



SUBMISSION

Submission to Food Standards Australia New Zealand

Proposal P293
Nutrition, Health & Related Claims
Consultation Paper

March 2012

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INTRODUCTION

H.J. Heinz Company Australia Limited (“**Heinz Australia**”), Heinz Wattie’s Limited in New Zealand (“**Heinz Wattie’s**”) and Golden Circle Limited are part of the H.J. Heinz global group of companies. Heinz Australia, Heinz Wattie’s and Golden Circle in this submission shall be collectively referred to as “**Heinz**”.

Heinz is one of the world’s leading producers of nutritious, convenient foods for every eating occasion and has been feeding families for more than 100 years. Heinz operates across the retail grocery and out of home channels, including hospitality and healthcare, and maintains #1 or #2 share in key categories including baby food, baked beans, tomato sauce and ‘wet’ soup.

With combined experience of over 140 years, Heinz provides a positive presence in the Australasian grocery products industry.

Heinz offers a diverse portfolio of brands, including:

| | | | |
|--|---------------|--------------------|-------------------|
| Heinz | Wattie’s | Golden Circle | La Bonne Cuisine® |
| HP | Lea & Perrins | Greenseas | PMU |
| Epicure | Farex | Tom Piper | Hamper |
| Imperial | Ox & Palm | Petdeli | Cham |
| Chef | Pacific | Crown | LOL |
| Craig’s | Oak | Original Juice Co. | Popper |
| GC Raw | Mediterranean | Little Ripper | Gourmet |
| Breton | Master Chef | Wild Boy | Ice Magic |
| The Good Taste Company | | Nurture | |
| Cottee’s (toppings, jelly and jams only) | | | |

Heinz also manufactures and/or distributes products under licence from:

| | |
|-----------------|--------------------|
| Weight Watchers | Complan |
| Eta | Rose’s (jams only) |

The Heinz product range includes:

| | | | |
|------------------------|-------------------|------------------|---------------------------|
| infant food | infant cereal | baked beans | canned pasta |
| soup | frozen vegetables | ketchup & sauces | canned fruit & vegetables |
| fruit juice | cordial | bottled water | corned beef |
| jams, jelly & toppings | frozen meals | canned seafood | |

Heinz Australia and Heinz Wattie’s are members of the Australian Food & Grocery Council and the New Zealand Food & Grocery Council respectively.

SUBMISSION

Heinz welcomes the opportunity to make comment on *Proposal P293 Nutrition, Health and Related Claims*, which has addressed two key areas:

PART I: structure and text of the revised draft of Standard 1.2.7, and
PART II: fat-free and % fat-free nutrient content claims

Heinz supports the inclusion of a standard which addresses Nutrition, Health and Related Claims, however although draft Standard 1.2.7 has been revised significantly since the previous consultation in 2009, considerable improvements are still required to address clarity and usability issues. Also, a transition period with an additional stock in trade period **must** be provided for effective implementation across industry.

Due to the complexity of P293, a six week consultation period has not been a sufficient length of time to provide a detailed and in depth response to all components of the consultation paper. Heinz is disappointed that Food Standards Australia New Zealand (FSANZ) is only seeking comment on the clarity and structure of the draft standard, and not on the issues and concerns raised during previous consultation periods of P293. The extensive period of time between consultations of the draft standard has meant that several comments in previous submissions are out of date and Heinz's position would now be different.

Applying the current format of the Nutrient Profiling Scoring Criterion (NPSC), and the new drafting of Standard 1.2.7, approximately 10% of Heinz labels will require updating. This equates to approximately 250 stock keeping unit's (SKU's) requiring labels to be updated. The overall cost through label changes after gazettal of Standard 1.2.7 would cost Heinz between \$2 million to \$2.5 million depending on the complexity of the packaging. Additional costs will be incurred for product and label write-offs if stock-in-trade provisions are not provided. These costs will reduce our ability to invest in innovation and productivity improvements, and will therefore have a negative impact on our ability to compete in local and export markets.

