



24 October 2019

Project Manager
Food Standards Australia New Zealand
PO Box 10559
The Terrace
Wellington 6143
NEW ZEALAND

Email: submissions@foodstandards.gov.au

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Call for submissions – Proposal P1050: Pregnancy warning labels on alcoholic beverages*.

Yours sincerely



***Call for submissions – Proposal P1050:
Pregnancy warning labels on alcoholic
beverages***

**Submission by the New Zealand Food & Grocery
Council**

26 October 2019

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the ***Call for submissions – Proposal P1050: Pregnancy warning labels on alcoholic beverages*** (the CFS).
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$31 billion in export revenue from exports to 195 countries – some 72% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income. Our members directly or indirectly employ more than 400,000 people – one in five of the workforce.

OVERARCHING COMMENTS

3. NZFGC completely understands that Foetal Alcohol Spectrum Disorder (FASD) is a preventable but incurable condition caused by foetal exposure to alcohol in the womb. We are aware that recognition of FASD across the New Zealand community is on the rise but there is significant room for more and better programmes to prevent and reduce its incidence. We would therefore highlight the major contribution the alcohol beverages industry contributes to raising alcohol harm awareness generally and pregnancy risks specifically.
4. NZFGC believes that FSANZ has mis-applied the significance of the Decision Regulation Impact Statement (DRIS) prepared by the Food Regulation Standing Committee for Ministers on the Forum for Food Regulation and has given it a status of policy guidance at best and Ministerial direction at worst. It is neither. Its influence on the overall position proposed by FSANZ is of great concern and in several areas has been the only ‘evidence’ to justify a particular view. As a result, NZFGC challenges several of the elements proposed by FSANZ particularly in design and transition.
5. In summary, NZFGC’s position on the pregnancy warning label is to not support excessive prescription that outstrips the prescription for medicines labelling as follows:
 - NZFGC supports the signal words noting the selection was ‘loose’.
 - NZFGC strongly opposes prescribing the signal words be in caps – this could be optional – and strongly opposes the signal words being red. There is no evidence to support such an approach nor precedent for the approach.
 - NZFGC does not support the text proposed for the warning label and instead supports consideration of government advice “*Don’t drink when pregnant*” or the scientifically factual statement that “*Alcohol may harm your baby*”.
 - NZFGC supports the differentiation between full label and a limited label for smaller containers.
 - NZFGC does not support the extreme prescription of size for the varying labelling layers and considers the medicines approach of size being ‘not less than’ to be adequate for the task.
 - NZFGC does not support prescribing the type and size of font since this is not mandated in medicines law under the Therapeutic Goods Administration (TGA) where ‘not less than’ is the form of size limitation.
 - NZFGC strongly opposes prescribing ‘red and black’ for the pictogram. However, to be constructive, we would support a move to ‘red and black’ over a 4-5 year period making the colour change a two step process: ‘black’ or ‘black and red’ within two years then ‘black and red’ within four to five years.

-
6. NZFGC supports the proposed application of the label to beverages above 1.15% ABV but not on all packaging layers. NZFGC recommends the 'layering' of the requirement to include pregnancy warning labels be reconsidered.
 7. NZFGC supports application of the warning to the proposed types of sales and packages.
 8. NZFGC supports the Brewers Association review of costs and benefits on the basis that a review by NZIER is independent, thorough, expert and defensible. We would also support NZFGC member submissions that provide detail on individual business costs and impact.
 9. The alcohol industry has continually and consistently argued for alignment of any specific labelling change requirements across the raft of current and upcoming labelling and other related requirements. We consider that, with the level of voluntary labelling already in place, a managed transition of less prescriptive arrangements over a longer period would address costs of current and future labelling changes with very little negative impact on raising the awareness of the target population.
 10. NZFGC strongly supports greater overlap with prospective, upcoming additional labelling changes for alcoholic beverages and a four year transition period with options for phasing in elements over that period.

DETAILED COMMENTS

FASD

11. NZFGC is very much aware that FASD is a preventable but incurable condition caused by foetal exposure to alcohol in the womb. We are aware that recognition of FASD across the New Zealand community is on the rise but there is always room for more and better programmes that maintain ongoing awareness especially for the constant stream of young women of childbearing age entering this specific population group each year.

