

Australian Beverages Council

Final Submission to FSANZ Proposal P1010
Formulated Supplementary Sports Foods
Consultation Paper

16 March 2023



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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 Proposal P1010 – *Formulated Supplementary Sports Foods Consultation Paper One: Regulatory Framework for Standard 2.9.4*.

ABCL members produce a range of non-alcoholic drinks, some of which are subject to regulations in Standards 2.6.2, 2.6.4 or 2.9.4 in the Food Standards Code (the Code). In the context of this submission, we refer to *sports drinks* as the relevant non-alcoholic beverages product category under Standard 2.9.4 - Formulated Supplementary Sports Foods (FSSF).

2. ABCL general comments

The ABCL continues to support FSANZ's work to provide certainty to consumers regarding food quality and safety and the provision of information through nutritional labelling to enable consumers to make informed choices. This enables industry to operate under a transparent and effective regulatory framework.

The sports food and drinks market has grown significantly in the last 25 years, attributed to factors including increased consumer health consciousness and increased sports participation, to which the industry is responding via innovation investment. In the market, the term *sports drinks* has evolved to more broadly apply to a variety of functional beverages used by active consumers, also capturing electrolyte drinks. As such, it is difficult to distinguish growth in the market for *sports drinks* without the inclusion of electrolyte drinks. Sports drinks may also be captured in some market research reports under functional beverages, alongside energy drinks, kombuchas and other 'health-related' beverages¹.

As new science emerges and industry responds to evolving consumer demands, it's crucial for regulatory frameworks underpinning food standards to be agile enough to support future innovation. The current framework in Standard 2.9.4 does not support the current FSSF market or the future market.

3. ABCL specific comments

To assist FSANZ in its review, the ABCL consulted with its members to develop an informed response to the consultation paper, considering the questions listed and their relevancy to the non-alcoholic beverages industry.

¹ IBISWorld. Functional Beverage Production in Australia Industry Report. December 2022.

3.1 Market Overview – Sports Drinks

Industry revenue in the functional beverage category is expected to grow 1.1% over the next five years, valued at \$514.1 million¹. Sports drinks* account for a significant share of industry revenue in the functional beverages category at 23.3%. There is a rising consumer demand for functional beverages, and for sports drinks this is mainly due to drivers such as increased sports participation and health consciousness². This is unsurprising as a recent 22-year longitudinal study of beverage sales indicated a 168% increase in volume sales of sports drinks in 2018 compared to 1997, at an annual growth rate of 7.66%³.

3.2 Definition of a Formulated Supplementary Sports Food

As per the current Standard 2.9.4, the current definition of a Formulated Supplementary Sports Food (FSSF) is as follows:

*‘Formulated supplementary sports food means a product that is specially formulated to assist **sports people** in achieving specific nutrition or performance goals’.*

The term ‘sports people’ in the current definition denotes a narrow population sub-group that suggests FSSF are only suitable for consumption by people who take part in sports. While this target may have been appropriate for consumers in the 1980s and 90s, it is no longer reflective of the current consumer base for these products. As indicated by the significant market growth and consumer demand for sports drinks (see response in section 3.1), Australian consumers are choosing sports drinks to support their physiological and physical needs that may be altered due to sport participation or any type of physical activity. With consumer needs changing, and science evolving, there is an opportunity to broaden the purpose of FSSF to provide for a variety of nutritional or performance goals. Other factors that determine a consumer’s choice of sports drink include:

- type of activity;
- intensity and duration of exercise;
- intended consumption time i.e., pre-exercise, during-exercise, post-exercise;
- environment; and
- personal attributes/needs (e.g., age range, health and wellness goals).

The current provisions in Standard 2.9.4 restrict manufacturers’ ability to meet specific consumer needs and provide them with a suite of broader informed sports drinks choices.

*Includes electrolyte drinks.

² IBISWorld. Australian Business Environment Profiles Report C4322. Sport Participation. January 2022.

³Shrapnel WS, Butcher BE. Sales of Sugar-Sweetened Beverages in Australia: A Trend Analysis from 1997 to 2018. *Nutrients*. 2020; 12(4):1016. <https://doi.org/10.3390/nu1204101>

3.3 Compositional permissions

The sports drink category continues to evolve and expand to address a broader spectrum of needs and occasions. 'Sports people' needs are not static and will vary depending on the factors listed (non-exhaustive) in section 3.2 above. While electrolyte drinks (as defined in Standard 2.6.2) are intended to replace fluid and electrolytes (and arguably carbohydrates⁴), the sports drinks category can cater to nutritional and physiological needs beyond that, such as:

- Hydration
- Recovery
- Hydration and Fuelling
- Fuelling
- Muscle recovery/building
- Mental performance.

The ABCL notes that FSANZ is not seeking further technical and safety information on the compositional requirements for FSSF, however, we believe it is important to highlight the variable functions sports drinks could deliver under an improved regulatory framework.

The ABCL agrees with FSANZ's approach to considering sports drinks' compositional requirements which is underpinned by evidence-based scientific assessments. We welcome the opportunity to provide FSANZ with scientific data to support amending the compositional permissions for sports drinks under Standard 2.9.4. We believe that the regulatory framework in Standard 2.9.4 could be improved to support innovation within the sports drinks category while ensuring public health and safety.

