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Dear Mr Staveley

## **Food Labelling Review - Targeted Industry Stakeholder Engagement**

### **About the submitter**

The Distilled Spirits Association of New Zealand (the Association) is a national trade organisation which represents New Zealand's leading producers, brand owners, importers and exporters of premium spirits (e.g. Brandy, Whisky, Rum, Gin, Vodka) and spirit-based drinks.

The Association's members include: Anchor Ethanol Ltd, Bacardi Martini Asia Pacific Ltd, Beam Global (NZ) Ltd, Brown Forman Beverages Worldwide, Diageo (New Zealand) Ltd, EuroVintage Ltd, Federal\*Geo Ltd, Hancocks Ltd, Lion, Moët Hennessy NZ Ltd, Pernod Ricard New Zealand Ltd, and The Rum Company (New Zealand) Ltd.

The Association appreciates the invitation to participate in the Food Labelling Review - Targeted Industry Stakeholder Engagement process.

### **Introductory comments**

The Association is supportive of proposals that provide consumers with accurate and helpful information to assist informed choice especially where there are clear health and safety risks and demonstrated effectiveness.

To that end, we believe the current alcohol beverages labelling regime is adequate and sufficient to provide consumers with enough information to make informed decisions. Importantly, the current requirements do not need to deviate further away from applicable international standards or the codex Alimentarius standards.

In the event of more proscriptive labelling regulations it will of course be incumbent for regulators to be certain first, that the ensuing proposals are proportionate, well targeted, that

they will have the desired outcome or would be effective in changing behaviour, that they are supported by independent scientific evidence of the highest quality and that there is numerically significant consumer demand. Underpinning this, there should be a clear enunciation of the problem that is being addressed. In applying these principles, the Review Panel's recommendations look like solutions in search of a problem.

Concerning the "evidence", the Alcohol Advisory Council (ALAC), the New Zealand Government's chief advisor on alcohol policy, acknowledges that "there is a lack of evidence on the efficacy of health advisory labels for changing behaviour"<sup>1</sup>.

Additionally, we would note that the World Health Organisation has said that alcohol beverages can be consumed safely in moderation. Therefore it would be wrong to suggest that simplistic and generic alcohol warning messages have applicability.

Regarding the actual harm of alcohol consumption while pregnant and or the implied conditions such as foetal alcohol syndrome (FAS), we would point out that there are no firm figures or other statistical data, collected by the Ministry of Health or ALAC, on its incidence in New Zealand upon which to rely. To proceed further the issue needs to be quantified with good empirical New Zealand data.

### **Domestic precedent**

The Association would like to call your attention to the fact that within New Zealand there has already been much public debate and analysis around mandatory warning statements on alcohol beverage packaging.

There have been two notable cases, which were both rejected by Parliament, including the 1990 Private Member's Bill, sponsored by Joy McLaughlan MP, that required that liquor advertisements be accompanied by a set of example messages such as: "*Alcohol during pregnancy can cause mental retardation and other birth defects*", "*Drinking this product, which contains alcohol, impairs your ability to drive a car or operate machinery*", "*This product contains alcohol and is particularly hazardous in combination with other drugs*", "*The consumption of this product, which contains alcohol, can increase the risk of developing hypertension, liver disease and cancer*" and "*Alcohol is a drug and may be addictive*."

Also rejected by Parliament was the 1999 Supplementary Order Paper (SOP) to the Sale of Liquor Amendment Act sponsored by Member Dianne Yates MP, proposing labelling that stated: "*Women should not drink liquor during pregnancy because of the risk of birth defects*" and "*Consumption of liquor impairs your ability to drive a car or operate machinery, and may cause health problems*".

The Association urges officials to particularly note the important New Zealand parliamentary decisions taken on mandatory health messages and labelling.

### **International precedent**

At an international level various jurisdictions, namely the European Union are also in various stages of reviewing their own labelling standards.

