

SA HEALTH Submission – Proposal P293 – Nutrition, Health & Related Claims

29 March 2012

Table 1: Revised draft Standard 1.2.7

Submitter name: SA HEALTH	
1. 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’.	
<p>This version of the draft Standard is greatly improved in its layout and comprehensibility against previous versions. Overall it has addressed the main issues of enforceability that were raised in previous submissions by SA Health, specifically by removing the distinction between high level and general level claims and including a list of pre-approved food-health relationships underpinning health claims. This drafting creates a level playing field for industry and assists in enforcement by removing the need for evaluating substantiating data.</p> <p>The following comments are offered in relation to specific clauses of the draft Standard.</p>	
Clause number	Comment
Editorial Note (transitional period)	The process for assessment of claims during the transition period needs to be clarified including consultation opportunities and the Ministerial review process.
Clause 2 definitions	Clarification is sought as to why nuts and seeds are specifically excluded from the definitions of fruit and vegetables and food groups. The current Australian Dietary Guide to Healthy Eating groups ‘lean meat, fish, poultry, eggs, nuts, legumes’. Also, the NPSC includes nuts and seeds in the fruit and vegetable category as they are eligible for V points.
Clause 3 Nutrition content claims or health claim must not be made about certain foods	Clause 3 specifies nutrition content claims or health claim must not be made about infant formula; however SA Health recommends that Infant Foods under Standard 2.9.2 also be included as per our previous submissions.

Clause 7 (therapeutic claims)	<p>Clause 5 makes it clear that this Standard does not apply to claims specifically permitted in other Standards.</p> <p>In the previous Draft Assessment Report for P293, FSANZ proposed a claims classification framework in which there was a graduated approach to how different claims were dealt with. Claims for the then 'high level' claims could use risk reduction terms (eg. Reduces the risk of developing osteoporosis) but not therapeutic or prophylactic terms (eg. Cures or prevents osteoporosis). Some explanation is needed as to if this same approach can be used to draw the line between a risk reduction and therapeutic claim since there are no longer 'general' and 'high' level claims.</p>
Properties that are naturally present or absent – claim must refer to the food itself not a specific brand.	Removal of this clause from previous drafts is supported in order to achieve the objective of simplifying the current drafting. It is agreed that such a provision may be adequately dealt with under the fair trading provisions.
Clause 11 Nutrition content claims about properties of food in Schedule 1	SA Health recommends that <i>all</i> content claims be subject to the NPSC as stated in our previous submissions.
Schedule	Comments
Schedule 1 (fat)	Support requirements for fat claims. Clarification may be needed in regard to the presentation of fat-free claims since they are not listed in the Schedule. It is assumed they will be permitted to be made without the need to meet any particular criteria apart from being true and accurate under 'false and misleading' laws.
Schedule 2 (energy)	<p>SA Health would like to see the rationale for setting a minimum energy requirement and no maximum for the claim 'contributes to normal metabolism'. The concern is that this results in a promotion of high energy foods.</p> <p>In regard to the specific health effect 'contributes to weigh loss or weight maintenance', SA Health maintains its position from previous submissions that no single food can claim to influence weight loss or weight maintenance and this claim is therefore misleading.</p>
Schedule 2 (sugars)	Sugar and dental health have an inverse relationship which is not made clear in Schedule2; current statement 'contributes to dental health' infers a positive relationship between sugar and dental health.

