

Australian Beverages Council

Submission to FSANZ Proposal P1056
Caffeine Review – 1st Call for Submissions

13th February 2023



Australian
Beverages 

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About the Australian Beverages Council Limited

The Australian Beverages Council Limited (ABCL) is the leading peak body representing the non-alcoholic beverages industry, and the only dedicated sector representative of its kind in Australia.

The ABCL represents approximately 95 per cent of the non-alcoholic beverages industry's production volume and our member companies are some of Australia's largest drinks manufacturers. The ABCL also represents many micro, small and medium-sized companies across the country. Collectively, the ABCL's members contribute more than \$7 billion to the Australian economy and employ over 50,000 people across the nation. The industry also pays \$1.2 billion in taxation per annum along its supply chain, and for every direct employee in the beverages manufacturing industry, there are 4.9 jobs required elsewhere in the economy to produce and retail beverages.

The ABCL strives to advance the industry as a whole, as well as successfully represent the range of beverages produced by members. These include carbonated soft drinks, energy drinks, sports and electrolyte drinks, frozen drinks, bottled and packaged waters, fruit juice and fruit drinks, cordials, iced teas, ready-to-drink coffees, kombucha, flavoured milk products and flavoured plant milks.

The ABCL advocates on issues such as portion sizes, front-of-pack and nutritional labelling, responsible industry marketing and advertising, and canteen guidelines, among others. Our members are responsible and responsive, listening to consumers and innovating to stand by a commitment to provide and promote more informed choice to Australians that support a healthy and balanced diet.

1. Introduction

The ABCL appreciates the opportunity to provide comments to Food Standards Australia New Zealand (FSANZ) on its 1st Call for Submissions of Proposal P1056 - *Caffeine Review*.

ABCL members produce a range of non-alcoholic drinks, some of which avail of the current provisions in the Food Standards Code (the Code) to include caffeine as a food additive (cola-type drinks) or as an ingredient for a physiological purpose (formulated caffeinated beverages). The existing permissions to regulate caffeine in long-standardised foods are one of the most stringent in the world, particularly for formulated caffeinated beverages (FCBs). We are proud of the continued adherence to these regulations by the non-alcoholic beverages industry, in addition to our [industry commitments](#) on the responsible sale and promotion of FCBs.

The ABCL acknowledges that P1056 Caffeine Review was raised following the completion of Urgent Proposal P1054 – Pure and highly concentrated caffeine products. We understand and agree with FSANZ's intent to not review or amend the current caffeine permissions in the Code that pertain to cola type drinks and FCBs under this proposal.

We also are aware of the ongoing work to review Standard 2.9.4 – Formulated Supplementary Sports Foods (FSSF) under Proposal P1010 and continue to engage with FSANZ on this proposal. We agree with FSANZ's approach to include its considerations of provisions for caffeine in FSSF in this proposal as part of its risk management options for caffeine in the food supply.

2. ABCL positions on the proposed regulatory measures

In review of the risk management options proposed in the P1056 consultation paper and FSANZ's recommendation, the ABCL supports the proposed regulatory measures under **Option 3 – Hybrid mix of regulatory and non-regulatory approaches**. Further details on our positions and recommended considerations are provided below.

2.1 Caffeine permission in Formulated Supplementary Sports Foods (FSSF)

The ABCL supports FSANZ's proposal to explicitly permit in FSSF, total caffeine up to 200 mg in a one-day quantity.

- **200 mg of caffeine in a one-day quantity**

As included in the ABCL's submission to the 'call for data' under Proposal P1010 in September 2021, the consistent ergogenic effect of caffeine on sports performance is well-documented and

confirmed by many international sports nutrition societies as a beneficial pre-exercise supplement^{1,2,3}.

The ABCL supports the one-day quantity of up to 200 mg caffeine as an appropriate level of caffeine. As noted in FSANZ's consultation paper, similar recommendations are made by international sporting bodies confirming it as a safe permissible level that also supports industry innovation.

