

Labelling of Alcoholic Beverages

User Guide

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Background

Food Standards in Australia and New Zealand

The Australian and New Zealand food standards system is governed by legislation in the states, territories, New Zealand, and the Commonwealth of Australia; including the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

The FSANZ Act sets out how food regulatory measures are developed. It created FSANZ as the agency responsible for developing and maintaining the *Australia New Zealand Food Standards Code* (the Code).

Responsibility for enforcing the Code in Australia rests with authorities in the states and territories and the Commonwealth Department of Agriculture for imported food; and with the Ministry for Primary Industries in New Zealand.

Responsibility of food businesses

This User Guide is not a legally binding document. It is designed to help interested parties understand provisions in the Code.

This User Guide reflects the views of FSANZ. However, the User Guide cannot be relied upon as stating the law. FSANZ is not responsible for enforcement of the Code or for providing advice on food compliance issues. In Australia, state or territory government agencies are responsible for enforcing and interpreting the Code. In New Zealand this is the responsibility of the NZ for Primary Industries public health units or local governments. Legal requirements may also change, for example, as government regulations are made or changed and as courts determine cases on food law in Australia and New Zealand.

Food businesses should obtain legal advice to ensure they are aware of developments in the law and any implications of such developments.

As well as complying with food standards requirements, food businesses must also continue to comply with other legislation.

In Australia, this legislation includes the *Competition and Consumer Act 2010*; the *Imported Food Control Act 1992*; and state and territory fair trading Acts and food Acts.

In New Zealand, this legislation includes the *Food Act 1981* and *Fair Trading Act 1986*.

Disclaimer

FSANZ disclaims any liability for any loss or injury directly or indirectly sustained by any person as a result of any reliance upon (including reading or using) this guide. Any person relying on this guide should seek independent legal advice in relation to any queries they may have regarding obligations imposed under the standards in the *Australia New Zealand Food Standards Code*.

Purpose of the User Guide

The purpose of this User Guide is to provide an overview for food businesses and other users on the requirements of the Code as they relate to the labelling of alcoholic beverages.

1. The labelling requirements for alcoholic beverages

The labelling requirements for alcoholic beverages are in Parts 1.2 and 2.7 of the Code. These requirements apply to beverages such as beer, wine and spirits.

The labelling requirements may not be applicable where the alcoholic beverage is sold in such a way as to be exempt from these requirements. However, in these situations, information may need to be displayed or provided to the purchaser.

Subclause 1(5) of Standard 1.1.1 provides specific exemptions for wine with a shelf-life of more than 12 months that was bottled prior to 20 December 2002. These wines do not need to comply with the current labelling requirements in the Code, if they would have complied with the applicable food standards in Australia or New Zealand on the date of bottling. These wines would need to be labelled with a 2002 vintage date or earlier.

Code reference

Standard 1.2.1 – Application of Labelling and Other Information Requirements sets out the application of the labelling and information requirements, including general exemptions from the requirement for a food to bear a label.

Other user guides

For further information on the general exemptions from labelling requirements, see the FSANZ User Guide on *Overview and Application of Food Labelling and Information Requirements*.

In addition to the requirements in the Code, there are also general legal requirements that apply to the labelling of alcoholic beverages. For example, in Australia the requirements of the *National Trade Measurement Regulations 2009 (Cwlth)* deal with measurement markings. In New Zealand, the *Weights and Measures Act 1987* sets out the requirements for measurement markings.

There are also legal requirements which deal with representations about alcoholic beverages. These requirements are outlined in more detail at the end of this user guide.

1.1 Part 2.7 – Alcoholic Beverages

The majority of the labelling requirements in Part 2.7 of the Code are in Standard 2.7.1 – Labelling of Alcoholic Beverages and Food Containing Alcohol. There are also some specific references and requirements in Standard 2.7.4 – Wine and Wine Products and Standard 2.7.5 – Spirits.

Alcohol by Volume Labelling – Standard 2.7.1

The requirements for the declaration of alcohol by volume apply to foods generally but for the purposes of this guide the requirements will be expressed as for alcoholic beverages only. The term ‘alcohol’ in the Code is a reference to ethyl alcohol or ethanol.

The label on the package of an alcoholic beverage containing more than 1.15% alcohol by volume must include a statement of the alcohol content. This statement must indicate the volume of alcohol in the alcoholic beverage as a proportion of the alcoholic beverage. The specific wording for the statement is not prescribed.

