



AUSTRALIAN
**FOOD &
GROCERY**
COUNCIL

AFGC SUBMISSION

RESPONSE TO:

**FSANZ PROPOSAL P1010 FORMULATED SUPPLEMENTARY
SPORTS FOODS**

**CONSULTATION PAPER ONE: REGULATORY FRAMEWORK
FOR STANDARD 2.9.4**

9 March 2023

Sustaining Australia

PREFACE

The Australian Food and Grocery Council (**AFGC**) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

With an annual turnover in the 2020-21 financial year of \$133 billion, Australia's food and grocery manufacturing sector makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

The diverse and sustainable industry is made up of over 16,000 businesses ranging from some of the largest globally significant multinational companies to small and medium enterprises. Each of these businesses contributed to an industry-wide \$3.2 billion capital investment in 2020-21.

Food, beverage and grocery manufacturing together forms Australia's largest manufacturing sector, representing over 32 per cent of total manufacturing turnover in Australia. The industry makes a large contribution to rural and regional Australia economies, with almost 40 per cent of its 272,000 employees being in rural and regional Australia.

It is essential to the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

Throughout the COVID19 pandemic, the food and grocery manufacturing sector proved its essential contribution to Australian life. Over this time, while our supply chains were tested, they remain resilient but fragile.

The industry has a clear view, outlined in *Sustaining Australia: Food and Grocery Manufacturing 2030*, of its role in the post-COVID19 recovery through an expansion of domestic manufacturing, jobs growth, higher exports and enhancing the sovereign capability of the entire sector.

This submission has been prepared by the AFGC and reflects the collective views of the membership.

OVERVIEW

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to respond to *Proposal P1010 Formulated Supplementary Sports Foods*¹. As Proposal P1010 is being assessed under a Major Procedure, there will be further public calls for submissions as part of FSANZ's formal assessment. This proposal continues stakeholder consultation for Proposal P1010 and discusses aspects of the regulatory framework for *Standard 2.9.4 - Formulated Supplementary Sports Foods, Schedule 29 – Special Purpose Foods*, and other relevant standards in the Australia New Zealand Food Standards Code (the **Code**). It will inform the proposed regulatory approach put forward in the 1st Call for Submissions (**CFS**).

Food Standards Australia New Zealand (**FSANZ**) prepared this Proposal P1010 to review the framework underpinning the regulation in formulated supplementary sports foods (**FSSF**) in Australia and New Zealand. FSANZ is also seeking views on the positioning of electrolyte drinks within the Code. It is important to note that two other proposals are of relevance to P1010; these are *Proposal P1056: Caffeine Review* and *Proposal P1030: Electrolyte Drinks*. FSANZ has committed to considering whether to transfer the regulation of electrolyte drinks from *Standard 2.6.2 – Non-alcoholic beverages and brewed soft drinks* to Standard 2.9.4 as part of P1010.

The AFGC presents this submission in two parts:

1. **General comments** which outline the AFGC's position on FSSF; and
2. **Specific Comments** relating to aspects of the P1010 consultation paper such as definitions, composition, labelling including claims, and the positioning of electrolyte drinks within the Code.

GENERAL COMMENTS

The AFGC supports the need for a review of *Standard 2.9.4 – Formulated Supplementary Sports Foods* and is mindful of not only public health and safety, but also the global trade implications of foods designed to meet the special performance needs of consumers.

The AFGC understands that sports foods are intended to meet a specific need and are not considered to be a “general food”. They do not merely supply nutrition but rather they are formulated such that the nutrients achieve a specific purpose and are hence categorised under “special purpose foods” in the Code.

The AFGC notes that Standard 2.9.4 has not been reviewed since it was first gazetted in 1998. The sports food market has grown significantly since then, with a greater diversity of products and new product categories. Sports foods are more easily accessible and widely available to a broader range of consumers across the community via supermarkets, specialty stores, gyms and online purchase, and are designed for an expanded range of health and wellness purposes².

¹ [P1010 – Formulated Supplementary Sports Foods \(foodstandards.gov.au\)](https://www.foodstandards.gov.au/proposals/P1010)

² [Call for data on substances used in contemporary sports foods](#)

Currently, a sports food must meet the compositional and labelling requirements of three defined sub-categories (high carbohydrate supplement, protein energy supplement, or a simple energy supplement) in order to promote/market their intended purpose with limited permission of health claims. This stifles innovation, lags behind new science, and hampers the ability to communicate the intended purpose of this category to people participating in sport and other physical activities.

The AFGC considers review and modification of the existing standard is long overdue, highlighting the balance required to protect public health, align policy and regulatory instruments while providing flexibility and incentive for innovation. As it is, the standard has several limitations including:

- potentially discouraging industry to search/innovate for better-suited ingredients which support benefit to the sports-and health-minded consumer.
- not allowing provision of adequate information thus confusing consumers,
- being inconsistent with international FSSF standards, and
- not allowing for an efficient and competitive food industry or fair trading.

SPECIFIC COMMENTS

The AFGC wishes to make the following specific comments in relation to this proposal.

For ease of reference the paragraph numbers and headings refer to sections in the FSANZ [Consultation Paper One: Regulatory Framework for Standard 2.9.4](#) document.

