

6 November 2019

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Ms Robyn Kruk  
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Dear Ms Kruk

### **Proposal to Mandate Pregnancy Warning Labelling in Australia and New Zealand**

We write to express our concern at the proposal to mandate a pregnancy warning label for beverage alcohol containers and packaging under proposal **P1050 Pregnancy warning labels on alcoholic beverages: Assessment Report** and as notified to the WTO by the New Zealand Government (**G/TBT/N/NZL/90**) and the Australian Government (**G/TBT/N/AUS/112**). While we are fully supportive of interventions that are proportionate, well-evidenced and shown to be effective at changing harmful consumption behaviours we have concerns that what is being proposed lacks rigour in this regard.

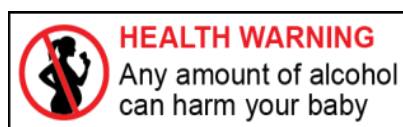
It is our understanding that during the process of consultation with industry, government(s) produced a Decision Regulation Impact Statement (DRIS) to provide a recommendation to the Australian and New Zealand Ministerial Forum on Food Regulation in regard to regulatory and non-regulatory options for pregnancy warning labels on packaged alcoholic beverages<sup>1</sup>. On page 2 of this document it was made clear that:

*...pregnancy warning labels, as an isolated intervention, have not been found to change behaviours in relation to alcohol consumption during pregnancy.*

Further the DRIS then justifies the effectiveness of the proposed labelling interventions only if:

*...complimented by broader activates [sic] and targeted interventions that aim to promote behaviour change...*

#### *Proposed Warning Label*



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<sup>1</sup> Food Regulatory Standing Committee Decision Regulation Impact Statement: Pregnancy warning labels on packaged alcoholic beverages (October 2018)

## Specific Concerns

WTO rules state that “new measures must not introduce ‘unnecessary trade costs’ or barriers to trade, especially if the stated objective of the measure—such as protecting public health—could be achieved with a less costly alternative. In addition, governments must ensure that measures do not discriminate against foreign products (in favour of domestic producers)”.

While Australia and New Zealand governments would be within their rights to argue for an exemption under public health grounds, they would need to prove the measure is both proportionate and effective.

We believe the proposed label design incorporates many elements that makes it a very high cost option without clear justification of the effectiveness of those elements. In the absence of such evidence we maintain the proposed changes are not proportionate and, as stated, it has been acknowledged that labelling alone is ineffective in changing behaviour of at-risk groups. We do not believe it would be legitimate to justify such a label intervention on the basis it may become effective if some wider (but mostly unspecified and unplanned) programme of state-supported activities is simultaneously implemented.

Australia, and to a greater extent, New Zealand, are both relatively small alcohol beverage markets globally. The Australian and New Zealand domestic industry will be in a favoured position to bear the one-off costs associated with a major label change, whereas overseas producers will need to create a country-specific label or undertake costly over-stickering to export to the Australian and New Zealand market.

Further we note that the statement in the proposed label variant “Any amount of alcohol can harm your baby” is not factually correct and ask the New Zealand and Australian governments to make available the specific scientific evidence they have relied on as supporting that statement in relation to the words “any amount...”. Similarly, the proposal does not contain credible evidence supporting the use of ‘Health Warning’ as the headline message, nor the mandated use of a specified colour.

## Recommended Approach

We acknowledge the need to support initiatives that focus on reduction of harmful drinking. However we believe the proposed mandatory label is not supported by evidence nor will it result in any measurable reduction in harmful drinking behaviour resulting in measurable reductions in FASD (as assumed in the DRIS). It is also costly to implement and, therefore, is in breach of WTO rules. We endorse the Australian and New Zealand industry approach on this matter and recommend governments amend P1050 to reduce costs to industry and to adopt accepted messaging. These include:

- The removal of the red line and red text: most information labels only have one or two colours to reduce costs. An additional colour imposes a high cost. In addition, the environmental impact of adding red to the label has not been considered. If Pantone 485 red is used on the increasingly popular ceramically decorated or Applied Colour Labels, (where the screen-printed label has been directly printed on glass), this has important environmental impacts:
  - It is not possible to achieve a bright red when printing with enamel without using heavy metals. The colour becomes a muddy brown.

- A company selling product in the USA could have significant export restrictions if they print a red in enamel as it will not meet the CONEG guidelines on heavy metals in packaging.
- The removal of “Health Warning” or its replacement with “Pregnancy Advice”: this wording more closely aligns to the Australian and New Zealand governments’ regulatory goals.
- Amending the warning phrase to better reflect scientific evidence and the policy outcome of directing pregnant women and those wanting to become pregnant not to drink: such as “It’s safest not to drink while pregnant”.
- Providing flexibility: allowing for the use of contrast instead of mandating a specific red colour to reduce costs with minimal impact on legibility.

Yours sincerely  
Dr Sue James

A handwritten signature in cursive script that reads "James".

Chairperson  
Distilled Spirits Aotearoa (NZ) Inc