

**SUBMISSION ON PRELIMINARY FINAL ASSESSMENT REPORT, P293  
NUTRITION, HEALTH AND RELATED CLAIMS**

The New Zealand Food & Grocery Council (the FGC) welcomes the opportunity to comment on the Preliminary Final Assessment Report, P293: Nutrition Health & Related Claims (the Report).

The FGC represents the major food and beverage manufacturers and suppliers in New Zealand. The Council's member companies supply 98 percent of the processed food and beverages to the grocery industry. They are also the major exporters of processed food and beverages. The following comments are therefore representative of a diverse range of views.

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 elaborately transformed manufactured products.

### **GENERAL COMMENTS**

Throughout the protracted development of the Nutrition, Health & Related Claims Standard the FGC has always been highly supportive of the Standard.

It has however expressed concern and regret that the enactment has taken so long. The FGC recognises that opposition to health claims has been expressed by some stakeholders but the delay is also due to the increasing complexity of the proposed Standard.

It is agreed that priority must be given to the protection of public health and safety and, for this reason, the FGC has agreed that all claims must be substantiated (the degree of substantiation depending on the type of claim that is being made). The FGC has concerns however that the requirements of the proposed Standard have added increasing complexity that will present difficulties for consumers, the industry and enforcement agencies.

### **ISSUES RELATED TO APPLICATION OF THE STANDARD**

#### **Application of Standard 1.2.7**

The FGC agrees with the recommendation that the Standard is to apply only to food for retail sale.

The FGC also agrees with the exemption that the Standard will not apply to foods for catering purposes, packaged meals delivered to clients of meal organisations and food provided to patients in hospitals and similar institutions, when the food is not in a package. The reasons for these exemptions are logical and make good sense.

The FGC also agrees with the exemption of dietary information from the Standard. The circumstances in which this exemption will apply however needs to be clarified as the examples provided on page 20 of the Report differ from those referred to on page 18.

## **NUTRIENT CONTENT CLAIMS**

### **Percentage Daily Intake**

The FGC supports the removal of mandatory % Daily Intake Labelling from products containing nutrition content and health claims.

It is pleasing to note that there is no strong evidence that content claims can mislead consumers and lead to distorted diets.

In respect of voluntary % Daily Intake the FGC supports Option 2 to permit voluntary DI labelling which is external to the NIP. Member companies are increasingly adopting Daily Intake Labelling as it can provide assistance to consumers in planning their daily food consumption.

### **Conditions for Food as Prepared or as Sold**

The FGC agrees that claims be permitted on foods as sold or as prepared or consumed. The Substantiation Framework of the Draft Assessment Report took a logical approach in stating “the content should be determined on the form of the food on which it is intended to be consumed. For packaged food this will generally be in the form suggested in the Directions for Use included on the label”.

## **SPECIFIC NUTRITION CONTENT CLAIMS**

### **Wholegrain**

The FGC does not agree that wholegrain be regulated as a biologically active substance. The term biologically active substance was used for components of foods that are biologically active and not consumed as individual foods. Wholegrains can be consumed as a separate food and therefore it is not logical to define them as a biologically active substance.

Furthermore wholegrains can contain many nutrients including biologically active substances and thus this is further reason for not classifying them as such a substance.

If wholegrains are defined as a biological substance therefore any reference to “wholegrain” on a label would be a nutrient content claim.

While FSANZ states defining wholegrain as a biologically active substance is consistent with Codex, it should be noted there is no definition for such substances in Codex.

## **Saturated and Trans Fatty Acid Claims**

The FGC supports the comments made by Dairy Australia and Fonterra Co-op Group Ltd in respect of this claim and in particular the definition of trans-fatty acids.

It is a sensible approach that saturated and trans-fatty claims not be treated in isolation. The definition of trans-fatty acid must however be reviewed to take account of the difference between naturally occurring ruminant trans-fatty acid and industrially produced trans-fatty acid.

## **Fibre Nutrition Content Claims**

The FGC supports Option 3, removing the specific criteria for meal/main dish products and the inclusion of an “excellent” source claim. It does not agree with the increased levels that have been set for meeting source claims.

Many products that currently make a source claim will be precluded from making such a claim under the proposed Standard and some products making a “good” source claim will be required to make a “source” claim. This will confuse consumers and could result in consumers decreasing their fibre intake. It will also require unnecessary re-labelling.

## **“No Added Sugar” Claim**

The FGC supports Option 2 which is FSANZ’s preferred approach.

It is inequitable however that the addition of concentrated fruit juice in products is restricted from making the claim when dried fruits which contain high levels of sugar will be permitted to carry a “no added sugar” claim.

## **“No Added Salt” Claim**

The FGC supports Option 2 which is FSANZ’s preferred approach.

## **Glycemic Index**

The FGC supports the fact that GI Descriptors can be used on products not linked with endorsements but does not support that a GI Claim not linked to an endorsement is required to meet the nutrient profile criteria for health claims.

The Glycemic Index “is an index” more closely identified with “content”.

The proposed requirement to meet the nutrient profile criteria will be discriminatory of small serve size products. It could also be discriminatory on products that do not qualify under nutrient profiling when other products may meet the requirements of an endorsement organisation.

