

**29 June 2015**  
**[13–15]**

## Approval Report – Application A1101

### Commencement of Dietary Fibre Claim Provisions

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Food Standards Australia New Zealand (FSANZ) has assessed an application made by the Australian Food and Grocery Council to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims for 12 months, from and including 18 January 2016, until and including 17 January 2017.

On 24 March 2015, FSANZ sought submissions on a draft standard and draft consequential variation to Standard 1.2.7 and published an associated report. FSANZ received seven submissions.

FSANZ approved the draft standards on 18 June 2015. The Australia and New Zealand Ministerial Forum on Food Regulation<sup>1</sup> (Forum) was notified of FSANZ's decision on 26 June 2015.

This Report is provided pursuant to paragraph 33(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

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<sup>1</sup> convening as the Australia and New Zealand Food Regulation Ministerial Council

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## Executive summary

FSANZ has assessed an Application from the Australian Food and Grocery Council requesting a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the *Australia New Zealand Food Standards Code* for 12 months, from and including 18 January 2016, until and including 17 January 2017.

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period. Clause 11 of Standard 1.2.7 imposes the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre listed in Schedule 1 of that Standard. FSANZ agreed to reconsider these criteria in 2013 following industry concern that they would adversely affect their ability to make nutrition content claims about dietary fibre. Some food businesses then elected to wait until this work was completed rather than proceeding with labelling and/or formulation changes required for compliance with the qualifying criteria. Other businesses elected to proceed with these changes before the outcome was known. After public consultation, FSANZ decided to maintain the qualifying criteria in Standard 1.2.7 and notified stakeholders of this decision in December 2013.

The Applicant asserts that, as FSANZ's decision on the qualifying criteria was not made until late 2013, 11 months after the gazettal of Standard 1.2.7, the transition period available for nutrition content claims about dietary fibre was effectively shortened by 11 months.

After accepting the Application, FSANZ undertook an initial round of public consultation in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application. Submissions were received from 10 stakeholders, with three providing cost data. From the information available, it appears that for those food businesses that delayed transitioning to the requirements for nutrition content claims about dietary fibre in Standard 1.2.7 pending the FSANZ consideration of the qualifying criteria in 2013, compliance costs could be minimised if the requirement to comply was delayed for 12 months. There was no opposition to the proposed delay from the five industry submitters. A further two submitters also supported the proposed delay. Three submitters did not support the delay stating that they considered two years from December 2013 sufficient time for food businesses to make labelling and/or product changes.

On 24 March 2015, FSANZ called for submissions on a draft Standard to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre for 12 months. All seven submitters supported the draft Standard.

FSANZ has approved draft Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims, and a draft consequential variation to Standard 1.2.7 of the existing Code, to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre<sup>2</sup> for 12 months.

A revision of the Code via Proposal P1025 – Code Revision, will replace the existing Code on 1 March 2016. FSANZ has therefore also approved draft Standard 1.2.12 – Transitional Standard for Dietary Fibre Nutrition Content Claims and draft consequential variations to Standards 1.1.1 – Structure of the Code, 1.2.7, 5.1.1 – Revocation, Transitionals etc of the revised Code.

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<sup>2</sup> For the purposes of this report, the term *qualifying criteria for nutrition content claims about dietary fibre* refers to the minimum amount of dietary fibre required in food carrying *source*, *good source*, *excellent source* (or synonyms), and *increased* claims (in relation to the amount of dietary fibre in the reference food).

The transitional period established by draft Standard 1.1A.8 will commence on 18 January 2016 and continue until the Standard ceases to have effect on 1 March 2016, which is the date on which the revised Code takes effect. The revised Code will also be amended so that the above transitional arrangement from 1 March 2016 until and including 17 January 2017 will be continued. Food businesses will be required to comply with all other aspects of Standard 1.2.7, including provisions for health claims about dietary fibre, from 18 January 2016.

As requested by submitters, to help consumers understand dietary fibre claims, FSANZ will provide information on the FSANZ website about the claims and the changes approved by FSANZ in this report.

# 1 Introduction

## 1.1 The Applicant

The Application was made by the Australian Food and Grocery Council (AFGC). The AFGC is the national organisation representing Australia's food, drink and grocery manufacturing industry. The Application is supported by the Grains & Legumes Nutrition Council, the New Zealand Food & Grocery Council and the Food and Beverage Importers Association.

## 1.2 The Application

The Application, received from the AFGC on 15 August 2014, sought to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the *Australia New Zealand Food Standards Code* (Code) for 12 months, from and including 18 January 2016, until and including 17 January 2017.

## 1.3 The current Standard

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period. Food businesses must comply with the new Standard, from and including 18 January 2016.

Clause 11 of Standard 1.2.7 requires nutrition content claims to comply with the conditions listed in Schedule 1 of that Standard. Schedule 1 includes conditions for nutrition content claims about dietary fibre. Foods carrying *source*, *good source* or *excellent source* (or synonyms of these) claims about dietary fibre must have 2 g, 4 g and 7 g dietary fibre per serving, respectively (see Table 1). In addition, foods carrying *increased* claims must contain at least 25% more dietary fibre than the same quantity of reference food (the reference food must contain at least 2 g of dietary fibre per serving). These qualifying criteria were developed during Proposal P293 – Nutrition, Health & Related Claims.<sup>3</sup>

For the purposes of this report the term *qualifying criteria for nutrition content claims about dietary fibre* refers to the minimum amount of dietary fibre required in food carrying *source* (2 g dietary fibre per serving), *good source* (4 g dietary fibre per serving), *excellent source* (7 g dietary fibre per serving) (or synonyms), and *increased* claims (reference food must contain at least 2 g dietary fibre per serving).

