

PREGNANCY WARNING LABELS ON ALCOHOLIC BEVERAGES



Lion submission

October 2019

About Lion

Lion is one of Australasia's premier producers of alcoholic beverages. In Australia, we produce brands including Tooheys, XXXX, James Squire, and Little Creatures. In New Zealand, we produce brands including Steinlager, Speight's, Panhead, Lindauer and Wither Hills in addition to distributing prominent global brands like Corona, Stella Artois and Guinness.

In FY2017¹, Lion directly contributed \$2.6 billion to the Australian and New Zealand economies, as well as \$2.8 billion indirectly. The direct figure includes \$1.065 billion of tax across both countries.

Lion employs approximately 1,800 people in Australia, and 1200 in New Zealand for a total of 3,000. We pride ourselves as responsible producers. Lion is a strong supporter and significant funder of Drinkwise in Australia, and Cheers! in New Zealand.

Introduction

Lion welcomes the opportunity to comment on Food Standards Australia and New Zealand (FSANZ) proposal P1050 'Pregnancy Warning Labels on alcoholic beverages'.

We have been engaged with this process since it began in October 2018. We have made submissions to the FSANZ process, and participated in roundtables with FSANZ and industry.

Since 2014, Lion has been voluntarily including pregnancy labels on all alcoholic beverages that it produces across Australia and New Zealand.

As a company, we recognise the impact that Fetal Alcohol Spectrum Disorder (FASD) has on individuals, families and communities. Our view is that a pregnancy warning labelling regime can be valuable as a complementary measure to support well-resourced, targeted interventions for at-risk cohorts and educational measures as part of an effective community-wide response to FASD. Lion's commitment to developing and maintaining a safe drinking culture is demonstrated through its membership and support of the Drinkwise and Cheers programmes across Australia and New Zealand (with Lion playing a crucial role in the design and funding of the Cheers' online pregnancy campaign Safer Pregnancy in New Zealand, while also being the single largest corporate contributor to the DrinkWise FASD campaign launched in 2018 in partnership with the Australian Commonwealth Government).

¹ Economic contribution and employment figures from 'Lion economic contribution: contribution for Year ending 2017' – modelling undertaken by Deloitte Access Economics

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A warning label can function as a trigger to remind pregnant women and the community of advice not to consume alcohol while pregnant – which is the objective of this measure. At the same time, a label of this nature should not be the sole or primary information source or a substitute for medical advice, and the labelling measures proposed should be proportionate to this objective.

In this submission, Lion wishes to focus upon the substantive aspects of implementation – in particular some of the prescribed label design elements which Lion believes will impose undue cost upon the sector. We believe that some changes to the design elements will make the scheme less disruptive to implement, while fulfilling its function as a trigger or reminder.

Lion also considers that the content of the proposed warning statement is not scientifically accurate, does not reflect government advice and should be changed. Lion further wishes to express its grave concern about the severe and unnecessary financial impact of a failure to coordinate the implementation of the proposed warning statement with other possible mandatory label changes.

Lion is a member of the Brewers' Associations of both Australia and New Zealand and supports the comments made in those Associations' submissions.

The proposal

Lion was an early adopter of pregnancy warning labels. As mentioned, pregnancy labels are contained on all alcoholic beverages produced by Lion across Australia and New Zealand.

The existing Drinkwise warning labels have been effective at raising awareness. Market research showed that 59% of women aged 18 to 44 recalled the pictogram, and 98% of women comprehended the message².

That said, we understand that FSANZ wishes to introduce a written warning to sit alongside the existing pictogram. Lion submits certain changes to the proposal that would allow the label to fulfil its objective as a reminder, while avoiding major unintended consequences upon implementation.

1. Change mandated colours to a contrast colour scheme

Lion considers that there is no justification for the proposed departure from existing practices to mandate colours for the proposed pregnancy warning statement. Mandated colours would be extremely costly, to the point of threatening the viability of smaller producers and international trade. A contrasting, bordered message will still fulfil the function of the proposed warning label as a trigger without an unnecessary departure from existing regulatory practices.

2. Change 'health warning' to 'pregnancy warning'

Lion believes that mandating the phrase "HEALTH WARNING" is not justified and would be unhelpful in achieving the trigger function of the proposed warning statement. If a two-word signal is required, then Lion's view is that "PREGNANCY WARNING" is more accurate and appropriate.

