

SUBMISSION OF DB BREWERIES LIMITED ON PROPOSAL P1025: DRAFT VARIATION TO AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE

1. This submission has been prepared on behalf of DB Breweries Limited and its associated and subsidiary companies (DB). The contact person is [REDACTED], Corporate Relations Manager, DB Breweries Limited, DDI [REDACTED] [REDACTED]: [REDACTED]
2. DB would welcome the opportunity to appear before FSANZ to speak to its submission.
3. DB is a member of the Brewers Association of Australia and New Zealand and a signatory to the cider makers' joint submission. DB supports the submissions on Proposal P1025 made by these entities.

A. EXECUTIVE SUMMARY

4. DB supports the Food Standards Code (Code) and the intent to modernise the Code by clarifying and unifying the provisions of the Code.
5. DB notes that the intent of the variation is not to change the effect of the provisions imposing requirements or obligations. However, as identified below, some of the proposed amendments do have this effect and potentially could lead to unintended consequences.
6. DB submits that given the major effect of the proposed changes is to clarify the roles of the application Acts in enforcement, the Code should include explicit reference to the overarching objectives of the FSANZ Act(s) to aid with interpretation and enforcement of the Code.
7. DB also submits on various specific provisions as set out below.

B. INTRODUCTION

8. DB has operated its business from its premises at 1 Bairds Road, Otahuhu for over 80 years.
9. DB owns and operates four breweries and one cidery around New Zealand - Waitemata Brewery in Otahuhu (Manukau East), Tui Brewery in Mangatainoka (Wairarapa), Monteith's Brewery in Greymouth (West-Coast Tasman) and DB Draught Brewery in Timaru (Rangitata) as well as Redwood Cidery in Nelson (Tasman). DB employs over 500 people across New Zealand.
10. DB's core manufacturing business is the production and sale of beer and cider - both locally and internationally. DB also produces a small number of ready to drink products (also referred to as RTDs) and non-alcoholic beverages.

C. SUBMISSION DETAIL

Overarching Objectives

11. DB supports the purpose and object to the Code and the Draft Variation to the Code. DB has a track record of supporting and encouraging socially responsible production and consumption of alcohol.
12. DB submits that the overarching objectives of the FSANZ Act should be explicitly included in the Code to assist with interpretation and enforcement. These could be

added either to Chapter 1, Part 1 (as a new Section 1.06), or to Chapter 1, Part 2. The Overarching Objectives are copied below:

The Authority is required by the FSANZ Act to observe certain processes in the course of developing or reviewing food regulatory measures. However the Authority must have regard to the following overarching objectives, in priority order:

- the protection of public health and safety; and*
- the provision of adequate information relating to food to enable consumers to make informed choices; and*
- the prevention of misleading or deceptive conduct.*

The Authority must also have regard to the following:

- the need for standards to be based on risk analysis using the best available scientific evidence;*
- the promotion of consistency between domestic and international food standards;*
- the desirability of an efficient and internationally competitive food industry;*
- the promotion of fair trading in food;*
- any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.*

13. DB submits that the addition of the Overarching Objectives would provide greater certainty and clarity as to how to resolve apparent conflict between two provisions, as well as guide enforcement agencies in determining the seriousness of an apparent breach. For instance, a strict reading of current Standard 1.2.3 would require beer labels to contain a statement that the product is not suitable as a complete milk replacement for children under the age of five years. However, reading this provision in light of the Overarching Objectives makes it clear that it is not appropriate to apply this requirement to alcoholic beverages.

