3 Methods

3.1 Label Collection

Nominated samplers for AgriQuality Australia Pty Ltd collected the food labels from Australian and New Zealand retail outlets between May – October 2005. The full method for collecting labels to be assessed for nutrition and health claims is given in Appendix 2.

For the purpose of the survey, foods were grouped into 14 major food categories using a classification system similar to that used in Standard 1.3.1 - Food Additives of the Food Code, as outlined below:

1. Dairy products
2. Edible oils & oil emulsions
3. Ice cream & edible ices
4. Fruit & vegetables
5. Confectionery
6. Cereals & cereal products
7. Breads & bakery products
8. Meat & meat products
9. Fish & fish products
10. Egg & egg products
11. Sugar, honey & related products
12. Foods intended for particular dietary uses
13. Non alcoholic beverages
14. Mixed foods

The product sampling plan was devised based on a Stock Keeping Unit (SKU) list obtained from a principal Australian retailer, with reference to the product sampling plan used for the collection of labels for the 2003 Label Monitoring Survey by Silliker Microtech Pty Ltd.

From the SKU list, the total number in terms of the variety of products available in each food category was estimated. Two percent of the total SKUs for any given food category was chosen as a sampling quota. The total number of samples to be taken was 1399: 746 from Australia and 653 from New Zealand.

To ensure the sampling of a variety of brand types, label collection was undertaken in both the North and South Islands of New Zealand and split between the principal supermarket chains in Auckland, Wellington and Christchurch. In Australia, sampling was undertaken in all States from principal supermarket chains, as well as smaller grocery outlets and specialist stores.

Any point of sale advertising materials relating to the collected products were also sought and retained with the relevant label for assessment of health and nutrition claims.

3.2 Data Collection

A draft checklist for nutrition, health and related claims was provided by FSANZ and modified to form a database containing the criteria required for the assessment of the labels collected for Phase 1, Stage 2 in 2003 (Appendix 3).
For the assessment of 2005 labels, AgriQuality developed a database (based on that used for Phase 1), which allowed comprehensive and systematic classification of nutrition and health claims, including multiple claims on some labels. The database allowed for recording appropriate detail that will enable interrogation of the data against future legislative frameworks.

Two food labelling analysts from AgriQuality Australia Pty Ltd, who are approved analysts under the Food Act (1984), assessed each label according to whether it carried a nutrition claim or a health claim, using the claim classification framework set out in the Initial Assessment Report to Proposal P293 (Appendix 1) for guidance. The analysts worked through the system together to ensure consistency of classification and interpretation, and as far as possible, in the wording used to describe inconsistencies with legislation or codes of practice. The FSANZ Labelling and Information Standards Section were consulted to ensure the Project Team’s interpretations were consistent with those of FSANZ.

As part of the checklist for each label, the exact wording of each claim was recorded in the database. Following completion of label assessment and data entry, any inconsistencies identified were resolved by referring to the exact wording or the actual labels.

3.3 Data security and confidentiality

The database is stored on AgriQuality’s secure network. Only members of the Project Team and the database developers have access to the database. The database is able to be accessed on the Internet via the appropriate security protocols, to enable the FSANZ Labelling and Information Standards Section to use the data.

3.4 Provisions used for label assessment

This section summarises the labelling provisions used to assess whether labels (plus any relevant point of sale material) in the current survey featured claims.

a) **Standard 1.2.8 – Nutrition Information Requirements** sets out nutrition information requirements in relation to food that is required to be labelled under the Food Code and for food exempt from these labelling requirements. This Standard prescribes when nutritional information must be provided, and the manner in which such information is provided (e.g. Nutrition Information Panel or NIP), including the conditions for making certain nutrition claims.

Specific requirements include declarations of the trans, polyunsaturated and monounsaturated fatty acid content where a nutrition claim is made for cholesterol, saturated, trans, polyunsaturated or monounsaturated fatty acids or omega-3, omega-6 or omega-9 fatty acids.

A declaration of the presence or absence of dietary fibre must be included in the panel when a nutrition claim is made for fibre, any specifically named fibre, sugars, or any other type of carbohydrate.

