



**Submission from Cancer Council Australia to
Food Standards Australia New Zealand on
Proposal P293 – Nutrition, Health and Related Claims
Revised Draft Standard 1.2.7 and Regulation of Fat-Free and % Fat-Free Claims
30 March 2012**

Cancer Council Australia

Cancer Council Australia is Australia's peak national non-government cancer control organisation. Its members are the eight state and territory cancer organisations, working together to undertake and fund cancer research, prevent and control cancer and provide information and support for people affected by cancer.

Cancer Council Australia's goal is to lead the development and promotion of national cancer control policy in Australia, in order to prevent cancer and reduce the illness, disability and death caused by cancer.

Our organisation is concerned about the way in which false, misleading, deceptive, or simply misunderstood marketing practices can contribute to the development of obesity and therefore the risk of cancer. With high rates of obesity in Australia and obesity a significant risk factor for cancer, these issues are extremely important to Cancer Council. We are also concerned about the possibility of food manufacturers making specific health claims in relation to cancer, as well as nutrition claims about the healthiness of foods. We are therefore very pleased to comment on this latest consultation paper on Proposal P293 Nutrition, Health and Related Claims addressing the revised draft Standard 1.2.7 and the additional proposals to regulate fat-free and % fat-free claims.

Cancer Council Australia has made five previous submissions to FSANZ on this proposal and raised it in three submissions regarding the Blewett Review of food labelling laws and policy and its recommendations.

Cancer Council acknowledges the extensive work and consultation that FSANZ has done over the last eight years in developing the standard for nutrition and health claims. Cancer Council is mostly very supportive of the progress that FSANZ has made in developing this standard. One remaining area of concern for Cancer Council is the fact that products carrying nutrient content claims would not be subject to nutrient profiling which we suspect will result in increased use of nutrition content claims to promote unhealthy foods. We are pleased that this current proposal goes part of the way towards addressing these concerns by applying nutrient profiling to products carrying fat-free and % fat-free claims.

We appreciate the complexity of developing this standard, especially with the sometimes divergent views of public health organisations and the food industry, and believe that this standard must retain a certain degree of complexity, in order to fulfill its obligations for protecting public health.

In the following pages Cancer Council has addressed a number of the specific questions raised in the discussion paper. These outline the reasons underpinning our support for proposed option 3a and the limitations of the remaining options.

1. Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of ‘user-friendliness’.

Cancer Council understands that the clarity of drafting, enforceability and user-friendliness of the standard will be of more concern for the jurisdictions and the food industry and therefore will refrain from commenting on this part of the consultation paper, other than to raise one particular issue. We believe that the matters addressed in the Consequential Amendments to Standard 1.2.8 7b relating to the provision of DI or RDI information outside the Nutrition Information Panel (i.e. on the front of food packages) would be better dealt with in a future amendment to the standard if necessary. While a separate front of pack labeling system is under consideration, it seems premature to consider provisos around percent daily intake.

Consequential variations 7B - Percentage DI or RDI information presented outside the panel

Cancer Council is aware that the members of the Food Regulation Standing Committee are currently working with health, consumer and industry stakeholders to investigate and develop a front of pack labelling scheme for use in Australia. This is in response to the recommendations of the Blewett Review of food labelling laws and policy.

Cancer Council does not support the voluntary industry % Daily Intake scheme that is currently favoured by a number of food manufacturers. Our research demonstrates that it is not as effective in guiding consumers towards healthier choices as other front of pack labelling formats.¹ This %DI scheme would not meet the Legislative and Governance Forum on Food Regulation requirements for an “easily understood, interpretive front-of-pack labelling system” because it is not an interpretive scheme.

The view of Cancer Council is that this clause does little to address the limitations of this labelling scheme or improve consumer understanding of this scheme. Conversely, there will be no significant consumer detriment if this clause is removed, pending the development of an agreed front of pack labeling scheme. Once a mandated front of pack labelling scheme has been developed and introduced into the Australia New Zealand Food Standards Code, if this issue is still relevant it can be dealt with in a subsequent amendment to standard 1.2.8.

2. What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims?

FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance.

As FSANZ would be aware, a qualitative study by Chan et al (2004) indicated that while consumers were skeptical of nutrition claims they were influenced by claims relating to fat content, particularly % fat-free claims.² They also indicated that these claims might lead to increased consumption of those foods, as consumers may perceive that they can eat more because they are healthier.² This aspect of ‘fat-free’ claims should be considered by FSANZ.