In summary, these Specific Comments highlights the need for:

- updating Standard 2.9.4 with a focus on Division 3 to **broaden the FSSF categories**
- **permitting claims** in Schedule 4 on FSSF products (to be further considered consultation paper 2)
- **developing a pathway** that considers and balances the compositional requirements applied to FSSF and the requirements of *Standard 1.2.7 – Nutrition, health and related claims* and Schedule 4 to permit claims.

Definitions

4.2.1 Defined population and purpose

The AFGC strongly recommends changes to the current definition of a FSSF based on two issues – the consuming **population** and **purpose**.

For reference, the current definition of a FSSF as stated in Section 1.1.2—2 of the Code is “a product that is *specifically formulated to assist sports people in achieving specific nutritional or performance goals*”.

Population

FSANZ acknowledges (consultation paper, page 17) that this definition was developed in the 1990s, since which time the industry and consumer base have evolved significantly. The AFGC considers that the reference to 'sports people' in the definition needs review and notes the following point from the FSANZ consultation.

“FSANZ notes that it is arguable that consumers who are not elite or professional ‘sports people’ could viably be a part of this population group if they are exercising regularly (i.e., to the extent that the latter results in physical and physiological conditions that require altered energy and nutritional intake). In this context, the term ‘sports people’ may no longer be appropriate”.

This indicates that the sports food market no longer remains a relatively niche segment and the sole domain of elite ‘sports people’ – the sector is showing signs of increasing market segmentation with products catering for a broader consumer base undertaking light and heavy exercise as part of an active lifestyle.

Recommendation 1

The AFGC recommends removing specific reference to 'sports person' in the definition of FSSF in recognition of the increasing market segmentation with products catering for a broader consumer base undertaking light and heavy exercise as part of an active lifestyle.

Purpose

The concept of ‘general purpose’ foods and ‘special purpose’ foods is recognised in the Code with specific requirements for labelling and composition applied to special purpose foods. As ‘special purpose’ foods, FSSF under Standard 2.9.4 may contain specified ingredients which are either not permitted to be added to ‘general purpose’ foods and drinks or are permitted to be added at a different level. The standard currently includes three sub-categories of products, namely 1) a high carbohydrate supplement, 2) a protein energy supplement, and 3) a simple energy supplement, for which specific compositional and labelling requirements apply.

As the standard has not been reviewed for many years, AFGC consider it is narrow in its application and does not reflect products in the marketplace today. Currently FSSF must meet the compositional and labelling requirements of the three defined sub-categories in order to promote/market “enhanced performance or beneficial physiological effects”, according to Standard 2.9.4—7. The claims permitted under these three categories (Division 3) do not in reality communicate “enhanced performance or other beneficial effects”.

For example:

For a high carbohydrate supplement (clause 2.9.4—8) the label may include a statement to the effect of

- 'may assist with providing energy'
- 'is **useful** before, during and after sustained strenuous exercise'

The AFGC strongly recommends a review of the current regulation such that the restrictions on ingredients such as nutritive substances and permitted health claims on FSSF are opened to enable sports science-driven innovation and thus benefits to people who participate in sport and other forms of physical activity.

Recommendation 2

The AFGC strongly recommends a review of the purpose of FSSF to reflect the latest science and drive innovation thus benefit and better inform consumer choice.

4.2.2 Regarding the definition of a ‘one-day quantity’

The AFGC supports the current definition in the Code that a ‘one-day quantity’ refers to *the amount of that food which is to be consumed in one day in accordance with directions specified on the label*. Importantly, it does not relate to the amount of all FSSF consumed in one day.

The issue of “stacking” i.e. consumers consuming more than one sports food product at the same time, is raised in the consultation paper (page 18). This is where the labelling and composition of the individual FSSF are compliant with the Code, but when taken as part of a ‘stack’, the FSSFs may contribute to exceeding the maximum one-day quantity and sometimes the Upper Level of intake (UL).

The AFGC is of the view that the practice of ‘stacking’ cannot be resolved via food regulation/food standards and is better addressed by ongoing education to appropriate stakeholders. To enable this, the AFGC recommends, but not limited to, inclusion of additional resources on FSANZ’s [consumer page](#) for sports foods.

The AFGC strongly supports food safety as a priority for the food regulatory system. Food standards are not designed to manage rare adverse effects in the population – they are focussed on risk management, not risk elimination³.

Recommendation 3

The AFGC strongly recommends an ongoing education campaign to provide information to a range of stakeholders on the safety of FSSF consumption rather than through further regulation.

³ [Food Regulation - Aims and objectives](#)

Current compositional permissions

The AFGC acknowledges the complexity of the review of the FSSF standard in concert with concurrent related reviews through *Proposal P1056 – Caffeine Review* and the recently gazetted *Proposal P1030 – Electrolyte Drinks*.

In addressing issues with current compositional permissions, Standard 2.9.4 and Schedule 29 require review, revision and broadening.

Standard 2.9.4

There is opportunity to further grow the sports food sector in Australia, however, this is limited by the inability to apply innovation and development in line with the latest science. This includes new ingredients and process technologies to support differing needs of sport- and health-minded consumers.