Information relating to the percentage daily intake of nutrients set out in a NIP may be included in the panel, as long as certain criteria are met.
Division 3 of Standard 1.2.8 also sets out the conditions for making nutrition claims in relation to the following:

- Polyunsaturated or monounsaturated fatty acid content of foods
- Omega fatty acid content of foods
- Low joule claims in relation to food
- Lactose claims in relation to food
- Gluten content of food
- Salt, sodium or potassium content of food

**b) Standard 1.3.2 - Vitamins and Minerals** regulates the claims which can be made in relation to the presence of a vitamin or mineral and lists the specific vitamins and minerals (and amounts) permitted. Where a claim is made in relation to the presence of a vitamin or mineral in a food, the label must include a statement containing the amount per 100g/mL of the vitamin or mineral in respect of which the claim is made and the proportion of the RDI of that vitamin or mineral per serving, or the average quantity per serving of the vitamin or mineral for which an ESADDI has been prescribed.

In addition, Standard 1.3.2 states that a claim relating to the presence of a vitamin or mineral in a food may be made if a reference quantity of the food contains no less than 10% or 25%, respectively of the Recommended Dietary Intake (RDI) or Estimated Safe and Adequate Daily Dietary Intake (ESADDI) for that vitamin or mineral.

**c) Standard 2.9.1 - Infant Formula Products.** This Standard provides for the compositional (including nutritional), and labelling requirements for foods intended or represented for use as a substitute for breast milk. This Standard also provides for infant formula products intended for infants with special nutritional requirements, and prohibits certain representations about the product in relation to health and nutrition.

**d) Standard 2.9.2 - Foods for Infants.** This Standard provides for the compositional (including nutritional) and labelling requirements of foods intended and/or represented for use as food for infants. This Standard also prescribes the conditions for making claims about vitamins and minerals in foods for infants.

**e) Standard 2.9.3 - Formulated Meal Replacements and Formulated Supplementary Foods.** This Standard provides compositional and labelling requirements for formulated meal replacements and formulated supplementary foods. In addition, this Standard sets out the compositional and labelling requirements for formulated supplementary foods for young children aged one to three years.

**f) Standard 2.9.4 - Formulated Supplementary Sports Foods.** This Standard defines and regulates the composition and labelling of foods specially formulated to assist sports people in achieving specific nutritional or performance goals. This Standard provides for the addition of certain micronutrients and other ingredients that are not permitted to be added to other foods, and sets out the requirements for making permitted nutrition claims.

**g) Standard 1.1A.2 - Transitional Standard – Health Claims.** This transitional standard sets out certain prescriptions relating to health claims, and generally prohibits the following, unless they are expressly permitted elsewhere in the Food Code:

- Claims or statements that the food is a slimming food or has intrinsic weight-reducing properties
- Claims for therapeutic or prophylactic action or a claim described by words of similar import
• The words ‘health’ or any word or words of similar import as a part of or in conjunction with the name of the food
• Any word, statement, claim, express or implied, or design that directly or by implication could be interpreted as advice of a medical nature from any person
• The name of or a reference to any disease or physiological condition.

This Standard also sets out the eligibility criteria for certain foods to carry a specific health claim about the benefit of maternal consumption of folate, to prevent neural tube defects (e.g. spina bifida) in developing foetuses.

h) Code of Practice on Nutrient Claims in Food Labels and in Advertisements 1995 (CoPoNC). CoPoNC provides the basis for voluntary self-regulation of nutrition claims by the Australian food industry. It sets out the conditions under which certain claims may be made on the labels of food packages, on labels associated with unpackaged foods and in the advertising of foods.

CoPoNC covers nutrition claims made with respect to the following nutrients: fats, saturated fats, cholesterol, sugars, fibre, salt and sodium, and energy. Other terms are also covered, including ‘X% free’ (when applied to any nutrient other than fat), the terms ‘light’, ‘lite’ or ‘diet’, and comparative claims between different foods.

