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Sunday 27 October 2019

## Submission to Proposal P1050 Pregnancy warning labels on alcoholic beverages

Please submit this to FSANZ as a **word** document (if required, a pdf of the submission may also be provided in addition to the word document).

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This submission is authorised by the PHA's Chief Executive Officer, Dr Prudence Stone.

### C. Summary

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The Public Health Association of New Zealand's vision is 'Good health for all - health equity in Aotearoa', or 'Hauora mō te katoa – oranga mō te Ao', and our purpose is to advocate for the health of all New Zealanders.

Considering the burden that falls on individuals, families and the wider community, we advocate for the introduction of more effective measures to reduce consumption of alcohol during pregnancy is both important and urgent.

Accordingly, we strongly support the introduction of mandatory warning labels on alcoholic drinks targeting women who are pregnant as an essential measure to achieve the primary objective stated in the Decision Regulation Impact Statement (DRIS) of 2018, that is 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".

This measure is also likely to attract a high level of public interest, making a significant contribution to the secondary objective – to "provide information to the community about the need for pregnant women to not drink alcohol".

We support the submissions of Alcohol Healthwatch and FARE.

#### **New Zealand Government's commitments under Te Tiriti o Waitangi and UNCROC**

Fetal alcohol spectrum disorder (FASD) is the leading cause of preventable developmental disability in New Zealand. FASD contributes to health inequalities in New Zealand as it is associated with lower socio-economic status and social deprivation. The New Zealand Government has a duty under Te Tiriti o Waitangi to protect the health of Māori and effective mandatory warning labels based on best evidence will ensure the government is meeting its commitments.

The Government also has responsibilities under the United Nations Convention on the Rights of the Child to protect the health of children. Significantly, it states in the preamble that *"Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before as well as after birth**"* <sup>(1)</sup>.

**The New Zealand Government also has other human rights obligations under the following agreements,** ICESCR: International Covenant on Economic, Social and Cultural Rights - Article 12 The Right to Health, UNDRIP: UN Declaration on the Rights of Indigenous People and CRPD: Convention on the Rights of Persons with Disabilities.

#### **Recommendations**

1. Pictogram-only warnings on beverage containers 100 ml and under
2. Pictogram-only warnings to be same size and format as for containers larger than 100 ml
3. Pictogram and warning text on all beverage containers over 100 ml
4. Wording of the warning statement to be *'Any amount of alcohol can cause lifelong harm to your baby'*

5. Beverages containing 0.5% ABV or more are required to carry the warning label
6. All alcohol products should be required to display the specific design features that are currently proposed for products with volumes greater than 800ml - no font size smaller than 3 mm
7. Warning labels to be located on the front of containers
8. Full size warnings to be required on all alcoholic beverage containers larger than 100ml
9. Transition timeframe of 12 months with no exemptions
10. Packaging – warning required for all layers
11. Ignore claims of cost to industry as inconsequential compared to cost of FASD and other adverse health outcomes
12. Education - FSANZ to commit to inform the public
13. FSANZ to undertake monitoring of the new labelling system and evaluation

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

Nothing to add

**E. Consumer testing of warning statements (section 3.1.2)**

We congratulate FSANZ for undertaking consumer testing and for including Māori and Pacific people. We are dismayed that Aboriginal and Torres Strait Islanders were excluded from the testing done in Australia as these communities are disproportionately affected by FASD and should be part of any consumer research <sup>(2)</sup>.

**F. Pictogram (section 3.2.2.2)**

We support the proposed pictogram as it is universally recognised.

We disagree with the proposal that “for alcoholic beverage volumes 200ml and under, only the pictogram will be required” <sup>(3)</sup> so that only products above 200ml would carry a pictogram, and warning text. Under the proposed 200ml limit inconsistencies would result. For example, as can be seen in the image below a 187ml bottle of wine (close to 2 standard drinks) would only be required to carry a pictogram and would not carry the same type of warning label as a Vodka Cruiser (second from the right) which only contains 1 standard drink). This is clearly nonsensical and does not adhere to the policy advice provided to FSANZ by ministers (the DRIS) that “the warning label is to include both a pictogram and a statement to convey a message that reflects government advice not to consume any alcohol during pregnancy”.



Therefore we recommend that for beverage containers 100 ml and under, the pictogram (only) be required but in the same size and format as for containers larger than 100 ml (this was what was discussed in our sector's consultation meeting with FSANZ in June 2019 and the quotation can be found on page 11 of the notes of that meeting).

