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Project Manager
Nutrient Profiling System Review
PO Box 10675
The Terrace
WELLINGTON 6143

Email: asa@asa.co.nz

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Consultation on the Nutrient Profiling System for the Children and Young People's Advertising Code*.

Yours sincerely

Katherine Rich
Chief Executive



Consultation on the Nutrient Profiling System for the Children and Young People's Advertising Code

Submission by the New Zealand Food & Grocery Council

11 February 2022

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (**NZFGC**) welcomes the opportunity to comment on the *Consultation on the Nutrient Profiling System for the Children and Young People's Advertising Code (the Consultation Paper)* published by the Advertising Standards Authority (**ASA**).
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

THE CONSULTATION

3. The ASA Codes Review Policy requires ASA codes of practice to be reviewed every five years. The Children and Young People's Advertising Code came into effect in October 2017 and the ASA has scheduled the review of this Code in 2022.
4. In advance of the process to consult on the full text of the Children and Young People's Advertising Code, the ASA Codes Committee is consulting with interested parties specifically on the appropriate nutritional classification system to form the basis of how an occasional food or beverage is defined, for the purposes of applying the relevant principles, rules and guidelines in the Children and Young People's Advertising Code.

OVERARCHING COMMENTS

5. NZFGC's preference is to support the use of the Nutrient Profiling Scoring Criterion (**NPSC**) to underpin the ASA Children and Young People's Advertising Code but recommends that consideration be given to this operating in conjunction with the Dietary Guidelines. The rationale for this position is described below but in short, NPSC is commonly used now by manufacturers across New Zealand and Australia, has been adopted by the Australian Association of National Advertisers (**AANA**), and is currently used to underpin advertising and marketing.
6. The application of the Dietary Guidelines in parallel provides surety for addressing clear anomalies that might arise in the application of the NPSC.
7. Since the NPSC has not been reviewed since its inception, NZFGC would support its review by Food Standards Australia New Zealand (**FSANZ**) to confirm its ongoing currency and utility.
8. NZFGC could also support the use of the Health Star Rating system (**HSR**) but this system might require amendment before its use to underpin the Children and Young People's Advertising Code. As well, in light of it being a voluntary system, HSR could be more prone to change and therefore less consistent in application over time.

DETAILED COMMENTS

New Zealand nutrient profiling systems

9. There are many nutrient profiling systems world-wide. The three operating in New Zealand are the NPSC in place for claims, the HSR in place for front of pack labelling information for consumers and the Food and Beverage Classification System (**FBCS**). The FBCS

currently underpins the ASA Children and Young People's Advertising Code and previously the provision of food to education facilities/schools (although this has now been superseded).

Comparison of global systems

10. In 2017, a research team from Canada (2017 Labonté M *et al*) reviewed four nutrient profiling systems for their effectiveness in identifying healthiness of foods for advertising: the Food Standards Australia New Zealand (**FSANZ**) NPSC, the WHO Regional Office for Europe (**EURO**) model, the Pan American Health Organization (**PAHO**) model, and a modified version of the PAHO model).

11. Labonté M *et al* concluded that, given significant differences between models, it was important for the characteristics underlying options to be carefully evaluated when trying to identify a suitable model to underpin restrictions on the marketing of unhealthy foods to children. The Canadian researchers favoured the more stringent EURO or PAHO models but the current consultation is for a New Zealand system that works for our food supply, has been tested/used in our environment and is already familiar to manufacturers. We comment further on this below.

The FBCS

12. There is no doubt the FBCS has some concerning shortcomings particularly related to beverages. It was developed in 2007 and while it has been subject to changes, it remains problematic in terms of its scope for the current food supply. As the ASA identified, it lacks clarity, is inconsistent and outdated, is not focussed on positive nutrients and is not a trans-Tasman system.

ASA Codes Committee preference

13. NZFGC appreciates that the ASA Codes Committee supports the adoption of the NPSC as developed by FSANZ. This appears to be on the basis of four criteria, that the NPSC:

- i) is understood and regularly used in New Zealand
- ii) has been developed independently and regularly reviewed
- iii) provides consistency for trans-Tasman advertisers and
- iv) was adopted by the Australian Association of National Advertisers.

