



**Public Health Association**  
AUSTRALIA

## **Public Health Association of Australia submission on P1050 - pregnancy warning labels on alcoholic beverages**

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# Contents

<b>Preamble</b>	<b>3</b>
I. The Public Health Association of Australia .....	3
II. Vision for a healthy population .....	3
III. Mission for the Public Health Association of Australia .....	3
<b>Introduction</b>	<b>4</b>
<b>PHAA Response to the consultation paper</b>	<b>4</b>
D. Literature review on the effectiveness of warning labels .....	4
E. Consumer testing of warning statements .....	5
F. Pictogram .....	5
G. Warning statement .....	5
H. Design labelling elements .....	6
I. Summary of proposed pregnancy warning label design .....	7
J. Beverages to carry the pregnancy warning label .....	8
K. Application to different types of sales .....	8
L. Application to different types of packages .....	8
M. Consideration of costs and benefits .....	8
N. Transitional arrangements .....	9
O. Draft variation to the Australia New Zealand Food Standards Code .....	9
P. Other comments .....	9
<b>Conclusion</b>	<b>10</b>
<b>References</b>	<b>11</b>

# Preamble

## I. The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

## II. Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

## III. Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.



## Introduction

PHAA welcomes the opportunity to provide input to the consultation on mandatory pregnancy warning labels on packaged alcoholic products.

As the current Parliamentary Inquiry confirms, foetal alcohol spectrum disorder (FASD) is a significant issue of concern for Australia, and globally. With clear evidence of the causes and how to prevent FASD, inaction is not an option. The PHAA strongly supports the transition from voluntary to mandatory health warnings regarding the risks of consuming alcohol while pregnant.

## PHAA Response to the consultation paper

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

The literature review confirms several elements of effective labels:

- “attention to warning labels is influenced by a range of design factors. These design factors can be manipulated to enhance the noticeability of warning labels such that consumers are more likely to notice the warning”.
- “increasing the size of warnings led to an increase in the noticeability of the warning”
- “location of a pregnancy warning label on the front of alcoholic beverages would receive quicker and/or more attention than those placed elsewhere on the packaging”
- “a border can be used to distinguish and separate the warning from other information that competes for attention”
- “Colour operates as a cue that in combination with an appropriate signal word is perceived as implying a greater hazard than the equivalent signal word in black text”
- “the addition of a pictorial element to a textual warning enhances the level of attention that the warning receives in comparison with a text only warning”
- “research on the standard pictogram suggests it is well understood by participants across target populations of women of childbearing age and young women, as well as the general population”
- “warnings can influence judgements participants hold about alcohol, and about its risks ... multiple exposure to the same warning across different situations can lead to stronger beliefs in alcohol as a risk factor in some chronic illnesses”
- “warning labels can have an impact on self-reported intentions to reduce alcohol consumption”

Importantly, the review also notes that while alcohol warning labels introduced elsewhere have had limited impact on consumption behaviour, they have also ‘not been designed with a view to optimise the attention they receive’. This provides Australia with an opportunity to establish a world’s best practice model for mandatory alcohol warning labels. Such a world-leading model would incorporate two distinct and important elements: firstly, the warnings would be designed to optimise the attention they receive, and secondly, they would be accompanied by supporting measures such as public education campaigns.

Australia should learn from the experiences of other jurisdictions, and improve upon those models. The desired outcome should be the best evidence-based model to reduce the health risks, not the best evidence-based model to reduce impact on industry.

## **E. Consumer testing of warning statements**

PHAA commends FSANZ for conducting consumer testing to help inform the development of the warning statement. The research found that when shown all four tested statements, the statement chosen as best conveying the message not to drink any alcohol while pregnant was “Any amount of alcohol can cause lifelong harm to your baby” (chosen by 52-54%) followed by “Any amount of alcohol can harm your baby” (chosen by 24-29%). This is a significant gap, with the longer message being chosen up to twice as often as the shorter one. PHAA questions then why the most suitable statement was not the one chosen, but notes that the chosen statement is also acceptable.

