Public Health Association
AUSTRALIA

Submission to
Food Standards Australia New Zealand
on
draft nutrition, health and related claims standard

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Introduction

The Public Health Association of Australia Incorporated (PHAA) is recognised as the principal non-government organisation for public health in Australia and works to promote the health and well-being of all Australians. The Association seeks better population health outcomes based on prevention, the social determinants of health and equity principles.

Public Health

Public health includes, but goes beyond the treatment of individuals to encompass health promotion, prevention of disease and disability, recovery and rehabilitation, and disability support. This framework, together with attention to the social, economic and environmental determinants of health, provides particular relevance to, and expertly informs the Association's role.

The Public Health Association of Australia

PHAA is a national organisation comprising around 1900 individual members and representing over 40 professional groups concerned with the promotion of health at a population level.
Key roles of the organisation include capacity building, advocacy and the development of policy. Core to our work is an evidence base drawn from a wide range of members working in public health practice, research, administration and related fields who volunteer their time to inform policy, support advocacy and assist in capacity building within the sector. PHAA has been a key proponent of a preventive approach for better population health outcomes championing such policies and providing strong support for the Government and for the Preventative Health Taskforce and National Health and Medical Research Council (NHMRC) in their efforts to develop and strengthen research and actions in this area across Australia.

PHAA has Branches in every State and Territory and a wide range of Special Interest Groups. The Branches work with the National Office in providing policy advice, in organising seminars and public events and in mentoring public health professionals. This work is based on the agreed policies of the PHAA. Our Special Interest Groups provide specific expertise, peer review and professionalism in assisting the National Organisation to respond to issues and challenges as well as a close involvement in the development of policies. In addition to these groups the Australian and New Zealand Journal of Public Health (ANZJPH) draws on individuals from within PHAA who provide editorial advice, and review and edit the Journal.

Advocacy and capacity building

In recent years PHAA has further developed its role in advocacy to achieve the best possible health outcomes for the community, both through working with all levels of Government and agencies, and promoting key policies and advocacy goals through the media, public events and other means. The PHAA believes that that appropriate food regulation is a key component to achieve public health.

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Recommendations

1: PHAA recommends that Health Claims on Food Labels are not introduced as food regulation in Standard 1.2.7- Nutrition, Health and Related Claims
(Although this is our preferred position we have made the following recommendations in our preferred position is not adopted.)

2: PHAA supports the re-drafting of Standard 1.2.7 and believes that it accurately captures the regulatory intents subject to the comments below in relation to specific clauses

3: PHAA is keen for the new standard to be approved and implemented without delay, subject to recommended changes, so that misleading claims can be dealt with accordingly

4: PHAA notes a number of issues in Standard 1.7.2 in the table below that require further clarity

4.1: Food Categorisation needs to be consistent to avoid confusion

4.2: Include both infant formula and foods for infants

4.3: Nutrition content claims should only be permitted on foods that meet the NPSC, since there is evidence that consumers do not understand the differences between claim types and that these types of claims increase perceived overall healthiness of foods

4.4: PHAA believes energy is a completely inappropriate claim to be promoting given the current epidemic of chronic disease in Australia and New Zealand

4.5 If an Energy claim is to be included, further consideration needs to be given to how fresh, minimally processed fruit and vegetables could be exempted from this minimum requirement.

4.6: It would be appropriate to consider the potential for these claims via the claims substantiation process

4.7: PHAA does not support the omission of the words "Your daily intakes may be higher or lower depending upon your energy needs". It is important that people realise that their own energy needs may differ for a number of reasons and to ensure consumers don't assume that they need to consume this much energy. This amendment is not considered consequential to the introduction of Standard 1.2.7 and, as such, should not be considered here.

4.8: PHAA would strongly recommend that consideration of this amendment be left until the review, currently being led by the Legislative and Governance Forum on Food Regulation to develop a uniform, interpretive front of pack labelling system, has been completed

4.9: If this permission for percentage daily intake information is accepted into the new standard, there is also a requirement for all the nutrients required on the NIP should be included on the front of pack rather than just a selection chosen by the manufacturer

4.10: PHAA does not agree the omission of cause-related marketing provides adequate protection against consumer deception and confusion

5: PHAA urges FSANZ to adopt the precautionary approach and act to limit the potential for harm associated with the way the Australian population view health claims

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6: PHAA therefore support modified Option 3 (regulate with additional regulatory requirements for fat-free and % fat free claims) but extend to all nutrition content claims or at least extend to low fat claims since both % fat free and low fat have the same nutritional criteria

7: The PHAA supports modified option 3(a), that fat-free and %fat-free claims and all other nutrition content claims should only be permitted on foods that meet the NPSC

8: PHAA does not support the use of a disclosure statement, nor does it support this only in relation to sugar concentration

9: PHAA does not support this option due to the difficulties in categorising foods and the potential to only focus on foods high in sugar or energy rather than all foods not meeting the NPSC.

