DB Breweries Limited
1 Bairds Road
PO Box 22010, Otahuhu
New Zealand
DX EX10906
Tel (+64) 9-259 3000
Fax (+64) 9-259 3001

27 October 2019

Submission to Proposal 1050 – Pregnancy warning labels on alcoholic beverages

To:

Food Standards Australia New Zealand
PO Box 10559
Wellington 6143.

By Email: standards.management@foodstandards.gov.au

Name of submitter: DB Breweries Limited, 1 Bairds Road, Otahuhu 2026,
Corporate Affairs Director,

Introduction

1. This submission is made by DB Breweries Limited ("**DB"**) and its associated and subsidiary companies in response to *Call for submissions - Proposal 1050: Pregnancy warning labels on alcoholic beverages* ("**Consultation document**").

2. DB is a wholly owned subsidiary of HEINEKEN NV. DB's core manufacturing business is the production and wholesale sale of beer and cider – both locally and internationally. DB also produces a small number of ready to drink products (RTDs) and non-alcoholic beverages. All DB's manufactured products are produced from facilities located in Otahuhu, Mangatainoka, Nelson, Greymouth, Paraparaumu, Wellington and Timaru.

3. DB is a large part of the New Zealand brewing industry which contributes $2.3b across the beer value chain and a direct contribution of over $645m per annum to New Zealand's GDP. The brewing industry alone contributes around $619m in taxes each year (split between excise, HPA levy and GST on purchases).

4. DB, along with its parent company, is proud to have sustainability and responsibility as a core business pillar.

5. DB Breweries is committed to being a responsible producer and minimising the harms associated with alcohol. This is reflected through its responsible approach to product marketing; its leading portfolio of low and no alcohol beers and ciders (for example Heineken 0.0); its Enjoy Responsibly campaigns, including Moderate Drinkers Wanted, Sunrise Belongs to the Moderate Drinker and When you drive, never drink; and it's partnerships and sponsorships – such as the aforementioned Cheers! initiative and community based campaign Keys down, real talk.

6. DB supports specific efforts to reduce the incidence of Foetal Alcohol Spectrum Disorder ("**FASD**") through coordinated programmes and activities including those focused on changing

behaviours of women who currently drink while pregnant. We acknowledge that carrying appropriate messaging on alcohol beverage labelling and packaging is a component of these programmes.

7. As another example, in early 2018, DB, Pernod Ricard and Lion, created and funded the Cheers! Safer Pregnancy campaign with a message of 'no alcohol means no risk' which targeted 25-35 year old females. This campaign is ongoing and has, to date, reached more than 165,000 people.

8. Although DB voluntarily includes the 'don't drink while pregnant' pictogram on the labelling and packaging of all its alcoholic beverages, it is acknowledged that pregnancy warning labelling alone will do little to change behaviours and reduce drinking during pregnancy. This fact has been acknowledged by governments in a number of official documents including the consultation DRIS.

9. While we acknowledge the Ministry of Health's Foetal Alcohol Spectrum Disorder Action Plan, as well as the Health Promotion Agency's 'Don't know, don't drink' work as part the delivery of that Plan, we believe that the social change elements of this Plan could be better funded and delivered. We also note that the messaging in the 'Don't know, don't drink' campaign is not consistent with the messaging in Proposal P1050.

10. In relation to FASD, DB is committed to supporting targeted interventions that result in positive behavioural impact. Conversely, DB is cautious of any approach that seeks to implement mandatory measures based on dubious evidential foundations and where other options are more effective and manageable for the stakeholders involved.

A. Name and Contact Details

11. See above (page one).

B. Authorisation

12. DB's submission has been authorised by its Managing Director, Petrus Simons.

C. Executive Summary:

13. Evidence presented by IARD establishes that pregnancy warning labels may encourage discussion by pregnant women about drinking while pregnant (IARD, Health Warning Labels on Alcoholic Beverages, February 2019). However, the conclusion from the FSANZ report suggests that mandatory warnings in other countries have, in many cases, not been optimised for the attention they receive. In other words, pregnancy warning labels may play a role in stimulating discussions for pregnant women, but it is unclear what the most effective label is to achieve this.

14. DB voluntarily includes pregnancy warning labels on its alcohol labelling and packaging because we agree with the Government's position; we recommend that women should not consume alcohol while pregnant.

15. We appreciate, though, that limited evidence exists to support the role of pregnancy warning labels alone in affecting behaviour change. This is an important driver in why we invest in other behavioural change strategies.

16. Despite general support for pregnancy warning labels, we strongly oppose the implementation of the proposed mandatory warning labelling design elements set out in the Proposal. Our most significant concern is that the Proposal is very light on how the significant proposed changes will lead to the intended behavioural outcomes.