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<sup>1</sup> "Industry labelling good first step", ALAC 13/7/11

Of direct relevance the Association notes that the European Parliament has recently rejected calls for health warning labels to be placed on alcohol beverage containers (especially concerning pregnant women).

And in December 2010 the Council of the EU agreed to exempt certain alcoholic beverages from nutrition labelling rules as well as from the indication of the list of ingredients.

On the above basis it seems to us that New Zealand (and Australia) should not stand alone but take the guidance of our leading trade partners' markets (given they supply more than two-thirds of our spirits and liqueur beverage volumes) and use their experience as a guide in considering any new labelling requirements in this area. In the interests of promoting international consistency, we urge New Zealand officials to take into account the scientific evidence reviewed by the respective European bodies as a guide to inform their decision making.

### **Trade impediment**

With a highly competitive global economy we would encourage MAF and other relevant officials to consider carefully the possible international trade implications with any new mandatory labelling proposals especially where other countries have not specified matching requirements. Specifically, new nutrition labelling requirements could adversely affect New Zealand's international trade relationships and be viewed as a technical barrier to trade under the World Trade Organization's TBT rules or be in breach of legal obligations under international agreements.

For example in relation to the:

Agreement on Technical Barriers to Trade (TBT)

- Article 2.2 on unnecessary obstacles to trade (more restrictive than necessary)
- Articles 2.4 and 2.9 on international standards as basis for building trade regulations

Agreement on Sanitary and Phytosanitary (SPS) measures:

- Article 2.2 on the necessary nature of the measure and sufficient scientific evidence
- Article 5.1 on the necessity of an appropriate risk assessment

We trust that officials will assess consistency with these international obligations in its considerations.

Finally, new mandatory labelling requirements could impose significant additional costs and administrative burden on exporters. In turn, this could add to the perception that New Zealand is a difficult market to invest in which could result in a reluctance for exporters to service the New Zealand market. This outcome could be regarded as not being in the public interest.

The Association therefore asks that any new measures be based on a scientific assessment of risk and should not unjustifiably impede trade.

Turning to each of the recommendations and discussion questions affecting alcohol beverages:

## WARNING LABELS

**Recommendation 24:** That generic alcohol warning messages be placed on alcohol labels but only as an element of a comprehensive multifaceted national campaign targeting the public health problems of alcohol in society e.g. *‘Drinking to excess is a danger to yourself and those around you’* and *‘Alcohol can damage your health’*.

**Recommendation 25:** That a suitably worded warning message about the risks of consuming alcohol while pregnant be mandated on individual containers of alcoholic beverages and at the point of sale (i.e. bars, etc) for unpackaged alcoholic beverages.

### Discussion Questions:

**1. If the recommendations were agreed to how could they be implemented, and what are the likely outcomes?**

Recommendation 24 talks of a “comprehensive multifaceted national campaign”, which appears reasonable.

However, no detail is provided as to what this constitutes exactly. To the best of our knowledge, we are not aware of any existing campaign in New Zealand that could be utilised.

Moreover, the recommendation would apply to both New Zealand and Australian jurisdictions which then suggest both Governments would have a responsibility to both fund and to design a public education campaign that was appropriate and consistent to both markets. The practical problem then exists in developing the comprehensive multifaceted national campaign. There cannot be different campaigns as labelling laws are the same for both countries.

In the end, it is important to recall that the report *“Labelling Logic”* from the Chair of the Review Panel, Dr Neal Blewett, found that *“Research on the effects of alcohol warnings shows that while awareness and understanding increases, generally labelling does not of itself result in behaviour change”* (4.73).

**2. To what extent do existing industry initiatives comprising voluntary health messages address (or partly address) the Review Panel’s proposal for generic alcohol warning messages and/or warning messages aimed at pregnant women?**

MAF will be aware of the recent DrinkWise Australia<sup>2</sup> initiative, announced in July 2011, to provide a set voluntary health messages, including the statement: *“It is safest not to drink while pregnant”* (an alternative to text is provided via a pictogram).

