

**Grains & Legumes Nutrition Council Ltd
(Formerly Go Grains Health & Nutrition)**

Submission

Proposal P293 Nutrition, Health and Related Claims

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PREFACE

This submission has been prepared by Grains & Legumes Nutrition Council Ltd (GLNC), an independent voice for grains and legumes in health and nutrition. GLNC is an organisation that links the Australian grains and legumes industry value chain from grain growers to food manufacturers, providing scientifically-based evidence about the role of grains and legumes in health and nutrition, to develop resources to support health promotion and education.

GGHN members are:

- Grains Research and Development Corporation
- GrainGrowers
- Bakers Delight
- Campbell Arnott's
- CSIRO Food Futures Flagship
- George Weston Foods Baking Division
- Goodman Fielder
- Kellogg Australia
- Kurrajong Kitchens
- Nestle / Cereal Partners Worldwide
- Sanitarium
- SunRice
- Ward McKenzie
- Heinz Australia

Associates:

- Australian Food & Grocery Council
- Pulse Australia
- Healthgrain Forum

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EXECUTIVE SUMMARY

Grains & Legumes Nutrition Council Ltd (GLNC) supports the development of a standard for Nutrition, Health and Related Claims, however we are concerned **the revised standard is more restrictive** than the previous standards. GLNC **does not support** the proposal to bring all health claims into one group of pre approved health claims. This restriction poses concerns to grain and legume manufacturers and marketers, such as, limiting future innovation and the need to alter well established consumer messages in relation to their brands and foods.

GLNC is also concerned that Fat-Free and % Fat-Free Claims have been included for comment without providing supporting evidence.

PART I – DRAFT STANDARD 1.2.7 – NUTRITION, HEALTH AND RELATED CLAIMS

GLNC strongly recommends the following amendments be made to ensure the draft of Standard 1.2.7 reflects the regulatory intent and provides clarity, enforceability and user-friendliness:

- FSANZ accepts health claims from an expanded set of authoritative sources in addition to EU, such as the US FDA, Health Canada and Australian Dietary Guideline Evidence Statements and the underlying systematic review of evidence, to ensure the regulatory intent of the Standard is realised
- The definition of a nutrition content claim in the Interpretations be expanded to include the words *certain substances – a claim about the presence and absence of certain substances* to ensure clarity
- The reference to a *property of food* in Division 1 Clause 12 be replaced with *certain substances* to ensure clarity
- The conditions for Endorsements are clearly stated for clarity and enforceability
- The meaning of the qualifying wording in Endorsements be clarified for enforceability
- Special health effect for dietary fibre be modified to offer alternate wording to laxation, and be expanded to ensure the Standard is user-friendly and delivers regulatory intent
- The list of foods included in Schedule 2 Conditions for permitted health claims Part 4 – Foods, be expanded to include wholegrain foods and legumes based on evidence from a cross section of authoritative sources to ensure the regulatory intent of the Standard is realised
- Food category specific criterion be developed and implemented in the Nutrient Profiling Scoring Criterion to ensure the regulatory intent of the Standard is realised

GLNC recommends the following amendments be made to ensure the draft of Standard 1.2.7 is user-friendly:

- The process for a high level claim variation is outlined in the Standard for user-friendliness
- Transition provision be increased from 2 years to 4 years for user-friendliness

SUMMARY OF RECOMMENDATIONS IN RELATION to FAT-FREE AND %FAT-FREE CLAIMS

GLNC Recommends:

- FSANZ investigate fat-free and % fat-free through formal processes with a separate proposal to examine the issue in its entirety

GLNC supports:

- Voluntary action through Code of Practice on Nutrient Claims in Food Labels and in Advertisements.

INTRODUCTION

Grains & Legumes Nutrition Council Ltd (GLNC) welcomes the opportunity to make a submission to Proposal P293 - Nutrition, Health and Related Claims. GLNC acknowledges that FSANZ is undertaking this consultation following direction provided by the COAG Legislative and Governance Forum on Food Regulation (the Forum).

GLNC acknowledges the scope of this paper is confined to responding to key questions raised in Part I and Part II of the Proposal.

