

Proposal 1056 Caffeine Review – NSW Submission

Major Procedure – 1st Call for Submissions

Summary

NSW appreciates the opportunity to comment on Proposal 1056 (P1056) Caffeine Review – 1st Call for Submissions (CFS).

NSW concurs with FSANZ's recognition that '*caffeine is a substance that has maximum safe daily intake recommendations, which vary depending on age and population group* (1st CFS Report pg. 5)'. NSW understands the intention of P1056 is to review overall caffeine regulation in the Australia New Zealand Food Standards Code (the Code), taking into account the adverse health effects identified in SD 1 as well as impacts to sensitive subpopulations.

NSW supports FSANZ's proposal to explicitly permit in formulated supplementary sports foods (FSSF), total caffeine up to 200 mg in a one-day quantity. However, NSW considers that further reforms are required to appropriately manage the risk of caffeine toxicosis in the broader community from FSSF and all foods. Additional suggestions are:

- Extend the proposed maximum 200mg one-day quantity to all foods containing caffeine, regardless of source.
- Add caffeine to the list of substances in Schedule 28-2, with a maximum permitted amount of 200mg.
- Prohibit 'stacking' practices in advertising for all foods containing ≥ 100 mg caffeine per serve, or where the combined dose of caffeine from the two or more foods exceeds 200mg per one-day quantity. This would apply to foods for retail sale where caffeine has been added and to foods for retail sale with naturally occurring caffeine,
- Retain the Proposal 1054 (P1054) variations to ensure that high dose, low volume caffeinated goods do not re-emerge as foods for retail sale.
- Prohibit the retail sale of caffeine as a food unless expressly permitted and prohibit the retail sale of a food containing caffeine as an ingredient or component unless expressly permitted.
- Labelling provisions: add lactating women as an additional category to at-risk subpopulations identified in mandatory advisory statements concerning caffeine on FSSF.
- Preparation of non-regulatory resources to support consumer understanding of keeping all oral caffeine intake below maximum daily limits (e.g. caffeine calculator). These resources should include communications materials to consumers to identify naturally occurring highly caffeinated resources more readily – Matcha Green tea, Guarana, Yerba Mate, Kombucha, Kola nut, Cocoa. Education on Linnaean names of naturally occurring caffeine sources is also proposed - *Camilla sinesis* (tea), *Coffea arabica* (Coffee), *Coffea canephora* (Coffee) and *Paullinia cupana* (Guarana) so consumers associate caffeine with the use of any of these terms in food related advertising or labelling information on foods.
- Clarify that resolution of P 1056 provides a trigger for amendment to the New Zealand Supplemented Foods Standard (SPS) due to the stated intent of the SPS being to provide interim measures until they are resolved by the Code.

- Transition period.

NSW further raises some issues relevant to the proposed amendments for foods naturally containing high levels of caffeine (e.g. guarana powder or extract) that are not proposed to be subject to any additional regulatory measures. These are suggested to ensure a consistent approach to the maximum one-day intake value of caffeine from any single food.

Further explanation of these comments is provided below.

Explicit permission of caffeine in FSSF up to 200 mg in a one-day quantity

NSW supports an express prohibition on the addition of caffeine to foods for retail sale in the Code, unless explicitly permitted (i.e. cola-type drinks, formulated caffeinated beverages (FCB) and as proposed for FSSF). This clear prohibition will resolve regulatory ambiguity as to the status of caffeine in general foods at levels below the thresholds set by P1054.

NSW also supports FSANZ's proposal to explicitly permit addition of caffeine to FSSF and set a maximum one-day quantity of 200 mg for total caffeine in a one-day quantity of FSSF. It will provide greater regulatory clarity on caffeine regulation for FSSF and help to reduce caffeine over-consumption from a single serve of FSSF.

NSW suggests this restriction apply to all foods containing caffeine rather than limit to FSSF. NSW is concerned that applying the restriction to FSSF only provides the means for larger caffeine doses to be legally introduced into other foods, such as formulated caffeinated beverages (FCB).