17. DB supports behavioural change in order to reduce the instances of FASD in New Zealand. As a result, it supports a position where pregnancy warning labelling continues to feature on alcoholic beverages to draw attention to the issue and where multi-disciplinary educational programmes are continued and enhanced.

18. Below we summarise DB's position on the Proposal generally, the specific design elements, the warning statement, and the consumer research.

19. This submission should also be read in conjunction with Brewers Association of New Zealand submission.

COMMENTS TO SPECIFIED SECTIONS OF P1050 CALL FOR SUBMISSIONS REPORT:

D. Literature review on the effectiveness of warning labels (section 3.1.1)

20. The literature review about the effectiveness of warning labels appears to involve a narrow assessment of available resources. It omits or gives little weight to an array of widely recognised research into the effectiveness of health warning labels, including the research recently summarised by IARD (International Alliance for Responsible Drinking).

21. The evidence in the literature review is weak, irrelevant and in some cases non-existent in support of the combination of all recommendations.

22. Most concerning, though, is that even when conflicting evidence was recognised a recommendation was nevertheless almost always adopted later in the Proposal without amendment reflecting the evidence.

23. By way of an example, the IARD research concluded that "among pregnant women overall, the impact of health warning labels on perceptions of risk has not been found to be significant". This is a conclusion replicated in the FSANZ review that "it is generally accepted that where alcohol warning labels have been introduced they have had limited impact on consumption behaviour."

24. Nevertheless the review appears to support an assumption that if one labelling design element (related to pregnancy warning labelling or otherwise) was found to have been useful in one context, then adding more must exponentially increase the benefit and consequentially lead to behavioural change.

25. There are examples throughout the literature review where recommendations are adopted despite there appearing to be contradictory evidence within the literature, such as:

    (a) "There were no studies in the review that experimentally tested the influence of signal words on attention";

(b) "Language such as *increases risk* was also considered more believable than language like *can cause*";

(c) "While some studies have explored the interactions between several design elements, none have done so comprehensively";

(d) "It is generally accepted that where alcohol warnings labels have been introduced they have had limited impact on behavioural change"

26. The Proposal risks the impression that the literature review was merely added to support FSANZ's reliance on the DRIS determination. We consider the literature review fails to critically assess all available research, in particular failing to give appropriate weight to evidence that is counter to the recommendations put forward in the Proposal. We are also disappointed that FSANZ chose to include non-peer reviewed material and is only seeking a peer review of the literature review during the consultation period; a peer review that will not be open for challenge by key stakeholders.

E. Consumer testing of warning statements (section 3.1.2)

27. While DB appreciates that FSANZ took on board the need to test warning statements with consumers, we are concerned that the approach taken and the methodology used was not as effective as it needed to be in order to accurately test the warning statements. In particular:

(a) Participants were only required to allocate meanings from a list of prompted choices in order to determine comprehension. On its own, this testing provides limited meaningful information about the unprompted understanding of these messages;

(b) Testing the proposed statements against criteria for believability, credibility and convincingness provides limited useful information. The fact that a statement is believable, credible or convincing is of limited benefit if that statement does not contribute to behavioural change;

(c) Despite setting out that only the warning statements would be tested, the testing misleadingly involved the use of proposed warning labels. These labels included the well-recognised pictogram which would have contributed to comprehension of the overall messaging of the warning statement.

(d) There was no assessment of whether, or to what extent, the warning statement and signal words added significant, or any, impact above and beyond the impact derived from use of the pictogram alone. There appears to be an assumption that adding a warning statement and other design elements will automatically be more impactful than a pictogram alone.

(e) An approach that includes a behavioural change assessment should also have been adopted. Comprehension is of course important, but if behavioural change is the outcome being assessed against the cost in the Cost Benefit

Analysis, then this is a relevant factor that deserved to be consumer tested in relation to the warning statement.

28. The fact that no individual elements of the proposed warning label were tested is also perplexing. The Proposal simply states that the use of a pictogram and warning statement and signal words were recommended. Relying on generally weak evidence and deference to DRIS advice, FSANZ dismissed the need to test separate elements of the proposed warning label.

29. As a result, and given the intention of the Proposal is to drive behavioural change, it is concerning that:

    (a) The pictogram was not tested, either alone or with the other proposed label elements (eg signal words, warning statements, blank space, text colour and size) to critically and fairly assess the potential impact of various combinations of these elements; and

    (b) Despite acknowledging that "no published studies have compared the effect of 'Pregnancy Warning' with other signal words on credibility or ability to attract attention" the signal words, including 'Pregnancy Warning' and 'Health Warning' were not tested against each other.

