Queensland Government

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Dear Sir / Madam

Submission: Urgent Proposal P1054 – Pure and highly concentrated caffeine products – Assessment of the Approved Variation

Thank you for the opportunity to provide a submission on the Call for Submissions paper for Proposal P1054.

This submission provides technical advice and comments related to this issue. The submission does not represent a Queensland Government position, which will be a matter for the Queensland Government when notification is made by the FSANZ Board to the Australia and New Zealand Ministerial Forum on Food Regulation.

Queensland Health supports Option 3 – Prepare a proposal to amend and/or add to the approved variation. It is agreed that pure and highly caffeinated food products should continue to be prohibited for retail sale under the variation to the Code introduced as part of Proposal P1054 to manage acute exposure to highly concentrated caffeine food products. The new proposal should consider whether further amendments to the Code are needed to manage risks posed by caffeine in the wider food supply to sensitive subpopulations and options for managing those risks.

Queensland Health is very concerned that the current drafting of the Code does not prohibit the addition of caffeine to a food as a stimulant, or for any other purpose where it does not fulfil the technological function of a food additive (as defined in Schedule 14). The maximum limits for caffeine in solid foods and semi-solid foods (5%) and liquids (1%), introduced by P1054, may have addressed risks of acute caffeine toxicity associated with the sale of pure and highly concentrated caffeine food products, but did not resolve the problem of the addition of caffeine for purposes other than as a food additive. We are concerned that if this anomaly is not resolved quickly, that the range of foods containing added caffeine may expand, increasing community exposure to it, complicating enforcement efforts and making it more difficult to reintroduce restrictions into the Code. We trust that the recommended proposal will address the addition of caffeine to food and will consider a 'prohibit unless permit' approach.

We believe the intention of the Code has always been to prohibit the addition of caffeine to foods unless expressly permitted. The current situation is an unintended consequence of the 2016 Code Revision (P1025) which changed the wording under Standard 1.1.1 from

unless expressly permitted a food for sale must not have as an ingredient or component…a food additive to, *a substance that was 'used as a food additive'*.
Our reasons for thinking that caffeine should only be added to food unless expressly permitted include:

- It is against the Ministerial Policy Guideline on Regulatory Management of Caffeine in the Food Supply (2014), and was not identified by the Food Regulation Standing Committee Food Regulation Policy Options Paper - The Regulation of Caffeine in Foods (2013). For example, the interpretation provided in P1054 would allow caffeine to be added, as a stimulant, to a whole range of foods including infant formula products and foods for infants, which is clearly not the intent or an acceptable outcome
- The Second Call for Submissions report of Proposal P1025 - Code Revision reinforces the view that caffeine would be regulated as a food additive, e.g. "*It can be inferred from all editorial notes that it is only the listed substances that are permitted and, by inference, that other substances are not permitted"*.
- The historical drafting of requirement for formulated caffeinated beverages, which was introduced party to allow the addition of caffeine to them.

The Department remains concerned that the prescribed maximum concentration of 5% caffeine in solid or semi-solid foods, and 1% in liquid foods may be perceived as safe compositional limits and may not provide a sufficient margin of safety. The assumptions in Supporting Document 1 (Risk and Technical Assessment) are based on consumption of these doses by healthy adults and do not consider that lower doses may cause severe adverse effects in children and sensitive subpopulations such as pregnant women, people with hypertension, etc.

The prescribed maximum limits for caffeine introduced by P1054 are in our view an interim measure. They may be able to 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 the risks from pure and highly concentrated caffeine products that are not foods.

The scope and safety assessment should also consider the form of the caffeinated food. The rate of absorption of caffeine into the body from different food matrices may need to be considered as part of the toxicological assessment when setting compositional limits. Also, as discussed, in Supporting Document 1, the form of the food (e.g. liquid, solid, gel, chewing gum) is an important consideration when assessing the ability to accidentally or intentionally over ingest caffeine.

It is important that the proposed review considers caffeine analogues and caffeine derivatives. It is noted that FSANZ proposes to consider these in the review of Standard 2.9.4 – Formulated Supplementary Sports Foods (P1010). However, the use of caffeine analogues and derivatives may not just be limited to sports foods, and hence should also be within the scope of the review of P1054. The scope should also be expanded to cover ingredient (e.g. guarana extract) and additives that contain high concentrations of caffeine. The addition of these substances to food may circumnavigate caffeine restrictions present similar risks and contribute to overall caffeine exposure.

The scope of the proposed review should be consistent with the Ministerial Policy Guideline on Regulatory Management of Caffeine in the Food Supply (2014), and the Food Regulation Standing Committee Food Regulation Policy Options Paper - The Regulation of Caffeine in Foods (2013). This could be addressed by not permitting the addition of caffeine

or caffeine-rich ingredients to food, unless expressly permitted by the Code. The provision of advice on labelling could also be explored as a management option, such as an advisory statement for foods containing higher concentrations of caffeine and declaring how much caffeine is present regardless of the source.

The Department also urges FSANZ to also address the broader problem that the Code currently does not properly limit the addition of food additives and substances to foods for technological purposes not listed in Schedule 14. Other purposes may include physiological and biochemical effects, physical and mental performance, growth, etc. Allowing the unregulated addition of additives for purposes not listed in Schedule 14 is at cross purposes with Standard 1.3.1 in limiting dietary exposure to them.

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