The most common message used in the voluntary messages has been “It’s safest not to drink while pregnant”. The finding that this was the wording with the highest rate of misinterpretation highlights the urgency of moving to an evidence-based, mandatory message. Consumer messaging for the past 8 years has been clearly suboptimal, and PHAA welcomes the opportunity provided through this consultation process to rectify that situation.

## **F. Pictogram**

PHAA supports the inclusion of the pictogram in mandatory warning labels as an evidence-based element of messaging.

The consultation paper notes that “research indicates the inclusion of a graphic with text helps make the warning more noticeable than text alone”. This finding means that to support the aim of optimising attention for the warning, the pictogram and text should be included together wherever possible. The proposal is for containers under 200ml to display only the pictogram. PHAA believes this does not support the overall aim, and that smaller containers can not only reasonably but easily display the full message incorporating both pictogram and text.

PHAA proposes that displaying the pictogram alone should be restricted to those containers upon which it is not physically possible because of size, to display both. PHAA believes that this would be only containers less than 100ml. While industry may suggest that it would be difficult to incorporate both elements on containers 150-200ml, maximising the public health benefit through an evidence-based approach must be the over-riding principle.

## **G. Warning statement**

As noted in E. above, PHAA is concerned that the most suitable warning statement according to the consumer testing, was not the statement chosen. If the complete statement was considered initially to be too long to be practicable to implement, it is difficult to understand why it was consumer tested.

PHAA supports the chosen statement, but believes that the mandatory messaging would be further strengthened by the inclusion of the full statement, as supported by the consumer testing.

## H. Design labelling elements

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

No comment

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

The results of the Siggins Miller 2017 Australian label evaluation may not be informative for the current process. The consultation paper notes that the evaluation report did not provide any information on the definition of the standard against which the labels were tested. This renders a finding that 90% had standard or above standard legibility and prominence largely meaningless as it cannot be interpreted. Similarly, the colours and contrast used for the pictogram were not reported, but have been found elsewhere to be important elements in the effectiveness of a labelling image. Finally, where the aim is to maximise the noticeability of the warning message, as is the case for P1050, the findings regarding which labels met the highest standard of evidence-base for effectiveness is a more appropriate measure than meeting an undefined standard.

**Principle 3: Consider other information relevant to design labelling elements including existing guidance and requirements for alcohol labelling such as the DrinkWise guidance for voluntary pregnancy warning labels, standard drink labelling, existing Code requirements for legibility and requirements for warning labels in other countries**

No comments

### Signal words

PHAA supports the use of “Health Warning” as an appropriate choice to increase attention, including of the broader community, not just women who may be pregnant. PHAA also supports the prescription of font type and colour to ensure readability.

### Warning label size

PHAA does not support the proposal for the pictogram only to appear for alcohol beverages <200ml. The original proposal was for 100ml, and there is not sufficient justification for the change of approach taken in this recommendation. The finding from the literature review that multiple exposures to a warning increases its effectiveness supports the prescriptive approach with the same standard warning appearing, and the variation of pictogram only being as limited as possible, to only the smallest size containers.

The goal of optimising the attention warning labels receive must take priority over convenience to the alcohol industry.

### Location and label orientation

The call for submissions notes that there are two reasons for not prescribing the location and orientation of the label: firstly as it may contravene free trade agreements, and secondly because there are no similar requirements currently in the Code.

The rationale presented regarding free trade agreements cites the World Wine Trade Group (WWTG) 2007 labelling agreement, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). PHAA believes that neither of these prohibit mandating the location and orientation of a health warning labels on alcohol beverages.

