



## Proposal P293: Nutrition Health and Related Claims

### A. Executive summary

Food and beverage processing is Australia's largest manufacturing industry.

Lion is the largest beverage and food company in Australasia, and is a market leader across the categories we operate in - milk, dairy, juice, cheese, beer and wine. We are also one of Australia's largest purchasers of agricultural goods. Our total direct and indirect contribution to the Australian and New Zealand economies in the past year was \$5.2 billion. The value we added as a result of our operations was more than \$2.2 billion – value that we redistribute to our people, commercial partners, industry, governments and the communities in which we operate<sup>1</sup>.

Lion acknowledges the significant amount of work Food Standards Australia New Zealand (FSANZ) has undertaken in the development of the draft Standard 1.2.7 Nutrition, Health and Related Claims.

However, we have a number of serious concerns about the draft Standard in its current format, particularly in relation to its lack of positive outcomes for the consumer, the cost imposed on business, and the additional regulatory burden it places on both industry and government. All of these concerns reflect a lack of regard for the Policy Guidelines for Nutrition, Health and Related Claims established by the Australia New Zealand Food Regulation Ministerial Council.

#### 1. Impact on consumers

Lion is fully supportive of ensuring all health and nutrition claims are evidence-based and provide accurate and clear information that assist consumers in making healthier dietary choices. The draft Standard proposes significant changes to *what* health claims can be made and *how* health claims will be approved, but no data or research has been provided on the likely impact of the proposed changes on consumer behaviour and, ultimately, the health of Australians. In the absence of a full Regulation Impact Statement (RIS) it is impossible to assess whether the changes are likely to achieve a positive outcome, and therefore whether the associated – and considerable - cost to industry and other stakeholders is justified. To proceed with this impost on industry runs totally counter to the Government's stated policy of reducing existing regulatory burden unless there is a compelling case for maintaining it.

The changes proposed in the draft Standard would prohibit Lion communicating to consumers the undisputed health benefits of some of our key products – including 'core foods' as defined by the Dietary Guidelines. For example, probiotic health messages on dairy would be lost, as would

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<sup>1</sup> <http://www.lionco.com/wp-content/uploads/2012/03/LionSR2011.pdf>

messages around calcium and vitamin D for strong bones and teeth. We would be prohibited from communicating the health benefits of regular-fat cheese and yogurt, disqualified by the nutrient profiling scoring criteria. Antioxidant messages would be lost from juice. We would be prohibited from providing education messages on protein for growing bodies or the role of low glycaemic index foods in a healthy diet, on products currently rated 'green' in school canteens across Australia – such as reduced- fat flavoured milk. This would be a negative outcome for consumers and certainly not assist with modifying dietary habits.

In addition, the changes are likely to stifle industry innovation, meaning that food and beverage products that may have health benefits for consumers will take much longer to get to market, if at all.

## **2. Cost to industry**

The Australian food and grocery manufacturing industry is faced with rising input costs, the impact of a changing climate, and the high Australian dollar affecting commodity prices. This, combined with global supply and demand, increased regulatory compliance costs and aggressive price cutting in the retail sector is creating unprecedented pressure on Australian food manufacturing operations.

The draft Standard would impose significant additional costs on Lion and many other food and beverage manufacturers at what is a particularly challenging time. Lion has estimated a one-off cost of \$4 million for new packaging across our product range. This figure does not cover additional costs associated with redundant materials, labour, education and training and lost opportunity costs including consumer understanding (and even loss of consumer confidence) about the importance of dairy, juice and soy as part of a balanced diet. Costs for applying to have current product claims added to a pre-approved list could be in the vicinity of an additional \$3 million.

We believe that these costs to the business are totally unacceptable in the absence of any concrete evidence that the current system is either misleading or disadvantaging consumers; or that the proposed changes will have a significant public health benefit.

## **3. Increased regulatory burden**

The current regulatory framework for health claims combines legislative Standards with a voluntary Code of Practice, with the onus on manufacturers to ensure they can substantiate any claims made in relation to their products – claims which can be challenged at any stage via jurisdictions or through Australia's system of fair trading laws. The proposed changes remove a claims hierarchy-framework and require pre-approval of all claims, requiring businesses to invest far more resource in this area, both human and financial, without clearly demonstrating the need for change.

Imposing an additional and unnecessary regulatory burden on the manufacturing sector seems to completely disregard the Federal Government's stated aim to reduce the regulatory impact on business. Indeed, as recently as this month the Prime Minister confirmed the Government's intention to reduce, wherever possible, excessive regulation on business with the formation of a Business Advisory Forum that will advise on deregulation.

Furthermore the proposed Standard would bring significant compliance and enforcement costs to government. For example, FSANZ would need adequate resources to manage the influx of new 'claim' applications in a timely manner and jurisdictions the skills to assess those claims.

#### 4. **Lion's position**

In the absence of a comprehensive Regulation Impact Statement (RIS) and demonstrated evidence of market failure **Lion rejects the draft Nutrition, Health and Related Claims Standard as proposed by FSANZ**. We strongly advocate for deferral of any further consultation or action on the draft Standard until a current RIS is made available to all stakeholders, allowing for all parties to fully assess the potential benefit to consumers and cost to all stakeholders.

Lion would welcome the opportunity to work with FSANZ in the development of a co-regulatory, tiered risk-based framework for the management of Nutrition, Health and Related Claims, which delivers to the needs of all parties. We expect that this would be based on the current Australian Food and Grocery Councils (AFGC) Code of Practice for Food Labelling and Promotion with consideration of the Code of Practice for Nutrient claims in food labels and in advertisements (CoPoNC).

Lion's **recommendations** to the draft Standard 1.2.7 are as follows:

##### **Recommendations**

1. A current Regulation Impact Statement should be made available to all stakeholders on all elements of the proposed draft Standard for Nutrition, Health and Related claims
2. Full consultation should be undertaken on all elements of the proposed draft Standard
3. Co-operative engagement should occur between FSANZ and industry to work towards developing a tiered risk-based, co-regulatory model for management of Nutrition, Health & Related claims – based on the current Australian Food and Grocery Councils (AFGC) Code of Practice for Food Labelling and Promotion and the Code of Practice for Nutrient claims in food labels and in advertisements (CoPoNC)\*
4. The correct regulatory assessment process should be followed before raising 'no fat' and % fat free' claims as an item for consultation in the draft Standard

\* National Food Authority (1995) Code of Practice for Nutrient claims in food labelling and advertisements, Commonwealth of Australia

## B. Overview of Lion and Market

### 1. Company information

- Lion is the largest beverage and food company in Australasia, with market leading positions in each of our categories. We build marketplace success from the foundations of ‘great people’ and ‘great brands’
- We employ over 7,000 people across the Tasman and indirectly employ many thousands more in the agricultural, retail, hospitality and tourism sectors. Every job we create leads to the creation of an additional four or more jobs in both Australia and New Zealand
- We are one of Australia’s largest purchasers of agricultural goods
- Our Dairy & Drinks and Beer, Spirits & Wine portfolios include some of the country’s most iconic brands, including Yoplait, Berri, Dairy Farmers, Coon and PURA, XXXX GOLD, Tooheys, Hahn, James Boag, Petaluma and Wither Hills
- Our total direct and indirect contribution to the Australian and New Zealand economies was \$5.2 billion<sup>2</sup>. The value we added as a result of our operations was more than \$2.2 billion – value that we redistribute to our people, commercial partners, industry, governments and the communities in which we operate.

