

26 October 2019

Food Standards Australia New Zealand (FSANZ)  
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To whom it may concern,

Endeavour Drinks appreciates and welcomes the opportunity to respond to the *Pregnancy warning labels on alcoholic beverages* discussion paper published on 4 October 2019.

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

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Endeavour Drinks  
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**B. For organisations, the level at which the submission was authorised**

Endeavour Drinks Group Executive Committee

**C. Summary**

Endeavour Drinks is supportive of the use of pregnancy labelling on alcoholic beverages sold in Australia and New Zealand and believes that a mandatory standard can be beneficial in ensuring that there is a level of consistency across the industry. This position is supported by the fact that - as a retailer, producer, private label manufacturing and exclusive brand importer - the vast majority of labels over which Endeavour Drinks has direct control have featured the voluntary DrinkWise label for many years.<sup>1</sup>

However, Endeavour Drinks is disappointed with the conclusions being drawn in the discussion paper, as it appears to ignore all concerns raised by Endeavour and the industry in the preceding 9 months. This includes the complexity and cost impact of applying mandated colours to a label, requiring a complete redevelopment of most artwork used on the 60-80,000 SKUs available in the market. Coupled with this is the onerous size of the warning on products between 200ml-800ml, which on some formats and products available in the market do not have a label that is large enough to accommodate the proposed dimensions.

Based on the range of costs being considered - from \$4,166 per SKU estimate proposed by FSANZ, to the industry's forecast of approximately \$16,500 per SKU - the costs of the FSANZ proposal on the industry is in the range of \$258m - \$1.354bn.

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<sup>1</sup> Approximately 95% of all labels under Endeavour Drinks' control included the DrinkWise label. Exceptions to the label are small volume, imported wine, where Endeavour Drinks represents a small amount of the producers global volume.

Of further concern is that in order to reach these conclusions - including a warning statement which goes against NHMRC guidelines - FSANZ has undertaken a literature review and consumer testing outside the normal process of scientific evidence building. Evenso, the reviews and testing neglected the opportunity to scientifically test the efficacy of the current voluntary label, which would have ensured a more complete understanding of the situation could be achieved.

While we appreciate that such a topic involves an array of different stakeholders with alternate views, we are most concerned with the fact that all of the above have been raised with FSANZ officials in industry roundtables in the past year, and have been subsequently ignored. As a result, Endeavour Drinks cannot support the application of the warning label as proposed by FSANZ and believes that more time should be taken by FSANZ to ensure proper scientific process and consultation is undertaken, with a view that a more robust process will result in a more effective and efficient solution.

#### **D. Literature review on the effectiveness of warning labels**

Given the time frame associated with the publishing of the discussion paper and the deadline for submissions, Endeavour Drinks is not in a position to comment specifically on all pieces of research that have been used in the literature review. We would note, however, that the summary of the literature - as included in the discussion paper - raises several comments that Endeavour believes FSANZ should consider.

##### *Publishing of literature review after consumer testing has been completed*

While we appreciate time pressures being applied to FSANZ, we are concerned about the entire process to inform an evidence based approach if consumer testing occurs prior to the publishing of a literature review. This raises questions around whether the scope and structure of the consumer testing is appropriate, and as a result, makes detailed analysis of the literature review considerably challenging.

##### *Literature treating pregnancy labelling in isolation*

We would note that all literature that has been reviewed by FSANZ and summarised in the discussion paper looks specifically at the salience of a pregnancy label, and the way such a message can 'stand out' on a label to improve it's recall and understanding. While in principle, Endeavour Drinks believes that information on drinking during pregnancy is critical for the relevant audiences to understand, we believe that this is one of many important messages that consumers need to understand from a label in order to inform their purchasing and consumption decisions. By looking at pregnancy labelling in isolation, it suggests that other messaging is not as important, and in turn their salience can be reduced or sacrificed to ensure pregnancy information is understood. This includes messaging around nutritional information, alcohol content, standard drinks, allergy information, recycling information, business information etc. - which are mandated by FSANZ and various other Australian State and Federal Government bodies - which will reduce in salience if a large, prominent pregnancy warning is to be introduced.