10: PHAA does not support restricting fat free and % fat free claims on the basis of sugar content only, as this overlooks the other nutritional qualities of foods, such as sodium, energy, fibre, etc

11: PHAA does not support a sugar concentration threshold, options 3(b) and 3(D) however, if a threshold were to be applied, we would argue that the appropriate threshold should be that which is consistent with the NPSC and with the criteria for low sugar content claims

12: PHAA would only support modified option 3a for additional regulatory requirements but would urge FSANZ to at least extend this to low fat claims, as a minimum, but preferably to all nutrition content claims as well

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PHAA's Opposition to Health Claims

In accordance with our current Policy Statement on Health Claims, we remain **strongly opposed** to their introduction. PHAA maintains that health claims on food labels are inconsistent with our fundamental public health principles. PHAA is also opposed as there is no evidence that they either inform the Australian population (or any other population), lead to improved food choices and improve public health [1,2,3,4,5]. Please find attached our policy on Health Claims on Food, which was first adopted in 1998. (Attachment 1: PHAA's Health Claims Policy).

Recommendation 1: PHAA recommends that Health Claims on Food Labels are not introduced as food regulation in Standard 1.2.7- Nutrition, Health and Related Claims.
(Although this is our preferred position we have made the following recommendations in our preferred position is not adopted.)

Summary of PHAA comments on the draft

In general, the PHAA supports the revised drafting of Standard 1.2.7 and believes it captures the regulatory intent. Despite still being a lengthy and complex standard, the clarity has improved, making it easier to comply with and enforce.

PHAA is very satisfied that all health claims will be pre-approved by FSANZ and that all foods carrying health claims will be required to fulfil the nutrient profiling scoring criteria (NPSC).

In relation to fat-free and % fat-free claims, PHAA supports Modified Option 3, that fat-free and % fat-free claims be regulated with additional regulatory requirements. It also recommends that "low-fat" claims be regulated in this manner as well as all other nutrition content claims. Within option 3, PHAA supports modified option 3(a), that fat-free and % fat-free claims and all other nutrition content claims should only be permitted on foods that meet the NPSC.

PHAA questions why % fat-free claims are the only nutrition content claims singled out for their potential to mislead consumers. The PHAA strongly urges that all foods and beverages carrying nutrition content claims be required to meet the NPSC, since there is evidence that they are viewed by consumers as being similar to health claims and have potential to mislead.

PHAA is concerned that specific re-drafting of Standard 1.2.8 regarding permissions for percentage daily intake declarations, which are not consequential to the introduction of standard 1.2.7, is unnecessary and may result in consumers being further mislead. This is particularly important given the recent Legislative and Governance Forum directive to develop a uniform front of pack labelling system.

The removal of conditions for cause-related marketing is also of concern as there is potential for this type of marketing to link a health-related cause with a particular food and that this could be interpreted as a health claim.

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Specific Responses to Submission

Drafting and intent

Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of 'user-friendliness'.

Recommendation 2: PHAA supports the re-drafting of Standard 1.2.7 and believes that it accurately captures the regulatory intents subject to the comments below in relation to specific clauses.

Standard 1.2.7 has become more user-friendly due to increased clarity and it will enable more streamlined and efficient enforceability, both within and between jurisdictions. PHAA congratulates FSANZ on the extent and quality of the work that has resulted in this new draft.

Recommendation 3: PHAA is keen for the new standard to be approved and implemented without delay, subject to recommended changes, so that misleading claims can be dealt with accordingly.

If not, please provide specific details in the table below. Ensure that the relevant clause number, schedule number or consequential variation item number that you are commenting on is clearly identified in the left column. Lines may be added if necessary.

Recommendation 4: PHAA notes a number of issues in Standard 1.7.2 in the table below that require further clarity.

Clause Number	Comments
2	**Food Group Interpretation** **Recommendation 4.1: Food Categorisation needs to be consistent to avoid confusion.** Nuts and seeds are not included in any of the food group coverage. In keeping with the Australian Guide to Healthy Eating, they could be added to d) meat, fish, eggs and dried legumes, however this is not consistent with the NPSC where nuts and seeds are considered in the fruit and vegetable category and are eligible for V points. **Fruit Interpretation** The current definition of fruit is not sufficiently clear and would recommend that specific reference to the exclusion of fruit juice concentrates and de-ionised fruit juice (used in roll-ups and similar products) be made.

