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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Consultation Paper – Proposal P1030: Composition and Labelling of Electrolyte Drinks*.

Yours sincerely

Katherine Rich  
**Chief Executive**



# **Consultation Paper – Proposal P1030: Composition and Labelling of Electrolyte Drinks**

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

**9 July 2021**

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## NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Consultation Paper – Proposal P1030: Composition and Labelling of Electrolyte Drinks*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

## OVERARCHING COMMENTS

3. NZFGC’s key concerns are around the definition, nutrition and health claims and transition. Overall, we believe the proposed response is not proportionate to the consuming population (around 1-2 % of the relevant target population groups) or the market segment (3% or less of sugar sweetened beverages sales).
4. In relation to the definition, we strongly recommend the term ‘carbohydrates’ be retained to improve consistency of definition with purpose and to reflect mandatory composition. We also recommend that reference to before, during and after exercise is an important element to reflect in the definition, not just after 60 minutes of strenuous exercise.
5. NZFGC strongly opposes restrictions on nutrition content claims. Standard 1.2.7 sets clear parameters around nutrition content claims and if electrolyte drinks meet these parameters, claims should be able to be made. Limiting nutrition content claims to those only about specific substances ignores any other attributes athletes may be looking for and therefore denying the consumer the information to make an informed choice.
6. While NZFGC supports the three proposed, pre-approved health claims, we do not support the general prohibition on any other health claims. The proposals will significantly disadvantage these products over any other product regulated by the Food Standards Code. If this limitation proceeds we recommend the option of using the previous wording “sustained” (aligning with “endurance “in EU performance claim) be considered. We also recommend ‘prior to strenuous exercise’, ‘carbohydrate and energy for normal metabolism’ and ‘energy for normal metabolism’ also be added.
7. Layering regulation on regulation on regulation restricts innovation to meet athlete needs, drives the Food Standards Code down a single product rabbit hole for no good reason and adds complexity. No other foods in the general food supply are so constrained and we fail to see justification in this product out of all the products covered by Standard 2.6.2. And there seems to be no clear rationale for the placement of electrolyte drinks in Standard 2.6.2 other than this is convenient.
8. NZFGC agrees with many of the other proposals made both for change and for retaining certain existing provisions although we consider there is no rationale to reduce the maximum fructose level permitted in electrolyte drinks from 50g/L to 20g/L and that a ratio of 50% of total carbohydrate in the drink should apply.
9. In relation to transition, NZFGC considers this unnecessarily harsh for a long shelf-life product and we recommend at least a 2 year transition period and an additional 12 months stock-in-trade.

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## DETAILED COMMENTS

### 1.5 Electrolyte drink consumption

10. Except for the ABS data of 2019-2020, all the consumption data is over a decade old and we are therefore concerned about the extent of relevance for the current proposal. Concerns about inappropriate use (by young people) appear to be around 1-2 % of the relevant target population groups and raise questions about the need for the excessive constraints proposed as a result.

### 1.6 Electrolyte drink consumer research

11. The consumer research is also over a decade old. Consumers can be expected to have changed over that time and without more recent consumer research, basing regulatory requirements on early 2000s responses is concerning.

### 1.7 Electrolyte drink market

12. The sales data is more useful since it reflects 2017 data. It does, however, show that even in the 'best case' scenario, these products are still only 3% or less of sugar sweetened beverages sales. The proposed response is not proportionate to the consuming population or the market segment.

## 2.2 Risk assessment

13. FSANZ's risk assessment was primarily aimed at determining if lower carbohydrate electrolyte drinks had a similar effect on rehydration and exercise performance as those that are currently permitted in the Code. The conclusion from examining several studies was that there was no clear difference.

## 2.3 Risk management

### Proposed transfer to Standard 2.9.4

14. There seems to be no clear rationale for the placement of electrolyte drinks in Standard 2.6.2 other than their retention in that Standard is a course of least resistance. As was proposed and supported in 2014, inclusion in Standard 2.9.4 has the logic of placement of a functional product.

### 2.3.2 Definition

15. The proposed new definition removes reference to carbohydrates since available evidence suggests a lower minimum level does not have a negative impact and FSANZ has responded to a call to define 'strenuous' as being 60 minutes or more of sustained strenuous physical activity.
16. NZFGC agrees in part with the proposed definition. WE strongly recommend the term 'carbohydrates' be retained to improve consistency of definition with purpose and to reflect mandatory composition.
17. An area of knowledge that has not changed over time and for which extensive evidence exists is that rehydration when an athlete or competitor is thirsty (after exercise) is too late. It needs to be before, during and after exercise (pre-event, within-event, and between-

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event) as was stated in 2010 by the British Nutrition Foundation<sup>1</sup> and repeated in many articles since<sup>2, 3, 4, 5</sup>. This is an important element to reflect in the definition (and in claims).

### 2.3.3 Minimum amount of carbohydrate g/L

18. Available evidence suggests a lower minimum carbohydrate level does not have a negative impact on performance. On this basis a lower minimum is proposed of 20 g/L.
19. NZFGC agrees with the proposed reduction in the minimum carbohydrate level but there is no rationale to reduce the maximum fructose level permitted in electrolyte drinks from 50g/L to 20g/L. The fructose maximum should be set at a ratio of 50% of total carbohydrate in the drink so that when the carbohydrate level decreases, then the fructose level would also decrease.

