



Project Officer Proposal 1050
Food Standards Australia New Zealand
PO Box 10559
The Terrace
Wellington 6036

25th October 2019

Dear Sir/Madam

Proposal P1050 – Pregnancy warning labels on alcoholic beverages

A. Name and contact details (position, address, telephone number, and email address):

B. For organisations, the level at which the submission was authorised:

Director

Thank you for the opportunity to comment on this proposal. The Ministry for Primary Industries (MPI) has the following comments to make:

C. Summary

MPI acknowledges the importance of and the intent to make the pregnancy warning label noticeable and the message clear, however the level of prescriptiveness of the proposed warning label may be greater than required to ensure the objective; *to provide a clear and easy to understand trigger to remind pregnant women, at both the point of sale and the potential point of consumption, to not drink alcohol*, is met.

MPI supports the use of a red and black pictogram and a warning statement with prescribed wording, the use of signal words, that the pregnancy warning label is separated from other information on the label with a border, on a contrasting background. However we consider details such as the exact drinking vessel and the exact colour of red used in the pictogram, the colour of the background, as well as the font type may be more prescriptive than necessary given the legibility requirements already required in the Food Standards Code.

While FSANZ does not define the pregnancy warning label as a warning statement MPI is of the view that it is comparable to warning statements currently in the Food Standards Code. We are of the view that the pregnancy warning label is different from other mandated alcohol labelling elements as it is targeting a specific health risk for a specific population, and therefore we agree with the proposal to require a pregnancy warning label also in situations where the Food Standards Code currently does not require alcoholic beverages to bear a label.



MPI agrees that pregnancy warning labels need to be complemented by broader activities such as consumer education to reduce the proportion of women who drink alcohol during pregnancy.

General comments

MPI notes that the *Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system* states that food standards developed under the Australia New Zealand Food Standards System shall be consistent with the obligations of both Members under the Agreement establishing the World Trade Organization.¹ Mandatory labelling requirements would fall within these international trade obligations. MPI, and other relevant New Zealand government agencies, are ready to engage with FSANZ to ensure that the proposal fulfils New Zealand's international obligations.

Comments to specified sections of P1050 Call for Submissions (CFS) report:

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

MPI considers FSANZ's assessment of the literature is in line with the evidence presented in the Decision Regulation Impact Statement and we agree with the use of the five dimensions of warning label effectiveness; attention; reading and comprehension; recall; judgement and behavioural compliance. We acknowledge that the evidence FSANZ has reviewed supports that multiple design elements can be used in varying combinations to enhance the noticeability of warning labels. We also note the lack of studies that have explored the interactions between several different design elements and the lack of evidence on the proposed prescribed label.

However, we note that while there is no evidence for the specific combination of elements prescribed for this proposed pregnancy warning label, there is evidence that the proposed design elements can enhance the noticeability and therefore the effectiveness of the label.

E. Consumer testing of warning statements (section 3.1.2)

MPI is of the view that the consumer testing of the wording for the warning statement confirmed that the voluntary statement '*It's safest not to drink while pregnant*' is not effective and is potentially confusing. The results of the consumer testing are not conclusive between the other three statements but we agree with FSANZ's pragmatic approach to base the decision on the wording of the statement on the principles outlined in the consultation document.

F. Pictogram (section 3.2.2.2)

MPI supports the use of the type of pictogram that is already been voluntarily used by the alcohol industry. However we note that there are different variations of the pictogram used by New Zealand industry with at least the French and the DrinkWise pictogram used.

MPI does not agree that the proposed level of specificity for the vessel is necessary to convey the message; we consider that any glass shape would convey the message adequately. We note for example that the mandated French pictogram includes a silhouette of a pregnant woman holding a

¹ *Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system*, Annex A, 2(c).

tumbler. If however the intent is that the pictogram has the silhouette of a pregnant woman holding a wine glass specifically, then that should be included in the drafting in words to make it explicit.

G. Warning statement (section 3.2.2.3)

MPI supports the use of the warning statement and FSANZ's proposal for the prescribed wording. See also our comment above under E.

H. Design labelling elements (section 3.2.2.4)

MPI recognises that the requirements for the proposed pregnancy warning label are more prescriptive than what is currently required for mandatory warning statements, advisory statements and declarations of substances in the Food Standards Code.

However we acknowledge that a certain level of prescription is needed to ensure the warning label can be an effective risk management tool. MPI notes the issues with the voluntary approach as to the lack of consistency, size, and legibility of the warning labels.

MPI supports the use of a red and black pictogram and a statement with prescribed wording, the use of signal words, that the pregnancy warning label is separated from other information on the label with a border, on a contrasting background. See further comments on the pictogram under F.

MPI does not object to the use of 'health warning' as the signal words. We have no further evidence to provide. We note that it is likely that the use of signal words 'Pregnancy warning' would only be relevant to those that know they are pregnant or are trying to get pregnant.