Industry alcohol awareness work including pregnancy awareness

12. The alcohol beverages industry contributes in several ways and often twice over to raise alcohol harm awareness generally and pregnancy risks specifically. We say this because the significant levy applied to alcohol for promotion is a mandatory contribution for such purposes. Even so, and having paid once for awareness raising has been independently proactive in undertaking a range of initiatives and measures to reduce alcohol related harm in the community. This has included the broad-ranging 'Cheers!' campaign, the voluntary uptake of labelling on Beer from Brewers Association members on all their beer products, in-store and social media campaigns such as the recent 'Cheers!' Safer Pregnancy initiative (funded by Lion, DB and Pernod Ricard) delivered through social media and YouTube.
13. These ongoing levies, investments and initiatives along with existing tight controls on marketing of alcohol demonstrates a high level of social responsibility and commitment to the promotion of responsible and appropriate alcohol consumption.
14. No singular action is a silver bullet and this array of measures along with the alcohol work of the Health Promotion Agency (funded by the industry levy) all contribute to the same goal of promoting the appropriate and responsible consumption of alcohol and preventing harm.
15. The alcohol and related industry has repeatedly advised it is open to partnering with government, health groups, community groups, clinicians and GPs to develop resources to inform and educate pregnant women and women of child bearing age. We know that

pregnant women in New Zealand are drinking less but with new entries into the population group each year and the need to maintain an impact more is better but only where research demonstrates a positive impact.

FSANZ Process

16. NZFGC is very familiar with the *FSANZ Act 1991* requirement under section 18(2)(e) for FSANZ to have regard to “any written policy guidelines formulated by the Forum on Food Regulation ...”. There is no provision for other documentation to substitute for ‘written policy guidelines’. As far as we are aware there is no policy guideline formulated by the Forum on Food Regulation relevant to alcohol consumption standards.

17. The issue was exacerbated by the Forum’s communique of November 2018 stating:

The Forum agreed that, based on the evidence, a mandatory labelling standard for pregnancy warning labels on packaged alcoholic beverages should be developed and should include a pictogram and relevant warning statement. The Forum requested Food Standards Australia New Zealand (FSANZ) develop this mandatory labelling standard as a priority and that the work be completed expeditiously.

The Forum exceeded its function under the *FSANZ Act 1991* and placed FSANZ in an invidious position of dealing with Ministerial preferences/directions when that appears to have been contrary to the legislation.

18. FSANZ can draw on any relevant information in the development of a standard and NZFGC fully supports the wide-ranging approach taken by FSANZ in much of its standard development work. However, FSANZ cannot rely on such information to provide it with parameters for consideration as though it were a policy guideline. NZFGC therefore finds it disappointing that FSANZ has relied so heavily on the DRIS and the Communiqué in forming its preferred position and to have deferred to the DRIS in several critical areas of the standard development. We ask that FSANZ reconsider some aspects of the proposal and take steps to analyse all current evidence to remove constraints created by reliance on the DRIS to alternative approaches.

Mandatory approach

19. We note that the Forum sought a mandatory standard for pregnancy warning labels. As a result, no options are included in the CFS for other a mandatory option. This is poor regulatory practice and gave no credence to the voluntary efforts of the alcohol industry to label products in the market or in marketing. While we consider this a flaw in the process, we are not seeking to delay the process further on this point. However, greater flexibility in other areas discussed below is sought which might have been considered in a more robust regulatory process.

Design Principles

20. NZFGC notes that FSANZ deduced six principles for designing an effective alcohol warning statement (not specifically a pregnancy warning label) drawn from several sources but primarily the WHO principles for warning statements. These were:

| | |
|---|---|
| 1. Identifies the problem | 2. Explains the consequences if exposed to the problem |
| 3. Directly refers to low levels of alcohol consumption | 4. Avoids definitive language that harm will always occur |
| 5. Uses personalised language to increase relevance | 6. Is as short as possible |

21. NZFGC supports the application of the design principles to the design of an alcohol pregnancy statement.

Pictogram

22. The selection of the pictogram (see opposite) appears based on:

- its current voluntary use
- the fact that from Australian research by Hall & Partners (2018), the pictogram was understood and overall was the 'strongest option' among those tested by Hall & Partners and
- increasing awareness and understanding of the pictogram by women of childbearing age and by men in the same age range.



