



SUBMISSION TO THE REVIEW OF FOOD LABELLING LAW AND POLICY

19 November 2009

Food Labelling Review Secretariat
Department of Health and Ageing
Canberra ACT 2601 Australia

Thank you for providing an opportunity to make a submission on the Review of Food Labelling Law and Policy, controlled by the Food Standards Australia New Zealand.

Alcohol Healthwatch is an independent charitable trust that works to reduce alcohol-related harm. We are contracted by the Ministry of Health to provide a range of services regionally and nationally, including provision of research-based information on policy and practice, as well as co-ordination and public health expertise for inter-agency and community groups who work on alcohol issues. We recognize the importance of the 1840 Treaty of Waitangi in setting out the special relationship between the New Zealand Government under the Crown and Iwi Maori in all matters relating to law and policy. We recognize that alcohol is a significant contributor to the burden of chronic and acute disease in both Australia and New Zealand and the impact of that burden fall most heavily on indigenous populations and the young.

Alcohol Healthwatch is pleased to see this review is broader than just labeling but includes consideration of 'policy drivers'. We applaud the Council of Australian Governments (COAG) for committing to this regulatory review and believe much more can be done to ensure public health and safety is the primary consideration. Our experience to date in regards the management of alcohol labeling suggests otherwise. When it comes to alcohol and health, commercial business interests have tended to be the key driver of policy and in our view this can cast a shadow over the objectivity of quasi-governmental organisation such as FSANZ.

Despite multiple opportunities to address the matter, alcohol products remain devoid of health advisory statements and nutritional panels to inform consumer choice. We note in the terms of reference that food law is to prevent '*misleading or deceptive conduct*'. We question whether failing to provide necessary information about a significant and proven health risk from consuming a product is equally misleading and deceptive.

This review provides yet another opportunity to redress the current regulatory imbalance surrounding alcohol and our submission respond to that argument accordingly.

Alcohol the drug

Alcohol Healthwatch believe that overall, the current food handling and labeling regulations laws in Australia and New Zealand are insufficient and inappropriate for the management of alcohol. Alcohol is first and foremost a toxic psychoactive drug and a food by default due to its caloric loading. Alcoholic beverages are the antithesis of nutrition.

Alcohol Healthwatch believes that alcohol should be regulated as a drug, for the following reasons:

- Alcohol is a highly intoxicating psychoactive drug
- Alcohol has a very high acute toxicity level relative to other psychoactive substances (eg. 1:10 for ethyl alcohol compared to 1:1000 for LSD or cannabis)¹
- Alcohol is a depressant drug linked to mental health problems and addiction
- Alcohol is a neurotoxin that can cause brain damage
- Alcohol can directly cause aggression
- Alcohol is carcinogenic. It is linked to cancer of the breast, liver, pancreas, mouth, oesophagus, bowel and more recently is believed to be linked to prostate cancer²
- Alcohol is teratogenic, having a direct toxic effect on fetal development, altering the course of normal cell growth and migration. What's more, as pointed out by Warrant and Hewitt (2009), *"Because of its common availability and usage, alcohol is more than just a teratogen; it is the most prominent behavioural teratogen in the world"*³

¹ Gable R (2004). Comparison of acute lethal toxicity of commonly abused psychoactive substances. *Addiction*, 99:686-696.)

² Fillmore KM, Chikritzhs T, Stockwell T, Bostrom A, Pascal R. Alcohol use and prostate cancer: A meta-analysis. *Molecular Nutrition & Food Research* 2009;53:240-255.

³ Warren K and Hewitt B (2009). *Fetal Alcohol Spectrum Disorders: When Science, Medicine, Public Policy and Laws Collide*. Developmental Disabilities Research Reviews, 15: 170-175.

- Alcohol inhibits the breakdown of nutrients, impairs nutrient absorption and leads to nutrient deficiencies such as folate and causes the brain and other body tissue to be deprived of glucose needed for energy, even when food intake is adequate⁴.
- Alcohol contributes to 4 per cent of the Global Burden of Disease. However, in economically developed countries this burden grows to 18.5 per cent
- Hazardous alcohol use is estimated to cause 31.5% of all deaths in 15-29 year old men in the developed world
- Alcohol is fattening
- There is no universal benefit to health from consuming alcohol. Research has shown that the so-called 'heart health' argument from moderate consumption is overstated⁵.
- There is no level of alcohol consumption that can be considered safe for all people at all times.⁶

The role of FSANZ in alcohol labeling and policy

We believe that until such time as a more appropriate structure is in place to regulate alcohol as a drug, the existing food labeling and policy system should be strengthened to enable alcohol anomalies and omissions to be addressed in a more robust manner.