² Quantum market research (2019) *Drinkwise Australia pregnancy warning consumer research*

3. Small vessel exemptions should be expanded to containers of up to 400mL

For practical purposes and for the same logic of the current recommended 200ml exemption, only the pictogram should be required on containers 400mL or below. The proposed label is also too large to be accommodated on these containers.

4. Make the warning statement scientifically accurate

Lion believes that the wording of the warning statement “any alcohol can harm your baby” is scientifically inaccurate and should be changed. FSANZ is obliged to propose only scientifically accurate and evidence-based measures.

5. Minimise costs by coordinating multiple label changes

Lion is concerned that there will be little or no mitigation of the implementation cost of the proposed warning statement unless FSANZ is able to coordinate the transition with other proposed label changes. Failure to do this will result in a very significant multiplication of cost to industry.

1. Change mandated colours to a contrast colour scheme

Proposal P1050 proposes the mandatory use of three colours – black, white, and red PANTONE 485 – for the pregnancy warning label. This is a significant departure from the approach taken elsewhere in the Food Standards Code. The General Legibility Requirements set out in Standard 1.2.4-24 are as follows:

If this Code requires a word, statement, expression or design to be contained, written or set out on a label—any words must be in English and any word, statement, expression or design must, wherever occurring:

(a) *be legible; and*

(b) *be prominent so as to contrast distinctly with the background of the label.*

In short, mandatory label information must be legible, prominent and contrasting (as well as meeting the minimum font size requirements set out at Standard 1.2.1-25). But there are no further requirements with regards to colour. Even in the case of the mandatory warning statements in the Food Standards Code, there are no requirements around colour beyond the requirement for contrast.

For all other mandatory or regulated information on all other food products, the requirements for legibility, prominence and contrast have been sufficient. In practice, the example below shows that if these requirements are properly implemented, then the contrast is effective in making information on the label clearly legible:

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Having the flexibility to use any colours provided that they are legible, prominent and contrasting is extremely important to alcoholic beverage producers from a cost perspective because there are physical limitations that constrain how many colours can be applied to a label.

4-colour labels

Four colour labels are significantly lower in cost than labels printed with more colours. Industrial printers designed to print with four colours are also significantly cheaper to purchase than 6-colour or 8-colour printers and often prove to be the only viable option for craft brewers and small-scale producers of alcoholic beverages. Some producers, such as small and medium wine producers, may even use 2-colour labels.

Mandating three colours, as proposed by FSANZ, would only leave one additional colour for label artwork for a significant portion of producers within the market. This would drastically constrain label artwork for 4-colour labels, who would be forced to print in black, red, white, and one colour of their choice. Given that craft brewers typically use colourful labels and bright packaging as a point of differentiation, such a change would likely be an unpalatable outcome for producers using 4 colour printing and would threaten the ongoing viability of those producers' businesses. It would mean that they are, in effect, unable to utilise a key point of difference from mainstream producers while, for large scale producers like Lion, it forces significant additional costs to be incurred in order to purely maintain the identity of brands that have been existence for generations.

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This would then have flow-on impacts for printing companies that offered 4-colour labels. To the best of our knowledge, FSANZ has not undertaken any analysis of the economic impacts of their proposal on small producers or printers.

6-colour labels

Labels that are printed with 6-colours are generally an industry standard. Lion uses 6-colour printing for almost all its packaging. Given the rarity of using 8-colour printing, 6-colour printing can be considered a 'hard ceiling' in terms of available colours when printing labels at scale.

Mandating three colours would reduce the number of available colours for label art to three when using 6-colour printing. This would have major consequences for artwork and brand value.

Lion's entire stable of brands would require major art redesigns at significant cost. Some brands that have been in existence for well over 100 years, would be barely recognisable with the reduction in available colours and would potentially be forced to abandon colours that are critical to the brand's identity.

Being able to work in only three colours would hamper companies' ability to compete using their labels – a major point of value for consumers when assessing products.

8-colour labels

Labels that use 8-colour printing are typically designed with maximum visual impact in mind. Mandating three colours would leave these labels with only five 'free' colours with which to design label art, a significant reduction from eight in terms of visual impact and appeal.

Under the FSANZ proposal, potentially more suppliers would move to 8-colour labels. These labels are more expensive and require much more complex and expensive printers to produce.

