



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

**16 December 2009**  
**[20-09]**

## **DRAFT ASSESSMENT REPORT**

### **APPLICATION A601**

### **DEFINITION OF 'WINE-BASED BEVERAGE'**

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

## **Executive Summary**

This Application (A601) from the Winemakers' Federation of Australia (WFA) (the Applicant) seeks to amend Standard 2.7.4 – Wine and Wine Product in the *Australia New Zealand Food Standards Code* (the Code). Standard 2.7.4 defines the terms 'wine' and 'wine product' for the purpose of defining specific compositional requirements for wine and wine products but not necessarily for the purpose of naming these products.

The Applicant is concerned that the product name 'wine product' can be misleading for consumers, particularly when used in combination with labelling the country of origin of the product, for example:

- 'Wine. Product of Australia' when labelling wine
- 'Wine Product of Australia' when labelling a wine product.

The Applicant has stated that if 'wine' cannot be distinguished from 'wine products,' there is a risk of substantial damage to Australia's national and international reputation as a producer of fine wine.

The Applicant seeks to replace the term 'wine product' with 'wine-based beverage' in Standard 2.7.4 and to declare 'wine-based beverage' to be a prescribed name.

An Initial Assessment Report for Application A601 was released in June 2008 for a six-week consultation period. FSANZ received eight submissions in response. A summary of submitter comments is provided in Attachment 1.

To assess this Application at Draft Assessment, FSANZ has considered evidence provided by the Applicant regarding the extent of the problem currently in the marketplace, the nature and extent of consumer deception, and whether the proposed amendments will address the purported consumer deception. Any applicable existing legislation has also been considered.

FSANZ has carried out an evaluation of two regulatory options for addressing this Application:

1. Option 1 – reject the Application thus maintaining the *status quo*; or
2. Option 2 – amend Standard 2.7.4 as per the Application.

### **Decision**

**To reject the Application pursuant to section 15A of the FSANZ Act (as was in force prior to 1 July 2007).**

### **Reasons for Preferred Approach**

FSANZ's decision to reject this Application is for the following reasons:

- Lack of cogent evidence of the extent of the problem in the marketplace.

- The requested regulatory intervention is unlikely to provide a net public benefit as the proposed benefit to consumers has not been confirmed.
- Legislation already exists to ensure that the food is labelled with a name that indicates the true nature of the food and to prevent consumers being misled or deceived from the labelling of food.
- The requested regulatory measure is not considered to be minimum effective regulation.

# CONTENTS

<b>INTRODUCTION.....</b>	<b>2</b>
1. BACKGROUND.....	2
1.1 Current Standard .....	2
1.2 Scope of the Application.....	2
1.3 Historical Background.....	3
2. THE ISSUE / PROBLEM.....	3
3. OBJECTIVES.....	3
4. KEY ASSESSMENT QUESTIONS.....	4
<b>RISK ASSESSMENT .....</b>	<b>4</b>
5. EVIDENCE SUPPORTING THE APPLICATION.....	4
5.1 Evidence of the extent of the problem in the marketplace.....	5
5.2 Evidence of the nature and extent of consumer deception .....	5
5.3 Examples of consumer complaints.....	8
6. LEGISLATION THAT MAY HAVE IMPLICATIONS FOR THE APPLICATION.....	9
7. RISK ASSESSMENT SUMMARY .....	10
<b>RISK MANAGEMENT.....</b>	<b>10</b>
8. OPTIONS .....	10
8.1 Option 1 – Reject the Application thus maintaining the status quo .....	11
8.2 Option 2 – Amend Standard 2.7.4 as per the Application.....	11
9. IMPACT ANALYSIS .....	11
9.1 Affected Parties .....	11
9.2 Benefit Cost Analysis.....	11
9.3 Comparison of Options .....	12
<b>COMMUNICATION AND CONSULTATION STRATEGY .....</b>	<b>13</b>
10. COMMUNICATION .....	13
11. CONSULTATION .....	13
11.1 Support for Option 1 – status quo .....	13
11.2 Support for option 2 – Amend Standard 2.7.4 as per the Application .....	14
11.3 Other submitters’ views.....	15
12. NOTIFICATION OF PRELIMINARY DECISION TO THE APPLICANT.....	15
12.1 Reasons have not taken into account material provided the Applicant .....	15
12.2 Consumer deception.....	16
12.3 Extent of the problem in New Zealand.....	16
12.4 Net benefit .....	17
12.5 Current legislation .....	17
12.6 Costs associated with labelling change .....	18
<b>CONCLUSION .....</b>	<b>18</b>
13. DECISION .....	18
13.1 Reasons for the Decision.....	18
ATTACHMENT 1 - SUMMARY OF ISSUES RAISED IN PUBLIC SUBMISSIONS .....	22

## **SUPPORTING DOCUMENT**

The following material, which was used in the preparation of this Draft Assessment Report, is available on the FSANZ website at

<http://www.foodstandards.gov.au/foodstandards/applications/applicationa601defin3918.cfm>

1. Consumer Study Final Report: Consumer evaluation of wine product vs. Wine-based beverage

## **INTRODUCTION**

FSANZ received an Application on 20 February 2007 from the Winemakers' Federation of Australia (WFA) to amend Standard 2.7.4 – Wine and Wine Product. The Application initially sought to amend the current definition of 'wine product' as well as to replace the term 'wine product' with 'wine-based beverage' and to declare 'wine-based beverage' a prescribed name.

On 22 May 2009, the WFA advised FSANZ of an amendment to its Application, stating that it no longer wanted to amend the definition of 'wine product'. Application A601 therefore seeks to replace the term 'wine product' with 'wine-based beverage' and to declare 'wine-based beverage' a prescribed name.

The Applicant is seeking a two year transition period so that the new labelling requirement would come into place for the vintage following the gazettal of the amendment and existing stock would not be required to be relabelled. The Code currently provides for a 12-month stock-in-trade period following commencement of a variation to the Code during which time a food product is taken to comply with the Code if it did before commencement of the variation.

### **1. Background**

#### **1.1 Current Standard**

In the Code, Standard 1.2.2 – Food Identification Requirements requires the label on a package of food to include either:

- the prescribed name of the food, where the name of the food is declared by the Code to be a prescribed name; or
- in any other case, a name or description of the food sufficient to indicate the true nature of the food.

Standard 2.7.4 includes definitions for 'wine' and 'wine product':

- **'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.'
- **'wine product** means a food containing no less than 700 mL/L of wine as defined in this Standard, which has been formulated, processed, modified or mixed with other foods such that it is not wine.'

Neither 'wine' nor 'wine product' are prescribed names in the Code.

#### **1.2 Scope of the Application**

As outlined above, the Applicant seeks to amend Standard 2.7.4 in relation to 'wine product'. Fortified wines such as port and sherry are captured by the definition of 'wine' rather than 'wine product' and hence are not affected by this Application.

