

**12/03**  
**8 October 2003**

## **DRAFT ASSESSMENT REPORT**

**APPLICATION A474**

**WINEMAKING**

**DEADLINE FOR PUBLIC SUBMISSIONS** to FSANZ in relation to this matter:  
**19 November 2003**  
*(See 'Invitation for Public Submissions' for details)*

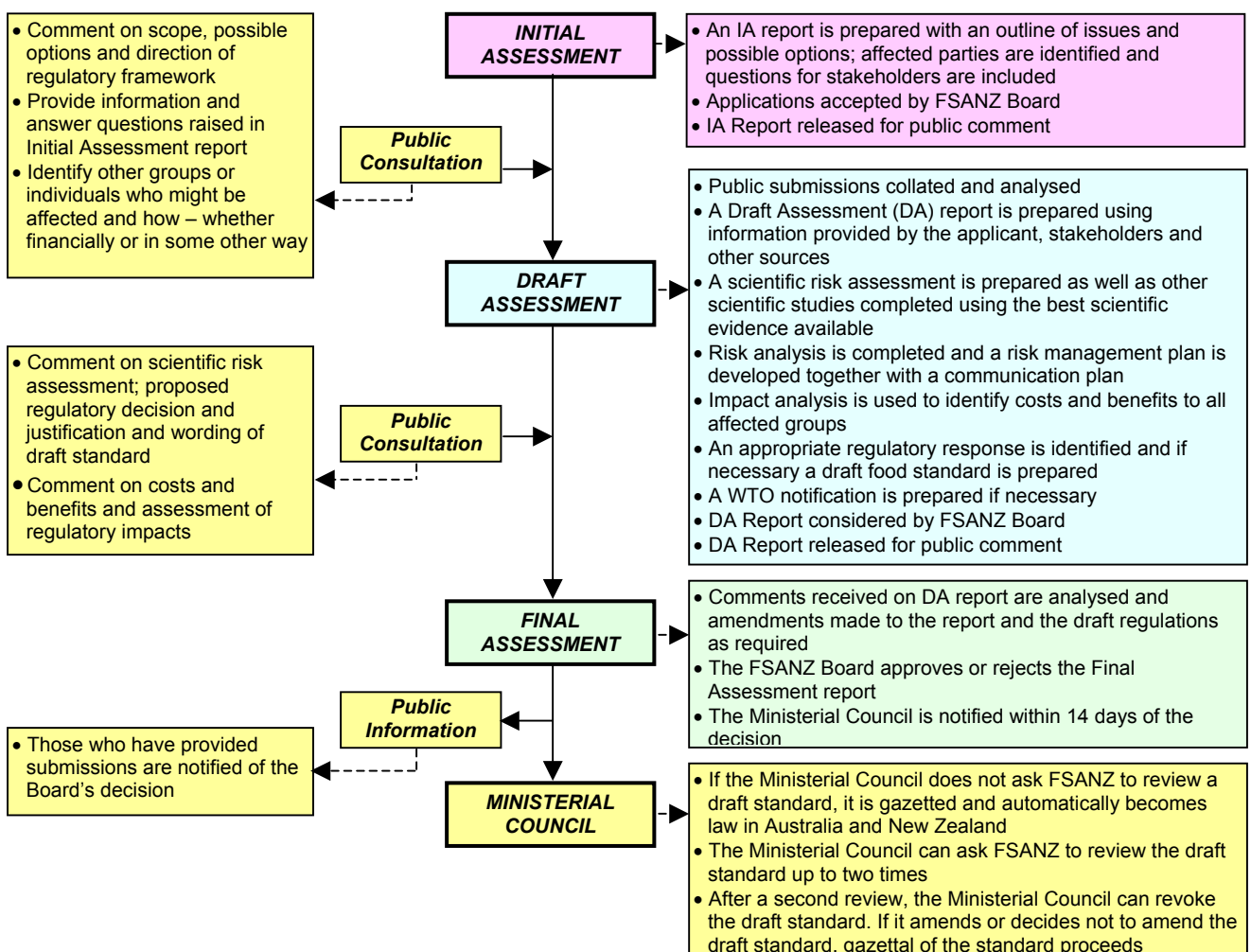
## FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

FSANZ's role is to protect the health and safety of people in Australia and New Zealand through the maintenance of a safe food supply. FSANZ is a partnership between ten Governments: the Commonwealth; Australian States and Territories; and New Zealand. It is a statutory authority under Commonwealth law and is an independent, expert body.

FSANZ is responsible for developing, varying and reviewing standards and for developing codes of conduct with industry for food available in Australia and New Zealand covering labelling, composition and contaminants. In Australia, FSANZ also develops food standards for food safety, maximum residue limits, primary production and processing and a range of other functions including the coordination of national food surveillance and recall systems, conducting research and assessing policies about imported food.

The FSANZ Board approves new standards or variations to food standards in accordance with policy guidelines set by the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) made up of Commonwealth, State and Territory and New Zealand Health Ministers as lead Ministers, with representation from other portfolios. Approved standards are then notified to the Ministerial Council. The Ministerial Council may then request that FSANZ review a proposed or existing standard. If the Ministerial Council does not request that FSANZ review the draft standard, or amends a draft standard, the standard is adopted by reference under the food laws of the Commonwealth, States, Territories and New Zealand. The Ministerial Council can, independently of a notification from FSANZ, request that FSANZ review a standard.

The process for amending the *Australia New Zealand Food Standards Code* is prescribed in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The diagram below represents the different stages in the process including when periods of public consultation occur. This process varies for matters that are urgent or minor in significance or complexity.



## INVITATION FOR PUBLIC

FSANZ has prepared a Draft Assessment Report of Application A474; and prepared draft variations to the *Australia New Zealand Food Standards Code* (the Code).

FSANZ invites public comment on this Draft Assessment Report based on regulation impact principles and the draft variations to the Code for the purpose of preparing amendments 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 for 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 should be received by FSANZ **by 19 November 2003**.

Submissions received after this date may not be considered, unless the Project Manager has given prior agreement for an extension.

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 Liaison 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).

### **Further Information**

Further information on this Application and the assessment process should be addressed to the FSANZ Standards Liaison Officer at 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)**

Assessment reports are available for viewing and downloading from the FSANZ website [www.foodstandards.gov.au](http://www.foodstandards.gov.au) or alternatively paper copies of reports can be requested from FSANZ's Information Officer at [info@foodstandards.gov.au](mailto:info@foodstandards.gov.au) including other general enquiries and requests for information.

# CONTENTS

<b>EXECUTIVE SUMMARY AND STATEMENT OF REASONS .....</b>	<b>7</b>
<b>1. INTRODUCTION .....</b>	<b>11</b>
<b>2. REGULATORY PROBLEM .....</b>	<b>11</b>
2.1 CURRENT REGULATIONS .....	13
<b>3. OBJECTIVE .....</b>	<b>13</b>
<b>4. BACKGROUND.....</b>	<b>13</b>
4.1 HISTORICAL BACKGROUND.....	13
<b>5. RELEVANT ISSUES .....</b>	<b>14</b>
5.1 PROVISIONS REGULATING WINE IN THE CODE.....	14
5.2 ALIGNMENT OF THE DEFINITION IN STANDARD 4.1.1 WITH THAT IN STANDARD 2.7.4.....	15
5.2.1 <i>Issues raised in submissions</i> .....	15
5.2.2 <i>Evaluation and impact analysis</i> .....	15
5.2.3 <i>Preferred approach</i> .....	15
5.3 PROHIBITION OF ADDITION OF ETHANOL TO ‘WINE’ IN STANDARD 4.1.1 .....	16
5.3.1 <i>Issues raised in submissions</i> .....	16
5.3.2 <i>Evaluation and impact analysis</i> .....	16
5.3.3 <i>Preferred approach</i> .....	17
5.4 PERMISSION TO USE GUM ARABIC (ACACIA) AS A FOOD ADDITIVE .....	17
5.4.1 <i>Issues raised in submissions</i> .....	17
5.4.2 <i>Evaluation and impact analysis</i> .....	18
5.4.3 <i>Preferred approach</i> .....	18
5.5 PERMISSION TO USE ARGON AS A PROCESSING AID .....	18
5.5.1 <i>Issues raised in submissions</i> .....	19
5.5.2 <i>Safety assessment of argon</i> .....	19
5.5.3 <i>Technological justification for use of argon</i> .....	19
5.5.4 <i>Evaluation and impact analysis</i> .....	19
5.5.5 <i>Preferred approach</i> .....	19
5.6 PERMISSION TO USE UREASE AS A PROCESSING AID .....	20
5.7 PERMISSION TO USE CARBON DIOXIDE AS A FOOD ADDITIVE.....	20
5.7.1 <i>Issues raised in submissions</i> .....	20
5.7.2 <i>Evaluation and impact analysis</i> .....	20
5.7.3 <i>Preferred approach</i> .....	21
5.8 INCLUSION OF YEASTS IN LIST OF PERMITTED PROCESSING AIDS.....	21
5.8.1 <i>Issues raised in submissions</i> .....	22
5.8.2 <i>Evaluation and impact analysis</i> .....	22
5.8.3 <i>Preferred approach</i> .....	22
5.9 INCLUSION OF BACTERIA IN LIST OF PERMITTED PROCESSING AIDS .....	22
5.9.1 <i>Issues raised in submissions</i> .....	22
5.9.2 <i>Evaluation and impact analysis</i> .....	23
5.9.3 <i>Preferred approach</i> .....	23
5.10 UNCHARRED OAK AS PERMITTED PROCESSING AID .....	23
5.10.1 <i>Issues raised in submissions</i> .....	23
5.10.2 <i>Evaluation and impact analysis</i> .....	23
5.10.3 <i>Preferred approach</i> .....	24

