

Response ID ANON-JN9Z-F8FU-4

Submitted to P1062 - Defining added sugars for claims
Submitted on 2023-10-05 20:50:19

Complete your submission

Your details

What is your name?

Contact person:

[REDACTED]

What is your email address?

Email address:

[REDACTED]

What is your telephone number?

Telephone:

[REDACTED]

Which one of the following groups do you most affiliate with?

Food industry

If other, please specify:

What is the name of your organisation?

Please write N/A if this does not apply.:

Wild Polly Brewing Co

What is your position title?

Please write N/A if this does not apply.:

[REDACTED]

Are you the contact person for your organisation?

Yes

If you are not the contact person for your organisation, please provide an alternative contact and details. If not applicable, please leave blank.

Contact person's name:

Email address:

Telephone:

Position title:

Have you read the P1062 – Defining added sugars for claims call for submission paper?

Yes

Confidential information

All submissions will be published, including redacted versions of confidential submissions. We will not publish material that we accept as confidential. Does your submission contain confidential information?

No. My submission does not contain confidential information.

Proposed changes to 'no added sugar(s)' claim conditions

1 FSANZ proposes to continue to set 'no added sugar(s)' claim conditions based on the addition of ingredients to foods (see section 5.2 of the Call for submissions document).

Do you have any comments on this approach?:

Wild Polly Brewing Co accepts and agrees that there should be clarity as to whether a food or beverage manufacturer can make a claim of 'no added sugars.'

We believe it should also be considered when a beer is made predominantly from sugar syrups, rather than sugar created through enzymatic action by converting starch released by grains during mashing, should not be considered beer, and that where beers made using sugars that are not grain based should declare that, or not be called beer.

However, the basis for that regulation is to ensure accurate and clear information to consumers to make informed decisions. If the definition of Added Sugars applies to beer, any definition of 'adding' that does not also explicitly address the removal of sugar (through conversion to alcohol during fermentation) will confuse rather than support consumers to make informed choices and a level playing field for manufacturers.

2 FSNZ proposes a food displaying a 'no added sugar(s)' claim must not contain an 'added sugars' as an added ingredient including an ingredient of a compound ingredient. FSNZ proposes defining 'added sugars' for this claim condition (see section 5.2.1.4 of the Call for submissions document).

Do you have any comments on this approach or the defined added sugars (see below)?:

The definition is incomplete and inadequate as it fails to explicitly address the situation in which the production method includes fermentation changing sugars to alcohol. This would result in a lack of clarity for industry, government and create further confusion for consumers about the energy make-up of beer.

Either beer should be excluded from any definition and conditions associated with Added Sugars or the definition needs to explicitly address the issue of fermentation.

It does not clearly describe sugars released during the brewing mashing process, whether using malted grain (predominantly used by brewers) or raw grain that is increasingly used by some brewers such as Wild Polly brewing. It is not clear whether sugars released from raw grains is the same as sugar and sugar syrups derived from plants as these can be completely different types of sugar. For instance sugar derived from raw millet grain during brewery mashing and converted to sugar via enzymatic process is not the same as sugar derived from other plant based sugars and syrups, which can have an entirely different impact on beer.

3 FSNZ proposes 'no added sugar(s)' and 'unsweetened' claims are not permitted on foods containing the hexose monosaccharide D-tagatose, as an ingredient, consistent with existing claim conditions in the Code. As D-tagatose is a hexose monosaccharide, it is captured in the definition of 'added sugars' (see section 5.2.2 of the Call for submissions document).

Do you have any comments on this approach?:

No. This is unlikely to impact the production of beer.

4 FSNZ proposes foods containing low energy sugars (mono- and disaccharides), as ingredients, listed in subsection S11—2(3) of Schedule 11 not be permitted to display 'unsweetened' claims (see section 5.2.2 of the Call for submissions document).

Do you have any comments on this approach?:

No. This is unlikely to impact the production of beer.

5 FSNZ proposes a food displaying a 'no added sugar(s)' claim must not contain the fruit products listed below as an added ingredient (including as an ingredient of a compound ingredient). FSNZ proposes to exempt fruit products which are lemon or lime fruit (see section 5.3 of the Call for submissions document).

Do you have any comments on this approach or the fruit products listed?:

Some of these fruit products are used in the production of beer, overwhelmingly prior to any fermentation.

The definition of Added Sugars is incomplete and inadequate as it fails to explicitly address the situation in which the production method includes fermentation changing sugars to alcohol. This would result in a lack of clarity for industry, government and create further confusion for consumers about the energy make-up of beer.

Either beer should be excluded from any definition and conditions associated with Added Sugars or the definition needs to explicitly address where the issue of fermentation.

6 FSNZ proposes a fruit product which is the food for sale (e.g. fruit juice) be permitted to make a 'no added sugar(s)' claim. This includes when the food is sold as a singular fruit (e.g. apple juice) or a blend of different fruits (e.g. blend of fruit juices), providing the food contains no 'added sugars' or other products identified in claim conditions, as added ingredients. A blend or combination of different fruit products (e.g. fruit juice and fruit purée) will not be permitted to make the claim. FSNZ also proposes to clarify that fruit does not include legumes, fungi, herbs, nuts and spices for the purpose of the claim conditions (see section 5.3 of the Call for submissions document).