FCBs are currently permitted to contain between 145mg/l – 320mg/L of caffeine. The largest volume can of FCB that can be readily purchased is 500ml, legally containing 160mg of caffeine. Increasing the can volume to 750ml would result in this product legally containing 240mg of caffeine. An internet search of energy drinks shows that a 710ml energy drink has been created with 226mg of caffeine per unit sold¹. This product was unavailable for purchase at the time it was reviewed, however has a sealable lid as the product label indicates it contains 2 serves. NSW suggests the existence of this product creates the real possibility of mild caffeine toxicosis emerging from foods other than FSSF, due to large acute doses of caffeine per unit sold.

NSW notes that caffeine is currently excluded from listed substances added to FCB that must comply with defined limits (Schedule 28-2) as the caffeine dose is governed by Standard 2.6.4-3. NSW suggests that caffeine is added to Schedule 28-2 with a maximum permissible quantity of 200mg per unit sold. This would also require amendment to Standard 2.6.4-3 (b) so caffeine becomes a 'listed substance'. This would prevent the shifting of large caffeine doses per unit sold from FSSF to FCB, as they would be capped at 200mg of caffeine per unit sold.

Exclusion of foods naturally containing caffeine from the 200mg maximum one-day quantity proposed also provides the means for such materials to be concentrated and added to foods other than FSSF. NSW suggests this can be remedied by applying the maximum 200mg one-day quantity to all foods containing caffeine, regardless of the source of caffeine (i.e. food regulated under 1.1.1-10(7) would not be exempt from the 200mg caffeine one-day quantity threshold). This would prevent intentional concentration of naturally occurring sources of caffeine (e.g. guarana) being used as a food ingredient in combination with synthesized caffeine to produce a food for retail sale in excess of 200mg of caffeine per one-day serving. NSW notes such practices are used by manufacturers of FSSF in the current market, therefore a consistent approach to the maximum permissible one-day quantity of caffeine should be applied to all foods for retail sale, regardless of the caffeine source.

¹ <https://www.amazon.com.au/Rockstar-Punched-Guava-Energy-Milliliters/dp/B07HHD74FD>

The role of caffeine when added to FSSF

The definition of FSSF provides that the product is specifically formulated to achieve a nutritional or performance goal (CFS pg. 28). Given caffeine will be a voluntary ingredient in these foods, defining the purpose of caffeine in FSSF becomes necessary to determine how it is listed in Schedule 29 of the Code. NSW notes FSANZ description of a biologically active substance in determining whether listing in the NIP is necessary in conjunction with a nutrition and health claim (CFS pg. 32). This implies that caffeine is a biologically active substance (BAS) when used in FSSF. If this is correct, listing as a BAS does not define the purpose of addition.

Standard 2.9.4-3 defines the status of various voluntary ingredients that may be added to FSSF as nutritive substances. Given FSANZ has determined caffeine has a beneficial ergogenic effect, it may be interpreted that caffeine when added to FSSF is not providing a nutritional effect, it is performance related. This separation of function requires consideration of how the maximum one-day 200mg caffeine ceiling will be applied to FSSF so that it considers all caffeine containing components in FSSF not just those intentionally added.

Definition of ergogenic function (CFS, pg. 28) for high caffeine doses also has implications to the definition of nutritive substance in the Code (Standard 1.1.2-12), as this definition hinges on a 'nutritional purpose'. If caffeine has an ergogenic² purpose, where does guarana extract sit within the Code compared to guarana berry? This question is important as the extraction process will likely concentrate the caffeine content of guarana, above that occurring in the berry as harvested.

NSW would appreciate further consideration on the operation of Chapter 1 definitions in the Code for the purpose of defining the purpose of concentrated, naturally occurring caffeine sources when sold as foods for retail sale or used as ingredients in other retail foods for sale.

'Stacking' practices concerning retail foods for sale containing high levels of caffeine.

FSANZ has correctly identified that 'stacking practices' (combined consumption of multiple serves of one highly caffeinated food in one day or consumption of multiple highly caffeinated foods in one day) is a practice of specific concern for caffeine toxicosis.

