



submissions@foodstandards.gov.au

Food Standards Australia New Zealand
Level 3
154 Featherston Street
Wellington Central
WELLINGTON 6011

12 October 2023

Submission by Lion Pty Limited

on

Proposal P1049 - Carbohydrate and sugar claims on alcoholic beverages

1. Introduction

Lion welcomes the opportunity to comment on the Call for Submissions for Proposal P1049 *Carbohydrate and sugar claims on alcoholic beverages* (the **CFS**).

Lion is a leading alcohol beverage company headquartered in Sydney, Australia. With origins dating back 180 years, Lion is known for its commitment to quality, craftsmanship, community, and sustainability. Lion is a pioneer in brewing and continues to innovate across a range of adult beverages. Its core beer portfolio includes many locally loved brands such as XXXX, Tooheys, Little Creatures, James Squire, Speight's, Steinlager, Emerson's and Panhead, more recently adding international craft brands to the fold, including New Belgium, the second largest craft brewer in the United States. Lion's portfolio also includes NZ wine brands, a premium fine wine business in North America and shareholdings in several craft adult beverage companies. Lion employs close to 4,000 people across Australia, New Zealand, and the USA, and is proud to be a carbon zero certified beverages company, recognized for its progressive policies and culture around flexible working, diversity, inclusion, and gender pay equity. Lion runs education platform Alcohol&Me and is a member of responsible drinking charities Drinkwise and Cheers!

2. Overview of Lion's Position

Lion welcomes the opportunity to comment on Proposal P1049 – *Sugar and carbohydrate claims for alcoholic beverages*. Lion supports the provision of information to consumers about the products they purchase and consume to assist them in making informed choices.

Lion supports Option 1 in the CFS. This option allows for producers to continue to provide information that is strongly valued by consumers. Lion also supports Option 2 for the same reason, although it questions the basis for some of the proposed

T +64 9 347 2000
F +64 9 358 8588
W lionco.com

A **Lion**
136 Fanshawe Street
Auckland 1010

PO Box 23
Auckland
New Zealand 1010

Lion NZ Ltd
Lion NZ Trading as Lion



restrictions. Lion is strongly opposed to Option 3, which would impose very significant costs that are not justified by evidence.

Lion's submissions on the options are set out in more detail below. Lion also offers in-depth responses to the questions for submitters based on its internal research and market intelligence that it hopes will be of assistance to FSANZ.

2.1 Option 1

Lion supports Option 1. This option reflects the status quo, where low/no carbohydrate and low/no sugar claims have been widely accepted and valued by consumers since 2013. Independent consumer research commissioned by Lion shows that consumers want to see this information and that it does not drive increased consumption of alcoholic beverages overall. Lion's view is that the current wording of Standard 1.2.7 already allows for sugars claims to be made on alcoholic beverages and it does not see a compelling reason to change the status quo. While FSANZ has referred to the original intent of carbohydrate claims for alcoholic beverages not including sugars, Lion's view is that Food Code is itself very clear on this point and the interpretation of the relevant provisions has long since been settled in favour of allowing sugar claims.

If required to support this option, Lion would support a targeted, government-led education and communication campaign as an important strategy to enable understanding of carbohydrate and sugar labelling on alcoholic beverages. Lion welcomes FSANZ's intention to work with peak industry organisations on communication strategies to ensure awareness of the carbohydrate and sugar labelling requirements on beverages containing alcohol during the transition period and the link with energy statements.

2.2 Option 2

Lion also supports the proposal in Option 2 to amend the Code to specifically allow for sugar claims to be made in respect of alcoholic beverages. As with Option 1, this allows for claims to be used on the labels of alcoholic beverages that are clearly valued by consumers and do not drive any negative public health outcomes. Again, if required to support this option, Lion would support a targeted, government-led education and communication campaign to support understanding of carbohydrate and sugar labelling on alcoholic beverages.

Lion believes that further evidence and consideration would be needed before specifically excluding other components of carbohydrate (e.g., fibre) or other specifically named sugars (e.g., fructose) from the scope of permitted carbohydrate labelling. Lion does not make or market products bearing such claims at the present time. However, it seems illogical to prohibit them for the future without any detailed evidence or consideration. These claims may well become relevant or important to consumers over time, and it is difficult to see how they would be any more or less misleading than existing permitted carbohydrate claims. They would still need to conform to the requirements of the Food Standards Code for carbohydrate claims.

