



10 May 2023

Ms Ashleigh Harding  
ASA Codes Committee Chair  
Advertising Standards Authority Inc  
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Dear Ms Harding

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the document *Have your say: Further consultation – Draft Children’s Advertising Code; Draft Food and Beverage Advertising Code.*

Yours sincerely

A handwritten signature in blue ink, appearing to be "Raewyn Bleakley".

**Raewyn Bleakley**  
**Chief Executive**



**Have your say: Further consultation – Draft Children’s Advertising Code; Draft Food and Beverage Advertising Code**

**Submission by the New Zealand Food & Grocery Council**

**10 May 2023**

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## NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (**NZFGC**) welcomes the opportunity to comment on the document *Have your say: Further consultation – Draft Children's Advertising Code; Draft Food and Beverage Advertising Code*.
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.

## OVERARCHING COMMENTS

3. The ASA and its Codes are held in high regard by the manufacturing industry. Many treat the Codes as de facto regulation and treat the Codes as baselines. Many manufacturers have their own policies and procedures that ensure they operate above what the Codes require to ensure a solid compliance buffer.
4. NZFGC notes that the ASA retains the proposal for the age definition of child to be <16. We strongly recommend alignment with Australia for the trans-Taman market, and the age definition being <15 years.
5. In relation to targeting criteria, we consider that the examples proposed for inclusion in the revised Code complicate and produce overly subjective and restrictive criteria. We note there is a more detailed list of media platforms in each Code under 'Application of the Code'. In our view it would be more helpful not to have to consult the Codes for an up-to-date list of current media. Any such clarification should sit outside the Codes.
6. It will be important for the Code to clearly define 'brands' (vs sub-brands and companies), especially for larger multi-brand, food manufacturers. A key concern with "synonymity" exists for brands that encompass extensive product ranges of both occasional and everyday food. While the intent of the F&B Code is not to prevent companies "synonymous" with occasional foods from reformulating or innovating to create healthy foods for kids, the synonymity provisions may in fact do this. To avoid this, the F&B Code should include a provision that allows "Occasional Brands" to advertise non-occasional foods to children in a responsible manner.
7. The incorporation in the Codes of brand advertisements is a significant complicating addition especially in relation to sponsorship. Sponsorship is key to sport and health and in our view, the ASA needs to clearly delineate the line that will balance the issues involved. NZFGC strongly opposes proposed rule 1(c) in the F&B Code because it cannot be understood. If the intention of the proposed rule is to govern sponsorship advertising that targets children, the key threshold of 'targeting children' has not been captured meaning that **all sponsorship** would be captured (rather than just advertising that targets children). We strongly recommend that proposed rule 1(c) be replaced by rules 3.1 and 3.2 of the Australian F&B Code>
8. The Australian F&B Code's rules go to the heart of what we understand the ASA is trying to achieve.

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9. NZFGC is supportive of the use of the NPSC but would note it has drawbacks (eg lack of recent review and 'one size fits all' approach).
  10. In the Children's Advertising Code, we repeat our concern at the mismatch with any jurisdiction other than the UK with the proposed age definition of children. We strongly support consistency of age applied across the Australian and New Zealand Advertising Codes.
  11. NZFGC members' strong preference is to not have to check the ASA website and Codes for an up-to-date list of current media. It is particularly important, however, that the Codes explicitly exclude product labels from any media list as is the case in the Australian Codes. We wonder about the inclusion of 'unaddressed mail' for the Children's Code since such mail is generally for the owner of the mail box, the householder. We support the exclusions in the relating to product packaging, bona fide news, reviews, editorial and broadcast programmes.
  12. In relation to Additional Guidelines for Advertisements targeting Children, and Rule 1(g) Fear and distress, we note that other Additional Guidelines use the phrase 'unless justifiable on educational or social grounds' and recommend its inclusion for consistency. In Principle 2: Truthful Presentation, NZFGC recommends Rule 2(a) would benefit from an explanation of what "enhanced disclosure" would look like in practice.
  13. In the Food and Beverage Advertising Code, we strongly oppose the use the term 'mostly unprocessed' in the Purpose of the Code and strongly recommend it be changed. We suggest a range of alternatives that could be better used.
  14. In relation to application of the Code, member preference is not to have to check the ASA website and Codes for an up-to-date list of current media. It is particularly important, however, that the Codes explicitly exclude product labels from any media list as is the case in the Australian Codes.
  15. While there is a definition of "Sponsorship" we strongly recommend this be amended to align with the definition in the Australian F&B Code. We also recommend the inclusion of a definition of "sponsorship advertising" and recommend further guidance and greater clarity and definition on what is considered "excessive" in Principle 1: Social responsibility. We strongly oppose the concept of synonymy between brands and a product category. In Principle 2: Truthful Presentation, content claims are allowed under the Food Standards Code for foods which are not NPSC compliant. Point 2 is stating that permissible content claims should not be made, a situation that is conflicting for manufacturers who are meeting the regulatory requirements of the Food Standards Code.