- **Minimum level for caffeine in FSSF**

The ABCL supports FSANZ proposal to not require a minimum amount of caffeine in FSSF that contain caffeine as it is consistent with overseas permissions.

- **Advisory statements on labels of FSSF containing caffeine**

The ABCL supports FSANZ's proposal for FSSF containing caffeine to be required to display an advisory statement using words to the effect of 'contains caffeine' on the label. We also support the wording of this advisory statement to not be prescribed to allow some flexibility for manufacturers, particularly for brands with smaller sized packaging.

- **Declaration of amount of caffeine and one-day quantity**

The ABCL supports the proposed new requirement to declare the average quantity of caffeine present in any FSSF containing caffeine, on a per serving and per unit quantity (100 g or 100 mL basis), irrespective of the source or amount.

- **Other advisory or warning statements**

The ABCL agrees with FSANZ's proposed approach to not require a warning or advisory statement for FSSF containing caffeine specifically for lactating women and individuals sensitive to caffeine. We also support non-regulatory approaches via consumer education to provide these subpopulation groups any additional information on the safety of these foods containing caffeine.

- **Nutrition content and health claims**

The ABCL supports FSANZ's proposal to not amend the current provisions relating to nutrition content claims about caffeine, or health claim permissions existing in Standard 2.9.4 as it relates to FSSF containing caffeine. We do however believe there is strong evidence associated with caffeine and enhanced sports or exercise performance that could substantiate a health claim for FSSF containing caffeine. We agree with FSANZ's approach to review the regulation of such health claims for FSSF under Proposal P1010 and will provide comments to FSANZ in that regard.

¹ International society of sports nutrition position stand: caffeine and exercise performance J Int Soc Sports Nutr.2021 Jan 2;18(1):1

² Position of the Academy of Nutrition and Dietetics, Dietitians of Canada, and the American College of Sports Medicine: Nutrition and Athletic Performance (2016). Vol 116 (3).

³ Caffeine-Sports Dietitians Australia (SDA) <https://www.sportsdietitians.com.au/factsheets/supplements/caffeine/> Accessed online on 8 September 2021.

2.2 An express prohibition on the addition of caffeine to other foods for retail sale, other than those that have a specific permission

The ABCL supports the prohibition of caffeine in other foods, other than those with specific permissions i.e., cola-type drinks, FCBs and as proposed for FSSF.

2.3 Removal of the P1054 variation

The ABCL supports the removal of the P1054 variation.

3. ABCL response to consultation paper questions

To assist FSANZ in its review, the ABCL has consulted with its members to provide a response to each of the questions listed in the consultation paper below.

Question 1: Do you consider there are risks to consumers from caffeine in the current market environment, under the current regulations?

As FSANZ's dietary intake assessment indicated, estimated usual intakes for populations groups did not show overconsumption of caffeine in children and adolescents and only a small percentage (up to 6 per cent) of adults who had exceeded the recommended maximum level of 400 mg per day.

The ABCL believes the current provisions in the Code relevant to caffeine permissions in cola-type drinks and FCBs are appropriate for the safe consumption of caffeine from these beverages. We also believe the proposed caffeine permission for FSSF i.e., up to 200mg one-day quantity is an appropriate level and will not pose any risk to consumers. We consider the required declaration of average caffeine quantity and advisory statement e.g., "contains caffeine" as sufficient to inform consumers of caffeine-containing FSSF.

Question 2: Do you have any thoughts on FSANZ's preferred option that if caffeine is prohibited to be added to all foods apart from cola-type drinks, FCBs and FSSF, that a pre-market assessment is then required to add caffeine to any other food? If not, are there other approaches that would better address the problem?

The ABCL supports in principle the preferred FSANZ approach (Option 3) to prohibit the addition of caffeine to all foods except for where an express permission exists.

The ABCL further requests FSANZ provide clarity on the process of which a business could apply for a permission to add caffeine to a food other than listed above. It is unclear if FSANZ is proposing that a full application is required to consider a permission to add caffeine OR if only a pre-market assessment is required.

