

Red Bull Australasia

**Submission to the second round of consultation on
Proposal P1025 Code Review**

11 September 2014





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SUBSTANTIVE SUBMISSION

Introduction

- 1 Red Bull is a non-alcoholic energy drink that has enjoyed a successful history since its inception in Austria in 1987. It is available in over 165 countries and have been available in Australia for 14 years and in New Zealand for 17 years.
- 2 Red Bull Australasia is the importer and distributor of Red Bull energy drinks in the Australia and New Zealand markets. It has offices in Sydney and Auckland. Red Bull Australasia has a product range of 20 different flavors and sizes that are available across both markets.
- 3 As a market leader in the non-alcoholic energy drink sector, Red Bull cooperates with scientific, regulatory and health bodies globally. Since its entry into the Australian and New Zealand markets, Red Bull has had a close working relationship with Food Standards Australia New Zealand ("**FSANZ**") and it appreciates being consulted on this revision of the Food Code.
- 4 As well as complying with all relevant laws and standards, Red Bull is also a party to both the Australian Beverages Council's Energy Drink Industry Commitment, and the New Zealand Beverages Council Energy Shots Industry Commitment.
- 5 Pursuant to these commitments, Red Bull has agreed to the responsible promotion, sale and manufacture of its products. This includes, inter alia, commitments to not directly market products to children or sell products in primary and secondary schools.
- 6 Red Bull's products are regulated by Food Standard 2.6.4 – Formulated Caffeinated Beverages. Red Bull Australasia wishes to comment on the proposed revised text of Standard 2.6.4, and directs its comments in this submission to that standard and the accompanying new schedule 29.

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[REDACTED]

Statement of principles

- 8 Red Bull supports the intent of Proposal P1025 Code Review ("**P1025**"). As noted in the proposal's terms of reference, P1025 aims to modernise the presentation of the Code to better meet the needs of a broad range of stakeholders in industry, commerce, and enforcement and proposes to achieve these by:
 - Presenting the code as a single, unified instrument;
 - Clearer presentation of requirements that impose an obligation in relation to the conduct of a food business or the sale of food, or relating to the composition of food or labelling; and
 - A greater reliance on definitions already present in the food acts of New Zealand and the states and territories.



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- 9 In particular, Red Bull notes that it is the intention of P1025 that provisions in the Code will not be substantively amended or impose new requirements or obligations. Red Bull supports this intention.
- 10 Red Bull agrees with the statement of principles described above. As a responsible market leader, Red Bull supports a Food Code that is clear, easily understood by regulators and consumers, internally consistent, easy to use, and accessible. Red Bull congratulates FSANZ on this work, and appreciates the ongoing opportunity to be consulted as a key stakeholder.

Proposed amendments

- 11 Red Bull has proposed several minor amendments to Standard 2.6.4. The content of these amendments are replicated as red lined sections in Appendix One of this submission.
- 12 A proposed final copy of Standard 2.6.4, including amendments to Schedule 29, has been provided as Appendix Two to this submission.
- 13 Red Bull believes that the amendments proposed would significantly clarify Standard 2.6.4 and would improve its internal consistency, accessibility, consumer comprehension, and ease of use.
- 14 In developing these amendments Red Bull has had regard to the terms of reference for P1205, and has sought to ensure that each amendment would provide a clarification to Standard 2.6.4 that improves its content as a whole. A description of Red Bull's proposed amendments, and the rationale for them, is detailed below.

Definitions — Section 2.6.4—2

- 15 The draft wording of Standard 2.6.4 contains definitions that are found in notes in various sections. Currently the legal effect of in-section notes is unclear. It is ambiguous if they are legally enforceable, or simply guides to interpretation. Therefore, for the avoidance of doubt, all definitions have been incorporated directly into the text of section 2.6.4—2. In addition, these definitions have been amended to ensure they are internally consistent.
- 16 2.6.4—2(b) has been amended to include the words "or providing energy". This clarification aligns the legalistic definition of "formulated caffeinated beverage" with the common term "energy drink" which is used by consumers when describing this beverage category. This clarification would improve consumer comprehension of the standard.

Prohibition on mixing Formulated Caffeinated beverages

- 17 Section 2.6.4—4 has been reworded for clarity, while still maintaining the substantive effect of the section. The current draft revised wording remains unclear and unnecessarily complex. The suggested amendments greatly clarifies this commonly misunderstood section.



