18 September 2018

Chair
Food Regulation Standing Committee
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Canberra ACT 2601
AUSTRALIA

Email: FoodRegulationSecretariat@health.gov.au

Dear Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Consultation Regulation Impact Statement: Labelling of sugars on packaged foods and drinks.*

Yours sincerely

Katherine Rich
Chief Executive

Consultation Regulation Impact Statement: Labelling of sugars on packaged foods and drinks

Submission by the New Zealand Food & Grocery Council

18 September 2018

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council ("NZFGC") welcomes the opportunity to comment on the *Consultation Regulation Impact Statement: Labelling of sugars on packaged foods and drinks*.

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.

EXECUTIVE SUMMARY

1. Food labels should not be the only source of contextual information for consumers since contextual information is data that gives context to a person, entity or event so that knowledge can be extracted from or applied to information. NZFGC understands that what is being sought is contextual information from relevant sources including labels about sugars to enable consumers to make informed choices in support of the dietary guidelines. NZFGC does not therefore agree with the desired outcome as stated because it is too narrow.
2. NZFGC agrees there is a potential mismatch between dietary guidelines and labels in relation to 'added' sugars but it is important to note two features: this is not new and definitions of 'added sugar' are not included in New Zealand's dietary guidelines beyond reference to the WHO definition of 'free sugars'. We are also concerned that singling out a specific nutrient for consumer focus risks losing sight of the whole-of-diet view and the context within which we live and eat in New Zealand. The human body metabolises sugars in the same way whether those sugars are added or intrinsic. This is not the case, for example, with saturated and unsaturated fats.
3. Nonetheless, if we are to discuss a single nutrient or types of that nutrient and determine policy positions for that nutrient then we have to be clear on the sugars we are talking about because it will impact on regulatory and non-regulatory response, consumer understanding and costs. Terminology must be considered in parallel with policy option consideration to ensure sensible, consumer-facing information results.
4. Manufacturers add sugars for a wide variety of technical and functional reasons. These have a significant impact for the food supply and for consumers. Manufacturing use of sugar is therefore an important consideration in whatever policy decisions are taken. In considering policy options, it is also important to be aware of categories and products that we expect to contain sugar because they are treats. These have featured in dietary guidelines as occasional foods and are familiar to consumers.
5. We would recommend caution in reaching decisions that place reliance on anticipated behaviour change in the absence of evidence. We should target one behaviour change at a time that takes account of current consumption patterns.
6. NZFGC strongly supports Option 2 Education to address consumer understanding about sugars, how to read labels and what a healthy diet might comprise in terms of sources of sugar and occasional treats. This might also go to what are 'added sugars' and describe the ingredients or products that are sugars including honey and fruit concentrates. Such education must be within a 'whole modern diet' education programme and not single out sugars for exclusive treatment over the core food groups.

7. Education can also target ethnic groups who might not read labels or who might read but not interpret labels in ways that assist them make healthier choices. Aiming education at high risk groups could have the greatest impact for education investment. Limiting reach (a weakness identified for Option 2) could be a positive aspect by focussing reach where it is most needed rather than providing generic 'one size fits all' campaigns. As well, while governments are best placed to deliver broad based education, a targeted campaign that also drew in public health professionals, health agencies and industry could be cohesive and comprehensive.
8. More generally, programmes in schools that teach healthy eating practices by demonstrating what a healthy breakfast and school lunch might comprise, aim to educate the young and provide a foundation of basic healthy eating in the formative years.
9. Option 3, ingredients listing, presents an inherent difficulty in creating confusion – about ingoing weight of a range of ingredients that are then arbitrarily grouped together – and confusion with allergens which can be emboldened in the ingredients list to draw them to the attention of consumers with allergies. Option 3 would also likely be costly and complex to implement because different concepts would need to be blended, and other labelling elements changed to address confusion such as with allergens. By either diluting or de-emphasising the allergen information, consumers may well be put at risk or at the least, disadvantaged as a result.
10. NZFGC could support Option 4, the addition of additional information in the NIP in the form of an additional item under 'sugars' on a voluntary basis at the outset. There would need to be an unambiguous definition of 'added sugar' for such a provision to work effectively and consistently.
11. NZFGC considers a strong voluntary labelling programme should precede any regulation under Option 4 in order to provide time for research on impact and any other labelling changes to be made. It would also be vital that any such change aligned both in terms of timing and form with any changes to the HSR flowing from the HSR 5 year review.
12. NZFGC does not support enhancing the added sugars NIP information with additional contextual information, such as HIGH/MEDIUM/LOW messaging in relation to the products' added sugars content but could see %DI labelling for added sugars providing a point of comparison across products. A mix of all the implementation mechanisms perhaps sequenced over time would work best.
13. NZFGC opposes Option 5 graphical warnings on grounds of:
    - giving primacy to consumer information over safety aspects
    - not being a whole of food, holistic or diet based
    - reducing importance of other nutrients of concern (saturated fat, sodium)
    - competing with proven information sources such as HSR
    - the absence of evidence on impact and unintended consequences
    - creating unnecessary fearmongering for consumers.
14. With information such as total and added sugars, ingredient listing of sugar ingredients, HSR for both whole of food and specific nutrient information, and manufacturer labelling such as comparative labelling, consumers already have extensive graphical and textual information both front and back of pack. If this is extended to websites, the information could overwhelming rather than assisting. Option 5 would carry high costs for local manufacturers and impact negatively on trade both export and import. Over-sticking of imports would be difficult and many imported foods would likely bypass New Zealand.
15. As a country that imports a substantial amount of food, this could have flow on effects for consumers, tourism, the economy and potentially food security.
16. NZFGC opposes Option 6 for reasons similar to those set out in relation to Option 5 as well as issues of standardisation, accuracy, consistency and label space.

17. NZFGC considers Option 7 (off-label information) in not relying on space on pack which is at a premium, to be a useful tool to add to developments over time. Effectiveness is still to be demonstrated but there is clearly the opportunity to develop this further.