The consultation paper states the following “*should food businesses wish to add caffeine to other foods, an application could be made to FSANZ to amend the Code*”.

We would appreciate clarification on the requirements of a business should they wish to pursue this approach.

Question 3: Do you foresee any compliance or enforcement issues with the preferred approach of expressly permitting total caffeine in FSSF at a maximum one-day quantity of 200 mg, whilst expressly prohibiting the addition of caffeine to all foods apart from cola-type drinks and FCBs?

The ABCL foresees no compliance or enforcement issues in the non-alcoholic beverages category.

Question 4: Are there other supporting measures that FSANZ should consider, whether regulatory or non-regulatory?

In response to Proposal P1054 Pure and highly concentrated caffeinated products, the ABCL expressed the industry’s support for recommendations three (3) and five (5) of [FSANZ’s review report](#) to Ministers in August 2019. FSANZ recommended that:

- a coordinated inter-agency consumer information campaign on safe caffeine consumption be developed and implemented in conjunction with recommendation 1 (the introduction of maximum limits of caffeine in foods); and
- targeted research on caffeine consumption across the Australian and New Zealand population, including consumption by specific vulnerable population groups, continue to be undertaken, including as part of the upcoming Intergenerational and Mental Health Study.

The ABCL reiterates its support for these two recommendations, appreciating that resourcing impacts for implementation may extend beyond existing resourcing within FSANZ. With that in mind, the ABCL wishes to offer its support for a consumer information campaign on safe caffeine consumption that could form part of the non-regulatory approach in this proposal. The ABCL’s existing [website](#), industry [commitments](#), and recently launched consumer-facing campaign, [DrinkFacts](#), are examples of industry initiative and responsible commitments to providing information to consumers on FCBs and caffeinated beverages more generally. The ABCL would be pleased to further endorse and/or adapt these resources in partnership with FSANZ.

Question 5: Can you share any further knowledge of current research about?

- a. the health effects of caffeine,
- b. global developments in caffeinated food products, or
- c. regulatory approaches being taken in comparable markets?

The ABCL references its submission to Proposal P1010 Formulated Supplementary Sports Foods (dated 9th September 2021), which provides supporting evidence of the benefit of caffeine on sports performance supported by international sporting bodies.

Question 6: In the medium term, does your company have any plans to expand the number of SKUs that contain caffeine? What would be the nature of those SKUs?

No comment.

7. Do the current regulations around caffeine, in particular where cola-type drinks and FCBs are concerned, allow for your future product development needs? If not, please explain why not and what regulation you think would be more suitable?

The ABCL supports the current provisions for caffeine addition to cola-type drinks and FCBs.

8. Beyond the mandated labelling imposed by the Code, is there any current or planned industry led mitigation measures to reduce consumers' exposure to caffeine?

Energy drink manufacturers have been at the forefront of responsible sales and marketing practices. In 2011, the ABCL launched the [Energy Drink Industry Commitments](#), and over the years have updated and strengthened these commitments.

The current version commits members of the ABCL to the following:

- not direct any marketing and advertising activities at children;
- not sell energy drinks in primary or secondary schools;
- not promote excessive consumption;
- not market energy drinks as only providing hydration;
- not use labelling to promote the mixing of energy drinks with alcoholic beverages;
- not manufacture or sell energy shots; and
- provide consumers with up-to-date information about energy drinks on the Australian Beverage Council's website.

The Energy Drink Industry Commitments also provide detailed information relating to the permissible amount of caffeine allowed in Energy Drinks/FCBs under the Code, and a helpful comparison of caffeine in non-alcoholic beverages to assist consumers.

The non-alcoholic beverages industry has also invested in innovation to offer smaller pack-sizes to moderate caffeine consumption and promote the responsible consumption of caffeinated beverages by Australians. Some non-alcoholic beverage manufacturers also choose to only feature smaller pack-sizes in marketing and advertising campaigns.