### 2. Market Overview

Food and beverage processing is Australia’s largest manufacturing industry and Lion is a market leader across the milk, dairy, juice, cheese and beer categories.

The increasingly global food market requires food manufacturing companies in Australia, as well as farmers, to compete not only in export markets but with imports into the domestic market. The Australian food and grocery manufacturing industry is faced with rising input costs, the impact of a changing climate, and the high Australian dollar affecting commodity prices. This combined with global supply and demand; increased regulatory compliance costs, and aggressive price cutting in the retail sector is creating unprecedented pressure for Australian food manufacturing operations.

These factors compromise growth in productivity; profitability and reinvestment in new plant and new process (i.e. in innovation); and therefore long term competitiveness.

In particular, the ability to innovate effectively will be a critical requirement for the competitiveness and long-term sustainability of the industry.

## C. Overview of Lion’s Response

Lion is pleased to provide a written submission to FSANZ in response to the *Calls for submissions - Proposal P293: Nutrition, Health and Related Claims*. We have previously provided responses to

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<sup>2</sup> Data based on the 2011 financial year

Proposal P234 Issues Paper in 2002; the Initial and Draft Assessment Reports for Proposal P293 in 2004, and 2006; and the Consultation Paper in 2008. Lion has consulted with the AFGC, the Fruit Juice Association (FJA) and Dairy Australia (DA) in the development of our submission, and our views align.

Lion supports the Australia New Zealand Food Regulation Ministerial Council Policy Guideline on Nutrition, Health and Related Claims (2002)<sup>3</sup>.

Lion continues to support the principle of minimum effective regulation which encourages innovation and investment to ensure that Australia's food manufacturing industry is sustainable for the long term.

Lion supports the development of appropriate measures to regulate nutrition, health & related claims managed through a sound, evidence-based, risk-hierarchical approach which instils confidence in the consumer.

The current draft Standard 1.2.7 is significantly different from the framework described by the Policy Guideline, and therefore we do not support the draft Standard in its current form.

**Lion's position:**

- **Lion rejects the draft Nutrition, Health and Related Claims Standard as proposed by FSANZ**

Lion provides support for our position in the following submission.

Lion would welcome the opportunity to work with FSANZ in the development of a co-regulatory framework for the management of Nutrition and Health Claims that delivers to the needs of all parties. We expect that this would be based on the current AFGC Code of Practice with consideration of CoPoNC.

Notwithstanding our rejection of the current proposed draft Standard 1.2.7 and substantial concerns about the consultation/review process regarding Standard 1.2.7 and 'fat free' claims, Lion will provide comment related to the current consultation as requested by FSANZ.

## **D. Draft Standard 1.2.7**

### **1. General**

Whilst Lion has specifically addressed the key questions raised for consultation under Proposal P293 in our submission, we note the *Ministers did ask FSANZ to consult broadly on the draft Standard itself* (page 2, Consultation Paper). We are concerned that the last time all elements of the draft Standard on Nutrition, Health and Related Claims were open for comment by FSANZ was in 2006 (via the Draft Assessment Report) – with the last Cost-Benefit Analysis (CBA) completed four years

<sup>3</sup> Australia New Zealand Food Regulation Ministerial Council Policy Guidance for Nutrition, Health and Related Claims (2002)

ago in March 2008. There have been some significant changes to the draft Standard and the operating environment since that time and as acknowledged in the Consultation Paper (page 15), a revised Regulation Impact Statement (RIS) is required on the 'complete' draft Standard 1.2.7.

As such, Lion requests that consultation on the draft Standard is deferred until a current Regulation Impact Statement (RIS) is made available to all stakeholders for a full round of consultation prior to any finalisation of the Standard.

Whilst Lion acknowledges the significant amount of work FSANZ has undertaken in the development of draft Standard 1.2.7 since the last consultation period in 2009, we believe the draft Standard remains unacceptable and will not provide consumers with accurate information; will add significant regulatory burden and costs to both industry and government; and will stifle innovation and the competitiveness of Australian food and beverage manufacturers.

Lion finds this concerning, given the Legislative and Governance Forum on Food Regulation (formerly the 'Ministerial Council') based the need for rejecting the draft Standard in 2008, and asking for a review, on the Standard *'being inconsistent with existing Policy Guidelines; being difficult to enforce or comply with; and placing unreasonable costs on industry and/or consumers (page 5, Consultation Paper 2012)'*.

**Lion's Recommendations:**

1. A current Regulation Impact Statement should be made available to all stakeholders on all elements of the proposed draft Standard for Nutrition, Health and Related claims
2. Full consultation should be undertaken on all elements of the proposed draft Standard
3. Co-operative engagement should occur between FSANZ and industry to work towards developing a tiered risk-based, co-regulatory model for management of Nutrition, Health & Related claims – based on the current Australian Food and Grocery Councils (AFGC) Code of Practice for Food Labelling and Promotion and the Code of Practice for Nutrient claims in food labels and in advertisements (CoPoNC)\*
4. The correct regulatory assessment process should be followed before raising 'no fat' and % fat free' claims as an item for consultation in the draft Standard

\*National Food Authority (1995) Code of Practice for Nutrient claims in food labelling and advertisements, Commonwealth of Australia

**The specific question posed by FSANZ regarding the current draft Standard 1.2.7 is set out below:**

- 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'.

## 2. Regulatory Intent

Lion strongly believes that the draft Standard 1.2.7 has failed to accurately address ‘regulatory intent.’ As the term ‘regulatory intent’ is not defined in the Consultation Paper, we have taken it to mean ‘does the draft Standard accurately reflect the intent of the Policy Guidelines on Nutrition, Health and Related Claims, and in particular the Policy Principles, as endorsed by the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) on the 24 May 2002<sup>4</sup>.’

Lion does not believe the current draft Standard 1.2.7 satisfies the regulatory intent of the 2002 Policy Guidance. In the following section we set out our reasons why, namely:

- Inappropriate use of nutrient criteria to discount ‘truth in labelling’ on food products where substantiation would otherwise permit, i.e. use of Nutrient Profile Scoring Criterion (NPSC) (Policy Principle 3);
- Failure to adhere to due regulatory process (Policy Principle 4);
- Impact on Innovation (Policy Principle 4);
- Failure to achieve minimum (cost) effective regulation (Policy Principle 5);
- Failure to adopt a process of substantiation which aligns levels of scientific evidence with the level of claims (Policy Principle 6); and
- Failure to have due regard to international regulatory systems (Policy Principle 7).

### 2.1. Use of Nutrient Profile Scoring Criterion (NPSC)

**Policy Principle 3:** Support government, community and industry initiatives that promote healthy food choices by the population.