If Option 2 is to be approved, Lion requests that further consideration be given to the relationship between this Option and the requirement for products bearing a nutrition content claim to bear a full Nutrition Information Panel (NIP) in standard 1.2.7. Under



P1059, FSANZ is proposing that all standardized alcoholic beverages must bear an energy label, but if a nutrition content claim is made about carbohydrates or sugars then the product must also bear a full NIP. Carbohydrate and sugar claims relate to the energy content of an alcoholic beverage, so there does not seem to be any logic in requiring other nutritional information. The Blewett report itself rejected the view that alcoholic beverages should carry a full NIP on the basis that alcoholic beverages contain few nutrients of concern.

If Option 2 is to be approved, Lion also requests an additional clarification with respect to Schedule 4-3 of the Food Standards Code. The intent of Option 2 is to clarify that claims regarding sugar may be made with respect to alcoholic beverages on the same basis as other foods. However, in Schedule 4-3, Part (a) of Column 4 in relation to “Sugar or Sugars” permits “No added” claims only when a product contains “no added sugars*, honey, malt, or malt extracts”.¹

Malt and malt extract are essential inputs for the production of beer. Lion does not consider malt or malt extract used as an ingredient for beer to be “added” since the sugar content is mostly consumed in fermentation. Lion believes that beer should not be prevented from making “No added” claims solely on the basis that it includes malt or malt extract as a base ingredient, and that Part (a) should be amended to reflect this. Such an amendment would be consistent with the permission in Part (b) for certain beverages to use concentrated fruit juice where fruit juice is an integral ingredient.

2.3 Option 3

Lion is strongly opposed to Option 3. There was no evidence to support this option in FSANZ’s 2018 Technical Assessment or its 2023 Consumer Literature Review. Independent consumer research commissioned by Lion (discussed below) shows that in fact:

- consumers want to see, and have valued seeing, low/no carbohydrate and low/no sugar claims where available;
- low/no carbohydrate and low/no sugar claims may influence the products selected by consumers within the relevant alcoholic drinks category, but they are not correlated with an increase in consumption; and
- consumers do not typically choose these options because they believe that they are lower in alcohol.

In short, removing the ability for alcoholic beverages to make carbohydrate or sugar claims would remove information that consumers value and that is not associated with harm.

Lion questions the purported benefit that Option 3 would provide clarity and certainty for enforcement agencies about the nutrition content claims that may and may not be made on alcoholic beverages. There is currently no uncertainty regarding carbohydrate claims on alcoholic beverages. They are clearly permitted. Lion believes that any ambiguity around sugar claims has been resolved in favour of such claims. Any proposal that ultimately leaves consumers with less information about the content of products being consumed in favour of ease of enforcement effectively prioritises the interests of

¹ Lion also notes that there is an ambiguity in the way that Part (a) is phrased because it is unclear if it is intended to mean added malt or malt extract or any malt or malt extract used in production.



enforcement agencies over those of consumers. It cannot be the case that this is considered a fundamental objective of any purported changes to the Code.

Lion also emphasises the very significant costs involved to the sector involved in Option 3. The CFR notes that there will be cost involved in re-branding, advertising, and defending market shares of alcoholic beverages, as well as the costs of changing labels. Lion wishes to emphasise that while costs involved in shifting away from brands built around a low/no carbohydrate or low/no sugar proposition are difficult to estimate, they are likely to dwarf the already very significant costs associated with a label change. This point is addressed in more detail in Lion's responses to the questions for submitters. The scale of costs involved is in no way justified by the non-existent evidential basis for Option 3.

If Option 3 is chosen, then Lion believes that a transition period of at least three years would be required due to the scale of the branding re-alignment that would be necessary. Ideally this would be aligned with any changes resulting from other outstanding consultations - specifically P1059 and P1058 - so that only one series of changes to labels and packaging is necessary.

3. Questions for submitters

1. Do you have or are you aware of any evidence to suggest that nutrition content claims about carbohydrate and/or sugar on alcoholic beverages affect consumers':

(a) level of consumption of alcoholic beverages?

(b) level of physical activity?

(c) general food intake?

2. Are you aware of any studies that sufficiently examine the effects of nutrition content claims about carbohydrate and/or sugar on choice between different types of alcoholic beverages?

