

**Proposal P293 Nutrition, Health and Related Claims
Summary of submissions to the Draft Assessment Report**

18. DIETARY INFORMATION

Submitter	Group	Comments
Agencies for Nutrition Action (ANA) (members except NZ Nutrition Foundation)	Public Health – New Zealand	<ul style="list-style-type: none"> • There needs to be a clear distinction in the Standard between advertising material produced by a food company and dietary information not related to specific food product, to ensure the food industry do not make misleading claims under the guise of providing dietary advice. • Nutrition messages from the food industry are often incomplete and inconsistent and biased towards their own products. • Are concerned that the food industry will find creative marketing opportunities to provide dietary information, even without reference to a particular food product, e.g. material sent to GPs and information provided on websites. • Would be very concerned if food manufacturers were able to make health claims under the guise of providing dietary information.
Australian Food and Grocery Council (Supported by Nestle Australia Ltd and Nestle NZ Ltd, Unilever Australasia, George Western Foods Limited/AB Food and Beverages, Simplot Australia Pty Ltd)	Industry, Australia	<ul style="list-style-type: none"> • FSANZ intent regarding dietary information is not clear, but appears to be to exclude dietary information from health claims requirements unless it is supplied by a manufacturer, when the health claim standard requirements apply. • The AFGC rejects this approach as many manufacturers provide general dietary information either through their consumer help line, website, or in pamphlets and other information. • To require this information to meet the requirements of the proposed general level health claim standard, with its proposed criteria and disqualifiers is not commensurate with FSANZ Section 10 objectives or the Ministerial policy objectives which called for ‘regulation commensurate with risk’. • The problem is caused by the very broad definition of ‘claim’ in the standard which includes the word ‘information’. This then requires some tortuous wording to exclude from ‘claim’ under the standard. • A solution would be to permit information provided by a manufacturer under its name and corporate brand, referencing in a balanced manner reputable scientific material regarding the human diet, which does not include information that refers to a specific brand of food product and a health effect. • The AFGC recommends that dietary advice/information unrelated to product information be outside the health claims standard so that manufacturers can continue to provide consumers with relevant information about their dietary needs.
Australian Nut Industry Council	Industry - Australia	<ul style="list-style-type: none"> • Based on the conditions in the Draft Assessment Report, not all nuts will be able to declare health benefits, despite being a valuable healthy food.

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Australian Nut Industry Council	Industry - Australia	<ul style="list-style-type: none"> • Not sure whether ‘Nuts for life’ a generic nutrition communications/educative initiative of the Australian Tree Nut industry, can provide ‘dietary information’ of the health effects of nuts. • To address this, believe a number of definitions require modification. • Dietary information definition – As the definition stands, general dietary information does not include information that refers to a specific brand of food and a health effect. Believes definition is ambiguous and is not clear whether the brand of food is linked with the health effect or if the health effect stands alone. • Recommend the wording be changed to make it clear that dietary information can refer to a health effect however does not include information that links a brand of food with a health effect. • Recommend following wording: dietary information means general dietary information, and includes information from national nutrition guidelines, but does not include information that refers to a specific brand of food and the effect of that brand of food on health.
Beer Wine and Spirits Council of New Zealand (BWSC)	Industry – New Zealand	<ul style="list-style-type: none"> • Have evaluated the legality of their medical and scientific website (www.beerwsc.co.nz) against the Standard, and found that the Standard can be interpreted in two ways: <ol style="list-style-type: none"> 1. A convoluted application would allow factual medical information on an industry website. The website would be described as containing ‘dietary information’ (as defined in Clause 1) used to achieve ‘moderation’ (Clause 9), which (in some way) overrides the prohibition of alcohol related claims (Clause 4). This is an interpretation that has been supported by FSANZ staff. 2. The Standard can also be interpreted to read that; the same website contains scientific papers discussing the health effects of alcoholic beverage consumption, is making a ‘health claim about a category’ of food (as defined in Clause 1). Alcoholic beverages are specifically banned by the Standard from making any Health Claims in Clause 4.1.a. • Much of this confusion revolves around the definition of ‘dietary information’. • One interpretation of dietary information could be restricted to ‘food intake’, and any mention of a health effect would change the website into a ‘health claim’, particularly where a single property of a food, alcohol, is described as producing a health effect (for example the referral to a 25 percent reduction in Cardiovascular Disease in adults). • Feels that this level of ambiguity is unacceptable particularly given that pressure groups regularly challenge the alcoholic beverages industry about their interpretation of regulations. • Therefore ask that the Standard be further clarified to ensure the legal position of non-branded, editorial, booklets and websites making statements about the positive and negative “health” effects of alcohol consumption. • The BWSC Medical Advisory Group provides scientifically based research summaries which describe the benefits of moderate alcohol consumption. The research is category based rather than product specific and the abstracts are subsequently published on the BWSC website. • Believes this presents a strong case to allow category health claims to continue to be made and that consumers have the right to obtain information on the food products they consume.

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Beer Wine and Spirits Council of New Zealand (BWSC)	Industry – New Zealand	<ul style="list-style-type: none"> • Also, the www.drinkresponsibly.co.nz website discusses alcohol and its effects on pregnancy, driving etc and a similar one in Australia www.drinkaware.com.au was recently launched. • The alcoholic beverages industry has also made the commitment to ALAC that their standard drinks logo will be included on all packaged product, along with the ‘drink responsibly’ symbol. • Asks for greater clarity regarding these types of campaigns or websites. • Current social marketing campaigns are factual, informative and moderate in their approach, and in keeping with government guidelines.
Campbell Arnott’s Asia Pacific	Industry-Australia	<ul style="list-style-type: none"> • Supports unregulated provision of broadly applicable dietary information. • This is achieved through maintenance of company websites, newsletters and advertising – in most cases the company logo is included to identify the source of the material; and on-pack communication. • As on-pack communication is arguably the most important form because it interacts with consumers at the time of purchase, the proposed standard describing ‘dietary information not linked to a specific brand of food’ cannot be achieved. • Recommends that general diet information be allowed to be provided on or in association with products and/or advertising that is not related to a claim being made on the product but helps to put the product in context of a healthy lifestyle and diet. • The proposed provision for dietary information is overly restrictive and could hamper opportunity to provide important diet information to consumers.
Cancer Society of New Zealand Inc Public Health Dietitians	Public Health – New Zealand Public Health – New Zealand	<ul style="list-style-type: none"> • There needs to be clear criteria for differentiating between dietary information not related to any specific food product (provided by an independent public health organisation) and claims made to advertise food products. • Concerned that the food industry could find creative marketing methods to provide dietary information which is not substantiated in the way it would be if covered by the Standard. • Information provided by food manufacturers’ will need to be tightened so it is not perceived as a health claim about food products
Coles Myer Ltd	Industry - Australia	<ul style="list-style-type: none"> • Strongly supports proposed exemption of broadly applicable dietary information that does not link a specific brand of food to a health effect, from general regulation under the Standard. • Welcomes enhanced opportunities for health promotion and education due to the exemption for dietary information from legislation governing health and nutrition claims. • Clause 9(3) contains an exception to the general rule that dietary information on a label or in an advertisement must relate to the property of the food that is the subject of a claim. We think that this exception should be broadened to permit the referencing of a complementary product on another product’s packaging. For example, a statement such as ‘use reduced fat milk’ on a cereal box should be permitted; however, our understanding is that such a claim would not currently be possible.