Do you have any comments on this approach?:

Beer is a product made with a number of contributing ingredients. This does not relate to beer and we have no comment.

7 FSNZ proposes 'no added sugar(s)' claims are not permitted when the concentration of sugars in the food is increased from the hydrolysis of carbohydrates during food manufacture, except when the sugars concentration in cereal-based plant milks made using hydrolysis is $\leq 1.5\%$ (and the product otherwise meets claim conditions) (see section 5.3.2 of the Calls for submissions document).

Do you have any comments on this approach?:

The goal of these legislative changes is to create consistency for consumers. Provided something meets all of the definitions and conditions then claims should be allowed.

8 FSANZ proposes to maintain the existing condition that a food displaying an 'unsweetened' claim must meet the conditions for a 'no added sugar(s)' claim, noting that the amended 'no added sugar(s)' claim conditions will apply (see section 5.4 of the Call for submissions document).

Do you have any comments on this approach?:

If the definition of Added Sugars addresses all of the issues noted in this paper, we have no issues with the consistency of applicability to the term 'unsweetened'.

9 FSANZ proposes to maintain the existing condition for intense sweeteners, sorbitol, mannitol, glycerol, xylitol, isomalt, maltitol syrup or lactitol. FSANZ proposes a food containing low energy sugars (mono- and disaccharides) listed in subsection S11—2(3) of schedule 11, as an ingredient (including an ingredient of a compound ingredient), not be permitted to display an 'unsweetened' claim (see section 5.4 of the Call for submissions document).

Do you have any comments on this approach?:

No. We have no comments on this issue.

10 FSANZ is proposing a two-year transition period to allow producers, manufacturers and importers time to make any required labelling changes for products carrying 'no added sugar(s)' or 'unsweetened' claims to comply with the new claim conditions (see section 7 of the Call for submissions document).

Do you have any comments on this approach?:

As FSANZ have identified that the requirements for 'Added Sugar' claims will be aligned with the resulting decision around 'sugar and carbohydrate claims' which is due to be determined in June 2024 any implementation times should be aligned.

As noted above, alignment of transition timelines across all of the ongoing labelling consultations affecting beer is one mechanism that will reduce the cost challenges from small brewers.

Data and evidence

11 Do you have any data or are you aware of published data on the number of products with 'no added sugar(s)' or 'unsweetened' claims in Australia and/or New Zealand (see data used for this proposal at section 3.1 of the Call for submissions document)?

No

If yes, please upload your file here.:

No file uploaded

12 Do you have any evidence or are you aware of published literature on consumer understanding of and responses to 'no added sugar(s)' or 'unsweetened' claims on food products (see evidence used for this proposal at section 3.2 of the Call for submissions report and Supporting Document 1)?

No

If yes, please upload your file here.:

No file uploaded

13 Do you have any data or know of any published data on the costs of labelling changes per stock keeping unit or package type (see data used for this proposal at Attachment E to the Call for submissions document)?

No

If yes, please upload your file here:

No file uploaded

Additional comments

Comments and other input

Additional comments and input:

Wild Polly Brewing Co refers FSANZ to the calculations of labelling costs set out by FSANZ in Attachment D to P1049 – Carbohydrate and Sugar Claims which better addresses labelling costs for beer.

On an assessment of total beers in the market 7440 the cost to the broader brewing industry for label changes could be as much as \$120, 654, 480. This highlights the imperative of ensuring any transition period or relabelling is timed with other regulated changes such as those that may arise from Energy

Labelling Consultation and Carbohydrate and Sugar Claims.

As noted in the FSANZ Modelling that supports the dollar amounts presented in Attachment D to P1049 – Carbohydrate and Sugar Claims, Table 1 – actual re-labelling costs vary greatly including:

- whether the change required is simply removal of text or other information or the addition of substantive impact which does require changes to both label layout and label shape/size.
- The transition time available – varying from very high costs at less than 12 months and moderated costs between 3-5 years of transition.

It should be noted that actual relabelling costs can greatly vary according to individual circumstances. Relabelling certain SKUs may cost notably less or notably more than these averages. The smaller the brewer and SKU run, the higher the cost. For a small brewery like Wild Polly Brewery we have absolutely NO economy of scale and are hit hardest with any changes that requires changes to SKUs and brewing runs.

Please upload additional files here.:

P1062 - FINAL Defining added sugars for claims - Wild Polly Brewing Co Submission 05.10.2023.docx was uploaded

Feedback

What is your level of satisfaction with using this platform to complete your submission?

Neutral

Do you have any feedback you would like to provide to FSANZ regarding this new platform?

No

If yes, please provide details.:

SUBMISSION:
Proposal P1062 –
Defining added sugars for claims

Via FSANZ Consultation Hub

By Wild Polly Brewing Co



About Wild Polly Brewing Co

Wild Polly, a family-owned business, was founded by Tim & Camille Sides, who live at Gundaroo, near Canberra. We were inspired to create Wild Polly Brewing Co whilst travelling around Australia with our two sons in a caravan on a journey of adventure and discovery. For us, beer is about sharing regional produce, relaxing and having fun with family and friends.

