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225–23

Call for submissions – Proposal P1059

Energy labelling on alcoholic beverages

Food Standards Australia New Zealand (FSANZ) has assessed a proposal to consider amending the Australia New Zealand Food Standards Code to provide energy (kilojoule) labelling information on alcoholic beverages and has prepared a draft food regulatory measure. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [current calls for public comment and how to make a submission](#).

All submissions on applications and proposals will be published on our website. We will not publish material that we accept as confidential. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1982*. Submissions will be published as soon as possible after the end of the submission period.

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Submissions should be made in writing; be marked clearly with the word 'Submission'. You also need to include the correct application or proposal number and name. Electronic submissions can be made by emailing your submission to submissions@foodstandards.gov.au. FSANZ also accepts submissions in hard copy to our Australia and/or New Zealand offices.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS HAS BEEN EXTENDED TO: 6pm (Canberra time 20 March 2023

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making a submission or application and proposal processes can be sent to standards.management@foodstandards.gov.au.

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Executive summary

Despite public health efforts, the prevalence of overweight and obesity in the Australian and New Zealand populations continues to increase. Energy balance is fundamental for maintaining a healthy body weight and reducing the risk of chronic disease related to overweight and obesity.

Alcohol is energy dense and the Australian and New Zealand dietary guidelines recommend limiting alcohol intake for achieving energy balance. Around 80% of Australian and New Zealand adults consume alcohol, and alcoholic beverages comprise approximately 16% of their total energy intake on days they are consumed.

Evidence indicates consumers generally have a poor understanding of the energy content of alcoholic beverages and do not understand alcohol is the main source of energy in most alcoholic beverages.

Unlike most other packaged food, alcoholic beverages are not required to be labelled with average energy content information in a nutrition information panel (NIP) unless a nutrition content or health claim is made.

In August 2019 the Australia and New Zealand Ministerial Forum on Food Regulation (now the Food Ministers' Meeting (FMM)) asked Food Standards Australia New Zealand (FSANZ) to consider energy labelling on alcoholic beverages, noting: *Currently, consumers' ability to understand the energy contribution that alcohol makes to their diet is severely limited, as alcoholic beverages are exempt from providing nutrition information on the label.*

Following preliminary work, including an evidence assessment and consideration of possible regulatory and non-regulatory options, FSANZ prepared this proposal to consider amending the Australia New Zealand Food Standards Code (the Code) to provide energy (kilojoule) content information on beverages containing alcohol.

The scope of the proposal is limited to beverages containing alcohol¹ that are packaged, required to bear a label for sale in Australia and New Zealand and currently exempt from the requirement to be labelled with a NIP. These beverages are:

- standardised alcoholic beverages e.g. beer, wine
- beverages containing no less than 0.5% alcohol by volume (ABV) that are not standardised alcoholic beverages.

FSANZ has considered the best available evidence, including Australia and New Zealand data on the prevalence of overweight and obesity, consumption of alcoholic beverages and energy intake from alcoholic beverages. Availability of energy content information in Australia and New Zealand and evidence regarding consumer values, understanding and behaviour in relation to energy content information about alcoholic beverages has also been considered.

FSANZ undertook targeted consultation with the alcohol industry, public health and consumer groups and jurisdictions in both Australia and New Zealand in July 2022 to inform this call for submissions.

¹ For the purpose of this report, beverages containing alcohol is used interchangeably with alcoholic beverages.

Following assessment, FSANZ is proposing to amend the Code to require the provision of energy content information on beverages containing alcohol² in the following prescribed format:

ENERGY INFORMATION		
Servings per package: (insert number of servings)		
Serving size: mL		
	Quantity per serving	Quantity per 100 mL
Energy	kJ (Cal)	kJ (Cal)

The proposed mandatory approach ensures greater coverage and consistency in the provision of information to enable consumers to make informed choices. It also provides regulatory certainty for industry as well as enforcement agencies.

FSANZ has considered the costs and benefits that may arise from the proposed energy labelling. This analysis concludes that less than 0.19% of the cost of obesity and overweight in Australia and New Zealand needs to be avoided to offset the cost to industry of a labelling change (see Section 5.9.1 and Attachment E). Therefore, mandatory energy labelling represents the option that is most likely to have the largest net benefit and is therefore the preferred option.

FSANZ has therefore prepared a draft variation to the Code (see Attachment A) to require the mandatory declaration of energy content information, in a prescribed format, on the label of packaged standardised alcoholic beverages and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages.

The current requirement to label beverages containing alcohol with a NIP if a nutrition content or health claim is made would remain in place.

FSANZ also proposes a three-year transition period from the date of gazettal of the draft variation if approved, and a stock-in-trade exemption for beverages packaged and labelled before the end of the transition period.

FSANZ seeks submissions on the draft variation.

² These beverages are also referred to as 'prescribed beverages' (as defined in section 1.1.2—3).

1 Introduction

1.1 The proposal

Proposal P1059 was prepared to consider amending the Australia New Zealand Food Standards Code (the Code) to require energy (kilojoule) labelling information on alcoholic beverages currently exempt from providing a nutrition information panel (NIP).

1.2 Reasons for preparing the proposal

Despite public health efforts the prevalence of overweight and obesity in the Australian and New Zealand populations continues to increase. In 2017–18, 67% (approximately 12.5 million) Australian adults³ were overweight or obese (ABS, 2018), an increase from 63% in 2014-15. In 2020-21, 68.1% (approximately 2.8 million) New Zealand adults⁴ were overweight or obese, an increase from 64.4% in 10 years (New Zealand Ministry of Health, 2021).

Energy balance is fundamental for maintaining a healthy body weight and reducing the risk of chronic disease related to overweight and obesity.

Alcohol is energy dense. Both the Australian and New Zealand dietary guidelines recommend limiting alcohol intake to achieve energy balance. On average, alcoholic beverages contribute approximately 16% of total energy intake for Australian and New Zealand adults on days when alcohol is consumed (FSANZ, 2021a).

Available evidence indicates consumers generally have a poor understanding of the energy content of alcoholic beverages and do not understand alcohol is the main source of energy in most alcoholic beverages. They do however generally value energy content information on the label of alcoholic beverages (FSANZ, 2021b).

Beverages containing alcohol⁵ are exempt from the requirement to be labelled with a NIP unless a nutrition content or health claim is made. NIPs on other foods contain information on average energy content and average quantity of six other specified nutrients (see Section 2.1 below).

The *Policy Guideline on Food Labelling to Support Consumers to Make Informed Healthy Choices*⁶ states that Food Ministers expect *food*⁷ labels to provide adequate information to enable consumers to make informed food choices to support healthy dietary patterns recommended in the *Dietary Guidelines*.

In August 2019 the Australia and New Zealand Ministerial Forum on Food Regulation (now the Food Ministers' Meeting (FMM)) noted: *Currently, consumers' ability to understand the energy contribution that alcohol makes to their diet is severely limited, as alcoholic beverages are exempt from providing nutrition information on the label.*

The Ministers asked FSANZ to consider energy labelling on alcoholic beverages.

³ 18 years and older

⁴ 15 years and older

⁵ For the purpose of this report, beverages containing alcohol is used interchangeably with alcoholic beverages.

⁶ [Policy Guideline on Food Labelling to Support Consumers Make Informed Healthy Choices](#)

⁷ The policy guidance footnotes that 'food' refers to foods and beverages, including alcoholic beverages.

1.3 Procedure for assessment

The proposal is being assessed under the General Procedure of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act).

1.4 Scope of the proposal

The proposal will consider amending the Code to require energy (kilojoule) content information to be provided for beverages containing alcohol⁸ that are currently exempt from the requirement to be labelled with a NIP, being:

- standardised alcoholic beverages⁹, and
- beverages containing no less than 0.5% alcohol by volume (ABV) that are not standardised alcoholic beverages.

These beverages are also referred to as ‘prescribed beverages’ (as defined in section 1.1.2—3).

Brewed soft drinks containing more than 0.5% ABV are therefore included in the scope. Beverages \leq 0.5% ABV are out of scope of the proposal. Foods containing alcohol that are not beverages are also out of scope.

Kits intended to be used to produce a standardised alcoholic beverage (e.g. a home beer brewing kit) are also exempt from the requirement to provide a NIP but are not within scope because, as sold, they are not beverages containing alcohol.

The scope is limited to prescribed beverages that are packaged and required to bear a label, for sale in Australia and New Zealand, including imported products.

1.5 Related proposals

1.5.1 P1049 – Carbohydrate and sugar claims on alcoholic beverages

Proposal P1049 was prepared in 2018 to clarify the Code with respect to claims about carbohydrate and sugar on alcoholic beverages (>1.15% ABV). This was in response to Food Ministers’ concerns that ‘% sugar-free’ claims are misleading, and that alcohol is being promoted as a healthy choice for consumers.

If P1049 results in changes to the permissions for carbohydrate and/or sugar claims about alcoholic beverages, the labels (and advertising) of some alcoholic beverages may need to be changed. Consequently, this proposal is being progressed in tandem with P1059 to minimise the potential impact on industry of having to make multiple label changes and to consider the implication of any label changes on consumers ability to make informed choices.

1.5.2 P1058 – Nutrition labelling about added sugars

In April 2022 FSANZ prepared Proposal P1058 to consider amending the Code to include ‘added sugars’ information in the NIP to enable consumers to make informed food choices in support of dietary guidelines. This proposal follows a review of nutrition labelling for added sugars, completed in 2021 (FSANZ, 2021c).

⁸ For the purpose of this report, beverages containing alcohol is used interchangeably with alcoholic beverages.

⁹ Standard 1.1.2 of the Code defines **standardised alcoholic beverage** to mean beer, brandy, cider, fruit wine, fruit wine product, liqueur, mead, perry, spirit, vegetable wine, vegetable wine product, wine or wine product.

Reviewing existing exemptions for a NIP, including that for alcoholic beverages, is out of scope of P1058. However any changes to labelling requirements for added sugars may apply to alcoholic beverages.

2 Background

2.1 Relevant labelling requirements in the Code

Standard 1.2.1 of the Code requires packaged foods to 'bear a label' with specific information, including nutrition information in a NIP, unless covered by an exemption in the Code.

Standard 1.2.8 sets out nutrition information requirements in relation to foods for sale that are required to bear a label, and for foods for sale that are exempt from these requirements. This standard also sets out when nutrition information must be provided, and the manner in which such information must be provided. A NIP must include declarations of the average quantity of six specified nutrients and average energy content information. However, section 1.2.8—5 exempts certain foods from the general requirement to be labelled with a NIP unless a claim requiring nutrition information is made in relation to the food, including:

- standardised alcoholic beverages
- beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages.

'Standardised alcoholic beverage' is defined in section 1.1.2—2 of the Code as beer, brandy, cider, fruit wine, fruit wine product, liqueur, mead, perry, spirit, vegetable wine, vegetable wine product, wine or wine product. These products are all defined in section 1.1.2—3 of the Code.

Under Standard 1.2.7, beverages containing more than 1.15% ABV are prohibited from making health claims and are permitted to make nutrition content claims only about energy, carbohydrate or gluten content only (section 1.2.7—4). There is no prohibition for nutrition content and health claims about beverages containing 1.15% ABV or less.

Where a nutrition content or health claim is made on beverages containing alcohol, section 1.2.8—5 requires a NIP to be provided. The Code also permits beverages containing more than 1.15% ABV to voluntarily provide certain information in a NIP (subsection 1.1.2—9(4)).

Section 1.1.2—2 defines 'average energy content' to mean *the average energy content calculated in accordance with section S11—2*. Section S11—2 sets out the equation.

Average energy content must be expressed in a NIP in kilojoules (kJ) or both in kilojoules and kilocalories¹⁰ (Cal) (subparagraph 1.2.8—6(1)(d)(i), subsection 1.2.8—6(2) and section S12—2).

Standard 2.7.1 sets out specific labelling requirements for alcoholic beverages and food containing alcohol. A statement of alcohol content is required on certain foods including an alcoholic beverage that contains 1.15% or less ABV and a beverage that contains not less than 0.5% ABV but not more than 1.15% ABV (section 2.7.1—3).

A statement of the approximate number of standard drinks contained in a food for sale that is

¹⁰ Kilocalories is expressed as 'calories' where appropriate in this report

capable of being consumed as a beverage and contains more than 0.5% ABV (measured at 20°C) must also be included on the label (section 2.7.1—4).

2.2 Australia and New Zealand dietary guidelines

The Australian Dietary Guidelines consider alcohol to be a discretionary food (i.e. energy dense, nutrient poor) and that *limiting alcohol intake is an important strategy for achieving appropriate energy intake*. The guidelines recommend that *alcohol intake contribute less than 5% of dietary energy* (NHMRC, 2013).

The Eating and Activity Guidelines for New Zealand Adults note that *drinking alcohol can add more energy to the diet than people are aware of* and recommend that *if you drink alcohol, keep your intake low* (New Zealand Ministry of Health, 2020).

2.3 Ministerial policy guidance

The *Policy Guideline on Food Labelling to Support Consumers to Make Informed Healthy Choices* (policy guideline) was endorsed by Food Ministers in August 2020. The scope of the policy guideline applies to foods and beverages, including alcoholic beverages.

The policy principles particularly relevant to energy labelling on alcoholic beverages are:

- *Food labels should provide adequate information to enable consumers to identify foods that do and do not contribute to healthy dietary patterns recommended in the Dietary Guidelines.*
- *Information that enables consumers to identify foods that contribute to healthy dietary patterns recommended in the Dietary Guidelines is a public health priority and therefore sits towards the mandatory end of the 'dominant mode of intervention' within the preventative health section of the Food Labelling Hierarchy.*
- *Information that supports consumers to apply the recommendations in Dietary Guidelines should be provided on food labels in a format which:*
 - *is easily accessed and understood by consumers;*
 - *supports consumers to manage energy intakes to assist with achieving and maintaining a healthy body weight;*
 - *supports consumers to compare foods;*
 - *does not promote consumption of foods inconsistent with Dietary Guidelines (such as those high in saturated fat, added sugars, added salt and or foods with little or no nutritional value);*

The policy guideline also refers to the need for education both in relation to the dietary guidelines to support consumer understanding and use of food labelling, and to inform consumers about new food labelling requirements.

2.4 Broader policy considerations

2.4.1 National Alcohol Strategy 2019-2028

The National Alcohol Strategy provides a framework to prevent and reduce alcohol-related harm in Australia, highlighting possible actions at the local, state or territory and national levels (Department of Health, 2019). The strategy recognises that alcohol consumption may lead to overweight and obesity and under priority area 4: Promoting healthier communities, suggests that education is required to improve consumer awareness and understanding of alcohol related harms.

2.4.2 National Preventative Health Strategy 2021 - 2030

The National Preventive Health Strategy aims to improve the health and wellbeing of all Australians at all stages of life, by addressing the wider determinants of health, reducing health inequities and decreasing the overall burden of disease (Department of Health, 2021). The strategy recognises alcohol consumption as a modifiable risk factor to the burden of disease, and notes that overweight and obesity is one of the top three contributing risk factors to the burden of disease. The strategy includes a number of desired policy achievements by 2030, including: *Consumer choice is guided by energy and ingredient labelling on all packaged alcoholic products.*

2.4.3 National Obesity Strategy 2022–2032

Australia launched a National Obesity Strategy in March 2022. The Strategy is a 10-year framework for action to prevent and reduce overweight and obesity in Australia (Department of Health, 2022). The framework outlines three ambitions with example actions. Ambition 1 focuses on creating environments that support healthy behaviours. It includes actions across the food system e.g. to consider regulations that support people to make healthier food and drink choices such as information on unhealthy ingredients including alcohol. Ambition 2 is about building health literacy and actions include the provision of engaging information, education, and skill-building initiatives, including online, that promote and align with the Australian guidelines for alcohol.

2.4.4 International recommendations

In 2010, the World Health Assembly endorsed the World Health Organization (WHO) Global Strategy to reduce the harmful use of alcohol (WHO, 2010). The strategy outlined a range of policy options and interventions including labelling on alcoholic beverages. Following endorsement of the strategy, regional action plans and strategies that aligned with the Global Strategy were developed and adopted in the Americas, European and African Regions.

In 2017 the WHO Regional Office for Europe released a discussion paper on policy options for alcohol labelling, proposing that alcohol labelling include nutritional information (including energy content) on containers. The paper notes that providing information about the energy content of alcoholic beverages allows consumers to monitor their diets and reduce their calorie intake if they wish (WHO, 2017).

