SUBMISSION:
Proposal P1049 – Carbohydrate and sugar claims on alcoholic beverages

Via email to: Submissions@foodstandards.gov.au

We appreciate the opportunity to provide a submission in response to Proposal P1049 and want to thank FSANZ staff for the constructive approach to considering the implications of this proposal.

About Brewmanity Beer Co – ABN 86 607 631 372

Brewmanity is a Victorian based independent beer company that has been operating since 2015.

We are one of 600+ independent brewers across Australia the majority of which are small producers making less than 700,000 litres per year.

The contribution of independent brewers to Australian society

Our members are overwhelmingly small to medium business that exist in big cities and small communities throughout Australia – they employ locals and give back to their communities.

Our members provide tourism destinations[1] and work directly with the agricultural sector through local malted barley and hops.

In 2021, an economic impact analysis undertaken by KPMG confirmed that the industry contributes:

- approximately $1.93 billion annually to the national economy
- regional jobs by employing 35,000 Australians, 10,000 directly and over 25,000 indirectly in the agricultural, manufacturing, distribution and hospitality industries – two thirds of which are in rural and regional Australia.

At a time when society is increasingly disconnected, our taprooms and brewpubs serve as the place that people can come together over a meal and a hand-crafted beer to discuss ideas, converse about society and feel connected.[2]

The broader context for independent brewers

In responding to this submission, it is important to provide some background context as to why our independent brewers care so strongly about this submission.

It is not hyperbole to say that the industry is currently under threat as a result of increasing regulation and economic pressures.

Our recent member survey indicated some very serious issues for our industry with 91% of respondents saying they have been somewhat, highly or extremely impacted by the current economic environment and 66% of respondents stated that their business may not survive the economic downturn.[3]

This is well illustrated by the fact that two very well-established breweries have gone into voluntary administration just this year[4] – with others indicating they will follow. If this trend continues more the

[1] We note that 'food and drink' is a core pillar of Tourism Australia's work with a recent $12B investment to keep tourism venues supported post covid.
[2] We note that in addressing mental health and wellbeing an increasing body of research evidence shows that building stronger broad social connects corresponds to stronger mental well-being. "Connect for mental wellbeing" Livingwell.corg.au.
[3] IBA Member Survey, May 2023.
[4] Ballistic Beer enters Administration, 25 Jan 2023. Available: https://brewsnews.com au/ballistic-beer-enters-administration/ Tribe Breweries enters administration, 28 Feb 2023. Available: https://brewsnews.com.au/tribe-breweries-enters-administration/

lack of competition from small breweries in the marketplace will enable further market dominant manufacturers and retailers to continue to set the price of alcohol.

While health advocates may celebrate the closure of these small Australian owned businesses – it is our view that this celebration is misplaced. It is in part the rise of craft beer – as a premium, higher priced, artisanal product, that has contributed to a change in consumer behavior towards choosing to consume lower amounts of a higher quality product. These changes are precisely what is advocated for by health bodies in terms of alcohol moderation or reduction.

In addition, our members are nimble and able to adapt to consumer changes and preferences quickly. Many of our members quickly adapted to providing no and low alcohol options for their customers and continue to focus on more of these products going forward.

Small brewers are the most impacted alcohol stakeholder by labelling regulation because we produce more new products each year than any other food and beverage manufacturer.

Between 1 July 2022 and 30 June 2023, breweries released to market an estimated 3443 packaged beers.[5] That equates to an astounding 66 new products to market each week – we do not know of any other food or beverage category that releases as many new products to market. By contrast wine predominately has a single vintage each year and spirits produce high number of items under limited SKU's.

Fairness in balancing considerations from small producers

Small brewers are the most impacted by constant changes to labelling regulation because we create more new products each year than any other food or beverage manufacturer. And yet, of the noted targeted consultation FSANZ engaged directly with:

- 18 health advocacy bodies;
- Diageo, Lion, Coca Cola, Campari, Endeavour Group, and Coles Group

The interests of each of those alcohol manufacturers are subsequently also represented by Associations that received further direct consultation (Brewers Association of Australia, Spirits and Cocktails Australia) giving them an outsized voice in the consultation process.

