



## **SUBMISSION**

### **Proposal P293 – Nutrition, Health and Related Claims**

#### **Revised Draft Standard 1.2.7 and Regulation of Fat-Free and % Fat-Free Claims.**

**National Heart Foundation of Australia.**

**30 March 2012**

**To:**

Standards Management Officer  
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**Level of Authorisation:**

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# **Proposal P293 – Nutrition, Health & Related Claims**

## **Introduction**

The National Heart Foundation of Australia understands that this proposal is seeking comment on the revised draft Standard 1.2.7 after considering issues raised in the Review Request, specifically on a new matter regarding 'fat-free' and '% fat-free' nutrition content claims.

The Heart Foundation is a not-for-profit, non-government health organisation which, among other activities, implements a world-renowned Food Information Program (the 'Tick' Food Information Program, referred to as the 'Tick Program') to help improve the nutritional health of Australians.

The Tick Program aims to improve the food supply by encouraging the food industry to produce, promote and 'signpost' foods that are healthier choices among foods of their type.

The Heart Foundation supports regulatory provisions that help the food industry produce and market products that assist people to achieve healthier eating patterns, with due consideration given to safety.

The Heart Foundation is committed to the continued development of food products that can improve nutrition and communicating consistent and easy to understand information about foods, especially fats and oils, to consumers to assist them in making informed and better choices in the foods they eat and prepare for their families. It is also committed via the Tick Program to working with the food industry to encourage the continued development of food products that can improve nutrition, through removal of trans fatty acids or reduction in saturated fat or sodium levels.

The Heart Foundation has commented at each stage of the consultation of P293, and has generally supported FSANZ preferred options in the Preliminary Final Assessment Report for P293 – Nutrition, Health and Related Claims, providing further comment and recommendations in 2009 and 2010.

The Heart Foundation wishes to make further comments and recommendations for this latest round of consultation, especially in reference to the proposed regulatory options for the 'fat-free' and '% fat-free' nutrient claims.

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## Executive Summary

- The Heart Foundation supports Option 3: “regulate with additional conditions for fat-free and % fat-free nutrient claims”.
- Of the options proposed by FSANZ at this time, the Heart Foundation supports Option 3(a): “require foods to meet the nutrient profiling scoring criterion to carry fat-free and % fat-free claims”.
- The Heart Foundation acknowledges in previous submissions we have recommended “that nutrient content claims should be permissible on all foods if they meet the conditions in Schedule 1 and this is not dependent upon meeting the Nutrient Profiling Scoring Criterion (NPSC)”. However, for the matter of fat-free and % fat-free claims, we support an exception to these recommendations.
- We support an exception that fat-free and % fat-free claims meet the NPSC for the following reasons:
  - Based on the identified research, fat-free and % fat-free claims carry the implication of health benefit, more than simply a statement of fact that nutrition content claims infer.
  - Requiring foods to meet the NPSC is the preferred option to Option 3(b) and Option 3(d) where sugar thresholds are proposed; and Option 3(c) which is unlikely to assist with consumer education and could lead to an arbitrary selection of food categories which are not permitted to make claims.
  - Requiring foods that carry health claims, and in this case fat-free and % fat-free claims, to meet the NPSC takes into account the overall nutritional quality of the food rather than just sugar content and would encourage reformulation of foods to reduce other risk association nutrients like sodium/salt.
- The Heart Foundation does not support the use of sugar as a nutrient threshold to determine if a food should carry a disclosure statement (Option 3(b)) or not be permitted (Option 3(d)) to make fat-free and % fat-free claims.
- If a threshold model were to be used, the Heart Foundation proposes that an energy (kilojoule) threshold for serving size be considered in regulating the fat-free and % fat-free claim.
- The Heart Foundation does not support option 3(c) as believes this does not assist with consumer education and could lead to an arbitrary selection of food categories which are not permitted to make claims.
- The Heart Foundation strongly recommends an education campaign is included for all Options proposed, not just as a component of Option 1: status quo. We recommend that the approach to fat-free and % fat-free claims that is ultimately chosen include a comprehensive education campaign to the Australian public to increase consumer awareness and understanding.
- The Heart Foundation seeks further clarification regarding the clauses ‘Interpretation’, ‘Standard does not prescribe words’ and ‘Endorsements’, along with clarification on definition and omissions in Schedule 2 and consequential variations to Standard 1.2.8 in the draft Standards 1.2.7.
- The Heart Foundation acknowledges the changes that have been made to the revision of the text and structure of the draft Standard 1.2.7 are improved greatly in terms of clarity and user-friendliness. We recommend that either the User Guide and/or editorial notes within the standard further clarify the points we have requested clarification on and contain examples.
- Finally, the Heart Foundation recommends an adequate education campaign to reinforce key messages of national nutrition guidelines, including the fat-free and % fat-free education mentioned above, to improve consumer and food manufacturers understanding of food labels in general, and nutrition and health claims.