The WHO have subsequently developed a Global Action Plan (2022 – 2030) to effectively implement the strategy to reduce the harmful use of alcohol as a public health priority (WHO, 2022a). The plan which proposes operational objectives, principles and key actions was agreed by delegates at the 75th World Health Assembly in May 2022 (WHO, 2022b). One of the proposed actions is for Member States to develop and implement requirements for, among other things, calorie labelling on alcoholic beverages. Further, the European framework for action on alcohol 2022-2025 was endorsed at the 72nd session of the WHO Regional Committee for Europe. The framework, which aligns and contributes to the realisation of the plan includes a specific focus on alcohol labelling as a priority area for action (WHO, 2022c).

2.5 Historical consideration of energy labelling on alcoholic beverages

When mandatory nutrition labelling was introduced during the development of the joint Code in 2000 (FSANZ, 1999), alcoholic beverages were exempted from the requirement to be labelled with a NIP. This exemption was based on the view that the presence of a NIP could mislead consumers about the nutritional value of alcoholic beverages when most alcoholic

beverages are of minor nutritional significance, except for their energy and alcohol content. It was noted that the relationship between energy and alcohol may need to be addressed through education (FSANZ, 1999).

In 2011, *Labelling Logic: Review of Food Labelling Law and Policy* included a recommendation *that energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products* (Blewett et. al., 2011). The context of this recommendation was that the provision of energy information would assist people wanting to manage their energy intake given the energy density of alcohol as a nutrient. The panel rejected the view that alcohol products like all other foods should carry a NIP given alcoholic beverages contain few nutrients of concern, other than alcohol, but noted the provision of energy content deserves consideration.

Food Ministers provided 'in principle' support of the recommendation (Legislative and Governance Forum on Food Regulation, 2011) and noted the labelling review panel's advice that providing the energy content information on alcoholic beverages:

- *would help consumers make informed choices between alcoholic beverages, non-alcoholic beverages and other foods, based on energy content*
- *may assist with product choices based on personal preference in relation to health and/or weight management, and*
- *would more closely align this class of food with other food commodities already required to declare energy content in the nutrition information panel.*

Food Ministers also noted:

- *alcohol consumption may contribute to a significant proportion of an individual's total daily energy intake and may therefore be a contributing factor to overweight and obesity; and*
- *that the implementation of this recommendation may bring associated costs for industry and have potential international trade implications; these would need to be fully assessed.*

Before making a decision, Food Ministers asked FSANZ to undertake further research, including discussions with industry, and complete a cost benefit analysis (CBA) to assess the impact of implementing the recommendation. FSANZ contracted the New Zealand Institute of Economic Research (NZIER) to complete the CBA and the report was published in 2015 (NZIER, 2015).

Following this, the Australian Government Department of Health prepared a paper, '*Broader Policy Issues regarding energy labelling on alcoholic beverages*', for discussion by the Food Regulation Standing Committee (FRSC) (Food Regulation Secretariat, 2017).

In September 2015, Food Ministers agreed to FRSC progressing to the next phase of the policy development process. FRSC commenced preliminary work to investigate a range of regulatory and non-regulatory policy options to address the issue and support consumers make informed purchasing choices and consumption decisions, including undertaking targeted stakeholder consultation in June 2017.

In 2017 and 2018 respectively, Food Ministers referred two other alcohol labelling matters to FSANZ:

- carbohydrate and sugar claims on alcoholic beverages; and
- pregnancy warning labels on alcoholic beverages.

After industry raised concerns about possible multiple changes to alcohol labelling requirements and the associated costs, in August 2019 Food Ministers agreed to refer the

work on energy labelling of alcoholic beverages to FSANZ as part of the work relating to alcohol labelling already underway.

2.6 FSANZ preliminary work

In response to the Food Ministers' request to consider energy labelling on alcoholic beverages, FSANZ undertook two stages of preliminary work.

Stage 1, completed in June 2021, involved an evidence assessment (FSANZ, 2021a) that, in the context of the Australian and New Zealand dietary guidelines and ministerial policy guidance, identified the following problem:

Unlike most other packaged food and beverages, labels on most packaged alcoholic beverages do not provide information about energy content to enable consumers to make informed choices in line with dietary guidelines.

Stage 2, completed in December 2021, involved a high-level qualitative analysis of regulatory and non-regulatory options to address the problem and identify a preferred approach (FSANZ, 2021d). This included consideration of implementation approaches (voluntary versus mandatory) and label format. Targeted consultation with key stakeholders informed the consideration of options. The key outcomes were:

- On-label energy content information is the best option to address the problem and is generally supported by stakeholders as the preferred option. However most stakeholders also consider that on-label energy information must be accompanied by a targeted, government-led education campaign.
- A truncated NIP, containing average energy content only, appears to be the most appropriate format for labelling on alcoholic beverages. It was also the preferred format for most stakeholders but requires more detailed analysis of format options.
- A mandatory approach would provide greater coverage and consistency for consumers than a voluntary approach and provides regulatory certainty and a level playing field for the alcohol industry.

Based on the findings from this preliminary work, FSANZ commenced this proposal in May 2022.

2.7 Overseas regulations

2.7.1 Codex Alimentarius

There is no Codex standard or guideline specific to the labelling of alcoholic beverages. In 2017, the WHO proposed the Codex Committee on Food Labelling (CCFL) undertake new work on the labelling of alcoholic beverages, including nutrition labelling (Codex Alimentarius, 2017).

Subsequently, a discussion paper was prepared for the 45th meeting of the CCFL in May 2019 for the purpose of deciding whether work on alcoholic beverage labelling would proceed. The paper presented five recommendations, ranging from doing nothing to initiating new work on a new Codex Standard on labelling of alcoholic beverages (Codex Alimentarius, 2019). There was varying support for the recommendations and members agreed that more time was needed to consider the paper. A revised discussion paper was planned for CCFL46, however, due to challenges associated with COVID-19 the paper was not available at CCFL46 and will now likely be considered by CCFL47 in May 2023.

2.7.2 European Union

Regulation (EU) No 1169/2011 exempts alcoholic beverages containing more than 1.2% ABV from nutrition declarations in the European Union (EU). A nutrition declaration, or just the declaration of the energy value, can however be provided voluntarily. The format for energy labelling is not prescribed, however declarations must be made in kilojoules and kilocalories and on a 100 mL basis. Per portion information may also be provided (Council of the European Union, 2011). A 2020 WHO Evidence Network Synthesis report on alcohol labelling practices in the European Region reported ten EU Member States have legislation that requires the declaration of nutritional values, with only Ireland requiring the listing of energy values (Jané-Llopis et al. 2020).

The European Commission is currently considering changes to the rules on information provided to consumers for alcoholic beverages. This follows up on Europe's Beating Cancer Plan, and will include rules on labelling alcoholic beverages, stipulating a mandatory list of ingredients and a nutrition declaration (European Commission, 2022a). Public consultation on initiatives for revising EU legislation on the labelling of alcoholic beverages closed in March 2022. Commission adoption was planned for fourth quarter 2022 however as at January 2023, this has yet to occur.

Regulation (EU) 2021/2117 which includes amendments to Regulation (EU) No 251/2014 to require the labelling of aromatised wine products¹¹ with a nutrition declaration and a list of ingredients will enter into force on 1 January 2023 (Council of the European Union, 2021). The on-label nutrition declaration may be limited to the energy value, which may be expressed by using the symbol "E" for energy. In such cases the full nutrition declaration and list of ingredients shall be provided on the label or by electronic means identified on the package.

2.7.3 Ireland

The Government of Ireland enacted the 2018 Public Health (Alcohol) Bill in 2018 (Government of Ireland, 2018) which includes a requirement for energy labelling (in kilojoules and kilocalories) on alcoholic beverages. The Act confers powers to the Minister of Health to make regulations to specify details of the labelling to be used. Draft regulations on the labelling of alcohol products were notified to the European Commission in June 2022 (European Commission, 2022b). Ireland is unable to adopt the regulations for alcohol labelling during a standstill period, where the Commission and other Member States examine the proposed text and respond. The standstill period ended 22 December 2022.

2.7.4 United Kingdom

In July 2020, the UK Department of Health & Social Care released a policy paper *Tackling obesity: empowering adults and children to live healthier lives* (UK Department of Health & Social Care, 2020). One of the actions of the paper was to consult on alcohol calorie labelling by the end of 2020. As at January 2023, this consultation has yet to occur.

2.7.5 United States

In the USA voluntary labelling of energy content information is permitted on certain alcoholic beverages¹² if the label also contains a statement of average analysis as provided in TTB Ruling 2004–1 (Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau,

¹¹ Article 1 of Regulation (EU) No 251/2014 states that Regulation (EU) No 1169/2011 shall apply to the presentation and labelling of aromatised wine products, save as otherwise provided for in this regulation.

¹² Wine, distilled spirits and malt beverages excluding wines containing less than 7 % alcohol by volume and beer that is not made with both malted barley and hops.

2004) or a serving facts statement as provided in TTB Ruling 2013–2 (Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau, 2013). Both of these statements include specified serving sizes for beverage types and require the listing of energy (using calories), carbohydrate, protein and fat content per serving or per container size.

2.7.6 Canada

In Canada, beverages with an alcohol content of more than 0.5% are exempt from nutrition labelling but a nutrition facts table, which includes calories, is allowed on a voluntary basis. A nutrition facts table becomes mandatory on an alcoholic beverage if a nutrition claim or reference to energy or certain nutrients is made, or if certain artificial sweeteners are added to unstandardised alcoholic beverages (Government of Canada, 2022). A nutrition facts table requires the listing of nutrients including energy value (as calories) per serving. Reference amounts, established by Health Canada, serve as the basis for determining serving sizes.

3 Evidence assessment

3.1 Consumption of alcoholic beverages

In recent national health surveys, 78.8% of Australian adults (aged 18 years and older) and 80.3% of New Zealand adults (aged 15 years and older) reported consuming alcohol on any occasion over the previous year (ABS, 2018; New Zealand Ministry of Health, 2019), with 55.0% of Australian adults consuming alcohol during the previous week (ABS, 2018). In a 2020 poll, 5% of Australian adults who drink alcohol reported consuming alcohol daily over the previous 12 months (FARE, 2020).

Based on day one of the consumption data from the Australian and New Zealand national nutrition surveys (ABS, 2013; University of Otago et al 2011a, b), 31.8% of Australian and 32.3% of New Zealand adults (aged 18 years and over) reported consuming an alcoholic beverage. For those consumers, mean and median alcohol intake from alcoholic beverages was equivalent to the consumption of 4.5 and 3 standard drinks respectively. From the same nutrition survey data, 86.4% of New Zealand adults (aged 18 years and over) consumed an alcoholic beverage over the previous year, a similar proportion to that found in the New Zealand health survey noted above.

3.2 Energy intake from alcoholic beverages

Alcohol is high in energy, contributing 29.3 kilojoules/gram to the diet (NHMRC et al, 2006). For adults (aged 18 years and over) in the Australian and New Zealand national nutrition surveys (ABS, 2013; University of Otago et al, 2011a, b), 81% and 74% respectively of the energy intakes from alcoholic beverages consumed on day one of the surveys is contributed by the alcohol itself.

Alcohol is the main source of energy in most alcoholic beverages. However alcoholic beverages may also contain other components e.g. carbohydrate, that contribute to their total energy content. The energy content of alcoholic beverages varies across categories (e.g. wine, beer, spirits) and across different products within categories, subject to the alcohol content and the content of other components that contribute energy. For example, a 330mL full strength beer contains around 380kJ while for the same volume, a stout beer contains approximately 430kJ and a cider over 700kJ, due to the variation in alcohol and carbohydrate (sugar) content (The New Zealand Institute for Plant & Food Research Limited et al, 2022). A 150mL glass of red or white wine can contain around 400-500kJ due to variation in the alcohol content (The New Zealand Institute for Plant & Food Research Limited et al, 2022). The energy content of ready-to-drink beverages (RTDs) is even more variable as these are

more likely to contain other ingredients with components such as carbohydrate and fat that also contribute energy.

The energy intake from alcoholic beverages for adults (aged 18 years and over) on day one of the Australian and New Zealand national nutrition surveys (ABS, 2013; University of Otago et al, 2011a, b) is considerable. A mean of 5.3% and 5.2% of total daily energy intake for all Australian and New Zealand adults respectively is contributed by alcoholic beverages. These figures include adults who did not consume an alcoholic beverage. For those who reported consuming an alcoholic beverage on day one of the national nutrition surveys, a mean of 16.7% of total energy intake for Australian adults and 16.0% of total energy intake for New Zealand adults is contributed by alcoholic beverages. These results are corroborated by the literature where it has been shown that on day one of the national nutrition survey, alcoholic beverages contributed the greatest proportion of energy from all beverage categories consumed by Australian adults (Riley et al. 2019).

For adults (aged 18 years and over) in the Australian and New Zealand national nutrition surveys (ABS, 2013; University of Otago et al, 2011a, b), wine and beer accounts for most of the energy intake from alcoholic beverages consumed on day one. For Australian adults, a mean of 46% of the energy intake from alcoholic beverages is from wine and 37% from beer. The remainder is from other alcoholic beverages (9%), spirits (6%) and cider and perry (2%). For New Zealand adults, a mean of 43% of energy from alcoholic beverages is from wine and 37% from beer. The remainder is from spirits (11%), other alcoholic beverages (8%) and liqueurs and cocktails (2%).

Further detail on alcoholic beverage intake in Australia and New Zealand is provided in Appendix 1 to the 2021 evidence assessment (FSANZ, 2021a).

3.3 Availability and prevalence of energy content information

In 2020, FSANZ undertook a limited, qualitative survey of alcoholic beverage labelling at major liquor retail outlets and supermarkets in Australia (two stores in Canberra) and New Zealand (three stores in Wellington). This survey aimed to explore the prevalence of energy content information on the label of alcoholic beverages such as beer, wine, cider and RTDs. Brewed soft drinks were not included in the scope of this work.

While voluntary labelling with a NIP is permitted by the Code, very few products available for retail sale in Australia and New Zealand were labelled with a NIP in the absence of making a claim. Nutrition content claims were more commonly made about beers and RTDs than other categories of alcoholic beverages and beers and RTDs were therefore more commonly labelled with a NIP. However FSANZ's survey found most packaged alcoholic beverages for retail sale in Australia and New Zealand did not provide energy content information on the label.

The prevalence and format of nutrition-related information (e.g. a NIP and/or a nutrition content claim) on alcoholic beverages in Australia was more recently investigated by Barons et al. in 2022. An in-store audit of 850 products across five categories of alcoholic beverages¹³ was conducted at the largest alcohol retailer in Melbourne. Only 19.8% of alcoholic beverages were labelled with nutrition related information and only 9.7% included a NIP in the absence of making a claim. More than half (57.9%) of the RTD's included in the study were labelled with nutrition related information, while less than 5% of wine and spirits were.

¹³ Wine (n = 200), beer (n = 200), spirits (n = 200), RTDs (n = 140) and ciders (n = 110)

3.4 Consumer evidence

In 2021 FSANZ undertook a rapid systematic review and meta-analysis to examine the available evidence regarding consumer value, understanding and behaviour in relation to energy content information about alcoholic beverages (FSANZ, 2021b). The review was based on a total of 38 studies, and the quality of each study was evaluated using a standardised quality assessment tool. Findings across studies were narratively synthesised and, where the outcome measures across studies could be combined, meta-analysis was used to estimate summary effects. This section summarises the findings of the review.

The section also includes additional consumer evidence from other systematic reviews (FSANZ, 2020; Wettlaufer, 2018).

3.4.1 Consumer value of energy labelling on alcoholic beverages

Results from 18 studies showed that consumers generally value energy labelling on alcoholic beverages (pooled proportion of consumers supporting energy labelling = 69% [95% CI: 56-79%]). However, certain groups (such as heavy drinkers, people who are not health-/weight-conscious, males, people with lower-level education) are likely to value the information less than others. Additionally, although consumers generally value energy content information, other information may be valued on the label to a greater extent (e.g. alcohol content, ingredients, warnings about particular health risks that are associated with alcohol consumption) and this likely varies across different groups in the population.

3.4.2 Consumer understanding of the energy content of alcoholic beverages

Results from 22 studies showed that, based on their general knowledge, consumers generally have a poor understanding of the energy content of alcoholic beverages. Firstly, only a minority of consumers are able to correctly estimate the energy content (i.e. number of kilojoules or calories) in alcoholic beverages using their general knowledge (pooled proportion of correct estimates across studies = 18% [95% CI: 14-24%]). This is the case regardless of whether consumers are asked to estimate the energy content of an alcoholic beverage per 100 mL or per standard serving size (e.g. 330 mL bottle of beer, a 375 mL RTD, a 125 mL glass of wine etc.). Additionally, consumers generally report that they do not know the energy content of alcoholic beverages and that they are not confident in their estimates.