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Dairy Australia	Industry-Australia	<ul style="list-style-type: none"> Page 40- supports the proposal for dietary information that does not link a specific brand of food to a health effect to not be regulated under the standard, as they undertake a significant amount of educational work.
Fonterra Co-Operative Group Limited	Industry – New Zealand	
Fonterra Co-Operative Group Limited supported by Fonterra Brands Australia (P&B)	Industry – New Zealand Industry - Australia	<ul style="list-style-type: none"> While advocating that branded products should be able to bear dietary advice, do not agree that FSANZ should mandate such advice be provided with certain claims. Believe that manufacturers should be able to state general dietary information without having to be linked directly to the products themselves. FSANZ principles are guided by the importance of educating the consumer on good dietary practice. This restriction directly contradicts FSANZ principles. Provided a message follows general claim policies of accuracy and validation, there is no reason why useful information should be withheld from the public. If there were concerns that a product may be incorrectly implying it contains the subject of the dietary information or that an unhealthy product itself is nutritious, the messages would be found inaccurate / misleading and prohibited on this basis.
George Western Foods Limited and AB Food and Beverages	Industry - Australia	<ul style="list-style-type: none"> The concept of ‘dietary information’ proposed is far too restrictive. The consequence of retaining the proposed interpretation will be that the vast amount of information currently available to consumers from food manufacturers will be eliminated. How can this be of benefit to consumers when it deprives them of information that will assist them to make an informed decision when purchasing foods?
Go Grains Health and Nutrition Limited supported by George Western Foods Limited/AB Food and Beverages and Campbell Arnott’s Asia Pacific	Industry - Australia	<ul style="list-style-type: none"> Believe the concept of ‘dietary information’ proposed is far too restrictive. The consequence will be that the vast amount of information currently available to consumers through the food industry will be eliminated. The proposed interpretation that dietary information ‘does not include information that refers to a specific brand of food and a health effect’ will prevent manufacturers from providing the wealth of information currently available in relation to their products, including information on websites, and that provided by the company nutritionist. If the interpretation extends to use of product names in recipes (this needs clarification) this will also limit the capacity of food companies to provide their customers with practical information. The requirement that dietary information ‘does not relate a specific health effect of a specific food’ needs clarification and re-consideration. Organisations such as Go Grains focus specifically on communicating the health benefits of specific foods, contributing to consumer education through science-based messages, information often not available from any other source.

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<p>Go Grains Health and Nutrition Limited</p> <p>supported by George Western Foods Limited/AB Food and Beverages and Campbell Arnott's Asia Pacific</p>	<p>Industry - Australia</p>	<ul style="list-style-type: none"> • Food companies that provide consumer education on matters of food and related health benefits are likely to have better access to scientific evidence than some public health personnel. If the food industry does not provide this information, who will? • Recent qualitative research commissioned by Go Grains (Vivid Feb 2006(full reference not provided)) confirms that consumer awareness of the health benefits of grain-based foods is low – a particular concern when the dietary guidelines encourage consumption of this food group. It is unlikely that the public health sector will ever have access to adequate resources or the appropriate information to allow them to fulfil this role in the future when there is no precedent that this has happened in the past. • Are not aware of any evidence that the considerable level of consumer education currently provided by the food industry has caused harm, nor that there is any risk to be managed as a result of the current arrangement. • Food manufacturers are very aware of their obligations under the Trade Practice Act and the requirement that the information they provide not be ‘false and misleading’, and most provide information about their foods in the context of balanced diet.
<p>Health Outcomes Team Auckland Regional Public Health Service (ARPHS)</p>	<p>Public Health – New Zealand</p>	<ul style="list-style-type: none"> • Definition of dietary information should be changed to “...but does not include information that refers to a specific brand of food and the impact of that brand on health”
<p>HortResearch</p>	<p>Academic and other – New Zealand</p>	<ul style="list-style-type: none"> • A grey area exists for specific dietary information which is not for point of sale. • Recommends that this area is clarified to enable the presentation of nutrition and health information to interested audiences in a specific, clear and concise manner • HortResearch does undertake promotional activities e.g. fact sheets and conduct contract research on the properties of fruit. Including health and nutrition. Often such information will be about specific cultivars. • Concerned that the current draft does not contain a clear description of what constitutes ‘dietary information’ and appears to limit this type of information to ‘general diet related information that does not relate a specific health effect to a specific food’
<p>National Centre of Excellence in Functional Foods</p>	<p>Academic & Other - Australia</p>	<ul style="list-style-type: none"> • Quotes Clause 9 (2) of the draft Standard 1.2.7 – “Conditions for dietary information (2) If the property of food is not a part of the claim under subparagraph 5(2)(d)(i), then any dietary information provided must relate to the food.” • The use of the term ‘food’ at the end of this statement suggests the food product is the topic of the claim. If this is the case, any dietary information referring to this food could be considered a health claim. • Recommends to avoid confusion, that similar to the distinction made in Clause 5(1)(e) of Standard 1.2.7, the dietary information should refer to the category of food and not the individual food. • Notes that the explanatory notes for P293 drafting states “dietary information cannot be provided on a food label or in an advertisement where no claim is made” Limiting dietary information to only being made on the food label or in an advertisement is overly restrictive.

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National Centre of Excellence in Functional Foods	Academic & Other - Australia	<ul style="list-style-type: none"> Such a limitation would prevent a manufacturer of wholegrain bread (which includes wholegrain in the title of the product) from communicating the benefit of wholegrain foods in the diet (which is dietary guidelines information) unless they had a health claim on the label. Another example is a manufacturer of a breakfast cereal that is normally consumed with milk who may want to include information about the dietary guidelines related to dairy consumption on the pack and would be prohibited in doing so. Recommend dietary information should be permitted on foods in the absence of a health claim.
National Foods Ltd	Industry, Australia	<ul style="list-style-type: none"> 'Dietary information' encompasses all generic dietary information that does not link a specific brand of food to a health effect. This includes information from dietary guidelines and national nutrition policies. This information will fall outside of the scope of this Standard. Dietary information on a food label or in food advertising (linked to the brand of food), will need to align with the level of claim being made (i.e. general or high level). National Foods seeks further clarification on the parameters for dietary information. If an education pamphlet primarily contains generic dietary information, but sponsored by National Foods, what are the constraints? Can corporate and/or branded website information reference disease states other than those for pre-approved high level claims – if scientifically substantiated and/or referenced in the Australian Dietary Guidelines? Given the large impetus company nutrition education resources provides to consumers, it would be imperative to continue to allow and encourage this service, to best facilitate FSANZ's objective of providing adequate information to consumers to enable informed food choices.
National Heart Foundation of Australia National Heart Foundation of New Zealand	Public Health, Australia Public Health - New Zealand	<ul style="list-style-type: none"> Wording is ambiguous. Current wording makes it seem that dietary information that links a dietary pattern with disease risk reduction could be included on labels therefore acting as a loophole for industry marketers. Recommends following wording: <i>'Dietary information means general dietary information, and includes information that is consistent with national nutritional guidelines, but does not include information that refers to a specific brand of food, serious disease or biomarker.'</i> Current wording of this clause 9(1) in Division 2, together with proposed wording of definition of 'dietary information' does not appear to prohibit the use of dietary information on branded food products. Could be used as a loophole for implied health claims when used on branded foods.
Nestle Australia Limited and Nestle New Zealand Limited	Industry – Trans Tasman	<ul style="list-style-type: none"> Section 5.2, page 34 states that dietary information will not be regulated under the Standard; however Clause 9 provides requirements relating to dietary information. This clause will prohibit dietary information being provided on food that does not relate to the food itself. Manufacturers should be able to provide dietary on a specific brand of food that is not directly related to the food itself. Dietary information can be advice on products that recommend ingredients be added to the food, providing nutrition education about those ingredients and the use of the product, e.g. a recipe mix designed for use with vegetables talking

