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Thank you for providing the opportunity to comment on this review. We assume that the overarching purpose of this standard is to improve health outcomes for the population. This standard does more than just imparting correct information, it informs health beliefs and develops behaviour which impact population health. Standard and policy change at this higher food system level can influence un-intended consequences, it is thus important that we get it right. As public health experts, it was critical to consider this whilst compiling this submission. We hope that you are able to consider these practical and informative suggestions.

FSANZ invites submitters to comment on the following:

- 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'.**

If not, please provide specific details. Ensure that the relevant clause number, Schedule number or consequential variation item number that you are commenting on is clearly identified.

Please note: It is not the purpose of this paper to revisit issues previously considered as part of P293. In addition, FSANZ is not seeking any further comment on issues raised in the Review Request.

In regards to this question on the usability of the revised drafting, it seems to be thorough and straightforward.

However from a public health perspective, we are concerned that any nutritional claims provide 'health halos' over nutrient poor foods and influence behaviour that can contribute towards non-communicable diseases. Investigative studies show that albeit 'truthful' labels and claims may not be sufficient to improve eating behaviour. By manipulating the macro and micro-nutrient content of foods in order to make a nutrient claim such as "low-carb" and "high protein" and allowing manufacturer-developed labels such as "healthy living", the public (in particular at-risk overweight public) can be misled into thinking this food is a healthy choice and is then over consumed (refer to part 2 of this submission).



One potential solution for FSANZ is to mandate that serving sizes and kilojoule (kJ) information are more salient. This would be useful for packaged foods and the fast-food industry where nutrition claims are widespread and salient and often divorced from serving size and kJ/nutrient info. In the latter case of fast-food advertising, the nutrient information may be not displayed or unavailable, even though a claim has been made. It is suggested that FSANZ should make it mandatory for Fast-food outlets to display serving size and nutritional information if a nutrition claim is made or advertised.

A second solution for FSANZ would be to increase the threshold for nutrient claims, thereby making the claim more substantial and less likely to promote unintentional kJ consumption by consuming a larger serving. For example;

Schedule 1: Energy | Reduced or Light/Lite | Change to: The food contains 33% fewer calories than the reference food (rather than 25%).

A third solution for FSANZ would be to alter the definition of serving sizes so that it is currently higher for foods that make relative nutrition claims. The FSANZ definition of serving size was unavailable from the website search field. It is assumed that it follows a similar definition to the FDA "an amount of food customarily consumed per eating occasion by persons 4 years and older, which is expressed in a common measure that is appropriate to the food."ⁱⁱ The key problem with this measure is that these reference amounts are for all foods in that category, regardless of their nutrition claims. They do not reflect how much is overeaten because of a nutrition claim (see submission part 2 below). Increasing serving sizes in the case of relative nutritional claims (e.g. low carb, reduced energy) would correspondingly increase the number of kJ's per serving mentioned in the label for these foods to become more realistic of how much is typically consumed.

By increasing serving size of foods with nutritional (primarily macro-nutrient related) claims this will; 1) more accurately describe the actual amount of food consumed and 2) would deter some people from eating significantly more than the serving size. For food manufacturer's, this may encourage them to provide portion-controlled packaging. For the public, they will be better and accurately informed when sifting through the market place of the shopping aisles.

PART 2:

FSANZ invites submitters to comment on the following:

- 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?**

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).

From a public health perspective, low fat and % fat-free claims are misleading and is a contributor to overweight, obesity and related co-morbidities.

We are concerned in regards to the public choosing foods with lower nutritional quality that feature low fat claims, in place of foods of higher nutritional quality (labelled or unlabelled). However there seems to be a research gap in this specific area. In contrast, a well-researched area is that low fat labels influence the public to consume larger servings (and therefore more kJ's) of low fat, kilojoule dense foods when compared to the same foods without the low fat claim.

Among the research scanned in preparing this submission, a Cornell University (2006) study found that low fat nutritional claims on foods with low nutrient value (confectionary, snack foods) have been shown to promote extra kilojoule consumption when compared with the same food that does not have a low fat claim. Participants in this study (n=269) ate 28.4% more M&M's if they were labelled as low fat (M=244 calories) than those labelled regular (M=190 calories). Furthermore, this finding was even more significant if the participant was overweight. Overweight and obese participants (n=103) were encouraged by the low fat labelling to consume greater quantities of kilojoules (47% increase) compared to normal weight participants (16% increase). The low fat label also decreased the perceived total kilojoules (rather than fat) in the foods tested compared to actual kilojoules, i.e. consumers expect that low fat products have 20-25% lower kilojoules than its regular counterparts.

This study found that the extra kilojoules consumed to increased portion size and a reduction in the feeling of guilt. Objective serving size information prevented normal-weight people from over-eating foods labelled as low fat. It does not influence overweight people. Therefore, allowing fat free and low fat claims on foods with poor nutritional value is misleading the public (especially over-weight public) into believing the product is low in kilojoules and therefore increases a consumers serving size estimate.

In the New Zealand and Australian context, overweight and obesity rates are increasing. The predominant cause of these conditions are an energy imbalance with total kilojoule consumption increasing alongside the competitive food-marketers tactics, appealing to both the hedonistic and health conscious. Therefore, efforts to make the public more aware of kJ content and portion sizes will have beneficial health impact in preventing obesity and its related morbidities. These findings should result in sounding alarm bells for FSANZ to restrict low fat nutritional claims and review serving size regulation.

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.

Option 1: Do not Support. Fat free claims have been shown to increase overall kJ consumption and the sub-option of an education option is likely to increase health inequalities with higher socio-economic groups responding to education, whilst lower socio-economic groups non-responding. Comprehensive multi-faceted population based education targeting the most at risk by being misled by low fat claims (overweight and obese) would take careful planning and be immensely costly when compared to a regulation change.