PART I – Draft Standard 1.2.7 – Nutrition, Health and Related Claims

Table 1: Revised draft Standard 1.2.7

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| <p>Submitter name: H.J. Heinz Company Australia Limited Heinz Wattie's Pty Ltd Golden Circle Limited</p> |
| <p>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'.</p> <p>Clarity and user-friendliness Heinz submits that draft Standard 1.2.7 will not be time effective to implement or interpret. The overall clarity of drafting and user-friendliness is poor, whereby a new user unfamiliar with the draft standard will require a lengthy period of exposure to gain a thorough understanding of the regulatory requirements surrounding Nutrient Content Claims, Health Claims and the NPSC. Applying the NPSC to determine whether health claims and certain nutrient content claims can be made adds to the complexity. The proposed definitions and resulting calculator are very complex and difficult to use. Overall a more simplified and transparent process would be preferred.</p> <p>Nutrition content claims Heinz is extremely concerned about the lack of specific conditions for nutrient content claims for infants and young children. Other than for vitamins and minerals, the draft Standard requires claims on foods for infants and young children to incorrectly meet the criteria that are based on adult dietary requirements.</p> <p>Heinz strongly recommends that nutrition content claims be permitted outside of Schedule 1 where the claim can be substantiated.</p> <p>Health claims Heinz supports the inclusion of pre-approved food-health relationships in the standard, from which health claims can be made. However the current list of 115 pre-approved food-health relationships in Schedule 2 is limiting and restrictive, and Heinz recommends this list be broadened before gazettal of the standard. Heinz is supportive of the proposal to screen and review international authority health claims. However Heinz would hope FSANZ consider international authorities outside European Union.</p> <p>The lack of clarity surrounding high level health claims is concerning. The draft standard does not appear to provide sufficient information on the application process, evidence required, length of time and cost involved when a food business will need to have a food-health relationship assessed by FSANZ. Heinz would like to highlight that a lengthy application procedure which is time consuming, costly and complex may discourage food businesses to apply for a high level health claims variation.</p> |

| Clause number | Comments |
|--|---|
| 2 Interpretation | Heinz seeks clarification from FSANZ on whether a cooked legume would meet the prescribed definition of a Vegetable, as listed in clause 2. References to legumes appear to be inconsistent throughout Standard 1.2.7, particularly within definitions provided for 'fvnl' and 'vegetable'. Heinz is unsure whether dried legumes that are then processed and sold as cooked legumes would be classified as a vegetable. |
| 16 High level health claims | <p>Where food-businesses will be able to make application to FSANZ seeking approval of a new food-health relationship, it is unclear how the food-health relationship, once approved by FSANZ, will be communicated to industry. For example, will the high level health claim be published in Standard 1.2.7? If so, does FSANZ plan to circulate regular updates of the standard?</p> <p>As there is insufficient information provided in the consultation paper regarding high level health claim variations, the intention and level of convincing evidence required for high level health claims is unclear.</p> <p>Additionally, what are the implications of a specific health claim being rejected by an international authority? Will variations of a rejected claim be considered by FSANZ?</p> |
| 18 How health claims are to be made | Text is difficult to follow and complex. There is a large amount of cross-referencing in this clause, where the user has to interchange between different schedules and paragraphs to grasp the guidelines on how a health claim is to be made. Suggest wording is improved and the number of cross-references is reduced for clarity and usability. |
| 19 Split health claims | Text is difficult to follow and complex. Suggest wording is improved for clarity and usability. |
| 23 (1) (b) Record keeping requirement for endorsements | <p>Item b in this clause may be interpreted incorrectly;</p> <p><i>“(b) the endorsing body has a nutrition or health function or purpose;”</i></p> <p>This statement reads that an endorsing body may have any kind of purpose, which may not necessarily be specific to health or nutrition. This does not then capture the intent of the clause.</p> |
| 24 Labelling of food required to meet the | fvnl requires clearer definition. Clause 24 refers to item 4 of Schedule 4; rewording of item 4 is required to more clearly identify the abbreviation fvnl and what each letter refers to, |

| NPSC | particularly as item 4 is cross-referenced throughout the standard. Strongly suggest fvnl definition is added to Clause 2 to improve usability. |
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| Schedule | Comments |
| 1 Conditions for nutrient content claims | <p>Nutrient content claim conditions based on adult populations</p> <p>The conditions set for nutrient content claims in Schedule 1 are based on the nutritional requirements for adults. The exception is for Vitamin and Mineral claims where conditions allow for different population groups. This is shown within the Schedule within Standard 1.1.1 (which allows for RDIs for young children) and the Standards within 2.9.</p> <p>However there is no recognition for different population groups for nutrient content claims in Schedule 1, other than vitamins and minerals. This does not align with The Nutrient Reference Values for Australia and New Zealand which provides different values for specific age groups.</p> <p>The draft standard does not allow for moving beyond the conditions set within Schedule 1 even when it would be inappropriate to make a claim based on that criterion.</p> <p>An example is dietary fibre. The Acceptable Intake (AI) for dietary fibre in Men is 30g/day, while the AI for dietary fibre in young children is 14g/day. Therefore the dietary fibre general claim condition of 2g per serving for an adult is inappropriate for young children.</p> <p>Heinz strongly recommends that nutrient content claims be permitted outside of Schedule 1 where the claim can be substantiated (such as the adjustment of claim conditions for different populations).</p> |
| 1 Conditions for nutrient content claims | <p>Dietary Fibre</p> <p>Heinz has noted that a “low” Dietary Fibre claim is not permitted under Schedule 1, however there may be a need for this claim among certain population groups e.g. infants.</p> |
| 1 Conditions for nutrient content claims | <p>Clarity of claim descriptor - Source of</p> <p>Where applicable for nutrient content claims, Heinz recommends listing ‘Source of’ as a specific descriptor and listing conditions to be met for a ‘Source of’ claim to reduce ambiguity and improve user-friendliness. As the descriptors ‘Good Source’ and ‘Excellent Source’ have been specified in Schedule 1, it is ambiguous as to whether a ‘Source of’ claim is permitted.</p> |