Schedule 2 (Part 4 – Foods: fruit and vegetables)	The specific health effect claims only relate to heart disease and heart health. The NHMRC draft Australian Dietary Guidelines (incorporating the Australian Guide to Healthy Eating) ¹ summarises good evidence regarding reduced risk of stroke, obesity and weight gain, and various cancers (oral, nasopharyngeal, prostate, colorectal and lung) with fruit and vegetable consumption. Therefore it would be appropriate to consider this and other emerging evidence for additional future claims about fruits and vegetables during the transition period for the Standard.
Consequential variations	Comments
Variation of 1.3.2 (claimable foods)	The consequential amendments to Standard 1.3.2 are supported providing the current drafting of Schedule 1 for vitamins and minerals remains.
2.15 Percentage daily intake information included in the panel	Clause requires either of the following statements: 'based on an average adult diet of 8700kJ' or 'percentage daily intakes are based on an average adult diet of 8700kJ'. This is different from the current required statement in Standard 1.2.8, i.e. 'Percentage Daily Intakes are based on an average adult diet of 8700 kJ. Your daily intakes may be higher or lower depending on your energy needs.' SA Health recommends consistency between the two standards, and prefers the existing wording in standard 1.2.8, as it is important for consumers to understand that their energy needs may be higher or lower than 'average', particularly given the population obesity problem we have in Australia and the subsequent need for overweight and obese consumers to lower their total energy intake.

Table 2: Fat-free and % fat-free claims

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Question	Comment
<p>2. 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?</p> <p>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.</p> <p><i>(Note: Please provide documented or validated evidence where possible)</i></p>	<p>There appears to be little documented evidence regarding actual consumer purchasing behaviours for products that include fat free or %fat free; however the literature has explored consumer understanding and attitudes towards fat free and % fat free claims, which in turn have implications for their purchasing decisions and consumption behaviour of such products.</p> <p>A survey by Gorton et al (2010)² examined how various population groups in New Zealand interpret the '97% fat free' and 'no added sugar' claims on food labels. 1,525 adult shoppers were surveyed at 25 Auckland supermarkets equally representing Maori, Pacific, Asian, New Zealand, European and other ethnicities. Up to three quarters of Maori, Pacific and Asian shoppers assumed that if a food carried a '97% fat free' or 'no added sugar' claim it was therefore a healthy food. Similarly low income shoppers were significantly more likely than medium or high income shoppers to assume that the presence of a claim meant a food was definitely healthy. The authors concluded that nutrition content claims have the potential for harm if the food they are placed on is not healthy overall, and that such claims should therefore only be permitted to be placed on healthy foods.</p> <p>Chan et al (2005)³ explored the beliefs of 36 adults (26 female, 10 male) regarding beliefs and attitudes to claims about fat made on the labels of packaged food via focus group discussions. Ten products were provided for consideration, carrying the following fat claims: fat free, no fat, low fat, low in fat, lite, extra light, 97% fat free, 92% fat free, 50% less fat, and the Heart Foundation Tick. Awareness of claims about fat was high in this small sample, and participants admitted that these claims influenced their purchase decisions. The most preferred form of claim was "X% fat free". There was considerable scepticism about all nutrient claims, and consumers preferred to check claims about fat against the values in the nutrition information panel. Many claims were seen as advertising that could be misleading, deceptive or confusing. Some participants regarded 'fat free' as often being a false claim, because of small amounts of fat declared in the NIP. Some consumers believe low fat claims encourage over consumption of foods. The authors concluded that changes to regulations governing nutrition claims on food labels should be made to enhance their credibility and support their role in assisting consumer to make healthier food choices. They also noted that caution is needed in interpreting the results from a small qualitative study such as theirs.</p>

