

## ATTACHMENT 2

### SUMMARY OF STAKEHOLDER RESPONSES

#### **Responses to Food Regulation Standing Committee Consultation Paper and Draft Amended Policy Principles on Regulation of Caffeine in Food**

##### **Respondents to consultation paper**

Australian Chamber of Commerce and Industry (ACCI)  
Australian Consumers' Association (ACA)  
Australian Food and Grocery Council (AFGC)  
Australasian Soft Drink Association Ltd (ASDA)  
Confectionery Manufacturers of Australasia Ltd (CMA)  
Dietitians Association of Australia (DAA)  
National Council of Women of New Zealand (NCWNZ)  
Nestle Australia Ltd  
Nestle NZ Ltd  
New Zealand Grocery Marketers Association (NZGMA)  
Red Bull Australasia  
Dr Rosemary Stanton

### **STAKEHOLDER RESPONSES**

#### **Overview**

A total of 12 submissions were received. Organizations representing the industry (8) were clearly of the view that the available scientific evidence did not provide justification for a restriction of the use of caffeine, especially in carbonated non-alcoholic beverages. The majority report of the Expert Committee on the Use of Caffeine was referred to as the basis for this view in a number of submissions. The fact that the per capita Australian consumption of caffeine is considerably lower than that in the USA. No adverse effects related to the increased caffeine consumption have been noted in the USA. The self-limiting nature of the caffeine addition in foods, especially beverages was also referred to, due to its bitter taste, as was the potential restriction to International Trade and competition, if the use of caffeine was limited beyond that provided by the existing regulations.

The ACA, the dietary professionals and the submission from the National Council of Women of New Zealand (4 submissions) were advocating a more cautionary approach to the regulation of caffeine use in foods, especially in products likely to be consumed by the vulnerable groups, including young consumers. The ACA pointed out that the caffeine consumption figures used in the formulation of the policy principles were based on consumption as of 1999 and argued that the introduction onto the market of formulated caffeinated beverages and sports drinks has produced a sharply increased caffeine consumption, especially in the younger age group.

The consensus view from the respondents support a regulatory response which is consistent across all forms of caffeine in the food supply, does not discriminate between caffeinated products already on the market and future products and is supported by advisory labelling provisions to protect at risk groups and assist the average consumer's choices.

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All but one of the industry-centered respondents supported Option 4 presented in the paper. The other industry submitter did not express a clear preference, considering option Options 2, 3 or 4 to be acceptable, in conjunction with Option 5.

*Of the others, one supported Option 2, two option 2 in conjunction with Option 5 and one Option 3 in conjunction with Option 5.*

### **Summary of comments on Purpose and Current Status and General Comments ACCI**

States that it is essential to the competitiveness of the Australian food manufacturing industry that it is not impeded by regulatory burdens which may limit its ability to compete with imported products or in international markets

#### **AFGC**

Expresses concern that sound science was lacking with some aspects of the consultation paper and also noted inconsistencies between several statements made in the paper relating to the effects of caffeine on 'vulnerable sections of the population'.

Considers that despite concern about this issue expressed by some people, the scientific evidence and scientific opinion does not support the view that children are a vulnerable group in terms of exposure to caffeine-containing foods or beverages. The majority report of the Expert Working Group on Caffeine and the ANZFA media release that accompanied the report are quoted in support of that view. With respect to pregnant women as a vulnerable group, the AFGC accepts the need for caution and supports the general recommendation that women should be advised to moderate their consumption of coffee during pregnancy. The AFGC further considers that current labelling requirements would permit individuals who may be sensitive to caffeine to understand and realise when caffeine has been added to a food or drink.

#### **ACA**

Notes that the great majority of scientific data and assessment contained in the policy report was drawn from the Expert Working Group's Report on Safety Aspects of Dietary Sources of Caffeine (June, 2002), which concluded that a 'no effect limit' could not be identified and it was likely that caffeine caused subtle effects even at very low dose levels; and between 4-5% of 2-4 and 5-12 year olds and 13% of 13-19 year olds are exceeding a level of intake associated with increased levels of anxiety.