We brew, for now, at a local craft brewery, using our own recipes and carefully selected ingredients. Wild Polly Brewing Co. is 100% independent, local and family owned. We will be building our own brewery on our farm.

We believe in a paddock-to-pint approach, creating ancient grain craft beer for everyone. Combined we are the brewer, sales rep, marketing manager, accountant, website master, social media consultant and more wrapped into one. We are a genuine small business.

Wild Polly Pale Ale and IPA have both picked up a string of awards at the Australian International Beer Awards (AIBAs) and Independent Brewer Awards (IBAs). In 2020 we were crowned the best gluten free brewery in Australia by the Melbourne International Beer Competition.

At Wild Polly we take sustainability seriously. As a sixth-generation farmer, with a love for the land, real connection to country, and having worked in environment and climate change fields his entire life, Tim is committed to ensuring Wild Polly produces climate-friendly and environmentally-sustainable beer.

Our beer is brewed using energy from the sun (solar panels on the brewery). All the left-over grain is fed to sheep, a perfect circular economy. We are planting many trees every year on our farm to capture carbon to reverse the effects of climate change as well as increase the habitat for threatened species such as the Gang Gang Cockatoo and improve biodiversity for all native wildlife.

I work directly with farmers to source the grain, I know where it all comes from and how it is grown, so that makes it a better beer. All our grain is grown in Australia, some other brewers use imported grain, which is ridiculous when you consider the great quality grain that is grown by Aussie farmers. None of the 'waste' from the brewing process is wasted. We believe in a circular economy and all the 'spent' grain and hops is taken back to our farm and fed to our sheep. The grain is high in protein and great for the sheep.

We are a member of the Independent Brewers Association (IBA), the peak national industry body representing Australia's 600+ independent brewers with two thirds of these small businesses based in regional and rural Australia.

The contribution of independent brewers to Australian society

IBA brewery members are overwhelmingly small to medium business, producing less than 700,000 litres a year, that exist in big cities and small towns throughout Australia – they employ locals and give back to their communities.

IBA members provide tourism destinations¹ and work directly with the agricultural sector through local malted barley and hops.

In 2021, an economic impact analysis undertaken by KPMG confirmed that the industry contributes:

- approximately \$1.93 billion annually to the national economy
- regional jobs by employing 35,000 Australians, 10,000 directly and over 25,000 indirectly in the agricultural, manufacturing, distribution and hospitality industries – two thirds of which are in rural and regional Australia.

¹ We note that 'food and drink' is a core pillar of Tourism Australia's work with a recent \$12B investment to keep tourism venues supported post covid.

At a time when society is increasingly disconnected, our taprooms and brewpubs serve as the place that people can come together over a meal and a hand-crafted beer to discuss ideas, converse about society and feel connected.²

The broader context for independent brewers

In responding to this submission, it is important to provide some background context as to why independent brewers, like us, care so strongly about this submission.

It is not hyperbole to say that the industry is currently under threat as a result of increasing regulation and economic pressures created by a market dominated by duopolies.

A recent member survey by the IBA indicated some very serious issues for our industry with 91% of respondents saying they have been somewhat, highly or extremely impacted by the current economic environment and 66% of respondents stated that their business may not survive the economic downturn.³

This is well illustrated by the fact that two well-established breweries have gone into voluntary administration just this year⁴ – with more breweries following. If this trend continues more the lack of competition from small breweries in the marketplace will enable further market dominant manufacturers and retailers to continue to set the price of alcohol.

While health advocates may celebrate the closure of these small Australian owned businesses – it is our view that this celebration is misplaced. It is in part the rise of craft beer – as a premium, higher priced, artisanal product, that has contributed to a change in consumer behaviour towards choosing to consume lower amounts of a higher quality product. These changes are precisely what is advocated for by health bodies in terms of alcohol moderation or reduction.

In addition, IBA members are nimble and able to adapt to consumer changes and preferences quickly. Small brewers are the most impacted alcohol stakeholder by labelling regulation because we produce more new products each year than any other food and beverage manufacturer. And smaller production runs means there is less opportunity to spread the cost of labelling compliance across large volumes of product.

Between 1 July 2022 and 30 June 2023, breweries released to market an estimated 3443 packaged beers.⁵ That equates to an astounding 66 new products to market each week – we do not know of any other food or beverage category that releases as many new products to market. By contrast, wine predominately has a single vintage each year and spirits produce high number of items under limited SKU's.

The goal of certainty amongst interrelated consultations

The public call for submissions for P1062 comes amidst the following interrelated consultations that are in varying stages:

- P1058 – Nutrition labelling about added sugars.
- P1059 – Energy Labelling on Alcoholic Beverages.
- P1049 – Carbohydrate and Sugar Claims.

² We note that in addressing mental health and wellbeing an increasing body of research evidence shows that building stronger broad social connects corresponds to stronger mental well-being. "Connect for mental wellbeing" Livingwell.org.au.

³ IBA Member Survey, May 2023.