Lion does not support the use of a nutrient profiling scoring criteria (NPSC) as proposed in the draft Standard 1.2.7.

As per the government response to the Recommendations of Labelling Logic<sup>5</sup>, page 25:

*“nutrient profiling criteria may be one tool to enable manufacturers to show that foods upon which health claims are made are suitably nutritious, but other tools may also be appropriate for demonstrating compliance”.*

The application of the NPSC to foods and beverages wishing to make a claim takes away the notion of ‘truth in labelling’, restricting manufacturers from being able to freely communicate to consumers about scientifically robust product features.

The use of a NPSC would impose nutrient qualifying and disqualifying criteria derived from population dietary advice onto individual food products, which is scientifically flawed. It creates arbitrary boundaries between products and ignores the well-established paradigm that an

<sup>4</sup> ANZFRMC, 2004. Ministerial Policy Guidelines on Nutrient, Health and Related Claims

[http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-policydocs.htm/\\$FILE/nutrition\\_guidelines.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-policydocs.htm/$FILE/nutrition_guidelines.pdf)

<sup>5</sup> Legislative and Governance Forum on Food Regulation (2011) Response to the Recommendation of Labelling Logic: Review of Food Labelling Laws and Policy

individual's good health is dependent upon a balanced diet containing a variety of foods balanced with adequate physical activity.

NPSC was initially proposed for health claims only. Under the draft Standard a number of nutrition content claims are required to meet the NPSC namely, 'diet', glycaemic index and glycaemic load. The rationale for this requirement is unclear and places undue constraint on low risk claims.

The application of the NPSC would mean a number of products across the dairy industry will no longer be able to make their current claims. This is contrary to government Dietary Guideline initiatives which encourage a 'variety' of nutritious foods, including the consumption of dairy products. This has the ability to cause confusion and uncertainty amongst consumers about the role of dairy in a balanced diet, as current messages will be lost potentially rendering dairy a less important component of their diet.

The impact to manufacturers relates not only to packaging but also to marketing materials used to educate consumers about product benefits and their role in a balanced lifestyle.

With respect to Lion, a number of products will be impacted by the proposed NPSC. For example, we could no longer promote and educate the following:

- regular fat yogurt and the role of probiotics in the diet; and,
- regular fat cheese and yogurt and the benefits of calcium for bones or teeth; and
- flavoured milk and the benefits of calcium, protein or a low glycaemic index.

Specifically, Lion has products that meet the 'green' School Canteen Criteria across Australia which would not meet the NPSC – for example, a 250mL or 300mL reduced-fat flavoured milk. In contrast, these products have been previously highlighted by independent nutritionists as ideal children's offerings.

There has been no evidence of 'consumer misperception' or 'inappropriate use' and therefore there is no valid reason why these nutritionally sound products should be unable to continue to make claims.

## 2.2. Failure to adhere to due Regulatory Process

<b>Policy Principle 4:</b> be consistent with and complement Australian and New Zealand national policies and legislation including those relating to nutrition and health promotion, fair trading, industry growth and international trade and innovation.
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Lion believes the standard FSANZ assessment process for development of or amendments to a Standard have not been followed due to:

- lack of a current RIS being available for public comment for the entire draft Standard 1.2.7 (discussed further under Section 2.4); and
- introduction of 'fat free' and '%fat free' claims into this consultation period – for which a RIS is not available for review.



We note that an external 'Application' to FSANZ to amend a Standard must follow a diligent process from justifying the need for change, to a RIS and a CBA for consumers, industry and government. We question why the same rigour was not applied by FSANZ in raising 'fat free' claims for consultation (acknowledging P293 is a 'Proposal', not an 'Application').

The inclusion of regulation around 'fat free' statements and definitions of '% fat free' are ill-founded and as such are strongly opposed on the basis they are duplicative of regulatory parameters given effect by the CoPoNC, costly for government and industry with no or little consumer benefit, and are not supported by sufficient evidence (see Section E for further detail).

### 2.3. Impact on Innovation

**Policy Principle 4:** be consistent with and complement Australian and New Zealand national policies and legislation including those relating to nutrition and health promotion, fair trading, industry growth and international trade and innovation

The pressures of performance and increasing competition will continue to compel all Australian manufacturers to improve the effectiveness of investment in innovation. Excessive and unnecessary regulatory burden reduces the incentive for innovation by industry, with negative consequences for investment in new products.

Lion believes that the draft Standard 1.2.7 discourages innovation. The time cycle for bringing new products to market is sometimes very short and must be timed to meet a 'window of opportunity'. If this process is slowed or impeded by the need to develop Applications to FSANZ in order to make claims, it is likely some new products will never make it to market.

The application of NPSC to products may also result in the loss of communication opportunities around product features or worse, the loss of existing products.

Manufacturers are less likely to innovate and fund research to meet the health needs of consumers and public health promotion if they cannot state the basic benefit to the consumer, without incurring considerable cost and delay for that product reaching the market.

For example, Yoplait Cal-tivate is a product new to the market, providing additional calcium and vitamin D. It addresses the well-documented health concerns on the number of Australians with inadequate levels of calcium and vitamin D, or who fail to achieve their daily recommendations for dairy. Whilst the product would meet the NPSC, nutrient-function claims (and widely recognised public health messages) such as calcium and vitamin D for strong bones and teeth are not within the pre-approved list for 'health claims', impacting the types of product features and key education messages important to consumers.

#### 2.4. Failure to achieve minimum, cost effective regulation

**Policy Principle 5:** be cost effective overall, not more trade restrictive than necessary and comply with Australia's and New Zealand's obligations under the WTO Agreements

Lion considers regulatory reform to be the most prominent and important policy lever the Government can pull to assist the food industry meet the challenges it is now facing. Compliance with regulation is always costly; compliance with ineffective, inefficient or unnecessary regulation is wasteful in the extreme. It reduces business profitability directly, undermines investment attractiveness and diverts funds from innovative activities necessary for continued competitiveness and productivity growth.

Lion does not believe the proposed draft Standard satisfies the requirement of Policy Principle 5 to “be cost effective overall”. In addition, Lion does not believe the current Standard meets the Council of Australian Governments (COAG) principles of minimum effective regulation<sup>6</sup>. The draft Standard includes provisions already covered under the Competition and Consumer Act (2010)<sup>7</sup>, and state and territory food and health Acts. Additionally, the draft Standard adds further regulatory burden to the industry by moving away from self-substantiation of health claims to the time-consuming and costly process of submitting an Application – with all health claims (both general and high level) to be assessed in the same manner as ‘high level’ health claims.

We strongly believe that co-regulation, incorporating a voluntary industry code, would be the most efficient and cost-effective option for the management of nutrition, health and related claims.

Lion is concerned that under the proposed draft Standard 1.2.7, products currently on the market will be rendered non-compliant with no evidence or justification they have provided misleading information to the consumer. Additionally, many products which will continue to be allowed to make claims will be required to alter their labels and education materials in order to comply with new labelling provisions, raising doubt in the mind of consumers – for example, a ‘no-fat’ milk which they have purchase daily disappears.