## 1.4 Justification for the Application

Before the gazettal of Standard 1.2.7, there were no qualifying criteria for nutrition content claims about dietary fibre in the Code. A voluntary code of practice, the 1995 *Code of Practice on Nutrient Claims in Food Labels and in Advertisements* (CoPoNC) (National Food Authority 1995), which included qualifying criteria for dietary fibre claims (see Table 1) was available in Australia. The *New Zealand Food Regulations (1984)* included qualifying criteria for *good source* claims only (4 g dietary fibre per serving); however these regulations were revoked in 2002.

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<sup>3</sup> Reports prepared for Proposal P293 are available at <http://www.foodstandards.gov.au/code/proposals/Pages/proposalp293nutritionhealthandrelatedclaims/Default.aspx>

**Table 1: Qualifying criteria for nutrition content claims about dietary fibre**

Descriptors for the dietary fibre nutrition content claim	CoPoNC qualifying criteria	Standard 1.2.7 qualifying criteria
	g dietary fibre per serving	
Source	1.5	2
Good source	3	4
Very high or Excellent source	6	7
Increased	reference food contains at least 1.5 g per serving and the food contains at least 25% more dietary fibre than the same quantity of reference food	reference food contains at least 2 g per serving and the food contains at least 25% more dietary fibre than the same quantity of reference food

In 2012, several breakfast cereal and bread manufacturers expressed concern that the qualifying criteria were set above the criteria in CoPoNC and that this would affect their ability to make nutrition content claims about dietary fibre. In response to this concern, FSANZ further considered the issue in 2013.

Following public consultation in mid-2013, FSANZ decided to maintain the qualifying criteria in Standard 1.2.7 and notified stakeholders of this decision in December 2013.<sup>4</sup>

As mentioned above, Standard 1.2.7 was gazetted in January 2013 with a three-year transition period, which ends on 18 January 2016. At that point, industry must comply with the Standard's qualifying criteria for nutrition content claims about dietary fibre.

The Applicant asserts that, as FSANZ's further consideration of the qualifying criteria was not completed until late 2013, the transition period available for nutrition content claims about dietary fibre was effectively shortened by 11 months. The Applicant therefore sought to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre for 12 months, that is, until and including 17 January 2017.

## **1.5 Reasons for accepting the Application**

The Application was accepted for assessment because:

- FSANZ was satisfied that information requirements relating to regulation impact would be best met by consultation with industry and the public following the Application's acceptance
- the Application otherwise complied with the procedural requirements under subsection 22(2)
- the Application related to a matter that warranted the variation of a food regulatory measure.

## **1.6 Procedure for assessment**

The Application was assessed under the General Procedure.

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<sup>4</sup> The consultation paper and final report are available at <http://www.foodstandards.gov.au/industry/labelling/Pages/Qualifying-criteria-for-nutrition-content-claims-about-dietary-fibre.aspx>

## 1.7 Decision

Draft Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims and consequential variation to Standard 1.2.7 of the existing Code, as proposed following assessment, were approved without change following consideration of submissions.

The approved draft Standard 1.1A.8 and draft consequential variation of Standard 1.2.7 of the existing Code take effect in Australia on 18 January 2016.

Given that a revision of the existing Code will take effect on 1 March 2016, draft Standard 1.2.12 – Transitional Standard for Dietary Fibre Nutrition Content Claims and consequential variations to Standard 1.1.1 – Structure of the Code, Standard 1.2.7 and Standard 5.1.1 – Revocation, Transitionals etc, of the revised Code, as proposed following assessment, were also approved with a minor change following consideration of submissions. The minor change was to the title of each instrument.

The approved draft Standard 1.2.12 and draft consequential variations to Standard 1.1.1, Standard 1.2.7 and Standard 5.1.1, of the revised Code take effect on 1 March 2016, which is the date on which the revised Code comes into effect.

The approved draft Standards and draft consequential variations of the existing and revised Codes and related Explanatory Statements are at Attachments A and B, respectively. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislative Instruments.

## 2 Summary of the findings

### 2.1 Summary of issues raised in submissions<sup>5</sup>

#### 2.1.1 Initial public consultation

An initial round of public consultation was undertaken in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application in accordance with the FSANZ Act, particularly paragraphs 29(2)(a) and (b).

Ten submissions were received. Five were from food businesses or bodies representing food businesses, three were from public health organisations and two were from jurisdictions. Of the ten submitters, seven supported the proposed delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre. A summary of issues raised by submitters and the FSANZ response were included in the call for submissions<sup>6</sup>. Cost data provided by three submitters are provided in section 2.3 of this report.

Overall, those in support of the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre noted that industry's decision to await the FSANZ review of the qualifying criteria in 2013 led to an 11 month delay in changing products and/or labels. Therefore, submitters considered an additional 12 months transition time is needed to reduce compliance costs, particularly in relation to the cost of anticipated product withdrawals and packaging write off (refer to section 2.3 for details).

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<sup>5</sup> Submissions can be viewed at <http://www.foodstandards.gov.au/code/applications/Pages/A1101-DietaryFibreClaimProvisions.aspx>

<sup>6</sup> The call for submissions is available at <http://www.foodstandards.gov.au/code/applications/Pages/A1101-DietaryFibreClaimProvisions.aspx>

Submitters not supporting the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre considered that two years from December 2013, when FSANZ's decision was made, should be sufficient time to make product or label changes to comply with Standard 1.2.7. They also noted that label changes could likely be combined with other labelling changes made over the remaining two years of the transition period, thereby minimising the cost of compliance.

Some submitters made comments about the level of the qualifying criteria for nutrition content claims about dietary fibre. FSANZ considers this topic is out of the scope of the Application.

### **2.1.2 Statutory call for submissions**

FSANZ released a call for submissions on a proposed draft Standard and consequential variations to the Code on 24 March 2015. Seven submissions were received, two from jurisdictions, four from industry and one from a public health stakeholder. All submitters supported the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7.

The New Zealand Ministry for Primary Industries suggested it is not necessary to refer to the 'absence' of dietary fibre in the Purpose and clause 1(1) of the draft Standard 1.1A.8. In response, FSANZ considers that the reference to 'absence' of dietary fibre is required so that the regulation of claims about the absence of dietary fibre is covered in the event such claims are made.