SD1 cites that consumption of 750mg of caffeine incites panic attacks in psychologically normal people (pg. 46). Consumption in excess of 6mg/kg bw are associated with clinical signs of moderate caffeine toxicosis including restlessness, anxiety, tremors and gastrointestinal discomfort. In a 70 kg adult this equates to consumption of 420mg caffeine in a sitting. Several high stimulant pre-workout products on the current market exceed 300mg of caffeine per serve. SD 1 further informs (pg. 3) that athletes are at increased risk of caffeine toxicosis due to the desire to pursue increased athletic performance. FSANZ notes *'there was evidence that consumers do not always self-regulate their caffeine intake even when experiencing perceived negative side effects'* (1st CFS Report pg. 20).

To aid individuals in not exceeding 400mg caffeine consumption for adults, NSW suggests FSANZ explore a prohibition of 'stacking' practices in the Code for highly caffeinated products (e.g. consumption of FSSF with an FCB).

This could be given effect by exploring amendment to Standard 1.1.1-10(9) information requirement to prohibit advertising and marketing practices concerning the 'stacking' of all food for retail sale with caffeine amounts in excess of 100mg per one-day quantity or where the combined total of caffeine per one-day quantity from all foods in the 'stack' exceeds 200mg of

² Ergogenic - enhancing athletic performance, <https://www.merriam-webster.com/dictionary/ergogenic>

caffeine per one-day consumption. This would assist in enhancing consumer understanding of the importance of not exceeding 200mg of caffeine as an acute dose.

Retention of P 1054 amendments to the Code

NSW is concerned that removal of the prohibition from sale of pure and highly concentrated caffeinated products from the Code may result in an advertent loophole in the Code that could permit the sale of high caffeine dose, low weight substances as foods (e.g. caffeinated chewing gum, energy strips and gels). NSW considers these products are more appropriately considered therapeutic goods as the principle purpose of oral ingestion of these products is the rapid delivery of a high dose of caffeine to an athlete. Importantly they do not serve a nutritional purpose (there is no provision of electrolytes, nutritive substances or hydration).

Some products contain 100mg of caffeine per serve with each serve having minimal mass and weight. The resultant product is orally ingested providing a very high caffeine dose per weight of unit sold and consumed. Should such a precedent be established that such things are foods, further product innovation is expected to produce vehicles capable of delivering large caffeine doses in very low volume carriers targeted at athletes. Such products are essentially drug delivery systems and should be regulated as therapeutic goods. NSW is concerned that such innovation provides a risk of caffeine toxicosis for athletes and should be regulated as foods.

Retention of the P1054 amendments (in conjunction with amendments proposed in P1056) provides the foundation for a robust regulatory framework for the use of caffeine in foods for retail sale *and* gives industry insight as to where the food:medicine interface boundary lies for use of caffeine in a food for retail sale as opposed to use of caffeine in a therapeutic good.

Caffeine sits at the Food Medicine Interface and caffeine-containing products can be regulated as either foods for retail sale or therapeutic goods. NSW notes the recent revision of caffeine regulation by TGA to amend the *Poisons Standard* to include caffeine in Schedule 4 and 6 to address the risk of pure or highly concentrated caffeine products.

Given its dual identity as either a food or therapeutic good, NSW suggests that Code drafting that enhances clarity of caffeine at the food:medicine interface be retained in the Code to provide regulatory clarity.

Prohibition on use of caffeine as a food for retail sale

NSW supports the proposal from FSANZ that caffeine should be prohibited from use in food for retail sale or from sale as retail food unless expressly permitted.

NSW suggests that amendment to Standards 1.1.1—10(5) and (6) concerning the retail sale of caffeine as food be considered as part of P 1056 so the prohibition applies to both the retail sale of caffeine as food and to the use of caffeine as an ingredient or component of another food for retail sale. This will remove the current regulatory ambiguity concerning the use of caffeine in food.