The voluntary information, implemented after extensive research, is a clear signal that industry members are socially responsible and are proactive to assist consumers reflect on their drinking behaviour. In fact, the drinks industry has a long record of programs and messages that engage with the consumer and encourages responsible consumption.

The voluntary industry initiative goes beyond messaging and as part of a wider educational programme links to more detailed information, such as the cause of harm, the health benefits of moderate consumption and other more complete sources of advice carried by official agencies and others.

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<sup>2</sup> The membership of DrinkWise Australia has links to majority of Association member companies

Like all labelling initiatives it will take time to implement and evaluate the results.

Finally, it is our view that the current voluntary information initiative is a credible alternative to the Review Panel proposal and achieves an equivalent outcome.

### **3. What issues need to be explored from an industry/public health perspective when considering these recommendations?**

At the outset it is important for any proposed warning message to take into account the fact that the majority of alcohol beverage consumption is neither dangerous nor damaging.

It is worth pointing out that when drinking is in conjunction with food and in a controlled environment or a positive social setting there is unlikely to be a problem.

Concerning the example statement: '*Alcohol can damage your health*' we would view this as inappropriate as it implies that any amount of alcohol and consumption per se can damage health. Further, the claimed effect is not sufficiently defined to be of any use to consumers.

Partial or incomplete information about the health effects of alcohol consumption is clearly unfair and unhelpful. In the interests of consistency and balance, should this recommendation be progressed, consideration should be given to mandating statements which recognise the scientific evidence which shows that moderate and responsible alcohol beverage consumption can confer certain health benefits and be part of an enjoyable lifestyle.

We would agree that any phraseology must be part of a targeted national campaign. Bald messages can't be used in isolation as they are too simplistic and unreasonable to address a complicated issue.

We note that there is an assumption that awareness amongst pregnant women is low or nonexistent around FAS and related issues and that messaging on labels would ameliorate this. In fact, knowledge and awareness levels are already very high.

The most recent national figures indicate that 82% of females stopped drinking during pregnancy and 79% of females who were planning a pregnancy stopped drinking<sup>3</sup>. This suggests that mandatory health warnings may not be necessary because of the overwhelming majority of pregnant women are aware and have changed their behaviour accordingly. A small minority either do not know the risks or choose to ignore medical advice.

### **4. What other regulatory requirements relevant to the sale of alcohol need to be taken into account?**

Alcohol beverages are already a highly regulated product in New Zealand (and Australia). Its production, sale and advertising are governed by strict rules. These rules already differentiate from other foods, and provide a much more powerful signal as to the context in which it should be consumed and by whom than the addition of extra labelling.

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<sup>3</sup> Alcohol Use in New Zealand Analysis of the 2004 NZ Health Behaviours Survey – Alcohol Use. Public Health Intelligence Occasional Bulletin No 40, March 2007

Standard drinks labelling is the most useful piece of information on alcohol beverage containers to assist consumers to make informed drinking choices. This is currently poorly understood. Rather than making labels more confusing to the consumer, a better response would be to invest in educational campaigns to assist consumers in using standard drinks to guide their drinking decisions.

**5. What implementation considerations need to be taken into account in relation to the Review Panel’s proposal for warning messages targeting pregnant women to be provided at point of sale for unpackaged alcoholic beverages?**

It is not necessarily clear that it is reasonable that venues such as bars, restaurants, conveyances, clubs and other on-licensed premises that sell unpackaged alcohol beverages should post warning messages for pregnant women.

From a practical perspective there is already a plethora of signage at many point of sales and a warning message for pregnant women would be probably be lost in the clutter. Cluttered signage is an unread sign and an unread sign offers no additional information. Further, PoS signage say at the bar or at the till would not be of any help to pregnant women when it does not have direct visibility. In many situations unpackaged alcohol beverages are generally ordered and consumed from a position not in close proximity to the display in the bar or service area.

Most alcohol (around 70%) is consumed away from licensed premises; that is in private venues or in homes. It would appear licensed venues are being unfairly targeted in this regard.