As requested by submitters, to help consumers understand dietary fibre claims, FSANZ will provide information on the FSANZ website about the claims and the changes approved by FSANZ in this report.

## **2.2 Risk assessment**

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period, which ends on 18 January 2016. Application A1101 seeks a 12-month delay in the requirement for industry to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7. The rationale is to reduce the cost of compliance for industry. FSANZ considered the qualifying criteria during the assessment of Proposal P293 and subsequently considered them again in 2013. Therefore the focus of Application A1101 is on the costs and benefits of delaying the requirement for industry to comply with the qualifying criteria for nutrition content claims for 12 months. We have undertaken an impact analysis based on the cost and other information provided by the Applicant and submitters.

## **2.3 Impact analysis**

The Applicant provided information and data to support the proposed 12-month delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre. The Applicant claims that the additional 12 months will *provide industry with an adequate period of time in which to address the challenges and financial impacts resulting from the increased levels of dietary fibre required.*

The Applicant referred to information provided in their submission in response to the consultation paper released by FSANZ in mid-2013. In that submission, the Applicant reported that members of the AFGC indicated that between 10% and 100% of products and SKUs<sup>7</sup> making nutrition content claims about dietary fibre do not meet the qualifying criteria in Standard 1.2.7.

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<sup>7</sup> SKU refers to a stock-keeping unit, a unique identifier for each distinct product that can be purchased in business.

It is not clear whether these figures remain current.

The Applicant reported data from a market survey conducted by the Grains & Legumes Nutrition Council in December 2013 and July 2014 (see Table 2). Methodology used for this survey was not provided.

**Table 2: Market survey conducted by Grains & Legumes Nutrition Council in December 2013 and July 2014**

Product Category	Survey Date	Number of products making dietary fibre claims	Number of products making dietary fibre claims that do not meet qualifying criteria in Standard 1.2.7	Latest product date mark
Breads and bread products	Dec 2013	150	16	
Breakfast cereals	Dec 2013	176	48	Aug 2015
Grains	Dec 2013	47	9	Oct 2014
Pasta	Dec 2013	22	5	Nov 2015
Soups with legumes	July 2014	10	2	May 2015
Liquid breakfast drinks	July 2014	29	6	Jun 2015
Legumes canned and dried	July 2014	77	9	Jun 2016
Muesli bars	July 2014	71	14	May 2015
Rice cakes	July 2014	7	7	Nov 2014
<b>TOTAL</b>		<b>589</b>	<b>116</b>	

Cost estimates for product withdrawal, packaging write-off and relabelling based on these data are provided in Table 3. Table 3 also includes a summary of cost information provided by three submitters. It appears from the available data that food businesses that elected to delay transitioning to the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7, may incur costs from labelling changes, product withdrawal and packaging write-off if the transition period remains as January 2016. The issue is likely to be compounded for products with a longer shelf-life, given there is no stock-in-trade provision to allow non-compliant stock to remain on sale.

The Applicant noted that, with the decision on the qualifying criteria not being made until December 2013, one manufacturer would not have sufficient time to reformulate their foods to meet the higher criteria. This manufacturer may therefore incur costs for relabelling in order to comply with the requirements by January 2016, followed by reformulation costs at a later date. The Applicant stated that this could cause confusion for consumers with changes in claims. The manufacturer advised the Applicant that if the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre was granted then product reformulation could be completed, avoiding relabelling costs.

The Applicant stated that a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is unlikely to affect consumers and that a delay could result in more current claims being maintained as there would be sufficient time to complete reformulation activities. The additional time would also give food businesses more time to communicate any changes to claims to consumers.

Since foods carrying claims are required to declare the amount of dietary fibre in the nutrition information panel, the Applicant asserts that consumers will still have information on which to base an informed choice. We note that the Grains & Legumes Nutrition Council stated in their submission that if a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is not granted, consumers could be affected as costs incurred by industry to write-off packaging may be passed on to consumers.

**Table 3: Summary of cost information provided by the Applicant and submitters (AUD)**

Item	Applicant/Submitter			
	Applicant (AFGC)	Grains & Legumes Nutrition Council	Simplot Australia	Nestle Australia Ltd, Nestlé New Zealand Ltd, Cereal Partners Worldwide
<b>Total number of products/SKUs carrying nutrition content claims about dietary fibre</b>	589 products <sup>1</sup>	402 products	111 SKUs	90 products (162 SKUs)
<b>Total number of products/SKUs that do not meet the qualifying criteria in Standard 1.2.7</b>	116 products <sup>1</sup>	84 products (breakfast cereals, breads, rice, noodles, crispbreads)	18 SKUs (frozen and canned vegetables)	25 products (25 SKUs) (breakfast cereals, snack bars)
<b>Cost of labelling changes made before October 2014</b>	No information provided	Estimate of at least \$400,000	Changes for 6 SKUs combined with other labelling changes	\$70,000 for 17 SKUs (partly combined with other changes)
<b>Cost of product reformulation before October 2014</b>	Partial cost of \$67,515 up to August 2013 (one food business)	Estimate of at least \$1.7 million (includes Nestle)	Nil products reformulated	Partial cost of \$50,000 for reformulating 12 products
<b><u>Direct cost of labelling changes:</u></b>				
<b>Transition period ending 18 January 2016</b>	Up to \$2.5 million (worst case scenario) (\$15,000 - \$25,000 per product with shorter shelf life)	NA	\$66,000 for 18 SKUs, but changes may be combined with other changes for 12 products, thereby costs avoided	\$185,000 for 18 SKUs
<b>Transition period ending 18 January 2017</b>	No information provided	NA	Relabelling can be combined with other label changes, therefore costs avoided	Cost likely to be a lot less than \$185,000 as costs can be shared with other changes
<b><u>Indirect cost of labelling changes:</u></b>				
<b>Transition period ending 18 January 2016</b>	<ul style="list-style-type: none"> <li>\$50,000 - \$75,000 per product for products with shelf life beyond January 2016; total cost - \$650,000 for withdrawal and relabelling or disposal of 9 legume products (worst case scenario)</li> <li>\$50,000 per food business to write off label stocks</li> </ul>	Costs associated with packaging write-off (estimate not provided)	Unable to provide cost estimate as need to know stock on hand just before January 2016. Could have up to 10 weeks stock to withdraw. Therefore would be costs to withdraw stock from trade and write the stock off along with costs of writing off packaging.	\$500,000 for product withdrawal and packaging write off