Part I - Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Specifically, asking for comment on drafting, any enforceability issues and the level of 'user friendliness'.

Part II - What evidence can you provide that shows that consumers are purchasing foods of a lower nutritional quality because they are being misled by fat-free or % fat free claims? Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat free claims)? Please provide reasons.

Please comment on the possible options for the additional regulatory requirements for fat-free and % fat free claims (option 3) as follows

- a) Which option do you support and why
- b) What is an appropriate sugar concentration threshold for options 3(b) and 3(d)?
- c) Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.

Further to the questions raised, GLNC is concerned that FSANZ has limited its consultation on the revised draft Standard 1.2.7 to specific changes made since its last consultation in March 2009. GLNC proposes the whole standard should be considered to ensure that the underlying principles for assumptions made based on the latest, highest quality evidence. As such, GLNC will respond to the question raised by FSANZ along with providing feedback on other areas.

GLNC does support the development of a standard for Nutrition, Health and Related Claims which will guide government, health professionals, food industry and of course, the consumer. With the recent release of the draft Australian Dietary Guidelines and Australian Guide to Health Eating¹, it is important to note the National Health and Medical Research Council's acknowledgement of the importance of diet in preventing chronic disease.

Diet is arguably the single most important behavioural risk factor that can be improved to have a significant impact on health. As the quality and quantity of foods and drinks consumed has a significant impact on the health and wellbeing of individuals, society and the environment, better nutrition has a huge potential to improve individual and public health and decrease healthcare costs.

Further, the National Preventative Health Strategy² is working to reduce the burden of obesity in Australia by increasing the demand for healthier food products and providing support for people to make healthier choices.

Both the draft Australian Dietary Guidelines and Australian Guide to Health Eating, and National Preventative Health Strategy are formative documents which reinforce the importance of Nutrition, Health and Related Claims in providing Australians with clarity as to food and health relationships.

HIGH LEVEL ISSUES WITH P293 NURTITION, HEALTH & RELATED CLAIMS

GLNC supports the development of a standard for Nutrition, Health and Related Claims, however, we are concerned the revised standard **is more restrictive** than the previous draft standards. This restriction poses concerns to grain and legume manufacturers and marketers, such as, limiting future innovation opportunities and incentives, and the need to alter well established consumer messages in relation to their brands and foods.

GLNC **does not support** the proposal to bring all health claims into one group of pre approved health claims. Pre approval of all health claims would significantly hinder innovation through time taken and cost of the pre approval process.

GLNC recommends FSANZ gives consideration to a health claims framework that is

- **Science based approach to substantiation of nutrition, health and related claims**
- **Enforceable to limit the use of unsubstantiated health claims, and**
- **Consumer focused providing easy to interpret information.**

PART I – DRAFT STANDARD 1.2.7 – NUTRITION, HEALTH AND RELATED CLAIMS

Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? GLNC has responded to this question in terms of clarity, enforceability and ‘user friendliness’.

4. REVISED DRAFT STANDARD 1.2.7

Section 4 Revised draft Standard 1.2.7	Comment
4.2 Pre-approval of general level health claims	<ul style="list-style-type: none">• Recommends FSANZ accepts health claims approved or currently being considered from other authoritative sources in addition to EU• Requests a list of health relationships currently under review by EU be added into the draft standard• Seeks clarity on the process for determining ‘acceptable’ claims

GLNC supports the inclusion of pre approved nutrition claims – health relationships as outlined in Schedule 1 and Schedule 2. GLNC **recommends FSANZ accepts health claims approved or currently being considered in countries that have similar evidence-based systems of review** such as USA, Canada and on the EC register. GLNC recommends that these claims are included in the draft standard to be presented to the Forum so that Australia and New Zealand manufacturer’s can take advantage of the latest science in developing and communicating claims on foods.

For example, the US FDA Modernization Act, 1999, approved health claim for whole grain foods is

"Diets rich in whole grain foods and other plant foods and low in total fat, saturated fat, and cholesterol may reduce the risk of heart disease and some cancers."³

GLNC also **recommends FSANZ acknowledge the health relationships as outlined in the Australian Dietary Guidelines Evidence Statements and underlying review of the evidence**⁴, international dietary guideline evidence statements and recently completed studies or published evidence.