**6. Can you suggest alternative solutions to the problems that the recommendations seek to address?**

Recent New Zealand research<sup>4</sup> has reported that light to moderate levels of alcohol consumption may *confer certain health benefits* for some drinkers.

This finding has been also been confirmed internationally, such as by the US Department of Health and Human Services official dietary recommendations (released February 2011) which state: “Alcohol consumption may have beneficial effects when consumed in moderation. Strong evidence from observational studies has shown that moderate alcohol consumption is associated with a lower risk of cardiovascular disease. “Moderate alcohol consumption also is associated with reduced risk of all-cause mortality among middle-aged and older adults and may help to keep cognitive function intact with age”.

Consistent with this is local official guidance issued by ALAC which recommends that consumption per occasion up to a maximum of 6 drinks for men and 4 for women is not hazardous drinking.

It is clear to us that mandatory alcohol warning messages would add little value if the statements lack credibility and or contradict the everyday experience of consumers. As an unintended consequence, moderate and responsible consumers may actually resent this kind

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<sup>4</sup> “Alcohol consumption and its contribution to the burden of coronary heart disease in middle-aged and older New Zealanders: a population-based case-control study”, NZMJ 12 March 2004, Vol 117, No 1190

of state intervention and such a message may actually encourage consumption by those looking for risky activity.

Other approach to warning messages that may have much more influence and bring about behaviour change might include:

- a) educative campaigns that urge moderate and responsible consumption and
- b) advisories that direct consumers to more detailed information held at official websites e.g. the ALAC website for safe drinking guidelines<sup>5</sup> or the Ministry of Transport for drink driving alcohol threshold information and information at other relevant private sector sites or resources.

As an example, we note the clear success of the MoT's mass media public education campaigns surrounding drinking and driving has been achieved without mandatory messages on beverage containers. ALAC's culture change program "*it is not the drink, but how we are drinking that is the problem*" is another successful example of an initiative without warning messages.

## **NUTRITION LABELLING EXEMPTIONS**

**Recommendation 26:** That energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products.

**Recommendation 27:** That drinks that are mixtures of alcohol and other beverages comply with all general nutrition labelling requirements, including disclosure of a mandatory Nutrition Information Panel (NIP).

**Recommendation 55:** That any beverages containing alcohol be exempt from nutrition-related front-of-pack labelling requirements.

## **Discussion Questions**

### **1. If these recommendations were accepted, how could they be implemented, and what are the likely outcomes?**

The Association believes that light to moderate drinkers enjoy alcohol beverages as part of a normal diet and individuals are well aware that excessive consumption may play a part in weight control. Many may not consider that energy statements to be a priority nor is it a major consideration in alcohol consumption for most consumers.

In terms of possible outcomes it would be wrong if any face value information was misinterpreted by some consumers that alcohol beverages with low energy values, for example, were somehow "healthier" or "beneficial" than other beverage types and wrongly encourage consumption. There is approximately 7 calories per gram of alcohol. Therefore, one standard drink of VODKA or GIN (10grams of alcohol) contains about 70 calories. A standard drink is not excessively high compared with a hamburger or fizzy drink, for example.

As indicated above, officials should anticipate that calorie representations on labels could potentially be misunderstood and used by some consumers in a comparative manner and a

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<sup>5</sup> ALAC states that non-hazardous drinking for an adult male is up to 6 standard drinks per occasion and 4 standard drinks for females. Of course it is accepted that some people should not consume any alcohol beverage at all

beverage with a lower value could be interpreted as being more healthy thus encouraging more of its consumption.

In these examples, energy content information could actually undermine other public health objectives.

For most people alcohol beverages are not consumed for nutritional purposes and mandatory statements are therefore not necessary or relevant. The recommendations should therefore not be accepted.

## **2. What issues need to be explored from an industry/public health perspective when considering these recommendations?**

A central long time guiding principle for the Association is that all categories of alcohol beverages should be treated consistently.

