

**Submission on Proposal P293  
Nutrition, Health and Related Claims  
Consultation Paper for First Review  
15 May 2009**

The New Zealand Food & Grocery Council (the “FGC”) welcomes the opportunity to comment on the Proposal P293, Nutrition Health & Related Claims Consultation Paper (the “Paper”).

The FGC represents the major food and beverage manufacturers and suppliers in New Zealand. The Council's member companies supply over 95 percent of the processed food and beverages to the grocery industry. They are also the major exporters of processed food and beverages.

The grocery industry contributes over \$9 billion to the domestic economy and is the largest employer in the manufacturing sector. In addition, member companies contribute \$1.7 billion towards New Zealand's export earnings in the form of manufactured products.

Food Standards Australia New Zealand (“FSANZ”) is seeking comment on:

- the approach used for the regulation of general level health claims (“GLHC’s”); and
- the complete revision of the text and structure of draft Standard 1.2.7 (the “Standard”) for the purpose of improving clarity and user-friendliness.

The FGC considers the revised Standard to be an improvement as it does improve clarity and reduce ambiguity. It must be noted, however, that further improvement could be made. In particular, the use of the word ‘symptoms’ in clause 10(a) has the potential to limit the scope of claims that may be made. The FGC believes that the word ‘symptoms’ should be removed from this clause.

The FGC is generally supportive of the ‘pre-approval’ by FSANZ of up to 90 health claim relationships, however, notes that keeping this list updated to reflect new research will be a resource intensive task.

The FGC is strongly opposed to the system of pre-approved relationships suggested by FSANZ for the regulation of GLHC’s, namely Option Two. The FGC submits that the proposed system is completely unworkable for the following reasons:

- (1) The process of applying for pre-approval is not confidential. This will result in the loss of first to market advantage for those companies that have made significant investment in the research leading to the new claim.

- (2) There is significant potential for the research and development process in New Zealand to be gravely affected as the proposed system does not protect intellectual property created by innovation and new product development. New Zealand has a unique position in the international market due to its relatively small size and we rely on innovation to set us apart from other markets. Over regulation, as suggested by Option Two, has the ability to destroy innovation and therefore destroy our industry.
- (3) The application process is lengthy and adds a considerable amount of time to the innovation development cycle.
- (4) There is no certainty that the GLHC will be approved at the end of the application process even if it meets all criteria. In addition, there is no right of appeal if a GLHC fails.
- (5) Industry will have to pay substantial costs each time they wish to seek pre-approval. Historically the food industry have absorbed significant compliance costs to meet regulatory requirements, however, due to the current economic crisis no additional costs can be absorbed. If Option Two was implemented then these extra charges would have to be passed on to the consumer. If industry did chose to absorb these costs then they would lose the profits required to sustain innovation.
- (6) Multinational companies may have duplication of costs if they have already sought approval for a GLHC from another jurisdiction such as the EU.
- (7) As referred to earlier as the list of pre-approved claims grows, it must be maintained and updated which is a significant administrative burden that FSANZ will have to meet. The FGC respectfully submits that FSANZ does not have the resources needed to fulfil this task.
- (8) In New Zealand, there is no justification for regulating GLHC's as the Fair Trading Act 1986 prohibits conduct which may be misleading or deceptive. If a company has funded reputable research, and the results are conclusive and supportive of the claim, then the idea that pre-approval is required over and above the legislation already in place is absurd.

The FGC submits that in the event that FSANZ does implement the system of pre-approved relationships, we would recommend that the GLHC's be afforded the same level of confidentiality as High Level Health Claims. Further, whilst FSANZ has indicated that the default timeframe for processing a GLHC would be 9 months, the FGC strongly believes that this timeframe should be reduced to 3 months.

In conclusion, the FGC are supportive of the revised Standard, however, are in strong opposition to Option Two, the suggested approach, for the regulation of GLHC's.

For further information, please contact:

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