Currently, a sports food must meet the compositional and labelling requirements of three defined sub-categories being 1) a high carbohydrate supplement, 2) a protein energy supplement, or 3) a simple energy supplement in order to promote/market their intended purpose with limited permission of health claims. Difficulty arises with respect to their application and relevance in the marketplace today, and in future proofing the standard to allow for product innovation. The formulation limitations under División 3 stifle the development of products and the ability to communicate valid and tangible product performance benefits to consumers.

It is important that the Division 3 categories be revised and updated to reflect advances in the active nutrition scientific literature. As an example, the categories, which would then permit associated health claims, could potentially be better expressed as functional sports foods that have the following key sports nutrition functions: Noting that beverages can fit in any and all future categories thus compositional requirements need to consider both solid foods and liquids.

Rehydration products	Pre exercise/workout products	During exercise / workout products or Endurance products	Post exercise /workout products	Recovery / preparation products
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The AFGC therefore strongly recommends a review of the existing categories with respect to their application and relevance in the marketplace today and in future proofing the standard to allow for product innovation.

Schedule 29 Special Purpose Foods

The AFGC strongly recommends that additional changes are required to *Schedule 29 – Special Purpose Foods* to align with amendments to Standard 2.9.4. Currently Schedule 29 is not fit for purpose as it does not include numerous substances with proven sports performance benefits for example, certain amino acids such as citrulline and beta-alanine, and those substances permitted by the Australian Institute of Sport Group A and Group B⁴. See **Appendix A** for further details.

Recommendation 4

The AFGC strongly recommends reviewing, revising and broadening of current compositional permissions of Standard 2.9.4, particularly Division 3, and Schedule 29 Special Purpose Foods to allow for product innovation based on current science.

Electrolyte drinks

5.1 Regulation of electrolyte drinks and 5.2 Consideration of move from Standard 2.6.2 to 2.9.4

In its response to the 2021 *Call for Submissions* on Consultation Paper for P1030 [Composition and labelling of electrolyte drinks](#), AFGC supported FSANZ's approach to retain electrolyte drinks within *Standard 2.6.2 – Non-alcoholic beverages and brewed soft drinks*.

The AFGC continues to support retaining electrolyte drinks provisions in Standard 2.6.2. as indicated in its submission to P1030 consultation, and remaining as a general purpose food in this standard.

However, the AFGC is open to considering the transfer of electrolyte drinks provisions to standard 2.9.4, on the principle that doing so would not impose any changes or additions to labelling requirements e.g., as prescribed in 2.9.4-(1).

The AFGC recommends future innovation in the sports drink category and proposes an additional pathway for functional sport beverages (e.g. low carbohydrate rehydration beverages, or sports drinks with the addition of nutritive substances and or functional ingredients) to be included within Standard 2.9.4.

Recommendation 5

The AFGC supports electrolyte drinks provisions in Standard 2.6.2 being retained.

The AFGC is flexible regarding the transfer of electrolyte drinks provisions to Standard 2.9.4, on the principle that this would not impose any changes or additions to labelling requirements e.g. as prescribed in 2.9.4—4(1).

The AFGC recommends an additional pathway for functional sport beverages to be included within Standard 2.9.4.

⁴ https://www.ais.gov.au/nutrition/supplements/group_a

6.0 Labelling

The AFGC strongly recommends that review of the regulatory framework of FSSF is considered in parallel with other food categories and ‘horizontal’ standards.

A key example is *P1024 - Revision of the Regulation of Nutritive Substances & Novel Foods*⁵ which is looking to develop an alternative risk-based framework for the regulation of nutritive substances and novel foods in the Code, while having regard to relevant Ministerial Policy Guidelines⁶.

6.1.1. Prescribed name

Regarding the prescribed name (Section 6.1.1), the AFGC notes that FSSF are required to be labelled with the prescribed name ‘formulated supplementary sports food’.

The industry is aware that a prescribed name that includes terms such as ‘supplement’ is a trigger for some sports authorities, coaches and athletes regarding the potential for contamination with an illicit substance. As a result, these products are often then required to be batch tested (e.g. Human and Supplement Testing [HASTA] testing) for illicit substances, which impose further costs and testing on every single batch of the product produced.

6.1.5 Nutrition content and health claims, 6.1.6 Labelling statements for particular FSSF

The AFGC considers that labelling requirements for FSSF are significantly out of step with current science, outdated, and lack flexibility to enable innovation to be able to provide effective and useful advice to consumers.

Placing restriction on information through limited claim permissions does not allow for clear differentiation between products (or clear communication of benefits to consumers who seek and need product information). This creates a significant disincentive to innovation and can result in poorer outcomes for consumers who may purchase products that do not meet their needs due to limited on pack information.

Hindering innovation and consumer information

Standard 2.9.4 and Schedule 29 need to be updated and aligned with advances in science to enable innovation in products benefiting both consumers and the food industry.