The PHAA notes that Article 5.4 of the WWTG Labelling Agreement states that “Nothing in this Agreement shall in any way prevent a Party from taking measures for the protection of human health and safety, provided such measures are in accordance with the provisions of the WTO Agreement”.<sup>1</sup> This clearly means that the WWTG Labelling Agreement presents no impediment to prescribing the location and orientation of pregnancy warning labels which are a measure for the protection of human health, as long as they are consistent with the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

The TBT Agreement does not preclude mandating health warning labels, and many WTO Members already mandate specifications as to positioning of alcohol health warning labels. There has never been a WTO dispute over alcohol warning labels, and legal experts have determined that “Although the industry may object to the alcohol labelling schemes being proposed and implemented in countries around the world, our view is that the TBT Agreement will provide little comfort to alcohol exporting members who seek to rely on it to challenge these new labelling measures.”<sup>2</sup> (p.154).

Similarly, the CPTPP does not prevent a government from prescribing the location or orientation of a label, even a supplementary one, and therefore does not present an impediment. A comprehensive legal analysis of the supplementary labelling provisions in the CPTPP concluded that: “...governments that mandate health information labelling for alcoholic beverages, including design and placement features for such labels, but allow the information to be applied as a supplementary label, will be acting consistently with the supplementary labelling obligations in annex 8-A. The text of the TPP suggests that a supplementary label should be understood as a label that is additional to the product’s standard label, but not necessarily one that must be able to fit into an unused space on the container. States should therefore resist arguments from other parties or private actors to the contrary.”<sup>3</sup> (p.385).

The second reason provided is that there is no provision currently under the Code for the location of mandatory labelling elements. PHAA believes that the imperatives of the health gains involved in pregnancy warning labels warrant such a provision to be added to the Code.

PHAA believes therefore that there is no reason not to apply the findings of the literature review in this regard – that consumers would be more likely to notice the warning label if it was located on the front-of-pack.

### **Colour and contrast**

PHAA supports the prescribed use of a particular red colour for the warning label, to increase contrast and attention, and to provide consistent messaging across all alcohol beverage products.

## **I. Summary of proposed pregnancy warning label design**

The PHAA supports prescribing all elements of the pregnancy warning label to ensure readability and consistency of messaging. The current proposal prescribes the pictogram, signal words, statement, a border, background colour and 3mm clear space outside the border.

The call for submissions report notes that the Code currently “requires the font size of warning statements to be at least 3mm and 1.5mm for small packages ... Guidance for standard drink labelling and the recycle logo recommends a larger label height (12-14mm) than that for the voluntary pregnancy warning label (8mm box height with a pictogram of about 5mm diameter)”.

PHAA believes the font size should be prescribed to match that of existing guidance under the Code for standard drink labelling and the recycle logo. The current proposal for the pictograms are all at least 6mm, which PHAA supports. The current proposal for the font size though is only 2.1mm for packages 200-800ml, and only 2.8mm for packages >800ml. This does not meet the current standards, and should be increased

accordingly, to ensure that the font size of warning statements is at least 3mm and 1.5mm for small packages.

The definition of a small package should be decreased from 200ml to 100ml, as was originally proposed, and the second category be removed, such that there are only two categories:  $\leq 100\text{ml}$  and  $>100\text{ml}$ . The call for submissions paper does not provide a sufficient reason for the selection of 200ml, which seems to be somewhat arbitrary and unjustified. Under the current proposal, the font size for standard 750ml wine bottles is only just over two-thirds the size of that recommended for warning statements.

In order to provide the maximum benefit to health, and optimise the attention the labels receive, the full label should appear on as many products as possible.

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

PHAA supports consumers being fully informed about products they are consuming. A standard of 0.5% ABV is in use in multiple areas noted in the consultation paper: Firstly, the Code “requires a statement of the number of standard drinks for food that is consumed as a beverage with more than 0.5% ABV; and secondly, three Australian jurisdictions require beverages with more than 0.5% ABV to be sold in licensed premises. The justification noted for a definition of 1.15% refers to the process of manufacture. For the consumer, the process of manufacture is of far less relevance and concern than the contents of the finished product. Where a product is not necessarily intended to have an alcohol content but does, the result for a foetus is the same. It is the content of the product which should determine the definition of an alcohol beverage, not the process of manufacture.

