

P293 – Nutrition, Health and Related Claims

**Submitter responses to questions 1 – 52
‘Criteria and conditions for content claims’
in Attachment 6
of the Initial Assessment Report**

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CHAPTER 1: PLACEMENT OF CONTENT CLAIMS

1.1 PLACEMENT OF CONTENT CLAIMS

Question 1

What is the best approach for the placement of generic content claims? Please provide a rationale to support your preferred approach.

Out of 147 submitters, 44.9% (66 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	20	16	5	3	44
Government	6	2	-	-	8
Public health	7	4	-	-	11
Consumers	1	-	-	-	1
Other	2	-	-	-	2
Total	36	22	5	3	66

Overview

More than 50 per cent of submitters (36) stated that generic content claims should be placed in a standard, whereas 27 submitters preferred that they be placed in a guideline. One submitter believed that the best place for generic content claims was in a standard relating to the food for which the claim was being made.

Placement in a standard

There were 36 submitters that clearly preferred that generic content claims be placed in a Standard in the Code. The specific approach's preferred by these submitters were as follows:

Twenty-two of these 36 submitters specified that they be placed in a single standard (Dr R Stanton, PHAA (supported by ACA), NSW DoH - N&PA Branch, NSW Food Authority, WA DoH, CSIRO - HS&N, Monash Uni – N&D Unit, Public Health South, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, NZ Magazines, Griffins Foods, Tegel Foods, CML, Tomox, Tas DoH&HS, NZ MoH). NZ MoH added that this is their preferred approach if Regulatory Option 1 is not taken.

Eight of these 35 submitters specified that they supported provision for nutrition content claims within a specified standard of the Food Standards Code and specifically stated that this include provision for vitamins and minerals (NZFSA, Diabetes Aust., DAA, NZDA, GI Ltd, National Starch, Solae Comp, Sanitarium Health Food Comp.). Naturalac Nutrition recommended a separate standard be created dealing with content claims, and with the claims currently covered by Standard 1.2.8 moved to this new standard. Heinz Aust/Heinz Watties NZ noted that they could see no issues with combining generic claims from Standard 1.3.2 and 1.2.8

with other health and related claims. ACCC noted the findings of the TEG and concurred with its recommendation (which was to place content claims in CoPoNC and Standard 1.2.8, and possibly Standard 1.3.2 all in one Standard of the Code).

The preferred approach for two other submitters was that generic content claims be captured in a legally enforceable standard (NHF Aust., NHF NZ). Canterbury DHB's comment was that they supported the inclusion of clear and effective nutrient and content claim criteria in the Food Standards Code.

Recommendations or suggestions made by some of these submitters were that:

- The Standard could be the 'Health and Nutrition Claims' Standard (NZFSA);
- The Standard should be as simple as possible (Tegel Foods) and as clear as possible (Heinz Aust/Heinz Watties NZ);
- Generic content claims should be kept simple and concise. The nutrition information panel is there to provide further information (Heinz Aust/Heinz Watties NZ);
- Where necessary, for example, in Standard 1.3.2, there would need to be either a repetition of the provisions or reference to the claims standard to ensure that users were aware of the relevant provisions (PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit); and
- A new standard would be good rather than Standard 1.3.2, as some claims may not relate to vitamins and minerals (CML).

Although preferring that conditions and criteria for all content claims should be contained in the Guideline, DAFF also recommended that for consistency, there should be one Nutrition, Health and Related Claims Standard. The one Standard should include pre-requisites for all claims, including content claims. Given that this will make the Guideline for general level claims enforceable, they recommended Standards 1.2.8 and 1.3.2, which currently address content claims, be amended to remove reference to claims.

The reasons provided by some of these submitters for preferring generic content claims be placed in a Standard were that this would:

- Create a level playing field for industry (Diabetes Aust., GI Ltd, NHF Aust., NHF NZ);
- Be less confusing (NZ MoH) and easier to access (PHAA (supported by ACA), NSW DoH - N&PA Branch, WA DoH, Monash Uni – N&D Unit);
- Be for ease of use (CML);
- Simplify the Food Standards Code for all its users (NSW Food Authority);

- Improve consumer understanding and trust (Diabetes Aust., GI Ltd);
- Help ensure consistency of claims and messages about the nutrient content of foods (DAA, NZDA, Sanitarium Health Food Comp.);
- Reduce the likelihood of misleading, non-compliant claims (NHF Aust., NHF NZ);
- Provide greater consistency (Tomox, Public Health South), certainty, and clarity for industry and enforcement agencies (Tas DoH&HS);
- Increase enforcement agencies powers (Diabetes Aust., GI Ltd);
- Provide enforceable claims (DAA, NZDA, Sanitarium Health Food Comp, Tomox); and
- Enable tighter regulation and monitoring (Public Health South).

Nutra-Life H&F believed that the best place for generic content claims is the Standard for that food (where a specific standard for a food exists). When no standard exists, they recommended that a standard would need to be created or some system developed to quantify claims.

Placement in a guideline

There were 27 submitters that clearly preferred that generic content claims be placed in a guideline (including AFGC, MasterFoods Aust. NZ, F&B Importers Assoc., MLA, Unilever Australasia, William Wrigley Junior Comp, Goodman Fielder, National Foods, Mainland Products, Nestle, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, GW Foods, Dairy Aust., PB Foods, Fonterra, DAFF, NZFGC, Cadbury Schweppes).

Seven of these 27 submitters clarified that their preferred approach was as per Regulatory Option 2, with the prerequisites for making generic content claims in a Standard and the criteria and conditions for making these claims in a Guideline document (GW Foods, Dairy Aust., PB Foods, Fonterra, DAFF, NZFGC, Cadbury Schweppes).

Although not explicitly stating their preferred approach, Parmalat recommended the provision of general prerequisites in Standard 1.2.8 and that Standard 1.3.2 is revised to include Biologically Active Substances. They suggested that if Option 2 were adopted, the format of criteria and conditions in a Guideline would be similar to the current CoPoNC.

The CMA added the proviso that there is an assurance that the Guideline will have recognised legal status. This is consistent with their preferred option, Option 2 (these comments were supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA).

Health and safety issues

Cadbury Schweppes suggested that some claims such as those relating to gluten should continue to be in a Standard as there are specific health issues. They went on to say that FSANZ should consider Standard 1.3.2 (Vitamins and Minerals) as a means of incorporating some claims into the standard. DAFF also mentioned that they could agree to including conditions and criteria for content claims with public health implications (e.g. lactose, gluten) in the Standard.

Enforcement

Nestle noted that the guideline would need the appropriate levels of enforcement occurring to ensure a level playing field for all manufacturers. The CMA recommended that government should endorse the guideline (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA).

Another recommendation was that the guideline is supported by the Fair Trading Act/Trade Practices Act to avoid conflict in interpretation, because it was considered that the regulation of content claims under the Fair Trading Act is sufficient (Mainland Products).

It was also noted that they understand that being in a guideline does not carry the full weight of having these enshrined within a standard, but it does strengthen the requirements set out under the current CoPoNC (William Wrigley Junior).

The reasons provided by some of these submitters for preferring generic content claims are placed in a guideline was that:

- Having generic content claims in the Guideline should provide greater flexibility and be easier to change than if in a Standard (F&B Importers Assoc., Goodman Fielder, MLA, AFGC, MasterFoods Aust. NZ, NZFGC, GW Foods), to reflect current consumer trends and scientific developments. (Dairy Aust.);
- This is consistent with the Ministerial Policy Principle of minimal regulation (F&B Importers Assoc., Goodman Fielder, AFGC, MasterFoods Aust. NZ, Unilever Australasia, GW Foods);
- Research (Williams et al., 2003. Asia Pac J Clin Nut 12(2): 138-50) shows that claims regulated through a voluntary guideline have proved as effective as the Food Standards Code (Dairy Aust.).

It was noted that the Ministers have asked Food Regulation Standards Committee (FRSC) for further advice to implement a risk management approach that will protect public health and safety through scientific substantiation of high risk claims, generic health claims for ease of use where evidence is clear and minimal regulation where there are no risks to public health (GW Foods).

Review

It was noted by three submitters that the Ministerial Council has requested that the system be reviewed in two years (NZFGC, AFGC supported by MasterFoods Aust. NZ). AFGC added that therefore placing general level claims in a guideline document present minimal risk of it being seen as continual commitment to maintaining it as a guideline if significant non-compliance is found (supported by MasterFoods Aust. NZ). NZFGC also noted that any difficulties that are being experienced could be addressed within a relatively short timeframe.

Dairy Aust. agreed that if after a satisfactory length of time, compliance with the Guideline is not achieved, incorporation of the relevant provisions into the Food Standards Code is acceptable.

Recommendations made by some of these submitters were that:

- The process of amendment to a guideline will need to be detailed in the Draft Assessment stage (this was not clear from the IAR) (Goodman Fielder);
- Content claims need to include claims on bioactive substances in addition to macronutrients, vitamins, minerals and energy. Hence standard 1.3.2 requires a review to include biologically active substances (PB Foods, Fonterra);
- General level claims currently regulated in Standard 1.2.8 should be incorporated into the guideline to ensure regulatory consistency and a single reference point for general level claims and maximum compliance (National Foods, Dairy Aust.);
- FSANZ also consider the fate of lactose, gluten, protein, carbohydrates, vitamins and minerals (source of/good source of) (Dairy Aust.); and
- Whichever option is chosen, a system for approval or recognition of new claims will need to be developed and agreed by FSANZ, industry, public health nutritionists and consumers (GW Foods).

In relation to the last point, GW Foods added that the disadvantages of having criteria and conditions in a Standard include a major potential drawback of the means by which new claims are "approved" and they were concerned that if the approval process were to require an application to be made to FSANZ this would provide an additional burden to industry with respect to cost. In addition to the requirements for approval of novel foods, there would be a further "disincentive" for industry to innovate.

Another recommendation made by four submitters was that a Guideline Management Committee be established under direction of the FRSC (Dairy Aust., AFGC supported by MasterFoods Aust. NZ, NZFGC). Dairy Aust. pointed out that this was rather than industry management, as CoPoNC was. The purpose of this as outlined by AFGC (supported by MasterFoods Aust. NZ) was to oversee the introduction of the guideline and to handle complaints, whereas NZFGC said its purpose was to ensure compliance with the Guidelines and to which complaints could be lodged. Dairy Aust. stated that it would be cross-functional involving all key stakeholders (i.e. regulators, enforcers,

the food industry, non-government organisations and consumers). NZFGC said that such a Committee should comprise official and consumer representatives and they noted that this has worked for the management of fruit juice claims under the Fair Trading Act.

General comments

Nutra-Life H&F also submitted that in terms of label placement, statements should be on the front panel as those hidden in general text are unlikely to impact. They suggested the label also include a qualification for the claims (e.g. a reference to the amount or nature of the substance defined in the claims), which can be included in the nutritional panel or some other defined area.

NZ Dairy Foods' comment was that it "Should be discretionary to the manufacturer. These are not high level claims and so should be up to the manufacturer to place and choose the most appropriate placement."

Other comments provided but not in direct response to the question

Beef & Lamb Marketing Bureau commented that a guideline for generic claims is more responsive to change than a standard.

Tas DoH&HS considered that the criteria and conditions for permitted existing claims in Standard 1.2.8 and also those relating to the addition of vitamins and minerals and for formulated caffeinated beverages should be maintained and included in a claims standard. They recommended that as the fortification of food with vitamins and minerals is currently under review it would be prudent to review permission to make claims with the permission to fortify.

CHAPTER 2: GENERAL CONDITIONS FOR CONTENT CLAIMS

2.1 ELIGIBILITY OF FOOD

Question 2

Should any foods be prohibited from making content claims, other than those standards already stipulated in the Code? Please provide evidence and a cohesive rationale to support your answer.

Out of 147 submitters, 43.5% (64 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	21	15	5	3	44
Government	6	2	-	-	8
Public health	6	3	-	-	9
Consumers	1	-	-	-	1
Other	2	-	-	-	2
Total	36	20	5	3	64

Overview

Nine submitters supported the notion that no foods, other than those prohibited in Standards already stipulated in the Food Standards Code, should be prohibited from making a content claim. However, one-third of submitters (21) stated that no foods at all should be prohibited from making a content claim. A number of submitters recommended specific foods that should be prohibited from making a content claim. These included foods that will be prohibited from making high level claims e.g. alcohol, infant formula, foods for infants, foods with poor nutrient density, foods targeted at children and Formulated Supplementary Foods.

No prohibition on foods

There were 21 submitters that stated that no foods should be prohibited from making content claims (AFGC, MasterFoods Aust. NZ, CML, Dairy Aust., GW Foods, Goodman Fielder, Parmalat Aust., Wyeth Aust., CSIRO HS&N, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Fonterra, Griffins Foods, Mainland Products, Naturo Pharm, NZ Magazines, NZTBC, Heinz Aust./Heinz Watties NZ, Unilever Australasia). In addition to this, AFGC (supported by MasterFoods Aust. NZ) noted that they understood the politics of not permitting claims on alcoholic beverages.

Several of these stakeholders believed that food should be able to make content claims as long as the claim is:

- Truthful (AFGC supported by MasterFoods Aust. NZ; Goodman Fielder, GW Foods, Unilever Australasia);
- Able to be substantiated (Griffins Foods) and is not misleading or deceptive (NZFGC); and
- Accurate (Parmalat Aust, Fonterra).

It was also pointed out that the nutrition information panel (Nutrition Information Panel) provides additional nutrition information to assist consumers make informed choices (F & B Importers Assoc., Unilever Australasia, Goodman Fielder,) and to protect them from deception and fraud (AFGC (supported by MasterFoods Aust. NZ)). In addition GW Foods stated that allowing all foods to make content claims if they met associated criteria and conditions would achieve a fair playing field that helps consumer understanding.

Fonterra felt that the only time prohibiting a food from making a claim could be justified is if there is a risk of misleading consumers or swaying the public towards inappropriate food types, which they considered was unlikely if a claim was substantiated; and conditions could be stipulated if required to prevent such a risk. They considered banning an entire food type from making claims to be too sweeping.

Further to this, Fonterra (supported by Mainland Products) did not agree that foods such as alcohol and baby food should be excluded from this framework, stating that while there would be other specific justification that would take precedence when regulating these food groups, there was no justification from excluding them where it does not apply. Doing so may result in unintended biases whereby consumers are unduly restricted from obtaining information about these products.

Mainland Products opposed the outright prohibition of claims being made on any foods and proposed each claim be assessed on the same basis irrespective of the food in question. They supported the idea of generic qualifying criteria/conditions even though it may preclude certain foods and consider that there should not be any problem as long as it is clear whether the claim relates to a single brand or a whole class of food.

Nestle pointed out that there was no evidence of market failure for other foods (not prohibited from making claims by the Food Standards Code) and that any concerns would have been addressed in the review of the Food Standards Code. NZ MoH commented that more foods might be prohibited if nutritional criteria apply to foods making claims and that the approach to be used should depend on the outcome of this consultation process.

Dairy Aust. pointed out that there were currently measures in place to regulate the foods that do make a claim, as CoPoNC stipulates qualifying criteria for food products wanting to display a claim, and the Ministerial Council Policy Guidelines for claims for foods support initiatives that promote healthy choices and are consistent with national policies and legislation.

NZFGC provided further comment stating that many claims (frequently outrageous ones) are made in many forums outside the food industry that are not subject to challenge and that go without substantiation. They pointed out that there are many more constraints than other disseminators of nutritional information, in the instances where claims are made. NZFGC considered that it is inequitable, illogical and unreasonable that the food industry has been fettered for making claims.

Opposition to prohibition of specific food types

Use of disqualifying criteria/foods with poor nutritional density

Heinz Aust./Heinz Watties NZ believed that foods should not be prohibited from making content claims where they meet the criteria for the nutrient/substance in question and did not think it was possible to establish qualifying criteria when existing nutrient and dietary guidelines relate to the total diet not to individual foods. Heinz Aust./Heinz Watties NZ also opposed disqualifying criteria as they didn't think it was possible to define a "healthy food" and considered any attempt to do so would misconstrue the concept of a healthy balanced diet that includes foods from all different food groups. They also believed that disqualifying criteria would lead to an uneven playing field and disadvantage products that serve consumers well e.g. sugar content of many fresh fruits will be higher per serve than many other foods that offer good nutrient value but may contain added sugar.

Alcohol

It was specifically requested that FSANZ consider allowing truthful claims for alcohol to correct myths about the health benefits of alcohol, which they believe have flourished because the truth cannot be told (ASA, NPANZ, Assoc. of NZ Advertisers, NZ Magazines, NZTBC and Cadbury Confectionery).

NZFGC was also concerned about the proposal to preclude alcohol from making claims, and commented that there are occasions when it would be helpful to make claims about these products e.g. there is an increasing amount of evidence about the benefits of drinking moderate amounts of alcohol. They also pointed out that there are alcoholic products available that could comply with nutritional criteria and that there is no logical reason why claims should not be allowed for these products, although the NZFGC recognised that the area is politically very sensitive.

See extra comments from AAB regarding alcohol at the end of this question.

Baby Food

The AFGC (supported by MasterFoods Aust. NZ) did not see a reason for a blanket prohibition on claims for 'baby food' and they therefore recommended that nutrient content claims continue to be allowed on foods for infants and those currently required or permitted on infant formula products (relates to requirements under Standard 2.9.1, 2.9.2 and 2.9.3). They suggested that the term 'baby food' used in the Ministerial Policy Guideline was probably meant to refer to infant formula or relate only to the use of high level claims.

National Foods were particularly opposed to prohibiting ‘baby foods’ from making claims as they currently manufacture Petit Miam baby yoghurt suitable for infants older than 6 months to differentiate this product from yogurts for other age groups. National Foods stated that significant research and development and capital has been invested to manufacture this product and that they would be greatly disadvantaged by any prohibition on claims (details were provided in their submission).

Sanitarium Health Food Comp believed provisions should be made to allow content claims on food products targeting young children (>1 year) as these foods are also suitable for a wide age range. Baby food manufacturer/marketer Heinz Aust./Heinz Watties NZ also opposed infant foods and infant formulas (where direct advertising to consumers is prohibited) being banned from making claims and pointed out that nutrition information on foods such as baby foods is very important given the well established nutrient deficiencies in NZ and Australia e.g. iron.

It was specifically requested that FSANZ consider allowing truthful claims for baby food (ASA, NPANZ, Assoc. of NZ Advertisers, NZ Magazines, NZTBC and Cadbury Confectionery).

NZFGC was also concerned about the proposal to preclude ‘baby food’ from making claims. They could not see any logical reason to prohibit infant foods from making claims but agreed that the requirements and provisions in Standards 2.9.1 (Infant Formula Products), 2.9.2 (Foods for Infants) and 2.9.3 (Formulated Meal Replacements and Formulated Supplementary Foods) be retained. National Foods supported this recommendation.

Infant formula marketer Wyeth Aust. opposed the idea that any food should be prohibited from making a nutrient content claim, provided the level of the nutrient referred to in the claim was sufficiently high to warrant mentioning on the label. They believed it would be disadvantageous to exclude Foods for Infants as mentioned in Standard 2.9.2 from making claims as these foods are of paramount importance, and prohibition would prevent any communication with consumers about product content. Wyeth Aust. also mentioned that factual statements enable consumers to differentiate products from competitors and the inability to do this would reduce the incentive to allocate resources for R & D for product improvements. They stressed that they only want to be able to make reference to particular nutrients on the pack, not to make high level or high-end general level claims. Wyeth Aust. also stressed that infant products are already heavily regulated through mandatory compliance with the Marketing in Australia of Infant Formulas Manufacturers and Importers (MAIF), which prevents manufacturers communicating directly with the end consumers of their products.

Confectionery

Several stakeholders involved in the confectionery industry opposed the idea that confectionery being excluded from making content claims.

Palatinit GmbH didn’t believe there was any justification for disqualifying foods based on their nutritional profile, in particular when based on their sugar, fat and

energy content, and did not support a concept of ‘appropriate foods’ in relation to making claims.

They highlighted that confectionery has a role as a ‘treat food’ in the diet and that it can make a positive contribution in terms of taste, palatability and enjoyment. They regarded the avoidance of confectionery as not feasible, unrealistic and unnecessary. Good fundamental nutrition education and accurate food labelling would help consumers make informed choices, not excluding confectionery products from making claims (Palatinit GmbH).

It was pointed out that some confectionery products e.g. sugar-free chewing gum; provide health benefits such as re-mineralising teeth after eating (Palatinit GmbH and William Wrigley Junior). Palatinit GmbH also noted that sugar free confectionery products made with isomalt were reduced in calorie, very low glycaemic, kind to teeth and contained low digestible carbohydrates that worked like dietary fibre, thus these products provide health benefits they believed need to be communicated to consumers.

Palatinit GmbH requested FSANZ not to define nutrition profiles and not to exclude confectionery products from making claims, as they believed good fundamental nutrition education together with accurate food labelling would help consumers make informed food choices.

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia) supported the inclusion of confectionery (sugar, chocolate and gum) within the framework of permission for nutrition, health and related claim (and this extends to vitamin and mineral claims and fortification) and stated that confectionery products cannot be fortified and are not claimable foods yet they contribute a significant nutritional content to the diet (vitamin and mineral content of 50g milk chocolate was provided in their submission).

Cadbury Schweppes noted that there were a number of foods not dissimilar in composition to confectionery that could be fortified and allowed to make claims and they believed that more products should be able to make content claims (e.g. chocolate is not a claimable food and cannot be fortified yet 100 g of milk may contain as much as 25% of the RDI for calcium).

It was stated that prohibiting confectionery from making content claims would limit the opportunity for innovation and the capacity to reformulate existing confectionery products (e.g. to become formulated foods/sports foods, and to create a new range of products such as those containing fibre and polyphenols) (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA).

William Wrigley Junior supported the inclusion of confectionery products including sugar free, sugar, chocolate and chewing gum, within the parameters of permitting health and nutrition claims and extending to vitamin and mineral claims; claims that cannot currently be made on confectionery products.

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia) supported the inclusion of confectionery (sugar, chocolate and gum) within the framework of permission for vitamin and mineral fortification (and therefore claims).

General comments regarding opposition to prohibition of specific food types

Cadbury Schweppes stated that they would like to be able to fortify fruit juices with calcium.

Naturalac Nutrition requested that foods should not be excluded from making content claims based on their nutritive value as certain foods have good reason for containing certain nutrients e.g. simple sugars in sports drinks.

Support for prohibition on foods in Standards already stipulated in the Code

There were nine submitters that supported that no foods other than those foods already prohibited in Standards already stipulated in the Code, should be prohibited from making a content claim (Aussie Bodies, PB Foods, NZ MoH, NZFSA, Nestle, F&B Importers Assoc., DAFF, NZ Dairy Foods, NZFGC).

It was noted that the substantiation framework ensures that the claim is substantiated (PB Foods).

Support for prohibition of specific food types

Foods prohibited from making high level claims

Seven submitters recommended that content claims should be prohibited on the same foods as which high level claims will be prohibited on, and these foods have been assumed to include infant formula, foods for infants, alcohol, foods with poor nutrient density (Tas DoH&HS, NSW DoH - N&PA Branch,), foods targeted at children and Formulated Supplementary Foods (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit).

NSW DoH - N&PA Branch considered that this is because content claims have the potential to imply a health claim. Likewise, PHAA (supported by ACA), Tas DoH&HS, SA DoH, WA DoH and Monash Uni. – N&D Unit supported this approach because of their concerns about the potential for consumers to misclassify and misinterpret claims (findings of consumer research conducted by the UK FSA, 2002).

Poor nutrient density

There were ten submitters (including the six mentioned in the section above) that recommended that foods with poor nutrient density/high in salt, fat and/or sugar; should be prohibited from making a content claim (Dr R Stanton, NSW Food Authority, Public Health South (for specific claims), Canterbury DHB, PHAA (supported by ACA), NSW DoH – N&PA Branch, SA DoH, WA DoH, Monash Uni – N&D Unit).