⁴ Ballistic Beer enters Administration, 25 Jan 2023. Available: <https://brewsnews.com.au/ballistic-beer-enters-administration/> Tribe Breweries enters administration, 28 Feb 2023. Available: <https://brewsnews.com.au/tribe-breweries-enters-administration/>

⁵ Data extrapolated based on Brews News New Beer releases during the time period - average beers per brewery and number of physical breweries (excluding brands) compared with an extrapolation of data from Coles Liquor Group.

The current Call for Submissions for P1062 in relation to defining added sugars for claims highlights that one of the core goals of the amendments is to:

‘provide clarity and certainty for industry and government in the implementation and enforcement of the voluntary nutrition claims permitted to be made about added sugars in foods’.

Like the Independent Brewers Association (IBA), Wild Polly Brewing Co strongly supports the goal of providing certainty for industry and government. It is with that goal in mind that we raise the following matters in response to P1062 to ensure that the interrelated nature of the definition at issue is adequately addressed.

The position of the Wild Polly Brewing Co

It is our view that the only pathway available that balances the policy objectives of the interrelated consultations, while making the implementation possible for 600+ small businesses like ourselves, is to:

- Exempt beer from the definition of Added Sugars or have a definition of added sugars that explicitly address the fermentation process.
- Where a NIP is required, adopt a recipe-based calculation methodology for any NIP that is clearly defined.
- Where a NIP is required, that NIP is available to be accessed via QR code or digital linking.
- Have a single aligned transition timetable with sufficient time to build capacity amongst small producers, test new methodologies etc.

The intention that definition of ‘Added Sugars’ will apply to beer

Our position is that the definition of ‘Added Sugars’ should not apply to beer as it inadequately addresses the issue of fermentation that is central to the production of beer.

In many cases brewers, like ourselves add sugar in the form of candi syrups into brews predominantly for added colour, flavour and mouthfeel, not for the additional sugar. Also, this candi syrup is always added pre-fermentation and the small amount of sugar added is converted into alcohol. In particular with Wild Polly’s brewing process, these sugars disappear entirely during the fermentation process as our beers are ultra-low in carbohydrates with negligible residual sugar, of which this sugar is unlikely to be the added candi syrup but residual sugar from the brewing process which was the starch initially released by the grain before conversion through enzymatic processes into sugar, which is then converted by yeast during fermentation into alcohol. For my business, to calculate the amount of added candi syrup that remains after fermentation would be basically impossible.

The Call for Submissions, however, makes it clear that the intention is that any definition of added sugars under this consultation will apply to beer. It states that any changes to the conditions for making ‘no added sugar(s) claims...would apply to food containing more than 1.15% ABV if amendments under P1049 are approved’ which is expected to take place in June 2024.⁶

As noted in the Call for Submissions and the Food Ministers Meeting communique – the clear intention is the definition of added sugars defined through the process of P1062 form the basis of how ‘added sugars’ can be incorporated into a NIP and on the front of package labelling.

⁶ Call for Submissions – Proposal P1062, p8.

The proposed definition of Added Sugars cannot, therefore, be considered in isolation of its potential future broad applicability to beer as governed by the food standards and:

- should either be clarified that it does not apply to beer or
- be explicit as to sugars pre fermentation and residual sugars to reduce future confusion and implementation challenges.

The definition of ‘Added Sugars’ needs to address the fermentation process explicitly

The Call for Submissions Report inadequately addresses the issue of products made using a fermentation process. There is no discussion at all of the fermentation process and the conversion of sugars to alcohol despite the clear intention that this definition will apply to alcoholic beverages.

If it is decided that the definition of ‘Added Sugars’ does apply to beer then a clear distinction between residual sugars and added sugars is necessary at the definition stage to ensure that any qualification methodology adopted is accurate. The failure to give due weight to this issue at the definition drafting time will only result in further confusion and implementation delay as the definitions need to be revisited again in the future.

The Australian Tax Office’s defines beer for excise purposes as ‘contain[ing] no more than 4% by weight of sugars (monosaccharide and disaccharide)’.⁷ This definition recognises that due to the fermentation process malted barley is converted to alcohol and that residual sugars (actual sugars remaining for consumption) must be low.

The approach proposed by FSANZ does not clarify the role of residual sugars (those sugars remaining after a fermentation process where sugar is converted to alcohol).

FSANZ proposes a food displaying a ‘no added sugar(s)’ claim must not contain an ‘added sugars’ as an added ingredient including an ingredient of a compound ingredient.

FSANZ proposes to define ‘added sugars’ for the purpose of ‘no added sugar(s)’ claim conditions to mean the following derived from any source:

- hexose monosaccharides and disaccharides;
- starch hydrolysate;
- glucose syrups, maltodextrin and similar products;
- products derived at a sugar refinery, including brown sugar, molasses, raw sugar, golden syrup, treacle;
- icing sugar;
- invert sugar;
- sugar and sugar syrups derived from plants;
- honey;
- malt;
- malt extracts;
- concentrated fruit juice, unless the food for sale is fruit juice; and
- deionised fruit juice.

⁷ Definition of Beer, Australian Tax Office, Available: <https://www.ato.gov.au/Business/Excise-on-alcohol/Excise-on-beer/>

Malt should not be included in the definition of ‘added sugar’. Malt itself contains very small amounts of sugars, but a lot of starch that has the potential to be converted to sugar (and then alcohol).

