

14 September 2017

Project Manager  
Food Standards Australia New Zealand  
PO Box 10559  
The Terrace  
Wellington 6143  
NEW ZEALAND

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

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the ***Consultation Paper – W1109 – Consultation about beta-glucan and blood cholesterol health claims.***

Yours sincerely

Katherine Rich  
**Chief Executive**



***CONSULTATION PAPER – W1109 –  
CONSULTATION ABOUT BETA-GLUCAN  
AND BLOOD CHOLESTEROL HEALTH  
CLAIMS***

**Submission by the New Zealand Food & Grocery  
Council**

**14 September 2017**

---

## NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the ***Consultation Paper – W1109 – Consultation about beta-glucan and blood cholesterol health claims***
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$31 billion in export revenue from exports to 195 countries – some 72% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income. Our members directly or indirectly employ more than 400,000 people – one in five of the workforce.

### OVERARCHING COMMENTS

3. NZFGC recommends that amendments to the Australia New Zealand Food Standards Code that may flow from W1109 not proceed and that the work be abandoned. This is on the basis of:
  - Potential issues with the systematic review as set out in paragraphs 10-12
  - Impact on the utility of the standard in terms of information for consumer choice and innovation
  - retrograde public health step in light of New Zealand’s trend down of serum total cholesterol levels
  - serious flow-on impact for innovation and research and development (R&D) by creating uncertainty about future goal posts changing and the resultant waste of resources and the stifling of initiatives
  - trade impacts where trade relies on the nexus between science, innovation and society and on a reliable, predictable and certain regulatory environment
  - cost.
4. W1109 sends the wrong signals to industry about regulatory certainty and predictability. It has the potential to create disharmony with international regulation that is strongly opposed.
5. W1109 also has the prospect of resulting in significant costs to consumers and to industry. For consumers it is the cost of loss of confidence in the claims system and labelling and for industry it is the direct cost of labelling, marketing, brand impact, and product formulation. Should a change to the beta-glucan/barley/cholesterol high level health claim have a flow on effect to the beta-glucan/barley general level health claim (and logic suggests it would) then the costs compound.
6. It is also concerning that a content threshold might be set for example, if a minimum percentage of whole grain oats in a serve is introduced and set so high that some of the whole grain oat based cereals currently on the market could not make the claim (where they can now be based on the beta-glucan content).
7. The potentially high cost to product development and R&D is evidenced by the South Australian Research and Development Institute (SARDI) and UNCLE TOBYS collaboration to develop a new oat breed ‘Kowari’ with higher beta-glucan content. This is planned to be planted by farmers in 2018 and is the result of a 14 years of research as part of the National Oat Breeding program. Costing a 14 year research programme that can no longer be utilised in Australia or New Zealand would be significant.

---

## DETAILED COMMENTS

### ***The Systematic Review***

8. NZFGC has not the expertise to make an assessment of the systematic review. However, we are concerned that there is no indication of peer review. The potential significance of its conclusions in several areas should have warranted considerable and international peer review. We are not advocating for peer review at this point as we believe the work should be abandoned and the resources refocussed on issues of greater import and more positive impact.
9. Having said that we would point to some oddities. We appreciate that isolating the impact of beta-glucan on blood cholesterol is highly desirable but requiring a '100% pure beta-glucan on blood cholesterol' test may not be possible. There is no discussion of the reasons this has not been pursued anywhere. It may be that 100% pure beta glucan may not be possible to produce or 100% pure beta-glucan that is extracted may perform differently than beta-glucan as part of a whole grain. These are not explored.
10. We support the comments from the Australian Food & Grocery Council comparing the review of the beta-glucan claims in 2006 and this more recent review. The 2006 review considered six papers and agreed to the beta glucan/barley/cholesterol high level health claim proceeding and, with only one additional paper relevant to barley considered in W1109, FSANZ now considers the beta glucan/barley/cholesterol high level health claim unsubstantiated.
11. NZFGC supports the comments made on areas of the methodology raised by others associated with or in the industry such as Nestlé Ltd and the Australian Food & Grocery Council.
12. The NZFGC position on abandonment is based on 4 key factors which we will cover under separate headings:
  - Appropriate application of scarce FSANZ resources on an issue of limited value and potentially high cost
  - Risk to public health and nutrition guidelines
  - Risk to R&D investment and innovation
  - Cost to industry.

### ***Resources for the Systematic Review***

13. NZFGC considers that applying scarce FSANZ resources to a systematic review of the food-health relationship between oats and barley and their derived beta-glucans on blood cholesterol concentration is puzzling and frustrating. We are aware of some reviews undertaken by FSANZ (for sodium (2014), phytosterols (2014), saturated fatty acids (2016) trans fatty acids (2014)). We have not seen a programme of work that would identify prioritisation of such work overall or within the claims area specifically and whether such reviews are a priority going forward. Given the acceptance of the relationship between oats and barley and their derived beta-glucans on blood cholesterol concentration internationally, the work of W1109 would certainly not have been rated as a priority area of focus by industry.
14. We are concerned that the combined expertise of the European Food Safety Authority, the US Food and Drug Administration and Health Canada has been found wrong in this case. We acknowledge differences in terminology may be pointed to but the effect is the same: the high level health claim of beta-glucan and blood cholesterol concentration for barley is supported everywhere but in Australia and New Zealand.