TCCA specifically mentioned the prohibition of confectionery (because confectionery making content claims on one particular nutrient often rates poorly on other nutritional measures, e.g. 99% fat free sweets are high in energy) and of soft drinks (because high levels of sugars or high energy dense drinks should not be marketed as healthy when they contribute to obesity).

NSW Food Authority added that eligibility and disqualification criteria should be established for all health and nutrient claims, by appropriate expertise under the auspices of FSANZ.

Dr R. Stanton referred to a study in the UK that found almost 75% of 260 fortified foods making claims were high in fat, salt or sugar. In addition, Canterbury DHB pointed out that food is perceived as superior if it carries claim, providing further support that foods should meet minimum criteria before being able to make a claim.

William Wrigley Junior doesn't consider products should be excluded from making health and nutrition claims, unless there is a clear need to protect consumer health and safety e.g. products containing alcohol or are high in saturated fats.

Alcohol

There were 16 submitters in total who supported that nutrition content claims be prohibited on alcohol. This includes the six listed above who supported prohibition on the same foods as which high level claims will be prohibited on, as well as TCCA, Diabetes Aust., DAA, GI Ltd, Cadbury Schweppes, National Starch, Sanitarium Health Food Comp, Solae Comp, NSW Food Authority, and NZDA.

Infant foods

There were 15 submitters who supported that nutrition content claims be prohibited on infant foods (or baby foods) in general, including the six submitters listed above who supported prohibition on the same foods as which high level claims will be prohibited on, as well as TCCA, Diabetes Aust., DAA, National Starch, Solae Comp, NSW Food Authority, and NZDA. Sanitarium Health Food Comp. clarified that they supported this prohibition on infant formula and on foods for infants regulated in Standard 2.9. Canterbury DHB supported prohibition on infant formula only.

Therefore there were eight submitters who supported prohibition of nutrition content claims on infant formula specifically, and seven submitters who supported prohibition of nutrition content claims on foods for infants (Standard 2.9.2) specifically.

General comments regarding support for prohibition of specific food types

It was recommended that if there is to be exclusions they should be on product class, e.g. alcohol, rather than attributes e.g. sugar content greater than x (Naturalac Nutrition).

It was recommended that the criteria and conditions for permitted existing claims in Standard 1.2.8, and those relating to the addition of vitamins and minerals to foods

and formulated caffeinated beverages should be maintained (but included in a claims standard) (PHAA (supported by ACA), SA DoH, Monash Unit – N&D Unit).

Mainland Products suggested that foods with core marketing messages not centred on health and nutrition should not carry claims for the sake of consistency.

Nutra-Life H&F commented that ‘absence claims’ should not be allowed if the food would not be expected to contain that ingredient (e.g. fresh milk contains no preservative). They also believed that products containing alcohol (either as an ingredient or part of an ingredient e.g. flavour) should reference this on the label.

Other comments provided but not in direct response to the question

AAB sought clarification that it is not the intention of P293 to prevent brewers from continuing to be able to:

- Provide balanced information through websites and magazines and publications setting out the benefits and risks of moderate beer drinking;
- Make category claims in relation to moderate consumption of beer in the context of a balanced lifestyle and diet; and
- Produce and sell beers to which nutrient content claims are applicable (e.g. reduced alcohol, low alcohol, reduced joule).

AAB go on to state that there is confusion as to whether the preamble of the claims pre-requisite section in the policy guideline *‘Every health claim made must comply with the following overarching policy principles, regardless of their claim classification level’* is intended to apply to all claims or solely to health claims. They point out that FSANZ in the context of discussing this issue expressly mentions nutrition content claims rather than health claims.

AAB and the Beer, Wine and Spirits Council of NZ sought the following clarification - is the prohibition of foods containing alcohol from making health claims intended to:

- Apply to all types of claims covered in P293 i.e. high level claims, general level claims and content claims;
- Apply to all products in the identified categories or only to some foods; and
- Be limited to labels and product specific advertising or apply to all forms of information about the category including websites.

The Beer Wine & Spirits Council of NZ stated that they found it difficult to draft a submission with such a variation of possibilities, but drafted their submission against the most extreme case of total prohibition of all claims, brand and category, all media for all alcoholic products. They believed P293 may make it more difficult for their industry to discuss and disseminate accurate information regarding their products to consumers and other interested parties and they recommended that status quo continue for alcohol allowing category health publications on websites, booklets and

editorials. They believe their research articles and medical advice articles on their website present a strong case for category health claims to continue to be made and that consumers have the right to obtain information on food products and members should continue to have the right to be able to make category claims. They noted that this does not necessarily need to be information on a product label but can be extended to other forms such as a website, brochure, pamphlet or other kind of advertising or marketing material, or editorial, as labelling is not the most effective way to get information across to consumers. They believe NZ brewers have been responsible in the information they have provided to consumers & the right to take that away does not seem fair. The Fair Trading Act covers misleading or deceiving practices.

Beer Wine & Spirits Council of NZ thought that the mechanism to be established for health claims would be sufficiently rigorous to require no category exception. They state that alcohol can be a normal & safe part of the majority of New Zealander's diets when consumed in moderation, and numerous studies show positive health benefits of moderate alcohol consumption, and alcohol is responsible for saving more lives than the deaths caused by disease due to alcohol abuse. They believe consumers have the right to know this information.

AAB raised concerns that one possible outcome of P293 is that it could result in the total prohibition of all information related to alcoholic products in all media, including the internet, newspaper reporting and scientific literature. They noted that numerous studies have demonstrated the very positive benefits of moderate alcohol consumption and are listed in the NHMRC report.

AAB and its member companies currently contribute to the health debate by providing balanced information on the consumption of beer, on their websites and through magazines and publication, highlighting the negatives as well as the positives of alcohol. They consider that it is important they continue to make this type of contribution. AAB said it is unclear from the IAR exactly what boundaries are proposed for the prohibition on alcoholic products making a health, nutrition and related claim, and it was also unclear whether the prohibition or permission of the claims be confined to a particular brand or subcategory or apply to product categories as a whole.

They noted that information and education to consumers about categories empowers them to make informed decisions in relation to their own nutrition and lifestyle requirements. Under the current definition of a 'label' within the Code and the application of labelling standards to advertising, these media could all be included in a prohibition on claims, limiting the ability of brewers to contribute to the debate and to provide balanced information to customers. This may result in limiting the ability of consumers to make informed choices about the responsible consumption of alcohol.

AAB commented that 'Light' and 'mid-strength' are well-established terms describing beers with lower alcohol content. There is also a range of beers that have reduced energy content to regular beer. P293 suggests that nutrient content claims may no longer be permitted on beer. The removal of this type of content claim would be detrimental to Government programs relating to health and to drink driving.

AAB believed the brewing industry have a good history of responsible use of 'nutrient content claims' and sees no justification for prohibiting these, thereby, limiting the provision of factual information to consumers. They stated that reduced alcohol beers account for 38% of the Australia beer market (highest in the world), 60% in Qld and WA. The removal of such claims from products could lead to a decline in the popularity. They did however support prohibition of HLCs in relation to any beer brands.

The CMA-Vic Branch (supported by CMA - Qld Branch, CM of SA, Langdon Ingredients, ICA, CMA NZ Branch and Med-Chem Ingredients) stated that confectionery is an appropriate food as any for the carriage of nutrition, health and related claims, despite making a small contribution to the overall diet. They recommended that food should not be disqualified based on its nutritional profile, in particular the sugar, fat and energy content should not be disqualifying mechanisms for health claims and this recommendation was supported by Mandurah Aust.

Langdon Ingredients, William Wrigley Junior and Mandurah Aust. challenged the use of the term 'appropriate foods' in the context of nutrition, health and related claims, because this indicates bias and promotes the concept of good and bad foods. They noted the role of all foods in a balanced diet and confectionery, as a treat food, has an acknowledged and legitimate role that can make a positive contribution, which is recognised in Australian Dietary Guidelines. Mandurah Aust. added that healthy nutrition is not just about the right amount of nutrients; it is also about taste, palatability, enjoyment and pleasure. To strictly avoid confectionery products is not feasible and therefore unrealistic and not necessary.

Mandurah Aust. noted that sugar free confectionery made with isomalt provides additional benefits for a healthy lifestyle and their properties such as reduced in calorie, need to be communicated to the consumer's benefit. They ask FSANZ to consider not defining nutrition profiles and not to exclude confectionery products from making claims, but instead a good fundamental nutrition education programme together with accurate food labelling will help consumers make informed food choices.

Adelaide Hills Comm. HS expressed concern about content claims on foods that otherwise may not be considered healthy, e.g. a claim about calcium would be fine appearing on milk and yoghurt etc but if used on other products such as ice cream, chocolate or juices that have added calcium, this would give consumers an eat more message for these foods.

NZ MoH commented that their advice for healthy eating is in the NZ Food and Nutrition guidelines background papers, these form the basis for what the NZ MoH considers healthy eating in NZ for a number of age groups based on current scientific evidence. Foods high in fat, sugar and salt are not promoted in these Food and Nutrition Guidelines and foods that are "unhealthy" on this basis should not be allowed to make nutrition or health claims, beyond content claims. The NZ MoH recommended a categorisation of foods with nutritional criteria that control this aspect of making claims, e.g. similar to the criteria used by National Heart Foundations' Pick the Tick programme.

MasterFoods Aust. NZ recommended that all products that can deliver nutritional or health benefits should be permitted to truthfully make that claim, and the imposition of qualifying/disqualifying criteria to individual foods or classes of foods is unwarranted. They believe this is certainly so for high level claims where the claim is evaluated by an expert panel, and also for general level claims. Their submission gives a detailed example of polyphenols in certain cocoa preparations and products such as de-fatted cocoa powder beverage mix, snack bar and chocolate.

SA DoH suggested pre-requisites and conditions are need for all claims and must deliver the overarching Policy Principles in the Policy Guideline. These include issues such as general level claims not being made on on-core foods marketed to children, health claims should not be made on confectionery, claims should not be made on foods high in energy, saturated fats, fats, salt or added sugar, or on foods with poor nutritional value, claims should be consistent and support dietary guidelines and health claims should not be made on foods marketed to vulnerable populations, e.g. infants, except on whole foods.

A number of Australian consumers recommended that if health claims are allowed on a food, the food is a 'nutritious' food. They noted that it is difficult to understand current claims, e.g. Fruit Loops claim to be a good source of 5 vitamins including folate, which is true but these vitamins are added and Fruit Loops are high in sugar and sodium and low in fibre; parents may see these claims and incorrectly decide Fruit Loops are a suitable cereal for their children. They recommended that if claims are made on non-nutritious foods, food manufacturers be required to disclose the negative aspects of the food, e.g. high in sugar. They are concerned that allowing claims on foods that are not nutritious has the potential to worsen the health of the Australian population (Lisa Russell, Annemarie Neville, Fiona Wright, Kathy McConnell, Glenn Austin, Amanda Barnett & Family, Julie Gelman, Sarah Ritson, Mrs Adriane Swinburn, Anna Karolyi, David Dwyer).

ACA considered that infant foods should not be permitted to carry health claims as they are targeted to some of the most vulnerable consumers and may take advantage of parents' desire to give their baby the most nutritious food possible. They added that disqualifying criteria should prohibit the use of health claims on inappropriate foods such as products high in fat, salt and sugar unless otherwise permitted, e.g. cholesterol claims on phytosterol spreads.

Disqualifying criteria should not apply for content claims, as they are a statement of the fact of a level of a particular nutrient, ingredient or biologically active substance that is contained within the product. The Nutrition Information Panel provides further information about other nutrient, ingredients and biologically active substances provided by the product which will assist consumers to select the appropriate products for inclusion in a diet to meet their individual needs (Kellogg's Aust.).

Consumer's Institute of NZ only support health claims on foods that are consistent with national nutrition policies. Foods high in fat (especially saturated fat), sugar and sodium should not be permitted to have health claims. Health claims should not be permitted on food marketed or intended for children.

2.2 METHODS OF ANALYSIS

Question 3

Do you think there should be provisions that stipulate analytical methods for content claims? If yes, what is the appropriate approach or what are the appropriate methods?

Out of 147 submitters, 47.6% (70 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	22	17	5	2	46
Government	5	2	-	-	7
Public health	9	3	-	-	12
Consumers	2	-	-	-	2
Other	2	1	-	-	3
Total	40	23	5	2	70

Overview

Almost sixty per cent of submitters (40) opposed provisions that stipulate analytical methods for content claims. Nine submitters gave their support for prescribing methods for certain nutrient such as fibre, or for certain claims such as ‘free’. Fifteen submitters supported provisions that stipulate analytical methods for content claims. Proposed approaches included specifying internationally recognised methods of analysis (e.g. Association Of Analytical Chemists), consistency in methods between Australia and New Zealand, specific guidelines that stipulate methodologies and include up-to-date methodology, and a prescriptive approach within a standard.

Submitters who opposed provisions

Forty submitters did not think there should be provisions that stipulate analytical methods for content claims in general (TCCA, Diabetes Aust., DAA, NZDA, GI Ltd, NHF Aust., NHF NZ, Coeliac Society of Aust., ASMI, Cadbury Schweppes, CHC, Solae Comp, Sanitarium Health Food Comp, National Starch, PB Foods, NZ MoH, Fonterra, Mainland Products, Griffins Foods, Naturalac Nutrition, Naturo Pharm, NZFGC, NZ Magazines, NPANZ, ASA, Assoc. NZ Advertisers, NZTBC, Cadbury Confectionery, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Crop & Food Research, Tas DoH&HS).

Justification for opposing provisions:

- Specific analytical methods would be too inflexible to respond to advances in technology (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch and CM of SA);

- It would not be feasible to specify analytical methods in the Code, especially as new technology is continuing to emerge (Tas DoH&HS, TCCA, Cadbury Schweppes, PB Foods, Mainland Products and Fonterra);
- Prescribing specific methods of analysis would require validation in every medium. Stipulation of test methods might imply such a method is validated for use in all foods (or imply restriction to this test method)(CHC, ASMI);
- The most appropriate method for one food matrix might not be the most appropriate for another food thus leading to incorrect figures (AFGC, MasterFoods Aust. NZ, Crop & Food Research, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch and CM of SA), and an exhaustive list was considered unwise, given that many different food matrices would potentially impact the methods of analysis (Goodman Fielder); and
- Crop & Food Research noted their experience with some current lab analysis that even if the analysis method for the component is up to date, figures can be incorrect figures because methods were not adequate for different food matrix effects/sample preparation.

The Coeliac Society of Aust. noted that as the Standard for gluten does not stipulate an analytical method, it implies the most sensitive method.

Crop & Food Research agreed it is difficult to stipulate methods as there is often more than one option in addition to newly developed methods and methods that are regularly updated (especially for biologically active substances).

Twelve submitters gave no specific reason for why they considered that analytical methods should not be stipulated (Diabetes Aust. DAA, NZDA, GI Ltd, NHF Aust., NHF NZ, Solae Comp, Sanitarium Health Food Comp, NCWA, NZ MoH, NZFGC, National Starch).

Submitters who gave no specific support or opposition to provisions

Five submitters did not clearly express support or opposition to provisions (Aussie Bodies, Parmalat Aust., Nutra-Life H&F, Tegel Foods, Heinz Aust./Heinz Watties NZ).

Submitters who gave conditional support for provisions

There were nine submitters who gave conditional support to provisions (AFGC, Dairy Aust, GW Foods, Goodman Fielder, National Foods, NZFSA, Nestle, MasterFoods Aust. NZ, Unilever Australasia).

Conditional support prescribed in certain circumstances:

- Nutrients including fibre, lactose, gluten (Dairy Aust., AFGC, MasterFoods Aust. NZ, Nestle, Unilever Australasia, GW Foods, National Foods, Goodman Fielder),

fat, sugar (AFGC, MasterFoods Aust. NZ, Nestle, Unilever Australasia, GW Foods, National Foods, Goodman Fielder);

- ‘Free’ claims (AFGC, MasterFoods Aust. NZ, Nestle, Unilever Australasia, GW Foods, National Foods, Goodman Fielder); and
- In rare cases where guidance is needed about a method to use e.g. lack of reliable or internationally validated method (NZFSA).

Although they generally opposed provisions, the AFGC (supported by MasterFoods Aust. NZ) considered that prescribed analytical methods would be appropriate for: Dietary fibre (there does not appear to be any alternative method to prescribing the method of analysis which defines what is regarded as dietary fibre); gluten (the limit of detection is the accepted method for analysing gluten); and ‘lactose free’, ‘sugar free’ and fat free which currently have maximum limits prescribed to CoPoNC. They also recommended that in the cases above, a method of analysis be prescribed with an appropriate limit of detection and/or limit of reporting.

Other submitters considered that it might be useful to define the analytical method for components such as fibre (Goodman Fielder, Unilever Australasia, Nestle, Fonterra, Mainland Products).

Although GW Foods did not believe there should be prescribed analytical methods in general, they recognised the benefit of stipulating methods for ‘free’ claims. Standardised methods for ‘free’ claims would reduce the inconsistency of results between laboratories, which in turn would help ease the complexity for manufacturers and enforcers when dealing with differing values, as a number of methods can be used (e.g. fat can be measured using the several analytical methods: Soxhlet; Acid Hydrolysis; Base Hydrolysis; Solvent Extraction; Gas Chromatography and the laboratory undertaking the analysis decides which method is appropriate. In some cases the chosen method might not be the best for measuring total metabolisable fat, and thus, they have recommended developing a guideline that stipulates the most appropriate methodologies taking into account the type of food matrix and the claim.

Submitters who supported provisions to stipulate analytical methods

Fifteen submitters supported the prescription of analytical methods for content claims (Dr. C Halais, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, WA DoH, CSIRO – HS&N, Monash Uni – N&D Unit, NZ Dairy Foods, Nutra NZ, CML, Dr. R. Stanton, PHAA (supported by ACA)).

Justification for provisions to stipulate analytical methods:

- Prescription of analytical methods supported fair-trading and would minimise confusion and misinterpretation by industry (Dr C Halais, Aussies Bodies Ltd, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, WA DoH, CSIRO – HS&N, Monash Uni – N&D Unit, NZ Dairy Foods, Nutra NZ, Nestle, Unilever Australasia, CML);
- They would help to verify supplier results (CML);

- They would minimise the likelihood of consumers being misled (CML, SA DoH, WA DoH, NSW DoH - N&PA Branch and Monash Uni-N&D Unit);
- To ensure consistency as different methods produce different results (e.g. methods for analysing fat) (Dr. R. Stanton, PHAA (supported by ACA), NSW Food Authority, NSW DoH - N&PA Branch, SA DoH, WA DoH and Monash Uni – N&D Unit); and
- Stipulation of analytical methods might be useful with regard to possible legal ramifications, i.e. what testing protocol would ‘hold up’ in a court of law (CML).

NZ Dairy Foods and Nutra NZ agreed that internationally recognised prescribed standard analytical methods should be adopted but gave no specific reason for their answer.

Proposed approaches or methods:

- Specifying internationally recognised methods of analysis e.g. Association of Analytical Chemists (AOAC) (Dr C. Halais, CSIRO-HS&N);
- That there should be consistency in methods between Australia and New Zealand (Heinz Aust./Heinz Watties NZ, Tegel Foods);
- A guideline in a user-guide or a code of conduct for analytical methods would allow for flexibility as opposed to a prescriptive list (Dairy Aust., PB Foods, GW Foods, Parmalat Aust., CSIRO – HS&N, NZFSA, Fonterra, Mainland Products);
- A specific guideline that stipulates methodologies to determine the most appropriate extraction rate, taking into account the type of food matrix as well as the nutrition claim, to assist industry compliance (GW Foods);
- Establishment of guidelines that include up-to-date methodology, rather than just a general approach to allow any methods, for example USDA flavanoid and procyanidin databases criteria, Holden, Bhagwat, and Patterson (2002)(Crop & Food Research);
- A prescriptive approach within a Standard, as this would be in keeping with other specifications of methodology i.e. mercury in fish and microbiological analysis (WA DoH, SA DoH and Monash Uni - N&D Unit); and
- NZ MoH considered that, in some instances, a calculation of the nutrient level of the analytical method might be necessary to ensure meaningful labelling (e.g. conversion factors for carotenoids, folate analysis and labelling, and dietary fibre definition).

Wyeth Aust. suggested that the analytical methods should be reviewed periodically to allow for advances in technology.

Use of accredited laboratories

Eighteen submitters considered it appropriate to specify testing in IANZ or NATA accredited laboratories (Tas DoH&HS, Diabetes Aust., GI Ltd, NHF Aust., NHF NZ, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, NZTBC, Cadbury Confectionery, Griffins Foods, Naturo Pharm, NZ Magazines, Aussie Bodies, Tegel Foods, CML, Sanitarium Health Food Comp).

CML noted that if this requirement delayed the claims legislation process, it might be necessary to compromise by only requiring specific tests to be done in a NATA laboratory for those criteria that appear on a mandatory Nutrition Information Panel.

NHF Aust. (supported by NHF NZ) noted, however, that testing in IANZ or NATA accredited laboratories would be a significant cost to industry and not easily monitored or enforced. Tegel Foods recommended that the chosen analytical methods be as simple as possible, available from a wide number of accredited labs and be accepted internationally. Griffins Foods also considered it important that nutrient definitions are specific enough to define analytical requirement (e.g. for fibre).

Seventeen submitters rejected the idea that NATA or IANZ accredited laboratories were necessary, stating that some manufacturers already have in-house laboratory facilities that are not accredited but are still credible (Cadbury Schweppes, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Dairy Aust., Fonterra, Mainland Products, Goodman Fielder, Nestle, National Foods). Nestle noted that NATA registration is not applicable to overseas laboratories, which are capable of analysing particular nutrients and biologically active substances. Furthermore, they stressed that some nutrients or biologically active substance methodology might not be included in the methods that NATA assesses.

GW Foods highlighted their concern that NATA accredited laboratories have been associated with substantiating nutrient content claims and consider NATA registration is not registration of appropriate methodologies chosen for certain tests but rather an assurance of the quality of work conducted e.g. the methodology chosen has been carried out correctly. In addition, GW Foods recommended NATA accredited labs to be used for prescribing analytical methodology and not to verify nutrient content claims.

AFGC (supported by MasterFoods Aust. NZ) rejected that requirements for only NATA registered laboratories to be used.

NSW Food Authority believed it was necessary for FSANZ to seek input from experts to determine the best approach/methods to use.

Additional comments and recommendations

GW Foods stressed that 'free' claims should be allowed with realistic conditions and criteria and detailed methodologies. They pointed out that the methodologies currently have minimum detection limits, where results cannot be described as zero, instead set where physiologically, clinically and nutritionally there is no difference

between these limits and zero. GW Foods believed having maximum residual limits for 'free' claims was consistent with international food standards and that retaining them would be consistent with FSANZ objectives i.e. the need for standards to be based on risk analysis using the best available scientific evidence; the promotion of consistency between domestic and international food standards; and the desirability of an efficient and internationally competitive food industry.

Twelve submitters noted that for claims such as "lactose free", "sugar free" and "fat free", there are maximum levels prescribed in CoPoNC (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch and CM of SA, GW Foods, Nestle). These levels are set where there is no difference physiologically, clinically and nutritionally between these limits and zero, however the levels are not strictly "zero" due to methodological limitations. These stakeholders stated that realistic conditions and criteria and detailed methodologies are therefore needed for "free" claims.

The CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA) further noted that these maximum residual limits are consistent with international food standards and believed that retaining them would be consistent with the need for standards to be based on risk analysis using the best available scientific evidence; the promotion of consistency between domestic and international food standards; and the desirability of an efficient and internationally competitive food industry.

Other submitters commented that methods of analysis should have appropriate limit of detection/reporting, and provided the example that it took several years to amend the Food Standards Code with internationally recognised testing methods for soluble fibre such as inulin (PB Foods, Fonterra, Mainland Products). They stated this meant manufacturers had difficulties in claiming the true energy content since the method was not recognised in Australia and Australian manufacturers were disadvantaged compared to manufacturers overseas.

