

Market Overview

Q1. For industry or regulators, do you have market or product data or information that you would like to provide to update FSANZ's understanding of the current market in Australia, New Zealand or globally?

We have seen growth in the following categories between calendar years 2019 and 2022

Dairy (eg WPI/WPC/Protein blends) +53%

Vegan Proteins (eg Pea/Rice/Soy/Vegan Blends) +46.7%, though most of that growth occurred btw 2019 and 2020, largely static between 2021 and 2022.

Weight Loss (weight loss/low calorie protein powders/fat burners) +52%

We have seen a much broader type of consumer using supplements over the past 5 years, and increased interest in supplements to support healthy aging (eg collagen), general health and wellness, hydration. The vast majority of our customer base do not consider themselves sports people (based on our surveying of our customer group, , most attend the gym or weight train or run/walk/cycle for fitness, but far fewer play an actual sport.

Definitions

Q2. As a consumer, regulator or industry stakeholder, have you identified any issues resulting from the definitions in the Code? If so, what are they and why are they an issue?

The code definitions mean nothing to consumers, very few if any refer to the code, understand it or use it to inform buying decisions. Note

As an industry stakeholder, the definition (*formulated supplementary sports food* means a product that is specifically formulated to assist sports people in achieving specific nutritional or performance goals) does not reflect the consumers that use these products. Especially related to 'sports people', which we believe is understood to mean professional athletes, not the general public who may play a sport, jog/ride a bike or train at a gym for example. The US 'dietary supplements' definition is a more accurate descriptor of the products currently defined in Australia as Supplementary Sports Foods.

Issues with the code also sit at the food/medicine interface. Other countries mentioned in P1010 separate and make the distinction between what is a food, what is a health food and what is a medicine. Australia should do the same and recognise that health foods are not medicines, but are foods with special health benefits. The CODEX reference to encapsulated

food products (P1010 2.3.1 page 10), shows encapsulated foods are labelled as "food supplement" are not regarded as medicines simply because they are in an encapsulated form and don't need to be classified as such. However, in Australia all encapsulated products are therapeutic goods as of Nov 2023.

Q3. For industry and regulators, how should proprietary blends or stacks best be regulated and why?

We believe proprietary blends should not be permitted. Though in our experience, monitoring and enforcement of imported products that do not meet Australian labelling requirements including ingredients lists, country or origin statements (there are many Australian companies claiming Made in Australia to considerable competitive advantage for products that are not substantially transformed, and are packaged powders) is nil to non-existent.

It seems unlikely based on the above that stacks or recommended combinations of products would be monitored or enforced either.

Q4. For all, should the Code retain the existing definitions in [Standard 2.9.4](#)? If so, why and if not, why not?

As noted in Q2, the definitions do not match the consumer group.

formulated supplementary sports food means a product that is specifically formulated to assist sports people in achieving specific nutritional or performance goals.

- Supplements are not only to assist sports people, they are used in healthy aging, to provide nutrition when dietary intake is inadequate, to fortify other foods (eg adding protein to a smoothie). Many gym goers would not identify as 'sports people' and are not professional or even amateur athletes. Many do not even play sport, instead they train at the gym, run/jog for fitness.

one-day quantity, in relation to a formulated supplementary sports food, means the amount of that food which is to be consumed in one day in accordance with directions specified in the label.

- What is the Food safety or health basis for the current 1 day quantity? How was that arrived at originally? It is important these one day quantities are based on rigorous scientific studies, otherwise doses may be recommended that are too low to derive any benefit, or conversely too high for safety. As the code has not been regularly updated, we suspect recommended one day quantities are no longer based on evidence or research.
- 1 day quantity alanine = 1200mg, naturally occurring in 30g WPI = 1379mg
- 1 day quantity creatine 3g per day – vast research indicates safety and recommended dose rate of 5-10g per day.

Current Compositional Permissions

Q5. Would a tiered approach to regulation based on composition improve public health and safety for consumers, while allowing for innovation (e.g. provisions for 'high risk' substances, restriction on sale, differing labelling requirements or compositional deviation)? If so, how could it look? How could high, medium and low risk products be differentiated? What requirements could apply to each and why (e.g. pre-market assessment, compositional and labelling requirements)?

Yes - but depends how it was implemented and enforced.

Basic protein powders (with ingredients: protein powder, flavour, sweetener) are not the same as pre workout supplements.

