



NEW ZEALAND WINE
PURE DISCOVERY

**NEW ZEALAND WINEGROWERS SUBMISSION
TO FOOD STANDARDS AUSTRALIA NEW ZEALAND
ON PROPOSAL P1025 – CODE REVISION
27 SEPTEMBER 2013**

1. INTRODUCTION

- 1.1. New Zealand Winegrowers welcomes the opportunity to provide comments on the draft food regulatory measure (**Draft Code**) prepared under Proposal P1025 to reform the Australia New Zealand Food Standards Code (**P1025**).
- 1.2. New Zealand Winegrowers (**NZW**) is the national organisation for New Zealand's grape and wine sector. NZW was established in 2002 by the New Zealand Grape Growers Council Inc and the Wine Institute of New Zealand Inc to represent, research and promote the national and international interests of New Zealand grape growers and winemakers. The organisation currently has approximately 700 grower members and 800 winery members. Every grape grower and winemaker in New Zealand is a member of our organisation.
- 1.3. NZW acknowledges that the reason for this revision is to modernise the Code by presenting it as a single, unified instrument which more clearly imposes obligations on operators and clarifies the relationship between the Code and other regulatory instruments. However, we are concerned that the Draft Code introduces a new level of complexity which frustrates these objectives. Our comments are focussed on the effectiveness of the draft as a regulatory instrument from a user's perspective.

2. BASIC CONCEPTS

New Definitions

- 2.1. The Draft Code introduces a new division between 'food' and 'food product' for the purposes of determining whether the labelling and compositional requirements apply. Whereas the existing Code simply refers to 'food for retail sale', the Draft Code creates a dense hierarchy of 'concepts'. This section is further complicated by the lengthy (and divergent) definitions of 'sale' which draft regulatory measure (**DRM**) 1.20 introduces.
- 2.2. From a user's perspective, it is critical that these basic concepts should be as clear, consistent and concise as possible given that most offence provisions rely on a *sale* (or an intention to sell) as a key element of the offence. The commentary underpinning Proposal P1025 fails to adequately explain the rationale behind the new concepts and definitions, however it is assumed that these were added in order to ensure consistent interpretation between the Code and other sources of food legislation. Given the Code's status as subordinate legislation in New Zealand law, there is no need to assert the primacy of application Acts within the Code's provisions. We acknowledge that this may not be the case for all Australian jurisdictions, however the complicated hierarchy established in DRM 1.15-1.20 appears to go further than necessary in ensuring that terms will be consistently interpreted.
- 2.3. It is therefore recommended that this section of the Draft Code be reviewed for clarity and an alternative method for ensuring consistency between the Code and state/territory legislation is devised.

DRB 1.23(2) Use of specified name

- 2.4. We submit that there should be an amendment to DRB1.23(2) to clarify that the use of a specified name is to be taken as a representation unless the context makes it clear that no such representation is conveyed (rather than the current wording 'that no such representation is intended'). It is the effect, not the intention, that is relevant in such circumstances and an amendment of this nature would also ensure consistency with domestic trade practices legislation.

Separation of compositional standards and definitions

- 2.5. The commentary to P1025 states that “definitions should not include substantive material” and for that reason all food definitions have been reviewed to remove substantive requirements and to restate the compositional requirements independently of the definition. It is not always possible to separate the composition of a product from its definition, and in its attempt to do so the Draft Code has inadvertently created standards which are circular and confusing for users. We elaborate on our comments in relation to the draft standard for ‘wine’ and ‘wine product’ below at paragraph 6.3.

3. **GENERAL LABELLING PROVISIONS**

Information Required on a Label

- 3.1. DRM 1.33 is intended to replace Standard 1.2.1(2) as a catch-all to encompass all requirements with a labelling component within the Draft Code. The construction of the opening paragraph “Subject to this section, labelling that is required for a food product under DRM 1.31 must state the following information in accordance with the provisions indicated” is potentially misleading in that it implies that each of the items must be included on a food label.
- 3.2. This should be contrasted with the wording in Standard 1.2.1 (“food for retail sale must comply with any requirements specified in...”) which in our view is preferable in that it does not create the impression that all items are mandatory. For example, it could be construed that all products were required to include a statement of ingredients, nutritional information panel (NIP) and information about characterising ingredients when this is clearly not the case. The reference to “in accordance with the provisions indicated” is not always going to be helpful as the exemptions are not necessarily contained in the listed provisions.
- 3.3. We therefore recommend that the wording be amended slightly to reflect that those items must be included unless specified otherwise in the Code.

“For the labelling provisions”

- 3.4. Many provisions in the Draft Code are prefaced by the phrase ‘for the labelling provisions’. The explanatory note states that this wording has been added so that users know “that a labelling requirement exists.” Despite its good intentions, this additional wording is problematic from an interpretation perspective - particularly in situations where

clauses are providing exemptions. For example, DRM 1.58 states: “for the labelling provisions, a requirement for a statement of ingredients does not apply to [list of products].” In this situation it could be construed that although a producer was not required to provide the information on a label, they may still be subject to the provisions which require the information to be provided at the point of sale. Given the potential for confusion (particularly given that most users will not have read the commentary to P1025 and will therefore not be aware that this phrase is intended to signal a labelling requirement) the utility of this additional phrasing should be reviewed.

