Code would be to perform an audit of the wine manufacturing process and to do a mass balance calculation. Again the issue of enforcement remains the same whether the water limit is 30 mL/L or 70 mL/L.

7.1.4 Impact in relation to the Trade Practices Act

The Department of Human Services of Victoria remains 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). The Food Technology Association of Victoria maintains that the current perception of consumers is that wine does not contain any added water, and would therefore be deceived.

7.1.4.1 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 it is possible that this amount may not be reached as different wines have varying requirements for additives and processing aids and there are further impacting differences between processing plants and their procedures. Food containing alcoholic beverages is required under subclause 2(1) of Standard 2.7.1 of the Code to have a declaration concerning alcohol by volume on the label. This is the information that a consumer would be relying on 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. The amended subclause 5(7) of Standard 4.5.1 also requires that the presence of water in wine is only for specific purposes and under the requirements of GMP; it does not allow wine manufacturers to fraudulently dilute their wines with water.

7.1.5 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 Standard 4.5.1 and Standard 2.7.4, and adding an editorial note in each Standard, referring to Standard 1.3.3 – Processing Aids for guidance on added water. NZFSA recommends such guidance to mean added water within the scope of GMP. At Draft Assessment, the Environmental Health Unit of Queensland Health expressed concern that New Zealand wines may become more desirable to consumers, and suggests that no maximum residual water limit be imposed, and that added water requirements be determined by GMP as in New Zealand.

7.1.5.1 Response

Standard 2.7.4 applies to both Australia and New Zealand, whereas Standard 4.5.1 is an Australia only standard. The Applicant has requested a change to Standard 4.5.1 only, and is specifically seeking an upper limit of water used in winemaking, which is consistent with international standards. The Applicant states that the Australian wine industry would prefer a maximum water addition limit maintained, so as to prevent a larger addition of water beyond that required for technical necessity.

Standard 2.7.4 is the governing Standard for wines in New Zealand and allows for added water to incorporate any permitted food additive or processing aid. This standard does not specify a given limit to the added water, but technical necessity in conformance with GMP is the guiding factor. Therefore, it is not clear as to why New Zealand wines should be more desirable than Australian wines.

7.1.6 Impact of the proposed changes on the New Zealand wine industry.

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

7.1.6.1 Response

Standard 4.5.1 is an Australia only Standard, and does not affect wine production in New Zealand. NZFSA, in its submission does not support the inclusion of a maximum water content in Standard 2.7.4, but recommends best management being through GMP as is currently the case in New Zealand.

7.1.7 Suggested change to the legal drafting of the amendment.

The proposed drafting of subclause 5(7) of Standard 4.5.1 was:

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 NSW Food Authority has suggested that the word **added** be inserted before ‘water’ in the first instance. i.e. ‘Wine, sparkling wine and fortified wine may contain **added** water in proportion....’

7.1.7.1 Response

FSANZ agrees that this would clarify that the water is additional to the water already naturally present in wine, and would also be consistent with subclause 2(d) of Standard 2.7.4. Furthermore, in the side letter to the wine agreement between the European Community and the United States, the word ‘added’ qualifies each instance of the word ‘water’.

FSANZ further decided to replace the words ‘a result of’ with ‘in conformance with’ in the drafting to add clarity and remove ambiguity.

7.1.8 Economic advantage to winemakers

Some submitters are concerned that Option 2 would enable opportunistic winemakers to increase their total volume and profits with no added costs, and may set a precedent for other industries. They further comment that contamination of wine with water is not a justification to increase the added water limit; rather measures are needed to prevent the problem.

7.1.8.1 Response

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. Given the volumes involved in transferring wine, it would be reasonable to expect that small amounts of water would be retained in the final product from generally accepted manufacturing practice.

With wineries differing in size and a variety of practices employed for wines according to their unique production requirements, it seems reasonable to legitimately increase the water limit slightly to accommodate all such requirements. This would provide all wine producers with greater flexibility in wine production without the ever present concern that residual water may be over the limit in the final product.