#### **ASDA**

Argues that evidence of negative impacts of caffeine on the 'vulnerable' populations identified in the draft policy guideline is lacking, even though in the USA per-capita consumption of carbonated soft drinks (CSDs) is almost double that in Australia, caffeine at higher levels (200mg/Kg) is permitted in any carbonated beverage, and there is a high level of consumption of iced-tea. ASDA further argues that caffeine is readily available in the present food supply from coffee, chocolate and other caffeine containing products and that the market does not support a large number of caffeinated non-cola soft drinks. ASDA further argues that where caffeine is permitted in a wider range of soft drinks such products do not make a significant contribution to overall caffeine intake and are generally preferred by adults, rather than children.

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### **DAA**

Considers that due to the uncertainty of higher consumption doses of caffeine, particularly in children, permission to allow caffeine to be added to a broader range of foods and beverages may represent a public health and safety risk. This opinion is based on comments from the Expert Working Group on caffeine that the threshold dose for behavioural effects in children remains unclear and the expressed concern that doses of caffeine typically consumed in the diet may lead to withdrawal effects in adults. Considers that further research is needed to clarify whether there would be similar effects in children. Notes that a FSANZ requirement for food additives is that they perform a technological function. While flavour/taste is recognised as a technological function in Standard 1.3.1, DAA does not believe that using a potentially addictive substance (caffeine) to impart flavour to foods and beverages is consistent with the intention of the food additives standard.

### **NCWNZ**

Does not support the broadening of permissions for caffeine addition to food. States that the addition of caffeine is a concern for a portion of population who for various reasons do not wish to have extra caffeine in their diet and for that reason have a view that the quantity of any caffeine added to food products should be clearly stated on the label.

### **Nestlé New Zealand and Australia**

Opposes any tightening of the permission for the addition of caffeine or caffeine containing products to foods. Claims that the tightening of the current requirements will decimate the businesses sectors that currently use these ingredients. Questions the voracity of the argument about the need to limit caffeine exposure in vulnerable sub-populations. Argues the need for more assessment of the make-up of these vulnerable sub-groups and the reasons for their vulnerability. Notes that the majority report of the Expert Working Group on the review of the safety aspects of dietary caffeine stated that the effects on children remained unclear and that 'there is little evidence that caffeine causes adverse health effects in adults unless the consumption rate is very high'.

### **Red Bull**

Stresses the need to consider all forms of caffeine equally in developing a regulatory response, in the light of the World Trade Organisation requirement to treat equal risks equally.

## **Summary of comments on Key Issues ACA**

Is concerned that the current consideration of policy options are based on outdated data (1995), as the caffeine product spectrum and usage patterns of new food products has changed significantly since that time. ACA points out that since the completion of the last National Nutrition Survey for Australia, global consumption in the functional drinks category (which includes sports and energy drinks) has increased exponentially. ACA states that this growth must be captured in basic dietary intake data to ensure policy principles are developed on a scientifically sound basis, if the vulnerable at risk groups and heavy users are to be protected.

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ACA notes that currently there is no definition of a 'kola drink'. Legally, 'Kola drinks' are those that are deemed by the manufacturer to have a kola flavour profile. The current standard could provide a significant loophole for exploitation in the future unless addressed with a responsible definition of kola properties to compare against soft drinks and other non-alcoholic water based beverages to curb the proliferation of caffeinated beverages.

### **AFGC**

Accepts that certain public health professionals have expressed a concern that "caffeine dependency may skew food intake in alleged vulnerable populations through the consumption of significant quantities of sweetened beverages and other sweet foods and lead to an inadequate intake of nutritious food", but states that no evidence exists to support this statement in Australia or in countries where caffeine can be added to an extended range of beverages.

Considers that any concern in the general community about excessive caffeine intake, particularly in children, could be best addressed by the provision of truthful information about the known effects of caffeine through the provision of fact sheets, as found on the FSANZ website, and use of appropriate labelling statements informing consumers of the presence of caffeine.

