

Proposal 1059

Energy labelling on alcoholic beverages – NSW Submission

General Procedure – the 1st Call for Submissions

Summary

NSW appreciates the opportunity to comment on Proposal 1059 (P1059) Energy labelling on alcoholic beverages – 1st Call for Submissions (CFS). NSW Food Authority has prepared this submission in consultation with other NSW government entities, including NSW Police Force and NSW Ministry of Health.

NSW generally supports FSANZ's proposal for the new requirement for an energy statement in a prescribed tabular format on alcoholic beverages. The mandatory energy statement will inform consumers of the energy content in alcoholic beverages and enable consumers to compare alcoholic products based on energy content.

The unique nature of alcohol as a food requires consideration of guidance and risk management advice provided in the *Australian Alcohol Guidelines*¹ (the *Guidelines*) in considering how best to apply energy labelling to alcoholic beverages (ELAB). Alcohol is associated with a mix of acute and chronic health management issues in addition to those related to its energy content. Excess alcohol intake also carries significant legal penalties (e.g. impaired driving, assault). This is a unique complicating factor for alcohol as a food. NSW suggests that ELAB needs to be implemented in a manner that aligns with, and does not downplay, the importance of the *Guidelines*.

NSW further offers commentary on the following additional matters concerning ELAB in this submission:

- Technical aspects of ELAB label design
- Consumer market research - Impacts of the proposed labelling scheme should be investigated
- Consumer education
- Other specific technical elements: outer packaging, %DI
- In-scope products.

Australian Alcohol Guidelines

NSW acknowledges that alcoholic beverages are known to be related to public health risk and social harms. Excessive drinking can cause harmful short-term and long-term impacts on the body and brain and is associated with various social problems. Regulating alcohol consumption to reduce alcohol-related harms is a high policy priority with cross-agency measures implemented.

*The Australian Alcohol Guidelines*¹ (the *Guidelines*) developed by the National Health and Medical Research Council (NHMRC) provide guidance on reducing the health impacts of drinking alcohol. The *Guidelines* advise on the number of standard drinks per day and per

¹ Australian Guidelines to Reduce Health Risks from Drinking Alcohol, <https://www.nhmrc.gov.au/about-us/publications/australian-guidelines-reduce-health-risks-drinking-alcohol#block-views-block-file-attachments-content-block-1>

week to reduce the risk of disease and injury. Building consumer awareness of the *Guidelines* is a strategic priority of Australian Governments and is identified in:

- The National Preventive Health Strategy²
- The National Drug Strategy³
- The National Alcohol Strategy⁴
- The NSW Cancer Plan⁵.

The *Guidelines* frame alcohol consumption advice in measures of standard drinks for all alcoholic drink classes to regulate personal alcohol intake in the Australian community, noting the various alcohol related harms in the Australian community arising from alcohol misuse.

Standard drinks recommendations have links to preventing acute harms arising from alcohol with serious to life threatening consequences if not followed in high-risk contexts (e.g. driving a motor vehicle). Consumption advice on standard drinks per week provided in the *Guidelines* also has relevance to longer term health impacts arising from excess alcohol consumption (e.g. fatty liver, liver fibrosis and cirrhosis). There is also strong evidence that alcohol use increases the risk of developing some cancers, including mouth, oesophagus, stomach, bowel, liver and breast.^{6 7 8}

Given the critical nature of standard drinks as a measure of alcohol intake, NSW suggests that FSANZ should carefully consider how to implement ELAB in a manner that does not confuse consumers on standard drinks consumption advice that is already required on packaged alcoholic products.

Mistakes in consumption volumes related to standard drinks carry serious consequences, e.g. drink driving is a criminal offence that can lead to conviction in Australian states and territories. NSW Health advice warns drivers that a blood alcohol content (BAC) of 0.02 can be reached after the consumption of only one standard drink^{9 10}.

NSW proposes that FSANZ implements ELAB through 2 separate mechanisms appropriate to the size of the packaged alcoholic beverage, one for beverages where the entire pack is consumed in one sitting (e.g. bottle/can of beer, cider or ready-to-drink [RTD] premix) and the other where the packaged product will most likely be shared among multiple people or consumed over different sittings (e.g. bottle of wine/fortified wine, bottle of spirits).

For the situation where the entire package will be consumed in one sitting, NSW suggests the kJ are displayed per unit consumed (e.g. per can/bottle of beer, cider, RTD) and for packages where it will be consumed over multiple sittings, expressed as standard drinks.