For example in the draft Australian Dietary Guidelines, the evidence statement, *‘Consumption of 1 – 3 serves per day of cereals high in fibre is associated with reduced risk of colorectal cancer in adults’*, presented on high fibre grain foods and colorectal cancer was noted as C grade evidence. Based on GLNC’s critique of a systematic review and dose response meta-analysis of prospective studies (Level III evidence) published in 2011⁵, we believe this evidence would now be evaluated as B grade evidence. As such this would be sufficient evidence for consideration to support a health claim.

FSANZ must consider evidence from these sources when finalising this standard and considering variations to health claims.

The document states *FSANZ proposes to review the health claims that are expected to be approved by the EU and plans to adopt acceptable claims for inclusion as food-health relationships in Standard 1.2.7*. GLNC requests a list of health relationships currently under review by EU, be included as an attachment to the draft standard.

GLNC seeks clarity on the process for determining 'acceptable' claims from authoritative sources, timeframe post approval and the process for communicating the acceptance of these claims. GLNC also seeks clarity on the process for industry to apply for claims, expected timeframe for review and approval of claims and the process for communicating the acceptance or rejection of these claims. GLNC requests FSANZ considers competitive advantage and commercial implications when developing and clarifying the process.

At a minimum, GLNC suggests FSANZ update Schedule 1 and Schedule 2 at two nominated periods each year. This would remove any ambiguity, the burden of the health claim variation process, assist innovation and support enforceability.

PART 1 - PURPOSE AND INTERPRETATION

Clause	Comment
Transitional Provisions	Recommends this be increased to 4 years

GLNC notes that a 2 year transition period is proposed however, **recommends this be increased to 4 years**.

An extended transition period of 4 years will allow for evidence based grain and legume-health relationships that are not yet approved, to be assessed by FSANZ for inclusion within the transition period. This would include work FSANZ foreshadowed concerning the need for existing nutrition, health and related claims to be assessed. This will also allow the grains and legume industry time to compile the appropriate evidence dossiers that will be required to accompany applications for the assessment of claims, along with updating packaging to reflect these changes.

Clause	Comment
Clause 2 Interpretation – Nutrition Content Claim	Strongly recommends definition of a nutrition content claim be expanded to include the words <i>certain substances – a claim about the presence or absence of certain substances</i> -

GLNC **recommends the definition of a nutrition content claim be expanded to include the words *certain substances*** to be consistent with the wording of a nutrition content claim as outlined in Attachment B - Explanatory Information, Clause 2, nutrition content claim. It

states a claim is only nutrition content claim if it refers to the presence or absence of certain substances, as listed in the definition, which is in reference (a) (i) – (xii).

PART 3 – REQUIREMENTS FOR NUTRITION CONTENT CLAIMS AND HEALTH CLAIMS

DIVISION 1 – NUTRITION CONTENT CLAIMS

Clause	Comment
Clause 12 Nutrition content claims about properties of food not in Schedule 1	Strongly recommends reference to a <i>property of food</i> be replaced with <i>certain substances that are not mentioned in Schedule 1</i>

GLNC recommends reference to a ***property of food*** be replaced with ***certain substances, as listed in (i) – (xii) in the definition***, to be consistent with the proposed wording above and wording in Attachment B - Explanatory Information Clause 2, definition of nutrition content claim.

DIVISION 2 – HEALTH CLAIMS

Clause	Comment
Clause 16 New health claims deemed to be high level health claims	Requests clarity to the process for a high level claim variation

GLNC requests clarity to the process for a high level claim variation. Inclusion of an outline of the process to be undertaken to request a variation is essential to the success of this standard. Any process which is cumbersome, time consuming, costly and stifles innovation will not encourage the grains and legume manufacturers and marketers to pursue health claims.