F. Pictogram (section 3.2.2.2)

30. DB currently voluntarily includes the 'don't drink while pregnant' pictogram on all labelling and packaging for its alcohol products (primary, secondary and tertiary).

31. Section 3.2.2.2 of the Proposal states that "Australian research concluded the above pictogram was understood to mean not to drink alcohol and overall was the 'strongest option' among those tested (Hall & Partners, 2018)." It also states that "there are moderate and increasing levels of awareness and understanding of the pictogram shown among women of childbearing age as well as men in the same age range".

32. Further, there is already evidence that the pictogram alone is effective in influencing behavioural change. It is disappointing that, despite this, the Proposal did not evaluate options around the use of the pictogram alone.

33. We appreciate that under the current voluntary arrangement there is the ability for alcohol manufacturers to use the pictogram in various sizes and colours. As this can naturally result in degrees of attention being afforded to the pictogram, DB's position has always been that it would be supportive of introducing parameters to increase consistency of use of the pictogram, both in terms of its size and the requirement to use contrasting colours.

G. Warning statement (section 3.2.2.3)

34. As already mentioned, there does not appear to be any conclusive evidence to support a "Warning Statement" increasing behavioural change over and above that which can be achieved through the use of the well-received and understood pictogram.

35. Not only is there limited apparent justification for a "Warning Statement" but the proposed statement is scientifically incorrect. It says that any amount of alcohol can be harmful to an unborn child. However, this statement does not reflect the current state of scientific evidence. Even the DRIS does not go so far as to make such a claim. Further, Government authorities cited in the DRIS take the precautionary position that it is not possible to determine a safe level of alcohol consumption for pregnant women and therefore women should not drink while pregnant.

36. The proposed "Warning Statement" therefore appears to contribute little towards behavioural change, is scientifically incorrect and is inconsistent with the Governmental position.

37. As a side note, it seems odd that the proposed warning statement (and in fact all tested statements) references "your baby" – a message that speaks directly to those who are pregnant or who are seeking to become pregnant – when the desire of the implementation of any labelling changes was also to inform the broader community. Use of the terminology simply creates necessary ambiguity about who the message is for.

H. Design labelling elements (section 3.2.2.4)

38. DB submits that a number of the design elements need reconsidering by FSANZ. As highlighted, the Proposal appears to support an assumption that, if one labelling design element was found to have been useful in one context, each design element that is added will result in an exponential increase in overall effectiveness. We see nothing in the Proposal to support this view.

Signal Words:

39. There were no studies identified in the FSANZ Literature Review that tested this precise combination of words specifically in the context of pregnancy warning labels. Rather, the choice of words is based on an extrapolation by FSANZ from general studies. However, beyond establishing in broad terms that signal words can help attract attention, the actual findings of the general studies are equivocal and do not appear to provide a solid evidential foundation for this choice of words.

40. Similarly, there is nothing in the research that clearly justifies the use of capitalisation, but rather there is a warning that in some instances capitalised wording is harder to read than sentence case.

41. As for the use of colour for the signal words, reliance appears to be placed on what is essentially a hypothesis in Wilkinson et al. (2009). It is also important to note that the consumer testing carried out by FSANZ did not test the use of colours.

42. Despite the proposed warning elements being designed for very specific primary target audience, namely pregnant women, using the phrase "Health Warning" does nothing to educate about the specific nature of the warning. In other words, despite the pictogram clearly relating to pregnant females, the signal wording, somewhat confusingly, more generally references everyone's health.

43. If any wording was to be used, "Pregnancy Warning" gives a much more realistic and appropriate picture of what this warning is about and who it is primarily targeting. Put another way, if a person was only to read the signal wording they would appreciate the intention of the wording.

Warning Label Size:

44. DB submits that the 8mm diameter pictogram proposed for containers less than or equal to 200ml should at least be extended to apply to containers less than or equal to 330ml.

45. This is for a number of reasons:

(a) **Size of label "real estate" and clutter –**A large amount of mandatory information is already required to be included on the label of a 330ml bottle (e.g. Standard Drinks, Best Before date, Volume, Alcohol Percentage, Contact Details) as well as important information which is included voluntarily (e.g. the Recycling message, Don't Drink and Drive message, Moderation message, Ingredients, and Nutrition Information Panels). It is likely that some of this, which is arguably of equal or even greater importance and relevance to the general population, would need to be deprioritised or removed completely in order to make space for the current Proposal

(b) **Hierarchy of messaging –** This suggests that the messages around drinking and driving, moderation and standard drinks, for example, are of less importance to the general population than a pregnancy warning which DB in no way supports. There are a number of potential issues associated with alcohol consumption and each is important; importance that should be reflected on labelling.

