

Proposal 1049

Carbohydrate and sugar claims on alcoholic beverages

NSW Submission

General Procedure – the 1st Call for Submissions

Summary

NSW appreciates the opportunity to comment on Proposal 1049 (P1049) Carbohydrate and sugar claims on alcoholic beverages – 1st Call for Submissions (CFS). NSW Food Authority has prepared this submission in consultation with NSW Ministry of Health. The submission does not represent a NSW Government position, which will be a matter for the NSW Government should notification be made by the FSANZ Board to the Food Ministers' Meeting.

Alcohol is a unique food as it is both a food and a drug. It contains high levels of energy as well as imparting psychoactive effects on consumption (intoxication). Alcohol is associated with public health impacts and social harms that do not relate to its energy load. There are also chronic health effects associated with high intake levels of energy dense foods such as alcohol.

Alcohol consumption advice by *the Australian Alcohol Guidelines* is linked to key national health policy frameworks which aim to minimise harms from alcohol. The scope of these policy strategies includes promotion and labelling of alcohol. Given the unique nature of alcohol as a food, labelling of alcoholic beverages needs to be discussed in a broader policy context than that of general food.

A key concern associated with carbohydrate and sugar claims on alcoholic products is the potential for them to be marketed as 'healthy' or 'healthier', or imply they are safer to consume than products without such label claims. This could result in increased consumption of alcohol, and operate in a contrary manner to advice provided in the *Australian Alcohol Guidelines*. The proposed regulatory changes in Proposal 1049 needs holistic discussion and consideration by Governments.

Proposal 1049 was raised in response to Ministers concerns that claims on alcoholic beverages are misleading and result in the promotion of alcohol consumption when public health advice is to limit alcohol intake¹.

Evidence provided by FSANZ in the 1st call for submissions for Proposal 1049 suggests that consumers may not properly understand how to appropriately interpret sugar/carbohydrate claims on alcoholic beverages. NSW Food Authority and NSW Ministry of Health consider that FSANZ needs to offer more conclusive evidence that consumers appropriately understand these claims, in order to support its position that such claims should be explicitly included in the Australia New Zealand Food Standards Code. In the absence of such evidence, there is concern that the 'health halo' risk cited by Ministers in the original referral of this matter to FSANZ has not been addressed.

¹ <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2017-November>

NSW Food Authority request that FSANZ obtain further evidence on before Proposal 1049 is progressed to approval report:

- how the proposed Code amendments address Ministers' concerns concerning sugar and carbohydrate claims on alcoholic products in its 2017 referral to FSANZ; and
- how the proposed Code amendments are consistent with Ministers 2018 position that sugar and carbohydrate claims on alcoholic products are not '*in line with the original policy intent that prohibits claims on alcoholic beverages in relation to sugar and carbohydrate*²'.
- Should comparative claims remain permitted on alcoholic beverages bearing sugar/carbohydrate claims (e.g. 'zero sugar', '50% less sugar'), that the full Nutrition Information Panel (NIP) is provided on both products. This will enable comparison between the product bearing the claims and its comparator.

The significant interrelation between Proposal 1049 and Proposal 1059 (Energy labelling of alcoholic beverages) suggests that informed decision making on these two proposals may only occur if they are progressed together and provided to Food Ministers for consideration at the same time. Depending on the outcome of Proposal 1059, consumers may have additional energy information on a product label to assist in the accurate interpretation of sugar and carbohydrate claims on alcoholic products, given both products are high-energy.

Finally, if comparative claims remain permitted on alcoholic beverages bearing sugar/carbohydrate claims (e.g. 'zero sugar', '50% less sugar'), NSW Food Authority supports a requirement for a full Nutrition Information Panel (NIP) to be provided on both the product making the claim, and the product in the company's range to which an implied comparison is made.

Ministers' original concerns need to be addressed

As FSANZ described in CFS pg 10-11, Proposal 1049 was raised in response to concerns of Food Ministers about sugar and carbohydrate claims on alcoholic beverages.

Communique for the FMM in November 2017³ states '*Forum Ministers are concerned that these claims on alcoholic beverages (i.e. sugar claims such as "% sugar-free") are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake.*'

Communique for the FMM in June 2018⁴ states '*FSANZ has agreed to raise a proposal to clarify Standard 1.2.7 of the Australia New Zealand Food Standards Code in line with the original policy intent that prohibits claims on alcoholic beverages in relation to sugar and carbohydrate.*'

NSW Food Authority notes *The Ministerial Policy Guideline on Nutrition, Health and Related Claims*⁵ requires '*exclusions for certain categories of food, such as alcohol and baby foods*' from foods eligible to make claims.