Both sections of Standard 1.1.1-10 require amendments so the status of caffeine as food is completely clear for the purpose of the Application Acts. FSANZ's caffeine review³ identified the ambiguous regulatory status of caffeine by stating '*There is a lack of clarity in situations where caffeine's use in or addition to food does not fall within the Code's definition of what constitutes 'a food additive', 'a processing aid', or a 'nutritive substance'. There is no express requirement in the Code that prohibits caffeine's use in or addition to food for other purposes*'. This new prohibition on the addition of caffeine for retail sale will remove doubt.

³ <https://www.foodstandards.gov.au/Documents/CaffeineReport2019.pdf>

This aspiration is consistent with view of the then Commonwealth Office of Legal Drafting Practice (OLDP) in its response to the legislative audit of the Code in 2010 (pg. 43, item 51)⁴.

NSW also suggests that operation of 1.1.1-10(7) is removed for the purposes of the 200mg maximum one-day quantity of caffeine. This provides for continued permission of caffeine in foods from naturally occurring sources but capped at a maximum level of 200mg per one-day quantity of the food consumed.

Grouping the proposed amendments together as suggested in this submission provides a solid regulatory framework for caffeine regulation in food by the Code:

- Caffeine will not be able to be sold as food for retail sale without express permission.
- Caffeine will not be able to be added to another food for retail sale as an ingredient or component without express permission.
- Where permitted for retail sale in any food, or as food for retail sale, caffeine will be subject to a maximum 200 mg one-day quantity.
- The 200mg per one-day quantity limitation will apply to total caffeine in all individual foods for retail sale, regardless of the source of caffeine.
- No food for retail sale may not contain more than 1% caffeine (liquid food) or 5% maximum (solid food).

NSW suggests the above points resolves regulatory ambiguity concerning the use of caffeine in foods for retail sale, resolves ambiguity concerning the maximum one-day quantity of caffeine that may be present in any individual food for retail sale, regardless of caffeine source and identifies those products consumed for the sole purpose of supplying large acute doses of the caffeine to the body are therapeutic goods (e.g. caffeine strips and gels)..

Labelling

NSW supports the proposal from FSANZ to require labelling of caffeine containing FSSF with 'contains caffeine' advisory labelling and to require caffeine content in FSSF to be numerically described as per serve and per 100mL/g. NSW would understand this requirement would apply to the total caffeine content of the FSSF and not just to sources of added caffeine in FSSF.

NSW suggests that labelling advisory information applicable to FCBs also apply to FSSFs containing caffeine. SD1 findings concerning caffeine consumption in vulnerable populations inform of the risks of caffeine toxicosis but at lower caffeine doses than for adults, especially for pregnant women, developing fetuses and on the transmission of caffeine through breastmilk to an infant (SD 1 pg. 24 – 28).

NSW considers inclusion of lactating women as a risk population in necessary in FSSF advisory labelling as it currently applies to FCB for 2 reasons. Firstly FSANZ proposes to permit a maximum 200mg acute dose of caffeine in a one-day quantity of FSSF – this exceeds the dose of caffeine in FCB cans readily available for retail purchase.

Secondly NSW considers that excluding lactating women and individuals sensitive to caffeine from the advisory statement would be inconsistent with the *Policy guideline – regulatory management of caffeine in the food supply* as follows:

- The *Policy guideline* requires FSANZ to specifically consider the risk to vulnerable population groups that include lactating women and individuals sensitive to caffeine. The safety assessment for lactating women and individuals sensitive to caffeine in SD1 concluded that the safe level of caffeine consumption is lower than the general adult population. NSW interprets this as a need for additional risk management measure in

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<https://www.foodstandards.gov.au/code/proposals/Documents/P1025%20Code%20revision%202CFS%20SD1%20Leg%20audit.pdf>

FSSF for lactating women and individuals sensitive to caffeine (such as the advisory statement).