Lion is concerned that the draft Standard is not accompanied by a RIS. A current RIS with substantive analysis of the costs and benefits of reforms is essential to ensure that any increase in costs to industry will be balanced by tangible benefits. Indeed, in the call for submissions, FSANZ states just that:

*“During the development of a review response, FSANZ has consulted with the Office of Best Practice Regulation (OBPR) which has advised that given the lapse in time, a revised RIS will be required in order to address changes arising from the review of draft Standard 1.2.7, and any further amendments relating to fat-free claims. FSANZ will be preparing the revised RIS once submissions to this call for comment have been received and considered. FSANZ will be undertaking targeted consultation with industry and the jurisdictions on this revised RIS,” (page 15, Consultation Paper).*

<sup>6</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-iar-description-outcomes.htm~ageing-iar-description-outcomes-11.htm~ageing-iar-description-outcomes-11-att1.htm>

<sup>7</sup> [http://www.austlii.edu.au/au/legis/cth/consol\\_act/caca2010265/](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/)

Lion is concerned that the impacts of any costs associated with this proposed reform are not fully understood. Such costs have the potential to place additional pressures on an already cost stressed supply chain and also FSANZ itself. The ability of manufacturers to innovate will be severely hampered and consumer access to new products will be reduced, impacting consumer's choice and variety. The costs to industry are through curtailed communication about robust product features, labelling and advertising costs; and/ or costs for applying to have current or new claims added to a pre-approved list. The impact on FSANZ (and jurisdictions) will be due to the additional workload generated from manufacturers raising Applications for health claims to be added to the Standard. If 'Expert Panels' are to be employed to assess new 'health claims', as is proposed under the draft Standard, there will also be a drain on 'independent' academic resources.

As per the FSANZ Application Handbook 2011, Section 2.1.6 Food standards development Work Plan (page 11):

*"In recognition of the fact that FSANZ has limited resources and it is not possible to process unlimited numbers of applications within a fixed period, FSANZ prioritises its work through the creation of the Food Standards Development Work Plan".*

In the absence of a current RIS there is also no evidence presented about the cost of regulating dietary information and of re-regulating 'fat-free' and '% fat free' claims.

Lion believes it is totally inappropriate to carry out a RIS during and after consultation of the draft Standard, and **requests that further action on this consultation is deferred until a RIS is completed and available for review by all stakeholders to ensure the impact of the proposed changes on all stakeholders is fully visible and understood.**

## **2.5. Failure to adopt a process of substantiation which aligns levels of scientific evidence with the level of claims**

<b>Policy Principle 6:</b> contain a process of substantiation which aligns levels of scientific evidence with the level of claims along the theoretical continuum of claims, and at minimum costs to the community
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The draft Standard 1.2.7 has merged general level and high level claims into one category termed 'health claims', with all health claims now requiring pre-approval before use. A tiered claims and risk-assessment process for substantiation has been lost, including the ability for manufacturers to self-substantiate claims, without cause for such change being justified or costed.

The proposed merging of general level and high level claims and the levels of evidence required is a cumbersome process and will pose a significant barrier to innovation through cost and time impediments.

Lion notes, of the 115 health claims pre-approved by FSANZ to date, 85% are for vitamins and minerals. In assessing the Lion product portfolio, of the nutrient-function claims not on the pre-approved list 75% are for macronutrients, 'biologically active substances' or 'other'.

The process for applying for a new health claim, including what level of evidence is necessary, is unclear – the draft Standard is silent on a Substantiation Framework. The potential cost for a paid ‘Application’ to FSANZ is large, ranging from \$20,000, to in excess of \$150,000. The timing for approval could be 12 to 18 months or beyond. There is no reference to the use of ‘emerging evidence’ for new claims, as is suggested in the Ministerial Council Policy Guideline for Nutrition, Health and Related Claims (page 10)<sup>8</sup>. This all has the potential of limiting innovation while manufacturers wait for the level of evidence to meet higher hurdles and deny the consumers the opportunity to access food and beverages at the forefront of science, leaving Australia lagging behind the rest of the global market.

Lion strongly opposes the formation of one category only for health claims, the pre-assessment of general level claims and the removal of self-substantiation for general level health claims (GLHC).

Such changes are completely new to the draft Standard, and should have been raised as the subject of a separate consultation. And as highlighted in the government response to the Recommendations of Labelling Logic (page 26)<sup>9</sup>:

the Legislative and Governance Forum on Food Regulation supports further consultation on the draft Standard 1.2.7 before its finalisation and in particular to 20(a) and 20(b). Item 20(a) relates to the hierarchy of substantiation of claims at various levels, that would encompass use of defined nutrition words and terms, pre-approved relationships, authoritative sources, systematic review and pre-market assessment and approval.

Lion notes, that no comment was invited in this Consultation Paper despite a marked change in the proposed management of health claims.

Lion strongly recommend that FSANZ approach the substantiation of claims in the manner that exists in the Policy Guideline, which is a claims framework relative to the degree of promise or benefit to the consumer. GLHCs should remain able to be self-substantiated by industry. GLHCs should require either ‘consistently agreed’ evidence or the ‘weight of the evidence’ to support the claim, as opposed to ‘convincing’ – as has previously been a topic in development of the draft Standard. A level of ‘convincing’ evidence is onerous and unnecessary when the degree of promise made by a claim is low. It also misaligns with international regulation such as the European Union which allows for ‘generally accepted’ scientific evidence.

Overarching to this, the Competition and Consumer Act 2010, ensures consumer messaging is truthful and not misleading.

Lion requests FSANZ further consider a co-regulatory model for management of nutrition and health claims, including provisions for a revised health claims Standard and a voluntary Code of Practice – as is current practice.

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<sup>8</sup> ANZFRMC (2002) Ministerial Policy Guidelines on Nutrient, Health and Related Claims (Page 4).

<sup>9</sup> Legislative and Governance Forum on Food Regulation (Dec 2011). Recommendations of Labelling Logic (page 26)<sup>9</sup>, the Legislative and Governance Forum on Food Regulation

Co-regulation in this area will be of the highest benefit to consumers and will assist in reducing regulatory and enforcement burden. This type of approach is also consistent with other Policy Principles:

- enabling responsible use of scientifically valid nutrient, health and related claims (Policy Principle 2);
- supporting government, community and industry initiatives that promote healthy food choices to the population (Policy Principle 3);
- being cost effective overall, and not more trade restrictive than necessary (Policy Principle 5);
- providing for collaborative action among enforcement agencies, industry and consumers which optimises potential to educate consumers on a balanced diet (Policy Principle 8); and
- allows for effective monitoring and enforcement, proportionate to the hierarchy of claims (Policy Principle 9).

## **2.6. Failure to have due regard to international regulatory systems**

**Policy Principle 7:** draw on the best elements of international regulatory systems for nutrient, health and related claims and be responsive to future trends and developments

The proposed draft Standard 1.2.7 makes reference to having regard for health claims approved in Europe, but to no other international regulatory authorities such as the US, Canada, the UK or Japan. This is despite Canada being a country Australia consulted closely with in the development of the draft Standard, including reference to their list of biological role claims in the Initial Assessment Report.