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3	**Ineligible foods** **<u>Recommendation 4.2:</u> Include both infant formula and foods for infants.** The only infant related foods identified as ineligible foods are infant formula products, however PHAA would like to re-iterate that all foods covered in standards 2.9.1, 2.9.2, and 2.9.3 should be considered ineligible foods, particularly in relation to health claims. The Ministerial Council Policy Guideline on Nutrition, Health and Related Claims, specifically makes reference to "infant foods" when suggesting categories of foods to be excluded from making health claims.
11	**Nutrition Content Claims** **<u>Recommendation 4.3:</u> Nutrition content claims should only be permitted on foods that meet the NPSC, since there is evidence that consumers do not understand the differences between claim types and that these types of claims increase perceived overall healthiness of foods** [6-10]**.** The Australian population can therefore be misled, where nutrition content claims are displayed on foods with poor nutritional profiles. PHAA is concerned that where foods, once displaying nutrition function claims (now considered health claims), do not meet the NPSC, manufacturers will revert to the use of nutrition content claims to market their products and avoid nutritional scoring. This will create even more confusion for consumers and will potentially lead to added enforceability burdens. Evidence relating to consumer perceptions of nutrition content claims will be elaborated on below in the response to Part II.
Schedule	**Comments**
2	**Part 3 – Other** **Energy** There is a requirement for a minimum energy content per serve – there is no indication why this minimum was selected and there is concern that this type of claim perpetuates the confusion that consumers have with the concept of energy as in "vitality" versus energy as in kilojoules. Additionally there are no standardised serve sizes and this may be lead to manipulation to meet requirements. Whilst it is acknowledged that a minimum content of energy is required to protect against false claims, the requirement also rules out use of this claim on most fruits and vegetables (except dried fruits and vegetables prepared with additional fats – which would be likely not to meet the NPSC). It is possible then to add to confusion about "energy" consumption and potentially sends the wrong message to a majority overweight and obese population or those trying to maintain normal weight status. **<u>Recommendation 4.4:</u> PHAA believes energy is a completely inappropriate claim to be promoting given the current epidemic of chronic disease in Australia and New Zealand.**

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	<u>Recommendation 4.5:</u> If an Energy claim is to be included, further consideration needs to be given to how fresh, minimally processed fruit and vegetables could be exempted from this minimum requirement. **Part 4 - Foods** **Fruits and Vegetables** The claims relating to fruits and vegetables only relate to heart health and reduced risk of coronary heart disease. Since the release of the Draft Dietary Guidelines for Australians, it is apparent that evidence exists for reduced risk of stroke, obesity and weight gain and oral and nasopharyngeal cancer. **Sugar** FSANZ needs to clarify the statement that sugar contributes to dental health could infer a positive relationship when in fact the evidence is for an inverse relationship. **<u>Recommendation 4.6:</u> It would be appropriate to consider the potential for these claims via the claims substantiation process.**
Consequential variations	**Comments**
7(2) [Standard 1.2.8]	The proposed variation to subclause 7(2) modifies the statement required to accompany percentage daily intake information included in a panel. The statement currently prescribed is "'*Percentage daily intakes are based on an average adult diet of 8700 kJ. Your daily intakes may be higher or lower depending upon your energy needs." The proposed variation provides that either of the following statements must be included – "based on an average adult diet of 8700KJ" or "Percentage daily intakes are based on an average adult diet of 8700KJ". **<u>Recommendation 4.7:</u> PHAA does not support the omission of the words "Your daily intakes may be higher or lower depending upon your energy needs". It is important that people realise that their own energy needs may differ for a number of reasons and to ensure consumers don't assume that they need to consume this much energy. This amendment is not considered consequential to the introduction of Standard 1.2.7 and, as such, should not be considered here.**
7B	**<u>Recommendation 4.8</u>: PHAA would strongly recommend that consideration of this amendment be left until the review, currently being led by the Legislative and Governance Forum on Food Regulation to develop a uniform, interpretive front of pack labelling system, has been completed.** The new section 7B sets out requirements if percentage daily intake information is to be declared outside the nutrition information panel. It provides that this information may be declared outside the nutrition information panel if the serving