The label on the package of an alcoholic beverage containing 1.15% alcohol by volume or less must also include a statement of the alcohol content. This does not apply to alcoholic beverages containing less than 0.5% alcohol by volume. The statement must indicate that the alcoholic beverage contains not more than a certain proportion of alcohol by volume, with the food business to include the proportion in the statement. The specific wording for the statement is not prescribed, although a specific statement is provided in the Code for indicative purposes i.e. ‘CONTAINS NOT MORE THAN X% ALCOHOL BY VOLUME’.

Depending on the alcoholic beverage, the declaration of alcohol by volume must be accurate to within specific limits. These are indicated in the Table to subclause 2(2) of Standard 2.7.1.

Code reference

Clause 2 of Standard 2.7.1 includes the provisions relating to alcohol by volume labelling.

Standard Drink Labelling – Standard 2.7.1

Standard drink labelling does not apply to beverages packaged prior to 20 December 2002. The requirements for standard drink labelling apply to beverages or food capable of being consumed as a beverage, where the alcohol by volume is more than 0.5%. A ‘standard drink’ is the amount of a beverage that contains ten grams of alcohol at 20 degrees Celsius.

The label on a package of an alcoholic beverage must include a statement of the number of standard drinks in the package. Where the package contains ten or less standard drinks, this statement must be accurate to the first decimal place. Where the package contains more than ten standard drinks, this statement must be accurate to the nearest whole number of standard drinks.

Code reference

Clause 3 of Standard 2.7.1 includes the provisions relating to standard drink labelling.

Specific Representations about Alcoholic Beverages – Standard 2.7.1

Standard 2.7.1 includes prohibitions on certain representations about alcoholic beverages. These are:

- An alcoholic beverage containing more than 1.15% alcohol by volume must not be represented as a low alcohol beverage.
- The label on a package of a beverage containing more than 0.5% alcohol by volume must not include the words ‘non intoxicating’ or words of similar meaning.

- Alcoholic beverages must not be represented in a form which expressly or by implication suggests that the beverage is non-alcoholic.

This latter prohibition applies to all foods containing alcohol.

Code reference

Clauses 4, 5 and 6 of Standard 2.7.1 include these prohibitions.

Standard 2.7.4 – Wine and Wine Products

In considering the requirements that apply to wine and wine products, relevant food businesses should also consult:

- For wines produced in Australia, the *Wine Australia Corporation Act 1980* (previously the *Wine and Brandy Corporation Act 1980* and the Regulations made under that Act.
- For wines produced in New Zealand, the *Wine Act 2003* and the Regulations and any Notices made under that Act.

Standard 2.7.5 – Spirits

The standard includes prohibitions on certain uses of geographical indications. A spirit is defined in Standard 2.7.5 as:

a potable alcoholic distillate, including whisky, brandy, rum, gin, vodka and tequila, which, unless otherwise required by this Standard, contains at least 37% alcohol by volume, produced by distillation of fermented liquor derived from food sources, so as to have the taste, aroma and other characteristics generally attributable to that particular spirit.

A geographical indication is defined as an indication either expressly made or implied:

(a) *which identifies a spirit as originating in a particular country, locality or region*

(b) *where a given quality, reputation or other characteristic of the spirit is essentially attributable to its origin in that particular country, locality or region.*

The Standard prohibits a geographical indication being used for a spirit unless the spirit has been produced in the country, locality or region indicated.

The standard also prohibits a spirit being sold under a geographical indication where the spirit is lawfully exported under the geographical indication from the indicated territory, locality or region but bottled in another territory, locality or region. This prohibition does not apply if the alcohol by volume concentration for the spirit is at a level permitted under the applicable laws for that geographical indication.

Scotch Whisky is one example of a spirit product name for which the Standard includes prohibitions on certain uses. Whisky produced in Scotland, in accordance with United Kingdom laws, can be labelled Scotch Whisky¹. The production and sale of Scotch Whisky in Scotland is regulated through The Scotch Whisky Regulations 2009.

This is without prejudice to the use and protection of certain terms as geographical indications in New Zealand and Australia; a matter which is governed by the laws of those jurisdictions.

Standard 2.7.5 operates in conjunction with other legislation. For example, the definition of whisky in Australia is also regulated by Section 105 (a) (1) of the *Customs Act 1901 (Cth)* and Section 77FI (1) of the *Excise Act 1901 (Cth)*. These provide that whisky produced in, or imported into, Australia must have been produced by the distillation of a fermented liquor of a mash of cereal grain in such a way that the spirit possesses the taste, aroma and other

¹ National Food Authority v the Scotch Whisky Association [1995] FCA 1205 (1995).

characteristics generally attributed to whisky and matured by storage in wood for at least two years.