Lion has commissioned research from independent agency Fiftyfive5 Australia on consumer attitudes, understandings and responses to low/no carbohydrate and low/no sugar claims on alcoholic beverages. It has also gathered data from its market intelligence sources that will be of relevance to FSANZ's considerations on this matter. The key points are summarized below. However, Lion is willing to provide more detail on the findings to FSANZ on a commercial in confidence basis if necessary.

Market trends

Lion agrees with the observation in 3.1 of the CFS that consumer interest in health and wellness is one of the major food and beverage trends, and it is strongly influential in the alcoholic beverages sector. This is a key driver of interest in low/no carbohydrate and low/no sugar alcohol beverages, although the focus of interest varies across product categories. At the same time, consumer interest in health and wellness is also a driver of an overall trend of reduction in alcohol beverage consumption. This is an important aspect to keep in mind: the increased interest in low/no carbohydrate and low/no sugar alcoholic beverages is part of a broader trend that tends towards reducing



rather than increasing alcoholic beverage consumption. This is borne out by the independent consumer research from Fiftyfive5 discussed below.

Lion also agrees with the observation in 3.3 of the CFR that there has been an increase in the prevalence of alcoholic beverages that carry nutrition content claims about sugar and/or carbohydrate over the last decade. Lion believes that the prevalence of such claims may in fact be understated in the Barons et al. (2022) and Haynes et al. (2022) studies cited in the CFR because these studies appear to be based on samples of individual product labels. This does not account for the fact that some labels will be for comparatively small volume SKUs while others will be for much larger volume SKUs.

By way illustration, Figure 1 shows the growth in market share by volume for low carbohydrate beer in the New Zealand off-premise market since 2015. The current market share is now 15%. This is a reasonable proxy for the whole packaged beer market, including on-premise consumption. These data demonstrate just how important low/no carbohydrate and low/no sugar claims on alcoholic beverages have become to consumers and that there is a genuine and reasonable desire from consumers to understand the carbohydrate content of the beverages that they consume. Over the same time period, the overall percentage of drinkers in New Zealand and the amount of alcohol consumed has remained reasonably steady, while hazardous consumption has decreased slightly according to the New Zealand Health Survey.

Figure 1 - Total off-premise beer sales by volume & category NZ.

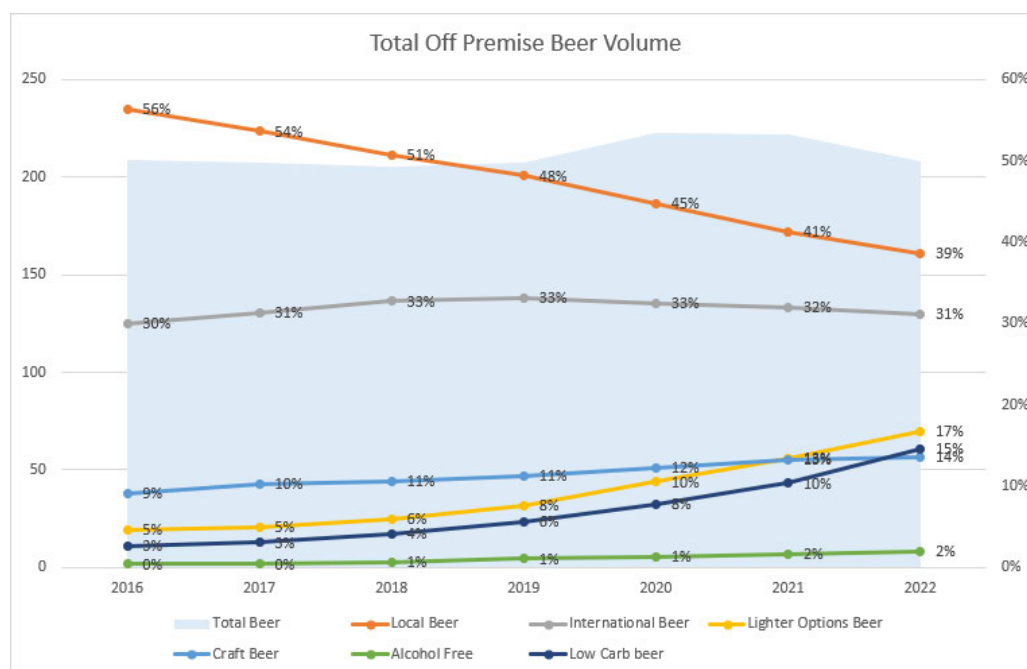
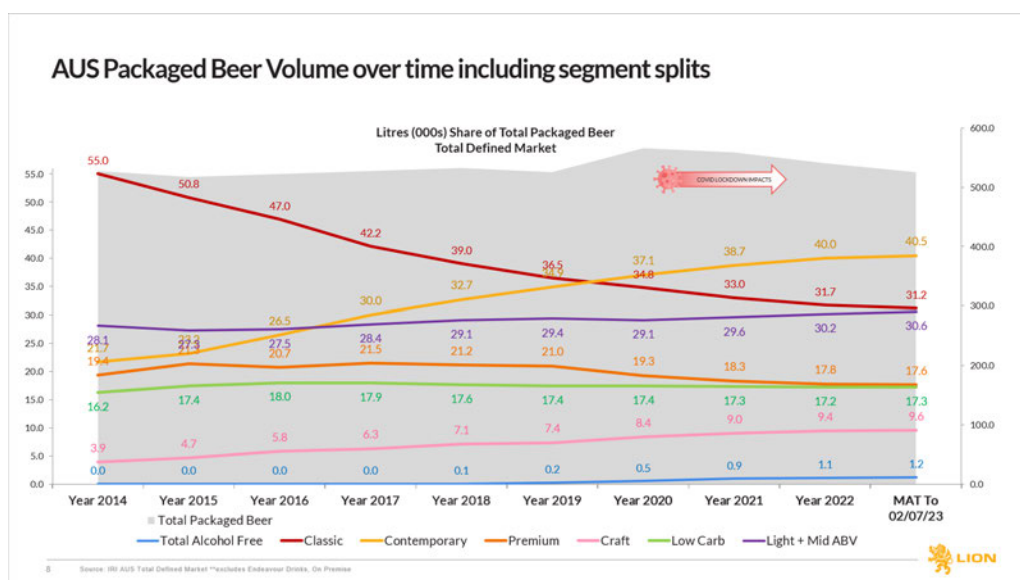