The Applicant is specifically seeking to maintain an upper limit of water used in winemaking, which is consistent with international standards, so as to prevent a larger addition of water beyond that required for technical necessity. The amended clause only allows the incidental addition of water in wine production for technological process reasons and does not allow wine manufacturers to fraudulently dilute wine to gain a profit. The limit has been requested to be raised to be consistent with actual manufacturers practice so that current legitimate wine production practice would not be inconsistent with the Code.

7.2 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 of WTO Technical Barriers to Trade (TBT) or Sanitary and Phytosanitary Measures (SPS) was not required.

CONCLUSION

8. Conclusion and Decision

FSANZ agrees to approve the increase of residual added water in wine from 30 mL/L to 70 mL/L resulting from the wine production process in conformance with GMP. This permission would be achieved by varying subclause 5(7) of Standard 4.5.1.

Decision

Approval is given to increase water use in wine production from 30 mL/L to 70 mL/L in conformance with GMP. Permission is provided by a variation to subclause 5(7) of Standard 4.5.1 – Wine Production Requirements (Australia Only).

8.1 Reasons for Decision

FSANZ approves the increase of water use in wine production from 30 mL/L to 70 mL/L in conformance with GMP, and the proposed draft variation to Standard 4.5.1 – Wine Production Requirements (Australia only) (**Attachment 1**) 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 in conformance with GMP.
- FSANZ has undertaken a full regulation impact assessment process. That process concluded that the proposed draft variation is necessary, cost-effective and of benefit to both producers and consumers.
- FSANZ's objectives outlined in section 10 of FSANZ Act, will not be compromised by the proposed changes.

9. 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 and Draft Assessment Reports

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 added water in proportion not exceeding 70 mL/L where that water is necessary for the incorporation of any substance specified in clause 3 or clause 4, or where that water is incidental to the winemaking process and where the presence of water in wine is in conformance with good manufacturing practice.

Summary of Public Submissions

Round one

Submitter organisation	Name
Food Technology Association of Victoria	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
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	Supports	Supports Option 2, to vary Standard 4.5.1 to incorporate the proposed amendments.
NSW Food Authority	Supports progression of the Application to the Draft Assessment stage.	<ul style="list-style-type: none"> - Need to examine relevant legislation in other jurisdictions, to promote consistency with international food standards, and identify potential trade issues. - Consider declaration of added water on the label to enable consumers to make informed choices. - Investigate technological justification for the use of water rather than a portion of the wine to disperse additives and processing aids. <p>Advises that:</p> <ul style="list-style-type: none"> - NSWFA does not currently monitor the amount of added water entrained into wine. - 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.
Australian Food and Grocery council	Supports	<ul style="list-style-type: none"> - Does not consider that the proposed amendment would impose any significant costs, or losses in product quality that would affect consumers. - 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. - 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.
Country Women's Association of NSW	Supports	Recognises the need for a higher water limit in winemaking.

Submitter	Position	Comments
Department of Health, SA	Supports progression of the Application to the Draft Assessment stage.	<ul style="list-style-type: none"> - States that conformance with GMP is difficult to enforce i.e. the level of water in wine may be difficult to attribute to GMP vs. deliberate or careless addition. - Draft assessment should investigate how often the current limit of 30 mL/L is breached, and whether it is a widespread problem. - Would labelling changes be required with increased water use in the final product?
The New Zealand Food Safety Authority.	Supports	<ul style="list-style-type: none"> - States 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 GMP. - 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. - Takes the view that consistency is necessary between Standards 4.5.1 and 2.7.4, regarding added water. - Does not support the inclusion of a maximum water limit in Standard 2.7.4, with best management being through GMP with reference to Standard 1.3.3 if necessary.
Department of Human Services, Victoria	Supports progression of the Application to the Draft Assessment stage.	Acknowledges that the Application has merit, however, 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, and may contravene a principle of the FSANZ Act 1991. Clarity on this issue is requested in the Draft Assessment Report.
Environmental Health Unit of Queensland Health	At this point does not support.	<ul style="list-style-type: none"> - Notes economic benefits for wine manufacturers in being able to more than double the amount of water permitted to be added to their products. - Notes that cleaning and testing procedures of large volume equipment is not unique to the winemaking industry e.g. milk industry. - Unconvinced that the existing limit of water addition is too low for the addition of additives and processing aids. - 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? - 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? - Foresee potential adverse implications for Australian wines in international wine trade.

