

**Comments from the Victorian Department of Health and Human Services and the Victorian Department of Jobs, Precincts and Regions.**

**Due date of submission – 18 March 2020**

The Victorian Departments of Health and Human Services and Jobs, Precincts and Regions (the departments) welcome the opportunity to respond to this proposal.

Forum Ministers raised concern regarding increased foodborne illness outbreaks related to fresh produce in June 2018<sup>1</sup>, requesting FSANZ identify appropriate regulatory and non-regulatory measures for Australia to manage food safety risks in ready to eat, minimally processed fruits and vegetables, fresh leafy green vegetables, melons, berries and sprouts.

Under P1052, FSANZ presents evidence (in SD1) to show that food safety outbreaks associated with fresh and minimally processed horticultural produce have continued during 2011-2019.

Victoria contends that the evidence presented in this proposal, in addition to evidence collected independently, points to a demonstrated market failure and the departments are supportive of FSANZ's view that the status quo is no longer adequate to manage the risk to public health and safety.

This is particularly evident in relation to the use of third party food safety schemes. The extent to which coverage by food safety schemes limits food safety outbreaks is unclear. In addition, the purpose and scope of food safety schemes do not always extend to all food safety matters, and may be specific to retailers' needs (including quality considerations). However, they are commonly referred to as a benchmark of industry engagement with food safety management.

While FSANZ previously noted through its work on Proposal P1015 that 70 per cent of the horticulture sector operated under third party food safety schemes, more recent evidence shows this is much lower with figures suggesting approximately 50 per cent of the sector does not operate under an audited food safety scheme (and higher in certain sectors).

The departments therefore support the development of regulatory measures, and supporting non-regulatory mechanisms, to improve food safety across the horticulture sector.

In addition to improved assurance in domestic products, a mandatory minimum food safety requirement for the sector provides greater confidence for international markets and raises the food safety credentials of the entire sector.

Contrary to the approach taken in this proposal, the departments remain of the view that a minimum food safety requirement is necessary across all horticultural products and presents further reasoning for this approach below. This is in addition to any regulatory (and non-regulatory) measures proposed to be developed to deal specifically with high-risk horticultural sectors.

The department seeks further clarification from FSANZ for the reasons for excluding Ready to eat (RTE), 'minimally processed fruit and vegetables' (as outlined in the call for submissions) and seed sprouts from the scope of high-risk horticulture for the purposes

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<sup>1</sup> <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2018-June>

of P1052 given they were specifically included in the request from ministers. It may also be worth clarifying how the definition of 'minimally' will be applied, given current provisions in Chapter 3 do not refer to this as a qualifying factor.

The departments accept that businesses handling RTE 'minimally processed fruit and vegetables' are regulated as food businesses and already subject to Chapter 3 requirements. However, this is not a definitive reason to exclude them from P1052 if these products are still considered by FSANZ to be in scope for the review of Chapter 4.

In considering the development of a primary production and processing standard for horticulture, the departments suggest that this would be a good opportunity for FSANZ to confirm or review the appropriateness of the specific requirements for seed sprouts. It would be unfortunate for one horticultural sector to be regulated differently to other similarly-risked sectors unless there is a good rationale for doing so.

The departments note that seed sprouts are also subject to Chapter 3 requirements and suggest that this provides more imperative for seed sprouts to be included in the scope of P1052. This will allow FSANZ to assess: the application of Chapter 3 requirements as part of primary production and processing standards, including identifying implementation issues that have arisen as a result of the seed sprouts standard; and how effective the seed sprouts standard has been at improving food safety management in that sector.

FSANZ seeks comments and input from stakeholders to inform its further assessment of the berries, leafy vegetables and melon sectors, particularly the following information or data:

1. Technical data on industry production and processing practices
2. Efficacy of current risk mitigation measures (including under atypical conditions e.g. extreme weather conditions)
3. Through-chain microbiological data (e.g. level, frequency and type of microbiological contamination at different production and processing stages or critical control points).

The departments refer FSANZ to the *On-farm food safety practices survey of strawberry growing in Victoria*<sup>2</sup> as a useful resource on technical data regarding product and processing practices in the strawberry industry, including farm environment; water and fertiliser use; and traceability.

The departments note the complexities in horticulture production due to many inputs and variables where food safety management must consider:

- environmental variation including extreme weather events
- site-specific factors such as soil type, topography and neighbouring activities
- crop inputs such as fertiliser and pesticides/herbicides
- their commercial and regulatory contexts.

It is apparent producers need to be able to connect combinations of events (for example, weather events, management decisions, other events such as wildlife incursion) to assess and act on food safety risk for each crop at the time of harvest. Clear/defined minimum requirements for all horticultural products may assist in facilitating improved food safety for the sector, by bringing producers' awareness to the key food safety risks.