##### *Detail on research that considers current labels*

The vast majority of the literature review considers research on what constitutes a label that will increase attention, recall and comprehension. However, other than acknowledging that "the literature review identified research on comprehension of existing warning statements and the standard pictogram on alcoholic beverages in Australian and New Zealand populations"<sup>2</sup>, there appears to be no discussion or reference to the fact that current labels may have had some positive impact. While some research might be limited, we believe that certain aspects should be acknowledged, such as:

- **Current Federal Government statistics on FASD** and alcohol consumption from pregnant women in Australia, which identifies that 98.8% of women either stop or moderate their drinking in response to pregnancy (an increase from 96.6% in 2004)<sup>3</sup>.
- **References to signal words, size, location, colour and contrast, pictorials and behaviour do not acknowledge current labels**, particularly in the context of:
  - The vast majority of products on the Australian market already including the voluntary warning
  - That pictorials being considered and researched are already being applied to most products
  - That "behaviours such as seeking further information [and] visiting a website"<sup>4</sup> may be linked to the fact that website details are included as part of the voluntary warning.

While we appreciate that the research on such aspects is indeed limited, we believe that not acknowledging such elements, then concluding that "larger, front of pack, warnings using colour, signal words and pictorial elements are likely to attract more attention than warning labels lacking those elements"<sup>5</sup> is a difficult conclusion to draw without establishing a baseline of the effectiveness of current labels.

## E. Consumer testing of warning statements

While we appreciate that time constraints have affected the capacity for FSANZ to conduct detailed consumer research, we are deeply concerned with both the methodology and conclusions of the testing. There are a number of reasons for this, including:

- **Consumer testing conducted prior to a literature review being published.** As mentioned above, such a reversal of normal process throws into question whether the scope of the consumer testing is appropriate.
- **Absence of a baseline/control to assess the efficacy of the current label.** It is concerning that such a basic element of applying a control (i.e. the current label applied to the majority of products in Australia and New Zealand) to the development of scientific evidence has not been included in the consumer testing. This is particularly concerning given FSANZ's acknowledgement in the literature review that research on the current label is limited<sup>6</sup>, as this presents a perfect opportunity to test the current warning.
- **Testing wording in isolation.** It appears to be limiting that the only element of the label that is being considered is the specific wording applied to the label, rather than various different formats and options of the label itself, including colour and contrast, size,

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<sup>2</sup> FSANZ Call for Submissions Report: Proposal P1050 - Pregnancy warning labels on alcoholic beverages, p. 12

<sup>3</sup> Australian Institute of Health and Welfare National Drug Strategy Household Survey, 2016

<sup>4</sup> FSANZ Call for Submissions Report: Proposal P1050 - Pregnancy warning labels on alcoholic beverages, p. 12

<sup>5</sup> *ibid*

<sup>6</sup> FSANZ Call for Submissions Report: Proposal P1050 - Pregnancy warning labels on alcoholic beverages, p. 12

location or signal word variations - elements that have been raised in the literature review. For example, the fact that all options included the heading 'HEALTH WARNING' ignores other options that might have greater relevance, such as 'WARNING', 'GOVERNMENT WARNING', 'FSANZ WARNING', 'PREGNANCY WARNING', 'PREGNANCY ADVICE', or, even, no signal words at all.

## F. Pictogram

With regards to the use of the pictogram, Endeavour Drinks is supportive of applying the current pictogram as a mandatory feature. While we are supportive of its inclusion, we have concerns related to colour and size, which is addressed later in this submission.

## G. Warning statement

Endeavour Drinks does not believe that the warning message is appropriate, as it is in our view that it goes above and beyond NHMRC guidelines for women who are either pregnant or considering pregnancy, which in turn has the potential to generate a level of confusion and unnecessary anxiety.

NHMRC guidelines state the following on drinking during pregnancy:

*"A 'no-effect' level has not been established, and limitations in the available evidence make it impossible to set a 'safe' or 'no-risk' drinking level for women to avoid harm to their unborn children, although the risks to the fetus from low-level drinking (such as one or two drinks per week) during pregnancy are likely to be low. A conservative, public health approach has therefore been taken in recommending that 'not drinking alcohol is the safest option' for pregnant women and women planning a pregnancy. This decision was not based on the fact that substantial new evidence had emerged since the previous guidelines were published, but on limitations of the existing evidence. Women who drank alcohol before they knew they were pregnant or during their pregnancy should be reassured that the majority of babies exposed to alcohol suffer no observable harm. The risk to the fetus from low level drinking is likely to be low. Women who find it difficult to decrease their alcohol intake will require support and treatment. It is important that they are referred to the appropriate services."*<sup>7</sup>

*"Efforts should be made not to induce unnecessary anxiety for isolated episodes of drinking. Women who drank alcohol before they knew they were pregnant or during pregnancy should be reassured that the risk to the fetus is likely to be low if they had drunk at low risk levels."*<sup>8</sup>