Coupling the above matters with advice of the *Australian Alcohol Guidelines (the Guidelines)* to limit alcohol intake, suggests that further evidence is required to support the FSANZ's position to explicitly permit sugar and carbohydrate claims on alcoholic products as it would seem this is the alternative position to the initial referral.

There remains concern that sugar claims are being interpreted by some consumers as a 'healthier' choice of alcoholic beverages. *The Guidelines* are clear that all alcohol intake should be minimised and there is no safe amount of alcohol that can be consumed.

² <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2018-June>

³ <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2017-November>

⁴ <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2018-June>

⁵ [https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/0348A8B1D309827ECA25801B0006D9CA/\\$File/FPGNHRC2018.pdf](https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/0348A8B1D309827ECA25801B0006D9CA/$File/FPGNHRC2018.pdf)

FSANZ states '*no clear evidence to suggest that sugar and carbohydrate claims on alcoholic beverages affect consumers' level of consumption of alcoholic beverages, and thereby affect the protection of public health and safety* (CFS pg 20)'.

However, FSANZ has identified some consumer evidence that suggests '*sugar claims may influence consumers to make inaccurate assumptions about alcoholic beverages* (CFS pg 18)'. Despite limitations in studies reviewed, evidence suggests sugar and carbohydrate claims may cause consumer misperceptions such as:

- low-carbohydrate beer is healthier than low-alcohol strength beer
- low-carbohydrate beer is healthy
- there is no need to worry about their weight when drinking low-carbohydrate beer
- ciders and RTDs are low in alcohol content

This implies that sugar and carbohydrate claims may create a 'health halo', influencing consumers to believe alcoholic beverages with such claims are healthier or somehow more beneficial than alcoholic beverages without such claims. Given public health and social harms can be caused by alcoholic beverages regardless of sugar/carbohydrate content, advertisement tactics to cause consumer misperception that some alcoholic beverages are healthier than others may have serious health and social implications. Addressing these concerns as part of Proposal 1049 is consistent with Ministers original request.

*The Ministerial Policy Guideline on Nutrition, Health and Related Claims*⁵ requires '*the system should promote a partnership between consumers, governments and industry in the delivery and responsible use of nutrition, health and related claims which protects consumers from false and misleading information that may result in distorted diets which harm health and increase health inequalities*' (policy principle 12).

In analysing the consumer misperception caused by sugar and carbohydrate claims, FSANZ discusses '*consumers do not understand that most of the energy in beer comes from the alcohol itself* (CFS pg 18)'. However, the Code amendment proposed in this CFS does not address this issue. NSW Food Authority suggests that significant consumer education is required in conjunction to Food Standards Code amendment to ensure consumers accurately understand how to examine and compare a 'zero sugar' product or other type of sugar/carbohydrate claim with an equivalent sugar comparator that has equivalent alcohol concentration.

NSW Food Authority requests that additional information and evidence is provided for Proposal 1049 prior to progression to approval report to ensure Ministers concerns are appropriately addressed.

P1049 and P1059 should be discussed face-to-face in FMM as a package

NSW Food Authority notes FSANZ's statement '*Given the interrelationship between P1059 and P1049, these proposals are being progressed in tandem to minimise the potential impact on industry of having to make multiple label changes and to consider the implication of any label changes on consumers ability to make informed choices.* (CFS pg 8)'.

Given the highly interrelated nature of Proposals 1049 and 1059 and the potentially significant impacts on alcohol consumption as a public health and safety priority that go beyond the food regulation system, NSW Food Authority suggests both proposals should be discussed face-to-face by Food Ministers at the same time. This will enable broader governmental consideration so a considered position may be provided by Food Ministers.

Regulating alcohol consumption is a high public health policy priority

Australian Alcohol Guidelines

Alcoholic beverages are known to be related to public health risk and social harms. Excessive drinking can cause harmful short-term and long-term impacts on the body and brain and is associated with various social problems. Regulating alcohol consumption to reduce alcohol-related harms is a high public health policy priority with cross-agency measures implemented.