Standard 2.7.3 – Fruit Wine and Vegetable Wine, includes definitions of ‘fruit wine and/or vegetable wine’ and ‘fruit wine and/or vegetable wine product’. The definition of ‘fruit wine and/or vegetable wine product’ is the same as that of a ‘wine product’ except that it refers to a fruit wine and/or vegetable wine rather than wine. The Applicant did not request any amendments in relation to this definition or to Standard 2.7.3.

### **1.3 Historical Background**

The WFA previously submitted a similar Application to Application A601, which was received by FSANZ in August 2005. In response to the Initial Assessment Report for that Application, Application A571 – Prescribed Name for Wine Products, a number of submitters commented that the WFA had not provided evidence or a history of consumer complaints to support the Application. FSANZ therefore requested that the WFA provide supporting evidence. However the WFA was unable to provide such evidence and thus withdrew the Application. Following this, the Australian Wine and Brandy Corporation (AWBC) received a complaint about the addition of ‘sugar’ to a product the consumer thought was wine, and the WFA therefore resubmitted the Application to FSANZ.

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

The WFA is concerned about the use of the term ‘wine product’ on labels. In its Application, the WFA identified that producers commonly combine ‘wine product’ with labelling of the country of origin of the product, for example:

- ‘Wine. Product of Australia’ when labelling wine; and
- ‘Wine Product of Australia’ when labelling a wine product.

The Application stated that statements such as these can be misleading for consumers. The WFA’s concern relates to confusion around the type of product that is being represented (wine or wine product) rather than whether the product is produced in Australia or not. Further information provided by the Applicant has stated that if ‘wine’ cannot be distinguished from ‘wine products’ there is a risk of substantial damage to Australia’s national and international reputation as a producer of fine wine.

Following the release of the Initial Assessment Report, FSANZ requested the Applicant provide evidence of the extent of this problem in the marketplace (refer to section 5 for further details).

## **3. Objectives**

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives which are set out in section 18 of the FSANZ Act. These are:

- the protection of public health and safety; and
- 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.

The specific FSANZ Act objectives relevant to this Application are the prevention of consumers from being misled or deceived, and the provision of adequate information relating to food to enable consumers to make informed choices.

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

The key questions requiring investigation as part of FSANZ's consideration of this Application are:

1. Is the potential for consumer misunderstanding supported by research?
2. Is there any other legislation that may have implications on this Application?
3. Is the proposed amendment as requested by the Applicant the best and most appropriate solution to the Applicant's concern about consumer misunderstanding?

### **RISK ASSESSMENT**

#### **5. Evidence supporting the Application**

Following the release of the Initial Assessment Report for Application A601 in June 2008, FSANZ requested further information under subsection 34(1) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act as was in force prior to 1 July 2007) from the Applicant on three occasions. The evidence sought related to the nature and extent of consumer deception that the Applicant is seeking to address and to the extent of the problem in the marketplace. The following information was requested:

- Evidence of the nature and extent of the consumer deception it was seeking to address.
- Evidence that the labelling amendments proposed under this Application will address the consumer deception or misunderstanding associated with the representation of wine products and other beverages containing wine.

- Evidence of the extent of the problem, in the marketplace at the current time, that the Application is seeking to address. It was suggested that this information could be obtained via a survey of how wine products (and other beverages containing wine) are currently represented in the marketplace (Australia and New Zealand), including their country of origin labelling statements.
- Examples of the consumer complaints the WFA or AWBC have received relating to consumer understanding of wine product labels.

In response to this request, the Applicant commissioned the Ehrenberg-Bass Institute for Marketing Science at the University of South Australia and School of Agriculture, Food and Wine at the University of Adelaide to undertake a consumer study to address the first and second issues listed above. The WFA, through its consultants, liaised with FSANZ in the design and execution of the consumer study. The draft report of the study was reviewed by FSANZ and a final revised report was subsequently received by FSANZ in February 2009 (see section 5.2 for a summary and Supporting Documentation for the full report).

### **5.1 Evidence of the extent of the problem in the marketplace**

Bag-in-box product can be wine or wine product. The Applicant estimates that 20% of all bag-in-box product sold in Australia is wine product and, therefore, potentially labelled in a misleading way i.e. the labelling of the product might indicate it was wine when in fact its composition meant it was a wine product. However, the Applicant has not provided evidence of wine product labelled in a misleading way.

Data for New Zealand on the extent of the problem were not provided.

WFA also provided some photographs of examples of the labelling of both wine and wine product currently in the marketplace. The WFA did not identify which products were wine and which were wine products under the definitions in the Code, however, the majority referred to the product as being a 'wine' on the label, particularly in descriptions of the product. FSANZ notes that only one of the product labels provided used the country of origin statement 'Wine product of Australia' (or similar), despite the claimed use of this phrase forming the basis for the Application. The label on this particular product described it as a 'wine' (e.g. 'This wine is...'). As the Applicant did not identify whether it was in fact a wine or wine product, FSANZ is unable to rely on this as an example of a potentially misleading wine product label. FSANZ therefore considers the Applicant was not able to provide adequate evidence of the problem through the materials provided. If these products are not 'wine' under the definition in the Code, then legislation, as outlined in section 6, exists to address this issue.

### **5.2 Evidence of the nature and extent of consumer deception**

The consumer study carried out by the Ehrenberg-Bass Institute for Marketing Science involved a survey of adult Australian white cask 'wine' consumers. The study combined a discrete choice experiment and a series of attitudinal questions regarding the terms 'wine', 'wine-based beverage' and 'wine product'. An internet delivery mechanism was used to implement the study. The final sample consisted of 1,112 Australian adults.



### 5.2.1 *Discrete Choice Experiment*

The discrete choice experiment is a market simulation technique that requires respondents to select their preferred product from a number of alternatives. Attributes of interest are varied across the alternative products in order to determine the contribution of the attributes to the respondent's choice. The study varied six attributes that are relevant to wine purchase decisions. In addition to the labelling of concern ('wine', 'wine product' or 'wine-based beverage'), the remaining five attributes varied were price, brand, country of origin, wine type and alcohol level<sup>1</sup>. Each cask (bag-in-box) was presented using a combination of these six attributes. Respondents were asked to select their preferred cask from a group of four, simulating selection of a cask for daily consumption (e.g. for dinner during the week). The four casks were displayed as a picture, with known branding and packaging as they would be on a shop shelf. Each respondent was presented with 16 such shop shelves and asked to select their preferred cask each time. In this type of study, respondents are not directly asked about the attributes under investigation.

Results indicated that the labelling of concern ('wine', 'wine product' or 'wine-based beverage') only had a small impact on purchase decision (2.1% of relative importance). It was the fourth most important attribute, with country of origin (52.8%), brand (22.0%), and price (21.7%) having greater impact on purchase decisions. Only wine type (1.3%) and alcohol level (0.1%) were of less importance than the labelling of concern in this Application.