Fonterra (supported by Mainland Products) stressed that content claims should be restricted to content that is reasonably efficacious such as in terms of bioavailability. Regulations preventing misleading consumers should prohibit the use of content claims where it would not be reasonable to make such claims.

Rather than have prescribed analytical methods, Canterbury DHB suggested that the Code specify that the test method used be one stated in the latest edition of the AOAC International. It is noted that labs must use the latest method to retain accreditation so there would be no need to change legislation and this would take care of changes to science and technology.

Canterbury DHB suggested that the Code could state what the test method must include e.g. which analytes/compounds to be determined/included, the level of accuracy, limits/levels of detection. This would mean that the test method used is appropriate and inclusive of all the components/compounds/properties that are defined as the nutrient being analysed.

CHC and ASMI also recommended the most appropriate test method be at the discretion of the sponsor and suggested that while test methods should not be prescribed, it would be appropriate to retain analytical data on each batch based on a validated test method, where the health claim is linked to a minimum nutrient content.

Although Nutra-Life H&F did not provide an opinion whether or not there should be provisions that stipulate analytical methods for content claims, they noted that analysis of the level of vitamins and elements using HPLC and other techniques might be impossible. In particular, analysis on a batch-by-batch basis, meaning manufacturers often resort to “Quantified at Time of Input”.

Other comments provided but not in direct response to the question

The Food Technology Assoc. of Vic. noted that the definition of fat in Australia is at variance to other authorities in overseas countries, and the definition of fibre is based on an analytical method, which appears to require some serious consideration and revision. They suggested that for claims of presence of nutrients and particularly nominated “actives” or individual substances/components, all measurements be established by relevant methodology that is available to Australian Labs. They also recommended that the measurement of analytes should be what is actually present, not just what is added.

2.3 SYNONYMS

Question 4

Are the listed synonyms similar in meaning to the types of content claims listed? Should the list be considered ‘exhaustive’ and therefore stipulated in a Standard in the Code or ‘illustrative’ and therefore provided in a guideline document as examples for manufacturers to use?

Submitter responses to specific issue raised in question

Out of 147 submitters, 48.3% (71 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	16	5	2	47
Government	7	2	-	-	9
Public health	7	4	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	42	22	5	2	71

Overview

Thirty submitters agreed that the listed synonyms were similar in meaning to the types of content claims listed. Two submitters agreed with some synonyms and seven

disagreed. Five submitters believed that similarity would depend on the context of the claim. Twenty submitters specified or implied that they preferred that an ‘exhaustive’ list be stipulated in a Standard. Twenty-four submitters supported an ‘illustrative’ list be provided in a guideline document. Seventeen submitters favoured an ‘illustrative’ list without specifying a guideline document, and one submitter preferred a guideline without specifying whether the list of synonyms should be ‘illustrative’. One submitter preferred a Standard that contains an ‘illustrative’ list.

Similarity of synonyms in meaning to the types of content claims listed

There were 30 submitters who considered that the listed synonyms were similar (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Heinz Aust/Heinz Watties NZ, Nestle, Unilever Australasia, Griffins Foods, NZ Dairy Foods, NZFGC, Nutra NZ, Tegel Foods, CHC, Dairy Aust, ASMI, TCCA, Diabetes Aust, DAA, NZDA, GI Ltd, F&B Importers Assoc, Solae Comp, Wyeth Aust, National Starch).

CML considered it was inappropriate to use the symbol ‘√’ to indicate ‘source’ as this could open up the potential for considering a number of other symbols, which are very much left up to interpretation; that ‘rich’ is more synonymous with ‘very high’ as opposed to ‘high’; and that ‘lite’ be added as an example of ‘low’.

NZFSA pointed out that ‘zero’ would be analytically challenging for some components so was not a suitable synonym for ‘free’; that synonyms for ‘reduced’ and ‘increased’ were likely to cause confusion and should not be permitted; and that the 25% rule would be more easily understood if only one term applied. NZFSA also questioned the need for ‘very high’. In their response to a later question, the NZFSA agreed with 25% as the value for “reduced”, but questioned the need for the percentage to be provided adjacent to the descriptor (as they do not support synonyms for “reduced”).

Seven submitters disagreed that the synonyms had a similar meaning to the types of content claims listed (see general comments and recommendations) (PHAA (supported by ACA), Tas DoH&HS, SA DoH, WA DoH, Nutra-Life H&F, Monash Uni – N&D Unit).

Five submitters stated that whether or not they are equivalent would depend on the context of the claim (AFGC, MasterFoods Aust. NZ, GW Foods, National Foods, Goodman Fielder).

Twenty-seven submitters did not specifically answer this part of the question (Dr R Stanton, NHF Aust., NHF NZ, Aussie Bodies, Bakewell, Cadbury Schweppes, Parmalat Aust., PB Foods, Sanitarium Health Food Co., NCWA, ACCC, NSW DoH – N&PA Branch, NSW Food Authority, DAFF, CSIRO – HS&N, Canterbury DHB, Public Health South, ASA, Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers, Fonterra, Mainland Products, NZ Magazines, NZ MoH).

Preference for an ‘exhaustive’ list of synonyms that is stipulated in a Standard

Ten submitters favoured this option and believed that the exact wording would reduce the possibility of ambiguity and misleading claims (Monash Uni – N&D Unit, PHAA (supported by ACA), CML, Tas DoH&HS, NSW DoH - N&PA Branch, SA DoH, WA DoH, NZFSA, Nutra NZ).

In addition, there were ten submitters that preferred that a list of synonyms should be included in a Standard, as opposed to a guideline, without specifically stating if the list should be ‘exhaustive’ (Public Health South, National Starch, Solae Comp, TCCA, Diabetes Aust, GI Ltd, DAA, NZDA, NHF Aust, NHF NZ). FSANZ notes that for these submitters an ‘exhaustive’ list was implied. However, six of the latter ten submitters recommended that the term ‘free from’ should be added to the synonyms specified for ‘free’ (Diabetes Aust, GI Ltd, DAA, NZDA, National Starch, Solae Comp.).

Several submitters suggested that an exhaustive list would limit the number of synonyms used and ensure that those used convey the correct meaning (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni-N&D Unit).

CML noted that this would provide greater clarity for consumers and industry, enable consistency and would help ensure compliance.

Six submitters suggested that a list in a Standard would limit the number of synonyms used and ensure that those used convey the correct meaning (Public Health South, Diabetes Aust, GI Ltd, DAA, NZDA, National Starch). In addition, four submitters believed the exact wording would reduce the possibility of ambiguity and misleading claims as anecdotal evidence suggests some consumers interpret synonyms as having different meanings (TCCA, Diabetes Aust., DAA and NZDA). National Starch believed that placement of a list in a Standard would ensure that the meaning is clear and well understood. Public Health South considered that standard terms would help to improve consumer’s understanding of the terminology.

NHF Aust. and NHF NZ stated that synonyms should be listed in the standard and other claims should be prohibited.

Preference for an ‘illustrative’ list of synonyms provided in a guideline

Twenty four submitters recommended an ‘illustrative’ list be provided in a guideline document (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Nestlé, NCWA, Unilever Australasia, NZ Dairy Foods, NZFGC, AFGC, MasterFoods Aust NZ, Dairy Aust, GW Foods, Goodman Fielder, NSW Food Authority, DAFF, CSIRO – HS&N, National Foods).

Seventeen submitters indicated that they favoured an ‘illustrative’ list without expressing a preference for a guideline (Sanitarium Health Food Comp, Heinz Aust./Heinz Watties NZ, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Fonterra, Mainland Products, Griffins Foods, Naturo Pharm, NZ Magazines, NZTBC, Tegel Foods, Canterbury DHB, F & B Importers Assoc, PB

Foods, Parmalat Aust) and Bakewell Foods noted their preference for a guideline, as opposed to a Standard, without specifically stating if the list should be ‘illustrative’. FSANZ notes that for these submitters, an ‘illustrative’ list and a guideline were implied.

Several submitters recommended that the term ‘free from’ should be added to the synonyms specified for ‘free’ (Dairy Aust., GW Foods, Sanitarium Health Food Comp).

Fonterra (supported by Mainland Products) highlighted that the proposed list already missed items such as ‘free from’ and ‘enriched’, hence the need for an ‘illustrative’ list. Dairy Aust. and GW Foods requested that ‘increased’ and ‘enriched’ be added to the synonyms specified for ‘high’.

Supporting arguments for an illustrative list:

- It would allow for creativity and flexibility on nutrition messages (Sanitarium Health Food Comp);
- It would be difficult for a list to be “exhaustive”. Therefore, an “illustrative” list, which is as “exhaustive” as possible, was recommended (NSW Food Authority);
- New phonetic ways to spell could quickly outdate a list as language changed therefore an “exhaustive” list was inappropriate (Canterbury DHB); and
- It was considered appropriate for low risk claims (DAFF).

Aussie Bodies recommended that an ‘illustrative’ list should be included in a Standard.

Eight submitters provided no comment on whether the list should be considered ‘exhaustive’ and therefore stipulated in a Standard, or ‘illustrative’ and therefore provided in a guideline document (Dr. R. Stanton, ASMI, Cadbury Schweppes, CHC, Wyeth Aust, ACCC, NZ MoH, Nutra-Life H&F).

General comments and recommendations

NZ MoH believed that it was necessary to clarify of what ‘free’ of a substance means (e.g. the level of detection limits the ability to determine whether or not a food is ‘free’ of a substance).

Cadbury Schweppes commented that the term ‘free’ should be clarified in terms of the residual or ‘accidental’ level of the nutrient that could be present (threshold level). ‘Fat free’ and ‘sugar free’ should be allowed with clarity as to their meaning (i.e. ‘fat free’ equates to 0.2% fat).

NHF Aust. and NHF NZ commented that where the definition ‘very high’ is not provided in the Standard, it should be made clear that the terms ‘very high’ or ‘excellent’ cannot be used for content greater than the definition of ‘high’. If a

product meets the definition of ‘very high’, then it should also be clear that the label could also use terms that indicate lesser amounts (e.g. ‘high’, ‘provides’ or ‘source’).

Public Health South recommended that claims for ‘source of’ only be allowed for ingredients that could result in potential harm to consumers e.g. nut allergy. For other nutrients, ‘source’ should be prohibited and only a ‘good source’ should be permitted.

Nutra-Life H&F believed ‘good source’ might imply ‘an aspect of preference’ (e.g. calcium from milk is a ‘good source’, however calcium from a supplement may not be a ‘good source’, even though it may be higher than that found in milk). Other comments made by Nutra-Life H&F were: that ‘rich’, ‘very high’ and ‘excellent source of’ could imply a better quality, whereas the reference is actually quantity not quality; and ‘high’ should be changed to ‘high in’ and ‘very high’ to ‘very high in’, although amounts would need to be quantified against the RDI as they considered that not many consumers would be able to judge.

Six submitters believed that it was necessary to conduct consumer research to understand how the listed terms are interpreted, as some words don’t appear to have the same meaning (Dr. R. Stanton, ACCC, WA DoH, Tas DoH &HS, Monash Uni. – N&D Unit, WA DoH). NSW DoH – N&PA Branch, WA DoH and SA DoH commented that it was important to test the list to ensure synonyms conveyed a similar meaning.

ACCC and Sanitarium Health Food Comp supported the inclusion of synonyms. Sanitarium Health Food Comp believed this would help ensure nutrient claims are portrayed consistently across foods, and believe this would help to educate consumers on reading labels and reduce the possibility of misleading and inaccurate claims.

TCCA further commented that the food industry was well aware of the impact wording could have on consumers. They provided an example of when the US Dietary Guidelines were developed, sugar industry lobbying in 1999-2000 resulted in a change from “go easy on beverages and foods high in added sugars” to “choose beverages and foods to moderate your intake of sugar.” TCCA noted that the meaning implied by these two statements is significantly different.

NZ MoH commented that it was not appropriate to include ‘lower’ and ‘fewer’ on labels as synonyms for ‘reduced’ as these could be confused with the ‘low’ category.

Canterbury DHB commented that while the terms proposed could be stipulated, a general over-riding criteria to capture new terms not stipulated should be included, that words, statements or other representations of similar meaning are also considered to be content claims.

Cadbury Schweppes noted the Standard for content claims must stipulate the types of claims that can be made including permitted synonyms and suggested that alternatives be included in a user guide for clarity and added to if required.

Aussie Bodies requested that a manufacturer be able to seek pre-approval if they wanted to use a synonym that isn’t listed.

NZFGC considered the list of synonyms to be acceptable.

2.4 CONDITIONS REGARDING FOOD CONSUMPTION

Question 5

Do you agree with CoPoNC's conditions regarding food for consumption?

Submitter responses to specific issue raised in question

Out of 147 submitters, 49.7% (73 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	16	5	3	49
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	43	22	5	3	73

Overview

In summary, the majority of submitters (71) agreed with CoPoNC's conditions regarding food for consumption, while two submitters disagreed.

Submitters who agreed with CoPoNC's conditions

Seventy-one of the 73 respondents agreed with CoPoNC's conditions regarding food consumption (TCCA, Diabetes Aust., DAA, Dr. R. Stanton, GI Ltd, NHF Aust., PHAA (supported by ACA), Aussie Bodies, AFGC, MasterFoods Aust. NZ, ASMI, Bakewell Foods, Cadbury Schweppes, CML, CHC, Dairy Aust., F&B Importers Assoc., GW Foods, Goodman Fielder, National Foods, National Starch, Parmalat Aust., PB Foods, Sanitarium Health Food Comp, Solae Comp, Wyeth Aust, NCWA, Tas DoH&HS, NSW DoH - N&PA Branch, NSW Food Authority, SA DoH, DAFF, WA DoH, CSIRO – HS&N, Monash Uni. – N&D Unit, Canterbury DHB, NHF NZ, NZDA, Public Health South, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Fonterra, Griffins Foods, Mainland Products, Naturalac Nutrition, Naturo Pharm, NZFGC, NZ Magazines, Nutra-Life H&F, Nutra NZ, NZTBC, Tegel Foods, NZ MoH, NZFSA, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA NSW Branch, CMA Qld Branch, ICA, CMA Vic Branch, CM of SA, Heinz Aust./Heinz Watties NZ, Nestle, Unilever Australasia and William Wrigley Junior).

Submitters that disagreed with CoPoNC's conditions

Two of the 72 respondents, namely Tomox and MLA, disagreed with CoPoNC's conditions regarding food for consumption. This was for the following reasons:

- 'As consumed' is confusing, as consumers don't always reconstitute food in the same way e.g. including water with instant noodles or with baby rice. Labelling needs to be much clearer in these cases (Tomox);
- Meat is prepared in a variety of ways and it is difficult to provide information regarding the content of food in the form in which it is consumed due to differences in meat fat, trimming, cooking methods, addition of ingredients, etc. Providing nutrient information on raw meat is more informative and less confusing to consumers (MLA).

General comments and recommendations

TCCA and Sanitarium Health Food Comp commented that if the food label makes a claim, the claim must relate to the form in which the food is typically consumed otherwise the claim is irrelevant and misleading.

Manufacturers must ensure that clear usage instructions are present for consumers (Cadbury Schweppes). Public Health South commented it was important to provide conditions under which content claims can be made and ensure labels include information that allows the consumer to prepare the food in such a way that the prepared product meets the claims. NHF Aust. and NHF NZ agreed the claim criteria should be relevant to the food "as prepared for consumption" according to directions on the pack and that it should be clear for which preparation method the claim applies to. TCCA recommended that to avoid misleading consumers, the manner of preparing the food (to meet the health claim) must be stipulated and any serving suggestions must comply with the stated preparation method or at the very least have a disclaimer negating the health claim where preparation is altered and the claim no longer applies. Canterbury DHB supported this recommendation.

Nutra-Life H&F commented the preparation method must be stipulated if the claim depends on it and suggested the consumer must be advised that failure to prepare food in a certain way will mean the claim is not valid (e.g. substituting cream for skim milk would no longer meet a low fat claim).

Naturalac Nutrition believed that labelling should indicate that the claim is valid if prepared in X manner however they did not think it was necessary to explicitly state that if prepared in a different manner the claim would be invalid.

ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC and NZ Magazines suggested FSANZ could apply a similar approach to Therapeutic Advertising, which cites that "individual results may vary" for preparation and the validity of claims.

Tegel Foods considered that it was more informative for consumers to have information on the food prepared according to directions on the pack than provide a

Nutrition Information Panel that relates to the food in the pack, e.g. in the case of raw chicken.

NSW Food Authority noted that these conditions in CoPoNC were established after a lengthy development process involving industry and regulators.

2.5 FOODS NATURALLY OR INTRINSICALLY HIGH OR LOW IN A NUTRIENT

Question 6

Do you agree with CoPoNC and NZFR conditions for foods naturally or intrinsically high or low in a nutrient?

Out of 147 submitters, 47.0% (69 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	15	5	2	46
Government	6	2	-	-	8
Public health	8	3	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	42	20	5	2	69

Overview

Forty-two submitters agreed with the CoPoNC and NZFR conditions for food naturally or intrinsically high or low in a nutrient. Sixteen respondents disagreed. The main reason provided by submitters for not agreeing related to processing of food and technology and innovation in product development meaning that whole foods within a class of foods do not always have similar nutritional content.

Submitters who agreed with CoPoNC and NZFR conditions

Of the submitters that answered this question, 42 agreed with the CoPoNC and NZFR conditions for food naturally or intrinsically high or low in a nutrient (TCCA, Diabetes Aust, DAA, Dr R. Stanton, GI Ltd, NHF Aust, NHF NZ, PHAA (supported by ACA), Tomox, ASMI, CML, CHC, Go Grains, Goodman Fielder, National Starch, PB Foods, Sanitarium Health Food Comp, Solae Comp, Wyeth Aust, NCWA, Tas DoH&HS, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, DAFF, WA DoH, CSIRO-HS&N, Monash Uni-N&D Unit, NZ MoH, NZFSA, NZDA, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Griffins Foods, Mainland Products, Naturo Pharm, NZ Magazines, Nutra NZ and NZTBC).

The NSW Food Authority highlighted that these conditions were established after a lengthy development process involving industry and regulators.

NZFSA agreed with these conditions in CoPoNC and NZFR because they considered the claims would be misleading otherwise.

Submitters that did not specifically indicate their support or opposition

Eleven submitters did not specifically indicate their support or opposition but made some of the comments below (Aussie Bodies, AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, F & B Importers Assoc, Canterbury DHB, Fonterra, Naturalac Nutrition, NZFGC, Nutra-Life H&F, Nestle).

Submitters who disagreed with CoPoNC and NZFR conditions

Sixteen submitters specifically stated that they did not agree with the CoPoNC and NZFR conditions for foods naturally or intrinsically high or low in a nutrient (Dairy Aust., National Foods, Parmalat Aust., GW Foods, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Heinz Aust/Heinz Watties NZ, Unilever Australasia).

Reasons given why CoPoNC and NZFR conditions are not appropriate:

- Implying a class effect could be misleading; as technology has meant that whole foods do not always have the same nutritional composition (Unilever Australasia, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Dairy Aust., GW Foods, National Foods, Parmalat Aust, GW Foods, Nutra-Life H&F, Fonterra, Aussie Bodies, Cadbury Schweppes). For example:
 - Some types of bread are intrinsically high in fat (e.g. focaccia or olive bread)
 - Protein fortified milk has a higher protein content than standard milk
 - Salad dressings and low fat yoghurts differ in composition;
- Many processed foods could be high or low in a nutrient and vary considerably in ingredients (e.g. many varieties of bread available meaning a generic claim for bread may not be applicable)(Canterbury DHB);
- Conditions are not reflective of the current food supply and would limit innovation and development (Cadbury Schweppes, Dairy Aust., National Foods, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA);
- Parmalat Aust. opposed the nutritional grouping of a whole class of foods when there is increasing segmentation across all food categories;
- Restricting claims like this would not protect consumers (Heinz Aust/Heinz Watties NZ); and
- Conditions were not deemed necessary; claims should be able to relate to a specific food (Heinz Aust/Heinz Watties NZ).

Naturalac Nutrition agreed these conditions should apply to whole foods with minimal processing e.g. milk, but not where products are formulated and/or highly processed e.g. whey protein isolate.

General comments and recommendations

Canterbury DHB noted that Nutrition Information Panels allow consumers to compare packaged products and with education consumers should become knowledgeable regarding content claims in basic foods (e.g. oil). They believed this highlights the need for an education programme. Canterbury DHB also stated that irrespective of the content claim, the food must have some inherent nutritional value (e.g. marshmallows, which are low in fat but high in sugar and contain little nutritional value, would be excluded from making a claim, generic or otherwise).

Three submitters considered that although the general principle for these conditions was still valid, changes in technology and marketing practices meant that the requirements should be written and explained more fully, which could be done more effectively in a guideline than a standard (AFGC, Nestle, NZFGC). Goodman Fielder commented that a clearer explanation was necessary, as they believed the current format was open to interpretation.

NHF Aust (supported by NHF NZ) suggested guidelines be created to assist with identifying if certain foods should make a statement that the food is naturally or intrinsically high or low in a nutrient.

Fonterra and PB Foods noted potential problems with the interpretation of ‘whole class of similar foods’, as there are so many different varieties within one class of food that could differ in fat, protein etc. Further clarification of this term was recommended.

National Foods queried whether the terms “bread - low fat food” or “low fat bread” have different meanings for consumers and suggested the conditions be removed from the Guideline.

Nutra-Life H&F commented that where a food group (for which a standard exists) clearly defines the levels of nutrient such as fat content, then claims such as "bread - a low fat food" could be supported. In addition they stated that it might be possible to claim "low carbohydrate bread" where the level of carbohydrate could be reduced, although in some circumstances the product identity standard might need to be changed (e.g. in the case of "margarine" and "low fat spread").

Go Grains recommended that for foods inherently low in carbohydrates (e.g. nuts), a ‘low carbohydrate’ claim should be accompanied by a clarifying statement that the claim refers to the whole class of similar foods.

Fonterra and Dairy Aust noted that some companies use pictorial representation for claims on a food, which would be prohibited by the requirement to stipulate the whole class of food (e.g. ‘low fat’ milk with a tick symbol).

Heinz Aust/Heinz Watties NZ added that claims regarding positive nutrients in a food should always be permitted as long as they are not misleading.

F&B Importers Assoc. suggested there could be a fuller explanation of the issue.

2.6 NORMAL COUNTERPART OR REFERENCE FOODS

Question 7

Do you agree with CoPoNC's requirements for 'normal counterpart' or 'reference foods'?

Out of 147 submitters, 45.6% (67 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	22	15	5	2	44
Government	6	2	-	-	8
Public health	8	3	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	40	20	5	2	67

Overview

Fifty-three submitters agreed with the three categories in CoPoNC for 'normal counterpart' or 'reference foods'. Ten submitters were less supportive of the first category definition while two submitters suggested alterations to the second category definition. One submitter disagreed with CoPoNC's requirements on the basis that the term 'normal counterpart' needs to be defined.

Submitter responses in relation to CoPoNC's requirements

Fifty-three submitters agreed with CoPoNC requirements for three categories into which 'normal counterpart' and 'reference foods' fit (TCCA, Diabetes Aust, DAA, Dr R. Stanton, GI Ltd, PHAA (supported by ACA), NHF Aust, Tomox, Aussie Bodies, ASMI, Cadbury Schweppes, F & B Importers Assoc, National Starch, Parmalat Aust., Solae Comp, Wyeth Aust, Mandurah Aust, Kingfood Aust., CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, CM of SA, NCWA, Tas DoH&HS, NSW DoH, NSW Food Authority, SA DoH, DAFF, WA DoH, CSIRO - HS&N, Monash Uni. – N&D Unit, NZ MoH, NZFSA, NHF NZ, NZDA, Canterbury DHB, Mainland Products, Griffins Foods, Naturalac Nutrition, Naturo Pharm, ASA, Cadbury Confectionery, NZ Magazines, Nutra NZ, NZTBC, CMA – NZ Branch, NPANZ, Assoc. of NZ Advertisers, CMA, Unilever Australasia, Palatinit GmbH, ICA).