DIVISION 3 - ENDORSEMENTS

Clause	Comment
Clause 21 Endorsements (1) and (2)	<ul style="list-style-type: none">• Strongly recommends the conditions for Endorsements are clearly stated• Requests subclause (1) point (b) <i>be independent of</i> be clarified• Requests subclause (1) point (c) <i>be free from influence</i> be clarified• Requests subclause (2) point (a) <i>financial interest</i> be clarified

GLNC **strongly recommends FSANZ clarifies when the conditions for endorsement would be applied and the meaning of the qualifying wording in Division 3 – Endorsements.** This clarification is essential to user friendliness and enforceability.

GLNC requests FSANZ state in Division 3 – Endorsements, that these conditions apply to nutrition content claims and health claims. This is in addition to the definition of endorsement in Part 1 Clause 2 - Interpretation.

GLNC requests subclause (1) point (b) **be independent of, point (c) be free from influence, be clarified** to support enforceability. Does the reference to *supplier of food* refer only to a food manufacturer or marketer or more broadly across a value chain to groups such as an organisation representing the interests of grain growers, for example? With a science based approach to substantiation of nutrition and health claims, there is a need to seek input from a cross section of parties and would be limited as to the extent of influence.

GLNC requests subclause (2) point (a) **financial interest be clarified** to support enforceability. To assist clarity of meaning, GLNC proposes inclusion of the wording or words to this effect, *has a financial interest, such as, realising a financial return or profit from its interest in the endorsing body.* This would avoid any ambiguity as to financial interest, such as a contribution to a research organisation from a food manufacturer or marketer.

SCHEDULE 2 – CONDITIONS FOR PERMITTED HEALTH CLAIMS PART 3 – OTHER

Clause	Comment
Dietary Fibre	Recommends the wording of the specific health effect be modified and the specific health effect be expanded

GLNC strongly recommends the specific health effect for dietary fibre **include alternate wording** such as ***maintains a healthy digestive system***, to support user-friendliness.

GLNC also strongly recommends the specific health effect for dietary fibre **be expanded** in light of recently published evidence and the evidence presented in the draft Australian Dietary Guidelines. An evidence statement to be considered

- “Consumption of 1-3 serves per day of cereals high in fibre is associated with reduced risk of colorectal cancer in adults.”

Health claims from other authoritative sources that also support expansion of the health effect of dietary fibre, include

- “Low fat diets rich in fiber-containing grain products, fruits, and vegetables may reduce the risk of some types of cancer, a disease associated with many factors.”³
(US FDA approved claim)

- “Low fat diets rich in fiber-containing grain products, fruits, and vegetables may reduce the risk of some types of cancer, a disease associated with many factors.”³ (US FDA approved claim)
- “Diets low in saturated fat and cholesterol and rich in fruits, vegetables, and grain products that contain some types of dietary fiber, particularly soluble fiber, may reduce the risk of heart disease, a disease associated with many factors.”³ (US FDA approved claim)
- ‘Replacing digestible starch with resistant starch induces a lower blood glucose rise after a meal’⁶ (EFSA approved claim)
- “Consumption of arabinoxylan contributes to a reduction of the glucose rise after a meal”⁷ (EFSA approved claim)
- “Rye fibre contributes to normal bowel function”⁸ (EFSA approved claim)

SCHEDULE 2 – CONDITIONS FOR PERMITTED HEALTH CLAIMS PART 4 – FOODS

Clause	Comment
	Strongly recommends the list of Foods be expanded to include wholegrain foods and legumes

GLNC strongly recommends the *specific health effect* be expanded to include wholegrain foods and legumes in light of recently published evidence and the Australian Dietary Guidelines Evidence Statements and underlying review of the evidence. Evidence statements to be considered

- Consumption of cereal foods (especially wholegrains and those with fibre from oats or barley) is associated with a reduced risk of cardiovascular disease in adults
- Consumption of 1-3 serves per day of wholegrain cereals is associated with a reduced risk of cardiovascular disease
- Consumption of 3-5 serves per day of cereal foods (mainly wholegrain) is associated with a reduced risk of weight gain
- Consumption of cereal foods (especially 3 serves a day of wholegrains) is associated with reduced risk of type 2 diabetes
- Consumption of soy foods is associated with reduced total cholesterol and LDL-cholesterol.
- Consumption of legume foods is associated with reduced risk of colorectal cancer.