Secondly, consumers are generally unable to correctly rank the energy content of different alcoholic beverages using their general knowledge. This is the case regardless of whether consumers are asked to rank the energy content of different alcoholic beverages for the same volume or based on standard serving sizes, as with the previous findings regarding absolute energy estimates. Consumers tend to underestimate the relative energy content of wine and spirits. That is, wine and spirits are mistakenly perceived as being lower in energy compared to other alcoholic beverages. Conversely, consumers tend to overestimate the relative energy content of beer. That is, beer is mistakenly perceived as being higher in energy compared to other alcoholic beverages. Consumers are also unaware of the energy content of alcoholic beverages relative to non-alcoholic beverages.

Thirdly, consumers are generally unaware that alcohol is the main source of energy in wine, beer, and spirits. Rather, one available New Zealand-based study found that consumers tended to believe that sugar was the main source of energy in these beverages (Walker et al. 2019a). One Australian-based study also indicated that low-carbohydrate beer consumers may mistakenly perceive carbohydrates as the main source of energy in beer. In this study consumers chose to drink low-carbohydrate beer over other types of beers (including light alcohol strength beer) because they mistakenly believed it to have less kilojoules and to be

less fattening (Victoria Health Promotion Foundation, 2010). Consumers are also generally unaware that 100mL of spirits is higher in energy than 100mL of wine or beer (GfK, 2014), which is likely related to the previous finding that consumers are unaware that alcohol is the main source of energy in these beverages. Some consumers may also perceive spirits to have no calories (energy) at all (Barber, 2016).

The overall finding that consumers are generally unable to correctly estimate the energy content (i.e. number of kilojoules or calories) in alcoholic beverages using their general knowledge is likely similar to that of food and non-alcoholic beverages (e.g. Brindal et al. 2012; Pettigrew et al. 2013). However, where the two may differ is that consumers generally understand that some foods are high in energy (Brindal et al. 2012). In contrast, consumers may not understand that alcohol is high in energy, as the evidence shows that consumers do not understand that alcohol is the main source of energy in most alcoholic beverages.

Whether providing energy content information enhances consumer understanding of the energy content of alcoholic beverages is further reviewed below.

3.4.3 The effect of energy content information regarding alcoholic beverages on consumer understanding and behaviour

Results from 16 studies showed that energy labelling (in kilojoule/calorie numerical format) has no effect on consumers' likelihood of drinking an alcoholic beverage. However, it is important to note that most studies examined the effect of energy labelling on participants' likelihood of consuming a single alcoholic beverage. As such, it remains unclear whether energy labelling has an effect on other relevant behaviours (such as consumer choice among different types of alcoholic beverages, or the number of drinks consumed over time).

This finding may be explained by the possibility that consumers do not understand energy content information when presented in kilojoule/calorie numerical formats. Consistent with this possibility, two available studies (including one based on a New Zealand sample) found that participants generally found kilojoule/calorie and percent daily intake information difficult to understand (Pabst et al. 2019; Walker et al. 2019a). Similar findings have been reported regarding consumer understanding of energy labelling on food and non-alcoholic beverages (Cowburn & Stockley, 2005; Watson et al. 2013). It is unclear whether providing participants with energy labelling for a range of different alcoholic beverages and/or using other (non-numerical) formats would provide a sufficient context for consumers to be able to interpret the information, and whether this in turn would affect consumer behaviour.

Studies typically provided participants with energy content information per standard serving size (e.g. per 125mL glass of wine, 330mL bottle of beer, 375 mL RTD, 30mL of spirits). No studies directly compared the effect of providing energy content information based on different quantities i.e. per standard serving size, per standard drink and per 100 mL. However, consumers generally report that they prefer energy content information that allows easy comparison between different types of beverages and helps them to understand the implications of drinking a serve of alcohol (e.g. glass of wine, bottle of beer; Walker et al. 2019a). Furthermore, consumers generally do not understand what a standard drink is (Wettlaufer, 2018), and find the distinction between 'serving size' and 'standard drinks' confusing because they are unsure how the two are related e.g. whether a 125mL serve of wine is a standard drink (Walker et al. 2019a). A border can be used to distinguish and separate different types of labelling information (FSANZ, 2020), such as energy content information vs. standard drink information.

Studies typically examined consumer perceptions of "calorie information" or "energy content information (i.e. kilojoules/calories)". Consumer perceptions of "calories" vs. "energy" vs. "kilojoules" were therefore not compared. Research in relation to food and non-alcoholic

beverages has shown that consumers do not necessarily understand that calories and kilojoules are the same thing; the terms 'energy' and 'kilojoules' have positive connotations (i.e. high 'energy' or 'kilojoule' products are perceived as healthy and necessary for sustained energy), whereas the term 'calories' has negative connotations (i.e. high 'calorie' products are associated with weight gain; Watson et al. 2013). It is unclear whether such consumer perceptions of the terms 'energy/kilojoules' would also apply to alcoholic beverages.

Additionally, given that most studies examined the effect of energy labelling on participants' likelihood of consuming a single alcoholic beverage, it remains unclear whether energy labelling has an effect on other relevant behaviours (such as consumer choice among different types of alcoholic beverages, or the number of drinks consumed over time).

Finally, there is limited evidence available to answer the question of whether providing energy labelling on alcoholic beverages is likely to encourage some 'at risk' groups of consumers to offset the energy from alcoholic beverages by reducing their food intake.

In summary, the effect of energy labelling of alcoholic beverages on consumer behaviour remains unclear, given that the way in which the available studies measured consumer behaviour, and the types of behaviours measured, was severely limited.

3.4.4 The effect of full nutrition information panels on consumer understanding and behaviour

As outlined in the previous section, the majority of the available research has focused on the effect of energy content information alone on consumer perceptions and behaviour. Few studies have examined the effect of a full NIP.

One experimental study based in the USA found that participants who saw a nutrition facts label¹⁴ on alcoholic beverages had significantly higher alcohol consumption intentions compared to participants who saw no nutritional information (Bui et al. 2008). However, this was a low quality study that did not control for other potential group differences that could also account for this effect. Additionally, this study did not examine the effect of the labels on consumer perceptions about the healthiness of the alcoholic beverages.

The findings of Bui et al. (2008) also contradict the findings of a high quality, well-controlled experimental study based on a New Zealand sample (Walker et al. 2019b). Walker et al. (2019b) found that participants who saw a NIP on an alcoholic beverage had significantly greater intentions to purchase that alcoholic beverage, compared to participants who saw no nutritional information. However, it is important to note that the NIP had no significant effect on participants' intentions to *consume* the alcoholic beverage. Furthermore, the effect of the NIP on purchase intentions found in Walker et al. (2019b) cannot be explained by a health halo effect¹⁵, as there was no significant difference between the two groups in perceived healthiness of the alcoholic beverage. Rather, the effect of the NIP on purchase intentions may be explained by the additional finding that participants perceived the NIP as more expensive (and therefore possibly more desirable) than no nutrition information.

In summary, there is no clear evidence to suggest that a NIP on alcoholic beverages misleads consumers about the general healthiness of these beverages.

¹⁴ In this study, the nutrition facts label contained information on the calorie, carbohydrate and fat content.

¹⁵ A health halo effect refers to the potential concern that a NIP may falsely imply that the alcoholic beverage is healthy, given that many of the values in the NIP may be zero.

3.5 Conclusion

Around 80% of Australian and New Zealand adults consume alcoholic beverages, and national nutrition surveys indicate that energy intake from alcoholic beverages, on the days they do consume them, is considerable.

Currently, only a small proportion of alcoholic beverages available for retail sale in Australia and New Zealand are labelled with a NIP. Therefore there is a lack of energy content information on the label of beverages containing alcohol to enable consumers to make informed choices.

The findings of a rapid systematic review undertaken by FSANZ indicate that consumers generally have a poor understanding of the energy content of alcoholic beverages. This is the case regardless of whether consumers are asked to estimate the energy content of an alcoholic beverage per 100 mL or per standard serving size. Consumers generally value energy labelling on alcoholic beverages, however providing consumers with energy labelling (at least in kilojoule/calorie numerical format) may not enhance consumer understanding, as consumers report that they find the information difficult to interpret. Consumers generally report that they prefer energy content information that allows easy comparison between different types of beverages and helps them to understand the implications of drinking a serve of alcohol (e.g. glass of wine, bottle of beer).

Available consumer evidence has found that energy labelling has no effect on consumers' likelihood of drinking an alcoholic beverage. However, it remains unclear whether energy labelling on alcoholic beverages affects a range of other relevant behaviours, such as choice among different types of alcoholic beverages, the number of drinks consumed over time, or the amount of food consumed. It also remains unclear whether providing energy labelling using non-numerical formats and/or for a range of different alcoholic beverages enhances consumer understanding and therefore affects consumer behaviour. Thus, it is not possible to make a definitive conclusion regarding the effect of energy labelling of alcoholic beverages on consumer behaviour, given the limitations of the current available evidence.

Few studies examined the effect of nutritional information more broadly e.g. a NIP, on consumer perceptions and behaviour. To date, there is no clear evidence to suggest that a NIP on alcoholic beverages misleads consumers about the general healthiness of alcoholic beverages.

4 Targeted stakeholder consultations

As part of the preliminary work (see Section 2.6), FSANZ undertook three rounds of targeted consultation with key stakeholders from the alcohol industry, public health and consumer groups and jurisdictions between October 2020 and October 2021. The purpose of these meetings was to discuss issues regarding energy labelling of alcoholic beverages and seek early views on possible options for providing energy information about alcoholic beverages to consumers.

As part of P1059, FSANZ undertook further targeted consultations with the same stakeholder groups in July 2022. At these meetings FSANZ sought views to inform the development of this call for submissions. A list of stakeholder organisations and groups represented at these meetings is at Attachment C.

Additionally, in June 2022 FSANZ held a meeting with a small group of key stakeholders from the alcohol industry to discuss technical issues associated with the determination of energy content information for alcoholic beverages. A list of stakeholder organisations

represented at this meeting is at Attachment D.

5 Risk management

5.1 Energy labelling on alcoholic beverages

As noted in Section 2.6, FSANZ's preliminary work identified the problem that, *unlike other packaged food, the labels on most packaged alcoholic beverages do not provide information about energy content to enable consumers to make informed choices in line with dietary guidelines* (FSANZ, 2021a). This is particularly in the context of Australian and New Zealand dietary guidelines that recommend limiting alcohol intake to assist in managing body weight and ministerial policy guidance indicating that Food Ministers expect food labels to provide adequate information to enable consumers to make informed food choices to support healthy dietary patterns recommended in the dietary guidelines.

The Australian and NZ dietary guidelines recommend limiting alcohol intake to achieve an appropriate energy intake and manage body weight. The *Policy Guideline on Food Labelling to Support Consumers to Make Informed Healthy Choices* (policy guideline) includes among other principles:

- *Information that supports consumers to apply the recommendations in Dietary Guidelines should be provided on food labels in a format which:*
 - *is easily accessed and understood by consumers;*
 - *supports consumers to manage energy intakes to assist with achieving and maintaining a healthy body weight;*
 - *supports consumers to compare foods;*

The energy content of alcoholic beverages ranges substantially, and while alcoholic beverages can contribute considerably to total energy intake, best available evidence shows that consumers generally have a poor understanding of the energy content of alcoholic beverages and the contribution it makes to their energy intake. Therefore providing readily accessible energy content information on the label of alcoholic beverages can enable consumers to make informed purchasing and consumption decisions. Such information can be used by consumers to help them manage their energy intake and body weight, and available evidence indicates consumers want and value this information (see Section 3.4.1).

Consequently, the provision of energy information on alcoholic beverages would allow consumers to make informed choices about alcoholic beverage consumption in support of dietary guidelines. Furthermore, the provision of this information would provide a foundation for education and other health care initiatives to be developed and implemented in order to facilitate informed consumer choice. This combined with other measures, including broader health education, can contribute to public health efforts to reduce the prevalence of overweight and obesity in Australia and New Zealand.

5.2 Consistency of energy information

Unlike many other packaged foods that are required to be labelled with a NIP, most alcoholic beverages are of minor nutritional significance other than their alcohol and energy content. While a statement of alcohol content is already required on beverages containing not less than 0.5% ABV, information about their energy content is not easily accessible to consumers. Producers can provide a NIP voluntarily, however most alcoholic beverages are not labelled with a NIP. Furthermore, producers are prevented from voluntarily providing energy content information only, without providing a full NIP.

Alcohol is high in energy and the main source of energy in most alcoholic beverages. Other nutrients are of minor significance. Given this, FSANZ considers that energy content information, rather than the usual information set out in a NIP, would be more appropriate for alcoholic beverages.

Although similar to the NIP, having consistency in the presentation of energy content information across alcoholic beverages would enable consumers to more readily identify information and compare products. While some industry stakeholders, in particular small producers, prefer flexibility around the presentation of energy content information, a standardised format for energy labelling on alcoholic beverages is generally supported by stakeholders and would provide regulatory certainty for industry.

Therefore, FSANZ is proposing to prescribe a standardised format in the Code for the provision of energy content information on beverages containing alcohol.

5.3 Format for energy labelling

FSANZ's preliminary work (see Section 2.6) identified that a truncated NIP, containing average energy content only, appeared to be the most appropriate format for labelling on alcoholic beverages. It was also the preferred format for most stakeholders, noting a more detailed analysis of format options was required (FSANZ, 2021d).

On this basis, FSANZ has considered how the existing requirements for NIPs in the Code could apply to the provision of energy content information on alcoholic beverages. Specific elements of the proposed format are addressed in Sections 5.3.1 – 5.3.7 below.

5.3.1 Tabular format and heading

5.3.1.1 *Relevant Code requirements for a NIP*

Subsection 1.2.8—6(2) requires a NIP to be presented in the prescribed format set out in section S12—2. A NIP must be set out in a tabular format with borders and the heading 'Nutrition Information'.

5.3.1.2 *Discussion*

Consumers are familiar with the provision of nutrition information in a NIP. Therefore, a similar, tabular format would likely enable consumers to more easily recognise energy content information on alcoholic beverages and compare it with other foods and non-alcoholic beverages.

A tabular format with borders and a heading would help consumers distinguish the information from other labelling elements that may compete for their attention (see section 3.4.3).

Most public health stakeholders do not support 'nutrition information' as a heading because this may imply that alcoholic beverages have some nutritional value. However, some are also concerned about the heading 'energy information' because of possible positive connotations associated with the word 'energy'. FSANZ notes the word 'energy' is used for the provision of energy content information in a NIP, so consumers are already familiar with the use of this word in relation to energy labelling. Further, evidence indicates that while the terms 'energy' and 'kilojoules' may have positive connotations for consumers in relation to food, it is unclear how consumers perceive these terms in relation to alcoholic beverages. Regardless, public health stakeholders supported a heading, noting it would add prominence and make the

energy content information look more 'official' which would differentiate it from marketing information.

Jurisdictions were mixed in their views, with some indicating the heading 'energy information' would more accurately reflect the energy content information, whereas others thought consistency with the heading used in the NIP may be better for consumers. Industry stakeholders on the other hand generally supported a single line, tabular format without a heading.

5.3.1.3 Proposed approach

To maintain consistency with the NIP, FSANZ is proposing to prescribe a tabular format for the presentation of energy information on alcoholic beverages with the heading 'ENERGY INFORMATION'. Use of a prescribed format will provide information in a manner familiar to how energy content information is provided on other foods. This will allow consumers to more readily recognise energy content information on alcoholic beverages and compare it with other foods and non-alcoholic beverages.

5.3.2 Units of measure

5.3.2.1 Relevant Code requirements

Standard 1.2.8 requires the average energy content to be expressed in the NIP in kilojoules or both in kilojoules and in kilocalories (subparagraph 1.2.8—6(1)(d)(i)) to not more than 3 significant figures (paragraph 1.2.8—7(3)(a)).

Average energy content must be calculated in accordance with section S11—2 (see Section 2.1).

5.3.2.2 Proposed approach

FSANZ is proposing to require the average energy content on alcoholic beverages to be provided to no more than 3 significant figures, in units of kilojoules with kilocalories optional. This approach standardises the units and degree of accuracy with the requirements in the Code for a NIP.