Although ten submitters agreed with the second and third category definitions, currently included in CoPoNC's requirements, they were less supportive of the first category definition for the reasons listed below (AFGC, MasterFoods Aust. NZ,

Sanitarium Health Food Comp, Dairy Aust, GW Foods, Goodman Fielder, National Foods, NZFGC, Fonterra, Nestle).

Two submitters had agreed with the first and third category definitions, but suggested altering the wording of the second category definition (CML, Heinz Aust/Heinz Watties NZ).

One submitter did not agree with any of the requirements and stated that the term 'normal counterpart' should be defined (CHC). One submitter did not clearly express whether or not they agreed with the requirements (Nutra-Life H&F).

Specific comments about CoPoNC categories

First category: The 'weighted average' food of that type based on an industry norm for the particular type of food; this category is not appropriate where the composition of 'normal' foods of that type on the market varies over a wide range.

Ten submitters (NZFGC, AFGC, MasterFoods Aust. NZ, Sanitarium Health Food Comp, Nestle, GW Foods, Dairy Aust., National Foods, Fonterra, Goodman Fielder) were less supportive of the first category definition in relation to 'normal counterpart' or 'reference foods', and gave the following reasons:

- It may be very difficult to ascertain the weighted average across every brand on the market (NZFGC);
- The term 'weighted average' is too encompassing and would require inclusion of every food in that food group (Dairy Aust., National Foods);
- A representative 'weighted average' may differ by the foods chosen (Fonterra);
- It would require knowledge of individual sales volumes and implies figures are available for every single brand on the market in Australia and New Zealand (AFGC, GW Foods, MasterFoods Aust. NZ);
- It is a moving target as sales may vary (AFGC, MasterFoods Aust. NZ, GW Foods).

Three submitters recommended that the words '*weighted average*' be omitted (Dairy Aust, National Foods, Fonterra), with Fonterra having suggested leaving the words 'industry norm' as the appropriate reference. Four submitters suggested omitting the phrase '*weighted average food of that type based on an*' (Nestle, AFGC, MasterFoods Aust. NZ, GW Foods), with the last three submitters suggesting that by including this altered definition in a guideline, as opposed to a Standard, the difficulties noted in the fourth and fifth points above would be overcome.

Goodman Fielder considered that the explanation for 'weighted average' was not clear or relevant in the current form.

Sanitarium Health Food Comp recommended that the definition should be expanded to allow manufacturers to refer to a range of products sold within a specific category of the supermarket, when determining the reference food.

Although they supported CoPoNC's requirements for the three category definitions, NHF Aust (supported by NHF NZ) noted that determining 'average' or 'weighted averages' of nutritional values across the market is difficult.

Second category: The ‘regular’ product which has been produced for a significant period by the manufacturer making the claim

CML and Heinz Aust./Heinz Watties NZ suggested omitting the term ‘significant period’ to avoid the following issue as explained by this example:

Two variants of peanut butter are launched at the same time (one regular, one reduced salt). If launched together, the regular offering (i.e. the reference food) wouldn’t have been out for a ‘significant period of time’ and therefore could not be used as the reference food.

They believed that the amount of time a product has been available should be irrelevant providing an appropriate reference food exists.

Heinz Aust./Heinz Watties NZ provided another example in which a food manufacturer might launch a range of products at the same time, with the range containing a ‘lite’ version and a regular version. They argued that under the current category definition, the launch of the ‘lite’ version would have to be delayed for a significant period of time, which would be disadvantageous to consumer health.

Third category: A food of the type in question whose composition is determined by reference to published food composition tables.

None of the 67 submitters that responded to this question had disagreed with this category definition for ‘normal counterpart’ or ‘reference foods’. However, NHF Aust. (supported by NHF NZ) believed that it would be useful if the proposed User Guide specified which food composition tables were appropriate to use and where they can be accessed. They also suggested that FSANZ’s Food Composition Tables be regularly updated to reflect the changing marketplace.

General comments and recommendations

DAA (supported by NZDA) recommended that when a manufacturer makes a comparative claim on a food and also manufactures the ‘regular’ product, the reference food should be the ‘regular’ product e.g. if a manufacturer produces ‘brand X’ cheese, then the ‘reduced fat brand X’ cheese should be compared to the ‘brand X’ cheese and not the weighted average or generic food in published tables.

Dairy Aust. agreed with CoPoNC’s requirements but questioned what happens if you do not have a reference food to make a comparative claim against. Similarly, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA - NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA) also questioned whether FSANZ had considered situations where a ‘normal counterpart’ or ‘reference food’ does not exist.

Unilever Australasia agreed to CoPoNC’s requirements in general, although they noted that it was becoming increasingly difficult to identify ‘normal counterpart’ or ‘reference foods’ with a diverse range of products and less specific regulation related to composition.

CML preferred the term ‘reference foods’ to the term ‘normal counterpart’.

In justification of their support for CoPoNC’s requirements, NSW Food Authority pointed out that these conditions were established after a lengthy development process involving industry and regulators.

Other comments provided but not in direct response to the question

Nutra-Life H&F stated that it is often necessary to compare ‘like’ with ‘unlike’ if consumers are to compare one food against another (e.g. “Our normal baked beans contain 10% added sugar, [whereas] ‘New Has-beens’ have less than 5% added sugar and provide fewer calories per can”).

CHAPTER 3: SPECIFIC CONTENT CLAIMS AND PREFERRED CRITERIA

3.1 COMPARATIVE CLAIMS

Question 8

Should these comparative claims be permitted?

Out of 147 submitters, 45.6% (67 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	17	5	2	48
Government	-	2	-	-	2
Public health	9	4	-	-	13
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	37	23	5	2	67

Overview

Fifty-six submitters supported the permission of comparative claims in general. Five submitters indicated conditional support on the grounds that claims were true, complied with the preferred criteria and conditions, and gave clarity as to what is 'increased' or 'reduced'. Three submitters did not agree with permission for comparative claims in general. One submitter disagreed with permission of 'reduced' claims for gluten.

Supported permission for comparative claims

Fifty-six submitters (84% of submitters who responded to this question) were in support of comparative claims being permitted (ASA, NPANZ, Assoc. of NZ Advertisers, Naturo Pharm Ltd, Cadbury Confectionery, Fonterra, Griffins Foods, Mainland Products, Goodman Fielder, Naturalac Nutrition, NZ Dairy Foods, NZFGC, NZ Magazines, NZTBC, Tegel Foods, NZ MoH, NZFSA, Heinz Aust./Heinz Watties NZ, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, ICA, CM of SA, Unilever Australasia, Nestle, NCWA, Diabetes Aust., DAA, NZDA, Dr. R. Stanton, GI Ltd., Tomox, Aussie Bodies, AFGC, MasterFoods Aust. NZ, ASMI, Bakewell Foods, Cadbury Schweppes, CML, Dairy Aust., F & B Importers Assoc., GW Foods, National Foods, National Starch, Parmalat Aust., PB Foods, Sanitarium Health Food Comp., Solae Comp., Wyeth Aust., CSIRO – HS&N, Public Health South).

Five submitters (Nutra NZ, PHAA (supported by ACA), Monash Uni – N&D Unit, Canterbury DHB) gave conditional support for the use of comparative claims, subject to claims being allowed only if they are true (PHAA (supported by ACA), Monash Uni – N&D Unit) and they comply with the preferred criteria and conditions (Nutra

NZ, PHAA (supported by ACA), Monash Uni – N&D Unit). Canterbury DHB believed that it should be clear what is increased or reduced before permission is granted.

The NHF Aust. (supported by NHF NZ) indicated their support for ‘reduced’ and ‘increased’ claims (and their synonyms), with the exception of reduced cholesterol claims.

Reasons provided by some submitters for supporting permission for comparative claims are that:

- Their continued use is consistent internationally (NZ MoH);
- They are recognised as an accepted part of CoPoNC Guidelines (NZFGC, Unilever Australasia, Nestle, AFGC, MasterFoods Aust. NZ, Goodman Fielder);
- They have provided good guidance for industry, consumers and enforcement agencies (AFGC, MasterFoods Aust. NZ, Goodman Fielder);
- There have been no obvious non-compliance issues (AFGC, MasterFoods Aust. NZ, Goodman Fielder) and there is no evidence of market failure (Nestle);
- Manufacturers may be less likely to develop less energy dense and/or fat dense alternatives if they are not able to make reasonably obvious claims (Naturalac Nutrition);
- They reinforce key messages of the NZ Food and Nutrition Guidelines to encourage people to eat less fat, sugar and reduce energy intake (Public Health South);
- They would provide consumers with useful information (NZFGC, NZ Dairy Foods, NZFSA, NZ MoH) in terms of the micronutrient content of a food when compared to a reference food (NZ Dairy Foods), or a change in the level of a specified nutrient (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, ICA, CM of SA, Cadbury Schweppes);
- Claims would be able to demonstrate increases or reductions in food that may never be able to achieve an absolute claim, and that such changes are significant from a consumer standpoint (Unilever Australasia); and
- From understanding and clarifying differences between food products (Aussie Bodies, Tomox), consumers would be better equipped to make informed food decisions and healthier food choices (NZ Dairy Foods, GW Foods, Diabetes Aust., GI Ltd., CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, ICA, CM of SA).

The AFGC (supported by MasterFoods Aust. NZ) believed that a 25% cut-off would enable a wider range of foods to make increased/reduced claims, thus offering nutritional benefits and the potential for improved health outcomes.

The CML noted that consumers are often looking for an alternative to the standard product but don't want to choose products at the extreme end (e.g. prepared to try reduced fat milk, but not low fat milk). In addition, CML believed that products carrying comparative claims represent a good compromise and are a way of slowly encouraging some individuals toward healthier products. If additional information was required, consumers could refer to the Nutrition Information Panel.

Submitters who did not support permission of comparative claims

Three submitters were not in support of comparative claims being permitted (Nutra-Life H&F, TCCA, CHC), and one submitter opposed the use of 'reduced' claims for gluten (Coeliac Society of Aust).

Nutra-Life H&F believed that labels must be unambiguous and concise and must clarify what the food is being compared to. They preferred specific statements such as '25% less fat than our regular brand'.

The TCCA believed that content cut-offs such as 'low', 'high' (e.g. ≥ 3 g fibre per average serve), or 'very high' (e.g. ≥ 6 g fibre per average serve) would have more meaning for consumers and would be less likely to mislead them. They noted that FSANZ qualitative consumer research has indicated that comparative claims have misled consumers (salt example). However, if comparative claims are permitted, they should be restricted to foods where the comparative difference is 25% or more, but as stated in the Codex, the amount (percentage, fraction or absolute amount) of difference between the food for which the claim is being made and (an equivalent quantity of) a reference food should be placed in close proximity to the claim.

The CHC believed that consumers have a lack of understanding (about claims) and that manufacturers take liberties.

General comments and recommendations

Dairy Aust. stated that consumers currently use comparative claims to make informed food decisions. They noted the results of the FSANZ Consumer Survey (2003) where participants familiar with these types of claims had used them to guide their food selection, with the Nutrition Information Panel verifying the claim. As quoted from the survey, "quantified 'less than' claims were preferred as they were regarded as far less ambiguous or confusing".

The NCWA stated that consumers require education about the meaning of words within comparative claims.

Although in support of comparative claims being permitted, Dr. R. Stanton believed that claims must show what is being compared.

Canterbury DHB suggested caution against “increased claims” being a back door for fortification, in that a manufacturer could make a claim about what is increased, thus allowing additional ingredients to allow a claim (for example adding more gelatine to a confectionery product and claiming more protein).

Heinz Aust./Heinz Watties NZ suggested that the claim ‘more/greater than’ should be permitted, for example, in high fibre products a ‘more than’ claim may apply.

Question 9

If permitted, do you agree with FSANZ’s preferred criteria?

Out of 147 submitters, 43.5% (65 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	16	4	2	46
Government	1	2	-	-	3
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	37	22	4	2	65

Overview

Forty-six submitters agreed with FSANZ’s preferred criteria in general. In addition, eleven submitters agreed with the first criterion of a 25 per cent cut-off only, one submitter agreed this criteria and the requirement that the comparison is made between foods of the same food group, and two submitters agreed with the preferred criteria in relation to ‘increased’ claims only.

In agreement with FSANZ’s preferred criteria

Forty-six submitters (71 % of submitters who responded to this question) agreed with the preferred criteria (Public Health South, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Fonterra, Mainland Products, Griffins Foods, Naturalac Nutrition, Naturo Pharm Ltd, NZ Dairy Foods, NZFGC, NZ Magazines, Nutra-Life H&F, Nutra NZ, NZTBC, NZ MoH, Nestle, NCWA, TCCA, Diabetes Aust., DAA, NZDA, Dr. R. Stanton, GI Ltd, PHAA (supported by ACA), AFGC, ASMI, Bakewell Foods, CHC, Dairy Aust., F& B Importers Assoc., GW Foods, Goodman Fielder, National Foods, National Starch, Parmalat Aust., PB Foods, Solae Comp, Wyeth Aust., CSIRO – H&N, Monash Uni – N&D Unit, Unilever Australasia, Queensland Health – PHS).

In addition, eleven submitters agreed with the first criterion of a 25 percent cut-off (NZFSA, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – Qld Branch, CMA – NSW Branch, CMA – Vic Branch, ICA, CM of SA). One submitter agreed with both first and third criteria (Cadbury Schweppes).

Two submitters agreed with the preferred criteria in relation to ‘increased’ claims only (NHF Aust., NHF NZ).

Reasons provided by some submitters for agreeing with the preferred criteria for comparative claims were that:

- They are consistent internationally (NZFSA) as the requirement of 25% aligns with Codex, and that the detail is already on the Nutrition Information Panel (Fonterra, Mainland Products); and
- Three submitters agreed with the criteria as they are in keeping with consumer research findings (Monash Uni – N&D Unit, PHAA, ACA).

First criterion: with the exception of micronutrients, the comparison should be based on a relative difference of at least 25% in the energy value or relevant nutrient content

Sanitarium Health Food Comp recommended retaining minimum absolute nutrient content difference in addition to the 25% relative difference requirement being proposed. They suggested that minimum absolute differences being highlighted as part of a claim may be considered trivial and potentially misleading (e.g. if a product with a low sugar content of 4% is compared to another food containing 3% sugar, which could be claimed as “25% less sugar than product X”).

Although Cadbury Schweppes agreed to at least a 25% reduction in the specified nutrient in order to make a ‘reduced’ claim, they questioned the need to declare the reduction and considered that this should be a voluntary declaration.

The AFGC noted that whilst ‘reduced/increased nutrient product name’ and unqualified ‘reduced/increased nutrients’ claims should be subject to the 25% rule, this should not prevent manufacturers from making claims such as ‘we have reduced the fat content of product X by 5%’.

Aussie Bodies were not convinced that the 25 percent cut-off should apply to all nutrient groups.

Second criterion: the identity of the reference food and the percent, fraction or amount of difference in energy value or nutrient content should be indicated adjacent to the comparative claim

The CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – Qld Branch, CMA – NSW Branch, CMA – Vic Branch, ICA, CM of SA) did not support a mandatory declaration of the percent variation of the energy or nutrient content in conjunction with the comparative claim, as they considered that this should be voluntary.

CML questioned that once the first criteria of 25 percent is met and the identity of the reference food is indicated, if industry might choose whether or not to include the difference in energy value or nutrient content adjacent to the comparative claim. They also noted that there is often space limitation on labels and this information can be obtained by comparing the Nutrition Information Panels for both products.

The NZFSA questioned the need to require the actual percentage adjacent to the term ‘reduced’. Manufacturers will put this on voluntarily as the case requires (e.g. if more than 25 percent), and if no percentage is given consumers can be assured that it meets the standard of a minimum 25 percent reduction.

Third criterion: comparative claims should only be made between foods of the same food group or foods that may substitute for one another in the diet

Dairy Aust. considered it necessary to clearly define what a ‘substitute’ food is. They quoted the proposed definitions (including ‘nutritional equivalence’ and ‘substitute food’) and qualifying criteria raised in a separate A500, as noted on page 13 of the IAR. The dairy industry considers that these criteria and definitions be adopted.

Tomox believed that consideration should be given to comparative claims for the same eating or drinking occasions (e.g. comparisons between milk and soft drinks or yoghurt and high fat snacks). Heinz Aust./Heinz Watties NZ recommended that consideration should be given to marketing campaigns where a food may be compared against a number of foods (e.g. one advertisement may compare foods representing different meal occasions and different food groups).

Heinz Aust./Heinz Watties NZ suggested that comparisons of nutrient values of one product against those of other products, which are not necessarily appropriate substitutions, may be useful (e.g. in the context of providing balanced information to consumers, a manufacturer may wish to compare the folate content in peas against a range of other folate-containing foods including orange juice. Other examples given include eggs, meat, baked beans, breads, and cereals).

General comments and recommendations

TCCA recommended that energy, fat, sugar, fibre and sodium criteria are also required. They suggested that criteria could be established for each of the five core food groups and ‘extra’ foods as agreed upon by health agencies.

Heinz Aust./Heinz Watties NZ recommended that the preferred criteria should only apply to fat and sugar modified products (e.g. using energy as criterion for products that are salt reduced or fibre increased should not be applicable).

The NHF Aust (supported by NHF NZ) recommended that claims for ‘reduced (or less than) fat’ and ‘reduced (or less than) sugar (s)’ should have an additional criterion that they are at least 25% reduced in kilojoules or energy.

PB Foods noted that FSANZ did not provide details on comparing micronutrients and biologically active substances.

The NZFSA believed that no synonyms should be permitted for “reduced” and “increased”. If the use of synonyms is recommended by FSANZ (e.g. ‘less’, ‘lower’ or ‘fewer’ for ‘reduced’), then there is a case for requiring the percentage change adjacent to the descriptor.

The CHC suggested that consumers would not understand the preferred criteria.

Other comments provided but not in direct response to the question

Several submitters argued that depending on the context in which they are used, ‘less than’ and ‘more than’ would not always constitute comparative claims. It could just simply be a statement of fact about the nutrient content within a food (AFGC, Nestle, National Foods, Unilever Australasia), or alternatively an implied ‘low’ or ‘source of claim (AFGC, National Foods, Unilever Australasia).

Nutra-Life H&F believed that reductions (shown in comparative claims) must be meaningful and would be expected to convey some benefit, although this can be implied and would generally be understood by the consumer.

Question 10

Should there be an additional criterion that relates to energy when ‘reduced’ and ‘less than’ claims are made in relation to total fat and sugar? If so, what criteria should apply and what evidence supports such an approach?

Out of 147 submitters, 42.2 % (62 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	21	14	5	2	42
Government	5	1	-	-	6
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	-	-	-	-	-
Total	36	19	5	2	62

Overview

Twenty-three submitters agreed that there should be an additional criterion that relates to energy when ‘reduced’ and ‘less than’ claims are made in relation to total fat and sugar. Two submitters expressed conditional support, and one submitter supported both the use of additional criteria and the recommendation to refer consumers to the Nutrition Information Panel. Thirty-three submitters disagreed with the proposal for an additional criterion.

Submitters who supported an additional criterion

Twenty-three submitters had agreed to an additional criterion that relates to energy when ‘reduced’ and ‘less than’ claims are made in relation to total fat and sugar (Public Health South, Mainland Products, NCWA, TCCA, Diabetes Aust., DAA, NZDA, Dr. R. Stanton, GI Ltd, NHF Aust, NHF NZ, PHAA (supported by ACA), Tomox, GW Foods, National Starch, Solae Comp, NSW Food Authority, SA DoH, Wa DoH, Heinz Aust./Heinz Watties NZ, Aussie Bodies, Nutra NZ).

Sanitarium Health Food Comp supported additional criteria relating to reduced energy content, with one exception. They noted that in contrast to the expected reduction in energy with a 'reduced fat' claim, a 'reduced sugar' breakfast cereal may have 25% less sugar and its replacement with grain content is unlikely to provide a similar decrease in energy content.

NZ Dairy Foods supported the approach that if one macronutrient is reduced, then it should not be replaced with another macronutrient of 'lower' quality (that is, reduced fat products should not have the fat replaced with empty calories such as sugar).

The CML was generally supportive of an additional criterion but were also comfortable with the Technical Expert Group suggestion to refer the consumer to the Nutrition Information Panel.

Although Heinz Aust./Heinz Watties NZ agreed with the suggestion for an additional criterion relating to energy, they believed that a labelling statement highlighting energy is unnecessary when all the information is available on the Nutrition Information Panel. In addition, they recommended that consideration be given to label space restrictions.

Reasons for support of an additional criterion:

- The total energy level of claimable food should be significantly less in energy than the 'reference' food (Tomox, National Starch);
- Consumers perceive 'low fat' and 'low sugar' products as also being low in energy (DAA, NZDA, GW Foods);
- The findings of the La Fontaine (2004) study and those of Crowe et al., (2004) indicate a number of foods for which low fat claims are made that do not have a concomitant reduction in energy. This was considered to be particularly misleading for consumers who may rely on the claim rather than refer to the Nutrition Information Panel for verification (PHAA (supported by ACA));
- An additional criterion would provide potentially useful information to the consumer (NSW Food Authority);
- Energy content would also become important as low carbohydrate options appear in the marketplace (Dr. R. Stanton); and
- A reduction in energy content, in proportion with the fat/sugar content for which the claim is made, would be prudent given the significance of the obesity epidemic in Australia and New Zealand (SA DoH, WA DoH, PHAA (supported by ACA)).

Suggestions for criteria that should apply

Energy ranges that have already been considered in the literature could be used as a guideline for developing energy criteria (TCCA). *Rolls and Barnett (2003)* were quoted, suggesting the following:

- 0-0.6 kcal/g = low energy density/unlimited intake
- 0.6-1.5 kcal/g = low energy density/eat to appetite
- 1.5-4.0 kcal/g = higher energy density/moderate intake
- 4.0-9.0 kcal/g = highest energy density foods (chips, confectionery, takeaways) require careful portion control.

A range can also be given as 1707 – 3840 kJ per 100 g; so for example foods with an energy density greater than 1700 kJ per 100 g would be excluded from making claims. This could prevent over consumption of high-density foods. Given that the 1700 kJ threshold is too high for some foods, additional sugar/fat criteria would be required in addition to energy criteria. TCCA suggested that this issue requires investigation, comment and agreement from various health agencies.

Criteria should apply to claims relating to total fat and total carbohydrate, not total sugar. It was noted that starches which have been added as fillers in low fat foods have a higher glycaemic index than sucrose and offer no additional nutritional benefits. Therefore it was considered unfair to single out added sugars (Diabetes Aust., GI Ltd.)

A criterion of ‘at least 25% reduced in kilojoules/energy’ (NHF Aust., NHF NZ) or ‘25 % less energy’ was recommended, to be consistent with the approach taken for macronutrients (Diabetes Aust., GI Ltd.).

The establishment of a percentage to allow for acceptable increases in protein, fibre and carbohydrate for low fat (Tomox).

Although they were unsure as to what criteria should apply, NZ Dairy Foods believed that there should be some reference to energy value of reduced micronutrient food being X % lower than the reference food.

Evidence given in support of such an approach

TCCA quoted from the study conducted by Baines and Lata (2004) for FSANZ, that “consumers focused on one nutrient only, primarily fat...this suggests that consumers might have difficulties assessing the overall nutrient composition of a food and in judging the relative differences between nutrients” (TCCA).

Several submitters quoted from the study by *La Fontaine (2004)* (TCCA, Diabetes Aust., GI Ltd, SA DoH, WA DoH). TCCA noted that there was a large standard deviation between the energy content of ‘full’ and ‘reduced’ equivalent products, with potato chips, biscuits and peanut butter having less difference in energy content than predicted. Other submitters supported the need for an additional criterion for energy density, as the findings indicated a number of foods for which low fat claims are made that do not have a concomitant reduction in energy, which could be misleading to

consumers (Diabetes Aust., GI Ltd, SA DoH, WA DoH). Results reported in the study by Crowe et al. (2004) were similar (SA DoH, WA DoH).