The Independent Brewers Association is the only direct engagement between FSANZ and Australia's small breweries. While this is for practical reasons – due consideration should be given to appropriately weighing that we represent 425 breweries who are small businesses.

P1049 Call for Submission Papers

Overall, we would note that the Submission Paper correctly outlines that there is very little independent data or information that helps to inform decision making in this matter. We have raised this matter at each consultation process with FSANZ and would continue to request that these major decisions are backed by hard data and robust cost analyses.

[5] Data extrapolated based on Brews News New Beer releases during the time period - average beers per brewery and number of physical breweries (excluding brands) compared with an extrapolation of data from Coles Liquor Group.

We note with concern the reliance on IBIS world for the most recent alcohol consumption data. The Australia Bureau of Statistics should provide the most independent and authoritative data set on current consumption.

Response to Questions for Submitters

1. Do you have or are you aware of any evidence to suggest that nutrition content claims about carbohydrate and/or sugar on alcoholic beverages affect consumers': (a) level of consumption of alcoholic beverages? (b) level of physical activity? (c) general food intake?

We are not aware of any objective and unbiased evidence that suggests that nutrition content claims about carbohydrate and/or sugar on alcoholic beverages affects consumers' level of consumption of alcoholic beverages, level of physical activity or general food intake.

Should other respondents provide information in response to this question – it is our view that this data should be made available to other submitters for comment/testing and consideration prior to being adopted as useful for the consideration of this proposal. As noted in the submission document, much of the research available has been the result of 'low quality' studies and are often produced by a stakeholder with a vested interest in the outcome of the research.

As noted above, the Independent Brewers Association and our small business owners do not receive funding to gather such data.

2. Are you aware of any studies that sufficiently examine the effects of nutrition content claims about carbohydrate and/or sugar on choice between different types of alcoholic beverages?

No. Brewmanity is not aware of any consumer behavior studies that objectively substantively examine the effects of carbohydrate and/or sugar on the choice between different types of alcoholic beverages.

Should other respondents provide information in response to this question – it is our view that this data should be made available to other submitters for comment/testing and consideration prior to being adopted as useful for the consideration of this proposal. As noted in the submission document, much of the research available has been the result of 'low quality' studies and are often produced by a stakeholder with a vested interest in the outcome of the research.

As noted above, the Independent Brewers Association and our small business owners do not receive funding to gather such data.

3. Do you agree with the estimates for the average cost of labelling change for option 3 for affected Stock Keeping Units (SKUs) in Attachment D? Please provide evidence to support your position.

Brewmanity does not have any evidence to support calculations of labelling costs that differ from those set out in Attachment D.

On an assessment of total beers in the market 7440[6] the cost to the broader brewing industry for label changes could be as much as $120, 654, 480.[7] This highlights the imperative of ensuring any transition

[6] Being a combination of new beers to market and existing core ranges – extrapolated from data from Coles Liquor Group.

period or relabeling is timed with other regulated changes such as those that may arise from the current Energy Labelling Consultation.

As noted in the FSANZ Modelling[8] that supports the dollar amounts presented in Attachment D, Table 1 – actual re-labelling costs vary greatly including:

- whether the change required is simply removal of text or other information or the addition of substantive impact which does require changes to both label layout and label shape/size.
- The transition time available – varying from very high costs at less than 12 months and moderated costs between 3-5 years of transition.[9]

It should be noted that actual relabeling costs can greatly vary according to individual circumstances. Relabeling certain SKUs may cost notably less or notably more than these averages.

We also note that the cost modelling presented in Attachment D does not address any changes to outer packing which would be required under P1059 Energy Labelling on Alcoholic Beverages and we reiterate that any labelling changes should take place at the same time.

4. Do you have any data on amounts or proportions of SKUs that carry nutrition content claims about carbohydrate and/or sugar and that would be affected by option 3?

Brewmanity have identified 8 packaged beers made by independent breweries that have been available for consumer purchase in the past year.[10] However, it is our view that this number is like to increase as this is a growing trend and consumer preferences continue to evolve and the regulatory framework is clarified.