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Nestle Australia Limited and Nestle New Zealand Limited	Industry – Trans Tasman	<p>about the number of recommended serves of vegetables that recipe use provides.</p> <ul style="list-style-type: none"> • Page 39 states that related claims such as endorsements, dietary information and trademarks are captured in the Standard. Page 34 states that dietary information will not in general be regulated. This appears to be a contradiction. • Section 5.2.3.4 – it appears that advice to ‘increase the number of serves of vegetables’ by ‘using product Y this will assist in providing your family with a balanced evening meal with 3 of the daily serve of vegetables’, where product Y does not contain vegetables but is a sauce or recipe mix used to enhance the appeal of vegetables. • FSANZ previously indicated this form of advice would not be captured within the Standard. Nestle do not agree with this.
New Zealand Food Safety Authority (NZFSA)	Government – New Zealand	<ul style="list-style-type: none"> • Comments relate to section 5.2.3.4 of the Draft Assessment Report. • Recognize the benefits to consumers of the general dietary information provided by some companies via a number of means including on their company websites and support the continuation of this. • Under the current drafting of the proposed standard, it is not clear whether this would be permitted. For example, under clause 9 of the proposed new standard, the dietary information must relate to the property of the food (or to the food) that is the subject of the claim. If general dietary information was provided on a company website it would not necessarily be linked to a specific food or claim. • Requests clarification around whether dietary information, not linked to a specific product or claim, but on the website of a company that may make many different products, would be permitted under the proposed new standard. • NZFSA and the Ministry of Health support the continuation of the permissions to promote nutritious foods as recommended in the New Zealand Ministry of Health Food and Nutrition Guidelines, e.g. fruits and vegetables, generically in advertising, including at the point of sale, so long as this advertising does not promote a particular brand. • Drafting error in the editorial note to the dietary information definition – (c) is repeated.
NSW Food Authority	Government – Australia	<ul style="list-style-type: none"> • It is not clear what dietary information would encompass. Questions whether there should be other exemptions other than moderating consumption.
Nutrition Australia	Public Health - Australia	<ul style="list-style-type: none"> • FSANZ will need to ensure there are no loopholes whereby food industry can make misleading or implied claims under the guise of providing dietary information. • There needs to be clear criteria for differentiating between advertising material produced by a food company and dietary information not related to any specific food product.
Obesity Action Coalition	Public Health – New Zealand	<ul style="list-style-type: none"> • There needs to be a clear distinction made in the standard between advertising material and dietary information not related to specific food product, to ensure the food industry do not make misleading claims under the guise of providing dietary advice. • Nutrition messages from the food industry are often incomplete and inconsistent and biased towards their own products.

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Obesity Action Coalition	Public Health – New Zealand	<ul style="list-style-type: none"> • Concerned that the food industry will also find creative marketing opportunities to provide dietary information, even without reference to a particular food product for example – material sent to schools, GP’s and information provided on websites. • Would be very concerned if food manufacturers were able to make health claims under the guise of providing dietary information.
Sanitarium Health Food Company	Industry – Trans-Tasman	<p>Background to recommendations on dietary information</p> <ul style="list-style-type: none"> • Provides nutrition information and advice to the Australian and New Zealand public. Employ and work closely with dietitians and nutritionists and work closely with leading academics and nutrition professors to ensure the health education programs are credible and provide consumers with practical advice on healthy eating that is scientifically substantiated. Typical information from Sanitarium, would be a discussion of emerging research to do with a particular type of food (e.g. whole grains, nuts). This information is not in the form of a “claim” rather, it is a discussion of the scientific research around that issue. This informs the consumer but also creates interest and debate around food health and nutrition issues. • A conservative estimate of Sanitarium investment in these health programs is approximately \$AU1.7million in Australia and \$NZ585,000 in New Zealand. At attachment 1 to the submission, provides an overview of the range and reach of programs currently implemented by Sanitarium. Provided results of consumer research relation to the credibility of information produced by Sanitarium at attachment 2. Compared to other food manufacturers, Sanitarium has consistently been rated the most preferred company and trusted company for providing nutrition advice, in both Australia and New Zealand. • Strongly believe any restrictions on these genuine health education activities that may inadvertently be applied by the new Standard 1.2.7 would be to the disadvantage of public health in both countries. • Offer the following comments and to ensure that Sanitarium, other manufacturers and industry groups who produce similar generic food and health information can continue to contribute to public health. • The definition of dietary information in draft Standard 1.2.7 excludes information that refers to a specific brand of food and a health effect. In addition the DAR states that broadly applicable dietary information that does not link a specific brand of food to a health effect will not be regulated under the Standard (Section 5.2.3.4). • It could be assumed that general diet and health information that relates a generic food (e.g. wholegrain cereal foods) to a health benefit (e.g. the decreased risk in heart disease associated with the consumption of wholegrains) could be allowed. However, it could also be argued that because Sanitarium manufactures a range of ready-to eat wholegrain breakfast cereals, Sanitarium could be prohibited from providing this type of information. This is because the definition of ‘claim’ (Standard 1.1.1), the stated purpose of Standard 1.2.7 and definition of ‘advertisement’ contain enough ambiguity to allow potentially differing interpretations of the Standard and its breadth of application.

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Sanitarium Health Food Company	Industry – Trans-Tasman	<ul style="list-style-type: none"> • The definition of ‘claim’ is very wide yet the proposed definition of ‘dietary information’ is too tight. The definition of ‘claim’ specifically includes ‘information’ so that even if “information” is in the form of a discussion of scientific papers about emerging research to do with food and health effects, it may well be caught by the prohibition. • Recommend that FSANZ clearly spell out their intentions of what they intend to be captured in the Standard regarding dietary information in an accompanying user guide. • Recommend that development of this user guide be made available for public comment prior to the final assessment report. • Recommends that the user guide clearly state that dietary information disseminated by a food company does not constitute an implied claim regarding a specific brand of a food manufactured by that company. In addition, it is recommended the user guide clarify the forms in which dietary information can be provided. • Recommends the following forms of communication from a food company be considered as dietary information – 1. Dietary information regarding generic foods, food groups and health & disease relationships provided from food companies, e.g. a leaflet on the health benefit of wholegrains from Sanitarium. 2. Dietary information as above, in the form of a leaflet, shelf wobblers, website article etc that includes graphical representations of foods referred to in the article, e.g. a picture of a range of grain-based foods. 3. Dietary information as above, which includes a specific brand of food in recipes contained within the articles etc. 4. Dietary information as above, which contains an advertisement for a specific brand of food either within the article or on separate pages. (In December 2005, Sanitarium provided FSANZ with a range of brochures and articles that we believe constitutes examples of quality dietary information that should continue to be permitted after gazettal of the new Standard.) • As user guides are not legal documents, recommends some thought be given by FSANZ to revising the definition of “dietary information” to more clearly permit substantiated nutrition information (that is not referring to their own products) to be disseminated by food companies. Put forward the following suggested rewording of the draft Standard: • Standard 1.2.7, Division 1, 1 (Interpretation): definition of dietary information: “Dietary information a) includes general dietary information, information from national nutrition guidelines, and information (including information provided by a food supplier under its name and corporate brand) referencing reputable scientific material regarding the human diet in a balanced manner, b) but does not include information that refers to a specific brand of food product and a health effect.”

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Sanitarium Health Food Company	Industry – Trans-Tasman	<ul style="list-style-type: none"> • Standard 1.2.7, Division 2, (General Requirements), 9: “Conditions for dietary information”, amend to the following: <ol style="list-style-type: none"> 1. This Standard does not apply to dietary information, except as provided in sub-clause (2) below. 2. If dietary information is provided on a label or in an advertisement for food: <ol style="list-style-type: none"> a. It must relate to the property of the food that is the subject of the claim; or b. If the property of the food is not part of the claim under subparagraph 5(2)(d)(i), then any dietary information provided must relate to the food. 3. Sub-clause (2) above does not apply where dietary information relates to moderating the consumption of food. 4. (4) Dietary information shall not be considered as being provided in an advertisement for food solely on the basis that it is provided by a food supplier under that supplier’s name and corporate brand. <p>Rationale of Recommendations</p> <ul style="list-style-type: none"> • Appreciates that FSANZ may not wish to meddle with the fundamental definition of claim for fear of opening up unintended loopholes. To minimise the risk of creating a loophole Sanitarium has focused solely on the ‘dietary information’ section of the proposed Standard • The dietary information definition should specifically “include information (including information provided by a food supplier under its name and corporate brand) referencing reputable scientific material regarding the human diet in a balanced manner”. Much of the ‘information’ provided by Sanitarium is in the form of discussion of emerging scientific research, not established food-health relationships. Therefore, considers it would be a mistake to use the same kind of level of substantiation as applies to true ‘claims’. If the same kinds of levels of substantiation as had been proposed for claims by Codex (‘generally accepted scientific review’) or the European Commission (‘generally accepted scientific data’) were required it would stop the dissemination of information about emerging scientific research of which Sanitarium needs to discuss in its material. • Therefore think the correct level of substantiation is: 1. all material referred to must be ‘reputable scientific material’; and 2. that material must be presented in a ‘balanced manner’. • Sanitarium recommends that FSANZ clarify the application of the substantiation framework to dietary information in the accompanying user guide. • As noted as currently drafted, information falls outside the dietary information definition if it refers to a ‘specific brand of food’. A Court might say that even mention of Sanitarium’s name and corporate logo on the Sanitarium site is a reference to a ‘specific brand of food’, i.e. ‘Sanitarium food’. The definition should therefore refer to ‘a specific brand of food product ...’