Lion can see no justification for confining the ongoing addition of permissible new health claims by FSANZ to the translation of European Union opinions only. It would be reasonable to expect that the opinions and permissions in other jurisdictions such as Canada and the US should hold the same weight as that of the European Union.

Likewise, there should be alignment with nutrition content claims approved internationally, such as 'free claims' (including 'fat free' and '% fat free') – see section E for further detail.

## **3. Standard 1.2.7: 'Drafting/ clarity/ user-friendliness' of the draft Standard**

For all of the reasons set out in the previous sections, Lion rejects the draft Standard 1.2.7 in its current form. We will however provide comment on particular aspects of the drafting, clarity and user-friendliness of the draft Standard, as specifically requested in the Consultation Paper. Refer to Appendix 1 for full detail.

## E. Fat free and % Fat free claims

### 1. General

The specific questions asked by FSANZ regarding 'fat free' claims are set out below:

- 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?
- 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.

Lion submits there are actually two particular issues that require consultation:

- i. Use of 'fat free/ % fat free' claims on products that may be of *lower nutritional quality (i.e. high in sugar/ energy) and have the potential to mislead consumers to thinking these products are healthier*
- ii. Use of '*absolute*' criteria to govern 'fat free' claims, i.e. 'fat free' means 'zero fat'.

In recognition of this difference, Lion has commented on the use of 'fat free' claims in relation to dairy products in our submission – as opposed to providing comment on products that may be of lower nutritional quality.

### 2. FSANZ Assessment Process

Lion wishes to comment on the FSANZ assessment process undertaken in raising the 'fat free' claim for consultation.

Page 2 of the Consultation Paper (2012) highlights the request coming from Ministers on the basis that 'fat free' claims may mislead consumers. Page 11 of the Consultation Paper acknowledges FSANZ has undertaken a preliminary review of the available evidence, claiming there appears to be no research on whether 'fat free' claims cause substitution behaviours (i.e. purchase of foods of a lower nutritional quality in place of foods with a higher nutritional quality).

Page 14 and 15 of the Consultation Paper acknowledge a revised Regulatory Impact Statement is required in order to address changes arising from the review of the draft Standard 1.2.7, including any amendments to 'fat free' claims.

Whilst FSANZ has committed to completing a RIS and CBA for 'fat free' claims, providing this information after the consultation period is inappropriate and unacceptable.

Lion is unaware of any credible consumer research that shows consumers are being misled by 'fat free' claims and as a result are purchasing foods of lower nutritional quality. Such claims have been widely used in the marketplace for years with nil apparent cause for concern. The

nutrition information panel serves to validate any claims on a product, highlighting the absolute amount of a nutrient in a product – be it fat, energy or sugar.

Lion notes, that for an Application to progress through the FSANZ assessment process<sup>10</sup>, the following information must be provided:

- Purpose and justification for the Application
- Regulatory impact (including cost/benefits to consumers, industry/ business and government; and impact on international trade), and
- Supporting information and data on public health and safety; consumer choice issues; food industry benefits.

In the absence of both consumer data validating a ‘purpose and justification’, and a RIS, Lion rejects the rationale, and questions the process for raising ‘fat free’ claims as an issue.

### 3. Lion’s Position and Rationale

**Lion’s position:**

- **Reject consideration of ‘fat free’ claims as part of the Consultation Paper for the draft Standard**
- **Accordingly, we oppose the ‘options’ proposed for consultation on ‘fat free’ claims in the draft Standard**

As stated above, in the absence of any evidence, Lion rejects consideration of ‘fat free’ claims as an issue for consultation in the draft Standard, and accordingly the ‘options’ proposed for consultation.

To note, the draft Standard 1.2.7 proposes ‘status quo’ as silent for permissions on ‘fat free’ claims (deferring instead to fair trading laws), with criteria for ‘% fat free’ reflective of the current CoPoNC.

However, the current situation in Australia is that the Food Standards Code is silent on ‘fat free’ claims, but criteria do exist in CoPoNC (i.e. the definition of ‘status-quo’ we recognise). Criteria for a ‘% fat free’ claim are also included in the voluntary Code of Practice. This Code of Practice has been in place since 1995. Whilst AFGC has the voluntary Code of Practice for Food Labelling and Promotion, it is yet to include permissions for claims.

Likewise, the criteria proposed in the draft Standard are inconsistent with international food regulation which permit ‘fat free’ claims and ‘minute residuals of nutrients that are physiologically, clinically and nutritionally insignificantly different to a zero percentage content of that nutrient’ (e.g. Codex, the US, UK, Canada and Europe). International criteria also exist for ‘%

<sup>10</sup> FSANZ Application Handbook (2011) <http://www.foodstandards.gov.au/foodstandards/changingthecode/applicationshandbook.cfm>

fat free' claims (such as in Canada and the US) – needing to meet the criteria for 'low fat' as a minimum.

Removal of criteria for 'fat free' claims is not aligned with the Policy Principles for the Policy Guideline on Nutrition and Health claims, namely 'Protecting and improving the health of the population' (Policy Principle 1), and 'Responsible use of nutrition and health claims' (Policy Principle 12).

In the dairy industry, 'fat free' claims serve to segment the category – namely 'no fat', 'reduced fat' and 'regular fat', directing consumers to their preferred products. Removal of this claim (and categorisation) could potentially direct consumers to higher fat products, serving not only to impact consumers purchase behaviour and options, but to have a significant impact on the dairy industry by removing 'category' definitions. As highlighted in the Draft Assessment Report for P234 (2002), nutrition content claims *"can play a major role in assisting consumers in making healthy, informed food choices by providing a quick and easy reference point, and that it is important that the Dietary Guidelines are reflected in the development of nutrition content claims and their criteria"*.

From a manufacturing and processing perspective, it is also important to understand it is not possible to completely remove all of the fat from dairy products. Raw milk naturally contains approximately 4% milk fat. The fat content in milk can be modified by removing cream from milk. The separation method used is a physical process using centrifugal forces to collect 'skim milk' and 'cream'. The use of centrifuges does not remove all the fat from skim milk, as the smaller fat globules (<1micron in diameter) are less effectively separated. Normally the residual quantity is around 0.1 to 0.12% of the milk. This limitation is understood around the world and other countries as being physiologically and clinically insignificant.

Lion is very concerned at the potential magnitude of the financial implications for our business based on the proposed changes to the 'fat free' claims. For example, in reviewing our product portfolio, 'fat free' claims (i.e. no fat claims) are on 45 sku's across the yogurt and white milk categories and would be affected by the proposed changes to claims. 'Percent fat free' claims are on over 100 sku's across fresh dairy<sup>11</sup>, dairy beverages and soy/ grain beverages. For yogurt only (and both 'fat free' and '%fat free' claims), this equates to 40% of the total fresh dairy portfolio.

In presenting Yoplait forme 'no fat' yogurt as a case-study, removal of the 'fat free' claim would require packaging and marketing changes. Product reformulation is not an option due to manufacturing limitations. Costs to product labels, marketing assets (i.e. TV advertising) and brand and consumer research would be in excess of \$1 million.