### **CMA**

Does not agree to the tightening of the permission for the addition of caffeine or caffeine containing products to foods and suggests that controls by appropriate advisory labelling information, as per existing regulations for caffeinated beverages, kola drinks and foods containing guarana or guarana extracts, should provide adequate consumer information.

Calls for consistency with international regulatory provisions, to ensure there are no technical barriers to trade as a result of policy development and the consequential regulatory amendments and labelling provisions is urged.

Considers the declaration of the presence of caffeine in confectionary products unnecessary, due to the relatively low levels of naturally occurring caffeine in chocolate and low levels of addition of coffee extracts for coffee and chocolate flavoured products. Believes public education may be needed to address any inappropriate use of foods containing caffeine.

### **Nestle Australia and New Zealand**

Questions the source of the estimates of dietary intakes provided in the paper. Notes that the figure of caffeine intake provided for 2-4 year olds of 10mg/day is attributed to kola-type drinks, but points out that this equates to less than 100mL of a kola-type beverage each day or to 30g chocolate and a chocolate flavoured milk drink.

Notes the lack of evidence for the validity of the concern expressed by some public health professionals that caffeine dependency may skew food intake in vulnerable populations through the consumption of significant quantities of sweetened beverages and other sweet foods, leading to an inadequate intake of nutritious foods. Recommends policy does not discriminate against foods flavoured with coffee and chocolate, which

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may be encouraging the consumption of significant quantities of milk in some sectors of the community.

### **Dr Stanton**

States that there is ample evidence that caffeine is addictive, with withdrawal symptoms when consumption stops. Whilst the effects of caffeine deprivation are not life-threatening, the potential adverse effects of caffeine deserve consideration. Thus severe daytime sleepiness (as a result of poor nocturnal sleeping) has been strongly correlated with high caffeine intake, with a resulting increased risk of accidents in those suffering from this condition.

Questions the technological justification of the use of caffeine in soft drinks and suggests that if it is being used to aid in moderating the sweetness of beverages, an alternative would be to decrease the high sugar content.

### **Summary of comments on Policy Principles**

The principles outlined in the consultation paper were criticized by a number of respondents.

### **ACCI**

Is not supportive of approaches to restrict advertising caffeine-containing products to children, due to definitional, administrative and enforcement problems inherent in such approaches.

### **ACA**

Strongly opposes the use of 'technological justification' as a high-order principle within the policy framework arguing that it does not impart any value to the assessment of applications for caffeine. ACA argues that a requirement to demonstrate an exclusive technological need would be a more useful criteria for high-order policy principles as it requires assessment of other compounds and agents which may provide the same function as caffeine in a food. ACA supports the draft specific principles, but with respect to the third principle emphasises that particular innovation and competitiveness may assist in promoting public health and safety and suggests that a principle encouraging innovation in caffeine substitution and minimisation would be appropriate.

### **AFGC**

Disagrees with the Policy Principles on the basis that they are not based on sound science in their development and therefore do not conform to one of the Characteristics of Policy Guidelines put forward by ANZFSC on 24 May 2002, "*Not pre-empt sound, scientific risk assessment*". Recommends consideration be given to an amended set of Policy Principles that conform to the Characteristics of Policy Guidelines put forward by ANZFSC on 24 May 2002.

### **ASDA**

Is of the view that currently, the Food Standards Code (and Options 2 and 3) has the effect of limiting innovation and competitiveness while potentially encouraging increased caffeine consumption through the imposition of a minimum caffeine content for non-cola type non-alcoholic beverages. In order to innovate manufacturers are obliged to produce formulated caffeinated beverages containing higher levels of caffeine rather than soft drinks.

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Stated that currently, the Food Standards Code (and Options 2 and 3) has the effect of limiting innovation and competitiveness while potentially encouraging increased caffeine consumption through the imposition of a mini mu m caffeine content for non-cola type non-alcoholic beverages. In order to innovate manufacturers are obliged to produce formulated caffeinated beverages containing higher levels of caffeine rather than soft drinks.