5.11	RESTORATION OF DEFINITIONS, AND COMPOSITIONAL AND LABELLING REQUIREMENTS FOR WINE PRODUCTS AND ‘LOW ALCOHOL’, ‘REDUCED ALCOHOL’ AND ‘DEALCOHOLISED’ WINE.....	24
5.11.1	<i>Issues raised in submissions</i> .....	24
5.11.2	<i>Evaluation and preferred approach</i> .....	24
5.12	OTHER MINOR PROPOSED CHANGES .....	25
5.13	ADDITIONAL MINOR AMENDMENTS REQUESTED AT DRAFT ASSESSMENT.....	25
5.14	CHANGE TO TITLE OF WINE PRODUCTION STANDARD.....	25
5.15	OTHER ISSUES RAISED IN SUBMISSIONS .....	25
5.15.1	<i>Outstanding issues from P266 omnibus amendments</i> .....	25
5.15.2	<i>Use of terms ‘Marsala’ and ‘Vermouth’</i> .....	26
5.15.3	<i>Labelling of food additives in wine</i> .....	26
<b>6.</b>	<b>REGULATORY OPTIONS .....</b>	<b>27</b>
<b>7.</b>	<b>IMPACT ANALYSIS.....</b>	<b>27</b>
7.1	AFFECTED PARTIES .....	27
7.2	IMPACT ANALYSIS .....	27
<b>8.</b>	<b>CONSULTATION.....</b>	<b>28</b>
8.1	WORLD TRADE ORGANIZATION (WTO).....	28
<b>9.</b>	<b>CONCLUSION AND RECOMMENDATIONS .....</b>	<b>29</b>
<b>10.</b>	<b>IMPLEMENTATION AND REVIEW.....</b>	<b>30</b>
	<b>ATTACHMENT 1 DRAFT VARIATIONS TO THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE .....</b>	<b>31</b>
	<b>ATTACHMENT 2 FOOD TECHNOLOGY REPORT FOR ARGON.....</b>	<b>34</b>
	<b>ATTACHMENT 3 SUMMARY OF SUBMISSIONS RECEIVED IN RESPONSE TO THE INITIAL ASSESSMENT REPORT .....</b>	<b>35</b>
	<b>ATTACHMENT 4 MINOR CHANGES TO STANDARD 4.1.1 – WINE PRODUCTION REQUIREMENTS (AUSTRALIA ONLY) PROGRESSED SEPARATELY AS PART OF PROPOSAL P266, MINOR AMENDMENTS OMNIBUS OF THE <i>FOOD STANDARDS CODE</i>, NO. 4.....</b>	<b>39</b>

## Executive Summary and Statement of Reasons

FSANZ (then the Australia New Zealand Food Authority) received an Application from the Winemakers' Federation of Australia (WFA) to amend wine regulations in the *Australia New Zealand Food Standards Code* (the Code) on 24 June 2002. FSANZ accepted the Application and prepared an Initial Assessment in May 2003. Public notice inviting submissions was given on 21 May 2003. The consultation period ended on 2 July 2003. A summary of submissions is at Attachment 3.

This Draft Assessment Report evaluates the issues raised in submissions received in response to the Initial Assessment Report and recommends draft variations to the Code for further consideration by a second round of public comment before the Final Assessment Report is prepared.

In this Application WFA has sought amendments to update and align the provisions regulating wine in the Code with those of other wine producing countries with which Australia and New Zealand trade in wine. These amendments are relevant to the ratification of Australia and New Zealand's multi-lateral wine agreement on trade in wine, the World Wine Trading Group Agreement on Mutual Acceptance of Oenological Practices, or MAA, which was signed by Australia and New Zealand in December 2001.

The Applicant requested the following amendments to the provisions regulating wine in the Code:

- a minor change to the definition for wine in Standard 4.1.1 – Wine Production Requirements (Australia only) to align it with the definition for wine in Standard 2.7.4 – Wine and Wine Product;
- a prohibition on the addition of ethanol to wine in Standard 4.1.1, except where explicitly permitted;
- permission for the use of gum arabic as a food additive for wine made in accordance with Standard 2.7.4 – Wine and Wine Product;
- permission for the use of gum arabic as a food additive for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- permission for the use of argon as a processing aid for wine made in accordance with Standard 2.7.4 – Wine and Wine Product;
- permission for the use of argon as a processing aid for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- permission for the use of the enzyme urease as a processing aid for wine made in accordance with Standard 2.7.4 – Wine and Wine Product;
- permission for the use of the enzyme urease as a processing aid for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- permission for the use of carbon dioxide as a food additive for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- inclusion of 'yeasts' in the list of permitted processing aids in Standard 4.1.1 – Wine Production Requirements (Australia only);
- inclusion of 'bacteria' in the list of permitted processing aids in Standard 4.1.1 – Wine Production Requirements (Australia only); and

- move ‘uncharred oak’ from the table listing permitted food additives to the table listing permitted processing aids in Standard 4.1.1 – Wine Production Requirements (Australia only).

Most of the requested Code amendments are to update provisions in Standard 4.1.1 – Production Requirements for Wine (Australia only). Many of the proposed amendments for Standard 4.1.1 are already permitted for wine made in accordance with Standard 2.7.4 and so are suitable for inclusion in Standard 4.1.1 without extensive re-evaluation.

Two requested amendments are for new processing aid permissions that are not permitted in the Code for wine made in accordance with either Standard 2.7.4 or Standard 4.1.1. These proposed amendments (for the use of argon and the enzyme urease) therefore need full safety and technological evaluation to ensure the requested permissions are safe and suitable.

For urease, it was not possible to undertake a safety assessment because the primary toxicological data was not provided. Given these circumstances, the Applicant has advised FSANZ that they wish at this stage to withdraw the request in their original Application to permit urease in the Code and that they will submit a separate Application once the primary toxicological data is available.

For argon, food technology and safety assessment reports conclude that it is suitable for inclusion in the Code because its use is technologically justified and raises no public health and safety concerns.

The original Application also requested a number of amendments relating to compositional and labelling requirements for wine products, and ‘low alcohol’, ‘reduced alcohol’, and ‘dealcoholised’ wine. However, without evidence for problems resulting from the absence of these provisions, and arguments that these problems would be resolved by their restoration, there is no justification for reinstatement of these provisions in the Code. At Draft Assessment these amendments have not been recommended for inclusion in the Code and the Applicant has advised FSANZ that they do not wish to continue at this stage with these parts of the Application.

Most submissions received in response to the Initial Assessment Report supported the requested amendments for winemaking provisions in the Code. However all submissions, except that of the Applicant, opposed the requested amendments associated with compositional and labelling requirements for wine product, and ‘low alcohol’, ‘reduced alcohol’, and ‘dealcoholised’ wine.

The original Application also requested a number of minor changes to Standard 4.1.1 – Wine Production Requirements (Australia only). These proposed amendments were of minor impact only, intending to correct minor omissions and inconsistencies, to correctly categorise permitted substances as processing aids or food additives, or to provide additional permissions that are already permitted by the joint wine standard, Standard 2.7.4 – Wine and Wine Product. Accordingly their assessment was progressed separately as part of Proposal P266, Minor Amendments Omnibus to the *Food Standards Code*, No. 4. Proposal P266 has now been finalised and the proposed amendments (at Attachment 7) were gazetted in July 2003.



In a supplementary submission at Draft Assessment the Applicant requested two minor changes to Standard 4.1.1 in addition to those in the original Application. These proposed amendments are of minor impact only, intending to include in Standard 4.1.1 permissions that are already permitted for wine made in accordance with the joint wine standard, Standard 2.7.4 – Wine and Wine Product. These additional amendments cannot be dealt with in this Application because they may not be legally sustainable. They have been referred to FSANZ’s next minor amendments omnibus proposal.

The main objective of this assessment is to ensure that the proposed amendments to the standards in the Code that regulate the manufacture of wine do not adversely affect public health and safety.

## **RECOMMENDATIONS AND STATEMENT OF REASONS**

In making its recommendations on these matters FSANZ has considered:

- the issues raised in submissions received in response to the Initial Assessment Report;
- issues associated with technological justification for the requested amendments; and
- public health and safety issues associated with the requested amendments.

At Draft Assessment FSANZ recommends that Standard 4.1.1 – Wine Production Requirements (Australia only) be amended as follows:

- change the definition of wine to be the same as that in Standard 2.7.4;
- include a compositional requirement that prohibits the addition of ethanol to wine except where explicitly permitted within the Standard;
- include gum arabic as a permitted food additive in the table to clause 3;
- include argon as a permitted processing aid in the table to clause 4;
- include carbon dioxide as a permitted food additive in the table to clause 3;
- include ‘yeasts’ in the definition of ‘prepared cultures’ in subclause 3(2);
- include ‘lactic acid bacteria’ in the definition of ‘prepared cultures’ in subclause 3(2);
- move ‘uncharred oak’ from the list of permitted food additives in table to clause 3 to the list of permitted processing aids in the table to clause 4; and
- change the title of the wine production standard, Standard 4.1.1, to Standard 4.5.1.

At Draft Assessment FSANZ recommends that item 14.2.2, of Schedule 1, Standard 1.3.1 – Food Additives, be amended to include permission for gum arabic (INS 414), with use to be limited by good manufacturing practice (GMP).

At Draft Assessment FSANZ recommends that Standard 1.3.3 – Processing Aids be amended as follows:

- in the table to clause 14, the entry for ‘oak chips’ be amended to ‘oak’; and
- in the table to clause 3 to include argon as a generally permitted processing aid for use in all foods.

Reasons for these recommendations are that the proposed amendments:

- for Standard 4.1.1 are already permitted for wine made in accordance with Standard 2.7.4 and so are suitable for inclusion in Standard 4.1.1 without extensive re-evaluation, thus giving Australian winemakers permissions that are available for use in wine sold in Australia;
- clarify existing drafting without changing the original intent;
- in the case of the newly proposed processing aid, argon, food technology and safety assessment reports conclude that its use is technologically justified and would raise no public health and safety concerns; and
- provide more consistency with the winemaking provisions of other countries with which Australia and New Zealand trade in wine.

## **1. Introduction**

Standard 4.1.1 – Wine Production Requirements (Australia only) carries forward into the Code the provisions that regulated the production of wine, sparkling wine and fortified wine that were in Standard P4 of the then Volume 1 of the *Food Standards Code*. The wine production provisions of Standard P4 were carried forward into Standard 4.1.1 without substantive amendment.

The wine production provisions were last modified in 1995 following extensive consultations with the Australian wine industry. These consultations coincided with the establishment of the *Agreement between Australia and the European Community on Trade in Wine, 1994*. The 1995 changes to the wine standard underpinned the Agreement by maintaining the ‘Australian’ wine style. These provisions included quality-allied winemaking provisions that were not appropriate for inclusion in the joint Australia New Zealand wine standard, Standard 2.7.4 – Wine and Wine Product.

