



Response to FSANZ on the revision of the Food Standards Code (P1025)

September 2013

The Dietitians Association of Australia (DAA) is the national association of the dietetic profession with over 5000 members, and branches in each state and territory. DAA is a leader in nutrition and advocates for better food, better health, and wellbeing for all. The DAA Food Regulation Advisory Committee appreciates the opportunity to provide feedback on the revised Food Standards Code.

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DAA interest in this consultation

As experts in nutrition, Accredited Practising Dietitians (APDs) assist the population with the translation of food labels and health claims. APDs also provide nutritional expertise relating to the development of food products that must comply with the current regulatory framework. DAA supports in principle the proposed revision of the Food Standards Code (the Code) to improve clarity, legal enforceability and usability by relevant stakeholders.

Recommendations

1. That the structure of the Code remains as is.
2. That user-guides and/or editorial comments are developed.
3. That the Code includes hyperlinks to any external documents.
4. That the definition of 'wholegrain' is revised to only define 'what is a wholegrain' and not include any compositional requirements for wholegrain foods.
5. That a minimum wholegrain content target be developed and that in the mean time the words 'or containing' in subsection 2.02(1) be removed.
6. DAA recommends that a note be added to clarify that reference to the health effects in the definition of fibre does not mean that a claim can be made about fibre in relation to those health effects.
7. That the definitions of nuts, legumes and seeds be included in the Code.
8. That the definition of food labels be revised to include products sold online.
9. That further clarification is provided regarding:
 - a) The definition of non-traditional food.
 - b) The definition of 'form of food' in relation to 'requirements' for preparation.
 - c) The definition of 'average quantity' in relation to the nutrition content of a food/substance.
 - d) The definition of a 'semi-solid' in relation to food labels.

Discussion

DAA agrees this consultation has important implications for food regulation enforcement, unifying and clarifying the Code. DAA supports the revision and further clarification of some definitions, and that definitions be moved to the beginning of the document. DAA also has some issues regarding the proposed changes as outlined below.

1. General concerns:

- DAA does not support sequential clause numbering and moving of schedules to the back of the document. This would impact all external materials currently referencing the Code (i.e. they will all need to be updated to reflect the updated standard).
- DAA suggests user-guides and/or editorial comments are developed to enable stakeholders to appropriately interpret the Code. This aligns with the purpose of improving the legal enforceability of the Code.

- DAA recommends that hyperlinks are provided to any external documents (such as the FSANZ Act, National Weights and Measurements Acts, etc.) that are referred to within the Code. This will facilitate easier reading and interpretation.

2. *Concerns relating to definitions:*

Wholegrain

- The current definition of wholegrain (section 1.06) states that: (a) wholegrain, as the name of a food, has the meaning given in subsection 2.02(2); and (b) a food is a wholegrain food if it may be sold as consisting of, or containing, wholegrain under subsection 2.02(1). Section 2.02 and its subsections set out a compositional requirement for wholegrain products.
- The wording of the wholegrain definition has the effect of incorporating a compositional requirement as part of the definition of wholegrain. Compositional requirements for wholegrain content are beyond the scope of the definitions section and should be dealt with separately in the relevant nutrition and health claims section of the Code.
- DAA recommends that the definition of wholegrain in section 1.06 be deleted and replaced with the definition of wholegrain set out in section 2.02(2).

wholegrain means the intact grain or the dehulled, ground, milled, cracked or flaked grain where the constituents—endosperm, germ and bran—are present in such proportions that represent the typical ratio of those fractions occurring in the whole cereal, and includes wholemeal.
- The wording of the compositional requirement in section 2.02(1) may also lend itself to confusion of consumers, because products with only small amounts of wholegrain may be called ‘wholegrain’. Such products may be mistakenly perceived as healthier options for people wanting to comply with the Australian Dietary Guideline to eat ‘mostly wholegrain’. For clarity, DAA recommends that the words ‘or containing’ be removed from the compositional requirement in section 2.02(1) unless a minimum wholegrain content target is adopted. DAA acknowledge that extensive stakeholder consultation may be required to achieve this. FSANZ may like to consider looking at existing wholegrain content targets such as The Grains and Legumes Nutrition Council Code of Practice for Wholegrain Ingredient Content Claims.

Fibre

- The current definition of dietary fibre (section 1.71) refers to the requirement for it to promote one of the following health effects:
 - (i) laxation;

(ii) reduction in blood cholesterol;

(iii) modulation of blood glucose.

- This definition contradicts *Schedule 4 - Nutrition, health and related claims* which only allows claims about laxation to be made related to fibre. For consistency with subsequent sections of the Code, DAA recommends that a note be added to this definition to clarify that a nutrition or health claim in relation to fibre can only be made as per *Schedule 4 - Nutrition, health and related claims* and any reference to the health effects in the definition of fibre does not mean that a claim can be made about fibre in relation to those health effects.

Non Traditional Food

- DAA notes that the current definition of non-traditional food (section 1.151, page 97) requires clarification to ensure stakeholders can more clearly determine foods (or substances) that do not have “a history of human consumption in Australia and New Zealand”. DAA acknowledges that there is a Revision of Nutritive Substances and Novel Foods (P1024) on the FSANZ work-plan, with public consultation before the end of 2013. DAA recognises that this proposal will consider non-traditional foods, novel foods and nutritive substances definitions.

Nutrition and Health Claims

- In General Definitions – Nutrition and Health claims (section 1.71, page 51) definitions of fruit and vegetables are provided to apply to the nutrient profiling scoring criterion.
- There are not similar definitions for nuts, legumes and seeds. This may have implications for use of powdered versions of these ingredients in product development. DAA recommends that definitions for each of these foods be included in the revised code.

Form of Food

- In ‘Form of Food’ (section 1.76, page 57) reference to the form of the food to which provisions of the relevant division apply are made. For example, “If this Division imposes a prerequisite, condition, qualification or any other requirement on the making of a claim, that prerequisite, condition, qualification or requirement applies to whichever of the following forms of the food is applicable:
 - (a) If the food can be either prepared with other food or consumed as sold—the food as sold;
 - (b) If the food is required to be prepared and consumed according to directions—the food as prepared;

c) If the food requires reconstituting with water—the food after it is reconstituted with water and ready for consumption;

(d) If the food requires draining before consuming—the food after it is drained and ready for consumption.

- Given that no one food ‘requires’ draining, or reconstituting or being prepared/consumed according to directions, DAA recommends further clarification on this.

Food label

- The current definition of food labels (section 1.27, page 29) requires clarification as to whether products that are sold online are required to have nutrition information panels.
- There is currently a lack of consistency surrounding the inclusion of such information for food products sold online. DAA recommends that this definition be clarified to include products sold online to ensure consumers have consistent access to this information.
- There is a need for further clarity regarding the definition of ‘average quantity’ in relation to the nutrition content of a food/substance. It is currently unclear whether this definition is referring to the average value of a series of analysed values of a particular nutrient or the average range of a series of values. DAA recommends that this definition be clarified to assist manufacturers to comply with requirements.
- The definition of a ‘semi-solid’ in relation to unit quantity requires clarification. It is currently unclear what constitutes a ‘semi-solid’ (for example, is it pourable or aerated?).