5.3.3 Basis of energy content information – quantity per 100 mL and per serving

5.3.3.1 Relevant Code requirements

For beverages and other liquid food, the average energy content is required to be expressed in the NIP as a quantity per 100 mL (the 'unit quantity'¹⁶) and as a quantity per serving (paragraph 1.2.8—6(1)(d)).

A serving is defined in subsection 1.1.2(2) as an amount of the food which constitutes one normal serving when prepared according to manufacturer's directions or when the food requires no further preparation before consumption. The Code does not prescribe the amount of food to be declared in a serving, rather the serve size is determined by manufacturers.

The NIP must clearly indicate any average quantities set out in the panel are average quantities (paragraph 1.2.8—7(1)(a)).

¹⁶ **unit quantity** means:

- (a) for a food that is a solid or semi-solid food—100 grams; or
- (b) for a food that is a beverage or other liquid food—100 millilitres.

Section 2.7.1—4 requires beverages containing more than 0.5% ABV (measured at 20°C) to be labelled with a statement of the approximate number of standard drinks.

5.3.3.2 Discussion

FSANZ has considered whether the basis for the provision of energy content information in a NIP for other beverages i.e. per 100 mL and per serving, is appropriate for alcoholic beverages and whether there are alternatives for these products. Alternatives considered include:

- per serving of a prescribed volume
- per container
- per 30 mL (spirits only)
- per standard drink.

Stakeholders are mixed in their views as to what is an appropriate basis for energy information on alcoholic beverages.

Public health stakeholders do not support providing the energy content information on a per serving basis, particularly if the serving size is determined by producers. They consider 'per serving' information implies a recommended amount for consumption which may lead to people consuming larger quantities of alcohol. These stakeholders support per container labelling, particularly on single serve packages e.g. RTDs and cans of beer. They consider this is the amount consumers are likely to consume as a serve but it would not imply a recommended serving.

Industry stakeholders generally support maintaining consistency with the approach in the NIP except for spirits which have a much a higher ABV than other alcoholic beverages and are usually consumed in small quantities e.g. 30 mL. They are of the view that per 100 mL labelling on spirits is inconsistent with safe drinking recommendations as 100 mL is significantly above a standard drink (~30 mL). Some jurisdictions and public health stakeholders agree, however others consider per 100 mL labelling is necessary to enable consumers to compare products.

Some industry stakeholders consider that 100 mL is an appropriate serving size for most wines and where the serving size is 100 mL the energy content should be declared per 100 mL only, rather than presenting the same information twice.

Public health stakeholders do not support energy labelling per standard drink. They note the energy content per standard drink would be similar across products given alcohol is the main contributor to energy content for most alcoholic beverages, and therefore energy content information based on a standard drink would be of limited use to consumers. They also note that a standard drink often does not reflect typical amounts consumed.

FSANZ has considered requiring energy content information to be provided on a 'per container' basis, noting that for many beverages the serving size would be the same volume as the container size. However, for products in multi-serve containers such as a bottle of wine or whiskey, it would not be appropriate or useful for consumers if energy content information was provided on a per container basis. Further, per container labelling is not consistent with the requirements for other packaged food.

Having considered alternative approaches, FSANZ considers the provision of energy content information per serving and per 100mL would best assist consumers to make informed

choices, and would provide consistency with the presentation of energy content information on other foods and beverages.

Providing energy content information on a per serve basis will help consumers estimate how much energy they would consume in a typical serving. This is important as consumers are unaware of the energy content of alcoholic beverages based on serving sizes and generally report that they prefer energy content information that helps them to understand the implications of drinking a serving of an alcoholic beverage e.g. glass of wine, bottle of beer (see Section 3.4.3). With regard to stakeholder concern that a per serving basis may result in consumption of larger quantities of alcohol, FSANZ notes that in accordance with the definition of 'serving' in the Code, the serving size must constitute a 'normal' serving. When compared with other alternatives (per standard drink and per container), FSANZ considers a per serving basis to be the most appropriate and useful for consumers.

In addition to per serving information, the provision of energy content per 100 mL would enable comparison between products. This is important as consumers are unaware of the energy content of different alcoholic beverages for the same volume e.g. 100 mL. Furthermore, this approach would standardise the provision of energy content information with the Code requirements for a NIP. This would enable consumers to easily compare energy content information between alcoholic beverages and with other products, where a NIP is displayed.

FSANZ has considered whether the basis for energy labelling on spirits should be different to other alcoholic beverages e.g. per serve or per 30 mL (a 'nip') only. However, the provision of information per 100 mL on spirits would enable consumers to compare the energy content of spirits with other products. This is particularly important as evidence indicates that consumers are unaware that spirits contain more energy per mL than beer and wine, and some consumers may also think that spirits have no energy at all (see Section 3.4.2). The provision of energy content information for a unit quantity i.e. per 100 mL is consistent with the requirements for other packaged foods and beverages including those that are not typically consumed in 100 g or 100 mL volumes e.g. jam and other spreads, soy sauce. There is no evidence from national nutrition surveys in Australia and New Zealand to indicate that consumers eat 100 g/mL servings of those foods, or that provision of energy content information per 100 g/100 mL encourages consumption patterns inconsistent with public health advice. Additionally, FSANZ is proposing to require a declaration of the average quantity of food in a serving which would guide consumers as to what a normal serving size is (see Section 5.3.4).

5.3.3.3 Proposed approach

For the reasons outlined above, FSANZ proposes to require average energy content information to be provided on alcoholic beverages per:

- serving of the beverage; and
- 100 mL of the beverage.

FSANZ is proposing this requirement would be applied consistently to all categories of alcoholic beverages, including spirits.

This approach would help consumers estimate how much energy they would likely consume in a normal serving as well as enable comparison between products.

Similar to other foods labelled with a NIP, FSANZ is not proposing to prescribe serving sizes for energy labelling on alcoholic beverages. This would provide producers with the flexibility to determine what a 'normal' serving size is for their particular product. Where a producer

chooses a serving size of 100 mL for their product, FSANZ is proposing to still require the energy content information per 100 mL to be provided in addition to the per serving information.

FSANZ also proposes the energy content information must clearly indicate that quantities are average quantities. This aligns with the current requirements in the Code for a NIP and FSANZ has not identified any reason to deviate from that approach.

5.3.4 Serving information

5.3.4.1 Relevant Code requirements

The NIP must contain details of the number of servings in the package (paragraph 1.2.8—6(1)(a)) and the average quantity of the food in a serving (paragraph 1.2.8—6(1)(b)).

Subsection 1.2.8—7(2) permits 'serving' to be replaced by 'slice', 'pack' or 'package'; or metric cup or metric tablespoon or other appropriate words expressing a unit or common measure on a NIP.

5.3.4.2 Proposed approach

It is proposed that details about the number of servings of the beverage in the package and the average quantity of the beverage in a serving, in mL, would be required on beverages containing alcohol. FSANZ considers the number of servings per package is important contextual information for consumers to consider serving size.

In relation to details of the number of servings of the beverage in the package, FSANZ is proposing that the word 'package' may be replaced by 'bottle', 'can', or another word or words that accurately describes the package containing the beverage. This would provide flexibility for producers and allows for the provision of energy content information that may be more meaningful to consumers than the word 'package' (see Section 5.3.3.2).

5.3.5 Percentage daily intake

5.3.5.1 Relevant Code requirements

Section 1.2.8—8 of the Code provides that a NIP may include information relating to the percentage daily intake (%DI) of nutrients set out in the panel. If included, the NIP must include the %DI per serving, calculated using associated reference values, and either of the following statements: 'based on an average adult diet of 8700 kJ' or 'Percentage daily intakes are based on an average adult diet of 8700 kJ'.

5.3.5.2 Proposed approach

FSANZ proposes information relating to the %DI of average energy content, calculated using the reference value of 8700 kJ, may be included on beverages containing alcohol. If the %DI is provided, a statement 'based on an average diet of 8700 kJ' or 'Percentage daily intakes are based on an average adult diet of 8700 kJ' must be included.

5.3.6 Legibility and location

5.3.6.1 Relevant Code requirements

For nutrition information in a NIP, the Code does not prescribe label design e.g. size, colour and location. However the generic legibility requirements as set out in section 1.2.1—24 of the Code apply.

5.3.6.2 Proposed approach

FSANZ is not proposing to prescribe any additional requirements for legibility or location of energy information on beverages containing alcohol. Consistent with the requirements for nutrition information in a NIP, it is proposed the generic legibility requirements of the Code would apply. As discussed above, the use of a heading and a tabular format will ensure the energy content information is distinct from other information on the label of alcoholic beverages (see Section 5.3.1).

5.3.7 Summary of proposed approach to format

In summary, FSANZ proposes the following format for the provision of energy content information on alcoholic beverages:

ENERGY INFORMATION		
Servings per package: (insert number of servings)		
Serving size: mL		
	Quantity per serving	Quantity per 100 mL
Energy	kJ (Cal)	kJ (Cal)

The following elements would be prescribed:

- Tabular format with borders
- Heading: ENERGY INFORMATION
- Information about:
 - The number of servings of the beverage in the package
 - The average quantity of the beverage in a serving, in mL
- Average energy content, to be expressed:
 - in kilojoules or both in kilojoules and in kilocalories
 - to not more than 3 significant figures
 - as the quantity per serving and quantity per 100 mL.

The inclusion of percentage daily intake information would be permitted. If provided, the following is an example of how it may appear:

ENERGY INFORMATION			
Servings per package: (insert number of servings)			
Serving size: mL			
	Quantity per serving	% Daily intake* (per serving)	Quantity per 100 mL
Energy	kJ (Cal)	%	kJ (Cal)
*Percentage daily intakes are based on an average adult diet of 8700 kJ.			

Generic legibility requirements of the Code would apply.

5.4 Options for implementation

As part of FSANZ's preliminary work, targeted stakeholders were consulted on implementation approaches for energy labelling on alcoholic beverages.

Public health and most jurisdictional stakeholders supported a mandatory approach to energy labelling. There was no clear consensus from industry stakeholders. Retailers and

small producers supported a voluntary approach whereas larger producers supported a mandatory approach for long-term regulatory certainty. There was no support for an industry led Code of practice or guidance.

The preliminary work identified mandatory labelling would provide greater coverage and consistency for consumers, as well as regulatory certainty and a level playing field for industry.

FSANZ has further considered implementation approaches for the provision of energy content information on alcoholic beverages as part of this proposal. Targeted stakeholders have generally maintained similar views to those expressed during FSANZ's preliminary work.

FSANZ notes that while there may be an increased number of alcoholic beverages that are labelled with energy content information under a voluntary approach, it remains possible that the labels on most alcoholic beverages would not provide the information. This would limit consumers' ability to make informed choices and compare the energy content of different products.

FSANZ maintains that a mandatory approach for the provision of energy content information on alcoholic beverages would ensure greater coverage and consistency for consumers to make informed choices. This is consistent with the policy guideline which states *information that enables consumers to identify foods that contribute to healthy dietary patterns recommended in the Dietary Guidelines is a public health priority and therefore sits towards the mandatory end of the 'dominant mode of intervention' within the preventative health section of the Food Labelling Hierarchy* (see Section 2.3).

A mandatory approach would also provide regulatory certainty for industry as well as enforcement agencies.

Therefore, FSANZ is proposing a mandatory approach for the provision of energy content information on alcoholic beverages.

5.5 Application of energy labelling

FSANZ is proposing to require energy labelling on beverages that are currently exempt from being labelled with a NIP i.e. standardised alcoholic beverages and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages (see Section 1.4). This latter category would capture beverages that are not 'standardised alcoholic beverages', for example an RTD containing a mixture of a spirit and a carbonated beverage. Additionally, 'brewed soft drinks', as defined in Standard 2.6.2, can contain 1.15% or less ABV and therefore those that contain 0.5% or more ABV would also require energy labelling.

5.5.1 Application to different types of sales

FSANZ has considered whether or not energy labelling should be required for specific types of sales, including retail sales such as 'fill your own' and fundraising events, sales to caterers¹⁷ and intra-company transfers¹⁸.

¹⁷ **caterer** means a person, establishment or institution (for example, a catering establishment, a restaurant, a canteen, a school, or a hospital) which handles or offers food for immediate consumption (section 1.2.1—2).

¹⁸ **intra-company transfer** means a transfer of a food between elements of a single company, between subsidiaries of a parent company or between subsidiaries of a parent company and the parent company.

5.5.1.1 Relevant existing labelling requirements in the Code

Retail sales

The Code requirements for labelling of 'retail sales' apply to:

- retail sales of a food e.g. sale of a bottle of wine from a supermarket
- food sold as suitable for retail sale without any further processing, packaging or labelling.

Section 1.2.1—6 requires food for retail sale in a package to bear a label, with some exemptions. Section 1.2.8—5 includes a requirement for foods required to bear a label (unless exempt) to be labelled with nutrition information in accordance with Standard 1.2.8. Section 1.2.8—5 requires those foods to be labelled with a NIP.

The exemptions from the general requirement for packaged foods to bear a label include food (beverages in this case) (section 1.2.1—6):

- made and packaged on the premises from which it is sold (e.g. wine made in and sold from a winery, beer made in and sold from a brewery)
- packaged in the presence of the purchaser (e.g. a drink poured in a bar or restaurant, fill your own bottle)
- delivered packaged, and ready for consumption, at the express order of the purchaser (excluding from vending machines) (e.g. orders delivered to consumers by a liquor retailer)
- sold at a fundraising event
- displayed in an assisted service display cabinet (e.g. a drink in an enclosed display cabinet such as glass fronted fridge).

Beverages sold from vending machines are not subject to the exemption for delivered packaged, and ready for consumption, at the express order of the purchaser i.e. in most situations a bottle etc. obtained from a vending machine would be required to bear a label.

The definition of 'package' in the Code specifically excludes hampers (section 1.1.2—2). Packaged food sold within a hamper, such as an alcoholic beverage, is required to bear a label (subsection 1.2.1—8(2)).

If an exemption from the general requirement to bear a label applies, the food may still be subject to some specific labelling requirements (in section 1.2.1—9), either accompanying the food, displayed in connection with the display of the food, declared or provided to the purchaser, or provided to the purchaser upon request. For a food (including a beverage) exempt from the general requirement to bear a label, a NIP must either be displayed in connection with the display of the food or provided to the purchaser upon request if a nutrition content or health claim¹⁹ is made about that food.

For the foods subject to an exemption from the requirement to be labelled with a NIP, as outlined in Section 2.1, that food must be labelled with a NIP if a nutrition content or health claim is made about that food. The voluntary provision of a NIP in accordance with Standard 1.2.8 on beverages containing alcohol is permitted by the Code.

Sales of food to caterers

Packaged foods sold to caterers are required to bear a label with certain information

¹⁹ Health claims and certain nutrition content claims are not permitted on foods (including beverages) that contain more than 1.15% ABV (section 1.2.7-4).

(sections 1.2.1—12 and 1.2.1—15). Other information, including NIPs (unless exempt), can be provided either on the label or in documentation (section 1.2.1—16). This requirement (i.e. the requirement to provide a NIP) would not apply to foods that are exempt under Standard 1.2.8 from the requirement to be labelled with a NIP, including beverages containing alcohol, unless a nutrition content or health claim is made about that beverage.

Additionally, the caterer must be provided with any information they request to enable them to comply with any compositional, labelling or declaration requirement of the Code (paragraph 1.2.1—17(a)).

Non-retail sales, non-catering sales and transportation outers

There are labelling requirements in the Code (Standard 1.2.1, Division 4) for foods sold where the sale is not a retail sale or not food sold to a caterer, nor an intra-company transfer²⁰, for example, a keg of beer sold to a bar.

Packaged food for sale that is not for retail sale, or sale to a caterer or an intra-company transfer, must be labelled with the name and address of the supplier (unless in documentation accompanying the food), name of the food and lot identification. Additionally, for these types of sales, the Code sets out that the purchaser must be provided with any information requested to enable them to comply with the Code requirements. There are no labelling requirements in the Code for intra-company transfers.

A ‘transportation outer’ is defined in section 1.1.2—2 of the Code as a container or wrapper which:

- (a) encases packaged or unpackaged foods for the purpose of transportation and distribution; and
- (b) is removed before the food is used or offered for retail sale or which is not taken away by a purchaser of the food.

If the food is in a ‘transportation outer’ the information listed above (name of the food etc.) may be provided on a label that is clearly discernible through the transportation outer (1.2.1—20).