NZFGC concurs with the choice of the pictogram based on its extensive use in the voluntary labelling programme.

23. We comment on colours applicable to the pictogram here because in the CFS, this received quite limited analysis – colour was identified as a design element in reference to the DRIS (p4), use of colour overseas (p7 and Attachment C) and under the heading 'colour and contrast' in 3.1.1.1.4 (p10). In this last section FSANZ noted that red compared to black was identified for enhancing attention, speed of identification, level of attention, noticeability and level of hazard. On this basis red over a black silhouette was recommended. The CFS states that "some countries that mandate a pregnancy warning icon prescribe the use of the colour red" (CFS p31). NZFGC referred to the CFS Attachment C to identify the countries mandating the icon (pp 72-79 CFS) and could identify only Turkey of the 13 countries mandating an icon as mandating it be red. We noted the Attachment C stated "[V]ery few countries specify the colour of the warning label (e.g. South Africa requires the text to be in black on a white background, Turkey requires the colour red in the pictogram)" (p72, CFS). This is not compelling evidence.

24. In labelling activities, colour equals cost and for the pictogram this is certainly the case. NZFGC considers that prescribing red and not proposing options of 'black' or 'red and black' adds significantly to the overall cost of relabelling for an uncertain return to the target audience. NZFGC does not support prescribing 'red and black' and recommends that two options be provided: 'black' or 'red and black'. Consideration might be given to mandating 'black' or 'red and black' for 5 years from commencement and thereafter 'red and black' to provide the alcohol industry with an opportunity to plan well in advance for the addition of colour.

Warning Statements

25. NZFGC notes the consumer testing conducted by Roy Morgan Research of four labels identical in all respects except for the text in the proposed label. The testing used six measures to assess participants' evaluations: comprehension, believability, credibility, convincingness, personal relevance and final comparison.

26. The results presented a dilemma for FSANZ in relation to the six measures used to assess participants' evaluations (comprehension, believability, credibility, convincingness, personal relevance and final comparison). FSANZ acknowledged this in the CFS stating "which of the remaining three statements [having identified the statement "*Its safest not to drink while pregnant*" as performing least well on all measures] consistently performs best across all measures in the survey is more difficult" (CFS 3.2.2.3). It was equally difficult for stakeholders to identify how FSANZ reached its decision on the text.

27. This was because while there were plenty of tables in the CFS drawn from the Roy Morgan Research, there was no table ranking the overall performance of the statements by consumers. We deduced the following (Table 1: Summary of Results of Roy Morgan Research) by focussing on the responses of either women of childbearing age or women in the proximate pregnancy category across Australia and New Zealand:

Table 1: Summary of Results of Roy Morgan Research

| Measure | Text: “Any amount of alcohol can harm your baby” | Text: “Any amount of alcohol can cause lifelong harm to your baby” | Text: “Alcohol can harm your baby” |
|---|---|---|---|
| Conveying the message not to drink any alcohol while pregnant | Equal Best (Aus and NZ) | Equal Best (Aus and NZ) | |
| Believable and credible | | | Best (NZ) |
| Relevance | | Best (Aus) | Best (NZ) |
| Convincingness | | Best (Aus) | Best (NZ) |
| Final comparison | Next best | Best (Aus and NZ) | |

