



Spirits New Zealand

Submission to Food Standards
Australia New Zealand

*Proposal P1050 – Pregnancy Warning
Labels on Alcoholic Beverages*

October 2019

Introductory Comments

1. Spirits New Zealand is the national trade organisation representing New Zealand's leading producers, distributors, brand owners, importers and exporters of premium spirits and spirit-based drinks. Our members are Asahi NZ, Bacardi, Beam Suntory, Brown-Forman, Diageo, Hancocks, Lion, Moet-Hennessy and Pernod Ricard. In addition we have three associate members who are Lactinol, EuroVintage and Federal Merchants.
2. Spirits NZ represents over 96% of spirit industry interests in New Zealand.
3. Spirits NZ and its members support efforts to reduce the incidence of Foetal Alcohol Spectrum Disorder through coordinated programmes and activities including those focused on changing behaviours of women who currently drink while pregnant. We acknowledge that carrying appropriate messaging on beverage alcohol labelling and packaging is a component of these programmes.
4. However as we have consistently pointed out, by itself, pregnancy warning labelling will do little to change behaviours and reduce drinking during pregnancy. This fact has been acknowledged by governments in a number of official documents and during pre-consultation discussions.¹
5. We find it difficult therefore to mediate a labelling information approach that seeks to influence behaviours but as part of a wider programme over which industry has no control. It also seems problematic to us to effectively carry out accurate cost benefit analyses when it is openly stated that labels don't change behaviours but are, nonetheless, an ingredient that could be assigned to a wider programme of activity.
6. And although we acknowledge the New Zealand Ministry of Health's *Taking action on fetal alcohol spectrum disorder 2016-19* we feel that the social change initiatives currently implemented to support this strategy could be better funded and delivered.
7. For example a critical part of the Ministry's plan is an initiative run by the Health Promotion Agency (known as *Don't Know, Don't Drink*). Yet the HPA does not use any of the proposed labelling imagery in its campaigns and will likely not do so when the label is mandated.
8. We find this situation curious since one of the calls for a mandated pregnancy label was based on the need for consistency and consistent application of label information. How can it be that New Zealand's lead social change agency – funded \$11.4 million from a levy on beverage alcohol – not use standard pregnancy messaging while producers are required to?
9. This situation cannot continue. We acknowledge this matter is commented on in section 4.3 of the consultation document.

¹ Food Regulation Standing Committee Decision Regulation Impact Statement (2018), Pregnancy warning labels on packaged alcoholic beverages, pp 2.

10. In contrast when industry, though its social change charity *Cheers!* ran its own initiative (*No alcohol = no risk*) we ensured that the pictogram element of the proposed label was prominently displayed.
11. Finally, we raise again with FSANZ the implementation issue related to timing and transition. FSANZ is already aware that other label changes are being considered which impact beverage alcohol.
12. We urge FSANZ to recommend as forcefully as possible that changes to labels relating to pregnancy, sugar, carbohydrate content and nutrition panel information be managed in such a way so as to necessitate only one coherent label change for industry. This could be easily achieved through the adoption of a phased approach that would allow label changes to be adopted at a date representing the final adopted change from the list above.
13. Further we ask that FSANZ also coordinate its planned label changes with the Ministry for the Environment who is currently consulting on the development of a Container Deposit/Return Scheme. The outcome of this will also most likely require a label change for beverage alcohol and is currently timed for 2021.
14. This submission should be read in conjunction with individual member company submissions which will include more detailed information on, in particular, cost impacts, phasing and timing considerations which will not be repeated here.
15. Please do not hesitate to make contact if you have any questions about this submission.

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Submission

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

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

16. The literature review rightly acknowledges the paucity of information that could gainfully be used to form an opinion on the effectiveness, form and placement of warning labels of any kind. Yet from this information and evidence-poor environment FSANZ has proposed an incredibly – without precedent in fact – prescriptive label approach.
17. Our review of the approach adopted by FSANZ is that it has almost universally accepted the elements as described in the DRIS associated with this consultation process and has then sought to fit what thin evidence is available to support the adoption of these elements. This is an extremely poor policy approach as it seems to imply that the outcome was agreed prior to a thorough examination of evidence.
18. For example prescribing a 3mm clear space around the label border is supported by poor research evidence yet it is to be part of the mandated label form. Such an element is a costly addition to a label that will have little impact in the first place.
19. Similarly the prescription of the use of colour – i.e. ‘red’ to have been adopted without sufficient evidence in accordance with the DRIS principles. Additionally, no other colour variants were tested by FSANZ nor was the impact of the use of contrast against a multi-coloured label background yet the recommendation is to include the colour red at a prescribed Pantone number.
20. Again the above can be said about the term **HEALTH WARNING** – seemingly the principle relating to this phrase has been lifted from the DRIS and then scant evidence used to propose it be used as ‘Signal Words’.
21. The matters raised in paragraph’s 19 and 20 should not come as a surprise to FSANZ since they were raised by multiple stakeholders during the pre-consultation meetings.

