

ENERGY LABELLING OF ALCOHOLIC BEVERAGES TARGETED STAKEHOLDER CONSULTATION - SUBMISSION TEMPLATE

Please provide a response to each question and feel free to provide as much information as necessary including attachments, website links and reference documents etc.

Name:			
Organisation:			
Contact Details		Phone: Email:	
Sector please indicate <input checked="" type="checkbox"/>			
Public Health <input checked="" type="checkbox"/>	Consumer <input type="checkbox"/>	Industry <input type="checkbox"/>	Other _____ <i>please specify</i>

Question 1:

Do you have any further relevant information regarding consumer opinion related to the energy labelling of alcoholic beverages? Where possible, please provide details, examples and/or evidence/references.

Response:

We are aware of the following additional information regarding consumer opinion about energy labelling of alcoholic beverages:

1. Foundation for Alcohol Research and Education (2011) 'Alcohol health warning labels: Attitudes and perceptions' (attached).

A 2011 survey commissioned by the Foundation for Alcohol Research and Education reported that 75% of respondents believed that alcohol health warning labels should include information on energy content.

2. Martinez, J. A., Dale, C. F., Fontana, V. C., & Collier, S. L. (2015). The impact of standard nutrition labels on alcoholic beverages. *Journal of Alcohol and Drug Education*, 59(2), 43-63 (attached).

A small study on nutrition labels on alcoholic beverages examined individual preference for nutrition labels. With a sample of 203 people, recruited via an online panel (83% from the USA), the researchers examined preferences for nutrition labels with different types of information as well as general public opinion about nutrition labels. The research found individuals preferred the provision of nutrition information on alcoholic beverages when compared to beverages where no nutrition labelling information was provided.

Respondents reported that 'the [nutrition] labels would help individuals know how many calories and "empty" calories they are consuming, that labels would help individuals to be informed about what they are buying and consuming, and that labels would allow individuals to make healthy nutritional choices'.

Question 2:

Do you have any further information regarding of any international standards, regulations, voluntary codes or schemes, or policy actions relevant to energy labelling of alcoholic beverages?

Response:

We are aware that the *Healthy Menu Choices Act, 2015* came into effect in Ontario, Canada in May 2017, under which chain restaurants must display calorie information about food products on their menus, along with information about the calorie content of standard alcoholic beverages.

We are also aware that the World Health Organization led a side event at the 40th Session of the Codex Alimentarius Commission, “to inform the international food safety standard-setting body of the dangers ethanol alcohol poses to human health and allow Members to begin contemplating in what ways Codex could possibly contribute to reducing the harmful consumption of alcoholic beverages.” The Codex website notes:

“Several developments at national, regional and international levels have raised expectations that Codex would support the reduction of burden of diseases linked to alcohol by standard setting within its mandate to protect consumer health, possibly through the definition of ‘alcoholic beverage’, labelling of alcoholic content and *calories* or health warnings.”

(Emphasis added). See <http://www.fao.org/fao-who-codexalimentarius/roster/detail/en/c/1025617/>.

Question 3:

Do you have any further information regarding industry and trade perspectives related to the energy labelling on alcohol? Where possible, please provide details, examples and/or evidence?

Response:

For a comprehensive discussion of possible implications of the Trans-Pacific Partnership (and other existing and future trade agreements relating to supplementary labelling) for alcohol labelling, please see the attached article: O’Brien P, Gleeson D, Room R, Wilkinson C, Marginalising health information: Implications of the Trans-Pacific Partnership for alcohol labelling, 2017, in press.

Regulation mandating energy labelling of alcohol products may raise issues under the Agreement on Technical Barriers to Trade (TBT). However, our view is that such regulation would not be inconsistent with Australia or New Zealand’s obligations under TBT. Our reasoning is set out below.

Regulation mandating energy labelling of alcoholic beverages would be a technical regulation for the purposes of Annex 1.1 of TBT. The relevant articles of TBT are Articles 2.1, 2.2, 2.4 and 2.5.

Article 2.1

Article 2.1 of TBT provides that in respect of technical regulations, imported products shall be treated no less favourably than like products of national origin or like products originating in another country. (For discussion of Article 2.1, see the attached article, O'Brien et al. 2017, in press.)

There would be no argument under Article 2.1 that the measure would result in less favourable treatment to imported products than domestic or other imported products, provided the measure applies comprehensively to all alcoholic beverage products, and does not discriminate (directly or indirectly) between imported and domestic products, or between imported products.

Article 2.2

Article 2.2 of TBT requires Members to ensure that technical measures do not create unnecessary obstacles to trade. As part of this obligation, Members must ensure that technical regulations are not "...more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create." Article 2.1 sets out a non-exhaustive list of legitimate objectives, which includes "protection of human health or safety".

(See further discussion of Article 2.2 in the attached article, O'Brien et al, 2017 in press.)

The burden of proof would rest on a complainant to show that the measure is a barrier to trade under Article 2.2. The complainant would have to show that the measure is:

- (a) not pursuing a legitimate objective; or
- (b) more trade restrictive than necessary to fulfil a legitimate objective (taking into account the risks non-fulfilment would create).¹

Is the measure pursuing a legitimate objective?

In our view, the objective of the measure should be to provide consumers with information about the energy content of alcoholic beverage products on product labels to assist them to better understand the energy contribution that alcoholic beverages make to their diets, and enable them to make informed decisions in relation to alcoholic beverage product purchases and consumption.

These would be considered legitimate objectives for the protection of human health and safety for the purposes of Article 2.2. The regulation should set out these objectives in clear and specific terms.²

¹ Panel Report, *US – Clove Cigarettes*, WTO Doc WT/DS406/R, [7.347-7.416]; Panel Report, *US – Tuna II (Mexico)*, WTO Doc WT/DS381/AB/R, [183-9].