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| <p>1 Conditions for nutrient content claims</p> | <p>Clarity of claim descriptor - Rich in / High in While Heinz understands that Standard 1.2.7 does not prescribe words, descriptors “Rich in” and “High in” have not been included in Schedule 1. These descriptors are currently widely used across food products in many categories, and may result in cost to the food industry if enforcement agencies find them to have dissimilar meaning to ‘Good Source’. Therefore Heinz requests the inclusion of an editorial note clarifying “Rich in” and “High in” descriptors.</p> |
| <p>1 Conditions for nutrient content claims</p> | <p>Clause reference error There appears to be error in item (c) under the ‘vitamin or mineral’ general claim conditions. This condition references clause 4 of Standard 1.3.2, however clause 3 of Standard 1.3.2 contains information pertaining to maximum claimable quantities of vitamins and minerals. Suggest ‘clause 4’ is replaced with ‘clause 3’ under item (c).</p> |
| <p>1 Conditions for nutrient content claims</p> | <p>Grammatical error There appears to be a spelling error in column 4 (b) under conditions for Protein, e.g. “fb”</p> |
| <p>1 Conditions for nutrient content claims</p> | <p>Gluten Heinz understands providing guidance on gluten and lactose free claims is important to ensure expressed claims for those with Coeliac disease and lactose intolerance are consistent. Heinz recommends the US and CODEX approach for gluten free claims be considered, where 20ppm is the threshold for gluten free claims. Also agreement must be reached with the Australian Competition and Consumer Commission (ACCC) and the New Zealand Commerce Commission prior to release of Standard 1.2.7 to ensure the interpretation of ‘free’ does not contravene the Trade Practices Act (TPA) in Australia and the Fair Trading Act (FTA) in New Zealand or conflict with guidelines issued by either of those Commissions.</p> |
| <p>1 & 2 Conditions for nutrient content & permitted health claims</p> | <p>Format The table format in Schedules 1 and 2 has improved from the previous draft standard, where the line break separation of descriptors is more user friendly.</p> |
| <p>2 Conditions for permitted health claims</p> | <p>Inconsistent use of the term “Children” Throughout the draft standard and other sections of the Code, the use of the term “children” is inconsistent and confusing. In Schedule 2 in both Part 1 (Minerals) and Part 2 (Vitamins), the relevant population group “children” is specified yet the standard has not provided a definition nor clarification on what specific age group this refers to.</p> |

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| | <p>However in Part 3 (Other) the population groups “young children aged 1 – 3 years” and “children aged 4 years and over” are specified, hence clarification is required for Parts 1 and 2.</p> <p>There is also inconsistency elsewhere in the Code, specifically the schedule within Standard 1.1.1 refers to “children” aged 1 - 3 years; and Standard 2.9.3 refers to “young children” aged 1 - 3 years.</p> <p>Heinz requests the terms be standardised.</p> |
| 2 Part 1 – Minerals | Drafting oversight Biotin and Folate have been included in this table, however they are not minerals. This appears to be a drafting error, where Biotin and Folate should be present under Part 2 (Vitamins). |
| 2 Part 3 – Other | Order of Part 3 Part 3 does not appear to be in alphabetical order, whereas Schedule 1 and Schedule 2 (Parts 1 & 2) have been listed in alphabetical order. Therefore Part 3 is inconsistent and difficult to follow. |
| 2 Part 3 - Other | Protein The relevant population for a Protein health effect has been specified as children aged 4 years and over, and infants aged 6 months to 12 months. Assuming there is no reasonable explanation for omitting the age of 1 - 3 years, this age group needs to be included in the schedule. |
| 2 Part 4 – Foods | Permitted health claims for foods It is concerning that Fruit and Vegetables are the only permitted food for a pre-approved food-health relationship. Given the scope of evidence available, Part 4 appears to be diminutive and incomplete. Wholegrains, legumes, nuts and fish, to name a few, provide key nutritional benefits of food recognised by health professionals in Australia and New Zealand as beneficial, and have not been included in the proposed standard. Based on reviews of scientific evidence, Heinz recommends Part 4 is broadened to include additional foods, such as legumes, as this would assist industry to communicate the health benefits to consumers. |
| 2 Part 4 – Foods | Foods category “Sugar or sugars” is listed, however does not appear to be suitable for the Foods category. Suggest that “Sugar or sugars” be moved into Part 3 (Other) to improve usability. |