## DETAILED COMMENTS

16. In addition to comments on the specifics of the proposed Children's Advertising Code (**the Children's Code**) and the Food and Beverage Advertising Code (**the F&B Code**), the Codes Committee sought comments on six key issues:
  - Two codes
  - Age definitions
  - Application of the targeting criteria
  - Brand advertising
  - Sponsorship advertising
  - Nutrient Profiling System.

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## **Two Codes**

17. The Codes Committee makes the case for proceeding with two codes, one for advertising to children (the Children's Code) and one for food and beverage (the F&B Code). Overlap is acknowledged at the outset by the Committee and particularly in relation to the inclusion in the F&B Code of a "restriction on occasional food and beverage advertising targeting children".
18. We note the two Codes share approaches, layout and headings as well as the text but occasionally deal at different levels of detail. We are not opposed to duplication and note that repeating messages can have a reinforcing result. However, it is easy to skip through parts that seem familiar and potentially miss the key points of difference. An area that could benefit from a single additional phrase to explain significance is in the introduction to the Children's Code where attention is drawn to alcohol and gambling Codes. The text might better link with the previous sentence and read:

"This Code is one part of the ASA standards that supports responsible advertising to prevent or minimise harm to children. In order to highlight such prevention and minimisation, attention is drawn to the [Alcohol Advertising and Promotion Code](#), the [Gambling Advertising Code](#) and the Food & Beverage Advertising Code (DRAFT).

## **Age definitions**

19. In the first consultation, NZFGC supported status quo in relation to age definitions, that is for the **age definition of 'child'** to remain at <14. This recognised the conditional nature of rights and responsibilities of the child, the otherwise significant legal arrangements available to persons from age 15 years, and the consistency with international norms and especially with Australia. Australia's Advertising Code defines a child as persons under the age of 15 years. NZFGC is supportive of having the same age definition for children in New Zealand as Australia has for consistency. ASA is proposing an age definition of <16.
20. Significantly, the ASA proposal has a single international alignment with the UK. We understand the age proposed is likely to be a compromise to account for removing the coverage and definition of 'young person' which is in the current Code. However, in a regional food and beverage market of such significant overlap in food manufacture and consumption and trans-Tasman trade, this could prove difficult and potentially unwieldy for manufacturers.
21. If status quo is not supported by ASA, then alignment with Australia for the age definition to be <15 years is supported.

## **Application of the targeting criteria and the Codes**

22. NZFGC understands the targeting criteria to be largely unchanged from the current arrangements at least in the chapeau statement which NZFGC has supported. We consider however, that the examples proposed for inclusion in the revised Code complicate and produce overly subjective and restrictive criteria.
23. We understand the intent behind providing examples to help industry achieve greater clarity but the current wording does not give advertisers any certainty over interpretation. However, NZFGC is concerned that the examples provided as content that is 'appealing' to children has no basis that the content is in fact appealing to children. By this we mean, the examples listed under criteria 2 include interactive applications, games, activities, websites and pop-ups, licensed characters from movies, TV programmes and gaming, cultural and sporting heroes, and 'use of cartoons' as examples of content that is appealing to children. NZFGC considers that these examples set out content that are equally, if not more appealing to adults, than they are to children, and that the statement that these

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themes are appealing to children has not been substantiated. From our perspective, it would make more sense to apply the quantitative 'expected average audience' tests set out under criteria 3 to assess whether content is appealing to children, rather than an arbitrary list.