Round two

Submitter organisation	Name
South Australian Wine Industry Association	Linda Bowes
Australian Food and Grocery Council	Kim Leighton
New Zealand Food Safety Authority	Carole Inkster
NSW Food Authority	David Cusack
Food Technology Association of Victoria	David Gill
Environmental Health Unit of Queensland Health	Gary Bielby
Department of Human Services, Victoria	Victor Di Paola

Submitter	Position	Comments
South Australian Wine Industry Association	Supports	Notes the benefits to winemakers seeking to produce wine under good manufacturing practices with no risk to public health.
Australian Food and Grocery Council	Supports	Supports for the following reasons: <ul style="list-style-type: none"> - significant cost savings for wine production in Australia. - no loss in product quality. - provide industry with greater flexibility in processing. - enable Australian industry to compete more effectively with international wines in domestic and export wine markets.
New Zealand Food Safety Authority	Supports	Supports the condition that water in wine may be added only in accordance with GMP.
NSW Food Authority	Supports	<ul style="list-style-type: none"> - Suggests that the WFA provides evidence to support its reasons why a portion of the wine may be an unsuitable carrier for additives in wine. - Proposes that the drafting at paragraph 7 reads “may contain added water...” to differentiate from that which is naturally present in wine. - Is of the opinion that GMP is introduced as an additional justification for the addition of water rather than a general qualification. Drafting should reflect that both ‘incorporation of any substance’ and ‘incidental to winemaking process’ be subject to GMP.
Food Technology Association of Victoria	Majority support of Option 2 to make the proposed amendment. However, a strong minority of the Committee recommends Option 1 to retain the <i>status quo</i> .	Reasons to support Option 1 to retain the <i>status quo</i> include the following: <ul style="list-style-type: none"> - The quantity of water added during wine production is not provable. - Consumer deception - because the current perception is that wine does not contain any added water and consists of pure grape juice, and that 7% water would be regarded as a significant amount. Wine would become 93% wine without any labelling changes. - Opportunistic winemakers could increase their total volume and profits with no added costs. - This may encourage other industries to make application to justify extra water incidentally added during production.

Submitter	Position	Comments
Environmental Health Unit of Queensland Health	Does not support	<p>Reasons to support Option 1 to retain the <i>status quo</i> include the following:</p> <ul style="list-style-type: none"> - Does not regard “contamination” of wine with residual water from cleaning of tanks or lines as being justification for raising the limit. Measures to avoid adulteration of wine need to be adopted such as purging with air or flushing with wine which is discarded. - Quantitative information is required with regard to the addition of additives in aqueous solutions, as little information is provided on ratios between volumes of added solutions and final wine volumes. Also no information has been provided as to which additives must be added in this way. - Acknowledges that Australia may suffer a trade disadvantage if it persists with the 30 mL/L limit, given that other wine producing countries agree to a limit of 70 mL/L. Though this is seen as a secondary issue to the economic benefits gained by wine manufacturers in more than doubling the amount of water permitted in wine. - Note that standard 4.5.1 is an ‘Australia Only’ Standard, and that NZFSA in its first round submission does not support the inclusion of a maximum water limit in Standard 2.7.4 but recommends best management through GMP as is currently the case in New Zealand. Assert that a change to Australian food legislation and none to that of New Zealand will make New Zealand wines more desirable to consumers.
Department of Human Services, Victoria	Does not support	<p>Reasons to support Option 1 to retain the <i>status quo</i> include the following:</p> <ul style="list-style-type: none"> - Concern that “good manufacturing practice” is used to justify the Application. - The main rationale used by the applicant for requesting the change appears to stem from an inability or unwillingness to use appropriate manufacturing processes to ensure that the current standard is adhered to. In which case there would be an argument for greater enforcement rather than raising the limit to 7%. - The applicant has not provided any scientific justification for the requested variation. - Concern that the proposed variation may breach the requirements of the Trade Practices Act regarding product description. - Assert that water is not used as a processing aid as it remains in the final product and dilutes the wine.