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Table 1: Revised draft Standard 1.2.7

<b>Submitter name:</b> <b>National Heart Foundation of Australia</b>	
<p><b>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’.</b></p> <p>Subject to the following comments, The Heart Foundation acknowledges the changes that have been made to the revision of the text and structure of the draft Standard 1.2.7 are improved greatly in terms of clarity and user-friendliness. We recommend that either the User Guide and/or editorial notes within the standard address the points we have requested clarification on below and contain examples.</p>	
<b>Clause number</b>	<b>Comment</b>
2 (food group)	The definition of food groups doesn't include nuts and seeds. The Heart Foundation recognises the complex nutrient profile of nuts and seeds, making them a difficult food to allocate. However, the Heart Foundation is concerned that by not being included in the definition, nuts and seeds are devalued as a source of unsaturated fat, protein, fibre and other nutrients. As raised in previous submissions <sup>1</sup> , the Heart Foundation strongly encourages FSANZ to reconcile this issue and determine which food group nuts and seeds should belong.
9 (1) and (2)	The Heart Foundation seeks clarification and confirmation about a specific example of modification of a health effect as outlined below under the Schedule 2, Part 2 – vitamins.
21 (1) (c) 21 (2) (a)	The Heart Foundation seeks clarification regarding the term “financial interest in the endorsing body”. Does this include payment of a fee to use the endorsement? This clarification has been sought in previous submissions <sup>1</sup> .
21 (2) (c)	The Heart Foundation seeks clarification regarding the terms “direct or indirect control over the endorsing body”. Does this affect charging a fee to use the endorsement?
<b>Schedule</b>	<b>Comments</b>
Schedule 2; Part 2 - Vitamins	<p>The Heart Foundation seeks further clarity regarding prescription of words in the following specific example. This clarification has been sought in previous submissions<sup>1</sup>.</p> <p>For the word ‘antioxidant’, can (or can not) it be used in place of ‘vitamin E’ and ‘vitamin C’ (column 1) as the specific health effect “contributes to cell protection from free radical damage” (column 2) is an activity of an antioxidant. See attachment 1 for the definition of “antioxidant”.</p>
Schedule 2; Part 3 – Other: trans fatty acids	The Heart Foundation raises the issue regarding the lack of health claims for ‘trans fatty acids’ as a stand alone ‘food or property of food’ category in column 1. The recommended inclusion is found in attachment 2. This recommendation has been included in previous submissions <sup>1</sup> , and the Heart Foundation seeks clarity as to whether this is an oversight or intentional.
Schedule 2; Part 3 – Other: wholegrains	The Heart Foundation raises the issue regarding the lack of health claims for ‘wholegrains’ as a food or food or property of food’ category in column 1. Previous comments and recommendations can be found in attachment 3 for reference. This recommendation has been included in previous submissions <sup>1</sup> and the Heart Foundation seeks clarity as to whether this is an oversight or intentional.