### **Nestle Ltd**

Notes that whilst the paper states that the proposed policy principles are based on current scientific knowledge, community perception and the level of public concern regarding caffeine, no measure is provided of the community perception or the level of public concern regarding caffeine. Claims that the paper appears to be only addressing the addition of caffeine to food and largely ignores the issue of naturally occurring caffeine in foods.

Argue that Principle 2 is not necessary as technological justification will always be considered in the approval of caffeine as a flavouring in foods other than kola-type beverages as it is a basic legal requirement that the addition of food additives, including flavourings, is technologically justified.

### **New Zealand Grocery Marketers Association**

Notes that caffeine is one of the most highly researched substances in the world and that, according to the National Library of Medicine more than 19,000 scientific studies have been conducted to date on coffee and caffeine. These studies have concluded "Caffeine to be Generally Recognised as Safe".

Notes that the Food Standards Code already recognises that caffeine is technologically justified as a bittering ingredient in levels up to 145mg/kg. The impact of total caffeine exposure in the diet as a result of increasing permission for the use of caffeine will be minimal. Consumers will have detailed information about the presence of caffeine from the ingredient list. Thus labelling is an important safeguard for "vulnerable" consumers while retaining the important objective of providing consumer choice.

### **Dr Stanton**

Argues that most people are aware that cola drinks currently available contain caffeine, but extending permission to add caffeine to other drinks would not be known to most people and even if the label contained this information, it is unlikely that most people would notice it, since caffeine in other drinks would not be expected.

## **Summary of comments on Draft Policy Options**

### **Option 1: No permission for the use of caffeine as an additive to food**

Not supported by any respondents on the basis that it does not meet the Policy Principles contained in the consultation paper. This option represents a tightening of current policy and would result in existing products being withdrawn from the marketplace, thereby having detrimental commercial consequences to industry and is trade restrictive.

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### **Option 2: No extension to the permission for the use of caffeine as an additive in food.**

Not supported by most of the industry-centered respondents, on the basis that it would stifle product innovation and industry competitiveness, require products to be removed from the New Zealand market, not harmonise regulation with New Zealand, and maintain the market inequity between Australia and New Zealand. These respondents also note that the adoption of this option would also introduce an anti-competitive environment, as products already on the market would have a competitive advantage, whilst caffeinated beverages presently permitted in NZ would have to be removed from shelves.

One respondent favours this option, another two favour this option in conjunction with Option 5 and one considers this option to be as acceptable as Options 3 and 4, in conjunction with Option 5.

### **Option 3: Permission for caffeine to be added to a broader range of foods, not marketed to or generally consumed by children:**

Not favoured by the majority of the respondents on the basis that categorising foods specific to various sub-population groups would be complex and restricting consumption to 'vulnerable' groups challenging to manage. Respondents pointed out that the use of this principle would require a definition of children (under 18) and may lead to the requirement for certain foods being not available for general sale, or to the need for retailers to ask for an age card before certain foods could be sold (rendering them liable to prosecution should they sell to a child).

The sub-option of labelling applied to ALL foods containing caffeine, eg chocolate or coffee extracts was rejected as unnecessary as the level of naturally occurring caffeine in such foods would be insignificantly low. It was argued that labelling for caffeine presence in the case of products such as chocolate flavoured milk is likely to be highly concerning for some people and may lead them to avoid such products, to their detriment. It was also argued that it is common knowledge that coffee, tea and chocolate contain naturally occurring caffeine.

The simultaneous implementation of aspects of Options 3 and 5 is supported by one respondent as being most in keeping and supportive of the principles considering the data and information about consumption currently available. Consideration of a labelling system that distinguishes between 'higher' levels of caffeine and 'low' caffeine products is considered to be appropriate by this respondent. That is, a labelling system that required specific warning labels for products which contains caffeine over a level determined appropriate by health experts. The ubiquity of a 'contains caffeine' label would not impart the required distinction between products with relatively low levels or products which may have added caffeine in them (such as chocolate bars) and traditional counterparts.