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	size is presented together with that information, and if this information is presented together. Currently, Standard 1.2.8 only prescribes requirements for percentage daily intake information in panels, and associated reference values. It does not deal with the use of this information outside the panel. It would appear that FSANZ is specifically amending this clause to allow for the AFGC Daily Intake Guide scheme to continue to be used and that, as such, it is not consequential to the introduction of standard 1.2.7, and has not been previously consulted about. The Food Labelling Law and Policy Review's expert panel, and the Ministerial Council's response to the expert panel's report, noted this system is confusing for consumers. It does not provide interpretive guidance about the healthiness of products, is not based on current recommended nutrient intakes, may be misleading when used on children's products, and may encourage people to aim to reach (rather than stay below) 'recommended' intake levels for unhealthy nutrients (e.g. sodium, saturated fat and sugar) and energy. **<u>Recommendation 4.9:</u> If this permission for percentage daily intake information is accepted into the new standard, there is also a requirement for all the nutrients required on the NIP should be included on the front of pack rather than just a selection chosen by the** manufacturer.
Omissions from previous drafts	**Cause-related marketing** **<u>Recommendation 4.10:</u> PHAA does not agree the omission of cause-related marketing provides adequate protection against consumer deception and confusion.** The previous draft required that a disclaimer be provided with a cause-related marketing statement (that was also a nutrition content or health claim). The new draft no longer makes reference to cause-related marketing, suggesting that if this type of marketing is also a nutrition content or health claim, then it will be regulated by the standard and that any misleading statements can potentially be dealt with through consumer law. It is possible to conceive of cause related marketing as being neither a nutrition content claim or a health claim but where a link could be made between the food and health, for example, "*Proceeds from the sale of this product will be donated to the McGrath Foundation or The Royal Children's Hospital Easter Appeal.* Neither of these causes has a disease mentioned in the name of the fund but many consumers could make the link to health. Exclusion of this clause has the potential to perpetuate unregulated and unsubstantiated health claims. We would therefore recommend that cause-related marketing be regulated and not simply left to consumer protection laws.

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Part II – Fat free and % fat free claims

Evidence consumers are misled

What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims? FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance. (Note: Please provide documented or validated evidence where possible)

In considering the literature relating to nutrition content claims, it is clear that a range of claims, not only fat free and % fat free claims can mislead consumers. We commend FSANZ for commissioning a literature review on the available evidence in relation to fat-free and % fat-free claims. We would suggest that this be strengthened to cover all nutrition content claims and we hope that the review will be made available to submitters and the public in due course.

As highlighted in the discussion paper, fat-free and % fat-free claims are made on a significant number of products in Australia, and across a range of product categories. Of all nutrition content claims on food, fat related claims are amongst the most prevalent [(9)]. FSANZ's own consumer survey indicates that fat content is the second most commonly referred to information on food labels [(11)]. There is certainly considerable interest by consumers and this interest corresponds with the number and type of claims used.

However, there is evidence that consumers also misinterpret such claims and attach a meaning and positive bias to foods displaying the claims that is beyond the scope of the claim made. Consumers can perceive these foods as being nutritious and healthy overall [(6-10)].

A recent study by the US General Accountability Office concluded that consumers have difficulty distinguishing among the many different types of claims on food labels, including health claims, qualified health claims, structure/function claims, and nutrient content claims and thus consumers are not able to properly make informed food choices without being potentially misled or deceived [(9)].

In a study on how participants interpreted health messages on food labels, Chung-Tung found that even when respondents were well acquainted with the nutrient or diet-disease relationship, there was no difference in how strongly respondents believed in the stated health benefit, regardless of whether the claim was a health, structure/function, or nutrient content claim [(12)] . Drewnowski found that consumer perception of healthiness of food was related to the presence of protein, fibre, calcium and vitamin C and by the declaration of absence of saturated fat and sodium. In a study of parent's perceptions of claims on children's cereals [(13)], Harris et al found that the majority of parents misinterpreted the meaning of claims by inferring that cereals with claims were more nutritious overall and might provide specific health-related benefits for their children [(14)]. They also found that the perception of healthiness afforded by claims predicted greater willingness to buy the cereals.

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Claims on foods can influence propensity to buy and consume food. Wansink and Chandon have shown that low fat labels increase food intake overall, but in particular increase snack food intake by up to 50% during a single consumption occasion, thereby significantly increasing energy, fat, sugar and/or salt intakes [15]. This then contributes to the chronic disease epidemic and significantly outweighs any cost to industry.