(c) **Packaging Formats:** The majority of bottles sold in volumes of 330ml or less are sold in secondary (and sometimes tertiary) packaging which, on the basis of this Proposal, will carry fully pregnancy warning labelling.

46. Expanding on paragraph 47(b), if the proposed pregnancy label was applied to a 330ml back label (say a back label that is 70mm by 50mm), it will take up approximately 7% of the back label. Currently, the voluntary pictogram is represented in relative sizing to other mandatory and voluntary messages and only uses approximately 1-2% of the total back label space. It is concerning that the Proposal is silent as to how the proposed pregnancy warning label sizing requirements will impact other important messages legislated to be stated on alcoholic products.

47. DB supports the inclusion of a pictogram on primary labelling for bottles produced in volumes of 330ml or less. In terms of sizing, DB strongly recommends that FSANZ reconsider how the Proposal would disproportionately promote a risk to pregnant woman over and above any other messaging required on alcohol labelling that has the potential to impact the community more generally.

48. If wording was found to influence behavioural change, DB would be supportive of the inclusion of a larger warning message on all secondary and tertiary packaging (outer

packaging) and on primary labelling for bottles produced in volumes of more than 330ml.

Colour and Contrast

49. The normal approach taken in the Food Standards Code towards labelling has been to balance flexibility with the need to communicate information to the consumer. This is embodied in the General Legibility Requirements set out in Standard 1.2.1-24 as follows:

If this Code requires a word, statement, expression or design to be contained, written or set out on a label—any words must be in English and any word, statement, expression or design must, wherever occurring:

(a) be legible; and

(b) be prominent so as to contrast distinctly with the background of the label.

50. The rigid proposition of a label coloured black, white and red when used in all circumstances will not align with this Standard.

51. Concerningly, the Proposal fails to mention why it was decided that a pregnancy warning message is deserved of more visual prominence than, say, the pictogram recommending that people do not drink and drive.

52. It was noted that the proposal contains a reference to the red colour (Pantone 485) being the same colour as the Standard Drinks lock up. However, this colouration is not mandated and most simple use the lock up in black and white or in other colours that contrast with the colours present on the labelling or packaging in question. In other words, in line with Standard 1.2.1-24.

53. Partly because DB is concerned that the rigid colour requirements may, in some cases lead to less attention on the proposed warning message, and partly because of the significant cost implications of requiring the use of up to three additional colours on labelling and packaging, DB submits that that the mandate requires contrasting colour be used for optimal attention and not a specific set of colours as per the proposal.

I. Summary of proposed pregnancy warning label design (section 3.2.2.5)

54. In light of the above, DB does not support the Proposal. Our greatest concerns relate to the proposed use of the following label design elements:

i. The use of the signal words “Health Warning”, rather than something more accurate like “Pregnancy Warning”;

ii. The inclusion of a warning statement which only appears to detract from the clarity of message inferred by the general public from the pictogram and is factually incorrect;

iii. The fact that full pregnancy warning mark (i.e. the “boxed” mark) is proposed for labelling of all products that are over 200ml; a volume exclusion that

captures next to no products. It is also concerning that the exclusion will essentially only cover spirits and liqueur products – i.e. those with higher percentages of alcohol by volume;

iv. The colour requirement dictating three colours be used, rather than aligning with the central "contrasting colours" provision already contained in the Code.

J. Beverages to carry the pregnancy warning label (section 3.2.3)

55. DB supports the proposal that all beverages over 1.15% ABV should carry some form of pregnancy warning labelling.

K. Application to different types of sales (section 3.2.4)

56. DB supports the proposed approach to different types of sales.

L. Application to different types of packages (section 3.2.5)

57. DB notes that the container size exclusion range has been increased from 50ml to 200ml however highlights that the volume of alcoholic beverages between 50ml and 200ml is negligible.

58. DB submits that the statement exclusion for containers up to and including 200ml volumes should be extended at least up to 330ml volumes. The vast majority of these products are sold in secondary, and sometimes tertiary, packaging (referred to in consultation document as 'outer packaging') which would contain the full pregnancy warning label including both the pictogram and statement.

M. Consideration of costs and benefits (section 3.4.1.1)

59. DB is pleased to note that the cost of labelling changes has been revised in the updated cost benefit analysis document and agrees that the 'Worst Case' costs (A$7,575) are a more accurate reflection of the average cost of a one off, like for like, change to a label for a large producer such as DB.

60. DB notes, however, that these costs do not include administration, record keeping and FTE hours involved, all of which are variable depending on the details of the label change. Nor do they include the cost of changes to outer packaging (secondary and tertiary packaging).