² Australian National Preventive Health Strategy 2021-2030, https://www.health.gov.au/sites/default/files/documents/2021/12/national-preventive-health-strategy-2021-2030_1.pdf

³ Australian National Drug Strategy 2017-2026, <https://www.health.gov.au/sites/default/files/national-drug-strategy-2017-2026.pdf>

⁴ Australian National Alcohol Strategy 2019-2028, <https://www.health.gov.au/resources/publications/national-alcohol-strategy-2019-2028?language=en>

⁵ NSW Government, NSW Cancer Plan 2022-2027, <https://www.cancer.nsw.gov.au/what-we-do/nsw-cancer-plan>

⁶ Nunez, C., Visalini, N., Sarich, P., Sitas, F., & Bauman, A. (2018). *Modifiable lifestyle factors and cancer risk*. Sax Institute. <https://www.cancer.nsw.gov.au/getmedia/5f2ffa67-ae5c-40a4-8742-3496ebd65637/Modifiable-lifestyle-factors-and-cancer-risk-Sax-for-CINSW-2017.pdf>

⁷ World Cancer Research Fund. (2018). *Alcoholic drinks and the risk of cancer*.

<https://www.wcrf.org/sites/default/files/Alcoholic-Drinks.pdf>

⁸ Sarich, P., Canfell, K., Egger, S., Banks, E., Joshy, G., Grogan, P., & Weber, M.F. (2020). Alcohol consumption, drinking patterns and cancer incidence in an Australian cohort of 226,162 participants aged 45 years and over. *British Journal of Cancer*. <https://doi.org/10.1038/s41416-020-01101-2>

⁹ NSW Ministry of Health, Alcohol: the facts,

https://yourroom.health.nsw.gov.au/publicationdocuments/Alcohol_fact_sheet_2021_A4.pdf

¹⁰ Transport for NSW, Blood alcohol limits,

<https://roadsafety.transport.nsw.gov.au/stayingsafe/alcoholdrugs/drinkdriving/bac/index.html>

NSW proposes that allowing manufacturers to set their own volume serve size for ELAB may further confuse consumers and possibly create misalignment between standard drinks information and energy information, inadvertently creating a higher chance of mistakes occurring in standard drinks consumption of alcoholic products.

Technical elements of ELAB display design on standardised alcoholic beverages

The below label format is proposed by NSW to FSANZ to assist in communicating energy information, whilst not losing the importance of standard drinks. NSW acknowledges that Standard 2.7.1–4 *Statement of the number of standard drinks* has no form requirements and the mandatory coupling of energy information with standard drinks information is out of scope of Proposal 1059. Such coupling of information would be voluntary.

Two basic models are proposed, those for containers where the entire container will be consumed in one sitting (e.g. can of beer/cider/RTD) and those where the entire container will not be consumed in a single sitting.

FSANZ could prescribe the serving size for both packaged alcoholic product to be consumed on one occasion and packages to be shared.

Package for consumption by an individual on one occasion: Serving size - the whole container

Package for consumption by many and/or over many occasions: the measure of a standard drink in the alcoholic package as defined in the *Guidelines*¹¹. An example could be spirits serving size for a standard alcoholic drink = 30ml for spirits, 100ml for wine etc (as defined in the *Guidelines*).

In both examples, NSW supports declaration per 100ml as suggested by FSANZ.

Figure 1 – Can of beer

ENERGY INFORMATION		
Servings per package: 1		
Serving size: 375 mL (1.3 standard drinks)		
	Quantity per serving	Quantity per 100 mL
Energy	574 kJ	153 kJ

In figure 1, the kilojoules are declared per serve (375ml can) and per 100mL to aid in consumer understanding of energy content and to make comparisons between products with the standard drinks declaration bolded, for example, so it is clear that in this example 1 serve has 1.3 standard drinks and 574kJ per 375ml unit. This advises consumers that a maximum of 1 beverage may be consumed if undertaking a high-risk activity such as driving (those with a 0.05 BAC maximum) or none may be consumed for those with a 0.02 BAC maximum, if driving within one hour of consuming alcohol.