² See Panel Report, *US – Clove Cigarettes*, WTO Doc WT/DS406/R, [7.347-7.416] and Appellate Body Report, *European Communities – Trade Description of Sardines*, WTO Doc WT/DS231/AB/R (26 September 2002) [189],

Is the measure more trade restrictive than necessary to fulfil the legitimate objective?

Assessment of whether a measure is more trade restrictive than necessary to fulfil a legitimate objective involves weighing and balancing³⁴ factors, including:

- (a) the degree of contribution made by the measure to the legitimate objective;
- (b) the trade-restrictiveness of the measure; and
- (c) the nature of the risks and the gravity of the consequences of non-fulfilment of the objective.’⁵

If this weighing and balancing exercise indicates that the measure is necessary, the Panel would then consider whether any reasonably available alternative measures are less trade restrictive than the measure, and whether an alternative measure would make an equivalent contribution to the legitimate objective, taking into account the risks of non-fulfilment of the objective.⁶

(See the attached article (O’Brien et al, 2017, in press) for further discussion.)

In our view, it could not be established that regulation mandating energy labelling of alcoholic beverages would be more trade restrictive than necessary to fulfil the legitimate objective set out above.

Public health and safety is an objective of high importance. The preservation of human life and health has been described by the WTO Appellate Body as ‘vital and important in the highest degree.’⁷

It is clear that the measure would make a material contribution to fulfilment of the objective outlined above. The measure, if implemented mandatorily, would ensure that information about the energy content of all packaged alcoholic beverage products would be provided directly to all purchasers of the products, and to all consumers of the products from the package. The measure would allow side-by-side comparison of the energy content of all packaged alcohol products, and of packaged alcohol and non-alcohol food and beverage products.

³ Ibid [321]; Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WTO Doc WT/DS332/AB/R (3 December 2007) [178] (*‘Brazil – Retreaded Tyres’*); Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO Doc WT/DS285/AB/R (7 April 2005) [306-8] (*‘US – Gambling’*). Appellate Body Report, *US – COOL (Article 21.5 – Canada and Mexico)*, WTO Doc WT/DS384/AB/RW; WT/DS386/AB/RW [5.212].

⁴ Appellate Body Report, *US – Tuna II (Mexico)*, WTO Doc WT/DS381/AB/R, [318].

⁵ Appellate Body Report, *US – Tuna II (Mexico)*, WTO Doc WT/DS381/AB/R, [322].

⁶ Appellate Body Report, *US – Tuna II (Mexico)*, WTO Doc WT/DS381/AB/R, [322]; Appellate Body Report, *US – COOL* WTO Doc WT/DS384/AB/R, [376]; Appellate Body Report, *US – COOL (Article 21.5 – Canada and Mexico)*, WTO Doc WT/DS384/AB/RW; WT/DS386/AB/RW [5.197].

⁷ *EC – Asbestos*, WTO Doc WT/DS135/AB/R, [172].

Evidence set out in the consultation paper from use of nutrition labels on food⁸ and from use of standard drink and alcohol content label information⁹ suggests that it is likely that energy labels would be used by a substantial proportion of consumers, particularly those managing weight and health conditions.

Along with existing requirements in the *Australia and New Zealand Food Standards Code* (Food Standards Code) for food and beverage products to display a Nutrition Information Panel, and legislation in a number of Australian states and territories requiring chain restaurants to display the kilojoule content of products, the measure would be part of a comprehensive package of food and beverage labelling measures that have the objective of enabling consumers to make informed choices about food and beverages, understand the nutrition and energy contributions that food and beverages make to their diet, and choose lower energy products in order to manage their weight and health issues.

The risks of non-fulfilment of the objective of the measure would be that consumers would have very limited information about the energy content of many alcohol products, and a severely limited ability to understand the energy contribution of alcohol to their diets. Consumers would have a severely limited ability to compare the energy content of alcohol products, and of alcohol and non-alcohol food and beverage products, and to make informed product purchase and consumption decisions based on energy content. There would be a risk that this would interfere with fulfilment of other measures that aim to encourage healthier choices and address obesity, as consumers would not have the full range of information they need to choose lower energy products.

Mandatory energy content labels would place only a minor degree of restriction on trade, and mandatory labelling is not as trade restrictive as other measures (such as import bans).

Are there less trade restrictive alternative measures?

In our view it could not be established that there is any less trade restrictive alternative to mandatory energy content labelling that would make an equivalent contribution to fulfilling the objective.

Energy labelling of alcoholic beverage products would have the unique function of providing energy information directly to consumers, and enabling them to use this information to compare products and make informed decisions when purchasing and consuming products.

⁸ Campos S, Doxey J, Hammond D. Nutrition labels on pre-packaged foods : a systematic review. Public health nutrition. 2011; 14(08) ;1496-506, and Food Standards Australia New Zealand. Consumer Label Survey 2015 – food labelling use and understanding in Australia and New Zealand [internet]. 2015 [cited 2017 January 2010], cited in Food Regulation Standing Committee. Targeted consultation paper : energy labelling of alcoholic beverages, 2017.

⁹ VicHealth. Alcohol health information labels : research report [Internet]. 2009 [cited 2017 April 18], cited in Food Regulation Standing Committee. Targeted consultation paper : energy labelling of alcoholic beverages, 2017.

Other potentially less trade-restrictive measures, such as public education campaigns, provision of energy content information on a website or at point of sale (e.g. display of information on posters, signs or menus at alcohol outlets) would not make an equivalent contribution to fulfilling the objective.

It would be very difficult for a public education campaign to convey information about the energy content of specific products to consumers, and for consumers to retain this information and use it to compare products and make informed purchase and consumption decisions. Therefore, a public education campaign, as an alternative measure, would carry a high risk of non-fulfilment of the objective. A public education campaign would act as a complementary rather than an alternative measure that would educate consumers about energy labels, and help them to understand energy information in the context of daily energy intake and diets.