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Sanitarium Health Food Company	Industry – Trans-Tasman	<ul style="list-style-type: none"> • Although P293 at page 40 (para 5.2.3.4 ‘Dietary Information’) says “Broadly applicable dietary information that does not link a specific brand of food to a health effect will not, in general, be regulated under the Standard ...”, at present there is no wording that actually takes ‘dietary information’ outside of the Standard. Correct that the definitions of ‘health claim’ and ‘nutrition content claim’ specifically exclude ‘dietary information’. But that does not take dietary information out of all the Standard’s coverage, e.g. it leaves in the prohibition on making high level claims, and of course claims of a therapeutic nature. It is therefore imperative to have a specific provision taking ‘dietary information’ outside the Standard. Sanitarium has added this as 1.2.7, Division 2 (General Requirements), 9(1). See that this dovetails with the current drafting of clause 9. • Because “dietary information” can be brought back within the Standard if it is in ‘an advertisement for food’, it is necessary to say that the mere mention of the food supplier’s corporate name and brand on information provided (e.g.) by Sanitarium, does not of itself convert that information into an ‘advertisement’. This would leave it to be decided on a case by case basis whether a food supplier has gone too far, i.e. crossed the line from ‘information’ to ‘advertisement’.
The Cancer Society of Australia	Public Health – Australia	<ul style="list-style-type: none"> • Are concerned that the current definition will allow industry to make claims that would not be regulated by the Standard, simply by not referring to ‘a specific brand of food’. • This allows claims to be made that would not be allowed under the Standard, and removes requirements to hold the substantiating evidence. For example nutrition information could be provided in television advertising/website/printed information that does not mention specific products but that is clearly associated with a particular company or particular type of food product, e.g. Kellogg’s and Uncle Toby’s are immediately associated with breakfast cereal. • The making of claims in relation to a type of food product may be as useful to a company as making claims in relation to its own brand of food. • The regulatory consequences should not differ so dramatically based on whether ‘a specific brand of food’ is referred to. • The exclusion of ‘dietary information’ in the definitions of ‘health claim’ and ‘nutrition content claim’ should be deleted but notes that they assume that that drafting will ensure that as stated in the Purpose of the Standard, the requirements of the Code will not apply to non-commercial types of activities.

**Proposal P293 Nutrition, Health and Related Claims
Summary of submissions to the Draft Assessment Report**

19. ENDORSEMENTS

Submitter	Group	Comments
5+ A Day United Fresh	Industry-NZ	<ul style="list-style-type: none"> • Concerned that the manner in which the United Fresh 5 + A Day programme’s logo is used would rate as an endorsement when used in conjunction with producer labelled goods. • Seeking pre-approval from FSANZ for their 5+ A Day programme to be considered an endorsement. Information on this programme is provided in the submission as an attachment. • United Fresh is a not-for-profit organisation that promotes increased fruit and vegetable consumption through a number of initiatives, including the 5+ A Day programme, run in primary schools, early childhood centres, Free Fruit in Schools, and nutrition programmes in partnership with other non-government organisations. • It is funded by the pan-produce, vertically integrated fruit and vegetable industry including retailers, wholesalers and growers. • To promote the message to eat at least 5 serves of fruit and vegetables a day, they encourage members to utilise the logo on all packaging and at point of sale. • Will be encouraging the fruit and vegetable industry to utilise health claims through the publishing of findings, education resources, labelling, production of brochures and leaflets, in conjunction with the 5+ A Day logo, which could be considered by FSANZ to represent endorsement of branded fruit and vegetables by United Fresh. • Have established memorandums of understanding with the National Heart Foundation and Cancer Society and have agreed to work closely with other members comprising industry, education and research. Also hold the Vice Chairmanship of the International fruit and Vegetable Alliance and in this role are striving to ensure international consistency in worldwide 5 a day-type programmes. Consider there may be times when FSANZ will consider United Fresh is endorsing health claims through these associations too. • Their logo is well known with 88% consumer awareness. Wish to use the logo in all areas including advertising, labelling, poster and brochures and at point of sale and see it as an implied endorsement encouraging replacement of high fat, high energy nutrient deficient foods with fruits and vegetables. •
Adecron Food Tech Consulting	Industry – New Zealand	<ul style="list-style-type: none"> • How will criteria for the National Heart Foundation, which change at times, be dealt with under the new regime? Do they then need to re-apply?

Submitter	Group	Comments
Australian Competition and Consumer Commission	Government-Australia	<ul style="list-style-type: none"> • Seeks clarification on the discussions and provisions around endorsements and trade marks. The ACCC has a statutory role in approving certification trademarks (CTM) before registration. Submission includes an attachment outlining ACCCs' certified trade mark processes. • Businesses use ordinary trade marks to distinguish the goods or services they sell. In contrast, a CTM indicates to consumers that a product or service meets a particular standard. CTMs might be displayed on product packaging or in associated promotional and advertising material. This is likely to be of value to businesses, as consumers may well prefer goods or services that they believe meet particular standards. • The ACCC is concerned (through its approval process – see Attachment to submission) to ensure that CTMs neither have the potential to mislead consumers nor are used to inhibit competition. • An example of the CTM process and its relevance to endorsements under the proposed standard would be the National Heart Foundation Tick. • Seeks clarification on the discussions and provisions around endorsements and trade marks. • The ACCC has a statutory role in approving certification trademarks. Provides in an attachment - ACCC's certified trade mark processes. • Businesses use trade marks to distinguish the goods or services they sell from those of other businesses. In contrast, a certification trade mark indicates to consumers that a product or service meets a particular standard, for example, is made from particular materials etc. • Certified trade marks may be displayed on product packaging or in associated advertising material. The ACCC is concerned (though its approval process) to ensure that certification trade marks neither have the potential to mislead consumers nor are used to inhibit competition. • An example of the certified trade mark process and its relevance to endorsements under the proposed standard is the National Heart Foundation Tick. • Appreciates the difficulty in incorporating existing endorsement programmes into the current framework but believe that existing programmes must also comply with the health claims standard. • However, if existing programmes endorse less healthy foods that would not be eligible to carry health claims it could potentially lead to consumer confusion about the healthiness of those products. In addition, the FSANZ consumer research found that participants believed that a product carrying an endorsement claim offered more of a health benefit than other types of claims. Therefore it is potentially misleading to allow existing endorsement claims that do not fit the framework. • Endorsing organisations could have a transition period to refine their existing endorsement programmes to ensure they are consistent with the health claims standard. • Consider existing endorsement programmes must comply with the new standard on nutrition, health and related claims.

Submitter	Group	Comments
<p>Australian Food and Grocery Council</p> <p>(Supported by Nestle Australia Ltd and Nestle NZ Ltd, Unilever Australasia, George Western Foods Limited/AB Food and Beverages, Simplot Australia Pty Ltd)</p>	Industry - Australia	<ul style="list-style-type: none"> • Rejects the proposed approach to endorsements. • Considers the proposed approach represents an anti-competitive and trade restrictive approach, locking in commercial advantage to current endorsement programmes in perpetuity. • The AFGC preferred solution to this is to exclude endorsements from the health claims standard.
Australian Fruit Juice Association (AFJA)	Industry - Australia	<ul style="list-style-type: none"> • Do not believe the issue of endorsement should be considered in the Standard.
Australian Nut Industry Council	Industry - Australia	<ul style="list-style-type: none"> • Endorsing organisation definition – propose that research and development/marketing organisations such as Horticulture Australia and its member bodies, including ‘Nuts for Life’ be deemed endorsing organisations. These bodies operate as not for profit organisations as they do not sell products but market the nutrition and health benefits of healthy foods such as fruits, vegetables, nuts and fungi. This will enable these organisations to provide dietary information and not be subject to conditions and criteria. • It is recommended that the Standard is made clear that information and logos (including ‘Nuts for Life’ logo) from endorsing organisations can be used at the point of sale at retail outlets. Recommend also that companies included in the Nuts for Life programme are permitted to provide a link or reference to Nuts for Life’s nutrition communication materials, such as a website link or the ‘Nuts for Life’ logo on pack or via their own websites.
Australian Self Medication Industry	Therapeutic – Australia and Trans Tasman	<ul style="list-style-type: none"> • There is a lack of New Zealand bodies represented in the pre-approved endorsement agencies listed
Axiome Pty Ltd for Toothfriendly International	Industry - Australia	<ul style="list-style-type: none"> • Support FSANZs’ proposal in the draft standard in respect to “endorsements” and Tooth Friendly International’s ‘Happy Tooth’ logo. • Please note that the Tooth Friendly International ‘Happy Tooth’ should in fact be referred to as a symbol, certifying that the product has been tested and meets the certifying criteria. • Thus the Draft Standard should be amended as follows: <i>Clause 2 (2) (c)</i> <i>“Toothfriendly International’s “Happy Tooth” symbol Certification Program”</i>
Cadbury Schweppes Pty Ltd	Industry - Trans Tasman	<ul style="list-style-type: none"> • Concern about the sole recognition of some endorsement programmes. • The draft Australian Standard provides a standardised methodology for GI and GL testing and the standard defines low, medium and high GI with corresponding numerical values. Any recognised laboratory that uses the Australian Standard