Code reference

Clause 4 of Standard 2.7.5 includes requirements about geographical indications

1.2 Part 1.2 – Labelling and Other Information Requirements

Some alcoholic beverages may be exempt from some general labelling requirements in Part 1.2 of the Code, including:

- Standard 1.2.4 – Labelling of Ingredients
- Standard 1.2.8 – Nutrition Information Requirements
- Standard 1.2.10 – Characterising Ingredients and Components of Food.

There are a number of standards which include general conditions that are, or in some situations may be, applicable to the labelling of alcoholic beverages, including:

- Standard 1.2.2 – Food Identification Requirements
- Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations (where relevant)
- Standard 1.2.5 – Date Marking of Food
- Standard 1.2.6 – Directions for Use and Storage (where relevant)
- Standard 1.2.7 – Nutrition, Health and Related Claims
- Standard 1.2.8 – Nutrition Information Requirements (where a nutrition content claim is made)
- Standard 1.2.9 – Legibility Requirements
- Standard 1.2.11 – Country of Origin Requirements (Australia only).

Standard 1.2.2 – Food Identification Requirements

Unless exempt, alcoholic beverages must include on the label:

- a name or description sufficient to indicate the true nature of the beverage
- the lot identification
- the name and business address in Australia or New Zealand of the supplier.

Code reference

Standard 1.2.2 – Food Identification Requirements includes these provisions.

Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations

Information must be provided about certain foods and substances in the form of mandatory declarations, warning statements or advisory statements. There are specific exemptions for some foods and substances e.g. isinglass.

Other than for warning statements, the exact wording and minimum size of type for these statements are not prescribed. If a mandatory declaration or an advisory statement is required, then it must be declared, provided or displayed as specified.

Code reference

Standard 1.1.1 defines warning statements and lists where they are found throughout the Code.

Standard 1.2.3 sets out the provisions regarding warning and advisory statements and declarations.

Other user guides

For further information on the requirements for mandatory advisory statements and declarations, see the FSANZ User Guide on *Warning & Advisory Statements and Declarations*

Standard 1.2.5 – Date Marking of Food

A date mark for an alcoholic beverage must be provided where required.

Businesses should also be aware of other legislation that may list such requirements, i.e. for New Zealand – the Wine (Specifications) Notice 2006.

Other user guides

For further information on the requirements for date marking, see the FSANZ User Guide on *Date Marking*

Standard 1.2.6 – Directions for Use and Storage

Directions for use and storage of an alcoholic beverage must be provided where the beverage is of a nature as to warrant such directions for health and safety reasons.

Standard 1.2.7 – Nutrition, Health and Related Claims

This Standard sets out the conditions for nutrition content claims and health claims. Health claims and nutrition content claims, other than nutrition content claims about energy content or carbohydrate content, are prohibited on alcoholic beverages (and other foods) that contain more than 1.15% alcohol by volume.

Standard 1.2.8 – Nutrition Information Requirements

Nutrition information must be provided where a nutrition content claim or health claim is made in relation to an alcoholic beverage (note that certain claims are not permitted on alcoholic beverages (and other foods) that contain more than 1.15% alcohol by volume, as outlined above).

Other user guides

For further information on the requirements when nutrition claims are made, see the FSANZ User Guide on *Nutrition Information*.

Standard 1.2.9 – Legibility Requirements

All prescribed labelling and information must be in English. Information in other languages must not negate or contradict the information in English.

All information on a label must be written legibly and prominently such as to afford a distinct contrast to the background.

Code reference

Clause 3 of Standard 1.2.9 includes requirements for legibility of labels.

Other user guides

Other user guides

For further information on the requirements for legibility, see the FSANZ User Guide on *Legibility Requirements for Food Labels*.

Standard 1.2.11 – Country of Origin Labelling

The requirements in this Standard do not apply in New Zealand or to alcoholic beverages from New Zealand. All other packaged alcoholic beverages must include:

- a statement on the package that identifies the country where it was made or produced; or
- a statement on the package that identifies the country where it was manufactured or packaged along with a statement to the effect that the beverage is constituted from ingredients imported into that country or from local or imported ingredients, as the case may be.