Item	Applicant/Submitter			
	Applicant (AFGC)	Grains & Legumes Nutrition Council	Simplot Australia	Nestle Australia Ltd, Nestlé New Zealand Ltd, Cereal Partners Worldwide
Transition period ending 18 January 2017	Above indirect costs largely avoided	Above indirect costs largely avoided	Above indirect costs avoided	Above indirect costs avoided
<b>Cost of product reformulation:</b>				
Transition period ending 18 January 2016	\$15,000 - \$25,000 per product	NA	Not reformulating any products	\$150,000 - \$200,000 for 12 products (includes relabelling costs) (to be completed by January 2016)
Transition period ending 18 January 2017	No information provided	NA	Not reformulating any products	Cost same as above

<sup>†</sup> Data were collected in December 2013 and July 2014 as shown in Table 2 of this report.

## 2.4 Risk management

The impact analysis suggests that if the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is delayed by 12 months, costs, particularly relating to product withdrawal and packaging write-off as provided in Table 3, would largely be avoided. Some relabelling costs may also be reduced. A delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre would also allow a further 12 months for the completion of product reformulation activities. In summary, although the information available does not allow a full understanding of the magnitude of the costs involved, it is apparent that compliance costs would be reduced for some food businesses. There appears to be no opposition to the proposed delay from the food industry in general.

As discussed in section 2.1.2, all submitters to the 2015 call for submissions supported the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7. As requested by submitters, to help consumers understand dietary fibre claims, FSANZ will provide information on the FSANZ website about the claims and the changes approved by FSANZ in this report.

The approved draft Standard 1.1A.8 (and subsequently the revised Code<sup>8</sup>) enables food businesses to either comply with clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, in relation to nutrition content claims about dietary fibre, from and including 18 January 2016, until and including 17 January 2017. Clause 2 of Standard 1.1A.8 permits the use of any descriptor for nutrition content claims about dietary fibre including *source*, *good source*, *excellent source* and *increased* without needing to comply with the qualifying criteria in Standard 1.2.7.

Food businesses will need to comply with all other requirements in Standard 1.2.7 from and including 18 January 2016, including provisions for general level health claims about dietary fibre.

<sup>8</sup> Note that the current Code expires on 1 March 2016, when the revised Code developed under Proposal P1025 takes effect and Chapters 1 and 2 of the current Code are repealed. On that date, the transitional arrangements proposed under Application A1101 will be carried over into the revised Code and continue until and including 17 January 2017. See Attachment B.

Note that subclause 2(2) of draft Standard 1.1A.8 includes the requirement for foods with *increased* claims about dietary fibre to contain at least 25% more dietary fibre than in the same quantity of reference food. This is included in Standard 1.1A.8 because this provision is in Schedule 1 of Standard 1.2.7 but is not part of qualifying criteria for nutrition content claims about dietary fibre for which the delay in the requirement for compliance was sought.

## **2.5 Risk communication**

### **2.5.1 Consultation**

Consultation is a key part of FSANZ's standards development process.

FSANZ applied a basic communication strategy for this Application. The calls for submissions were notified via the FSANZ Notification Circular, media release, FSANZ's social media tools and Food Standards News. Interested parties for Proposal P293 – Nutrition, Health & Related Claims were notified via email of the calls for submissions. The Applicant and interested parties have been notified at each stage of the assessment. Subscribers were also notified via email about the availability of documents for public comment.

FSANZ acknowledges the time taken by individuals and organisations to make submissions on this Application. FSANZ undertook an initial round of public consultation in October 2014 to gather cost-benefit information and to seek stakeholder views to inform the assessment of the Application. Ten submissions were received.

After assessing the Application, FSANZ sought submissions on a draft standard and draft consequential variation to Standard 1.2.7 and published an associated report. The consultation period was from 24 March 2015 until 5 May 2015. FSANZ received seven submissions.

Every submission on an application or proposal is considered by FSANZ. All comments are valued and contribute to the rigour of our assessment.

## **2.6 FSANZ Act assessment requirements**

### **2.6.1 Section 29**

#### **2.6.1.1 Cost benefit analysis**

FSANZ is required to consider the impact of various regulatory and non-regulatory options on all sectors of the community, especially relevant stakeholders. The benefits and costs associated with draft Standard 1.1A.8 and consequential variation of Standard 1.2.7 of the existing Code and draft Standard 1.2.12 and consequential variations of Standards 1.1.1, 1.2.7 and 5.1.1 of the revised Code have been considered.

FSANZ has clarified the regulation impact statement requirements for the Application with the Office of Best Practice Regulation (OBPR). The OBPR's advice is that a regulation impact statement is not required as proposed changes are considered as minor, machinery and deregulatory in nature (OBPR ID: 17599).

Two regulatory options were considered as follows:

1. approve the draft Standard 1.1A.8 and consequential variation to Standard 1.2.7 of the existing Code and the draft Standard 1.2.12 and consequential variations of Standards 1.1.1, 1.2.7 and 5.1.1 of the revised Code

2. reject the draft Standards and consequential amendments to other Standards.

The available evidence suggests that a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 for 12 months, from and including 18 January 2016, until and including 17 January 2017, is likely to be the most cost-effective response. This determination is based mainly on qualitative analysis which is appropriate for the nature of the Application. Refer to section 2.3 for a discussion on the costs and benefits.