Nutrition claims are either expressed as absolute (e.g. ‘high’, ‘low’ or ‘free’) or as comparative, where a particular food is compared to a reference food (e.g. ‘reduced’ or ‘increased’).

i) Fair trading legislation – Certain sections of the New Zealand Fair Trading Act 1986 (FTA) and the Australian Trade Practices Act 1974 (TPA) relate to food labelling and marketing. Specifically, claims about food content, quality, quantity, characteristics or benefits must not be misleading or deceptive. In relation to food, this includes labelling of food products, any advertising, promotional material, or verbal representation about those products.

Labels with nutrition or health claims were assessed against fair trading legislation in terms of the representation not being false, misleading or deceptive in any particular way.

j) New Zealand Dietary Supplement Regulations 1985 (NZDSR)

The NZDSR has specific labelling requirements that relate to all dietary supplements, including Food Type Dietary Supplements (FTDS).

Labels must include the quantities or proportions of the claimed active ingredients in the package or container or in each dosage unit.

Unless permitted by other legislation, dietary supplements may not make therapeutic claims relating to any of the following:
• Treating or preventing disease
• Diagnosing disease or ascertaining the existence, degree or extent of a physiological condition
• Altering the shape, structure, size or weight of the human body
• Otherwise preventing or interfering with the normal operation of a physiological function, whether permanently or temporarily, and whether by way of terminating or reducing or postponing, or increasing or accelerating, the operation of that function, or in any other way.
Thus, while therapeutic claims are not permitted under the NZDSR, health claims are not prohibited. Inclusion of the term ‘dietary supplement’ on the product label is required under this regulation, which assisted the Project Team in identifying any labels to be assessed against NZDSR.

3.5 Assessment of claims

Nutrition, health and related claims are defined and classified in Proposal P293 – Nutrition, Health and Related Claims and Standard 1.2.8 of the Food Code.

When the Project Team identified a label claim, they assessed it against the specific requirements of the labelling provisions in legislation and codes of practice to determine whether it was consistent with those provisions.

Assessment of claims against certain provisions required interpretation by the assessors, and this section provides key examples to indicate how such assessments were made.

3.6 Nutrition claims on labels collected in Australia and New Zealand

a) Standard 1.2.8 – Nutrition Information Requirements
Any nutrients or biologically active substances that were listed in the NIP in addition to those required by a standard NIP were assessed as nutrition claims. Where the nutrients or substances were not mentioned anywhere else on the label, and the amount claimed was consistent with other relevant provisions of Standard 1.2.8, the claim was considered to be consistent with the requirements of Standard 1.2.8.

Where a nutrient or biologically active substance is mentioned on a label, it is required to be listed in the NIP to not more than three significant figures. In the current survey, when a nutrient or biologically active substance was mentioned on the label, but not listed correctly in the NIP, the claim was considered to be inconsistent with the requirements of Standard 1.2.8 for absolute nutrition claims.

Where a nutrition claim is made in respect of cholesterol, saturated, trans, polyunsaturated or monounsaturated fatty acids or omega-3, omega-6 or omega-9 fatty acids, the amount of the trans, polyunsaturated and monounsaturated fatty acids must be declared in the NIP. In the current survey, if the NIP did not provide the fatty acid information as required, this was counted as a single inconsistency, even if the label made nutrition claims in relation to more than one of the above nutrients e.g. ‘cholesterol free, good source of omega 3 fatty acids’. Such claims were assessed as absolute or comparative nutrition claims, depending on whether the claim used the terms ‘high’ or ‘low’ (absolute), or, ‘increased’ or ‘decreased’ (comparative).

Where a nutrition claim is made in respect of fibre, any specifically named fibre, sugars, or any other type of carbohydrate, the NIP must include a declaration of the presence or absence of dietary fibre. The absence of dietary fibre in the product must be declared as zero. In the current survey, where such a claim was made on the label, but dietary fibre was not correctly listed in the NIP, the claim was assessed as inconsistent with the requirements of Standard 1.2.8 for absolute nutrition claims.

