

Proposal P1052 – PPP Requirements for Horticulture (Berries, Leafy Vegetables and Melons)

Second call for submissions

Comments from the Victorian Department of Jobs, Precincts and Regions and the Victorian Department of Health – February 2022.

The Victorian Departments of Health and Jobs, Precincts and Regions (the departments) welcome the opportunity to respond to this proposal to amend the Australia and New Zealand Food Standards Code (the Code). The departments concur with Food Standards Australia New Zealand's (FSANZ) view that the status quo is no longer adequate to manage the risk to public health and safety in relation to horticulture. The departments support the proposed action preferred by FSANZ, that is, the introduction of a combination of regulatory and non-regulatory measures for the sector, known as Option Three. The departments note the ongoing possibility of foodborne illness incidents or outbreaks *outside* of the commodity areas identified for regulation. To address Food Ministers' June 2018 request in full, additional requirements should be developed across the sector for Ministers' consideration.

The departments anticipate that clear benefits would follow from implementing regulatory and non-regulatory measures for the sector.

- The measures would enhance the ability of regulators to establish and/or strengthen relationships with commodity specific Victorian horticulture producers, and better understand the profile and regulatory needs of parts of the sector.
- The measures will establish additional pathways for education, two-way communication, and opportunities to identify emerging foodborne illness risks early and act on them.
- The proposed standards will provide a tool to allow regulators to monitor and, when necessary, enforce compliance with food safety standards which may not otherwise be available.
- The measures will increase consumer and trade partner confidence in the safety of these foods.

The departments have some queries in relation to FSANZ's proposed formulation of Option Three. We note that some of these issues were raised in the departments' response to the first call for submissions (March 2020) and are still outstanding. Key questions and comments are outlined below. Additional technical details are provided in [Attachment 1](#).

- **The proposal to only introduce primary production and processing standards for berries, melons and leafy greens.**
 - The departments note the original request from Ministers (June 2018) to consider measures to manage food safety risks in ready to eat, minimally processed fruits and vegetables, fresh leafy green vegetables, melons, berries and sprouts.¹

¹ The communique from the meeting can be found at:

<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2018-June>

- The departments further note that existing measures in chapter three of the Code may partially address the risks associated with some ready to eat, minimally processed fruit and vegetables, and that there is an existing Standard 4.2.6 for sprouts.
 - International jurisdictions such as the United States, New Zealand and the European Union have introduced more stringent regulatory requirements across the whole horticulture sector. This gives these jurisdictions a competitive advantage in international markets and leaves Australia at a disadvantage for mutual recognition / international alignment for our unregulated commodities.
 - The departments concur that regulatory settings for horticulture should be proportionate and based on evidence of risk.
 - However, the departments note the ongoing possibility of foodborne illness incidents or outbreaks *outside* of these three commodity areas. The departments further note the additional commodities requested for review by the Food Ministers. Based on Australian and international experience, additional measures for horticulture more broadly would more effectively address food safety risks.
 - The departments note that existing barriers to entry in the horticulture sector are relatively low. The introduction of regulatory requirements for only berries, melons and leafy greens potentially encourages new producers to avoid these product lines, or incentivises existing producers to switch to different produce. The food safety and supply chain implications of these incentives have not yet been examined in any detail.
 - The departments recommend that FSANZ consider:
 - Application of the basic food safety requirements, as outlined in the proposed berry standard, across the entire food producing horticultural sector; OR
 - That the regulatory measures to be adopted under P1052 be identified as an urgent and initial step in addressing food safety in horticulture, with additional measures still to be developed for the sector.
 - The departments further recommend that FSANZ consider the introduction of a notification/registration requirement for all horticulture food producers. This would provide FSANZ and regulators with additional information related to the horticulture sector, allowing for a better understanding of the entire sector, improved potential for two-way communication and hence a more effective response to outbreaks and incidents.
 - The departments also note that there are different risk profiles *within the* product categories identified as higher risk and in need of bespoke regulation.
 - Melons is a good example, in particular the difference between watermelon and rockmelon in terms of food safety risk.
 - There may be merit in FSANZ considering whether the draft standards concentrate regulatory efforts in the highest risk areas, even within the product categories.
 - Alternatively, this differentiation could potentially be reflected in jurisdictional decisions around implementation, with highest risk products a key focus of the new measures.
- **Proposed content of the Standards 4.2.7, 4.2.8 and 4.2.9 to cover berries, leafy vegetables, and melons**
 - **Chapter 3 and Chapter 4 interface**

