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Tēnā koe

Attached are the comments that the New Zealand Food and Grocery Council wishes to present on *P1010 – Review of formulated supplementary sports foods : Consultation Paper Two – Nutrition and health claims.*

Ngā mihi nui

A handwritten signature in blue ink, appearing to be "Raewyn Bleakley". The signature is stylized and fluid.

Raewyn Bleakley
Chief Executive



**P1010 – Review of formulated
supplementary sports foods : Consultation
Paper Two – Nutrition and health claims**

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

4 September 2023

NEW ZEALAND FOOD AND GROCERY COUNCIL

1. The New Zealand Food and Grocery Council (**NZFGC**) welcomes the opportunity to comment on the *P1010 – Review of formulated supplementary sports foods : Consultation Paper Two – Nutrition and health claims*.
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.

EXECUTIVE SUMMARY

3. NZFGC is strongly supportive of sports foods being permitted to make ‘good source’ nutrition content claims about vitamins and minerals but we consider the prohibition in section 2.9.4—7 for representations on the label of sports foods in relation to enhanced athletic performance or beneficial physiological effects should NOT be retained. There is a body of evidence that can be drawn on which substantiates enhanced athletic performance or beneficial physiological effects that is used to permit representations in overseas markets, such as the EU and the USA, that should be permitted in Australia and New Zealand.
4. A section of pre-approved claims for selected parts of 2.9 standards would be go some way to removing the need for New Zealand manufactured products to be marketed under the New Zealand Food (Supplemented Food) Standard. Pre-approved claims for sub-categories of sports foods if they meet certain requirements should be available. FSANZ should consider including any authorised EU health claims as pre-approved health claims for sports foods.
5. NZFGC supports sports foods being permitted to make health claims about enhanced athletic performance and/or beneficial physiological effects in accordance with Standard 1.2.7. As well, NZFGC considers that if a sports food can contribute to the overall improvement of the general population diet, then it should be able to do so.
6. If the prohibition in section 2.9.4—7 is removed, no measures are needed to ensure there is regulatory clarity between sports foods and therapeutic goods because each country already has arrangements in place for this purpose. Standard 1.2.7—8 also contributes through prohibiting the use of claims of a therapeutic nature on foods.
7. We consider sports foods should be permitted to make high level health claims in accordance with Standard 1.2.7. Even for general foods there is little demand or desire for high level health claims so we would not expect this to be any different for sports foods.
8. NZFGC considers it appropriate to retain an exemption for sports food under the definition of special purpose food from the nutrition profiling scoring criterion (**NPSC**). These foods are formulated specifically to meet the nutritional needs of people participating in sport who have higher demands on macro-nutrients and energy than the general population. It is therefore challenging for formulated supplementary sports foods to meet the NPSC.

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9. NZFGC considers the same provisions should apply for formulated supplementary sports foods as they do for any other general food under Standard 1.2.7 and Schedule 4, while maintaining in place the provision in Standard 2.9.4 that NPSC does not apply to:
- nutrition content claims (source and good source)
 - pre-approved list of general level health claims
 - use of self- substantiation pathway for health claims.
10. As noted, a list of pre-approved general level health claims specific to enhanced athletic performance and/or beneficial physiological effects to allow for provision of adequate information relating to foods should be constructed.
11. Finally, NZFGC sees no reason why endorsing bodies as defined in the Food Standards Code (not-for-profit etc) should not be able to endorse products. There are sufficient checks and protections in Division 6 of Standard 1.2.7 to ensure this is controlled and the extensive criteria to be applied provides a further layer of protection.

COMMENTS

Q1. Are you aware of any additional, relevant consumer evidence about consumer perceptions of nutrition content or health claims on sports foods? [yes/no]. If yes, please provide details.

12. NZFGC has no additional relevant consumer evidence about consumer perceptions of nutrition or health claims for New Zealand but a recent UK/Irish study may be of interest: “Athletes Perceived Level of Risk Associated with Botanical Food Supplement Use and Their Sources of Information” by Bridin McDaid et al, *International Journal of Environmental Research and Public Health*, 2023: 20, 6244, <https://doi.org/10.3390/ijerph20136244>.

Q2. For industry stakeholders: how many of your company’s stock keeping units (SKUs) for formulated supplementary sports foods are labelled with the following:

- **Nutrition content claims;**
- **Health claims;**
- **The Division 3 statements in Standard 2.9.4 for high carbohydrate supplement, protein energy supplement or energy supplement (refer Table 1 of Section 2.2.3)**

13. NZFGC members may be able to provide this information in their submissions.

Q3. Are there areas of concern regarding nutrition content claims on sports foods? [yes/no]. Please provide details.