Such guidance highlights that the research on low level alcohol consumption during pregnancy is limited, and that messaging on such issues needs to be managed sensitively. The fact that the focus of the research and its conclusions appears to try and emphasise that 'any amount of alcohol can be harmful' not only ignores the inherent sensitivity involved, but would go beyond NHMRC guidelines that 'not drinking is the safest option'<sup>9</sup>. If relied upon to apply the final label, FSANZ would not only be acknowledging that labels on alcohol products are inconsistent with the advice that medical professionals in Australia are given to inform patients, but has the

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<sup>7</sup> NHMRC guidelines, p. 68

<sup>8</sup> Ibid, p. 77

<sup>9</sup> <https://www.health.gov.au/health-topics/alcohol/alcohol-throughout-life/alcohol-during-pregnancy-and-breastfeeding>

potential to go against its own guidance that the warning needs to “avoid using definitive language about casual connections”<sup>10</sup>.

## **H/I. Design labelling elements / Summary of proposed pregnancy warning label design**

Endeavour Drinks does not agree with the overall design of the pregnancy label on a number of fronts:

### *Use of mandated colours including red*

As stated on a number of occasions, the mandating of colours on a pregnancy label, including the use of red, creates significant complications on a large number of products. Different SKUs and product types employ different printing processes, however on the majority of those, there is a limited amount of colours that can be used in order to achieve the artwork design. By mandating particular colours to be used, the artworks will need to be completely changed and, in many situations, will not be able to look the same following the application of the label. Some labels on smaller products and brands use as little as three colours on their label - none of which is the prescribed red colour - meaning that this brands entire architecture is at risk.

If the design of the warning remained as suggested, there would be considerable costs required on each package type. The below table provides examples of different types of packages, the different types of printing methods used and the associated costs associated with making such a change. Each cost described would impact each individual SKU.

<b>Package Type</b>	<b>Print Method</b>	<b>No. of Colour Options</b>	<b>*Cost / design change (plates only)</b>
Carton	Flexographic	3	\$4,000
Carton	Preprint	5	\$12,000
Wrap/Multipack	Lithographic	6	\$4,500
Bottle Labels	Gravure	6 - 8	\$10,000
Bottle Labels	Lithographic	6	\$4,500
Cans	Wet on wet	5	\$1,200

***\*Varies slightly between supplier & country of manufacture.***

Considering the above costs, we believe that the proposed industry cost of \$16,500 per SKU is a conservative estimate.

Compared with the use of contrast colours for the warning (as applied with the voluntary label) avoids this complication entirely. By its very nature, the label is using the existing colour palette that is being applied on that product - whether there are three or eight total colours being used - which in turn avoids this complication and significant cost.

<sup>10</sup> FSANZ Call for Submissions Report: Proposal P1050 - Pregnancy warning labels on alcoholic beverages, p. 11

It is therefore recommended that the previous alternative suggested - that being the use of contrast for the label rather than mandating colour - would be the preferred option that significantly reduces complexity and cost.

#### *Mandated size on some formats*

Endeavour Drinks' concern in the sizes being proposed is largely focused on the application of the label on single containers between 200ml-800ml. Based on the pictogram being 6mm in diameter, coupled with the broad guidance included in Table 10 of the discussion paper, we are assuming that the total width of the box will be approximately 30mm (36mm with 3mm of clearspace on either side).

Such a sized label becomes incredibly challenging for 330ml bottles, which is the preferred size bottles for most beers, ciders and RTDs. Given the other mandatory, commercial and voluntary requirements that are included on such bottles, there is the potential that some elements would either need to be removed from the back label or be diminished in size, thereby making them more difficult to be read by consumers. Such features include:

- Basic product information
- Allergen warning e.g. sulphites
- Commercial information regarding the business making the product, including contact details for customer complaints
- ABV information and net volume
- Container Deposit Scheme information
- Barcodes, whose size directly relates to supply chain efficiency
- Voluntary environmental information, including Planet Ark-approved logos
- Nutritional information panel (mandatory on some products)

Where the above are either applied by mandate or by existing agreement and which cannot shift in order to meet the minimum size, label sizes may need to be amended, adding significant cost and complexity to the manufacturing process. In some situations, the label itself is as large as the manufacturing process allows, meaning that the entire bottle or container will need changing to accommodate the warning. Such a decision goes against previous requests from various Government bodies to reduce the amount of packaging used due to environmental concerns.