61. Further, we would expect relabelling to be more onerous for smaller producers than larger ones, as the fixed costs will be proportionately larger against their volume production. DB submits that some attempt to differentiate costs between small, medium and high volume producers would be informative of the distribution of potential impacts of compliance costs.

62. The FSANZ Act (S.59 (2)(a) requires FSANZ to have regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, government or industry that would arise from the proposed measure. DB

has a number of concerns with the interpretation of this clause as well as with the cost benefit analysis, these are detailed further below:

(a) **Attention over behavioural change**: As previously discussed, there is little evidence to show the positive impact of warning labels generally on behaviour change. In paragraph 3.1.1.5 there is simply an assertion that more design factors should lead to more attention (note: attention not behaviour change) and that "it is generally accepted that where alcohol warnings labels have been introduced they have had limited impact on consumption behaviour." While it appears, through earlier commentary in the consultation document, that FSANZ agrees that a label alone will not change behaviour, the cost benefit analysis compares the costs of labelling changes with 'beneficial outcomes' or FASD cases avoided; which would be an outcome of behaviour change. . DB submits that the cost benefit analysis should compare the cost of labelling and packaging changes with increased attention to labels.

(b) **"One off" costs**: As mentioned above, the consultation document has assumed that the only cost is the cost to producers in terms of swapping out old labels for new ones. It does not contemplate that in some cases products will need back labels (where previously there was none), larger labels in order to fit all mandatories or three new colours (black, white and red). These changes will not be one off costs but in fact ongoing going costs to the producer for as long as the product is produced.

(c) **Monetary versus other costs:** In any event, the FSANZ Act requires FSANZ to have regard to "costs" generally. These are not just monetary costs. The proposed changes elevate the pregnancy warning labelling above all other warnings which will have a consequential impact on society as both moderation and drink driving messaging in particular, are symbolically relegated to less of a concern in the eyes of the Government.

(d) **Compliance Costs:** Given the complexity of the proposed Food Code variations, it is interesting to see that the Proposal does not mention compliance costs in its analysis. Smaller producers in particular will likely find the interpretation of matrix of requirements to be challenging. The Ministry for Primary Industries will then be faced with significant costs to ensure compliance.

63. Additionally, the Brewer's Association of New Zealand (of which DB is a member) sought an external review from NZIER on the Cost Benefit Analysis (available as an attachment to the Brewer's Association submission. This drew a number of conclusions including that:

(a) A break-even analysis can be used to identify how many beneficial outcomes are required to match the costs of the regulation. The FSANZ results show (and DB agrees) that low percentage reductions in FASD births would suffice, but it does not answer the question of how effective the labelling is at changing behaviour that would reduce alcohol exposure of babies before birth.

(b) The low break-even result of the FSANZ analysis is partly a function of the accumulation of benefits over time and the long 20 year time-frame, which requires fewer cases of avoided FASD and/or lower values attached to each avoided case, than would occur with a shorter timeframe. As the effect of new information campaigns, such as label changes, tends to decline over time, so too would the avoidance of new FASD cases as a result of the labelling changes.

(c) Twenty years is a long period over which to attribute improved behaviour to a single label change. As FSANZ has used a 10 year time-frame in past assessments of labelling proposals (e.g. on energy labelling of packaged alcohol in 2015); such a shorter time-frame could be more appropriate to apply to P1050.

64. Given the above points and considerations, DB questions the usefulness of the Cost Benefit Analysis in providing an accurate indication of the true costs (both indirect and direct) of the proposed changes to labelling.

65. Further, while DB agrees that even low percentage reductions in FASD would be a positive result from any labelling changes, the fact remains that the Cost Benefit Analysis provides no additional useful data to establish a link between the effectiveness of the proposed suite of labelling requirements and behaviour change.

N. Transitional arrangements (section 4.1)

66. We raise again with FSANZ the implementation issue related to timing and transition. FSANZ is already aware that other label changes are being considered which impact alcohol beverages.

67. We urge FSANZ to recommend as forcefully as possible that changes to labels relating to pregnancy, sugar, carbohydrate content and nutrition panel information be managed in such a way so as to necessitate only one coherent label change for industry.

68. On the transitional arrangements specifically proposed in P1050, DB submits that a two year transitional timeline would only be appropriate under either of the following scenarios:

(a) The transition period commences when ALL current labelling consultations (added sugar, energy, and carbohydrate and sugar content claims) are consulted on and gazetted; OR

(b) In the event that additional requirements for changes to labels occur within the proposed two year transitional period for pregnancy warning labels, the transition period is extended for all changes to align with the transition period for the new label changes. For example, should energy labelling on alcohol products be mandated with a two year transitional period and should this occur one year into two year pregnancy warning labelling transition period, the requirement for PWL should then be extended to align with the latter period.