14. NZFGC considers there are concerns especially in relation to nutrition content claims on sports foods. The key issue is the conditions applied on claims. Companies need to be able to make nutrition and health claims for consumer information.

15. It is the experience of relevant members that the threshold for self-substantiating claims under Standard 2.9.4 are particularly burdensome and that a section of approved claims for selected parts of 2.9 standards would be go some way to removing the need for New Zealand manufactured products to be marketed under the New Zealand Food (Supplemented Food) Standard.

Q4. Should sports foods be permitted to make ‘good source’ nutrition content claims about vitamins and minerals? [yes/no]. Please provide reasons.

16. NZFGC is strongly supportive of sports foods being permitted to make 'good source' nutrition content claims about vitamins and minerals. Standard 1.2.7 provides for only four instances where 'good source' may be used: dietary fibre, omega-3 fatty acids, protein and vitamins and minerals. Several other special purpose foods are permitted to make such claims about all four substances including foods for infants, formulated meal replacements, formulated supplementary food and formulated supplementary food for young children. Sports people are arguably less vulnerable than consumers in these other groups and it is not clear why the 'good source' claims cannot therefore be made for vitamins and minerals in sports food.

17. In our view, content claims assist consumers of sports products to select the correct product to meet their requirements and for their safe use. Nutrition content claims help ensure the requirement of the Policy Guideline on the Intent of Part 2.9 is met. That is for adequate information to be provided, "including through labelling and advertising of special purpose foods, to assist consumer understanding of the specific nature of the food, the intended population group and intended special purpose of the food, and provide for safe use by the intended population and to help prevent inappropriate use by those for who the special purpose food is not intended".

Q5. Should nutrition content claims on sports foods be permitted in accordance with Standard 1.2.7? [yes/no]. Please provide reasons.

18. NZFGC is of the view that nutrition content claims on sports foods should be permitted in accordance with Standard 1.2.7. As with the response to Question 4, the use of specific descriptors should be permitted for the group of consumers using sports foods. This would allow industry to provide more information on pack to support consumers to differentiate between products and also to provide incentive for industry to innovate.

Q6. Should any other specific provisions for nutrition content claims be considered for sports foods? [yes/no]. Please provide details.

19. NZFGC does not consider that any other specific provisions for nutrition content claims are necessary for sports foods. If there is an ingredient in a product that supports a nutrition content claim, the product should be able to make the nutrition content claim.

Q7. Should the prohibition in section 2.9.4—7 for representations on the label of sports foods in relation to enhanced athletic performance or beneficial physiological effects be retained? [yes/no]. Please provide reasons.

20. NZFGC considers the prohibition in section 2.9.4—7 for representations on the label of sports foods in relation to enhanced athletic performance or beneficial physiological effects should NOT be retained. This prohibition is very confusing as the term "beneficial physiological benefit" has no clear definition. It should be removed as it is creating misinterpretation of the prohibition. In any event, the prohibition is unnecessary. There is a body of evidence that can be drawn on which substantiates enhanced athletic performance or beneficial physiological effects that is used to permit representations in overseas markets, such as the EU and the USA, that should be permitted in Australia and New Zealand. These have been assessed by authoritative regulatory agencies in those countries/regions and there is no reason FSANZ could not do this for our region.

21. Sports people are less vulnerable than consumers in other categories of special purpose foods. NZFGC considers it is unreasonable to have a prohibition on representations of enhanced athletic performance or beneficial physiological effects. Companies would like to see pre-approved claims for sub-categories of sports foods if they meet certain

requirements (i.e. a modern, fit-for-purpose version of Division 3). In our view the categories currently under Division 3 are not fit for purpose and are out-of-date.

Q8. If the prohibition in section 2.9.4—7 is removed, should sports foods be permitted to make health claims about enhanced athletic performance and/or beneficial physiological effects in accordance with Standard 1.2.7? [yes/no]. Please provide reasons.

22. Yes, NZFGC supports sports foods being permitted to make health claims about enhanced athletic performance and/or beneficial physiological effects in accordance with Standard 1.2.7. We understand the Ministry for Primary Industries has conducted nutrition and health claims research earlier in 2023 and this may be helpful to discussions. Its last survey¹ in 2016 identified 45 general health claims used of which 28 were preapproved.

Q9. Should sports foods be permitted to make health claims that do not relate to enhanced athletic performance and/or beneficial physiological effects in accordance with Standard 1.2.7? [yes/no]. Please provide reasons.

23. Yes, NZFGC considers that if a sports food can contribute to the overall improvement of the general population diet, then it should be able to do so. It is also the case that a relatively high proportion of the general population participate in regular physical activity or sports (e.g. running, physical training at home or at the gym). The Sport New Zealand [Active NZ Survey 2019](#) found that 72 percent of adults participated in sports or active recreation per week. Sports food products are not only consumed by professional athletes but also by a large proportion of the active adult population.