24. We are of the view that "Examples include, **but are not limited to**", will result in the opposite. The addition of "regularly and predictably gather" could prove problematic. The present Code just says "gather"; the new proposed wording creates ambiguity where previously none existed – for example is a skate park, or local shops near a playground, or inside a shopping mall considered in scope?
25. We note there is a more detailed list of media platforms in each Code under 'Application of the Code'. In our view it would be more helpful not to have to consult the Codes for an up-to-date list of current media. Any such clarification should sit outside the Codes.
26. In relation to audience targeting, the ASA will be relying on the advertisers' presentation of evidence to support target estimates. We consider it would be helpful to refer to some of the analytics that might be used for illustrative purposes only. There may be issues in relation to influencers whose global followings can be in the millions, for example.

### ***Brand advertising***

27. The Codes Committee is proposing to apply the Codes to brand advertising. At the first consultation, NZFGC did not support synonymy of brand and product advertising. In our view, such a 'black out' approach would be a loss for the consumer by not being advised of 'better for you' products within a range. Being able to communicate the value of low or no sugar/fat/salt products is beneficial for the consumer. Targeting becomes particularly challenging because brands can be viewed by broader population groups. This also impacts sponsorship (see below). We do not see this as having been addressed.
28. At the outset, it would be important for the Code to clearly define Brands (vs sub-brands and companies), especially for larger multi-brand, food manufacturers.
29. A key concern is "synonymy" with occasional food and beverage products. Brands that encompass extensive product ranges are particularly problematic. For example, is "Tip Top" synonymous with ice cream (occasional food) or bread (everyday food). Is "Mars" synonymous with confectionary (occasional food) or petfood. If this wording remains, we recommend defining 'synonymous with'.
30. NZFGC remains of the view that the Children's Code should focus on the intent of the advertisement and the product rather than the brand. If the Codes Committee pursues the inclusion of brand advertising, then a range of examples should be included in the guidance that addresses the issues raised above. Examples where one category by virtue of popularity in the mind of the consuming public seems to overshadow all other products in the brand's range.
31. While the intent of the F&B Code is not to prevent companies "synonymous" with occasional foods from reformulating or innovating to create healthy foods for kids, the synonymy provisions may in fact do this. It would therefore be helpful to avoid this unintended consequence by including in the F&B Code a provision that allows "Occasional Brands" to advertise non-occasional foods to children in a responsible manner.

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### ***Sponsorship advertising***

32. While the draft Codes' provisions continue the restrictions on occasional food and beverage product advertising, the incorporation of brand advertisements is a significant complicating addition especially in relation to sponsorship. There are long-standing and newer sponsorship arrangements that are significant for the community and which have the effect of sustaining a programme or creating its demise. Commonly used examples include Ronald McDonald House (30 years) and Surf Life Saving (KFC, one of two gold partners). Neither uses products.
33. The issue of "synonymity" is the same as set out above for brands. Names (eg KFC) without products or logos are enough to attract ASA's attention. There are 74 Surf Life Saving clubs in New Zealand and 19,000 participants dominated by youth (71 percent of the total surfing participants are in the 6- to 34-year-old age range).
34. Sponsorship is key to sport, health and often an entity's survival. In our view, the ASA needs to clearly delineate the line that will balance the issues involved so that both advertisers and complainants do not expend energy on issues that were not intended to be or should not be captured.
35. We would support the ASA exploring a grandfather clause so that existing agreements where products are not used but sponsorship directly benefits the health and wellbeing of the community are out of scope.
36. We are not entirely sure what the proposed rule 1(c) in the F&B Code means. For simplicity, and to further the alignment between the Australian and New Zealand frameworks, we strongly recommend that the ASA replaces the proposed rule 1(c) with rule 3.2 of the Australian F&B Code. This rule still allows occasional food and beverage sponsorship, but provides that where such sponsorship advertising does target children, products cannot be shown. As well, we are strongly opposed to the prohibition on brand names and logos not being featured on promotional material and child sized clothing. Including the Australian F&B Code's definition of 'sponsorship' and its rule 3.2 addresses this issue.