¹¹ Australian Guidelines to Reduce Health Risks from Drinking Alcohol, <https://www.nhmrc.gov.au/about-us/publications/australian-guidelines-reduce-health-risks-drinking-alcohol#block-views-block-file-attachments-content-block-1>

Figure 2 – Bottle of spirits, 40% ABV, 22 standard drinks per 700 mL container

ENERGY INFORMATION		
Standard drinks per package: 22		
Serving size: 30 mL (1 standard drink)		
	Quantity per serving	Quantity per 100 mL
Energy	257 kJ	856 kJ

The standard drink of 30ml is bolded so it is clear to consumers that a maximum of 1 serving (30ml) of the beverage may be consumed if undertaking a high-risk activity such as driving (those with a 0.05 BAC maximum) or none may be consumed for those with a 0.02 BAC maximum, if driving within one hour of consuming the alcoholic beverage.

This also provides consumers with a simple means of regulating their alcohol intake to ensure consumption is in line with advice in the *Guidelines* (no more than 4 standard drinks in one day and no more than 10 in a single week). The *Guidelines* further advise that healthy adults following this advice have less than a 1 in 100 chance of dying from an alcohol-related condition.

NSW would encourage manufacturers to consider including standard drinks information within the proposed energy labelling scheme or in close proximity to assist consumer decision making.

Impacts of the proposed energy labelling scheme should be investigated.

ELAB whilst principally driven as an information requirement for alcoholic beverages to assist in making informed consumer choice, also carries some risks in implementation as kJ may become the determinant factor in alcoholic drink choice rather than additional information to standard drinks. NSW notes this is not within scope of Proposal 1059 but considers impacts of ELAB provision should be investigated to determine consumer response to the proposed system.

An example could be where ELAB could be mis-used by some high-risk sub-populations would be where higher kJ beverages, such as a beer, are substituted with lower kJ beverages that carry more risk, such as a vodka shot. More alcohol can be consumed more quickly in this example.

NSW suggests that FSANZ explore the impacts of the proposed ELAB scheme on potential consumer understanding and purchase behaviour prior to finalisation of Proposal 1059 to obtain some understanding of the impacts and use of this scheme by high-risk subpopulations. This consumer market research could also assist with P1049 Carbohydrate and sugar claims on alcoholic beverages.

Potential key areas for exploration and suggested questions:

Awareness of alcohol guidelines

- Are you aware of alcohol consumption limits in the *Australian Alcohol Guidelines*? (max 4 standard drinks in one day and max 10 in a week)
- Are consumers aware that compliance with the *Guidelines* will also reduce the chances of dying from an alcohol related harm to less than 1 in 100?
- Do you understand the consequences of misjudging standard drink information if you undertake a high-risk activity (e.g. driving a car?)

Awareness of energy content of alcoholic beverages

- Are you aware that alcohol itself has more energy than carbohydrate?

Understanding and interpretation of the energy table design

- If provided with energy information about alcoholic beverages (sample labels with energy table provided), are you more likely to drink less alcohol? Which product has more energy/ which product has more standard drinks etc?

- If provided with energy information about alcoholic beverages, (sample label provided) would you consume more or less alcohol or would you substitute more or less food on a night out?

- If standard drink information was bolded in the energy table on alcoholic beverages would this assist you to make decisions about drinking alcohol?

These questions are intended to ensure consumer awareness of appropriate consumption limits and consequences associated with alcohol generally and also ensure that should ELAB be provided, it would be used appropriately and not misused (e.g. substitute for food, substitute higher alcohol containing product with less kJ) or confused (with standard drink information).

Once the importance of these two key information pieces on alcohol are understood, on-going consumer education may then be usefully employed to promote extended awareness and hopefully behaviour change.

Consumer education on appropriate consumption of alcohol

Consumer awareness of the *Australian Alcohol Guidelines (the Guidelines)* and knowledge amongst Australians of what is a standard drink remains low¹². In 2009, only 26% of Australians indicated they were familiar with the content of the *Guidelines*. With new *Guidelines* being published in 2020, it is increasingly important to ensure Australians are informed of recommended standards of alcohol use and consumption¹³.

The effects of providing ELAB on consumer behaviour may not be fully realised should it not be supported by Australian-wide consumer education.

NSW suggests FSANZ consider the development of holistic educational resources on alcohol consumption to ensure that ELAB is not provided with a narrow focus. Educational resources for ELAB should not inadvertently promote comparison of alcoholic products solely on the basis of their energy value, alcohol content is equally if not more important in making better health choices.