Producing further evidence for the effects of claims on food purchasing behaviours is somewhat problematic as there is not an extensive literature in the field. However, there is general agreement that implementing measures to protect consumers from harm, such as development of obesity, heart disease etc, should not be delayed because there is not sufficient, convincing evidence [17]. It would appear that consumers strongly support governments using their regulatory powers. A national survey conducted by Cancer Council Victoria in 2010 found that 89% of consumers were in favour of government introducing regulations to stop food companies promoting healthy aspects of foods that are overall unhealthy.

Recommendation 5: PHAA urges FSANZ to adopt the precautionary approach and act to limit the potential for harm associated with the way the Australian population view health claims.

Which option is supported

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 give your reasons.

Recommendation 6: PHAA therefore support modified Option 3 (regulate with additional regulatory requirements for fat-free and % fat free claims) but extend to all nutrition content claims or at least extend to low fat claims since both % fat free and low fat have the same nutritional criteria.

Whilst the PHAA can understand to some extent the emphasis that FSANZ is placing on dealing with fat free and % fat free claims, we believe that such a distinction between nutrition content claims has potential to create even more consumer confusion. If similar types of claims are treated differently, it introduces inconsistencies within the food standards code and it does not take into account a range of other nutrition content claims that are similarly used on foods of low nutritional value that would not meet nutritional scoring criteria. We would therefore urge FSANZ to consider additional regulatory requirements for all nutrition content claims.

PHAA does not support either option 1 or option 2 since maintaining the status quo does not deal adequately with concerns about misleading consumers, an education program is unlikely to inform and protect all consumers adequately, particularly those most in need of dietary change, and will be expensive to conduct and maintain, and a voluntary code of practice has failed to properly regulate claims.[4] In drafting standard 1.2.7, there is recognition that a comprehensive standard that considers all aspects of claims on foods is the best approach to ensure conformity and enforceability.

We also note that fat free claims are not specifically addressed in schedule 2 of draft standard 1.2.7 and that the provisions of consumer protection laws are to be relied upon to ensure their

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appropriate use. We have concerns about the capacity of the commissions who regulate consumer law in terms of their interpretations of the law and in terms of their resourcing to deal with breaches. We are also unsure as to why there are specific descriptors for "saturated fatty acid free" and "trans fatty acid free" in schedule 2. This is surely inconsistent with the treatment of fat free claims.

Additional regulatory requirements

Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) (refer section 8) as follows:

a. Which option do you support and why?

Recommendation 7: The PHAA supports modified option 3(a), that fat-free and %fat-free claims and all other nutrition content claims should only be permitted on foods that meet the NPSC.

We do however, suggest that dealing with only fat free and % fat free claims in this way will create inconsistencies within the code and will not address a range of other claims that are used to promote foods of poor nutritional quality. We reiterate that all foods displaying nutrition content claims should be subject to the NPSC.

Option 3b: require a disclosure statement if above a sugar concentration threshold

Recommendation 8: PHAA does not support the use of a disclosure statement, nor does it support this only in relation to sugar concentration.

As FSANZ shows in their preliminary research about the nutrients of concern in relation to fat free and % fat free claims – it is not only sugar that needs to be considered, but sodium concentration as well since this was found to be a disqualifier for more food categories than sugar concentration. It is possible to find numerous examples of the use of nutrition content claims other than fat free and % fat free that are displayed on foods/beverages with either high quantities of sugar and/or sodium, low in fibre and vitamins and minerals, or even high alcohol. For example, consider the following foods/beverages:

- Milo Cereal, makes content claims about wholegrains, fibre, vitamins and minerals, but contains almost 30% sugar;
- Baked Oaty Slices, which again make content claims about wholegrains and fibre, but are high in fat (> 50%), saturated fat (20%) and sugar (17%);
- Nutri-grain, this "iron-man food" makes content claims about protein, calcium and "carbs", but is low in fibre (2.7%), and high in sugar (>30%) and salt (>200mg/100g); and
- Natural Blonde beer, which makes a 'low carb' claim, but is high in alcohol (4.2% ABV).

