



# Submission to Food Standards Australia New Zealand - Proposal P1030

Health Claims – Formulated Supplementary  
Sports Foods and Electrolyte Drinks

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**57 Carrington Road Marrickville NSW 2204**

**Phone 02 9577 3333 Fax 02 9577 3377 Email [ausconsumer@choice.com.au](mailto:ausconsumer@choice.com.au)  
[www.choice.com.au](http://www.choice.com.au)**

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ABN 72 000 281 925 ACN 000 281 925

## About CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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## Introduction

CHOICE appreciates the opportunity to provide the following comments to Food Standards Australia New Zealand (FSANZ) on Proposal P1030 Health Claims - Formulated Supplementary Sports Foods & Electrolyte Drinks.

CHOICE has been actively involved in the debate over health claims for many years based on our commitment to consumer rights. In order for the market to operate efficiently, consumers must be able to make informed decisions and be protected from misleading or deceptive conduct. In this instance, we are concerned about the proposal to allow electrolyte drinks (EDs) to carry health claims relating to their respective purposes, without having to meet the Nutrient Profile Scoring Criterion (NPSC), a requirement within Standard 1.2.7<sup>1</sup>.

EDs are specifically formulated for people engaging in strenuous or prolonged exercise. Despite this, they are marketed to and consumed by a much wider audience. Health claims that are only applicable to a specialised group of people should not be placed on a product when it is known that the product is marketed to and consumed by a wider population.

Additional health claims on EDs would only benefit a small proportion of consumers; those who engage in high levels of strenuous activity. For all other people, health claims would be misleading, leading consumers to believe that the product is healthy when in fact it is high in sugar, sodium and kilojoules. This is an example of the 'halo effect' where a specific claim leads consumers to believe that the product is healthier overall.

The purpose of the health claims requirement within Standard 1.2.7 is to ensure that consumers are not misled. To qualify for a health claim, products need to meet the NPSC to ensure that they are generally healthy. Consumers should have the confidence that if a product has a health claim, it is then a healthier product. Creating a loophole for EDs is a backwards step for this standard and could easily mislead consumers into thinking they are drinking a healthier product.

## 1. Electrolyte drinks in the market place

Electrolyte drinks are specifically formulated for strenuous physical activity. Research by Sports Dietitians Australia concludes that EDs can only enhance performance during high intensity and endurance sports.<sup>2</sup> This is further supported by the Australian Institute of Sport (AIS) which states that athletes need to undertake high intensity exercise of approximately 60 minutes or more to benefit from consuming electrolyte drinks.<sup>3</sup> Intense activity is key to gaining a benefit from EDs. For the vast majority of athletic activity, consuming EDs provides no benefit to performance. For a typically active or casual athlete, additional electrolytes are unnecessary if

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<sup>1</sup> Standard 1.2.7 became law in 2013 to regulate nutrient content claims and health claims on food labels and in advertisements. It was introduced to reduce the risk of misleading and deceptive claims about food.

<sup>2</sup> Sports Dietitians Australia, *Fact Sheet Fluid in Sports*, accessed 23 September 2014  
<[www.sportsdietitians.com.au/resources/upload/files/110517%20Fluids%20in%20Sport%20PV\(1\).pdf](http://www.sportsdietitians.com.au/resources/upload/files/110517%20Fluids%20in%20Sport%20PV(1).pdf)>

<sup>3</sup> AIS (2009) *Fluid - Who Needs It?* accessed 23 September 2014  
<[http://www.ausport.gov.au/ais/nutrition/factsheets/hydration/fluid\\_-\\_who\\_needs\\_it](http://www.ausport.gov.au/ais/nutrition/factsheets/hydration/fluid_-_who_needs_it)>

a well-balanced diet is maintained.<sup>4</sup> For general exercise, such as a netball game, an hour gym session or a three hour bike ride, water is considered the best source of hydration.<sup>5</sup>

Some emerging research disputes the evidence behind EDs enhancing any athletic performance, linking the science behind these claims to industry influence.<sup>6 7</sup>

Despite EDs being tailored to a very specific market of people engaging in prolonged and strenuous physical exercise, 21 million litres of EDs were consumed in Australia in 2006 (the most recent data available).<sup>8</sup> It is the fastest growing sector of the soft drink market, up 33% from the previous year.<sup>9</sup> These figures indicate that consumption of EDs goes far beyond sportspeople. We believe this is attributed to the marketing, availability and misconceptions of the benefits of EDs.