Display of the energy content information on a website would require the consumer to seek out energy information about specific products from the website. Consumers would not have the information readily available to them at the point of sale to enable comparison of products and informed purchase decisions. Therefore, such a measure would also carry a high-risk of non-fulfilment of the objective, and would only be effective as a complementary rather than alternative measure.

Similarly, display of the energy content of alcoholic beverage products at the point of sale would require the consumer to seek out energy information about specific products at the point of sale by consulting the display, rather than providing the information to the consumer directly on the product label and allowing side-by-side comparisons. In addition, where products are consumed away from alcohol outlets, such a measure would not provide information to consumers about the energy content of products and enable consumers to make informed consumption decisions, at the point of consumption. Such a measure would also carry a high-risk of non-fulfilment of the objective.

Further, we do not think it could not be established that implementation of energy labelling under a self-regulatory, quasi-regulatory or co-regulatory measure would make an equal or better contribution to fulfilling the objective of providing information to consumers about the energy content of alcoholic beverages, and enabling informed product comparisons and decisions.

These approaches would carry a high risk of non-fulfilment of the objective, as there would be a high risk that they would result in inconsistent uptake of energy labels by alcohol companies, and/or selective application to lower energy products within an alcohol company's range.

Evidence from evaluation of self-regulatory and co-regulatory food and alcohol labelling initiatives shows that these approaches do not result in widespread or consistent implementation of labelling interventions.

Evaluation of voluntary implementation of pregnancy health warnings on alcohol labels in 2014 found that only 38.2% of products surveyed displayed the pregnancy warning label.¹⁰

The two-year evaluation of the co-regulatory Health Star Rating labelling system found that industry uptake of HSRs has been very low. Only 14.4% of eligible food products displayed HSRs and most food companies (61%) had only implemented the HSR system across a subset of their products at the end of the evaluation period. The result is that the most frequently occurring HSR is four stars¹¹, with food manufacturers selectively displaying HSR only on higher scoring products.

A 2017 study analysing voluntary implementation of calorie labelling of alcohol products as part of the Public Health Responsibility Deal in England found that only two of 156 product labels examined (1.3%) included calorie information.¹²

Articles 2.4 and 2.5

Article 2.4 of TBT requires that where ‘relevant international standards’ exist, Members must use them as the basis for technical regulations, except whether they would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

Article 2.5 of TBT creates a presumption that a technical regulation does not create an unnecessary obstacle to trade if it is prepared in accordance with relevant international standards.

Is there a relevant international standard for energy content labelling of alcohol?

1. Codex Guidelines

Codex Alimentarius (Codex) Guidelines on Nutrition Labelling CAC/GL 2-1985 (Codex Guidelines) may be considered a ‘relevant international standard’ for energy labelling of alcoholic beverage products for the purposes of Article 2.4.

Section 3.1.2 of the Codex Guidelines provides that nutrient declaration should be mandatory for all prepackaged foods except where national circumstances would not support such declarations.

An international standard for the purposes of the TBT Agreement has been defined as one approved by an international standardising body. An international standardising body has been found to be a body whose membership ‘should be open on a non-discriminatory basis to

¹⁰ Siggins Miller. Evaluation of the voluntary labelling initiative to place pregnancy health warnings on alcohol products. Final Report. 23 May 2014.

¹¹ Heart Foundation, Report on the monitoring of the implementation of the Health Star Rating system in the first two years of implementation: June 2014 to June 2016, p169.

¹² Peticrew M, Douglas N, Knai C, Maani Hessari N, Durand MA, Eastmure E, Mays N. Provision of information to consumers about the calorie content of alcoholic drinks: did the Responsibility Deal pledge by alcohol retailers and producers increase the availability of calorie information? *Public Health*, 2017, 149, pp 159-166.

relevant bodies of at least all WTO members' and must have recognised activities in standardisation.¹³

Codex Alimentarius Commission may be considered an international standardizing organization, and the Codex Guidelines may therefore be considered a relevant international standard pursuant to Article 2.4.

The Codex Guidelines appear to apply to alcohol. The Codex Guidelines provide a method for the calculation of energy in alcohol (in section 3.3.1).

There are also references to alcohol in other Codex standards and guidelines. For example the General Standard for the Labelling of prepackaged foods CODEX STAN 1-1985 does not exempt alcoholic beverages and refers specifically to alcohol in relation to mandatory labelling of prepackaged foods in Section 4 on 'Mandatory Labelling of Prepackaged Foods. Section 4.17.17(iv) provides that an indication of the date of minimum durability shall not be required for:

“...wines, liquor wines, sparkling wines, aromatized wines, fruit wines and sparkling fruit wines;

Beverages containing 10% or more by volume of alcohol...”

In addition, the March 2017 Report from the Commission of the European Parliament and the Council regarding the mandatory labelling of the list of ingredients and the nutrient declaration of alcoholic beverages noted that the Codex Standard on the labelling of prepackaged foods does not exempt alcoholic beverages from the provision of the mandatory list of ingredients.¹⁴

Section 3.2.1 of the Codex Guidelines provides that where a nutrient declaration is applied, declaration of energy value, amounts of protein, available carbohydrate, fat, saturated fat, sodium, total sugars, the amount of any other nutrient for which a nutrition or health claim is made, and the amount of any other nutrient considered to be relevant for maintaining a good nutritional status, as required by national legislation or national dietary guidelines.

Therefore, if the Codex Guidelines were considered to be a relevant international standard, requiring a nutrient declaration on alcohol products in accordance with article 3.2.1 would comply with the Guidelines. The presumption under Article 2.5 that a technical regulation

¹³ Van den Bossche P, Zdouc W. *The Law and Policy of the World Trade Organization*, 3rd Ed. 2012, Cambridge: Cambridge University Press, page 880; Appellate Body Report, *US – Tuna II (Mexico)*, WTO Doc WT/DS381/AB/R.