Additionally and as mentioned above, the ABCL has recently launched [DrinkFacts](#), a consumer-facing campaign designed to provide consumers with transparent and accurate information on non-alcoholic beverages available in Australia. The DrinkFacts website includes a [page](#) dedicated to providing consumers with information on Energy Drinks, referencing FSANZ's stringent regulation that governs these products, including the caffeine composition of Energy Drinks, the permissible daily safe limit of caffeine and other relevant information on these products.

9. Will your company be prepared to help develop non-regulatory measures to monitor and manage the number of food products that contain caffeine?

As mentioned in responses to questions 4 and 8, ABCL members are supportive of non-regulatory measures such as a consumer information campaign, and the current [commitments](#) made by the non-alcoholic beverages industry to manage products containing caffeine available to consumers in Australia and New Zealand.

The ABCL welcomes future engagement with FSANZ to consider the development of further non-regulatory measures beyond the current industry initiatives in place.

10. For product developers considering the addition of plant or other extracts containing caffeine, do you consider these would meet the definition of a novel food and therefore require a premarket safety assessment?

No comment.

11. How many stock keeping units (SKUs) will be affected by the proposed changes, for either FSSF or other foods, or both?

The ABCL recommends that FSANZ reach out directly to manufacturers to source this information.

12. If your business has any SKUs affected, then:

- a. what is the nature of those products, and**
- b. what action will you take in response to the regulation (for example, withdraw the product, reformulate the product, update labels to meet new requirements, etc)?**

The proposed changes impact only FSSF in the non-alcoholic beverages category. If approved, manufacturers may choose to add caffeine to FSSF in accordance with the provisions set out in the Code, including reformulation and an update to labels to be compliant with those requirements.

13. What will the cost of the above action(s) be? Be as specific as possible, and please separate the cost by type, for example, reformulation, re-labelling, write-off of existing stock etc.

Obtaining information this specific is challenging, particularly as there are variabilities between individual businesses in processes and labour-costs involved. We refer FSANZ to the ABCL's labelling cost survey, which we shared with FSANZ in September 2022 at the FSANZ Annual Meeting with the non-alcoholic beverages industry. The ABCL conducted a survey on a select number of member companies, ranging from small, medium to large sized businesses to aggregate the costs of a single label change.

14. For any of your existing SKUs likely to be affected by the regulatory option, typically how long do those SKUs take to be sold?

Please refer to Question 11.

15. To what extent do you agree that there are relatively few general foods (i.e. not FSSF) that contain added caffeine (i.e. foods that will be impacted by the proposal) and are currently sold in Australia and New Zealand?

No comment.

16. Are there any unintended consequences of the proposal?

Not that we are aware of.

17. How effective do you believe each of the proposed options would be in achieving the objectives of this proposal and why? In particular, consider risks of over-consumption of caffeine for sensitive sub-populations.

The ABCL believes the risk assessment carried out by FSANZ, including the safety assessment and dietary intake assessment, is a sufficient and appropriate indicator of current consumption rates of caffeine in Australia and New Zealand.

We agree that FSANZ's preferred Option 3 will ensure safe consumption of caffeine by the general population and subpopulation groups, as well as supporting innovation by the non-alcoholic beverages industry to provide consumers with broader and informed choice.

18. Do you have any other comments on the benefits or costs of the proposed options?

No comment.

4. Conclusion

In summation, the ABCL supports FSANZ's preferred approach, **Option 3 – Hybrid mix of regulatory and non-regulatory approaches**. We kindly request further clarity on the requirement for a pre-market assessment for the use of caffeine in any other foods other than FCBs and cola-type drinks.

We welcome all future opportunities to engage with FSANZ on this proposal and stakeholder involvement for the development of non-regulatory approaches to support industry implementation.

5. Further Enquiries

Should you have any queries regarding the positions detailed in this submission, please contact:

Ms Cathy Cook
Head of Corporate Affairs
M: 0406 399 211
Email: Cathy@ausbev.org

Ms Lianna McGeary
Technical Scientific and Regulatory Affairs
Manager
M: 0411 957 982
Email: Lianna@ausbev.org