⁵ Proposal P1024 – Revision of the Regulation of Nutritive Substances & Novel Foods
<https://www.foodstandards.gov.au/code/proposals/Pages/P1024.aspx>

⁶ Policy Guideline on the intent of Part 2.9 – Special Purpose Foods.
[https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/8809C2329ABEFD18CA25801B00100EAA/\\$File/Policy%20Guideline-Part%202.9%20of%20the%20Code-Special%20Purpose%20Foods.pdf](https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/8809C2329ABEFD18CA25801B00100EAA/$File/Policy%20Guideline-Part%202.9%20of%20the%20Code-Special%20Purpose%20Foods.pdf)

As noted in the consultation paper (page 23), FSSF are limited in the claims they are permitted to make: *“Standard 1.2.7 does not apply to claims expressly permitted elsewhere in the Code (refer to paragraph 1.2.7—6(a)), such as those permitted for sports foods in Division 3 of Standard 2.9.4. Claims that are therapeutic in nature are not permitted (section 1.2.7— 8).”*

While nutrient profiling scoring do not need to be met, *“..special purpose foods standardised under Part 2.9 (including FSSF) do not need to meet the NPSC to make a health claim”.*

The only health claims permitted for FSSF are limited to those that relate to:

2.9.4—8 High carbohydrate supplement

(2) The label on a package of a high carbohydrate supplement may include statements to the effect that:

- (a) the food is useful before, during, or after sustained strenuous exercise; and*
- (b) appropriate usage may assist in the provision of energy in the form of carbohydrates.*

2.9.4—9 Protein energy supplement

(2) The label on a package of protein energy supplement may include statements to the effect that:

- (a) the product may assist in providing a low-bulk diet as may be required during training; and*
- (b) the product may assist in supplementing the diet with a high energy source as may be required during training; and*
- (c) usage as directed may assist in the development of muscle bulk; and*
- (d) the product is useful before, during, or after sustained strenuous exercise*

2.9.4—10 Energy supplement

(2) The label on a package of energy supplement may include statements to the effect that:

- (a) the product may assist in supplementing the diet with an energy source as may be required during training; and*
- (b) the product is useful before, during or after sustained strenuous exercise*

The permitted claims on current FSSF (as described above), limit the ability to inform consumers of the benefits of sports foods. This seems unreasonable when there are products on the market which are supported by scientific evidence for enhanced physiological performance or simply “good source” content claims.

There needs to be an approach that enables necessary information to be conveyed to sports and fitness-minded consumers for relevant products. Without this, the only way to differentiate such products is via alternate sources of information that may lack rigor and scientific basis such as sports blogs, other social media platforms, and sports/personal trainers.

The AFGC recommends an updated cost-effective pathway for permission for future scientifically proven performance and recovery claims that considers and balances the compositional requirements applied to FSSF and the labelling requirements of *Standard 1.2.7 – Nutrition, health and related claims* and Schedule 4 to permit claims.

However, careful consideration is required as Standard 1.2.7 currently does not contain sports performance/ recovery permissions.

Thus, if adopting standard 1.2.7, it would also require additional thought of 1) updating Division 3 health claims, 2) allowing these on FSSF and 3) managing FSSF that may not meet nutrient profiling scoring criteria due to compositional requirements.

Recommendation 6

The AFGC recommends developing a pathway that considers and balances both the compositional requirements applied to FSSF and the labelling requirements of Standard 1.2.7 and Schedule 4 to permit claims that inform consumer choice.

QUESTIONS

1. 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?

The industry provided data directly to FSANZ during the 2021 FSANZ [Call for data on substances used in contemporary sports foods](#) for P1010.

2. 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?

[Copied from the body of submission]

The AFGC strongly recommends changes to the current definition of a FSSF based on two issues – the consuming population and purpose.

For reference, the current definition of a FSSF, as stated in Section 1.1.2—2 of the Code, is “a product that is *specifically formulated to assist sports people in achieving specific nutritional or performance goals*”.

Population

FSANZ acknowledges (consultation paper, page 17) that this definition was developed in the 1990s, since which time the industry and consumer base have evolved significantly. The AFGC considers that the definition of 'sports people' needs review and notes the following point from the FSANZ consultation.

“FSANZ notes that it is arguable that consumers who are not elite or professional ‘sports people’ could viably be a part of this population group if they are exercising regularly (i.e., to the extent that the latter results in physical and physiological conditions that require altered energy and nutritional intake). In this context, the term ‘sports people’ may no longer be appropriate”.

This strongly indicates that the sports food market no longer remains a relatively niche segment and the sole domain of elite ‘sports people’ - the sector is showing signs of increasing market segmentation with

products catering for a broader consumer base undertaking light and heavy exercise as part of an active lifestyle.

Purpose

The concept of 'general purpose' foods and 'special purpose' foods is recognised in the Code with specific requirements for labelling and composition applied to special purpose foods. As 'special purpose' foods, FSSF under Standard 2.9.4 may contain specified ingredients which are either not permitted to be added to 'general purpose' foods and drinks or are permitted to be added at a different level. The standard currently includes three sub-categories of products, namely 1) a high carbohydrate supplement, 2) a protein energy supplement, and 3) a simple energy supplement, for which specific compositional and labelling requirements apply.

As the standard has not been reviewed for many years, AFGC consider it is narrow in its application and does not reflect products in the marketplace today. Currently FSSF must meet the compositional and labelling requirements of the three defined sub-categories in order to promote/market "enhanced performance or beneficial physiological effects" according to Standard 2.9.4—7. The claims permitted under these three categories (Division 3) do not in reality communicate "enhanced performance or other beneficial effects".