5. Do you agree with FSANZ's current overall consideration of costs and benefits?

Overall, Brewmanity considers that FSANZ has generally balanced the considerations of costs and benefits well with respect to Option 2.

It is our view that a digital linking/ QR code represents the best opportunity to meet the needs of consumers to provide information to support health related claims. See our comments under heading **Qualified Support for Option 2.**

If, for any reason as a result of this consultation, FSANZ determines to adopt an alternative option, the cost benefit analysis needs to be re-evaluated.

6. Are there any other material costs and benefits that you believe should be taken into account in this analysis?

As Option 2 is a confirmation of the existing status quo with clarification there is no need for a transition period. However, should FSANZ determine that alternative options should be adopted it is our view that a long transition period of greater than three years should be adopted.

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[7] 7440 total beers x Can total cost set out in Table 1 – Attachment D.
[8] Summary of results – Cost survey of changing labels for alcoholic beverages – 2021 (FSANZ)
[9] Summary of results – Cost survey of changing labels for alcoholic beverages – 2021 (FSANZ)
[10] Web Search: Dan Murphys, Beer Cartel AND Independent Beer Awards (The Indies) competition entries.

As noted above, the transition time available greatly impacts costs with moderated costs between 3-5 years of transition.[11] Small breweries require over three years to mitigate the transition costs.

The recent pregnancy warning labels are a good illustration of the transition issues. Our members are small breweries and have very limited bargaining power when ordering cans from the duopoly of suppliers in Australia. The Breweries are required to make minimum orders – regardless of their anticipated sales timelines for the same volume.

The IBA has itself assisted 21 small breweries who had purchased minimum can orders of labelled product prior to the adoption of the new pregnancy warning label. Due to the required order size from the manufacturer and at the economic environment – breweries have been left with cans that need to be relabeled. To date, the IBA has facilitated the ordering of over 350,000 labels of the newly mandated pregnancy warnings to be retrospectively added to cans for small breweries.

In implementing the cost of mandated pregnancy warning labels, IBA members Bad Shepherd Brewing valued the cost of writing off cans and ordering new cans would have been $90,000. They instead opted for over-stickering option costing $30,000 but then also have had to deal with the fallout of any impression the over stickered can may have on stockists and beer drinkers.[12]

Small breweries overwhelmingly meet and exceed regulatory requirements. Small breweries take seriously their role in managing a regulated product. Should a transition be necessary, we simply seek a long transition of close to five years to mitigate the very real costs borne by small businesses endeavoring to comply.

Qualified Support for Option 2

The Independent Brewers Association supports the recommendation by FSANZ to adopt Option 2 as presented in the Call for Submissions Paper with some amendments.

Option 2 – clarify the existing permission to make nutrition content claims about carbohydrate by including an express permission in the Code to make nutrition content claims about sugar on food that contains more than 1.15% ABV Under this option the Code would be amended to include an express permission for nutrition content claims about sugar on food that contains more than 1.15% ABV, including alcoholic beverages. Nutrition content claims about carbohydrate would continue to be permitted. The existing conditions for making carbohydrate and sugar content claims would apply.

Existing Conditions Amended –QR Codes are a necessity

We understand and support the ongoing need for a Nutrition Information Panel where a carbohydrate or sugar content claim is made.

QR Codes are a necessity

[11] Summary of results – Cost survey of changing labels for alcoholic beverages – 2021 (FSANZ)

[12] Pregnancy labelling bits hard for breweries, 20 June 2023. Available: https://brewsnews.com.au/pregnancy-labelling-bites-hard-for-breweries/

However, as set out in our submission to P1059 – Energy Labelling on Alcoholic Beverages it is our view that this does not need to be an on-label solution and that that a technology solution such as a QR code should be allowed.

Given that the overall policy guideline stems from a concern to 'provide adequate information to enable consumers to make informed food choices to support healthy dietary patterns recommended in the Dietary Guidelines' it would seem necessary to meet consumers where they are at – in terms of how they are accessing information. This consultation commenced in 2017 – some 6 years ago.[13] It is commonly accepted that technology and society have changed substantially in that time.

If the existing conditions regarding carbohydrate and sugar claims are not amended as part of this consultation to enable technological solutions to be deployed – we run the risk of being out of step with how consumers expect to be able to find information today and into the future.

