Queensland Government

Queensland Health

[redacted]

23 March 2023

Standards Management Officer
Food Standards Australia New Zealand
PO Box 5423
Kingston ACT 2604

Dear Sir / Madam

Submission - Proposal - P1010 Formulated Supplementary Sports Foods - Consultation Paper One: Regulatory Framework for Standard 2.9.4 - Queensland Health submission

Thank you for the opportunity to provide a submission on the Consultation Paper One**:** Regulatory Framework for Standard 2.9.4 for Proposal P1010.

This submission provides comments on the proposed changes to the *Australia New Zealand Food Standards Code* (the Code) and was prepared with input from health professionals from the [redacted] The submission does not represent a Queensland Government position, which will be a matter for the Queensland Government should notification be made by the FSANZ Board to the Food Ministers' Meeting.

This first paper for Proposal P1010 has been prepared to consider the framework underpinning the regulation of Formulated Supplementary Sports Foods (FSSF) in Australia and New Zealand. Responses received to this consultation paper will inform the proposed regulatory approach put forward in the 1st Call for Submissions. It is recognised that the issues considered by the paper do not reflect the entirety of issues that will be considered in the P1010 review, and similarly it is noted that our response does not attempt to cover the entirety of issues at this time and where no response has been provided to a question it has been have omitted from our submission.

Questions for submitters

Definitions

Q2. As a consumer, regulator or industry stakeholder, have you identified any issues resulting from the definitions in the Code? If so, what are they and why are they an issue?

The definitions relating to FSSF in the Code can cause differences of opinion when determining whether a food is a FSSF or a medicine. The section 7 declaration for sports supplements under the

[redacted]

Therapeutic Goods Act 1989 has assisted with definitions, however, there is a need to better define within the Code what a FSSF is, to assist food businesses and regulators to understand requirements for products that may sit at the food medicine interface.

Clarification will be required to be able to define the differences between electrolyte drinks, energy drinks and FSSF to ensure there is no crossover and provide legal clarity in requirements.

Caffeine requirements are not clearly defined for FSSF, rather they are in the general provisions of the Code, but it is acknowledged this may be clarified by Proposal P1056.

There are also issues for products claimed to be a FSSF, but may best fit with Standard 2.9.3, formulated meal replacements and formulated supplementary foods. For example, the current FSSF definition can capture a FSSF targeted to the population sub-group of professional athletes (traditionally considered sports persons) such as jockeys, bodybuilders or boxers for the specific nutritional goal of rapid weight loss for their pre-competition weigh-in. This same FSSF could also be targeted towards the population sub-group of people who are seeking weight loss. This group of people may or may not take part in sports but are seeking to consume the FSSF to meet the specific nutritional goal of weight loss. The definition in the Code could be amended to clarify whether a FSSF is permitted to be targeted to population sub-groups outside the specific purpose of being a sports person.

In addition, the current definition of a FSSF relating to a person *achieving nutritional or performance goals* could be interpreted broadly and apply to a range of non-traditional sports persons for example video gamers, chess players and race car drivers who have the performance goal of increased focus and/or energy. These non-traditional sports could satisfy the generally accepted expectations for traditional sports such as rules of play, competitions, skill requirements and performance expectations.

It is agreed that the generic term of sports people in the definition of a FSSF should be updated to reflect the current populations likely to consume a FSSF. FSSF are readily accessible to non-sports persons due to their widespread availability online and in stores. The definition could instead include persons who are consuming the FSSF pre-, during or post-, exercise (rather than only limited to sport).

Consideration could be given to whether additional definitions should be considered for inclusion into the Standard regarding other types of foods targeted at sports people, which are commonly marketed as *pre-work out*, *post-work out*, *fat burners*, *thermogenic*, *recovery*, and *stimulant*. The definitions could prescribe the naming of FSSF to only allow products to be labelled with these terms if each definition is met. Please note, it is not argued here for the inclusion of these categories but noting the review should consider if there is merit in prescribing requirements for the composition and labelling (and hence marketing) of them.

Furthermore, consideration should be given to clarifying if some of the commonly used marketing terms on sports supplements, such as fat burning and thermogenic, are health claims and should be subject to health claim requirements in the Code.

Q3. For industry and regulators, how should proprietary blends or stacks best be regulated and why?