## **Light/Lite Claims**

The FGC supports the inclusion of Light/Lite claims in the Standard but does not support Light/Lite claims being used only when products meet the “reduced” nutrition content claim.

There is no consumer research provided to support the FSANZ recommendation.

Nutrition Information Panels also provide useful information which negates the requirement to meet the “reduced” nutrition content claim.

In addition consumers are used to seeing such claims. Substantial re-labelling would also be required without any significant benefits. It should also be noted that the Fair Trading Act can also be invoked to cover any concerns about a consumer being misled.

### **Comparative Nutrition Content Claims and Definition of “Reference Foods”**

The FGC supports the proposed changes to the definition of reference foods but submits that further amendments are necessary as the definition is still too restrictive.

The definition should also permit comparisons with foods that have already been altered nutritionally.

The definition also does not appear to allow comparative claims in respect of biologically active substances; it only refers to nutrient comparisons.

## **ISSUES RELATED TO HEALTH CLAIMS**

### **Eligibility Criteria for General Level Health Claims**

The FGC agrees that the regulatory system should promote the responsible use of claims and protect consumers from false and misleading information (page 84 of the Report) and hence the reason FSANZ is supporting the use of a model to determine the eligibility of foods to carry a health claim. The FGC submits however that providing the health claim can be substantiated, (which the FGC strongly supports) and nutrition information is readily available on the label, this provides for the responsible use of claims.

The difficulties and anomalies of the models to assess the eligibility of foods to make health claims are well addressed in the Report but the proposal for adopting nutrient profiling is of concern for the following reasons:

- It perpetuates the categorisation of foods as “good” and “bad” which conflicts with the nutrition principle that it is the combination (proportion) in which foods are consumed that is important. A wide variety of foods must be eaten and all foods have a place in the diet. It is the proportion in which they are eaten that must always be kept to the fore.
- The proposed points system based on a 100g/ml approach takes no cognisance of the quantity in which the product will be consumed in one serving.
- It discriminates against foods with small serving sizes that may contain nutrients for which health claims can be made.
- It still creates anomalies.
- The profiling system is complex and will need substantial education for industry.

It will be a disincentive for smaller manufacturers, to adopt health claims. They do not have the technical resource readily available, to interpret, implement and monitor the complex

requirements of the model. It will fetter innovation at a time when both the Australia and New Zealand governments are actively promoting innovation in the food industry. (It is also important to note that the proposed Standard is only one of many Standards which are introducing increasing complex provisions. This negates the important principle of minimum regulation).

- Classifying food as “good” or “bad” or “healthy” or “unhealthy” is neither helpful nor appropriate. It takes no cognisance that different age groups, different lifestyles and difference cultures have different nutritional requirements.

The proposed nutrient profiling could have adverse effects on an individual’s nutritional needs.

- Many foods that have positive attributes for which a health claim could be made will be precluded by nutrient profiling from making such claims.

### **Weight Management “Diet” Claims**

The FGC supports Option 2 as it will provide for a greater range of products that make a positive contribution to weight management, to qualify for the claim.

It is important to note however that there are foods, other than low joule foods, that also play an effective role in weight management. Provisions should be included in the Standard to allow for this fact.

### **New Diet-Disease Relationships**

FSANZ should have provided more robust evidence as to why it concluded “the evidence relating wholegrain and bran to a reduction in cardiac heart disease is not convincing” and “the evidence relating to long chain omega-3 fatty acid composition in reduction in the risk of CVD is “probable” but not convincing.”

Further input and consideration of these claims is required.

## **ISSUES RELATING TO RELATED CLAIMS**

### **Dietary Information**

It is pleasing to note that FSANZ acknowledged the role the food industry can play in the provision of dietary information and that such activities should not be hampered.

The food industry provides substantial nutrition and dietary advice through many means and such activity is increasing as industry takes a more active role in addressing the obesity issue.

The FGC agrees that dietary information not involving direct sale to the public should be exempt from the Standard.

The FGC submits however that the definition is too narrow as it precludes linking a component in a food to a health effect and this will preclude much of the dietary information that is currently conveyed. The provision of dietary information is a very effective way of educating consumers which could be jeopardised unless the definition is amended.

## **Endorsements**

The FGC supports Option 2 to exempt endorsement programmes from the Standard.

It is a fair approach to take as endorsements implemented after the enactment of the Standard should be treated in the same way as endorsements currently in existence.

## **ISSUES RELATING TO WORDING CONDITIONS**

### **Small Packages**

The FGC supports Option 2.

### **Split Claims**

The FGC supports Option 2.

## **ITEMS FOR CONSIDERATION**

### **Consideration of New Nutrient Reference Values**

While the FGC approves the need to update NRV but caution this could cause consumer confusion. It must also be recognised that it will result in substantial label changes and thus a very long transition period will be required.

### **Trademarks**

The FGC is concerned at the suggestion that FSANZ could be linked into the trademark registration process. This would add delay and complexity into what is already a lengthy, complex and costly process. This matter requires further consultation with the industry.

## **CONCLUSION**

While positive amendments have been made in the Report, the FGC regrets the added complexity in the proposed Standard which it considers is counter productive and will diminish the useful and important role Nutrition, Health and Related Claims can play.



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