Considering the three labelling options, 'wine' was preferred to both 'wine product' and 'wine-based beverage'; and 'wine product' was preferred to 'wine-based beverage'. The findings suggest that consumers perceive the label 'wine product' to be closer to 'wine' than 'wine-based beverage'.

In summary, the discrete choice experiment suggests the term 'wine-based beverage' would be a better term to distinguish these types of products from 'wine' than 'wine product'. However the labelling information relating to 'wine', 'wine product' or 'wine-based beverage' has no strong influence on product choice, with country of origin, brand and price being much more important attributes in consumer's product choice.

### 5.2.2 *Attitudinal Questions*

Following the discrete choice experiment, a series of attitude and perception questions were asked of respondents. These included:

- evaluations of products labelled 'wine', 'wine product' and 'wine-based beverage' for quality, taste, naturalness and intention to purchase dimensions
- repeating these evaluations after providing respondents with definitions of the products
- perceptions of allowed ingredients in 'wine', 'wine product' and 'wine-based beverage'
- direct questions about consumers feeling misled.

---

<sup>1</sup> See Table 2 in the Final Report for details of all attributes and levels (Supporting Document 1).

Consumer evaluations of the three products were significantly different, with 'wine' scoring better than 'wine product'. Both 'wine' and 'wine product' scored better than 'wine-based beverage'. This is consistent with the results from the discrete choice experiment. While these significant differences exist at the aggregate level, 56% of respondents did not differentiate between 'wine product' and 'wine-based beverage' in their evaluations.

Respondents were then provided with the Code definition for 'wine' and a single definition for both 'wine product' and 'wine-based beverage' (i.e. the definition of 'wine product' currently in the Code) and asked to evaluate the products on the same dimensions as before. For 38% of respondents, the provision of information had no or almost no impact on their evaluations. For 52.3% of respondents, their evaluation of 'wine product'/'wine-based beverage' decreased by at least 10%. For 9.3% of respondents, the provision of information resulted in increased evaluation of 'wine product'/'wine-based beverage' by at least 10%.

The findings from the evaluations indicate that just over 50% of respondents are unaware of the differences between 'wine' and 'wine product'/'wine-based beverage', and that when drawn to their attention this does change their evaluations of the product. For a substantial minority (38%), either the respondents were aware of the distinction between 'wine' and 'wine product'/'wine-based beverage' and therefore the definitions had no impact on their evaluations, or alternatively, if unaware, when made aware it did not substantially impact on their evaluations.

The majority of respondents were aware that 'wine' is a product of fermented grapes (79.6%), with fewer respondents (50.4%) aware that 'wine product' and fewer still (32.2%) considered 'wine-based beverage' to be a product of fermented grapes. A low proportion of respondents (12.5% to 21.5%) considered sugar, water, fruit juices, aroma and other sources of alcohol to be allowable ingredients in 'wine'; for 'wine product' this grew to a range of between 40.2% to 54.2% and then grew again for 'wine-based beverage' to between 62.8% to 72.5% of respondents considering them allowable ingredients.

These findings suggest that respondents can distinguish between the three terms, and that more respondents differentiate 'wine-based beverage' from 'wine' than 'wine product' from 'wine' in terms of their allowable ingredients.

The survey asked three direct questions of respondents about being misled by the term 'wine product'. The responses to these questions indicate that a majority of respondents would feel misled if they purchased a product labelled 'Wine product of Australia' and it was 'not completely made of grapes but may contain other food'. However, as noted in the final report (Supporting Documentation) the results from direct questions such as these are likely to overstate consumer concerns.

### 5.2.3 *Conclusions from the consumer study*

The consumer study presented evidence that a product labelled 'wine-based beverage' is more readily understood to be different to 'wine' than a product labelled with the term 'wine product'. This is demonstrated by both the discrete choice experiment and the attitudinal questions.

The attitudinal questions further showed that when provided with information about the difference between ‘wine’ and ‘wine product’/‘wine-based beverage’<sup>2</sup>, a greater proportion of respondents distinguished between ‘wine’ and ‘wine product’/‘wine-based beverage’ than prior to being provided with this information. This suggests that to assist the greatest proportion of consumers, the term ‘wine-based beverage’ would need to be accompanied with some form of consumer education regarding this term.

The discrete choice experiment demonstrated that labelling of the product as ‘wine’, ‘wine product’ or ‘wine-based beverage’ was of little importance to the choice respondents made. This result may occur as a consequence of the terms being of little relevance in real-life decisions where country of origin, brand and price are more important and the information is not used. Alternatively, it could be that respondents do not perceive the terms as different unless their attention is drawn to them, as indicated in the attitudinal questions.

In summary, the results from the consumer survey suggest that a proportion of consumers may be misled by the term ‘wine product’. However, the term ‘wine-based beverage’ is unlikely to assist consumers to make a more informed decision unless their attention is drawn to the term and they have been provided with information regarding the difference between those products and ‘wine’.

### **5.3 Examples of consumer complaints**

In the Application, the Applicant provided information about a complaint received by the AWBC. This complaint relates to a casked beverage labelled as a ‘wine product of Australia’. The label on the product identified in this complaint included the product name ‘Crisp Dry White’ and the description ‘This is a fresh, crisp, white wine with...’, and ‘sugar added’. The consumer complaint focuses on the quality of the contents of the cask and the addition of sugar to wine which the complainant states ‘is quite illegal in Australia’.

In February 2009, in response to a request for further information, the WFA notified FSANZ that the AWBC and WFA had received 32 complaints over the last 18 months. These related to products consumers believed were wine containing illegal additives, specifically sugar, flavourings and water. Records of these complaints and the products to which they related were not kept, making it difficult for FSANZ to assess the degree of support they give to this Application.

With regards to these complaints, as described in section 6, there is legislation in place to prevent a product which is not wine, being labelled as a ‘wine’. In addition, the consumer research outlined in section 5.2 indicates that the proposed labelling change alone is unlikely to assist consumers to make a more informed decision.

Also in response to a request for further information, the Applicant notified FSANZ that the AWBC now requires the statement ‘wine-based beverage’ on all relevant products proposed for export, as a result of an Australian produced cask ‘wine’ being rejected from China as it contained added artificial colour. In this case, the producer claimed not to be marketing the product as wine.

---

<sup>2</sup> Respondents were provided with the Code definition for ‘wine’ and a single definition for both ‘wine product’ and ‘wine-based beverage’ (i.e. the definition of ‘wine product’ currently in the Code)

The Applicant claims that a change to the Code as per the Application would provide consistency between export and domestic standards and in their view underpin the integrity of the Australian regulatory system for wine and wine products. FSANZ notes that requiring ‘wine-based beverage’ as a prescribed name under the Code would not create consistency between domestic and international standards.