For example :

For a high carbohydrate supplement (clause 2.9.4—8) the label may include a statement to the effect of

- 'may assist with providing energy'
 - 'is **useful** before, during and after sustained strenuous exercise'
- The AFGC strongly recommends a review of the current regulation such that the restrictions on ingredients such as nutritive substances and permitted health claims on FSSF are opened to enable sports science-driven innovation and thus benefits to people who participate in sport and other forms of physical activity.

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

[Copied from body of submission]

The AFGC supports the current definition in the Code that a 'one-day quantity' refers to *the amount of that food which is to be consumed in one day in accordance with directions specified on the label*. Importantly, it does not relate to the amount of all FSSF consumed in one day.

The issue of "stacking" i.e. consumers consuming more than one sports food product at the same time, is raised in the consultation paper (page 18). This is where the labelling and composition of the individual FSSF are compliant with the Code, but when taken as part of a 'stack', the FSSFs may contribute to exceeding the maximum one-day quantity and sometimes the Upper Level of intake (**UL**).

The AFGC is of the view that the practice of 'stacking' cannot be resolved via food regulation/food standards and is better addressed by ongoing education to appropriate stakeholders. To enable this, the

AFGC recommends, but not limited to, inclusion of additional resources on FSANZ's [consumer page](#) for sports foods.

The AFGC strongly supports food safety as a priority for the food regulatory system. Food standards are not designed to manage rare adverse effects in the population -- they are focussed on risk management, not risk elimination⁷.

4. For all, should the Code retain the existing definitions in Standard 2.9.4? If so, why and if not, why not?

The AFGC opposes the existing definitions and thus require a review. Please refer to Question 2 for an extended answer.

5. 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)?

Please refer to section 6.0 (in copy above) for additional detail on review of the regulatory framework. The AFGC appreciates the effort of FSANZ to try to find a solution for the regulatory framework that works for all stakeholders.

The AFGC seeks greater clarity/detail of the proposed tiered approach before it could consider this. Such an approach may be helpful for the industry to bring ingredients defined as "low risk" to market without the complexity of costly application to amend the Code. But, if it were to increase restrictions of currently permitted ingredients in sports foods, this would be counterproductive.

Additionally, the AFGC has concern regarding any additional regulation that may impact on an efficient and competitive food industry and fair trading.

6. 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.

The AFGC is not able to provide evidence but instead refers to the position of the Academy of Nutrition and Dietetics, Dietitians of Canada, and the American College of Sports Medicine that *the performance of, and recovery from, sporting activities are enhanced by well-chosen nutrition strategies*. These organisations provide guidelines for the appropriate type, amount and timing of intake of food, fluids and

⁷ [Food Regulation - Aims and objectives](#)

dietary supplements to promote optimal health and sport performance across different scenarios of training and competitive sport⁸.

Based on the above, the AFGC is of the view that further education of all effected stakeholders needs to be undertaken regarding any known analogues and derivatives that may pose a health concern or risk.

- 7. Is there any evidence in current research in relation to known analogues and derivatives that 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.**

The AFGC is unaware of any current research on this topic.

- 8. 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?**

[Copied from body of submission]

The AFGC is of the view that the practice of 'stacking' cannot be resolved via food regulation/food standards and is better addressed by ongoing education to appropriate stakeholders. To enable this, the AFGC recommends, but not limited to, inclusion of additional resources on FSANZ's [consumer page](#) for sports foods.

The AFGC strongly supports food safety as a priority for the food regulatory system. Food standards are not designed to manage rare adverse effects in the population -- they are focussed on risk management, not risk elimination⁹.

- 9. To what extent are vulnerable consumers regularly consuming sports foods? Please provide evidence.**

The AFGC is not able to provide any information on this topic.

- 10. 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.**

Yes. The AFGC strongly recommends a review of the existing categories with respect to their application and relevance in the marketplace today and in future proofing the standard to allow for product innovation. The AFGC considers that the compositional and labelling requirements for FSSF are highly outdated resulting in compliance and enforcement difficulties and failing to be able to provide effective and useful

⁸ [Nutrition and Athletic Performance : Medicine & Science in Sports & Exercise \(lww.com\)](#)

⁹ [Food Regulation - Aims and objectives](#)

advice to consumers. The restrictions on compositional requirements and/or labelling (health claims) requirements need to be eased to enable innovation.

Specifically, the permitted claims on current sports foods (as described below under Division 3 of std 2.9.4—8, 9 and 10), limit the ability to inform consumers of the benefits of sports foods. This seems unreasonable when there are products on the market which are supported by scientific evidence for enhanced physiological performance or simply “good source” content claims.

The AFGC provides the following examples to demonstrate that the current categories need review.

- *Protein bars*

- Protein bars under Standard 2.9.4-9, “*Protein energy supplement*” category must contain “not more than 30% and not less than 15% of the *average energy content of the product is derived from protein”; which is difficult to formulate.

Thus, sports bar manufacturers often formulate under general foods but are unable to make sports performance claims as there are no permitted under Standard 1.2.7 and Schedule 4.