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Additional labelling requirements

18 Section 2.6.4—5 comprises the majority of the Standard. Red Bull proposes the following amendments to improve its internal consistency and clarity:

- Insertion of “additional” into the section title to make it clear that these requirements are in addition to Standard 1.2.1;
- Transferring Note 1 and Note 2 to the beginning of the section;
- Removing text from section 2.6.4—5(1)(b) (that is now included in the definition of listed substance) to improve clarity by removing unnecessary duplication;
- Including references to Standard 1.2.1 in the text of the section;
- Replacing references to beverages with “formulated caffeinated beverage” where appropriate, to improve internal consistency in the standard and to make it clear what beverage is being referred to;
- Removal of the word “clearly” from 2.6.4—5(3). The word distinguished already means “clearly different”, so the inclusion of the word “clearly” is superfluous. Read plainly, the current wording requires that advisory statements be “clearly, clearly different” from a nutritional information panel. This is unnecessary;
- Transferring the definition in Note 3 into the definition sections, as described above;
- Making minor wording changes to Section 2.6.4—5(3)(c) and 5(4); and
- The creation of a new sub-heading titled “calculation of one-day quantity” described below.

Calculation of one-day quantity

- 19 The calculation of one-day quantity should be incorporated into Schedule 29 as a new section to that schedule. This would ensure that the listed substance values used for the one-day calculation, and the calculation itself, are found in the same place in the Food Code. This would improve accessibility.
- 20 In addition, including a note in the proposed new section in Schedule 29—3 that cross references the definitions of concentration and permitted amount would similarly ensure that this calculation can be easily understood and correctly applied.
- 21 The current draft splits the one-day quantity across two parts of the Food Code. Amending the schedule in this way proposed above would ensure that Schedule 29 includes in one place all relevant information that is needed to correctly calculate maximum one-day quantities. This would improve accessibility and clarity.



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APPENDIX ONE: PROPOSED AMENDMENTS TO REVISED DRAFT STANDARD 2.6.4

Key

- Red text is inserted text;
- Red and strike-through text is deleted text.

2.6.4—2 Definitions

formulated caffeinated beverage means a flavoured, non-alcoholic beverage, or a flavoured, non-alcoholic beverage to which other substances (for example, carbohydrates, amino acids, vitamins) have been added, that:

- contains caffeine; and
- has the purpose of enhancing mental performance **or providing energy.**

To avoid doubt, a formulated caffeinated beverage is a water based flavoured drink for the purposes of item 14.1.3 of section S15—5, and section S18—10.

In this standard:

~~*Listed substance* means a substances listed in column 1 of the table in section S29—2~~

One-day quantity means the maximum amount of formulated caffeinated beverage that should be consumed in a day, calculated in accordance with clause (5) of this Standard

listed substance means a substance listed in column 1 of the table in section S29—2 and must be expressed in the units in column 2 of the table in Section S29—2.

permitted amount is, for a listed substance, the permitted amount identified in the table to section S29—2.

concentration is the concentration of the listed substance in the formulated caffeinated beverage, expressed in mg/L.

2.6.4—4 Prohibition on mixing formulated caffeinated beverages

A ~~food beverage~~ for sale ~~(other than a formulated caffeinated beverage)~~ must not consist of a mixture of a non-alcoholic beverage and a formulated caffeinated beverage. **To avoid doubt, a beverage for sale in this clause does not mean a formulated caffeinated beverage.**



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2.6.4—5 **Additional** Labelling requirements—formulated caffeinated beverage

Note 1: General labelling provisions are set out in Standard 1.2.1.

Note 2: Subsection 1.2.1—9(7) and paragraph 1.2.1—9(8)(g) each contain a labelling requirement for formulated caffeinated beverages that are not required to bear a label.

Required declarations

- (1) ~~For the labelling provisions~~ Notwithstanding the provisions of Standard 1.2.1 the label of a formulated caffeinated beverage must declare ~~the required declarations of average quantities are a declaration of~~ the average quantity, per serving size and per 100 mL, of:
 - (a) caffeine, expressed in milligrams; and
 - (b) each listed substance (if any) ~~that the beverage contains, expressed in the units in column 2 of the table to section S29—2.~~
- (2) The declarations under subsection (1):
 - (a) may be adjacent to or follow a nutrition information panel on the label; and
 - (b) may be set out in the format in section S12—5; and
 - (c) must be **clearly** distinguished from the nutrition information panel.