#### **Lion's Recommendations**

- 1. Correct regulatory assessment process should be followed before raising 'fat free' claims as an item for consultation in the draft Standard**
- 2. Continue with the current criteria for 'no fat' and '% fat free' claims as per the Code of Practice for Nutrient claims in food labelling and advertisements<sup>\*</sup>, and through a voluntary Code of Practice**

<sup>\*</sup>National Food Authority (1995) Code of Practice for Nutrient claims in food labelling and advertisements, Commonwealth of Australia



Lion notes that food labels are but one means of consumer education. Investment in improved understanding of the information currently on the label (particularly the nutrition information panel), could serve as a much more effective use of time and resource to influence consumer behaviour than removal of 'fat free' claims which are widely used by consumers.

#### **4. Lion's Responses to Questions Raised by FSANZ in relation to 'fat free' claims**

For all of the reasons set out above, Lion rejects any amendment to the current criteria for 'fat free' claims as per the requirements in CoPoNC, without solid evidence on the costs and benefits of any regulatory change.

However, we are prepared to provide specific comments in response to the questions raised by FSANZ as set out below:

**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?**

In reviewing market data, 'low/no/ reduced fat' claims rank in the top three claims on products, highlighting the importance of use by the consumer<sup>12</sup>.

Lion is unaware of any research that consumers are being misled by 'fat free' or '% fat free' claims and as a result are purchasing foods of lower nutritional quality.

Lion emphasises the need for any evidence FSANZ undertakes or reviews in relation to 'fat free' claims to follow best-practice methodologies, that is:

- is quantitative as opposed to qualitative;
- employs an adequate sample size and appropriate target audience;
- is of the correct duration; and,
- controls for confounding variables.

This assessment would form part of an overarching RIS if consultation on this claim is progressed and adheres to the appropriate regulatory assessment in the process.

**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.**

Lion opposes the three 'options' for consultation as per the draft Standard.

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<sup>12</sup> GNPD, March 2012. Product claims in Australia – all food and beverage categories

Lion supports the continued use of 'fat free' claims as per the criteria in the CoPoNC, and through a voluntary Code of Practice.

For 'fat free' claims in particular, permissions include, and should continue to include, minute residuals of nutrients that are physiologically, clinically and nutritionally insignificantly different to a zero percentage content of that nutrient.

Lion has adopted the practice of including a disclosure statement on products. This complements the data in the nutrition information panel. The statement reads, 'less than/ equal to 0.15g fat/ 100g or 100mL'.

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

- 1.1. Which option do you support and why?**
- 1.2. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)? Where possible, provide information and evidence to support your suggested threshold value.**
- 1.3. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.**

Lion is unaware of any research that consumers are being misled by 'fat free' or '% fat free' claims and as a result are purchasing foods of lower nutritional quality.

Truth-in-labelling should permit claims to be made on products, where adequate substantiation is held by the manufacturer. The need to apply qualifying criteria (such as the nutrient profiling scoring criteria), thresholds levels, or disclosing statements, is obsolete.

The use of 'fat free' claims should continue as per current requirements defined in CoPoNC, until otherwise demonstrated.

## **F. Conclusion**

The Australian food processing industry is finding business conditions particularly challenging due to a number of factors coming together at once to create a 'perfect storm'. Some can be directly influenced by Government policy; others are of a global nature. It is, however, no exaggeration to state that the well-being of the food manufacturing sector and the well-being of Australians are intricately linked.

Given that Australians expect as a right – and indeed the Government have a duty to provide – safe, nutritious, affordable food, it follows that there should be a regulatory regime which ensures the industry is as well placed as possible to maintain the wholesome food supply Australia currently enjoys.

**Lion's position:**

**Lion rejects the proposed draft Standard 1.2.7 for Nutrition, Health and Related Claims**

Lion is looking forward to working with FSANZ to ensure this reform process provides genuinely better regulation and support for the long term sustainability of the food industry in Australia and New Zealand.

## G. Appendix

### Appendix 1 – Comments on draft Standard 1.2.7 in relation to ‘Drafting/ clarity/ user-friendliness’

To note: the recommendations in Table 1 apply to the development of a co-regulatory model for the management of Nutrition, Health and Related claims.

**Table1:**

Clause	Description	Impact/ Action	Recommendation(s)
<b>Part 1 – Purpose and Interpretation</b>	Transition period – 2 year transitional period proposed during which Standard 1.1A.2 operates concurrently with this Standard 1.2.7	The proposed transition period makes no provisions for ‘stock in trade’ and is inadequate for the following reasons: <ul style="list-style-type: none"> <li>- does not accommodate health claims not currently on a pre-approved list, for which an Application to FSANZ may be required including the general ‘work plan’ timings, and influx of Applications FSANZ is likely to receive</li> <li>- does not provide adequate provisions for the number of products each manufacturer will need to reformulate or update to comply with the criteria for nutrition content and health claims to minimise the cost impact on businesses and in-turn the flow on to consumers</li> </ul>	1. increase the transition period to a minimum of four years
	Cause-related marketing – remove from the draft Standard 1.2.7	- Support the removal of this from the draft Standard	
	Dietary Information – proposed that dietary information, i.e. dietary guidance of an educational nature that is not a nutrition content or health claim from	<ul style="list-style-type: none"> <li>- Definition and permissions for dietary information still remains unclear</li> <li>- What constitutes an ‘authoritative source’ also remains unclear, including what permissions exist locally and internationally</li> </ul>	1. clearly define ‘dietary information’ (i.e. in a User-Guide) 2. clearly articulate what elements are now exempt from the definition of dietary information to ensure dietary messages from

Clause	Description	Impact/ Action	Recommendation(s)
	<p>an authoritative source is excluded from the draft Standard. E.g. choose foods low in fat.</p> <p>Dietary information type statements referring to a health effect (i.e. effect on the human body), will be considered/ regulated as a health claim</p>		<p>authoritative sources can be used for educational purposes</p> <p>3. explain and expand upon which authoritative sources are permitted – both locally and internationally – include practical examples for how dietary information can be used</p>
<b>Part 2/ clause 5 – Claims framework and general principles</b>	<p>The Standard does not apply to:</p> <ul style="list-style-type: none"> <li>- a claim about the risks or dangers of alcohol consumption or about moderating intake</li> </ul>	<ul style="list-style-type: none"> <li>- The redrafting of the standard has confused the permission to use descriptors for ‘alcohol’, such as ‘mid-strength’ and ‘full-strength’</li> <li>- Such descriptors serve to responsibly inform the consumer of the alcohol content of a product, and minimise the risk of over-consumption</li> </ul>	<p>1. Standard 1.2.7 to clearly differentiate permissions for descriptors on alcoholic beverages such as ‘light’, ‘mid-strength’ and ‘full-strength’, from a nutrition content claim</p>
<b>Part 3/ 12 Requirements for nutrition content claims and health claims (including Endorsements and Nutrient</b>	<p>Nutrition content claim about properties of food not in Schedule 1 – descriptors permitted are only ‘contains’, or ‘does not contain’</p>	<ul style="list-style-type: none"> <li>- This clause relates to a nutrition content claim about a property of a food <u>not</u> mentioned in Schedule 1. It is unclear what claims this may relate to – i.e. biologically active substances (BAS) are listed as an example, what else?</li> <li>- It remains unclear what other terms are permitted for ‘contains’ and ‘does not contain’. As stated on page 68 of the Consultation Paper, claims such as ‘high/ low’ are not permitted, however claims such as ‘source/ free of’ are.</li> </ul>	<p>1. Provide examples of what nutrition content claims are captured under this clause besides BAS</p> <p>2. Provide synonyms of words for ‘contains’ and ‘does not contain’</p> <p>3. Clarify the use of ‘free of’</p>