69. Under both the above scenarios, this will enable industry to manage changes with a greater level of certainty as well as minimise what will already be significant costs.

70. In any event, DB also suggests FSANZ coordinate its planned label changes with the Ministry for the Environment who is currently consulting on product stewardship initiatives that, if gazetted, are likely to apply to packaging used by alcohol manufacturers. The outcome of this will also most likely require a label change for alcohol beverages and is currently timed for 2021.

O. Draft variation to the Australia New Zealand Food Standards Code (Attachment A)

71. As set out above, we do not consider that there is sufficient justification for the recommendations set out in the Proposal. It follows DB does not support including such recommendations in Food Code by way of a variation. Regardless of this position, it would be remiss not to comment on the concerns that we have with the drafting of the proposed variations.

72. At an initial level we note that that draft provisions appear overly complex, are not user friendly, contain duplications and unnecessary cross-references. It is also evident that the proposed provisions lack the necessary clarity that the Food Code strives to attain. The proposed provisions are unduly complicated which will almost certainly result in confusion in the marketplace. Without limiting our submission that any proposed Food Code revisions should be re-assessed from scratch, our other initial comments are set out below for completeness.

Name

This instrument is the *Food Standards (Proposal P1050 – Pregnancy warning labels on alcoholic beverages) Variation*.

2 Variation to standards in the *Australia New Zealand Food Standards Code*

The Schedule varies Standards in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

4 Effect of the variations made by this instrument

(1) Section 1.1.1—9 of Standard 1.1.1 does not apply to the variations made by this instrument.

(2) During the transition period, a food product may be sold if the product complies with one of the following:

(a) the Code as in force without the variations made by this instrument; or

(b) the Code as amended by the variations made by this instrument.

(3) A food product that was packaged and labelled before the end of the transition period may be sold after the transition period if the product complies with one of the following:

(a) the Code as in force without the variations made by this instrument; or

(b) the Code as amended by the variations made by this instrument.

(4) For the purposes of this clause, the **transition period** means the period commencing on the variation's date of commencement and ending 24 months after the date of commencement.

[**DB Comment**: Comments set out paragraphs 66 to 70]

Schedule

Standard 1.1.2

[1] **Standard 1.1.2** is varied by

[1.1] omitting the definition of individual portion pack from subsection 1.1.2—2(3), substituting

individual portion pack—see subsection 1.2.1—6(3) and subsection 2.7.1—9(5).

[1.2] inserting in subsection 1.1.2—2(3) in alphabetical order

pregnancy warning label means either the pregnancy warning pictogram or the pregnancy warning mark.

pregnancy warning pictogram means the following pictogram:

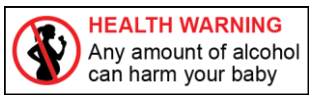
pregnancy warning mark means the following image comprising

(a) the pictogram,

(b) the signal words “Health Warning” and

(c) the statement “Any amount of alcohol can harm your baby”,

all within a border.



prescribed alcoholic beverage means a beverage that has more than 1.15% alcohol by volume.

Standard 1.2.1

[2] **Standard 1.2.1** is varied by

[2.1] by omitting the Note to subsection 1.2.1—6(1), substituting

Note 1 See section 1.2.1—9 for information requirements for food for sale that does not need to bear a label.

Note 2 See Division 4 of Standard 2.7.1 for the requirements relating to a *pregnancy warning label.

[2.2] by omitting the Note to subsection 1.2.1—6(2), substituting

Note 1 See also section 1.2.1—24

Note 2 See Division 4 of Standard 2.7.1 for the requirements relating to a *pregnancy warning label.

[2.3] by inserting after subsection 1.2.1—6(3)

Note See Division 4 of Standard 2.7.1 for the requirements relating to a *pregnancy warning label.

[2.4] by inserting after subsection 1.2.1—12(1)

Note See Division 4 of Standard 2.7.1 for the requirements relating to a *pregnancy warning label.

Standard 2.7.1

[3] **Standard 2.7.1** is varied by

[3.1] inserting after Note 2 to Standard 2.7.1

Division 1 Preliminary

[3.2] omitting the Note to section 2.7.1—2, substituting

Note In this Code (see section 1.1.2—2):

caterer means a person, establishment or institution (for example, a catering establishment, a restaurant, a canteen, a school, or a hospital) which handles or offers food for immediate consumption.

pregnancy warning label means either the pregnancy warning pictogram or the pregnancy warning mark.

pregnancy warning pictogram means the following pictogram:

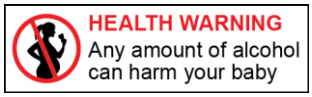
pregnancy warning mark means the following image comprising

(a) the pictogram,

(b) the signal words "Health Warning" and

(c) the statement "Any amount of alcohol can harm your baby",

all within a border.



prescribed alcoholic beverage means a beverage that has more than 1.15% alcohol by volume.

standard drink, for a beverage containing alcohol, means the amount that contains 10 grams of ethanol when measured at 20°C.