- The *Policy guideline* requires consideration of exposure to caffeine from all dietary sources. The dietary intake assessment in SD2 concluded that coffee and tea are the two major sources of caffeine intake for females of child-bearing age, which provides some evidence that lactating women may consume caffeine from general foods such as coffee and tea regularly. Considering caffeine intake from other sources, NSW suggests advisory information is required for lactating women (among other sensitive populations) to avoid consuming FSSF containing large acute doses of caffeine.

NSW proposes these risks warrant the use of advisory statements on FSSFs containing caffeine, and on other foods containing caffeine. NSW suggests there is merit in considering mandating the words 'contains caffeine' on caffeine containing foods so there is consistency in what is required on food labels to declare caffeine content. Besides from providing clear benefit to health practitioners and caffeine sensitive consumers alike through consistent language, it also applies consistent principles in the Code to the provision of health and safety information on food labels for consumers, similar to that applied in Proposal 1044 (Plain English Allergen Labelling). NSW considers the same approach as used in Proposal 1044 is applicable to caffeine containing foods as caffeine toxicosis affects all consumers (SD1 sections 2.4, 2.5, 2.6), not just a segment of the population as is the case for food allergens.

NSW further notes FSANZ commentary that health claims concerning enhanced athletic performance in relation to caffeine content could not be made (CFS, pg. 33). Given FSANZ earlier position that 'contains caffeine' mandatory advisory statement is not a nutrition content claim (CFS, pg. 33), the use of voluntary health claims permissible on FSSF requires further discussion.

FSANZ considers claims relating to energy supplementation on FSSFs describing assistance in supplementing the diet with an energy source to be permissible. NSW requests further discussion from FSANZ on whether any claim concerning ergogenic effect could be construed as supplementing diet with an energy source. NSW considers that caffeine cannot be described as serving a nutritional purpose as ergogenic effects concerns 'enhancing athletic performance⁵'. NSW further notes 'ergogenic' is not found in the Macquarie Dictionary. There may be benefit in defining ergogenic in the Code so any potential claims made concerning caffeine and ergogenic effect have a consistent definitional base to assess claim compliance.

NSW suggests that definitions are required in the Code due to claims about physiological effects, such as gaining muscle; increasing mental focus; increasing metabolism; increasing stamina; increasing testosterone levels; reducing oestrogen levels or otherwise modifying hormone levels; losing weight or fat; preparing for workout; recovering from workout, reside in the *Therapeutic Goods (Declared Goods) Order 2019*. Section 1.2.7—8 explicitly prohibits claims from being therapeutic. NSW suggests clear advice is provided by FSANZ on the prohibition of use of such words, or words of equal effect on the label of FSSF in the 2nd CFS (on the basis they are therapeutic claims).

NSW would appreciate further commentary from FSANZ on the possibility (or not) of claims pertaining to physiological, ergogenic effects of caffeine in the 2nd CFS.

To ensure consumer and industry certainty there may be merit in considering an approach to claims for FSSF in a manner similar to Proposal 1030 composition and labelling of electrolyte drinks. That was to permit a limited number of claims about specific matters and to not permit self-substantiation. NSW would appreciate commentary from FSANZ on this suggestion in the 2nd CFS.

⁵ <https://www.merriam-webster.com/dictionary/ergogenic>

NSW further considers there is merit in considered 'contains caffeine' type statements on food for retail sale with high level of naturally occurring caffeine, or where two natural sources of high caffeine foods are combined. An example is dark chocolate coated coffee beans⁶, both source foods contain naturally occurring caffeine, what is the combined caffeine dose per serve and per 100g from these foods? NSW suggests this is explored by FSANZ in the 2nd CFS so there is a consistent approach to the proposal to limit caffeine content per serve from an acute dose of food to a maximum limit of 200mg of caffeine per one-day quantity in all foods for retail sale.

Consumer education

The provision of non-regulatory education materials is just as important as regulatory measures in considering best practice risk management for foods containing caffeine. There are several key educative initiatives to consider in this area:

- Linnaean names for caffeine containing foods
- Natural sources of caffeine and variance in the strength of caffeine dose provided by these foods.
- An electronic app, calculator: know your 400mg to aid in avoiding excess caffeine consumption.
- Caffeine toxicosis: symptoms linked to dose varying from mild to life threatening.
- Dangers of 'stacking' practices in caffeine consumption.