Clause	Description	Impact/ Action	Recommendation(s)
<b>Profiling Scoring Criteria)</b>		- Is it unclear (based on the above) whether claims such as 'free of fat', 'free of sugar', are permitted under this clause	
13 (3)	Folate nutrition content claim – nutrition content claim permitted but only if health claim about folic acid is made about same food	- The intent of this clause is confusing and requires clarity – does it mean a nutrition content claim is not permitted for folate?	1. To provide clarity over the use of a nutrition content claim for folate, as opposed to a health claim
14	Nutrition content claim must not imply slimming effects. A nutrition content claim about energy must not use a <u>descriptor</u> that directly/ indirectly refers to slimming or suggest the food has weight loss/ maintenance properties	- This clause remains confusing, particularly in relation to permitted 'descriptors', i.e. could the word 'diet' imply weight management properties?	1. Review and clearly articulate the wording and criteria for energy/ weight management for a nutrition content claim (as different to a health claim) 2. Include any conditions in Schedule 1 (page 28)
15	Comparative claim – include difference between the amount of the property in the claimed food and reference food	- The Standard is vague around how to communicate the 'difference' between the amount of the property in the claimed food and reference food on packaging	1. Include guidance on the various options for how to state the difference, i.e. percentage, fraction or actual amount
16	New health claims deemed to be 'high level' health claims	- The revised draft Standard 1.2.7 has re-classified general level health claims and high level health claims into one category termed 'health claims' (refer also to section 2.5 of	1. Revert to the previous claims hierarchy of general level and high level health claims 2. Implement a co-regulatory model

Clause	Description	Impact/ Action	Recommendation(s)
		<p>this submission)</p> <ul style="list-style-type: none"> <li>- The definition for 'high level' health claims has been removed from the Standard (directed to FSANZ Act instead)</li> <li>- There is no rationale provided for the change (i.e. no RIS; no CBA)</li> <li>- There is lack of clarity on the application process, including the substantiation requirements, timing, costs, construction of an Expert Committee, etc</li> <li>- There is lack of clarity on the frequency of FSANZ updating the pre-approved health claims list and process they will adopt</li> <li>- There is lack of clarity which international regulatory authorities will be referenced other than the European Union (i.e. US FDA; Canada Health; Japan, UK)</li> <li>- There are a number of nutrient-function claims currently in the marketplace which are missing from the pre-approved list of health claims</li> </ul>	<p>for management of nutrition and health claims, including a voluntary Code of Practice (i.e. current practice)</p> <ol style="list-style-type: none"> <li>3. Implement a tiered-risk based assessment process, with substantiation commensurate with level of consumer benefit</li> <li>4. Introduce a pre-approved list of general and high health claims, in addition to a process for manufacturers to self-substantiate claims not currently on the pre-approved list</li> </ol>
18 (3)	Health claims and Dietary context statement – health claim must be made in the context of a healthy diet	<ul style="list-style-type: none"> <li>- It is unclear whether dietary context statements are required for all health claims or only those health claims for which a dietary context statement is included in Schedule 2/ column 4</li> </ul>	<ol style="list-style-type: none"> <li>1. To clearly articulate which health claims require dietary context statements, and include this in Schedule 2/ column 4</li> </ol>
24	Labelling of foods required to meet NPSC	<ul style="list-style-type: none"> <li>- Refer to previous comments on NPSC (see section 2.1)</li> </ul>	
<b>Schedule 1 – Nutrition</b>	Schedule 1/ nutrition content claims: silent on free	<ul style="list-style-type: none"> <li>- The proposed draft Standard is silent on 'free' claims. As per clause 12, 'free from' may be included for nutrition content</li> </ul>	<ol style="list-style-type: none"> <li>1. To include the provisions for 'free' claims as is current practice under</li> </ol>

Clause	Description	Impact/ Action	Recommendation(s)
<b>content claims</b>	claims (e.g. fat, cholesterol, sugar, salt)	<p>claims not currently listed in Schedule 1</p> <ul style="list-style-type: none"> <li>- Table to subclause 8(3) – 8 refers to ‘food in small packages’ and includes label conditions for ‘fat free’ – i.e. energy quantity per serve to be listed, and yet the Standard is silent on fat free claims</li> <li>- International regulations permit for such claims where levels are ‘minute residuals of nutrients that are physiologically, clinically and nutritionally insignificantly different to a zero percentage content of that nutrient’ (e.g. Codex, the US, UK, Canada and Europe).</li> <li>- Refer to Section E for further detail</li> </ul>	CoPoNC, in a Voluntary Code
	Energy/ diet – qualifying criteria and application of NPSC	<ul style="list-style-type: none"> <li>- This nutrition content claim is required to meet the NPSC prior to its use, where NPSC is typically applied to general level and high level health claims deemed of higher risk to the consumer</li> </ul>	1. Exempt the nutrition content claim for energy from NPSC
	Gluten free claims	<ul style="list-style-type: none"> <li>- Certain beer manufacturers are using ‘gluten-free’ claims as a public health message to consumers who are sensitive to gluten</li> <li>- Prohibitions will impact consumer choice and knowledge</li> </ul>	1. For beer to be granted permission for ‘gluten-free’ claims
	Glycaemic index (GI)	<ul style="list-style-type: none"> <li>- This nutrition content claim is required to meet the NPSC prior to its use, where NPSC is typically applied to general level and high level health claims deemed of higher risk to the consumer</li> </ul>	1. Exempt the nutrition content claim for GI from NPSC
	Glycaemic load (GL)	<ul style="list-style-type: none"> <li>- This nutrition content claim is required to meet the NPSC prior to its use, where NPSC is typically applied to general level and high level health claims deemed of higher risk to</li> </ul>	1. Exempt the nutrition content claim for GL from NPSC