18. NZFGC considers exemptions to be important to consider particularly for special foods (eg infant formula and other foods covered in Part 2.9 of the Food Standards Code), alcohol in Standard 2.6 and foods in Standards 2.8 and 2.10. Appropriateness would need to be considered for each in developing the policy options further.

19. The different implementation mechanisms described in the Paper are reflective of overall themes but they are generalised and there will always be exceptions, variations and combinations or sequencing.

20. The absence of an agreed definition of what is the subject of 'added sugars' or 'sugars-based ingredients' presents significant difficulties for attributing benefits and costs since the parameters of the definitions would impact scope, uptake and a raft of implementation considerations.

21. NZFGC suggests that any accommodations for implementation should be across the board and not limited to small business and that efforts be applied to tools that might be developed to assist small business. Costs associated with implementing any aspects of food manufacture are subject to a range of factors, both direct and indirect, that may not be considered in determining policy. These include research and development to apply to implementation, competitive forces across product categories, and more fundamental questions about continuing with a product at all or even in the food industry. Each manufacturer undertakes their own assessment of the relativities and risks involved with pricing being part art and part design. No definitive response is therefore possible especially in the absence of a preferred option(s).

22. Costs to other programmes and information (food safety, dietary, sustainability, ethical) are also difficult to assess but to the extent that there is limited space on a label and decluttered labels and 'clean labels' that are transparent and simple (deceptively) are not only complex but rely on consumer perceptions, responses and preferences as well as retailer positioning, then costs will be a moving feast.

SPECIFIC COMMENTS

Introduction

23. NZFGC's comments follow the layout and sequence provided in the Consultation paper. We raise concerns as they arise from statements in the paper and respond to questions as presented. Reference to dietary guidelines for New Zealand refers to the Ministry of Health's Eating and Activity Guidelines for New Zealand Adults (2015)[1].

24. The purpose of the paper is "to enable consumers to make informed choices in support of dietary guidelines". Dietary guidelines are tools developed for public health professionals to advise clients/ consumers on healthy eating but they are also used extensively by manufacturers to frame products and recipes for consumers that meet the Government's expectations in relation to the general population's nutrition. The guidelines are 'dietary' and take a whole of diet perspective which accords with Ministers intention to take a whole-of diet, holistic approach to food labelling'.

25. A key issue of concern is that in singling out a specific nutrient for consumer focus risks losing sight of the whole-of diet view and the context within which we live and eat in New Zealand. Such a singling out would come at the expense of concerns about saturated fat

[1] Ministry of Health Eating and Activity Guidelines for New Zealand Adults. Wellington, 2015

and sodium which are as important. All three nutrients are features of the dietary guidelines and are considered together throughout the guidelines.

Terminology

26. Definitions are often technical details but not in this case. If we are to discuss a single nutrient or types of that nutrient and determine policy positions for that nutrient then we have to be clear on what we are talking about because it will impact on regulatory and non-regulatory response, consumer understanding and costs. There is, for example, no definition internationally or nationally of 'sugars-based ingredients', a term that has been popularised in the North American media and which is used throughout the Consultation Paper without definition.

27. There are already three sugar related definitions in the Australia New Zealand Food Standards Code (the Food Standards Code): Standard 1.1.2—3, Schedule 4.2 and Schedule 4.3, and a fourth used for the AUSNUT database. There are also definitions used by WHO, Codex, EFSA, Health Canada and the US Food and Drug Agency.

28. Determining a definition will impact on all Options under consideration particularly in relation to compound ingredients in the area of calculation, compliance, costs and extent of relevance to consumer choice. For example, Vitamins A and D can be carried by lactose. If lactose is excluded (as in the WHO definition) or a threshold level is determined (under Standard 1.2.4—5 the threshold for calculation is that a compound food has to comprise 5% or more of the food for sale) then these minuscule amounts of added sugar could be ignored. If not, theoretical calculations would need to be made by the manufacturer for inclusion in labelling and terms like 'sugars (vitamin A and D)' identified. This would not be helpful to consumers and could have considerable unintended consequences.

29. Further examples of complexity are first in relation to juices when used as acidifiers, as some high acid juices like lemon and lime are used solely for this purpose. There is a question about whether the sugar content be counted as 'added sugar' or whether the juice was being counted as part of the total juice content of the final product. Additionally, sugar content changes during production, a feature of the objection by the European Commission to the WTO when the USA notified its added sugars labelling for consultation (May 2014)[2].

30. Terminology must be considered in parallel with policy option consideration to ensure sensible, consumer-facing information results.

Statement of the problem

31. The human body metabolises sugars in the same way whether those sugars are added or intrinsic. This is not the case, for example, with saturated and unsaturated fats and lends strong justification for the separation out of 'saturated fats' from all fats. For this reason one of the mandated nutrients on the Nutrition Information Panel (NIP) is 'Sugars' indented under the heading 'Carbohydrate' and representing the total average sugars in a serve or per 100g/100ml of the product.

32. The interest in 'added sugars' stems in part from a paradox that many fresh fruits contain intrinsic sugar in the form of fructose (a monosaccharide) and dietary guidelines promote fruit and vegetables as part of a balanced diet. This constrains taking a position that differentiates sugar because it is integral in many plants and foods. The key positive is the vitamins, antioxidants and water we also get from fruit and plants that may not be present in other products containing equivalent amounts of added sugars.