Consumers will not always be aware that reference to names such as *Camellia sinensis* (tea), *Coffea arabica* (Coffee), *Coffea canephora* (Coffee), *Paullinia cupana* (Guarana) in ingredient listings or marketing materials for food is reference to naturally caffeinated food. Consumers could benefit from having greater familiarity with these product names as there is little familiarity with the Linnaean terms. This is especially important for Guarana⁷ as this contains significantly more caffeine per gram than coffee.

Consumers would also not likely be aware that Matcha Green tea⁸ contains significantly more caffeine per serve than traditional green tea. This is due to the different production techniques used in the growing of *Camellia sinensis* plant and in the case of Matcha use of the entire leaf in producing tea powder. Caffeine levels in Matcha Green tea are generally double that of standard tea. Consumers are also likely not aware that Yerba mate⁹ is a natural source of caffeine which is available for purchase in the Australian market. Consumers would also not regularly associate Kombucha¹⁰ as a caffeinated product, however those Kombuchas made from tea will contain caffeine. Consumers are also not likely to understand the high level of caffeine in dark chocolate per 100g (80mg)¹¹ compared to milk or white chocolate. For example, consumption of 100g of dark chocolate (8-10 squares) can provide an equivalent caffeine dose to consumption of a can of Red Bull¹².

NSW further cites 2 drinks containing caffeine as a relatively recent product innovation where these products had not previously been sold under labels that consumers readily associate with caffeine – Sprite + and Mountain Dew Energised. In the absence of clear consumer education that these specific products contain caffeine, there is a risk of inadvertent provision of caffeine to young children. NSW notes content of SD1 concerning symptoms of caffeine

⁶ <https://www.haighschocolates.com.au/dark-coffee-beans-200g>

⁷ <https://www.caffeineinformer.com/caffeine-content/guarana>

⁸ <https://www.healthline.com/nutrition/matcha-green-tea#what-it-is>

⁹ <https://yerbamateaustralia.com.au/what-is-yerba-mate>

¹⁰ <https://swolverine.com/en-au/blogs/blog/the-6-best-natural-sources-of-caffeine-other-than-coffee-to-jumpstart-your-day>

¹¹ <https://www.caffeineinformer.com/caffeine-content/dark-chocolate>

¹² <https://www.caffeineinformer.com/caffeine-content/red-bull>

toxicosis in young children (pg. 22-23). NSW notes the recent articles in the Sydney Morning Herald on caffeinated Sprite¹³ and expressing concerns on caffeine levels in Prime¹⁴.

NSW suggests a comprehensive resource of natural caffeine sources (and their varying descriptors used in marketing materials) would greatly assist consumers in managing caffeine intake, and being aware of which specific products within a product range contain caffeine.

NSW further suggest FSANZ explore the development of a caffeine calculator as a useful tool for consumers to know how much caffeine they are consuming. This would assist in keeping consumers below the 400mg daily maximum daily intake of caffeine. NSW notes the existence of a calculator on the caffeine informer website¹⁵, there could be a simple development project in converting the content of this site (once modified to apply regulatory limits proposed in P 1056) into an app for consumer use on smartphones.

A dose dependant visual display of caffeine toxicosis for use in gyms, health clubs would also assist in enhancing consumer understanding of the dangers of exceeding 400mg caffeine consumption per day. This could serve as some measure of assisting in reducing voluntary intake of multiple serves of FSSF by high-risk individuals in high-risk settings. Information provided in SD 1 on acute caffeine toxicity could serve as the basis for this resource (SD1 pg. 19). The chart could display the following:

- beneficial caffeine effects at lower doses (SD1 pg. 17-18)
- shift to moderate toxicosis at levels in excess of 6 mg/kg bw (SD1 pg. 19)
- inducing panic attacks at 750mg (SD1 pg. 46)
- tachycardia, seizures at 1200mg (SD1 pg. 18)
- fatal at 3000mg.