We note that other jurisdictions do not include malt in the definition of added sugars. Or, if they do, they aim to clarify that it only meets the definition of ‘added sugars’ if it is not fermented.

Below are relevant examples from the international review provided as part of the Call for Submissions.

Codex	No mention of malt in definition of added sugars. (d) The sugars content of the food itself has not been increased above the amount contributed by the ingredients by some other means (Example: the use of enzymes to hydrolyse starches to release sugars).
Canada	Provides a detailed example of ‘Sugars-based ingredients that are monosaccharide, disaccharide or a combination of these... barley malt (unfermented)*’ * Barley malt which is subject to fermentation has its sugars converted to alcohol’. ⁸
South Africa	as no sugar or free sugar or “ no sugar added ” or “ no added sugar ” or other words with a similar meaning, may not be made for an end product foodstuff unless —the sugar content of the foodstuff itself has not been increased above the amount contributed by the ingredients, by some other means such as the use of enzymes to hydrolyse starches to release sugars.
Brazil (collegiate Board resolution) pg 52 of submissions	<i>Added sugars are defined as:</i> all monosaccharides and disaccharides added during the processing of the food, including the fractions of monosaccharides and disaccharides arising from the addition of the ingredients cane sugar, beet sugar, sugars from other sources, honey, molasses, molasses, rapadura, sugarcane juice, malt extract, sucrose, glucose, fructose, lactose, dextrose, invert sugar, syrups, maltodextrins, other hydrolyzed carbohydrates and ingredients with the addition of any the above ingredients, with the exception of polyols, added sugars consumed by fermentation or non-enzymatic browning and sugars naturally present in milks and dairy products and sugars naturally present in vegetables, including fruits, whole, pieces, powdered, dehydrated, pulps, purées, whole juices, reconstituted juices and concentrated juices;

Interestingly, the US Brewers Association have advised that the USDA codes cited in the FSANZ Call for Submissions do not apply to beer and the governing regulations do not, in fact, require nutrient content labelling for alcohol beverages.

In many jurisdictions cited in the Call for Submissions, the fulsome definition of Added Sugars the issue of fermentation is addressed.

⁸ List of Ingredients and allergens on food labels, Annex A “Examples of sugars-based ingredients that are monosaccharide, disaccharide or a combination of these”. Canadian Government. Available <https://inspection.canada.ca/food-labels/labelling/industry/list-of-ingredients-and-allergens/eng/1628716222800/1628716311275?chap=7#s16c7>

On a recipe based calculation methodology it is possible to make a clear distinction between Residual Sugars (those sugars remaining after a fermentation process) and sugars added after fermentation – which we accept would be added sugars.

Consumer Certainty

The call for submissions clearly outlines that ‘the overarching goal is to support consumers to make informed choices.’⁹

Defining and clarifying ‘added sugars’ to align with claims about added sugars with dietary guidelines supports the policy intent of enabling consumers to make informed choices and reduces the potential for them to be misled.¹⁰

If the definition of added sugars having regard residual sugars is not addressed there would be no ability to use the existing definition when determining how to display the outcomes in a NIP to inform a consumer.

Clearly defined calculation methodology critical to survival of small brewing industry

Although the methodology for calculation of Added Sugars is not directly being asked about in this Call for Submissions – it is our view that the complexities around adopting a methodology for any potential inclusion in a NIP highlights why the definition of Added Sugars must explicitly address the fermentation process.

Like the Independent Brewers Association, Wild Polly Brewing Co agrees strongly with the issues outlined at 3.1.3 in the ‘Review of Nutrition Labelling for Added Sugars’ for consultation P1058 that addressed the Quantification of Added Sugars. We agree that a recipe-based approach for quantification of added sugars is possible and is indeed the only solution that will work for the small brewing industry. We agree that any quantification method be clearly documented and be as simple as possible and not require any high-cost testing that takes a significant amount of time.

As cited above, small brewing industry is unlike any other food and beverage industry. We add 66 new products to market each week. The very foundation of the industry is a fast-changing market, shorter shelf life, very small batches and seasonal offerings.

If a NIP is required on products that requires laboratory testing, rather than calculation and then a NIP on label– this will have a significant impact on Wild Polly Brewing Co, to the point that it is likely that we will no longer have a viable small business.

To illustrate the practical implications of these discussions on a small brewery here is a timeline submitted by one of the IBA’s member breweries:

TABLE 1: Best case timeline of a new product development with NIP would be

Day 1 – Brew Beer

⁹ Pg 16

¹⁰ Pg 61

Day 14 – Beer stable enough to take sample and send it off to external lab

Day 17 – Sample received by external lab

Day 19 – Sample processed and tested by external lab

Day 20 – Lab results received by brewery

Day 20 – Art designer/agency to update/create can artwork

Day 21 – Submit artwork to can production company

Day 35 – Receive custom printed cans

Day 36 – Pack cans

With the constraints of current regulations, we can pre-order and design the cans so that they arrive in the brewery even before we do the brew day.

This means that the moment the product is ready (generally day 14-21) we can package.

This above new timeline blows out production by anywhere from 16-23 days per brew, holding up tank space, **reducing the amount of beer we can produce in a year by around half**, given that it doubles tank residency time.