Alcohol content AND standard drinks

- 3.5. The general labelling provision DRM1.33 lists the requirements for a food product containing alcohol in sub-clause (x) as being ‘a statement of the alcohol content’ **or** ‘a statement of the number of standard drinks in the product.’ Given that both items are mandatory, we submit that the conjunction ‘and’ should replace ‘or’ for clarity.

4. **MANDATORY DECLARATIONS**

Definition of ‘present’

- 4.1. DRM 1.57 concerns the requirement to include a labelling declaration where certain foods are ‘present’ in the food product. Although subsection 2 notes that the food may be present as either an ingredient, a substance used as a food additive or a substance used as a processing aid, we recommend that the term ‘present’ is defined in order to clarify to users when a declaration is necessary. The purpose of the provision is to alert consumers who may have an allergy or sensitivity to a particular food. In operation however, it is severely restricting the range of products from which an allergenic individual can choose from for, in many cases, no meaningful reason. For example, in the absence of any definition for what constitutes ‘present’ in the Code currently, wine producers are forced to label the presence of allergens for all wines produced using milk or egg products regardless of whether the allergens are actually present in the final product. Not only does this impose cost on producers through unnecessary label requirements, it also limits the choice of products available to consumers with allergies.
- 4.2. In order to address this issue, both the European Commission and the Canadian Government have designed their allergen labelling provisions in such a way as to establish a mechanism for determining whether allergens are “present” in the final product. Health Canada

developed guidelines to establish acceptable processing practices that are shown to avoid the presence of allergens in the final product (wine). NZW strongly supports this approach as providing a practical mechanism for producers to determine whether or not they need to make an allergen declaration on their label.

- 4.3. NZW also supports the establishment of a limit of detection beyond which allergens may be considered “not present” for the purposes of the labelling requirement. The OIV resolution *Revision of the Limit of Detection and Limit of Quantification Related to Potentially Allergenic Residues of Fining Agent Proteins in Wine* (OIV-Oeno 502-2012) establishes limits of detection for egg and milk products used in wine production of 0.25 mg/L. The European labelling standard adopts the OIV limit of detection and prevents producers from stating that their product ‘may contain’ an allergenic substance for this purpose. NZW believes that a limit of detection (or at least greater clarity around detectability in the food product for the purposes of determining ‘presence’) should be considered as a priority by the Code Review.

5. **GENERAL LABELLING OF ALCOHOLIC BEVERAGES**

Standard Drinks

- 5.1. DRM 2.64 specifies that alcoholic beverages must contain a standard drinks statement. Standard drink is defined as “the amount of a beverage which contains 10 grams of ethanol when measured at 20°C.” However, it is not clear from either the current or proposed wording whether the number of standard drinks should be calculated on the *actual* alcohol content or the *labelled* alcohol content (i.e. taking into account the tolerance currently provided in 2.7.1). We are aware that both interpretations are relied on currently and it would be helpful for producers if this point could be clarified in the revised Code.

6. **PRODUCT SPECIFIC STANDARDS**

Fruit wine and vegetable wine

- 6.1. The fruit wine and vegetable wine standard in the Draft Code has been amended to remove the words “during production” from the composition rules in DRM 2.70. There is no explanation for this change and we note that the comparable wine and wine product standard (DRM 2.72) retains this wording. We interpret the phrase “during production” as extending to include all stages of production up to the point of final packaging. It is therefore not clear what FSANZ was seeking to establish by removing the words “during production” other than to imply that “during production” relates to a certain section of the

manufacturing process and fruit/vegetable wine requires greater flexibility than other products. If this is the case then it would represent a substantive change from the current standard and we submit that it should be introduced as a separate Proposal accordingly.

- 6.2. To avoid confusion we submit that there should be consistency across both standards and “during production” should either be deleted in both or retained in both.

Wine

- 6.3. As noted above, the decision to separate composition and definition standards has resulted in a confusing and somewhat circular provision regarding wine. Rather than a single definition of wine as in the existing standard, DRM 2.7.2 proposes a compositional requirement, with a subordinate definition, followed by a further note. In fact, it is not possible to neatly separate the compositional and definitional elements, for the following reasons:

- a) grape juice and grape juice products are products derived solely from grapes and therefore included within the definition of wine – they are specified separately for the avoidance of doubt;
- b) sugars added to wine do not remain in the product in their existing form but in a form equivalent to the naturally occurring components of wine – they are either converted into alcohol during fermentation or break down into glucose and fructose;
- c) brandy or neutral spirits may be added for fortification – in which case the addition is integral to the product which becomes ‘fortified wine’;
- d) water is naturally occurring and is specified in order to limit its addition to wine.

- 6.4. In our view, the definition should remain as set out in the current standard 2.7.4 to avoid confusion.

7. **CONCLUSION**

- 7.1. NZW would welcome an opportunity to participate further in the Code Review process. In the meantime, if you have any questions please contact either John Barker or Kristy McKay (contact details set out below).

Yours faithfully

NEW ZEALAND WINEGROWERS



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