

Submission in response to the FSANZ 1st Assessment Report on Primary Production and Processing requirements for Raw Milk Products

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The report and its draft proposals for marginal change in the regulation of cheesemaking in Australia and New Zealand can be considered from several perspectives, which include:

- as an expression of regulatory philosophy and role
- as a statement of preferred regulatory practice
- as a response to community or industry expressions of a desire or need for change
- as a framework for continued community understanding of and support for the chosen regulatory pathways, and
- as an exemplar for responding to continued innovation and development in this and other areas of food production

It is difficult to fault the straight-line logic of the proposed change in regulatory arrangements.

In response to perceived health risks in the handling and marketing of milk and milk products, including extended on-farm holding times, bulk collection and large scale treatment in industrial scale facilities, before further elaborate wholesale and retail distribution chains, an apparatus of pasteurising and other precautionary practices has been built up and enforced through regulation.

This has included sustained education and training in the processes involved, for which the pre-existing farming, industry and community knowledge and skills base had been rudimentary. Over a period regulation has been extended to such provisions as use-by dates as retailer and consumer competence and confidence were judged to have declined as the economics of small scale production and distribution declined.

Looking at it in another way, the current regulations were essentially introduced and developed to address the realities of handling quite different products – milk collected at longer intervals from multiple producers, handled as undifferentiated inputs to production lines eventually leading to the development of multiple product lines routinely including “milks” which were previously unknown, or even illegal (e.g. varied by addition of powdered milk or other milk solids, reduction of fat content, and addition of gums or gels to cream-related products). For this techniques such as homogenisation became essential to extend the shelf-life of packaged lines.

A focus on continuing, tidying and tightening this mainline regulatory strategy is understandable.

Benefits and disbenefits

In this context, pasteurisation has been an effective across-the-board technique able to be applied and documented routinely on an industrial scale without particularly specialised knowledge. It has been a means of achieving important public health benefits – or, rather, substantially reducing public health hazards. Its very success as an instrument has led many to regard pasteurisation as an outcome in itself.

Less regard has been paid to the disbenefits it also incurs, including loss of flavour, complexity and local and seasonal variations – in general, naturalness and freshness – and to its role in supporting development of convenience milk as the norm – milk which is able to be sold long after its natural “use-by” date. The value of across-the-board pasteurisation in avoiding the sale of hazardous sub-standard milk has come at some cost of the creaming off of the peaks of excellent milk qualities, which are either lost or diverted to creating manufactured variations.

The success of general pasteurisation has had the parallel consequence of diverting attention from, and sidelining awareness and knowledge of other processes which can serve to render milk products safe for marketing and consumption. A range of these processes and techniques have been integral to the development of both bulk and specialty cheeses over a very long time.

Raw milks

This general regulation of milk was applied virtually without differentiation to smaller-scale and local producers who remained, but with a number of States maintaining their regulatory prerogatives in relation to the supply of raw milk for particular purposes outside the industrial and regulatory mainstream.

Two of the main reasons for this were, first, to provide room for a minority of consumers who asserted that raw cows milk was distinctly better flavoured, healthier and, as a completely natural product unaffected by manufacturing processes, reflecting local and seasonal characteristics comparable to those prized with other traditional foodstuffs. Secondly, it was to permit further development of the then comparatively new interest in goat milk as an alternative for sufferers of allergies and a number of digestive diseases. The latter point was made easier to concede in part because goat milk was at the time available only from small scale herds, with at most a single retail or other intermediary, involving at each stage from producer to final consumer people concerned, knowledgeable and careful about the safe handling of the milk.

As these regulations were being introduced and developed there was comparatively little interest among producers or consumers in maintaining a niche for commercial production of raw milk cheeses. There has, however, been a continuing interest in and demand for raw milk, for drinking, cooking or making of cheese at a domestic level. This includes people who have wanted fresh local whole milk as opposed to homogenised, and those

who want to do their own pasteurising in the course of producing clotted cream or other milk products.

A specific anomaly in the regulatory regime is the limitation on the *sale* of raw milk and the sale of products made with raw milk rather than on their use. If the justification for regulation is based on public health grounds, the lack of prohibition on use would seem to indicate either significant confidence in the ability of ordinary people to manage the risks associated with pathogens in untreated milk, or a level of disregard for their welfare. Alternatively, it may be an expression of regulatory philosophy, that controls should not extend beyond industrial and commercial spheres, or even that the “domestic” level is too messy, or insignificant or could lead to resentment and widespread disregard of regulation.

From the report itself it would seem that the numbers of people accessing raw milk has been increasing either entirely within the regulations, or by means which avoid direct sale. As it was necessary to attempt research on the extent of these practices, it seems there is little evidence they are causing a significant degree of health risks. At most it would seem that a light-handed response to this would be appropriate, even under an industrially-oriented regulatory regime.

It is stated that the present review has also been undertaken because of direct requests for permission to import raw milk cheeses judged to be safe for general consumption by food authorities in advanced countries partly on the grounds that Australian consumers should not be denied access to products acceptable in such markets

There is also the argument that Australian producers should not be denied the opportunity to compete with any such products which may be permitted entry to the market as imports. Whatever its attractions, it would be anomalous to grant this application on the grounds of competition theory rather than on the basis of low and acceptable health risks.