### **Option 4: Permission for caffeine to be added to a broader range of foods**

Supported by the industry-related respondents as the most appropriate option, assessed against the Policy Principles. Used with appropriate labelling provisions and Advisory

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Statements, if health implications are identified, this option is seen as providing consumers with the necessary information to make informed choices. The respondents stress that mandatory labelling provisions should not apply to all foods containing caffeine, as this would be inconsistent with international standards but, rather, to foods containing added caffeine.

### **Option 5: Restriction to current permission for adding guarana and other caffeine-containing substances classed as food to other foods**

Not supported by the majority of respondents. Industry respondents point out that this option will affect foods, such as chocolate milk, chocolate ice cream, any confectionery containing coffee or chocolate containing cocoa, chocolate and coffee extract, which are already on the market. This is inconsistent with existing national and international regulations and would require wholesale removal of products from sale.

There is support for the use of this option, in conjunction with option 3, from one respondent, with another supporting the principles expressed, if used in conjunction with other options.

### **Preferred options by stakeholder group**

Type of respondent	No. of submissions	Option 1	Option 2	Option 3	Option 4	Option 5	Combined opts 2 & 5	Combined opts 3 & 5	Combined opts 5 & 2, 3 or 4
Industry	8	N/A	N/A	N/A	7	N/A	N/A	N/A	1
Consumer Organisations	2	N/A	N/A	N/A	N/A	N/A	1	1	N/A
Health Professionals	2	N/A	1	N/A	N/A	N/A	1	N/A	N/A

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### Summary of Comments on Table 1

AFGC and ASDA recommend the several amendments to Table 1, which demonstrates (with one amendment to Policy Principle 5 of added caffeine) that Option 4 best meets the Principles.

#### Amended Table 1: Comparison of options based on Policy Principles for caffeine addition to foods

Table 1:	Option 1	Option 2	Option 3	Option 4	Option 5
<b>Policy Principles</b>	<b>No permissions for the use of caffeine as an additive to food</b>	<b>No extension to the permissions for the use of caffeine as an additive to food</b>	<b>Permission for caffeine to be added to a broader range of foods, not marketed to or generally consumed by children</b>	<b>Permission for caffeine to be added to a broader range of foods</b>	<b>Restrictions to current permissions for adding guarana and other caffeine-containing substances classed as food to other foods</b>
To ensure that vulnerable sub-groups of the population are not adversely affected by added caffeine in food	Yes	<u>Yes</u> Partly <sup>5</sup>	Partly	<u>No</u> Part y Yes <sup>4</sup>	No
To ensure that the addition of caffeine to food as flavouring is technologically justified and that additions are kept at the minimum necessary to achieve the intended purpose	Yes	Yes	Possible	Yes <sup>3</sup>	N/A
To ensure that the impact of caffeine additions to individual foods are considered in the context of the total diet	Yes	Possible	Possible	<u>No</u> Possible <sup>2</sup>	Possible
To consider the appropriate use of advisory statements on caffeine-containing foods in alignment with the risk to vulnerable subgroups of the population	No <sup>1</sup>	Possible	Yes <sup>2</sup>	Yes <sup>2</sup>	N/A
To ensure that consumers, including parents, have access to information about the presence of <b>added</b> caffeine in food to enable informed and healthy food choices	No	Partly	Yes <sup>2</sup>	Yes <sup>2</sup>	N/A
To ensure, except where public health and safety is affected, that industry innovation and competitiveness is supported	No	No	No	Yes	No

<sup>1</sup> Unless extends to foods naturally containing caffeine.

<sup>2</sup> Providing mandatory to label products with "contains caffeine" and include advisory statements, allowing consumers informed choice.

<sup>3</sup> All additives must be technologically justified.

<sup>4</sup> Current labelling provisions allow for this. US data shows children and pregnant women are not adversely affected.

<sup>5</sup> People still consume caffeine in tea, coffee and cola beverages. The status quo does not guarantee that vulnerable groups are more or less at risk.