[2] European Commission. Response to G/TBT/N/USA/893 – Food Labelling, Revision of the Nutrition and Supplements Facts Labels

33. Nonetheless, as with other nutrients of interest (eg saturated fat, sodium), total sugars can be identified in the nutrient icons alongside the Health Star Rating (HSR) system 'stars' symbol. This provides a very clear context for the information since the HSR rating is for the whole food product based on its nutrient profile while the nutrient icons are described as 'nutrient content declarations … indicating the average quantity of prescribed nutrients'[3]. The intention is that the graphic 'should provide convenient, relevant and readily understood nutrition information and/or guidance on food packs to assist consumers make informed food purchases and healthier eating choices"[4]

34. The reference in the dietary guidelines in Australia and New Zealand on 'added sugars' is not captured on many labels but some manufacturers are addressing consumer interest by providing such information. For example, on the Milo ready-to-drink pack, the source of sugars is set out in the NIP (lactose and sucrose) and a statement underneath the NIP notes that "over half the total sugars are naturally occurring in the milk with just over 1tsp (4.7g) of added table sugar per pack":

Servings Per Pack: 1 Serving Size: 200mL	Average Quantity per Serving	%DI* per Serving	Average Quantity per 100mL
Energy	600kJ	7	300kJ
Protein	8	16	4
Fat-total	2.8	4	1.4
- Saturated	1.8	8	0.9
Carbohydrate	20.7	7	10.4
- Sugars	17.9	20	8.9
- Lactose	9.5		4.7
- Sucrose	4.7		2.3
Dietary Fibre	0.8	3	0.4
Sodium	140	6	70

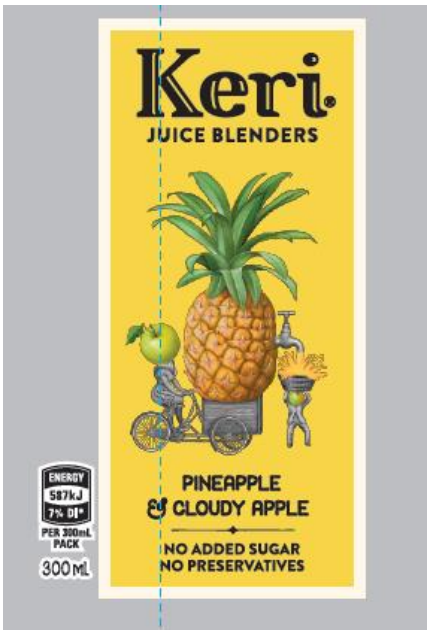
35. Another mechanism is to add a footnote to the NIP (see below left – Kellogg Sultana Bran) or present a claim being made about 'no added sugar' to respond to consumer interests (below right).

Consultation question 1. Do you support

Servings per package - 9
Serving size - 45g (3/4 metric cup†)

	quantity per serving	% daily intake ▲ per serving	per serve with 1/2 cup skim milk	quantity per 100g
ENERGY	630 kJ	**7%**	830 kJ	1410 kJ
PROTEIN	4.3 g	**9%**	8.9 g	9.5 g
FAT, TOTAL	0.8 g	**1%**	0.9 g	1.7 g
- SATURATED	0.2 g	**0.8%**	0.3 g	0.4 g
CARBOHYDRATE	28.0 g	**9%**	34.5 g	62.3 g
- SUGARS ^	12.7 g	**14%**	19.2 g	28.2 g
DIETARY FIBRE	7.0 g	**23%**	7.0 g	15.5 g
- SOLUBLE	1.5 g	-	1.5 g	3.4 g
- INSOLUBLE	5.4 g	-	5.4 g	12.1 g
SODIUM	121 mg	**5%**	178 mg	270 mg
		% RDI*		
THIAMIN (VIT B1)	0.28 mg	**25%**	0.33 mg	0.61 mg
RIBOFLAVIN (VIT B2)	0.42 mg	**25%**	0.68 mg	0.94 mg
NIACIN	2.5 mg	**25%**	2.6 mg	5.6 mg
VITAMIN B6	0.4 mg	**25%**	0.4 mg	0.9 mg
FOLATE	100 µg	**50%**	106 µg	222 µg
IRON	3.0 mg	**25%**	3.1 mg	6.7 mg
MAGNESIUM	64 mg	**20%**	79 mg	142 mg
ZINC	1.8 mg	**15%**	2.3 mg	4.0 mg

† Cup measurement is approximate and is only to be used as a guide. If you have any specific dietary requirements please weigh your serving.
▲ Percentage daily intakes are based on an average adult diet of 8700kJ.
* Percentage Recommended Dietary Intake (Aust/NZ)
^ Over 2/3 of the sugar in product is from the sultanas.



[3] p2 HSR System Style Guide
[4] Ibid p2

the statement of the problem presented on page 7? [*Information about sugar provided on food labels in Australia and New Zealand does not provide adequat*

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36. NZFGC agrees there is a potential mismatch between dietary guidelines and labels in relation to ‘added’ sugars but it is important to note two features:

    - this is not new
    - definitions of ‘added sugar’ are not included in New Zealand’s dietary guidelines beyond reference to the WHO definition of ‘free sugars’.

37. In considering policy options, it is particularly important to be aware of categories and products that we expect to contain sugar and that contribute substantially to population

sugar intakes because they are treats such as desserts, confectionery, jams and jellies and bakery products. These have featured in dietary guidelines as occasional foods and are familiar to consumers. We acknowledge there are unexpected categories containing sugars but, through media coverage of products such as mixed dishes, soups, sauces and dips consumer attention has been heightened. This is discussed, for example, in the Canadian context by Bernstein et al.[5]

About sugars

38. Manufacturers add sugars for a wide variety of technical and functional reasons, much wider than the home cook or restauranteur:

- at times for restoration (eg lactose in milk)
- for stabilization (eg additional milk solids)
- as a bulking agent in premixes
- to standardise other ingredients (eg pectin)
- as a carrier of vitamins and minerals (eg lactose for vitamins A and D)
- for 'mouthfeel'
- for food preservation
- to enhance flavour and
- for freeze-thaw stability (eg in yoghurts).

39. These have a significant impacts for the food supply and for consumers. Manufacturing use of sugar is therefore an important consideration in whatever policy decisions are taken.

Consultation question 2. Are you aware of any form of information about added sugars that is provided on food labels in addition to those identified above

40. The Consultation Paper lists the following labelling arrangements reflecting added sugars:
    - statement of ingredients
    - NIP
    - percentage daily intake
    - nutrition content claims
    - HSR
    - voluntary declaration of added sugar content.