The proposals in the report appear to provide little more than reinforcement of current practice with management of milk for cheesemaking in Australia, and a focus on centralising all relevant regulation by having States give up their current discretionary provisions.

On the face of it, this seems to express an overriding objective to maintain and tighten a limited command-and-control model of regulation particularly suited to larger-scale production of cheeses with essentially standardised characteristics by a limited number of enterprises. This may be the simplest and most effective approach for those purposes.

However, the report does not establish that this would be the only, let alone the most effective, way of overseeing for public health purposes smaller scale production of a wider and changing range of specialty cheeses, including artisan cheeses and particularly those using raw milk. These are products which in essence reflect and depend on local and seasonal conditions, individual herd characteristics and management, close and

personal cooperation between milk and cheese producers, and knowledge, skills and experience of cheesemakers.

Interest in and demand for such cheeses is seen to be increasing. This is not something peculiar to cheeses. There has been, and continues to be, in Australia and similar countries, a developing and increasingly discriminating interest in specialty foods and other products showing particular characteristics of terroir, locale, seasonality and traditional or more recently developed skills. Indeed, State and federal government agencies are emphasising these attractions as key parts of economic and cultural tourism strategies.

Reframing the question

If the question of regulation were to be framed differently, a different range of answers could be seen to be available. For example: “How might government constructively support the development of artisan and specialty cheesemaking for local consumption and as distinctive products for wider marketing with adequate public health safeguards?”

Realistically, this must take as its starting point much smaller scale production and much more hands-on processes. At present, there is only a limited number of skilled and experienced artisan cheesemakers capable of meeting the demands of raw milk cheese production – the demands of nurturing and controlling the product as well as managing the health aspects competently. A number of our cheesemakers have already been making, for investigation and test purposes only, a range of raw milk cheeses. Others have skills acquired overseas. Given the particular intensity and generally greater expense of making raw milk cheeses, only a proportion of them would actually want to expand or switch to this on a commercial basis. It would not be desirable from any point of view to create an open go for enthusiastic amateurs as the starting point.

Over the period of development of the present regulatory regime for milk and cheese production, there has been a progressive loss of community knowledge and skills in traditional making and management of cheeses using the freshest of milk. This has had the consequential effect of making it difficult, particularly for younger people, to acquire and pass on such knowledge and skills, which include the beneficial use of microorganisms in traditional and other foods.

Consumers also have largely lost the knowledge and confidence they previously had in safely managing milk which they had received much fresher, often as bulk milk, using their own containers and with much more limited access to refrigeration.

This is sometimes used as an argument in favour of regulating raw milk cheese out of existence. That is no more – and probably even less - valid than arguing that Australia’s economy should be restrained within the bounds of its current skills base, whatever that might be.

If it is feasible and defensible on public health grounds for artisan and smaller scale industrial cheese makers in Europe to prepare and market raw milk cheeses there is no valid argument from first principles that it cannot be done in Australia and New Zealand.

But how in practice might this be achieved, building from a limited base of skills and achievement? The most obvious strategy would be to work from a starting point of approved traditional good practice and licensing of producers with demonstrated levels of skill and experience. Particularly in the proving stages this would entail a closer regime of inspection and testing than subsequently.

Progressively there would be more opportunities for new people to work in approved establishments and to undertake approved trade training to prepare for licensing. At the same time others in the supply and consumption chains would be able to develop their own understanding and skills. As already happens with milk producers supplying milk for artisan cheesemaking, quality and handling requirements must be well understood. Particularly in producing regions, it can be expected that communities of practice would develop for mutual support. They could become prime means for health authorities to play a positive role in encouraging a spread of skills and exchange of practical information.

Consumers would need to get to understand the shorter shelf-life and handling conditions for different cheeses. Given that distribution is likely to be direct from producers or through a limited number of specialty retailers who already offer extensive advice, this should not be a significant difficulty.

Such an approach would not create any sort of overnight revolution. It would require development of the knowledge, skills and experience of regulators as well as the industry and consumers. This includes the basic style and orientation of regulation.

Responsive regulation

In this context, a “responsive” regulatory framework would be most appropriate. Under responsive regulation, producers with established capacities, good production management systems and consistently good performance are managed with a lighter hand. They can be progressively permitted to operate with a higher degree of self-regulation. Should their performance drop, a tighter approach can be taken until the higher levels of performance are reinstated. This provides professional, financial and commercial incentives for good performance.

Unacceptable performance can be penalised not only by tighter supervision but also through options of public reporting, financial penalty, licence suspension or court action.

New entrants would start with the closest set of requirements for good practice and performance. As they establish their capacities there would be opportunity for them to operate with less directive and expensive regulatory supervision.

Such approaches provide opportunity to meet acceptable standards of public health and product quality in a smaller scale artisan-based industry. They also provide a positive context for development and innovation in ways particularly appropriate to particular regions with potential for distinctive specialty products.

These are all outcomes of with multiple benefits for consumers and communities.

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