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| 3 & 4 NPSC | Nutrient Profiling Scoring Criterion (NPSC) The majority of Heinz core range products, including baked beans, soups and juices, are eligible to carry a health claim when the NPSC is applied. |
| 3 & 4 NPSC | Purpose of Schedule 3 To improve usability and reduce the need for cross referencing, Heinz recommends Schedule 3 be abolished and the nutrient profiling scoring criterion table moves into Schedule 4 as an additional item. Both Schedule 3 and Schedule 4 contain information pertaining to the NPSC, therefore it would be more practical to have all NPSC information together in the same schedule. Otherwise, Heinz recommends the inclusion of an editorial note in Item 7 of Schedule 4 (Calculating the Final Score), which should refer users to the location of the nutrient profiling scoring criterion table, i.e. Schedule 3. |
| 4 Nutrient profiling scoring method | NPSC calculator on website Heinz recommends the inclusion of an editorial note which refers users to the Health Claims Nutrient Profiling Calculator on the Food Standards Code website. It may improve useability and time efficiency for new users, rather than utilising the extensive manual calculation of the NPSC final score as outlined in this schedule. |
| 4 <i>Item 4 (1) (i)</i> Nutrient profiling scoring method | fvnl terminology The word “tinned” is a term not supported by the food industry. “Canned”, “thermally processed”, and “aseptically packed” may prove more useful terms for industry within this clarification statement. |
| 4 <i>Item 4 (6) (c)</i> Nutrient profiling scoring method | Grammar The text “a mixture of” appears to be unnecessarily listed twice in this statement. |
| Section 11 Transitional arrangements | Stock in trade period Heinz requests that the two year transition period be extended to four years to allow for stock-in-trade. This is for the following reasons:- The majority of Heinz products are shelf-stable long shelf life products (a shelf life of two years or longer) where there are significant stock-in-trade periods. Many Heinz products are packed seasonally (such as canned vegetables) and therefore are only produced once or twice a year. |

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| | <p>Label stocks are bought in bulk to reduce costs and will need to be run-out before new labels are printed. Heinz prefers to avoid dumping printed label stocks.</p> <p>Applying Standard 1.2.7 to 250 of Heinz SKU's is a laborious process which will require dedicated resources who are familiar with the new standard and the complexities of individual products.</p> <p>Heinz has been reluctant to apply label changes in anticipation of P293's gazettal due to the uncertainty associated with its progress over the past eight years.</p> <p>Therefore it would be almost impossible for Heinz to comply with the two year transition period without an additional two year stock-in-trade provision.</p> <p>Additionally, as the current 115 pre-approved food-health relationships listed in the standard are limiting and restrictive, Heinz submits that a transition period longer than two years is required to allow sufficient time for FSANZ to assess and approve additional food-health relationships, particularly if international health claims are to be considered within the transition period.</p> |
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PART II – Fat-free and % fat-free claims

Heinz submits that additional regulatory measures surrounding the use of fat free or % fat free claims will require detailed analysis beyond the scope of this submission. Heinz has found it difficult to comment on option 3 (regulate with additional regulatory requirements for fat free and % fat free claims) when specific categories and a sugar concentration threshold are not provided.

Heinz questions the intent of placing additional regulatory measures on fat free or % fat free claims but not on low fat or fat comparative claims.

It is also unclear whether the additional regulatory measures will be applied to foods that require preparation before consumption (e.g. cordial), or foods that are not eaten in isolation (e.g. jam).