A 2010 study by Barreiro-Hurle et al highlighted nutrition claims about fat content as the most influential on consumer preferences, more so when the claims are additional to information already available on the Nutrition Facts Panel.³ This study also indicated that they were more influential on products that were less healthy.³

A 2003 study by Williams et al of the use of nutrient content claims on more than 6000 foods and drinks found that claims about fat content were among the most common claims.⁴ In 2005, Williams reviewed studies assessing the influence of nutrition and health claims on consumer behavior.⁵ While many of these studies were looking at claims about nutrition or health benefit rather than nutrient content, Williams concluded that consumers were influenced by health claims but did not necessarily make a distinction between nutrition content claims, and structure-function or health claims.⁵

Cancer Council is also aware that FSANZ has its own body of consumer research on use and understanding of nutrition content claims. One 2003 study indicated that % fat-free claims are among the most widely recognised nutrition content claims many consumers had difficulty interpreting % fat-free claims, though it should be noted that the claims tested was 94% fat-free which is not a permitted nutrient content claims.⁶

3. Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat-free claims)? Please give your reasons.

Cancer Council supports Option 3a to introduce specific requirements to regulate fat-free claims using the Nutrient Profiling Scoring Criteria.

Options 1 and 2 are not supported as they do not address Cancer Council's concerns about the use of nutrition content claims to promote unhealthy foods. Since 1995 these claims have been the subject of a voluntary industry code of practice yet there is little evidence that the Code of Practice on Nutrition Claims on food labels and in advertising has been effectively enforced and the use of non-compliant % fat-free claims continues. We see no reason why a voluntary code focusing solely on fat-free claims would be taken seriously by the food industry when the existing code of practice is not.

Also, it seems illogical that FSANZ would use additional voluntary measures to regulate fat-free claims when the proposed standard has already recognised the need for nutrition content claims to be regulated by a government standard not a voluntary industry code. This approach would only add an additional level of complexity to the regulatory approach, and yet it would likely deliver little additional benefit in promoting healthy choices and preventing consumers being misled by fat-free claims on unhealthy foods.

- 4. Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) (refer section 8) as follows:**
- a. Which option do you support and why?**
 - b. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)? Where possible, provide information and evidence to support your suggested threshold value.**

c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.

As outlined in previous submissions, Cancer Council supports extending the use of the Nutrient Profiling Scoring Criteria to cover all products carrying nutrition content claims. This would ensure that consumers are not misled by nutrition content claims on labels and in advertising that promote only the desirable aspects of a product, such as lower fat content or added calcium, but remain silent on other negative aspects such as high sugar, sodium or kilojoule content.

We therefore support Option 3a as it goes part of the way in addressing Cancer Council's concerns about the potential for consumers to make less healthy choices as a result of selective nutrition content claims.

Cancer Council also believes that of the four proposed approaches to regulating fat-free claims, the use of the Nutrient Profiling Scoring Criteria is most consistent with the current regulatory approach to regulating health claims.

Cancer Council suggests the regulation apply to 'low fat' claims as these are linked with % fat-free claims in that a product can only make a % fat-free claim if it meets the criteria to carry a low fat claim. We also suggest that FSANZ considers extending this regulation to include some comparative fat claims (e.g. 30% less fat than a reference product) and claims about specific types of fats (e.g. low in trans fats). Some manufacturers are reducing the fat content of their products or changing the type of fats used by switching to healthier cooking oils. Examples include potato crisps that currently carry a claim "75% less saturated fat" or "25% less fat" compared to other potato crisps, yet the products may still contain significant amounts of total fat, saturated fat, energy and sodium.

Option 3b is not supported as it places additional burden on consumers to scrutinise food labels. This approach would require consumers to look for three separate sources of information to make a healthy choice: 1) the fat-free claims, 2) the Nutrition Information Panel, and 3) a disclaimer referring to the high sugar content. This also establishes a new precedent as disclaimers are currently only used to highlight potential safety issues for certain at-risk groups (e.g. people with allergies, pregnant women, infants and children). Disclaimers should not replace regulation as the primary consumer protection mechanism for preventing consumers being misled by nutrition claims that are little more than selective marketing.

Option 3c would exclude fat-free claims on certain categories of products (e.g. confectionery) that are high in sugar or kilojoules and would not normally contain fat. This may go part of the way in addressing Cancer Council's concerns about the potential for fat-free claims to create a misleading impression of a product's overall healthiness. However, this approach has three significant limitations. First, it would not address the use of fat-free claims on foods that should be considered unhealthy because of high sodium levels. Second, it would not cover mixed food categories such as breakfast cereals, sauces and snack products. Third, while many consumers would know that confectionery products are not healthy choices, it is much more difficult for consumers to identify healthier choices when products contain a mix of other foods and ingredients.

Cancer Council does not support option 3d as it would permit products that are high in salt or sodium to make fat-free claims. Section 8.3.1 of the consultation document indicates that many products that carry fat-free claims would not pass nutrient

profiling because they may have a high sodium content. By focusing on sugar content only, many unhealthy high-sodium foods will be permitted to make fat-free claims.

Also, establishing a sugar criteria based on total sugars may disadvantage products where fruit contributes significantly to sugar content.

Contact details

Cancer Council is very keen to see the Standard 1.2.7 finalised, and with the new approach to regulating fat-free claims would support its immediate adoption into the Food Standards Code. We hope there will be no further delays in introducing this standard, as it is very important that there is effective regulation to protect consumers from any potentially misleading and unsubstantiated health claims.

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Reference List

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