EURO or PAHO models

14. Based on the criteria above, the EURO and PAHO models would only meet one of the four criteria. Opting for the EURO or PAHO models would be at odds with trans-Tasman alignment as is the current FBCS. Neither of the EURO or PAHO models familiar to New Zealand manufacturers. In addition, as both the EURO and PAHO are international models, they may not necessarily reflect the New Zealand food supply.

15. Around 70% of the packaged food sold in New Zealand is common across both Australia and New Zealand. Reviewing the nutrient profiling system that underpins the Children and Young People's Advertising Code provides an opportunity to have alignment trans-Tasman and supports consistency in the region.

NPSC

16. The NPSC is an independently developed nutrient profiling system used in Australia and New Zealand to determine whether food and beverages are suitable to make a health claim, based on its nutrient profile (see Attachment A for more details). It comprises just three categories which presents issues for scoring some products, especially cheese. A cheese and cracker snack would not meet the NPSC score of <4 in category 2 and would be 'occasional'. Similarly, under the NPSC criteria, block cheeses such as mild and colby

would not score under 28 in Category 3 and would therefore be considered occasional foods as well. These do not align with dietary guidelines which recommend milk and milk products and these cheese snacks and block cheeses would be considered occasional foods and at odds with the Dietary Guidelines. While the NPSC has been used widely across the food industry in New Zealand for many years, it has not been reviewed (regularly or otherwise) since development over a decade ago.

17. There is logic in the NPSC underpinning the Children and Young People's Advertising Code, given that the ability to make health claims is directly linked to how a product is marketed and advertised. It also offers the advantage over other systems in that it was recently adopted by the AANA in its Food and Beverage Advertising Code. As many manufacturers operate trans-Tasman, harmonisation between the ASA and AANA advertising codes is a significant advantage.
18. Further in support of the NPSC, it has been recognised by, and referenced in, The George Institute *State of the Food Supply Australia 2021* report as an indicator of whether a food or beverage is classified as 'healthy' (or for the purpose of this Advertising Code, 'non-occasional'). The George Institute states that its proxy for 'healthy' (a score of 3.5 stars under the HSR) is based on "alignment with eligibility to make a health claim on foods under legislation in Australia and New Zealand".
19. The NPSC is not perfect and it is not necessarily the case that products that do not meet the NPSC should be deemed as occasional food and beverages. Consideration would also need to be given to how meals (i.e. from Quick Service Retailers (**QSRs**) and other food service) would be managed, as the NPSC was not designed to cater to mixed meals. Since it has not been reviewed since its establishment, if it is used by the ASA, NZFGC would support its review by FSANZ.

The HSR

20. An alternative system for consideration is the HSR, which meets 3 of the 4 criteria applied by the ASA to support recommendation of the NPSC for the Children and Young Person's Advertising Code.
21. HSR has been independently developed, has been reviewed recently (2018-20), and is a government-led initiative that scores the nutritional value of packaged foods for the purpose of front of pack labelling. It is designed to give the consumer information on the nutritional value of packaged food within a category. Its calculator is now managed by FSANZ.
22. The HSR is also familiar to manufacturers across Australia and New Zealand.
23. There are however disadvantages with using the HSR to underpin the Children and Young Person's Advertising Code, including that:
 - it was not adopted by the ANAA and would therefore not provide for trans-Tasman alignment
 - it is a voluntary system, so may be less familiar to some manufacturers than the NPSC (which is mandatory) and perhaps more susceptible to change
 - unlike the NPSC, the HSR was specifically designed to assist consumers choose *between products within a category*, and this may not be fit-for-purpose to underpin the Children and Young Person's Advertising Code
 - anomalies still exist most significantly for cheese.
24. Anomalies in the scoring of some cheeses are still to be addressed. A fundamental principle of the HSR system was that all core foods (as defined in the Nutrition Guidelines)

were to score at least 3 stars. During the HSR review process, anomalies in the scoring of some dairy products were recognised and the Ministerial Forum requested additional work be undertaken on cheese (category 3D) to improve its treatment within the HSR. That review has not been undertaken.

