



14 November 2019

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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council (NZFGC) wishes to present on *Call for submissions – Urgent Proposal P1054: Pure and highly concentrated caffeine products: Initial consideration report*.

Yours sincerely

  
**Chief Executive**



**Call for submissions – Urgent Proposal  
P1054: Pure and highly concentrated  
caffeine products: Initial consideration  
report**

**Submission by the New Zealand Food & Grocery  
Council**

**14 November 2019**

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## NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the ***Call for submissions – Urgent Proposal P1054: Pure and highly concentrated caffeine products: Initial consideration report*** (the CFS).
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$31 billion in export revenue from exports to 195 countries – some 72% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income. Our members directly or indirectly employ more than 400,000 people – one in five of the workforce.

### THE PROPOSAL

3. This Proposal P1054 was a result of a request to FSANZ from Australian Government Ministers following a review and report on the current availability and regulation of caffeine and on options for strengthening the regulations concerning caffeine. In FSANZ’s view there was a high risk for consumers of such products and which required action to protect public health.

### OVERARCHING COMMENTS

4. NZFGC agrees that there is a risk to public health and safety from pure and highly concentrated caffeine. As a result, FSANZ has proposed a maximum limit of 5% per 100g of caffeine across the food supply. Some products will not meet this threshold and others may not.
5. NZFGC therefore recommends consideration be given to a slightly higher maximum level being set to address these concerns and to remove costs from the cost benefit analysis. Even with such a minor adjustment, NZFGC suggests that notification to the WTO of the measure be reconsidered on the basis that innovations using caffeine may be in train that have not been considered in this assessment.

### DETAILED COMMENTS

#### ***The problem***

6. FSANZ assessed that there was an immediate and acute risk posed by the sale of pure or highly purified forms of caffeine to consumers on the basis of one death in Australia and two in the USA.

#### ***Risk assessment***

7. An initial evaluation of the health effects of caffeine by FSANZ in 2000 noted evidence of “increased anxiety levels in both adults and children” at doses equivalent to two cans of cola for children (around 95mg per day) and three cups of instant coffee for adults (around 210mg per day). The coffee culture may well have raised tolerances at least in adults. In any event, FSANZ reports that both the European Food Safety Authority (EFSA) and the US Food and Drug Administration consider that almost double the doses assessed by FSANZ in 2000 (400mg per day) were safe for most adults. Neither agency has set a level for children although the acute level for certain adults (200 mg per day) might substitute for children.
8. EFSA suggests that above 500mg per day by adults there is a decrease in the rate of clearance of caffeine.

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9. FSANZ has identified that at 1,200mg per day there is the risk of tachycardia, arrhythmia and seizures, at 3,000mg per day, a risk of the dose being lethal and at 5,000 to 10,000 mg per day, the dose is life threatening. An amount of just 5mL of pure caffeine is equivalent 3,000 mg. For those who might have used pure caffeine, the dose requires fine scales, more finely calibrated than kitchen scales, to measure accurately.

### ***Risk Management***

10. FSANZ considers pure and highly concentrated caffeine food products to be a clear and present danger to consumers that requires immediate action. Once immediate health risks are addressed, broader issues such as the impacts of caffeine in sports foods and the food-drug interface will be considered in slower time.

#### ***Proposed limit***

11. FSANZ therefore proposes to set a maximum compositional limit for caffeine in food and to set that limit at a concentration in the food of 5% (5g/100g) in the product presented for retail sale. The concentration limit is proposed to apply to all forms of the product at retail including dry products, concentrates and liquids.

#### ***Impact on foods***

12. FSANZ presents a table of commonly available foods containing caffeine and none other than pure caffeine powder (94g-98g per 100g) is above 5.88g per 100g (a pre-workout sport supplement powder). A typical 1-2g serve of instant coffee contains 55-80mg of caffeine while, according to FSANZ, roasted coffee beans and ground coffee and coffee beverages contain less than 3g per 100g.
13. At the proposed limit, FSANZ advises that its analysis of 15 popular brands of sports supplement powders would suggest some individual containers of products on the market "might marginally exceed the proposed 5% limit".

#### ***Proposed maximum level too fine***

14. NZFGC considers the proposed maximum limit to be too finely set in relation to current food products to the extent that some may be removed from the market when there has been no issue associated with them in the past. NZFGC also understands that syrups and soda mixes sold at retail for dilution by the consumer may fall above the 5% maximum. Such a finely set maximum could result in the removal of these products from sale and inhibit future innovation of caffeine containing products in the future.
15. NZFGC therefore recommends consideration be given to a slightly higher maximum level being set to address these concerns.

#### ***Other risk management proposals***

16. NZFGC agrees with FSANZ that warning labels on caffeine containing products in the general food supply would be unlikely to protect public health and safety and therefore be less than effective.
17. NZFGC agrees with the additional longer term proposals by FSANZ including consideration of broader issues at the time sports foods are reviewed, targeted research on consumption in Australia and New Zealand and consumer and regulator education in relation to caffeine.

#### ***WTO notification***

18. NZFGC is surprised that FSANZ is not proposing to notify the WTO of the proposed change to the Food Standards Code. WTO members are not prevented from taking immediate

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measures to protect public health and safety but this does not prevent notification. Irrespective of the number of products affected and even if that is none, there is responsibility to notify a change that may have an impact in the future or to products planned for manufacture.

19. NZFGC suggests that notification to the WTO of the measure be reconsidered.

Costs and benefits

20. There is a clear risk from pure and highly concentrated caffeine. At the level proposed, there are costs – to some products on the market and to future innovation because the level is finely set. With a slight increase in maximum level the costs would be negligible for a very tangible benefit.

21. NZFGC repeats its recommendation for a slight increase in the maximum level proposed to remove any costs to the current market and to future innovation.