## **2. Regulatory problem**

Since 1995, when the last substantive amendments were made to wine production provisions, there have been advances in wine technology, which are reflected in the regulations of many winemaking countries. These technological innovations enable the production of a better quality product with lower production costs.

Australia is at a competitive disadvantage when wine may be produced more efficiently and effectively in other countries, which use certain food additives and processing aids that are not permitted for use during the manufacture of Australian wine.

In this Application the Winemakers’ Federation of Australia (WFA) has sought amendments to update and align the provisions regulating wine in the Code with those of other wine producing countries with which Australia and New Zealand trade in wine.

Where a requested amendment is not permitted for either wine made in Australia only (i.e., wine made in accordance with Standard 4.1.1) or for wine made in accordance with Standard 2.7.4 (i.e., wine sold in Australia), the Applicant has requested that the Code be amended to include permission for wine made in accordance with both standards.

WFA has requested the following amendments to the provisions regulating wine in the Code:

- a minor change to the definition for wine in Standard 4.1.1 – Wine Production Requirements (Australia only) to align it with the definition for wine in Standard 2.7.4 – Wine and Wine Product;
- a prohibition on the addition of ethanol to wine in Standard 4.1.1, except where explicitly permitted;
- permission for the use of gum arabic as a food additive for wine made in accordance with Standard 2.7.4 – Wine and Wine Product;
- permission for the use of gum arabic as a food additive for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- permission for the use of argon as a processing aid for wine made in accordance with Standard 2.7.4 – Wine and Wine Product;

- permission for the use of argon as a processing aid for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- permission for the use of the enzyme urease as a processing aid for wine made in accordance with Standard 2.7.4 – Wine and Wine Product;
- permission for the use of the enzyme urease as a processing aid for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- permission for the use of carbon dioxide as a food additive for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only);
- inclusion of ‘yeasts’ in the list of permitted processing aids in Standard 4.1.1 – Wine Production Requirements (Australia only);
- inclusion of ‘bacteria’ in the list of permitted processing aids in Standard 4.1.1 – Wine Production Requirements (Australia only); and
- move ‘uncharred oak’ from the table listing permitted food additives to the table listing permitted processing aids in Standard 4.1.1 – Wine Production Requirements (Australia only).

Most of these amendments are to update provisions in Standard 4.1.1 – Production Requirements for Wine (Australia only). Many of the proposed amendments for Standard 4.1.1 are already permitted for wine made in accordance with Standard 2.7.4 and so are suitable for inclusion in Standard 4.1.1 without extensive re-evaluation.

Two requested amendments are for new processing aid permissions that are not permitted in the Code for wine made in accordance with either Standard 2.7.4 or Standard 4.1.1. These proposed amendments (for the use of argon and the enzyme urease) therefore need full safety and technological evaluation to ensure the requested amendments are safe and suitable.

For urease, it was not possible to undertake a safety assessment because the primary toxicological data was not provided. Given these circumstances, the Applicant has advised FSANZ that they wish at this stage to withdraw the request in their original Application to permit urease in the Code and that they will submit a separate Application once the primary toxicological data is available.

The original Application also requested a number of amendments relating to compositional and labelling requirements for wine products, and ‘low alcohol’, ‘reduced alcohol’, and ‘dealcoholised’ wine. However, without evidence for problems resulting from the absence of these provisions, and arguments that these problems would be resolved by their restoration, there is no justification for reinstatement of these provisions in the Code. At Draft Assessment these amendments have not been recommended for inclusion in the Code and the Applicant has advised FSANZ that they do not wish to continue at this stage with these parts of their Application.

The original Application also requested a number of minor changes to Standard 4.1.1 – Wine Production Requirements (Australia only). These proposed amendments were of minor impact only, intending to correct minor omissions and inconsistencies, to correctly categorise permitted substances as processing aids or food additives, or to provide additional permissions that are already permitted by the joint wine standard, Standard 2.7.4 – Wine and Wine Product. Accordingly their assessment was progressed separately as part of Proposal P266, Minor Amendments Omnibus to the *Food Standards Code*, No. 4. Proposal P266 has

now been finalised and the proposed amendments (at Attachment 7) were gazetted in July 2003.

In a supplementary submission at Draft Assessment the WFA requested two minor changes to Standard 4.1.1 in addition to those in the original Application. These proposed amendments are of minor impact only, intending to include in Standard 4.1.1 permissions that are already included in the joint wine standard, Standard 2.7.4 – Wine and Wine Product. These additional amendments cannot be dealt with in this Application because they may not be legally sustainable. They have been referred to FSANZ's next minor amendments omnibus proposal.

## **2.1 Current Regulations**

The Application requests a number of changes to winemaking provisions in the Code (see Section 5). The current regulations in Australia and other winemaking countries are included, where appropriate, in the relevant section that details each amendment.

## **3. Objective**

The main objective of this assessment is to ensure that the proposed amendments to the standards in the Code that regulate the manufacture of wine (see Section 5 for details) do not adversely affect public health and safety. The assessment will also need to be consistent with the other section 10 objectives of the FSANZ Act.

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.

## **4. Background**

### **4.1 Historical background**

During the review of wine regulations in Australia and New Zealand, the Australia New Zealand Food Authority (ANZFA), now FSANZ, determined that some of the production provisions for wine that underpin Australia's Agreement with the European Community (EC) on trade in wine (and that were contained in the then Volume 1 of the *Food Standards Code*) were inappropriate in a joint wine standard because they prescribed practices relating to wine

quality that could become technical barriers to trade. As a result of the review, ANZFA developed a minimally prescriptive joint standard on wine, Standard 2.7.4 – Wine and Wine Product, which recognises accepted winemaking practices throughout the world. Wine made in New Zealand or imported from other wine producing countries need comply only with this Standard. However Australia’s Agreement with the EC on trade in wine relies on Australian wine being recognised as wine of designated quality and origin (e.g. *appellation contrôlée*, DOC, *qualitätswein* etc.) and the provisions in Standard 2.7.4 did not implement these requirements.

As a temporary measure until a more appropriate legislative vehicle was found, Standard 2.7.4 – Wine and Wine Product of the then Volume 2 of the *Food Standards Code* referred directly to provisions contained in Standard P4 – Wine, Sparkling Wine and Fortified Wine and in Standard P6 – Wine Products and Reduced Alcohol Wine in the then Volume 1 of the *Food Standards Code*.

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

With the strong support of Ministers of the Australia New Zealand Food Standards Council, FSANZ developed the Australia only wine production standard, Standard 4.1.1 – Wine Production Requirements (Australia only). The provisions of Standard 4.1.1 were based substantively on Standard P4. They ensure that all wine made in Australia (i.e., wine for export as well as for domestic consumption) is recognised by the EU as being wine of designated quality and origin (e.g. *appellation contrôlée*, DOC, *qualitätswein* etc.) rather than as table wine thus ensuring continuation of the current access of Australian wine to the European Community market.

## **5. Relevant issues**

### **5.1 Provisions regulating wine in the Code**

Standard 4.1.1 is an Australia-only wine production standard with the main purpose of assisting to uphold Australia’s Agreement with the EU on trade in wine. Wine made in Australia must be made in accordance with Standard 4.1.1 whether it is intended for export or domestic sale. All wine made in accordance with Standard 4.1.1 would also comply with Standard 2.7.4.

There are no public health or safety reasons to prohibit the use in Standard 4.1.1 of any processing aid or food additive that is already permitted for use in wine made in accordance with Standard 2.7.4. Therefore there are no grounds for not duplicating permissions in Standard 4.1.1 that are already permitted for wine made in accordance with Standard 2.7.4 except if such a permission would be likely to undermine the Australia’s Agreement with the EU on trade in wine.

Requested amendments that are not permitted in the Code for wine made in accordance with either Standard 2.7.4 or Standard 4.1.1 need full safety and technological evaluation to ensure the requested amendments are safe and suitable for inclusion in the Code.

## **5.2 Alignment of the definition in Standard 4.1.1 with that in Standard 2.7.4**

The current definition for wine in Standard 2.7.4 – Wine and Wine Product is:

*Wine means the product of the complete or partial fermentation of fresh grapes, or a mixture of that product and products derived solely from grapes.*

The current definition for wine in Standard 4.1.1 – Wine Production Requirements (Australia only) is:

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

The Applicant requests a change to the current definition for wine contained in Standard 4.1.1 – Wine Production Requirements (Australia only), which restricts the source of products to those from ‘fresh’ grapes. The requested change is to align the definition with that of the joint wine standard, Standard 2.7.4 – Wine and Wine Product.

### *5.2.1 Issues raised in submissions*

All but one of the submissions that commented specifically on this issue were in favour of the proposed change to the definition for wine in Standard 4.1.1 to align it with that in Standard 2.7.4. It was not made clear in the one opposing submission that the intent was understood to align the two definitions for wine within the Code to make them identical.

### *5.2.2 Evaluation and impact analysis*

The definition for wine in Standard 2.7.4 was developed during the review whereas the definition in Standard 4.1.1 was carried forward into the new Code without benefit of review. The proposed alignment of the definition for wine in Standard 4.1.1 with that in Standard 2.7.4 would remove ambiguity about the permitted use of concentrated grape juice and extracts from grape skins for wine made in accordance with Standard 4.1.1 because these are definitely ‘products derived solely from grapes’ but arguably may not be ‘products derived solely from fresh grapes’.

The proposed change also is desirable from a regulatory point of view to keep discrepancies between the two standards to a minimum. If the proposed amendment were to go ahead there would be benefits for Australian wine producers in reducing ambiguity as well as to food law enforcers and regulators due to the closer alignment of the two standards. There are no additional costs associated with the proposed amendment for any of the affected parties identified in section 7.

### *5.2.3 Preferred approach*

At Draft Assessment FSANZ proposes to align the definition of wine with that in Standard 2.7.4.

### 5.3 Prohibition of addition of ethanol to ‘wine’ in Standard 4.1.1

The Applicant also requests an additional sentence to be added to the definition of wine, which would prohibit the addition of ethanol to wine except where explicitly permitted by the Standard.