- 
15. FSANZ has generally presented as a strategic and responsive organisation but on this issue we are concerned its integrity and standing will suffer. In relation to its current corporate plan, FSANZ states:

“FSANZ already has a record of protecting public health objectives beyond the provision of safe food. The ministerial priorities will help us to sharpen our work in this area ... to include consideration of longer term health outcomes, such as obesity and overweight.”

Longer term health outcomes relating to cholesterol levels that are discouraged by the removal of a high level health claim (that is otherwise available worldwide) would seem not to meet the FSANZ corporate plan.

16. Similarly, the FSANZ Strategy speaks of enabling “... FSANZ to maintain a clear strategic direction for its scientific activities” and supporting FSANZ to “... provide excellent evidence based scientific advice to inform decision making”. We suggest that W1109 is not contributing to this Strategy and that W1109 is a detraction to the FSANZ evidence base by neither representing the “... ‘best available science’ (as required by the FSANZ Act)” nor “in a form that is relevant to needs and easily accessible”. We contend it is not relevant and, in relation to ‘best available science’, concur with views expressed in other submissions that to discount the evidence for beta-glucan from barley for lowering cholesterol on the number of subjects compared to random control trials for oats is problematic.
17. The FSANZ Strategy goes on to state that “We will further consider the feasibility of adopting overseas risk assessments, as recommended by the Australian Government. We will continue discussions with research organisations and universities about gaps in our evidence base”. In W1109, we see no commitment to adoption of overseas risk assessments, in fact we see the opposite – an undermining of that commitment – and we see no evidence of collaboration on this work (although we have seen that in reviews of general level health claims).

#### ***Utility of Standard 1.2.7 seriously undermined***

18. Should the work of W1109 proceed to amendment of the Food Standards Code we believe the utility of the Standard 1.2.7 would be seriously undermined and a key benefit of ongoing innovation and R&D jeopardised.
19. We discuss innovation separately below but it is important to note that In the Regulation Impact Statement (2012) on health claims, it is stated up front that “Proposal P293 seeks to provide a regulatory arrangement to ensure that food labels (including advertisements) bearing nutrition, health and related claims provide adequate information to enable consumers to make informed choices, while preventing misleading or deceptive information. The Proposal also seeks to support industry innovation and provide certainty for industry and enforcement agencies.” (NZFGC underlining).
20. In terms of information for consumer choice, should the high level health claim be amended and then not available in the future for products that may be in development or developed in the future, consumers will be negatively impacted to an unknown extent. Serum total cholesterol is trending down in New Zealand (Miller et al 2016) and while much of this can be attributed to changes in the consumption of saturated fats, every contribution including increased consumption of whole cereals are valuable.

#### ***Impact on Public Health***

21. We appreciate that the bar set for the substantiation of high level health claims is appropriately high. However the context is food not pharmaceuticals and this is in the context of diet not hospitalisation or medically prescribed rehabilitation. In light of this,

---

potential removal or down grading of a high level health claim that has been in place in Australia and New Zealand for several years, together with its widespread continued application overseas, would seem a retrograde public health step to take.

22. It is difficult to assess the impact that a down grading of the high level health claim might generate – the respective nutrition guidelines for Australia and New Zealand refer to optimal nutrition at a broader level than specific nutrients such as beta-glucans but they do talk to the importance of whole cereal grains and refer to polysaccharides which includes beta-glucans (MoH 2015):

“Eating whole grain and high fibre grain foods is linked with a lower risk of cardiovascular disease, type 2 diabetes, weight gain and some cancers, such as bowel cancer.... Whole grains and those high in naturally occurring fibres provide better health benefits than more refined grains ... dietary fibre is described as, and limited to, polysaccharides that are part of the plant cell wall”.

23. A down grading of the high level health claim for the polysaccharide, beta-glucan, might be considered inconsistent with dietary guidelines. In any event, it creates uncertainty and confusion.
24. It also creates concern for a review of the high level health claims involving fruit and vegetable intake and coronary heart disease and calcium and osteoporosis and whether these are in train, planned or set aside.

#### ***Impact on R&D***

25. Both Australia and New Zealand have Government programmes and initiatives around growing R&D, boosting investment in R&D and encouraging the uptake and commercialisation of R&D. In addition, New Zealand has promoted Standard 1.2.7 as:

“Enabling industry to take advantage of market opportunities and maximise exports, a new system for health claims provides opportunities to develop food products that can carry health claims” (MPI website).

26. If W1109 was acted upon, there could be a serious flow-on impact for these programmes by creating uncertainty about future goal posts changing and the resultant waste of resources and the stifling of initiatives.
27. The impact on innovation would take a similar hit. The New Zealand Ministry of Business, Innovation and Employment’s top-line statement in relation to R&D is:
- “The science and innovation systems are critical to boosting the number of knowledge-intensive, internationally-connected firms. MBIE is working to lift business expenditure on research and development...”