- *Gels*

- Gels are one of the few products that are able to meet the requirements for the “*High carbohydrate supplement*” (clause 2.9.4—8(3a-b)) category as the food must contain:

- (a) *not less than 90% of the *average energy content of the product is derived from carbohydrate; and*
- (b) *more than 15% of the product by weight is *carbohydrate when prepared as directed.*

- Often times these items have a propensity to trigger GI distress in athletes due to the high carbohydrate content so some flexibility in the % energy from carbohydrate is worthy of consideration. Branched Chain Amino Acids (**BCAA**) may also provide an important energy source and nutrient source during some activity pursuits and should also be permitted in this category.

- *Protein powders*

- Protein Powders are group of sports protein supplements currently in market which cannot be formulated to meet the composition requirements of Division 3, and so cannot access the performance claims permitted under this division.
- Standard 2.9.4 does not allow for the use of performance claims under Division 3 to be used together with formulated high protein supplemental powders (e.g. whey protein isolate supplements and high protein powders) for muscle protein synthesis following high intensity resistance training.

It is important that the Division 3 categories be revised and updated to reflect advances in the active nutrition scientific literature. As an example, the categories, which would then permit associated health claims, could potentially be better expressed as functional sports foods that have the following key sports nutrition functions: Noting that beverages can fit in any and all future categories thus compositional requirements need to consider both solid foods and liquids.

Rehydration products	Pre exercise/workout products	During exercise / workout products or Endurance products	Post exercise /workout products	Recovery / preparation products
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However, careful consideration is required as Standard 1.2.7 currently does not contain sports performance or muscle growth / recovery permissions. Thus, if adopting standard 1.2.7, it would also require additional thought of 1) updating Division 3 health claims, 2) allowing these on sports nutrition products and 3) managing FSSF products that may not meet nutrient profiling scoring criteria due to compositional requirements.

Thus, a pathway is required to retain and revise the claims permitted under Division 3 of Standard 2.9.4 but broaden them to be permitted to other foods and beverages that meet the same performance/outcome benefit and allow health claims from Schedule 4 to better communicate additional benefits of sports foods.

There needs to be an approach to convey to sports- and fitness-minded consumers the information necessary to select relevant products. Without this, the only way to differentiate such products would be by alternate sources of information that may lack rigor and scientific basis such as sports blogs, other social media platforms, and sports/personal trainers.

The AFGC recommends an updated cost-effective pathway for permission for future scientifically proven performance and recovery claims that considers and balances the compositional requirements applied to FSSF and the requirements of *Standard 1.2.7 – Nutrition, health and related claims* and Schedule 4 to permit claims.

11. 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?

The AFGC understands the aspirations of FSANZ to transfer the regulation of electrolyte drinks from Standard 2.6.2 – Non-alcoholic beverages and brewed soft drinks to Standard 2.9.4.

As background, the AFGC, in its response to the 2021 *Call for Submissions* on Consultation Paper for P1030 [Composition and labelling of electrolyte drinks](#), supported the proposed approach for electrolyte beverages to remain under Standard 2.6.2 with the following caveats:

- prescribe the name 'electrolyte drink'
- amend the units of osmolality to 'per kilogram'
- reduce the minimum requirement for carbohydrate in electrolyte drinks to 20 g/L
- remove the reference to 'mineral' in relation to the permission to add the mineral salts, and adopt 'electrolytes' in lieu
- prohibit the declaration of % Recommended Dietary Intake (%RDI) of the prescribed electrolytes

Additionally, the AFGC recommended amendments to the proposed approach:

- retain reference to 'carbohydrates' (and electrolytes) in the definition as it aligns with compositional requirements and functionality
- amend the definition to include consuming electrolyte drinks before, during and after physical performance.ⁱ
- amend the maximum fructose permitted in electrolyte drinks to be set relative to the amount of total carbohydrate in the beverage to 'no more than 50% of the total amount of carbohydrates'
- permit other content claims, beyond those only about: carbohydrate; sugar or sugars; energy; and/or any one of five substances classified as electrolytes, to encourage innovation
- allow flexibility in the general level health claims prescribed wording requirements regarding the quantifiable amount of time of the strenuous exercise of '60 minutes or more' or one hour or more, and allow the use of the previous wording "sustained".
- permit other general level health claims relating to hydration prior to strenuous physical activity, carbohydrate and energy for normal metabolism, and energy for normal metabolism
- permit a two year transition period and one year stock in trade, given the numerous changes to the labelling of these drinks that will impact the majority of these drinks

Future proofing sports drinks

[Copied from body of submission]

The AFGC continues to support retaining electrolyte drinks provisions in Standard 2.6.2. as indicated in its submission to P1030 consultation, and remaining as a general purpose food in this standard.

However, the AFGC is open to considering the transfer of electrolyte drinks provisions to standard 2.9.4, on the principle that doing so would not impose any changes or additions to labelling requirements e.g. as prescribed in 2.9.4—4(1).

The AFGC recommends future innovation in the sports drink category and proposes an additional pathway for functional sport beverages (e.g. low carbohydrate rehydration beverages, or sports drinks with the addition of nutritive substances and or functional ingredients) to be included within Standard 2.9.4.

12. 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?

Please refer to the responses to Q11.

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

Please refer to the responses to Q11 and 12.

14. 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.