When analysing this issue, FSANZ should consider the range of products within the food category in question. Foods that usually have a high fat content can be reformulated to contain lower fat (e.g. frozen desserts) therefore a fat claim enables consumers to differentiate between low and high fat products within that food category. This is also evident among spreads, where a % fat free claim on a jam is relevant information for consumers who may be shopping for a low fat product within a category predominantly comprised of high fat spreads, e.g. nut based spreads. Serving size should also be considered when looking at criteria required for fat free and % fat free claims.

Appendix 1 provides details of the impact of regulatory measures surrounding the use of fat free and % fat free claims on Heinz products, applying each of the four possibilities for Option 3 as outlined in P293.

Summary of Appendix 1

- ❖ Five Heinz product categories are affected by Option 3a: *Cordial (although no fat free claims are made), Jams, Sauce, Dressings and Frozen Desserts*
- ❖ Two Heinz product categories are affected by Option 3b: *Cordial, Jams*
- ❖ Three Heinz product categories are affected by Option 3c: *Cordial, Jams, Frozen Desserts*
- ❖ Two Heinz product categories are affected by Option 3d: *Cordial, Jams*

The following assumptions have been made in order to assess Heinz products.

- A sugar threshold of 30g / 100g/mL (*)
- Restricted categories include: Cordials, Jams, Desserts (#) (however Heinz submits that fat free claims are relevant to consumers in both jam and dessert categories)
- Based on undiluted (unprepared) product (^)

Table 2: Fat-free and % fat-free claims

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?

No evidence has been collected by Heinz.

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)?

Heinz preference is Option 3, however Heinz does not support any of the four possibilities outlined in the consultation paper.

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.

Heinz submits that this topic and any related discussion warrants further consultation and in depth analysis before any definitive conclusion and regulation can be made. Heinz acknowledges that the metabolism of nutrients including fat, carbohydrates and protein are complex processes, therefore Heinz is concerned about the limitations and / or lack of scientific justification of each option 3(a), 3(b), 3(c) and 3(d).

Heinz takes this opportunity to highlight that any criteria should consider food products with a small serving size. For example, a salad dressing is not likely to be consumed in a quantity greater than 25mL in a given meal. Therefore regulatory measures surrounding the use of fat free or % fat free claims using criteria per 100g/mL may put certain food categories in a potentially disadvantageous market position.

For further information, please contact:

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Appendix 1: Impact of fat free or % fat free claims on Heinz products

| Category | # of SKU's with % Fat Free claims | % Fat Free Claim | Option 3a (NPSC) | Option 3b (disclosure statement *) | Option 3c (category #) | Option 3d (sugar threshold *) |
|--|-----------------------------------|------------------|------------------|------------------------------------|------------------------|-------------------------------|
| Beverages | | | | | | |
| - Chilled Juice | - | None | ✓ | N/A | ✓ | ✓ |
| - Ambient Juice | - | None | ✓ | N/A | ✓ | ✓ |
| - Carbonated Juice | - | None | ✓ | N/A | ✓ | ✓ |
| - Cordials [^] | - | None | Captured | Required | Captured | Captured |
| - Light Cordials [^] | - | None | Captured | N/A | Captured | ✓ |
| Frozen Vegetables | - | None | ✓ | N/A | ✓ | ✓ |
| Weight Watchers Frozen Meals | 50 | 97-98% Fat free | ✓ | N/A | ✓ | ✓ |
| Weight Watchers Frozen Desserts | 9 | 97-99% Fat free | Captured | N/A | Captured | ✓ |
| Ambient Fruit & Vegetables | - | None | ✓ | N/A | ✓ | ✓ |
| Infant | - | None | Exempt | N/A | ✓ | ✓ |
| Ketchups and Sauces | | | | | | |
| - HP Sauce | 5 | 99% Fat free | Captured | N/A | ✓ | ✓ |
| - Dressings | 9 | 97% Fat free | Captured | N/A | ✓ | ✓ |
| Jams | | | | | | |
| - Cottee's | 40 | 99% Fat free | Captured | Required | Captured | Captured |
| Meat | | | | | | |
| - Canned Chicken | 5 | 98% Fat free | ✓ | N/A | ✓ | ✓ |
| Quick Serve Meals | | | | | | |
| - Baked Beans | 50 | 99% Fat free | ✓ | N/A | ✓ | ✓ |
| - Pasta (inc. Spag) | 40 | 99% Fat free | ✓ | N/A | ✓ | ✓ |
| - Creamed Rice etc. | 6 | 99% Fat free | ✓ | N/A | ✓ | ✓ |
| Soups | 120 | 97-98% Fat free | ✓ | N/A | ✓ | ✓ |
| Seafood | 5 | 98% Fat free | ✓ | N/A | ✓ | ✓ |