24. Sports foods should be permitted to make health claims beyond enhanced athletic performance and/or beneficial physiological effects in accordance with Standard 1.2.7. People who play sport and athletes have basic dietary requirements like all consumers.

Q10. If the prohibition in section 2.9.4—7 is removed, are measures needed to ensure there is regulatory clarity between sports foods and therapeutic goods? [yes/no]. If yes, please provide details.

25. No, if the prohibition in section 2.9.4—7 is removed, no measures are needed to ensure there is regulatory clarity between sports foods and therapeutic goods because each country already has arrangements in place for this purpose. The Australian Therapeutic Goods Authority has a system in place and while New Zealand has measures in place now, these might be reassessed in advance of the commencement of the recently enacted Therapeutic Products Act 2023 in 2026.

26. It is also our view that Standard 1.2.7—8 also contributes through prohibiting the use of claims of a therapeutic nature on foods.

Q11. Should sports foods be permitted to make high level health claims in accordance with Standard 1.2.7? [yes/no]. Please provide reasons.

27. Yes, because there are only ten pre-approved high level health claims and there have been no applications for any others as far as we are aware since Standard 1.2.7 came into force so even for general foods there is little demand or desire for high level health claims. It is also the case that the suppliers of general foods are not using high level claims as identified

¹ Ministry for Primary Industries. *New Zealand Nutrition and Health Claims Survey 2016/17: Post-implementation of Standard 1.2.7 Survey of Nutrition, Health and Related Claims used on packaged foods in New Zealand*. Wellington, 2023

by the MPI research in 2016 and neither was any use identified in the baseline survey in 2014.

28. An example of a possible high level health claim might be in relation to iron deficiency anaemia and hyponatremia which would be relevant disease states to make claims on when it comes to sports foods.

Q12. Sports foods are currently exempt from meeting the nutrient profiling scoring criterion (NPSC). Should this exemption be retained for sports foods? [yes/no]. Please provide details of circumstances when the NPSC should or should not apply.

29. Yes NZFGC considers it appropriate to retain an exemption for sports food under the definition of special purpose food. These foods are formulated specifically to meet the nutritional needs of people participating in sport who have higher demands on macronutrients and energy than the general population. It is therefore challenging for formulated supplementary sports foods to meet the NPSC.

Q13. Should FSANZ consider including any authorised EU health claims as pre-approved health claims for sports foods (refer Attachment B)? [yes/no]. Please provide reasons.

30. Yes, FSANZ should consider including any authorised EU health claims as pre-approved health claims for sports foods. Attachment B to the Consultation paper contains nine such claims dating from 2009.

31. The inclusion of authorised EU health claims as pre-approved health claims for general foods was the process followed for Standard 1.2.7 for its commencement and there is no reason that EU health claims for sports foods should not be included. Such an approach also promotes consistency across international regulations.

Q14. Do you support restricting health claims on sports foods to a list of pre-approved claims only? [yes/no]. Please provide reasons.

32. No, health claims on sports foods should not be restricted to a list of pre-approved claims. In our view, pre-approved claims could be part of a package of measures that would also include, for example, provision for self-substantiated claims. NZFGC considers the same provisions could apply for formulated supplementary sports foods as they do for other general food under Standard 1.2.7 and Schedule 4, while maintaining in place the provision in Standard 2.9.4 that the NPSC does not apply to:

- nutrition content claims (source and good source)
- the pre-approved list of general level health claims
- the use of self- substantiation pathway for health claims.

33. In addition, the following specific provision should apply:

- a list of pre-approved general level health claims specific to enhanced athletic performance and/or beneficial physiological effects to allow for provision of adequate information relating to foods to enable consumers to make informed choices and the prevention of misleading or deceptive conduct. This list would be integrated into Standard 1.2.7 and Schedule 4.

Q15. Should any other specific provisions for health claims be considered for sports foods? [yes/no]. If yes, please provide details.

34. NZFGC does not consider any further specific provisions for health claims need to be considered for sports foods other than those set out in response to Q14.

Q16. Should endorsements on sports foods be permitted in accordance with Standard 1.2.7? [yes/no]. Please provide reasons.

35. Yes, NZFGC sees no reason why endorsing bodies as defined in the Food Standards Code (not-for-profit etc) should not be able to endorse products. Such bodies could be sports associations or trusts for example. There are enough checks and protections in Division 6 of Standard 1.2.7 to ensure this is controlled and the extensive criteria to be applied provides a further layer of protection.