Yes. As part of the Australia and New Zealand food regulatory system, FSANZ plays an important role in supporting public health and safety by setting food standards so that Australian and New Zealand consumers have safe food and can make informed choices about the food they buy¹⁰.

Hence, the AFGC is of the view that FSANZ is fulfilling its role to protect public health and safety when setting mandatory food labelling standards and hence the existing requirements in the Code for sports foods are appropriate for managing potential risks to public health and safety.

The AFGC strongly recommends that review of the regulatory framework of FSSF are considered in parallel with other food categories and horizontal labelling standards.

The AFGC is of the view that the practice of 'stacking' cannot be resolved via food regulation/food standards and is better addressed by ongoing consumer education. To enable this, the AFGC recommends, but not limited to, inclusion of additional information on FSANZ's [consumer page](#) for sports foods.

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

The AFGC supports having warning and advisory statements as these must be provided for certain foods or ingredients which may cause health risks for some consumers or when people may be unaware of a severe health risk posed by a food or an ingredient¹¹.

However, the AFGC considers that the existing warning and advisory statements are overly worded, need to be shortened with the aim of communicating a similar meaning, and thus less onerous for the industry to be able to include these on the labels (especially small pack sizes known as 'stacks' (not be confused with stacking) in sports nutrition. It will also assist the consumers in improving their understanding of such warning and advisory statements.

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

[Copied from body of submission]

Currently, a sports food has limited permission of health claims under Division 3.

¹⁰ [Our role in supporting nutrition-related public health \(foodstandards.gov.au\)](https://www.foodstandards.gov.au/australian-standards/food-standards/food-safety-and-nutrition/food-safety/food-safety-standards/food-safety-standards-for-sports-foods)

¹¹ [Warning and advisory statements \(foodstandards.gov.au\)](https://www.foodstandards.gov.au/australian-standards/food-standards/food-safety-and-nutrition/food-safety/food-safety-standards/food-safety-standards-for-sports-foods)

In relation making informed choice, the existing labelling requirements do not allow provision of adequate information to convey to sports- and fitness-minded consumers the information necessary to select relevant products.

In order to differentiate such products, consumers must seek out alternative sources of information that may lack rigor and scientific basis such as sports blogs, other social media platforms, and sports/personal trainers.

The AFGC recommends an updated cost-effective pathway for permission for future scientifically proven performance and recovery claims that considers and balances the compositional requirements applied to FSSF and the requirements of Standard 1.2.7 – Nutrition, health and related claims and Schedule 4 to permit claims.

However, careful consideration is required if adopting standard 1.2.7, in relation to 1) updating current Division 3 health claims, 2) allowing these on sports foods and 3) managing sports foods that may not meet nutrient profiling scoring criteria due to compositional requirements,

Lastly, the AFGC is of the view that Australian manufacturers are placed at a significant disadvantage to manufacturers based in New Zealand, and distributors who import product via New Zealand to Australia, on the basis that there is less restriction on composition and the ability to communicate the benefits of the products enabling consumers to make informed choices.

17. 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.

The AFGC considers that the opportunity to further grow the sports food sector in Australia is limited by the inability to leverage labelling statements in concert with innovation, the level of latest science, ingredients available, and new process technologies that can make it increasingly possible to look at differing needs of fitness minded adults.

Currently, a sports food has limited permission of health claims under Division 3 viz high carbohydrate supplement, protein energy supplement, and energy supplement.

To claim that a product 'may assist with providing energy' or 'is useful before, during and after sustained strenuous exercise' does not provide a clear benefit or purpose of the sports food. These are vague and generalised statements.

For example, general purpose foods have permission to make general level health claims under Standard 1.2.7 (if NPSC-compliant) about muscle building and repair, and energy production and release, however, this is not permitted for FSSF under Standard 2.9.4.

The composition requirements to achieve optimal sports performance outcomes have moved considerably over the last three decades and the Division 3 compositional boundaries need broadening.

Hence, the AFGC recommends review, revision and broadening of labelling statements in Division 3 to be able to allow products to carry the intended benefits on the label. Health claims in relation to immune health, gut health, cognitive health, bone health, muscle health, focus benefits, concentration benefits are all critical to sports performance and health claims around these areas, linked to baseline nutrition requirements should be permitted to be used by 'functional sports foods.'

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

Please refer to the responses to Q15, 16, 17.

19. 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?

[Copied from body of submission]

The AFGC recommends an updated cost-effective pathway for permission for future scientifically proven performance and recovery claims that considers and balances the compositional requirements applied to FSSF and the labelling requirements of *Standard 1.2.7 – Nutrition, health and related claims* and Schedule 4 to permit claims.

However, careful consideration is required as Standard 1.2.7 currently does not contain sports performance/ recovery permissions. Thus, if adopting standard 1.2.7, it would also require additional thought of 1) updating Division 3 health claims, 2) allowing these on FSSF and 3) managing FSSF that may not meet nutrient profiling scoring criteria due to compositional requirements.

This will enable the industry to make claims such as nutrient content ("good source of x") and general level health claims either via a) the pre-approved list or b) via the self-substantiation pathway on FSSF. This then provides consumers with scientifically based information in an approved and existing regulatory framework that can assist in informed decision making.