*The Australian Alcohol Guidelines*⁶ (*the Guidelines*) developed by the National Health and Medical Research Council (NHMRC) provide guidance on reducing the acute and long-term health impacts of drinking alcohol. *The Guidelines* frame alcohol consumption advice in measures of standard drinks for all alcoholic drink classes to regulate personal alcohol intake in the Australian community, noting the various alcohol related harms in the Australian community arising from alcohol misuse. *The Guidelines* advise that:

- *healthy men and women should drink no more than 10 standard drinks a week and no more than 4 standard drinks on any one day; and*
- *the less you drink, the lower your risk of harm from alcohol.*

The standard drinks per day recommendation aims to prevent acute harms that may arise from excessive alcohol intake (e.g. injuries and accidents when under the influence of alcohol). Consumption advice on standard drinks per week provided in the *Guidelines* aims to limit longer term health impacts arising from excess alcohol consumption (e.g. fatty liver, liver fibrosis and cirrhosis). There is also strong evidence that alcohol use increases the risk of developing some cancers, including mouth, oesophagus, stomach, bowel, liver and breast.^{7 8 9}

Awareness and comprehension of the Guidelines amongst Australians of what a standard drink remains low.¹⁰ In 2009, only 26% of Australians indicated they were familiar with the content of the *Australian Alcohol Guidelines*. New Guidelines were published in 2020, and concerningly, data from the Cancer Council shows that fewer people are aware of or can correctly identify the standard drinks recommended in the updated guidelines.¹¹ It is increasingly important to ensure Australians are informed of recommended standards of alcohol use in these new guidelines.¹² NSW Ministry of Health notes that awareness of the Guidelines is key, and that any labelling changes should ensure consumers' already limited understanding around standard drinks and recommended consumption volumes are not further misunderstood and/or confused.

Health policy frameworks have strong links to Australian Alcohol Guidelines

Building consumer awareness of the recommendations in *the Guidelines* is a strategic priority of Australian Governments and is identified in various key national health policy frameworks.

⁶ Australian Guidelines to Reduce Health Risks from Drinking Alcohol, <https://www.nhmrc.gov.au/about-us/publications/australian-guidelines-reduce-health-risks-drinking-alcohol#block-views-block-file-attachments-content-block-1>

⁷ Nunez, C., Visalini, N., Sarich, P., Sitas, F., & Bauman, A. (2018). *Modifiable lifestyle factors and cancer risk*. Sax Institute. <https://www.cancer.nsw.gov.au/getmedia/5f2ffa67-ae5c-40a4-8742-3496ebd65637/Modifiable-lifestyle-factors-and-cancer-risk-Sax-for-CINSW-2017.pdf>

⁸ World Cancer Research Fund. (2018). *Alcoholic drinks and the risk of cancer*. <https://www.wcrf.org/sites/default/files/Alcoholic-Drinks.pdf>

⁹ Sarich, P., Canfell, K., Egger, S., Banks, E., Joshy, G., Grogan, P., & Weber, M.F. (2020). Alcohol consumption, drinking patterns and cancer incidence in an Australian cohort of 226,162 participants aged 45 years and over. *British Journal of Cancer*. <https://doi.org/10.1038/s41416-020-01101-2>

¹⁰ Cancer Council, Election Priorities, https://www.cancercouncil.com.au/wp-content/uploads/2022/10/2090_CCNSW-Election-Priorities_WEB2.pdf

¹¹ Cancer Council NSW. Alcohol use, awareness and support for policy measures - NSW Community Survey on Cancer Prevention 2022 <https://www.cancercouncil.com.au/wp-content/uploads/2023/06/Community-Survey-on-Cancer-Prevention-Alcohol-Short-Report-2022.pdf>

¹² FARE Annual Alcohol Poll, 2020 Attitudes and Behaviours, <https://fare.org.au/wp-content/uploads/ALCPOLL-2020.pdf>

*The National Preventive Health Strategy 2021-2030*¹³ has set the following focus areas and policy achievement goals respectively:

- Focus area '*Reducing alcohol and other drug harms*' – Policy achievement goals by 2030 include:
 - *Harm minimisation and addressing the wider determinants of health are at the forefront of Australia's approach to alcohol and other drug policy and prevention investment*
 - *The availability and promotion of alcohol is restricted to minimise alcohol-related harm, as outlined in the National Alcohol Strategy (see below)*
- Focus area '*Improving access to and the consumption of a healthy diet*' – Policy achievement goals by 2030 include:
 - *Consumer choice is guided by energy and ingredient labelling on all packaged alcoholic products*
 - *Restricted promotion of unhealthy food and drinks at point of sale and at the end-of-aisle in prominent food retail environments, and increased promotion of healthy food options*