Consumer testing of warning statements (section 3.1.2)

22. The basic methodology (sample size, statistical significance etc) used to test the warning statements appears to be sound. We discuss our concerns with the proposed statement below but would point out here that the approach taken to select and then compare the four statements while appearing reasonable is flawed.
23. Our main concern is that the research approach only allowed for prompted responses in a compare and contrast format. Yet label information is observed in a subservient manner and rarely does the consumer see it as equivocally as the phrases were tested.
24. At the very least unprompted responses should have been sought so that phrases could be more accurately assessed (e.g. 'what does this [phrase] mean to you' as opposed to 'which of the phrases is [more impactful]'). Given the way the phrases were tested it is hardly surprising that the two that tested more strongly were selected by research participants.

Pictogram (section 3.2.2.2)

25. The pictogram was first developed in France by Pernod Ricard and is now universally adopted by almost all beverage alcohol companies globally. We believe that the pictogram, by itself, is sufficient to convey the message that women should not drink if pregnant.

Warning statement (section 3.2.2.3)

26. The warning statement is factually incorrect and not supported by evidence and should not be used. We are surprised that FSANZ has proposed the phrase '*any amount of alcohol can harm your baby*' as not only is it untrue it is also impossible to achieve.
27. The fact that only products with an alcohol content of greater than 1.15% by volume will need to carry a pregnancy warning label makes the warning statement nonsensical. This issue was tabled by the submitter at stakeholder pre-consultation meetings.
28. We do not think it is sufficient for FSANZ to argue that the statement has been selected because of its tested impact. FSANZ has a duty of care based on its enabling legislation to ensure code content is accurate and reflects current scientific evidence.
29. By advancing the proposed phrase based on its tested perceptual impact FSANZ has had to ignore what the science is actually saying about alcohol and pregnancy. If the argument is that this can be done based on the precautionary principle then we would argue that this is a misuse of such a dictum.
30. We would support the use of '*alcohol can harm your baby*' or something more directive and more aligned with the desired public health policy outcome e.g. '*don't drink if you're pregnant*' or '*don't drink if pregnant*'.

Design labelling elements (section 3.2.2.4)

31. See comments above.
32. In addition we note that industry's suggestion that '*Pregnancy Warning*' would be more impactful than '*Health Warning*' has been ignored because the former has not been tested and, therefore, no evidence exists as to its impact or not. FSANZ then calls for any additional evidence to be supplied on this matter.
33. Given the short timeframe for this consultation process it is not possible to provide such information but we would welcome an extension to the implementation timetable to undertake such work although we call into question why FSANZ did not include testing of proposed 'Signal Words' in its own research.
34. We have already made comment on matters relating to colour and contrast but re-iterate that we feel the evidential basis by which to arrive at a prescribed red colour and a 3mm exclusion space are not sufficiently supported.
35. We support the use of the pictogram.

Summary of proposed pregnancy warning label design (section 3.2.2.5)

36. See the section immediately above.

Beverages to carry the pregnancy warning label (section 3.2.3)

37. If the proposed warning statement is adopted, we would not support pregnancy labels being restricted to beverages containing 1.15% ABV or above. With this particular statement, we would propose that all beverages containing any alcohol would need to carry the message in order to be consistent.
38. Further we would propose that Bitters be exempted from the need to carry any pregnancy warning – no matter what final decisions are made on the form and content of the warning label. Bitters are a spiritous beverage but are only used as an ingredient in, mostly, the creation of cocktails where a few drops at a time are used.
39. Further, we note that Bitters are packaged and sold in small containers and are a small part of the overall beverage alcohol market. Such an exemption would be very beneficial to, in particular, some of the members of the New Zealand distilling industry who tend to be small, start-up businesses and sensitive to cost imposts.

Application to different types of sales (section 3.2.4)

40. We support the approach as detailed in the consultation document.

Application to different types of packages (section 3.2.5)

41. We acknowledge FSANZ's position on this matter but would point out that for small New Zealand distillers the cost impact associated with labelling both bottle and box/carton (say) is significant and is not, in our opinion, proportionate to the benefit to be gained from such a prescription.

Consideration of costs and benefits (section 3.4.1.1 of CFS)

42. We do not intend to expand on the matter of cost in this submission other than the general comments below as Spirits NZ members and other trade associations will do so in more detail. However we believe the cost of label changes used to determine a cost/benefit solution does not reflect true costs nor do the costs assess the business impact for small, medium and large producers.
43. This is particularly so if a mandated red colour is used along with the 3mm exclusion zone. Industry-supplied figures from previous consultations do not reflect the impact of such factors.

Transitional arrangements (section 4.1 of CFS)

44. While we understand the compromise position FSANZ has suggested (i.e. a two year transition from time of gazetting) we point out that this timeframe is particularly impactful on smaller producers who are far more cost sensitive and print label stock for upwards of three years at a time.
45. Given our comments in our introductory remarks about a merged transition arrangement to allow for other labelling changes we recommend three years be reconsidered as this timeframe would better accommodate one managed label change.

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

46. We have no comment on proposed changes at this time.

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

47. We have no further comments.