I suggest that this is a best-case scenario for a relatively large-scale, organised brewery that brews at their own facility and has sufficient resourcing for these activities. A ultra-small brewery like myself would have even longer timeframes, especially as I use a contract location for brewing.

As noted by the IBA member, the time in tank to wait for testing and any on-label NIP will reduce the output from small business by up to half. This will make business impossible for small businesses such as ourselves.

Delaying time in tank also has other real-world implications such as reducing the quality of fresh hop beer.

We also note that based on discussions by the IBA with their members and the Brewing Interlaboratory Reference Analytes¹¹ an industry led proficiency testing scheme for organisations performing beer analysis, it is our view that there is a significant lack of capacity in small brewery owned labs and outsourced labs to perform the necessary testing for a NIP to be added to every beer.

Any NIP requirement needs to be available through a QR Code

It is our view, that should a NIP be required on beer products beyond those that make Carbohydrate and Sugar Claims (see P1049 Carbohydrate and Sugar Claims Submission) any NIP must be able to be digitally linked rather than on label.

While the question regarding a full NIP has not been directly asked as part of this Call for Submissions – the Call for Submissions document itself makes it clear that any definition adopted under this proposal will form the basis for how ‘added sugars’ can be incorporated into a NIP and on

¹¹ <https://www.bira.org.au/>

the front of package labelling. It would not be proper service to our members to fail to raise the significant business implications of increasing requirements for NIPs on beer.

As set out in the above 'Best Case Timeline' the requirement for a NIP to be printed on-can will itself lead to at least a 16 day delay in bringing new beer to market. In fact, it is the need to print on label that is the most significant delay in the new product timeline. As we have articulated above, small batch and speed to market of new products are the hallmark of the small brewing industry. The on label requirement will destroy the small brewing industry.

A QR code goes some way to mitigating the very real timeline challenges around new products to market with cans being able to be ordered as beer goes into tank. The difference is illustrated below with a revised timeline showing a 16 day saving of time in tank.

Table 2: Best case timeline of a new product development with NIP on QR Code

Day 1 – Brew Beer / Order packaging and cans with final artwork and design
Day 14 – Beer stable enough to take sample and send it off to external lab
Day 17 – Sample received by external lab
Day 19 – Sample processed and tested by external lab / NIP information added to website accessible by QR Code
Day 20 – Beer removed from tanks and packaged

Given that the underlying policy premise stems from a concern to 'provide adequate information to enable consumers to make informed food choices to support healthy dietary patterns recommended in the Dietary Guidelines' it would seem necessary to meet consumers where they are at – in terms of how they are accessing information.

QR codes are 'ubiquitous' post COVID. According to Bernard Salt of The Demographics Group, the pandemic triggered a critical shift in consumer behaviour in which Australians of all ages obtain information online, via app or via QR Code.¹² This shift in consumer behaviour is evidenced in one of Australia's largest retailers, Woolworths, citing that 'customers are feeling more comfortable scanning QR codes while on the move.'¹³ This example is directly applicable to supporting the use of QR codes on labels.

The legislation is being 'opened' now. Given the complexities and challenges of legislative change, it would be a waste of taxpayer funding of FSANZ, and all the stakeholders, to have to revisit this issue again in less than five years' time if it was found that on label communication has not been as effective as hoped due to not meeting consumers expectations around information. We should not take this risk, rather we would request that FSANZ adopt a commonsense change now as an available option.

Finally, the research findings from Barons et al (2022) showed that of the sample of products reviewed 'all products carrying a nutrition content claim also provided a NIP consistent with current

¹²Presentation, Independent Brewers Association Conference, 22 August 2023.

¹³ Hannah Ross, Woolworth's Managing Director, Everyday rewards. May, 2022. Available:

<https://www.smh.com.au/business/companies/woolworths-launches-qr-code-payments-after-big-shift-towards-adoption-20220510-p5ak1j.html>

Code requirements'¹⁴. There has been no data provided that indicates compliance would diminish if a technology option of digitally linking such as a QR code was available.

Costs to Industry

The costs to industry set out in 4.2.2 only lists relabelling, lost sales from products with removed claims and reduced demand for ingredients which are captured in the claim conditions.

In considering the revised definition of added sugars in isolation that may be the case. However, in considering the implications of quantifying added sugars for inclusion in a NIP the costs to the small brewing industry are substantially more significant.

As noted above, the IBA's members have advised that depending on the quantification methodology adopted for both Added Sugars and any requirement for a partial or full NIP on label resulting from P1059 – Energy Labelling on Alcoholic Beverages – the cost to industry would be the closure of many of the current 650+ small breweries, while not achieving the amendments stated goals. In our view, failing to account for the cumulative cost of decisions made in isolation paints a skewed picture that masks the true impact on small brewing and may well make our brewery unviable.

To reduce the cumulative cost impact and complexity, while meeting the policy objectives of the interrelated labelling consultations any decision must:

- Exempt beer from the definition of Added Sugars or have a definition of added sugars that explicitly address the fermentation process
- Adopts a recipe-based calculation methodology for any NIPs that is clearly set out
- Where a NIP is required, that NIP is available to be accessed via QR code or digital linking.
- Have a single aligned transition timetable with sufficient time to build capacity amongst small producers, test new methodologies etc.