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Consequential variations	Comments
Variations to Standard 1.2.8	The Heart Foundation would like to comment on the following variations as the changes proposed are new introductions and do not appear to be consequential to the introduction of Standard 1.2.7.
<p>[2.15] <i>omitting subclause 7(2), substituting...</i></p> <p>(2)(b)(ii): the following must be included on the panel...</p>	<p>The proposed variation to Standard 1.2.8, subclause 7(2) modifies the statement required to accompany percentage daily intake (DI) information when included in a nutrition information panel (NIP).</p> <p>The current prescribed statement is ‘Percentage daily intakes are based on an average adult diet of 8700 kJ. Your daily intakes may be higher or lower depending upon your energy needs.’ The variation [2.15] no longer prescribes inclusion of the sentence ‘Your daily intakes may be higher or lower depending on your energy needs’.</p> <p>The Heart Foundation recommends that the statement ‘Your daily intakes may be higher or lower depending on your energy needs’ be retained in variation [2.15] (2)(b)(ii) following the proposed statements of:</p> <ul style="list-style-type: none"> <li>• ‘*based on an average adult diet of 8700kJ’; or</li> <li>• ‘Percentage daily intakes are based on an average adult diet of 8700kJ’.</li> </ul> <p>The Heart Foundation recommends retaining this statement, as a failure to highlight different individual energy needs may mislead some consumers leading to underestimation of the energy contribution of some foods to their daily energy requirements and the potential to consume more energy than is required. Individuals have different energy needs dependent on age, sex, gender, body weight, physical activity levels and illness and this difference should be identified to consumers by retaining the above statement.</p> <p>The Heart Foundation supports the general inclusion to variation [2.15] which prescribes the addition that requirements for %DI are made on a per serving basis.</p>
<p>[2.16] <i>inserting after clause 7</i></p> <p>7B: Percentage DI or RDI information presented outside the panel.</p>	<p>This variation is an addition to Standard 1.2.8, clause 7 which currently outlines percentage daily intake of nutrients set out <u>in a nutrition information panel</u>. The variation [2.16] outlines that %DI/RDI information prescribed in the NIP in Clauses 7 and 7A can be declared <u>outside the nutrition information panel</u> if:</p> <ol style="list-style-type: none"> <li>a) the serving size is presented together with the DI or RDI information; and</li> <li>b) the food to which the DI or RDI information relates does not contain more than 1.15% alcohol by volume.</li> </ol> <p>The Heart Foundation is concerned that the proposed variation does not reflect the regulatory intent of the rest of the information in Standard 1.2.8 – Division 2 which currently prescribes requirements for the NIP only. Further to this, %DI information provided outside the NIP may be contrary to part 4 of clause 7B which prescribes that the DI/RDI information presented does not constitute a nutrition content claim. For example, this could occur in the situation where %fat aligns with nutrition content claims for ‘Fat’ in Column 3 of Schedule 1 of standard 1.2.7.</p> <p>In view of the above and the outcome of the Blewett Review<sup>2</sup> recommendations on front-of-pack labelling (i.e. Recommendation 50: That an interpretive front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities), the Heart Foundation recommends that consideration of matters relating to %DI information <u>outside</u> the panel/on front of pack in the Food Standard is premature and subclause 7B be deferred from inclusion in variation [2.16].</p>