¹⁴European Commission. Report from the Commission to the European Parliament and the Council regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages. Brussels, 3 March 2017, https://ec.europa.eu/food/sites/food/files/safety/docs/fs_labelling-nutrition legis_alcohol-report_en.pdf.

does not create an unnecessary obstacle to trade if it is prepared in accordance with relevant international standards would then apply.

If the Codex Guidelines were considered to be a relevant international standard and only energy content labels were implemented, we think it could be established that full nutrient declaration would be an inappropriate means for fulfilment of the legitimate objective, based on the view set out in the Labelling Logic: Review of Food Labelling Law and Policy report that “...the fact that alcoholic beverages contain few nutrients of concern (other than alcohol) could mean that NIPs might be seen as conveying quite positive messages about alcohol”.¹⁵

2. *Agreement on the Requirements for Wine Labelling*

In our view, the Agreement on Requirements for Wine Labelling (ARWL) adopted by the World Wine Trade Group would not be considered a relevant international standard pursuant to Article 2.4.

It is unlikely that the World Wine Trade Group (WWTG) would be considered an international standardizing organization.

As discussed above, an international standardising body has been found to be a body whose membership ‘should be open on a non-discriminatory basis to relevant bodies of at least all WTO members’ and must have recognised activities in standardisation.¹⁶

Participation in the WWTG is open to any WTO members. However, the WWTG describes itself as an “informal grouping of industry representatives from wine producing countries around the world”¹⁷ and does not have formal membership but only “participants” from industry and government.¹⁸ Although the WWTG has “participation guidelines”, it does not have a constitution and its secretariat rotates between countries.¹⁹ The WWTG’s website states that WWTG “does not have written operating procedures or rules.”²⁰

Further, the WWTG does not appear to have recognised activities in standardization.

Even if the WWTG were an international standardizing body, it is unlikely that the ARWL would be considered a *relevant* international standard for the purposes of energy labelling of alcoholic beverages.

The purpose of the ARWL is to harmonise parties’ national requirements for placement on wine labels of information with respect to country of origin, product name, net contents and

¹⁵ Blewett N GN, Pettigrew S, Reynold C, Yeatman H. Labelling Logic: Review of Food Labelling Law and Policy (2011): Department of Health and Ageing; 2011.

¹⁶ Van den Bossche P, Zdouc W. *The Law and Policy of the World Trade Organization*, 3rd Ed. 2012, Cambridge: Cambridge University Press, page 880; Appellate Body Report, *US – Tuna II (Mexico)*, WTO Doc WT/DS381/AB/R.

¹⁷ See <http://www.wwtg-gmcv.org/p/statements.html>

¹⁸ See <http://www.wwtg-gmcv.org/p/administration.html>.

¹⁹ See see <http://www.wwtg-gmcv.org/p/administration.html>.

²⁰ See <http://www.wwtg-gmcv.org/p/procedures.html>

actual alcohol content. The ARWL does not include any standards or provisions with respect to labelling of energy or nutrient content information, and applies only to wine and not to other types of alcoholic beverages.

In any case, the ARWL provides in clause 4 that nothing in the Agreement shall prevent a party from taking measures for the protection of human health and safety, provided such measures are in accordance with the WTO Agreement. It is likely that energy content labelling of alcoholic beverages would fall under this exemption.

Question 4:

Do you have any data, information or evidence to inform on the policy linkage between energy information, weight management and alcohol consumption?

Response:

The targeted consultation paper provides a comprehensive and up-to-date summary of the evidence relating to the policy linkage between energy information, weight management and alcohol consumption.

As set out in the targeted consultation paper, alcohol is:

- a concentrated form of energy,
- the main contributor to discretionary energy intake among Australian adults (aged 19 or older),
- likely to contribute to excessive energy intake and weight gain, and
- a risk factor for obesity.

In addition, excessive alcohol consumption is a risk factor for serious long-term health problems, including liver cirrhosis, stroke, coronary heart disease and high blood pressure. Alcohol has been classified by the World Health Organization International Agency for Research on Cancer as a Group 1 carcinogen, and is a proven risk factor for cancer of the mouth, pharynx, larynx, oesophagus, bowel, breast and liver.²¹ Long-term alcohol consumption is responsible for more than 3200 cancers (2.8 per cent) in Australia each year.²²

The Australian Dietary Guidelines recommend that alcohol intake contributes less than 5 per cent of dietary energy because of the negative association between intake of alcohol and health outcomes. The Guidelines recommend that “in view of the increasing prevalence of overweight and obesity, limiting alcohol intake is an important strategy for achieving energy balance.”²³

²¹ Cancer Council Victoria 2016, *Fact sheet: alcohol and cancer risk*, <<http://www.cancervic.org.au/preventing-cancer/avoid-alcohol>>.

²² Pandeya, N, Wilson, LF, Webb, PM, Neale, RE, Bain, CJ & Whiteman, DC 2015, ‘Cancers in Australia in 2010 attributable to the consumption of alcohol’, *Australian and New Zealand Journal of Public Health*, vol. 39, no. 5, pp. 408-413.

²³ National Health and Medical Research Council (2013) *Australian Dietary Guidelines*. Canberra: National Health and Medical Research Council.

We acknowledge there is currently little direct evidence available of the effectiveness of energy labelling of alcohol beverages, as mandatory energy labelling has not yet been introduced internationally.

However, we support the definition of the policy problem set out on page 7 of the Consultation Paper that consumers currently have a severely limited ability to understand the contribution that alcohol makes to their diets.

We believe the objectives of energy labelling of alcohol should be, as set out above, to inform consumers about the energy content of alcoholic beverages, increase understanding of the energy contribution that alcohol makes to consumers' diets, and enable consumers to make informed purchase and consumption decisions.

Mandatory energy labelling of alcoholic beverages would overcome the policy problem and achieve these objectives. Displaying energy information on the label of alcohol products would ensure the information is provided to the appropriate audience (drinkers) at the appropriate times (when they purchase and consume products).