The AWBC have informed FSANZ that under the AWBC Regulations, wine product exported from Australia must comply with the Code. The AWBC approach to ensuring that wine product for export complies with the requirement in the Code to declare a name or description of the food sufficient to indicate its true nature (under clause 2 of Standard 1.2.2), is to require the name ‘wine-based beverage’ or an alternative name that clearly indicates the product is not wine (personal communication, 7 October 2009)

## **6. Legislation that may have implications for the Application**

In the Code, Standard 1.2.2 – Food Identification Requirements requires the label on a package of food to include either:

- the prescribed name of the food, where the name of the food is declared by the Code to be a prescribed name; or
- in any other case, a name or description of the food sufficient to indicate the true nature of the food.

The definitions in Standard 2.7.4 for ‘wine’ and ‘wine product’ are for the purpose of defining specific compositional requirements for wine and wine products. The Code specifically states that definitions of certain foods do not establish the name of the food. Accordingly the terms ‘wine’ or ‘wine product’ are not explicitly required to be used in the labelling or representation of these products. However, this does not prevent the voluntary use of these terms on labels, including where these terms would be an appropriate common name to describe the true nature of the product. Likewise, the current provisions do not prevent the use of ‘wine-based beverage’ as the name of the food.

Standard 1.2.11 – Country of Origin Requirements sets out the requirements for country of origin labelling of packaged foods and certain unpackaged foods. The Standard requires most packaged foods to be labelled with a statement on the package that identifies:

- where the food was made or produced; or
- a statement on the package:
  - that identifies the country where the food was made, manufactured or packaged for retail sale; and
  - to the effect that the food is constituted from imported ingredients or from local and imported ingredients.

Standard 1.2.11 applies to Australia only. There is no requirement under the Code for country of origin declarations on foods sold in New Zealand. However, under the *New Zealand Wine Regulations 2006*, grape wine made in New Zealand (but not wine products) must be labelled in a manner that clearly indicates the country of origin of the wine.

The *Trade Practices Act 1974* (Cwth) provides the basis for the use of statements such as ‘product of’ and ‘made in’ for Australia and Standard 1.2.11 also provides guidance, in the form of an editorial note, on the use of these terms. Standard 1.2.11 does not actually prescribe the terminology to be used in the country of origin declaration.

The placement of the name of a food and the placement of the country of origin declaration is at the discretion of the supplier, i.e. it is not necessary to position the words ‘wine product of Australia’ in the one sentence. However the information must be legible and prominent, and comply with relevant fair trading legislation, i.e. not be misleading or deceptive.

The *Trade Practices Act 1974* and the New Zealand *Fair Trading Act 1986* serve to prohibit misleading and deceptive conduct, including conduct resulting in consumers being misled as to the nature of a good created by its representation.

The relevant food acts in Australia and New Zealand also include provisions regarding misleading labelling.

## **7. Risk Assessment Summary**

FSANZ is of the view that the Applicant has not provided cogent evidence of the extent of the problem as identified in the Application. The Applicant did not provide information regarding how much wine product in the marketplace is currently labelled using the term ‘wine product of Australia’ as was indicated in the Application as being commonly used by producers. Despite claims the problem was more widespread, only one example of a consumer complaint was able to be provided. This example, as well as a number of the photos of product provided by the Applicant, referred to the product as ‘wine’ somewhere on the label. If these products are not ‘wine’ under the definition in the Code, then legislation, as outlined in section 6, exists to address this issue.

The WFA claimed, on the basis of the consumer research, that 30-40% of Australian cask wine consumers are potentially misled by the current product labelling of wine product. On the wine product labels used in the consumer research, the term ‘WINE PRODUCT OF [COUNTRY]’ was used. However, as quantitative evidence of the extent of usage of ‘WINE PRODUCT OF AUSTRALIA’ on wine product in the marketplace is not known, it is not possible to estimate the extent of consumers in the marketplace being misled.

Although the attitudinal questions in the consumer research demonstrated that some consumers may be misled by the term ‘wine product’, it also demonstrated that the name ‘wine-based beverage’ is unlikely to assist consumers to make an informed decision unless their attention is drawn to the term and they have been provided with information regarding the difference between those products and wine.

## **RISK MANAGEMENT**

### **8. Options**

FSANZ has identified two regulatory options that are available for the assessment of Application A601, as follows:

## **8.1 Option 1 – Reject the Application thus maintaining the *status quo***

Under this option, the *status quo* would be maintained by not amending the Code.

## **8.2 Option 2 – Amend Standard 2.7.4 as per the Application**

Under this option, the Code would be amended by replacing the term ‘wine product’ with the term ‘wine-based beverage’, and declaring ‘wine-based beverage’ as a prescribed name.

## **9. Impact Analysis**

FSANZ is required, in the course of developing regulations suitable for adoption in Australia and New Zealand, to consider the impact of various options on all sectors of the community, including consumers, the food industry and governments in both countries.

The regulatory impact assessment identifies and evaluates the advantages and disadvantages of amendments to the standards, and their economic impacts. Where medium to significant competitive impacts or compliance costs are likely, FSANZ will estimate compliance costs of regulatory options and consult further with the Office of Best Practice Regulation (OBPR) regarding the Regulatory Impact Statement. The level of analysis will be commensurate to the issue and the regulatory impacts of the application or proposal.

### **9.1 Affected Parties**

The parties likely to be affected by this Application are:

1. suppliers of wine products, including manufacturers and importers (**industry**)
2. **consumers** of wine products
3. **government** agencies of Australian States and Territories and New Zealand.

### **9.2 Benefit Cost Analysis**

#### *9.2.1 Option 1: Reject the Application, thus maintaining status quo*

##### 9.2.1.1 Benefits

FSANZ considers that the existing legislation (which would be maintained under option 1) is adequate to address the problem claimed by the Applicant. Option 1 is consistent with the principle of minimum effective regulation. Under this option, industry will benefit from less prescription and will not incur any costs from labelling changes. There will be no costs of labelling changes passed onto consumers.

There are no additional costs to the government from maintaining the *status quo*.

### 9.2.1.2 Costs

FSANZ considers that the costs to industry and consumers of option 1 are limited as indicated by the lack of evidence of potentially misleading labelling in the marketplace, and, if there is misleading labelling in the marketplace, FSANZ considers the existing legislation is adequate to address this.

## *9.2.2 Option 2: Amend Standard 2.7.4 as per the Application*

### 9.2.2.1 Benefits

The increase in prescription could provide clarity of the labelling requirements of wine product for industry. Government enforcement agencies could also benefit from the increased prescription. For consumers and for industry, other benefits would be limited for the same reasons as outlined under section 9.2.1.2 above.