### ***Nutrient Profiling System***

37. The current Code uses the Food and Beverage Classification System (**FBCS**) and the Health Star Rating system (**HSR**) to determine foods for 'occasional consumption. NZFGC recognises that the FBCS has largely fallen into disuse and has not been updated for several years. The Codes Committee is proposing to use the Nutrient Profiling Scoring Criterion (**NPSC**).
38. We appreciate that the ASA sought expert advice on nutrient profiling systems including the NPSC, that systems were generally complex and comparisons equally as difficult. The Codes Committee conclusion was to pursue a system already familiar to advertisers but that was independent.
39. NZFGC is supportive of the use of the NPSC but would note that it has not been reviewed in over a decade and it is a 'one size fits all' approach which can be problematic for categorisation. Nonetheless, it is commonly used across the region and will prove helpful for single advertisements designed for both New Zealand and Australia.

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## The Children's Advertising Code

40. **Introduction** – As noted at the outset, in the introduction to the Children's Code where attention is drawn to alcohol and gambling Codes, the text might better link with the previous sentence and read:  
“This Code is one part of the ASA standards that supports responsible advertising to prevent or minimise harm to children. In order to highlight such prevention and minimisation, attention is drawn to the [Alcohol Advertising and Promotion Code](#), the [Gambling Advertising Code](#) and the Food & Beverage Advertising Code (DRAFT).”
41. **Purpose of the Code** – We strongly agree with the need for advertising to particularly have regard to “protecting children from harm to their physical or mental well-being.”
42. **Application of the Code** – We note the list of media that the Children's Code is to apply to. We understand this is repeated from other ASA sources but our strong preference is to not have to check the ASA website and Codes for an up-to-date list of current media. It is particularly important, however, that the Codes explicitly exclude product labels from any media list as is the case in the Australian Codes:  
“...does not include: labels or packaging for products; corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy; in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel, station or network.”<sup>1</sup>
43. We wonder about the inclusion of ‘unaddressed mail’ for the Children's Code since such mail is generally for the owner of the mail box, the householder.
44. It is also important to continue with the exclusions in the Current Children's and Young Persons Advertising Code that read:  
“This Code does not apply to product packaging, bona fide news, reviews, editorial and broadcast programmes.”
45. **Interpreting the Code** – No comment.
46. **Definitions for the purposes of this Code** – We have commented on the age proposed in the definition of ‘Children’ and repeat our concern at the mismatch with any jurisdiction other than the UK. We strongly support consistency of age applied across the Australian and New Zealand Advertising Codes.
47. On Targeting, we support the continued use of the three criteria of nature and intended purpose, presentation and expected average audience.
- 48. Principle 1: Social responsibility**  
Rules 1(a), (b), (c), (d) No comment.
49. Rule 1(e) Licensed and proprietary characters and celebrities – An example that exempts celebrities wearing or carrying their competition outfits or equipment when talking to children would be helpful to ensure that visiting celebrities are not precluded from interacting with children. An example is where a sportsperson might have visited a children's competition venue in their recognisable sports gear had it not carried an occasional food manufacturers logo. Celebrity visits inspire children and should be

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<sup>1</sup> [Food & Beverages Advertising Code – AANA](#)



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encouraged as much as possible. Consideration might be given to a carve out for this purpose.

