

30 March 2012

Food Standards Australia New Zealand  
PO Box 7186  
CANBERRA ACT 2610

### **CHF Submission to FSANZ Proposal P293, Nutrition, Health & Related Claims**

Dear Sir/Madam

CHF welcomes the opportunity to provide a submission into the *Food Standards Australia New Zealand's* (FSANZ) public consultation (the Consultation) regarding Proposal P293, Nutrition, Health & Related Claims. CHF's general comments on the Consultation and draft Standard 1.2.7 (the draft Standard) are provided below, while the comments on 'fat-free' and '% fat-free claims' are at **Attachment A**, as per the response template provided.

CHF is the national peak body representing the interests of Australian healthcare consumers. We work to achieve safe, quality and timely healthcare for all Australians, supported by accessible health information and systems.

CHF provides in principle support for the aims of the Consultation to finalise the draft Standard and to clarify for consumers the misconceptions that may exist and/or the misleading information conveyed through the use of 'fat-free' or '% fat-free' claims on food.

Consumers expect the information on the packaging and labelling of food to be accurate, and they are entitled to feel confident that the health and nutrition claims made on products are not misleading or deceptive in assisting them to make healthier food choices. As a guiding principle, CHF feels that health food claims should be used as a tool to convey factual health-relevant information which better educates consumers, rather than as a marketing tool.

#### ***Practical Application by Industry***

Overall, CHF feels the regulatory intent as provided through Attachment B of the Consultation documents is accurately captured. However, CHF's experience in applying the manufacturing and regulatory framework in a practical setting is limited and therefore we would be interested to see what other organisations, who routinely work on these issues, have to contribute to the Consultation.

### ***Clarity and User-Friendliness***

The level of ‘clarity’ and ‘user-friendliness’ of the draft Standard, and the information regarding ‘fat-free’ or ‘% fat-free’ claims, is contingent on the intended audience for the information. Those who work in areas with detailed knowledge behind the science of nutrition and the composition of food, and those who work within the regulatory framework of the issues, may find the documents easy to comprehend. However, CHF feels that the language used and the way the information is presented will not be easily understood by the general public.

CHF understands that consumers may not be the intended audience for this information; however, considering that the objectives of FSANZ include providing a high degree of consumer confidence in the quality and safety of food, as well as adequate information relating to food to enable consumers to make informed choices, CHF would like FSANZ to clarify how this information will be tailored for public consumption. Information resources which plainly present the information contained in the draft Standard, for example, could be created which express how the regulations may apply to everyday settings. The examples on page 5 of the Consultation’s documents, which explain the differences between the levels of claims, is useful in contextualising the issue for consumers and would be one approach to include in an information resource.

### ***Enforceability***

CHF understands that the FSANZ has no direct role in the enforcement of food labelling and that this responsibility is shared between the Australian Competition and Consumer Commission (ACCC) and the Australian Quarantine and Inspection Service (AQIS). This being the case, CHF feels that this relationship needs to be acknowledged in the draft Standard and for provisions to be included that clearly outline the process for how breaches of the draft Standard will be addressed, even it merely defers to the provisions of another document, such as the *Competition and Consumer Act 2010*.

### ***Consumer Consultation***

A study by the University of Wollongong<sup>1</sup>, which compares the appeal of health food claims on Australian and Dutch consumers, shows that there are differences between the behaviour of the population groups in how they select food based on health claims, and that policy makers need to conduct consumer research with local populations when making policy decisions.

CHF is concerned that there has been limited direct consumer consultation in developing the draft Standard and on the matter of clarifying the issues surrounding ‘fat-free’ and ‘% fat-free’ claims. This is evidenced by the statement on page 11 of the Consultation documents which says, “*To date, FSANZ has only undertaken a preliminary review of the available evidence on consumer perceptions relating to fat-free or % fat-free claims.*” CHF seeks clarification on what level of direct consumer consultation was conducted as part of this review, and whether any public consultations are planned in the future.

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<sup>1</sup> P.G. Williams, L. Ridges, M. Batterham, B. Ripper and M.C. Hung. *Australian consumer attitudes to health claim [sic] – food product compatibility for functional foods*. (Food Policy, 2008, 33(6), 640-643).