There are also requirements about country and place of origin representations in other legislation. For example, section 9 of the *Commerce (Trade Descriptions) Act 1905* (Cth) prohibits a person from importing any goods to which a false 'trade description' is applied. A Trade description includes any description as to the country or place in or at which the goods were made or produced.

The *Competition and Consumer Act 2010* (Cth) prohibits businesses from engaging in conduct that misleads or deceives or is likely to mislead or deceive. More specifically, the Act prohibits businesses making false or misleading representations about the particular history of goods, the place of origin of goods or misleading the public about the nature, manufacturing process or characteristics of any goods. The *Competition and Consumer Act 2010* also contains defences that apply where country of origin claims are made if the goods pass one of a number of tests. For further information on the requirements under the *Competition and Consumer Act 2010*, visit [Australian Competition and Consumer Commission](#).

2. Representations about alcoholic beverages

All representations about alcoholic beverages are subject to a wider regulatory context that should be considered. Food businesses need to ensure that any representations are not false, misleading or deceptive or likely to mislead or deceive consumers about an alcoholic beverage.

Food Legislation

Food legislation in Australia and New Zealand includes provisions relating to representations about food which are relevant to alcoholic beverages. These include:

Food Act 1981 (New Zealand)

Subsection 10(1)

No person shall sell any food or appliance—

- (a) That bears or has attached to it, or is contained in a package that bears or has attached to it, any false or misleading statement, word, brand, picture, label, or mark purporting to indicate the nature, suitability, quantity, quality, strength, purity, composition, weight, origin, age, effects, or proportion of the food or appliance, or of the food or appliance contained in the package, as the case may require, or of any ingredient or nutrient or other constituent of the food or any component of the appliance; or*
- (b) That has been packaged, processed, or treated in a manner that is false or misleading in relation to any of the matters mentioned in paragraph (a) of this subsection.*

Food Acts of Australian States and Territories:

A person must not, for the purpose of effecting or promoting the sale of any food in the course of carrying on a food business, cause the food to be advertised, packaged or labelled in a way that falsely describes the food.

A person must not, in the course of carrying on a food business, sell food that is packaged or labelled in a way that falsely describes the food.

A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.

Food that is falsely described includes food to which any one or more of the following paragraphs applies:

- (a) The food is represented as being of a particular nature or substance for which there is a prescribed standard under the Food Standards Code and the food does not comply with that prescribed standard.*
- (b) The food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance.*
- (c) The food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance of lower commercial value than food of the represented nature or substance.*
- (d) The food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance.*

(e) Any word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression as to the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person.

(f) The food is not of the nature or substance represented by the manner in which it is packaged, labelled or offered for sale.

Consumer Protection Legislation

The *Competition and Consumer Act 2010* (Australia) has provisions dealing with representations in food and beverage labelling, packaging or advertising:

1. Schedule 2 – The Australian Consumer Law provides that businesses must not engage in misleading or deceptive conduct, or conduct likely to mislead or deceive. For example, businesses must not make representations likely to mislead or deceive consumers about the most prominent ingredients or characteristics of an alcoholic product.
2. The Australian Consumer Law also provides that businesses must not make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition or style in relation to the supply, or possible supply, of a food or beverage. In short this means that an alcoholic beverage must match any description or claim made on the labelling, packaging or promotional material.

In New Zealand, misleading labelling (including origin) is covered under section 10 of the New Zealand Food Act 1981 and section 13 of the Fair Trading Act 1981.

Where can I get more information?

Food Standards Australia New Zealand

Australia

www.foodstandards.gov.au

New Zealand

www.foodstandards.govt.nz

Other user guides to the Code on the FSANZ website

www.foodstandards.gov.au/code/userguide/Pages/default.aspx

Consumer protection legislation information

Australian Competition and Consumer Commission (ACCC)

www.accc.gov.au/content/index.phtml/itemId/142

Commerce Commission of New Zealand

www.comcom.govt.nz/

Trade measurement legislation information

Australia

www.measurement.gov.au/index.cfm?event=object.showContent&objectID=C3EB158B-BCD6-81AC-1DC5A41E29837C8C

New Zealand

www.consumeraffairs.govt.nz/measurement/businessinfo/index.html

Other websites

Wine Australia

<http://www.wineaustralia.com/australia/>

Australian Customs Service

<http://www.customs.gov.au/>

The Scotch Whisky Regulations 2009:

http://opsi.gov.uk/si/si2009/uksi_20092890_en_1