Figure 2 shows the equivalent data for Australia for the total packaged beer market (i.e., on and off premise). Low carbohydrate beers have been established in the market for a longer period, and their market share is reasonably consistent at roughly 17% of the total market in both value and volume terms.



Figure 2 - Total sales of packaged low carbohydrate beers in Australia



Consumer research

More specific insights into these market trends were provided by the consumer research carried out by FiftyFive5 Australia in September 2022.² This information focussed on consumer sentiment on low/no carbohydrate and low/no sugar claims on beer and RTDs since these are the products where such claims are most prevalent.

The research shows that market penetration is strong for both type of claim, although it tends to vary across products and demographics. Around 1 in 10 beer drinkers claim they have consumed a low-carbohydrate beer in the past 3 months (11% in Australia, 12% in NZ with a higher share among 18–24-year-olds (21% Australia, 20% NZ). A corresponding proportion of people consuming beer in the last 3 months considered the amount of carbohydrates as a factor when considering their choice of beer (14% in Australian, 10% in NZ).

More than 1 in 3 RTD drinkers claim they have consumed a low-sugar RTD in the past 3 months (38% in Australia, 42% in NZ). The share is again higher among 18–24-year-olds (58% in Australia, 55% in New Zealand) and closely followed by 25–35-year-olds (44% in Australia, 51% in New Zealand) with claimed consumption dropping away in the older demographics – consistent with overall RTD consumption trends. Of people consuming RTDs in the last 3 months, the amount of sugar was a factor in their choice of RTD for 27% of consumers in Australia and 38% of consumers in New Zealand.

More than half of beer and RTD consumers consider that in circumstances where a beer or RTD product can make a claim about carbohydrate or sugar, this is very important or somewhat important for them to know. Around one quarter to one third of beer and RTD drinkers looked at the nutrition information panel (NIP) last time they

² Methodology: 10-minute online survey with last 3-month Beer or RTD/Seltzer/Soda drinkers in Australia (N=1,051) and New Zealand (N=1,017). Data collected via online survey, using a nationally representative screener (based on ABS and Stats NZ age, gender, and location census figures) to identify the target audience.



purchased. Among those who looked at the NIP, claims are even more important. In short, these claims are recognised and valued by consumers.