Affected parties include the following:

**Industry:** The proposed food regulatory measures will benefit food businesses as they will minimise the costs of compliance with the qualifying criteria for nutrition content claims about dietary fibre. There has been no opposition to the proposed delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre from the food industry in general.

**Consumers:** It is not clear from the information available whether or not consumers will be affected by the proposed food regulatory measures, that is, by the possibility that foods with similar claims (e.g. *high fibre*) may have different amounts of dietary fibre (lower amounts) for a further 12 months. Since the gazettal of Standard 1.2.7 in January 2013, it is possible that foods in the marketplace with similar claims about dietary fibre could have different levels of dietary fibre.

Information about the dietary fibre content of foods carrying claims will continue to be available in the nutrition information panel, which may help to address any confusion over the 12 month period. To help consumers understand dietary fibre claims, FSANZ will provide information on the FSANZ website about the claims and the changes approved by FSANZ in this report.

The Grains & Legumes Nutrition Council stated in their submission that if a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is not granted, consumers could be affected as costs incurred by industry to write-off packaging may be passed on to consumers.

**Government:** There is not likely to be additional costs to government from the draft variations. Although the New Zealand Ministry for Primary Industries noted in its submission that it would be more straightforward if all requirements for nutrition, health and related claims came into force at the same time, no reference to costs was made.

#### **2.6.1.2 Other measures**

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the Application.

#### **2.6.1.3 Any relevant New Zealand standards**

The approved draft Standard 1.1A.8 of the existing Code and the approved draft Standard 1.2.12 of the revised Code apply to both Australia and New Zealand.

#### **2.6.1.4 Any other relevant matters**

No other relevant matters have been identified.

## **2.6.2. Subsection 18(1)**

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

### **2.6.2.1 Protection of public health and safety**

The approved draft Standard will only result in a relatively short delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre. It is not expected to impact adversely on the protection of public health and safety. See sections below.

### **2.6.2.2 The provision of adequate information relating to food to enable consumers to make informed choices**

As there will be no change to Standard 1.2.8 – Nutrition Information Requirements, consumers will continue to be provided with information about the dietary fibre content of foods carrying nutrition content claims about dietary fibre. In addition, subclause 19(3) of Standard 1.2.8 permits the voluntary declaration of dietary fibre in the nutrition information panel if the food contains less than 2 g dietary fibre per serving.

### **2.6.2.3 The prevention of misleading or deceptive conduct**

To assist consumer understanding of dietary fibre claims between January 2016 and January 2017, FSANZ will provide information about the claims on the FSANZ website.

## **2.6.3 Subsection 18(2) considerations**

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period, which ends on 18 January 2016. Application A1101 seeks a 12 month delay in the requirement for industry to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7. The rationale is to reduce the cost of compliance for industry. FSANZ considered the qualifying criteria during the assessment of Proposal P293 and subsequently considered them again in 2013. Therefore the focus of A1101 is on the costs and benefits of delaying the requirement for industry to comply with the qualifying criteria for nutrition content claims for 12 months. A qualitative analysis of costs and benefits has been undertaken.

- **the promotion of consistency between domestic and international food standards**

Not applicable as the approved draft Standard will only result in a relatively short delay in the requirement to comply with the qualifying criteria for one specific type of nutrition content claim.

- **the desirability of an efficient and internationally competitive food industry**

The variations to the existing and revised Codes will help to reduce the costs of compliance with qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7, thereby supporting an efficient and internationally competitive food industry.

- **the promotion of fair trading in food**

This Application is only about a relatively short delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre.

- **any written policy guidelines formulated by the Ministerial Council<sup>9</sup>**

In December 2003, Ministers approved the *Policy Guideline on Nutrition, Health and Related Claims*<sup>10</sup>. The Policy Guideline sets out the policy principles underpinning the regulation of nutrition content claims (and health claims) and aims to permit claims and encourage industry to innovate, whilst ensuring consumers are not misled.

The Policy Guideline states that a regulatory system for health, nutrition and related claims should amongst other things *allow for all transition issues to be clearly identified and steps taken to justify and to minimise costs of change and transition*. The delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre will help to minimise the cost of compliance with this aspect of Standard 1.2.7.

### 3 Transitional arrangements for Code Revision

FSANZ has approved a revision of the *Australia New Zealand Food Standards Code* via Proposal P1025 – Code Revision (the revised Code)<sup>11</sup>. The revised Code will replace the existing *Australia New Zealand Food Standards Code* (the existing Code) on 1 March 2016, when the existing Code will be repealed.

The approved variation at Attachment B varies the revised Code. It will amend the revised Code on 1 March 2016 to ensure that the revised Code is consistent with the current Code as amended by the variation at Attachment A.

### 4 References

National Food Authority (1995) Code of Practice on Nutrient Claims in Food Labels and in Advertisements. Commonwealth of Australia.

#### Attachments

- A. Approved draft variations to the existing *Australia New Zealand Food Standards Code* and related Explanatory Statements
- B. Approved draft variations to the revised *Australia New Zealand Food Standards Code* (commencing 1 March 2016) and related Explanatory Statements

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<sup>9</sup> Now known as the Australia and New Zealand Ministerial Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)

<sup>10</sup> The Policy Guideline is available at: <http://www.foodstandards.gov.au/code/fofr/fofrpolicy/pages/default.aspx>

<sup>11</sup> <http://www.foodstandards.gov.au/code/proposals/Pages/proposalp1025coderev5755.aspx>

## **Attachment A – Approved draft variations to the *Australia New Zealand Food Standards Code***



### **Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions) – Standard 1.1A.8**

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The Board of Food Standards Australia New Zealand gives notice of the making of this Standard under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on 18 January 2016.

Dated [To be completed by Standards Management Officer]

Standards Management Officer  
Delegate of the Board of Food Standards Australia New Zealand

**Note:**

This Standard will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**.

