



28 March 2012

Food Standards Australia New Zealand  
PO Box 10559  
The Terrace  
WELLINGTON 6143

By email: [submissions@foodstandards.gov.au](mailto:submissions@foodstandards.gov.au)

**SUBMISSION on  
P293 – Nutrition, Health & Related Claims**

Thank you for the opportunity to comment on the revised draft Standard 1.2.7 – Nutrition, Health & Related Claims. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

Contact:

Libby Manley  
Consumer NZ  
Private Bag 6996  
Wellington 6141  
Phone: 04 801 2077  
Email: [libby@consumer.org.nz](mailto:libby@consumer.org.nz)

### **General comments**

In earlier submissions to FSANZ on P293, Consumer NZ has called for nutrition content claims to be subject to the Nutrient Profiling Scoring Criteria (NPSC). It is pleasing to see that health claims will have to meet NPSC but we are disappointed that nutrition claims will not be subject to the same level of scrutiny.

This means foods high in energy, sugar, fat or sodium will be able to make nutrition content claims. This has the potential to mislead consumers about the overall nutritional value of unhealthy foods. For example, a calcium content claim on high-fat ice cream may mislead consumers into thinking this is a healthy product.

We remain concerned about how FSANZ will regulate endorsement programmes. FSANZ consumer research concluded that participants believed a product carrying an endorsement claim offered more of a health benefit than other types of claims. If a product is ineligible to carry a health claim using the nutrient profiling model it should not carry an endorsement.

To avoid confusion, we think nutrition claims and endorsements should be permitted only on foods which meet NPSC. Consumers should be able to take label claims at face value, without having to double check them against the nutrition information panel.

- 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'.**

#### **Clarity of drafting and 'user-friendliness'.**

User guides written in plain English, providing practical examples of how the regulations apply will be necessary to improve the Standard's user-friendliness. This could take the form of an update to the existing NZFSA Food Labelling Guide (most recent version published in May 2009) to reflect the changes to the regulations.

Consumer NZ is particularly concerned by the lack of clarity provided by Division 1 – Nutrition content claims. Clause 11 is lengthy and interpreting the regulations requires cross-referencing to the appended Schedule 1. Clarity could be improved by using tables within the Standard, as per the format used in other sections of the Food Standards Code.

A minor editing detail - for consistency, please delete "etc" from point (8) within clause 11 of the Standard as the clause it refers to no longer includes "etc" in the heading.

#### **Enforceability issues**

We see strict enforcement of claims as vital if the food industry is allowed to continue to use nutrition and health claims to market foods.

To assist enforcement of both health and nutrition claims we'd like to see a publicly accessible complaints procedure established in New Zealand so it is easy for consumers to make a complaint. However, a complaints process alone will not be sufficient to protect consumers from misleading claims. Many consumers will not have the capacity to identify a claim that is potentially misleading, incorrect or unsubstantiated. There must be pro-active monitoring in addition to the complaints process.

Sufficient funding must be allocated for monitoring compliance otherwise we believe this system will lack sufficient authority to achieve its goal.

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. (Note: Please provide documented or validated evidence where possible).**

Consumer NZ would like regulation of *all* nutrition claims relating to fat including: contains zero fat, % fat content, low fat, % fat-free and fat-free. Such claims should be permitted only on foods that meet NPSC. This would ensure consistency and minimise confusion for consumers.

In 2010, research on how various population groups in New Zealand interpret the nutrition content claim "97% fat-free" was published in *The Australia and New Zealand Journal of Public Health*<sup>1</sup>. The researchers found percentage fat-free claims on food can be misinterpreted by shoppers as meaning the food is healthy overall and appear to be particularly misleading for Māori, Pacific, Asian and low-income groups.

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.**

Consumer NZ supports **option 3 (regulate with additional regulatory requirements for fat-free and % fat-free claims)** for the following reasons:

In reality, percentage fat-free claims are most commonly found on highly processed foods of lower nutritional quality rather than nutritious whole foods. When confronted with a "fat-free" claim, consumers are required to check the nutrition information panel and determine whether it is actually a healthy food. Option 3 would prevent foods of lower nutritional quality from carrying these claims.

We do not think it is sufficient to rely on consumer law and existing clauses within draft Standard 1.2.7 (status quo) as we do not believe this will improve the current situation. At present, it is too easy for manufacturers to market foods using claims that are misleading.

We are not in favour of option 2 (voluntary codes of practice) as food-labelling regulations should protect public health and safety, provide consumer information and prevent misleading conduct. The health and other interests of consumers should not be compromised in favour of watered-down food labelling regulations or weaker industry codes that might suit some manufacturers in the food industry.

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?**

Consumer NZ supports **option 3(a) – require foods to meet nutrient profiling scoring criterion**. This option will ensure that foods of lower nutritional quality cannot carry fat-related nutrition claims.

- 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.**

While we do not support this option, if it was adopted, technical experts and public health nutritionists according to dietary guidelines should develop the appropriate sugar threshold.

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<sup>1</sup> Gorton, D., Mhurchu, C. N., Bramley, D. and Dixon, R. (2010), Interpretation of two nutrition content claims: a New Zealand survey. *Australian and New Zealand Journal of Public Health*, 34: 57–62.