### 9.2.2.2 Costs

The Applicant has claimed that the cost to industry of the proposed amendment would be minimal because they are seeking a cost effective transitional arrangement. In addition, they have noted that the commercial impact on New Zealand producers is likely to be very small as cask production in that country is very minor, and although there may be impacts on RTD (ready-to-drink) manufacturers, these should be small due to the high turnover of these products.

Pricewaterhouse Coopers (PWC) (2008)<sup>3</sup> classify changes in text only (no change to the layout of the label) as a minor labelling change costing \$AUD2885<sup>4</sup> per Stock Keeping Unit (SKU) for a folding carton. The number of SKU's affected by Option 2, amending the Standard as per the Application is unknown.

Any increased costs of labelling may potentially be passed on to consumers.

## **9.3 Comparison of Options**

A comparison of options indicates that Option 1 does not impose additional costs. Option 2 has little benefit, does not address the potential problem and is not consistent with the principle of minimum effective regulation. Moreover, it could impose costs (\$AUD2885 per SKU) on those businesses that are not currently labelling with the name 'wine-based beverages', including businesses beyond those who are seeking the change and will voluntarily accept any costs. Even if there are imperfections in the marketplace, the results from the consumer study (section 5) indicate that the name 'wine-based beverage' is unlikely to assist consumers to make an informed decision unless their attention is drawn to the term and they have been provided with information regarding the difference between those products and wine. In addition, the product name was found to have no strong influence on product choice.

---

<sup>3</sup> PriceWaterHouseCoopers 2008, *Cost Schedule for Food Labelling Changes*, Final Report.

<sup>4</sup> Amount in AUD including New Zealand Estimates

FSANZ considers that existing legislation is adequate to address the problem claimed by the Applicant. Some stakeholders have also expressed the view that the potential problem is an enforcement issue, for which further regulation may not be warranted (refer to Attachment 1 for Summary of Issues Raised in Public Submissions).

Therefore, FSANZ supports Option 1 – maintaining the *status quo*.

## **COMMUNICATION AND CONSULTATION STRATEGY**

### **10. Communication**

This Application is a routine application seeking to amend an existing Standard. At Initial Assessment, the Application did not generate public interest or attention from the media. As a result, FSANZ did not apply any specific communication strategies to Application A601.

### **11. Consultation**

An Initial Assessment Report for Application A601 was released for public consultation in June 2008, for a period of six weeks. FSANZ received eight submissions in response. A brief summary of submitter comments and FSANZ's response is provided below, and a full summary of submitters' comments is provided in Attachment 1.

#### **11.1 Support for Option 1 – *status quo***

The Australian Food and Grocery Council, the Food Technology Association of Australia, NSW Food Authority, and the New Zealand Food Safety Authority supported Option 1 – maintain the *status quo*. Reasons provided included the following:

- Government policy is for minimum effective regulation.
- The Code has undergone extensive review to remove superfluous and prescriptive requirements.
- Declarations must be considered in light of the prohibitions on false, misleading or deceptive representations in food or health acts and fair trading laws.
- The current Standard adequately provides for the correct description and labelling of a wine product.
- This is a matter of enforcement of current legislation.
- The costs to industry of prescribing a name are significant. The Applicant has not demonstrated that a prescribed name is needed or that the costs to industry are justified.
- The complaint referred to in the Initial Assessment Report is not in itself grounds for the Application.
- There is no evidence of a problem.



## 11.2 Support for option 2 – Amend Standard 2.7.4 as per the Application

The WFA and AWBC supported option 2. Reasons for this included the following:

- Consumers are not always provided with adequate information enabling an informed choice between ‘wine’ and related beverages and the Code fails to prevent potentially misleading conduct. The existing legislation for labelling of wine and wine products compromises two of FSANZ’s objectives (provision of adequate information to enable informed choice and prevention of misleading or deceptive conduct).
- If ‘wine’ cannot be distinguished from ‘wine products’, there is a risk of substantial damage to Australia’s national and international reputation as a producer of fine wine.
- Regarding the FSANZ objective to promote consistency between domestic and international food standards, each of Australia’s major international wine markets has arrangements in place to adequately distinguish ‘wine’ from associated beverages. This contrasts with the situation in Australia where there is potential for confusion, which is particularly evident when considering the alternative statements ‘Wine. Product of Australia’ and ‘Wine Product of Australia’.
- The WFA and AWBC have received a number of complaints from consumers following purchase of product they thought was wine, when they found from closer inspection it was a wine product.

### 11.2.1 FSANZ Response

FSANZ’s response to the comments outlined above is as follows.

#### 11.2.1.1 Risk of damage to Australia’s national and international reputation as a producer of fine wine

In terms of the domestic market, FSANZ considers that legislation currently exists to prevent consumers from being misled as to the nature of a product i.e. to ensure that ‘wine product’ is able to be distinguished from ‘wine’. Further detail is provided in section 6.

The Applicant has notified FSANZ that the AWBC now requires the statement ‘wine-based beverage’ on all relevant products for export.

#### 11.2.1.2 Existing legislation compromises two of FSANZ’s objectives

FSANZ considers that the legislation that currently exists for the naming and representation of a wine product, as outlined in section 6, meets the FSANZ objectives of provision of adequate information to enable informed choice, and prevention of misleading or deceptive conduct. The Code currently requires a name or description of the food sufficient to indicate the true nature of the food and this requirement is intended to ensure that consumers are provided with information to make an informed choice, and that the name or description is ‘true’, in order that consumers are not misled.

### 11.2.1.3 Consistency between domestic and international food standards

Codex Alimentarius does not include standards for alcoholic beverages; hence there are no prescribed names for products similar to 'wine products' as defined in the Code, under Codex Alimentarius Standards.

In the European Union, including the United Kingdom, aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails are mandatory designations. The AWBC notes in its submission that in the USA, 'imitation wine' is defined and must include 'imitation' as part of its designation.

Although these countries have implemented the principle of requiring a prescribed name for products similar to a wine product according to the definition of the Code, FSANZ is not aware of any country that prescribes the name 'wine-based beverage'. Requiring 'wine-based beverage' as a prescribed name under the Code would therefore not create consistency between domestic and international standards.

### 11.2.1.4 Consumer complaints

As noted in section 5.3, records of all of these complaints and the products to which they related were not kept (except for one complaint), making it difficult for FSANZ to assess the degree of support they give to this Application.

## **11.3 Other submitters' views**

The Department of Human Services, Victoria did not specify support or opposition for either option and did not object to the Application proceeding to Draft Assessment. Queensland Health also did not support or oppose the Application but intended to review this position contingent on the evidence the Applicant has undertaken to provide. They suggested that perhaps the Code only needs amendment if other legislation has been tried and failed.