50. **Additional Guidelines for Advertisements targeting Children** – NZFGC has no comment on the content of the additional guidelines but is concerned the notation replicates that used in Principle 1, that is Rule1(a), (b), (c), (d) etc. We consider that separate notation should be employed eg Rule 1A(a), 1A(b), 1A(c), 1A(d) etc.
51. Rule 1(g) Fear and distress – provides that advertisements must not cause fear or distress without justification. In other Additional Guidelines the phrase ‘unless justifiable on educational or social grounds’ is used. We wonder why this is not the case for fear and distress when these reactions might result from educational material eg preventing drowning.

### **Principle 2: Truthful Presentation**

#### **Additional Guidelines for Advertisements targeting Children**

52. Rule 2(a) Identification – Point 3 states that advertisements targeted at children require “enhanced disclosure” and at Point 4 states that  
“Enhanced disclosure should be prominent, interruptive, and sufficient to identify the advertiser and the commercial intent of the advertisement”.
53. NZFGC suggests this is further enhanced to better explain what “enhanced disclosure” would look like in practice.

### **The Food and Beverage Advertising Code**

54. **Introduction** – No comment.
55. **Purpose of the Code** – We note that the second sentence in the second paragraph of the purpose statement reads “A healthy diet consists of foods and drinks that are mostly unprocessed and are low in saturated fat, salt and sugar.” We strongly oppose the use the term ‘mostly unprocessed’ and would point to the many processed foods that add positive nutrition to New Zealand diets such as yoghurt and breads. We strongly recommend that the sentence read:  
“A healthy diet consists of foods and drinks that are mostly ~~unprocessed and are~~ low in saturated fat, salt and sugar.”
56. Alternatively, the following could emphasise fresh fruit and vegetables which are under-consumed across New Zealand:  
“A healthy diet consists of foods and drinks mostly ~~unprocessed and are~~ low in saturated fat, salt and sugar and that includes a good proportion of fruit and vegetables.”  
or  
“A healthy diet consists of nutrient rich foods and drinks that are generally lower in saturated fat, salt and added sugar.”
57. There is no agreement in New Zealand or globally with the definition of ‘processed’ food. The term is used for a wide variety of purposes and in many different contexts. For example, the Health Star Rating system allows fruit and vegetables that are “fresh, cooked, frozen, canned, pickled or preserved;” and “that have been peeled, diced or cut (or

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otherwise reduced in size), puréed or dried.”<sup>2</sup> Food processing plays an important part in delivering safe, nutritious and affordable foods as research consistently demonstrates<sup>3</sup>.

**58. Application of the Code** – As stated above, we note the list of media that the F&B Code is to apply to. We understand this is repeated from other ASA sources but our strong preference is to not have to check the ASA website and Codes for an up-to-date list of current media. It is particularly important, however, that the Codes explicitly exclude product labels from any media list as is the case in the Australian Codes:

“...does not include: labels or packaging for products; corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy; in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel, station or network.”<sup>4</sup>

**59. Interpreting the Code** – No comment.

**60. Definitions for the purposes of this Code** – We note the ‘targeting children’ definition duplicates the provision in the Children’s Code.

61. While there is a definition of “Sponsorship” we strongly recommend this be amended to align with the definition in the Australian F&B Code. We also recommend the inclusion of a definition of “sponsorship advertising”.

62. On Targeting, we support the continued use of the three criteria of nature and intended purpose, presentation and expected average audience.

**63. Principle 1: Social responsibility**

Rules 1(a) Guideline 2. “Advertisements promoting a competition, premium or loyalty/continuity programme must not encourage excessive repeat purchases of Occasional Food and Beverages”. Further guidance and greater clarity and definition on what is considered “excessive” would be helpful particularly in relation to loyalty programmes.

64. Rule 1(b) Occasional Food and Beverage Advertising and Rule 1(c) Occasional Food and Beverage Brand Sponsorship Advertising – These rules refer to “brands [that are] synonymous with Occasional Food and Beverages”. NZFGC strongly opposes the concept of synonymy between brands and a product category.

