

SA HEALTH submission to Proposal P1056 Caffeine Review. February 2023

South Australia welcomes the opportunity to provide comment to Food Standards Australia New Zealand on the 1st Call for submissions for *Proposal P1056 – Review of permissions for Caffeine in food*.

South Australia supports in principle *Option 3 – Hybrid mix of regulatory and non-regulatory approaches* - subject to reviewing the drafting of the amendments to the Code to be provided in the next proposal paper.

The proposed regulatory measures are:

- to explicitly permit in FSSF, total caffeine up to 200 mg in a one-day quantity
- an express prohibition on the addition of caffeine to other foods for retail sale, other than those that have a specific permission i.e. cola-type drinks and FCBs
- the removal of the P1054 variation. This hybrid approach includes the non-regulatory options outlined in option 2 above (preferred option).

General Comments

The prescribed maximum limits for caffeine introduced by P1056 are in our view an interim measure to protect public health and safety. They could be repealed if the Code is amended to prohibit the addition of caffeine to foods unless expressly permitted, and maximum compositional limits set where permitted (e.g. for cola drinks and formulated caffeinated beverages). Furthermore, the limits introduced by the Therapeutic Goods Administration should address risks from pure and highly concentrated caffeine products that are not foods.

There may be a regulatory gap if caffeine is added to a food for the purpose of a “stimulant” rather than being used as a food additive, novel food, or nutritive substance. Currently Standard 1.1.1 may not regulate this use.

The proposed drafting for P1056 will need to address the gap where caffeine is used for other purposes other than a food additive, nutritive substance, novel food. There will need to be another express permission required to be listed in the Code and Standard 1.1.1 will need to be amended to address the gap.

In order to make it clear to users of the Code, it is suggested that Standard 1.1.1 be amended to insert “(k) caffeine” in clause (6).

(6) Unless expressly permitted by this Code, food for sale must not have as an ingredient or a component, any of the following:

- (a) a substance that was *used as a food additive;*
- (b) a substance that was *used as a nutritive substance;*
- (f) if the food is for retail sale—a *novel food;*
- (g) a *food produced using gene technology;*
- (h) a food that has been irradiated;*
- (i) kava or any substance derived from kava;*
- (j) raw apricot kernels.*
- (k) caffeine*

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The proposed amendment should regulate beverages such as flavoured soft drinks (non-cola) using caffeine in the drink as a “stimulant” rather than for the purpose of food additive, nutritive substance or novel food ingredient. Many of these flavoured soft drinks with added caffeine are now being sold in Australia which is likely to create confusion going forward and communication to industry about these changes will need to be considered.

We look forward to considering the proposed drafting in the next round of comment.