Justification for mandatory colours

Lion considers that the use of prescribed colours is unlikely to be any more effective in achieving the trigger function of the warning label than existing "legible, prominent and contrasting" requirements. Lion further considers that the case for mandating colours and departing significantly from the existing provisions of the Food Standards Code have not been made out in the Call for Submissions.

The purpose of mandating colours is purportedly to attract attention and reinforce the warning nature of the message. However, the focus on attracting attention to the exclusion of other relevant considerations appears to be disproportionate to the actual function of the proposed warning statement as a trigger. It is the reinforcement of a message, rather than the need to maximise immediate attention that should be the focus.

The marginal benefit from mandating the colours, as opposed to the existing "legible, prominent and contrasting" standard, has not been considered in depth in the Call for Submissions, which is a significant omission given that this is likely to be a significant source of additional cost.

The evidence reviewed by FSANZ largely considers only red/black combinations and is purely suggestive of an impact on attention rather than conclusive. Other colour combinations were not

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tested for attention, nor was there any control of labels designed to the mandatory “legible, prominent and contrasting” standard. Consequently, it cannot be said that there is a sufficient evidential basis to justify such a major cost to industry and departure from the existing provisions of the Food Standards Code.

FSANZ must also consider the impact of mandating a colour combination for one type of warning statement only, when there are in fact several mandatory warning and advisory statements specified in the Food Standards Code. There is no objective reason to privilege one type of warning statement over any other – they all deal with serious risks or conditions. Such a significant departure in FSANZ existing practice risks opening the floodgates requests for the mandating of colours for all warning and advisory labels at great cost and disruption to the food sector.

Trade impacts

It is important to consider the trade impacts of mandating colours for the proposed warning statement. At present, no major export destination or import source country for alcoholic beverages mandates a three-colour pregnancy warning. Consequently, all imported alcoholic beverages entering New Zealand and Australia will be required to include a new label that is unique to those markets. All exported alcoholic beverages will need to remove the Australia/New Zealand warning statement because it will be non-compliant for markets that have mandated their own pregnancy warning statement.

These are not insignificant consequences. In the Call for Submissions, FSANZ says:

Amending the Code to require a pregnancy warning label on packaged alcoholic beverages is unlikely to have a significant effect on international trade as currently importers of alcoholic beverages into Australia and New Zealand have to comply with local labelling requirements and similarly, Australia and New Zealand exporters have to comply with labelling requirements of the country to which they export.

While it is true that some parts of the label do generally need to be changed for products that are imported or exported, this does not mean that this is not an additional cost. But over and above that fact, FSANZ does not appear to have given any consideration the extraordinary impact of mandating colours.

The fact is that it is not standard regulatory practice for most of our major trading partners in the alcoholic drinks sector to mandate label colours. So the change is not simply a matter of including or excluding a labelling element (which is difficult and costly enough in itself); it becomes a matter of the colour of the label itself – which is another order of magnitude in terms of cost and complexity.

In most cases, over stickering is an impractical option - particularly for high volume products such as beer. Consequently, foreign producers will need to reconsider the whole colour scheme of their labels to accommodate the mandated three colours within the colour scheme that they have already established. Many producers might decide that the cost is prohibitive for the size of the New Zealand market or consider that the additional cost will need to be passed on to the market in order to be commercially viable.

While Lion appreciates that FSANZ has made some enquiries with printers in Australia and New Zealand, these efforts do not adequately capture the scope and nature of the changes that will need to be made.

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It is worth noting that several Lion's most well-known and highest volume products use the colour red prominently in all forms of advertising and packaging (West End, Steinlager and Lion Red to name a few). In most cases, these products do not use the prescribed Pantone 485 and, in the absence of any compelling reason to prescribe the colour, this is likely to put these well-known brands to unnecessary expense.

Taking the example of imported beer, in many cases the labelling is printed directly onto the bottle or can. Overstickering is a practical impossibility given the nature of the production and packaging lines. Changing from a 4 to a 6-colour label, for example, means significantly more than printing new labels; it potentially means a change to the entire production line.

The over stickers would need to be applied manually to each individual bottle. The process cannot be automated as we must ensure that no label impacts or covers the other mandatory labels required. By way of example, Corona (which Lion distributes in New Zealand) is one of the products that would be affected. To put into perspective the magnitude of what FSANZ is proposing, over 17 million litres of Corona were sold into the New Zealand market alone in the last 12 months (making it the 4th largest brand in the market. (This equates to roughly 48 million 355mL bottles. The prospect of requiring over sticking or the introduction of a new colour on the labels of a large global brand like Corona (which is produced in Mexico and does not include red on its product in any other market) stands to place an extreme burden on a business like Lion.