A contradiction in this regard currently exists within the Code because products with 0.5- $<1.15\%$  ABV must be labelled with the number of standard drinks, but not as an alcoholic beverage. Such contradictions may be highlighted by the P1050 process, but should not pose an impediment to an optimal outcome. The inconsistency should be addressed within the Code, to ensure all labelling and definitions of alcohol meet the same standard – 0.5%. This could be done at the same time as P1050 which requires a variation to the Code anyway.

As noted in the consultation paper, the lower limit is also more consistent with the messaging of the label – that any amount of alcohol can cause harm – and would be consistent with the 3 jurisdictions who have already moved towards the standard being 0.5%.

## **K. Application to different types of sales**

No comments

## **L. Application to different types of packages**

PHAA supports the proposal that where multiple layers of packaging exist, the warning label should appear on each layer, and each individual portion pack.

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

Recent estimates suggest that the costs of caring for people with FASD run into the billions every year, and that cost-effective prevention can provide greater than 700% returns on investment.<sup>4</sup> The cost to industry of implementing mandatory pregnancy warning labels, for which there has been an extensive lead-in time acknowledged by Industry,<sup>5</sup> are clearly outweighed by the benefits.

## **N. Transitional arrangements**

The Australia and New Zealand Ministerial Forum on Food Regulation first advised that pregnancy warning labels on alcohol beverages could become mandatory in 2011. Extensions until a mandatory ruling were given in 2014 and 2017. Industry has therefore had ample time to prepare for this decision, as acknowledged by the Industry itself.<sup>5</sup> Given the extensive delays which have occurred since 2011, and the request from the Forum in October 2018 for FSANZ to consider the issue expeditiously, the shortest practicable implementation timeframe should be adopted. PHAA supports a 12 month transition period.

## **O. Draft variation to the Australia New Zealand Food Standards Code**

No comments

## **P. Other comments**

### **Education**

The consultation paper notes that pregnancy warning labels should exist as “part of a broader suite of measures aimed to raise awareness of the risks of drinking alcohol during pregnancy”. PHAA strongly supports this, and recommends that FSANZ note the importance of such awareness raising measures, and the need for Government funding to enable them. Critically, such measures must be evidence-based. A recent analysis found that compared with public health organisations, the information on alcohol consumption provided by alcohol-industry funded bodies (such as DrinkWise), was significantly less likely to include important information, and more likely to emphasise uncertainties, use ambiguous language, and to provide misinformation which may actually increase risk.<sup>6</sup>

It is important therefore, that health information is provided by governments and health agencies, to ensure that it is evidence-based and reduces risk, and that any potential conflict of interest with the need of Industry to increase profits is avoided.

### **Monitoring and evaluation**

Reporting of monitoring and evaluation of mandatory pregnancy warning labels will be an important feature of a successful implementation, and should be included as an integral part of the recommendations. Compliance should be measured with regard to coverage, presentation and comprehension of the label across all alcohol beverages.

## Conclusion

PHAA supports the proposal for mandatory pregnancy warning labels on alcohol beverages. However, we are keen to ensure that the labels are designed and implemented with a view to optimise the attention they receive, in line with this submission. We are particularly keen that the following points are highlighted:

- The size of the labels and font should be increased to comply with current Code standards
- The use of the pictogram only should be restricted to the smallest containers (<100ml)
- The transition should be 12 months, in recognition of the extensive delays to date in enacting this measure
- All beverages containing >0.5% ABV should be required to carry the warning label, consistent with the requirements for standard drink labelling
- Trade issues and current limitations of the Code are not sufficient reasons to not prescribe the location and orientation of the label.

PHAA appreciates the opportunity to make this submission and the opportunity to contribute to better information for consumers and the reduction of FASD in Australia.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

Public Health Association of Australia

Alcohol, Tobacco and Other Drugs

27 October 2019

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