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SUBMISSION

Code Revision – Proposal P1025

The Brewers Association of Australia and New Zealand (Brewers Association) welcomes the invitation to provide comment on Proposal P1025.

Australian members of the Brewers Association comprise Carlton & United Breweries, Coopers and Lion Co that produce and distribute 95% of beer consumed in Australia. DB Breweries along with Lion Co similarly are the major brewers in the New Zealand market.

We seek to provide useful comment on the first draft of this Proposal based on our role in the industry and on our on-going commitment to ensuring that the integrity of beer as a traditional part of the Australian and New Zealand diet is maintained.

General Comments

While the Brewers Association understands that this revision of the Food Code is driven by the need for regulatory authorities to be able to successfully prosecute those who fail to adhere to the Food Standards Code, it is also aware as no doubt is Food Standards Australia and New Zealand that such major reviews can have unintended consequences.

We believe that while Proposal 1025 is not intended to alter the meaning of the Code but only to provide greater clarity, it has a number of unintended impacts on the food industry, partly because of the scale of the rewrite and partly because of the lack of discussion with industry. In regards to the former, while the rewrite may provide legal clarity, the Proposal is likely to make interpretation by those working in the food industry more difficult. The current Food Code is a lengthy document but the proposed Code is considerably longer. Significant parts of the food industry, including this Association, have found it necessary to employ consultants to provide a clearer understanding of the impact of the proposed Code on their activities. While it was not the intent of FSANZ to complicate the understanding of the Code by those who use it, this is clearly an outcome.

Specific Comments

The following are specific areas of concern where it is felt that there have been changes, intended or unintended, which impact on the brewing (and other) food industry.

- The change in the definition of ingredient now includes processing aids. As an example of how this may impact, filters using filter powder are used to clarify beer prior to packaging. If there is any powder bleed, this would be considered an “ingredient” under the new definition. There are other complications with this new definition including cross contamination and label claims.

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- The new definition of “use of an additive” and “additive” is more restrictive than the existing definitions and may constrain the use of materials that have been historically used in the industry such as clouding agents and natural colourants derived from the permitted ingredients of beer. These include extracts of coloured malt, which have minimal residual fermentability, or clouding agents derived from yeast or pectin. Under the proposed new definition, these ingredients could be considered food additives and require premarket approval before use.
- The reference to compositional requirements in 1.23 is confusing. *“The compositional requirement relating to ‘beer’ does not prevent the use of ‘ginger beer’ in relation to the soft drink, or ‘unhopped beer’ to describe beer made without the hops that would be required for it to be described as ‘beer’.”* It is hard to understand how an “unhopped” beer can be a “beer” when beer is characterised by hops as an ingredient. The product is not beer. This could create confusion particular in NZ where definitions in the Food Code control what can be sold in supermarkets. We suggest adding “” Labelling a food product “Unhopped Beer” does not make the product compliant with 2.68”.
- The removal of “or words to that effect” from clause 2 in 2.7.1 has the effect of requiring on the label “mL/100 g, mL/100 mL or as the percentage of alcohol by volume” rather than the more flexible approach presently in the Food Code. There is no reason that the industry should not be able to continue to use, for example “% vol/vol”?
- The restructuring of the legibility clause.(Standard 1.2.9 Clause 2) has separated the word “prominent” from other statements (1.50) so making the positional requirements for label statements less ambiguous. This probably removes any legal justification of putting addresses etc. on base of packs.
- In addition in the legibility clause the statement “be large enough so that it can be read easily” has effectively been taken from an Editorial Note in the present Code and been introduced as an additional legal requirement in the redrafted Code. This has the effect of strengthening the label legibility requirements.
- There are at least three issues which the redrafted Food Code could have clarified the meaning of the present Code:

➤ Standard 2.7.2 defines:

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.

Standard 1.2.3 requires:

Cereal-based beverages, where these foods contain no more than 2.5% m/m fat and less than 3% m/m protein, or less than 3% m/m protein only.	Statement to the effect that the product is not suitable as a complete milk replacement for children under the age of five years.
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- Beer is a cereal based beverage which contains no more than 2.5% fat and less than 3% protein and therefore there is a strong argument that there is mandatory requirement for every bottle or can of beer to be labeled “as not suitable as a complete milk replacement for children under the age of 5 years”. Clearly this is inappropriate and is ignored, but it is bad precedent for the Code and could be easily rectified with the appropriate additions of the words “Non-alcoholic”.



- Whether or not a glass of draught beer is required to be labelled needs to be clarified. Labelling is needed in the case of *“a sale of a food product that is not a retail sale, if there is a representation that the food product is suitable for sale from a retail outlet without any further processing, packaging or labelling”*. While draught beer is under C02 or N2 gas pressure and is chilled, it is not clear that these meet the definition of processing. The Association believes that there should be confirmation that the process of serving draught beer through a tap, at the express request of the customer, constitutes processing for the purposes of the revised Code and, consequently, that the sale of beer in a draught beer container, such as a keg, is a catering sale and not a retail sale.
- The status of “Light” alcohol claim is unclear. Technically there is an argument that “Light” is a “nutrition content claim” because alcohol is a biologically active substance and “light” is not a claim about “the presence or absence of alcohol” rather it is a quantitative claim. If “Light” is a nutritional content claim then it is prohibited by 1.2.7. Clearly this is not the intent of the regulation and this should be clarified in the revised Code.

Additional Costs

There will be costs to the industry if the redrafting goes ahead particularly in its present state which includes:

- Training of staff
- The change of the numbering of clauses and the removal of Standard numbers in the redrafted Food Code will require companies to change any controlled documents which refer to specific Standards or Clauses. In a single company this could number in the hundreds of documents.
- If there are no changes in the definitions mentioned above then:
 - Some label claims would need to be removed or shifted with the associated costs.
 - Some materials which are presently permitted as Ingredients may no longer be permitted if they are deemed to fall within the revised Additive definition, and would need to be replaced, with both development and material costs.

Conclusion

The Brewers Association strongly supports the principle of an unambiguous, enforceable Food Code because its members comply to their understanding of the Code and expect a “level playing field”.

The Brewers Association recognises that this review of the Code is a major task and, as such, it is likely to result in unintended changes, some of which can significantly impact on industry. Costs will be introduced, product manufacture made more difficult and innovation restricted.

We ask that FSANZ address our concerns and those of the food industry to ensure that as was intended there is no substantive change to the intent or application of the Code for established product categories, such as beer.

In particular the Association requests a Regulatory Impact Statement to ensure the overall benefit to the community for any changes. We would welcome the opportunity to discuss our concerns with you.