However, to support implementation of any new regulatory approach, industry guidance and resources will be necessary to navigate the complexity of production systems and

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<sup>2</sup> <https://www.foodstandards.gov.au/publications/Documents/Strawberry%20report.pdf>

encourage a food safety culture that is responsive to changing, possibly extreme, environmental conditions where additional food safety measures may be necessary.

Industry overview: FSANZ welcomes information in submissions that can further inform us of the number, size and location of producers in these sectors.

The departments have nothing to add.

Non-regulatory measures: Food safety schemes: FSANZ welcomes information in submissions that can further inform us of the uptake and of the efficacy of industry schemes across the high-risk horticulture sectors.

A qualitative survey commissioned by Agriculture Victoria indicates a larger portion of the horticulture sector (approximately 40 - 55% depending on jurisdiction) is not using a third-party food safety scheme. This is significantly lower than FSANZ's previous assessment (P1015). In addition, the *On-farm food safety practices survey of strawberry growing in Victoria report (2016)* indicates 44 per cent of strawberry growers in the Yarra Valley do not operate under a third-party scheme.

Analysis commissioned by Agriculture Victoria suggests that certain segments of the horticulture sector may require specific guidance to comply with any food safety regulatory measures. Communication around the importance of food safety may be a necessary first step to support any regulatory measure. For example, sector analysis identified a large segment of growers (generally smaller growers) placing a lower priority on food safety measures. While comprising smaller growers, this group of growers represented the largest segment of the analysis, making up 45% of the horticulture producer population sampled. Industry guides and continuation of food regulatory system food safety culture work may assist in facilitating adoption of food safety measures.

#### Option 2 – Food regulatory measures

FSANZ welcomes the views of submitters on the range of regulatory approaches to be considered under Option 2, including:

- Whether existing regulatory requirements (e.g. Chapter 3 requirements) should/could apply and the feasibility/practicality of implementing and enforcing particular measures.
- The nature of the risk for particular commodities or production activities
- Where in the production chain (or for what products) any interventions have the greatest impact
- Options to apply a tiered regulatory approach across businesses and/or commodities proportional to risk.

#### Minimum requirements

There is no primary production and processing standard for horticultural products produced in Australia. In contrast, the United States and Europe have government-mandated standards for the production of horticulture products. In the US, the Food Safety Modernization Act (2011) – Produce Rule 2016 includes minimum standards for growing, harvesting, packing and storing produce, with scientifically based standards for water, soil, animals, worker training and hygiene; equipment, tools and building, with exemptions for some production including gardeners, food preservers and farmers markets. While New Zealand has a two-tiered approach to food safety according to risk,

we understand all horticultural produce is essentially captured by mandatory regulatory requirements.

FSANZ has identified in SD1 that whilst identification of the supply chain failure in a foodborne illness outbreak is challenging, key factors include poor quality water for irrigation, hygiene and sanitation controls, and processing conditions. These factors apply across the board, not just to high risk sectors.

While we understand the arguments for FSANZ seeking to limit the sectoral coverage, we maintain a more appropriate approach would be to consider a standard that seeks to set base-line regulatory requirements for the entire horticulture sector while avoiding additional regulatory burden on the 'best practice' or less risky producers.

This might include establishing a minimum standard in important areas such as:

1. traceability;
2. water testing;
3. microbiological limits;
4. hygiene; and
5. record keeping confirming food safety and building confidence in the supply chain.

These requirements may enable improved enforcement and, if necessary, prosecution for serious breaches of expected food safety practices. Consideration should be given to a system of mutual recognition with industry-led requirements where possible, or at least where any requirements for horticulture produce in the Food Standards Code match those requirements of third-party food safety schemes.

The departments are reluctant to support a standard that imposes excessive or duplicative requirements, in addition to existing industry-led requirements.

The departments suggest that development of minimum requirements for all horticultural sectors, at the same time as more robust regulatory requirements for high-risk horticultural products, is the most efficient way to respond to the ministers' request. The Food Regulation Standing Committee may be best placed to provide this advice to the Forum in late-2020 after this process has been further developed and subject to additional advice from FSANZ.

#### Application of Chapter 3 requirements to primary production and processing

Based on the definitions in the Code of food business and primary food production, on-farm packing, treating (for example, washing) or storing of food, where the food handled was grown on the same premises, and is not sold directly to the consumer, is a primary production activity and is not covered by the Chapter 3 food safety standards.

However, the departments recognise that some production and processing practices for horticultural produce may require regulation under Chapter 3 to improve food safety outcomes, in the same way that sprout producers are covered by the requirements of Chapter 3, for example, 'pick and pack' businesses for leafy greens. An assessment of the effectiveness of the requirements for seed sprouts may also assist in informing the relevance of Chapter 3 requirements for horticulture.