### ***Public and Consumer Education***

CHF welcomes any effort to make health information clearer for consumers, particularly addressing the public's misconceptions that 'fat-free' and '% fat-free' claims on food means 'healthier' food choices. However, any effort to develop more prescriptive regulations around this issue must be supported by a well-resourced public nutrition education and health promotion program.<sup>2</sup>

CHF notes that the Consultation documents do not mention how the public will be made aware of changes to the regulations. CHF seeks clarification on how FSANZ intends to enhance public awareness of the issues and potential changes resulting from the Consultation.

### ***Other Issues***

- CHF seeks clarification on the consultation process and timeline for the matters relating to 'fat-free' and '% fat-free' claims.
- The *Explanatory Information on Standard 1.2.7* document (provided as Attachment B of the Consultation documents) assists in the interpretation, and clarifies the intent, of each clause of the draft Standard. However, clause 20 of the explanatory document should be reviewed as it appears to instead apply to clause 19 of the draft Standard.

### ***Conclusion***

CHF's primary concern with the Consultation and its relevant documents is that while the aims of the Consultation itself will ostensibly benefit consumers, the documents have not been drafted with consumers in mind. The documents also provide limited guidance as to how the outcomes of the Consultation will be conveyed to the public. CHF also believes that the relationship between FSANZ, ACCC and AQIS should be presented clearly to ensure accountability and to provide consumers with a clear avenue through which they can raise concerns.

Finally, CHF believes that raising consumer awareness and understanding of the issues – through well-targeted education campaigns and or through the development of community awareness strategies – should be a key part of whatever policy direction the Consultation results in.

Please do not hesitate to contact CHF Senior Policy Manager, Anna Greenwood, at [a.greenwood@chf.org.au](mailto:a.greenwood@chf.org.au) or on 02 6273 5444, if you would like to discuss this submission in more detail. CHF appreciates the opportunity to provide comments on the Proposal, and looks forward to reviewing the outcomes of the Consultation.

Yours sincerely

**Carol Bennett**  
**CHIEF EXECUTIVE OFFICER**

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<sup>2</sup> P.G. Williams. *Can Health Claims for Foods Help Consumers Choose Better Diets?* (Clinical Nutrition, 2006, 15(2), 25-30)

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

Submitter name: Consumers Health Forum of Australia	
Question	Comment
<p>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>CHF considers that other organisations whose work focuses primarily on food and nutrition would be better placed to answer this question. To date, CHF has received limited correspondence from its members or consumers about this issue.</p>
<p>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>CHF considers that raising consumer awareness and understanding, through a well-targeted education campaign, of the issues surrounding of 'fat-free' and '% fat-free' claims should be a key part of whichever option is adopted. Before CHF can support one over the other, more information is required as to what the implications of each option are and the requirements they will create for relevant stakeholders, and whether or not the option will enhance consumer understanding of the issues, leading to better informed health food choices. General comments on each option are provided below.</p> <p><b>Option 1</b></p> <p>CHF considers that maintaining the status quo would not contribute to better consumer understanding of the issues, as it requires the consumer to analyse the claims against the other information contained on the packaging/label, rather than shifting the onus back onto the manufacturer to present clear information which is not misleading or deceptive.</p>

<p>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> <ol style="list-style-type: none"> <li>Which option do you support and why?</li> <li>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.</li> <li>Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.</li> </ol>	<p><b>Option 2</b> CHF sees value in creating a code of conduct which may better inform and guide industry practice and behaviour. However, this option, as it is voluntary, may further confuse consumers if it is inconsistently adhered to. Additionally, CHF is concerned that, if adopted, the code of conduct would be developed solely by industry and without consumer input.</p> <p><b>Option 3</b> Only permitting ‘fat-free’ and ‘% fat-free’ claims on foods which meet the nutrient profiling scoring criterion would provide a baseline for consumers. This may enable them to better understand the nutritional profile of a food, rather than individual components, which would assist in giving them a more complete picture of the item and the health impact of the product they are selecting.</p> <p>Prohibiting ‘fat-free’ or ‘% fat-free claims’ on food categories such as ‘confectionery’, given that they generally provide very little in the way of nutritional content, would be welcomed as part of a broader strategy. CHF supports this option; however, recognises the difficulties that may arise when attempting to categorise food.</p> <p>A: As above. B &amp; C: CHF considers that other organisations would be better-placed to answer these questions.</p>
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