The change is also significant for wine. FSANZ has referred to the World Wine Trade Group *Agreement and Protocol on Requirements for Labelling* with regard to matters of label placement. However, it is important to recognise that mandating colours will undermine the whole rationale of that Agreement.

The WWTG Labelling Agreement was premised on the idea that producers could have a single colourful "market" label for all jurisdictions and a single "mandatory" label that would change according to the market. The idea was that the "mandatory" label would be the less expensive to print and to change and could be in 2 colours if necessary. By introducing colour requirements, FSANZ will significantly undermine the value of that Agreement. For example, while an NZ exporter might remove the domestic pregnancy warning statement, the producer will still have had to design the back label in multiple colours where it otherwise might have been able to economize on two colours.

Finally, it should be noted that under WTO rules technical regulations of this nature must be scientifically justified – even where they serve a public health function. As above, Lion questions whether the evidence base can be said to provide sufficient justification for the imposition of the colour requirement.

2. Change 'health warning' to 'pregnancy warning'

Lion believes that mandating the phrase "HEALTH WARNING" is not justified and would be unhelpful in achieving the trigger function of the proposed warning statement. If a two-word signal is required, then Lion's view is that "PREGNANCY WARNING" is more accurate and appropriate.

Conformity with Forum direction

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The original direction from the Forum on Food Regulation did not mandate this particular phrase or even the use of signal words. Instead, the Communiqué from the Forum records its decision in the following terms:

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.

Therefore, the choice of this form of signal words goes beyond the direction of the Forum.

While the DRIS made some recommendations about exploring certain aspects of label design including signal words, this is not in itself a direction or Policy Guideline from the Forum that FSANZ was required by law to consider. The advice in the DRIS was to explore different warnings, but the proposals of the DRIS should not have been taken as determinative or as circumscribing the range of signal words that could be tested. In any event, FSANZ did not actually conduct consumer testing even on the range of signal words are suggested by the DRIS, but instead elected to use the phrase HEALTH WARNING for all of its consumer-tested statements.

Limited evidence for HEALTH WARNING

While FSANZ undertook market research to test consumer responses to a limited range of label configurations, it only tested one set of signal words: HEALTH WARNING. The reasons that FSANZ gave for arriving at this particular set of signal words and failing to test any others do not appear to be based on conclusive scientific evidence.

No studies were identified by FSANZ that tested this precise form of words specifically in the context of pregnancy warning labels. The general studies relied upon by FSANZ broadly indicated that signal words can help attract attention, but beyond that the actual findings of the general studies do not give a conclusive or even a strong indication that the phrase HEALTH WARNING would be more effective in this context.

Lion considers that the failure to test a number of options based on weak evidence is a flaw in FSANZ's process that calls into question the validity of the recommendation regarding mandating the words HEALTH WARNING.

HEALTH WARNING is not aligned with current practice

The Food Standards Code prescribes a number of warning and advisory statements for different risks related to food. None of these statements include signal words, and particularly not the phrase HEALTH WARNING. As is the case with mandating colours, it is very difficult to see any objective reason to privilege one type of warning statement over any other – they all deal with serious risks or conditions. The fact that this was not specifically directed by the Forum nor is it strongly evidence-based makes this departure from current practice even more difficult to understand.

HEALTH WARNING is not accurate

Lion believes that the phrase HEALTH WARNING is not the most accurate or targeted phrase that could be used. The proposed warning statement is intended to be a trigger for awareness of the risks associated with drinking while pregnant. It is targeted towards a specific harm affecting a specific part of the community. It is not a general health warning. While a secondary objective is as

a trigger for the wider community, this is still only in the context of consumption whilst pregnant and not a general health warning.

The direction from the Forum was for FSANZ to develop a proposal for “pregnancy warning” labels, and not to develop a generalised “health warning” label.

If it is considered necessary to include signal words, then Lion proposes that ‘HEALTH WARNING’ is changed to ‘PREGNANCY WARNING’ to avoid confusion, to ensure the measure is correctly targeted and to accurately reflect the guidance provided by the Ministerial Forum.