28. It appears the longer statement “*Any amount of alcohol can cause lifelong harm to your baby*” was favoured in relation to four of the six measures used to assess participants’ evaluations by Australian women and the shortest statement “*Alcohol can harm your baby*” was favoured in relation to three of the six measures used to assess participants’ evaluations by New Zealand women. Both were discarded by FSANZ.
29. The FSANZ conclusion was that the statements ‘*Any amount of alcohol can harm your baby*’ and ‘*Any amount of alcohol can cause lifelong harm to your baby*’ “tended to perform best in both Australia and New Zealand in conveying the desired message ... and are also believable, credible and seen as convincing to the key audience.” Since all three statements were believable, credible and seen as convincing to the key audience, the preferences recorded for these measures have been dismissed by FSANZ because the final selection by FSANZ appears based only on the measure to convey the message ‘not to drink any alcohol while pregnant’ and on the shortness of message (even though there was strong support for the term ‘lifelong’ from those surveyed). The bottom line is the selection of text by FSANZ was not ‘the best’ and further consideration should be applied to justify selection.
30. We concur with the Brewers Association that the form of text proposed “Any amount of alcohol can harm your baby” is scientifically incorrect and may cause undue distress and worry to expectant mothers. When the role of FSANZ is to ‘provide excellent evidence-based scientific advice to inform decision making’, it would be an unusual circumstance indeed if FSANZ was to recommend this statement or fail to note the lack of evidence to support such a claim.
31. We further concur that the precautionary position taken by government authorities is far from establishing a scientific basis for the proposition that any amount of alcohol can cause harm to an unborn child. Indeed, the weight of scientific evidence suggests that low and infrequent consumption is likely to carry a low risk, and there is no evidence that extremely low levels of consumption are harmful.
32. NZFGC does not support the text proposed and instead supports the government advice “*Don’t drink when pregnant*” or the scientifically factual statement that “*Alcohol may harm your baby*”.

Design Labelling elements

33. FSANZ developed three principles based on the *FSANZ Act 1991*, the DRIS, evidence relating to health-related warning labels and other information (eg existing guidance and

requirements such as Drinkwise, existing Food Standards Code requirements and overseas warning labels). The principles were:

Principle 1: Have regard to policy advice in the DRIS provided to FSANZ, with particular reference to the recommendations related to warning label design

Principle 2: Consider the best available evidence relating to design labelling elements in the context of health warnings and warning labels

Principle 3: Consider other information relevant to design labelling elements including existing guidance and requirements such as the Drinkwise guidance for voluntary pregnancy warning labels, standard drink labelling, existing [Food Standards] Code requirements for legibility and requirements for warning labels in other countries.

34. NZFGC considers the first principle to have substituted for a non-existent policy guideline and to have resulted in particular design decisions reflected in Principles 2 and 3 that should be reconsidered. NZFGC is particularly concerned with three elements:

- 1) separation from other information through being boxed and surrounded by clear space
- 2) mandating contrasting colours.

NZFGC suggests these elements be reconsidered in light of alternatives both in relation to timing (as noted above under '*Pictogram*' and spatial considerations.

35. All three principles covered more or less similar elements with increasing levels of detail applied under each by FSANZ such that Principle 3 covered a summary of the proposed approach under subheadings: signal word(s), warning label size, location and label orientation, colour and contrast, and summary of proposed pregnancy warning label design. The key points made for each are:

- signal word(s) – three options are discussed: 'Health warning', 'Government warning' and 'Warning'. 'Health warning' was preferred on the basis of increasing credibility, more attention accorded two words, broader than 'Pregnancy warning' and having greater community application. However, FSANZ then proposes the words be in caps and be red. NZFGC supports the signal words but strongly opposes prescribing these be in caps and in red. There is no evidence to support such an approach and no precedent is presented for this. We repeat the comments made above:
 - The CFS states that "some countries that mandate a pregnancy warning icon prescribe the use of the colour red" (CFS p31). Attachment C to the CFS identifies countries mandating warnings (pp 72-79 CFS). NZFGC could identify only Turkey of the 13 countries mandating warnings that mandated the colour red noting the CFS states "[V]ery few countries specify the colour of the warning label (e.g. South Africa requires the text to be in black on a white background, Turkey requires the colour red in the pictogram)" (p72, CFS). This is not compelling evidence.
- warning label size – the DRIS features here and should not have influenced the proposed approach to the extent it has. NZFGC nonetheless supports the differentiation between full label and a limited label for smaller containers. NZFGC does not support the extreme prescription on size of the varying labelling layers. We strongly recommend that a 'not less than' approach be taken in all cases. In the medicines area, the TGA uses this terminology including for warnings (see Therapeutic Goods Order No. 92 - Standard for labels of non-prescription medicines (August 2017), <https://www.legislation.gov.au/Details/F2017C00744>). The form and size of the font is not mandated in medicines law under the TGA. Removing the very tight restrictions on size and removing entirely font requirements entirely would provide a level of flexibility, albeit limited, to best accommodate the warning by the industry.
- location and label orientation – NZFGC strongly supports the decision not to mandate the location (to front of pack) of the warning label. NZFGC equally strongly opposes the application of a border and clear space around the warning. Again we

point to medicines legislation and the Therapeutic Goods Order No. 92 which requires no boxing or 'clear space' for warnings.