Submitter	Group	Comments
Cadbury Schweppes Pty Ltd	Industry - Trans Tasman	<p>method should be able to define GI/GL of a food with either the index or qualifying declaration.</p> <ul style="list-style-type: none"> The New South Wales School Canteen Association criteria are not inline with the criteria established for making general health claims: <ul style="list-style-type: none"> The criteria considers some foods to be unacceptable to school aged children where as under P293 these foods are suitable for carrying health or nutrition messages as they would meet the qualifying criteria. They specifically exclude products containing artificial sweeteners whereas P293 encourages the use of artificial sweeteners in order to make nutrient content claims and to meet the generic qualifying criteria for General Level claims. The NSWSCA specifically excludes all foods that contain any Confectionery, whereas P293 would allow claims to be made on foods that contain confectionery as long as the disqualifying criteria are met.
Campbell Arnott's Asia Pacific	Industry- Australia	<ul style="list-style-type: none"> Recommend endorsements remain outside the scope of the proposed Standard. 'Grandfathering' certain endorsements that currently exist is anti-competitive. New endorsement schemes need to overcome significant barriers to be on a food; however they are not seen as claims and represent commercial and marketing instruments.
Cancer Society of New Zealand Inc	Public Health – New Zealand	<ul style="list-style-type: none"> The proposed regulation may make it impossible for a credible organisation like Cancer Society of New Zealand to promote generic messages encouraging healthy food choices at point-of-sale. This should be treated differently from a formal product or brand specific endorsement programme. They are not on level playing field with organisations such as the National Heart Foundation. Anomaly created when the National Heart Foundation can use its logo at point-of-sale but they can not because of the word 'cancer' –a serious disease. How will the integrity of current endorsement programmes be maintained? The Draft Assessment Report states that existing endorsement programmes will be approved to 'to continue unchanged'. Are concerned that FSANZ establishing a regulatory endorsement of a self-regulatory system.
Coles Myer Ltd	Industry, Australia	<ul style="list-style-type: none"> We understand that clauses 8(1) (a) and (b) are simply cross references to clauses 5(2) (c) and 5(2) (a) respectively. If our understanding is correct, we think that reference to those specific clauses by clause number rather than the present description would provide greater clarity. Same comment applies to clause 8(3) (1) (a).
Confectionery Manufacturers of Australasia Supporters shown below CMA NSW Branch	Industry – - Australia	<ul style="list-style-type: none"> Questions the exclusivity afforded to endorsement programmes when some companies may choose not to licence their food product with a registered programme, whereas all the same validation may be achieved by other appropriately approved scientific analysis. Companies should be able to make certain statements about their products without having to use the nominated, endorsed symbol and pay the endorsement programme licence fees. This is conditional on substantiation of the claim and testing through an appropriately accredited body. Potential confusion may arise from the proposed exemption of current endorsements (nominated in the draft Standard

Submitter	Group	Comments
CMA Queensland Branch CMA SA Branch CMA Victoria Branch Langdon Ingredients CMA NZ Branch (supporters of Confectionery Manufacturers of Australasia) International Confectionery Association	Industry – New Zealand Industry - international	1.2.7, Clause 2(2)) when future endorsements will need to meet the disqualifying total sugars, saturated fat and sodium requirements. This offers unfair competitive advantage to commercial operators and sets up a system that will disadvantage consumers by way of inconsistent criteria. <ul style="list-style-type: none"> • The tooth friendly endorsement is commonly used by the confectionery industry for sugar free products. Whilst it is proposed that this endorsement is incorporated into Standard 1.2.7, questions whether new products not currently in the market, will be able to use it. Is it appropriate to permit it when sugar free is to be permitted by way of fair trading law?
Dairy Farmers Group	Industry - Australia	<ul style="list-style-type: none"> • Recommendation to include the Osteoporosis Australia symbol.
Department of Human Services Victoria	Government – Australia	<ul style="list-style-type: none"> • Opposes the proposed approach to endorsement programmes. The proposal to allow pre-existing endorsement programmes to continue without limit and only permit new endorsement programmes that comply with the Standard is inconsistent and anti-competitive. • The proposed approach places no control over programmes that alter their criteria after the introduction of the Standard. • Suggests that all endorsement programmes should be aligned with the new Standard within a specified timeframe to ensure consistency of message and to prevent consumer confusion, and should also be assessed in a fully transparent manner.
Dietitians Association of Australia (DAA)	Public Health - Australia	<ul style="list-style-type: none"> • Consideration should be given to Australia’s ‘Go for 2 and 5 Veg’ and New Zealand ‘5 + A Day’ endorsement programmes in the list of pre-existing programmes.
Fonterra Co- Operative Group Limited supported by (P&B) Fonterra Brands Australia	Industry – New Zealand Industry - Australia	<ul style="list-style-type: none"> • Agrees with the recommendation that endorsements be regulated as general high level claims where a serious disease is part of the organisation’s name. • Supports the recommendation that endorsements without a serious disease as part of their name not be considered as claims.
Food Products Association (FPA)	Industry- International	<ul style="list-style-type: none"> • Conditions for use of endorsement should be consistent. • Agrees that it is appropriate to implement a regulatory structure that includes claims made by endorsement. • Organisations should be permitted to provide information and materials related to disease prevention and dietary information outside the context of labelling claims. • To avoid misinterpretation by consumers it is important that FSANZ review the various endorsing groups and approve exiting and future logos within the context of the proposed regulatory structure.

Submitter	Group	Comments
Food Technology Association of Western Australia (FTAWA)	Industry - Australia	<ul style="list-style-type: none"> New standard should maintain current practices that follow the Heart Tick Programme and Code of Practice for Nutrient Claims. Also criteria set by school canteen associations that impact on small food businesses.
Environmental Health Association Australia	Government- Australia	
Glycaemic Index Ltd (GIL)	Public Health - Australia	<ul style="list-style-type: none"> Supports provisions for endorsements including the list of organisations with existing programmes to be exempt from the proposed legislation
Go Grains Health and Nutrition Limited supported by George Western Foods Limited/AB Food and Beverages	Industry - Australia	<ul style="list-style-type: none"> Strongly objects to the fact that the Standard does not apply to existing endorsement programmes. Believe it is discriminatory, because information can be included on pack in the context of an endorsement programme that would not otherwise comply with the health claims criteria and manufacturers who are part of the GI symbol programme are permitted to use descriptors ('low, medium', 'high') where other manufacturers may not. The use of these descriptors over recent years has helped consumers to become more aware of their meaning. To require those companies who are not part of an endorsement programme to remove the descriptors from their products would provide a clear, but unfair, marketing advantage to the endorsement programmes and their paying members.
Heinz Australia/Heinz Wattie's New Zealand	Industry – Trans Tasman	<ul style="list-style-type: none"> Supports the continued use of the 'Tick' Programme in its current state.
Horticulture Australia Ltd (supported by Horticulture Australia Council and SPC Ardmona)	Industry - Australia	<ul style="list-style-type: none"> Recommends that the criteria of pre-approved endorsement programmes be compliant with the Standard and that any future endorsements made by the body should also comply. Suggests that an agreed phase-in period (e.g. 2 years) be allowed to bring any existing product endorsements into line with the Standard. Recommends that Horticulture Australia Ltd be approved as an endorsing organisation and that the Go for 2&5 and Nuts for Life endorsement programmes be considered for pre-approval (qualifying and disqualifying criteria provided in the submission).
Horticulture New Zealand	Industry - NZ	<ul style="list-style-type: none"> Industry should be able to place logos on material that is scientifically validated.
International Diabetes Institute	Public Health - Australia	<ul style="list-style-type: none"> Request that the Shop for Gold programme be included as a pre-approved endorsement programme. Information about this programme has been provided in this submission. Concerned that the definition of endorsement may possibly be interpreted to mean that an endorsement programme must include a certification trade mark. To avoid confusion insert the word 'may' into the definition (...and may include a certification trademark...').