The Applicant is concerned that both the current and the proposed definitions in Standard 4.1.1 are ambiguous as to whether grape ethanol is permitted to be added to ‘wine’. The original intent of the drafting was that ethanol addition would only be permitted as specified by the compositional provisions for ‘fortified wine’ or ‘sparkling wine’. The Applicant wishes to clarify the distinction between ‘fortified wine’, ‘sparkling wine’ and ‘wine’ in Standard 4.1.1, which includes that ‘wine’ may not have ethanol added to it, by adding a provision that explicitly prohibits the addition of ethanol to ‘wine’.

The requested definition is:

*Wine means the product of the complete or partial fermentation of fresh grapes, or a mixture of that product and products derived solely from grapes. The alcoholic content cannot be increased by the addition of ethanol unless elsewhere specified.*

#### 5.3.1 Issues raised in submissions

All but one of the submissions supported the requested amendment for additional drafting to prohibit the addition of ethanol to wine in Standard 4.1.1 except where explicitly permitted. The supporting submissions sought clarification on the need for, and the effect of, this amendment and whether Standard 2.7.4 should also be amended. The opposing submission stated that the existing provisions did not require amendment.

#### 5.3.2 Evaluation and impact analysis

The current and proposed definitions are ambiguous in this respect and it could be argued either way that grape ethanol is ‘a product derived solely from grapes’ or ‘a product derived solely from fresh grapes’. In an Australia-only production standard for wine, the distinction between ‘fortified wine’, ‘sparkling wine’ and ‘wine’ is appropriate and therefore an amendment that clarifies this distinction can be justified.

If the proposed amendment were to be accepted, Australian wine producers would benefit from a reduction in ambiguity in Standard 4.1.1, as would food law enforcers and regulators in Australia and New Zealand. There are no additional costs associated with the proposed amendment for any of the affected parties identified in section 7.

A compositional requirement in Standard 4.1.1, rather than a modification of the definition for wine, will give effect to the requested amendment without complicating the definition for wine unnecessarily.

The definition for wine in Standard 2.7.4 does not distinguish between ‘wine’, ‘sparkling wine’ and ‘fortified wine’ because there are no issues associated with public health and safety that warrant making that distinction. Therefore there is no need to amend provisions in Standard 2.7.4 to prevent the addition of ethanol to ‘wine’. Standard 2.7.4 recognises a wide



range of legitimate winemaking practices, and it is not necessary to prohibit the addition of ethanol to 'wine'. Labelling that accurately describes a product, together with the Code's specific mandatory labelling requirements for wine, would ensure that consumers were adequately informed about the nature of a particular product they were intending to purchase.

### 5.3.3 Preferred approach

FSANZ proposes to include a compositional requirement in Standard 4.1.1 that prohibits the addition of ethanol to wine except where explicitly permitted in the Standard.

## 5.4 Permission to use gum arabic (acacia) as a food additive

Gum arabic or acacia gum or arabic gum, is the dried gummy exudate from tropical and sub-tropical *Acacia senegal* trees and related *Acacia* species. It is used in winemaking in many countries for stabilisation as it prevents the formation of cloudiness and deposits by stopping unstable colloid particles from aggregating in clarified wine.

Gum arabic is currently listed as a generally permitted food additive in Schedule 2 of Standard 1.3.1 – Food Additives. Schedule 2 food additives are also generally permitted processing aids. The *New Zealand Food Regulations, 1984*, (repealed in December 2002) permitted the use of gum arabic in wine. However the Code does not permit these Schedule 2 food additives to be used for wine made in accordance with Standard 2.7.4 – Wine and Wine Product or for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only).

Gum arabic is approved by the Office International de la Vigne et du Vin (OIV) for use in wine. It is permitted for use in wine made in the European Community (EC), in South Africa and in the USA. Australia's Agreement with the EC on trade in wine also permits the use of gum arabic in wines made in the EC for sale in Australia.

Gum arabic is classified by the Joint Expert Committee of Food Additives (JECFA) as an emulsifier, thickening agent and stabiliser. According to the latest evaluation of gum arabic by JECFA in 1989, its ADI is 'not specified', if used according to, and limited by, good manufacturing practice (GMP).

The Applicant requests that the Code be amended to permit the use of gum arabic as a food additive for wine made in accordance with Standard 2.7.4 – Wine and Wine Product and for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only). The Applicant claims that this permission will assist free trade in wine, provide consistency with international standards, and give force to Australia's international obligations under Annex 1 of the *Agreement between the European Community and Australia on trade in wine* and the New World Wine Producers' Mutual Acceptance Agreement on Oenological Practices (MAA).

### 5.4.1 Issues raised in submissions

All submissions that commented specifically on this issue were in favour of the amendment. None of the submission opposed the requested permission.

#### 5.4.2 *Evaluation and impact analysis*

Gum arabic is already a generally permitted food additive (Standard 1.3.1, schedule 2). These generally permitted Schedule 2 food additives are not permitted for use in wine made in accordance with Standard 2.7.4 unless specifically listed in Standard 1.3.1, Schedule 1. Listing in Schedule 2 means gum arabic has been assessed and deemed safe for use in food at GMP levels and therefore that there are no public health or safety issues associated with extending its use wherever there is a need to use it.

The use of gum arabic as a food additive in wine is a widely accepted winemaking practice and amending the Code to permit its use for wines made in accordance with either Standard 2.7.4 or Standard 4.1.1 will benefit all affected parties and align these wine standards more closely with those of other wine producing countries with which Australia and New Zealand trade in wine.

#### 5.4.3 *Preferred approach*

At Draft Assessment FSANZ proposes to amend Standard 1.3.1, schedule 1, item 14.2.2 to include permission for gum arabic (INS 414) for wine made in accordance with Standard 2.7.4.

FSANZ also proposes to amend Standard 4.1.1, table to clause 3, to include gum arabic as a permitted food additive.

### **5.5 Permission to use argon as a processing aid**

Argon is a colourless, odourless, inert gas. It is heavier than carbon dioxide or nitrogen, more readily displacing oxygen than these other gases. Therefore it provides a better protective gas cover over wine during production, thus better preventing oxidation of wine and the growth of unwanted bacteria and yeast.

Argon is not currently a permitted processing aid for wine made in accordance with Standard 2.7.4 – Wine and Wine Product or for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only).

Argon is approved for use in wine as a processing aid by the Office International de la Vigne et du Vin (OIV). It is permitted for use in wine made in the European Community (EC). Australia's Agreement with the EC on trade in wine also permits the use of argon for wines made in the EC for sale in Australia and also for wines made in Australia for sale in the EC.

In addition, argon is listed in the *Codex inventory of all compounds used as processing aids* (Appendix A), as a propellant and packaging gas, as are carbon dioxide and nitrogen (Codex Committee on Food Additives and Contaminants 1999); the initial Inventory of Processing Aids was adopted by the Codex Alimentarius Commission at its 18<sup>th</sup> Session in 1989, from whence it had been sent to all Member Nations and Associate Members of FAO and WHO as an advisory text.

The Applicant requests that the Code be amended to permit the use of argon as a processing aid for wine made in accordance with Standard 2.7.4 – Wine and Wine Product and for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only).

### *5.5.1 Issues raised in submissions*

All submissions that commented specifically on this issue were in favour of the amendment. None of the submission opposed the requested permission.

### *5.5.2 Safety assessment of argon*

Argon is an inert noble gas, which is a normal component of atmospheric air, and is colourless, odourless and tasteless, non-corrosive, non-flammable and non-toxic. It is stable as a gas. Since argon is a gas (boiling point: -185.9 °C), exposure through ingestion is unlikely. Argon can be absorbed into the body by inhalation. On loss of containment this gas can cause suffocation by lowering the oxygen content of the air in confined areas.

From the available information, it is concluded that the use of argon as a processing aid in food would pose no public health and safety risk.

### *5.5.3 Technological justification for use of argon*

The food technology report on the use of argon as a processing aid in wine (at Attachment 2) recommends that argon should be approved for use in winemaking as a processing aid since it has a technological purpose during wine production or processing, including bottling, as a covering gas that displaces air and oxygen.

### *5.5.4 Evaluation and impact analysis*

There are no public health or safety issues associated with the use of argon as a processing aid during winemaking and packaging. The use of argon as a processing aid during wine production is a widely accepted practice in other wine producing countries.

Amending the Code to permit the use of argon for wines made in accordance with either Standard 2.7.4 or Standard 4.1.1 will benefit all affected parties and align the Code's provisions regulating wine more closely with those of the wine producing countries with which Australia and New Zealand trade in wine.

Due to its complete chemical inertness, there are no public health and safety issues associated with the use of argon as a processing aid for any food. Therefore, provided there is technological justification for its use, argon would be a suitable processing aid for use during the manufacture of any food. Providing a general permission for the use of argon, rather than just for wine, will prevent the need for future Applications to amend the Code to permit the use of argon during manufacture of various individual foods.

### *5.5.5 Preferred approach*

At Draft Assessment FSANZ proposes to amend Standard 1.3.3, table to clause 3 to include argon as a generally permitted processing aid for use in all foods, which includes wine made in accordance with Standard 2.7.4.

FSANZ also proposes to amend Standard 4.1.1, table to clause 4, to include permission for argon as a processing aid because the permissions in Standard 1.3.3 do not apply to Standard 4.1.1.

## **5.6 Permission to use urease as a processing aid**

At Draft Assessment it was not possible to undertake a safety assessment for urease because the primary data toxicological data was not provided. This information has been sought from the company that produces the enzyme. The lack of primary data means that at Draft Assessment a recommendation cannot be made for permission to use urease. To reject this part of the Application (permissions for urease) at Draft Assessment would mean a rejection of the whole Application.

The Applicant has advised FSANZ that they wish at this stage to withdraw the request in their original Application to permit urease in the Code because to continue without doing so would result in a rejection of the whole of the Application.

The Applicant further advises that they will submit a separate Application once the company that produces urease has provided the primary toxicological data.

## **5.7 Permission to use carbon dioxide as a food additive**

For wine made in accordance with Standard 2.7.4 – Wine and Wine Product, carbon dioxide is permitted for use as a food additive (item 14.2.2, Schedule 1, Standard 1.3.1 – Food Additives) and as a processing aid (subclause 3(b), Standard 1.3.3 – Processing Aids). For wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only), carbon dioxide is permitted only for use as a processing aid (table to clause 4, Standard 4.1.1).

Permission to use carbon dioxide as a food additive is also listed in the Annex 1 of Australia's Agreement with the EU on trade in wine (*List of oenological practices authorised for wines originating in Australia* and *List of oenological practices authorised for wines originating in the Community*).