Where percentage daily intake information is included in an NIP, the percentage daily intake of energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium must be provided, accompanied by the statement ‘*Percentage daily intakes are based on an average adult diet of 8700 kJ. Your daily intakes may be higher or lower depending upon your energy needs.*’
Specific claims in relation to polyunsaturated or monounsaturated fatty acid content, omega fatty acid content, low joule, lactose, gluten or salt, sodium or potassium content were each assessed according to the provisions of Division 3 of Standard 1.2.8 for nutrition claims. For example, for a nutrition claim that a food is low lactose, lactose must be listed in the NIP, and the amount in the food must not be higher than 0.3 g per 100 g. The amount of galactose in the product must also be listed in the NIP, with the format for this prescribed in Standard 1.2.8. As the claim relates to sugars, a declaration of the presence or absence of dietary fibre must also appear in the NIP. If any of these label components were absent or in a different format to that prescribed, the nutrition claim was assessed as inconsistent with the requirements of Standard 1.2.8.

Gluten claims were not assessed in this stage of the label monitoring survey as they will be included in the assessment of labelling requirements for certain substances in the second stage of the 2005 label monitoring survey.

b) Standard 1.3.2 – Vitamins and Minerals

Standard 1.3.2 sets out several criteria for making claims relating to the presence of vitamins or minerals in a food. For example, a claim to the effect that a food is a good source of a vitamin or mineral may be made if a reference quantity of the food contains no less than 25% of the RDI or ESADDI for that vitamin or mineral. If the amount stated on the label was less than 25% the claim was considered to be inconsistent with the provisions of Standard 1.3.2.

Where a claim is made in relation to the presence of a vitamin or mineral in a food, the average quantity of the vitamin or mineral in 100 g (or 100 mL) of the food must be provided. The label must also include a statement of the proportion of the RDI of that vitamin or mineral contributed in one serving of the food. Alternatively, it must state the average quantity of the vitamin or mineral for which an ESADDI has been prescribed (in the Food Code) in a serving of the food. If either of these two statements is an entry in the NIP, the average quantity of the vitamin or mineral in a serving of the food must also be specified.

In the current survey, where this information was not represented correctly on a label, the claim was considered to be inconsistent with the requirements of Standard 1.3.2.

For example, the following claim on a label for frozen vegetables implies the presence of Vitamin C:

‘Research indicates that many frozen vegetables contain the same or higher levels of Vitamin C than most fresh vegetables which are sold under normal commercial conditions.’

The label would therefore be required to specify the amount of Vitamin C in 100g of the product, in addition to the appropriate RDI or ESADDI information contributed per serving of the product.

c) Other standards within the Food Code

Other Standards of the Food Code that were used in the assessment of claims in the current survey included Standard 2.9.1 – Infant Formula Products, Standard 2.9.2 – Food for Infants, Standard 2.9.3 - Formulated Meal Replacements and Formulated Supplementary Foods and Standard 2.9.4 – Formulated Supplementary Sports Foods. Any mandatory statements required by these or other Standards within the Food Code were not considered a health or nutrition claim.

d) Fair trading legislation
The fair trading legislation in Australia and New Zealand prohibits false, misleading or deceptive representations about food. For the current survey, the majority of claims assessed against fair trading legislation related to claims about the amount of certain nutrients or substances in the food. Claims that a food was 'free' of a nutrient or substance were assessed as inconsistent with the fair trading legislation if any amount of this nutrient or substance was listed in the NIP.

An exception was made in the current survey for any labels collected in Australia with nutrition claims made according to the provisions of CoPoNC, whereby claims that a food is free of a certain nutrient can be made where finite levels of that nutrient are present in the food1.

As the nutritional content of the products was not chemically analysed, assessments against fair trading provisions were based only on the information provided by the manufacturer on the food label.

3.7 Nutrition claims on labels collected in Australia
In addition to the requirements of other labelling provisions, labels collected in Australia that made nutrition claims were assessed against CoPoNC requirements.

According to CoPoNC provisions, labels with claims such as ‘96% (or less) fat free’ were assessed as inconsistent, as were labels with claims such as ‘97% fat free’ where the NIP stated the product contained more than 3% fat.