Submitter	Group	Comments
Jenny Robertson Consulting Services (Jenny Robertson & Dan Southee)	Industry - Australia	<ul style="list-style-type: none"> • Rejects endorsements drafting as anti-competitive and trade restrictive. • Inclusion of selected existing certified trademarks and endorsements into a standard but requiring all new endorsements to comply with the standard after gazettal is in our view anti-competitive. The approach adopted by FSANZ is to accept current endorsements/trademarks in perpetuity, irrespective of any changes they may make to their programmes. • We recommend that the endorsements section of the proposed Draft Standard be removed.
John Birkbeck (Massey University)	Academic – New Zealand	<ul style="list-style-type: none"> • Disturbed by the implication in 5.2.3.1 and elsewhere that pre-existing claims based on endorsement by non profit organisations or proprietary rights can not be subject to scrutiny for compliance. • If a claim is unsubstantiated it must be deemed illegal regardless of the circumstances. • The statement “the nutrition criteria that the endorsement programme applies to product will need to be consistent with Australia/NZ nutrition policy principles” is good but why does it not apply to branded products (pg 62)? • Suggests changing the words ‘being exempt from’ to ‘conforming to’ in the statement, to “Pre-approved endorsements will be listed in the Standard as being exempt from the requirements of this standard.”
Kellogg (Aust.) Pty Ltd	Industry-Australia	<ul style="list-style-type: none"> • Agrees that endorsements should be allowed • The proposed pre-approval approach is discriminatory towards new endorsement programmes and food manufacturers • Current endorsement programmes will be exempt from meeting the requirement of any disqualifying criteria imposed • This is inconsistent and an unnecessary onerous on manufacturers • Will create inconsistencies in the claims implied (and substantiated) by the endorsements, causing confusion to consumers • It is clear with the Ministerial Council’s Policy Guideline that endorsement programmes should be regulated according to the claim which is being made
Kraft Foods Ltd	Industry - Australia	<ul style="list-style-type: none"> • Contends that endorsements should not be misleading and this is already part of fair trading legislation. • The proposed requirement for endorsement approval is an unnecessary cost to those endorsements not pre-approved. It is an extra burden on those who have to manage the approval process, all with very little if any benefit to the consumer.
Mrs Mac’s Pty Ltd	Industry-Australia	<ul style="list-style-type: none"> • Levels of responsibilities need to be determined in regard to substantiation of high level claims. Of concern is the Heart Foundation tick if classified as a high level claim. • Responsibility for substantiation should be on the endorsing agency. • Industry requires a consensus on what will be enforced and reviews need to be with sensible time lapses so as to avoid packaging updates. • Heart Foundation criteria for a meat pie is: total saturated fat 5.0g/100g, trans fat <0.2 g per 100g and sodium 350mg/100g. This isn’t consistent with the suggested general level claims requirements which appear more stringent. • FSANZ needs to maintain current practices of following current endorsement programmes rather than creating new ones.

Submitter	Group	Comments
National Centre of Excellence in Functional Foods	Academic & Other – Australia	<ul style="list-style-type: none"> • The process that FSANZ used to make the six endorsement programmes exempt from Standard 1.2.7 is not clear. • It is important that the criteria used by FSANZ to assess current endorsement programmes are made transparent. This appears to be different to any criteria currently contained in the draft Standard. In the absence of any criteria, a decision to make these programmes exempt from the Standard could be seen as providing these organisations with an unfair advantage. Other endorsing organisations would be required to adhere to Standard 1.2.7. In addition, future endorsement programmes will be required to meet specific components of the claims classification framework, rather than the criteria currently being used for pre-approval and subsequent exemption from the Standard. • There is no comment made about a regular review of these endorsement programmes that are exempt from the Standard or a regular review of the criteria enabling a food product to carry their endorsement logo. It is not known how FSANZ will regulate changes in such criteria should these excluded organisations choose to modify them in any way. • Recommend that rather than exempting pre-approved endorsement programmes from Standard 1.2.7. It would be better to include the criteria being used to assess programmes and to use these criteria in the future. Endorsement programmes (such as the six currently exempt from the standard) could then be included in guideline documents as examples of programmes which meet the criteria. The process of FSANZ pre-approving future endorsement programmes could be maintained, however the process for pre-approval would be transparent as the criteria for assessment would be legislated. • Rejects drafting pertaining to ‘related claims,’ i.e. endorsement and trade marks, as anti-competitive, trade restrictive and outside the jurisdiction of this Standard. • The Draft Assessment Report does not address data from National Heart Foundation (2001) which clearly indicates that consumers understand the tick logo. • FSANZ have accepted the use of the GI or GL numeric values and ratings for the Glycaemic Index Symbol Programme (Sydney University) – an endorsement programme. To remove any anti-competitive connotations, to maximise consumer understanding and avoid misperception, and to facilitate product innovation, the permission to use GI or GL claims on labelling or education materials, should be made publicly available. • National Foods suggests the following benefits arise from food endorsement programmes: <ul style="list-style-type: none"> – improvement in food supply meeting national Dietary Guideline recommendations – increased consumer choice of healthier food products – health benefits – a competitive food industry environment – economic benefits – support for government health promotion messages – health & economic – economic support for nutrition or disease related research or consumer education – e.g. NHF. • As endorsement programmes have their own stringent nutrition criteria, National Foods sees it unnecessary and duplicative to have these regulated by FSANZ as well.

Submitter	Group	Comments
National Foods Ltd	Industry, Australia	<ul style="list-style-type: none"> • Potential cost impositions could include: <ul style="list-style-type: none"> – duplicate substantiation and compliancy costs – duplicated enforcement costs – costs of relabelling and in some instances deleting or relaunching products – costs in dealing with consumer enquiries, i.e. product changes? – costs in changing product promotional material or website information – loss of market share due to increasing costs to being passed on as price rises to the consumer. • National Foods strongly recommends that endorsements and trademarks remain outside the scope of the nutrition, health and related claims Standard. The rigour of such certification processes eradicates the need for any further approval by FSANZ.
National Heart Foundation of Australia National Heart Foundation of New Zealand	Public Health, Australia Public health - New Zealand	<ul style="list-style-type: none"> • The definition in Division 1 refers specifically to a ‘design’ – may be implications for claims that might be permitted under certification trademark rules e.g. a future GI certification programme that included the ability to claim ‘low GI’. • Supports proposed exclusion of the Tick Food Information Programme from the Standard, on the basis of its pre-approval by FSANZ. • A contract agreement between the National Heart Foundation of Australia and the National Heart Foundation of New Zealand guarantees that the Tick logo will continue as much as possible to represent the same nutrient criteria. • Administration of the Tick Programme will pass to NZ from 1 March 2006 – therefore recommends that draft Standard be amended to separately list to Tick Programmes of both Australia and New Zealand. • The Tick Programme should be excluded from the Standard because: <ul style="list-style-type: none"> – It is the flagship public health nutrition programme of the Heart Foundation; – Nutrition criteria for Programme eligibility are consistent with healthier eating recommendations of the Dietary Guidelines; – The communication and educational activities of the Programme are consistent with the guidelines; – The Programme operates under strict certification rules and changes are required to be approved by the Trademark Office, ACCC and IPONZ. – Consumers trust and value the Tick. – Licensees being required to comply with the FSC and CoPoNC means that the Tick Programme serves as a <i>de facto</i> enforcer of labelling and advertising regulations; – Tick Programme successfully encourages product reformulations to improve the food supply