- The departments note that there are some ambiguities relating to the activities covered by chapters 3 and 4, subject to whether products have been substantially transformed.
 - The departments request that consideration be given to the use of the term 'chopping' in the new standards – see note in [Attachment 1](#).
 - The departments note that FSANZ's review of food safety management standards (the chapter three and four review) may further address these issues in the Code, and suggest that this additional work be prioritised in the FSANZ work plan.
- **Standard 4.2.6 Production and Processing Standard for Seed Sprouts**
 - The departments note that the existing standard for seed sprouts (4.2.6) differs in terms of requirements of the new proposed horticulture standards (see further detail and table in [Attachment 1](#)). As was suggested in our response to the first call for submissions, this proposal presents an opportunity for a review of the sprout standard, to promote sectoral consistency, alignment and rectify known issues.
 - This includes the issue of cross referencing Chapter 3 requirements in the sprout standard, and the implementation challenges this presents for regulators (see further detail in [Attachment 1](#)).
 - The departments also note that, like the seed sprout standard, the proposed leafy green and melon standards do not explicitly include a notification requirement, instead presumably relying on a Food Safety Management Statement (FSMS) for this purpose. A clear articulation of the need for businesses to notify to regulators would assist in accurate interpretation and compliance with the new standards.
- **Food Safety & Quality Schemes**
 - The departments note the widely utilised third party accredited food safety and quality schemes by horticultural producers and the significant work undertaken by producers to meet the requirements of these schemes.
 - As the departments have previously noted, in Victorian survey work undertaken to date, it is not clear how many producers are covered by these schemes.
 - The schemes differ considerably and are not limited in scope to food safety issues.
 - With the introduction of the three proposed standards, the departments note that the validity and usefulness of these schemes will depend on their demonstrated ability to meet the requirements of the standards.
 - The departments note the significant additional consultation work already underway with the regulators and producer groups. This work will need to continue during the transition period, to ensure that the third party schemes can meet the requirements of the proposed standards.

The departments acknowledge the extensive work undertaken by the Horticulture Implementation Working Group on the development of the compliance plans, which are indicative and a guide to industry about how the new measures may work. The departments note that, following FSANZ's work and consultation on P1052, jurisdictions will have a series of decisions to make in relation to the implementation of the proposed regulatory and non-regulatory measures for the sector.