Evidence set out in the consultation paper from use of nutrition labels on food²⁴ and from use of standard drink and alcohol content label information²⁵ suggests that it is likely that energy labels would be used by a substantial proportion of consumers, particularly those managing weight and health conditions.

There is no policy justification for alcohol to be exempt from requirements to display energy information that apply to other food and beverage products. In fact, the policy justification for energy labelling is particularly strong in relation to alcohol, given the evidence of its association with energy intake, weight gain and obesity.

Energy labelling would also have the benefit of helping to counteract nutrition content claims and other marketing strategies by alcohol producers that have the potential to confuse and mislead consumers about the energy content and nutritional profile of alcohol. 'Low carbohydrate' claims may lead consumers to believe that products carrying the claims are lower in energy and less likely to contribute to weight gain than other products, which may not be the case. The claims may also mislead consumers to believe the carbohydrate content of alcohol is relevant to energy content and weight management. The current requirements for alcohol products that make a nutrient content claim to display a NIP are not sufficient to counter this, as they do not allow consumers to compare the energy content and nutrient profile of these products with other products not making claims or displaying NIPs.

²⁴ Campos S, Doxey J, Hammond D. Nutrition labels on pre-packaged foods : a systematic review. Public health nutrition. 2011; 14(08) ;1496-506, and Food Standards Australia New Zealand. Consumer Label Survey 2015 – food labelling use and understanding in Australia and New Zealand [internet]. 2015 [cited 2017 January 2010], cited in Food Regulation Standing Committee. Targeted consultation paper : energy labelling of alcoholic beverages, 2017.

²⁵ VicHealth. Alcohol health information labels : research report [Internet]. 2009 [cited 2017 April 18], cited in Food Regulation Standing Committee. Targeted consultation paper : energy labelling of alcoholic beverages, 2017.

Evidence set out in the consultation paper from the use of nutrition information labels on food,²⁶ kilojoule labelling on fast food menus,²⁷ and the Health Star Rating scheme²⁸ provides some indication that energy labelling has the potential to influence consumption towards lower energy products. It may also lead to lower overall alcohol consumption, and have consequential benefits of reducing alcohol-related harm and health impacts. In addition, energy labelling may lead producers to reformulate products to reduce energy content, which would have the effect of reducing population energy intake.

However, we believe that energy labelling of alcohol should be viewed as a supportive measure as part of a comprehensive strategy to encourage healthier choices and prevent obesity, as it would provide information consumers need to make lower energy choices. We agree with the statement on page 5 of the consultation paper “that labelling measures may complement or support broader public health initiatives, but cannot be expected to drive them.” Our view is that achievement of the objectives set out above provides sufficient policy justification for energy labelling of alcoholic beverages, and evidence that it would influence consumption patterns should not be a prerequisite to implementation.

Question 5:

What types of intervention do you consider appropriate in addressing the identified problem? Please provide details of the intervention options, costs associated with the intervention option(s), and evidence of the effectiveness of the proposed approach.

Response:

We strongly support mandatory implementation of energy labelling of alcohol beverage products under government regulation.

To be effective in achieving the objectives of informing consumers about the energy content of alcoholic beverages, increasing understanding of the energy contribution of alcohol to diets, and enabling effective product comparisons and lower energy choices, it will be crucial that energy content labels appear on all packaged alcohol products, in a clear, legible and consistent format.

Government regulation is essential to ensure consistent implementation of energy labels across alcohol products. There is a risk that other intervention options would result in inconsistent uptake by alcohol companies, and/or selective application to lower energy products.

Evidence from evaluation of self-regulatory and co-regulatory food and alcohol labelling initiatives indicates that these approaches do not result in widespread or consistent implementation of labelling interventions.

²⁶ Campos S, Doxey J, Hammond D. Nutrition labels on pre-packaged foods : a systematic review. Public health nutrition. 2011; 14(08) ;1496-506, cited in Food Regulation Standing Committee. Targeted consultation paper : energy labelling of alcoholic beverages, 2017.

²⁷ NSW Food Authority. Evaluation of kilojoule labelling: NSW Food Authority; 2013.

²⁸ Health Star Rating Advisory Committee, Two year progress review on the implementation of the Health Star Rating system- June 2014- June 2016, April 2017; Heart Foundation, Report on the monitoring of the implementation of the Health Star Rating system in the first two years of implementation: June 2014 to June 2016, p 199.

In December 2011, the Legislative and Governance Forum on Food Regulation gave the alcohol industry two years to voluntarily adopt pregnancy warning labels on alcohol products before labels were implemented under government regulation. Evaluation of voluntary implementation of pregnancy health warnings found that only 38.2% of products surveyed displayed the pregnancy warning label.²⁹

Industry uptake of the co-regulatory Health Star Rating (HSR) labelling system has been very low, with the two year review noting that only 14.4% of eligible food products displayed HSRs at the end of the evaluation period.³⁰ In addition, most food companies (61%) have only implemented the HSR system across a subset of their products,³¹ despite the directive in the HSR system Style Guide that “food companies that choose to adopt the HSR system are encouraged to do so consistently across their product range, and/or within product categories.”³² The result is that the most frequently occurring HSR is four stars³³, with food manufacturers selectively displaying HSR only on products that score more highly. This is illustrated by examining the application of HSR to snack bars. The Obesity Policy Coalition surveyed 164 bars in major supermarkets in April 2016 and found that more than 63 per cent of snack bars on major supermarket shelves did not display the HSR system and that the products which did not carry health stars were the least healthy, with most scoring between 1 and 2.5 out of a possible 5 stars.³⁴ This impedes consumers’ ability to effectively compare the health ratings of products and make informed food and beverage choices.