Submitter	Group	Comments
<p>National Heart Foundation of Australia</p> <p>National Heart Foundation of New Zealand</p>	<p>Public Health, Australia</p> <p>Public health - New Zealand</p>	<ul style="list-style-type: none"> • New direction since last submission: NHFA Board agreed to extend the Programme into the foodservice sector in Australia. The Programme can now influence a major proportion of foods eaten by Australians outside the home. • Australian Government has identified need for national foodservice accreditation system; the Tick Programme is in the ideal position to provide such a system. • 8 in 10 consumers would welcome guidance by the Tick on eating outside the home. Concept also supported by 9 in 10 dieticians. • Expansion into foodservice provides the following challenges: <ul style="list-style-type: none"> – Needs to achieve consistent quality and compliance with the Tick standards and more complex processes for compliance testing. Trials have been undertaken with several foodservice organisations and the Programme is expected to launch in mid to late 2006. • The Tick Programme is run by a highly reputable and independent health organisation which can maintain the integrity of the Tick ‘brand’. • Concerned that the possibility of exclusion of pre-approved endorsement programmes may be ‘time limited’. Concerned that this would introduce a significant amount of uncertainty and risk food industry confidence in the Programme and confusion among consumers. • If required to meet conditions of Section 8 of the draft Standard, the Tick Programme would have no difficulty in substantiating the meaning of the Tick trademark on foods. • Clause 8(1) (a) would introduce difficulties for the Programme because of differing objectives of the Tick criteria vs. the FSANZ disqualifiers. Tick criteria are category-based and developed for food supply change. • FSANZ disqualifiers identify foods that are not high in saturated fats, sugars and sodium (Tick criteria are category based). Some foods will have difficulty meeting these levels as different food types make different nutritional contributions. • To comply with the Standard, the Heart Foundation assessed the application of the proposed ‘disqualifying’ criteria to Tick approved foods. The analysis found difficulties with applying these disqualifiers for foods with higher serving sizes and for certain food categories, including milks, yoghurts, soups, processed meat/poultry/seafood, canned fish and ready meals. • Submission provides a table comparing proposed FSANZ disqualifying criteria against Tick criteria which shows that in six categories, more than half the Tick approved foods would not meet the proposed disqualifying nutrient levels. Examples provided. • The Heart Foundation urges FSANZ to refrain from limiting the period of time for which the pre-approval of endorsement programmes applies. Would support a review of endorsements.

Submitter	Group	Comments
Nestle Australia Limited and Nestle New Zealand Limited	Industry – Trans Tasman	<ul style="list-style-type: none"> • Endorsements should fall outside the Standard and not be regulated in such a way. • Endorsing organisations will not permit their endorsement to be trivialised and will control their use. They are contractual arrangements and should not be subjected to regulation in this way. • Recommend that future endorsements should be able to apply for exemption in the same way as those that are exempted under the draft Standard, where the conditions for making the endorsement are consistent with nutrition policy of Australia or New Zealand. • For that to occur, a longer transition time should be provided to allow the necessary applications to be made for inclusion in the Standard. • Believe that any endorsement programme that is exempt from the Standard should make the conditions of the endorsement programme transparent to the general public. This will enable the company to explain how the endorsement relates to their products, particularly if the endorsement is not as restrictive as the regulations. • A particular endorsement organisation does not publish or communicate their criteria as it is regarded as Intellectual Property. • Retention of the definition for an endorsing organisation will ensure that appropriate organisations and any endorsement that they may develop will be exempt from the standard. • (Attachment 5, section 6.7) Notes that where the draft assessment report states that where an endorsement does not reference a serious disease, it will need to meet the general level <u>health</u> claim substantiation; that this should be the <u>general level claims</u> substantiation, because nutrient content claims and general level health claims are both a subset of general level claims.
New Zealand Food and Grocery Council (NZFGC)	Industry – New Zealand	<ul style="list-style-type: none"> • Allowing some to be excluded from regulation (clause 2 (2)) is inequitable and unfairly discriminatory. • It gives a commercial advantage to current holders of endorsements that could be construed as anti-competitive. • Endorsements should be excluded from food regulation. They are contractual arrangements and should be regulated under trademark legislation.
New Zealand Food Safety Authority (NZFSA)	Government – New Zealand	<ul style="list-style-type: none"> • (5.6.1.1) Questions the exclusion of the entire programme associated with an endorsement from the proposed new standard as opposed to just the endorsements logo. By exempting such programmes a recognised endorsement programme will be able to make claims that other similar but non-endorsed products could not, e.g. GI logo. • In the Table to Clause 11, descriptors, e.g. ‘low’ etc are not permitted to be used in association with GI/GL values, however the Glycaemic Index Ltd Symbol Programme, which uses the GI logo in association with a descriptor, often ‘low’, is exempt from the proposed standard. The Programme’s website gives GI values for what they deem to be ‘low GI’ and ‘high GI’. • In the presentation by FSANZ at the P293 Draft Assessment Report briefings, the GI log was shown, with the descriptor ‘low’ included. At that time FSANZ made the comment that the descriptor ‘low’ would not be permitted, which appears to contradict the current drafting.

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New Zealand Food Safety Authority (NZFSA)	Government – New Zealand	<ul style="list-style-type: none"> • Requests clarification on this area. • NZFSA and the Ministry of Health suggest the need for a transparent process for the alteration of any criteria around a pre-approved endorsement to ensure that endorsement remains consistent with the intent of the proposed standard. • Suggest the status of pre-approved endorsement programmes be reviewed on a regular basis.
NSW Food Authority	Government – Australia	<ul style="list-style-type: none"> • Notes that in the definition of endorsement it does not include diseases other than serious diseases and justification for this exclusion is apparent. • Similarly, in the definition of endorsing organisation, there is no justification for the exclusion of diseases other than serious diseases in this definition. • The use of the word ‘suppliers’ in this definition is unclear, although it is assumed that its use is based on the definition of ‘supplier’ in Standard 1.1.1. • As the standard does not apply to specific endorsement programmes, questions whether e.g. the NHF Tick Programme is allowed to include health claims on the products it endorses. • Is concerned that the content and direction of these programmes may change and suggests that the Code applies to what is in force at the time. If this is not the case then these schemes can be changed at any time so that they are no longer within the spirit or intent of the standard. • Is unclear as to how the approved endorsements are added to the approved list and whether it will be through the Initial/Draft Assessment process or some other formal FSANZ process. • Considers that these endorsements already approved and exempt from the standard possibly provide an unfair market advantage, and therefore should have a sunset clause to fall into line with the standard. • It seems incongruous that an endorsement from an endorsing organisation, which includes in its name a serious disease (e.g. the Cancer Council), is only required to comply with conditions for general level claims. This would potentially create an opportunity for less scrupulous manufacturers to enter into endorsement ‘arrangements’ thereby by-passing the restrictions otherwise applicable to high level claims.
Queensland Health	Government – Australia	<ul style="list-style-type: none"> • Existing endorsements should be required to comply with the health claims standard and be given 2 years to comply (as is the case for industry).
Rae Frampton	Consumer – New Zealand	<ul style="list-style-type: none"> • Supports endorsement of programmes such as the Health Foundation’s “Pick the Tick”.
Rosemary Stanton	Public Health - Australia	<ul style="list-style-type: none"> • The current endorsement programme for GI is available to companies that pay. Many products would not meet the disqualifying criteria, e.g. Nutella contains undisclosed trans fats and high sugar content but is promoted as healthy as it has a low GI. The presence of the ‘G’ is sufficient to generate sales, no other claims are needed. • The endorsing company has a vested interest in marketing the ‘G’. • If the GI endorsement is accepted, it is essential, to avoid consumer confusion and deception, that disqualifying criteria be applied to content claims.