5.5.1.2 Proposed approach

FSANZ is proposing that beverages containing alcohol for retail sale that are within the scope of this proposal would be required to meet the proposed requirements for energy labelling, except for those that are labelled with a NIP that complies with Standard 1.2.8. In addition, existing provisions for food for retail sale would apply to beverages containing alcohol that are exempt from the requirement to bear a label, meaning there would be no requirement for the proposed energy labelling to be provided (unless a NIP is provided).

For beverages containing alcohol sold to a caterer, FSANZ is proposing that existing requirements for food sold to caterers would apply. Therefore the proposed energy labelling would be required either on the label of the food for sale or in documentation (see section 1.2.1—16), unless a NIP that complies with Standard 1.2.8 is provided.

For both retail sale (including from vending machines and in hampers) and sales to caterers of beverages containing alcohol about which a nutrition content or health claim is made, a NIP must be provided according to the current requirements in the Code. Additionally,

²⁰ “Intra-company transfer” is defined in section 1.2.1—18 as ‘a transfer of a food between elements of a single company, between subsidiaries of a parent company or between subsidiaries of a parent company and the parent company’.

beverages containing alcohol may voluntarily be labelled with a NIP in accordance with Standard 1.2.8. FSANZ is proposing that for beverages containing alcohol for which a compliant NIP is provided, there would be an exemption from the requirements for energy labelling. This is because an energy declaration for these products is already provided in the NIP.

The proposed approach outlined above aligns with the current approach in the Code for the provision of NIPs on foods for retail sale and sold to caterers that are not specifically exempt from providing a NIP. FSANZ has not identified any reason to deviate from that approach for energy labelling on beverages containing alcohol. Maintaining the same approach may also assist with compliance and enforcement of the Code.

FSANZ proposes that existing provisions for non-retail and non-catering sales situations or in intra-company transfers would apply, meaning the proposed energy labelling would not be required. This is because in these situations the beverage is not sold directly to consumers for whom the information is intended. As outlined above, the purchaser must be provided with any information requested to enable them to comply with the Code requirements.

No amendments to the Code are proposed for transportation outers in relation to energy labelling on beverages containing alcohol. FSANZ is aware that some packages may be used as either a 'transportation outer' as defined by the Code, or as a package for retail sale. For example, a box/case containing 12 bottles of wine may be used to transport the wine and is removed before retail sale of the individual bottles, or, the wine bottles may be displayed and sold to consumers in the box/case. If the package for retail sale does not meet the definition of a transportation outer, in particular because it is not removed before the food is used or offered for retail sale, then the labelling requirements proposed for retail sale, as outlined in above, would apply. This is currently the situation for other labelling requirements e.g. standard drink labelling for beverages containing alcohol in packages that may function as either a 'transportation outer' or a package for retail sale.

Table 1 below summarises the proposed approach for energy labelling on beverages containing alcohol for different types of sales.

Table 1: Proposed approach for energy labelling on beverages containing alcohol for different types of sales

Packaged beverage – type of sale	Energy content information required on label?
Wholesale (non-retail, not sold to caterers), intra-company transfers (including 'transportation outers')	No
Sold to caterers	Required either on the label or in documentation
Retail sale, required to bear a label	Yes, unless labelled with a NIP
Made and packaged on premises from which it is sold e.g. in winery, brewery	No*
Delivered packaged and ready for consumption, at the express order of the purchaser	No*
Sold at fundraising event	No*
Displayed in an assisted service display cabinet	No*
Packaged in presence of purchaser e.g. 'fill your own' and also drinks poured into drinking vessel ready for immediate consumption e.g. glass of wine in a bar	No*
Sold from a vending machine	Yes, unless: <ul style="list-style-type: none"> • an exemption applies e.g. packaged in the presence of the purchaser • labelled with a NIP
Vending machine itself	No (not a package according to the definition of package in the Code)
Sold in a hamper	Yes, unless labelled with a NIP
Hamper itself	No (not a package according to the definition of package in the Code)

* Note that if a nutrition content or health claim is made about the product, a NIP must either be displayed in connection with the display of the food or provided to the purchaser upon request.

5.5.2 Application to different types of packages for retail sale

FSANZ has considered how to apply energy labelling requirements to beverages containing alcohol for retail sale that:

- have more than one layer of packaging
- have packaging that includes individual packages or containers intended to be used separately (i.e. individual portion packs)
- are for sale in 'small packages'.

5.5.2.1 Relevant Code requirements

Subsections 1.2.1—6(2) and 1.2.1—6(3) set out labelling requirements for foods for retail sale that have more than one packaging layer.

If a food for retail sale has more than one layer of packaging e.g. a bottle of whisky inside an outer carton or a bladder of wine inside a carton ('cask' wine), only one label is required (subsection 1.2.1—6(2)). This would usually mean a label would need to be on the outermost layer so that it is legible in accordance with the legibility requirements in the Code (section 1.2.1—24 of Standard 1.2.1 – Requirements to have labels or otherwise provide information).

If the food for retail sale is sold in packaging that includes individual packages for servings that are intended to be used separately (individual portion packs) (e.g. a 12 pack of beer) but which:

- (a) are not designed for individual sale; and
- (b) have a surface area of 30 cm² or greater;

then the only labelling required on the individual portion pack is information about warning statements and declarations (e.g. allergens) (subsection 1.2.1—6(3)).

There are specific labelling requirements for foods for sale in a 'small package' i.e. a package with a surface area of less than 100 cm² (section 1.1.2—2). This includes specific requirements for nutrition information. Food for sale in small packages is exempt from the general requirement to be labelled with a NIP, however if a nutrition content or health claim is made about such a food, certain nutrition information must be provided, depending on the subject of the claim. The average energy content of the food per serving must be provided if the claim is about energy, dietary fibre, sugars or any other carbohydrate, or fat free (paragraph 1.2.8—14(1)(b) and S13—2). The format for providing that information is not prescribed.

5.5.2.2 Proposed approach

The energy content information for beverages containing alcohol for retail sale would only be required on one layer of packaging, consistent with subsection 1.2.1—6(2). The requirement in the Code for the label to be legible would apply at the point of retail sale. If the energy content information in the prescribed format is voluntarily provided on multi layers of packaging of the one product for retail sale, FSANZ is proposing that this would not be deemed a nutrition content claim triggering the requirement for a NIP.

This approach would require the provision of energy content information on beverages containing alcohol at the point of sale. It provides producers with the flexibility to choose to label different layers of packaging with the energy content information in accordance with the proposed requirements e.g. on individual cans of beer sold in a six-pack in addition to the outer package/box, or just on the outer facing box, subject to how the product will be displayed for retail sale. This would allow for the product to be sold by the retailer in either the outer package or inner package, with compliant labelling.

FSANZ considers that to specifically require the labelling on certain packages, including both inner and outer packages, would be onerous in the situations whereby the inner packages are not intended for individual/separate retail sale outside of the outer box. This also applies to individual portion packs.

This approach aligns with the current requirements in the Code for the provision of nutrition information and FSANZ has not identified any reasons to deviate from that approach.

Similarly, FSANZ is not proposing to require mandatory energy labelling on beverages containing alcohol in small packages. As outlined above, small packages are exempt from the requirement to declare nutrition information unless a nutrition content or health is made. Nutrition labelling of small packages when nutrition content or health claims are made was considered during P293 – Nutrition, Health and Related Claims²¹. If a nutrition content or health claim is made about energy or certain nutrients in relation to food in a small package, the average energy content of that food is already required to be declared. Therefore no amendments for small packages with respect to energy labelling on beverages containing

²¹ [Proposal P293 - Nutrition, Health and Related Claims \(foodstandards.gov.au\)](https://www.foodstandards.gov.au/p293)

alcohol are considered necessary.

5.6 Other considerations

5.6.1 Calculation of energy content

5.6.1.1 *Relevant Code requirements*

Standard 1.2.8 requires the 'average energy content' of a food to be included in the NIP (subparagraph 1.2.8—6(1)(d)(i)). Section 1.1.2—2 defines 'average energy content' to mean *the average energy content calculated in accordance with section S11—2*. Section S11—2 (Calculation of values for nutrition information panels) sets out the equation for calculating average energy content. Energy factors and the 'average quantity' of each component in the food e.g. carbohydrate, fat and alcohol, are required for the calculation. Energy factors for general components in food are set out in subsection S11—2(2). The definition of 'average quantity' (section 1.1.2—2) refers to the average for such foods from that producer or manufacturer²².

Section 1.1.1—6 sets out how the 'average quantity' of a substance to be declared in the labelling of a food for sale is to be calculated. This section only applies when determining the average quantity of substances such as carbohydrate, sugars and fat for declaration in the NIP. The section allows for factors that would cause the actual amount to vary, including as a result of seasonal variability. It allows for the use of laboratory analysis, calculation from ingoing ingredients and calculation from generally accepted data relevant to that food e.g. the Australian Food Composition Database (FSANZ, 2021e) and the New Zealand Food Composition Database (The New Zealand Institute for Plant & Food Research Limited et al, 2022). The method used is at the discretion of the manufacturer or producer (subsection 1.1.1—6(2)).

Standard 2.7.1 requires the labels of certain foods, including beverages with 0.5% or more ABV, to include a statement of the alcohol content (ABV) of that food/beverage. The statement must be accurate to within certain limits prescribed in the standard, for example, for beer, cider or perry, to within 0.3% ABV (subsection 2.7.1—3(4)).

5.6.1.2 *Discussion*

Targeted industry stakeholders have indicated that while calculation from ingoing ingredients is appropriate for some alcoholic beverages e.g. RTDs, it is difficult for other products e.g. wine and beer, so flexibility around the methods for determining energy content information is required. They also noted the Australian and New Zealand food composition databases currently have limited data on alcoholic beverages and do not include all of the different styles/varieties of products in the marketplace e.g. beers. Some suggested a pool of recognised data should be made available to alcohol producers for the purposes of energy labelling. They advised the costs associated with laboratory analysis for substances used in the calculation would be problematic, particularly for small producers.

FSANZ considers the calculation in the Code for determining average energy content allows for flexibility. There is flexibility in how the average quantity of components (sugar etc.) to be used in the calculation are determined. The same methods as prescribed for determining the average quantity of substances such as carbohydrate, sugars and fat for declaration in the

²² **average quantity**, of a substance in a food, means the average, for such foods from that producer or manufacturer, of: (a) where a serving or reference amount is specified—the amount of the substance that such a serving or reference amount contains; or (b) otherwise—the proportion of that substance in the food, expressed as a percentage.

NIP could be used to determine those average quantities e.g. calculation from generally accepted data relevant to that food.

Calculation from generally accepted data is consistent with the method in the EU where the energy value provided on-label may be based on a calculation from generally established and accepted data. It is also consistent with the US where manufacturers may rely on an appropriate combination of analyses and other sources to accurately label their products, including databases and typical value charts. FSANZ recognises Australian and New Zealand food composition databases have limited data available for beverages containing alcohol. However, other data may be available and could be used, subject to its reliability and accuracy. For example the Australian Wine Research Institute (AWRI) has published data on the typical composition of Australian red and white wines (AWRI, 2021).

Laboratory analysis is not mandated hence there should not be costs for laboratory analysis unless a company chooses to have their product analysed.

As noted in the targeted consultations, the ABV must already be declared on the label of beverages containing alcohol and this could be used in the energy calculation; hence additional costs would not be imposed in obtaining that information for the purpose of the average energy calculation. For beverages with 1.15% or less ABV, although the specific ABV is not required to be declared, companies would need to determine the ABV of their beverages in order to comply with the requirements for ABV labelling.

There are different views from stakeholders about whether a specific tolerance for a variance from the actual energy content should be permitted. Noting the requirement for an 'average' energy content allows for tolerances, some stakeholders still consider prescribing specific tolerances would be useful, particularly for smaller producers.

As outlined above, the current provisions for NIPs require declaration of an 'average' energy content based on 'average' quantities of the components used in the prescribed calculation. The use of average quantities allows for an average across foods from a manufacturer or producer e.g. across a range of beers brewed by a craft beer company. The ABV declared on the label, for which there are tolerances permitted, could be used in the equation, again allowing for variation from an exact energy content.

5.6.1.3 Proposed approach

Based on the discussion above, FSANZ is proposing to apply the current provisions in the Code for determining average energy content to the proposed requirement for energy labelling on beverages containing alcohol. FSANZ is not proposing specific tolerance levels for which the average energy content may vary from the precise energy content of a particular product.

5.6.2 Voluntary provision of a NIP

5.6.2.1 Relevant Code requirements

The voluntary provision of a NIP in accordance with Standard 1.2.8 on beverages containing alcohol is permitted by the Code.

5.6.2.2 Discussion

During targeted stakeholder consultations, public health and consumer stakeholders as well as some jurisdictions indicated they did not support allowing the voluntary provision of a NIP

on alcoholic beverages. There was some concerns that NIPs on alcoholic beverages present them as having some nutritional value and can have a 'health halo' effect.

Conversely industry stakeholders support retaining the current permission to provide a NIP voluntarily, and one jurisdiction considers that a NIP on alcoholic beverages enables greater comparison by consumers across products. Industry stakeholders argue that the information provided within a compliant NIP is informative, factual information.

FSANZ is not aware of any evidence to suggest that a NIP on beverages containing alcohol beverages creates a 'health halo' effect. The original reason for the exemption from a NIP for standardised alcoholic beverages was that the presence of a NIP could mislead consumers about the nutritional value of alcoholic beverages when most alcoholic beverages are of minor nutritional significance, except for their energy and alcohol content. However, based on available evidence, FSANZ considers that removing the current permission to voluntarily provide a NIP on alcoholic beverages from the Code is not warranted.

5.6.2.3 Proposed approach

FSANZ is proposing to retain the permission for the voluntary provision of a NIP on the label of beverages containing alcohol.

As outlined in Section 5.5.1.2, FSANZ is proposing to exempt beverages containing alcohol that are labelled with a NIP in accordance with the Code from the requirement for the proposed energy labelling.

This approach will avoid costs for industry of relabelling beverages containing alcohol that are currently labelled voluntarily with NIPs, to remove the NIP and replace it with the proposed energy labelling.

Furthermore, the proposed approach would be consistent with the EU, United States and Canada where voluntary declarations of nutrition information on alcoholic beverages in accordance with requirements for the presentation of that information is permitted.

5.6.3 Nutrition content claims about energy

5.6.3.1 Relevant Code requirements

Nutrition content claims about energy are permitted on alcoholic beverages in accordance with Standard 1.2.7 (paragraph 1.2.7—4(c) and section 1.2.7—12). Compositional limits must be met for claims of 'low' energy, 'reduced' energy and light or 'lite' in respect to energy, and 'diet' claims.

There are no specific conditions for the presentation or location on the label of energy claims or for the units used e.g. kilojoules or calories.

The presence of a nutrition content claim about energy on the label of an alcoholic beverage would trigger the requirement for that beverage to also be labelled with a NIP (see Section 2.1).

5.6.3.2 Proposed approach

FSANZ is not proposing to change the provisions for making nutrition content claims about energy in relation to beverages containing alcohol as part of this proposal.

A claim made about energy content (i.e. not the mandatory provision of energy content

information in the prescribed format) would trigger the requirement to provide a NIP. This enables consumers to compare and evaluate all nutrients in that beverage, and with other beverages making a claim. In addition, the mandatory energy labelling on alcoholic beverages would enable consumers to compare the energy content of alcoholic beverages with alcoholic beverages which make a permitted nutrition content or health claim, something they have not been able to do before.

5.7 Risk management summary

In summary, FSANZ is proposing to require energy content information to be provided for standardised alcoholic beverages and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages.

The following standardised format for the provision of energy content information would be prescribed in the Code:

ENERGY INFORMATION		
Servings per package: (insert number of servings)		
Serving size: mL		
	Quantity per serving	Quantity per 100 mL
Energy	kJ (Cal)	kJ (Cal)

As illustrated above, the prescribed format would include the following elements:

- tabular format with borders
- heading: ENERGY INFORMATION
- the number of servings of the beverage in the package
- the average quantity of the beverage in a serving, in mL
- average energy content, to be expressed:
 - in kilojoules or both in kilojoules and in kilocalories
 - to not more than 3 significant figures
 - as the quantity per serving and quantity per 100 mL.

The inclusion of percentage daily intake information as part of the energy information declaration would be permitted.

The energy content information would be required on the label of packaged beverages containing alcohol for retail sale, except for those:

- that are exempt from the general requirement to bear a label; or
- that are labelled with a NIP that complies with Standard 1.2.8.