Response to Specific Submission Questions.

These responses should be read in conjunction with the entirety of our submission.

1. FSANZ proposes to continue to set 'no added sugar(s)' claim conditions based on the addition of ingredients to foods (see section 5.2 of the Call for submissions document).

Do you have any comments on this approach?

Wild Polly Brewing Co accepts and agrees that there should be clarity as to whether a food or beverage manufacturer can make a claim of 'no added sugars.'

We believe it should also be considered when a beer is made predominantly from sugar syrups, rather than sugar created through enzymatic action by converting starch released by grains during mashing, should not be considered beer, and that where beers made using sugars that are not grain based should declare that, or not be called beer.

However, the basis for that regulation is to ensure accurate and clear information to consumers to make informed decisions. If the definition of Added Sugars applies to beer, any definition of 'adding' that does not also explicitly address the removal of sugar (through conversion to alcohol during fermentation) will confuse rather than support consumers to

¹⁴ FSANZ Call for Submissions p16.

make informed choices and a level playing field for manufacturers.

2. **FSANZ proposes a food displaying a 'no added sugar(s)' claim must not contain an 'added sugars' as an added ingredient including an ingredient of a compound ingredient. FSANZ proposes defining 'added sugars' for this claim condition (see section 5.2.1.4 of the Call for submissions document).**

Do you have any comments on this approach or the defined added sugars (see below)?

FSANZ proposes to define 'added sugars' for the purpose of 'no added sugar(s)' claim conditions to mean the following derived from any source:

- hexose monosaccharides and disaccharides;
- starch hydrolysate;
- glucose syrups, maltodextrin and similar products;
- products derived at a sugar refinery, including brown sugar, molasses, raw sugar, golden syrup, treacle;
- icing sugar;
- invert sugar;
- sugar and sugar syrups derived from plants;
- honey;
- malt;
- malt extracts;
- concentrated fruit juice, unless the food for sale is fruit juice; and
- deionised fruit juice.

The definition is incomplete and inadequate as it fails to explicitly address the situation in which the production method includes fermentation changing sugars to alcohol. This would result in a lack of clarity for industry, government and create further confusion for consumers about the energy make-up of beer.

Either beer should be excluded from any definition and conditions associated with Added Sugars or the definition needs to explicitly address the issue of fermentation.

It does not clearly describe sugars released during the brewing mashing process, whether using malted grain (predominantly used by brewers) or raw grain that is increasingly used by some brewers such as Wild Polly brewing. It is not clear whether sugars released from raw grains is the same as sugar and sugar syrups derived from plants as these can be completely different types of sugar. For instance sugar derived from raw millet grain during brewery mashing and converted to sugar via enzymatic process is not the same as sugar derived from other plant based sugars and syrups, which can have an entirely different impact on beer.

3. **FSANZ proposes 'no added sugar(s)' and 'unsweetened' claims are not permitted on foods containing the hexose monosaccharide D-tagatose, as an ingredient, consistent with existing claim conditions in the Code. As D-tagatose is a hexose monosaccharide, it is captured in the definition of 'added sugars' (see section 5.2.2 of the Call for submissions document).**

Do you have any comments on this approach?

No. This is unlikely to impact the production of beer.

4. **FSANZ proposes foods containing low energy sugars (mono- and disaccharides), as ingredients, listed in subsection S11—2(3) of Schedule 11 not be permitted to display ‘unsweetened’ claims (see section 5.2.2 of the Call for submissions document).**

Do you have any comments on this approach?

No. This is unlikely to impact the production of beer.

5. **FSANZ proposes a food displaying a ‘no added sugar(s)’ claim must not contain the fruit products listed below as an added ingredient (including as an ingredient of a compound ingredient). FSANZ proposes to exempt fruit products which are lemon or lime fruit (see section 5.3 of the Call for submissions document).**

Do you have any comments on this approach or the fruit products listed (see below)?

- **Dried fruit, other than whole, cut or chopped dried fruit;**
- **fruit juice (other than concentrated fruit juice), unless the food for sale is canned fruit or frozen fruit;**
- **fruit juice powder;**
- **fruit powder;**
- **fruit pulp;**
- **fruit purée;**
- **concentrated fruit purée.**

Some of these fruit products are used in the production of beer, overwhelmingly prior to any fermentation.

The definition of Added Sugars is incomplete and inadequate as it fails to explicitly address the situation in which the production method includes fermentation changing sugars to alcohol. This would result in a lack of clarity for industry, government and create further confusion for consumers about the energy make-up of beer.

Either beer should be excluded from any definition and conditions associated with Added Sugars or the definition needs to explicitly address where the issue of fermentation.

6. **FSANZ proposes a fruit product which is the food for sale (e.g. fruit juice) be permitted to make a ‘no added sugar(s)’ claim. This includes when the food is sold as a singular fruit (e.g. apple juice) or a blend of different fruits (e.g. blend of fruit juices), providing the food contains no ‘added sugars’ or other products identified in claim conditions, as added ingredients. A blend or combination of different fruit products (e.g. fruit juice and fruit purée) will not be permitted to make the claim. FSANZ also proposes to clarify that fruit does not include legumes, fungi, herbs, nuts and spices for the purpose of the claim conditions (see section 5.3 of the Call for submissions document).**

Do you have any comments on this approach?