Specific Submissions

14. DB makes the following submissions in relation to specific provisions of the draft Code. Suggested drafting amendments are shown after each submission in mark-up.
15. **Section 1.06: Definition of “Lot identification”:** DB’s understanding is that the intent behind this definition (and related operative provisions) is to ensure that food manufacturers, importers and distributors can track individual lots of food so that if an issue is identified, lots can be isolated and traced back to the exact place of production to ascertain the cause and extent of the issue. DB submits that the definition should be amended as set out below to ensure that importers or distributors who have no access (including contractual rights) to the tracing system by which the lot identification operates should not be permitted to rely on the manufacturer’s lot identification. Allowing importers and distributors to rely on the manufacturer’s lot identification where they have no access to this tracking system (or potentially even the ability to translate it) defeats the intent of the provision as it does not allow for swift tracking and isolation in the event of an issue (particularly an issue concerning public health and safety).

lot identification, for a food product, means a number or other information ~~that~~ *by which the manufacturer, importer and distributor (if relevant) can identify*es:

- (a) the premises where the food product was prepared or packed; and*
- (b) the lot of which the food product is a part.*

16. **Section 1.06: Definition of “Standardised Alcoholic Beverage”:** DB submits that this new definition should not include liqueurs. Unlike the other beverages listed in this definition, liqueurs do not have standardised ingredients and are simply “a spirit

flavoured or mixed with other foods, which contains more than 15% abv, measured at 20°C.” The key benefit of being a standardised alcoholic beverage is an exemption from ingredient labelling requirements. This is understandable on the basis that (most) standardised alcoholic beverages can only be made from a very limited prescriptive list of ingredients. This logic does not extend to liqueurs that can be comprised of any ingredients in addition to a spirit. DB submits that, for this reason, liqueurs should be required to have ingredient labelling to inform consumers as to what they are made from.

standardised alcoholic beverage means beer, brandy, cider, fruit wine, fruit wine product, ~~liqueur~~, mead, perry, spirit, vegetable wine, vegetable wine product, wine or wine product.

17. **Section 1.73(2):** DB submits that this exemption should be widened to include statements which technically are health claims but are intended as allergen warnings or to assist responsible consumption of alcohol. The key omissions are statements that a product is free or low in lactose or gluten. Most ciders are free of gluten and cider producers should be able to inform their consumers who may be celiac or have gluten allergies that their products are safe to consume. The same applies with lactose. Whilst these claims are technically a health claim, their intent is to provide allergy information as opposed to sell more product on the basis of purported benefits of consuming the product. We note that gluten free beer is currently also on the market (see Appendix A).

1.73 Nutrition content claims or health claims not to be made about certain foods

- (1) A nutrition content claim or health claim must not be made about:
- (a) kava; or
 - (b) a food that contains more than 1.15% alcohol by volume; or
 - (c) an infant formula product.
- (2) Paragraph (1)(b) does not prevent a nutrition content claim about energy content, ~~or carbohydrate content~~, **gluten content or lactose content** being made.

18. DB also supports the Brewers Association submission that light/lite alcohol beer should not be considered a health claim. This could be clarified in Section 1.75 as follows:

1.75 Division does not apply to certain claims or declarations

This Division does not apply to:

- (a) a claim that is expressly permitted by this Code; or
- (b) a claim about the risks or dangers of alcohol consumption or about moderating alcohol intake; ~~or~~
- (c) **a claim that a product is light/lite or low alcohol; or**
- (c) a declaration that is required by an application Act.

19. **Section 1.122(2):** DB submits that section 1.122(2)(a)(i) should be removed as it duplicates limbs (ii)-(iv). In other words, all of the additives listed in Schedule 15 are comprised in additives or colourings permitted at GMP. Including reference to Schedule 15 creates confusion as it is not clear whether Schedule 15 has to be read in conjunction with the food type in question or not in this context.

20. DB further submits that reference to substances that have been extracted, refined or synthesised, as well as reference to use of ingredients *by consumers*, should not be included in section 1.122(2)(b) as they are not in the current Code. Introduction of the notion of ingredients used by consumers is particularly confusing as it does not accord

with the definition and general use of the term “ingredient” in the Code. The Code concerns the production of food by food manufacturers. Ingredients commonly used by consumers (as opposed to manufacturers) is a much narrower concept than this.

(2) For subsection (1), the substances are:

(a) any of the following:

~~(i) a substance that is listed in Schedule 15;~~

(ii) an additive permitted at GMP;

(iii) a colouring permitted at GMP;

(iv) a colouring permitted to a maximum level; and

(b) any substance that:

~~(i) has been extracted, refined, or synthesised; and~~

(ii) is not normally sold as a food product; and

(iii) is not normally used as an ingredient ~~by consumers~~.