We recommend that for all containers above 100ml both pictogram and warning text should be required.

#### **G. Warning statement (section 3.2.2.3)**

Of the 4 labels tested, the PHA supports the statement, *'Any amount of alcohol can cause lifelong harm to your baby'*.

This statement performed as well as the proposed statement 'any amount of alcohol can harm your baby' in the consumer testing. The inclusion of the word 'lifelong' in the message conveys the severity of the potential harm and informs the public of the potential for permanent damage to the baby. The FSANZ document states 'Signal words can also connote different levels of hazard. In some circumstances the use of authoritative sources can increase the credibility of warnings'. 'Lifelong' could be defined as a signal word and the inclusion of the reference to 'lifelong' in a government agency statement assists in increasing public awareness of FASD <sup>(3)</sup> <sup>(4)</sup>.

#### **H. Design labelling elements (section 3.2.2.4)**

It states in the FSANZ Background Paper that the 'guidance for standard drink labelling and the recycle logo recommends a larger label height (12-14 mm) than that for the voluntary pregnancy warning label (8 mm box height with a pictogram of about 5 mm diameter)' <sup>(5)</sup>. We cannot see any justification for this statement as it is far more important for consumers to see a pregnancy warning label conveying information vital to the health of babies than a recycling label. The pregnancy warning label should be bigger and more prominent than any other labels on the container just as warning labels have come to dominate tobacco plain packs.

#### **Location of warning**

'The location of the pregnancy warning label on alcoholic beverage containers is not prescribed, giving industry flexibility with the positioning of the warning label' <sup>(3)</sup>.

We strongly disagree with this proposal. To be effective the warning label must have impact and grab the attention of the consumer. Just as there are very tight requirements around warning labels on tobacco packaging there must be stringent requirements for pregnancy alcohol warnings and the industry should not be permitted to choose the location of the label or have input into any of the design elements.

Research indicates that warnings are most noticeable when on the front of a container, with as little surrounding clutter as possible, that is, separated from the main product information and branding <sup>(6)</sup>. FSANZ's own document states "warning labels directly in field of vision such as front-of-pack attract greater attention than those not directly in field of vision" <sup>(5)</sup>.

We support labels to be located on the front of containers.

We are bewildered as to why FSANZ seems to be ignoring its own findings that "The relevant evidence is clear that colour and contrast, size, location, typography, use of signal words and reduced clutter can all affect the noticeability of a warning label. Hence it is appropriate to **regulate** many of these 'attention' labelling elements to help make the warning label noticeable and ensure consistency across products" <sup>(5)</sup>.

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

The PHA agrees with the main proposed elements of design but we do not agree with exceptions to the proposed font size.

To be effective the warning label must be easily legible and noticeable and therefore we disagree with the proposal that any warning label font size is less than 3mm.

The font must be at least 3mm following FSANZ's own set standard minimum of 3mm font for warning text with the only exception being for products with a volume of less than 100ml. That is all alcohol products should be required to display the specific design features that are currently proposed for products with volumes greater than 800ml.

For beverage containers 100 ml and under we propose the pictogram (only) be required but in the same size and format as for containers larger than 100 ml as proposed in FSANZ's P1050 Background Paper on p11 <sup>(5)</sup>.

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

The PHA supports option 2 that all products with a 0.5% Alcohol by volume (ABV) are subject to the proposed standard.

It is proposed that 'pregnancy warning labels would be required on packaged beverages with more than 1.15% alcohol by volume (ABV)' <sup>(3)</sup>. We disagree with this proposal as it is inconsistent with the advice given to women that there is no safe level of alcohol consumption during pregnancy. We understand that the proposed cut-off of 1.15% ABV relates to the existing alcohol labelling code of an alcoholic product, but a public health approach puts the best interests of the child first before any other

considerations. This means that the labels must align with the health advice that pregnant women should not drink alcohol and the limit should be set at 0.5% ABV.

Moreover, the risks of alcohol consumption during pregnancy should be related to the ABV rather than the container size which could have invidious results such as, for example, a 187ml bottle of wine (which is close to 2 standard drinks) would not carry the same type of warning label as the Vodka Cruiser (second from the right) which only contains 1 standard drink).

Setting the limit at 0.5% ABV also takes account of the variability of alcohol content among various products. The Australian Department of Health paper on the Roundtable on fermented beverages highlighted this little recognised variability <sup>(7)</sup>. At the moment these products are not subject to alcoholic beverages labelling standards, our proposal will correct this obvious anomaly and clarify for pregnant women the risk of consuming these beverages.