Beer is a product made with a number of contributing ingredients. This does not relate to beer and we have no comment.

7. **FSANZ proposes ‘no added sugar(s)’ claims are not permitted when the concentration of sugars in the food is increased from the hydrolysis of carbohydrates during food manufacture, except when the sugars concentration in cereal-based plant milks made using**

hydrolysis is $\leq 1.5\%$ (and the product otherwise meets claim conditions) (see section 5.3.2 of the Calls for submissions document).

Do you have any comments on this approach?

The goal of these legislative changes is to create consistency for consumers. Provided something meets all of the definitions and conditions then claims should be allowed.

8. **FSANZ proposes to maintain the existing condition that a food displaying an 'unsweetened' claim must meet the conditions for a 'no added sugar(s)' claim, noting that the amended 'no added sugar(s)' claim conditions will apply (see section 5.4 of the Call for submissions document).**

Do you have any comments on this approach?

If the definition of Added Sugars addresses all of the issues noted in this paper, we have no issues with the consistency of applicability to the term 'unsweetened'.

9. **FSANZ proposes to maintain the existing condition for intense sweeteners, sorbitol, mannitol, glycerol, xylitol, isomalt, maltitol syrup or lactitol. FSANZ proposes a food containing low energy sugars (mono- and disaccharides) listed in subsection S11—2(3) of schedule 11, as an ingredient (including an ingredient of a compound ingredient), not be permitted to display an 'unsweetened' claim (see section 5.4 of the Call for submissions document).**

Do you have any comments on this approach?

No. We have no comments on this issue.

10. **FSANZ is proposing a two-year transition period to allow producers, manufacturers and importers time to make any required labelling changes for products carrying 'no added sugar(s)' or 'unsweetened' claims to comply with the new claim conditions (see section 7 of the Call for submissions document).**

Do you have any comments on this approach?

As FSANZ have identified that the requirements for 'Added Sugar' claims will be aligned with the resulting decision around 'sugar and carbohydrate claims' which is due to be determined in June 2024 any implementation times should be aligned.

As noted above, alignment of transition timelines across all of the ongoing labelling consultations affecting beer is one mechanism that will reduce the cost challenges from small brewers.

Data and evidence

Submitters are invited to provide any data relevant to these questions in the form of an editable PDF, Excel spreadsheet or Word Document.

11. **Do you have any data or are you aware of published data on the number of products with 'no added sugar(s)' or 'unsweetened' claims in Australia and/or New Zealand (see data used for this proposal at section 3.1 of the Call for submissions document)?**

No. We are not appropriately funded or resourced to undertake large scale data research. The limited research undertaken on behalf of small brewers such as myself by the IBA has not identified any independent beer making this claim.

12. Do you have any evidence or are you aware of published literature on consumer understanding of and responses to 'no added sugar(s)' or 'unsweetened' claims on food products (see evidence used for this proposal at section 3.2 of the Call for submissions report and Supporting Document 1)?

No. We are not appropriately funded or resourced to undertake significant research of this nature. It is our expectation that any recommendations by FSANZ are evidence based and, as such, have gathered all objective evidence in coming to its recommendations.

13. Do you have any data or know of any published data on the costs of labelling changes per stock keeping unit or package type (see data used for this proposal at Attachment E to the Call for submissions document)?

Wild Polly Brewing Co refers FSANZ to the calculations of labelling costs set out by FSANZ in Attachment D to P1049 – Carbohydrate and Sugar Claims which better addresses labelling costs for beer.

On an assessment of total beers in the market 7440¹⁵ the cost to the broader brewing industry for label changes could be as much as \$120, 654, 480.¹⁶ This highlights the imperative of ensuring any transition period or relabelling is timed with other regulated changes such as those that may arise from Energy Labelling Consultation and Carbohydrate and Sugar Claims.

As noted in the FSANZ Modelling¹⁷ that supports the dollar amounts presented in Attachment D to P1049 – Carbohydrate and Sugar Claims, Table 1 – actual re-labelling costs vary greatly including:

- whether the change required is simply removal of text or other information or the addition of substantive impact which does require changes to both label layout and label shape/size.
- The transition time available – varying from very high costs at less than 12 months and moderated costs between 3-5 years of transition.¹⁸

It should be noted that actual relabelling costs can greatly vary according to individual circumstances. Relabelling certain SKUs may cost notably less or notably more than these averages. The smaller the brewer and SKU run, the higher the cost. For a small brewery like Wild Polly Brewery we have absolutely NO economy of scale and are hit hardest with any changes that requires changes to SKUs and brewing runs.

¹⁵ Being a combination of new beers to market and existing core ranges – extrapolated from data from Coles Liquor Group.

¹⁶ 7440 total beers x Can total cost set out in Table 1 – Attachment D.

¹⁷ P1049, Attachment D, Summary of results – Cost survey of changing labels for alcoholic beverages – 2021 (FSANZ)

¹⁸ P1049, Attachment D, Summary of results – Cost survey of changing labels for alcoholic beverages – 2021 (FSANZ)