## **STANDARD 1.1A.8**

### **TRANSITIONAL STANDARD FOR DIETARY FIBRE NUTRITION CONTENT CLAIMS**

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#### **Purpose**

This Standard provides a transitional arrangement that operates concurrently with Standard 1.2.7 for a specified period to permit certain nutrition content claims about the presence or absence of dietary fibre to be made during that period.

#### **Clauses**

##### **1 Transitional Arrangement**

(1) During the transitional period, a claim about the presence or absence of dietary fibre in a food must comply with clause 11 of Standard 1.2.7 or clause 2 of this Standard, but not a combination of both.

(2) To avoid doubt, this Standard only relates to the application of clause 11 of Standard 1.2.7 and does not affect the application of any other clause of Standard 1.2.7.

(3) Subclause 1(2) of Standard 1.1.1 does not apply to this Standard.

(4) In this clause –

**transitional period** means the period commencing on 18 January 2016 and ending on 1 March 2016.

##### **2 Transitional Requirements for Dietary Fibre Nutrition Content Claims**

(1) A claim about the presence or absence of dietary fibre in a food may use any descriptor that is not mentioned in subclause (2), including a descriptor expressed as a number or in numeric form.

(2) If a claim about the presence of dietary fibre in a food uses the descriptor 'increased' or a synonym of that descriptor, that food must contain at least 25% more dietary fibre than in the same quantity of reference food.

(3) In this clause –

**food group** has the same meaning as in Standard 1.2.7.

**reference food** means a food that is –

(a) of the same type as the food for which a claim is made and that has not been further processed, formulated, reformulated or modified to increase or decrease the amount of dietary fibre; or

(b) a dietary substitute for the food in the same food group as the food for which a claim is made.

## Explanatory Statement

### 1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the existing Code, for 12 months (that is, until and including 17 January 2017).

The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft Transitional Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims and a draft consequential variation to Standard 1.2.7.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation<sup>12</sup>, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the draft Standard and consequential variation.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

### 2. Purpose

The Authority has approved draft Standard 1.1A.8 to permit nutrition content claims about dietary fibre to be made other than in accordance with Standard 1.2.7 during a transitional period. During the transitional period, suppliers will be able to comply with either clause 11 of Standard 1.2.7 or clause 2 of draft Standard 1.1A.8.

The transitional period established by draft Standard 1.1A.8 will commence on 18 January 2016 and continue until the Standard ceases to have effect on 1 March 2016, which is the date on which the revised Code takes effect. The revised Code will be amended before that date so that the revised Code continues the above transitional arrangement from 1 March 2016 until and including 17 January 2017.

### 3. Documents incorporated by reference

Draft Standard 1.1A.8 does not incorporate any documents by reference.

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<sup>12</sup> convening as the Australia and New Zealand Food Regulation Ministerial Council

#### **4. Consultation**

A non-statutory round of public consultation was undertaken in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application in accordance with the FSANZ Act, particularly paragraphs 29(2)(a) and (b). Submissions were called for on 23 October 2014 for a four-week consultation period.

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 included one round of public consultation following an assessment and preparation of a draft Standard, a draft consequential variation and associated report. Submissions were called for on 24 March 2015 for a six-week consultation period.

A Regulation Impact Statement was not required because the draft Standard 1.1A.8 of the existing Code is likely to have only a minor impact on business and individuals (OBPR ID: 17599).

#### **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

#### **6. Variation**

Clause 1 establishes a transitional arrangement for claims about the presence or absence of dietary fibre in a food.

Subclause 1(1) permits a claim about the presence or absence of dietary fibre in a food to be made during the transition period in accordance with either clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, but not a combination of both.

Subclause 1(2) explains that Standard 1.1A.8 only relates to the application of clause 11 of Standard 1.2.7. That is, a claim made under or in accordance with Standard 1.1A.8 must comply with all applicable clauses of Standard 1.2.7 other than clause 11.

Subclause 1(3) provides that subclause 1(2) of Standard 1.1.1 does not apply to Standard 1.1A.8. This means, for example, there will be no stock in trade exemption when the Standard commences.

Subclause 1(4) defines the term 'transitional period' used in subclause 1(1). The definition provides that the transition period will commence on 18 January 2016 and will end on 1 March 2016, which is the date on which the revised Code takes effect and Chapters 1 and 2 of the current Code, including Standard 1.1A.8, will be revoked and replaced. The revised Code will be amended before 1 March 2016 to establish and continue the same transitional arrangement for claims about the presence or absence of dietary fibre in a food made during the period from 1 March 2016 until and including 17 January 2017.

Clause 2 lists the requirements for claims about the presence or absence of dietary fibre in a food that are permitted by clause 1 of Standard 1.1A.8.

Subclause 2(1) permits such a claim to use any descriptor that is not mentioned in subclause (2). This permission includes the use of a descriptor expressed as a number or in numeric form.

Subclause 2(2) imposes a specific condition for the use of the descriptor ‘increased’ or a synonym of that descriptor in such claims—the relevant food must contain at least 25% more dietary fibre than in the same quantity of reference food.

Subclause 2(3) provides definitions for terms used in clause 2 (“food group” and “reference food”).

**Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation**

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The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 3 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer  
Delegate of the Board of Food Standards Australia New Zealand

**Note:**

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**.

**1 Name**

This instrument is the *Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation*.

**2 Variation to Standards in the *Australia New Zealand Food Standards Code***

The Schedule varies a Standard in *Australia New Zealand Food Standards Code*.

**3 Commencement**

The variation commences on 18 January 2016.

**SCHEDULE**

**[1] Standard 1.2.7** is varied by inserting after the heading “Part 1 – Purpose and Interpretation of that Standard” –

“

**Editorial Note:**

Standard 1.1A.8 is a transitional Standard that applies to claims about the presence or absence of dietary fibre in a food and operates concurrently with Standard 1.2.7. The transitional arrangement permitted by Standard 1.1A.8 allows a supplier making a claim about the presence or absence of dietary fibre in a food to either comply with clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, but not both. This transitional arrangement under Standard 1.1A.8 commenced on 18 January 2016 and will cease on 1 March 2016 when the revised Code takes effect and that Standard is revoked. The revised Code will provide a similar transitional arrangement until and including 17 January 2017.