## **12. Notification of Preliminary Decision to the Applicant**

Prior to making its final decision, FSANZ informed the Applicant via correspondence on 19 August 2009 of its intention to reject Application A601. Contained within this correspondence was a copy of the preliminary Draft Assessment Report. The Applicant was provided with a 28-day period to respond to the preliminary decision to reject the Application. The Applicant responded in a letter received by FSANZ on 14 September 2009. The main points raised in that letter, and the responses from FSANZ are outlined below.

### **12.1 Reasons have not taken into account material provided the Applicant**

The letter stated that the reasons advanced in support of the opinion are unreasonable and do not take into account the material provided by the Applicant. In further correspondence with FSANZ, the WFA clarified that they do not believe that FSANZ has considered adequately the independent research report provided.

### *12.1.1 FSANZ response*

FSANZ has carefully considered the consumer study carried out by the Ehrenberg-Bass Institute for Marketing Science. FSANZ does not dispute the findings of the consumer study, indeed the findings highlight that the proposed remedy of using the term ‘wine-based beverage’ will not enable consumers to discriminate between these products and wine to any significant degree. The study was well designed and carried out to, *inter alia*, measure the effectiveness of the proposed remedy. FSANZ was grateful for the consumer study, as it enabled an evidence-based approach to food regulation.

## **12.2 Consumer deception**

The letter stated that the WFA considered that matters involving consumer deception were sufficiently important to warrant being addressed through FSANZ’s work program. It noted that in terms of FSANZ’s view that there was a lack of evidence of the extent of consumer deception. The WFA had received several complaints from consumers and this raised the question of how many complaints were required before FSANZ considers there was a problem.

### *12.2.1 FSANZ response*

As outlined in section 5.1, the Applicant was unable to provide sufficient evidence of consumer deception in the market place at the current time, hence FSANZ was unable to determine whether the claimed consumer deception was sufficient to warrant amendment to the Code. As outlined in section 6 of this Report, FSANZ requested records of the complaints mentioned by the Applicant; however, such records were not kept and hence were not provided to FSANZ. FSANZ could therefore not use these complaints to determine the degree of support they gave to the Application, irrespective of the number of complaints received. It should be noted that even if the complaints did identify a problem with the way wine products are currently represented in the marketplace, other factors, as summarised in section 13, are required to be taken into account when determining whether amendment to the Code is warranted.

## **12.3 Extent of the problem in New Zealand**

As noted in this Report, the extent of the problem (as identified in the Application) in New Zealand has not been quantified. The Applicant noted that this was correct and the reason for this was that their concern was limited to the threat to the reputation of Australia’s wine. The WFA added that the New Zealand Wine Growers were aware of and did not oppose this Application. The letter stated that the WFA struggled to understand the rational underlying FSANZ opinion on this issue.

### *12.3.1 FSANZ response*

It is acknowledged that the Application was submitted with the purpose of protecting the reputation of Australia’s wine. The fact that the extent of the problem has not been quantified in New Zealand is not necessarily a reason in its own right for rejecting this Application.

However, FSANZ is required to consider the Application in terms of both Australia and New Zealand, including whether there is a problem in the New Zealand market that needs rectifying by amendment to the Code. The situation in New Zealand also needed to be taken into account in the benefit cost analysis.

## **12.4 Net benefit**

The WFA stated that, contrary to FSANZ claim that the requested regulatory intervention was unlikely to provide a net benefit; the independent research had clearly shown that this regulatory response would have an impact. The WFA added that it would also provide consistency with the efforts of the Australia Wine and Brandy Corporation to protect the reputation of the Australian export industry, and that they remained concerned that FSANZ inaction might expose the AWBC to possible legal challenge.

### *12.4.1 FSANZ response*

As outlined in section 9 of this Report, FSANZ considers that there is no net benefit from the requested amendment to the Code, because the amendment could impose costs on industry, and is unlikely to assist consumers to make an informed decision unless their attention is drawn to the term ‘wine-based beverage’ and they have been provided with information regarding the difference between those products and wine.

Under the AWBC Regulations, wine product exported from Australia must comply with the Code. The AWBC approach to ensuring that wine product for export complies with the requirement in the Code to declare a name or description of the food sufficient to indicate its true nature (under clause 2 of Standard 1.2.2) is to require the name ‘wine-based beverage’ or an alternative name that clearly indicates the product is not wine.

FSANZ does not consider that its standards development processes expose the AWBC to possible legal risk. The AWBC, who made a submission in response to the Initial Assessment Report, did not mention any legal implications for it flowing from this matter.

## **12.5 Current legislation**

The WFA agreed that legislation existed to ensure that food was labelled with a name that indicated the true nature of the food. However, it stated that it could be argued that statements such as ‘Wine product of Australia’ satisfied current legislation, despite continuing to mislead consumers.

### *12.5.1 FSANZ response*

Other legislation exists to prohibit misleading and deceptive conduct that is not acknowledged by the Applicant i.e. the *Trade Practices Act 1974* and the *New Zealand Fair Trading Act 1986*, as well as the relevant food acts in Australia and New Zealand. It should be noted that the overall impression that a product creates should be taken into account in considering whether the representation of the product is misleading or not, rather than just the product name or description.

As outlined in section 5.1, the Applicant was unable to provide sufficient evidence of the use of statements such as ‘Wine product of Australia’ on product in the marketplace.

## 12.6 Costs associated with labelling change

The WFA stated in that any costs associated with the requested labelling changes would be minimal as they involved short shelf-life products and any amendments could be phased in over a reasonable period of time. The WFA stated that this was a costless response to a problem that could only benefit consumers and producers and met the test of minimum effective regulation.

### 12.6.1 FSANZ response

The suggested changes are unlikely to benefit consumers in assisting them in making an informed purchasing decision (unless their attention is drawn to the term ‘wine-based beverage’ and they have been provided with information regarding the difference between those products and wine). The proposed amendment is also therefore unlikely to benefit wine producers, as was the intent of the Application. Therefore, even if the costs are minimal as suggested by the Applicant, these need to be weighed against the benefits of amending the Code as requested. Other factors required to be considered by FSANZ also need to be taken into account.

The Council of Australian Governments (COAG) *Best Practice Regulation Guide for Ministerial Councils and National Standard Setting Bodies* states that regulatory measures and instruments should be the minimum required to achieve pre-determined and desirable outcomes. This implies minimising regulatory burden as much as possible and focusing regulation where necessary and commensurate to the problem. As outlined above, the extent of the problem in the market place was unable to be identified and legislation already exists with the intent of preventing consumers from being misled. Under these circumstances, prescribing additional labelling changes would be inconsistent with the COAG regulation guidelines.

## **CONCLUSION**

### 13. Decision

#### **Decision**

**To reject the Application pursuant to section 15A of the FSANZ Act (as was in force prior to 1 July 2007).**

The Applicant has the right of appeal to the Administrative Appeals Tribunal in accordance with section 63 of the FSANZ Act (as was in force prior to 1 July 2007).