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

<b>Submitter name: National Heart Foundation of Australia</b>	
<b>Question</b>	<b>Comment</b>
<p>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?</p> <p>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.</p> <p><i>(Note: Please provide documented or validated evidence where possible)</i></p>	<p>The Heart Foundation has not formally reviewed the evidence that consumers are purchasing foods of lower nutrition quality because they are being misled by fat-free or %fat-free claims, beyond the evidence provided by FSANZ in the Call for Submissions – Proposal P293.</p> <p>The Heart Foundation understands that fellow public health bodies have reviewed the available evidence in relation to fat-free claims for this round of P293 submissions to assist the preparation of a literature review by FSANZ. We understand that the evidence indicates that the presence of fat free, reduced fat and low fat nutrition information and claims influence consumers' perception of the overall healthiness of a food product, providing a positive bias and "halo" effect which may lead to purchasing of foods that are of lower nutritional quality. For this reason, the Heart Foundation supports FSANZ in reviewing possible approaches to address this.</p>
<p>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.</p>	<p>The Heart Foundation supports <b>Option 3: "regulate with additional conditions for fat-free and % fat-free claims"</b>.</p> <p>The Heart Foundation does not support Option 1: "status quo". In view of our understanding of the evidence that fat-free and % fat-free claims are misleading, there is a need to address this beyond the current status quo.</p> <p>The Heart Foundation does not support Option 2: "voluntary action through a code of practice". Our experience with compliance by the food industry with the Code of Practice on Nutrient Content Claims through the Tick Program shows that compliance is arbitrary by sections of the food industry and varies in consistency, quality and accuracy.</p> <p>The Heart Foundation supports Option 3: "regulate with additional conditions for fat-free and % fat-free claims". We strongly support regulatory requirements that help the food industry produce and market products that assist people to achieve healthier eating patterns. Regulation will also assist with imported foods in compliance with nutrient claims.</p> <p>The Heart Foundation recommends an education campaign for <b>all options</b> not just as a sub-option for Option 1 – Status Quo.</p> <p>The Heart Foundation advises on an adequate education campaign to reinforce key messages and improve consumer understanding of food labels and nutrition and health claims in general, not only</p>

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	addressing minimising the likelihood of consumers being misled by fat-free and % fat-free claims. It proposes a well-funded and evaluated social marketing campaign on how to read labels with focus on fat types and serve sizes.
<p>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:</p> <p>a. Which option do you support and why?</p> <p>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.</p> <p>c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.</p>	<p><b>4a.</b></p> <p>The Heart Foundation considers it important to assist consumers to make better choices in foods and as a result is supportive of options which minimise misleading communication.</p> <p>Of the current options proposed by FSANZ, the Heart Foundation supports <b><u>Option 3 (a)</u></b>.</p> <p>The reasons for this include:</p> <ul style="list-style-type: none"> <li>– Based on the identified research, fat-free and % fat-free claims carry the implication of health benefit, more than simply a statement of fact that nutrition content claims infer.</li> <li>– For foods carrying health claims, and in this case fat-free and % fat-free claims, the NPSC takes into account the overall nutritional quality of the food rather than just sugar content. Options 3(b) and 3(d) focus on sugar and not total energy and other nutrients that need to be considered in the context of an overall healthy diet. See comments below under 4(b) for more details regarding sugar thresholds.</li> <li>– The categories identified by FSANZ as most likely to fail (with the exception of confectionery) all fail on sodium, a nutrient which the Heart Foundation would support reformulation to reduce. In this respect, if companies wanted to be able to make nutrient claims they would have to reformulate to improve their nutritional quality.</li> <li>– The Heart Foundation notes that in supporting this option, foods which are by their nature fat free such as dried fruit would pass the nutrient profiling score criterion and be eligible to carry the %Fat Free or Fat Free claim. We agree that this could be misleading to consumers; however this is the preferred option to 3(b) and 3(d) where sugar thresholds are proposed.</li> <li>– The Heart Foundation does not support option 3(c) as believes this does not assist with consumer education and could lead to an arbitrary selection of food categories which are not permitted to make claims.</li> </ul> <p><b>4b.</b></p> <p>The Heart Foundation <b><u>does not</u></b> support the use of sugar thresholds and recommends instead the use of <b><u>energy</u></b>. If an energy threshold was set then the Heart Foundation may consider an alternative 3b) "Require a disclosure statement if</p>