Victoria agrees that there are requirements in Chapter 3 of the Code that could be relevantly and effectively applied to certain primary production activities. However, the proposal to amend the definitions in Chapter 3 of the Code to achieve this outcome could be problematic for a number of reasons including:

- it will further blur boundaries between food business and primary production activities, exacerbating incompatibility between definitions in the Code and those in some jurisdictions' food legislation, and obscuring the delineation of administrative and enforcement responsibilities between departments (that is, between health and agriculture);
- in the case where minimum requirements are set, it may not be appropriate for Chapter 3 requirements to be applied broadly to primary production activities;
- it is unclear how it will apply to other primary production and processing sectors, to which specific requirements from Chapter 3 have been applied as was considered appropriate at the time the relevant standards were developed.

Careful drafting may be required to ensure that there is not regulatory overreach. This could include drafting of relevant provisions directly into Chapter 4, rather than expanding Chapter 3 provisions to include primary production.

The departments note commentary in the CFS on the current priority of the Food Regulation System to remain robust and agile by reviewing the legislative frameworks underpinning the system. FSANZ has suggested that improved alignment of definitions across jurisdictions may await the outcomes of this review, however the departments note the requests of Forum ministers to address foodborne illness associated with fresh horticultural produce, agreed in June 2018, may require more immediate action.

#### Cost-benefit information:

FSANZ would welcome views in submissions to inform the cost-benefit work including:

- What sort of interventions should FSANZ consider in its analysis?
- Should consideration be given to regulating different sorts of businesses differently?
- Should FSANZ be aiming to achieve complete through-chain traceability from paddock to plate, or only the capacity to trace one step forward and one step back?
- Do you think information technology can reduce the cost of tracing horticultural products through the supply chain? How could it better meet the needs of industry, government and consumers?
- What are the benefits of enhanced food safety regulation in terms of protecting or accessing overseas markets?

Where possible, quantitative or qualitative evidence should be provided to support your point of view.

#### Traceability:

The departments note the traceability requirements for other food sectors are currently 'one step forward and one step back', and consider the same requirements are applicable for horticulture.

The *On-farm food safety practices survey of strawberry growing in Victoria* report found for the most part, growers captured traceability of produce from the strawberry patch to packing in punnets. However, for a small number of farms packing lesser quality strawberries (seconds) produce was not labelled with the basic traceability information. The seconds, in all cases, were destined for sale at farmers markets. It is unclear whether sufficient traceability information for these strawberries is passed onto the end consumer at the time of purchase to facilitate product traceability in the event of a food safety investigation. The department has no information about whether this practice is common across other horticultural sectors, however, it could be addressed with a minimum requirement for traceability.

The departments suggest the FSANZ consult with the Australian Government's Department of Agriculture on their traceability project to ensure alignment of approach.

### Market access

Maintaining an industry-wide reputation for quality, safe products is important for market access. Mandatory standards, whether government or industry-led food safety programs, provide assurance to customers that fresh produce from Australia meets food safety requirements. Strong and clearly demonstrated industry-wide adoption of good food safety practices increases the reputation of the industry as whole. The independence of regulatory standards is particularly valued by importing customers.

Importing countries often grant market access for products based on appropriate sanitary and phytosanitary (SPS) measures being in place. Exported products must be safe. They must be free from harmful contaminants, pests and diseases. SPS measures aim to protect human, animal or plant life from biosecurity risks arising from the introduction, establishment and spread of pests and diseases; and food safety risks arising from additives, toxins and contaminants in food and feed.

Food safety for horticulture exports is a growing concern to international trading partners. As evidenced in SD1, there have been several foodborne illness outbreaks attributed to contamination of horticulture produce such as melons and leafy green vegetables. Following the 2016 Salmonella outbreak in Australian leafy greens, the industry reported a significant and sustained drop in sales. The small export market was also disrupted.

There is an opportunity to provide trading partners with clear and consistent information about the food safety requirements for horticultural produce. Other Australian food commodities that operate under specific production and processing requirements benefit from this transparency. The ability of Australian horticulture exporters to assure importing countries about the safety of their food exports is playing an increasingly determinative role in their ability to export. Any cost-benefit analysis should consider the export opportunities associated with setting regulatory requirements for all horticultural produce.

### Concluding remarks

In conclusion, the departments recommend FSANZ consider setting minimum requirements across all horticultural produce.

- Given insights from FSANZ on supply chain failures in foodborne illness outbreaks, minimum standards for traceability, water testing, microbiological limits, hygiene; and record keeping may be appropriate.
- We suggest an assessment of the requirements for seeds sprouts, including those requirements for producers in Chapter 3, may inform the development of regulatory options for the horticulture sector.
- Some Chapter 3 requirements could be appropriately applied to high-risk horticultural produce, however, care needs to be taken to ensure that drafting does not exacerbate implementation issues associated with inconsistent definitions.
- The findings of the qualitative research commissioned by Agriculture Victoria also highlights the need for non-regulatory measures to improve food safety culture and guide improved food safety practice for the horticulture sector.