Claims made in respect of nutrients which occur at a naturally or intrinsically high or low level in a food must be expressed in terms which make it clear that the claim refers to the whole class of similar foods, and not only to the particular brand of food on which the claim appears. For example, claims such as ‘AMCO Canola Oil is the lowest in saturated fats of all the vegetable oils’ would not be consistent with the CoPoNC provisions, as it does not refer to the whole class of canola oils. Conversely, claims such as ‘Eta Nuts like all nuts are naturally cholesterol free’ would be assessed as consistent with the ‘whole of class’ provisions of CoPoNC.

Nutrition claims which make comparisons with other foods, for example ‘reduced’, ‘increased’, ‘lower’ or ‘more (nutrient) than...’ must be accompanied by a statement on the label which compares the food with a reference food. While the code of practice requires the comparison statement to appear in close proximity to the claim statements, for the purposes of the current survey, if the information is provided anywhere on the label the claim would be considered to be consistent with CoPoNC requirements: The term ‘close proximity’ was not seen to be specific enough to allow accurate and reliable assessment.

If a label carries the words 'light' or 'lite' in relation to the food, the characteristic which makes the food 'light' must be stated on the label, regardless of whether the term is used as a nutrition claim, or whether it applies to some other characteristic of the food. For example, the label of a ‘Light Fruit Cake’ must have a statement saying the term ‘light’ refers to the colour, or the absence of dark coloured spices and dried fruit. In the current survey, when the word 'light' did not refer to a nutrition claim or a health claim, the wording was not counted as a claim made under the provisions of CoPoNC.

1 The Australian Competition and Consumer Commission (ACCC) and New Zealand Commerce Commission (NZCC) might not consider those foods making claims to be ‘free’ of a nutrient or substance that meet the provisions of CoPoNC but have a finite level of the nutrient present, to be absolutely free of that nutrient.
Where the terms 'lite' or 'light' are used as part of the name of the food, or used on the label to describe the food, and refers to a nutrient or to the energy content of the food, it is a nutrition claim according to the provisions of CoPoNC. In the current survey, if the 'lite' or 'light' claim referred to a nutrient or to energy, it was assessed for consistency with the corresponding labelling provisions for 'reduced' or 'low' claims.

Where dietary fibre was listed in the NIP but not mentioned elsewhere on the label, it was assessed as 'source of fibre' claim according to the CoPoNC provisions, provided that it was not listed in the NIP due to another mandatory requirement e.g. a nutrition claim for other forms of carbohydrate or sugar. This approach is similar to vitamins, minerals and other substances listed in the NIP being classified as nutrition content claims. Products assessed as making 'source of fibre' claims in the current survey were required to contain not less than 1.5g fibre per serving of the food in order to be consistent with the CoPoNC provisions.

3.8 Classification and assessment of health claims on labels collected in Australia and New Zealand

All health claims identified in the current survey were assessed against the provisions of the Transitional Standard 1.1A.2. The claims were also classified using the classification framework provided in the Initial Assessment Report to Proposal P293 (see Appendix 1).

Transitional Standard 1.1A.2 requires that any label on or attached to a package or an advertisement for a food shall not include the word ‘health’ or any word or words of similar import as a part of or in conjunction with the name of the food. It can be difficult to assess whether a brand name of a product is used in conjunction with the name of a food, so in the current survey brand names containing the word ‘health’ were assessed as consistent with the provisions. The word ‘health’ or any word or words of similar import would be positioned on the same panel as the name of the food, and in the same sized print as the name of the food, to be assessed as being used in conjunction with the name of the food and therefore inconsistent with the provisions.

Transitional Standard 1.1A.2 of the Food Code currently prohibits claims or statements that a food is a slimming food, or that a food has intrinsic weight-reducing properties. Claims such as ‘lite’, ‘reduced fat’, ‘low joule’ or ‘diet’ were not assessed as slimming or weight reduction claims in the current survey. In addition, brand names such as ‘Weight Watchers’ were not assessed as slimming claims in the current survey.

In the current survey it was sometimes difficult to determine whether a claim in relation to lifestyle and wellbeing was actually referring to a physiological condition. A distinction was drawn between a physiological condition (such as dehydration, indigestion and other bodily discomforts) and a disease.