The Applicant requests that the Code be amended to permit the use of carbon dioxide as a food additive for wine made in accordance with Standard 4.1.1 – Wine Production Requirements (Australia only).

### *5.7.1 Issues raised in submissions*

Most submissions supported the requested permission for the use of carbon dioxide as a food additive in Standard 4.1.1. One submission opposed the permission because it was an apparent duplication of an existing provision in the Code.

### *5.7.2 Evaluation and impact analysis*

Standard 4.1.1 is an Australia-only wine production standard whose main purpose is to assist in upholding Australia's Agreement with the EU on trade in wine. There are no public health or safety reasons to prohibit the use in Standard 4.1.1 of any processing aid or food additive that is permitted for use in wine made in accordance with Standard 2.7.4. Therefore there are

no grounds for not duplicating permissions in Standard 4.1.1 that are permitted for wine made in accordance with Standard 2.7.4 except if such permission would be likely to undermine the Agreement. The use of carbon dioxide is permitted by the Agreement and for wine made in accordance with Standard 2.7.4. Therefore there would be no adverse impact on any affected parties if the proposed amendment were to be accepted. The proposed permission in Standard 4.1.1 would duplicate the existing permission for use in wine made in accordance with Standard 2.7.4 and align with the existing permission in the Australia's Agreement with the EU on trade in wine.

If the amendment were not to go ahead, Australian winemakers would not be permitted to use carbon dioxide as a food additive, while all other winemakers of products sold in Australia are permitted to use it. Clearly this would be a considerable disadvantage to Australian winemakers, which cannot be justified.

### 5.7.3 Preferred approach

At Draft Assessment FSANZ proposes to amend Standard 4.1.1, table to clause 3, to include carbon dioxide as a permitted food additive.

## 5.8 Inclusion of yeasts in list of permitted processing aids

The Code does not explicitly permit the use of yeasts in wine production. However, the definition for wine contained in Standard 2.7.4 – Wine and Wine Product states that wine is the ‘... product of the complete or partial fermentation of ...’. The fermentation process relies on yeasts or bacteria and so permissions for the use of yeasts and bacteria are implied within the definition for wine. In Standard 4.1.1 – Wine Production Requirements (Australia only), as well as being implied in the definition for wine (as in Standard 2.7.4), ‘prepared cultures’, which arguably would include ‘yeasts’, are permitted for use in wine production.

The Applicant requests that the Code be amended to include ‘yeasts’ in the table to clause 3, Processing aids, of Standard 4.1.1 – Wine Production Requirements (Australia only). ‘Yeasts’ refers to specific strains of yeast, rather than wild yeast, which may be added to facilitate the primary alcoholic fermentation, where sugar is converted to alcohol. The Applicant claims that the inclusion of ‘yeasts’ would complement the requested inclusion of ‘bacteria’ (see section 5.9) on the list of processing aids, which also may be added to facilitate secondary malolactic fermentation. The Applicant claims that these inclusions, if approved, would make the list of substances that may be added during wine production completely inclusive.

The Applicant indicates that in the USA ‘yeast, cell wall/membranes of autolyzed yeast’ to facilitate the fermentation of juice/wine are included in the list of ‘Materials authorised for treatment of wine and juice’ in 27 CFR 24.246, as is bacteria. Also, yeasts are included in Annex 1 ‘List of oenological practices and processes authorised for wines originating in Australia’, in the *Agreement between the European Community and Australia on trade in wine*, and in Annex IV, ‘List of authorised oenological practices and processes’ of *EC Council Regulation No 1493/1999 on the common organisation of the market in wine*.

### 5.8.1 *Issues raised in submissions*

Most submissions agreed that the definition for ‘prepared cultures’ in Standard 4.1.1 would not exclude ‘yeasts’ but supported the proposal to amend the drafting to explicitly permit such use. None of the submissions opposed such an amendment.

### 5.8.2 *Evaluation and impact analysis*

It is of benefit to all affected parties to decrease the ambiguity of the Code. There are no costs involved in clarifying the intent of existing drafting other than the costs associated with amending the Code itself.

### 5.8.3 *Preferred approach*

At Draft Assessment FSANZ proposes to amend the definition of ‘prepared cultures’ in Standard 4.1.1, subclause 3(2) to include ‘yeasts’.

## **5.9 Inclusion of bacteria in list of permitted processing aids**

The Code does not explicitly permit the use of bacteria in wine production. However the definition for wine contained in Standard 2.7.4 – Wine and Wine Product states that wine is the ‘... product of the complete or partial fermentation of ...’. The fermentation process relies on yeasts or bacteria and so the permission for the use of yeasts and or bacteria is implicit within the definition for wine. In Standard 4.1.1 – Wine Production Requirements (Australia only), as well as being implied in the definition for wine (as in Standard 2.7.4), ‘prepared cultures’, which arguably could include ‘bacteria’, are permitted for use in wine production.

The Applicant requests that the Code be amended to include ‘bacteria’ in the table to Clause 3, Processing aids, of Standard 4.1.1 – Wine Production Requirements (Australia only). ‘Bacteria’ in the Application refers to malolactic bacteria, which are added to facilitate secondary malolactic fermentation, where malic acid is converted to lactic acid. The Applicant claims that inclusion of ‘bacteria’ would complement the requested inclusion of ‘yeasts’ (see section 5.8) on the list of processing aids, which also may be added to facilitate primary alcoholic fermentation. These inclusions, if approved, would make the list of substances that may be added during production completely inclusive.

The Applicant indicates that in the USA ‘malo-lactic bacteria to stabilise grape wine’ are included in the list of ‘Materials authorised for treatment of wine and juice’ in 27 CFR 24.246, as are yeasts. Also, ‘lactic acid bacteria’ are included in Annex 1 ‘List of oenological practices and processes authorised for wines originating in Australia’, in the *Agreement between the European Community and Australia on trade in wine*, and in Annex IV, ‘List of authorised oenological practices and processes’ of *EC Council Regulation No 1493/1999 on the common organisation of the market in wine*.

### 5.9.1 *Issues raised in submissions*

Most submissions agreed that the definition for ‘prepared cultures’ in Standard 4.1.1 would not exclude lactic acid bacteria but supported the proposal to amend the drafting to explicitly permit such use.

Several submissions opposed the Applicant's suggested amendment ('bacteria') on the basis that it was too broad. One submission considered such an amendment would potentially permit the use of genetically manipulated bacteria strains and/or strains with antibiotic resistance markers that could have wide ranging environmental impacts.

#### *5.9.2 Evaluation and impact analysis*

It should be noted the safety of lactic acid bacteria is not in question. Lactic acid producing bacteria are permitted in the Code for the production of fermented milk products such as yoghurt. Cultures of these bacteria can also be considered as foods and thus are permitted for use during the manufacture of all foods (Standard 1.3.3, subclause 3(a)). This general permission however does not extend to wine made in accordance with Standard 4.1.1 which lists permitted processing aids and food additives within the Standard itself.

It is in the interests of all affected parties to amend Standard 4.1.1 to explicitly include lactic acid bacteria because it would remove ambiguity. Unambiguous drafting would also restrict the permission to only those bacteria already approved for food use in the Code, thus ensuring effective protection of public health and safety.

#### *5.9.3 Preferred approach*

At Draft Assessment FSANZ proposes to amend the definition of 'prepared cultures' in Standard 4.1.1, subclause 3(2) to include 'lactic acid bacteria'.

### **5.10 Uncharred oak as permitted processing aid**

The Applicant requests that, in Standard 4.1.1 – Wine Production Requirements (Australia only), 'uncharred oak' be moved from the table listing permitted food additives to the table listing permitted processing aids. The Applicant claims that this would align with the permission for the use of oak chips during wine manufacture in Standard 1.3.3 – Processing Aids, table to clause 14, Permitted processing aids with miscellaneous functions, which permits its use as a processing aid for wine made in accordance with Standard 2.7.4 – Wine and Wine Product.

#### *5.10.1 Issues raised in submissions*

Most submissions supported the requested amendment to move 'uncharred oak' from the table listing permitted food additives to the table listing permitted processing aids in Standard 4.1.1. None of the submissions opposed such an amendment.

Two submissions suggested that the listing for 'oak chips' in Standard 1.3.3, table 14 and the listing for 'uncharred oak' in Standard 4.1.1 should be made more consistent.

#### *5.10.2 Evaluation and impact analysis*

In general a food additive is a substance that is present in the final food and performs a technological function in that food. Wine may be stored in oak containers or with pieces of oak during manufacture to impart distinguishing characteristics to the wine. The oak treatment of wine does not fit any of the permitted technological functions listed in Standard

1.3.1, Schedule 5, and so the use of oak is more appropriately categorised as a process or processing aid.

In the interests of improving consistency in the permissions for the use of oak for wine made in accordance with Standards 2.7.4 and 4.1.1, FSANZ proposes to change the listing in Standard 1.3.3 to 'oak'. This is less restrictive than either 'oak chips' or 'uncharred oak', in a joint wine standard.

#### *5.10.3 Preferred approach*

At Draft Assessment FSANZ proposes to move 'uncharred oak' from the list of permitted food additives to the list of permitted processing aids in Standard 4.1.1.

In addition FSANZ proposes to change the listing for 'oak chips' in the Standard 1.3.3, table to clause 14, to 'oak'.

### **5.11 Restoration of definitions, and compositional and labelling requirements for wine products and 'low alcohol', 'reduced alcohol' and 'dealcoholised' wine**

The original Application requested amendments concerning wine products and with 'low alcohol', 'reduced alcohol' and 'dealcoholised' wine as outlined in sections 5.9.1, 5.9.2, 5.9.3, and 5.10, 5.11 and 5.12 of the Initial Assessment Report. These are:

- maximum alcohol limit for wine products;
- ethanol in wine products to be only permitted from grape sources;
- permission for use in wine products for water and spirit used in vegetable extracts;
- permission to use in wine products those additives and processing aids permitted for use in wine, sparkling wine and fortified wine;
- restoration of labelling requirements for wine product;
- restoration of a definition and prescribed maximum alcohol content for 'reduced alcohol wine';
- restoration of an alcohol content labelling requirement for 'low alcohol wine'; and
- restoration of an alcohol content labelling requirement for 'dealcoholised wine'.