41. NZFGC is aware that some cereal manufacturers make use of notation in the NIP for sugars to indicate what % is from dried fruit.

42. NZFGC would point to the Be Treatwise® programme which is applied to confectionery in Australia and New Zealand as a means of conveying balanced eating. While it does not label added sugars, it reflects the dietary guidelines that treat foods may be eaten sometimes, in small amounts and that serve size is an important element in the balance.

Consumer knowledge, attitudes and behaviours relating to sugars (Section 1.7)

43. The Consultation Paper states the FSANZ literature review reporting that consumers in Australia and New Zealand seek out sugars information as one of the first elements they look at on a food label. The international evidence suggested that additional interpretive or contextual information (such as daily recommendation for sugars, or advice about whether the product's sugars content was high or low) on the label, may offer consumers further assistance in understanding food labels and making purchase decisions.

[5] Bernstein J et al **Total and Free Sugar Content of Canadian Prepackaged Foods and Beverages** *Nutrients* **2016**, *8*(9), 582; doi:10.3390/nu8090582

44. The frenzy of global interest in sugar continues to drive an explosion of research in the area such that conclusions made previously may be subject to continual change and influence by factors that remain mired in competing influences and research of varying authenticity and rigor.

45. We would therefore recommend caution in reaching decisions that place reliance on anticipated behaviour change in the absence of evidence. A recent study suggests that "considering the feasibility of target behaviours, with a stage/modular approach that focuses on one behaviour change at a time as well as taking into account current consumption patterns are also warranted."[6]

46. The Consultation Paper refers to sources of information on added sugars as examples in dietary guidelines and FSANZ database and consumer resources on Government websites across Australia and New Zealand.

Consultation question 3. Are you aware of other sources of information (publically available or otherwise) on the added sugars content of foods available in Australia and New Zealand, beside those described above?

47. NZFGC suggests there may be other sources of information available from the likes of the Heart Foundation and the New Zealand Nutrition Foundation.

Objectives and Desired outcome of the sugar related work

48. FRSC proposes that the desired outcome of this work is that "*Food labels provide adequate contextual information about sugars to enable consumers to make informed choices in support of the dietary guidelines" and that* 'contextual information' in this situation relates to information that can support consumers to use and interpret a food label.

Consultation question 4. Do you agree with the desired outcome of this work proposed above? If not, please suggest an alternate desired outcome and justify your suggestion.

49. NZFGC does not agree with the desired outcome as stated because it is too narrow. Food labels should not be the only source of contextual information since contextual information is data that gives context to a person, entity or event so that knowledge can be extracted from or applied to information. NZFGC understands that what is being sought is contextual information from relevant sources <u>including labels</u> about sugars to enable consumers to make informed choices in support of the dietary guidelines.

Statement of options

Option 1: Status quo

50. As noted above, the human body does not distinguish added from total sugars and it has therefore been total sugars that have been the focus of public health professionals, industry and consumers for many years usually in the context of 'fat, sugar and salt' as nutrients of the diet to manage. The New Zealand dietary guidelines groups these three nutrients throughout the guidelines rather than singling out one to the exclusion of others (other than to describe each).

51. Being more specific and referring to 'saturated fats', 'sodium', and 'added sugars' has depended on the primacy, focus or impact attributed to these nutrients but certainly until now, managing 'sugars' has been generally sufficient. The focus now on added sugars allows the intrinsic sugars in foods especially fruit to be categorised differently. This could result in greater consumer confusion over time.

[6] p17 Kirkpatrick S et al. Gaps in the evidence on population interventions to reduce consumption of sugars: a review of reviews. *Nutrients* 10, 1036, 2018 doi:10.3390/nu10081036

Option 2: Education on how to read and interpret labelling information about sugars

52. This option proposes to provide consumers with education on how to read and interpret current labelling information about sugars. This option would not result in any changes to current food labels. Consumer research provides mixed evidence regarding whether Australian and New Zealand consumers can use current labelling to make informed choices with respect to sugars.

Consultation question 5. How effective would this option be in addressing the policy issue and achieving the desired outcome? Please provide evidence to justify your views

53. NZFGC strongly supports education to address consumer understanding about sugars, how to read labels and what a healthy diet might comprise in terms of sources of sugar and occasional treats. This might also go to what are 'added sugars' and describe the ingredients or products that are sugars including honey and fruit concentrates. Such education must be within a 'whole modern diet' education programme and not single out sugars for exclusive treatment over the core food groups.

54. Education can also target ethnic groups who might not read labels or who might read but not interpret labels in ways that assist them make healthier choices. For example, the New Zealand dietary guidelines state (p43) that "rates of obesity vary considerably between different ethnic and socioeconomic groups: pacific (67%) and Maori (46%) adults were more likely to be obese [compared to the national average of around 30% and] adults living in the most socioeconomically deprived neighbourhoods (44%) were most likely to be obese than adults living in the least deprived areas (21%)."

55. Aiming education at these high risk groups could have the greatest impact for education investment. Limiting reach (a weakness identified for Option 2) could be a positive aspect by focussing reach where it is most needed rather than providing generic 'one size fits all' campaigns. As well, while governments are best placed to deliver broad based education, a targeted campaign that also drew in public health professionals, health agencies and industry could be cohesive and comprehensive.

56. More generally, programmes in schools that teach healthy eating practices by demonstrating what a healthy breakfast (eg Sanitarium and Fonterra Kickstart Breakfast programme) looks like and programmes like the 'buy one, give one' Eat My Lunch' that show what a school lunch might comprise, aim to educate the young and provide a foundation of basic healthy eating in the formative years.

57. Such programmes have not to date been time limited nor have costs been borne solely by Government as suggested in the weaknesses of the Option. The duration and costs of interfacing education and awareness programmes can vary depending on the level of cooperation, complementarity and willingness of all parties to participate.

Consultation question 6. How would this option impact you? Please provide impacts and cost relevant to you.