*The Australian National Alcohol Strategy 2019-2028*¹⁴ (the *National Alcohol Strategy*) has set the following priority goals and policy objectives respectively:

- Priority goal '*Managing availability, price and promotion*' with policy objectives including '*Minimise promotion of risky drinking behaviours & other inappropriate marketing*', under which '*Promotion of measures that support changing individual and community attitudes towards risky alcohol consumption*' is set out as a shared responsibility action.
- Priority goal '*Promoting healthier communities*' with policy objectives including '*Improve the awareness and understanding of alcohol harms*'

*The Australian Dietary Guidelines*¹⁵ also refers to the recommendations in *the Australian Alcohol Guidelines* and recommend '*Limit intake of alcohol*'.

*The NSW Cancer Plan*¹⁶ has set evidence-based prevention efforts towards reduction of alcohol consumption as one of the priorities, based on the fact that alcohol consumption can contribute to higher cancer incidence.

Given the strong need to reduce alcohol-related harms in the community by managing alcohol consumption, NSW Health offers the Get Healthy Service Alcohol Program¹⁷ to help people reduce alcohol intake.

NSW Food Authority requests that FSANZ further explore broader education initiatives currently deployed in the Australian community to minimise alcohol intake as part of Proposal 1049. It is important that such parties are aware of Proposal 1049 so they may tailor their messaging and advice. An example would be clearer consumer education that 'zero sugar' products still contain the same amount of alcohol as their full sugar comparators, therefore have the same risk profile as discretionary foods.

Broader policy consideration is required for labelling of alcoholic beverages

Given various cross-agency high-priority measures targeting alcohol consumption as described above, labelling of alcoholic beverages needs to be discussed in a broader policy context than that of general food. Consideration needs to be given whether the proposed

¹³ Australian National Preventive Health Strategy 2021-2030, https://www.health.gov.au/sites/default/files/documents/2021/12/national-preventive-health-strategy-2021-2030_1.pdf

¹⁴ Australian National Alcohol Strategy 2019-2028, <https://www.health.gov.au/resources/publications/national-alcohol-strategy-2019-2028?language=en>

¹⁵ https://www.eatforhealth.gov.au/sites/default/files/2022-09/n55_australian_dietary_guidelines.pdf

¹⁶ NSW Government, NSW Cancer Plan 2022-2027, <https://www.cancer.nsw.gov.au/what-we-do/nsw-cancer-plan>

¹⁷ <https://www.gethealthynsw.com.au/health-professionals/who-to-refer/alcohol-reduction/>

change to alcohol labelling in Proposal 1049 may facilitate *'inappropriate marketing'* that influences *'individual and community attitudes towards risky alcohol consumption'*. If so, such marketing practices should be minimised in accordance with *the National Alcohol Strategy*.

There is a concern that the proposed changes could facilitate inappropriate marketing specifically towards young women. A recent study notes that low-carbohydrate and sugar marketing targets the supposedly more health-conscious demographic of young women to attract new customers and boost profits. Apart from potentially increasing alcohol consumption, there are concerns around this demographic using alcohol during pregnancy (including the time before a woman is aware she is pregnant) and the link between alcohol and breast cancer.¹⁸

*The Ministerial Policy Guideline on Nutrition, Health and Related Claims*¹⁹ specifically mentions alcohol as a category of foods that should be excluded from making claims. Communique for the Food Ministers' Meeting (FMM) in June 2018 clarifies *'the original policy intent that prohibits claims on alcoholic beverages in relation to sugar and carbohydrate'*.

If claims are made, *the Policy Guideline on Nutrition, Health and Related Claims*¹⁹ requires:

- *'any intervention by government should support government, community and industry initiatives that promote healthy food choices by the population'* (policy principle 3);
- *'any intervention by government should be consistent with and complement Australian and New Zealand national policies and legislation including those relating to nutrition and health promotion, fair trading, industry growth and international trade and innovation'* (policy principle 4); and
- *'claims can be made providing the claim is socially responsible and does not promote irresponsible food consumption patterns'* (overarching policy principle).