Attachment 1

Topic	Responses
Definitions and terminology in the proposed standards	<ul style="list-style-type: none"> • More clarity is needed in how the proposed standards draw a clear distinction between ‘substantial transformation’ (when Chapter 3 applies) and ‘relevant activity’ (when these proposed new standards apply). <ul style="list-style-type: none"> ○ Care should be taken so that definitions are not inconsistent with definitions in the model food provisions (and definitions in each state and territories’ relevant legislation) • It is recommended that the term ‘chopping’ be removed from Standards 4.2.7, 4.2.8 and 4.2.9, as it already appears in Standard 3.2.2 under the definition ‘process’ and this is likely to cause confusion. • ‘Chopping’ is interpreted to mean the reduction of an item from a whole to a component or components less than a whole, and would therefore constitute substantial transformation. This would not include ‘trimming’ of extraneous leaves, stems, shoots and roots after harvesting of the whole primary produce. ‘Trimming’ is a more appropriate term to include in the Standards 4.2.7, 4.2.8 and 4.2.9. • Clarifying definitions will aid in avoiding a potential situation in which, for example, a melon producer purporting to act under primary production requirements can chop something into smaller pieces, package it, and send directly to a supermarket without being registered as a food business and bypassing the Chapter 3 requirements.
General food safety management requirements/ notification requirements - all	<ul style="list-style-type: none"> • The general FSMS requirements in Standard 4.1.1 (which are proposed to apply to leafy greens and melons) do not include a clear obligation to notify, creating a risk that requirements are not clear to producers or regulators. • There is a need to clarify that the requirements for leafy greens and melon producers also includes notification or registration with the relevant authority – consistent with the requirements for berries. • This could also involve updating both the leafy green and melon compliance plans, to include a requirement for ‘business particulars’ to be provide to the regulator, as in the berries compliance plan. • This could also be addressed through FSANZ’s scheduled review of the food safety management standards, and by considering inclusion of a clear obligation to notify in Standard 4.1.1.
Standard 4.2.7 - Primary production and processing standard for Berries	<ul style="list-style-type: none"> • FSANZ’s risk assessment presented in SD2 reports that: “the contamination of soil or soil amendments are risk factors that apply broadly to the commodity sectors.” <ul style="list-style-type: none"> ○ Given this, consideration should be given to including a requirement to monitor soil and fertilizer inputs in the berries standard (and making relevant updates to the compliance plan to reflect this).

Relationship to the sprout standard, and chapter 3 & 4 interface	<ul style="list-style-type: none"> Food Ministers requested FSANZ reassess the food safety risk management of sprouts, and to identify regulatory and non-regulatory measures in relation to sprouts². The development of a PPP standard for horticulture presents a good opportunity for FSANZ to also review the appropriateness of the exiting production and processing standard for seed sprouts (Standard 4.2.6). <ul style="list-style-type: none"> The Call for Submissions notes that seed sprouts weren't considered due to the existence of Standard 4.2.6. However, there is no commentary or evidence provided regarding the effectiveness of this standard. We encourage FSANZ to use this opportunity to consider learnings from, and improve, the implementation and regulation of the sprout standard. The sprout standard does not include several of the requirements which will be applied to the proposed new standards (see Table 1). <ul style="list-style-type: none"> Whilst the application of Standard 3.2.2 and Standard 3.2.3 to sprout producers attempts to address these gaps, in practice there are challenges experienced by regulators that are not responsible for administering standards that sit outside of Chapter 4. <ul style="list-style-type: none"> For example, in Victoria once a business is considered a primary producer, regulators are unable to apply any chapter three requirements. As such, chapter three requirements cannot be applied to sprout processors as was intended by the standard. Updating the seed sprout standard to be more consistent with the proposed new standards (i.e instead of relying on Chapter 3, including specific requirements in the sprout standard for equipment and premise cleanliness; and the health, hygiene, skills and knowledge of personnel) would help address these existing issues.
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TABLE 1 – Comparison of existing seed sprout standard to proposed three new PPP standards.

Requirement	Berries	Leafy vegetables	Melons	Seed sprouts
Notification of business	✓	x	x	x
General food safety management requirements	x	✓	✓	✓
Traceability: one step forward, one step back	✓	✓	✓	✓
Management of water as an input	✓	✓	✓	x°
Management of soil and fertiliser as inputs	x	✓	✓	x

² The communique from the meeting can be found at:
<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2018-June>

Management of seed and seedling as inputs	x	✓	x	✓
Management of the growing site	x	✓	✓	x
Management of food safety following weather events	x	✓	✓	x
Construction and cleanliness of premises and equipment	✓	✓	✓	x
Maintaining an appropriate temperature of harvested produce	x	✓	✓	x
Appropriate washing and sanitisation of produce	x	✓	✓	✓*
Management of animals and pests	x	✓	✓	x
Skills and knowledge	✓	✓	✓	x
Health and hygiene of personnel and visitors	✓	✓	✓	x
No sale or supply of unacceptable commodity	✓	✓	✓	✓

*Whilst Standard 4.2.6 does cover general inputs, it provides far less detail than the proposed new standards *Decontamination and washing and sanitation have been considered equivalent between the standards.