### 2.3.4 Nutrition content claims

20. NZFGC strongly opposes restrictions on nutrition content claims. Standard 1.2.7 sets clear parameters around nutrition content claims and if electrolyte drinks meet these parameters, claims should be able to be made. Limiting nutrition content claims to those only about: carbohydrate; sugar or sugars; energy; and/or any one of five substances classified as electrolytes (specifically calcium, sodium, magnesium, potassium and chloride) under Standard 2.6.2 ignores any other attributes athletes may be looking for and therefore denying the consumer the information to make an informed choice.
21. Layering regulation on regulation on regulation (only these claims on these components of these products) restricts innovation to meet athlete needs, drives the Food Standards Code down a single product rabbit hole for no good reason and adds complexity such as in relation to RDIs. No other foods in the general food supply are so constrained and we fail to see justification in this product out of all the products covered by Standard 2.6.2.

### 2.3.5 Health claims

22. NZFGC does not support the proposed approach on health claims. With the products remaining in Standard 2.6.2 in the general food supply, and while NZFGC supports the three proposed pre-approved health claims, we do not support the general prohibition on any other health claims. Such a restriction is again a layering of unnecessary regulation in an area where, in the last 20 years there has been only a handful of general level health claim applications made anyway.
23. It is not clear if the statement that the “overall approach for health claims about electrolyte drinks will be reconsidered in the broader context of the regulation of sports foods” is intended to be a comfort when the industry will effectively be prevented from innovating until the sports food review which might take until the mid-2030s to conclude if P1030 is anything to go by. FSANZ is simply locking in a recipe which is not its role. The proposals will significantly disadvantage these products over any other product regulated by the Food Standards Code.

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<sup>1</sup> [Hydration for optimum athletic performance - British Nutrition Foundation](#)

<sup>2</sup> Munoz & Johnson “Hydration for Athletic Performance” Ch 45 in *Nutrition and enhanced sports performance 2<sup>nd</sup> edition*, Academic Press: 2019. pp 533-543 <https://doi.org/10.1016/B978-0-12-813922-6.00045-X>

<sup>3</sup> Burke et al “International Association of Athletics Federations Consensus Statement 2019: Nutrition for Athletics” in *Int J Sport Nutr Exerc Metab* 2019; 29(2):73-84. doi: 10.1123/ijsnem.2019-0065.

<sup>4</sup> Nuccio et al “Fluid Balance in Team Sport Athletes and the Effect of Hypohydration on Cognitive, Technical, and Physical Performance” in *Sports Med.* 2017;47(10):1952-1982. doi: 10.1007/s40279-017-0738-7

<sup>5</sup> Orru et al “Role of Functional Beverages on Sport Performance and Recovery” in *Nutrients.* 2018;10(10):1470. doi: 10.3390/nu10101470

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24. We have already noted the value of hydration before, during and after strenuous activity. If the limitation on claims proceeds, then flexibility to reflect the sequence or relationship between hydration and the activity will be significant. NZFGC recommends flexibility in the prescribed wording requirements regarding the quantifiable amount of time of the strenuous exercise of '60 minutes or more' or one hour or more. NZFGC recommends the option of using the previous wording "sustained" (aligning with "endurance" in EU performance claim). We also recommend 'prior to strenuous exercise', 'carbohydrate and energy for normal metabolism' and 'energy for normal metabolism' also be added.
25. FSANZ proposes that units for osmolality should refer to 'per kg' and not 'per L'. As with the EU, the osmolality range is proposed as 200-340 mOsm/kg.
26. NZFGC agrees with these proposals concerning osmolality.

### **2.3.6 Reference to minerals**

27. NZFGC supports the proposed removal of reference to 'mineral' in relation to the permission to add mineral salts. Instead, the term 'electrolyte' is proposed to reflect the electrolytic function that sodium, potassium, calcium and magnesium and chloride ions perform rather than as minerals.

### **2.3.7 Nutrition information requirements**

28. Several changes are proposed for the NIP of electrolyte drinks, some for consistency, to address omission and to convey more information (average quantities) or less information (RDIs).
29. NZFGC supports these NIP proposals.

### **2.3.8 Claims in relation to tonicity of electrolyte drinks**

30. FSANZ is not proposing any changes to statements about isotonic drinks and NZFGC agrees with this position.

### **2.3.9 Prescribed name**

31. FSANZ proposes to retain the prescribed name 'Electrolyte drink'. This is commonly used by industry and NZFGC therefore supports the proposal.

### **3.1 Transitional arrangements**

32. FSANZ proposes a single, 12 month period to cover transition and stock-in-trade.
33. NZFGC considers this unnecessarily harsh for a long shelf-life product. There is no rationale provided for a single, 12 month period to cover transition and stock-in-trade. We consider the immediate past, current and future trading environment, encompassing as it does all the Covid related issues of packaging and supply chain exigencies to be difficult and costly for change. As FSANZ is aware, imported goods supplies (ingredients, packaging, printing etc) is experiencing ongoing delays and shortages for which there is no indication of improvement.
34. NZFGC recommends at least a 2 year transition period and an additional 12 months stock-in-trade.