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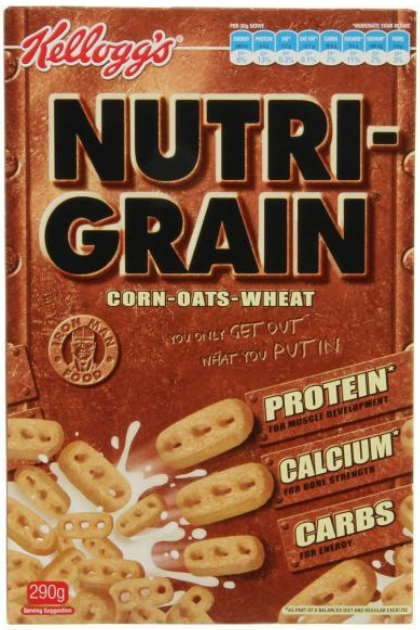

Per serve	kJ	Prot	Fat	Sat Fat	CHO	Sugars	Sodium	Fibre
Milo Cereal (30g)	500	3g	1.7g	0.69g	22g	8.9g	37.5mg	2g
Oaty Slices (40g)	760	4.3g	10.8g	4.2g	17.8g	8.2g	58mg	2.0
Nutri-grain (30g)	480	6.6g	0.2g	<0.1g	20.8g	9.6g	168mg	0.8g
Low carb beer (355ml)	412	0.7g	<0.1g	<0.1g	3.5g	0.24g	25mg	N/A

Use of the existing NPSC would be encouraged to maintain consistency with other claims.

In addition, disclosure statements have been found not to be effective in communicating clearly to consumers.[12] Therefore PHAA recommends the use of the NPSC for all nutrition content claims in order to maintain consistency.

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Option 3c Not permit claims on certain products by category

Recommendation 9: PHAA does not support this option due to the difficulties in categorising foods and the potential to only focus on foods high in sugar or energy rather than all foods not meeting the NPSC.

Option 3c Not permit claims on foods above a sugar concentration

Recommendation 10: PHAA does not support restricting fat free and % fat free claims on the basis of sugar content only, as this overlooks the other nutritional qualities of foods, such as sodium, energy, fibre, etc.

What is an appropriate sugar concentration threshold for options 3(b) and 3(d)?

Recommendation 11: PHAA does not support a sugar concentration threshold, options 3(b) and 3(D) however, if a threshold were to be applied, we would argue that the appropriate threshold should be that which is consistent with the NPSC and with the criteria for low sugar content claims.

Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims?

Recommendation 12: PHAA would only support modified option 3a for additional regulatory requirements but would urge FSANZ to at least extend this to low fat claims, as a minimum, but preferably to all nutrition content claims as well.

Summary

PHAA reiterates that it **strong opposes** health claims on food labels.

PHAA's strongly supports and argues that resources should be directed to labelling components that are used by the population and will improve public health such as nutrition claims, ingredients lists, nutrition information panels and an interpretative front of pack labelling scheme. The Australian population wants simple and reliable information on food labels, for example the introduction of an interpretative front-of-pack labelling system such as traffic lights [(18).]

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Attachment 1

PHAA's Health Claims on Food Policy

In considering this policy statement it should be noted that the following definition of public health should be applied when considering food regulatory options:

'The organised response by society to protect and promote health, and to prevent illness, injury and disability.'

The starting point for identifying public health issues, problems and priorities, and for designing and implementing interventions, is the population as a whole, or population sub-groups.

The Public Health Association of Australia notes the following:

1. Fundamental public health nutrition principles include:
   - The reduction in risk for disease is affected by the total diet and lifestyle pattern, not by use of an individual food;
   - Most individual foods by themselves do not prevent or cause a disease;
   - All chronic diseases in which diet has been implicated to play a causative and/or preventative role and for which labelling and advertising claims could be anticipated, are multi-factorial in nature as to the aetiology and progression;
   - The precise role of diet for many such diseases remains to be fully understood; and
   - The role of diet for each individual can be variable because of individual differences in hereditary and life-style factors.[1]

2. Historically, food regulation policy based on prohibiting health claims was introduced in Australia and New Zealand in response to some food manufacturers' marketing abuses. The prohibition policy has effectively prevented many food marketing abuses that attempted to unscientifically promote individual food products or ingredients as having disease prevention and/or health promoting properties. Thus the prohibition has helped serve to protect public health in Australia and New Zealand since the early 1900s. The removal of this general prohibition puts at risk the secure foundation for protecting public health and safety afforded by this important public health policy.

   The Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) requested in July 2001, a policy on health and related claims be developed to guide the setting of food regulations in this area. The policy was agreed to in 2003, although a further vote was required regarding biomarker claims in 2004.[2,3] The policy established a risk based classification scheme for claims on foods that considered the degree of promise to consumers in following the advice of the claim.

   After approving the policy, the ANZFRMC directed Food Standards Australia New Zealand (FSANZ) to develop a standard to regulate nutrition, health and related claims. In 2007, FSANZ released a Preliminary Final Assessment Report for public comment (Food Standards Australia New Zealand, 2007, *Preliminary Final Assessment Report, Proposal P293: Nutrition, Health and Related Claims*, FSANZ, Canberra). The ANZFRMC requested a review of the final assessment report and not long after requested a review of all food labeling which resulted in delay of the finalization of P293. It is anticipated Food Standard 1.2.7 – Nutrition, Health and Related Claims will be decided on by ANZFRMC and included into the Food Standards Code in 2012.

