



**The Distilled Spirits Association of
New Zealand**

Submission to Food Standards Australia
New Zealand on its Review of the Food
Code (2nd call for submissions)

September 2014



Introduction

The Distilled Spirits Association of New Zealand (DSANZ) is the national trade organisation representing New Zealand's leading producers, distributors, brand owners, importers and exporters of premium spirits and spirit-based drinks.

DSANZ members are Bacardi New Zealand Holdings Ltd, Beam Suntory Inc, Brown-Forman, Diageo, Hancocks, Independent Liquor, Lion, Moet-Hennessy and Pernod Ricard New Zealand. In addition we have three associate members who are Anchor Ethanol, EuroVintage and Federal Merchants.

Together DSANZ represents over 98% of spirit industry interests in New Zealand.

DSANZ takes a direct and active interest in the development of policy and regulation that has the potential to impact the operation of its members' interests in New Zealand. We assess this impact through two overlapping lenses.

The first relates to direct trading impact and the second to the contribution of regulations to the reduction in the harm caused by excessive consumption of alcohol. DSANZ actively supports the creation of a moderate drinking culture in New Zealand through direct action (see also www.cheers.org.nz) and through support of a balanced regulatory approach.

FSANZ, as a body, has the potential to impact both the trading environment and the culture of consumption through the standards it sets, the advice it gives to Ministers or other agencies and through the evidence it collects and then applies.

In principle DSANZ supports well-evidenced and realistic regulation that takes into account the complex dynamics of the alcohol sector. We acknowledge that FSANZ takes an evidence-based approach before making changes to the Food Code and we hope this approach continues.

We would welcome any further discussion FSANZ might have about the contents of this document.



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Commentary

1. DSANZ is supportive of FSANZ's attempts to modernise the Food Code. We believe that FSANZ's use of an evidenced-based approach to help it deliberate on complex food issues will be better supported if empowering regulations and standards are more clearly defined and laid out.
2. As such we support FSANZ's attempt to achieve this through:
 - a. more clearly presenting requirements that impose an obligation relating to the conduct of a food business or the sale of food, or relating to the composition of food or labelling;
 - b. greater reliance on definitions already present in the food acts of New Zealand, the states and the territories; and
 - c. presenting the Code as a unified instrument.¹
3. We would particularly make note of your attempts to better define the link between the Food Code, offence provisions, obligations as such and application Acts. In section 3.2.3 of Proposal P1025 you state:

Provisions of the Code that impose obligations or set out requirements to be complied with are to be amended to ensure that it is clear who is required to comply with the obligation or requirement (if it is intended that a person be responsible) and to ensure a higher level of certainty of meaning and operation about the actual requirement.

The provisions in Part 1 and 2 of the draft food regulatory measure establish requirements for composition, packaging, labelling and the provision of information. It is intended that offences relating to these provisions would be prosecuted under the provisions of the application Acts that relate to selling a food product that does not comply with a requirement relating to the food, or the packaging or labelling of the food. That is, it is anticipated that a failure to comply with a requirement in Part 1 or Part 2 would usually be prosecuted under the local equivalent of section 17(2) of the model food provisions.

The provisions of Parts 3 and 4 create obligations that are to be complied with by identified persons, whether legal persons or natural persons, in relation to the conduct of food businesses. They are intended to be prosecuted under the provisions of the application Acts that relate to failure to comply with a requirement imposed on a person in relation to the conduct of a food business or food intended for sale or for sale.

4. DSANZ supports any attempt that more clearly draws the link between breaches of the Food Code and the ability to seek legal remedy through offence provisions. Our interest is two-fold.

¹ 2nd Call for Submissions – Proposal P1025, page 4.

5. Obviously there is a general interest in better and clearer provisioning of those Acts that link to the Food Code – this is simply a matter of good practice. Secondly however it is DSANZ's belief that there is a significant issue relating to the illegal importation of alcohol into New Zealand.
6. Illegally imported alcohol tends to have two identifying traits when found in retail outlets – the product is either abnormally priced and/or is mislabelled or mis-identified in some way.
7. From time to time prosecuting agencies receive information from industry or other sources and take action. However it is our belief that trade in illegally imported product occurs at a concerning rate.²
8. We would therefore commend FSANZ's proposal to more strongly link the Food Code's provisions with respect to labelling, packaging and business conduct to offence provisions mostly carried in other Acts.
9. Finally we note FSANZ's commentary in 3.2.21 of Proposal P1025 regarding the on-going work being undertaken on labelling requirements and look forward to being involved in these discussions.

² DSANZ is currently undertaking its own investigation into the scale and scope of this issue.