As is stated in the CFS, reference to placement relied in part on the DRIS, an influence that should have allowed for a greater consideration of the evidence for 'borders and clear space'. We note the CFS clearly states that "To date, no studies have investigated whether this specific practice influences consumer understanding of a pregnancy warning label". In our view, there is no compelling evidence for a border or clear space and no particular precedence other than the Australia-only, country-of-origin labelling (hardly in the same category).

- colour and contrast – NZFGC strongly opposes mandating 'red and black' for the pictogram as noted above. We would again to medicines law that does not mandate red and in many areas mandates a strong contrast. In the interests of being constructive, we could support a move to 'red and black' over a 4-5 year period making the change a two step process: 'black' or 'black and red' within two years then 'black and red' within four to five years.

Summary of proposed pregnancy warning label design

36. In summary, NZFGC's position on the label design is to not support excessive prescription that outstrips the prescription for medicines labelling as follows:

- NZFGC supports the signal words
- NZFGC strongly opposes prescribing the signal words be in caps – this could be optional – and strongly opposes the signal words being red. There is no evidence to support such an approach nor precedent for the approach.
- NZFGC does not support the text proposed and instead supports the government advice "*Don't drink when pregnant*" or the scientifically factual statement that "*Alcohol may harm your baby*".
- NZFGC supports the differentiation between full label and a limited label for smaller containers.
- NZFGC does not support the extreme prescription of size for the varying labelling layers and considers the medicines approach of size being 'not less than' to be adequate for the task.
- NZFGC does not support prescribing the type and size of font since this is not mandated in medicines law under the TGA where 'not less than' is the form of size limitation.
- NZFGC strongly opposes prescribing 'red and black' for the pictogram. However, to be constructive, we would support a move to 'red and black' over a 4-5 year period making the colour change a two step process: 'black' or 'black and red' within two years then 'black and red' within four to five years.

Beverages to carry the warning label, types of sales and types of packages

37. The reliance on the DRIS is very evident in this section of the CFS (section 3.2.3.1) but fortunately the DRIS was not as directive about application of the warning label. FSANZ considered options.

38. NZFGC supports the proposed application of the label to beverages above 1.15% ABV but not on all packaging layers. Reference to the DRIS enters the decisions FSANZ made in relation to this aspect and practical considerations and impact appear to have been ignored as a result. NZFGC recommends the 'layering' of the requirement to include pregnancy warning labels be reconsidered.

39. NZFGC supports application of the warning to the proposed types of sales and packages.

Costs and benefits

40. NZFGC supports the Brewers Association review of costs and benefits on the basis that a review by NZIER is independent, thorough, expert and defensible.
41. We would also support NZFGC member submissions that provide detail on individual business costs and impact.

Transition

42. The alcohol industry has continually and consistently argued for alignment of any specific labelling change requirements across the raft of current and upcoming labelling and other related requirements. The upcoming within the FSANZ area of responsibility are changes to labels relating to pregnancy, sugar, carbohydrate content and nutrition panel information. It is absolutely unequivocal that when not aligned, sporadic and intermittent labelling changes are hugely burdensome to industry with significant and unnecessary cost to consumers.
43. In our view, while FSANZ reflected the comment from Ministers that "...FSANZ consider energy labelling on alcoholic beverages to FSANZ and request FSANZ consider energy labelling as part of the work relating to alcohol labelling..." (CFS p53) has not been seriously considered. This could quite sensibly have considered a phased implementation so as "...not to delay the work on developing pregnancy warning labels for alcoholic beverages" (CFS p53). We note that the TGA's programme to make labelling information clearer has had a four year transition from Aug 2016 to Aug 2020 (see <https://www.tga.gov.au/australias-medicine-labels-are-becoming-clearer>) and believe that, with the level of voluntary labelling already in place a managed transition of less prescriptive arrangements over a longer period would address costs of current and future labelling changes with very little negative impact.
44. NZFGC strongly supports greater overlap with prospective, upcoming additional labelling changes for alcoholic beverages and a four year transition period with options for phasing in elements over that period.