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3. Lack of consistency in interpretation and enforcement of regulations on labelling of foods, especially health and related claims, is a continuing problem. Despite their prohibition, many claims have been used in the market place since the policy was agreed to, [4] with little or no enforcement because the jurisdictions were anticipating the finalisation of the standard.

4. Health claims are a vexatious and divisive public health policy issue. Broader public health nutrition policy currently does not provide guidance as to the role of claims on foods to support the provision of information or education regarding priority public health nutrition issues. Public debate has been absent regarding the role of such claims on food labels – whether they are primarily supporting food marketing perspectives; their role in public health education; the benefits or dangers of using health related claims to promote specific brands of foods or food items versus a whole of diet approach.

5. Regulations are of little value in the absence of well funded, effective and consistent enforcement by enforcement officers who have been trained for the task.

6. Many large food companies are prepared to undertake the risk of receiving a disproportionately small fine to achieve the marketing gains of implementing aggressive marketing strategies that include health claims.

7. The decision to proceed with some form of health claims on food will have a major impact on the food supply, the food industry, nutrition education, the work of health professionals and consumers.[5] For example, the PHAA believes that health claims will promote an understanding of individual foods as drugs - that is a "magic bullet" effect, which is unrealistic and misleading for most diet-related diseases. Furthermore, this "medicalisation" of food distorts the importance of balance, variety and moderation in food selection and other public health nutrition messages. Additionally, the foods most needed for improved health outcomes do not have labels (e.g. fresh fruit and vegetables) and therefore cannot carry claims.

8. The evidence that health claims either inform consumers and improve food choices, beyond promoting specific products, or promote public health is inconclusive at best. [6] Recent works indicates that consumers interpret claims differently to health and food professionals and this needs to be considered when substantiating claims to avoid consumer misunderstanding of the meaning of the claim. [7] Moreover, the use of the Folate Health Claims Pilot as an example of success of health claims in Australia[8] is not valid for the following reasons:
   - The nutrient-disease relationship for folate is not representative of most nutrient/food and health relationships;
   - The evidence that was used to support claims of a successful intervention were based on an inappropriately short time period (approximately 6 months) for the duration of the Pilot and the period of evaluation; and
   - An 8-year follow up monitoring research project found after an initial successful uptake of the claim, only two food products in the marketplace were still using the folate health claim. [9] It is possible that this indicates the claim did not provide the marketing advantage that was hoped for by the industry.

   Indeed the impact evaluation of the Folate Health Claims Pilot in Australia, concluded that written educational material, rather than food labelling, was the preferred mechanism for conveying information to consumers about folate and neural tube defects.[10]

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9. The research suggests that consumers want simple and reliable information on food labels.[11, 12] The PHAA supports the use of some food labelling, e.g. nutrition information panel labelling, which is factual rather than speculative and has been demonstrated to be effective in assisting healthy food choices.[13]

10. Proliferation of manufacturer-led claims on foods may act to increase consumer scepticism of information on food labels[14] and act to undermine other important public health initiatives such as, allergen labelling or provision of nutrition information panels.

11. The recent review of food labeling in Australia, [15] has made a number of recommendations with respect to nutrition, health and related claims, including, that:
    - All foods carrying a nutrition, health and related claim comply with an agreed nutrient profiling system; and
    - The presence of a general or high-level claim and/or the presence of equivalent endorsement, trade names and trademarks mandates the use of standardized Front of Pack Multiple Traffic Light labeling.

12. New evidence suggests that warning labels may be effective in deterring people from making unhealthy food purchases.[16]

The Public Health Association of Australia affirms the following:

13. The PHAA believes that regulatory provisions to allow health claims on food are a contradiction to the following public health nutrition principles (as stated in Point 1):
    - The reduction in risk for disease is affected by the total diet and lifestyle pattern, not by use of an individual food;
    - Individual foods by themselves do not prevent or cause a disease;
    - All chronic diseases in which diet has been implicated to play a causative and/or preventative role and for which labelling and advertising claims could be anticipated, are multi-factorial in nature as to the aetiology and progression;
    - The precise role of diet for many such diseases remains to be fully understood; and
    - The role of diet for each individual can be variable because of individual differences in hereditary and life-style factors. [1]

14. In lieu of the inconsistencies with public health nutrition principles, health claims pose a potential risk to public health nutrition by creating further consumer confusion about food and health relationships and distorting dietary intake patterns. The PHAA believes that in isolation and unless managed with strong regulation, health claims will be counterproductive to public health in Australia. In particular, they will have potential to undermine public health nutrition efforts and to divert limited public resources to the servicing of a program, the implementation of which will preferentially benefit vested commercial interests and some scientists associated with these commercial interests.

