

AUSTRALIAN BEVERAGES COUNCIL

**P1054 - Urgent Proposal to prohibit the retail sale
of pure and highly concentrated caffeine products**

13 November 2019



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About the Australian Beverages Council

The Australian Beverages Council [ABCL] is the leading peak body representing the non-alcoholic beverage industry, and the only dedicated industry representative of its kind in Australia.

The ABCL represents approximately 90 per cent of the industry's production volume and Member companies are some of Australia's largest drinks manufacturers. The ABCL also represents many small and medium-sized companies across the country. Collectively, the ABCL's Members contribute more than \$7 billion to the Australian economy and nationally they employ approximately 50,000 people. The industry also pays in excess of \$1.2 billion in taxation per annum along its supply chain, and for each and every direct employee in the beverages manufacturing industry, there are 4.9 jobs required elsewhere in the Australian economy to produce and retail the beverages.

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

The unified voice of the ABCL offers Members a presence beyond individual representation to promote fairness in the standards, regulations, and policies concerning non-alcoholic beverages. The ABCL plays a role in educating consumers on making informed choices which encourages balance, moderation and common sense.

The ABCL advocates on issues such as portion sizes, environmental sustainability, nutritional labelling, responsible industry marketing and advertising, and canteen guidelines. The ABCL's Members listen to consumers and adapt their products accordingly by making positive changes and standing by a commitment to promote greater choice, appropriate portions and more low and no kilojoule products.

The ABCL is an important conduit between the non-alcoholic beverage industry and governments, supporting the Australian Government, State/Territory Government and Local Councils.

The ABCL introduced a dedicated juice division, **Juice Australia** (formerly Fruit Juice Australia), in 2009 and a dedicated water division, the **Australasian Bottled Water Institute** [ABWI], in 2011.

Executive Summary

The ABCL has summarised its response to the Proposal below and supports:

- ✓ the intent of the Proposal to consider amending the Australia New Zealand Food Standards Code [the Code] to prohibit the retail sale of pure and highly concentrated caffeine food products;
- ✓ the principle that products with existing, adequate regulations, such as formulated caffeinated beverages (commonly known as energy drinks) and cola drinks, are not affected by proposed amendments to the Standard 1.1.1;
- ✓ a 5% [5g/100g] caffeine limit. This level is unlikely to impact current and future caffeine-containing drinks and foods noting that formulated caffeinated beverages are permitted a maximum of 0.032g/100g and cola drinks 0.0145g/100g;
- ✓ the multifaceted approach regarding pure and highly concentrated caffeine in the Food Standards Australia New Zealand [FSANZ] report to Ministers;
- ✓ recommendation 5 - the continued monitoring of caffeine consumption, including specific vulnerable population groups, across Australia as it would help inform public health assessment for caffeine and its sources;
- ✓ recommendation 3 - the development and implementation of a coordinated inter-agency consumer information campaign on safe caffeine consumption; and
- ✓ the position that energy drinks in the Australian market are already subject to some of the most stringent regulations in the world. Under Standard 2.6.4 of the Code, the amount of caffeine in energy drinks is strictly regulated to a maximum amount of 32 mg/100 mL.

Industry Energy Drinks Commitments

- All Members of the ABCL involved in the manufacture or distribution of energy drinks voluntarily agreed to a set of major industry commitments in 2011 as part of the responsible sale and promotion of energy drinks in Australia. These were updated in 2018 and reflect a responsible approach to the sale and promotion of energy drinks in Australia. Other jurisdictions have mirrored the ABCL self-regulation, such as New Zealand, as best practice of the sale and promotion of formulated caffeinated beverages.
- Among these commitments, the industry has agreed that the marketing and advertising of energy drinks will not be directed to children, and energy drinks will not be sold in any school, both primary and secondary.

Background

It is understood that FSANZ has prepared Proposal P1054 to consider amending the Code to prohibit the retail sale of pure and highly concentrated caffeine food products.

FSANZ has prepared a draft variation to prohibit the retail of sale of foods in which total caffeine is present in a concentration of 5% (5g/100g) or more.

Furthermore, the continued use of caffeine as an ingredient in foods, such as formulated caffeinated beverages and cola type beverages, are unaffected and the current lower maximum limits in the Code remain in place for those foods – a pragmatic position that is fully supported by the ABCL and its Members.

Based on the draft variation to Standard 1.1.1. of the Code, FSANZ proposes to:

- a) set a maximum compositional limit for caffeine in food; and
- b) set that limit at a concentration in the food of 5% (5g/100g) in the product presented at retail sale.

The Australian Beverages Council's Position and Issues for Consideration

The ABCL representing the non-alcoholic beverages industry in Australia supports the:

1. inclusion of a maximum compositional limit of caffeine in food;
2. set the limit at a concentration in the food of 5% (5g/100g) in the product presented at retail sale; and
3. continued use of caffeine as an ingredient in foods such as formulated caffeinated beverages and cola beverage are unaffected and the current lower maximum limits in the Code remain in place for those foods.

The ABCL has detailed its full position and response in relation to P1054 below:

Current standards regulating caffeine

The ABCL supports the FSANZ opinion in the [review](#) that:

“caffeine as an ingredient in cola drinks and formulated caffeinated beverages does not present a high risk given the maximum concentration of caffeine in these foods is already prescribed in the Code.”