## Marketing and availability of EDs

Although EDs are products created for a specific group of consumers, they are widely available and marketed to a broad audience. Research commissioned by FSANZ found that ED marketing is perceived to be aimed at the general public rather than elite athletes.<sup>10</sup> Consumers are aware of electrolyte drinks being advertised during sports games, at train stations, on the sides of buses and in ad shells at bus stops.<sup>11</sup> The availability and ease of purchasing sports drinks contributes to the idea that EDs are designed for ordinary consumption. They are sold in supermarkets, corner stores, convenience shops, petrol stations and vending machines and are often positioned amongst sugar sweetened beverages or by the checkout, encouraging impulse purchases.

## Misconception of the benefits of EDs

Engaging in prolonged or strenuous activity is not seen as a requirement for ED consumption by most consumers. Consumer research highlights that many individuals consume sports drinks in situations unrelated to strenuous exercise, such as when thirsty, hot or simply outdoors.<sup>12</sup> Respondents to this research even mentioned that sports drinks were used for hangovers or to relieve pregnancy cramps.

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<sup>4</sup> O'Dea, J. (2003) 'Consumption of nutritional supplements among adolescents: Usage and perceived benefits', *Health Education Research*, Vol 18, Issue 1 as cited in Meadows-Oliver, m. & Ryan-Krause. P. (2007) 'Powering up with Sports and Energy Drinks', *Journal of Pediatric Health Care*, Vol 21, Issue 6

<sup>5</sup> Health Promotion Agency (2014) *Behind the hype: Sports Drinks*, accessed 23 September 2014, <<http://www.hpa.org.nz/sites/default/files/documents/Sports%20drinks.pdf>>

<sup>6</sup> Heneghan et al. (2012) 'Mythbusting sports and exercise products', *BMJ*, 345:e4848

<sup>7</sup> Cohen, D. (2012) 'The truth about sports drinks', *BMJ*, 345:e4737

<sup>8</sup> CHOICE (2006) *Sports Drinks Review and Compare*, accessed 18 September 2014, <<http://www.choice.com.au/reviews-and-tests/food-and-health/food-and-drink/beverages/sports-drinks-review-and-compare.aspx>>

<sup>9</sup> Ibid

<sup>10</sup> Colmar Brunton (2010) *FSANZ Consumer research investigating the use of formulated supplementary sports foods*, accessed 22 September <[http://www.foodstandards.gov.au/publications/Documents/Sports\\_foods\\_final\\_report.pdf](http://www.foodstandards.gov.au/publications/Documents/Sports_foods_final_report.pdf)>

<sup>11</sup> Ibid

<sup>12</sup> Ibid

A US study found adolescents do not differentiate their use of electrolyte drinks for varying levels of physical intensity. Respondents stated they consumed sports drinks for their flavour, to quench thirst and to gain extra energy to improve sports performance.<sup>13</sup>

## 2. Misleading consumers

EDs are specifically formulated for strenuous or prolonged exercise. Their definition in Standard 2.6.2 of the Food Standards Code requires EDs to have more than 10 mmol/l of salt and more than 50g/L sugar. To put this into context, 100ml of Gatorade has 6g of sugar,<sup>14</sup> while 100ml of Coke has 10.6g of sugar.<sup>15</sup> However if a whole 600ml bottle of Gatorade is consumed in one sitting, as the serving size information would suggest, you would be consuming 36g of sugar, which is comparable to a serve size of coke containing 40g sugar.<sup>16</sup> Due to high sugar content, Gatorade would not pass the Nutrient Profiling Scoring Criteria and therefore not be eligible for a health claim under Standard 1.2.7.

However, Proposal P1030 would not require EDs to meet the NPSC allowing the drinks to carry health claims specific to their purpose. CHOICE believes this would result in serious negative consequences.

### The 'halo effect': specific health claims on unhealthy products is misleading

A CHOICE submission on health claims in 2012 identified that specific health claims can result in the 'halo effect' where a health claim leads consumers to believe that the product is healthier overall.<sup>17</sup> Portraying products as healthy when they are not is misleading. This is particularly true when the product is widely consumed and purposefully marketed towards segments that do not receive any proven benefit.