#### *5.11.1 Issues raised in submissions*

All of the submissions, except that of the Applicant, opposed the requested amendments for the compositional requirements for wine product and the requested labelling requirements for wine product, 'low alcohol', 'reduced alcohol' and 'dealcoholised' wine.

#### *5.11.2 Evaluation and preferred approach*

Without evidence of problems resulting from the absence of these provisions, and arguments that these problems would be resolved by their restoration, there is no justification for reinstatement of these provisions in the Code.



At Draft Assessment these amendments have not been recommended for inclusion in the Code and the Applicant has written to FSANZ advising that they do not wish to continue at this stage with these parts of the Application.

## **5.12 Other minor proposed changes**

The Applicant also requested a number of changes to Standard 4.1.1 – Wine Production Requirements (Australia only). These proposed amendments were of minor significance only, intended to correct minor omissions and inconsistencies, to correctly categorise permitted substances as processing aids or food additives, or to provide additional permissions that are already permitted by the joint wine standard, Standard 2.7.4 – Wine and Wine Product.

These minor amendments were progressed separately as part of Proposal P266, Minor Amendments Omnibus to the *Food Standards Code*, No. 4. These amendments to Standard 4.1.1 (at Attachment 7) were approved by the Board in May 2003, notified to the Australia New Zealand Food Regulation Ministerial Council, and gazetted in July 2003.

## **5.13 Additional minor amendments requested at Draft Assessment**

At Draft Assessment the Applicant requested two minor amendments to Standard 4.1.1 that are already permitted for wine made in accordance with Standard 2.7.4:

- permission in Standard 4.1.1 to use dimethylpolysiloxane as a processing aid; and
- allowance for use of water, in Standards 4.1.1, where the use of water is the unavoidable consequence of the winemaking process.

These additional amendments cannot be dealt with in this Application because they may not be legally sustainable. They have been referred to FSANZ's next minor amendments omnibus proposal.

## **5.14 Change to title of wine production standard**

Ongoing work in the development of primary production and processing standards within Chapter 4 of the Code requires a restructuring of the Chapter 4 Index. The restructure does not involve the amendment of the legally enforceable part of the Code and is not an amendment 'to a standard'. The restructure merely involves a change in the title of the wine production standard from 4.1.1 to 4.5.1.

## **5.15 Other issues raised in submissions**

### *5.15.1 Outstanding issues from P266 omnibus amendments*

The NZFSA submission advised of a number of outstanding issues raised in its submission on P266 - Minor Amendments Omnibus No. 4.

#### 5.15.1.1 Evaluation

These matters were not addressed in the P266 Final Assessment report. However, the NZFSA has agreed that FSANZ will consider the matters in the next minor amendments

omnibus.

### 5.15.2 *Use of terms 'Marsala' and 'Vermouth'*

The Applicant at Draft Assessment requested surety that Australian winemakers can continue to make products and describe them as 'Marsala' and 'Vermouth'.

#### 5.15.2.1 Evaluation

At Initial Assessment, the labelling requirements requested for 'marsala' and 'vermouth' were that these terms could replace in a label the prescribed name 'wine product'. Since 'wine product' is not a prescribed name in the Code, there is nothing to prevent the use of 'Marsala' or 'Vermouth' on a label where that use is appropriate:

- The word 'marsala' is a registered geographical indication for a type of Italian wine. It is also an Australian traditional expression. The conditions of its use are described as follows by the Australian Wine and Brandy Corporation:

*Except where the word 'marsala' is used as a registered geographical indication, it may only be used to describe and present a fortified wine.*

The term 'marsala' should not, therefore, be used to describe a wine product.

- Any wine product labelled as vermouth must have the characteristics commonly associated with vermouth. Otherwise it would be likely to be a breach of the provisions in food law and fair trading law, which prohibit false, misleading or deceptive conduct.

### 5.15.3 *Labelling of food additives in wine*

The submission from the Council for Jewish Women in New Zealand describes anecdotal evidence of adverse reactions to local New Zealand wine for the last five years, including headaches, pains, stomach problems etc, after drinking as little as 10 mL of wine. These reactions do not occur when the same people travel in Europe and drink European wines.

The submitter suspects that the adverse reactions may be due to the heavy use of additives in New Zealand-made wines so that they 'travel well' when exported to Europe and supposes that these additives are not listed on the labels for fear of scaring the European market which has very strict (and old) labelling laws.

The submitter requests that strict labelling requirements be introduced so that the Jewish community can return to ritual consumption.

#### 5.15.3.1 Evaluation

Wine exported for sale must comply with the food regulations of the countries in which it is sold. Therefore it is unlikely that wine made in New Zealand for sale in Europe uses food additive at levels higher than those permitted in the country of sale. For the same reason it is also unlikely that labelling requirements are ignored including Europe's 'very strict (and old) labelling laws'.

The Code's provisions for winemaking recognise winemaking practices worldwide and there are few, if any, substances that are permitted in the Code that are not permitted in Europe. The Code also has mandatory labelling requirements for those foods and other substances that are recognised as being the most common ones likely to cause adverse reactions in susceptible individuals. These labelling requirements are more stringent than those that apply in Europe or the USA.

Many people drink wine without adverse effects and substances permitted for use in wine would be used in many other foods. Without scientific evidence that the cause of the problems described in the submission are due to wine, let alone the food additives present in wine, it is not justifiable to amend the Code's current labelling requirements.

## **6. Regulatory 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 and New Zealand. The benefits and costs associated with the proposed amendment to the Code will be analysed using regulatory impact principles.

The following regulatory options are available for this Application:

*Option 1*      Approve all the proposed changes to the wine regulations in the Code.

*Option 2*      Not approve any of the proposed changes to the wine regulations in the Code.

## **7. Impact Analysis**

### **7.1 Affected parties**

The affected parties to this Application include those listed below:

1. wine producers, importers and exporters in Australia, New Zealand and worldwide;
2. wine consumers in Australia and in New Zealand;
3. Australian State and Territory and New Zealand government enforcement agencies that enforce food regulations; and
4. enforcement agencies in countries importing wine made in Australia or New Zealand.

### **7.2 Impact analysis**

The costs and benefits relating to the proposed amendments and issues raised in submissions that are associated with these costs and benefits are analysed under the relevant issue-specific headings in Section 5 above.

## **8. Consultation**

Eight submissions were received in response to the Initial Assessment report:

- one from a Commonwealth Government Department (Agriculture, Fisheries and Forestry – Australia);
- one from a peak national organisation representing the packaged food and beverage industry (Australian Food and Grocery Council);
- one from a representative of the Council of Jewish Women in New Zealand;
- one from a state-based government department with responsibility for enforcing food regulation (Department of Health, Western Australia: Western Australia Food Advisory Committee).
- one from a state-based food technology association (Food Technology Association of Victoria Inc.);
- one from the New Zealand Government Department with responsibility for enforcing food regulations (New Zealand Food Safety Authority); and
- two from the Applicant, with two minor requested amendments in addition to those in the original Application (Winemakers' Federation of Australia).

Most submissions supported most of the Applicant's requested amendments for matters relating to winemaking as outlined in the Initial Assessment report. Most submissions also opposed the requested amendments for compositional and labelling requirements for wine products, 'low alcohol', 'reduced alcohol' and 'dealcoholised' wine.

Specific issues raised in submissions are covered and evaluated under the relevant headings in Section 5.

A summary of submissions received in response to the Initial Assessment report is at Attachment 3.

Comment relating to the costs and benefits of the proposed amendments in this Draft Assessment report are invited from the affected parties identified in section 7.

### **8.1 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.

There are no widely accepted international standards for winemaking. Amending the Code to allow the proposed changes to wine regulation is likely to assist trade in wine, especially in countries with which Australia has existing agreements on trade in wine, because the proposed changes are consistent with those countries' domestic wine regulations. There does not appear therefore to be a need to notify the WTO.

## 9. Conclusion and Recommendations

In making its recommendations on these matters FSANZ has considered:

- the issues raised in submissions received in response to the Initial Assessment Report;
- issues associated with technological justification for the requested amendments; and
- public health and safety issues associated with the requested amendments.

At Draft Assessment FSANZ recommends that Standard 4.1.1 – Wine Production Requirements (Australia only) be amended as follows:

- change the definition of wine to be the same as that in Standard 2.7.4;
- include a compositional requirement that prohibits the addition of ethanol to wine except where explicitly permitted within the Standard;
- include gum arabic as a permitted food additive in the table to clause 3;
- include argon as a permitted processing aid in the table to clause 4;
- include carbon dioxide as a permitted food additive in the table to clause 3;
- include ‘yeasts’ in the definition of ‘prepared cultures’ in subclause 3(2);
- include ‘lactic acid bacteria’ in the definition of ‘prepared cultures’ in subclause 3(2);
- move ‘uncharred oak’ from the list of permitted food additives in table to clause 3 to the list of permitted processing aids in the table to clause 4; and
- change the title of the wine production standard, Standard 4.1.1, to Standard 4.5.1.

At Draft Assessment FSANZ recommends that item 14.2.2, of Schedule 1, Standard 1.3.1 – Food Additives, be amended to include permission for gum arabic (INS 414), with use to be limited by good manufacturing practice (GMP).

At Draft Assessment FSANZ recommends that Standard 1.3.3 – Processing Aids be amended as follows:

- in the table to clause 14, the entry for ‘oak chips’ be amended to ‘oak’; and
- in the table to clause 3 to include argon as a generally permitted processing aid for use in all foods.

Reasons for these recommendations are that the proposed amendments:

- for Standard 4.1.1 are already permitted for wine made in accordance with Standard 2.7.4 and so are suitable for inclusion in Standard 4.1.1 without extensive re-evaluation, thus giving Australian winemakers permissions that are available for use in wine sold in Australia;
- clarify existing drafting without changing the original intent;
- in the case of the newly proposed processing aid, argon, food technology and safety assessment reports conclude that its use is technologically justified and would raise no public health and safety concerns; and
- provide more consistency with the winemaking provisions of other countries with which Australia and New Zealand trade in wine.

## **10. Implementation and review**

FSANZ recommends that the effective date for the proposed amendments be from the date of gazettal.