Submitter	Group	Comments
Sanitarium Health Food Company	Industry – Trans-Tasman	<ul style="list-style-type: none"> • Is concerned that a number of endorsement programmes have been ‘pre-approved’ in the proposed Standard. This is an anti-competitive and trade restrictive approach. Pre-approved endorsement programmes and products bearing the endorsements gain a commercial advantage, as there would be no requirement for them to comply with criteria or disqualifying conditions even though they bear, in many cases, an implied health claim (e.g. National Foundation Heart Tick). This provides a competitive advantage, not only to the endorsing organisation, but also to companies whose products bear the endorsement. • Understand that pre-approved programmes have already undergone a rigorous assessment by organisations such as ACCC. However, the proposed system allows manufacturers that pay endorsement fees to have their products linked to health benefits regardless of the health claims disqualifying criteria. • The same product made by a manufacturer that does not pay for the endorsement may be disqualified from being able to bear any kind of health message. Consumers may mistakenly believe that the endorsed product is more nutritious than the same product that is not endorsed. In particular, the pre-approval of the GI symbol creates an unfair advantage for endorsed products in that they can bear the descriptors ‘low’, ‘medium’ or ‘high’ in association with the GI number. Without descriptors, the GI rating on a product will have little meaning to consumers. • Recommends that all endorsements, including existing programmes, be subject to the proposed Standard. If disqualifying criteria were removed for general level health claims from the proposed Standard, then this would solve the issue of having endorsement criteria that are looser than the generic disqualifying criteria (where products bearing existing endorsements would not meet the disqualifying criteria and therefore not be able to bear a health-related claim such as the endorsement).
South Australia Department of Health	Government – Australia	<ul style="list-style-type: none"> • Recommends that existing endorsement programmes be required to comply with the requirements for new programmes within a reasonable timeframe (e.g. 2 years). This would fit in with the proposed introduction timeframe.
Tomox Pty Limited	Public Health	<ul style="list-style-type: none"> • Osteoporosis Australia bone stamp symbol should be assessed for pre-approval, being consistent with the National Action Plan for Osteoarthritis, Rheumatoid Arthritis and Osteoporosis 2004 – 2006.
The Cancer Council of Australia	Public Health – Australia	<ul style="list-style-type: none"> • Support the pre-approving of some current endorsement programmes however believe that FSANZ needs to clarify the conditions for pre-approving existing endorsement programmes. • They are perceived as ‘implied claims’ and FSANZ quite rightly treats them as a separate type of claim. • How will FSANZ ensure the integrity of the endorsement programme is maintained, given that criteria for programmes are constantly being reviewed? Notes the draft assessment states that existing endorsement programmes will be approved ‘to continue unchanged’. • Are concerned that the Standard will not be able to regulate the pre-approved programmes if they become commercialised and change their criteria. FSANZ may be creating an ‘open cheque’ policy for existing endorsement programmes, with a possibility of those programmes having a more commercial imperative if the current arrangements are substantially changed.

Submitter	Group	Comments
The Coeliac Society of Australia Inc	Public Health, Australia	<ul style="list-style-type: none"> • Are in agreement with the proposal for pre-approval of some current endorsement programmes including the Coeliac Society of Australia Inc. programme which uses the crossed grain logo (trademarked). • Agree with the proposed regulatory framework for future endorsement programmes, whereby the words “Coeliac Society of Australia” could be used if the general level health claim substantiation requirements and related qualifying criteria are met. • Propose their future endorsement programme would be used for both ‘gluten free’ and ‘low gluten’ foods but in each case would comply with the relevant food standards code.
The Wrigley Company Pty Ltd	Industry – International	<ul style="list-style-type: none"> • Seeks pre-approval for the Fédération Dentaire Internationale endorsement programme (recognition programme) on its sugar-free chewing gum. The World Dental Federation (FDI) recognition programme for sugar free chewing gum is represented by the FDI logo along with the text “Chewing of sugar free gum, such as [insert brand] is beneficial to dental health”. Only sugar free chewing gum is eligible to receive the recognition of the FDI under this programme. • The FDI recognition programme for sugar free gum is different to the Tooth Friendly programme, which covers a broader range of confectionery and hence requires a testing fee to be paid to ensure that products are actually tooth friendly. • Notes that for the purpose of their submission the term “sugar free” is used to describe products in which the sugar has been replaced by polyols and intense sweeteners and comply with CoPoNC that set a maximum level of 0.2g sugars per 100g food. • The dental health benefits of sugar free gum are well established within the dental community and are based on over two decades of clinical research which is in the public domain (note: the references contained within this document are a selection only as the body of work is enormous). Clinical trials on the oral health benefits of chewing gum pre-date the 1970s (3), with trials on the benefits of sugar free gum commencing during the 1970s (4, 5) as chewing gum containing sugar substitutes became available. During the 1980s a huge body of work was completed, consistently establishing the dental health benefits of chewing sugar free gum due to its non cariogenic nature (6) (contains no carbohydrates) and salivary stimulation (7, 8) which clears food (9, 10) and helps control plaque pH (References 11-21), as were the benefits in using sugar free gum to assist in the treatment of Xerostomia (dry mouth) (22). Provided a Stephan Curve, showing the effects of sugar free chewing gum on oral pH. • By the 1990s it was well understood that chewing sugar free gum could play a significant role in caries prevention and treatment (23-28) as stimulated saliva contains the same types of calcium, phosphate and hydroxyl ions that occur naturally in the teeth and can have a remineralising effect on previously demineralised tooth enamel (29).

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The Wrigley Company Pty Ltd	Industry – International	<ul style="list-style-type: none"> • It has been clearly established that chewing sugar free gum after eating or drinking for a period of 20 minutes can help reduce the incidence of tooth decay by up to 40% (30). Clinical trials into the multitude of benefits of sugar free gum on dental health continue today. The huge body of work, built over a long period of time and undertaken with a variety of sugar free gum products, has established that the dental health benefits accrue to all sugar free chewing gum. The FDI require no further proof of the dental health benefits of any individual sugar free gum product other than the comprehensive body of research already undertaken over the past few decades. Proof that the gum is sugar free is taken from the ingredient labelling and nutritional panel of the product (no further testing is required), as the FDI understand that Wrigley ANZ operate within a legal/regulatory framework that heavily penalises misleading and deceptive conduct. The endorsement of Wrigley sugar free chewing gum is granted as part of the FDI recognition programme for sugar free gum. The FDI recognise the benefits of mastication on general health due to the effect of stimulated saliva flow. The FDI believe that mastication may have broader health effects than the benefit to oral health alone. • FDI supporting letter, FDI Policy Statement: Effect of Masticatory Ability on General Health and a FDI supplied article: Nakata M: Masticatory Function and its effects on general health at appendix 1, 2 and 3 of the submission. • The FDI recognition programme satisfies the P293 Policy Guidelines definition of an ‘endorsement programme’ and an ‘endorsement’. The FDI satisfies the P293 Policy Guidelines definition of an ‘endorsing organisation’. • The FDI logo and recognition comment is used on a variety of marketing materials, including but not limited to product packaging, point of sale materials and advertising materials, including television advertising. The FDI logo serves as the certification trademark and endorsement. The FDI is an NGO and a not for profit organisation (www.fdiworldental.org). It is the world body for dentistry and represents over 150 countries including the Australian and New Zealand Dental Associations. • The FDI endorsement of Wrigley’s sugar free gum complies with the requirements of a general level claim. The claim is well substantiated. The common understanding of the term sugar free chewing gum within the dental community is chewing gum, to which no sugar has been added, i.e. uses sugar substitutes. Sugar free chewing gum complies with the conditions for a nutrition content claim in relation to low sugar and no added sugar. Consider sugar free should also be included in clause 11. Wrigley’s sugar free chewing gum satisfies the disqualifying criteria for sodium, saturated fatty acids and total sugars. • The FDI endorsement only applies to sugar free chewing gum, which is consistent with the Australia New Zealand Nutrition Policy Principles which recommend choosing foods with little added sugar (31). <p>References</p> <ol style="list-style-type: none"> 3. Hein JW, Pramod SM, Gertrude AQ (1961) Changes in plaque pH following gum chewing and tooth brushing, Journal of Dental Research 40:313 4. Shannon IL, Frome WJ (1973) Enhancement of Salivary Flow Rate and Buffering Capacity, Journal of Canadian Dental Association 3:77-181

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