#### 13.1 Reasons for the Decision

FSANZ has rejected this Application having regard to the following matters listed in section 15 of the FSANZ Act (as was in force prior 1 July 2007):

- (a) any submissions made to it within the specified period in response to a notice given under section 13A or 14; and

- (b) the objectives and matters listed in section 18; and
- (c) whether costs that would arise to bodies or persons from a food regulatory measure developed or varied as a result of the application outweigh benefits that would arise to the public from the measure or variation; and
- (d) whether there are any alternatives (available to the Authority or not) which are more cost-effective than a food regulatory measure developed or varied as a result of the application; and
- (e) any other relevant matters.

FSANZ's findings in regard to the above matters, leading to its decision, are detailed in the following sections.

*13.1.1 Any submissions made to the Authority within the specified period in response to a notice given under section 13A or 14*

FSANZ has considered all submissions received within the specified period and has noted that the majority of submitters do not support the amendments proposed in Application A601 (see Attachment 1 for a summary of these submissions). The main issues raised in submissions and FSANZ's response are detailed in section 11.

*13.1.2 The objectives and matters listed in section 18*

13.1.2.1 Subsection 18(1)

Of the objectives in subsection 18(1), the prevention of consumers being misled or deceived, and the provision of adequate information relating to food to enable consumers to make informed choices are considered to be the relevant objectives for this Application.

As outlined in section 5, the attitudinal questions in the consumer study indicated that some consumers are potentially misled by the term 'wine product', however, the extent of this problem in the marketplace was not able to be identified. In addition, the current requirement in the Code, that the food is labelled with a name or description of the food sufficient to indicate the true nature of the food, is intended to provide information to assist consumers to make an informed choice, and to prevent misleading or deceptive product names or descriptions. It is also noted that fair trading legislation serves to prohibit misleading and deceptive conduct.

Furthermore, the consumer study indicated that the name 'wine-based beverage' is unlikely to assist consumers to make an informed decision unless their attention is drawn to the term and they have been provided with information regarding the difference between those products and wine.

13.1.2.2 Subsection 18(2)

FSANZ is also required to have regard to the matters listed in subsection 18(2), and has considered the Application against these matters as follows:

Matter (a): the need for Standards to be based on risk analysis using the best available scientific evidence

A full risk analysis has been carried out in the assessment of this Application and the recommendation for option 1 has been based on this analysis. The risk analysis included full consideration of the available evidence provided by the Applicant on consumer behaviour and purchasing decisions as outlined in section 5. As noted earlier, FSANZ considers that the Applicant was unable to provide adequate evidence of the extent of the problem in the marketplace.

Matter (b): the promotion of consistency between domestic and international food standards

Although the USA, European Union and United Kingdom have implemented the principle of prescribing names for products similar to a wine product according to the definition of the Code, FSANZ is not aware of any country that prescribes the name 'wine-based beverage'. Requiring 'wine-based beverage' as a prescribed name under the Code would therefore not create consistency between domestic and international standards.

Matter (c): the desirability of an efficient and internationally competitive food industry

The currently regulatory requirements for the naming and representation of a wine product are not deemed to inhibit the efficiency and international competitiveness of the food industry. These requirements are consistent with the principle of minimum effective regulation. In terms of international competitiveness, as outlined above, the AWBC are requiring that wine products for export are labelled with the term 'wine-based beverage' or a name that clearly indicates the product is not wine, under the current requirements for naming foods in the Code. Therefore, FSANZ considers that amendments to the Code are not necessary in order to address this matter.

Matter (d): the promotion of fair trading in food

The promotion of fair trading in food has not been raised as an issue in this Application and therefore consideration of this matter is not applicable in this instance.

Matter (e): any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority

There are no Ministerial Council policy guidelines that are of relevance to the assessment of this Application.

*13.1.3 Whether costs that would arise to bodies or persons from a food regulatory measure developed or varied as a result of the application outweigh benefits that would arise to the public from the measure or variation*

From the impact analysis carried out (section 9) FSANZ has concluded that the requested regulatory intervention is of little benefit, does not address the potential problem and is not consistent with the principle of minimum effective regulation.

*13.1.4 Whether there are any alternatives (available to the Authority or not) which are more cost-effective than a food regulatory measure developed or varied as a result of the application*

After having regard to all of the information available, FSANZ has determined that there are currently regulatory measures in place to ensure wine product is not misrepresented. Therefore no alternatives to the amendment requested in the Application have been considered.

*13.1.5 Any other relevant matters*

No other relevant matters have been identified.

## **ATTACHMENT**

1. Summary of issues raised in public submissions



### Summary of issues raised in public submissions

FSANZ received eight submissions in response to the Initial Assessment Report on Application A601 – Definition of ‘wine-based beverage’, during the 6-week public consultation period from 4 June to 16 July 2008. A summary of submitter comments is provided below.

Two regulatory options were presented in the Initial Assessment Report:

**Option 1** – Maintain the *status quo*; or

**Option 2** – Amend the Code by defining the term ‘wine-based beverage’, declaring ‘wine-based beverage’ as a prescribed name and deleting the current definition for wine product.

#### Australian Food and Grocery Council (AFGC)

- Supports option 1.
- Regulation should only be imposed to ensure minimum necessary regulations are maintained and detailed standards imposed only to correct market failure.
- The Code is not prescriptive in the use of appropriate terms to identify country of origin.
- Declarations must be considered in the light of the prohibitions on false, misleading or deceptive representations in the Food or Health Acts and fair trading laws.
- Rejects that the labelling change is warranted as it would not provide consumers with information that is substantially different from the present. This is a matter of enforcement rather than amendment of the Code with the consequential costs incurred by industry.
- If the labelling ‘wine product of Australia’ was a mistake in the layout of the graphic design, the two terms would have been closely aligned and would have read ‘wine product Product of Australia’. This is still clear to the consumer that this is a wine product.
- Notes that the applicant has not considered amending Standard 1.2.11 to improve the clarity of country of origin statements, or requested prohibition of the joining of declarations under Standard 1.2.9.
- Agrees with the FSANZ risk assessment summary with respect to misleading or deceptive behaviour.
- Notes in regard to the complaint about ‘added sugar’ that Standard 2.7.4 permits the addition of sugar during wine production.

#### Australian Wine and Brandy Corporation

- Strongly supports option 2. Provides reasons as follows:
  - International wine reputations can be fragile. Wine is a unique natural product.
  - If the natural beverage ‘wine’ cannot be distinguished from wine products then there is a risk of substantial damage to Australia’s international reputation as a producer of fine wine.