Resources could also be developed on the dangers of 'stacking' practices for caffeinated foods. This refers to consumption of multiple serves of caffeinated foods in the same day or as part of the same sitting. Consumers should be advised of the dangers of consuming multiple serves of caffeine at the same time in keeping daily intake below the 400mg maximum proposed for adults.

Currently, NSW educates the NSW public on the health impacts of caffeine through a variety of channels including:

- **NSW Health social media posts to support health eating and active living targeting the NSW public.** Key messages have included limiting caffeine intake in general adults (up to 400mg caffeine per day) and breastfeeding women (up to 200mg caffeine per day) and caffeine content in common food and drinks.
- **NSW Health's free prevention programs and services to support health eating and active living.** Advice on caffeine is tailored to the target audience of each program and service. This includes guidance for pregnant and lactating women to limit caffeine intake to 200mg per day. Information on caffeine is delivered across a variety of channels including policies, guidelines, program resources (for example, factsheets, booklets, training packages), free coaching calls, and social media posts.
- **NSW Health clinical resources targeting sub-populations.** This includes NSW Health Having a Baby Booklet¹⁶, a resource for women who are pregnant or planning pregnancy which recommends limiting caffeine intake to 200mg a day during pregnancy.

¹³ <https://www.smh.com.au/business/consumer-affairs/my-daughter-did-not-want-to-finish-her-sprite-then-i-read-the-label-20230208-p5ciwm.html>

¹⁴ <https://www.smh.com.au/lifestyle/health-and-wellness/logan-paul-s-energy-drink-has-more-caffeine-than-the-legal-australian-limit-20230221-p5cm52.html>

¹⁵ <https://www.caffeineinformer.com/>

¹⁶ <https://www.health.nsw.gov.au/kidsfamilies/MCFhealth/Publications/having-a-baby.pdf>

- **Information and factsheets available to the public on NSW Health websites.** NSW Health websites house factsheets on caffeine¹⁷ and energy drinks and caffeine¹⁸. NSW Health's Your Room¹⁹, a digital hub for facts about alcohol and drugs, includes an interactive factsheet²⁰ on energy drinks and caffeine aimed at young people.
- **General information on caffeine in foods on the NSW Food Authority website²¹.**

Some of the above NSW education material references FSANZ's existing caffeine education material as a key evidence source. If FSANZ updated its caffeine education, then NSW would look to update its own material to amplify this advice.

New Zealand Supplemented Food Standard

NSW notes the intent of the Supplemented Food Standard is to provide an interim regulatory arrangement for supplemented food until there are appropriate provisions in the Code. NSW would understand that the outcomes of P 1056 (once gazetted) into the Code would result in review of corresponding caffeine provisions in the NZ supplemented foods standard. NSW would appreciate some commentary on this matter in the 2nd CFS.

Transition period

NSW requests FSANZ to consider the health and safety implications of transition periods in the further development of P 1056, especially if the aspiration of deleting P 1054 amendments is still desired. There must not be any gap in regulatory coverage in the absolute prohibition on the sale and supply of pure and highly caffeinated products as foods for retail sale.

ENDS

The views expressed in this submission may or may not accord with those of other NSW Government agencies. The NSW Food Authority has a policy which encourages the full range of NSW agency views to be submitted during the standards development stages before final assessment. Other relevant NSW Government agencies are aware of and agree with this policy.

Dated as 27 February 2023

¹⁷ <https://www.health.nsw.gov.au/aod/resources/Pages/caffeine.aspx>

¹⁸ <https://www.health.nsw.gov.au/aod/resources/Pages/energy-drinks.aspx#:~:text=How%20much%20caffeine%20is%20safe,about%204%20cups%20of%20coffee>

¹⁹ <https://yourroom.health.nsw.gov.au/>

²⁰ <https://yourroom.health.nsw.gov.au/a-z-of-drugs/Pages/energy-drinks-and-caffeine.aspx>

²¹ <https://www.foodauthority.nsw.gov.au/consumer/caffeine>