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SUBMISSION

Proposal P293 – Nutrition, Health and Related Claims

Draft Standard 1.2.7

Consultation paper for review of Part I and II

National Heart Foundation of New Zealand

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To:

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Introduction

The National Heart Foundation of New Zealand understands that Food Standards Australia New Zealand (FSANZ) is seeking comment on the structure and regulatory clarity of draft Standard 1.2.7 – Nutrition and Health Related Claims.

The Heart Foundation also understands that FSANZ is seeking comment on the matter of fat-free and % fat-free claims, and in particular whether consumers are currently, or are likely to be in the future, misled by these claims, thereby warranting the application of additional regulatory measures.

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

The Tick Programme is the most widely recognised front-of-pack label programme in New Zealand. It 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 is committed to the continued reformulation of food products with improved nutritional profiles and communicating consistent and easy to understand information to consumers about foods, to reduce their risk of heart disease. This assists them in making informed and better choices about the foods they eat and prepare for their families.

At each stage of the consultation process for P293, the Heart Foundation has commented **on**, and has generally supported most of FSANZs' preferred options.

The Heart Foundation has further comments and recommendations for this latest round of consultation, especially in reference to fat-free and % fat-free nutrient content claims.

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Executive Summary

- Overall, the Heart Foundation supports regulatory provisions that help the food industry produce and market products that assist people to achieve healthier eating patterns.
- The Heart Foundation supports regulations that minimise misleading information to consumers.
- The Heart Foundation supports Option 3 – ‘regulate with additional conditions for fat-free and % fat-free nutrient claims’.
- Of the options proposed, the Heart Foundation supports Option 3(a) – ‘require foods to meet the Nutrient Profiling Scoring Criterion (NPSC) to carry fat-free and % fat-free claims’.
- The Heart Foundation believes Option 3(a) is most feasible for several reasons:
 - It attempts to address the possibility that fat-free claims may be misleading.
 - It 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 such as sodium.
 - As front-of-pack (FOP) labels are currently under consideration, to avoid consumer confusion it is important that claims are able to co-exist with any future FOP labels without contradicting each other. For this reason the Foundation recommends applying the NPSC to both nutrition content and health claims, to reduce the likelihood that foods carrying ‘positive’ nutrient content claims will have less healthy ratings on FOP labels.
- For Option 3(a), the Heart Foundation recommends: other nutrition content claims be assessed for their potential to mislead consumers to avoid inconsistency. It also strongly advises that a well-funded and evaluated social marketing campaign be implemented to improve consumer understanding of nutrition content and health claims.
- 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.
- The Heart Foundation does not support using food categories to determine whether fat-free and % fat-free claims can be made [Option 3(c)] due to the proposed difficulties associated with food category definition and claim enforcement.
- The Heart Foundation seeks further clarification regarding the clauses ‘Interpretation’ and ‘Endorsements’ and also expresses concern over the confidentiality process associated with new potential health claims.
- Finally, 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. The Heart Foundation is in general agreement with the revised draft Standard.

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Table 1: Revised draft Standard 1.2.7

Submitter name: National Heart Foundation of New Zealand	
<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>In general, the National Heart Foundation of New Zealand believes the drafting accurately captures the regulatory intent of the standard, however there are a few points that require clarification.</p>	
Clause number	Comment
2 (food group)	Nuts and seeds are not included in the definition of food group. The Heart Foundation seeks clarification under which food group these would be listed. Clarification has been sought in previous submissions. ¹ This is particularly important and relevant with the use of health claims for fruit and vegetables and heart disease.
16 (2)	It is understood that the intent of this standard is to protect public health and safety. The Heart Foundation considers however that allowing food companies to have new potential health claims assessed confidentially (as per the Food Standards Australia New Zealand Act 1991) is inconsistent with the standard’s intent. It is therefore recommended that research from food companies for new food-health relationships be made public.
21 (1c)	The Heart Foundation seeks clarification on the statement: ‘An endorsing body must – be free from influence by; the supplier of food in relation to which an endorsement is made.’ Does ‘influence’ include getting feedback from the supplier on usability, attainability and technological issues related to the endorsement? The Heart Foundation believes adding ‘undue’ before the word ‘influence’ will more accurately portray the intent of this statement.

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

Submitter name: National Heart Foundation of New Zealand	
Question	Comment
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>The Heart Foundation has not formally reviewed the evidence that consumers are purchasing foods of lower nutritional 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>It is understood that evidence regarding the impact of nutrition content claims on consumer purchasing behaviour is limited. There is however some evidence that fat free and % fat-free claims have the ability to mislead consumers. Gorton et al² surveyed 1,525 people at Auckland supermarkets and found Maori, Pacific, Asian and low-income shoppers frequently misinterpret % fat-free claims on food to mean the food is healthy overall.</p> <p>There is also anecdotal evidence from the Heart Foundation’s Pacific Heartbeat team (PHB) that shows that fat-free and % fat-free claims are misleading. Participants in the Certificate in Pacific Nutrition (CPN) course, endorsed by Auckland University of Technology and delivered by the PHB, cover ‘food label reading’ to learn how to read and correctly interpret food labels to make healthy purchasing decisions. CPN course facilitators have reported participants thinking that foods with fat-free labels are healthy to eat without knowing there are other nutrients, such as sugar and sodium/salt, which need consideration.</p> <p>Further, CPN students have misinterpreted % fat-free claims to mean ‘no fat’ because percentage (%) was not well understood in the first place. This is not surprising feedback as ongoing food label misinterpretation has occurred since the course began 10 years ago.</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>The Heart Foundation supports Option 3 – ‘regulate with additional conditions for fat-free and % fat-free claims’ as the most feasible option. The Foundation supports regulations that help the food industry produce and market products that assist people to achieve healthier eating patterns. The Foundation is also supportive of options that minimise misleading communication.</p> <p>The Heart Foundation, however, believes that as FSANZ is engaging in expert assistance to prepare a literature review on fat-free claims, this option should only go ahead if sufficient evidence is provided that these claims commonly mislead consumers and influence purchasing behaviour.</p> <p>Option 2: 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 Programme shows compliance is arbitrary by sections of the food industry and varies in consistency, quality and accuracy.</p>