65. The Oxford Dictionary define synonym as “a word, morpheme, or phrase that means exactly or nearly the same as another word, morpheme, or phrase in a given language”. The issue is around broad application and unintended consequences. It is important the Code provides an easily understood hierarchy of criteria that will serve to clarify whether the nutrient profiling system superseded brands synonymous with occasional food and beverage. For instance, Coke Zero Sugar (which is not classed as an occasional food and beverage in the NPSC framework) could fall under the rules because the brand/product is “synonymous” with Coke Classic (which is classed as an occasional food and beverage).

66. We suggest this needs to be less an equivalency unless substantiated by fact, and rather than percentage of a brand’s range, we suggest volume of sales that is occasional food or

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<sup>2</sup> Schedule 5—4 Australia New Zealand Food Standards Code

<sup>3</sup> [Ultra-Processed Food Consumption and Risk of Type 2 Diabetes: Three Large Prospective U.S. Cohort Studies | Diabetes Care | American Diabetes Association \(diabetesjournals.org\)](#)

<sup>4</sup> [Food & Beverages Advertising Code – AANA](#)

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beverage for example. A company's product portfolio may include a 50:50 split of non-occasional: occasional products but if 90% of that company's sales are occasional (and therefore likely to have the greater advertising spend), it should be deemed "synonymous".

67. Proposed rule 1(c) in the F&B Code is very confusing and we cannot make linguistic sense of it. If the intention of the proposed rule is to govern sponsorship advertising that targets children, the key threshold of 'targeting children' has not been captured meaning that **all sponsorship** would be captured (rather than just advertising that targets children). It is our strong recommendation that the ASA F&B Code aligns with the Australian F&B Code in this by replacing proposed rule 1(c) with rules 3.1 and 3.2 of the Australian F&B Code. Rule 3.1 in the Australian F&B Code states that "Advertising (including sponsorship advertising) of Occasional Food and Beverage Products must not target children". Rule 3.2 states that "Sponsorship advertising that does target children must not show an Occasional Food or Beverage product, or such product packaging, or depict the consumption of an occasional food or beverage product".
68. In our view, the Australian F&B Code rules specifically get to the heart of what we understand the ASA is trying to achieve.
69. We would add that the inclusion of brand names and logos in Rule 1(c)(2) is entirely problematic. We believe this could impact Coca-Cola Christmas in the Park. If it did, Coca-Cola may no longer put on the Coca-Cola Christmas in the Park, the biggest and most popular free event in the Southern hemisphere, and one which raises significant money for charity. This is a real-world consequence of the proposed changes.
70. Some manufacturers may use influencers but do not directly target their marketing campaigns at children or young people. They do not use influencers under the age of 16, however, there have been instances where the influencers used include their children in the content they produce. An example would be the influencer, Nerida Cortese, who was used for GoGo Chicken. She has a Tik Tok channel where she dances with her son. See <https://www.tiktok.com/@nerida100/video/7216137335585492226>. Clarity around these instances would be helpful.

## ***Principle 2: Truthful Presentation***

### ***Additional Guidelines for Food and Beverage Advertising***

71. Point 2 states:

"Advertisements must not mislead as to the nutritional value of any food or beverage. Products high in sugar, fat and / or salt must not be portrayed in any way that suggests they are beneficial to health. For example, foods high in sugar must not claim to be "low fat" or "fat free" and foods high in fat must not claim to be "low sugar" or "sugar free".

72. Content claims are allowed under the Food Standards Code for foods which are not NPSC compliant. Point 2 is stating that permissible content claims should not be made, a situation that is in conflict for manufacturers.

73. Point 6 states:

"Advertisers who make nutrient, nutrition or health claims about a food or beverage in an Advertisement must be able to provide evidence that it complies with the requirements of the Australia and New Zealand Food Standards Code, specifically Food Standard 1.2.7."

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74. This is already a requirement in the Food Standards Code which requires substantiation evidence to be held. The addition in the draft Code of “must be able to provide evidence” is new insofar as it seems to indicate that advertisers need to provide evidence to the ASA. We do not believe this is the intent and some wording change is required to make it clear that the evidence must be held or available if required by a regulatory agency including the ASA. Clearly the Commerce Commission and the Ministry for Primary Industries also have interests in truth in labelling requiring evidence.