As to the other design elements in the proposed pregnancy warning label, we consider that the objective of noticeability could still be met while providing some level of flexibility to manufacturers in the spirit of all other mandatory labelling elements in the Food Standards Code having to meet the general legibility requirements.

The general legibility requirements in Standard 1.2.1 Division 6 require that a word, statement, expression or design mandated in the Food Standards Code on a label must be legible and be prominent so as to contrast distinctly with the background of the label. Further the font size for warning statements is specified. MPI considers that these requirements should apply and would be adequate to meet the objective of pregnancy warning labels. Further prescription as to font type, type of drinking vessel and the exact colour of red used in the pictogram, as well as the colour of the background of the warning label may be unnecessary additions.

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

See our comments under F, G and H above.

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

MPI supports FSANZ's proposal that beverages containing more than 1.15% ABV are required to carry the warning label.

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

MPI notes that the proposed requirement is defined as a “pregnancy warning label” and not a “warning statement” as defined in Standard 1.1.2. Therefore the requirements for a warning statement to “accompany the food or be displayed in connection with the display of the food” as required by 1.2.1-9 (2) would not apply to the pregnancy warning label.

MPI is of the view that the pregnancy warning label is equivalent to warning statements currently in the Food Standards Code. We also consider that the pregnancy warning label is different from other mandated alcohol labelling as it is targeting a specific health risk for a specific population, and therefore we consider there is justification for it to be treated differently.

MPI supports the proposal to require a pregnancy warning label also in situations where the Food Standards Code currently does not require alcoholic beverages to bear a label. These are for packaged alcoholic beverage made and packaged on premises from which it is sold; delivered packaged and ready for consumption at the express order of the purchaser; sold at fundraising event; and displayed in an assisted service display cabinet.

MPI notes that displaying a warning label sign in licensed premises is out of scope for this proposal. However, we consider that in order to meet the stated primary objective of the proposal to provide a clear and easy to understand trigger to remind pregnant women, at both the point of sale and the potential point of consumption, to not drink alcohol, there may be a need to provide the pregnancy warning label in some additional situations in which the Food Standards Code currently does not require alcoholic beverages to bear a label. We consider it may be appropriate to require a pregnancy warning label to be applied in particular in the case of ‘packaged in the presence of purchaser’ and where that alcoholic beverage is removed from the location of purchase for consumption, such as a fill your own bottle at a liquor store.

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

Given that the primary objective of the proposal aims to remind pregnant women not to drink alcohol both at the point of purchase and at the point of consumption, MPI considers the requirement for the pregnancy warning label to be on both the outer most layer of packaging (at point of purchase) and on the individual container (point of consumption) to be appropriate. We query the need for the warning label to be on all layers of packaging in the case of a package with more than these two layers (eg. on the tissue paper of a bottle wrapped in tissue and then in a box).

M. Consideration of costs and benefits (section 3.4.1.1 of CFS)

MPI has no comments on the updated consideration of costs and benefits and notes that costs to industry are one-off whereas the benefits of the warning label are potentially significant and, when combined with a wider education of the public, are on-going.

N. Transitional arrangements (section 4.1 of CFS)

MPI notes that FSANZ proposes a two-year transition period for the mandatory pregnancy warning label from the date of gazettal of variations to the Food Standards Code, and an exemption for alcoholic beverages packaged and labelled before the end of the transition period. The same

transitional arrangements would apply to imported products. However, the wording of the draft variation is not clear that this is the case. See our comment to Section O below.

MPI would like clarification on whether in the case of a product that is bottled before the end of the transition period, but not outer packed until after the end of the transition period, both the inner and outer packaging would be required to carry the pregnancy warning label?

MPI additionally notes that given a 'packed on' date is not required on the label, enforcement with regard to packed on date could be difficult.

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

While MPI is not convinced that the level of specificity is necessary, we are of the view that if the intent is that the pictogram has the silhouette of a pregnant woman holding a wine glass specifically, then that should be included in the drafting in words to make it explicit.

MPI considers that the use of the word "Compliance" in the header of 2.7.1—10 is confusing and proposes 'Requirements for the format of a pregnancy warning label' as an alternative to the header.

MPI requests clarity in the wording of subsection 2.7.1—10(3) as to whether it is acceptable for the pregnancy warning statements used in other countries to still be visible on the packaging when product is sold in Australia or New Zealand (that displays the mandated provisions of Division 4).

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

MPI agrees that pregnancy warning labels need to be complemented by broader activities such as consumer education to reduce the proportion of women who drink alcohol during pregnancy.

MPI is in agreement that industry guidance on the implementation of the requirements, including transition arrangements, for the pregnancy warning label should be available at the time of gazettal of changes to the Food Standards Code. MPI agrees that the downloadable pregnancy warning label graphics that FSANZ will make available for easy use by industry will assist with implementation.

Yours sincerely