Option 2: Do not Support. This 'voluntary' action leaves substantial grey area for food marketers and manufacturers to deny uptake and compliance. Obesity and Overweight statistics are to dire to leave this area un-regulated and un-enforced.

Option 3: (a) SUPPORT. This Nutrient Profiling Scoring Criterion has validity as it regards the food for what it is in its entirety. As fat free claims can promote over-consumption, this can be highly damaging if a person believes they are eating a healthy product and they have (or are at risk of) a certain diet controlled disease. Furthermore, the comprehensive approach of the NPSC addresses sodium levels, a large contributor to various chronic conditions affecting a large portion of the general public. I would also propose that trans-isomer fatty acid(s) content is added to the risk-increasing component list, due to the wealth of evidence stating that trans-fats both increase Low Density Lipoproteins and reducing High Density Lipoproteins and this contribution to cardiovascular disease.

A New Zealand Study ⁱⁱⁱ concluded that % fat free and no added sugar nutrition content claims on food are frequently misinterpreted by shoppers as meaning the food is healthy overall and appear to be particularly misleading for Māori, Pacific, Asian and low-income groups. The researchers highlighted implications that nutrition content claims have potential for harm if the food they are placed on is not healthy overall. The researchers recommended that claims should therefore only be permitted to be placed on healthy foods. Thus supporting nutrition content claims to be based on the nutrient profiling model.

3(b) Do not Support. A lengthy disclosure statement has various practical implications, and also may not reach the intended at risk consumer. Studies have also shown that front and back label claims must be accompanied by a cohesive communication, education and marketing effort. ^{iv} This may not be viable or cost effective. Also, it has been shown that many people limit their information search to front panel, and longer health claims on the front panel tend to be less fully processed than shorter claims. ^v

3(c) Partial Support; It is agreed that restricting food categories such as confectionary and baked goods is possibly a great place to start as the misleading concerns arise predominantly from this category. However, as this process may exclude intended foods, it is not an appropriate long term response. For example if candied popcorn came under the popcorn category (rather than confectionary) it may be misleading to public to be labelled as 99% fat free as it is higher in KJ than a reduced fat version. This option will initially reduce the number of misleading claims on the supermarket shelves, but not aid in increasing confidence that the nutrient claim is accompanied by a healthy food.

3(d) Partial Support; By regulating claims alongside total sugar content this supports removing the misleading food manufacturer strategy of macro-nutrient manipulation in order to qualify for a claim (i.e, increasing sugar to enhance palatability after removing fat). From a public health perspective, the largest concern is not that the claims are solely factual, rather that they are not misleading or confusing and result in increased total kilojoule consumption, or a lack of nutrient consumption due to incorrect health beliefs. This option does not look at the whole food (including sodium), as the NPSC does which is more informative and less misleading in offering a platform for developing health beliefs than regulations with sugar. Also, it is difficult to find

comprehensive evidence supporting a generalised threshold of how much sugar per serving is appropriate.

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:

a. Which option do you support and why?

Option 3: (a) *see reasoning above*

b. 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.

The New Zealand Ministry of Health Food and Nutrition Guidelines background paper recommends that no more than 15% of total daily energy to be obtained from sucrose and other free sugars. The WHO FAO expert consultation (2003) recommended 10% and the NHMRC, Dietary Guidelines for Australian Adults (2003), recommends moderate intakes of sugar (being careful not to displace foods that provide nutritional gains). As the kilojoules consumed from sugar per serving is of concern, a threshold in grams per serving should be determined, rather than grams per 100gm (e.g. 10g per 100g). However it is difficult to find solid evidence to detail an exact range of sugar per serve that is general enough to suit a wide range of grocery items. This reasoning is why this option is not supported in its entirety.

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

See above (part 1) suggestions in regards to regulating and the saliency of serving size and kJ information.

Additionally, the success of nutritional claim changes by FSANZ will be greatly facilitated by nutritional campaigns to lay the groundwork of basic nutrition information and result in confident, informed consumers. Whereas many nutrition education efforts have been ineffective on a public health scale, effective efforts have taken a marketing-related approach toward education. That is, using targeted, consistent messages, using multiple communication channels with a strong consumer orientation³.

In summary, when reviewing nutritional content claims on packaging it is important to acknowledge consumer behaviour and the effects this has on public health rather than solely investigating the factual nature of a claim. Nutritional claims have influence, they are used as a guide for both purchasing and food consumption behaviour^{vi}. Inappropriate food consumption can result in an energy imbalance, obesity and related co-morbidities. Nutritional claims should be regulated as health claims are, using the NPSC as they both influence health beliefs about products.

Thank you for providing the opportunity for comment.

Yours sincerely,

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ⁱ Wansink, B and Chandon , (2006), Can 'Low Fat' Nutrition Labels lead to Obesity? Journal of Marketing Research. Vol XLIII (Nov), pp. 605-617.

ⁱⁱ FDA, 2003, pp. 29-30

ⁱⁱⁱ Gorton D, Mhurchu CN, Bramley D, Dixon R, (2010) Australian And New Zealand Journal Of Public Health Feb: Vol. 34 (1), pp. 57-62.

^{iv} Cheney, M & Wansink B, (2005) Leveraging FDA Health Claims, The Journal of Consumer Affairs, Vol 39, No 2, pp. 386-398

^v Levy, AS and Fein, SB (1998) Consumers Ability to Perform Tasks using Nutritional Labels, Journal of Nutrition Education, 30:4 (July-Aug), pp.210-217

^{vi} Food Standards Australia New Zealand. 2003, A Qualitative Consumer Study Related to Nutrition Content Claims on Food Labels, Canberra (AUST)