15. The present approach to health claims appears to be driven by a long standing need by industry to use such claims to differentiate their products for marketing purposes.[17] It is not driven by, or even within the context of, public health initiatives to promote better nutrition education for consumers.

16. The primary drivers for a health claims regulatory framework are the highly processed food industry and/or large food manufacturers rather than local food producers of primary and core foods. Experience from those countries that do permit health claims suggests that this situation

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presents public health nutrition risks from biological (dietary imbalances), social (more expensive foods tend to display claims) and environmental (use of resources in processing) dimensions.[18,19]

17. Within the current considerations of health claims by food regulators there is an overly simplistic view about so-called "maximising opportunities" for health gain provided by the advertising budgets for food products. Advertising budgets for food products are designed to increase sales of specific products, not increase consumer understandings of healthy diets. Not surprisingly, research suggests that health claims promote only product-specific knowledge; there is no evidence that health claims educate consumers to make healthy food choices.[12]

The Public Health Association of Australia makes the following recommendations:

18. While opposing the concept of health claims on the grounds that they are inconsistent with fundamental public health nutrition principles and that evidence is lacking that health claims will benefit public health, the PHAA acknowledges that the ANZFRMC have stated that it supports the setting of Standard 1.2.7 – Nutrition, Health and Related claims to permit the introduction of certain health claims and that the gazettal of this standard is imminent. Faced with this outcome, the PHAA recommends:

19. Implementation of the following recommendations from the Labelling review:
    - That all foods carrying a nutrition, health and related claim comply with an agreed nutrient profiling system; and
    - The presence of a general or high-level claim and/or the presence of equivalent endorsement, trade names and trade marks mandates the use of standardized Front of Pack Multiple Traffic Light labeling.

20. Government policy on the role of information and education to promote public health should be based on sound evidence. Currently evidence is lacking that health claims provide a role in the nutrition education of consumers and thereby benefit the public's health.

21. Research efforts should be directed at determining the most effective mechanisms for health information dissemination, particularly in relation to food choices.

22. Complementary nutrition education and monitoring and evaluation strategies should be well funded, coordinated and implemented by an independent national organisation such as the Australian Institute of Health and Welfare to complement the proposed revised food label format (see PHAA Policy on Food and Nutrition Monitoring and Surveillance in Australia).

23. Nutritionists and other educators should be able to use disease claims as a corollary (a disease claim relates certain individual foods to increasing the risk of certain diseases, e.g. high sugar containing foods linked to dental caries).

24. Evidence should be provided that there is no harm to individuals or the population, especially disadvantaged groups through the use of health claims.

25. Surveillance of food labels and advertising by the food regulatory system for compliance to food regulations needs to be enhanced considerably. Fines for contraventions should be increased substantially.

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26. Research on consumer understanding of health claims should be conducted to inform the scientific substantiation process. FSANZ or another independent organisation should be responsible for conducting such research before the standard is implemented.

27. Research into the effectiveness of warning labels should be conducted.

The Public Health Association of Australia resolves to undertake the following actions:

28. The Food and Nutrition Special Interest Group, with the backing of the Board, Branches and other Special Interest Groups, will advocate for the recommendations outlined in this policy statement to be enacted, in particular the implementation of the recommendations of the Labelling Review.

29. The Food and Nutrition Special Interest Group will monitor the process and evaluation of any action taken in response to changes to current legislation on health and related claims, with particular focus on the potential for conflicts of interest to arise among commercial, scientific and government bureaucratic interest groups.

30. The Food and Nutrition Special Interest Group will, with the Board's endorsement, collaborate with other health and consumer groups to share information, campaign jointly and lobby for further research into health claims on food and their public health impact and to keep a watching brief on regulatory processes associated with health claims to expose those processes that are non-transparent and subject to conflict of interest concerns.

31. The Food and Nutrition Special Interest Group will maintain and update the PHAA's information base on health claims and their public health impact.

32. The Food and Nutrition Special Interest Group will advocate for any liberalisation of the existing general prohibition on health claims to be complemented with equal emphasis towards permitting warning labels that link individual foods with increased risk of disease outcomes.

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