Our experience of dealing with alcohol with its categorization as a food, suggests that FSANZ has not exercised its responsibility for public health commensurate with the harm that can arise from consuming the product. On the contrary our experience suggests that the process and rationale to date have been questionable and at times dismissive. Over the past decade, there have been numerous attempts to request tighter regulation of informational labeling of alcohol through FSANZ (formally Australia New Zealand Food Authority ANZFA) none of which have yet resulted in adequate regulation as the examples below indicate:

Australia New Zealand Food Authority Application A 305

This application for a pregnancy health warning label for alcohol from an Australian Branch of the National Council of Women was deferred pending consideration of a further application.

⁴ Alcohol & Nutrition (1993). National Institute on Alcohol Abuse and Alcoholism No. 22 PH 346 October 1993 .

⁵ Jackson R, Broad J, Connor J, Wells S. Alcohol and ischaemic heart disease: Probably no free lunch. *Lancet* 2005;366:1911-1912.

⁶ Ministry of Health. 2002a. *Food and Nutrition Guidelines for Healthy Adults: A Background Paper*. Wellington: Ministry of Health.

Australia New Zealand Food Authority Application A 359

This application submitted for consideration to ANZFA in 1999 by the Australian based, Society Without Alcoholic Trauma (SWAT), called for a label on alcohol to state, *“This product contains alcohol. Alcohol is a dangerous drug”*. This was rejected despite ANZFA agreeing with the applicant that *“alcohol is categorised officially as a food but is in fact a drug”*. Of concern was the pro-drinking bias with their decision, such as the words ‘health benefits’ being used 48 times in a 51 page document. Not only was the proposed statement rejected on many questionable grounds, ANZFA also went outside the bounds of its own terms of reference to reject not just this proposed label but warning labeling in general, effectively shutting the door to other applications. FSANZ then vigorously opposed a SWAT appeal to the Administrative Appeal Authority against the rejection of its application.⁷

Australia New Zealand Food Authority Standard 2.6.4 - Caffeinated Energy Drinks

After ruling out a health warnings for alcoholic beverages in 2000, stating that such health warning labeling were ineffectual and likely lead to a ‘backlash’, a mere twelve months later, ANZFA ruled that caffeinated energy drinks sold in Australia and New Zealand should carry the ‘advisory’ statement: *“This food is not recommended for children, pregnant women or lactating women and individuals sensitive to caffeine”*.

Food Standards Australia New Zealand Proposal P 255 – Folate/Neural Tube Defect health Claim

Alcohol Healthwatch made a submission regarding the importance of advising the public that alcohol was a known antagonist to the absorption and metabolism of folate.

Food Standards Australia New Zealand Application A576

This application to require a pregnancy health advisory statement for alcohol was lodged in February 2006 by the Alcohol Advisory Council of New Zealand at the behest of the Government of New Zealand. Similar to what happened to application A305 some years earlier, the work to progress the application has been delayed more than once; pending the outcome of the revised Australian Drinking Guidelines and pending the outcome of a further proposal to address the much wider and more complex topic of ‘binge drinking’.

According to the FSANZ Workplan, progress on a decision to require a pregnancy health warning label remains outstanding until at least 2011, more than a decade after the first application calling on FSANZ was rejected.

Managing the risk to public health from alcohol

If alcohol is to be considered a ‘food’ it is in an absurd league of its own. Alcohol is different to other food in that it is not a potential carrier of toxins, such as that which can occur when

⁷ SWAT appeal to the Administrative Appeal Tribunal Hearing 19/10.2000 – A2000/243.

legitimate food is handed incorrectly, alcohol *is* the toxin – the primary source of harm. Public surveys suggest the public is generally poorly informed about the range and scope of health problems that can arise from alcohol consumption. Compared to pro-drinking messages in the marketplace which are pervasive due to the lack of controls on alcohol marketing, this information is generally lacking.

Alcohol Healthwatch along with the vast majority of health organisations including the World Health Organisation is very concerned about the inculcation of pro-drinking attitudes through the aggressive proliferation of liquor industry marketing. The evidence is now overwhelming that this increases the uptake of alcohol consumption by children and adolescents.

According to a new meta-analysis of studies, The Science Group of the European Alcohol and Health Forum have concluded that, “... alcohol marketing increases the likelihood that adolescents will start to use alcohol and to drink more if they are already using alcohol.”⁸ Yet no food labeling regulation exists in Australia and New Zealand that would help to counter such pro-drinking messages associated with consumption of this ‘food’ product.

