

Food Standards Australia New Zealand
PO Box 5423
Kingston ACT 2604
Tel: 02 6271 2222
E: standards.management@foodstandards.gov.au

CMA submission to FSANZ 1st Call for submissions – Proposal P1056 Caffeine review

Complementary Medicines Australia (CMA) appreciates the opportunity to provide feedback on FSANZ's review of the permissions for caffeine in the general food supply and formulated supplementary sports foods. We are aware there are ongoing issues in relation to caffeine and have given significant thought to this consultation.

CMA is the peak body representing the complementary medicines and health food products sector supporting Australian jobs, research, manufacturing and exports by meeting community demand for preventative and complementary healthcare. CMA represents sponsors, manufacturers, suppliers and retailers of complementary medicines and nutritional products including foods.

CMA membership represents approximately 80% of the supply chain for complementary medicines. For sports supplements, CMA represents a smaller proportion of the market, but currently are the main body representing industry with sports supplements interests.

CMA supports safe and responsible use of products, whilst retaining consumer access and choice, through regulation that is fair, balanced and risk-based.

History of caffeine regulation & CMA

CMA's approach to the responsible regulation of caffeine products has been consistent throughout the years. For example, in May 2018, CMA sought additional regulation for therapeutic goods to ensure safe use of the caffeine, where we proposed:

'Labels of [complementary medicines] containing caffeine should advise users to limit their total caffeine intake from all sources (including tea, coffee or other products containing caffeine), and should provide information regarding the amount of caffeine per dose of the product relative to the caffeine content of a cup of coffee. For example, a statement such as the following should be included on the label:

**Limit the use of caffeine-containing products (including tea and coffee) when taking this product.
One tablet/capsule contains about the same amount of caffeine as x cups of instant coffee.'**

At that time, our recommendation was not taken up. At a later date, even higher restrictions were placed on those products without consultation based upon an adverse event that had occurred, despite that event likely occurring from an unregulated imported product. From this experience we are concerned that the regulators need to give greater heed when industry is regulation-positive and to the proposals suggested, provided there is adequate consultation and impact analysis.

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FSANZ Proposal - summary

CMA notes that FSANZ is in particular, reviewing:

- caffeine in Formulated Supplementary Sports Foods (FSSF) and foods in general supply; and
- the extent of the risk posed to vulnerable sub-populations and whether and how risk can be managed.

FSANZ is not proposing to amend the permissions for:

- cola-type drinks
- formulated caffeinated beverages (FCBs), or
- naturally occurring caffeine [i.e., no impact on the sale of coffee and tea and chocolate that naturally contain caffeine, or the mixing of these foods with other foods under this proposal]

FSANZ has outlined three options in the proposal: Option1 : Status quo; Option 2: Status quo with non-regulatory approach (i.e., education); and Option 3: Hybrid mix of regulatory and non-regulatory approaches.

Under FSANZ's preferred option, ***Option 3 – Hybrid mix of regulatory and non-regulatory approaches***, preferred measures are stated to include:

- a new express permission to add caffeine to FSSF i.e., total caffeine up to a maximum of 200 mg in a one day quantity in conjunction with labelling requirements, including;
 - a requirement to declare the average quantity of caffeine present, irrespective of the source or amount; and
 - 'contains caffeine' – or words to that effect; a non-prescribed advisory statement on the label of all FSSF containing caffeine, irrespective of the source or amount, in addition to required advisory statements for FSSF;
- **an express prohibition on the addition of caffeine to foods for retail sale** other than those that have a specific permission i.e., currently cola-type drinks and formulated caffeinated beverages (FCBs);
- the inclusion of the non-regulatory options outlined in option 2 (revisions and update of consumer education materials); and
- the removal of the P1045 variation; the prohibition of the retail sale of foods in which total caffeine is present in a concentration of 5% or more (solid or semi-solid food) or 1% or more (liquid food).

CMA Position

CMA's position is that [REDACTED] innovation is not inhibited but that adequate safeguards for consumers are in place.

[REDACTED] CMA supports the concept of a **hybrid mix of regulatory and non-regulatory approaches**, however, with a significantly modified regulatory approach from that currently outlined in Option 3, as outlined in this submission.

In brief summary, CMA's position includes that:

- We agree consumers should be educated via the non-regulatory options for safe consumption;
- As part of an effective educative approach, consumers should have labelling [REDACTED] that helps them understand the quantity of caffeine intake [REDACTED];
- While we support an express permission for caffeine in FSSF, the permission and proposed one-day quantity must be reconsidered in respect of broader safety impact of effectively disincentivising consumers from seeking risky overseas purchases. It also should be reconsidered in view of product innovation, global trade needs, and the need to support consumer choice of caffeine source based on established scientific data;
- For FSSF, consumers must be permitted to access information that reliably supports caffeine use in sports performance and that is recognised by other reputable and/or Government bodies; and
- The P1045 variation removal must not occur without consideration of incidental or low amounts of caffeine potentially present in a wide range of foods and flavours, and further must not occur without consideration of flexibility, innovation, trade concerns, cultural food concerns, and the right to consumer choice.

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