FSANZ states *'There is no clear evidence to suggest that sugar and carbohydrate claims affect consumers' level of consumption of alcoholic beverages'* (CFS pg 19). However, NSW Food Authority considers some of the consumer evidence identified by FSANZ as concerning due to the implication of potential increase in alcohol consumption. It is suggested that a precautionary principle is applied, given the known harms and high-risk nature of alcohol.

The finding from one high quality study (Cao et al., 2022; mentioned in SD1 pg 22) that young female adults mistakenly perceive ciders and RTDs with sugar claims as being significantly lower in alcohol content is concerning. Australia Institute of Health and Welfare²⁰ reports younger people (aged 18-24) are more likely than any other age group to consume alcohol at a level that exceeds the alcohol consumption advice by *the Guidelines*.

Underestimation of alcohol content may lead to serious consequences, e.g. drink driving is a criminal offence that can lead to conviction in Australian states and territories. NSW Health advice warns drivers that a blood alcohol content (BAC) of 0.02 can be reached after the consumption of only one standard drink^{21 22}.

Necessary nutrition information to enable consumers to make informed choices

¹⁸ <https://research.curtin.edu.au/news/new-report-exposes-pink-and-pretty-alcohol-marketing-tactics-to-women/?type=media>

¹⁹ <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-Policy-Guideline-on-Nutrition-Health-and-Related-Claims>

²⁰ Australian Institute of Health and Welfare. (2023). *Alcohol, tobacco & other drugs in Australia*. <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/younger-people>

²¹ NSW Ministry of Health, Alcohol: the facts, https://yourroom.health.nsw.gov.au/publicationdocuments/Alcohol_fact_sheet_2021_A4.pdf

²² Transport for NSW, Blood alcohol limits, <https://roadsafety.transport.nsw.gov.au/stayingsafe/alcoholdrugs/drinkdriving/bac/index.html>

If Proposal 1049 progresses to approval report and recommends that nutrient content and comparative claims on alcoholic beverages concerning sugars and carbohydrate content are expressly permitted, NSW Food Authority supports the requirement for the full nutrition information panel (NIP) to apply to alcoholic beverages when claims are made. This assists consumer interpretation of a claim and allows a consumer to see that a 'zero sugar' alcoholic beverage is still a high energy food, and the energy reduction from sugar in an alcoholic product is relatively low.

However, as alcoholic beverages are exempt from displaying the NIP unless claims are made, when real or implied comparative claims are made on alcoholic beverages (e.g. 'sugar free', 'no sugar', 'low carbohydrates'), consumers are not provided with necessary information to compare the product bearing the claim with a full sugar or full carbohydrate comparator.

If comparative claims remain permitted on alcoholic beverages, NSW Food Authority supports a requirement for a full NIP to be provided on both the product making the claim, and the product in the company's range to which an implied comparison is made. Informed food choices are only possible when consumers are given opportunity to compare the information between a product bearing a claim and a reference food.

Further, if comparative claims are permitted on alcoholic beverages, further tightening of the definition of a reference food is required to ensure appropriate comparisons are made. For example, there is a current beer brand on the market using the following comparative claim, '50% less calories' on the front-of-pack and claiming "50% fewer calories than wine per ml" on the back of the outer package. The current definition of a reference food (Standard 1.1.2) requires a reference food to be "the same type as the food for which the claim is made and that has not been further processed, formulated, reformulated or modified". NSW Food Authority disputes a beer being compared to a wine as a reasonable comparator.

FSANZ does not address this issue in Proposal P1049, it proposes '*subject to approval, mandatory energy labelling on alcoholic beverages would provide information to enable consumers make informed choices and could further reduce the potential for consumers to be misled as energy content information will be available for all alcoholic beverages, allowing consumers to compare energy content information across both alcoholic and non-alcoholic beverages and with products making nutrition content claims* (CFS pg 20-21)'.

This statement creates significant concerns as to the nature of a comparator for making comparative claims, not just within alcoholic beverages but more broadly across the food supply. The intent of comparative claims is to compare two nearly identical foods, where the difference is the subject of the claim.

ENDS

The views expressed in this submission may or may not accord with those of other NSW Government agencies. The NSW Food Authority has a policy which encourages the full range of NSW agency views to be submitted during the standards development stages before final assessment. Other relevant NSW Government agencies are aware of and agree with this policy.

Dated as 4 September 2023