[3.3] inserting after section 2.7.1—2

Division 2 Requisite statements

[3.4] inserting after section 2.7.1—4

Division 3 Restricted representations

[3.5] inserting after section 2.7.1—7

Division 4 Pregnancy warning labels

2.7.1—8 Requirement for a pregnancy warning label

(1) The package of a *prescribed alcoholic beverage must display a *pregnancy warning label if the beverage:

(a) is for retail sale; or

(b) is sold to a *caterer; or

[DB Comment: It is concerning that, under this definition, producers will have to label all products that are sold to caterers with pregnancy labelling. It appears to be an unintended oversight to require

producers to add the warning to kegs sold to caterers, for example, that are not intended for direct retail sale to consumers.]

(c) is sold as suitable for retail sale without any further processing, packaging or labelling.

(2) Subsection (1) does not apply to a *prescribed alcoholic beverage that:

(a) is sold for retail sale; and

(b) is packaged in the presence of the purchaser.

2.7.1—9 Requirements for pregnancy warning labels on layers of packaging

(1) If subsection 2.7.1—8(1) requires a *pregnancy warning label to be displayed on a package, the pregnancy warning label must be:

(a) on the package; or

(b) if there is more than 1 layer of packaging—on each layer of packaging.

[DB Comment: It is concerning that, under this definition, producers may have to label non-consumer facing packaging such as "shipper" packaging. This type of packaging is used for SKUs such as 500ml bottles that sold individually. This provision should be limited to packaging that is "sold as suitable for retail sale" – as with proposed standard 2.7.1-8(1)(c).]

(2) Subsection (1) does not require a *pregnancy warning label to be located on outer packaging if a pregnancy warning label on the inner packaging is clearly discernible through the outer packaging.

[DB Comment: This potentially causes ambiguity with respect to packs of six alcoholic beverages which are sold in cluster or basket pack formats. With these pack formats it is possible to see the warning labels featured on the beverage labelling but it is unclear whether this provision intends to capture these pack formats.]

(3) Subsection (1) does not require a *pregnancy warning label to be located on the bladder within a box of a *prescribed alcoholic beverage.

(4) Subsection (1) does not require a *pregnancy warning label to be located on outer package of a prescribed alcoholic beverage that is sold to a *caterer if the beverage has more than 1 layer of packaging.

(5) If a package of a *prescribed alcoholic beverage required by subsection 2.7.1—8(1) to display a *pregnancy warning label contains individual packages for servings that are:

(a) intended to be used separately (***individual portion packs***); and

(b) not designed for individual sale

then a pregnancy warning label must also be displayed on each individual portion pack.

(6) To avoid doubt, subsection (1) does not require a *pregnancy warning label to be located on the package of a *prescribed alcoholic beverage that contains individual portion packs if a pregnancy warning label on an individual portion pack is clearly discernible through that package.

[DB Comment: As a general interpretation point, we advocate for clear drafting in the first instance that does not require a "for the avoidance of doubt" provision. We advocate for a clear clause 2.7.1—9(2).]

2.7.1—10 Compliance with a requirement for a pregnancy warning label

(1) If a provision of this Division requires a *pregnancy warning label to be displayed on a package or layer of packaging listed in Column 1 of the following table, the pregnancy warning label that must be displayed on that package or packaging is the pregnancy warning label listed in Column 2 of that table.

The pregnancy warning label to be displayed

Column 1	***Column 2***
Package or packaging	*Pregnancy warning label*
A package (including each layer of packaging) of a *prescribed alcoholic beverage with a volume of ≤ 200 ml.	The *pregnancy warning pictogram.
A package (including each layer of packaging) of a prescribed alcoholic beverage with a volume of >200 ml.	The *pregnancy warning mark.
1. A package (including each layer of packaging) of a prescribed alcoholic beverage that contains individual portion packs. 2. To avoid doubt, a reference to a package or packaging in item 1 does not include an individual portion pack.	The pregnancy warning mark.

[DB Comment: Comments set out paragraphs **Error! Reference source not found. to Error! Reference source not found..]**

(2) If subsection 2.7.1—9(5) requires a *pregnancy warning label to be displayed on an *individual portion pack listed in Column 1 of the following table, the pregnancy warning label that must be displayed on that individual portion pack is the pregnancy warning label listed in Column 2 of that table.