21. **Section 1.123:** DB submits that more flexibility should be permitted in the use of additives in line with the Overarching Objectives. As per the Brewers Association submission, this intent was more evident with the current drafting of the Code, including by cross-reference to the Codex Alimentarius General Standard. This could be achieved by permitting the use of [natural] additives at GMP or to the maximum level of the expressly permitted additive (whichever is the lower) where such an additive is a direct substitute for an expressly permitted additive and is listed on an internationally recognised Standard (such as the Codex) in relation to that food type.

22. This would achieve the Overarching Objectives of promoting consistency with international food standards, create an internationally competitive food industry, promote fair trading in food (between local and offshore producers) and not prejudice the health and safety of consumers. Many New Zealand food manufacturing companies are now part of a wider international group. Permitting this flexibility not only allows international innovations (that are permitted by established international standards) to be brought to New Zealand but also ensures that New Zealand producers are not compromised by more restrictive provisions than our major competitors globally.

23. Such wording could either be added to section 1.123 or directly to Schedule 15 so that it cross-referred to section 1.123(1)(a). Suggested draft wording as follows:

Additives that:

(i) perform the same technological function as an expressly permitted additive for the same food type;

(ii) are listed on [internationally recognisable food standards]/[the Codex General Standard and/or the EU Directive on Food Additives] for the same food type; and

(iii) are used in accordance with GMP or to the quantity permitted of the expressly permitted equivalent food additive (whichever is the lower),

may be used as a food additive in relation to that food type.

24. This is consistent with clause 3.2.6 of the document “Call for Submissions – Proposal P1025” dated 23 May 2013 which states:

The overarching policy principle is that it should be permissible to add substances to foods where:

(a) the purpose for adding the substance can be articulated clearly by the manufacturer (ie, the ‘stated purpose’); and

(b) the addition of the substance to food is safe for human consumption; and

- (c) *the substance is added in a quantity and a form that is consistent with delivering the stated purpose; and.*
- (d) *the addition of the substance is not likely to create a significant negative public health impact to the general population or sub population; and*
- (e) *the presence of the substance does not mislead the consumer as to the nutritional quality of the food.*

25. **Section 2.60(3):** There appears to be a typographical error in this provision which is also in the current Code. Section 2.60(3) states that a food must not consist of a mixture of a formulated caffeinated beverage and a non-alcoholic beverage. Given the definition of “formulated caffeinated beverage” means a “flavoured non-alcoholic beverage..”, DB submits that section 2.60(3) contains an error and intended to refer to “alcoholic beverages” instead of “non-alcoholic beverages”. This makes more sense in relation to the potential harm of combining heavily caffeinated beverages with alcohol (and the limits on the amount of caffeine that can be added to alcoholic beverages).

(3) *A food must not consist of a mixture of a formulated caffeinated beverage and ~~an non~~-alcoholic beverage.*

26. **Section 2.63(1):** Under the revised formulation of this provision, DB submits that limb 2.63(1)(b) is now redundant as it is covered by limbs (a) and (c). Section 2.63(3) would need a consequential amendment so that it only cross-refers to paragraph (1)(b).

(1) *For the labelling provisions, a statement of the alcohol content is required for:*
 (a) *a food that contains more than 1.15% alcohol by volume; or*
~~(b) an alcoholic beverage that contains 1.15% or less alcohol by volume; or~~
 (b) *a beverage that contains not less than 0.5% but not more than 1.15% alcohol by volume.*

(3) *For paragraph (1)(b) ~~or (c)~~, the alcohol content must be expressed using the words ‘CONTAINS NOT MORE THAN X% ALCOHOL BY VOLUME’.*

27. **Section 2.68(1):** DB submits that the revised layout of this Standard could lead to unintended consequences when combined with the Sale and Supply of Alcohol Act 2012 (SSAA). Section 58(1)(a) of the SSAA states that supermarkets are only licensed to sell “beer that complies with the appropriate New Zealand food standard for beer”. DB’s concern is that by listing Section 2.68(1)(a) and (b) separately it implies that beer with salt (for example) added during production, is not “beer” as defined but “beer with...”. This interpretation would mean that beer that has other sources of carbohydrate, sugar, salt, herbs or spices added during production would not be beer that is able to be sold in supermarkets. DB submits that this is not the intent of this Section (as demonstrated by the current Standard) and should be amended as below.