It is therefore recommended that the minimum size of the pictogram be reduced, that the box surrounding the warning be removed and the clearspace be removed. In so doing, the industry will have flexibility on orientation and positioning, allowing for the warning to fit without sacrificing other important information. Such an approach would also be more in line with previous advice from FSANZ, which does not mandate such a size limitation on other information, including on royal jelly allergy information - a label which, if unnoticed by an allergic consumer, could be fatal.

#### *Impact on importation*

WTO guidelines state that "new measures must not introduce 'unnecessary trade costs' or barriers to trade, especially if the stated objective of the measure—such as protecting public

health—could be achieved with a less costly alternative. In addition, governments must ensure that measures do not discriminate against foreign products (in favour of domestic producers)"<sup>11</sup>.

While we appreciate that the position of the warning is not being mandated, it could be argued that the design features being proposed will form a considerable trade barrier for imported products. While domestic businesses will need to comply, international producers who are importing to Australia in small volumes are less likely to continue such importation if such restrictions need to be included.

While it is not unique for various countries to have different artworks and domestic requirements, it is unprecedented that such products would have completely different colour palettes for their artwork to facilitate the use of a health warning. Given these requirements, coupled with the very small beverage markets of Australia and New Zealand it is possible that in many situations, international producers will simply decide that importing to Australia and New Zealand is not commercially viable.

Section M of this submission discusses the benefits of this change in greater detail, highlighting the case that benefits could be achieved in other ways for arguably less cost.

#### **J. Beverages to carry the pregnancy warning label**

In principle, Endeavour agrees that applying the warning labels to beverages over 1.15% ABV is logical, however if the suggested wording is to be used, then such a statement would need to be changed, given that FSANZ are suggesting that "any amount of alcohol can harm your baby". If this wording is to continue, then FSANZ's decision would be - by its own definition - contradictory given that many products contain between 0.1 - 1.15% ABV will not have a warning label applied. It is recommended that the warning statement be revised and the benchmark of 1.15% ABV for labels should be maintained.

#### **K./L. Application to different types of sales/packages**

In principle, Endeavour Drinks agrees to the application of a pregnancy warning label to the types of retail sales and packages noted,

#### **M. Consideration of costs and benefits**

##### *Costs of change*

The most recent FSANZ proposal has suggested that the costs of mandating pregnancy labels on the industry would be approximately \$4,166 per SKU. However, according to a 2008 PriceWaterhouseCoopers report for FSANZ, it has been forecast that such costs could be in the \$9-10K per SKU range. Throughout the consultation process, the industry has reviewed the likely cost impact of the proposed changes, and has come to the conclusion that the costs are likely to be as high as \$16,500 per SKU.

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<sup>11</sup> Trade challenges at the World Trade Organization to national noncommunicable disease prevention policies: A thematic document analysis of trade and health policy space, PLoS Med, 26th June 2018



This cost discrepancy is likely driven by assumptions being made on printing requirements, compared with the realities of making such a change. For example, it's unlikely that original forecasts assumed that there would be a complete change to the entire artwork and colour palette of labels. However, this is very much the reality with the proposed warning, as the vast majority of products have a limit on the amount of colours that can be used in printing.

Coupled with the potential changes to label sizes (as previously outlined), as well as the ongoing ink costs for the use of new colours (which could be as high as 2 cents per product), it is believed that the industry number is more accurate, albeit on the conservative end (as outlined in section H/I).

However, regardless of the costs being proposed, the range would result in a cost to industry of \$258m - \$1.354bn on the 60-80,000 SKUs available in Australia and New Zealand.

#### *Benefits of change*

Given the substantial costs, significant benefits would need to be realised to justify the spend on compliance by the industry. Further, to justify such benefits, it is imperative that the significant costs being applied are being spent in the most effective way in order to shift behaviour with the target audience.

Endeavour Drinks believes that targeting the 12% of women who do not change their drinking behaviour when pregnant would be a much more effective and efficient method of achieving meaningful progress. It is our view that rather than costly, population-wide initiatives that focuses on the assumption that women are seeking health care advice from product packaging, investment in medical professionals that can be adequately resourced and easily accessed by key groups would lead to much more targeted, positive outcomes.

As a result, Endeavour Drinks does not believe that the benefits of the proposal outweigh the costs.

#### **N. Transitional arrangements**

Endeavour Drinks agrees with the proposed two year transition period.

Throughout this process, Endeavour Drinks has been open to discuss the above issues in detail with various representatives of FSANZ, and answer any questions that might arise. We would welcome the opportunity to further explain these issues if the need arises.

Your Sincerely,



Richard Fifer  
Government Relations Manager  
Endeavour Drinks