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	<p>above an <u>energy</u> concentration threshold”.</p> <p>An energy threshold could be set at 600kJ/serve in support of the Australian Guide to Healthy Eating or at an appropriate level to be determined based on modelling. An energy threshold captures sugar and it is energy that is the actual target when discussing limiting sugar content, as outlined on page 9 of FSANZ's call for Submissions – Proposal P293, as a high intake of added sugar has the potential to contribute to overconsumption of discretionary calories<sup>3</sup>.</p> <p>Using total sugar content includes natural sugars along with added sugars. The Heart Foundation would prefer that added sugars instead of total sugars were presented as options 3(b) and 3(d), however is aware that this would be difficult and require substantiation based on ingredient listings. Foods which contain natural and added sugars and which significantly contribute to nutrient intake such as breakfast cereals or flavoured yoghurt may be represented to consumers as high in sugar. This may mislead consumers to believe that these foods are unhealthy choices due to their sugar content.</p> <p>Sugar consumption can increase risk of dental caries but there is not enough evidence to prove association with other chronic diseases based solely on sugar intake<sup>4</sup>. There is weak evidence that a reduction in sugar consumption prevents increases in measures of body weight and/or body fat<sup>3, 5</sup>. Refined sugar consumption in Australia has declined, while obesity trends over the same time period have increased<sup>6</sup>. Added sugar intake can be associated with nutrient dilutions - a consequence of too many empty calories, as unlike most other carbohydrates, added sugars contribute no nutrients besides energy. The issue then is food patterns with too many nutrient poor foods and overconsumption of energy<sup>7</sup>. There is evidence that small amounts of added sugars may have a beneficial effect on micronutrient intake by improving the palatability of foods and beverages that otherwise may not be consumed<sup>3</sup>. As such, there is insufficient data to set an upper limit for added sugar intake<sup>4</sup>.</p> <p><b>4c.</b></p> <p>Other suitable options for regulatory requirements are referred to above under 4b. where energy is recommended instead of sugar as a threshold.</p> <p>This would support the message to consumers that it is the overall energy content that is of issue rather than sugar per se. A statement stipulating whether or not the food is lower in kilojoules would prevent misleading claims and would inform consumers.</p>
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### **Attachment 1: Definition of Antioxidants.**

According to Macquarie Concise Dictionary 4<sup>th</sup> Edition<sup>8</sup> means:

- *any substance inhibiting oxidations,*
- *any substance which inhibits oxidative deterioration in certain materials including many foods*
- *such a substance in the body which neutralises free radicals formed when body cells burn oxygen for energy, keeping the immune system healthy and reducing the risk of cancer and other diseases.*

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### Attachment 2: Inclusion of Trans Fatty Acids into Schedule 2, Part 3.

Column 1 Food or property of food	Column 2 Specific health effect	Column 3 Relevant population	Column 4 Dietary context	Column 5 Conditions
Trans fatty acids	<ul style="list-style-type: none"> <li>Reduced intake contributes to heart health</li> <li>Trans fatty acid intake is associated with increased CHD incidence and risk of CHD<sup>9-13</sup></li> <li>trans fatty acids increases LDL-C, decreases HDL-C and increases fasting triglycerides<sup>10, 12, 14, 15</sup>.</li> </ul>		Diet low in trans fatty acids / as part of a healthy diet consisting of a variety of foods	The food meets the conditions for making a nutrition content claim about trans fatty acids for free and reduced or light/lite.

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### **Attachment 3: Inclusion of Wholegrains into Schedule 2, Part 3.**

To re-iterate previous Heart Foundation comments presented in 2003<sup>16</sup> & 2009<sup>1</sup>, we

- would support a nutrient content claim for wholegrain relating to a minimum proportion of wholegrain ingredients as based on the daily intake target as proposed by industry bodies such as Go Grains and the US Wholegrains Council;
- believe that the regulatory provision for 'wholegrain' labelling will help reduce confusion about the meaning of this and similar terms, and provide an incentive to industry to develop and promote healthier grain-based foods; and
- recommend FSANZ consider claims permitted overseas<sup>17, 18</sup> in conjunction with recent evidence provided in the Heart Foundation's 2009 submission on P293.<sup>1, 19, 20</sup>

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### References:

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