For beverages containing alcohol sold to a caterer, FSANZ is proposing the energy content information is provided either on the label or in documentation (under section 1.2.1—16), unless a NIP that complies with Standard 1.2.8 is provided.

The energy content information for beverages containing alcohol for retail sale would only be required on one layer of packaging. Generic legibility requirements of the Code would apply at the point of sale. There would be no requirement for the energy content information on 'transportation outliers' as defined in the Code.

FSANZ is not proposing to require mandatory energy labelling on beverages containing alcohol in small packages.

FSANZ is proposing to apply the current provisions in the Code for determining average energy content. No specific tolerance levels for which the average energy content may vary from the precise energy content of a particular product are proposed.

The permission for the voluntary provision of a NIP on the label of beverages containing alcohol would be retained. As noted above, if a NIP in accordance with Standard 1.2.8 is provided, the energy content information in the prescribed format above would not be required.

5.8 Risk communication

5.8.1 Consultation

Consultation is a key part of FSANZ's standards development process.

FSANZ has developed a communication strategy for this proposal. Subscribers and interested parties have been notified about this call for submissions via the FSANZ Notification Circular, media release and through FSANZ's social media tools and Food Standards News.

FSANZ undertook targeted consultation with key stakeholders from the alcohol industry, public health and consumer groups, and jurisdictions in July 2022, to discuss a proposed approach, including format options, for energy labelling on alcoholic beverages (see Section 4). In addition FSANZ met with a small group of key stakeholders from the alcohol industry in May 2022 to discuss technical issues associated with the determination and provision of energy content information on alcoholic beverages. FSANZ has considered the views and information provided by stakeholders in its assessment.

FSANZ acknowledges the time taken by individuals and organisations to make submissions on this proposal. All comments are valued and contribute to the rigour of our assessment. Comments received will be taken into account when developing any draft variation for approval by the FSANZ Board. A summary of views will be provided to the Board to assist its decision making process.

If a draft variation to the Code is approved by the FSANZ Board, that decision will be notified to the Food Ministers' Meeting. If the Ministers do not request a review, the variation to the Code would be gazetted soon after. Gazettal of the variation to the Code would be publicly notified in the national press and on the FSANZ website.

5.8.2 World Trade Organization (WTO)

Australia and New Zealand are members of the World Trade Organization (WTO) and therefore are legally obliged to follow the rules of WTO trade related agreements. The Technical Barriers to Trade (TBT) Agreement recognises countries' rights to adopt standards for the protection of human health at the level it considers appropriate provided that such measures are in accordance with that Agreement (WTO, 1995).

As members of the WTO, Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

There are relevant overseas standards for declarations of energy content information on the label of beverages containing alcohol but there is currently no international standard (see

Section 2.7). Amending the Code to require beverages containing alcohol (no less than 0.5% ABV) to be labelled with energy content information in a prescribed format may have an effect on international trade because this requirement is additional to and/or different from requirements in other countries. Therefore a notification to the WTO under Australia's and New Zealand's obligations to the WTO TBT Agreement has been made to enable other WTO members to comment on the proposed amendments.

5.8.3 International trade agreements

Australia and New Zealand are also parties to several free trade agreements (FTAs) that include clauses relevant to the labelling of alcoholic beverages, particularly wine and distilled spirits. The general purpose of FTAs is to protect against technical regulations that create unnecessary barriers to trade. For example, Australia and New Zealand are parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which includes Annex 8-A: Wine and Distilled Spirits (DFAT, 2019). The CPTPP came into force in Australia and New Zealand on 30 December 2018. Section 10 of Annex 8-A states that if a party requires a wine label to include information other than the product name, country of origin, net contents or alcohol content, the party shall permit the supplier to provide the information on a supplementary label fixed to the wine container after importation but before offering the product for sale and may require that the supplier fix the supplementary label before release from customs. Section 5 of Annex 8-A sets out similar permissions for distilled spirits. That means the proposed mandatory energy labelling may be affixed as a supplementary label on wines and distilled spirits imported into Australia and New Zealand. The Code does not prevent the use of supplementary labels. Further, the mandatory labelling requirements may not need to be met before products are released from customs in both Australia and New Zealand, but must be met before products are offered for sale.

Australia and New Zealand are members of the World Wine Trade Group (WWTG) along with Argentina, Canada, Chile, Georgia, South America and the USA. The group developed a Labelling Agreement in 2007 which enables exporters to sell wine into WWTG markets without having to redesign their labels for each individual market (WWTG, 2019). Importantly article 5.4 states that nothing in the agreement prevents a Party from taking measures for the protection of human health, provided it complies with the WTO Agreement. Further article 10.1 of the Agreement does not prevent an importing country from requiring national mandatory information on a label. Therefore, the WWTG Labelling Agreement does not prevent Australia and New Zealand from introducing mandatory energy labelling on alcoholic beverages for domestically produced or imported products.

5.8.4 Australia and New Zealand wine exports

While there are broad requirements in both Australia and New Zealand for wine exported from either country to comply with domestic labelling requirements, the *Wine Australia Regulations 2018* and the *New Zealand Wine Act 2003* include some provisions to facilitate the entry of wine into overseas markets.

Section 14(3) of the Wine Australia Regulations 2018 applies to exports from Australia. It states:

The Authority may approve the grape product [for export] if the Authority is satisfied that:

(a) either:

(i) the grape product complies with the Australia New Zealand Food Standards Code; or

(ii) the ways in which the product does not comply will not compromise the reputation of Australian grape products; and

*(b) the grape product is sound and merchantable; and
(c) the description and presentation of the grape product is appropriate having regard to requirements of the Act, other Australian laws and the laws of other countries.*

Section 14(2A) of the *New Zealand Wine Act 2003* states that labelling requirements in a New Zealand standard do not apply where they conflict with a labelling requirement for an export market.

Therefore it appears unlikely that the proposed mandatory energy labelling in Australia and New Zealand would be a barrier for wine exports.

5.9 FSANZ Act assessment requirements

When assessing this proposal and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 59 of the FSANZ Act:

5.9.1 Section 59

5.9.1.1 Consideration of costs and benefits

The FSANZ Act requires FSANZ to have regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, government or industry that would arise from the proposed measure (paragraph 59(2)(a) of the Act).

The Office of Impact Analysis (OIA)²³ has exempted FSANZ from the need to prepare a formal Consultation Regulation Impact Statement (CRIS) in relation to the regulatory change proposed (reference number OBPR22-02135). The OIA was satisfied that ongoing consultation has been undertaken over a prolonged period, and the options under consideration have been tested with relevant stakeholders and representative stakeholder views are known. However, a Decision RIS (DRIS) will be created for this proposal following the consultation period for this Call for Submissions.

Although a formal CRIS is not required, FSANZ has given consideration to the costs and benefits that may arise from the proposed measure, which is provided at Attachment E. It provides an analysis which satisfies the requirements of section 59 of the FSANZ Act and the Regulatory Impact Analysis Guide of for Ministers' and National Standard Setting Bodies (May 2020) (the Regulatory Impact Guide).

FSANZ considered three options to address the lack of information and consistency in the presentation of energy labelling on alcoholic beverages:

1. Maintain the status quo
2. Permit energy content information to be provided voluntarily in a prescribed format
3. Require energy content information to be provided in a prescribed format

Following consideration of the costs and benefits, FSANZ considers that Option 3 would, on balance, have the largest net benefit and is therefore the preferred option. Only a small proportion (0.19%) of the cost of overweight and obesity in Australia and New Zealand needs to be avoided to offset the costs of label changes on industry. Given that around 80% of Australian and New Zealand adults consume alcohol and alcoholic beverages comprise approximately 16% of their total energy intake on days they are consumed (see Section 3), it appears that a change of this magnitude is plausible.

²³ Formerly The Office of Best Practice Regulation (OBPR)

A mandatory approach ensures the consistent provision of energy content information on beverages containing alcohol and greatest coverage of products, which would maximise the benefits as well as providing regulatory certainty for industry. The provision of consistent energy information across all alcoholic beverage products would allow consumers to make informed choices about their consumption in line with dietary guidelines. It would also provide an enabling environment for education and other health care initiatives to be developed that take the energy content of alcoholic beverages into account.

Therefore Option 3 represents the greatest net benefit to the community. However, information received through this consultation process may result in FSANZ arriving at a different conclusion.

Questions for submitters (see Attachment E)

1. Do you agree with the estimates for the average cost of labelling change and the number of Stock Keeping Units (SKU) that would need to be changed? Please provide evidence to support your position.
2. Do you think the estimated average cost of labelling change is representative of all products within scope of this application?
3. Do you have any views on whether the estimates we have used for the costs of overweight and obesity are appropriate? If you have alternative studies you would like us to consider please provide references to them.
4. Do you agree with the use of break-even analysis in this situation? If not can you provide alternative evidence about potential causal links between labelling change and potential health benefits?
5. Are there any other material costs and benefits that you believe should be taken into account in this analysis?

5.9.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the proposal.

FSANZ notes that non-regulatory options including education or a voluntary code of practice (CoP) would not adequately address the problem of a lack of consistent energy content information being available on the label of alcoholic beverages to enable informed consumer choice (see Section 4 of Attachment E). Whilst it is likely that there would be some net benefit under a voluntary approach, as noted in Section 5.9.1.1 above, the proposed mandatory approach offers greater coverage and consistency for consumers, which would maximise benefits as well as providing regulatory certainty for industry.

5.9.1.3 Any relevant New Zealand standards

The relevant Standards apply in both Australia and New Zealand. There are no relevant New Zealand only Standards.

5.9.1.4 Any other relevant matters

Other relevant matters are considered below.

5.9.2 Subsection 18(1)

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act

during the assessment.

5.9.2.1 *Protection of public health and safety*

FSANZ's assessment indicates the provision of energy information on alcoholic beverages would enable consumers to make informed choices about alcoholic beverage consumption in support of dietary guidelines. Furthermore, the provision of this information would provide a foundation for education and other health care initiatives to be developed and implemented in order to facilitate consumers' informed choice. This combined with other measures, including broader health education, can contribute to public health efforts to reduce the prevalence of overweight and obesity in Australia and New Zealand.

5.9.2.2 *The provision of adequate information relating to food to enable consumers to make informed choices*

The proposed mandatory declaration of energy content information in a prescribed format would provide consumers with consistent access to information about the energy content of beverages containing alcohol to enable them to make informed choices.

5.9.2.3 *The prevention of misleading or deceptive conduct*

FSANZ has not identified any issues relevant to this matter.

5.9.3 Subsection 18(2) considerations

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

FSANZ has used best available evidence to develop the proposed energy labelling requirements for beverages containing alcohol, including a literature review and meta-analysis (FSANZ, 2021b).

- **the promotion of consistency between domestic and international food standards**

FSANZ has considered overseas regulations for the provision of energy information on alcoholic beverages (see Section 2.7). There is no consistency across international and overseas food standards in the format or requirements for the provision of energy content information on the label of beverages containing alcohol.

- **the desirability of an efficient and internationally competitive food industry**

FSANZ does not anticipate any significant impact on efficiency and international competition. However, a notification has been made to enable other WTO members to comment on the proposed draft variation to the Code (see Sections 5.8.2 – 5.8.4).

- **the promotion of fair trading in food**

FSANZ has not identified any issues relevant to this matter.

- **any written policy guidelines formulated by the Forum on Food Regulation**

The *Policy Guideline on Food Labelling to Support Consumers Make Informed Healthy Choices* (see Section 2.3) has been considered in developing the proposed approach to the provision of energy content information on beverages containing alcohol. The proposed draft variation is consistent with the aim and principles in this guideline.

6 Draft variation

The proposed draft variation to the Code is at Attachment A.

A draft explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

7 Implementation

7.1.1 Transitional arrangements

In developing a proposed approach for transitional arrangements, FSANZ has considered the range of products in the market required to adopt the proposed new labelling requirements, the costs and practicalities of transition for industry, stakeholder views, relevant precedents for transitional arrangements and other relevant FSANZ proposals.

At the targeted consultations in July 2022, industry stakeholders suggested the transitional arrangements for this proposal should be consistent with Proposal P1050 – Pregnancy warning labels on alcoholic beverages. Under P1050, a three year transition period and stock-in-trade exemption were applied. Industry stakeholders indicated this would be sufficient to incorporate new labelling requirements into normal labelling updates and help to reduce costs across the sector. They noted such an approach would be particularly helpful for smaller producers and businesses who may never undergo a brand refresh and therefore rarely change their labels.

There was general support from all stakeholder groups for alignment of this proposal with other proposals that may result in labelling changes for beverages containing alcohol, specifically P1049 – Carbohydrate and sugar claims on alcoholic beverages and P1058 – Nutrition labelling for added sugars.

FSANZ is proposing the draft variation would take effect on the date of gazettal, with a three year transition period and a stock-in-trade exemption for alcoholic beverages packaged and labelled before the end of the transition period.

The three year transition period means that during the three years, a beverage containing alcohol can comply with either the Code as in force as if the variation had not taken effect, or with the Code as amended by the variation. After the transition period, all beverages containing alcohol would need to comply with the variation except for those subject to the stock-in-trade exemption.

A three year transition period would allow sufficient time for industry to adopt new labelling requirements and minimise costs associated with labelling changes. The transition period would not unduly impact consumers as the label information has previously not been available, however a transition period greater than three years would delay the provision of information to consumers.

Application of a stock-in-trade exemption to beverages containing alcohol packaged and labelled before the end of the transition period is aimed at reducing the need for re-labelling. This approach recognises beverages containing alcohol with a slow market turnover or those intended for ageing/cellaring before sale but have been labelled. Such products may include, but are not limited to, top-shelf spirits and premium wines. Given the relatively fast market turnover of beer, cider, RTDs and most spirits (i.e. most of these beverage types produced after gazettal of the new requirement would be sold within three years), FSANZ expects only a relatively small proportion of beverages would not be labelled with the mandatory energy content information after the end of the three year transition period. In relation to the wine market, the majority of wines have the vintage on the label. FSANZ considers it reasonable to not expect the small proportion of premium wines which remain in the market for some years to be relabelled (or over-stickered) with energy content information. After the end of the three year transition period the majority of beverages containing alcohol would be expected to carry a declaration of energy content information.

In summary, FSANZ proposes a three year transition period and a stock-in-trade exemption for beverages containing alcohol packaged and labelled before the end of the transition period.

7.2 Education

If the draft variation is approved, FSANZ intends to prepare communication and education materials related to the new energy labelling requirements.

FSANZ recognises that education of relevant industry stakeholders will be important for implementation of the proposed changes to labelling information. FSANZ intends to work with peak industry organisations on communication strategies to ensure awareness of the new energy labelling requirements on beverages containing alcohol during the transition period.

FSANZ also recognises that consumer education is important to support consumers' awareness and use of the proposed energy labelling. FSANZ will develop web content and utilise other communications channels, including social media, to directly inform consumers about the new labelling and where to look for it. The provision of consistent, on-label information about the energy content of alcoholic beverages also fits within a broader ecosystem of policy initiatives designed to address overweight and obesity (see Sections 2.4.1, 2.4.2, 2.4.3). These broader policy initiatives contain provisions for consumer education that will be supported by having consistent information about the energy content of alcohol available at the point of purchasing and consumption to enable consumers to make

informed choices in the context of their overall energy intake. To this end, FSANZ will communicate with health professionals and state, territory, Australian and New Zealand governments about the new requirements for energy labelling to raise awareness about its ability to support health education and promotion activities within the community.

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Attachments

- A. Draft variation to the Australia New Zealand Food Standards Code
- B. Draft Explanatory Statement

- C. List of participants from targeted consultations held in July 2022
- D. List of participants from targeted industry consultation meeting held in June 2022

Attachment A – Draft variation to the Australia New Zealand Food Standards Code



Food Standards (Proposal P1059 – Energy labelling on alcoholic beverages) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [*To be completed by Delegate*]

[*Name and position of Delegate*]

Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

1 Name

This instrument is the *Food Standards (Proposal P1059 – Energy labelling on alcoholic beverages) Variation*.

2 Variation to Standards in the *Australia New Zealand Food Standards Code*

The Schedule varies Standards in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

4 Effect of the variations made by this instrument

- (1) Section 1.1.1—9 of Standard 1.1.1 does not apply to the variations made by this instrument.
- (2) During the transition period, a food product may be sold if the product complies with one of the following:
 - (a) the Code as in force without the variations made by this instrument; or
 - (b) the Code as amended by the variations made by this instrument.
- (3) A food product that was packaged and labelled before the end of the transition period may be sold after the transition period if the product complies with one of the following:
 - (a) the Code as in force without the variations made by this instrument; or
 - (b) the Code as amended by the variations made by this instrument.
- (4) For the purposes of this clause, the **transition period** means the period commencing on the variation's date of commencement and ending 36 months after the date of commencement.