A 2017 study analysing voluntary implementation of calorie labelling of alcohol products as part of the Public Health Responsibility Deal in England found that only two of 156 product labels examined (1.3%) included calorie information.³⁵

The effectiveness of energy labels for informing consumers and increasing understanding about the energy contribution of alcohol to diets would also depend on whether the energy information is presented in a clear, legible and consistent format on the label. Labels must be large enough to be legible, and should comply with the legibility requirements in Standard 1.2.9 of the Food Standards Code. The format of energy labelling should also be consistent

²⁹ Siggins Miller. Evaluation of the voluntary labelling initiative to place pregnancy health warnings on alcohol products. Final Report. 23 May 2014.

³⁰ Health Star Rating Advisory Committee, Two year progress review on the implementation of the Health Star Rating system- June 2014- June 2016, April 2017.

³¹ Heart Foundation, Report on the monitoring of the implementation of the Health Star Rating system in the first two years of implementation: June 2014 to June 2016, p 199.

³² Health Star Rating system Style Guide, section 2.3e

³³ Heart Foundation, Report on the monitoring of the implementation of the Health Star Rating system in the first two years of implementation: June 2014 to June 2016, p169.

³⁴ Obesity Policy Coalition, Unhealthy snack bars don’t reveal health rating: survey, 16 May 2016, <http://www.opc.org.au/latestnews/mediareleases/pages/unhealthy-snack-bars-dont-reveal-health-rating.aspx>

³⁵ Petticrew M, Douglas N, Knai C, Maani Hessari N, Durand MA, Eastmure E, Mays N. Provision of information to consumers about the calorie content of alcoholic drinks: did the Responsibility Deal pledge by alcohol retailers and producers increase the availability of calorie information? *Public Health*, 2017, 149, pp 159-166.

across products to make it easy for consumers to locate the information and compare the energy content of products.

Implementation of energy labels should be accompanied by a comprehensive public education campaign to increase awareness of the labels, and educate consumers on how to use the labels, on the energy contribution that alcohol makes to diets in the context of daily energy intakes, and on the health impacts of alcohol.

Question 7:

What are the impacts for stakeholders that need to be considered in this policy development process? Please provide details.

Response:

Impacts considered in the policy development process should include the following impacts of failing to introduce mandatory energy content labels on alcohol products:

1. Impact on consumers, particularly those who are overweight or obese, managing weight or managing health conditions.

Consumers would not have access to the full range of information about the nutritional consequences of drinking. Consumers would have severely limited ability to keep track of their daily energy intakes, compare the energy content of alcohol products, and alcohol and non-alcohol products, make informed purchase and consumption decisions, choose lower energy products, and understand the energy contribution that alcohol makes to their diets.

In particular, consumers who are overweight or obese, or who are managing their weight, would be prevented from having access to the full range of information they need to keep track of and manage their energy intake, and choose lower energy products.

Consumers would not have access to the full range of information that would help to counter or clarify the potentially misleading or confusing effect of alcohol marketing in relation to nutrient content and health, such as low carbohydrate claims.

2. Impact on public health professionals/organisations

Public health professionals and organisations would not have access to the full range of information they need for education and research purposes.

3. Impact on efficacy of food regulatory system and other healthy eating interventions

Failure to introduce mandatory energy labels on alcohol products would interfere with achievement of a key aim of the Food Regulatory System: to enable consumers to make informed choices about food and prevent them from being misled.

There would also be a risk that this would undermine the effectiveness of other interventions that aim to encourage healthier choices and address obesity, as consumers would not have the full range of information they need to choose lower energy products.

Submission to Proposal P1050 – Pregnancy warning labels on alcoholic beverages

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

– Alcohol, Cancer Council Victoria

Telephone:

Email:

B. For organisations, the level at which the submission was authorised:

Senior representatives of Alcohol Policy Coalition organisations.

C. Summary (optional but recommended if the submission is lengthy):

The [Alcohol Policy Coalition](#) (APC) is a collaboration of health and allied agencies that share concerns about the harmful impacts of the alcohol industry and its products.

The members of the Alcohol Policy Coalition are:

Australasian College of Emergency Medicine	Royal Australasian College of Surgeons
Alcohol and Drug Foundation	St Vincent's Health Australia
Cancer Council Victoria	The Salvation Army
Centre for Alcohol Policy Research, La Trobe University	Turning Point
Foundation for Alcohol Research and Education (FARE)	Victorian Alcohol and Drug Association
Jewish Community Council of Victoria	Violence Prevention Group, School of Psychology, Deakin University
Public Health Association of Australia (Victoria)	Uniting Church in Australia, Synod of Victoria and Tasmania

The APC strongly supports mandatory pregnancy warning labels on alcoholic beverages and we commend Food Standards Australia New Zealand (FSANZ) for its work to progress this important initiative.

The APC supports most elements of FSANZ's proposed changes to the *Food Standards Code* (Code), particularly the proposed use of a pictogram, signal words and warning text in a box, and the proposed prescribed colours.

The APC makes the following key recommendations for changes to FSANZ's proposal:

- Reduce the product size below which the pregnant woman pictogram only (and no warning text) is required from 200ml to 100ml.
- Require all containers 100ml and above to display a pictogram of at least 10mm in diameter and warning text of at least 3mm.
- Prescribe front-of-pack location and horizontal orientation of the warning label.
- Allow a 12 month transition timeframe rather than the proposed 2 year timeframe.

- Outline clear plans/frameworks for educating consumers about the labelling changes, monitoring and evaluating the efficacy of the changes, and ensuring compliance.
- Recommend a comprehensive education campaign funded by the Australian Government to educate consumers about the labelling changes (which could be conducted in conjunction with an education campaign about changes to the National Health and Medical Research Council's *2009 Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (NHMRC Australian Drinking Guidelines)).

Comments to specified sections of P1050 Call for Submissions (CFS) report:

E. Consumer testing of warning statements (section 3.1.2)

The Alcohol Policy Coalition (APC) accepts the testing of an alcohol warning statement that includes a pictogram, signal words and a statement based on the evidence and the policy direction received by FSANZ.