58. NZFGC established a programme of work over 5 years ago for 'Healthier New Zealanders' that has aimed to encourage and assist members deliver on the objective of 'Healthier New Zealanders' and to share initiatives (non-competitive) for product, staff and consumers. Any education campaign promoting the dietary guidelines would link well with industry initiatives. This has been evidenced with the education around and promotion of the HSR by NZFGC and member companies.

Option 3: Change to statement of ingredients

59. This option proposes to change the statement of ingredients to overtly identify sugars-based ingredients. Sugars-based ingredients added to a food are 'added sugars'. This could be by way of a bracketed list or emboldened or asterisked ingredient items.

60. We note the Consultation Paper discusses the Canadian direction in this regard but there has been no implementation discussion and it is likely to be some years away as other changes in Canada relating to 'Food Labelling Modernization' are worked through.

61. The real difficulty inherent in Option 3 is creating confusion – about ingoing weight of a range of ingredients that are then arbitrarily grouped together – and confusion with allergens which can be emboldened in the ingredients list to draw them to the attention of consumers with allergies. Allergens are a food safety issue of considerable concern for 8-10% of the entire population. Consumer choice is not a food safety issue and primacy for allergens would be essential.

62. Blending ingoing weight of ingredients with groups of types of ingredients could add to consumer confusion rather than remove confusion. Public health professionals advise consumers that if sugar is listed near the start of the ingredients list the product contains a greater proportion of this ingredient.' This advice could be compromised by ingredient grouping depending on the definition of 'sugars' decided on.

Consultation question 7. How effective would this option be in addressing the policy issue and achieving the desired outcome? Please provide evidence to justify your views

63. As noted above, the effectiveness of this option would be limited by current advice given to consumers and potential to create confusion with food safety elements of labelling.

Consultation question 8. How would this option impact you? Please provide impacts and cost relevant to you.

64. NZFGC understands that this option would likely be costly and complex to implement because different concepts would need to be blended. For manufacturers, separating, grouping and reordering of ingredients would require training and systems programming/engineering to achieve. Other labelling elements would likely need changing to remove confusion such as with allergens. By either diluting or de-emphasising the allergen information, consumers may well be put at risk or at the least, disadvantaged as a result.

65. More products are subject to recalls because of allergens than any other feature. Manufacturers therefore already apply specific attention to allergens to try to reduce this incidence. Removing an avenue currently available to communicate allergens to those needing the information increases the risk for consumers to miss the information they need.

66. Changing the ingredients listing creates trade issues through misalignment with export markets and, for imports, similar difficulties.

Consultation question 9. Referring to Table 1 in Section 3.1, which implementation mechanism would be most appropriate for this policy option? Please provide the pros and cons of your selected implementation mechanism

67. Table 1 in section 3.1 describes the pros and cons of various implementation mechanisms:
    - voluntary
    - Code of Practice (CoP) industry driven
    - CoP government driven
    - regulatory.

68. If Policy Option 3 was pursued, regulatory amendment could be required to facilitate even voluntary implementation if this involved departing from currently mandatory requirements. For example, if sugars-based ingredients (as may be defined) were to be grouped to the exclusion of ingoing weight, then regulatory amendment would be required to remove the requirement for ingoing weight. Thereafter, any of voluntary, Codes of practice or regulation could all be applied as appropriate but potentially at significant cost.

Option 4: Added sugars quantified in the NIP

69. This option proposes to quantify a foods' added sugars content in the NIP. Added sugars would be an addition to the existing information in the NIP. The Consultation Paper suggests two approaches:
    - identify 'added sugars' in the NIP
    - *added sugars quantified in the NIP and enhanced with additional contextual information:* The added sugars information in the NIP could be enhanced with additional contextual information, such as HIGH/MEDIUM/LOW messaging in relation to the products' added sugars content or using %DI labelling for added sugars (a daily intake reference value for added sugars would need to be established to enable %DI labelling).

70. NZFGC could support the addition of additional information in the NIP in the form of an additional item under 'sugars' on a voluntary basis at the outset. There would need to be an unambiguous definition of 'added sugar' for such a provision to work effectively and consistently. Regulatory amendment would likely be needed for voluntary uptake to ensure consistency.

71. NZFGC considers a strong voluntary labelling programme should precede any regulation in order to provide time for research on impact and any other labelling changes to be made. It would also be vital that any such change aligned both in terms of timing and form with any changes to the HSR flowing from the HSR 5 year review.

72. NZFGC does not support enhancing the added sugars NIP information with additional contextual information, such as HIGH/MEDIUM/LOW messaging in relation to the products' added sugars content but could see %DI labelling for added sugars providing a point of comparison across products. This would require a DI reference value for added sugars to be developed as part of the approach.

73. For primacy and relativity reasons this would also need to be considered/added for fats and sodium resulting in a cluttered and dense NIP where messaging would likely be lost. The HSR and other information already provides the opportunity to communicate such contextual information and manufacturers take up the opportunity themselves to communicate context to consumers eg Heinz. Such information might well have turned consumers away 5 years ago but the information is now a selling point for some products. NZFGC supports such information remaining with manufacturers to apply voluntarily.

Consultation question 10. How effective would this option be in addressing the policy issue and achieving the desired outcome? Please provide evidence to justify your views.

74. Policy Option 4 would provide the alignment sought between nutrition guidelines and labels, providing health care professionals with evidence to draw to clients' attention in terms of healthy food choices.

Consultation question 11. How would this option impact you? Please provide impacts and cost relevant to you

75. All label changes carry costs for manufacturers. As with option 3, this proposal would require substantial re-programming of production (recipe) management systems, declarations from ingredient suppliers for sugars content, data entry to systems databases, and adjustment of calculation programmes to identify, assess, sum and generate the relevant 'added sugar' dataset. The cost would be substantial but could be 'smoothed' by an appropriate transition time and a voluntary implementation.

Consultation question 12. How would the proposed option impact existing elements of a food label (both mandatory and voluntary)? Would adopting this option require another element of a food label to be removed from the package? If so, which labelling elements would be removed?