Schedule

Standard 1.1.2

[1] After subsection 1.1.2—9(4)

Insert:

Display of a mandatory energy statement does not constitute a nutrition content claim

- (5) To avoid doubt, the display of an energy statement required by section 2.7.1—4A does not constitute a nutrition content claim.

Display of a voluntary energy statement does not constitute a nutrition content claim

- (6) If this Code permits, but does not require, a layer of packaging of a *prescribed beverage to display an energy statement referred to in section 2.7.1—4A, the display of that statement on that layer of packaging does not constitute a nutrition content claim.

Standard 1.2.1

[2] Paragraph 1.2.1—8(1)(z)

Repeal the paragraph, substitute:

- (z) the required information for reduced sodium salt mixtures and salt substitutes (see section 2.10.2—8);
- (za) for *prescribed beverages—an energy statement (see section 2.7.1—4A).

Standard 2.7.1

[3] Note to section 2.7.1—2

Insert:

average energy content means the average energy content calculated in accordance with section S11—2.

prescribed beverage means:

- (a) a *standardised alcoholic beverage; or
- (b) a beverage containing no less than 0.5% alcohol by volume.

small package means a package with a surface area of less than 100 cm².

serving means an amount of the food which constitutes one normal serving when prepared according to manufacturer's directions or when the food requires no further preparation before consumption, and in the case of a formulated meal replacement is equivalent to one meal.

[4] After section 2.7.1—4

Insert:

2.7.1—4A Statement of energy

- (1) For the labelling provisions, an energy statement is required for a *prescribed beverage.

Note The labelling provisions are set out in Standard 1.2.1.

- (2) An energy statement is not required for a *prescribed beverage that:
 - (a) has a nutrition information panel on the label of its package; or
 - (b) is a food for sale in a *small package.
- (3) An energy statement required by subsection (1) must comply with sections 2.7.1—4B, 2.7.1—4C and 2.7.1—4D.

2.7.1—4B What must be in an energy statement

- (1) The energy statement must contain the following information:
 - (a) the number of servings in the package; and
 - (b) the *average quantity of the beverage in a serving expressed in millilitres; and
 - (c) the *average energy content expressed in kilojoules or both in kilojoules and in kilocalories per:
 - (i) serving of the beverage; and
 - (ii) 100 mL of the beverage.
- (2) The energy statement must be set out in the following format unless this Code provides otherwise:

ENERGY INFORMATION		
Servings per package: (insert number of servings)		
Serving size: mL		
	Quantity per serving	Quantity per 100 mL
Energy	kJ (Cal)	kJ (Cal)

2.7.1—4C How to express particular matters in an energy statement

- (1) The energy statement must clearly indicate that any average quantities set out in the statement are average quantities.
- (2) In an energy statement, 'package' may be replaced by 'can', 'bottle' or any other word or words that accurately describe the package containing the *prescribed beverage.
- (3) The *average energy content must be expressed in an energy statement to not more than 3 significant figures.
- (4) If the *average energy content per serving or 100 mL of the *prescribed beverage is less than 40 kJ, that average energy content may be expressed in the energy

statement as 'LESS THAN 40 kJ'.

2.7.1—4D Percentage daily intake information

- (1) The energy statement may include information relating to the percentage daily intake of energy in the statement.
- (2) If information relating to percentage daily intake of energy is included, the energy statement must include:
 - (a) the percentage daily intake of energy per serving, calculated using 8700 kJ as the reference value; and
 - (b) either of the following statements:
 - (i) 'based on an average adult diet of 8700 kJ'; or
 - (ii) 'Percentage daily intakes are based on an average adult diet of 8700 kJ'.
- (3) For subsection (2), an example energy statement with percentage daily intake information is:

ENERGY INFORMATION			
Servings per package: (insert number of servings)			
Serving size: mL			
	Quantity per serving	% Daily intake* (per serving)	Quantity per 100 mL
Energy	kJ (Cal)	%	kJ (Cal)
*Percentage daily intakes are based on an average adult diet of 8700 kJ.			

Attachment B – Draft Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

The Authority prepared proposal P1059 to consider amending the Code to require energy (kilojoule) labelling information on beverages containing alcohol. The Authority considered the proposal in accordance with Division 2 of Part 3 and has prepared a draft variation to the Code.

2. Variation will be a legislative instrument

If approved, the draft variation would be a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and be publicly available on the Federal Register of Legislation (www.legislation.gov.au).

If approved, this instrument would not be subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers' Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority has prepared a draft variation to amend Standards 1.1.2, 1.2.1 and 2.7.1 of the Code to require a statement of energy on the label of most standardised alcoholic beverages, and most beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages.

The draft variation also proposes transitional arrangements (see below).

4. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of P1059 will include one round of public consultation following an assessment, targeted communication with key stakeholders, and the preparation of a draft variation and associated assessment summary.

The Office of Impact Analysis (OIA) has exempted FSANZ from the need to prepare a formal Consultation Regulation Impact Statement (CRIS) in relation to the regulatory change proposed (reference number OBPR22-02135). The OIA was satisfied that ongoing consultation has been undertaken over a prolonged period, and the options under consideration have been tested with relevant stakeholders and representative stakeholder views are known.

6. Statement of compatibility with human rights

If approved, this instrument would be exempt from the requirements for a statement of compatibility with human rights as it would be a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

7. Variation

Item [1] of the Schedule to the variation would amend Standard 1.1.2 by adding two new subsections to section 1.1.2—9 in numerical order: subsections 1.1.2—9(5) and 1.1.2—9(6).

New subsection 1.1.2—9(5) provides that the display of a mandatory energy statement required by new section 2.7.1—4A (see **item [4]** below) does not constitute a *nutrition content claim* (as defined in section 1.1.2—9).

New subsection 1.1.2—9(6) provides that the display of a voluntary energy statement on a layer of packaging of a *prescribed beverage*, referred to in new section 2.7.1—4A (see **item [4]** below), does not constitute a *nutrition content claim*.

A *prescribed beverage* is defined in section 1.1.2—2 as:

- a standardised alcoholic beverage i.e. beer, brandy, cider, fruit wine, fruit wine product, liqueur, mead, perry, spirit, vegetable wine, vegetable wine product, wine or wine product; or
- a beverage containing no less than 0.5% alcohol by volume.

Item [2] of the Schedule to the variation would amend Standard 1.2.1 by repealing existing paragraph 1.2.1—8(1)(z); and substituting it with the same paragraph 1.2.1—8(1)(z) (except with a semi-colon at the end), followed by new paragraph 1.2.1—8(1)(za).

As paragraph 1.2.1—8(1)(z) is currently the last paragraph in subsection 1.2.1—8(1), it has a full stop at the end. So it was necessary to change the full stop to a semi-colon because of inserting new paragraph 1.2.1—8(1)(za).

New paragraph 1.2.1—8(1)(za) provides that the label on a packaged *prescribed beverage*

must contain an energy statement in accordance with the new section 2.7.1—4A (see **item [4]** below).

Item [3] of the Schedule to the variation would amend Standard 2.7.1 by inserting in the Note to section 2.7.1—2 references to the following terms and their definitions in section 1.1.2—2:

- *average energy content*;
- *prescribed beverage*;
- *small package*; and
- *serving*.

The Note to section 2.7.1—2 sets out references to terms defined in section 1.1.2—2 which are relevant to Standard 2.7.1.

The definitions of these additional terms would relate to the new energy statement requirements in Standard 2.7.1 (see **item [4]** below).

These terms are italicised in the Explanatory Statement.

Item [4] of the Schedule to the variation would amend Standard 2.7.1 by inserting four new sections in 'Division 2 – Requisite statements' of the Standard, after section 2.7.1—4: sections 2.7.1—4A, 2.7.1—4B, 2.7.1—4C and 2.7.1—4D. The new sections set out requirements for an energy statement for *prescribed beverages*. The new sections are as follows:

New section 2.7.1—4A

New section 2.7.1—4A is the primary provision relating to mandatory energy statements for *prescribed beverages* and sets out when an energy statement is required.

Subsection 2.7.1—4A(1) provides that for the labelling provisions, an energy statement is required for a *prescribed beverage* (as defined in section 1.1.2—2 – see **item [3]** above).

The Note to this subsection explains that the labelling provisions are set out in Standard 1.2.1.

Subsection 2.7.1—4A(2) provides that an energy statement required by subsection (1) does not apply to a *prescribed beverage* that has a nutrition information panel on the label of its package; or that is a food for sale in a *small package* (as defined in section 1.1.2—2 – see **item [3]** above).

Subsection 2.7.1—4A(3) provides that an energy statement required by subsection (1) must comply with new sections 2.7.1—4B, 2.7.1—4C and 2.7.1—4D (see below).

New section 2.7.1—4B

New section 2.7.1—4B sets out requirements about what information an energy statement must contain.

Subsection 2.7.1—4B(1) provides that an energy statement must contain:

- the number of *servings* in the package; and
- the average quantity of the beverage in a *serving* expressed in millilitres; and

- the *average energy content* expressed in kilojoules or both in kilojoules and in kilocalories per:
 - *serving* of the beverage; and
 - 100 mL of the beverage.

Subsection 2.7.1—4B(2) requires an energy statement required by subsection (1) to be set out in the format prescribed by the table to subsection 2.7.1—4B(2).

New section 2.7.1—4C

New section 2.7.1—4C sets out requirements about how to express particular matters in an energy statement.

Subsection 2.7.1—4C(1) provides that the energy statement must clearly indicate that any average quantities set out in the statement are average quantities.

Subsection 2.7.1—4C(2) permits the word ‘package’, in an energy statement, to be replaced by the word ‘can’, ‘bottle’ or any other word or words that accurately describe the package containing the *prescribed beverage*.

Subsection 2.7.1—4C(3) requires the *average energy content* in an energy statement to be expressed to not more than 3 significant figures.

Subsection 2.7.1—4C(4) provides that if the *average energy content* per serving or 100 mL of a *prescribed beverage* is less than 40 kJ, that *average energy content* may be expressed in the energy statement as ‘LESS THAN 40 kJ’.

New section 2.7.1—4D

New section 2.7.1—4D sets out provisions related to percentage daily intake information in an energy statement.

Subsection 2.7.1—4D(1) permits information relating to percentage daily intake of energy to be included in an energy statement. Therefore, the inclusion of such information in an energy statement would be voluntary.

Subsection 2.7.1—4D(2) provides that if information relating to percentage daily intake of energy is included in an energy statement, the statement must include:

- the percentage daily intake of energy per serving of a *prescribed beverage* calculated using 8700 kJ as the reference value (see paragraph 2.7.1—4D(2)(a)); and
- either of the following statements (see paragraph 2.7.1—4D(2)(b)):
 - ‘based on an average adult diet of 8700 kJ’, or
 - ‘Percentage daily intakes are based on an average adult diet of 8700 kJ’.

Subsection 2.7.1—4D(3) provides an example of an energy statement with percentage daily intake information for the purposes of subsection 2.7.1—4D(2).

8. Transitional arrangements

If the draft variation is approved and becomes a legislative instrument:

1. The above variations would commence or take effect on the date of gazettal of the

instrument (see clause 3 of the draft variation).

2. The stock-in-trade exemption provided by section 1.1.1—9 of Standard 1.1.1 would not apply to any of the above variations (see subclause 4(1) of the draft variation).
3. Clause 4 would provide two transitional arrangements:

First, there is a general transitional arrangement where during a three year transition period commencing on the date of gazettal of the instrument, a prescribed beverage may be sold if the beverage complies with either the Code as in force without the amendments made by the instrument; or the Code as amended by the instrument.

Second, there is a specific transitional arrangement where prescribed beverages packaged and labelled before the end of the transition period may be sold after the transition period without having to provide an energy content statement.

The intent of these transitional arrangements is to assist in minimising the costs of complying with the draft variation for industry while not unduly delaying exposure of the energy content statement to consumers.

Attachment C – List of participants from targeted consultations held in July 2022

Australia	New Zealand
ACT Health	Alcohol Healthwatch
Alcohol and Drug Foundation (ADF)	Brewers Association of New Zealand
Australian Brewers Association	Brewers Guild of New Zealand
Australian Chronic Disease Prevention Alliance and Cancer Council	Consumer New Zealand
Australian Distillers Association	Countdown
Australian Government Department of Health	Dietitians New Zealand
Australian Grape and Wine	Distilled Spirits Aotearoa New Zealand Inc
Campari Australia Pty Ltd	Foodstuffs New Zealand
Cancer Council New South Wales	Health Promotion Agency
Cancer Council Victoria	Lion New Zealand
Cancer Council Western Australia	New Zealand Alcohol Beverages Council
Cider Australia	New Zealand Winegrowers
Coca-Cola Europacific Partners Australia	New Zealand Alcohol Beverages Council
Coles Group Limited	New Zealand Ministry of Health
Consumers' Federation of Australia (CFA)	New Zealand Ministry of Primary Industries
Department of Agriculture, Fisheries and Forestry	Spirits New Zealand
Department of Health and Human Services Tasmania	
Department of Health and Human Services Victoria	
Diageo Australia	
Endeavour Group	
Foundation for Alcohol Research and Education	
Independent Brewers Association Australia	
Lion Australia	
National Alliance for Action on Alcohol (NAAA)	
New South Wales Food Authority	

New South Wales Ministry of Health	
Obesity Policy Coalition at Cancer Council Victoria	
Public Health Association of Australia	
Queensland Health	
South Australia Health	
Spirits and Cocktails Australia	
Tasmanian Government Department of Health	
The George Institute	
The Heart Foundation	
Victorian Health	
Western Australian Health	
Wine Australia	

Attachment D – List of participants from targeted industry consultation meeting held in June 2022

Australia	New Zealand
Australian Brewers Association	Alcohol Healthwatch
Australian Distillers Association	Brewers Association of New Zealand
Australian Grape and Wine	Brewers Guild of New Zealand
Independent Brewers Association	New Zealand Winegrowers
Spirits and Cocktails Australia	Spirits New Zealand and Distilled Spirits Aotearoa New Zealand Inc

Attachment E – Consideration of costs and benefits

1. Introduction

Proposal P1059 – Energy labelling on alcoholic beverages is considering amending the Australia New Zealand Food Standards Code (the Code) to require energy (kilojoule) labelling information on alcoholic beverages currently exempt from providing a nutrition information panel (NIP).

FSANZ has given consideration to the costs and benefits that may arise in relation to this proposal. This appendix provides an analysis of those costs and benefits to satisfy the requirements of section 59 of the FSANZ Act and the Regulatory Impact Analysis Guide of for Ministers' Meetings and National Standard Setting Bodies (the Regulatory Impact Guide) (OBPR, 2021). It is not attempting to replicate the content of a Consultation Regulatory Impact Statement (CRIS). Much of the content and the detail typically contained in a CRIS is contained in the Call for Submissions (CFS). This supporting document will adopt the general structure of a CRIS, but instead of restating the content of the CFS, will refer the reader to where further content is located.

The Office of Impact Analysis (OIA) has exempted FSANZ from the need to prepare a formal CRIS in relation to the regulatory change proposed (reference number OBPR22-02135). The OIA was satisfied that ongoing consultation has been undertaken over a prolonged period, and the options under consideration have been tested with relevant stakeholders and representative stakeholder views are known. However, a Decision RIS (DRIS) will be created for this proposal.

2. What is the problem?

Unless a packaged alcoholic beverage makes a permitted nutrition content or health claim it is exempt from the requirement to be labelled with a NIP. This is in contrast to most other packaged food and beverages which are required to provide a NIP with energy content (kilojoule and/or kilocalorie) information.

A lack of information and consistency in the presentation of energy labelling on alcoholic beverages prevents consumers from checking and comparing the energy content in a quick and convenient way, to make informed choices and potentially better manage health outcomes and/or their welfare more broadly. This is particularly relevant in the context of Australian and New Zealand dietary guidelines that recommend limiting alcohol intake to assist in managing body weight, and ministerial policy guidance indicating that Food Ministers expect food labels to provide adequate information to enable consumers to make informed food choices to support healthy dietary patterns recommended in the dietary guidelines. Please see Sections 1, 2 and 3 of the CFS for a full statement of the problem and context of proposed changes.