The APC strongly supports the signal words, "HEALTH WARNING", and supports the text warning statement "Any amount of alcohol can harm your baby". The APC notes that the text warning statement is proposed by FSANZ on the basis of the consumer testing which showed that it performed well across all measures, and that it meets the objectives of the Food Regulation Standing Committee: to provide a clear and easy to understand reminder to pregnant women at the point of sale and consumption, not to drink alcohol and to provide information to the community about the need for pregnant women to not drink alcohol when pregnant.

We note that the two options "Any amount of alcohol can harm your baby" and "Any amount of alcohol can cause lifelong harm for your baby" rated the highest among women generally and the proximate pregnant class.

However, we note that the second option performed notably better than the first option across most of the consumer testing indicators, and that FSANZ has justified the selection of the first option only on the basis of length of the warning. We do not believe this is a strong rationale for the decision to select the shorter of the two statements given this difference in consumer testing outcomes, and we seek further explanation.

F. Pictogram (section 3.2.2.2)

The APC supports the design of the pictogram based on the Australian testing that it is well understood to represent the message that pregnant women should not drink alcohol.

The APC supports the use of a black graphic with a contrasting red circle and diagonal line, as research supports the use of contrasting colours, and the use of the colour red is supported by the DRIS finding that red is the colour that receives the most attention and is most readily associated with a warning.

We have concerns about the recommended size of the pictogram of 8mm on small containers, and 6mm on containers between 200-800ml. Pictograms of this size would be smaller than the size currently used in the voluntary industry scheme, and research has found that the pictogram in the voluntary scheme did not sufficiently attract attention, mainly because of the small size.ⁱ In addition, a pictogram of 8mm does not enable visibility of essential design features of the pictogram, namely the drink held by the pregnant woman.

The APC would like to see a clear evaluation program to determine whether the pictogram is noticed and understood by the range of target audiences.

G. Warning statement (section 3.2.2.3)

The APC strongly supports the use of the signal words, 'HEALTH WARNING' and also supports the text warning statement chosen. However, as mentioned in section E, the APC seeks further justification for the decision to choose the shorter of the two statements that performed best in consumer testing as this is not discussed in depth in the consultation document.

H. Design labelling elements (section 3.2.2.4)

The APC supports the prescription of the design elements of the warning label and graphic in the Code as this creates uniformity across the sector and levels the playing field as all manufacturers must comply. Mandatory requirements also support the consumer through the presentation of information consistently.

The APC particularly supports the following design elements:

Signal words

The APC supports the use of the warning statement using the words 'health warning', and their appearance in bold and red. This satisfies the recommendations for effective tobacco warning text which suggest that the words should be phrased in clear, simple, direct active and personalised language that adopts appropriate language for the target audience.ⁱⁱ

Warning label size

Please see section I for detailed comment on the size of the warning label and the contents and their application to various size containers.

Overall design

The APC supports the recommendation that the signal words, warning statement and pictogram appear in a box, with a border that is red, white and black. The APC supports a 3mm clear space outside the border (but believes that this space should be white).

Location and label orientation

The APC strongly supports prescription of front-of-pack location and horizontal orientation of the warning label in the Food Standards Code. These features are supported by evidence as important for increasing the salience of the label, and are necessary to meet the objective of noticeability.

The APC does not accept that wine free-trade agreements are barriers to prescribing label location or orientation, and we ask FSANZ to seek further advice about this. Please see the submission to this consultation from the APC's member organisation FARE for further information on this issue. Please also see the attached 2018 submission from APC and Cancer Council Victoria to a targeted consultation on energy labelling of alcoholic beverages, which sets out relevant information on the question of whether energy labelling regulation would be inconsistent with Australia or New Zealand's obligations under the Agreement on Technical Barriers to Trade.

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

FSANZ has proposed three labelling categories (under 200mls, 200-800mls and above 800mls). FSANZ has also proposed labelling categories for outer packaging of products such as carton or multipack. The creation of different labelling categories for different size alcohol products (by container volume) has not been established or justified by FSANZ within the consultation document.

A body of research, including the FARE research on the voluntary DrinkWise labels and research on tobacco health warnings.ⁱⁱⁱ, has found that the pictogram is most effective when used in combination with text.

The APC strongly recommends that the threshold below which products should only be required to display the pictogram should be 100mls, as the threshold of 200mls proposed by FSANZ does not recognise the relative risk of different products. For example, small bottles of wine (187ml) contain around 2 standard drinks, more than a larger 287 ml serve of a ready-to-drink product, which contains 1 standard drink. In addition, there are numerous products below 200mls.

The APC strongly recommends that the minimum pictogram diameter size should be 10mm across the product size categories, as this is the minimum size sufficient to attract attention and that enables all design features of the pictogram, including the drink held by the pregnant woman, to be clearly visible.

The APC does not accept the need for the second category (products between 200-800mls) as clear justification for a smaller warning label in this category has not been provided.

The requirements recommended in the report for products above 800ml are not appropriate. The size proposed for the pictogram (6mm) is smaller than current voluntary approach (8mm) and the proposed font size of the warning text (2.1mm or 6 point) is smaller than the minimum already specified in the Code, which requires the font size of warning statements to be at least 3 mm and 1.5 mm for small packages. The general legibility requirements also apply to warning statements.

The APC regards the size of the label as integral to achieving the objective of providing a clear and easy to understand trigger to remind pregnant women to not drink alcohol at both the point of sale and the potential point of consumption. As confirmed in the literature review, numerous studies have established that the effectiveness of the warning label increases with size, and that larger size increases recall. At a minimum, the size of the warning text must be large enough to be legible, and the pictogram must be large enough that all design elements are visible. The proposed 2.1mm (6pt) warning text size for the proposed 200-800m category is well below the size required for legibility and would certainly fail to meet the objective of noticeability.

