11 November 2022

APPLICATION A1256 - COLOUR OF PREGNANCY WARNING LABELS FOR CORRUGATED CARDBOARD PACKAGING

The Foundation for Alcohol Research and Education (FARE) welcomes the opportunity to provide input to the consultation on Application A1256. FARE is the leading not-for-profit organisation working towards an Australia free from alcohol harms. We approach this through developing evidence-informed policy, enabling people-powered advocacy and delivering health promotion programs.

FARE has been working with communities across the country to improve the health and wellbeing of Australians for 20 years. This includes undertaking research, policy development, advocacy and health promotion programs to prevent, diagnose and manage Fetal Alcohol Spectrum Disorder (FASD). FASD is a lifelong disability, that affects individuals prenatally exposed to alcohol.

FARE supports the requirements of Proposal P1050 '*Pregnancy warning labels on alcoholic beverages'* as incorporated into the Australia New Zealand Food Standards Code (the Code), including the scope, application, size and colour requirements of the warning labels. FARE has concerns that the FSANZ draft food regulatory measure responding to Application A1256, may compromise the objectives of P1050, without fully exploring possible alternatives to those proposed in the Application and in the draft measure. The proposed measure represents a weakening of this important policy that helps prevent alcohol harm during pregnancy, including FASD.

The incorporation of Proposal P1050 into the Code applies to *all* packaged alcoholic products (with more than 1.15% alcohol by volume) available for retail sale. The only exception being when the beverage is packaged in the presence of the purchaser (such as wine or beer served in a glass at a restaurant or bar). There are no exceptions provided in the Code for products with packaging that has different technical, printing or cost requirements, and no exceptions for low or unknown volumes of packaged products.

These requirements are supported by the evidence (including technical, printing and costing evidence), considered by FSANZ during the P1050 consultation process. It showed alcohol packaging should use prescribed colours (particularly the use of red), that achieve a consistent high contrast label, that is legible, noticeable and indicates the hazard being communicated. In the review of P1050, FSANZ assessed that changing the colour requirements of the warning, particularly the removal of the colour red, would undermine the label's effectiveness in reducing the prevalence and severity of FASD.

Concerns with Application A1256 and the FSANZ draft regulatory response

Page numbers below refer to Application A1256.

1. **Achieving the objective relies on full implementation.** The Application says that "*poorly registered pregnancy warnings undermine their effectiveness*" (p. 25) and "*a properly registered pregnancy warning in contrasting colours is more likely to be effective than an improperly registered pregnancy warning in 3 colours*" (p.23). This is simply stating the fact that the measure not being fully implemented will undermine the effectiveness of the measure, (rather than supporting the Application). It is equally true to say '*a pregnancy warning in 3 colours will be more effective than a pregnancy warning in black and white'.*

2. **Cost / benefit analysis is complete.** FSANZ has already fully considered the cost / benefit of implementing the red warning colour. As FSANZ has noted, preventing just a few people from getting FASD easily covers the high-end estimates of the cost of implementation. The Application has not provided specific enough implementation cost evidence for FSANZ to update a costbenefit to justify this amendment (see pages 17-19). It provides 'low / medium / high' range of setup and print costs, and example costs from a specific business, but does not indicate how many packaging units the per-unit cost applies to.

3. **More detailed retail-displayed data is needed.** The Application says "*the use of CCCs at the point of sale is difficult to quantify*" (p. 11), "*Producers have little control over how CCCs are used in a retail setting*" (p. 12) and that it is working on an assumption that "*less than 10% of all products are packaged in CCCs at the point of sale*" (p.13). The Application needs to establish how many Corrugated Cardboard Cartons (CCCs) are on retail display, to be able to assert that it's only a small proportion (such as 10 per cent). This is not specific enough data to justify compromising P1050 requirements. Producers not having 'control' over how retailers display their products does not mean they cannot influence them (including by CCC printing) or collect relevant data.

4. **Industry concerns have been considered.** Previous Industry P1050 submissions have stated the cost of implementation was prohibitive (p. 18), opposed the implementation of colour (p. 22), used '*discourage entry to market'* (p. 10) and '*few international precedents'* (p. 24) in their opposition to P1050. Raising these concerns again is not relevant to this amendment, and seems to imply the Applicant does not accept the P1050 evidence or the FSANZ decision which is evidence-based and has strong community support.

5. **FSANZ evidence is established and accepted.** The Application says it "*is not challenging the findings of FSANZ in relation to P1050*" (p. 28). However, it also states this amendment would "*have only a very minor impact on potential attention to the pregnancy warning"* (p. 6). This is questioning the evidence previously accepted by FSANZ regarding the colour red. The statement following that this *"is offset by the gain in consistency and comprehension against the status quo*" (p. 6) is incorrect as this proposed amendment would not be an improvement on the status quo of P1050, but a compromise of it.

6. **Point-of-sale is equally important.** The Application statement that there would be "*no impact at the point of consumption*" (p. 7) does not consider the importance of having this information available at the point of retail sale. As the FSANZ P1050 decision made clear, the measure was targeted at both Retail Point-of-Sale, as well as Point-of-Consumption.

Alternative options

The Application says that the Applicant "*believes that there are no viable alternatives*" (p. 11). However, the Application does outline the technical processes required to implement P1050 (p. 17). This implies that the substantive issue is the cost of implementation, rather than technical capability.

The following three options all meet the original P1050 requirements and objectives. They are not mutually exclusive and could all be offered in response to this application:

- **Option 1.** Retain the design and colours defined in P1050. Industry invests in the technology (pre-print or higher quality post-print – see p. 17) required to implement P1050 fully in its original form.
- **Option 2.** Require the printing of "NOT FOR RETAIL DISPLAY" label on all post-printed CCCs.

Combine this with gathering data to accurately measure how well retailers follow this notice. Noting that a product labelled ‘not for retail sale’ may still be legally considered suitable for retail sale. This option should retain the requirement to print the larger, single colour warning as per the FSANZ draft response as backup until compliance data is established.

- **Option 3.** The FSANZ draft response already proposes a larger design and a redesign of the pregnancy graphic to accommodate the monochrome diagonal line. Given this, there is a simple option that would fully comply with P1050, and directly address the technical issue that has been raised. This would be to require the printing of a larger design (retaining the original three colours) with a greater separation (> 6 mm) between each element. It accommodates and avoids any overlap or distortion, even if there is maximum misalignment in the printing registration.

If you would like to discuss any part of this submission further, please contact