TCCA also mentioned a number of recent studies (Rolls, Roe and Meengs 2004, Westerterp-Plantenga 2004, Stubbs, Ferres and Horgan 2000, Porrini et al. 1995) that have suggested total daily energy intake is affected by the energy density of foods consumed.

Energy criteria associated with existing fat, sugar, salt and dietary fibre criteria that is already included in the National Heart Foundation 'Pick the Tick' Programme (applicable to food items such as sweet or savoury biscuits, cakes, cereal bars and breakfast cereals) was provided as further evidence by TCCA to support such an approach.

The NHF Aust. (supported by NHF NZ) referred to a survey by NHF Australia (2003), in which there was evidence that some products claiming reduced in fat only had a small reduction in energy. Five products carrying reduced fat or 'lite'/'light' claims of 25-50 % less fat only had an average energy reduction of 13%.

Submitters who opposed an additional criterion

Thirty-three submitters did not support the proposal for an additional criterion that relates to energy when 'reduced' and 'less than' claims are made in relation to total fat and sugar (Canterbury DHB, Griffins Foods, NZ Magazines, ASA, NPANZ, Assoc. of NZ Advertisers, NZTBC, Naturo Pharm, NZFGC, Fonterra, NZFSA, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, ICA, CM of SA, Unilever Australasia, Nestle, AFGC, MasterFoods Aust. NZ., Cadbury Schweppes, CHC, Dairy Aust., F & B Importers Assoc., Goodman Fielder, National Foods, Parmalat Aust., Wyeth Aust.).

Reasons for opposing an additional criterion:

- According to Council of Australian Governments principles, new regulation should only be introduced to correct market failure. There is no demonstrated market failure with respect to the current criteria for energy (Unilever Australasia, Nestle, AFGC, MasterFoods Aust. NZ, Goodman Fielder, National Foods);
- Questioned what evidence there is for the need for an additional criterion (F & B Importers Assoc);
- Although increasing the carbohydrate and gum content of the food mimics the mouth feel of fat, there is still a reduction in energy content (AFGC, MasterFoods Aust. NZ, Nestle);
- In many cases, where a product must rely on low moisture content to maintain quality and the fat is removed, it is usually replaced by either sugar or protein (with the exception of removing fats from liquids) (Cadbury Schweppes);

- Additional criteria would be unnecessary if there were strong disqualifying criteria for content claims. There should be a clear condition to stop low fat products being filled with sugar (Canterbury DHB);
- Reduction in a particular nutrient will lead to increases in the relative proportions of other ingredients will increase. Notwithstanding these slight increases in relative proportions of carbohydrate and protein the overall energy content is still reduced (Goodman Fielder);
- Findings from research conducted by La Fontaine (2004) have shown that despite an overall decrease of approximately 25% in energy content of fat reduced foods, the range of decrease (or standard deviation) was quite wide (AFGC, MasterFoods Aust. NZ, Nestle);
- ‘Reduced sugar’ or ‘reduced fat’ claims do not imply low energy, which is a separate claim (Fonterra);
- The disclosure statement proposed by FSANZ is lengthy (Fonterra, Dairy Aust., National Foods) and rendered unnecessary, given that Nutrition Information Panels are a requirement on food products making comparative claims (Dairy Aust., National Foods). Disclosure statements would not fit small sized packs in addition to the Nutrition Information Panel. (National Foods);
- Energy content information is clearly displayed on the Nutrition Information Panel and most consumers should be familiar with them now and would already use them to make informed decisions about a product (Fonterra, NZSFA, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, ICA, CM of SA, Dairy Aust., National Foods, Parmalat Aust., NZFGC);
- Consumers who do not refer to the Nutrition Information Panel might be misled about the energy content of foods for which low fat claims do not correlate to a reduction in energy (NZFSA);
- The FSANZ Consumer Survey (2003) found that participants were not supportive of the concept of disqualifying criteria, believing them to be unnecessary. Participants considered themselves more than capable of deciding for themselves whether a product was an overall healthy choice for them (Dairy Aust., National Foods); and
- There is evidence that some consumers are interested in fat levels, irrespective of energy content (NZFSA).

Three submitters who did not clearly express whether they agreed or disagreed made the following comments:

- Consumers could control the amount of energy by altering the serving size. They believed it is questionable whether or not a lower energy claim means you can eat

more food, and if so, what is the benefit except in regard to satisfaction (Nutra-Life H&F);

- Findings of the La Fontaine (2004) study and those of Crowe et al., (2004) indicated a number of foods for which low fat claims are made that do not have reduction in energy (Tas DoH&HS). Consumers who do not refer to the Nutrition Information Panel for verification may mistakenly believe the product to be lower in energy (NSW DoH – N&PA Branch, Tas DoH&HS);
- When ‘reduced’ and ‘less than’ claims are made, it was recommended that they should be required to be lower in energy in proportion to the fat or sugar content for which the claim was made (NSW DoH – N&PA Branch, Tas DoH&HS).

General comments and recommendations

CML recommended further research by FSANZ before any criteria are set (e.g. products making low carbohydrate claims should still be low in energy and low in fat).

Four submitters considered that the energy level of the claimable food must be significantly less than the reference food (DAA, NZDA, GW Foods, Solae Comp.). Five submitters argued that if energy is not reduced, then products must clearly state that they are not low in energy than comparable products (DAA, NZDA, GW Foods, Solae Comp, Tas DoH&HS).

Nutra NZ believed that from an industry perspective, if both fat and sugar content is reduced to meet a total energy target, a replaced ingredient would be used which is likely to be more expensive, especially in low moisture foods. Use of expensive ingredients would be reflected as higher product prices, which are not appealing to the consumer.

Public Health South recommended a statement on total energy per serve should also accompany these claims, as low fat and low sugar products do not necessarily equate to a low energy product.

Dr. R. Stanton suggested that energy points might be a useful alternative to kilojoules, given that most people cannot relate to kilojoules and the numbers become cumbersome to add up.

The Sanitarium Health Food Comp recommended modelling to determine what level of energy reduction occurs when fat content is reduced in different food categories. In addition, they believed that some ‘reduced’ claims should be excluded (e.g. when there is no valid scientific rationale to suggest that a food should have less energy if a ‘reduced salt’ claim was made).

Eleven submitters supported an educational approach for consumers unfamiliar with Nutrition Information Panels, rather than a regulatory approach (NZFSA, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, ICA, CM of SA).

3.2 'FREE' CLAIMS

Question 11

Should 'free' claims be permitted? Briefly explain.

Out of 147 submitters, 50.3% (74 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	16	5	3	48
Government	7	2	-	-	9
Public health	9	4	-	-	13
Consumers	1	-	1	-	2
Other	2	-	-	-	2
Total	43	22	6	3	74

Overview

Sixty-three submitters agreed that 'free' claims should be permitted. Most reasons for permitting 'free' claims were related to their use as identifiers for consumers, international consistency, the current value of the 'free' claims market, and that regulation would be through the fair trading laws. A number of submitters raised issues relating to the approval of 'free' claims and subsequent criteria, which included the need for substantiation and improved regulation; compliance with fair trading definitions, inclusion in the Food Standards Code or related Guideline, and physiologically insignificant amounts. Six submitters opposed the general use of 'free' claims and one submitter opposed permission of all 'free' claims except those in relation to gluten and lactose.

Sixty-three submitters agreed that 'free' claims should be permitted (Diabetes Aust., GI Ltd, DAFF, CSIRO-HS&N, Naturalac Nutrition, Tegel Foods, GW Foods, Heinz Aust./Heinz Watties NZ, Parmalat Aust., Nestle, Fonterra, Griffins Foods, Aussie Bodies, F& B Importers Assoc., NZFSA, PB Foods, NZFGC, Sanitarium Health Food Comp, Unilever Aust., Cadbury Schweppes, CML, ASA, Cadbury Confectionery, NPANZ, Assoc. of NZ Advertisers, NZTBC, Naturo Pharm Ltd, NZ Magazines, AFGC, MasterFoods, NHF Aust., NHF NZ, Dairy Aust., National Foods, PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit, Canterbury DHB, Tas DoH&HS, PHS, ASMI, CHC, Wyeth Aust., NZ Dairy Foods, NZ MoH, TCCA, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA., CMA-Vic Branch, CM of SA), Mainland Products, William Wrigley Junior, Goodman Fielder, ACCC, Coeliac Society of Aust.).

A number of reasons were given as to why 'free' claims should be permitted. These reasons included issues concerning general consumer information, identifiers for specific diets, aligning with fair trading laws, international recognition and codex legislation.

General consumer information

'Free' claims provide useful consumer information (F& B Importers Assoc., NZFSA NZFGC, National Foods, William Wrigley Junior). This (nutrition) information was described in terms of messages that were quick, simplistic, concise, accurate, clear, easily understood and/or enabled consumers to make positive health changes.

Consumers are interested in these messages as experienced by the rapid and sustained growth of this category over the past 12 years (William Wrigley Junior).

It was also pointed out that there is evidence (from comparing results from the 2003 Consumer survey on Nutrition Content claims to the 2001 Qualitative food labelling research), that consumers are using 'free' claims more extensively and view them "much more favourably" because they are definitive and do not make any comparative claims to other foods. 'Free' claims are rated as the second most frequently used type of nutrition content claim (Dairy Aust., Nestle).

Useful identifier for specific diets

In particular, 'free' claims are useful identifiers for consumers, with certain medical conditions or food sensitivities, who wish to avoid certain components of food (PB Foods, Aussie Bodies, GW Foods, Sanitarium Health Food Comp, Unilever Aust., AFGC, Nestle, MasterFoods, National Foods, Goodman Fielder).

Examples cited included coeliac disease sufferers looking for gluten free products or consumers, with personal dietary reasons, seeking fat free or lactose free foods.

Value of the 'free' claims market

With reference to National Food's brands (Yoplait yoghurt and Pura milks) it was noted that:

- The total dollar value for the 'no fat' yoghurt market in Australia for all brands is Aus\$82m, of which 38% or Aus\$31m, relates to the Yoplait 'no fat' brand;
- The total dollar value for the national milk market in Australia for all brands of 'no fat/fat free' milk is Aus\$218m of which 21% or Aus\$45.7m relates to the Pura Tone No Fat brand. (Refer to p12 of Submission for more details).

Over the past 10 years the confectionery industry has invested heavily in the development of the 'sugar free' category. In Australia it is worth in excess of Aus \$220million (of which A\$160m accounts for chewing gum sales) and in New Zealand it is estimated at NZ\$53 million (of which \$NZ40m relates to the gum market). Marketers have also worked to develop brand acceptance for intense sweeteners e.g. NutraSweet, and sugar alcohols such as Sorbitol (Nestle, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA).

It was also noted that William Wrigley Junior had made wide use of the term 'free' particularly in relation to their sugar free products, based on sugars being replaced by sugar alcohols.

International consistency

'Free' claims currently exist in the Food Standard Code and CoPoNC, which recognise small but finite tolerances based on internationally recognised practice (Goodman Fielder).

'Free' claims are recognised by other countries. Therefore, the use of such claims promotes consistency between domestic and international food standards as well as meeting the demands of Australian consumers (NZFGC, William Wrigley Junior). International examples cited were USA, Canada, UK and Codex (Dairy Aust., Nestle) as well as EU legislation (Goodman Fielder), in which small, finite but nutritionally insignificant, levels of nutrients were allowed in 'free' claims.

Codex legislation

'Free' claims are consistent with CODEX (Cadbury Schweppes, National Foods). 'Sugar free' and 'fat free' are set at 0.5% and 0.2%, respectively. However, concern was expressed that Regulatory Option 2 may not safeguard 'free' claims but if claims are accepted ACCC must acknowledge that they are permitted (Cadbury Schweppes).

Alignment with fair trading laws

'Free' claims would be regulated through the fair trading laws (CML, ASA, Cadbury Confectionery, NPANZ, Assoc. of NZ Advertisers, NZTBC, Naturo Pharm, NZ Magazines, Dairy Aust., Nestle).

It was also pointed out that Fair Trading legislation in New Zealand has set a legal precedent that 'free' is absolute, whereas Trade Practices legislation in Australia appears to rely on the principle of 'average consumer comprehension' (National Foods).

Many submitters raised issues in relation to permitting the use of 'free' claims. These issues included the need for substantiation and improved regulation; compliance with fair trading definitions, inclusion in the Food Code or related Guideline, no detectable provision and physiologically insignificant amounts. Although the following comments were made in response to question 11, some relate to question 12 (FSANZ's preferred criteria).

Substantiation

'Free' claims should only be permitted if they can be substantiated (ASMI). In particular, demonstration that the food contains absolutely none of the substance (CHC) or is completely free of the nutrient or contaminant with supporting evidence that this is true and correct 100% of the time (Wyeth Aust.).

Improved regulation

'Free' claims should be permitted if they are better regulated as they are easily open to abuse e.g. 0% fat free chocolate bar is misleading consumers about the health nature of the bar (NZ Dairy Foods).

Compliance with fair trading definitions

'Free' claims should only be permitted if they comply with Trade Practices Act/Fair Trading Act definitions (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit, Tas DoH&HS, Mainland Products).

In addition, these claims should not mislead consumers by implying more benefits than appropriate e.g. gluten free, lactose free (Tas DoH&HS).

It was recommended by Mainland Products that:

- Inconsistencies between the Food Code and fair trading legislation must be resolved by giving priority to the Fair Trading Act/Trade Practices Act. They considered that writing potentially conflicting references to such matters in the Food Code and related Guidelines was a waste of resources;
- A short section in the Code/Guidelines is included for inexperienced users to appropriate related legislation.

NHF Aust. and NHF NZ agreed with this by pointing out that since there was potential inconsistency with fair trading laws, attention should be drawn to the requirements of fair trading laws within the Standard (NHF Aust, NHF NZ).

Foods bearing claims were also required to carry a Nutrition Information Panel (Nutrition Information Panel), so whilst 'free' claims on foods with small but finite tolerances of the substance being claimed could be in technical breach of the Fair Trading Act, the Nutrition Information Panel acted as a disclaimer as it indicates the actual amounts present (Goodman Fielder).

ACCC's comments were that the ACCC does not wish to prohibit *free* claims. Where a 'free' claim is true (not detectable presence) then manufacturers should be permitted to provide this important information to consumers (PHS, ACCC). It is essential that conditions for making 'free' claims are consistent across all food standards, whether it be 'lactose free', 'gluten free', 'fat free', 'sugar free', 'dairy free' or 'GM free'. Consumers interpret 'free' to mean 'no presence of'. Manufacturers may argue that small residual levels of nutrients are 'nutritionally insignificant' and as a consequence, should be permitted. The ACCC is of the view that conveying the 'nutritional insignificance' of foods to consumers can be just as accurately relayed in a positive and truthful manner. For example "contains less than 1% fat" (ACCC).

TCCA also considered that if these claims did mislead consumers, they should be replaced with 'contains no' or 'zero' claims.

Inclusion in the Food Standards Code or related Guidelines

'Free' claims should be included in the Food Code legislation and all content claims should have criteria in the Code including unqualified 'free' claims. It was noted that not all cases were taken on by Fair Trading. Therefore, criteria should be stated in the Food Code legislation (Canterbury DHB).

Mainland Products explicitly opposed reference to 'free claims' in the Food Code or related Guidelines.

'Gluten free' provisions

'Gluten free' claims should remain as is currently defined in the Code or to be altered so that gluten free is defined as less than 20ppm (Coeliac Society of Aust., Tas DoH&HS).

Analytical methods used to test for particular ingredients should have appropriate limits of detection. For example, the gluten tests are becoming more sensitive than required for ensuring that products are safe for consumers with coeliac disease. In other words this issue should be discussed in line with the current FSANZ application on allergen labelling (PB Foods).

Disqualifying criteria

TCCA supported permission of 'free' claims only if there were disqualifying energy, sugar, sodium, or other content criteria as suggested in Q10. For example, fat free marshmallows contain 68g sugar/100g and are not a nutritious food.

Physiologically insignificant amounts

There was considerable discussion about the interpretation of 'free' claims with reference to meaning absolutely zero/no presence of an ingredient compared to a residual amount, which is physiologically, clinically or nutritionally insignificant.

A number of submitters felt that 'free' claims should be permitted on foods e.g. 'sugar free', 'fat free', as a descriptor of physiologically, clinically and nutritionally insignificant components – making provision for technically unavoidable residual/carry over levels of a nutrient left after processing (Nestle, CMA, supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA).

It was also suggested by these submitters that:

- There was no difference between these limits and zero sugar/fat, and that they were not misleading and did not provide concerns for public health and safety;
- The CoPoNC requirement of 'sugar free' be retained as 'no more than 0.2g sugar(s) per 100g food' but within a Government endorsed guideline which is legally enforceable (i.e. supports Standard 1.2.7, to provide certainty and

protection to consumers, consistency of application by industry and a framework for compliance and enforcement by designated agencies).

‘Sugar free’ is generally accepted as 0.2% sugar and ‘fat free’ as 0.15% fat (present through accidental means or as carry over in an ingredient). It was noted that ACCC have agreed not to take action with insignificant levels present but having it in the standard would ensure manufacturers are working within the law (Cadbury Schweppes).

‘Free’ claims are a useful descriptor, which takes into account the potential for unavoidable carryover of unprocessed material from these ingredients at physiologically insignificant levels. It was also noted that internationally, the term sugar free is prescribed generally with carry over sugar at levels exceeding the 0.2% currently prescribed in CoPoNC (William Wrigley Junior).

Parmalat Aust. recommended that criteria currently stipulated in CoPoNC be retained and noted that 'free claims' are permitted in other jurisdictions and in Codex, and are not considered misleading if the physiological contribution of the nutrient is insignificant.

It was stated that 'free' claims need to be conveyed in a simplistic, concise, accurate and meaningful way and that in the case of 'sugar free', the sugar(s) have been removed, replaced or were not present (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA).

Although these claims are useful to certain people, with analytical methods becoming increasingly sensitive, unless limits of detection can be specified, at or below levels, which are considered to be physiologically, clinically and nutritionally significant, these claims will not be used by industry (Unilever Aust.).

There were some general comments as to why there should be clarification of the meaning or interpretation of the word ‘free’. They included the following:

- It might encourage consumers to think the food may be consumed in large amounts (TCCA);
- Consumers interpret ‘free’ to mean ‘no presence of’ (ACCC);
- Clarification as to whether the term 'free' can also mean 'to the limit of detection' (CML);
- Levels of detection limit the ability to determine whether food is ‘free’ of a substance (NZ MoH); and
- Further research is needed by FSANZ concerning the use of 'free' claims (TCCA).

Sugar free

Some of the related 'sugar free' points raised by Nestle, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA) were that:

- Through non-alignment with Codex, Australia and NZ will be out of step with other international markets, causing trade barriers for local importers and disadvantaging consumer choice;
- There was a lack of enforcement action proposed by ACCC regarding their concern about the use of 'sugar free' on products that contain a residual sugar component – but reserving the right to take future action in the case of consumer complaints or trade advantages;
- Their consumer research found that consumers continue to be interested in 'sugar free' confectionery particularly from a dental perspective.

'Sugar free' recommendations, in addition to a qualified 'sugar free' claim of 0.2g per 100g of food in the proposed new guideline (compared to Codex 'sugar free' threshold of 0.5g/100g), were that:

- To be effective this will require formal agreement with ACCC and NZCC and achievement of this should now be possible given there is a Memorandum of Understanding between FSANZ and the ACCC;
- There should be consistency between food and TGA regulated products such as cough syrups and lozenges.

It was also stated that they are not aware of any consumer complaints regarding 'sugar free' and that companies that comply with CoPoNC are unfairly affected.

For more comments by submitters regarding 'sugar free' claims, refer to responses for question 33.

General issues

Views expressed by AFGC, MasterFoods and Nestle were that:

- With regard to Section 3.2.2 of the P293 IAR, the prior position of FSANZ in permitting 'free' claims is considered the correct one. This was explained in relation to a small residual where physiologically, clinically and nutritionally there is no difference between these maximum limits and zero sugar or fat etc. At these physiologically, clinically and nutritionally insignificant levels, 'free' claims are not misleading;
- With regard to the inequity between free claims in CoPoNC and gluten free and lactose free, the same principle should apply and the principle should be one of physiological, clinical and nutritional insignificance;

- With regard to section 3.2.4 of the P293 IAR, it is unacceptable that government agencies can make purely theoretical decisions with complete disregard for the practical situation and the benefit these claims have for consumers; and
- The whole basis for the decision, i.e. that the ACCC and NZCC both interpret 'free' claims as meaning that none of the substance should be present in the food, irrespective of food regulation and codes of practices' is based on the total false premise that 'free' means zero. Gluten free and provisions around the exclusion to declaring GM material where it is unintentionally present in a final food do not follow this premise.

Summary of issues

Goodman Fielder summed up the issues mentioned by many of the submitters by stating that 'free' claims should be permitted according to Codex criteria, or if the nutrient is undetectable or immeasurable, or if the amount that would appear in the Nutrition Information Panel, under the conditions specified in Standard 1.2.8, is zero (Goodman Fielder).

Concerns regarding fair-trading

William Wrigley Junior referred to issues raised by ACCC in 2002, concerning the use of 'free'. This had prompted them, along with the CMA, to discuss the use of the term with the Dept of Health, FSANZ and ACCC. Advice received from ACCC in April 2003 was that: "it remains concerned about the use of the sugar free descriptor on products that contain a residual sugar component ...It does not propose to take enforcement action against the use of the descriptor where the level of sugar in the products is nutritionally insignificant. Nevertheless, the ACCC indicates that it reserves the right to take future action, particularly if it receives consumer complaints or the use of the claims appear to be giving a trader an unfair advantage over its competitors".

It was also stated that despite ACCC concerns, William Wrigley Junior had successfully marketed these products in the last 12 yrs and had not been made aware of any consumer issues relating to the term.

Consumer understanding

National Foods stated that consumers do understand the 'free' claims concept and are not misled by foods labelled 'fat free' but contain up to 0.15% fat, and that this amount of fat is negligible.

Total prohibition

Some submitters (Goodman Fielder and National Foods) appeared to misunderstand FSANZ's position of permitting 'free' claims by aligning with fair trading legislation.

It was pointed out by Goodman Fielder that a total prohibition was inconsistent with the provisions in the FSC for gluten free and lactose free claims which are permitted, if the components are not detectable, not necessarily absent). It was considered fallacious to argue that fair trading legislation prohibits 'free' claims. Rather, there is a prohibition on false, misleading or deceptive claims, but there is nothing to prevent a claim that is true from being made (Goodman Fielder).

In addition the proposed FSANZ position of total prohibition was unsustainable as it put Australia and New Zealand out of alignment with Codex and other international jurisdictions (Goodman Fielder, National Foods). It would also introduce more prescriptive legislation generating additional costs (National Foods).

Six submitters opposed the use of 'free' claims. Most reasons were that 'free claims' might be misleading (National Starch, Solae Comp., DAA, NZDA, Tomox) or confusing (Bakewell Foods). It was also considered that 'free' claims should not be permitted, except for gluten free and lactose free, where appropriate and accurate (Dr. R. Stanton).

An example given in terms of incorrectly implying a benefit, was a sweet made with sugar claiming to be 'cholesterol free'. DAA and NZDA were concerned that such a claim could be misinterpreted to mean the product was beneficial for heart disease or weight loss.