While EDs can provide specific benefits to sportspeople, they are high in energy (one leading brand of sport drinks contains 618 kJ in a 600ml bottle, for example)<sup>18</sup> and carry high levels of salt and sugar. For the average individual not partaking in strenuous or physical activity, EDs could have adverse health consequences that directly conflict with the Australian Dietary Guidelines (ADGs). ADGs state that Australians should limit their intake of foods containing added salt and sugars.<sup>19</sup> In fact, the guidelines specifically include sports drinks among the drinks that should be limited.<sup>20</sup>

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<sup>13</sup> Schneider, M.B. & Benjamin, H.J. (2011) Sports drinks and energy drinks for children and adolescents: are they appropriate? *Pediatrics*, 127(6), pp.1182-9

<sup>14</sup> Gatorade website, accessed 19 September, <<http://gatorade.com.au/perform.php#>>

<sup>15</sup> Coke website, accessed 19 September <<http://www.coca-colajourney.com.au/brands/coca-cola/coca-cola>>

<sup>16</sup> A serve size of coke is a can; 375ml.

<sup>17</sup> CHOICE (2012) Submission to Food Standards Australia New Zealand Proposal P293 Nutrition, Health and Related Claims

<sup>18</sup> Gatorade website, accessed 19 September, <<http://gatorade.com.au/perform.php#>>

<sup>19</sup> Eat for Health (2013) *Healthy Eating for Adults*, accessed 19 September, <[https://www.nhmrc.gov.au/\\_files\\_nhmrc/file/publications/n55g\\_adult\\_brochure\\_print.pdf](https://www.nhmrc.gov.au/_files_nhmrc/file/publications/n55g_adult_brochure_print.pdf)>

<sup>20</sup> Professor Amanda Lee quoted in News.com.au (2013), *Why so-called healthy drinks are really as bad as soft drinks*, accessed 19 September, <<http://www.news.com.au/lifestyle/food/why-so-called-healthy-drinks-are-really-as-bad-as-soft-drink/story-fneuz92c-1226748659979>>

The purpose of regulating health claims is to ensure that consumers are not being misled. Products need to pass the NPSC to ensure that they are suitable to qualify for health claims. As all products need to go through this test, consumers should have confidence that if a product has a health claim, it is generally healthy. Creating a loophole for EDs is a backwards step for this standard and could easily mislead consumers into thinking they are drinking a healthier product.

Changes for EDs would make them appear more desirable than many other beverages, including vitamin waters which don't classify as EDs due to lower sugar and salt content but wouldn't be able to carry health claims under P1030.

## **Benefiting who? Change to health claims offers no substantial benefit to consumers**

EDs only produce benefits for a small subset of the Australian population. The benefit of added health claims would only be of use to this small group of consumers. Exempting EDs from the accepted restrictions for sugar-sweetened drinks would be at the expense of the broader population being misled about the adverse health impacts of ED consumption. The "healthiness" of these beverages is already widely misconceived<sup>21</sup> and allowing additional health claims would only add to this. CHOICE firmly believes the health claims for EDs presented under P1030 would directly mislead consumers.

One of the objectives of the FSANZ Act is the 'provision of adequate information relating to food to enable consumers to make informed choices'.<sup>22</sup> This proposal directly contravenes this objective, with the benefits flowing to industry, and the likelihood of detriment to consumers. Both health and nutrition content claims have long been used by food companies as marketing tools to increase sales and market share.<sup>23</sup> CHOICE is concerned that additional health claims under P1030 would be used as another marketing tool for industry to achieve greater market share while providing no benefit for consumers.

## **Conclusion**

CHOICE understands that FSANZ is attempting to resolve an anomaly. That is, EDs are unable to carry health claims despite the fact their product definition requires them to achieve specific outcomes. However, considering that EDs are high in energy, sugar and salt and are being consumed and marketed to the general public, FSANZ should not let these products bypass the important consumer protections under Standard 1.2.7.

When changing food regulations, FSANZ has 3 objectives, one of which is preventing misleading and deceptive conduct. Yet this proposal does not do this. CHOICE believes that the limited benefits of additional health claims on EDs do not override the negative consequences of the potential for everyday Australians to be misled. For this reason we urge FSANZ to not proceed with allowing EDs to carry health claims without having to meet the NPSC.

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<sup>21</sup> Colmar Brunton (2010) *FSANZ Consumer research investigating the use of formulated supplementary sports foods*, accessed 22 September

<[http://www.foodstandards.gov.au/publications/Documents/Sports\\_foods\\_final\\_report.pdf](http://www.foodstandards.gov.au/publications/Documents/Sports_foods_final_report.pdf)>

<sup>22</sup> Food Standards Australia New Zealand Act (1991)

<sup>23</sup> Hughes et al. (2012) 'Regulating health claims on food labels using nutrient profiling: what will the proposed standard mean in the Australian supermarket?', *Public Health Nutrition*, Vol 16, Issue 12