It is requested that FSANZ consider the public health risks posed by the sale of caffeine rich extracts and the use of such extracts in food, and what regulatory measures may address the risks. this is not a reference to traditional coffee extracts such as coffee and tea beverages, but food extracts containing very high concentrations of caffeine that may potentially be considered as ‘food’. Some extracts, such as some guarana extract products, advertised on the internet are very high in caffeine (for example 22% caffeine). In addition, some extracts containing highly concentrated caffeine are advertised as ‘natural caffeine’ suggesting they are safer or healthier.

One option for extracts containing a high proportion of caffeine would be to retain the maximum limits for caffeine in Standard 1.1.1—10(5)(g). However, there is concern that these limits are still very high and not suitable as maximum compositional limits for such products and could still result in harm to some individuals. Alternative options could be explored. This could include defining caffeine rich extracts above a certain concentration as 'caffeine' for the purposes of the proposed express prohibition on the addition of caffeine to foods. Inclusion of requirements relating to the type of method for extracting caffeine (e.g. limiting to water extraction only) are probably not ideal because of the difficulty enforcing this type of requirement because this information is not readily available, particularly for imported foods.

In addition to regulating the addition of caffeine to food, the requirements should regulate the retail sale of caffeine (of various concentrations), extracts very high in caffeine (both liquids and powders), and proprietary blends that contain high concentrations of caffeine. It is important that there be legal clarity in regard to extracts and proprietary blends because these could otherwise be considered to be 'foods' and permitted by the Food Standards Code.

Strategies need to be considered to ensure online shopping searches provide appropriate warnings on the dangers of highly concentrated caffeine and high caffeine content foods and drinks (including extracts). FSANZ should maintain warnings on the FSANZ website about the dangers of caffeine powders and high caffeine content foods. This should include work to ensure these webpage rank highly in web searches for caffeine powders and high caffeine content foods, because consumers are likely to attempt to purchase these products online from overseas, and high webpage rankings allow warnings to be viewed at the same time. Social media advertising may also need to be considered.

Proprietary blends, while considered a trade secret and a marketing tool, still require ingredients to be clearly labelled in Australia. While ingredients must be disclosed, the exact amount does not need to be referenced, so long as it is listed, as per Code requirements in descending order of weight. The ingredients and concentrations of these proprietary blends should be made clear. While proprietary blends are legally accepted in other countries such as the United States of America, consideration should be given to whether they are permitted in Australia. Proprietary blends may allow the manufacturer to mislead consumers by:

- Not listing certain ingredients in overall descending order in the ingredients list
- including active ingredients in low, ineffective levels
- stock the product with inexpensive ingredients which can limit active ingredients
- use inactive ingredients or 'fillers'
- provide ability for substitution of ingredients with cheaper alternatives.

The safety of the ingredients depends on what the ingredients are and the quantities within the product which in proprietary blends may remain unknown. Allergens are one example where all ingredients should be provided.

Possible hidden drugs (both scheduled and unscheduled substances) is another example that requires further consideration. In the past, there have been instances where the ingredients list (or proprietary blend information) has listed the substances as a herb or herbal extract on the label rather than as the name of the pharmacologically active substance or active ingredient. In one instance, analysis of a food found the presence of a 'drug' at a higher concentration than would be expected to be present from the inclusion of a botanical.

A possible solution in relation to quantities of particular ingredients, such as those with a daily recommended quantity, is if present over a certain quantity/percentage, similar to caffeine, the quantity must also be provided. Further, with regard to compositional requirements – there is the potential that

limits could be too high (e.g., caffeine or amino acids and their chemical analogues) to protect public health and safety.

Q4. For all, should the Code retain the existing definitions in Standard 2.9.4? If so, why and if not, why not?

The existing definition of one-day quantity remains relevant.

There is a need to better define within the Code what a FSSF is, to assist regulators understand where products sit at the food medicine interface and provide greater regulatory clarity as to which requirements of the Code a product should comply with. Further, this definition includes reference to 'sports people' and the question is raised whether it should go further to define a sports person. This is due to the fact that currently these products are being used by many population sub-groups that are not engaging in sporting activities and may simply be choosing these product as they are seeking weight loss.

Current Compositional Permissions

Q5. Would a tiered approach to regulation based on composition improve public health and safety for consumers, while allowing for innovation (e.g., provisions for 'high risk' substances, restriction on sale, differing labelling requirements or compositional deviation)? If so, how could it look? How could high, medium and low risk products be differentiated? What requirements could apply to each and why (e.g., pre-market assessment, compositional and labelling requirements)?