Four submitters did not clearly express whether they agreed or disagreed that 'free' claims should be permitted. They raised the following points:

- The 'free' claim is potentially useful for some components such as fat, sugar etc even if traces of these substances are present. However, Fair Trading requirements make this type of statement problematic and, as the FSANZ consumer research suggests, unacceptable to the bulk of the consumers (NSW Food Authority, NSW DoH – N&PA Branch);
- Claims such as 'dairy free' or 'egg free' target consumers who may suffer from food allergy. Many food items are labelled as 'free from' common allergenic foods, which are targeted at these consumers and are purchased due to the perception that the foods are absolutely free from that allergen (Allergy NZ & Anaphylaxis Aust.);
- Precautionary warning statements used in conjunction with 'free' claims are misleading and extremely confusing for food-allergic consumers. They may pose a risk to their safety if cross contamination risk is high for that product – hence featuring an allergen warning statement. 'Free from' allergen claims must mean free, and therefore no need for precautionary allergen statements (Allergy NZ & Anaphylaxis Aust); and
- 'Free' has a specific and legal meaning according to the NZ Commerce Commission. However, the use of the term can be a minefield. The terms 'no added ...' or 'formulated without ...' although not absolutes, convey to consumers that the product meets their requirements for absence or very low content claim (Nutra-Life H&F).

Other comments provided but not in direct response to the question

Axiome supported 'free' claims being permitted. They also noted the wide use of 'free' claims and their utility in helping consumers make food choices. Other comments were that:

Current criteria are consistent with requirements for other countries/Codex; CoPoNC criteria/conditions for 'free' claims should be retained:

- 'Zero content' is unrealistic and not relevant for food, given that sugar/fat are detectable at trace levels and would disqualify almost all foods; and
- 'Free' claims are nutrition claims and should relate to physiological significance of the component in a food.

Queensland Health – PHS believed that claims such as ‘free’, and ‘wild’ should conform to trade practices/fair-trading definition or be specifically included in the Standard to ensure enforceability.

Consumers Instit. of NZ remains opposed to ‘free’ claims. They stated that a product containing two percent fat is not ‘free’ of fat and allowing the claim is not consistent with the zero tolerance policy of the New Zealand Commerce Commission.

Question 12

If ('free' claims are) permitted, do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 48.3% (71 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	22	16	5	3	46
Government	7	2	-	-	9
Public health	7	4	-	-	11
Consumers	2	-	1	-	3
Other	2	-	-	-	2
Total	40	22	6	3	71

Overview

Twenty-nine submitters agreed with FSANZ's preferred criteria. Some expanded their responses in terms of compliance with fair trading laws. Thirty-four submitters clearly disagreed with FSANZ's preferred criteria, including four submitters who did not agree that ‘free’ claims should be permitted at all. Other reasons for disagreeing were mostly in terms of a preference for permitted levels that were physiologically, clinically or nutritionally insignificant.

Discussion

A total of 29 submitters agreed (or implied agreement) with FSANZ's preferred criteria (no provisions) with regard to 'free claims'. Most expressed a very clear preference and others made reference to trade practices/fair trading definitions or conveying 'nutritional insignificance' in a positive and truthful manner.

Sixteen submitters agreed with the preferred criteria in general (Diabetes Aust., GI Ltd, Aussie Bodies, CML, CHC, NSW Food Authority, CSIRO- HS&N, PHS, Dairy Aust., ASA supported by NPANZ, Assoc. of NZ Advertisers, NZTBC, Naturo Pharm, NZ Magazines, and Cadbury Confectionery).

Twelve submitters agreed with the preferred criteria and specifically noted compliance with fair trading laws or trade practices/fair trading definitions or that 'no provisions' is replaced with something like 'non present'/needs to comply with fair trading legislation (NHF Aust., NHF NZ, Tomox, Griffins Foods, Wyeth Aust., NZFSA, NSW DoH – N&PA Branch, SA DoH, PHAA (supported by ACA), Monash Uni. – N&D Unit, Tas DoH&HS). WA DoH supported this view (despite stating that they disagreed with FSANZ's preferred criteria).

In addition, ACCC implied agreement. They stated that it is essential that conditions for making free claims is consistent across all food standards, whether it be 'lactose free', 'gluten free', 'fat' free, 'sugar free', 'dairy free' or 'GM free'. They added that consumers interpret free to mean 'no presence of.' Their view was that conveying the 'nutritional insignificance' of foods to consumers could be just as accurately relayed in a positive and truthful manner. For example, "contains less than 1% fat".

Other comments concerning approval of preferred criteria were that:

- Tas DoH&HS supported the general prohibition on 'free' claims and the use of 'very low' in place of 'free' for foods which satisfy the CoPoNC criteria for 'free', except where otherwise specified in the code, e.g. in relation to gluten and lactose;
- The Code should refer to the legislation and provide guidance (NZFSA);
- Additional requirements should be defined for terms such as 'negligible', to give industry some flexibility for products with extremely low, or virtually zero, contents of nutrients (NHF Aust., NHF NZ).

It was noted that whilst Dairy Aust. stated that they agreed with the preferred criteria, they added that:

- While not providing an absolute 'free' threshold, they provide nutritionally appropriate and, from a responsible food manufacturers' perspective, practical cut-offs;
- Where no allergy or intolerance is implicated, the levels below the thresholds set by CoPoNC are not of nutritional significance;

- There is global acceptance to permit small tolerances as outlined in the Initial Assessment Report. The dairy industry believes that approving such claims in Australia also maximises harmonisation of international regulations and international competitiveness; and
- Current provisions for ‘free’ claims are outlined in both the CoPoNC and in Standard 1.2.8. For consistency, the dairy industry recommends that all criteria and conditions for ‘free’ claims should be included in a Guideline.

Thirty-four submitters did not agree with FSANZ’s preferred criteria for ‘free’ claims (TCCA, Fonterra, Canterbury DHB, NZ Dairy Foods, National Foods, NZFGC, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch and CM of SA), AFGC, MasterFoods Aust. NZ, Sanitarium, Cadbury Schweppes, GW Foods, Tegel Foods, Heinz Aust./Heinz Watties NZ, Nestle, F & B Importers Assoc., Unilever Australasia, William Wrigley Junior, DAFF, Parmalat Aust., Goodman Fielder, DAA, NZDA, National Starch, Solae Comp.).

The latter four submitters did not believe that ‘free’ claims should be permitted at all.

Reasons given for not supporting FSANZ’s preferred criteria were that the approach relies on regulation by fair trading laws, which do not provide sufficient certainty to manufacturers, consumers or enforcement agencies (William Wrigley Junior, Nestle, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch and CM of SA).

Alternative recommendations to FSANZ’s preferred criteria included comments relating to CoPoNC, Codex, the principle of physiological, clinical and nutritional insignificance, residue present as a result of accidental carryover and standard analytical methodologies.

CoPoNC preference

Nineteen submitters recommended retaining criteria currently stipulated in CoPoNC (F & B Importers Assoc., NZ Dairy Foods, Unilever Australasia, William Wrigley Junior, AFGC, MasterFoods Aust. NZ, National Foods, Parmalat Aust., Nestle, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch and CM of SA).

Specific comments were that:

- Current maximum residual levels contained in CoPoNC should be retained and appropriate levels set for gluten and lactose either by way of maximum residual limits or by way of prescribing methods of analysis, with appropriate level of detection / reporting (AFGC, Nestle);
- The sugar free claim should be prescribed within the framework of the guideline and retain the criteria of no > 0.2g sugar(s) per 100g food. It was pointed out that there was a need for all interested regulatory agencies to agree

to the adoption of this guideline in order to provide certainty to manufacturers who comply with the requirements of the guideline (William Wrigley Junior);

- A qualified 'sugar free' claim, i.e. 0.2g per 100g of food, is prescribed in the proposed new guideline, which supports Standard 1.2.7, which is more stringent than Codex requirement of 0.5g per 100g. It was recommended that further actions be considered regarding the international alignment of Australia and NZ with Codex (Nestle, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA-NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch and CM of SA);
- The current maximum residual levels contained in CoPoNC for 'free' claims such as 'sugar free' and 'fat free', levels should be set where physiologically, clinically and nutritionally there is no difference between these maximum limits and zero percent sugar or fat content. Retaining these maximum residual limits is consistent with international food standards; consistent with risk adverse legislative practice; is not false or misleading; and therefore complimentary to the objectives of food regulation (National Foods);
- There should be provisions, such as in the CoPoNC. The free claims should also be regulated for protein and carbohydrate (NZ Dairy Foods).

Codex

Two submitters referred to Codex. Specific comments were that:

- The criteria that FSANZ previously held which was consistent with Codex should be retained. The outcome of negotiations between FSANZ and the ACCC on 'free' claims is unsatisfactory, in that Australia will now have different requirements on this issue from Codex, the US and Canada. As they are more restrictive requirements, this could be taken as a barrier to trade (DAFF);
- Nestle also noted the precedent set by Codex which provides for 'free' claims that have very small amounts of the nutrient present.

Physiological, clinical or nutritional insignificance

Three submitters supported the notion that a 'free' claim should be permitted where there is physiological, clinical or nutritional insignificance (Fonterra, National Foods, NZFGC).

Specific comments were that:

- 'Free' can indicate no significant amounts, or that which is nutritionally and physiologically insignificant. This need not mislead the consumer and there is international and Codex acceptance of this use (Fonterra);
- The 'free' claims in CoPoNC and gluten free and lactose free in the FSC, should both be based on the same principle, one of physiological, clinical and

nutritional insignificance. It was also pointed out that gluten free does not mean zero gluten, rather that gluten may be present at less than 10 mg/kg, the detection limit of the method of analysis (National Foods);

- Such a decision does not fulfil the New Zealand Commerce Commission's definition of 'free' but the definition of 'free' as it relates to claims in food legislation has not been tested in the courts. Given that 'consumers', for the purposes of the Fair Trading Act have been defined by the Court as "people who may be gullible, of less than average intelligence and poorly educated", it is highly probable that permitting the use of 'free' based on the above criteria would be accepted rather than the concept of zero tolerance (NZFGC).

Residual levels

Three submitters recommended that residue present as a result of accidental carryover should be permitted. Specific suggestions were that:

- Apart from quantifying the 'free' level it must also be stipulated that any residue can only be present as a result of accidental carryover and manufacturers must be able to prove this if challenged by an enforcement agency (Cadbury Schweppes);
- Small tolerances for 'free' claims should be incorporated into the standard in alignment with international regulations (Heinz Aust./Heinz Watties NZ, Tegel Foods) and the fact that the ability to measure traces of compounds in foods is improving continuously (Tegel Foods); and
- Appropriate levels should be set for gluten and lactose 'free' claims either by determining a maximum residual limit or prescribed methods of analysis, with appropriate levels of detection/reporting (National Foods).

Standard analytical methodologies

It was recommended that standard analytical methodologies should be set out in a guideline, including maximum limits. It was noted that analytical limits have been set where physiologically, clinically and nutritionally there is no difference between these maximum limits and zero sugar or fat etc, and therefore they cannot be considered false or misleading and so are not contrary to the objectives of food standards (GW Foods).

It was recommended that 'free' claims should mean nil (based on FSANZ research in which consumers unanimously agreed that 'free' claims should mean 'nil') or where this is not possible, the maximum amount should be set e.g. <0.1g per 100g. Free claims should be permitted only if there is qualifying and disqualifying energy, sugar, sodium or other content criteria (TCCA).

Other comments:

- Guidance be given for 'free' claims to help ensure claims are applied consistently across different products (Sanitarium Health Food Comp);

- This is an area for consumer research, as the NZ Commerce Commission interprets ‘free’ as absolute (Fonterra);
- Consumer research (Section 3.2.3 of P293 IAR) reports that some consumers find these claims a quick and useful tool, while more suspicious consumers use these tools as a guide and check further with the nutrition information panel (National Foods);
- The IAR states that ‘consumers have favourable attitudes toward ‘free’ claims’ and that they are a ‘quick and easy tool to use’, when making purchasing decisions (Goodman Fielder);
- The preferred criteria are considered a purist approach toward ‘free’ claims, which will inevitably deny consumers of these types of claims (Goodman Fielder);
- The criteria for the ‘% fat free’ claim needs review as good regulation will ensure compliance (National Foods);
- All criteria and conditions for ‘free’ claims should be included in a Guideline (National Foods);
- FSANZ, the ACCC and NZCC in adopting this theoretical approach are denying consumers appropriate information to make informed and non-misleading decisions in relation to food choices and are doing a disservice to the consumer they claim to be protecting (AFGC, Nestle).

Four submitters recommended the general prohibition of ‘free’ claims (National Starch, Solae Comp, DAA, NZDA).

DAA and NZDA explained that the use of ‘very low’ in place of ‘free’ for foods which satisfy the CoPoNC criteria for ‘free’, should be applied, except where otherwise specified in the Code (e.g. in relation to gluten and lactose).

Six submitters did not state a clear position as to whether they agreed with FSANZ’s preferred criteria for ‘free’ claims (no provisions).

Naturalac Nutrition stated that they were unsure and believed that there may be instances where technologically unavoidable traces of the substance of concern should not prevent the use of free claims.

Nutra-Life H&F pointed out that ‘free’ has a specific and legal meaning according to the NZ Commerce Commission but the use of the term can be a minefield. They suggested that the terms ‘no added ...’ or ‘formulated without ...’ although not absolutes, convey (the message) to consumers that the product meets their requirements for absence or very low content claim.

NZ MoH stated that ‘free’ should be clearly defined in the Food Standard Code to enable clear guidance for enforcement

‘Free from’ allergen claims should be considered in the context of health and nutrition claims as they reference a serious medical condition. In addition, they imply and are interpreted as the manufacturer guaranteeing the product is 100% ‘free from’ and may be used as short cuts by food-allergic consumers rather than looking at the ingredient list. It was also suggested that ‘free’ claims should be discouraged in the absence of adequate evidence to set internationally recognised, science based substantiation (Allergy NZ & Anaphylaxis Aust.).

‘Free’ claims should not be mentioned at all. FSANZ research findings have shown that consumers perceive the word 'free' is the same as 'nil' or 'zero' (Mainland Products).

The appropriateness of ‘free’ claims should be balanced with regard to other characteristics about a product that may make it undesirable i.e. fat free claims on high sugar confectionery (ASMI).

3.3 ENERGY CLAIMS

Question 13

Should these claims be permitted? Briefly explain.

Out of 147, 48.3% (71 in total) responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	23	15	5	3	46
Government	7	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	42	21	5	3	71

Overview

More than 85 per cent of submitters (61) supported energy claims being permitted in general. Reasons provided for supporting permission of these claims included a history of their use, for provision of consumer information, and because of the overweight/obesity epidemic. Seven submitters did not support the permission of ‘calorie free’ claims, and two submitters did not support permission of ‘increased energy’ claims. One submitter did not support permission for ‘reduced energy’ claims.

61 submitters support energy claims being permitted (Aussie Bodies; ASMI; Cadbury Schweppes; CML; CHC; Dairy Australia; F&B Importers Assoc.; GW Foods; Goodman Fielder; National Foods; Parmalat; PB Foods; Sanitarium Health Food Comp, NCWA; Diabetes Aust.; Dr Rosemary Stanton; GI Ltd; PHAA (supported by ACA); NSW DoH - N&PA Branch – N&PA Branch; NSW Food Authority; DAFF;

WA DoH; Monash Uni. – N&D Unit; Public Health South; Canterbury DHB; Fonterra; Griffins Foods; Mainland Products; Naturalac Nutrition; NZ Dairy Foods; NZFGC; NZ Magazines; Nutra-Life H&F; CSIRO – HS&N; NZ MoH; NZFSA; Heinz Aust./Heinz Watties NZ; Nestle; Unilever Australasia; William Wrigley Junior; NHF Aust (supported by NHF NZ); AFGC (supported by MasterFoods); ASA (supported by Cadbury Confectionery; Naturo Pharm; NZTBC; NPANZ; Assoc. of NZ Advertisers); CMA (supported by Mandurah Aust; Palatinit GmbH; Kingfood Aust.; CMA NZ Branch; CMA NSW Branch; CMA Qld Branch; CMA Vic. Branch; CM of SA; ICA)

Other submitters generally supported energy claims being permitted with the exception of ‘calorie free’ claims (Tomox; Canterbury DHB; National Starch; Solae Comp; DAA supported by NZDA). Bakewell Foods only commented that ‘calorie free’ should not be permitted.

TCCA supports these claims being permitted if an upper limit of energy is specified in accordance with recommendations developed by Rolls and Barnet (2003) where foods 0-0.6 kcal/g are defined as very low energy density foods. These foods are unlikely to contribute to weight gain or (in people with diabetes) raise blood sugar levels and may increase dietary variety.

Submitters identified a number of reasons as to why energy claims should be permitted:

- Four submitters commented that these claims have had a history of use in the market place (PB Foods; GW Foods; National Foods; CMA (supported by Mandurah Aust; Palatinit GmbH; Kingfood Aust.; CMA NZ Branch; CMA NSW Branch; CMA Qld Branch; CMA Vic. Branch; CM of SA; ICA) and AFGC (supported by MasterFoods)) and three submitters also noted that there is no evidence of market failure in this area (Nestle; GW Foods and AFGC (supported by MasterFoods));
- Some submitters indicated that these claims were particularly useful in providing information to consumers (NSW DoH - N&PA Branch – N&PA Branch; NSW Food Authority; NCWA; William Wrigley Junior); helpful for consumer choice (DAFF); or to assist them in identifying lower energy/joule food options in order to reduce energy intake (Tas DoH&HS; WA DoH; PHAA (supported by ACA); Monash Uni. – N&D Unit; National Foods; NHF Aust. (supported by NHF NZ) and AFGC (supported by MasterFoods) and CMA (supported by Mandurah Aust; Palatinit GmbH; Kingfood Aust.; CMA NZ Branch; CMA NSW Branch; CMA Qld Branch; CMA Vic. Branch; CM of SA; ICA));
- CHC noted that consumers understand and look for energy claims whilst Aussie Bodies commented that consumers want to be guided in their food choices by such claims. Public Health South also stated that these claims would reinforce the NZ Food and Nutrition Guidelines that encourages people to reduce energy intake when necessary;

- Two submitters considered the overweight/obesity epidemic in Australia provides significant justification for the retention of these claims (Diabetes Aust. and GI Ltd);
- Unilever Australasia believes that permitting these claims will increase innovation in this area; a view also shared by National Foods in relation to supporting government initiatives such as the Australian Government National Obesity Taskforce – Healthy Weight 2008 Strategy. This defines food supply outcomes for the food industry including the manufacturing of food and drinks with fewer calories.

Griffins Foods suggested that ‘good/excellent source of energy’ claims should also be permitted. CML do not support ‘increased’ energy claims commenting that Australians are already consuming more than their daily energy needs. They did acknowledge that there are sections of the market where high-energy foods may be of benefit and therefore suggested that if permitted, these claims should only be allowed on appropriate products, such as supplementary sports drinks and formulated meal replacements.

Some submitters raised concerns in relation to claims being misleading. ACCC noted that consumers may be confused by calorie claims such as ‘less than 1 calorie per serve’, when the serving size is dependent on the container size or another amount determined by the manufacturer. However, William Wrigley Junior suggested that it may be more beneficial to relate energy intake to a serving size rather than 100 g basis as the serving size of some products (e.g. chewing gum) is significantly less than 100g and it is unlikely that 100 g would be consumed in one sitting.

TCCA do not support the use of comparative claims and believe that content claims with set kJ criteria (such as ‘low’ ≤ 170 kJ per 100 g of food) have more meaning for consumers and are less likely to mislead them. However if reduced claims are permitted, they also support that the identity of the reference food be indicated adjacent to the comparative claim.

NZFSA also raised concerns regarding the use of synonyms for ‘low’ and ‘reduced’ energy claims, specifically stating that they do not support terms such as ‘lower calories’ for ‘reduced’ because it could result in consumer confusion. NZFSA suggested that if there are no synonyms accepted for ‘reduced’ then FSANZ might consider if the percentage (%) reduction adjacent to the term is actually required. They suggested that voluntary provisions could apply.

Dr Rosemary Stanton believes that slimming claims, either explicit or implicit, should not be permitted.

NZFSA also noted that the correct term for calories in the nutrition information panel is kilocalories (kcal).

Other comments provided but not in direct response to the question:

Axiome agreed that these energy claims should be permitted.

Question 14

If so, do you agree with FSANZ's preferred criteria?

Out of 147, 36.7% (54 in total) responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	15	13	4	-	32
Government	7	2	-	-	9
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	34	17	3	0	54

Overview

Forty submitters stated that they supported FSANZ's preferred criteria for all energy claims. Another four submitters supported the criteria for 'low energy' claims and five submitters supported the criteria for 'reduced energy' claims. One submitter did not support the criteria for 'low energy' claims, and another submitter did not support the criteria for 'reduced energy' claims. There was some discussion as to whether the criteria be based on per 100g/100ml basis or on a per serve basis, with serve sizes standardised.

Support for criteria

Forty submitters stated that they supported FSANZ's preferred criteria for all energy claims (NCWA; Diabetes Aust.; Dr Rosemary Stanton; GI Ltd; PHAA (supported by ACA); ASMI; Cadbury's Schweppes; CML; CHC; F&B Importers Assoc.; National Foods; Parmalat Aust.; PB Foods; Sanitarium Health Food Comp; NSW DoH - N&PA Branch; NSW Food Authority; SA DoH; DAFF; WA DoH; Monash Uni – N&D Unit; Public Health South; Canterbury DHB; Fonterra; Griffins Foods; Mainland Products; NZ Dairy Foods; NZFGC; NZ Magazines; NZ MoH; NZFSA; Unilever Australasia; Nestle; NHF Aust. supported by NHF NZ; ASA (supported by Cadbury Confectionery, Naturo Pharm Ltd, NZ TBC; NPANZ; Assoc. of NZ Advertisers), AFGC (supported by MasterFoods).

Four submitters supported the criteria for 'low ' and 'reduced' claims (TCCA; Heinz Australia/Heinz Watties NZ; Goodman Fielder; Dairy Aust.).

'Low energy' and 'reduced energy' claims

Four submitters noted that the 'low' energy claims criteria and conditions are the same as those reviewed and incorporated into Volume 2 of the Code and that the 'reduced' energy claims criteria is consistent with Codex and other comparative nutrition claims (Goodman Fielder; DAFF; AFGC (supported by MasterFoods).

CSIRO-HS&N agreed with the proposed criteria for ‘reduced’ energy claims but believed the criteria for ‘low’ energy claims have been set too high.

Aussie Bodies believed that the criteria for ‘reduced’ energy claims should require the reduction of 30% energy value rather than the 25% proposed by FSANZ.

‘Calorie free’

There were a number of issues raised in relation to ‘calorie free’ claims. Two submitters suggested that there should be criteria for ‘calorie free’ claims and that these should be based on Codex guidelines on energy free claims (≤ 4 Kcal (17kJ) per 100ml for liquids) or Canadian provisions. (Dairy Aust.; Goodman Fielder). TCCA suggested that the criteria for ‘free’ claims must be specified as zero or nil or an agreed low figure, e.g. <1 kJ per 100g/ML and Heinz Australia/Heinz Watties New Zealand believed that the calorie free claim should be permitted within the standard. Nutra-Life H&F believed that ‘calorie free’ claims could be misleading if used on products which do not normally provide caloric energy (e.g. water) however they suggest that claims such as “when used as directed – provides no calories” could overcome this problem.

Basis for criteria

There was some discussion by some submitters as to whether the criteria be based on per 100g or 100ml basis or on a per serve basis. Whilst National Starch and Solae Comp specifically noted that they support the criteria being based on per 100g or 100mL, the DAA (supported by NZDA) states that the criteria should be only on a per serve basis and that defined serving sizes be modelled on the Australian Guide to Healthy Eating. Tas DoH&HS supports the use of both per 100g or 100mls or per serve basis in relation to ‘low’ energy claims and is in agreement that serving sizes be based on those outlined in the Australian Guide to Healthy Eating. Both the DAA (supported by NZDA) and Tas DoH&HS both support the criteria being based on per 100 g or 100mL until serving sizes are standardised in the Code.

General comments

The ACCC suggested that FSANZ could take the opportunity to revisit the claims are criteria in light of market developments.

Dairy Aust also noted that all criteria and conditions for general level claims should be included in a guideline document.