28. Creating uncertainty is the best way to scare off R&D investment.

#### ***Impact on Trade***

29. The New Zealand Government has several strategies for business growth and trade. Many target the food sector since our trade in foods contributes around 25% to GDP. Sir Peter Gluckman, in his address to the 20<sup>th</sup> anniversary of the Australia New Zealand Food Treaty, stated:

“The high value nutrition sector will grow in the next decades. What will drive that sector? Evidence based health claims.”

Growth in trade that relies on the nexus between science, innovation and society relies also on a reliable, predictable and certain regulatory environment. This has the potential to be undermined in relation to high level health claims.

- 
30. W1109 send the wrong signals to industry about regulatory certainty and predictability. It has the potential to create disharmony with international regulation that is strongly opposed.

### **Cost to industry**

31. We would point to the cost that disallowing the beta-glucan/barley/cholesterol high level health claim will create for industry in several areas:
- labelling
  - marketing
  - brand impact
  - product formulation.
32. Should a change to the beta-glucan/barley/cholesterol high level health claim have a flow on effect to the beta-glucan/barley general level health claim (and logic suggests it would) then the costs compound.
33. It is also concerning that a content threshold might be set for example, if a minimum percentage of whole grain oats in a serve is introduced and set so high that some of the whole grain oat based cereals currently on the market could not make the claim (where they can now be based on the beta-glucan content).
34. There is also a potentially high cost to product development and R&D underway. We would point to the the South Australian Research and Development Institute (SARDI) and UNCLE TOBYS collaboration to develop a new oat breed 'Kowari' with higher beta-glucan content that is planned to be planted by farmers in 2018. This was the result of a 14 years of research as part of the National Oat Breeding program.
35. We are uncertain how one would calculate the cost of 14 years public-private research investment and collaboration but the potential loss would seem to be a compelling cost impact of a potential change since if the beta-glucan criteria was removed, then this type of research may be discontinued. The overall result would be a lowering of beta-glucan content in oats as other nutritional parameters were focussed on although there could be a ready export market to overseas manufacturing, sending the 'value add' returns off shore.

### **Questions**

Question 1: What do you consider to be the best approach for managing this food-health relationship in the Code, given the outcomes of the systematic review for the food-health relationship for a HLHC about beta-glucan? (see Section 7.1) Please give reasons for your response.

36. NZFGC believes that the issues raised about the W1109 systematic review and its potential consequences are of such significance that the best approach for managing this food-health relationship in the Code is to make no change and abandon W1109.

Question 2: What do you consider to be the impacts of amending the Code for consumer understanding about beta-glucan, oats and barley and blood cholesterol?

37. False claims have a significant impact on consumer confidence and on food brands. Both would be impacted by a change to the beta-glucan high level health claim.
38. As well, trust would be damaged. This would most likely be levelled at industry as having misled consumers. FSANZ may not be seen in the same light, at least by consumers.

---

Question 3: Do you consider that such amendments to the Code would be consistent with dietary guidelines and other relevant public health messages? Why/why not

39. We have made comments on potential inconsistencies with dietary guidelines and for public health. We would point to context of these claims being food and the diet not pharmaceuticals and hospitalisation and changes being a retrograde public health step to take. Current messages would be negatively impacted.
40. A down grading of the high level health claim for the polysaccharide has the potential to create uncertainty and confusion and concern for a review of the high level health claims involving fruit and vegetable intake and coronary heart disease and calcium and osteoporosis and whether these are in train, planned or set aside.

Question 4: What do you consider to be the impacts on the food industry of such an amendment?

41. We have made comments on potential impacts of an amendment for industry – costs directly associated with the labelling, marketing, brands and formulation. There are also costs to innovation and trade and to consumer trust.

## References

FSANZ. *Corporate Plan 2017-18*. Canberra, 2017.

FSANZ. *Food Standards Australia New Zealand Science Strategy 2017-21*. Canberra, 2017.

Gluckman P. (2016) Sir Peter Gluckman's address to the 20th anniversary of the signing of the Australian and New Zealand Food Treaty, Wellington. Office of the Prime Minister's Chief Science Advisor: 2016.

Miller JC, Smith C, Williams SM, Mann JI, Brown RC, Parnell WR, Skeaff CM. (2016) Trends in serum total cholesterol and dietary fat intakes in New Zealand between 1989 and 2009. *Australian and New Zealand Journal of Public Health*, 40(3): 263-269.  
DOI: 10.1111/1753-6405.12504.

Ministry for Primary Industries (nd) Health claims for high value foods  
<http://www.foodsafety.govt.nz/industry/general/labelling-composition/health-claims-for-high-value-foods/>

Ministry of Health. (2015) *Eating and Activity Guidelines for New Zealand Adults*. Ministry of Health: Wellington NZ, 2015.