76. As noted above, additional information in the NIP, including voluntary implementation, may require amendment to several Standards in the Food Standards Code including Standard 1.1.2, possibly 1.2.7 and 1.2.8 and Schedules 12 and 13 at least. This presumes agreement on an appropriate definition. It would also require ensuring no disjoint was created with HSR and claims in place on products were also aligned. New claims might need to be added regarding added sugars.

Consultation question 13. Referring to Table 1 in Section 3.1, which implementation mechanism would be most appropriate for this policy option? Please provide the pros and cons of your selected implementation mechanism

77. As noted above, a mix of all the implementation mechanisms perhaps sequenced over time would work best.

Option 5: Advisory labels for foods high in added sugars

78. This option proposes that advisory labels be placed on foods that exceed a predetermined threshold for added sugars. The advisory labels would indicate that the food was high in added sugars, and/or include advice to consumers on the negative health consequences of consuming too much added sugars. The approaches include a shape or symbol or a text box.

79. NZFGC opposes Option 5 on grounds of:

- giving primacy to consumer information over safety aspects (risks losing focus on important warning and advisory messages, storage and preparation messages, allergen information)
- not being a whole of food, holistic or diet based (consumers eat food not individual nutrients)
- reducing importance of other nutrients of concern (saturated fat, sodium)
- competing with proven information sources on labels such as HSR
- the absence of evidence on impact and unintended consequences
- creating unnecessary fear mongering for consumers already confused as to interpreting food related information.

80. The Consultation Paper suggests international research on consumer use of abstract information such as grams of sugar is challenging. However, the principles for nutrition labeling according to Codex Alimentarius[7] "should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather to convey an understanding of the quantity of nutrients contained in the product." The US legal system has rejected attempts to apply warnings to beverages on grounds of misleading the consumer and the implication that any amount of added sugars might be harmful being untrue since they are generally recognised as safe and can be part of a healthy dietary pattern when not consumed in excess. Toxicity was also found to be untrue[8].

81. Graphics, verbiage or other depictions which could give rise to doubt about the safety of similar food or which could arouse or exploit fear in the consumer should not be adopted.

82. With information such as total and added sugars, ingredient listing of sugar ingredients, HSR for both whole of food and specific nutrient information, and manufacturer labelling such as comparative labelling, consumers already have extensive graphical and textual information both front and back of pack. If this is extended to websites, the information could overwhelming rather than assisting.

Consultation question 14. How effective would this option be in addressing the policy issue and achieving the desired outcome? Please provide evidence to justify your views.

83. As noted above, Policy Option 5 would not meet a range of the objectives of the proposals nor the desired outcome. In terms of effectiveness, attributing the strengths of any front of pack labelling system to the Option misses the point about a nutrient specific approach taking primacy over all other safety related or whole of food information. Nor does it align with dietary guidelines which look to the whole diet and healthy eating.

Consultation question 15. How would this option impact you? Please provide impacts

[7] Codex Guidelines on Nutrition Labelling CAC/GL 2-1985 (Rev 1-1993)

[8] US Court of Appeals for the Ninth Circuit No 16-16072 2017
http://cdn.ca9.uscourts.gov/datastore/opinions/2017/09/19/16-16072.pdf

and cost relevant to you

84. Option 5 would carry high costs for local manufacturers, undermine the HSR (and potentially see uptake decline) and impact negatively on trade both export and import. Over-sticking of imports would be difficult and many imported foods would likely bypass New Zealand.

85. As a country that imports a substantial amount of food, this could have flow on effects for consumers, tourism, the economy and potentially food security.

Consultation question 16. How would the proposed option impact existing elements of a food label (both mandatory and voluntary)? Would adopting this option require another element of a food label to be removed from the package? If so, which labelling elements would be removed?

86. See above

Consultation question 17. Referring to Table 1 in Section 3.1, which implementation mechanism would be most appropriate for this policy option? Please provide the pros and cons of your selected implementation mechanism

87. Not applicable

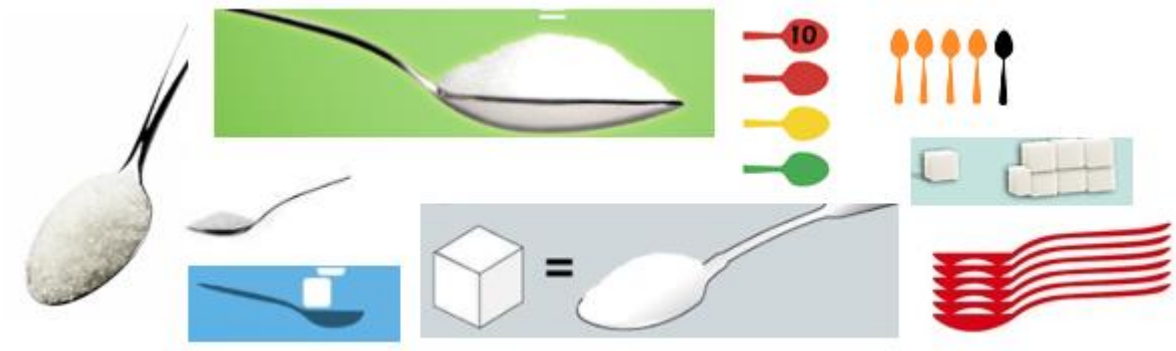
Option 6: Pictorial approaches to convey the amount or types of sugars in a serving of food

88. This option proposes to pictorially display the amount of sugars and/or added sugar in a serving of food. The pictorial information, such as the added sugars content in teaspoons of table sugar (or some other household measure) or numbers of sugar cubes, are proposed as possibly being displayed on the front of the pack or in association with the NIP.

89. NZFGC opposes Option 6 for reasons similar to those set out in relation to Option 5:
    - giving primacy to consumer information over safety aspects (risks losing focus on important warning and advisory messages, storage and preparation messages, allergen information)
    - not reflecting the whole of food, holistic or diet based (consumers eat food not individual nutrients)
    - reducing importance of other nutrients of concern (saturated fat, sodium)
    - the absence of evidence on impact and unintended consequences
    - creating unnecessary fear mongering for consumers already confused as to interpreting food related information.