However, careful consideration is required if adopting standard 1.2.7, as it would also require additional thought of 1) updating Division 3 health claims, 2) allowing these on sports nutrition products and 3) managing FSSF products that may not meet nutrient profiling scoring criteria due to compositional requirements,

RECOMMENDATIONS

The AFGC recommendations are:

- Remove specific reference to 'sports person' in the definition of FSSF in recognition of the increasing market segmentation with products catering for a broader consumer base undertaking light and heavy exercise as part of an active lifestyle.
- Review the purpose of FSSF to reflect the latest science and drive innovation thus benefit and better inform consumer choice.
- Implement an ongoing education campaign to provide information to a range of stakeholders on the safety of FSSF consumption rather than through further regulation
- Review, revise and broaden of current compositional permissions of Standard 2.9.4, particularly Division 3, and Schedule 29 Special Purpose Foods to allow for product innovation based on current science.
- Retain electrolyte drinks provisions within Standard 2.6.2.; and
 - not impose any changes or additions to labelling requirements e.g. as prescribed in 2.9.4—4(1), if transfer of electrolyte drinks provisions were to go to Standard 2.9.4
 - including an additional pathway for functional sport beverages within Standard 2.9.4.
- Develop a pathway that considers and balances both the compositional requirements applied to FSSF and the labelling requirements of Standard 1.2.7 and Schedule 4 to permit claims that inform consumer choice.

For further information about the contents of this submission contact:

APPENDIX A – RECOMMENDED CHANGES TO SCHEDULE 29

[LINK schedule 29](#)

S29—18

Amino acids that may be added to formulated supplementary sports food

For paragraph 2.9.4—3(1)(b), the table is.

Amino acids that may be added to formulated supplementary sports food

Column 1	Column 2
Amino acid	Maximum amount that may be added to a one-day quantity
L-Alanine	1 200 mg
L-Arginine	1 100 mg
L-Aspartic acid	600 mg
L-Cysteine	440 mg
L-Glutamine	1 900 mg
L-Glutamic acid	1 600 mg
Glycine	1 500 mg
L-Histidine	420 mg
L-Isoleucine	350 mg
L-Leucine	490 mg
L-Lysine	420 mg
L-Methionine	180 mg
L-Ornithine	360 mg
L-Phenylalanine	490 mg
L-Proline	1 100 mg
L-Serine	1 400 mg
L-Taurine	60 mg
L-Threonine	245 mg
L-Tyrosine	400 mg
L-Tryptophan	100 mg
L-Valine	350 mg

Additions to the Schedule

Amino acids

- Beta-alanine (1200 mg/day)
- Citrulline (2000 mg serve/day)
- Taurine (500 mg - 2000 mg/day)
- Leucine 3000 mg/day to cover current recommended guidelines for leucine.
- Isoleucine and valine 1500 mg/day, to permit the recommended 1:0.5:0.5 Leucine: isoleucine: Valine ratios.

The ideal ratio of leucine, isoleucine, and valine, collectively known as branched-chain amino acids (BCAAs), in sports nutrition is 2:1:1, with twice as much leucine as isoleucine and valine.

S29—19	<p>Substances that may be used as nutritive substances in formulated supplementary sports food</p> <p>For paragraph 2.9.4—3(1)(c), the table is:</p> <p>Substances that may be used as nutritive substances in formulated supplementary sports food</p> <table><tr><th>Column 1</th><th>Column 2</th></tr><tr><th>Substance</th><th>Maximum amount that may be added to a one-day quantity</th></tr><tr><td>L-carnitine</td><td>2g</td></tr><tr><td>Choline</td><td>10 mg</td></tr><tr><td>Inosine</td><td>10 mg</td></tr><tr><td>Ubiquinones</td><td>15 mg</td></tr><tr><td>Creatine</td><td>3 g</td></tr><tr><td>Gamma-oryzinol</td><td>25 mg</td></tr></table>	Column 1	Column 2	Substance	Maximum amount that may be added to a one-day quantity	L-carnitine	2g	Choline	10 mg	Inosine	10 mg	Ubiquinones	15 mg	Creatine	3 g	Gamma-oryzinol	25 mg	<p>Additions to the Schedule</p> <p>Additional substances that are Group A and B supplements, that should be included in Sch 29 (AIS)</p> <p><u>Group A</u> - (sports nutrition doses)</p> <ul style="list-style-type: none">• Dietary Nitrate / Beetroot Juice• Sodium Bicarbonate• Glycerol <p><u>Group B</u> (sports nutrition doses)</p> <ul style="list-style-type: none">• Collagen protein• Ketone supplements• Curcumin• N-Acetyl Cysteine• Quinine• Menthol <p>Other additions: Food Polyphenols Adaptogens</p>
Column 1	Column 2																	
Substance	Maximum amount that may be added to a one-day quantity																	
L-carnitine	2g																	
Choline	10 mg																	
Inosine	10 mg																	
Ubiquinones	15 mg																	
Creatine	3 g																	
Gamma-oryzinol	25 mg																	

ⁱ McDermott, B.P., et al., *National athletic trainers' association position statement: fluid replacement for the physically active*. Journal of athletic training, 2017; 52(9): 877-895.