”

# Explanatory Statement

## 1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the existing Code, for 12 months (that is, until and including 17 January 2017).

The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft consequential variation to Standard 1.2.7.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation<sup>13</sup>, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the consequential variation.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

## 2. Purpose

The Authority has approved a draft variation called *Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation* to make a consequential amendment to Standard 1.2.7 in order to provide an explanation of the transitional arrangement permitted under Standard 1.1A.8.

## 3. Documents incorporated by reference

The draft consequential variation does not incorporate any documents by reference.

## 4. Consultation

A non-statutory round of public consultation was undertaken in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application in accordance with the FSANZ Act, particularly paragraphs 29(2)(a) and (b). Submissions were called for on 23 October 2014 for a four-week consultation period.

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 included one round of public consultation following an assessment and preparation of a draft Standard, a draft consequential variation and associated report. Submissions were called for on 24 March 2015 for a six-week consultation period.

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<sup>13</sup> convening as the Australia and New Zealand Food Regulation Ministerial Council

A Regulation Impact Statement was not required because the draft consequential amendment to Standard 1.2.7 of the existing Code is likely to have only a minor impact on business and individuals (OBPR ID: 17599).

## **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## **6. Variation**

Item 1 inserts a new Editorial Note into Standard 1.2.7 explaining that:

1. Standard 1.1A.8 is a transitional Standard that applies to claims about the presence or absence of dietary fibre in a food and operates concurrently with Standard 1.2.7
2. the transitional arrangement permitted under Standard 1.1A.8 allows a supplier making a claim about the presence or absence of dietary fibre in a food to either comply with clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, but not both
3. this transitional arrangement under Standard 1.1A.8 will commence on 18 January 2016 and will cease to operate on 1 March 2016 when the revised Code takes effect and that Standard is revoked
4. the revised Code will provide a similar transitional arrangement until and including 17 January 2017.

## **Attachment B – Approved draft variations to the revised *Australia New Zealand Food Standards Code* (commencing 1 March 2016)**



### ***Australia New Zealand Food Standards Code* – Revocation and Transitional Variation 2015 (Application A1101 – Commencement of Dietary Fibre Claim Provisions)**

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The Board of Food Standards Australia New Zealand gives notice of the making of this Standard under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on 1 March 2016.

Dated [To be completed by Standards Management Officer]

Standards Management Officer  
Delegate of the Board of Food Standards Australia New Zealand

**Note:**

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 20XX.

## Standard 1.2.12 Transitional standard for dietary fibre nutrition content claims

**Note 1** This instrument is a standard under the *Food Standards Australia New Zealand Act 1991* (Cth). The standards together make up the *Australia New Zealand Food Standards Code*. See also section 1.1.1—3.

**Note 2** The provisions of the Code that apply in New Zealand are incorporated in, or adopted under, the *Food Act 2014* (NZ). See also section 1.1.1—3.

### 1.2.12—1 Name

This Standard is *Australia New Zealand Food Standards Code* – Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims.

**Note** Commencement:

This Standard commences on 1 March 2016, being the date specified as the commencement date in notices in the *Gazette* and the *New Zealand Gazette* under section 92 of the *Food Standards Australia New Zealand Act 1991* (Cth). See also section 93 of that Act.

### 1.2.12—2 Transitional arrangement

- (1) A claim about the presence or absence of dietary fibre in a food must comply with section 1.2.7—12 or section 1.2.12—3, but not a combination of both.
- (2) To avoid doubt, this Standard only relates to the application of section 1.2.7—12 and does not affect the application of any other provision of Standard 1.2.7.
- (3) Subsection 1.1.1—9(1) does not apply to this Standard.

### 1.2.12—3 Transitional requirements for dietary fibre nutrition content claims

- (1) A claim about the presence or absence of dietary fibre in a food may use any descriptor that is not mentioned in subsection 1.2.12—3(2), including a descriptor expressed as a number or in numeric form.
- (2) If a claim about the presence of dietary fibre in a food uses the descriptor 'increased' or a synonym of that descriptor, that food must contain at least 25% more dietary fibre than in the same quantity of reference food.
- (3) In this section:  
**food group** has the same meaning as in Standard 1.2.7.  
**reference food** means a food that is:
  - (a) of the same type as the food for which a claim is made and that has not been further processed, formulated, reformulated or modified to increase or decrease the amount of dietary fibre; or
  - (b) a dietary substitute for the food in the same food group as the food for which a claim is made.

### 1.2.12—4 Expiry of the transitional arrangement

This Standard ceases to have effect on 18 January 2017.

## Explanatory Statement

### 1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims, for 12 months (that is, until and including 17 January 2017). The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft Transitional Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation<sup>14</sup>, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

### 2. Purpose

The Authority has approved draft Standard 1.2.12 to permit nutrition content claims about dietary fibre to be made other than in accordance with Standard 1.2.7 during a transitional period. During the transitional period, suppliers will be able to comply with either section 1.2.7—12 of Standard 1.2.7 or section 1.2.12—3 of draft Standard 1.2.12.

The transitional period established by draft Standard 1.2.12 will commence on 1 March 2016, and cease on 18 January 2017.

### 3. Documents incorporated by reference

Draft Standard 1.2.12 does not incorporate any documents by reference.

### 4. Consultation

A non-statutory round of public consultation was undertaken in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application in accordance with the FSANZ Act, particularly paragraphs 29(2)(a) and (b). Submissions were called for on 23 October 2014 for a four-week consultation period.

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<sup>14</sup> convening as the Australia and New Zealand Food Regulation Ministerial Council

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 included one round of public consultation following an assessment and preparation of a draft Standard, a draft consequential variation and associated report. Submissions were called for on 24 March 2015 for a six-week consultation period.