Other comments provided but not in direct response to the question

Axiome agreed that with FSANZ preferred criteria for energy claims.

3.4 PROTEIN

Question 15

Should these protein claims be permitted? Briefly explain.

Out of 147 submitters, 47.6% (70 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	14	5	2	46
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	43	20	5	2	70

Overview

Sixty-seven submitters supported permission for ‘source of protein’ claims. Three submitters did not support permission for these claims. In addition, 67 submitters specifically supported permission for ‘good source of protein’ claims and three submitters did not support permission for these claims.

Support permission for protein claims

The majority of respondents (95.7% - 67 in total) agreed that ‘source of protein’ claims should be permitted (ASA, AFGC, CMA-NSW Branch, Assoc. of NZ Advertisers, Aussie Bodies, ANIC, ASMI, Bakewell Foods, CMA-Qld Branch, Cadbury Confectionery, Cadbury Schweppes, TCCA, CMA-Vic Branch, CMA, CML, CM of SA, CSIRO – HS&N, DAA, Dairy Aust., DAFF, Diabetes Aust., F&B Importers Assoc., GW Foods, GI Ltd, Goodman Fielder, Griffins Foods, Heinz Aust./Heinz Watties NZ, ICA, Kingfood Aust., Mainland Products, Mandurah Aust., MasterFoods Aust. NZ., MLA, NZ MoH, Monash Uni. – N&D Unit, National Foods Ltd, NCWA, NHF Aust., NHF NZ, National Starch, Naturalac Nutrition, Naturo Pharm Ltd, Nestle, Nutra Life H&F NZ, NZ Dairy Foods, NZDA, NZFGC, NZTBC, NPANZ, NSW DoH – N&PA Branch, NSW Food Authority, NZ Magazines, NZFSA, Palatinit GmbH, Parmalat Aust., PB Foods, PHAA (supported by ACA), SA DoH, Sanitarium Health Food Comp., Solae Comp., Dr. R. Stanton, Tas DoH&HS, Tomox, Unilever Australasia, WA DoH, CMA NZ Branch).

The majority of respondents (95.7% - 67 in total) agreed that ‘good source of protein’ claims should be permitted (ASA, AFGC, CMA-NSW Branch, Assoc. of NZ Advertisers, Aussie Bodies, ANIC, ASMI, Bakewell Foods, CMA-Qld Branch, Cadbury Confectionery, Cadbury Schweppes, TCCA, CMA-Vic Branch, CMA, CML, CM of SA, CSIRO – HS&N, DAA, Dairy Aust., DAFF, Diabetes Aust., F&B Importers Assoc., GW Foods, GI Ltd, Goodman Fielder, Griffins Foods, Heinz Aust./Heinz Watties NZ, ICA, Kingfood Aust., Mainland Products, Mandurah Aust., MasterFoods Aust. NZ., MLA, N, Monash Uni. – N&D Unit, National Foods Ltd,

NCWA, NHF Aust., NHF NZ, National Starch, Naturalac Nutrition, Naturo Pharm Ltd, Nestle, NZ Dairy Foods, NZDA, NZFGC, NZTBC, NPANZ, NSW DoH – N&PA Branch, NSW Food Authority, NZ Magazines, NZFSA, Palatinit GmbH, Parmalat Aust., PB Foods, PHAA (supported by ACA), Public Health South, SA DoH, Sanitarium Health Food Comp., Solae Comp., Dr. R. Stanton, Tas DoH&HS, Tomox, Unilever Australasia, WA DoH, CMA NZ Branch).

A number of industry submitters supported the standardisation of protein claims to help in consumer protection and to promote fair trading (AFGC, MasterFoods Aust. NZ, CMA, Mandurah Aust, Palatinit GmbH, Kingfood Aust, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, CM of SA, ICA, CMA – NZ Branch). National Foods considered the standardisation would provide accurate nutrition information and promote consumer confidence and fair-trading by providing clear guidance to manufacturers. Dairy Aust. considered the permission of protein claims will build consumer confidence and provide manufacturers with clear guidance.

Aussie Bodies noted that consumers seek out protein rich foods and require guidance on what is a good protein food. Aussie Bodies also noted that recent research has focussed on many functional benefits of protein. ANIC considered consumers are interested in selective foods with higher protein content. CML considered consumers look for alternative sources of protein to meat, but are often not sure which other foods contain reasonable levels of protein. MLA considered consumers have a poor understanding of food sources of protein. Mainland products considered consumers are currently given little information in the dietary guidelines about protein requirements and that protein claims will provide some perspective to consumers. Other submitters noted that protein claims would provide useful information to the consumer (NSW Food Authority, NZFSA)

A number of industry submitters supported the permission and standardisation of protein claims to ensure international alignment (CMA, Mandurah Aust, Palatinit GmbH, Kingfood Aust, CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, CM of SA, ICA, CMA - NZ Branch, Cadbury Schweppes).

Many of those submitters who supported the permission of protein claims noted that while protein is not in short supply and is not implicated in the development of the most prevalent diet related diseases, protein claims may be relevant for specific groups (NSW DoH – N&PA Branch) such as the frail and elderly, those recovering from illness, vegetarians (Tas DoH&HS, SA DoH, WA DoH, Dr. R. Stanton, PHAA (supported by ACA), Monash Uni. – N&D Unit) and sports people (Naturalac Nutrition, Mainland products). Cadbury Schweppes noted that there appears to be no apparent risk to Australian and New Zealand population regarding protein deficiency.

Diabetes Aust. and GI Ltd noted the increase in popularity of high-protein fad diets such as the Atkins diet has led to an increase in the number of foods making protein claims. Such claims may be useful to consumers who require a high/low protein diet and such claims should be regulated to protect consumers from false and misleading conduct.

TCCA believed that protein claims should only be permitted on nutritious foods with acceptable levels of fat, sugar, salt and/or energy density. Without qualifying and

disqualifying criteria consumers may be misled. The current criteria would allow a ‘good source/high in protein’ claim to be made on a meat pie, although lean meat from a butcher is unlikely to carry this claim.

Dairy Aust, Sanitarium Health Food Comp and ANIC noted that the permission of these claims would address the issue of protein claims currently been illegally made and would ensure consistency.

Did not support permission for protein claims

Three respondents (4.3%) did not think that ‘source of protein’ claims should be permitted (CHC, Public Health South (in answer to question 16), Canterbury DHB).

Three respondents (4.3%) did not think that ‘good source of protein’ claims should be permitted (CHC, Nutra-Life H&F, Canterbury DHB).

The CHC did not support protein claims being permitted, as low protein intake is not a pattern in Australia. Nutra-Life H&F did not like the term ‘good source’ for protein claims. Canterbury DHB considered protein not to be a health issue in NZ and therefore should not be allowed. Canterbury DHB noted that consumers could access information about the protein from the Nutrition Information Panel.

General comments

Other comments raised by industry in relation to this matter include:

- Nutra-Life H&F pointed out that the US regulations relate major nutrients to the recommended amount consumed in a 2000-calorie diet, which gives an indication of the relationship between the serving of the food, and the amount of the nutrient/ingredient provided.
- MLA noted there is increasing evidence regarding the health benefits of increasing energy intake from protein as part of a low fat, moderate carbohydrate diet.
- CSIRO – HS&N believe there should be a provision for protein-enriched claims (i.e. 25% more protein than similar products)
- Dr. R. Stanton considered protein claims should not be a high priority.

Comments in relation to question 16

- CML considered the term ‘per serving’ would be best replaced with ‘100 g/mL’ as per Codex guidelines;
- National Foods pointed out that the proposed regulation does not take into account protein quality or the composition of basic food staples such as milk. Whole milk would not meet the criteria for a ‘high in’ claim despite being an important dietary protein source.

Other comments provided but not in direct response to the question

Beef & Lamb Marketing Bureau did not directly respond to this question but noted agreement that protein claims be permitted.

Question 16

Do you agree with FSANZ's preferred criteria for protein claims?

Out of 147 submitters, 42.2% (63 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	9	5	2	40
Government	6	2	-	-	8
Public health	8	3	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	42	14	5	2	63

Overview

There were 33 submitters who agreed with FSANZ's preferred criteria for 'source of protein' claims, whereas 24 submitters disagreed with these criteria. Thirty-three submitters also agreed with FSANZ's preferred criteria for 'good source of protein' claims, whereas 26 submitters disagreed with these criteria. There were seven submitters who could not provide comment on the actual figures.

Source of protein

Views were mixed amongst submitters with 51.6% (33 in total) agreeing with FSANZ's preferred criteria for 'source of protein' claims (Aussie bodies, ANIC, ASMI, Cadbury Schweppes, TCCA, CSIRO – HS&N, DAA, DAFF, Diabetes Aust., GI Ltd, Heinz Aust./Heinz Watties NZ, Mainland Products, NZ MoH, Monash Uni. – N&D Unit, NCWA, NHF Aust., NHF NZ, National Starch, Naturalac Nutrition, Nutra Life H&F, NZ Dairy Foods, NZDA, NSW DoH – N&PA Branch, NSW Food Authority, NZFSA, PHAA (supported by ACA), SA DoH, Solae Comp., Dr. R. Stanton, Tas DoH&HS, Tomox, WA DoH).

Goodman Fielder supported the Codex criteria for both 'source' and 'high' claims for protein using the 'per serving' reference quantity. They also supported the conversion of NRV to DRV using the 50g DRV value for protein and therefore proposed that the Codex criteria for 'source' at 5g per serving (10% DRV), and 'high' at 10g per serving (20% DRV) are the most appropriate criteria.

Of those submitters that supported these claims be permitted, there were 24 submitters who disagreed with one or more aspects of these criteria or made recommendations regarding the criteria (AFGC, CML (in answer to question 15), CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, CMA, CM of SA, Dairy Aust., Fonterra, F&B Importers Assoc., Goodman Fielder, GW Foods, ICA, Kingfood Aust., Mandurah Aust, MasterFoods Aust. NZ, National Foods, Nestle, NZFGC (in answer to question 15), Palatinit GmbH, Parmalat Aust., PB Foods, Unilever Australasia, CMA NZ Branch).

Seven other submitters could not provide comment on the figures (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, NZ Magazines). Griffins Foods did not explicitly disagree with the criteria but did question the combining of the two different criteria as discussed below.

Nutra-Life H&F supported the proposed criteria but questioned how it would be communicated to consumers.

Aussie Bodies were comfortable with the criteria but believed the criteria to be a little low. However, Aussie Bodies accepted that this is important in order to admit certain foods such as milk.

Tas DoH&HS noted it might be worth considering a measure of biological value for protein in 'source' and 'good source' claims.

Good source of protein

There were 33 agreeing with FSANZ's preferred criteria for 'good source of protein' claims (Aussie bodies, ANIC, ASMI, Cadbury Schweppes, TCCA, CSIRO – HS&N, DAA, DAFF, Diabetes Aust., GI Ltd, Heinz Aust./Heinz Watties NZ, Mainland Products, NZ MoH, Monash Uni. – N&D Unit, NCWA, NHF Aust., NHF NZ, National Starch, Naturalac Nutrition, NZ Dairy Foods, NZDA, NSW DoH – N&PA Branch, NSW Food Authority, NZFSA, PHAA (supported by ACA), Public Health South, SA DoH, Solae Comp, Dr. R. Stanton, Tas DoH&HS, Tomox, WA DoH).

Public Health South did not consider 'source' claims should be permitted as too many foods meet this criterion, however agreed with FSANZ's preferred criteria for 'good source' or 'high in' protein claims.

Of those submitters that supported these claims be permitted, there were 26 submitters who disagreed with one or more aspects of these criteria or who made recommendations regarding these criteria (AFGC, CML (in answer to question 15), CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, CMA, CM of SA, Dairy Aust., Fonterra, F&B Importers Assoc., Goodman Fielder, GW Foods, ICA, Kingfood Aust., Mandurah Aust, MasterFoods Aust. NZ, MLA, National Foods, Nestle, NZFGC (in answer to question 15), Palatinit GmbH, Parmalat Aust., PB Foods, Sanitarium Health Food Comp., Unilever Australasia, CMA NZ Branch).

Sanitarium Health Food Comp suggested for 'good source/high in' claims there be at least 8g of protein per serve as this would allow milk to qualify for a 'high protein' claim which is a food recognised in the Australian Guide to Healthy Eating as a 'good source of protein'.

The AFGC, MasterFoods, National Foods, MLA and Nestle considered the figures for the amount of protein per serve and the amount of energy from protein for 'good source/high in protein' should both be double that of 'source of protein', unless a sound rationale can be provided. In addition, AFGC, MasterFoods, National Foods and Nestle considered that doubling could be achieved by increasing the 'good source' energy from protein figure or reducing the 'source' energy from protein figure.

The CHC did not support the criteria as they did not support the permission of the claims.

Combining of criteria regarding protein content and percent energy

A number of submitters who agreed with FSANZ's preferred criteria for protein claims, predominantly government submitters, noted that they particularly agreed with the combined criteria proposed (Tas DoH&HS, SA DoH, WA DoH, NZ MoH, NZFSA, PHAA (supported by ACA), Monash Uni. – N&D Unit).

Conversely, there were 12 submitters who did not support this combined criteria approach or who made recommendations regarding this approach (NZFGC, AFGC, MasterFoods Aust NZ, Dairy Aust., F&B Importers Assoc., GW Foods, National Foods, Parmalat Australia, PB Foods, Fonterra, Unilever Australasia, Nestle). Whilst supporting FSANZ's preferred criteria for protein claims, Griffins foods questioned the relevance of the combined criteria of protein content and percent of energy value for 'source' and 'good source/high in' claims.

These submitters considered it sufficient for either of the criteria to be satisfied. It was recommended the word 'and' could be replaced by 'or' for both 'source of protein' criteria and 'good source/high in protein' criteria (AFGC, MasterFoods Aust NZ, Dairy Aust., F&B Importers Assoc., GW Foods, National Foods, Parmalat Australia, PB Foods, Fonterra, Unilever Australasia, Nestle, NZFGC). Two of these submitters considered such an approach would accommodate the nutritional needs of different sub-groups of the population (infants, adolescents and men) (Dairy Aust., National Foods). In addition, National Foods considered that such an approach would accommodate the practicalities of serve size, i.e. 60 g Petit Miam tubs targeting toddlers.

National Foods, AFGC, MasterFoods and Nestle pointed out that the criteria appears to be a combination of Codex and European Union requirements and that in the interest of international harmonisation both requirements be adopted only as alternatives. Fonterra noted that no other country or body has combined the two requirements and that FSANZ must justify its preference for both requirements.

GW Foods questioned the relevance of the percent of energy from protein requirement and therefore did not support the dual criteria.

The AFGC, MasterFoods Aust. NZ and Nestle considered the risk of foods with large serving sizes but low in protein levels making a source of protein claim is theoretical and has not been clearly identified and demonstrated. AFGC, MasterFoods Aust NZ, Nestle, National Foods and Goodman Fielder considered that if 5 g is recognised as the sufficient amount to qualify for a 'source' claim, whether it is obtained from a food with a large or a small serving size is irrelevant and the dual criteria is therefore not necessary.

Serving sizes

National Foods believed serve sizes should not be mandated as manufacturers already appropriately determine the serve size in the Nutrition Information Panel, relevant to the target population. A number of other submitters recommended that FSANZ consider the criteria be based on a per 100 g basis rather than alternative forms of measurement (CML, CMA, Mandurah Aust, Palatinit GmbH, Kingfood Aust., CMA – NSW Branch, CMA – Qld Branch, CMA – Vic Branch, CM of SA, CMA NZ Branch, ICA)

Fonterra noted that an issue with using an absolute metric arises with small servings, e.g. for children's yoghurt, which may contain less than the stipulated grams of protein. Other target groups may require different protein levels. Using a percentage threshold may require too much protein in some circumstances.

CML questioned whether there are plans to specify an amount in liquid products (as per fat) or will manufacturers have to do the conversion to grams as part of the substantiation process.

Disqualifying criteria/disclosure statement

NHF Aust. and NHF NZ noted that consideration should be given to a disclosure statement indicating the energy content of the food. TCCA agreed with the criteria but only if there is accompanying criteria which specifies energy and fat/sugar/sodium content.

Other comments provided but not in direct response to the question

Queensland Health – PHS did not directly respond to this question but noted agreement with FSANZ's preferred criteria for protein claims.

Campbell Arnott's Asia Pacific recommended that either the gram content or proportion of energy value from protein be used within 'source' or 'good source' claims.

3.5 FATS

Question 17

Should these fat claims be permitted? Briefly explain.

Out of 147 submitters, 49.7% (73 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	15	5	2	47
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	4	-	-	-	4
Total	45	21	5	2	73

Overview

Sixty-nine submitters supported permission of ‘low fat’ claims, 68 supported permission of ‘reduced fat’ claims, 64 supported ‘fat free’ claims, and 57 submitters supported ‘x% fat free’ claims. There was no opposition to the permission of ‘low fat’ claims, but one submitter did not agree with permission of ‘reduced fat’ claims. Another submitter specifically stated that they did not support permission of ‘fat free’ claims and twelve submitters stated that they did not support permission of ‘x% fat free’ claims.

‘Low fat’ and ‘reduced fat’ claims

There were 69 submitters that clearly supported the permission of ‘low fat’ claims and 68 submitters that supported permission of ‘reduced fat’ claims (Aussie Bodies, AFGC, MasterFoods Aust. NZ, ANIC, ASMI, Bakewell Foods, Cadbury Schweppes, CML, CHC, Dairy Aust., F&B Importers Assoc, GW Foods, MLA, National Foods, Parmalat Aust, PB Foods, Sanitarium Health Food Comp, NCWA, NSW Food Authority, DAFF, CSIRO – HS&N, Uni of Adel. & Uni of SA – Nutrition & Physiology Research Group, NZFSA, NZ MoH, Public Health South, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Functional Wholefoods NZ, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, NZ Magazines, Tegel Foods, Heinz Aust./Heinz Watties NZ, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle, Diabetes Aust, DAA, NZDA, Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, National Starch, Solae Comp., Tas DoH&HS, NSW DoH - N&PA Branch– N&PA Branch, WA DoH, Monash Uni – N&D Unit). TCCA supported permission of ‘low fat’ claims, but not permission of ‘reduced fat’ claims.

TCCA added that ‘low in fat’ claims are unlikely to mislead consumers as the criteria of ‘<3g fat per 100g’ is appropriate; however additional criteria are required

(energy/sugar/sodium/fibre). They gave an example of Coco Pops which use a ‘low fat’ claim but are one of the highest sugar and sodium containing breakfast cereals (36.5g sugar/100g and 564mg sodium/100g). A consumer looking only at the fat content may believe this cereal offers an equal or better choice than a more nutritious cereal such as rolled oats, which is not the case.

Regarding ‘reduced fat’ claims, TCCA did not support the use of these, as they are likely to mislead consumers, e.g. 25% reduced fat cheese often still contains 15-20g fat per 100g (high). They noted the FSANZ qualitative consumer research (salt example on pg 204 of the IAR), which indicates that comparative claims do indeed mislead consumers.

‘Fat free’ claims

There were 64 submitters that clearly supported the permission of ‘fat free’ claims (Aussie Bodies, AFGC, MasterFoods Aust NZ, ANIC, ASMI, Bakewell Foods, Cadbury Schweppes, CML, CHC, Dairy Aust., F&B Importers Assoc, GW Foods, MLA, National Foods, Parmalat Aust, PB Foods, Sanitarium Health Food Comp, NCWA, ACCC, NSW Food Authority, DAFF, CSIRO – HS&N, Uni of Adel. & Uni of SA – Nutrition & Physiology Research Group, NZFSA, NZ MoH, Public Health South, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Functional Wholefoods NZ, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, NZ Magazines, Tegel Foods, Heinz Aust./Heinz Watties NZ, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle, TCCA, NHF Aust., NHF NZ, PHAA (supported by ACA), National Starch, ACCC, NSW DoH - N&PA Branch–N&PA Branch, WA DoH, Monash Uni – N&D Unit, Tas DoH&HS).

Two submitters added provisos for supporting permission of these claims, that:

- They would not support the use of this claim unless it conformed to Trade Practices law (Tas DoH&HS);
- The claims should only be made on foods, which also meet criteria for energy/sugar and sodium (TCCA).

Conversely, there was one submitter that clearly stated that they did not support ‘fat free’ claims (Tomox). FSANZ notes that these responses must be taken into consideration in conjunction with the responses to question 11 of Attachment 6.

‘Per cent (%) Fat free’ claims

There were 57 submitters that clearly supported permission of ‘% fat free’ claims (Aussie Bodies, AFGC, MasterFoods Aust NZ, ANIC, ASMI, Bakewell Foods, Cadbury Schweppes, CML, CHC, Dairy Aust., F&B Importers Assoc, GW Foods, MLA, National Foods, Parmalat Aust, PB Foods, Sanitarium Health Food Comp, NCWA, NSW Food Authority, DAFF, CSIRO – HS&N, NZFSA, NZ MoH, Public Health South, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Functional Wholefoods NZ, Griffins Foods,

Mainland Products, NZ Dairy Foods, NZFGC, NZ Magazines, Tegel Foods, Heinz Aust./Heinz Watties NZ, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle, TCCA, NCEFF, Tomox, NHF Aust., NHF NZ, Uni of Adel. & Uni of SA – Nutrition & Physiology Research Group). It was noted by FSANZ that in answer to the following question (18), Uni of Adel and Uni of SA Nutritional Physiology Research Group submitted that this claim be abolished.

CML added that they agreed with permission for ‘% fat free’ claims only if the criterion for low fat could be met.

TCCA added the proviso that foods making this claim should also meet criteria for sugar, energy and sodium.

Conversely there were 12 submitters that specifically stated that they did not support permission of this claim (Diabetes Aust, DAA, NZDA, Dr R Stanton, GI Ltd, PHAA (supported by ACA), National Starch, Solae Comp, WA DoH, Monash Uni – N&D Unit, Nutra-Life H&F). Tas DoH&HS noted that they would not support the use of this claim unless it conformed to trade practices law.

Reasons provided by submitters for supporting permission of these claims were that:

- The FSANZ Qualitative consumer survey (2003) reported that ‘% fat free’ claims were the most frequently used type of nutrition content claim, and deemed to be the most trustworthy, and were considered to be more definitive and reliable (Dairy Aust.);
- Research has shown this claim is the most preferred format of claim amongst consumers and most commonly used type of fat claim in the Australian Market, accounting for almost half of all such claims (see reference 21 in submission), which suggests it is reasonable this claim continue to be permitted (NCEFF).

Although supporting use of the ‘% fat free’ claim, Cadbury Schweppes were concerned about this claim due to non-compliance with CoPoNC. They agreed that to make this claim the product should also meet the requirements for ‘low fat’ claims.

NHF Aust. (supported by NHF NZ) were also in support of this claim but noted a survey conducted by the National Heart Foundation in New Zealand in 2003 that showed common use of ‘% fat free’ claims on high sugar, high-energy products (such as chocolate confectionery) with very little nutritional value. They added that such claims have the potential to mislead consumers that the product would be a healthier choice.

Reasons provided by submitters for not supporting permission of ‘% fat free’ claims were as follows:

- They should all be prohibited on the basis of their potential to mislead consumers (DAA, NZDA) and the fact that they provide no additional information to the “low fat” claim (Diabetes Aust., GI Ltd). DAA, supported by NZDA, added that

this opposition is strengthened in light of the proposed prohibition on ‘free’ claims generally;

- These claims are absurd, misleading and have been abused by food manufacturers. Fat reduced claims could be used as an alternative and the percentage by which the fat had been reduced could provide all the information provided by ‘% fat free’ claims (Dr R Stanton);
- These types of claims are not interpreted by consumers accurately (FSANZ 2003/Paterson 2003a) and are therefore potentially misleading (PHAA (supported by ACA), NSW DoH - N&PA Branch– N&PA Branch, WA DoH, Monash Uni – N&D Unit, Tas DoH&HS). In addition they do not provide additional information over low fat claims and have been misused in the market place (PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit, Tas DoH&HS);
- This claim suggests a product contains less fat than a similar product and marketers use it to imply that the fat content is small. Consumers would like to know how much fat (in terms of mass) each serving provides. The Nutrition Information Panel (Nutrition Information Panel) must include the fat content, and the term ‘% fat free’ represents the remainder of the food so it is not really about fat at all. The claim ‘only 3% fat’ or ‘only 3 g fat per serve’ were preferred. The ‘% fat free’ claim has the potential to be used dishonestly to mislead the consumer especially if the consumer doesn’t know the amount of fat per serve (Nutra-Life H&F).