3. Make the warning statement scientifically accurate

Lion believes that the wording of the warning statement “any alcohol can harm your baby” is scientifically inaccurate and should be changed. Lion supports the advice that women should not drink any alcohol while pregnant. However, there is no evidence to support the proposition that consumption of an extremely small amount of alcohol by a pregnant woman can cause FASD. Promoting a message that is not scientifically accurate is likely to cause unnecessary distress and worry to pregnant women and undermine the credibility of FSANZ as a science-based agency.

While FSANZ has done some consumer testing on the message, that testing does not alter the fact that the message itself is not evidence-based as required by FSANZ legal obligations. The fact that FSANZ has suggested that beverages with between 0.5% and 1.15% alcohol by volume do not need to carry the proposed warning statement suggests that even FSANZ do not hold the view that any amount of alcohol can be harmful.

4. Small vessel exemptions should be expanded to containers of up to 400mL

FSANZ is proposing that containers up to 200mL will be exempt from carrying the full label. Instead, it is proposed that they would only be required to carry the pictogram.

Lion supports this pragmatic approach. However, in our view it does not go far enough.

We propose that this exemption is expanded to containers up to 400mL. There are numerous examples of the proposed FSANZ label simply not fitting on some existing beer and RTD bottles in the 200 mL to 400 mL range. For beer and RTDs, the full label would still be shown on secondary (6-pack and 4-pack) and tertiary (carton) packaging. Around 95% of off-premise beer sales in Australia are sold in tertiary or secondary packaging.

5. Minimise costs by coordinating multiple label changes

FSANZ has recognised that there is significant cost involved in changing labels and that the transition to the proposed warning statement will take some time. It has proposed a two-year transition with a stock-in-trade exemption.

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Although we recognise FSANZ's efforts to assess the costs, Lion believes that the true costs may be considerably higher and that the cost-benefit analysis does not give an accurate picture of the potential impact and measurable outcomes that will be achieved.

One of the key elements of FSANZ's own cost-benefit analysis is to apply a cost mitigation factor to the implementation of the proposed warning statement based on the idea that producers will be able to combine the inclusion of the mandatory warning label with other label changes made voluntarily or to comply with other regulatory requirements.

Within any given two-year cycle, the majority of producers are unlikely to voluntarily undertake a major label change that requires a change in colour. The main impetus for label change is going to come from regulatory requirements. Even if voluntary changes were planned, the reality is that, faced with a change of this magnitude, most producers would time their voluntary changes to coincide with regulatory changes rather than the other way around.

Since FSANZ is the agency responsible for developing new regulatory requirements for the labelling of alcoholic beverages, it alone has responsibility for the mitigation or otherwise of the cost of regulatory label changes.

Lion is very concerned that there are a number of proposed label changes that might affect the alcoholic beverages sector currently under consideration by FSANZ that have not been coordinated with this Proposal. These include energy labelling for alcoholic beverages and added sugar labelling.

Additionally, we expect a container deposit scheme to be implemented in New Zealand in the near future. This will require further changes to affected labels.

Lion strongly urges FSANZ to consider an extended transition period to remove the risk that multiple important label changes will need to be made at different times. If FSANZ is not able to do so, industry will face the possibility of 3 separate unmitigated sets of label changes rather than 1 single mitigated label change. Even using FSANZ's own figures for an unmitigated scenario, this could cost the industry AU\$1.8 billion. Such a massive amount of cost cannot be imposed upon an industry without serious financial repercussions. Avoiding this is to a very significant extent within FSANZ's power and responsibility.

Conclusion

Lion acknowledges the role that labelling plays in consumer awareness and education.

The changes we are proposing will retain the visual impact of the FSANZ proposal, while allowing industry to implement the new regime.

If these changes to the proposal are not made:

- Small producers may cease production – a change as simple as prescribing warning label colours stands to have an extreme and disproportionate impact on small scale producers
- Printers will be adversely impacted
- Label art will be significantly constrained and noticeably plainer (which results in an obvious detriment to the consumer)

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- Australasian products will be disadvantaged against others when exported
- Industry supply chain costs will increase significantly

We consider this could lead to the imposition of significant unnecessary cost on industry without achieving any extra benefit.

Thank you for this opportunity to submit on proposals for mandatory pregnancy labelling for alcoholic beverages. We welcome the opportunity for further discussion and are happy to provide additional information or answer any questions arising from our submission.