

Operation of Australia's legislation regarding whisky

All whisky produced or entered into Australia is regulated by the *Customs Act 1901* or *Excise Act 1901*. This legislation is enforced by the Australian Taxation Office (ATO) (in the case of the *Excise Act*) and the Australian Border Force (in the case of the *Customs Act*). Whisky and other spirits are also subject to relevant provisions of the Australia-New Zealand [Food Standards Code](#) and [Australian Consumer Law](#).

Importing/exporting whisky – *Customs Act 1901*

Section 105A requires imported whisky to be matured by storage in wood for at least two years before it can be delivered from customs control. Whisky is defined as “a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to whisky.”

When exporting whisky, the requirements of the *Customs Act* and *Excise Act* prevent exports of whisky unless the exported spirit meets the two-year wood maturation requirement, even if the whisky would meet the destination country's legal requirements.

Producing whisky domestically – *Excise Act 1901*

Section 77FI requires whisky sold domestically to be matured by storage in wood for at least two years before it can be delivered from the ATO's control. Whisky is defined in section 77FI of the *Excise Act* with the same definition as section 105A of the *Customs Act* (as set out above).

Food Standards Australia New Zealand (FSANZ)

The food regulation system in Australia and New Zealand is a multi-jurisdictional cooperative arrangement involving the Governments of two countries and eight Australian State and Territory Governments. The joint [Food Standards Code](#) ('Code') is developed and administered by FSANZ, an independent statutory authority, and generally applies to all foods produced or imported for sale in Australia and New Zealand, as set out in the [Food Standards Australia and New Zealand Act](#) (FSANZ Act).

Food standards play a role in protecting the health and safety of consumers and make a positive contribution to longer term public health objectives. The object of the FSANZ Act is to ensure a high standard of public health protection throughout Australia and New Zealand. The rigorous system reflects the many businesses and stakeholders in the food supply chain, providing a firm platform on which our food industries can operate, and enables choice for consumers.

In Australia and New Zealand, the regulation of food is covered by a range of laws and policies. Generally, consumer protection laws require information about food to be truthful and not misleading. The relevant standard regarding whisky is standard 2.7.5 (see below) which applies to both Australia and New Zealand. This standard sets out a definition of 'spirits' and requires that a food sold as a spirit must be a spirit and contain no less than 37% alcohol by volume (35% for tequila).

The Code can be [amended](#) through an application or a proposal. FSANZ consults publicly on all applications and proposals. Comments are invited to obtain stakeholder feedback on the effects of regulatory options. Issues raised in public submissions are evaluated and addressed in a FSANZ assessment report. These processes also ensure that any changes are made consistently with Australia's international obligations, including under the WTO SPS and TBT Agreements.

FSANZ base their decision on the best available scientific evidence and then refer it to the [AU and NZ Ministerial Forum](#) for decision. This forum includes representatives from all Australian States and Territories, the Commonwealth Government and the New Zealand Government. The Forum signs off on all food standards and can also request that a draft standard be developed, reviewed, amended or rejected. Wherever possible, the Forum makes its decisions by consensus. If this is not possible, the Forum can resolve matters by voting. Each of the ten governments has one vote, and six votes are required for a decision.

Australian state and territory governments and the New Zealand government implement and enforce the Code through their respective laws. The Department of Agriculture, Water and the Environment enforces the Food Standards Code at the border in relation to imported food through the *Imported Food Control Act 1992*.

False or misleading claims about goods – Australian Consumer Law

Australia has laws to protect consumers from being misled about products that they buy, including whisky. Under the [Competition and Consumer Act 2010](#), businesses are not allowed to make statements that are incorrect, or likely to create a false impression. This rule applies to advertising, product packaging and any information provided by staff or online shopping services. It does not matter whether the business intended to mislead the consumer or not, if the overall impression left by the representation creates a misleading impression as to the price, value or quality, then the behaviour is likely to breach the law. This therefore prevents any business from selling a product as whisky which did not meet the Australian legislative requirements.