90. Added to these issues are ones of standardisation, accuracy, consistency and label space. The teaspoon is not a standard measure unlike the gram, kilogram or litre. It is like turning back the clock to discarded units such as bushel, grain, peck etc which were discarded because of lack of uniformity and poor relationship with primary units. There is the added complication of using volume (the teaspoon) to measure weight and the level, rounded and heaped descriptors.

91. For educational purposes, where many pictorial examples are found, they may well have a useful role. Examples of the problems can be readily found.



92. A noted above, the Consultation Paper suggests international research on consumer use of abstract information such as grams of sugar is challenging. With information such as total and added sugars, ingredient listing of sugar ingredients, HSR for both whole of food and specific nutrient information, and manufacturer labelling such as comparative labelling, consumers have extensive graphical and textual information both front and back of pack.

Consultation question 18. How effective would this option be in addressing the policy issue and achieving the desired outcome? Please provide evidence to justify your views.

93. As noted above, Policy Option 6 would not meet a range of the objectives of the proposals nor the desired outcome. In terms of effectiveness, attributing the strengths of any front of pack labelling system to the Option misses the point about a nutrient specific approach taking primacy over all other safety related or whole of food information. It does not align with dietary guidelines which look to the whole diet and healthy eating. Such labelling would also seriously undermine the HSR.

Consultation question 19. How would this option impact you? Please provide impacts and cost relevant to you

94. As with Option 5, Option 6 would carry high costs for local manufacturers, impact negatively on trade both export and import. Oversticking of imports would be difficult and many imported foods would likely bypass New Zealand. As a country that imports a substantial amount of food, this could have flow on effects for consumers, tourism, the economy and potentially food security.

Consultation question 20. How would the proposed option impact existing elements of a food label (both mandatory and voluntary)? Would adopting this option require another element of a food label to be removed from the package? If so, which labelling elements would be removed?

95. See above.

Consultation question 21. Referring to Table 1 in Section 3.1, which implementation mechanism would be most appropriate for this policy option? Please provide the pros and cons of your selected implementation mechanism

96. Not applicable.

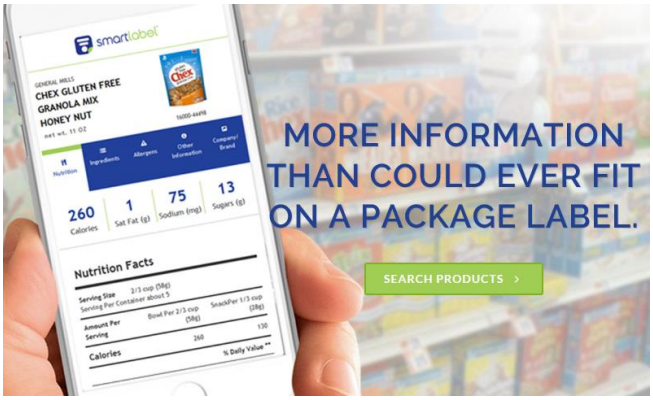
Option 7: Digital linking to off label web-based information about added sugars content

97. This Option proposes that a food label would signal the availability of further information about the food which can be accessed on a website via an electronic or digital link. The digital/electronic link could be a “QR code”, bar code or other scannable code, or a link to a website that has to be typed into a browser.

98. There are examples of this Option in use in the food sector commercially as described in the Consultation Paper (as commercial organisations in the US and Canada providing access to more detailed product information with a digital format (from websites, through Apps) directly from the manufacturer). This option recognises that trying to cram more information on labels is a retrograde step and that we should not be using 20th Century methods on a 21st Century issue.

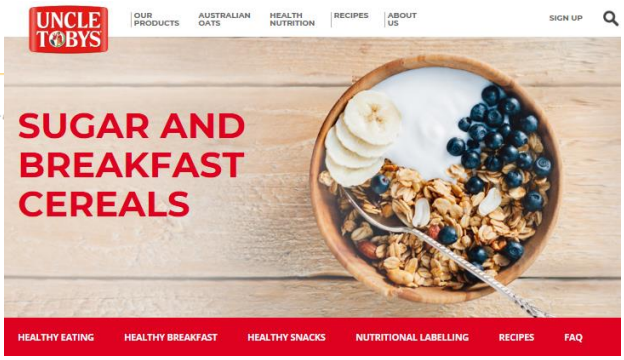
99. With space on pack at a premium, there is a trade-off between immediacy and contextual and other information. Other technological developments such as printable electronics and imprinted logic circuits are currently entering the market, for brand owner attractions (flashing lights, lighted logos to attract consumer attention) and functional benefits such as indicating healthfulness and linking to off-label information.

100. The key advantage of off-label, on-line information is, as Smart Label states, "more information than could ever fit on a package label" can be available.



Smart Label. Available at: Smart Label website (accessed 24 April 2018)

101. A variation of this is also seen in the information manufacturers already provide on their websites, for example:



102. There are software difficulties associated with standardisation and compatibilities but as noted above, given time and technology advances, these could be resolved.

Consultation question 22. How effective would this option be in addressing the policy issue and achieving the desired outcome? Please provide evidence to justify your views.

103. NZFGC considers Option 7 a useful tool to add to developments over time. Effectiveness is still to be demonstrated but there is clearly the opportunity to develop the option over time. Many manufacturers are already providing product specific information on-line. With purchasing of grocery items on-line increasing, digital platforms provide the consumer with an entry portal to answer product questions concurrently to purchasing.

Consultation question 23. How would this option impact you? Please provide impacts

and cost relevant to you

104. As noted, depending on the form, the manufacturer would be responsible for provision and maintenance of information irrespective of the platform which could be commercial (as with Smart Label), non-profit (as with GS1 or Nutritrack) or Government. The information around added sugars would still require similar engineering (and entail similar costs) as for labels but label costs would not be added.