All products which contain a measurable amount of alcohol must be included in the labelling regime to be consistent with the health message that there is no safe level of alcohol consumption during pregnancy.

We do not support the proposed 200-800ml category to be the only containers to carry the full size warning. The pregnancy warning labelling system must take into account the growing variability of size and types of alcoholic beverage containers especially the trend for single serve, consume-in-one-sitting products. It is arguably even more important for these products to carry full size pregnancy warnings.

Full size warnings must be required on all alcoholic beverage containers larger than 100ml.

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

Nothing to add.

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

The PHA agrees all layers of packaging must carry the full pregnancy warning label.

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

Any economic arguments the industry may raise to justify a delay of more than a year for implementing the mandatory labelling system must be rejected as unethical and unconscionable. However, the financial costs of FASD are significant; it is estimated that the cost for the provision of services and support for every individual with FASD to be \$15,000, and the overall annual financial cost to be NZ\$690 million <sup>(8)(9)</sup>.

This does not include the cost of the burden on families, communities and society, which includes not only the financial impacts associated with the provision of social and health services, but also the cost of alternative or extra education, legal help, additional medical expenses, assessments or interventions, and the cost of lost opportunities of lives blighted by FASD.

**N. Transitional arrangements (section 4.1 of CFS)**

“FSANZ proposes a two-year transition period for the mandatory pregnancy warning label from the date of gazettal of variations to the Code, and an exemption for alcoholic beverages packaged and labelled before the end of the transition period” <sup>(3)</sup>.

We strongly disagree with the proposed time frame for the transition period. The 2018 DRIS concluded that ‘only a small proportion of FASD cases need to be prevented to offset the costs of label changes to industry’ and ‘Therefore, mandatory labelling represents the option that is most likely to result in the largest net benefit to the community’ So why the delay? The October 2018 meeting of the Australia and New Zealand Ministerial Forum on Food Regulation (Forum) asked FSANZ to ‘consider mandatory pregnancy warning labelling on packaged alcoholic beverages as a priority and that the work be completed expeditiously’ <sup>(3)</sup>. Not only does a two year transition period seem at odds with the sense of urgency implied by the Ministers’ 2018 decision but it also minimises the seriousness of the impact of FASD. This is a condition that is entirely preventable and causes permanent damage to children and therefore calls for an urgent response not a business-as-usual one (2 year transition being the usual requirement in similar situations).

The alcohol industry has had years to prepare for this change. “The Legislative and Governance Forum on Food Regulation (now the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum)) provided the alcohol industry with a two-year period, commencing December 2011, to voluntarily place pregnancy warning labels on alcoholic beverages, before regulating such a change” <sup>(3)</sup>.

There is also numerous evidence from other countries that a shorter timeframe is achievable. France <sup>(10)</sup>, Mexico <sup>(11)</sup>, Lithuania <sup>(12)</sup> and the USA all set a one year transition period when they introduced mandatory labelling.

We also disagree with the exemption for alcoholic beverages packaged and labelled before the end of the transition period. The industry knows this change is coming and should be preparing for it now or in fact should have started to introduce changes as soon as the Forum’s decision was made in 2018 following the original decision made in 2011. Industries can change quickly in response to policy change signals, as has been demonstrated by the sugar sweetened beverages industry in the UK, which even before the introduction of the tax on sugary drinks had started to adjust their recipes and reduce sugar content of their drinks <sup>(13)</sup>.

Therefore we urge FSANZ to set the transition timeframe to be 12 months with no exemptions.

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

Nothing to add

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

##### **Education**

Section 4.3 of the CFS deals with Education

“It is expected public health agencies will incorporate reference to the pregnancy warning label in their education materials thereby drawing attention to the labelling requirement and linking the warning label message to broader education messages about FASD”<sup>(3)</sup>

We agree that some form of awareness campaign targeted at the public will be needed. We call on a commitment from FSANZ/government to inform consumers about these changes and not to leave this work to others.

It is vital that education campaigns are implemented by FSANZ or an appropriate government agency and not by industry.

### **Monitoring and Evaluation**

It is important that FSANZ sets up and properly funds a robust monitoring and evaluation system. Perhaps the model of FSANZ’s monitoring of folic acid fortification in Australia (introduced in 2009) might be helpful.

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