Basic protein is very low risk, and is also sold in supermarkets and online not under Standard 2.9.4 but as smoothie enhancers/cooking ingredient. Whey protein is naturally occurring in milk, which is widely consumed. It has low potential for adverse events across the broad population. There is a wealth of research supporting the supplementation of protein for improved athletic performance and recovery, and that supports the safety and effectiveness of whey proteins for this purpose. We would support the introduction of a tiered approach that recognises the safety of products in this category, defined by their compositional ingredients.

High risk is best tied to inclusion of certain things eg stimulants/caffeine, or for a product category ie any pre workout supplement.

The success of this tiered approach will once again rely on enforcement of the code.

Q6. Is there any evidence that current practice in relation to analogues and derivatives pose a health concern or risk? If you consider that there is a health concern or risk, please provide relevant details and data, where available.

We are unaware of any evidence that analogs or derivatives pose a health concern or risk that is not already identified with the primary substance.

Q8. How could the Code assist in reducing the risk to consumers who are stacking sport food products and potentially consuming more than the maximum amount permitted by [Standard 2.9.4](#) in the Code?

How does FSANZ think this could be regulated? It's like trying to regulate if someone eats a banana with a cereal for breakfast, vs a banana after a curry dinner. Each individual will have a different potential and actual stack, and be purchasing from potentially multiple locations.

Q9. To what extent are vulnerable consumers regularly consuming sports foods? Please provide evidence.

We identify vulnerable customers as those with sensitivities, allergies or intolerance, and more broadly people under 15 years and pregnant or breastfeeding consumers that are already considered with the mandated warnings.

We do have a considerable customer base that do buy products to avoid an intolerance eg buy a plant protein to avoid dairy, as dairy causes digestive discomfort. In contrast a large proportion of those avoiding dairy do so through lifestyle choice (ie vegan diet by choice) or simply as they believe it is better for them.

We do not target under 15s to consume products that are under 2.9.4 and if we have queries that relate to a medical condition we always advise that the consumer consult with a GP or accredited dietician before consuming any supplements.

Q10. Do the current definitions and compositional and labelling requirements in the Code relating to sports foods pose any difficulties in compliance or enforcement? If yes, please provide reasons why and examples.

There is a variety of non conformance in our industry related to; NIP accuracy, Country of Origin labelling, claiming gluten free but not listing a gluten test on the NIP, incorrect ingredients lists. This is both on imported product and on that manufactured in Australia.

Some identical products are regulated differently due to the presented use case, eg. Collagen is sold for joint support and post exercise recovery under Standard 2.9.4 and needs mandatory warning and other requirements under Standard 2.9.4. Identical ingredient (ie collagen) is also sold for beauty/skin/nails, not under Standard 2.9.2, with no mandatory warning. Example [here](#).

Regulators (ACCC, Food Standards NSW) were informed of some companies in the industry selling product based on protein content (including 3rd party tests by NMI) well below claimed (ie claimed 90% protein, actual but regulators did not take any action - regulators are not enforcing existing requirements now.

Without effective enforcement, companies may choose to ignore or circumvent the code, potentially leading to inconsistent product quality and safety. Furthermore, consumers may be confused or misinformed about the composition and nutritional value of the products which can impact their purchasing decisions and potentially their overall health.

Lack of enforcement results in significant risks and challenges for those in the industry that do comply as well as for consumers.

Electrolyte Drinks

Q11. If the existing requirements for electrolyte drinks were transferred to a special purpose food standard (i.e. under Standard 2.9.4), what impacts (positive or negative) might this have on industry, regulators and/or consumers?

This is not a direct concern for us as we do little to nothing in this space, however we believe having it all under one standard eg Standard 2.9.4 makes sense.

Q12. If electrolyte drinks were to remain a general purpose food (i.e. [under Standard 2.6.2](#)) what impacts (positive or negative) would this have on industry, regulators and/or consumers?

We have no information to make an informed judgement on this question.

Q13. How would transferring electrolyte drinks to Standard 2.9.4 impact consumer messaging around their purpose and use? Please provide reasons for your view.

We believe Standard 2.9.4 is a better position for them based on their use case if 2.9.4 intends to stay focused on sports people.

Labelling

Q14. Are the existing labelling requirements in the Code for sports foods appropriate for managing potential risks to public health and safety? Please provide details on why or why not.

As per Q10. as cases of incorrect ingredients, incorrect NIPs and underdosing are not pursued, having the requirements in the code seems to do little to manage any potential risks, and relies on companies doing the right thing (which the majority do, however only the larger ones like us in our experience).