### **ATTACHMENTS**

1. Draft variations to the *Australia New Zealand Food Standards Code*
2. Food technology report for argon
3. Summary of submissions received in response to the Initial Assessment Report
4. Minor changes to Standard 4.1.1 – Wine Production Requirements (Australia only) progressed separately as part of Proposal P266, Minor Amendments Omnibus of the *Food Standards Code*, No. 4

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

**To commence: On gazettal**

[1] **Standard 1.3.1** of the Australia New Zealand Food Standards Code is varied by –

[1.1] *inserting in* Schedule 1, *under item* 14.2.2, Wine, sparkling wine and fortified wine –

414	gum arabic	GMP
-----	------------	-----

[2] **Standard 1.3.3** of the Australia New Zealand Food Standards Code is varied by –

[2.1] *inserting in the* Table to clause 3 –

Argon
-------

[2.2] *omitting from the* Table to Clause 14, *the* Substance –

Oak chips
-----------

*substituting* –

Oak
-----

[3] **Standard 4.1.1** of the Australia New Zealand Food Standards Code is varied by –

[3.1] *omitting from the heading of the* Standard –

Standard 4.1.1

*substituting* –

Standard 4.5.1

[3.2] *omitting from clause* 1, *the definition of* wine, *substituting* –

**wine** means the product of the complete or partial fermentation of fresh grapes, or a mixture of that product and products derived solely from grapes.

[3.3] *omitting from subclause* 3(2), *the definition of* prepared cultures *substituting* –

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

[3.4] *inserting in the* Table to clause 3 –

Carbon dioxide Gum Arabic
------------------------------

[3.5] *omitting from the Table to clause 3 and inserting in the Table to clause 4 –*

Uncharred oak
---------------

[3.6] *inserting in the Table to clause 4 –*

Argon
-------

[3.7] *omitting clause 5, substituting –*

## **5 Composition**

- (1) Wine and sparkling wine must contain no less than 80 mL/L of ethanol at 20°C.
- (2) Notwithstanding subclause (1), wine must not contain added ethanol.
- (3) Fortified wine must contain no less than 150 mL/L and no more than 220 mL/L of ethanol at 20°C.
- (4) Wine, sparkling wine and fortified wine must not contain methanol –
  - (a) in proportion exceeding 2 g/L of ethanol content at 20°C in the case of white wine and white sparkling wine; and
  - (b) in the case of other products, in proportion exceeding 3 g/L of ethanol content at 20°C.
- (5) Wine, sparkling wine and fortified wine must contain no more than –
  - (a) 250 mg/L in total of sulphur dioxide in the case of products containing less than 35 g/L of sugars, or 300 mg/L in total of sulphur dioxide in the case of other products; and
  - (b) 200 mg/L of sorbic acid or potassium sorbate expressed as sorbic acid; and



- (c) 100 mg/L of polyvinyl polypyrrolidone; and
- (d) 1 g/L of soluble chlorides expressed as sodium chloride; and
- (e) 2 g/L of soluble sulphates expressed as potassium sulphate; and
- (f) 400 mg/L of soluble phosphates expressed as phosphorus; and
- (g) 1.5 g/L of volatile acidity excluding sulphur dioxide, expressed as acetic acid; and
- (h) 0.1 mg/L of cyanides and complex cyanides expressed as hydrocyanic acid; and
- (i) 200 mg/L of dimethyl dicarbonate.

(6) If potassium ferrocyanide has been used as a processing aid in the manufacture of a wine, sparkling wine or fortified wine, the final product must have residual iron present.

(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.

### Food technology report for argon

Argon (Ar) is colourless, odourless, inert, monoatomic gas (being one of the noble elements, group O or VIIIA of the Periodic Table). Other inert noble gases in this group are helium and neon. Noble gases are characterised by having an entirely filled electronic outer p subshell, which is the reason they are inert. Argon's atomic number is 18 and it has an atomic weight of 39.948. It is found at low levels in air. It is normally obtained from the liquefaction and separation of air. Its abundance is 93.4  $\mu\text{L/L}$  in dry air. Argon's density at Standard Temperature and Pressure (STP: 0°C, 1 atmosphere pressure) is 1.78  $\text{mg cm}^{-3}$  compared to 1.25  $\text{mg cm}^{-3}$  for nitrogen. Its solubility in water at 20°C is 33.6  $\text{cm}^{-3}/\text{kg}$  ( $\text{mL/L}$ ), which is greater than nitrogen but a lot less than carbon dioxide<sup>1,2</sup>.

Argon is one of three gases (the others are carbon dioxide and nitrogen) that the wine industry wishes to use to displace air (oxygen) during wine production and bottling. The use of such gases is to displace oxygen, thereby limiting deleterious oxidation of wine and preventing the growth of unwanted bacteria and yeast during wine production. Argon is the heaviest of the three gases so is best able to displace oxygen.

Argon is more expensive and is more soluble in water (and wine) than nitrogen but it has the advantage of being heavier than nitrogen so can displace air (oxygen) and so acts as an inert blanket gas better than nitrogen. Which displacement gas wine producers use will depend on the job they wish it to do and the balance of advantages and disadvantages.

Argon is a permitted processing aid for winemaking in various international organisations, including Codex (*Codex inventory of all compounds used as processing aids*, 1989), the Office International de la Vigne et du Vin (OIV) and the European Community (contained in Annex 1 of the *Agreement between the European Community and Australia on trade in wine*).

Argon is an inert gas, which if used in winemaking would not be considered a food additive since it has no function in the final food and does not meet any of the technological functions listed in Schedule 5 of Standard 1.3.1 of the *Australia New Zealand Food Standards Code*. Argon is technologically justified for use in winemaking as a processing aid because since it has a technological purpose during wine production or processing including bottling, as a covering gas that displaces air (oxygen), and does not perform this function in the final food.

#### References:

1. Greenwood N N and Earnshaw A *Chemistry of the Elements* 1984 Pergamon Press New York pp 1042-1045.
2. The Merck Index (13<sup>th</sup> Ed) 2001 Merck & Co. Inc. Whitehouse Station NJ.

## **Summary of submissions received in response to the Initial Assessment Report**

### **List of submitters:**

- 1 Agriculture, Fisheries and Forestry – Australia, Food Regulation and Safety Section (AFFA)
- 2 Australian Food and Grocery Council (AFGC)
- 3 Council of Jewish Women (CJW NZ)
- 4 Department of Health, Western Australian Food Advisory Committee (WA Health)
- 5 Food Technology Association of Victoria Inc (FTAV)
- 6 New Zealand Food Safety Authority (NZFSA)
- 7 Winemakers’ Federation of Australia (WFA)

### **Agriculture, Fisheries and Forestry – Australia, Food Regulation and Safety Section**

The AFFA submission advises that Australia Quarantine and Inspection Service (AQIS) will assess the regulatory impact on AQIS operations of any proposed amendments after the Draft Assessment stage has been completed.

### **Australian Food and Grocery Council**

The AFGC submission supports the proposed changes, subject to appropriate safety assessment by FSANZ and where they are considered necessary. The submission made specific comments on all issues raised in the Initial Assessment report, supporting many of the proposed amendments and offered specific comments on several issues:

- The proposed revised definition of wine permits wine to be made from a mixture of wine and products derived solely from fresh grapes. It appears that this could permit a wine to be made from wine and grape spirit. The AFGC considers that, if this is the case, the additional sentence proposed in the AFGC Application would be necessary.
- The AFGC recommends that FSANZ examines all references to alcohol in the Code and standardises its terminology to refer to ethanol and its measurement at 20oC through the next omnibus amendments proposal.
- with respect to ‘oak chips’ and ‘uncharred oak’ in Standards 1.3.3 and 4.1.1 respectively, the AFGC recommends that FSANZ discuss with the WFA the possibility of achieving improved consistency of terminology.

The AFGC submission opposed the reintroduction of the provisions relating to wine products and ‘low alcohol’, ‘reduced alcohol’ and ‘dealcoholised’ wine as outlined in sections 5.9.1, 5.9.2, 5.9.3, and 5.10, 5.11 and 5.12 of the Initial Assessment report. Specifically, the AFGC considers that:

- inclusion of the proposed compositional requirements for wine product (ethanol content to be derived only from grapes and grape products; a maximum alcohol content; allowance for water and alcohol used in making vegetable extracts; and permission for additives and processing aids) in the standard would limit innovation and would be

contrary to the desirability of an efficient and internationally competitive food industry and, therefore, does not support them;

- in the absence of a clearly defined problem, the AFGC does not support reinstating the proposed labelling requirements;
- in the absence of a clearly defined problem, the AFGC does not support reinstating the definition for reduced alcohol wine; and
- in the absence of evidence of a clearly defined problem of consumers being misled, the AFGC does not support reinstating the maximum alcohol content for reduced alcohol wine.

### **Council of Jewish Women, New Zealand**

The CJWNZ submission provides anecdotal evidence of adverse reactions to local New Zealand wine for the last five years, including headaches, pains, stomach problems etc, after drinking as little as 10 ml of wine. These reactions do not occur when same people travel in Europe and drink European wines.

Suspects that the adverse reactions may be due to the heavy use of additives in New Zealand made wines so that they ‘travel well’ when exported to Europe. Supposes that these additives are not listed on the labels of NZ wine for fear of scaring the European market, which has very strict (and old) labelling laws.

Requests that strict labelling requirements be introduced so that the Jewish community can return to ritual consumption.

### **Department of Health, Western Australian Food Advisory Committee**

WA Health’s submission supports several elements of this Application. However the Committee also notes that the Application has the potential to reintroduce prescriptive clauses into the standards and cause duplication, which is not in the spirit of the legislation reform initiated through the Blair Report. It therefore supports ‘Option 2: Approve some but not all of the proposed changes to the wine regulations in the Food Standards Code.’

The Committee recognises that further information on the use of urease to achieve the desired outcome is required to thoroughly assess this Application and advised that it will review this issue when details are provided on the practical use and management of urease in reducing the ethyl carbamate levels in wines.

The committee supported:

- permission to use gum arabic;
- permission to use argon;
- listing of ‘yeast’ as a processing aid; and
- moving ‘uncharred oak’ from list of permitted food additives to list of permitted processing aids.