The APC accordingly recommends 2 categories of product size with the following requirements:

1. Products less than 100mls

Products less than 100mls should be required to display the pictogram, which should be at least 10mm in diameter.

2. Products 100mls or larger

All products 100mls and above should be required to carry the full warning mark (pictogram and warning text). The APC strongly recommends that the warning text should be required to be at least 3mm on all products of 100mls or larger, consistent with existing warning label requirements in the Food Standards Code. In addition, the

pictogram should be at least 10mm in diameter, as this is the minimum size that would attract attention and enable the drink held by the pregnant woman to be visible.

The APC supports the proposed size requirements for outer packages, and for multi-packages.

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

As there is no established safe level of alcohol consumption during pregnancy, it is the preference of the APC and FASD experts that warning labels should be applied on all alcoholic products above 0.5% ABV, so that a consumer may make an informed choice about consumption. Failure to label such products would contradict the National Health and Medical Research Council's recommendation that no alcohol is consumed during pregnancy.

The lack of alcohol volume labels on products such as Kombucha has implications for pregnant women who want to make alcohol-free choices in pregnancy. This is a policy issue that should be addressed separately, and is not sufficient justification for not requiring these products to carry pregnancy warning labels. This carries risks for pregnant women who may drink large quantities of these types of drinks, and pregnant women have the right to be warned of these risks.

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

The APC agrees with agrees with the proposed approach outlined in the consultation document.

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

The APC supports FSANZ's proposal for the application of pregnancy warning labels to different types of packages. We strongly support the proposal that pregnancy warning labels be required both on outer packaging and on individual containers for multipacks, and on outer and inner packaging where single serve products are presented inside a further layer of packaging. This will ensure that a warning label is visible to pregnant women at the point of sale and at the point of consumption and is consistent with the policy's objective as outlined in the Draft Regulatory Impact Statement (DRIS). A policy that required a label only on one layer of packaging would not meet this objective and would undermine the purpose and efficacy of the policy.

We accept FSANZ's proposal to not require labels on the inner bladders of alcohol sold in a box or on outer packaging where a label from inner packaging can be clearly read. We are satisfied that neither of these exceptions undermines the purpose of the policy as labels will remain visible at the point of purchase and consumption.

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

The APC agrees with the updated costs and benefits outlined in the consultation document and that the benefits of preventing FASD far outweigh the costs of implementing mandatory pregnancy warning labels on alcohol products.

We believe that the financial benefit of the proposal is likely to be greater than outlined in the consultation document, as there are a range of costs that are not included in the assessment, as FSANZ notes, including: costs saved beyond a 20 year period, saving the costs of lost economic productivity and (in most assessments) benefits to the prison or youth detention systems. As FSANZ notes, the cost assessment is also generally conservative in

estimating the cost benefits of avoiding new FASD cases and assumes a cost to industry at the higher end of the range quoted in the DRIS.

We believe an assessment of the direct and indirect benefits to the community of the proposal must include the non-financial benefits experienced by individuals, families and communities when FASD is prevented. As FSANZ notes, its assessment did not include the emotional costs avoided by preventing some cases of FASD.

.N. Transitional arrangements (section 4.1 of CFS)

The APC does not support the proposed two year timeframe as it is unnecessary and adequate justification for the timeframe has not been provided in the report.

The APC acknowledges that new labels will need to be manufactured to comply with the policy, and that the industry will need time to do this. We believe that the public health benefits of preventing cases of FASD should be of primary importance, and that allowing industry a two year transition period will unreasonably delay the benefits of the policy.

The APC supports a 12 month transition period. We believe this period is reasonable given that alcohol manufacturers are readily able to change labels to meet their own commercial interests, and that FSANZ's analysis found that most labels are stored for a maximum of four months. A 12 month transition period also reflects the timeframe provided for label changes in the Food Standards Code (Standard 1.1.1—9) as well as the transition period applied in other countries that have introduced pregnancy warning labels.

If a two year transition period is maintained, APC argues that the proposed stock in trade exemption is not necessary. Two years is a long transition period, and it would be reasonable to expect manufacturers to ensure that all products on sale after the end of that period display the labels.

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

The APC has no further comments on the draft variation that are not covered in the sections above.

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

The APC is concerned that FSANZ's proposal for public health agencies to include information about pregnancy warning labels in their education materials is inadequate and unreasonable, and will not ensure consumers are educated about and understand the labelling changes. This proposal fails to recognise the limited resources of public health agencies, which should not be relied upon to perform this function.

A clear plan for educating consumers about the labelling changes should be set out. This should involve a comprehensive education campaign funded by the Australian Government. We note that the release of the updated NHMRC Australian Drinking Guidelines is imminent and suggest that a campaign should be funded for the dual purposes of educating the community about the updated guidelines as well as the pregnancy warning labelling changes.

The APC is also concerned that FSANZ's proposals in relation to evaluation and monitoring section are unclear and weak. A clear plan and framework for monitoring and evaluation should be set out to ensure that the labelling scheme remains effective. The monitoring and compliance section should also outline a clear plan and framework, including the penalties for non-compliance, how non-compliance will be managed and which Government

department/agency will be responsible for compliance.

The APC supports the development of guidance by FSANZ available at the time of gazettal to ensure that alcohol industry producers are able to implement labelling changes immediately.

ⁱ Hall & Partners (2018)

ⁱⁱ Scollo, MM and Winstanley, MH. (2018). Tobacco in Australia: Facts and issues. Melbourne: Cancer Council Victoria Available from www.TobaccoInAustralia.org.au, Chapter 12, Attachment 12.1
Tobacco Labelling Resource Centre. (2013). Tobacco Labelling Toolkit.
<http://www.tobaccolabels.ca/toolkit/> , Chapters 1 and 2.

ⁱⁱⁱ Tobacco Labelling Resource Centre. (2013). *Tobacco Labelling Toolkit*.
<http://www.tobaccolabels.ca/toolkit/> , Chapter 1.