Context claim statements for both wholegrain foods and legumes would need to be established.

For wholegrain foods, the following could be considered

- A diet containing a high amount of wholegrain foods – at least half your intake of grain foods be wholegrain foods

For legumes, the following could be considered

- A diet high in legumes – at least 4 serves of legumes a week

Conditions for both wholegrain foods and legumes would need to be established. For wholegrain foods, the following could be considered

- A serving of the food contains **at least 16g wholegrains**, representing one third of the WGDTI (48g) for older children (9+ years), teenagers and adults. Three serves of the recommended 6 grain foods per day would then supply the 48g WGDTI.
- Grain-based foods that contain 25% wholegrain. The evidence base for the health effects of wholegrains predominantly defines wholegrain food as grain-based foods containing 25% wholegrain.

SCHEDULE 3 – NUTRIENT PROFILING SCORING CRITERION

Clause	Comment
Schedule 3	recommends food category specific criterion be developed and implemented

Category 2 – any food other than those included in Category 1 or 3 is an extremely broad category. GLNC **recommends food category specific criterion be developed** and implemented in line with the food groups as defined in the draft Australian Dietary Guidelines, Australian Guide to Healthy Eating or adopted from other authoritative sources such as the widely recognised Heart Foundation Tick Program. In the case of grain-based foods, what may be relevant for bread would not necessarily be relevant for breakfast cereals, rice or pasta.

SCHEDULE 4 – NUTRIENT PROFILING SCORING METHOD

Clause	Comment
Schedule 4 Clause 2 Baseline points for Category 1 or 2 foods	Determination of baseline points must be on a per serve basis and not on a 100g basis

Clause 2 Baseline points for Category 1 or 2 foods

Determination of baseline points on a 100g basis is unrealistic as this is not what a consumer eats per serve. In the case of breakfast cereal, the Australian Guide to Health Eating recommends one serve of breakfast cereal to be 1 1/3 cup of cereal of approximately 65g. Added to this, is the situation where the breakfast cereal may have added fruit or nuts, the cereal would be penalised for a higher level of total sugar or saturated fats per 100g. This is inconsistent with the draft Australian Dietary Guidelines which is telling us to eat a wide

variety of foods including fruit and nuts. The same rationale applies for serving sizes that are greater than 100g.

PART II – FAT-FREE AND %FAT-FREE CLAIMS

GLNC does not support the inclusions of fat-free and % fat-free claims to Proposal P293 and Standard 1.2.7, noting that this is a deviation from FSANZ own processes to include it within P293. GLNC encourages FSANZ to investigate the matter through formal processes with a separate proposal to examine the issue in its entirety. GLNC questions the evidence FSANZ has referenced to lead them to believe consumers are being misled.

What evidence can you provide that shows that consumers are purchasing foods of a lower nutritional quality because they are being misled by fat-free or % fat free claims?

GLNC is not aware of any evidence that consumers are being misled in relation to fat-free and % fat-free claims, noting that the Competition and Consumer Act 2010⁹ provides consumers with protection from misleading and deceptive labelling, covering this area.

Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat free claims)? Please provide reasons.

GLNC is concerned that options are provided without a risk assessment being undertaken to assess all the available evidence and demonstrate further regulation is required. GLNC recommends a proposal to assess all the available evidence and develop recommendations based on the evidence, be prepared.

GLNC supports voluntary action through the Code of Practice on Nutrient Claims in Food Labels and in Advertisements¹⁰, where Fat-Free and % Fat-Free Claims are permitted based on fat composition.

Please comment on the possible options for the additional regulatory requirements for fat-free and % fat free claims (option 3) as follows

- d) Which option do you support and why***
- e) What is an appropriate sugar concentration threshold for options 3(b) and 3(d)?***
- f) Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.***

Given the lack of assessment in this area, GLNC does not believe it is appropriate to respond to this question.

REFERENCES

1. National Health and Medical Research Council. Australian Dietary Guidelines Incorporating the Australian Guide to Healthy Eating. Draft for Public Consultation. 2011, Commonwealth of Australia: Canberra
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