The requirements may be adequate, but the lack of enforcement and regulation to ensure their accuracy means that consumers are not provided clear and accurate information about the products sold under Standard 2.9.4.

Q15. What are your views on the relevance to sports foods of the existing warning statement and advisory statements? Please provide reasons for your view.

From the code:

a statement to the effect that the food is not a sole source of nutrition and should be consumed in conjunction with a nutritious diet;

We have no issue with this statement, though we do feel it doesn't add anything from a consumer point of view, no product should be a single source of nutrition and we would recommend everyone consume a nutritious diet.

(ii) **a statement to the effect that the food should be used in conjunction with an appropriate physical training or exercise program; and**

Under the current definition of 'sports' people, part (II) may be valid, however, as we have noted, this is not a relevant definition for many users of these products. Many products sold under S2.9.4 do not need to be consumed as part of a training or exercise routine, for example, collagen for joint health and support, protein powders to increase protein intake, creatine to support vegetarian diets, greens supplement for natural source of vitamins and minerals.

(iii) **the *warning statement 'Not suitable for children under 15 years of age or pregnant women: Should only be used under medical or dietetic supervision**

We assume that the reason for (iii) has basis in safety/research, though we suspect that to be largely out of date related to the age of the Standard. We do note that a large range of products similar to, but not sold under standard 2.9.4 do target these populations eg high protein bars, fortified with protein foods and a large variety of products targeting pregnant and breastfeeding consumers with ingredients identical to products sold under 2.9.4, but without any mandated warnings

<https://www.happyway.com.au/blogs/news/is-protein-safe-when-pregnant-or-breastfeeding>

<https://inshapemummy.com/products/in-shape-mummy-breastfeeding-shake-chocolate-brownie-or-vanilla>

<https://www.healthylife.com.au/shop/products/the-healthy-mummy-premium-smoothie-double-choc>

Additionally, it would be useful to understand how protein supplements in particular were determined to be unsuitable for the U15s and pregnant women.

We also note some disparity between Standard 2.9.4 and 2.9.3 in terms of protein per serve
Formulated Supp foods Standard 2.9.3

2.9.3—5 Compositional requirements for formulated supplementary foods

(1) A formulated supplementary food must contain in a serving no less than:

(a) 8 g protein; and *but no maximum, so 30g serve of WPC with 22g protein would comply with added vit/min mix, but if made under 2.9.4 not allowable for Under 15s?

(b) 550 kJ; and

(c) 20% *RDI of at least 1 vitamin or mineral listed in Column 1 of the table to section S29—14.

Q16. Please discuss whether you think the existing labelling requirements for sports foods enable consumers to make informed choices. Please provide reasons for your view.

All labelling requirements require consumers to have functional literacy and numeracy skills and understand how to read a NIP, we do not believe this is common across broad sections of consumers.

We believe supplements consumers may be better than many at assessing NIPs (however we know many are inaccurate/incorrect), we also actively educate our customers on how to read a NIP and ingredients list and what questions to ask of companies.

Labelling requirements like mandated warnings may make those unable to understand the code and the reason for it fearful or distrusting of products that are good for health and wellbeing.

Finally as referenced in earlier questions, consumers can only make informed choices when the information presented is accurate and truthful. If the regulations are not enforced that increases the risk of non compliant product being sold and therefore the risk of potential harm.

Q17. What are your views on the usefulness of the labelling statements in [Division 3](#) for particular sports foods (high carbohydrate supplement, protein energy supplement, energy supplement)? Please provide reasons for your view.

Not very useful, they are generally covered under directions and dosage information on products anyway. The same requirements could be consolidated for most supplements generally, and we observe that the current labelling statements are often not present on supplements that fall into these categories currently, and therefore are also likely unenforced.

Q18. Have you identified issues on any other labelling aspects specific to sports foods? Please provide detail.

As compositional requirements/one day quantites are very out of date and not in line with the current market, or often what is naturally occurring, there are restrictions on labelling ingredients sold under Standard 2.9.4 that do not exist for identical ingredient not sold under S2.9.4. The safety/risk of the product is identical however, being captured under S2.9.4 means there are requirements for labelling, that do not exist otherwise for an identical ingredient.

Q19. To inform the scope of the second consultation paper, do you have any views on how [Standard 1.2.7 – Nutrition, health and related claims](#) could apply to sports foods?

NSPC is not relevant for S2.9.4 and health star rating does not apply to products under 2.9.4, but is referenced heavily in 1.2.7.

1.2.7 does not appear to have been created with types of products in 2.9.4 in mind, so largely irrelevant, except for protein claims.