- The existing arrangements for labelling of wine and wine products compromise two of FSANZ's objectives:
  - Provision of adequate information to enable informed choice
  - Prevention of misleading or deceptive conduct.
- Believe that 'wine' and 'wine products' are not adequately distinguished by the prevailing arrangements in the Code. Consumers are not always provided with adequate information enabling an informed choice between wine and wine products and the Code fails to prevent potentially misleading conduct.
- Also note one objective of FSANZ is to promote consistency between domestic and international food standards. Each of our major wine markets has arrangements in place to adequately distinguish 'wine' from associated beverages.
- Suggests that rather than adopting a new definition, if the existing definition for 'wine product' was applied to 'wine-based beverage' the potential for consumer deception would be minimised (provided the term 'wine-based beverage' was prescribed).

#### **Department of Human Services, Victoria**

- Has no objections to the progression of the Application to Draft Assessment.
- Notes the Application is not as simple as the Initial Assessment Report indicates. The definition of 'wine-based beverage' removes the minimum 700 ml/L of wine and changes it to '...where the contained alcohol derives predominantly from wine.'
- Requests FSANZ ask the Applicant to conduct relevant research to determine the consequences of such a change to:
  - The types of new products this standard would allow to be developed.
  - How consumer behaviour is likely to change, i.e. would more or less alcohol be likely to be consumed per head.
- The proposed amendment would allow lower alcohol products into the market. Have views of the National Preventative Health Task Force been sought on the proposed change?
- If the Application succeeds, the new Standard would need an extended stock in trade provision for existing products in the marketplace, because of their long shelf life.

#### **Food Technology Association of Australia (FTAA)**

- Supports Option 1 for the following reasons:
  - The current Standard adequately provides the requirement for a correct description for wine product.
  - Any deceptive or incorrect labelling should be subject to either the jurisdiction as appropriate for enforcing the Food Standards and/or the ACCC.
  - The one example provided was insufficient to describe the Applicant's concern as the description provided was unclear as to the exact position, size of lettering, etc used on the label of the product in question.

- If the claim that the addition of sugar to wine 'is quite illegal in Australia' is correct then amendment of the labelling clauses of the Standard will not provide any relief.
- The consumer research proposed by the WFA should have been conducted and provided with this Application to justify if a real concern or risk exists.

### **Queensland Health**

- Neither accepts nor rejects the Application but intend to review this position contingent on the evidence the Applicant has undertaken to provide.
- Any case the WFA presents will need to be robust as FSANZ notes it is not aware of evidence of deception being reported by consumer organizations.
- WFA should be asked to demonstrate why existing legislation like the Trade Practices Act couldn't be used to stop any such deception.
- It would seem to be theoretically possible for manufacturers of other mixed foods to pretend that a food consisted of higher quality ingredient by saying that it was 'X product of Y' e.g. a mixture of butter and dripping could be called 'Butter product of Australia'. However this doesn't seem to occur and presumably is stopped by existing legislation.
- Has existing legislation been tried as a remedy? Perhaps the Code needs amendment only if this other legislation has been tried and failed?
- Notes that the definition of fruit wine and/or vegetable wine product is the same as that of wine product except that it refers to fruit wine and/or vegetable wine rather than wine. The Applicant has not requested any amendments in relation to this definition or to Standard 2.7.3.

### **NSW Food Authority**

- Does not support further progression of the Application.
- The proposed requirement that 'wine-based beverage' be a prescribed name is completely inappropriate. The Code has undergone extensive review to remove superfluous and prescriptive requirements, of which this would be a prime example. The applicant has not presented any persuasive rationale for this proposal whatsoever.
- The alleged single complaint on which the Application is based is not considered remotely close to sufficient justification to consider an amendment to the Code.
- It is noted that the WFA is to carry out consumer research. Even if consumers were to find 'wine product of Australia' misleading, the remedy would seem to lie in getting the offending company to amend the misleading country of origin statement rather than amending the Code.
- Agrees with the FSANZ risk assessment summary with respect to misleading or deceptive behaviour.
- The Initial Assessment Report notes that the subject of the complaint was labelled 'sugar added'. The Initial Assessment Report states with respect to Standard 4.5.1 that 'Products produced in Australia that do not meet this standard cannot be represented as wine'. Given that Standard 2.7.4 permits the addition of sugars to wine during production, and that Standard 4.5.1 does not expressly prohibit such addition, the proposition in the Initial Assessment Report would seem debatable.

## **New Zealand Food Safety Authority (NZFSA)**

- Strongly opposes the Application. There is no evidence of a problem and there will be significant costs associated with changing the definition.
- The terms wine and wine product are not explicitly required to be used.
- In accordance with the Code, a 'wine product' should not be labelled in a way that confuses it with wine. If not specifically described as a 'wine product', it must be described in a way as to 'indicate the true nature of the food (Standard 1.2.2).
- The second example provided by the Applicant (page 5), is incorrect labelling of the product.
- The second question for submitters on page 7 of the Initial Assessment Report is unclear and is not a fair question, as the label is ambiguous. The example can be clarified by stating: Wine Product. Product of Australia. This wording would elicit a different response from submitters.
- It is important that any research that the Applicant supplies uses examples of wine product labelling that is not ambiguous.
- Believe the complaint referred to in the Initial Assessment Report is not a ground to support the Application. It is misleading to describe a Wine Product as a 'crisp white wine. This is a matter of possible misleading trade practice.
- The costs to industry associated with prescribing a name are significant and must be justifiable. Prescribed names are a requirement in the Code only when there are public health and safety concerns or consumer issues that mean a name should be prescribed.
- The Applicant has not demonstrated that a prescribed name is needed or that the costs to industry are justified.
- It is vital that the wine products used in the consumer research are correctly labelled and comply with the Code.

## **Winemakers' Federation of Australia (WFA)**

- The WFA and the Australian Wine and Brandy Corporation (the regulator in Australia) have received a number of complaints from consumers following the purchase of product they thought was wine, but subsequently found it was a wine product. Although the labelling of the product was in accordance with the law and the producer did not intend to mislead the consumer, it became apparent that the current terminology can cause consumer confusion – hence the application.
- As this issue is very important to the wine industry – a \$5 billion industry creating export earnings of \$2.7 billion and economic activity of the order of \$40 billion in regional Australia, the Board of the WFA is very keen to see this application to progress in order to help protect the reputation of Australian wine nationally and internationally.
- Dr. Wendy J. Umberger of the University of Adelaide and Dr Simone Mueller, of the University of South Australia are undertaking a research study into aspects of wine labelling. The researchers have contacted FSANZ to seek their advice on the methodology and sampling strategies.
- The key element of this proposal is that FSANZ make the term 'wine-based beverage' a prescribed name. This would ensure that no risk for consumer confusion can arise. This would also mean that 'wine' marketed domestically and for export can be labelled as 'Wine. Product of Australia' in compliance with international requirements and ensuring no confusion arises back in Australia.

- Believe the business cost of this decision will be minimal as WFA are seeking a transitional arrangement so that existing stock would not require re-packaging. Most of the wine product is relatively short shelf-life product and marketed in bag-in-box format.