A Regulation Impact Statement was not required because the draft Standard 1.2.12 of the revised Code is likely to have only a minor impact on business and individuals (OBPR ID: 17599).

## **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## **6. Variation**

Section 1.2.12—1 provides the name of the Standard is the *Australia New Zealand Food Standards Code – Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims*.

Sections 1.2.12—2 to 1.2.12—4 establish a transitional arrangement for claims about the presence or absence of dietary fibre in a food.

Subsection 1.2.12—2(1) permits a claim about the presence or absence of dietary fibre in a food to be made in accordance with either section 1.2.7—12 or section 1.2.12—3, but not a combination of both.

Subsection 1.2.12—2(2) explains that Standard 1.2.12 only relates to section 1.2.7—12 and does not affect the application of any other provision of Standard 1.2.7. That is, a claim made under or in accordance with Standard 1.2.12 must comply with all applicable sections of Standard 1.2.7 other than section 1.2.7—12.

Subsection 1.2.12—2(3) provides that subsection 1.1.1—9(1) does not apply to Standard 1.2.12. This means, for example, there will be no stock in trade exemption when Standard 1.2.12 commences.

Section 1.2.12—3 lists the requirements for claims about the presence or absence of dietary fibre in a food that are permitted by section 1.2.12—2.

Subsection 1.2.12—3(1) permits such a claim to use any descriptor that is not mentioned in subsection 1.2.12—3(2). This permission includes the use of a descriptor expressed as a number or in numeric form.

Subsection 1.2.12—3(2) imposes a specific condition for the use of the descriptor 'increased' or a synonym of that descriptor in such claims—the relevant food must contain at least 25% more dietary fibre than in the same quantity of reference food.

Subsection 1.2.12—3 (3) provides definitions for terms used in section 1.2.12—3 ("food group" and "reference food").

Section 1.2.12—4 provides that Standard 1.2.12 ceases to have effect on 18 January 2017.

***Australia New Zealand Food Standards Code – Revocation and Transitional Variation 2015  
(Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential)***

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The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 2 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer  
Delegate of the Board of Food Standards Australia New Zealand

**Note:**

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX.**

## **1 Name of instrument**

This instrument is the *Australia New Zealand Food Standards Code — Revocation and Transitional Variation 2015 (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential)*.

## **2 Commencement**

This instrument commences on 1 March 2016 immediately after the commencement of Standard 5.1.1 – Revocation and transitional provisions —2014 Revision.

## **3 Variation of Standard 1.1.1**

Schedule 1 varies the *Australia New Zealand Food Standards Code* – Standard 1.1.1 – Structure of the Code and general provisions.

## **4 Variation of Standard 1.2.7**

Schedule 2 varies the *Australia New Zealand Food Standards Code* – Standard 1.2.7 – Nutrition, health and related claims.

## **5 Variation of Standard 5.1.1**

Schedule 3 varies the *Australia New Zealand Food Standards Code* – Standard 5.1.1 – Revocation, transitionals etc

### **Schedule 1 – Variation of Standard 1.1.1**

[1] In subsection 1.1.1—2(2), after the entry for “Standard 1.2.11 – Country of origin labelling requirements”, insert “Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims-2014 Revision”

### **Schedule 2 – Variation of Standard 1.2.7**

[1] After section 1.2.7—12, insert

**Note** Standard 1.2.12 is a transitional Standard that applies to claims about the presence or absence of dietary fibre in a food and operates concurrently with Standard 1.2.7. The transitional arrangement permitted by Standard 1.2.12 allows a supplier making a claim about the presence or absence of dietary fibre in a food to either comply with section 1.2.7—12 or section 1.2.12—3, but not both. This transitional arrangement under Standard 1.2.12 commenced on 1 March 2016 and ceases to have effect on 18 January 2017.”

### **Schedule 3 – Variation of Standard 5.1.1**

[1] Insert into section 5.1.1—2 in alphabetical order:

“(ca) Standard 1.1A.8—Transitional Standard for Dietary Fibre Nutrition Content Claims.”

# Explanatory Statement

## 1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the existing Code, for 12 months (that is, until and including 17 January 2017).

The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation to the Code, which consists of a draft Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims and draft variation consequential variations to other Standards.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation<sup>15</sup>, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the draft Standard and consequential variation.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

## 2. Purpose

The Authority has approved a draft variation called *Australia New Zealand Food Standards Code — Revocation and Transitional Variation 2015 (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential)* to make consequential amendments to Standards other than Standard 1.2.12.

## 3. Documents incorporated by reference

The draft consequential variation does not incorporate any documents by reference.

## 4. Consultation

A non-statutory round of public consultation was undertaken in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application in accordance with the FSANZ Act, particularly paragraphs 29(2)(a) and (b). Submissions were called for on 23 October 2014 for a four-week consultation period.

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 included one round of public consultation following an

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<sup>15</sup> convening as the Australia and New Zealand Food Regulation Ministerial Council

assessment and preparation of a draft Standard, draft consequential variations and associated report. Submissions were called for on 24 March 2015 for a six-week consultation period.

A Regulation Impact Statement was not required because the draft consequential amendments in the revised Code are likely to have only a minor impact on business and individuals (OBPR ID: 17599).

## **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## **6. Variation**

Item 1 of Schedule 1 of the Variation amends subsection 1.1.1—2(2) by inserting into that subsection a reference to Standard 1.2.12. Subsection 1.1.1—2(2) sets out the structure of the Code.

Item 1 of Schedule 2 of the Variation amends Standard 1.2.7 by inserting a new Note after subsection 1.2.7—12. The Note is to explain the transitional arrangement established by Standard 1.2.12 for claims about the presence or absence of dietary fibre in a food.

Item 1 of Schedule 3 of the Variation amends section 5.1.1—2 by inserting into that section a reference to Standard 1.1A.8. This will mean that Standard 1.1A.8 will be revoked on 1 March 2016.