Clause	Description	Impact/ Action	Recommendation(s)
		the consumer	
	No added sugar – includes fruit juice concentrate	- The revised criteria for ‘no added sugar’ is proposed to include fruit juice concentrate. This does not acknowledge the nutrients juice can provide, and that fruit juice is distinct from deionised fruit juice	1. Exempt fruit juice concentrate from the nutrition content claim for ‘no added sugar’
<b>Schedule 2 – health claims</b>	Schedule 2/ health claims	Refer to Appendix 2 for a list of nutrient-function claims to add to the pre-approved list of health claims	
	Energy (general level health claim): contributes to weight loss/ maintenance. Meet criteria for ‘diet’ (nutrition content claim)	- As above - The permitted claim and conditions for energy/ weight management for a nutrition content claim, versus a health claim still requires greater clarity	1. Review and clearly articulate the wording and criteria for energy/ weight management for a nutrition content claim and a health claim
	Beta-glucan/ cholesterol reduction – the food must contain at least 1g per serving of beta-glucan from the foods listed in (a)	- The recommended conditions for beta-glucan are different to international regulation <ul style="list-style-type: none"> <li>o E.g. US FDA permissions for beta-glucan are for 0.75g/ serve (as opposed to 1g)</li> </ul>	1. To align with international regulation 2. Adopt the condition of 0.75g/ serve of beta-glucan
	Phytosterols/ reduced blood cholesterol. Dietary context statements required: - diets low in saturated fat - diets containing 2g sterols per day	- Support the changed wording from ‘reduced cholesterol absorption’ to ‘reduced blood cholesterol’ - There is a need to clarify the Dietary Context Statements proposed in Schedule 2 versus the current Advisory Statements stipulated in Standard 1.2.3 of the Food Standards Code (i.e. healthy diet; children; >3g no additional benefits). - The statements are contradictory and/or repetitive	1. To remove the Dietary Context statements required to support this claim in Schedule 2, instead reverting to the Advisory Statements already included in Standard 1.2.3 of the Food Standards Code

Clause	Description	Impact/ Action	Recommendation(s)
		<p>statements (i.e. 'healthy diet' versus 'diets low in saturated fat'; 2g per day for a health benefit, versus no additional benefit at &gt;3g/d)</p> <ul style="list-style-type: none"> <li>- The scientific evidence does not support the need for diets to be low in saturated fat</li> <li>- The need for 'diets containing 2g of plant sterols per day' is dependent on the evidence used to validate the claim (which can vary depending on the food matrix)</li> </ul>	
	Fruit/ veg heart disease – fruit juice excluded from being permitted to make these claims	<ul style="list-style-type: none"> <li>- The Evidence Statements in the Draft Dietary Guidelines that assess the benefits of fruit and vegetables and heart disease often included fruit juice.</li> </ul>	<ol style="list-style-type: none"> <li>1. To review the evidence base for juice, and include permissions for juice into this health claim as validated</li> </ol>
<b>7B (2)</b>	DI or RDI information may be presented outside the NIP if serving size is presented together with DI or RDI	<ul style="list-style-type: none"> <li>- To clarify the requirements for this clause</li> </ul>	<ol style="list-style-type: none"> <li>1. Clear explanation of the requirements for this clause</li> </ol>
<b>8</b>	Table to subclause 8(3) – 8 refers to 'food in small packages'	<ul style="list-style-type: none"> <li>- To clarify whether this table only relates to 'small packages' – it outlines labelling conditions for BAS, cholesterol, fat free etc.</li> <li>- To note: this table includes label conditions for 'fat free' – energy quantity per serve to be listed, and yet the Standard is silent on fat free claims</li> </ul>	<ol style="list-style-type: none"> <li>1. Articulate the requirements for 'small packages' versus other packages</li> <li>2. To include the provisions for 'fat free' claims. Consider use of a voluntary Code of Practice</li> </ol>

## Appendix 2 – Impact of the draft Nutrition, Health and Related Claims Standard on Lions products

Nutrition Content Claims		
	Claim	Impact
<b>Category</b>		
<b>White Milk</b>		
	Fat free	Nil permissions in draft Standard
	Cholesterol free	Nil permissions in draft Standard
	Glycaemic Index	New criteria in draft Standard
<b>Dairy (yogurt; snacks; desserts)</b>		
	Fat free	Nil permissions in draft Standard
	% Fat free	Proposed change to criteria in draft Standard
	Protein	New criteria in draft Standard
	Probiotics	New criteria in draft Standard
	Glycaemic Index	New criteria in draft Standard
<b>Dairy beverages</b>		
	% Fat free	Proposed change to criteria in draft Standard
	Glycaemic Index	New criteria in draft Standard
<b>Juice/ drinks</b>		
	Glycaemic Index	New criteria in draft Standard
	Antioxidants	New criteria in draft Standard
	Herbs/ botanicals	New criteria in draft Standard
	Fibre	Revised criteria in draft Standard
<b>Soy/ cereal-based beverages</b>		
	Glycaemic Index	New criteria in draft Standard
	Sugar free	Revised definition in draft Standard
	Protein	New criteria in draft Standard
	Fibre	Revised criteria in draft Standard

Nutrient Function Claims		
	Claim	Impact
<b>Category</b>		
<b>White Milk</b>		
	Calcium for <u>strong</u> bones and teeth	Claim not in draft Standard
	Low Glycaemic Index for sustained energy	Claim not in draft Standard
	Low Glycaemic Index to help you feel fuller for longer	Claim not in draft Standard
	Low Glycaemic Index to help you manage sugar in blood	Claim not in draft Standard
	Healthy weight management	Product does not meet qualifying conditions for the claim
	Reduces LDL cholesterol by an average of 10%	Specific claim is not in draft Standard (NB: claim for cholesterol reduction is)
	Omega 3 for cardiovascular system and general wellbeing	Claim not in draft Standard (NB: claim for EPA/ DHA is)
	Omega 3 for brain and eye development (young children)	Claim not in draft Standard
	Essential fatty acids for brain development	Claim not in draft Standard
<b>Dairy</b>		
	Probiotic cultures for digestive wellbeing	Claim not in draft Standard
	Prebiotic dietary fibre for digestive wellbeing	Claim not in draft Standard
	Calcium for strong bones	Claim not in draft Standard
	Calcium and vitamin D for strong bones and teeth	Claim not in draft Standard
	Low Glycaemic Index for sustained energy	Claim not in draft Standard
	Low Glycaemic Index to help you feel fuller for longer	Claim not in draft Standard
	High in protein to help keep you fuller for longer	Claim not in draft Standard
	High in fibre to help keep you fuller for longer	Claim not in draft Standard
<b>Dairy beverages</b>		
	Protein for growing muscles	Product does not meet NPSC
	Low Glycaemic Index for sustained energy	Product does not meet NPSC Claim not in draft Standard
<b>Juice/ drinks</b>		
	Fibre for digestive health	Claim not in draft Standard
	Low Glycaemic Index for sustained	Claim not in draft Standard

Nutrient Function Claims		
	Claim	Impact
Category		
	energy	
	Vitamin A/ antioxidant (i.e. beta-carotene)	Claim not in draft Standard
	Antioxidants such as vitamins A and C to help neutralise free radicals	Claim not in draft Standard
	Echinacea and Immune health	Claim not in draft Standard
	Vitamin C and Immune health	Claim not in draft Standard
<b>Soy/ cereal-based beverages</b>		
	Low Glycaemic Index for sustained energy	Claim not in draft Standard
	Nutrients for active minds and growing bodies – iron, iodine, b-vitamins	Claim not in draft Standard
	Rich in natural isoflavones for overall wellbeing and help manage change of life symptoms for adult women	Claim not in draft Standard