

ABCL Submission

Proposal P1063 Code Revision (2024)

- Added Sugar(s) Claims

27 June 2024



About the Australian Beverages Council Limited

The Australian Beverages Council Limited (ABCL) is the leading peak body which has represented the non-alcoholic beverages industry for more than 75 years. It is the only dedicated industry representative of its kind in Australia.

The ABCL represents approximately 95 per cent of the industry's production volume and Member companies range from some of Australia's largest drinks manufacturers whose drinks are enjoyed nationally and around the world through to small and micro companies. These drinks include carbonated soft drinks, energy drinks, sports and electrolyte drinks, frozen drinks, bottled and packaged waters, fruit and vegetable juices and fruit drinks, cordials, iced teas, ready-to-drink coffees, flavoured milk products and flavoured plant milks.

The industry contributes more than \$9 billion annually to the Australian economy and employs more than 63,000 FTEs. The industry pays more than \$1.2 billion in taxes per annum, and for every direct employee in the beverages manufacturing industry, there are 4.9 jobs required elsewhere in the Australian economy to produce and retail the drinks.

Summary

The ABCL welcomes the opportunity to provide comments on *Proposal P1063 Code revision (2024) – Added sugar(s) claims*. We understand Food Standards Australia New Zealand (FSANZ) has prepared Proposal P1063 to:

1. amend section S4-3 of the Australia New Zealand Food Standards Code (the Code) to correct a typographical error; and
2. remove the term 'sugars*' from the Code as that term is now redundant as a result of the amendments made by proposal P1062.

In reference to the first item, the ABCL supports the Code being amended, however, recommends a redraft of the proposed S4-3 rewording to improve clarity and align with the intent of P1062. The ABCL recommends the following wording:

- (a) *The food for sale is not an added sugar.*
- (b) *The food for sale does not contain added sugar as an added ingredient.*
- (c) *The food for sale does not contain more sugars than:*
 - (A) *10g/100g for solid food; or*
 - (B) *7.5g/100mL for liquid food.*

In reference to the second item, the ABCL supports FSANZ's proposal to remove the term 'sugars*' from the Code.

ABCL's Response

First proposal

1. amend section S4-3 of the Code to correct a typographical error.

The ABCL does not support FSANZ's recommendation.

The ABCL supports FSANZ's statement that the conditions in S4-3 for the 'No added' sugar claim need to be updated. However, the recommendation to replace the current word "and" with "or" under 'Sugar or sugars' in column 1, subparagraph (b)(i) in column 4 results in ambiguity, increasing the likelihood of misinterpretation of the Code.

Under the proposed recommendation, a likely interpretation of these conditions would be that a 'no added sugar' claim can be made if either the criteria of subsection (a) and (b)(i) **or** the criteria for (b)(ii) are met.

For reference, the current conditions are as follows:

- (a) *The food for sale is not an added sugar.*
- (b) *The food for sale does not contain:*
 - (i) *an added sugar as an added ingredient; **and***
 - (ii) *more sugars than:*
 - (A) *10 g/100 g for solid food; or*
 - (B) *7.5 g/100 mL for liquid food*

We note there are more conditions for this claim, but they are not affected by this change.

The table below illustrates how such a misinterpretation could occur, should the word "or" be used in the condition. The example is for a beverage with added sugar as an ingredient, but with a total sugar content of 5.5g/100ml:

Conditions to be met	Interpretation
a) <i>The food for sale is not an added sugar.</i>	Condition is met
b) <i>The food for sale does not contain:</i> (i) <i>an added sugar as an added ingredient;</i> or	Condition may be disregarded based on the "or"
(ii) <i>more sugars than:</i> (A) <i>10g/100g for solid food; or</i> (B) <i>7.5g/100ml for liquid food</i>	Condition is met as the beverage contains <7.5g/100ml sugars

Based on the proposed changes in *Proposal P1063 Code revision (2024) – Added sugar(s) claims* and as outlined in the example above, a beverage containing added sugar could still make a ‘no added sugar’ claim, as it meets the conditions in subsections (a) and (b)(ii), even though an added sugar is present. Despite the Code requirements being met in this example, a ‘no added sugar’ claim may be perceived as misleading under Consumer Law as the product contains added sugar.

To help clarify the wording, the ABCL recommends creating three separate, distinct statements for making no added sugar claims.

The suggested statements are as follows:

(d) The food for sale is not an added sugar.

(e) The food for sale does not contain added sugar as an added ingredient.

(f) The food for sale does not contain more sugars than:

(A) 10g/100g for solid food; or

(B) 7.5g/100mL for liquid food.

The ABCL believes that this wording aligns more closely with the intent of the outcome of *P1062 – Defining added sugars for claims*.

Second proposal

2. remove the term ‘sugars*’ from the Code as that term is now redundant as a result of the amendments made by proposal P1062.

The ABCL supports FSANZ’s proposal to remove the term ‘sugars*’ from where it is currently used in the following standards and schedule in the Code:

- Standard 1.1.2 Definitions used throughout the Code
- Standard 1.2.7 Nutrition, health and related claims
- Standard 1.2.8 Nutrition information requirements
- Standard 2.6.2 Non-alcoholic beverages and brewed soft drinks
- Schedule 4 Nutrition, health and related claims (section 3)

Additional Comments

The ABCL is of the view that, regarding the proposed changes to the conditions for 'No added sugar' claims in Schedule 4, there could have been an opportunity for greater clarity.

The issue could be viewed as being more than a simple typographical error, and ABCL is of the view that the error would likely lead to misinterpretation of the Code.

Conclusion

The ABCL thanks FSANZ for the opportunity to comment on this proposal.

1. The ABCL **supports** the need to revise the Code following amendments resulting from *Proposal P1062 - Defining added sugars for claims*, however, ABCL believes the proposed amendments result in ambiguity, increasing the likelihood of misinterpretation of the Code.
2. The ABCL **recommends** that the Schedule 4-3 drafting be reworded to improve clarity and align with the intent of *P1062*.
3. The ABCL **supports** FSANZ's proposal to remove the term 'sugars*' from the Code.