Required advisory statements

- (3) ~~For the labelling provisions~~ Notwithstanding the provisions of Standard 1.2.1 the label of a formulated caffeinated beverage must declare ~~the required~~ advisory statements ~~are statements~~ to the effect that:
 - (a) the food contains caffeine; and
 - (b) the food is not recommended for:
 - (i) children; or
 - (ii) pregnant or lactating women; or
 - (iii) individuals sensitive to caffeine; and
 - (c) if the **formulated caffeinated** beverage contains a listed substance, ~~no more than a~~ the one-day quantity ~~that~~ should be consumed per day.

~~**Note 1**—The labelling provisions are set out in Standard 1.2.1.~~

~~**Note 2**—Subsection 1.2.1—9(7) and paragraph 1.2.1—9(8)(g) each contain a labelling requirement for formulated caffeinated beverages that are not required to bear a label.~~

~~**Note 3**—For a formulated caffeinated beverage, the **one day quantity** is the maximum amount that should be consumed in a day. For each listed substance that the beverage contains, a one day quantity will not contain more than the amount in the corresponding row of the table to section S29—2.~~

- (4) For the advisory statement required by paragraph (3)(c), the one-day quantity may be expressed as mL, or as cans, **or as** bottles, as appropriate.

Calculation of one-day quantity

- (5) For paragraph (3)(c), to determine the **one-day quantity**:
 - (a) for each listed substance that the **formulated caffeinated** beverage contains, calculate the equivalent amount in accordance with the equation in ~~subsection (6) S29—2~~; and
 - (b) select, as the **one-day quantity**, the lowest of the equivalent amounts ~~as so~~ calculated.



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~~(6) For subsection (5), the equation is:~~

$$\text{equivalent amount} = \frac{\text{permitted amount}}{\text{concentration}} \times 1000$$

Amendment to S29—2

S29—3 *Calculation of one-day quantity*

Note Definitions

“One-day quantity”, “Permitted amount”, and “concentration” are defined in Standard 2.6.4—2

(1) For section 2.6.4—5(3)(c) the following calculation shall be used to determine the one day quantity.

$$\text{equivalent amount} = \frac{\text{permitted amount}}{\text{concentration}} \times 1000$$



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APPENDIX TWO: PROPOSED FINAL REVISED TEXT OF STANDARD 2.6.4 AND SCHEDULE 29

Food Standards Code—Standard 2.6.4

as in effect on [date of Standard]

Made under the *Food Standards Australia New Zealand Act 1991*

Standard 2.6.4 Formulated caffeinated beverages

Note 1 This instrument is a standard under the *Food Standards Australia New Zealand Act 1991* (Cth). The standards together make up the Australia New Zealand Food Standards Code. See also section 1.1.1—3.

Note 2 The provisions of the Code that apply in New Zealand are incorporated by reference into a food standard under the *Food Act 1981* (NZ). See also section 1.1.1—3.

2.6.4—1 Name

This Standard is *Australia New Zealand Food Standards Code — Standard 2.6.4 — Formulated caffeinated beverages*.

Note Commencement:

This Standard commences on [date of commencement], being the date specified as the commencement date in notices in the *Gazette* and the New Zealand Gazette under section 92 of the *Food Standards Australia New Zealand Act 1991* (Cth). See also section 93 of that Act.

2.6.4—2 Definitions

Note In this Code (see sections 1.1.2—3 and 1.1.2—6:

non-alcoholic beverage:

(a) means:

- (i) packaged water; or
- (ii) a water-based beverage, or a water-based beverage that contains other foods (other than alcoholic beverages); or
- (iii) an electrolyte drink; and

(b) does not include a brewed soft drink.

formulated caffeinated beverage means a flavoured, non-alcoholic beverage, or a flavoured, non-alcoholic beverage to which other substances (for example, carbohydrates, amino acids, vitamins) have been added, that:



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- (a) contains caffeine; and
- (b) has the purpose of enhancing mental performance or providing energy

To avoid doubt, a formulated caffeinated beverage is a water based flavoured drink for the purposes of item 14.1.3 of section S15—5, and section S18—10.

In this Standard:

One-day quantity means the maximum amount of formulated caffeinated beverage that should be consumed in a day, calculated in accordance with subsection 2.6.4—5(5) of this Standard

listed substance means a substance listed in column 1 of the table in section S29—2 and must be expressed in the units in column 2 of the table in Section S29—2.

permitted amount is, for a listed substance, the permitted amount identified in the table to section S29—2.

concentration is the concentration of the listed substance in the formulated caffeinated beverage, expressed in mg/L.