Claims such as ‘It is important to remember to keep hearts and bodies healthy by helping your family choose snacks that are low in saturated fat’ would be assessed as whole of diet claims, others such as ‘Echinacea is believed to reduce the severity and duration of colds’ would be assessed as risk reduction claims referencing a non-serious disease or condition.

‘Whole of diet’ claims are not always regarded as health claims. However, in the current survey, where dietary information was provided on a label without relating specifically to the food, these were assessed as ‘whole of diet’ claims. An example of a ‘whole of diet’ claim is as follows:

‘Do you drink enough fluids each day? By following the guidelines of the Healthy Beverage Pyramid, you can ensure that your daily fluid intake, as part of a balanced
diet, can be rich in antioxidants and nutrients, and low in saturated fats and empty kilojoules.'

Non-specific general wellbeing claims were also assessed as ‘whole of diet’ claims in the current survey. An example of such a claim is as follows:

'Iron is an essential component of the diet for everybody. It is vital for our mental and physical well being.'

In the current survey, so-called ‘lifestage’ claims were assessed as general level health claims. An example of such a claim is as follows:

‘The RDI for folate doubles for women the month before and three months following conception.’

Consistency of these claims with the requirements of Transitional Standard 1.1A.2 was assessed accordingly.

3.9 Health claims on labels of dietary supplements collected in New Zealand

Labels collected in New Zealand labelled as dietary supplements were assessed against the labelling provisions set out in the NZDSR².

Since the NZDSR does not prohibit health claims, if foods collected in New Zealand were labelled as dietary supplements some claims that would have been deemed to be inconsistent with the requirements of Standard 1.1A.2 were assessed as consistent with the provisions of NZDSR.

In the current survey, very few labels from products manufactured in New Zealand and sold as dietary supplements were included in the label collection.

3.10 Limitations of the survey

Some of the limitations of this survey are outlined in the final report for the pilot Label Monitoring Survey (Phase 1, Stages 1 and 2), including those introduced in the sampling process.

i) Sampling bias

The non-random selection of retail packaged food products in this survey was intended to increase the likelihood of sampling as many brand types and different products as possible within a given food category or sub-category, as well as including as large a number of manufacturers as practical.

However, this sampling method also introduced the chance of sample bias, as products were not sampled proportionally to the number of SKUs of a manufacturer. Therefore, data obtained from this survey may not be a true representation of foods available in the mainstream market place nor of the purchasing behaviour of consumers.

In addition, retail packaged food products collected in this survey were primarily collected from the leading supermarket chains in each country, with few products purchased from boutique food stores or small independent retail outlets. While this sampling was intended to mirror consumer food purchasing patterns, small retail outlets may have a greater tendency

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² Labels collected in Australia that were manufactured in New Zealand and labelled as dietary supplements were not assessed against the labelling provisions set out in the NZDSR.
to stock products with labels that are inconsistent with the labelling provisions due to more lenient supplier standards and fewer resources to ensure labelling consistency.

ii) Interpretation bias
It is a challenging task to ensure all relevant labelling provisions for nutrition, health and related claims are taken into account when assessing each label. In addition, different interpretations of labelling provisions can be a limitation.

The Project Team addressed these limitations through thorough consultation, and a group approach to the assessment of label claims. Together, the analysts tested the database to ensure the claim assessment system was procedurally correct, had a logical progression that allowed for the correct classification and was able to store the appropriate label detail. Through this testing, the team developed a consistent interpretation style and identified appropriate wording to describe inconsistencies in the free-text fields of the database.

The FSANZ Labelling and Information Standards Section were consulted to ensure the Project Team’s interpretations were consistent with those of FSANZ, and the recording of exact wording provides the ability to confirm these interpretations if required.

iii) Assessment bias
Labels collected in Australia were assessed against the relatively extensive and prescriptive labelling provisions of CoPoNC, in addition to all other provisions of the Food Code and the TPA. Therefore the assessment placed greater focus on the labels of food sold in Australia than those sold in New Zealand.