Two examples, based on actual products, are provided below to illustrate:

i) Beer and Seltzer

Beer 346kJ per can (355ml) at 4.2% ABV and 1.2 standard drinks per can.

Seltzer 372 kJ per can (250ml) at 6% ABV and 1.2 standard drinks per can.

The lesser volume of the seltzer compared to the beer results in a similar standard drinks outcome per can consumed with nearly identical energy content. Substitution risk is managed by virtue of the smaller can size of the seltzer.

¹² Cancer Council, Election Priorities, https://www.cancercouncil.com.au/wp-content/uploads/2022/10/2090_CCNSW-Election-Priorities_WEB2.pdf

¹³ FARE Annual Alcohol Poll, 2020 Attitudes and Behaviours, <https://fare.org.au/wp-content/uploads/ALCPOLL-2020.pdf>

ii) Beer and a RTD

Beer 527 kJ per can (330ml) at 4.2% ABV and 1.1 standard drinks per can.

RTD 510 kJ per can (330ml) at 6% ABV and 1.6 standard drinks per serve.

The energy content of both products is nearly identical as per the first example, however there is a 0.5 difference in standard drinks consumed per can between the two products. A comparison on energy content alone is not appropriate as the RTD product contains more alcohol per serve than the beer.

To this end, NSW suggests the following educational resources are developed to support appropriate consumer understanding and interpretation of ELAB in the context of general consumption advice provided by the *Guidelines*:

- appropriate consumption of alcohol, e.g. consumption advice provided in the *Guidelines*, not substituting alcohol for food as alcohol is an energy source.
- volumes of alcohol that constitute a standard drink,
- how to interpret energy/kilojoule information of alcohol and;
- how energy/kilojoule information is different to standard drinks (i.e. 100ml volume for energy/kilojoule does not equal 1 standard drink in all cases).

As discussed earlier in this submission, consumers need to be just as aware of standard drinks consumed per can (or serve) as they are of energy content. To examine one in isolation of the other may result in more standard drinks being consumed per serve of nearly energy equivalent alcoholic beverages. This outcome is arguably inconsistent with consumption advice provided in the *Guidelines*, especially for products where a serving size is the entire contents of the package (e.g. can of beer, cider, RTD, wine).

Furthermore, NSW encourages FSANZ to consumer test designs for ELAB to understand consumer interpretation of this new information and how would it be used by consumers to aid decision making. This testing should specifically target at-risk sub-populations (younger people aged 18 – 24 years and older people aged 50 years and older¹⁴) so interpretation and use of ELAB is understood. The 18-24 year old sub-population is especially important due to the risk of binge drinking and sub-optimal decision making under social pressure. Specific matters to target are the risk of alcohol drink comparison on energy load alone, rather than considering alcohol content and energy load as equally important and whether alcohol would be substituted for food as alcohol is now a quantifiable energy source.

For example, a standard RTD (4.8% ABV) made with a sugar sweetened beverage mixer may have equivalent energy to a stronger alcohol containing RTD – 6-7% made with a zero-sugar beverage mixer; is the person likely to purchase the higher alcohol containing product on the basis that the energy loads are roughly equivalent? Will this person make choices based on energy content alone, on alcohol content alone or a combination of the two? This sub-population should also be targeted to ensure that provision of energy information will not result in increased risk of foregoing food in favour of obtaining energy from alcoholic products. ELAB should not increase the risk that the psychoactive effects of alcohol are overshadowed by energy content concerns when consumers are making purchase decisions.

NSW notes FSANZ comments on stakeholder consultation undertaken in 2021):

‘targeted consultation with key stakeholders informed the consideration of options... However most stakeholders also consider that on-label energy information must be accompanied by a targeted, government-led education campaign. (CFS Report pg11)’. FSANZ also states, ‘the provision of this information would provide a foundation for education and other health care

¹⁴ <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/about>

initiatives to be developed and implemented in order to facilitate informed consumer choice (CFS Report pg19)'.

NSW considers that further work is required in the development of educational materials to support sustained benefit from ELAB.

ELAB labelling – Other specific technical elements

NIP requirements when voluntary claims are made

Section 1.2.7—4 prohibits nutrition content claims or health claims about alcoholic beverages that contain more than 1.15% alcohol by volume, other than nutrition content claims about energy content, carbohydrate content or gluten content. This results in nutrition content claims for energy content, carbohydrate content or gluten content, including comparative claims (e.g. 'reduced' or 'light/lite') in comparison to reference food being permitted on alcoholic beverages.