The logic for this is that on a standard drink basis they contain the same amount of alcohol, they are consumed in much the same venues, on similar occasions and are sold alongside each other in retail and on-licence premises. There is no objective reason why any requirement to label energy content should apply to some alcohol beverage types but not others.

Therefore the proposed recommendation should actually exempt “mixtures of alcohol beverages” and treat them on the same basis as “standardised alcohol beverages”.

As an important precedent we note, for example the recommendations around the proposed multiple traffic lights system, all alcohol beverages including “mixtures of alcohol beverages” are exempted. For consistency and to achieve a level playing field with standardised alcohol beverages, “mixtures of alcohol beverages” should be exempted from declaration of energy content and mandatory NIP.

In the event that nutritional information panels were to be mandatory for all alcohol beverages then it would be important that safe drinking consumption guideline information from ALAC and a reminder to consumers of the well-known benefits associated with light to moderate consumption be recognised. Provision of this messaging would be in the interests of a healthy diet and lifestyle.

## **3. To what extent is there support for the declaration of nutrition information on a mandatory basis on the labels of alcoholic beverages, including the declaration of energy content?**

We have not detected any noticeable level of drinks industry or significant average consumer interest for this information.

As referenced elsewhere in this paper, consumers do not consume alcohol beverages in the context of health or their diet, but for lifestyle reasons.

Accordingly, energy content information is not relevant because consumers do not purchase and consume alcohol beverages for their energy content.

Looking for international guidance we note that the Review Panel's recommendation for a energy statement system runs counter to the position in the European Union. MAF will be aware that in the context of the discussions on the proposed new EU food labelling Regulation, the European Parliament's Environment, Public Health and Food Safety Committee (ENVI) (19 April 2011) voted to reject a proposed requirement that alcohol beverages should provide energy information. In this regard, we urge MAF officials to take this outcome into account.

#### **4. What reasons might there be to exclude alcoholic beverages from the requirement to declare nutrition information?**

There is no point listing protein, fat, salt, vitamin or mineral information in alcohol beverages as in the case of spirits they contain none or very little of these elements.

A mandatory NIP on alcohol beverages could be interpreted by some consumers that there are positive nutritional benefits from alcohol beverages. A NIP implies that alcohol beverages are healthy and this may not be the intention the Review Panel.

It is unlikely that consumers of alcohol beverages would be confused by the omission of the information on their favourite beverage. Further this type of information is irrelevant for alcohol beverages and a NIP would make little or no difference to a consumer's alcohol beverage choice.

#### **5. To what extent is there support for the exemption of alcoholic beverages from any nutrition-related front of pack labelling scheme?**

Simplistic FoPL which may summarise nutrition related information via a multiple traffic light system could confuse and mislead consumers. In terms of alcohol beverages the system may "green" light spirits, signalling them as being "healthier", or show "amber" as being "OK", as fat, salt and added sugar are generally not present. This highlighting, potentially encouraging inappropriate consumption, a significant consequence, may not be the intention on the part of public policymakers.

The Association has not detected any need or drinks industry support nor are we aware of any independent research calling for nutrition related FoPL from the average consumer. Neither is there any convincing evidence that shows such labelling would provide useful and behaviour changing information to drinkers.

Looking to overseas, we note that none of New Zealand's major trading partners have mandatory nutrition related FoPL for alcohol beverages. For example, the EU and the United States do not impose any mandatory nutrition labelling for spirits. New Zealand should not get out of step with our trade partners in this area.

We therefore strongly concur with the Review Panel recommendation that alcohol beverages be exempted from nutrition related FoPL requirements.

#### **6. Can you suggest alternative solutions to the problems that the recommendations seek to address?**

Those consumers concerned about energy or nutrition issues will already know or have looked up how many calories and what nutrients are contained in their beverage choice before purchase or consumption.

An alternative approach to energy and nutrition labelling may be for authorities to convince consumers to prioritise health in general when they are making all food and alcohol beverage drink choices.

The Association appreciates the opportunity to provide comment on the Review Panel's labelling recommendations regarding alcohol beverages and we stand ready to assist MAF officials going forward.

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