

## Fact Sheet

# Non-compliant energy drinks

Energy drinks that are non-compliant with labelling and compositional requirements of the [Food Standards Code](#) are not permitted to be sold in Australia.

### Products of concern

There are many non-compliant brands of highly caffeinated energy drinks that are being sold in South Australia. These drinks are generally imported from overseas and have labelling and a caffeine content that does not meet Australian Standards.

Some energy drinks from overseas have been designed for the Australian market and meet the Australian standards, but may have the same or similar brand names as non-compliant products.

Only food and drinks that are compliant with the [Australia New Zealand Food Standards Code](#) (the Code) are allowed to be sold in Australia.

### Non-compliant products

As per [Standard 2.6.4](#) of the Code, the maximum permitted level of caffeine in a formulated caffeinated beverage (commonly known as an energy drink) is **320mg/L**. Some energy drinks that have been sold in South Australia exceeded the permitted level of caffeine allowed in these drinks by almost double the maximum permitted level (see table below).

In addition to non-compliant caffeine levels, the labelling on most of these products is non-compliant with the requirements for date marking, layout, content and terminology of the nutrition information panel, and supplier information. Some are also non-compliant with the requirement to provide information in English.

### Caffeine content per volume

Energy drink can volume (mL)	Caffeine content (mg)	Caffeine content in mg/L	Compliant?
500	160	320	✓
473 (16 FL OZ)	300	634	✗
473 (16 FL OZ)	200	423	✗
473 (16 FL OZ)	160	338	✗
355 (12 FL OZ)	200	563	✗
250	80	320	✓

### Checking energy drink compliance with the Code

- > Calculate the caffeine content per litre by checking the can volume and amount of caffeine in the product. Refer to the table above or calculate as follows:  $(1000 \div \text{volume in mL}) \times \text{caffeine content in mg} = \text{caffeine content in mg/L}$ .



- For example:  $(1000 \div 355\text{mL}) \times 200\text{mg} = 563\text{mg/L}$



- > Check that the date mark (usually on the bottom of the can) is in the Australian format i.e. best before DD/MM/YY, not in overseas format e.g. MM/DD/YY.

Compliant date marking	Non-compliant date marking

- > Check the nutrition information panel is in the format required by [Schedule 12](#) of the Code.

Compliant NIP	Non-compliant NIP

- > Check that an Australian supplier name and address (importer, distributor or retailer) is provided.

### Penalties for non-compliance

Sale, or advertisement for sale, of food and drinks that do not comply with the Code is an offence under Section 21 of the [South Australia Food Act 2001](#) (the Act):

- (2) A person must not sell any food that does not comply with any requirement of the Food Standards Code that relates to the food.
- (3) A person must not sell or advertise any food that is packaged or labelled in a manner that contravenes a provision of the Food Standards Code.

Penalties for non-compliance with Section 21 of the Act are:

- > Maximum penalty
  - If the offender is a body corporate—\$250 000.
  - If the offender is a natural person—\$50 000.

- > Expiation fee
  - If the offender is a body corporate—\$2 500.
  - If the offender is a natural person—\$500.

### When non-compliant products are found

If you see a product you're unsure about, or you have identified a non-compliant product, contact the SA Health Food Standards Surveillance via [healthfood@sa.gov.au](mailto:healthfood@sa.gov.au) or by submitting the details on the [SA Health Complaints about food form](#). Make sure to include the name and location of retailer, date of observation, brand name(s), can volume, caffeine content and photos of the products where possible.

When non-compliant products are found for sale, they must be removed from display and isolated before being returned to the supplier, destroyed or other actions as directed by an Authorised Officer under the Act.

### Health implications of high caffeine intake

If people drink non-compliant energy drinks in addition to normal daily caffeine intake, it's likely they are consuming close to or more than the recommended daily limit of caffeine for children, adolescents, and adults.

This can be associated with adverse effects such as anxiety, increased blood pressure and insomnia. Regularly exceeding recommended daily limits for caffeine is particularly hazardous during pregnancy.

### Recommended maximum daily intake of caffeine

- > Children and adolescents under the age of 18: 3mg per kilogram of body weight per day (e.g. 40kg child x 3mg = 120mg per day).
- > Adults: 400mg per day (with maximum of 200mg a serve).
- > People who are pregnant or breastfeeding: 200mg per day.

### Further information

- > Australian Federal Register of Legislation
  - Standard 2.6.4 – Formulated caffeinated beverages  
[www.legislation.gov.au/Series/F2015L00467](http://www.legislation.gov.au/Series/F2015L00467)
  - Standard 1.2.1 – Requirements to have labels or otherwise provide information  
[www.legislation.gov.au/Details/F2022C00936](http://www.legislation.gov.au/Details/F2022C00936)
- > Food Standards Australia New Zealand
  - Caffeine [www.foodstandards.gov.au/consumer/generalissues/pages/caffeine.aspx](http://www.foodstandards.gov.au/consumer/generalissues/pages/caffeine.aspx)
  - Caffeine powders and high caffeine content foods  
[www.foodstandards.gov.au/consumer/generalissues/Pages/highly-concerntrated-caffeine.aspx](http://www.foodstandards.gov.au/consumer/generalissues/Pages/highly-concerntrated-caffeine.aspx)

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## For more information

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