3. Why is Government Action Needed?

The availability of information such as energy content is foundational to an open and transparent food production system, and is a precondition for consumers to be able to make informed choices about the food and beverages they consume in support of dietary guidelines. It also provides a foundation for education and other health care initiatives to be developed and implemented in order to facilitate consumers' informed choice about their overall energy intake.

Producers typically provide information to consumers where the benefit (increased sales) is

greater than the cost. When the market does not provide full disclosure of relevant information to consumers on its own, it is a case of market failure (Sunstein 2018). The energy content of alcoholic beverages is likely to be seen as a negative attribute by many consumers and is therefore likely to be underprovided. Energy content information is of value to consumers (see Section 3.4.1 of the CFS) and may assist them in making an informed choice in line with their preferences and in a way that is more consistent with the recommendations of the Australian and New Zealand governments' dietary guidelines.

Excess energy consumption has a direct link to negative health outcomes for individuals as a result of chronic disease due to overweight and obesity. It also has negative consequences for the wider society as a result of medical and other costs. More details are provided in Section 2 of the CFS.

Establishing a direct causal relationship between a specific labelling change and a health outcome is challenging. Behaviour modification is considered to be a learning process, requiring sufficient information for people to make informed purchasing and consumption decisions. However, in a broader policy context the provision of energy content information on alcoholic beverages is enabling and supportive of broader health promotion and education activities. Therefore, the cumulative and additive impacts of this labelling are also considered.

4. What options are to be considered?

A number of regulatory and non-regulatory options were considered before a formal proposal was prepared. Preliminary work was undertaken to identify, analyse, consult on and refine these options (FSANZ 2021). As a result a number of options were discarded as part of the preliminary work because they were not seen as effective and/or feasible as other options. For completeness some of these are discussed below.

Two specific non-regulatory options and an additional regulatory option were considered and a determination was made that they were unlikely to address the problem as standalone options.

Education

Education alone would not address the problem, as the problem is the lack of consistent energy information being available to enable consumers' informed choice. Education would not change the fact that most packaged alcoholic beverages for sale in Australia and New Zealand do not currently provide energy content information on-label.

Although education could be targeted to improve consumer understanding of the energy content of alcoholic beverages, the impact of education on informed consumer choice would be limited if energy information was not consistently available. Consumers may not be able to easily use education to compare energy content between alcoholic beverages and with other foods at the time of making purchase and consumption decisions in the absence of energy information on-label. This may limit how meaningful and useful education is, particularly as education is also unlikely to reach all consumers and education may only be delivered at certain times or in certain settings.

Voluntary Code of Practice (CoP)

A voluntary CoP would not adequately address the problem of lack of energy content information on the label of alcoholic beverages. It would be inconsistent with the requirements for nutrition labelling on other packaged foods, and there was no support from

any stakeholder groups for this option. It would also share many of the same limitations of option 2 discussed below.

Digital linking to off-label, web-based information

Under this option, a digital link e.g. QR code on the label of alcoholic beverages would direct consumers to nutrition information provided online on industry websites.

Digital linking to off-label information would not provide consumers with easily accessible information at point of sale/consumption to enable them to make informed choices. It requires more cognitive effort to access the information and assumes consumers have the required technology. It may also be more difficult for enforcement agencies. This is also inconsistent with policy guidance which states the information must be 'easily accessed' (Section 2.3 of the CFS) and labelling requirements for other packaged foods.

This analysis considers three options to address the problem.

Option 1 - Maintain the status quo

In any consideration of changes to regulation, the status quo must be a part of FSANZ's assessment.

Under this option, there would be no changes to the Code and provision of energy content information for alcoholic beverages would remain the same, i.e., 'standardised alcoholic beverages' and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages would remain exempt from the requirement to be labelled with a NIP.

Provision of a NIP containing energy content information on a voluntary basis would still be permitted.

Option 2 - Permit energy content information to be provided voluntarily in a prescribed format

The Code would be amended to allow the voluntary provision of energy content information, in a prescribed format, on the label of most packaged 'standardised alcoholic beverages' and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages.

Provision of a NIP containing energy content information on a voluntary basis would still be permitted.

A NIP would still be required when permitted nutrition content and health claims are made.

Option 3 - Require energy content information to be provided in a prescribed format

The Code would be amended to require a mandatory declaration of energy content information, in a prescribed format, on the label of most packaged 'standardised alcoholic beverages' and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages.

Provision of a NIP containing energy content information on a voluntary basis would still be permitted and when provided would be exempt from providing energy content information in the prescribed format.

A NIP would still be required when permitted nutrition content and health claims are made.

5. What is the likely net benefit of each option?

The net benefit of the status quo option (option 1) by definition is zero as it involves no change. This would mean the legislative situation (as set out in Section 2.1 of the CFS) remains the same. The status quo is the option against which all other options are considered. If no other options are likely to achieve a net benefit option 1 would be the preferred option.

Permitting energy content information to be provided voluntarily in a prescribed format (option 2) could conceivably achieve some net benefits with the provision of some information. However, some wider consideration of whether it is a suitable option is initially required:

Voluntary compliance should be considered where:

- there is no strong public interest concern, in particular, no major public health and safety concerns;
- the problem is a low-risk event, of low impact or significance; and
- the problem can be fixed by the market itself. For example, there may be an incentive for individuals and groups to develop and comply with voluntary arrangements (such as industry survival or market advantage).

The likelihood of voluntary compliance being successful is increased if there is:

- a viable industry association;
- a cohesive industry with like-minded or motivated participants committed to achieving the goals;
- evidence that voluntary participation can work – effective sanctions and incentives can be applied, with low scope for the benefits being shared by the non-participants; and
- a cost advantage for tailor made solutions (OBPR, 2007).²⁴

Considering the above criteria there are a number of reasons why voluntary compliance should not be considered for this proposal.

There is a strong public interest in the provision of consistent energy content information on alcoholic beverages because of the potential costly health consequences of excess energy in an individual's diet that impact not only on that individual but the wider society. Consistent energy content information on alcoholic beverages is a precondition for consumers to be able to make informed choices about alcoholic beverage consumption in the context of their overall energy intake as well as providing a foundation for education and other healthcare initiatives to be developed. Inconsistent provision of energy information would constrain these outcomes by providing only partial information at the time of purchase and consumption and preventing comparison of the energy content of different alcohol beverage products and other foods.

The problem is also unlikely to be fixed by the market itself as there are strong incentives to not provide this information, especially where a product has a relatively higher energy content to similar products. Industry can already provide energy content information voluntarily i.e. producers can provide a NIP voluntarily, however most alcoholic beverages are not labelled with a NIP (see Section 3.3 of the CFS). The alcohol industry is very diverse, meaning there is variable industry association coverage and substantially different motivations across the industry. There is also evidence from international voluntary energy

²⁴ Criteria adapted from Office of Best Practice Regulation, *Best Practice Regulation Handbook* August 2007, 65 – whilst this is not the current guidance provided by the OBPR it still remains a useful in considering the appropriateness of voluntary compliance.

labelling schemes that sufficient coverage is unlikely to be achieved.²⁵

Therefore, whilst it is likely that there would be some net benefit under a voluntary approach, it is extremely hard to assess what that would be as the level of uptake is uncertain, and may differ between alcoholic beverage products. However, what is clear is the additional cumulative benefits of having all alcoholic beverages labelled with energy content information consistently. That is the capacity to easily compare all products against each other and consumers being able to better develop the habit of using this information routinely in order to make informed choices about their alcohol purchase and consumption.

Option 3 requires energy content information to be provided in a prescribed format on alcoholic beverage labels. There are a range of costs and benefits that are potentially associated with this regulatory intervention shown table 1 below.

Table 1: Impact on different social groups arising from option 3

Social group	Notes on impacts
Alcoholic beverage producers	Cost of changing labels.
Alcoholic beverage Consumers	<p>Potential positive health outcomes as a result of being able to better manage energy intake.</p> <p>Potential welfare gains by maintaining a similar energy intake but instead selecting a preferred basket of products to achieve the same energy intake.</p> <p>An existence value possibly exists in relation to labelling regardless of whether consumers use or intend to use it, with the majority of consumers valuing energy labelling on alcoholic beverages (see Section 3.4.1 in the CFS).</p> <p>Potential welfare loss if consumer still consumes the same alcoholic beverage products but now feels guilty and thus gets less enjoyment. However, there are also potential welfare gains for consumers who consume a product that has less energy content to another and feel virtuous as a result.</p>
Government	<p>Some small costs to implement and enforce new requirements. Enforcement officers would need to be made aware of the new requirements.</p> <p>Potential savings in health care expenditure.</p>

As mentioned above, quantifying benefits for an intervention like this does present some challenges. Consumers presented with energy content information could use it in more than one way, meaning simply valuing the health benefits could under or over value the change to consumers. Consumers could read the information and make a decision to reduce their energy consumption and improve their health outcomes. Alternatively, they could maintain their present energy consumption but do it with an alternative mix of food and drink that increases their utility. It could also have an existence value if they value an open and transparent food production system, and the ability to make informed choices about alcoholic beverage consumption in respect of energy content. The provision of energy content information could conceivably also result in a loss in utility for some consumers if they still drink as much as they were originally going to but now feel guilty about it or have a positive value if they feel virtuous as a result of their choice. Additionally, the benefits of this

²⁵ A recent EU study (Sarasa Renedo 2022) that looked at [the take-up of voluntary energy labelling on alcohol](#) on 8,838 products across the 27 member countries found that only up to 51% of beer, 42% of ciders, 39% of RTDs, 21% of spirits, and less than 2.5% of wine products had energy information present on the label.

intervention are likely to result in additional cumulative and additive impacts as it is enabling and supportive of broader health promotion and education activities.

As a result of these potential complexities, for the purpose of this analysis, a break-even analysis of labelling change costs against potential health costs has been chosen. This approach will give decision makers guidance on the magnitude of the behaviour change needed to achieve a net benefit.

A series of questions will also be asked seeking further comment from stakeholders to assist in the preparation of the DRIS.

Costs

In 2021, FSANZ updated its model of the costs of changing labels on packaged alcoholic beverages with greater than 1.15% alcohol by volume (ABV). Estimated label change costs are detailed in Table 2 below. These cost estimates are not final and may change, including taking account of any evidence-based feedback from stakeholders.

Estimated costs are per Stock Keeping Unit (SKU). An SKU covers all containers with the same unique package type, shape, size, brand, contents, and vintage. For instance:

- all 750 mL bottles of the same red merlot wine with the same label, produced by the same company with the same brand in the same year (different SKU to a merlot wine produced by the same company in the same year but of a different size at 375mL); and all 330 mL cans of the same lager, of the same shape, produced by the same company with the same label.

Our modelling provides the estimates (indexed to 2022 costs) outlined in table 2 below.

Table 2: Labelling change costs for alcoholic beverages

Sub-component	Bottle	Can	Cask	All containers Weighted Average
Administration activities	32	259	1,641	52
Label redesign	392	12,382	178	795
Develop proof and film/files, engrave plates/cylinders and colour match	2,794	4,683	303	2,806
Review label sample	223	259	178	221
Total Costs	3,441	17,584	2,301	3,874

FSANZ currently estimates there to be 71,269 SKUs of packaged alcoholic beverages in the Australian and New Zealand markets. Of those total SKUs, FSANZ estimates 4,225 SKUs currently include a permitted nutrition content claim and would not be affected by this proposal. Therefore, FSANZ estimates 67,044 SKUs may be affected by this proposal. The above figures for all SKU's are a weighted average, meaning that because bottles comprise the bulk of all alcohol beverage SKUs in Australia and New Zealand, the weighted average cost across all SKUs is closest to the estimate for a bottle. The total cost of this labelling change is therefore estimated to be a one-off cost of \$260 million.

Benefits

In terms of a potential benefit of this intervention, overweight and obesity can cause a variety of chronic illnesses and early deaths. Consumers may, in the context of their total dietary intake, be better able to control and reduce their overall energy intake if there is clear and consistent energy content information on the label of alcoholic beverages. Currently, consumers have no means of determining the contribution that alcoholic beverages make to their overall energy intake, which hampers their ability to make informed choices about their alcohol consumption in support of dietary guidelines. Greater ability to make consumption decisions in support of the dietary guidelines may help to reduce illnesses and deaths caused by being overweight or obese, especially in the longer-term. A large number of people may benefit with potentially large ongoing savings to health care costs.

The most comprehensive study in Australia of the cost of obesity²⁶ estimated its cost at \$8.6billion AUD (PWC 2015). Adjusting their estimates for population growth and inflation provides an estimate of \$12.7billion AUD. A more recent study in New Zealand estimates the cost of excess weight²⁷ between \$4billion and \$6billion. Therefore, a central estimate is \$5billion AUD (Barton and Love 2021) – again, adjusting for inflation and population growth this estimate has been adjusted upwards to \$5.2billion AUD.

²⁶ PWC's report indicates obesity is a chronic disease defined as 'a condition of abnormal or excessive fat accumulation in adipose tissue, to the extent that health may be impaired'. While there are a number of methods to identify obesity, the body mass index (BMI) provides the most widely used, albeit crude, way to measure population-level obesity.

²⁷ Barton and Love's report indicates 'we have included overweight in the estimates rather than just obesity due to the definitions used and mix of approaches found in the literature. We refer to excess weight which captures overweight and obesity and is defined as high Body Mass Index (BMI).

Acknowledging the difference in methodology, exactly what is being measured and the time between when both studies were done, a somewhat crude estimate of the combined cost across both countries has been developed by adding both inflation and population adjusted figures together to get an estimate of \$17.9billion AUD. Further evidence will be sought for inclusion in the DRIS around these costs as challenges exist in getting an appropriate cost for individuals being overweight rather than obese from readily available literature for Australia. An attempt will also be made to appropriately model the ongoing growth of the number of people who are becoming overweight and obese into these estimates.

Undertaking a break-even analysis over a ten-year period using a 7% discount rate, only a 0.19% reduction in the cost of overweight and obesity is needed to offset the potential labelling change cost. Given 80% of Australian and New Zealand adults consume alcoholic beverages, and on the days they do, 16% of total energy intake is contributed by alcoholic beverages (see Section 3 of the CFS), it appears that a change of this magnitude is plausible. The percentage change in the cost of overweight and obesity that needs to be avoided will be lower when more complex modelling is applied.

6. Who was consulted and how was their feedback incorporated?

Extensive targeted consultation has been undertaken as part of this process. Please see Section 4 of the CFS for full details.

7. What is the best option from those considered?

Option 3 is the preferred option as it is the one that is likely to have maximum efficacy. A consistent, clear and mandated approach to energy labelling on alcoholic beverages is also the preferred approach by most stakeholders and provides regulatory certainty for industry.

Undertaking a break-even analysis over a ten-year period using a 7% discount rate, only a 0.19% reduction in the cost of overweight and obesity is needed to offset the potential labelling change cost. It does not seem unreasonable to assume that this option could contribute to a change of this size especially when considered in the context of the broader policy environment. The provision of energy information on alcoholic beverages is a precondition for informed consumer choice about alcohol consumption in the context of their overall energy intake, and therefore contributes to broader preventative health measures that educate consumers about managing energy balance. The provision of energy labelling is also likely to have value (or benefit) that extends beyond any direct health benefits, as evidenced by the majority of consumers both wanting and valuing this information.

8. How will the chosen option be implemented and evaluated?

Implementation and enforcement of the variation to the Code would be the responsibility of the Australian state and territory and New Zealand food regulation agencies. FSANZ provides a transition period from the date variations are gazetted and registered as a legislative instrument. This period gives industry and government authorities time to put measures in place to meet the requirements. For this variation, a three year transition period with a stock-in-trade exemption is being proposed (see Section 7.1.1 of the CFS). Australian states and territories and the New Zealand Government are responsible for any review of implementation and compliance. They are also typically responsible for initiating any substantive reviews of the Code through the Food Ministers' Meeting.

Questions

1. Do you agree with the estimates for the average cost of labelling change and the number of Stock Keeping Units (SKUs) that would need to be changed? Please provide evidence to support your position.
2. Do you think the estimated average cost of labelling change is representative of all products within scope of this application?
3. Do you have any views on whether the estimates we have used for the costs of overweight and obesity are appropriate? If you have alternative studies you would like us to consider can you please provide references to them.
4. Do you agree with the use of break-even analysis in this situation? If not can you provide alternative evidence about potential causal links between labelling change and potential health benefits?
5. Are there any other material costs and benefits that you believe should be taken into account in this analysis?

9. References

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