28. DB further submits that with the rapid explosion of beer styles now available in New Zealand, section 2.68(1) should refer to more than just ale, lager, pilsner, porter or stout to capture all internationally recognisable beer styles. This position is also consistent with the Overarching Objectives in regard to international consistency and competitiveness.

(1) *A food that is sold on the basis of a representation that it is ‘beer’, ‘ale’, ‘lager’, ‘pilsener’, ‘porter’, ~~or ‘stout’~~ or other internationally recognisable beer-styles, must consist of:*
 (a) ~~beer; or~~
 (b) ~~beer with the addition of any of the following if added during production:~~
 (i) ~~cereal products or other sources of carbohydrate;~~
 (ii) ~~sugar;~~
 (iii) ~~salt;~~

~~(iv) — herbs and spices.~~

(2) In this section:

beer means the product, characterised by the presence of hops or preparations of hops, prepared by the yeast fermentation of an aqueous extract of malted or unmalted cereals, or both, *with the addition of the following permitted during production:*

- (i) *cereal products or other sources of carbohydrate;*
- (ii) *sugar;*
- (iii) *salt;*
- (iv) *herbs and spices.*

- 29. DB further submits that honey and fruit and vegetable juices should be included as permissible ingredients to beer. The rationale for this is that those ingredients are permitted for fruit wines, of which beer could be considered a sub-class. If made as a fruit wine, beer could have honey and juices added (and still be permitted for sale in grocery). It seems an unintended consequence that the same is not permitted when made for sale as a beer.
- 30. **Sections 2.69 and 2.70:** DB supports the submission of the cider makers' and is a signatory to that submission (and the related Statement of Understanding) via its subsidiary, Redwood Cider Company.
- 31. **Schedule 2:** DB submits that ABV and %Alc/Vol should be added to this schedule as commonly used (both within New Zealand and internationally) units of measurement on labels for percentage of alcohol by volume.
- 32. **Schedule 3: Section 3.02:** DB submits that reference to international texts should include reference to the most current edition or version to avoid this section becoming quickly out of date.

S3.02 Substances with specifications in secondary sources

If there is no relevant specification under section S3.01, the substance must comply with one of the following (including as updated from time to time):

- 33. **Schedule 15:** See submission above concerning Section 1.123 relating to use of internationally permitted additives for same food types.
- 34. **Schedule 16: Section 16.01(2)(a):** As with Section 3.02, DB submits that reference to international texts or standards should include reference to the most current edition or version to avoid becoming quickly out of date. For instance the listing of the GRAS list of flavouring substances is already out of date with edition 26 now available.
 - (2) *For this Schedule and Schedule 15, the **flavouring substances** are any of the following:*
 - (a) *a substance that is listed in at least one of the following publications (including as updated from time to time):*
- 35. **Schedule 16: Section 16.01(3):** There is a typographical error in the header of the table. The first list is entitled "Additive permitted at GMP – numerical listing" whereas it should read "Additive permitted at GMP – alphabetical listing".

D. SUMMARY

36. DB believes that the Code and the proposed variations to the Code are appropriate and effective. However DB submits that the intent to modernise the Code (to assist interpretation and enforcement) could be improved by including the Overarching Objectives in the Code and allowing greater flexibility for manufacturers in line with these Overarching Objectives. There are also some minor typographical errors and unintended consequences from the re-draft of the Code as set-out in this submission.
37. If the nature of some of these submissions is deemed outside the scope of the current Proposal, DB would like them considered separately as applications to amend the Code on this basis.

Appendix A