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	<p>Option 1: Initially the Heart Foundation considered recommending Option 1 – ‘status quo’, however this option is limited, as it does not address the possibility that consumers are being misled by fat-free and % fat-free claims. Further, regulation of fat-free and % fat-free claims based on consumer law relying on consumer complaints is unlikely to be effective. A proactive monitoring and enforcement process would be needed.</p> <p>The Heart Foundation considers the major advantage of Option 1 to be the sub-option: an education campaign to increase consumer awareness and minimise the likelihood of possible misunderstanding regarding fat-free and % fat-free claims, and therefore the Foundation recommends a social marketing based education campaign for Option 3, not just as a sub-option for Option 1.</p>
<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>Of the options proposed, the Heart Foundation supports Option 3(a) – ‘require foods to meet the nutrient profiling scoring criterion (NPSC) to carry fat-free and % fat-free claims’, and considers it important to assist consumers in making healthier food choices.</p> <p>The Heart Foundation acknowledges that while Option 3(a) has its limitations, such as inconsistency in focusing on the singular nutrient (fat), it takes into account the overall nutritional quality of the food and attempts to address the possibility that fat-free claims may be misleading.</p> <p>Further, front-of-pack (FOP) labels are currently under consideration in Australia and New Zealand. To avoid consumer confusion, it is important that nutrition content claims and health claims are able to co-exist with any future FOP labels without contradicting each other. For this reason, the Foundation recommends the NPSC be applied to all claims, both nutrient content and health claims. This will mean that only healthy foods can carry a claim, reducing the likelihood that a food carrying a ‘positive’ nutrient content claim has a less healthy rating on a FOP label.</p> <p>The Heart Foundation acknowledges that in supporting this option, foods which are by their nature fat-free, such as dried fruit, would pass the NPSC and be eligible to carry fat-free or % fat-free claims. The Foundation agrees that this could be misleading to consumers, however it is the preferred option to 3(b) and 3(d) where sugar thresholds are proposed.</p> <p>The Heart Foundation recommends that if Option 3(a) is chosen then all nutrient content claims will also need to be assessed for their potential to mislead consumers. For example, Gorton et al² found shoppers; particularly Maori, Pacific, Asian and those with low-incomes, misinterpret ‘no added sugar’ claims, believing products with these claims are healthy.</p> <p>The Heart Foundation also strongly advises on a well-funded and evaluated social marketing campaign for Option 3(a).</p>

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	<p>It proposes a campaign which reinforces key messages and improves consumer understanding of nutrition content and health claims. Evidence shows that social marketing is a successful tool for aiding behaviour change. Community participation in campaign planning and implementation is fundamental to its success.³</p> <p>Options 3(b) and 3(d): The Heart Foundation does not support Option 3(b) – ‘require a disclosure statement if above a sugar concentration threshold’, nor Option 3(d) – ‘not permit claims on foods above a sugar concentration threshold’. Both focus on the single nutrient (sugar) and do not take into account total energy.</p> <p>The Heart Foundation understands FSANZ is reviewing fat-free and % fat-free claims due to concern that consumers may think products with these claims are ‘healthier’. Products with fat-free claims may be high in energy or sodium, or low in fibre. Focusing singularly on sugar is therefore inconsistent.</p> <p>Furthermore no distinction has been made between natural and added sugar, therefore products containing natural sugar (e.g. fruit or flavoured yoghurt, which contribute significantly to nutrient intake) will be represented in the same way as products high in added sugar (e.g. confectionary). This may mislead consumers to believe that foods containing natural sugars are unhealthy choices due to their sugar content.</p> <p>Option 3(b): In addition, the Heart Foundation questions whether a disclosure statement will influence consumer behaviour, particularly if it is in a small font and on the back of packaging.</p> <p>Option 3(c): - ‘Not permit claims on certain products by food category’, is not supported by the Heart Foundation because of the proposed difficulties associated with defining food categories and enforcing whether or not claims are on the correct products.</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 you suggested threshold value.</p>	<p>The Heart Foundation has not formally reviewed the evidence to support and appropriate sugar concentration threshold for options 3(b) and 3(d) because it is not supportive of these options.</p>
<p>c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.</p>	<p>The Heart Foundation has no further suggestions other than those commented upon in this submission.</p>

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References

¹ National Heart Foundation of New Zealand. *Proposal P293 – Nutrition, Health and Related Claims Draft Standard 1.2.7; Submission*. Auckland (NZ): NHF; 2007

² Gorton D, Ni Mhurchu C, Bramley D, Dixon R. Interpretation of two nutrition content claims: a New Zealand survey. *Aust NZ J Public Health*. 2010; 34(1):57-62

³ Aras R. Social marketing in healthcare. *Australis Med J*. 2011; 4(8): 418-424