It is considered that the widespread addition of caffeine to FSSF is not an argument to justify the continued addition of caffeine to FSSF. The addition of caffeine to FSSF has been driven by market forces and not government policy or informed by a risk assessment. There are many different purposes or types of FSSF. If caffeine is permitted in sports food and maximum concentrations set, it may not be appropriate for a blanket approach. That is, risk management options should potentially be customised for the different types/purposes of FSSF. It is acknowledged that this may be addressed by Proposal P1056.

It is suggested that a pre-market assessment could be required for FSSF products which are being reformulated to replace a banned substance with an analogue. This could assist in identifying potential risks to public health and safety prior to the product being available in the marketplace.

Support is not given for a self-substantiation approach for regulating sports supplements similar to the current health claim requirements, particularly those containing potentially novel foods or substances or nutritive substances. With enforcement of self-substantiation, the onus is on enforcement officers to review the dossier of evidence, which can be very time consuming and beyond the education and skill set of enforcement officers. Furthermore, it could be problematic for imported foods because importers may not proactively conduct a self-substantiation exercise and the same product may be imported by multiple importers.

Consideration could also be given to the problem of risk assessment for safety reasons versus concentration for efficacy. For enforcement and public health risk assessment purposes, a substance present in higher concentrations may be a safety risk, but it may be difficult to assess its safety when present in small concentrations.

Q6. Is there any evidence that current practice in relation to analogues and derivatives pose a health concern or risk? If you consider that there is a health concern or risk, please provide relevant details and data, where available.

In 2018, Victoria, in consultation with Queensland, wrote to the Australian Government Department of Agriculture and Water Resources, now the Department of Agriculture, Fisheries and Forestry (DAFF), to provide evidence of the risk posed by non-compliant FSSF to support the reassessment of their risk status under the Imported Food Inspection Scheme.

As part of the evidence provided, a number of FSSF that were associated with adverse health outcomes were included as examples, including:

a) [redacted]
   - Product contained prescription only medications and high levels of caffeine.
   - One case was hospitalised. Product was subsequently recalled by the importer.

b) [redacted]
   - Products contained *Acacia rigidula*, plant extract known to contain several amphetamines.
   - Cases reported increased heart rate and heart palpitations. One case of cardiac arrest. FDA issued warning letters to several manufacturers of dietary supplements containing *Acacia rigidula*.

c) [redacted]
   - Products contained substances listed on the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP).
   - Adverse effects reported consistent with post-anabolic steroid use.

d) [redacted]
   - Products contained Vinpocetine (a synthetic derivative from the Vinca minor plant).
   - Possible adverse effects include hypotension, tachycardia or hives.

e) [redacted]
   - Products contained 1,3-dimethylamylamine (DMAA).
   - Adverse effects include high blood pressure, vomiting, liver injury, heart attack, stroke and death.
   - TGA scheduled DMAA as a Schedule 10 poison (substances of such danger to health as to warrant prohibition of sale, supply and use).

f) [redacted]
   - Product was reformulated to replace DMAA with aegeline. Product was subsequently recalled worldwide.
   - Cases reported acute non-viral hepatitis, hospitalisations, acute liver failure and death.

g) [redacted]
   - Product contained green tea extract.
   - Case reported acute non-viral liver failure and was investigated by the TGA.

h) [redacted]
   - Product contained high levels of caffeine and prescription medications theophylline, oxedrine and yohimbine (which may have been present from herbal extracts). Product was recalled.
   - Cases reported tachycardia, vomiting, low blood pressure and loss of consciousness.

It is evident that products are being reformulated with analogues to banned substances (for example, DMAA was replaced with aegeline) which can result in new adverse health effects. These adverse health effects may only be identified after the product has been in the marketplace. It is likely that some of these products are no longer available for purchase.

Consideration should be given to the crossover of requirements for complementary medicines. For example, different compositional requirements apply to amino acids in complementary medicines, which can be presented in a way that is similar to FSSF. Also, consideration could be given in the review to whether certain types of higher risk 'dietary supplements' that are currently sold as sports foods (not necessarily complying with current FSSF requirements) may more appropriately be regulated under therapeutic goods legislation.

Q8. How could the Code assist in reducing the risk to consumers who are stacking sport food products and potentially consuming more than the maximum amount permitted by standard 2.9.4 in the Code?