25. To illustrate this point, regular fat cheese scores 2 stars while regular fat milk scores 4 stars. The HSR system more heavily penalises the saturated fat in cheese (category 3D) relative to the treatment of fat in all other core food categories (1, 1D, 2, 2D foods). There is no scientific rationale for this unequal treatment. Saturated fat should be treated equally across core foods. Applying the saturated fat scoring from category 1D, 2, 2D foods to category 3D would resolve the anomaly that currently exists in the HSR for cheese.
26. Consideration would again need to be given to classification of mixed meals such as from QSRs and other food service as the HSR was not designed for this purpose.
27. A system designed for one purpose should not be 'shoe-horned' into another purpose without review. The HSR was not designed for advertising and marketing but this is not to say it could not be adapted. An example of alternate use of the HSR is the National Healthy Food and Drink Policy for district health boards published by the Ministry of Health in 2019. HSR is the basis of the Policy with some allowances for gluten and dairy-free foods following the Policy's development in 2015-2017.
28. After the HSR's review in 2018-2020, several amendments were made including some changes to category/nutrient cut points. Further category cut point changes to the HSR could be made to accommodate an alternate purpose. However, industry would then have three forms of the system to accommodate – for front of pack labelling, for district health boards and for the Children and Young Person's Advertising Code. This could be quite confusing.

Dietary Guidelines

29. Whatever system is selected, NZFGC would support application of the Dietary Guidelines to operate in conjunction to ensure consistency in approach.

Conclusion

30. In terms of a recommended option, NZFGC favours the NPSC on the basis that it:
 - allows for trans-Tasman alignment,
 - is well understood and regularly used in New Zealand
 - has been developed independently
 - was designed with marketing/ advertising applications in mind
 - is applicable to the New Zealand food supply
 - could be applied immediately without the need for change.
31. NZFGC could support HSR if the decision was made to apply it instead of the NPSC for many of the same reasons listed above. Nonetheless, it has not been designed with marketing/ advertising applications in mind and would likely not be able to be applied immediately.
32. In both cases, applying the Dietary Guidelines where necessary to resolve inconsistencies would enhance the application of the nutrition profiling system.

References

Labonté M, Poon T, Mulligan C, Bernstein JT, Franco-Arellano B, Abbé. 2017 Comparison of global nutrient profiling systems for restricting the commercial marketing of foods and beverages of low nutritional quality to children in Canada. *American Journal of Clinical Nutrition*, 106(6):1471-1481 DOI: [10.3945/ajcn.117.161356](https://doi.org/10.3945/ajcn.117.161356)

National District Health Board Food and Drink Environments Network. 2019. *National Healthy Food and Drink Policy (2nd ed)*. Wellington: Ministry of Health.

The George Institute for Global Health. *Foodswitch: State of the food supply Australia 2021*, Sydney: 2021. [SotFS-Report.pdf \(georgeinstitute.org\)](https://www.georgeinstitute.org.au/~/media/Files/2021/07/SotFS-Report.pdf)

Overview of the NPSC (November 2016)

Nutrient profiling is used internationally to classify foods based on their nutrient content and can help to identify healthier foods.

The NPSC is a nutrient profiling system used in Australia and New Zealand to determine whether a food is suitable to make a health claim, based on its nutrient profile. Only foods that meet a certain score will be allowed to have health claims made about them. Health claims are claims which refer to a relationship between a food and a health effect, such as 'calcium for healthy bones and teeth'.

The NPSC is applied to individual foods. A score is determined based on the amount of energy, saturated fat, total sugars and sodium in the food, along with the amount of fruit, vegetables, nuts, legumes, coconut, spices, herbs, fungi, algae and seeds and in some cases, dietary fibre and protein. The final score determines whether a food is eligible to make a health claim, based on its nutrient profile.

The calculation methods for determining the final score and the scoring criterion are contained in Schedules 4 and 5 of the Food Standards Code. FSANZ has also developed an online calculator to help food businesses work out the final score.

Other conditions in the health claims Standard (Standard 1.2.7 - Nutrition, health and related claims) must also be met before a health claim can be made. For instance, health claims must be based on food-health relationships that have been substantiated according to the Standard.

The Australia and New Zealand Ministerial Forum on Food Regulation (the Forum) asked FSANZ to regulate nutrition and health claims in Australia and New Zealand and provided a policy guideline in 2003.

Since then FSANZ developed a Standard (Standard 1.2.7) to regulate nutrition and health claims and the NPSC was developed as part of this work.

[Overview of the Nutrient Profiling Scoring Criterion \(foodstandards.gov.au\)](http://foodstandards.gov.au)