QR codes are 'ubiquitous' post COVID. According to Bernard Salt of The Demographics Group, the pandemic triggered a critical shift in consumer behavior in which Australians of all ages obtain information online, via app or via QR Code.[14] This shift in consumer behavior is evidenced in one of Australia's largest retailers, Woolworths, citing that 'customers are feeling more comfortable scanning QR codes while on the move.'[15] This example is directly applicable to supporting the use of QR codes on labels.

The legislation is being 'opened' now. Given the complexities and challenges of legislative change, it would be a waste of taxpayer funding of FSANZ, and all the stakeholders, to have to revisit this issue again in less than five years' time if it was found that on label communication has not been as effective as hoped due to not meeting consumers expectations around information. We should not take this risk, rather we would request that FSANZ adopt a commonsense change now as an available option.

Finally, the research findings from Barons et all (2022) showed that of the sample of products reviewed 'all products carrying a nutrition content claim also provided a NIP consistent with current Code requirements'[16]. There has been no data provided that indicates compliance would diminish if a technology option of digitally linking such as a QR code was available.

It is our view that:

a) Option 2 should be adopted with an amendment to the existing conditions relating to carbohydrate and sugar claims to allow the option for Nutrition Information Panels to be digitally linked through a QR code (or similar).
b) A digitally linked solution also addresses the issues raised in P1059 – Energy Labelling – ensuring a consistent approach.
c) It is the solution that best addresses the need to provide consumers' information from a label to make informed choices.
d) The legislation is 'open' now is the time to future proof the changes adopted to keep pace with societal and technological changes.

Limit on ability to make claims re specific sugars

[13] Raised at 2017 the Australia and New Zealand Ministerial Forum on Food Regulation (now the Food Ministers' Meeting (FMM)). FSANZ Call for Submission p5.
[14] Presentation, Independent Brewers Association Conference, 22 August 2023.
[15] Hannah Ross, Woolworth's Managing Director, Everyday rewards. May, 2022. Available: https://www.smh.com.au/business/companies/woolworths-launches-qr-code-payments-after-big-shift-towards-adoption-20220510-p5ak1j.html
[16] FSANZ Call for Submissions p16.

The proposal intends to prohibit nutrition content claims about specifically named/ specific types of sugars and gives fructose as an example.[17]

However, the issue of lactose requires further consideration. Lactose is properly defined as a sugar.[18]

There remains some confusion in the brewing industry as to lactose. While milk is defined as an allergen – lactose as a component of milk – is not. This is evident from a recent issue with Stone and Wood Milk Counter Culture Eirinn Irish Cream Stout for an undeclared allergen.[19]

There are a wide variety of beer styles that have names that may raise concerns amongst consumers about the presence of an allergen – Sweet Stout, Cream Stout, Oatmeal Stout, Dessert Stout, Ice cream IPA, to name a few. It would make sense to be able to state 'Lactose Free' on a label as a method of alerting consumers that the particular product – though of a style that may commonly contain lactose – is indeed lactose (and therefore) allergen free.

On a plain reading of the existing drafting this would not be permitted. It is our view that an exemption should exist for claims made in relation to products that would be considered allergens (or components of allergens) – not withstanding their definition as a sugar/sugars or carbohydrate. In particular that 'lactose free' be permitted.

It is our view, that if this issue is not addressed it will continue to create confusion as to permissibility and is contrary to giving consumers appropriate information to make informed decisions about consumption.

Thank you for the opportunity to provide input in to this process. If you require any further information please do not hesitate to contact me via email [redacted]

[redacted]

[redacted]

[redacted]

[17] FSANZ Call for Submission 5.1.1 p21.
[18] Sugars* in Schedule 4 is relevant for 'no added sugar' and 'unsweetened' nutrition content claims. Sugars* means any of the following products, derived from any source: (i) hexose monosaccharides and disaccharides, including dextrose, fructose, sucrose and lactose.
[19] Lactose labelling requirements: FSANZ, 20 March 2023. Available: https://brewsnews.com.au/lactose-labelling-requirements-fsanz/