Stacking or the consumption of multiple FSSF will need to be considered. As commented on in the submission for Proposal P1056, it is agreed that variations to the Code should be progressed to include an explicit permission for a maximum one-day quantity of caffeine in FSSF. It is assumed this will be addressed through appropriate labelling advisory statements in relation to the maximum one-day quantity. A similar approach could be applied to substances in sports food products that require a maximum limit for safety or nutritional reasons.

There are many 'dietary supplements' on the market that are promoted for both weight loss and for use by body builders, which it is assumed are captured by requirements for FSSF. Often, they are promoted with claims such as 'ketogenic' and 'fat burning' and contain caffeine. The proposed express prohibition on the addition of caffeine to all foods apart from cola-type drinks, FCBs and FSSF would mean these products, if they contain caffeine, would need to comply with the requirements for FSSF. Often these types of products contain substances with stimulant type actions that allegedly assist with weight loss or 'fat burning'. It is important that any requirements that reduce risks of over consumption of certain substances from stacking of FSSF also apply to other foods that contain any such substance, such as any weight loss supplements regulated by the Food Standard Code.

With the maximum level of 200 mg one day quantity of caffeine that is proposed to be permitted in FSSF, there are concerns as to whether this will still allow business to add foods and food extracts containing caffeine, such as guarana extract. This would therefore effectively be making each serve more than the maximum one-day quantity proposed to comply with the Code variations. The maximum one-day amount needs to incorporate the total caffeine from all sources including all the food ingredients (as these may also naturally contain caffeine) and not simply the caffeine that is added as a pure source.

Whilst the explicit permission of up to a maximum of 200 mg of caffeine in a FSSF is a positive move to protect sensitive sub-populations, there will still be potential for individuals to participate in stacking practices and therefore place themselves at risk of consuming over the maximum of 200 mg per day intake of caffeine. This new express permission will minimise the current risk of imported body building supplements that currently do not comply entering the local market.

It is anticipated that there will be existing FSSF products that do not currently comply with the preferred approach of a maximum one-day quantity of 200 mg. Therefore, whilst there may be an increased workload in the short term for jurisdictions and the Department of Agriculture, Fisheries and Forestry (imported food program) to assess compliance, this should in time result in greater regulatory certainty for both businesses and jurisdictions.

A mandatory warning against stacking products could be provided as a new provision. Also, a warning provision for labelling such as 'not to be taken with any other sports supplements or medicines without advice from a medical practitioner' could be incorporated.

Q10. Do the current definitions and compositional and labelling requirements in the Code relating to sports foods pose any difficulties in compliance or enforcement? If yes, please provide reasons why and examples.

There are difficulties with the laboratory analysis of FSSFs which are impacting enforcement of the compositional the requirements of the Code. This is due to the current compositional limits being hard to test against. This could involve testing for presence and levels of scheduled substances and other ingredients such as novel foods routinely present in such products (whether declared or not).

Routine testing by food regulators of FSSF products for compliance, and then working to remove non-compliant products from sale is problematic. This is because it is expensive and time consuming, there are many products on the market, such products (especially imported products) are quickly replaced by new products, because there are often multiple importers that fall into different jurisdictions, and because not all jurisdictions have the resources to prioritise this work.

There are a range of body building supplements on the market, typically pre-workout supplements, that contain caffeine, in some cases high concentrations of caffeine. These can be easily identified in online searches such as 'preworkout powder high caffeine Australia' and 'caffeine workout supplement Australia.' Often these products also contain other types of stimulants too. The maximum limits for caffeine in FSSF proposed by Proposal P1056 should provide a safe limit for caffeine in these products and provide greater legal clarity for businesses and enforcement agencies.

Importation of foods resembling FSSF that comply or allegedly comply with the *New Zealand (Supplemented Food) Standard 2016* and imported under the Trans-Tasman Mutual Recognition Agreement can pose enforcement difficulties. It is understood the *New Zealand (Supplemented Food) Standard 2016* was intended to be an interim regulatory arrangement until there are appropriate provisions in the Food Standards Code.

Electrolyte Drinks

Q11. If the existing requirements for electrolyte drinks were transferred to a special purpose food standard (i.e. under standard 2.9.4), what impacts (positive or negative) might this have on industry, regulators and/or consumers?

There may be positive impacts by transferring electrolyte drinks to standard 2.9.4 in that substances added may be more controlled under standard 2.9.4 requirements.

From an enforcement and compliance perspective, it is important that compositional and labelling requirements are clear and easy to interpret to help facilitate compliance.