The pregnancy warning label to be displayed

Column 1	***Column 2***
Individual Portion Pack	*Pregnancy warning label*
An *individual portion pack with a volume of ≤ 200 ml.	The *pregnancy warning pictogram.
An individual portion pack with a volume of > 200 ml.	The *pregnancy warning mark.

(3) If a provision of this Division requires a *pregnancy warning label to be displayed, the pregnancy warning label must be displayed as a whole and without modification.

2.7.1—11 Legibility requirements for pregnancy warning labels

(1) If a provision of this Division requires a *pregnancy warning label to be displayed on a package or layer of packaging listed in Column 1 of the following table, the pregnancy warning label must comply with any corresponding legibility requirements listed in Columns 2, 3 and 4 of that table.

Legibility requirements for pregnancy warning labels

Column 1	*Column 2*	*Column 3*	*Column 4*
Package or packaging	*Size of the *pregnancy warning pictogram or the pictogram of a *pregnancy warning mark*	*Size of signal words and statement of a pregnancy warning mark*	*Size of clear space outside a pregnancy warning mark*
A package (including each layer of packaging) of a *prescribed alcoholic beverage with a volume of ≤ 200 ml.	At least 8 mm diameter	Not applicable	Not applicable
A package (including each layer of packaging other than the outer package) of a prescribed alcoholic beverage with a volume of > 200 ml and ≤ 800 ml.	At least 6 mm diameter	At least 6 point (2.1 mm)	At least 3 mm
A package (including each layer of packaging other than the outer package) of a prescribed alcoholic beverage with a volume of > 800 ml.	At least 9 mm diameter	At least 8 point (2.8 mm)	At least 3 mm
An outer package (other than the outer package of a prescribed alcoholic beverage with a volume of ≤ 200 ml).	At least 11 mm diameter	At least 10 point (3.5 mm)	At least 3 mm
1. A package (including each layer of packaging) of a prescribed alcoholic beverage that contains individual portion packs. 2. To avoid doubt, a reference to a package or packaging in item 1 does not include an individual portion pack.	At least 11 mm diameter	At least 10 point (3.5 mm)	At least 3 mm

[DB Comment: Such a matrix of requirements is unseen in other areas of the Food Code. It is overly complex and will cause significant administrative costs seeking compliance with the hundreds of producers of alcoholic beverages in New Zealand. These compliance costs have not been factored into the Proposal.]

(2) If subsection 2.7.1—9(5) requires a *pregnancy warning label to be displayed on an *individual portion pack listed in Column 1 of the following table, the pregnancy warning label must comply with any corresponding legibility requirements listed in Columns 2, 3 and 4 of that table.

Legibility requirements for pregnancy warning labels

Column 1	*Column 2*	*Column 3*	*Column 4*
Individual Portion Pack	*Size of the *pregnancy warning pictogram or the pictogram of a *pregnancy warning mark*	*Size of signal words and statement of a pregnancy warning mark*	*Size of clear space outside a pregnancy warning mark*
An *individual portion pack with a volume of ≤ 200 ml.	At least 8 mm diameter	Not applicable	Not applicable
An individual portion pack with a volume of > 200 ml and ≤ 800 ml.	At least 6 mm diameter	At least 6 point (2.1 mm)	At least 3 mm
An individual portion pack with a volume of > 800 ml.	At least 9 mm diameter	At least 8 point (2.8 mm)	At least 3 mm

2.7.1—12 Required form for pregnancy warning labels

(1) The circle and strikethrough of:

(a) the *pregnancy warning pictogram; and
(b) the pictogram of a *pregnancy warning mark;

must be printed in the colour known as Pantone 485.

(2) The silhouette of a pregnant woman on:

(a) the *pregnancy warning pictogram; and
(b) the pictogram of a *pregnancy warning mark;

must be printed in the colour black.

(3) The background of:

(a) the *pregnancy warning pictogram; and
(b) the pictogram of a *pregnancy warning mark;

must be printed in the colour white.

(4) The signal words of a *pregnancy warning mark must be printed:

(a) in the colour known as Pantone 485; and
(b) in bold font; and
(c) in a sans-serif typeface; and
(d) in capital letters; and
(e) in English.

(5) The statement of a *pregnancy warning mark must be printed:

(a) in the colour black; and
(b) in a sans-serif typeface; and
(c) in sentence case; and
(d) in English.

(6) A *pregnancy warning mark must be printed with:

(a) the border in the colour black; and
(b) the background within the border in the colour white.

P. Other comments (within the scope of P1050 – see section 1.5)

DB has no further comments.