	<p>These findings support the concern that products with fat free or % fat free (or no added sugar) claims are sometimes incorrectly perceived by some consumers as being healthy. The current Schedule 1 draft conditions for a % fat free claim that the food also meets the conditions of a low fat nutrition content claim is some protection against misleading use of this claim in terms of its fat content. However fat free and % fat free could still be misleading in regard to the overall nutritional quality if the food is less desirable in other aspects such as high in sodium, and/or sugar, and/or overall energy.</p>
<p>3. 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.</p>	<p>SA Health supports Option 1 (status quo) so that the draft standard can proceed. However, SA Health suggests this is with the view to separately consider all nutrition content claims being subject to meeting the nutrient profiling scoring criterion (NPSC) should further research confirm this.</p> <p>SA Health supports <i>all</i> content claims being subject to the NPSC as stated in previous submissions. It is considered that the same reasoning given to justify the application of NPSC to foods carrying fat free claims could be given to all content claims, especially those relating to nutrients of public health significance, such as sodium, saturated fats and sugar.</p> <p>While there does not appear to be strong justification for a different approach to fat free content claims, it is acknowledged that these claims are the most prevalent in the marketplace and therefore arguably the most misleading.</p> <p>This is a significant issue which has only recently been raised by Ministers. It is considered that the time needed to properly investigate and conduct consumer research on the influence of fat related claims over other claims is not feasible within the existing timeframes. Therefore it is suggested that this issue be considered further in a separate proposal so that the rest of the draft standard can proceed.</p> <p>Option 1 (status quo) is therefore supported until such time as further evidence can be gathered on consumer use and understanding of fat related claims. SA Health considers that further research should focus on the use of fat-free and %fat free claims on confectionary and other high sugar foods and there possible displacement of other foods in the diet. SA Health commends FSANZ on commissioning a literature review on the available evidence in relation to fat-free claims, but suggests the scope of the literature review be broadened to include all nutrition</p>

	<p>content claims.</p> <p>Option 2 (code of practice) is not considered a valid option. The Code of Practice on Nutrient Claims (CoPONC) has been in existence for a number of years and has not significantly influenced manufacturers' attitudes to labelling for content claims. A Code of Practice that specifically put boundaries around the use of fat free claims on confectionary would have the same issues as stipulations in the Standard (option 3(c)); ie.. how are foods categorised appropriately?.</p> <p>CoPoNC states that - "If the claim is made for a food naturally or intrinsically free of fat, it must refer to the whole class of similar foods". eg. fat free claims on specific confectionary should refer to all confectionary that is intrinsically low in fat . While this requirement may be useful in not discriminating between naturally low fat products such as bread, it does not change the perception of healthiness of a product such as confectionary; eg. A product stating that all jelly snakes are 99% fat free is still arguably misleading the consumer into thinking that jelly snakes are healthier than other snack foods.</p>
<p>4. Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) (refer section 8) as follows:</p> <p>a. Which option do you support and why?</p> <p>b. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)? Where possible, provide information and</p>	<p>a. None of the sub-options for Option 3 are supported at the present time. Option 3(a) is considered a reasonable approach in the future if sufficient justification exists to support a different approach to fat free claims than to other nutrition content claims.</p> <p>b. Options 3(b) and 3(d) are not supported. It is considered that a sugar threshold would be problematic and possibly result in inconsistencies. A simple threshold for fat, sugar and salt was proposed previously when considering an earlier version of nutrient profiling but considered too inequitable when comparing across categories such as packaged cereals and fresh/ dried fruit. These options focussing on sugar content exclude other less desirable nutrients present in higher amounts, e.g. sodium, energy; and possible absence of positive nutrients such as fibre, fruit, vegetable, nut, legume or wholegrain content.</p> <p>Option 3(c) is also not supported. It is agreed that category definitions for prohibited foods would be difficult and confusing for consumers.</p> <p>c. No comment.</p>

<p>evidence to support your suggested threshold value.</p> <p>c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.</p>	
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¹ NHMRC Australian Dietary Guidelines Incorporating the Australian Guide to Healthy Eating. Draft for Public Consultation. December 2011.
http://consultations.nhmrc.gov.au/open_public_consultations/dietary-guidelines

² Gorton D, Mhurchu CN, Bramley D, Dixon R. Interpretation of two nutrition content claims: a New Zealand survey. Aust N Z J Public Health. 2010 Feb;34(1):57-62

³ Williams P, Yeatman H, Ridges L, Houston A, Rafferty J, Ridges A, Roesler L, Sobierajski M, Spratt B. Nutrition function, health and related claims on packaged Australian food products--prevalence and compliance with regulations. Asia Pac J Clin Nutr. 2006;15(1):10-20.