FSSF and electrolyte drinks may differ markedly in relation to ingredients, such as sodium and carbohydrate or sugar content. Electrolyte drinks may be located in a supermarket or vending machine along with soft drinks and other general-purpose beverages, confusing their intended purpose and having the risk of increasing obesity due to sugar content and also contributing to unhealthy higher salt intake.

Q12. If electrolyte drinks were to remain a general-purpose food (i.e. under standard 2.6.2) what impacts (positive or negative) would this have on industry, regulators and/or consumers?

Grouping these items with FSSF could have a positive effect by removing the product from mainstream/general purpose beverage categories that could be consumed daily.

Q13. How would transferring electrolyte drinks to standard 2.9.4 impact consumer messaging around their purpose and use? Please provide reasons for your view.

Currently, electrolyte drinks may be located in a supermarket or vending machine alongside soft drinks and other general-purpose beverages, confusing their intended purpose, replacing the body's electrolytes/energy needs following intensive exercise. They are marketed to a wide audience, including children. Transferring electrolyte drinks to standard 2.9.4 may reflect on their location within a supermarket shelving, removing them from general-purpose beverage locations and vending machines, sending a clear message that these drinks have a specific purpose relating to intensive exercise. Electrolyte drinks may have benefit for athletes or those undertaking highly intensive exercise, and are not intended as, nor should be placed beside, general-purpose beverages to be consumed on a more frequent basis.

Labelling

Q14. Are the existing labelling requirements in the Code for sports foods appropriate for managing potential risks to public health and safety? Please provide details on why or why not.

The required statements in the Standard could be improved to better manage potential risks to public health and safety. For example, to warn against product stacking or to provide breast-feeding safety directions/precautions.

The existing required statements should be reviewed to determine if these statements are already captured elsewhere in the Code. For example, Standard 2.9.4**-**4(1)(a)(iv) requires a warning statement if the FSSF contains added phenylalanine. Standard 1.2.3-2 prescribes the requirements for mandatory advisory statements as listed in Schedule 9. Schedule 9-2, item 1 requires an advisory statement indicating that the food contains phenylalanine if the food that contains aspartame or aspartame-acesulphame salt.

The ingredients and their naming on food labels for FSSF are complex and would be difficult for the average consumer to understand the actual product they are consuming. For example, the FSSF [redacted] was reformulated following the banning of DMAA and is now available as [redacted]. This product is a proprietary blend however lists the following ingredients: Betaine Anhydrous, Taurine, Beta Alanine, Agmatine Sulfate, N-Acetyl-L-Tyrosine, DMAE, L-Theanine, Caffeine, DiCaffeine Malate, Hordenine HCL, TheaCrine, N-Comaroyldopamine, Rauwolfia Vomitoria, Acetyl-L-Carnitine, and Choline Bitratrate.

This ingredient list places the onus on checking multiple sources such as The Poisons Standard (SUSMP), the Food Standards Code, and the internet to determine if the ingredient is a scheduled medicine or poison, if the ingredient is permitted in food, and to check if there is any general safety issues or topical news. A general search using web search engine will commonly direct the consumer to FSSF online stores and will rarely provide a result from an independent source such as FSANZ or the TGA.

Because of the complexity of the naming of ingredients, consumers may instead rely on the product's claims and reviews to determine whether they will purchase and consume the product. For example, a consumer who is seeking a FSSF for pre-workout may purchase a FSSF product that is labelled as a pre-workout and makes associated claims such as energy formula, intense stimulant, extreme energy, high stim, and mind-muscle connection.

Many online stores with FSSF's for sale also allow consumers to filter products using tags such as pre-workout, energy & endurance, and keto amongst others and to filter based on ratings and reviews from other consumers. These online stores may make additional claims in the description of the

product that are not on the food label itself but may influence the consumer's choice to purchase the product.

It is recommended that the onus should be on the manufacturer to provide ingredient information on the food label which is easy to understand and is in plain English.

Therefore, it is suggested that the naming of the ingredient's list of FSSF products could be considered during the consultation and submission process of this proposal. Alternatives to the current requirements could include stating whether the ingredient is a scheduled medicine or poison such as Rauwolfia vomitoria (Schedule 4, prescription only medicine), the ingredient's category or class such as L-Theanine (amino acid) or Rauwolfia vomitoria (plant), or the ingredient's purpose or action in the body such as DiCaffeine Malate (caffeine for energy, malic acid to assist in digestion of the caffeine).