The Committee did not support:

- changes to the definition for wine (because existing definition is sufficient);

- permission to use carbon dioxide as a food additive (because it would be a duplication of existing provisions);
- permission to list ‘bacteria’ as a processing aid (because of possibility for genetically manipulated strains and/or strains with antibiotic resistance markers to cause environmental problems) and;
- duplication of definition of wine product in Standard 4.1.1 (because existing provisions regulating wine product are sufficient);
- reinstatement of previously deleted compositional requirements for wine products (because existing provisions are sufficient);
- reinstatement of labelling requirements for reduced alcohol wine (because existing labelling provisions are sufficient);
- reinstatement of labelling requirements for low alcohol wine (because existing labelling provisions are sufficient); and
- reinstatement of labelling requirements for dealcoholised wine (because existing labelling provisions are sufficient).

### **Food Technology Association of Victoria Inc**

The FTAV submission supports the proposed changes to the wine regulations in the Code.

### **New Zealand Food Safety Authority**

The NZFSA submission generally supported most of the proposed amendments but sought clarification on several of the issues raised in the Application:

- requests that FSANZ clarify the intent of Standard 2.7.4, clause 2(c) with respect to use of brandy or other spirit during the making of wine (as distinct from sparkling or fortified wine) but specifies that this is not a request for a change to the current definition for wine contained in Standard 2.7.4;
- suggests that FSANZ consider an associated amendment to remove permission for urea as a processing aid in wine in the Code because it appears to be inconsistent to permit urease in wine to reduce levels of ethyl carbamate, while permitting urea as a processing aid in winemaking. Good Manufacturing Practice (GMP) is not a sound method to prohibit the use of urea. In our view, if a substance is unsafe to use in some situations (such as alcoholic beverages), the Code should prohibit its use, not rely on manufacturers knowing it is not appropriate GMP to use the substance;
- suggests aligning the references to ‘oak chips’ in Standard 1.3.3 and ‘uncharred oak’ in Standard 4.1.1;

The submission advised of a number of outstanding issues from its submission on P266.

The submission also advised that the New Zealand Ministry of Foreign Affairs and Trade (MFAT) is concerned that some of the proposed amendments exceed the parameters of regulation measures that may affect public health and safety, which is the domain of FSANZ. The labelling elements of the amendment are more related to consumer information. For example, the issues of ‘marsala’, ‘vermouth’, and ‘carbonated’ are not matters related to health and safety, but domestic labelling requirements. These changes will not have an impact for New Zealand if the changes only relate to the Australian Wine Production Requirements, but could have an impact if they were transferred into the joint Code.

### **Winemakers’ Federation of Australia**

After consultation with WFA’s Technical Committee and with trading partners the Applicant advises that it no longer needs to proceed with the requested amendments concerning wine products and with ‘low alcohol’, ‘reduced alcohol’ and ‘dealcoholised’ wine as outlined in sections 5.9.1, 5.9.3, and 5.10, 5.11 and 5.12 of the Initial Assessment report.

The Applicant wishes to continue with the issues outlined in section 5.9.2 *viz*: maximum alcohol limit for wine products; ethanol in wine products to be only from grape sources; permission for use in wine products for water and spirit used in vegetable extracts; and permission to use in wine products those additives and processing aids permitted for use in wine, sparkling wine and fortified wine. The Applicant also requests surety that they can continue to make products and describe them as ‘Marsala’ and ‘Vermouth’, without prescribing the names in the Code.

In a supplementary submission, the Applicant also requests two minor changes in addition to those in the original Application and provides technical information explaining and supporting the requested amendments:

- permission to use dimethylpolysiloxane as a processing aid (antifoam agent) for wine made in Australia; and
- to allow the use of water, where the use of water is the unavoidable consequence of the winemaking process, in both Standards 4.1.1 and 2.7.4. In Standard 4.1.1 only, the limit on such water use to be 30 mL per litre of wine.

The submission fully supports the amendments proposed in their amended Application because their implementation is necessary to ensure that Australian wine continues to be made to a high quality and maintains its reputation on international markets.

**Minor changes to Standard 4.1.1 – Wine Production Requirements (Australia only) progressed separately as part of Proposal P266, Minor Amendments Omnibus of the *Food Standards Code*, No. 4**

Application A474 from the Winemakers' Federation of Australia, received on 24 June 2002, contained a number of requested amendments that were of minor impact only and that were progressed separately in a minor amendments omnibus proposal, P266.

The Board agreed the amendments proposed in P266 in May 2003 and the amendments gazetted in July 2003. The extract below details these changes.

Extract from Final Assessment report P266, Minor Amendments Omnibus to the *Food Standards Code*, No. 4:

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

**Location:** Table of permitted additives (Table to clause 3) and Table of permitted processing aids (Table to clause 4).

**Explanation:** The following list of proposed amendments are of minor impact only, intending to correct minor omissions and inconsistencies, to correctly categorise permitted substances as processing aids or food additives; or to provide additional permissions that are already permitted by the joint wine standard, Standard 2.7.4 – Wine and Wine Product.

- in Table to clause 3, change 'potassium metabisulphite' to 'potassium sulphites' to make consistent with wine standard and wine standards in other countries;
- in Table to clause 3, change 'tannin' to 'tannins' to make consistent with joint wine standard and wine standards in other countries;
- in Table to clause 4, add permission to use 'lysozyme' (already permitted for use as a processing aid in wine standard via subclause 3(b) of Standard 1.3.3);
- in Table to clause 3, replace 'diammonium hydrogen phosphate' with 'ammonium phosphates' and move permission to Table 4 (ammonium phosphates are used as yeast nutrients and hence are processing aids but are listed currently with food additives);
- in Table to clause 3, add permission to use 'thiamin chloride' as well as 'thiamin hydrochloride' and move thiamin permissions to Table to clause 4 (thiamin is used as a yeast nutrient and hence these substances are processing aids but are listed currently with food additives);
- in Table to clause 3, move qualification for use of thiamin to Table to clause 4 (to accompany the moved permission for thiamin);
- in Table to clause 3, move 'potassium hydrogen tartrate' to Table to clause 4 (used as a

processing aid but is currently listed as a food additive);

- in Table to clause 3, move ‘prepared cultures’ to Table to clause 4 (used as a processing aid but is currently listed as a food additive);
- in Table to clause 3, replace ‘prepared cultures’ with ‘cultures of micro-organisms’, which is more specific and unambiguous wording;
- in Table to clause 3, permit use of dimethyl dicarbonate with a maximum permitted level of 200 mg/kg (the maximum permitted level to be included as paragraph 5(4)(i))(permitted as a food additive in wine standard through listing in Schedule 1 of Std 1.3.1);
- in Table to clause 4, add permission for use of ‘calcium tartrate’ as processing aid (permitted as processing aid in wine standard through listing in Schedule 2 of Standard 1.3.1);
- in Table to clause 4, add permission to use ‘perlite’ (permitted as processing aid in joint wine standard through listing in Table to clause 3 of Standard 1.3.3);
- in Table to clause 4, add permission for use of ‘cellulose’ as a processing aid (inert filtration agent) (permitted as processing aid in wine standard through listing in Schedule 2 of Standard 1.3.1);
- in Table to clause 4, delete ‘calcium alginate’ and ‘potassium alginate’ and replace with ‘alginates, calcium and potassium salts’. This listing is more consistent with common drafting practice; and
- in Table to clause 4, consolidate listings for different milk products by deleting ‘casein’, ‘evaporated milk’, ‘milk’, and ‘potassium caseinate’ and replacing with ‘milk and milk products’.

**Solution:** Replace Table to clause 3 and Table to clause 4 with Tables below; add a maximum permitted level for dimethyl dicarbonate of 200 mg/kg as paragraph 5(4)(i).



**Table to clause 3**

<b>Additive</b>
Ascorbic acid
Calcium carbonate
Citric acid
Dimethyl dicarbonate
Erythorbic acid
Grape juice including concentrated grape juice
Lactic acid
Malic acid
Metatartaric acid
Mistelle
Potassium carbonate
Potassium hydrogen carbonate
Potassium sulphites
Potassium sorbate
Sorbic acid
Sulphur dioxide
Tannins
Tartaric acid
Uncharred oak

**Table to clause 4**

<b>Processing aid</b>
Activated carbon
Agar
Alginates, calcium and potassium salts
Ammonium phosphates
Bentonite
Calcium tartrate
Carbon dioxide
Cellulose
Copper sulphate
Cultures of micro-organisms
Diatomaceous earth
Egg white
Enzymes
Gelatine
Hydrogen peroxide
Ion exchange resins
Isinglass
Lysozyme
Milk and milk products
Nitrogen
Oxygen
Perlite
Phytates
Polyvinyl polypyrrolidone
Potassium ferrocyanide
Potassium hydrogen tartrate
Silicon dioxide
Thiamin chloride*
Thiamin hydrochloride*

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

**Location:** Paragraph 6(1)(a).

**Explanation:** Provisions concerning the strength of the fortifying grape-derived alcohol were previously prescribed in Standard P4 in order to reduce the level of potential impurities in sparkling and fortified wine. These provisions were carried over without amendment into Standard 4.1.1. However these matters are adequately covered in Sections 57A and 57B of the *Distillation Act 1901* and so are not required in the Code. That is, the qualification for ‘grape spirit’ used in the manufacture of ‘sparkling wine’ is no longer required in Standard 4.1.1.

**Solution:** After ‘grape spirit’ delete ‘containing no less than 740 mL/L of ethanol at 20°C’.

**Location:** Paragraph 6(1)(b).

**Explanation:** Provisions concerning the strength of the fortifying grape-derived alcohol were previously prescribed in Standard P4 in order to reduce the level of potential impurities in sparkling and fortified wine. These provisions were carried over without amendment into Standard 4.1.1. However these matters are adequately covered in sections 57A and 57B of the *Distillation Act 1901* and are not required in the Code. That is, the qualification for ‘brandy’ used in the manufacture of ‘sparkling wine’ is no longer required in Standard 4.1.1.

**Solution:** After ‘brandy, delete ‘containing no less than 571 mL/L of ethanol at 20°C’.

**Location:** Clause 7.

**Explanation:** Provisions concerning the strength of the fortifying grape-derived alcohol were previously prescribed in Standard P4 in order to reduce the level of potential impurities in sparkling and fortified wine. However these matters are adequately covered in Sections 57A and 57B of the *Distillation Act 1901* and so are not required in the Code. That is, qualifications for ‘brandy’ and ‘grape spirit’ used in the manufacture of ‘fortified wine’ are no longer required in Standard 4.1.1.

**Solution:** Delete subclauses (1) and (2) and renumber subclause (3) as subclause (1).