Additionally, In the supporting [document](#) it states:

“The Code imposes prohibitions on the use of substances as food additives, processing aids and nutritive substances, unless expressly permitted.

The Code expressly permits caffeine for use in cola type drinks (if used as a food additive – as defined) and in formulated caffeinated beverages. In both cases, this use is subject to compositional and labelling requirements....”¹

ABCL supports the exclusion of already regulated beverages from the proposed changes in the Code, specifically:

- Standard 2.6.2 Non-alcoholic beverages and brewed soft drinks
- Standard 2.6.4 Formulated caffeinated beverages

The ABCL notes that Standard 2.9.4 Formulated supplementary sports foods is under review in P1010 and that caffeine and labelling is to be considered as part of this.

¹ FSANZ Call for submission – Call for submissions – Urgent Proposal P1054. 1 November 2019. Page 4-5

Maximum compositional limit

The ABCL supports a 5% [5g/100g] caffeine limit. This level is unlikely to impact current and future caffeine-containing drinks and foods noting that formulated caffeinated beverages are permitted a maximum of 0.032g/100ml and cola drinks 0.0145g/100ml.

Energy drinks in the Australian market are already subject to some of the most stringent regulations in the world.

Under [Standard 2.6.4](#) of the Code, the amount of caffeine in energy drinks is strictly regulated to a maximum amount of 32 mg/100 mL, meaning the most common serving size (a 250 mL can) must not contain more than 80 mg of caffeine, which is equivalent to a cup of instant coffee. Further, all labelling of energy drinks must contain a warning statement that the product is not recommended for certain persons, as well as an advisory statement regarding a one-day quantity.

In addition to these regulations under Australian law, all Members of the ABCL involved in the manufacture or distribution of energy drinks voluntarily agreed to a set of major industry commitments in 2011 as part of the responsible sale and promotion of energy drinks in Australia.

Late in 2018, the ABCL and its Members strengthened its [commitments](#) on energy drinks, highlighting the industry's responsive stewardship of the category. Among these commitments, the industry has agreed that the marketing and advertising of energy drinks will not be directed to children, and energy drinks will not be sold in any school, both primary and secondary. Supporting informed choice, the ABCL launched a consumer [website](#) in 2013 and updated this in 2019, providing detailed, consumer-friendly information about the category, a list of FAQs and additional scientific references.

Additional long-term risk management measures

The ABCL supports the multifaceted approach regarding pure and high caffeine content products, as detailed in the [report](#) compiled by FSANZ to Ministers which was subsequently endorsed by Senator the Hon Richard Colbeck, Minister for Aged Care and Senior Australians, Minister for Youth and Sport.

The approach recommended:

- The option of imposing a maximum limit of caffeine for general foods be considered in light of the outcomes of FSANZ's review (now underway) of Standard 2.9.4 (which covers sports foods). [Recommendation two];
- Development and implementation of a coordinated inter-agency consumer information campaign on safe caffeine consumption [Recommendation three];

- Development and adoption of guidance on the regulation of high caffeine content products and pure caffeine powders to inform compliance action by regulators. [Recommendation four]; and
- Targeted research on caffeine consumption across the Australian and New Zealand population, including consumption by specific vulnerable population groups. [Recommendation five].

The ABCL **strongly supports:**

- recommendation three, the development and implementation of a coordinated inter-agency consumer information campaign on safe caffeine consumption. The ABCL offers support and/or message amplification of information for consumers on safe caffeine consumption.
- recommendation five, the continued monitoring of caffeine consumption, including specific vulnerable population groups, across Australia. This recommendation would help inform public health assessments for caffeine and its sources.

Summary

The ABCL thanks FSANZ for the opportunity to provide this submission in support of the Proposal to consider amending the Code to prohibit the retail sale of pure and highly concentrated caffeine food products.

Final remarks are included below for consideration:

- The ABCL supports a 5% [5g/100g] caffeine limit. This level is unlikely to impact current and future caffeine-containing drinks and foods noting that formulated caffeinated beverages are permitted a maximum of 0.032g/100ml and cola drinks 0.0145g/100ml;
- It supports the exclusion of already regulated drinks from the proposed changes in the Code, specifically:
 - Standard 2.6.2 Non-alcoholic beverages and brewed soft drinks
 - Standard 2.6.4 Formulated caffeinated beverages;
- The ABCL supports the multifaceted approach regarding pure and highly concentrated caffeine food products in the FSANZ report to Ministers which was endorsed by the responsible Australian Government Minister;
- It especially supports recommendation 5 the continued monitoring of caffeine consumption, including specific vulnerable population groups, across Australia as it would help inform public health assessments for caffeine and its sources; and recommendation 3 the development and implementation of a coordinated inter-agency consumer information campaign on safe caffeine consumption;
- The ABCL and its Members are currently implementing voluntary commitments on energy drinks, highlighting the industry's responsive stewardship of the category. Among these commitments, the industry has agreed that the marketing and advertising of energy drinks will not be directed to children, and energy drinks will not be sold in any school, both primary and secondary;
- Energy drinks in the Australian market are already subject to some of the most stringent regulations in the world. Under Standard 2.6.4 of the Code, the amount of caffeine in energy drinks is strictly regulated to a maximum amount of 32 mg/100 mL, meaning the most common serving size (a 250 mL can) must not contain more than 80 mg of caffeine, which is equivalent to a cup of instant coffee.

Contact

To discuss this submission or any recommendation contained therein, please contact:

Australian Beverages Council