It is also suggested that additional information on FSSF and their numerous, complex ingredients could be provided on the FSANZ website which could provide an independent source of information for consumers to check on the safety of these ingredients.

Consideration could be given to limiting and standardising the types of claims about the functions of a product (typical claim include keto, fat burning, and thermogenic) to functional claims that are scientifically accepted, accurate and demonstrated by evidence.

Upon finalisation of Proposal P1010, the development of further education materials for both the consumer and the food industry would be welcomed. In conjunction with appropriate labelling requirements, this may also serve to reduce the risk to consumers of FSSF by providing information and education as to how these products should be made up and consumed. This may also serve to protect the most vulnerable populations within the community from harm.

Q15. What are your views on the relevance to sports foods of the existing warning statement and advisory statements? Please provide reasons for your view.

Previous issues with consumers product stacking, or exceeding recommended quantities, believing that 'more is better', emphasises a lack of clarity about usage and warnings with the current labelling requirements. As these products are marketed as food, clarity is also required for the safe use by pregnant or breast-feeding women.

It is also noted that some sports foods include legal disclaimers suggesting the product should only be used under medical supervision. The inappropriate use of such disclaimers for the public to transfer the risk to the consumer, particularly on products containing potentially novel substances, and drug-like substances is unfair to the consumer, who should be able to rely on legislated requirements and the regulatory framework to ensure products are safe to consume.

Q16. Please discuss whether you think the existing labelling requirements for sports foods enable consumers to make informed choices. Please provide reasons for your view.

Previous issues with consumers product stacking, or exceeding recommended quantities, believing that 'more is better', emphasises a lack of clarity about usage and warnings with the current labelling requirements. As these products are marketed as food, clarity is also required for the safe use by pregnant or breast-feeding women.

It is concerning that there is no ability to consider ingredients that may not be included on the label. The public naturally assume that a product that is available for sale is safe for them to consume. This is because if it was known to contain ingredients that were harmful to their health, enforcement and/or regulatory action would be taken to remove this product from sale. This is the essence of why there are high expectations from regulators with regard to amendments to Standard 2.9.4.

Q17. What are your views on the usefulness of the labelling statements in Division 3 for particular sports foods (high carbohydrate supplement, protein energy supplement, energy supplement)? Please provide reasons for your view.

The term 'energy' on products is often marketed in relation to the function of stimulants such as caffeine content rather than kilojoule content.

Q18. Have you identified issues on any other labelling aspects specific to sports foods? Please provide detail.

FSSF commonly contain novel foods or ingredients at quantities that exceed the Code. Safety risks for certain FSSF that are readily available for sale as foods in Australia may not have had a safety assessment for certain ingredients. Regularly, ingredients included provide risks, for example, ingredients could possibly be safe when used for a limited amount of time only, or could be unsafe for pregnant or breast-feeding women. No such warnings are provided for.

Q19. To inform the scope of the second consultation paper, do you have any views on how standard 1.2.7 – Nutrition, health and related claims could apply to sports foods.

Health claims are to provide information in relation to healthy food options. FSSF are 'supplementary' to foods and therefore should not be permitted to include health claims.

Health claims can currently be self-substantiated. The claim can be made and justified by the manufacturer without an independent assessment prior to the product entering the market. Systematic reviews of claims by food regulators can take time, effectively providing a loophole that allows inappropriate labelling of products to be within the marketplace. There may be a lack of specialist knowledge to be able to affectively review self-substantiated claims.

As discussed for Question 5, concern is raised about allowing self-substantiation for regulating sports supplements similar to the current health claim requirements, particularly those containing potentially novel foods or substances or nutritive substances. With enforcement of self-substantiation, the onus is on enforcement officers to review the dossier of evidence, which can be very time consuming and beyond the education and skill set of enforcement officers. Allowing self-substantiation could be problematic for imported foods because importers may not proactively conduct a self-substantiation exercise and the same product may be imported by multiple importers.

Consideration should be given to clarifying if some of the commonly used marketing terms on sports supplements, such as fat burning, keto and thermogenic, are health claims and should be subject to health claim requirements in the Code. Consideration could be given to limiting and standardising these types of claims about the functions of a product to claims that are scientifically accepted, accurate and demonstrated by evidence.

No concerns are raised with the current nutritional claims within standard 2.9.4.

Should you require further information in relation to this matter, please contact Food Safety