The ABCL requests FSANZ consider the practicality and justification of compositional requirements to ensure they are technically feasible and are supported by the science and expertise in this space.

For example, under Division 3 in subsection 2.9.4 – 8 a 'High carbohydrate supplement' means a FSSF which:

- a) Not less than 90% of the average energy content of the product is derived from carbohydrate; and
- b) More than 15% of the product by weight is carbohydrate when prepared as directed.

In educational materials and nutritional guidance for athletes, foods categorised as 'high carbohydrate' are often much lower than 90% contribution to energy content. Commonly known 'high-carbohydrate' foods including rolled oats and brown rice contain approximately 59% and 74% carbohydrate, respectively.

There are also few products that meet b), except for gels, due to a higher % carbohydrates/weight ratio causing GI distress in many athletes. In fact, the ideal ratio is 6 – 8%. If a sports drink were to fit

⁴ ABCL Submission to FSANZ Proposal P1030 Composition and Labelling of Electrolyte Drinks Consultation Paper. July 2021.

into the category of a "high carbohydrate" product, the carbohydrate content would need to be tripled for the same liquid volume.

These examples highlight the impracticality of the compositional requirements in Division 3 and the need for them to be revised so as to ensure they are evidence-supported.

3.4 Electrolyte Drinks

As indicated in our 2021 [submission](#), the ABCL supports retaining electrolyte drinks provisions in Standard 2.6.2. ABCL members have no concerns with electrolyte drinks remaining as a general purpose food in Standard 2.6.2.

The ABCL welcomes the opportunity to further consult with FSANZ on the transfer of existing requirements for electrolyte drinks to a special purpose food standard i.e., Standard 2.9.4.

ABCL members are open to considering the transfer of electrolyte drinks provisions to Standard 2.9.4, with the principle that doing so would not impose any changes or additions to the existing labelling requirements for electrolyte drinks (as gazetted on 12 August 2022) e.g., as prescribed in Standard 2.9.4 - 4(1). We request FSANZ consider a framework for Standard 2.9.4 that would encompass necessary requirements to protect public health and safety and enable evidence-supported industry innovation in sports drinks (and electrolyte drinks). Future innovation in this category e.g., sports drinks with the addition of amino acids/protein, caffeine, and other nutritive substances is supporting the provision of broader informed consumer choice.

3.5 Labelling

Prescribed name

The ABCL notes the industry's concern regarding the use of the prescribed terms 'supplement' and/or 'sports food' on labels of FSSF. These terms capture the attention of sports authorities, public health, athletes and their coaches, and impactfully create fear or exacerbate existing fears of 'supplement' consumption by athletes. It is now common protocol for athletes to consume only those supplements that have been batch-tested by a third party to ensure it contains no illicit substance(s). Batch-testing requirements are still a relatively new and grey area for some products (e.g., protein fortified beverages), and athletes are less inclined to take risks in this space regardless of the beverage being regulatory compliant.

Sports clubs/teams avoiding consumption of FSSF unless it is batch-tested due to the prescribed name and terminology requirements on the label, detrimentally disadvantages sports drinks manufacturers. If batch-testing becomes a pre-requisite requirement for FSSF this will add further costs to industry. The issue of terminology continues to present challenges for industry: it

disincentivises innovation, adds cost, and without a supportive regulatory framework opens up scrutiny from public health on any products described as a ‘supplement’.

Nutrient content and health claims

The current regulatory framework in Standard 2.9.4 is overly restrictive on provisions for making nutrient content or health claims beyond that permitted for claiming the presence of a vitamin, mineral or nutritive substance in a FSSF. The restriction on claims limits the information available to the consumer as to why the presence of that vitamin, mineral or nutritive substance is included in the sports food or drink.

We also question the extent to which the currently permitted claims under Division 3 for FSSF are informative for consumers i.e., *“the product is useful before, during or after sustained strenuous exercise”*. Without context as to why the product is “useful” i.e., its physiological or nutritional purpose, consumers are informed only of direction of use or general function.

The ABCL has access to a wealth of evidence supporting a range of nutritional, physiological and performance benefits of certain nutrients and ingredients. The current framework prevents manufacturers’ ability to pursue a route to identify and substantiate those benefits into product claims or purposeful communications for the consumer. In fact, some general foods can make claims relevant to energy, metabolism, and muscle building that FSSF cannot.

The restrictive nature of this framework disincentivises manufacturers from innovating within this space and does not support broader consumer informed choice. We recommend FSANZ consider a pathway for FSSF (including sports drinks) to apply Standard 1.2.7 to this category. We also welcome the opportunity to provide FSANZ with supporting evidence at the appropriate stage of the Proposal P1010 review.

Warning and advisory statements

The ABCL believes that the current warning and advisory statements are appropriate for FSSF but could be made more succinct and possibly combined to accommodate smaller packaging sizes (and label sizes), which are typical for beverages.

4. Conclusion

In summary, we support FSANZ’s work to review the existing regulatory framework in Standard 2.9.4 to be reflective of the current FSSF market, and support industry innovation. We believe the existing definition, purpose and labelling requirements are restrictive and out of date and step with the evidence and should be improved to enable industry to provide broader choice of sports drinks to consumers.

Thank you for the opportunity to provide comments to the Proposal P1010 Consultation Paper.

We look forward to the next two stages of consultation on this proposal and any further opportunities to engage with FSANZ.

5. Further Enquiries

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

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