Consultation question 24. How would the proposed option impact existing elements of a food label (both mandatory and voluntary)? Would adopting this option require another element of a food label to be removed from the package? If so, which labelling elements would be removed?

105. NZFGC would see off-label developments as complementary to existing mandatory requirements and to other policy options that might be adopted.

Consultation question 25. Referring to Table 1 in Section 3.1, which implementation mechanism would be most appropriate for this policy option? Please provide the pros and cons of your selected implementation mechanism

106. Option 7 is most appropriately implemented voluntarily but there could be Codes of Practice developed by industry or government or both.

Questions about all options

Consultation question 26. Are there additional options that should be considered to address the policy issue and achieve the desired outcome? If so, please describe your suggested option and how it addresses the policy issue and would achieve the desired outcome? Please also describe the cost of implementing your proposed option.

107. Variations and combinations of options may well be possible but NZFGC considers the main options have generally been covered in the Consultation Paper.

Consultation question 27. Is the description of the strengths and weaknesses of the proposed options (compared to the status quo) accurate? Please justify your response with evidence.

108. Strengths and weaknesses of the proposed options have been addressed in consideration of the Options above.

Consultation question 28. **:** Are there additional strengths and weaknesses associated with the proposed options (compared to the status quo)? Please describe what these are.

109. Additional strengths and weaknesses of the proposed options have been considered in the foregoing consideration of the Options. However, unintended consequences remain of concern. If added sugars are singled out on labels, even in the NIP, we wonder if this could turn consumers away from beneficial, nutrient dense core foods, such as nutrient dense breakfast cereals and dairy products, simply because they contain added sugars.

Consultation question 29. If you proposed a different option at question 26, please detail the strengths and weaknesses of you proposed option, compared to the status quo.

110. Not applicable

Consultation question 30. Should the proposed options apply to all packaged foods in the Australian and New Zealand food supply, or only particular foods or food

categories? If so, which option(s) should apply to particular foods or food categories and what would these foods or food categories be

111. Exemptions will always be important to consider particularly for special foods (eg infant formula and other foods covered in Part 2.9 of the Food Standards Code), alcohol in Standards 2.6 and foods in Standards 2.8 and 2.10 covered by the Food Standards Code. Appropriateness would need to be considered for each in developing the policy options further.

Consultation question 31. Is the description of the pros and cons of the different implementation mechanisms in Table 1 accurate? Please justify your response with evidence.

112. In general, the pros and cons of the different implementation mechanisms in Table 1 are reflective of overall themes but they are generalised and there will always be exceptions.

113. As well, voluntary systems do carry sanctions for brands applied through industry self-regulation (such as with marketing under the Advertising Standards Authority) and consumer and media channels (such as was the case for Milo).

114. In relation to an industry driven Code of practice, NZFGC does not consider any confusion about regulatory requirements would be created.

Consultation question 32. Are there other pros and cons associated with the different implementation mechanisms? Please describe what these are.

115. The implementation mechanisms do not reflect the industry/Government partnership approach that has delivered HSR. This addresses many of the cons attributed to the code of practice implementation mechanisms such as increased risk of inconsistent use of added sugars definition and joint Australia and New Zealand approaches

Consultation question 33. Are there any other benefits or costs associated with the proposed labelling options which have not been identified above

116. The absence of an agreed definition of what is the subject of ‘added sugars’ or ‘sugars-based ingredients’ presents significant difficulties for attributing benefits and costs since the parameters of the definitions would impact scope, uptake and a raft of implementation considerations. The Consultation Paper suggests (p36) that “there may be additional associated benefits to the community from this work. For example, some of the proposed options may encourage reformulation of products to reduce the sugars content, which may reduce the added sugars content of foods available for consumption”.

117. Education has the greatest opportunity to deliver additional associated benefits to the community by linking with a range of other complementary programmes undertaken by both Government and industry across disciplines (health, education, sport, science) and across social and ethnic divides.

Consultation question 34. Should there be exemptions or other accommodations (such as longer transition periods) made for small businesses, to minimise the regulatory burden? If so, what exemptions or other accommodations do you suggest?

118. NZFGC suggests that any accommodations should be across the board and not limited to small business.

119. Implementation of the food safety focussed food system in the New Zealand under the Food Act 2014 focussed on need and risk, not size. Tools were developed to better assist small business comply and this approach should be taken with labelling and

related developments. Tools have also been instrumental in application and uptake of HSR so as to facilitate uptake by any business.

120. NZFGC therefore suggests 'accommodations' focus on tools that might be developed to assist small business.

Consultation question 35. What would be the cost per year for the industry to self-regulate (e.g. voluntary code of practice- industry driven)? Please justify your response with hours of time, and number of staff required. Please specify which country (Australia or New Zealand) your evidence is based on

121. In the absence of a preferred option or suite of options, a response to this question can only be answered by looking at current examples. HSR and advertising models offer the best information relevant to Australia and New Zealand. The ASA's primary function is to self-regulate advertising in New Zealand and it is funded by the advertising and media industries paying subscriptions and advertiser levies. Its budget is around NZ$800,000 per annum.

122. NZFGC is not aware of the cost of HSR regulation and suggests governments are well placed to assess such costs.

Consultation question 36. Would industry pass any of the costs associated with implementing the proposed options on to consumers? What is the basis for your view

123. Costs associated with implementing any aspects of food manufacture are subject to a range of factors, both direct and indirect, that may not be considered in determining policy. These include research and development to apply to implementation, competitive forces across product categories, and more fundamental questions about continuing with a product at all or even in the food industry. Each manufacturer undertakes their own assessment of the relativities and risks involved with pricing being part art and part design. No definitive response is therefore possible especially in the absence of a preferred option(s).

124. Costs to other programmes and information (food safety, dietary, sustainability, ethical) are also difficult to assess but to the extent that there is limited space on a label and decluttered labels and 'clean labels' that are transparent and simple (deceptively) are not only complex but rely on consumer perceptions, responses and preferences as well as retailer positioning, then costs will be a moving feast.