NSW agrees with FSANZ proposal to not require ELAB when a manufacturer makes a voluntary claim that automatically attracts the requirement for a full nutrition information panel. This is not necessary as it would be doubling up on the same information.

However, display of a nutrition information panels (NIP) on both products used to make comparative claims should be considered to foster transparency in information communicated to consumers. NSW has observed zero sugar containing RTD products on the market bearing NIPs when the full sugar RTD comparator product does not. While acknowledging that this matter is out of scope of P1059 and dealt with in Proposal 1049 — Carbohydrate and sugar claims on alcoholic beverages, NSW would encourage manufacturers to consider that if a claim is made on a zero-sugar product (i.e. 'no-carbs', '99.9% sugar-free') that the NIP is also provided on the full sugar comparator. This enables consumers to compare actual differences between the two products rather than rely on the information on the zero-sugar product alone.

ELAB of one layer of packaging when multiple layers are used

NSW questions the value of only providing ELAB of the outer layer of packaging when multiple layers are used in conjunction with the sale of alcoholic product. NSW notes that FSANZ has proposed that inner-layer packaging is only required where the product is potentially available for individual sale. NSW notes many alcoholic products are packed in multiple layers of packaging at the point of manufacture and are then customised by the retailer at the point of sale. Using a carton of beer as an example, consumers can purchase the carton, a carrier pack of 4-6 units or an individual unit. NSW understands that the individual unit (can or bottle) must have a ELAB and it would be at the discretion of the manufacturer to also provide ELAB on the carton or carrier pack.

The optimal consumer outcome is achieved if ELAB is provided on all units capable of being sold and in a manner to facilitate use of this information pre-purchase and at the point of consumption.

Voluntary percentage daily intake information

NSW suggests the proposed voluntary percentage daily intake information (% DI) increases the risk of consumers making comparative choices on alcoholic products in a manner that does not consider the alcohol content as a primary influencing factor guiding purchase decisions.

The purpose of ELAB is to inform consumers that alcohol is an energy source, the primary purpose of the *Guidelines* is to promote appropriate alcohol consumption in a manner that significantly reduces both the chronic health consequences as well as acute effects as alcohol is a psychoactive substance.

Use of % DI as front of pack labelling risks consumers buying solely on energy content alone (e.g. the RTD full sugar and zero sugar example previously discussed in this submission) rather than basing a purchase decision on energy content and alcohol content.

Use of %DI and it's required statement "based on the average adult diet of 8700kJ" may also be misinterpreted as a recommendation – that alcohol should be part of an adult's diet of 8700kJ. This may result in a perceived interpretation of a 'health halo' associated with the use of % DI as it is often used in conjunction with the % RDI of vitamins and minerals. ELAB should in no way risk promotion or provide perceived "healthiness" in relation to alcohol.

In-scope products

NSW notes that this proposal may potentially cover more products than manufacturers or consumers understand as alcoholic beverages. Survey of Alcohol Content and Labelling of Fermented Soft Drinks¹⁵ coordinated by the Implementation Sub-committee for Food Regulation (ISFR) discovered that a proportion of fermented drinks (e.g. 64.8% of kombucha samples and 73.4% of water-based kefir samples) had an alcohol content of more than 0.5% ABV. The results imply that many products known as fermented soft drinks may have undeclared alcohol content higher than 0.5% ABV.

NSW asserts that all beverages containing a certain level of alcohol should comply with the relevant labelling requirements, regardless of the name or category of the product. If this proposal proceeds to gazettal, an energy statement will be one of the requirements which apply to all beverages containing no less than 0.5% ABV.

Online sales should also be included in the scope of this new requirement. The whole label is not always available or visible in online sale webpages. Consumers purchasing alcoholic beverages online should also be provided with the energy information at the point of purchase, in addition to standard drink information.

ENDS

The views expressed in this submission may or may not accord with those of other NSW Government agencies. The NSW Food Authority has a policy which encourages the full range of NSW agency views to be submitted during the standards development stages before final assessment. Other relevant NSW Government agencies are aware of and agree with this policy.

Dated as 15 March 2023

¹⁵ Survey of Alcohol Content and Labelling of Fermented Soft Drinks,
<https://www.foodstandards.gov.au/science/surveillance/Pages/Survey-of-Alcohol-Content-and-Labelling-of-Fermented-Soft-Drinks.aspx>