2.6.4—3 Composition—formulated caffeinated beverages

A formulated caffeinated beverage:

- (a) must contain no less than 145 mg/L and no more than 320 mg/L of caffeine in total, from any source; and
- (b) may contain a listed substance.

2.6.4—4 Prohibition on mixing formulated caffeinated beverages

A beverage for sale must not consist of a mixture of a non-alcoholic beverage and a formulated caffeinated beverage. To avoid doubt, a beverage for sale does not mean a formulated caffeinated beverage.

2.6.4—5 Additional Labelling requirements—formulated caffeinated beverage

Note 1: General labelling provisions are set out in Standard 1.2.1.

Note 2: Subsection 1.2.1—9(7) and paragraph 1.2.1—9(8)(g) each contain a labelling requirement for a formulated caffeinated beverages that are not required to bear a label.

Required declarations

- (1) Notwithstanding the provisions of Standard 1.2.1 the label of a formulated caffeinated beverage must declare the average quantity, per serving size and per 100 mL, of:
 - (a) caffeine, expressed in milligrams; and
 - (b) each listed substance (if any).
- (2) The declarations under subsection (1):
 - (a) may be adjacent to or follow a nutrition information panel on the label; and
 - (b) may be set out in the format in section S12—5; and
 - (c) must be distinguished from the nutrition information panel.



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Required advisory statements

- (3) Notwithstanding the provisions of Standard 1.2.1 the label of a formulated caffeinated beverage must declare advisory statements to the effect that:
- (a) the food contains caffeine; and
 - (b) the food is not recommended for:
 - (i) children; or
 - (ii) pregnant or lactating women; or
 - (iii) individuals sensitive to caffeine; and
 - (c) if the formulated caffeinated beverage contains a listed substance, the one-day quantity that should be consumed per day.
- (4) For the advisory statement required by paragraph (3)(c), the one-day quantity may be expressed as mL, or as cans, or as bottles, as appropriate.

Calculation of one-day quantity

- (5) For paragraph (3)(c), to determine the **one-day quantity**:
- (a) for each listed substance that the formulated caffeinated beverage contains, calculate the equivalent amount in accordance with the equation in S29—3; and
 - (b) select, as the **one-day quantity**, the lowest of the equivalent amounts calculated.
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Food Standards Code—Schedule 29

as in effect on [date of Standard]

Made under the *Food Standards Australia New Zealand Act 1991*

Schedule 29 Formulated caffeinated beverages

Note 1 This instrument is a standard under the *Food Standards Australia New Zealand Act 1991* (Cth). The standards together make up the Australia New Zealand Food Standards Code. See also section 1.1.1—3.

Formulated caffeinated beverages are regulated by subsection 1.1.1—10(5) and Standard 2.6.4. This Standard lists substances and their corresponding permitted amounts for Standard 2.6.4.

Note 2 The provisions of the Code that apply in New Zealand are incorporated by reference into a food standard under the *Food Act 1981* (NZ). See also section 1.1.1—3.

S29—1 Name

This Standard is *Australia New Zealand Food Standards Code — Schedule 29 — Formulated caffeinated beverages*.

Note Commencement:

This Standard commences on [date of commencement], being the date specified as the commencement date in notices in the *Gazette* and the New Zealand Gazette under section 92 of the *Food Standards Australia New Zealand Act 1991* (Cth). See also section 93 of that Act.

S29—2 Formulated caffeinated beverages

For section 2.6.4—2 and section 2.6.4—5, the table is:

Formulated caffeinated beverages

Column 1	Column 2
<i>Substance</i>	<i>Permitted amount</i>
Thiamin	40 mg
Riboflavin	20 mg
Niacin	40 mg
Vitamin B ₆	10 mg
Vitamin B ₁₂	10 µg
Pantothenic acid	10 mg
Taurine	2 000 mg
Glucuronolactone	1 200 mg
Inositol	100 mg



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S29—3 Calculation of one day quantity

Note Definitions

“One-day quantity”, “Permitted amount”, and “concentration” are defined in Standard 2.6.4—2.

For section 2.6.4—5(3)(c) the following calculation shall be used to determine the one day quantity.

$$\text{equivalent amount} = \frac{\text{permitted amount}}{\text{concentration}} \times 1000$$