In both Australia and New Zealand, the availability of beer and RTDs with low/no carbohydrate or low/no sugar claims is not correlated to an increase in consumption. On the contrary, compared with the average beer drinker, low/no carbohydrate beer drinkers consume slightly fewer serves per week. In Australia, the average beer drinker consumes around 3.9 serves per week compared with a low/no carbohydrate drinker who consumes around 3.3 serves per week. In NZ, the average beer drinker consumes around 5.1 serves per week compared with a low/no carbohydrate drinker who consumes around 4.2 serves per week. There is no suggestion in any of this research that low/no carbohydrate or no/low sugar beverages are consumed in addition to, rather than in place of, their full carbohydrate or sugar equivalents. Compared with the average RTD drinker, low/no sugar RTD drinkers drink around the same number of serves per week. In Australia, the average RTD drinker consumes around 2.6 serves per week compared with a low/no sugar drinker who consumes around 2.7 serves per week. In NZ, the average RTD drinker and low/no sugar RTD drinker both consume around 3.7 serves per week.

For non-alcohol drinkers, the carbohydrate/sugar content of alcoholic beverages is a low priority consideration, so low/no carbohydrate or low/no sugar labelling does not significantly influence their choices. For most consumers who choose to drink low/no carbohydrate or low/no sugar beer or RTDs, removing these claims would lead the majority to choose another alcoholic beverage category with few consumers (around 3%) saying they would instead choose a non-alcoholic beverage or low/zero alcohol beer/RTD (that is not low/no carbohydrate or sugar) rather than not drink at all. Very few consumers choose to drink low/no carbohydrate or low/no sugar beer or RTDs because they believe that these products are lower in alcohol.

3. Do you agree with the estimates for the average cost of labelling change for option 3 for affected Stock Keeping Units (SKUs) in Attachment D? Please provide evidence to support your position.

Lion strongly disagrees with the average cost of labelling change for affected SKUs in Attachment D. The Marsden Jacobs model is built around inclusion or exclusion of regulatory information. The highest cost scenario in the Marsden Jacobs modelling is “Substantive additional content which does require changes to both label layout and label shape/size.” This scenario essentially involves shifting around of existing elements on a label to incorporate a new regulatory element. It is in no way relatable to the removal of the core elements of a brand that is built around low/no carbohydrate or low/no sugar labelling. It is not just a matter of removing the words “low carb” and shifting the other elements of the label around to fill the gap. A fundamental re-branding is required.

Low/no carbohydrates beers and low/no sugar RTDs and ciders are an important part of the market for each of these product categories. As shown above, low carbohydrate beers represent 15% of the New Zealand off-premise beer market and 17% of the Australian packaged beer market. They represent a substantial investment in R&D and brand building to respond to consumer demand. While this is partially acknowledged by FSANZ, the costs of re-branding and re-marketing new product lines if the ability to make carbohydrate and sugar claims was removed are very tangible and is important to understand the scale of the costs involved. It is likely that these costs would be orders of magnitude higher than the cost of a label change calculated by Marsden Jacobs.



For a product such as Speight's Summit Ultra Low Carb Lager, where the low carbohydrate status is integral to and in fact the defining feature of the brand, losing the ability to make a low carbohydrate claim would eliminate the brand's value proposition effectively eroding millions of dollars of brand value and requiring a further investment of many millions more to re-orient or replace that brand. It is critical that any decisions made recognise that the primary cost to suppliers is in the elimination of a designated sub-category rather than the costs associated with any labelling changes. To date, Lion considers that insufficient weight has been placed on the corresponding impact of any changes on the brand.

4. Do you have any data on amounts or proportions of SKUs that carry nutrition content claims about carbohydrate and/or sugar and that would be affected by option 3?

Lion has provided some indicative data above on the proportions of beers carrying low carbohydrate claims.

5. Do you agree with FSANZ's current overall consideration of costs and benefits?

Lion agrees that Option 2 has a substantial net benefit relative to Option 3. It is not clear that Option 2 offers significant net benefit relative to Option 1 since the status quo is that carbohydrate and sugars claims are widely used and accepted across the sector. As discussed elsewhere, Lion is not convinced that there is a sufficient basis for the proposed restrictions on other forms of carbohydrate claims in Option 2.

6. Are there any other material costs and benefits that you believe should be taken into account in this analysis?

Lion has outlined above the need for a clear understanding of the substantial scale of the costs that Option 3 would involve beyond a label amendment.

Yours faithfully

[Redacted signature block]

[Redacted text]

[Redacted text]

[Redacted text]

[Redacted text]