When there is clear evidence of harm to health, the scope of regulation needs to be consistently applied and broad enough to incorporate the spectrum of information that is reaching the general public through marketing. This is particularly important for alcohol because of its appeal and risk to the health of children and adolescents.

RTDs & caffeinated drinks on the market

Alcohol consumption is increasing largely due to the proliferation and rise in consumption of new Ready-to-drinks (RTDs), the product of choice for young people. Both the Australian and New Zealand public have expressed a great deal of concern about RTDs and their acute and chronic effect on adolescents and young people and young women in particular.

These colourful and highly sweetened beverages are purpose designed to appeal to youth and are fueling binge drinking among young women⁹. In New Zealand, the latest life expectancy tables (Statistics New Zealand 2008) show that while life expectancy for every other group improved, young women aged 15-19 years experience a lowered life expectancy. The primary cause of death of people in this age group, are those most closely associated with alcohol use - that is accidents, violence and poisoning.

In addition, RTDs are now commonly marketed with additives such as caffeine and taurine, added to mask the effects of intoxication allowing on-going drinking when significant amounts have already been consumed. We note on the FSANZ website the Ministerial Council has responded to public concern about caffeinated beverages and is calling for a review. This is to

⁸ The Scientific Group of the European Health Forum. 2009. *Does marketing communication impact on the volume and patterns of consumption of alcoholic beverages, especially by young people? - a review of longitudinal studies.* http://ec.europa.eu/health/ph_determinants/life_style/alcohol/Forum/docs/science_o01_en.pdf

⁹ Connor (2008) The knock-on effect of unrestrained drinking. New Zealand Medical Journal, Vol 121, No. 1271.

be commended but far more urgent is work to address the far more deadly effects of alcohol being marketed to young people.

Equally anomalous is the apparent requirement for a non-alcohol caffeinated beverage to carry a mandatory health advisory statement while a caffeinated alcoholic beverage is not required to do so. Some manufacturers to their credit choose to add the caffeine health advisory on their alcoholic RTD beverages. While this may be a responsible gesture, it is galling and somewhat cynical that they should warn about the relatively low risk of caffeine in their product while remaining silent on the high risk to health from the ethanol in their product.

We are not convinced that the level of public health expertise nor the scope and power of the current regulatory system is sufficient to ensure consistency of decision-making and to deal with such obvious and misleading anomalies.

Equity of decision-making in Australia and New Zealand

The Food Standards Treaty exists between two sovereign nations. However, by virtue of its state and territory representation at the decision-making table, the current FSANZ structure results in a significant power imbalance in favour of the larger Treaty partner. We are also concerned how this may be impacting on our obligations under this nation's founding Treaty of Waitangi which preceded any other trans-national trade treaties.

For the public of New Zealand to have confidence in the decisions regarding the food we eat, this situation needs reviewing. We would prefer a system whereby each nation should be free of trade obligations to respond to the problem at a national level when the evidence of harm justifies such a move, as is the case with alcohol.

Conclusion

In our view, FSANZ has not demonstrated that it has taken its responsibility toward alcohol labeling sufficiently serious to date to meet its stated objectives; the protection of public health and safety; the provision of adequate information for consumers; and the prevention of misleading or deceptive conduct.

As stated in this submission, alcohol is a highly toxic drug that can cause harm at very low levels and the public are generally poorly informed about the breadth and depth of the harm and the risk associated with alcohol consumption. In no way should alcohol be treated like an ordinary food commodity.

Recommendations

To ensure informed consumer choice and to contribute to the reduction of the burden of disease directly related to alcohol, Alcohol Healthwatch recommends that the current food labeling system requires:

- that alcohol is first and foremost recognized and regulated as a drug

- that all alcohol products in Australia and New Zealand carry prominent health warning labels
- that a pregnancy health advisory statement is urgently prioritised
- nutritional information and ingredients panels on all alcohol products
- extending the regulations to require health advisory statements at point of sale and accompanying all forms of liquor advertising
- extending the regulations to be able to restrict the alcohol content and size of packaged alcoholic beverages,

and, for the system to better meet its policy objective of public health and safety, Alcohol Healthwatch recommends:

- that this review gives consideration to alcohol labeling and marketing being administered by a separate government body so it can be more rigorously controlled as a drug and more appropriately reflect the associated level of harm
- that public health take precedence over commercial interests
- increasing within the current system the level of New Zealand public health that are fully independent of commercial interests
- equity of decision-making that is more representative of two sovereign nations, Australia and New Zealand
- that the agreement between these two nations enables either to exercise its sovereignty to regulate its own national policy without penalty when the burden of harm indicated such a move is necessary and desirable as is the case with alcohol.

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