Although not clearly indicating their preference regarding permission of ‘% fat free’ claims, ACCC noted that they understood that ‘% fat free’ claims may be prohibited in other comparable countries because of the potential for such claims to mislead consumers. They added that a number of large manufacturers have consistently made ‘% fat free’ claims (and other % free claims) over and above permissions set in CoPoNC.

Reasons for supporting one or more of the proposed fat claims in general were as follows:

- They may be useful in assisting consumers to choose a diet lower in fat (PHAA (supported by ACA), NSW DoH - N&PA Branch– N&PA Branch, WA DoH, Monash Uni – N&D Unit, Tas DoH&HS, NSW Food Authority, NZ MoH, DAFF);
- Consumers are most interested in fat levels (Aussie Bodies, NZFSA);
- Given the focus on obesity and consumer interest, which will only increase. Consumers are used to seeing ‘fat’ claims and FSANZ research has found consumers favour the use of such claims (NZFGC);
- Consumers look for, understand and want this information (CHC);

- There is widespread consumer interest and understanding of the benefits of reducing fat intake as part of healthy eating, and labels that identify low fat foods will assist consumers in selecting appropriate foods (MLA);
- Fat claims would give consumers some perspective on how much fat is appropriate in the diet (Mainland Products);
- It is important for foods to be described as a high or low fat food as limiting fat in the diet is a recommendation of the Food and Nutrition Guidelines (Public Health South);
- These claims also help consumers to reduce their fat intake quickly and easily and the Nutrition Information Panel provides additional information about the fat content per 100g and per serve (National Foods);
- They provide consumers with quick and easy information regarding the fat content of food (Unilever Australasia), which they can and do check by referring to the Nutrition Information Panel for confirmation (consumer research supports this behaviour) (AFGC, MasterFoods Aust. NZ, GW Foods);
- Fat claims provide a useful and easy mechanism for consumers to identify foods in relation to their fat consumption. There is a long history of consumer acceptance in the marketplace for this range of claims (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA);
- These claims are included on many food products by manufacturers and their use should continue (Nestle);
- They have been in use for many years and, with the exception of ‘% fat free’ claims, have been adequately controlled by CoPoNC (AFGC, MasterFoods Aust. NZ, GW Foods, National Foods);
- These claims are already established in CoPoNC and there is no reason to delete them. Products that carry ‘low’ or ‘reduced’ fat claims may be an essential part in the strategy to overcome obesity (Cadbury Schweppes);
- Truthful claims should be permitted (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC).

Other comments provided but not in direct response to the question

Queensland Health - PHS agreed that ‘low fat’, ‘reduced fat’ and ‘fat free’ claims should be permitted, but submitted that ‘% fat free’ claims should be prohibited as these types of claims are not interpreted by consumers accurately and therefore are potentially misleading. They do not provide additional information over low fat claims and have been misused in the market.

Question 18

If so, do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 47.6% (70 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	14	5	2	45
Government	7	2	-	-	9
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	3	-	-	-	3
Total	44	20	5	2	71

Overview

Six submitters agreed with the concepts but could not comment on the figures. Forty-eight submitters agreed with FSANZ's preferred criteria for 'low fat' claims and another five submitters agreed with these criteria for single foods only. Two submitters disagreed with FSANZ's preferred criteria for 'low fat' claims. Forty-nine submitters agreed with FSANZ's preferred criteria for 'reduced fat' claims and another two submitters agreed with the criteria for single foods only. Three submitters did not fully agree with the proposed criteria. Twenty-eight submitters agreed with the proposed criteria for 'fat free' claims, whereas 20 disagreed. Twenty-three submitters stated that they agreed with FSANZ's preferred criteria for 'x % fat free' claims and 21 disagreed.

Agreed with all preferred criteria

There were 18 submitters that indicated that they agreed with the preferred criteria for fat claims in general (Diabetes Aust., GI Ltd, Tomox, Aussie Bodies, ANIC, ASMI, Parmalat Aust, PB Foods, NCWA, NSW Food Authority, DAFF, CSIRO – HS&N, NZ MoH, Public Health South, Canterbury DHB, Griffins Foods, Mainland Products, NZ Dairy Foods).

Six submitters supported the concept but could not comment on the figures, as they are not experts (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC).

Reasons provided for agreeing with these criteria were that:

- These conditions and most of the other CoPoNC requirements were established after a lengthy development process involving industry and the regulators (NSW Food Authority);
- They are consistent with Codex and other 'reduced' claims (DAFF).

Other submitters either did not comment about the criteria for all the fat claims, or agreed or disagreed with some of the criteria as indicated in the following comments for each claim below.

Low fat

In addition to the 18 submitters above, there were another 30 submitters who stated that they agreed with FSANZ's preferred criteria for 'low fat' claims (PHAA (supported by ACA), AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, CML, CHC, Goodman Fielder, National Foods, Sanitarium Health Food Comp, Tas DoH&HS, SA DoH, WA DoH, Monash Uni – N&D Unit, NZFSA, Fonterra, NZFGC, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle, Dairy Aust.).

Another five submitters agreed with this criteria for single foods but recommended that there should be a separate low fat definition for main dishes and meal type products which takes account of the combination of a protein source plus vegetables and cereal in the combined meal (Solae Comp, DAA, NZDA, GW Foods, National Starch). DAA, NZDA and GW Foods suggested a value of 5g or less per 100g.

The reasons provided by some submitters for agreeing with these criteria were that:

- They are the current CoPoNC conditions (AFGC, MasterFoods Aust. NZ, Fonterra, Goodman Fielder);
- They are reasonably consistent internationally (AFGC, MasterFoods Aust. NZ, National Foods, NZFSA);
- They are also in line with Codex requirements (Goodman Fielder).

Some submitters noted the typing error of 1.5 ml fat per 100 mL liquid food, which should read 1.5 g fat per 100 mL (PB Foods, Fonterra).

There were two submitters who specifically disagreed with FSANZ's preferred criteria for 'low fat' claims (MLA, Heinz Aust/Heinz Watties NZ). Their arguments were as follows.

The current recommendation for 'low fat' claims does not recognise the unique role of non-carbohydrate containing animal foods such as meat. It is unrealistic to expect foods that contain no carbohydrate but are high quality protein sources, to meet the low fat criterion as foods with a different mix of nutrients. Lean beef and lamb contain on average 6 g fat per 100 g. It was recommended that a separate criterion is used for allowing meat, poultry and fish to make a 'low fat' claim where the maximum fat level is set at 10 g/100 g, which would provide the red meat industry with an incentive to continue to respond to consumer demand for lean red meat cuts (MLA).

Further consideration should be given to criteria set for solid and liquid foods. It is assumed that the criterion of 1.5 mL/100 g food was established for liquid foods of large serving sizes, however this criterion for liquid food does not fit well for foods

with small serving sizes such as salad dressings. It is also predicted that there will be some inconsistencies in claims between Australia and New Zealand, because units of measure for sauces and salad dressings in Australia are traditionally in mL, and in New Zealand they are in grams. Standard 1.2.8, sub clause 5 1(b) states that the Nutrition Information Panel must include “the average quantity of the food in a serving expressed, in the case of a solid or semi-solid food, in grams, or in the case of a beverage or other liquid food, in millilitres”. With regard to this, it is unclear whether a food such as a pour-able dressing fits into the ‘liquid food’ or ‘semi-solid food’ category. Weights and measures legislation is also inconsistent in each state and with New Zealand. If salad dressing is declared in grams, it would meet the ‘low in fat’ criteria more easily than if it was declared in mLs. It was suggested that additional criteria be included such as:

“Less than or equal to 3 g per 100 g; less than or equal to 1.5 g per 100 mL liquid food where the serving size exceeds 100mL; less than or equal to 3 g per 100 mL liquid food where the serving size is less than 100 mL” (Heinz Aust/Heinz Watties NZ).

NHF Aust. and NHF NZ who questioned the manner in which liquid food can be determined, e.g. yoghurts, ice cream, and chunky soups, also raised this issue. They suggested that there should be more clarity as to which criterion to use for these types of products.

Reduced fat

In addition to the 18 submitters above, there were another 31 submitters who stated that they agreed with FSANZ’s preferred criteria for ‘reduced fat’ claims (DAA, NZDA, PHAA (supported by ACA), AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, CHC, Goodman Fielder, National Foods, Tas DoH&HS, SA DoH, WA DoH, Monash Uni – N&D Unit, NZFSA, NZFGC, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle, Dairy Aust., NHF Aust., NHF NZ).

Another two submitters agreed with these criteria for single foods but recommended that there should be consideration for reduced fat meals where all components are taken into account (National Starch, Solae Comp.).

The reasons provided by some submitters for agreeing with these criteria were that:

- They are the current CoPoNC conditions (AFGC, MasterFoods Aust. NZ);
- They are reasonably consistent internationally (AFGC, MasterFoods Aust. NZ, National Foods);
- They are also in line with Codex requirements (Goodman Fielder);
- FSANZ has also simplified the reduced fat claim consistent with its simplification of reduced energy claims (AFGC, MasterFoods Aust. NZ);

- ‘Reduced’ should have the same meaning for all nutrients (NZFSA).

Three submitters indicated that they did not fully agree with the proposed criteria (this does not include the submitters who recommended an additional criterion for energy, as discussed in the following question) (Sanitarium Health Food Comp, CML, TCCA).

In addition to the proposed criteria, Sanitarium Health Food Comp recommended an absolute reduction in fat content, as per the current Code of Practice guidelines, as without the additional absolute reduction in fat content, it leaves opportunity for manufacturers to compare a low fat product to another product that is also low in fat, so the difference in fat content is nutritionally insignificant and therefore misleading to consumers.

It was suggested by TCCA that if these claims are allowed, the proposed criteria should be altered so that only foods containing a specified low level of fat (e.g. 5 – 10 g fat or less per 100 g) can make a claim.

It was questioned by CML whether once the first criteria is met (25% reduction) and the identity of the reference food is indicated, could industry choose whether or not to include the difference in fat content adjacent to the comparative claim? In answer to question 17 they noted that it is not necessary to declare the actual fat content in conjunction with the claim because this information is already available on the Nutrition Information Panel.

Fat free

It is noted by FSANZ that this section needs to be considered in conjunction with the answers to questions 11 and 12 of Attachment 6.

In addition to the 18 submitters above, there were another 10 submitters who actually stated that they agreed with FSANZ’s preferred criteria for ‘fat free’ claims (CML, CHC, Dairy Aust.), including six submitters who recommended that a notation about conformance with fair trading legislation is required (PHAA (supported by ACA), Tas DoH&HS, SA DoH, WA DoH, Monash Uni – N&D Unit, NZFSA).

It was emphasised that foods that claim to be fat free are indeed fat free (Public Health South).

NZFSA noted that New Zealand would be undertaking separate work on ‘free from’ claims due to international inconsistencies.

There were 20 submitters who disagreed with the proposed criteria for ‘fat free’ claims (AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, F&B Importers Assoc., Goodman Fielder, National Foods, Fonterra, Heinz Aust/Heinz Watties NZ, CMA, Mandurah Aust., Palatininit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle).

A number of these submitters recommended that the criteria in CoPoNC should be used instead (F&B Importers Assoc., Cadbury Schweppes, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, AFGC, MasterFoods Aust. NZ, Nestle).

The reasons given for this were to:

- Harmonise with international food standards and promote an efficient and internationally competitive food industry (AFGC, MasterFoods Aust. NZ, Nestle);
- Promote international trade and regulatory alignment (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA).

It was added that whole lines of product have been built on the ‘fat free’ and ‘no fat’ claims and to no longer permit their use would be harmful to the companies that have built the branding. Loss of an established brand and introduction of a replacement would cost tens of millions of dollars. Brand loyalty is an important factor in consumer choice and it would be potentially confusing to consumers to find their brand of choice no longer available (AFGC, MasterFoods Aust. NZ, Nestle).

One of these submitters recommended that for international consistency the Codex conditions for fat free claims be adopted (no more than 0.5g per 100g or per 100mL), as the energy difference from the CoPoNC level is negligible. ‘Fat Free’ claims should be retained if appropriately low, but nutritionally insignificant, levels are present in the food, and where there is no detectable or measurable fat, or where the fat entry in the Nutrition Information Panel is zero (Goodman Fielder).

Fonterra also agreed that ‘free’ could indicate no significant amounts, or that which is nutritionally and physiologically insignificant. This need not mislead the consumer and there is international and Codex acceptance of this use.

Heinz Aust/Heinz Watties NZ, Unilever Australasia and TCCA submitted that ‘fat free’ claims should be permitted with provisions. Unilever Australasia went on to explain that this claim did not cause confusion with consumers as it was seen that the very low level of fat that could be detected as present was insignificant in its contribution in the context of the total diet. TCCA suggested set criteria, these either being zero or nil or an agreed figure such as < 1.0 g/100 g or 100 mL, and the food should also meet criteria for sugar, energy and sodium.

National Foods noted that ‘free’ claims are useful identifiers for consumers, and consumers understand the concept of ‘no fat’ across a variety of food categories. They do not believe that consumers are being misled by foods labelled ‘free’ but containing up to 0.15 % fat, because this amount of fat is negligible.

Per cent (%) Fat free

In addition to the 18 submitters above, there were another 5 submitters who stated that they agreed with FSANZ's preferred criteria for '% fat free' claims (Cadbury Schweppes, CML, Goodman Fielder, Sanitarium Health Food Comp, NZFSA). However it is noted by FSANZ that one of these submitters made recommendations to amend the criteria (Sanitarium Health Food Comp. recommended that a statement regarding the fat content be included, as outlined below).

The reason that was provided for supporting these criteria was that they are currently required by CoPoNC to meet 'low fat' criteria, and the omission of the requirement in CoPoNC to state the actual fat content in conjunction with the claim is supported. The majority of products carry Nutrition Information Panels on the label and consumers are familiar with looking at this type of information and will easily understand the relationship between the claim and the declaration for fat in the Nutrition Information Panel (Goodman Fielder).

There were 21 submitters that disagreed with the proposed criteria for '% fat free' claims (NHF Aust., NHF NZ, AFGC, MasterFoods Aust. NZ, CHC, Sanitarium Health Food Comp, Fonterra, Tegel Foods, Unilever Australasia, Nestle, Dairy Aust.), including those submitters that proposed that these claims be prohibited (Dr R Stanton, PHAA (supported by ACA), Tas DoH&HS, NSW DoH – N&PA Branch, SA DoH, WA DoH, Monash Uni – N&D Unit, Uni of Adel & Uni of SA – Nutrition & Physiology Research Group, TCCA).

Recommendations made by submitters for alternative or additional criteria for '% fat free' claims were that:

- A disclosure statement about the energy content of the food accompanies these claims (NHF Aust, NHF NZ);
- This claim should be removed from the table; it is deceptive to the consumer and has in the past been abused by marketers and manufacturers (CHC);
- A statement regarding the actual fat content per 100g is included in close proximity to the claim. This is because '% fat free' claims have the potential to confuse consumers as to the actual fat content of the product, particularly when the serving size is greater than 100g (Sanitarium Health Food Comp);
- The '% fat free' claim is not misleading and it should be permitted to any level that the manufacturer feels is acceptable in marketing terms. Any customer confusion is removed by having the actual fat percentage of the product in the nutrition information panel (Tegel Foods);
- These claims should be restricted so that only foods containing 5 – 10 g fat or less per 100 g, and that meet certain energy, sugar and sodium criteria can make a claim (TCCA);
- The proposed criterion is replaced with one that allows '% fat free' claims on foods containing not more than 10% fat in solid foods and not more than 5%

fat in liquid foods (AFGC, MasterFoods Aust. NZ, Dairy Aust., Unilever Australasia, Nestle).

Regarding this last recommendation, it was explained that this would be more consistent with consumers assessment of 'low fat' and indeed (although the nutritional profile of a single food cannot be compared to that of a diet), if all foods fell within this fat range, it would result in a diet consistent with dietary advice for fat to provide only 20-30% of energy. FSANZ's surveys show that the health conscious consumer checks the claim against the nutrition panel and their own rules or thresholds and as a consequence would not be misled. It was, however, acknowledged that '% fat free' claims in CoPoNC suffer the greatest non-compliance (AFGC, MasterFoods Aust. NZ, Nestle).

Reasons provided by submitters for not supporting the proposed criteria for '% fat free' claims were that:

- This claim is often confusing, for example, a 97% fat free often implies a 97% reduction of a food's normal fat content, therefore this claim should be abolished (Adel. Uni & Uni of SA – Nutrition & Physiology Research Group);
- This was one of the most non-compliant claims from CoPoNC (Williams 2003) and FSANZ consumer research found consumers felt that a percentage below 90 was misleading and should not be permitted (Dairy Aust.);
- A threshold for '% fat free' is not listed in Codex. There does not appear to be justification for this, as the claim itself contains the amount of fat listed, e.g. '97% fat free' indicates less than or equal to 3 g per 100 g. A threshold for the claim to be made is arbitrary as consumers are unlikely to be misled. This threshold was stated in CoPoNC and was the only provision with which there was little compliance, indicating a widespread view that it is unjustifiable (Fonterra).

More caution in wording the qualifying/disqualifying criteria, particularly given the widespread use of and consumer acceptance of '% free' claims, was suggested by ACCC.

General comments

One submitter preferred a frank statement regarding the amount of fat per serving e.g. consuming 500 mL milk containing 3% fat provides 15 g fat compared to 10 g of butter with 80% fat which provides 8 g fat. It was pointed out that the milk would be able to make a low fat claim (Nutra-Life H&F).

Question 17 responses that related to question 18

Dr R Stanton questioned why a 25% reduction for reduced fat claims.

Other comments provided but not in direct response to the question

Queensland Health – PHS agreed with the preferred criteria for ‘low fat’, ‘reduced fat’ and ‘fat free’ claims, but did not agree with the preferred criteria for ‘% fat free’ claims because they felt that these claims should be prohibited. They explained that ‘97% fat free’ claims are problematic as the Nutrition Information Panel is based on average energy values, which may vary significantly and put such claims into doubt.

NZ Beef and Lamb Marketing Bureau stated that fat claims should recognise the role of individual foods within the whole diet. They added that low fat criteria are totally unrealistic for animal foods, which have low carbohydrate content but still provide an impressive level of essential nutrients without a high level of fat.

Question 19

Should there be an additional criterion that relates to energy for ‘reduced fat’ claims? If so, what criteria should apply and what evidence supports such an approach?

Out of 147 submitters, 41.5% (61 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	21	12	5	2	40
Government	4	2	-	-	6
Public health	8	4	-	-	12
Consumers	1	-	-	-	1
Other	2	-	-	-	2
Total	36	18	5	2	61

Overview

Thirty-five submitters opposed an additional criterion that relates to energy for ‘reduced fat’ claims. Twenty-four submitters supported this additional criterion. Criteria that were suggested included a 25% reduction in energy or exclusion of food with an energy content greater than 1700kJ per 100g.

Supported additional criterion for energy

There were 24 submitters that supported an additional criterion that relates to energy for ‘reduced fat’ claims (Diabetes Aust., DAA, NZDA, Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, ASMI, CML, National Starch, Sanitarium Health Food Comp, Solae Comp, Tas DoH&HS, NSW DoH – N&PA Branch, NSW Food Authority, WA DoH, CSIRO - HS&N, Monash Uni – N&D Unit, Public Health South, NZ Dairy Foods, TCCA).

Some submitters recommended what criteria should apply to energy, as follows:

- There should be a 25% reduction in energy compared to the ‘normal’ product, in order to be consistent with the approach taken for macronutrients (Diabetes Aust., GI Ltd);
- A minimum reduction of 25% energy for all reduced fat, reduced sugar and light (lite) claims should apply. As with comparative claims, there should be a statement of comparison with the normal counterpart (NHF Aust., NHF NZ);
- This should be defined as a certain reduction in energy allowing for a small increase in protein/fibre/carbohydrate level (Tomox);
- When ‘reduced’ and ‘less than’ claims are made, they should be required to be lower in energy in proportion to the fat content for which the claim is made. This is because there are a number of foods for which low fat claims do not correlate to a reduction in energy content. If consumers are not checking the Nutrition Information Panel they may mistakenly believe the product to be lower in energy (NSW DoH- N&PA Branch);
- Exclude food with greater than 1700 kJ per 100 g. Other criteria would have to be considered (sugar/salt/fat), as this energy density would not exclude all foods, particularly high sugar foods such as some Confectionery (jelly beans, jubes) and high sugar breakfast cereals (Coco Pops are 1603 kJ per 100 g). The research by Rolls and Barnett and others provides a basis on which criteria could be developed (justification and evidence supporting this recommendation is included under the ‘Evidence for supporting such an approach’ section below) (TCCA).

NZ Dairy Foods were unsure what criteria should apply, but they noted there is evidence that consumers will purchase products with reduced fat claims but if the product is not reduced in energy then it will not help them in weight control.

Sanitarium Health Food Comp recommended carrying out modelling to determine what level of energy reduction occurs when fat content is reduced in different food categories.

A number of submitters stated or implied that a disclosure statement regarding the energy content (or similar) of the product in conjunction with the ‘reduced fat’ claim, should be indicated on the label, with the following comments:

- If reduced fat claims are not accompanied by a significant energy reduction, the consumer should be alerted through a statement to the effect that the product is not reduced in energy (DAA, NZDA, Tas DoH&HS);
- A statement on total energy per serve should accompany these claims. Low fat and low sugar products do not necessarily equate to a low energy product (Public Health South);

- 'Reduced fat' claims should result in a significant reduction in energy, which should be stated (Solae Comp.);
- Consider using something other than kJ to express energy content, e.g. 25% reduced fat, 49% fewer kilojoules than xxx) (Dr R Stanton);
- Potentially useful information to the consumer (NSW Food Authority).

Evidence for supporting such an approach was based on the findings of the La Fontaine Study (2004) (Diabetes Aust., GI Ltd) and Crowe etc (2004), which indicate that there are a number of foods for which low fat claims are made, that do not have a concomitant reduction in energy. This can be misleading for consumers who may not check the Nutrition Information Panel (Monash Uni – N&D Unit, WA DoH).

TCCA provided the following evidence for their recommended criteria:

- A number of recent studies suggest that total daily energy intake is affected by the energy density of foods consumed (Rolls, Roe and Meengs 2004, Westerterp-Plantenga 2004, Stubbs, Ferres and Horgan 2000, Porrini et al. 1995);
- The NHF Pick the Tick program has included energy criteria to existing fat, sugar, salt and dietary fibre criteria, for some food items such as sweet/savoury biscuits, cakes, cereal bars and breakfast cereals;
- Rolls and Barnett (2003) suggest using energy ranges, with the highest energy density foods (chips, confectionery, takeaways) categorised as 4.0-9.0 kcal/g (or 1707-3841.20 kJ per 100 g). Therefore if foods greater than 1700 kJ per 100g were excluded from making claims this could prevent the over consumption of highly energy dense foods, by consumers who believe the 'reduced fat' foods they are eating are healthier.

Reasons provided by submitters for supporting an additional criterion relating to energy were that:

- It is prudent to require that energy content be reduced in proportion with the fat content for which the claim is made, given the significance of the obesity epidemic in Australia and New Zealand (PHAA (supported by ACA), Monash Uni – N&D Unit);
- Consideration needs to be given if the 'fat free' claim will induce increased consumption of the product that contains a different constituent with potential adverse nutritional effect in high quantities (ASMI);
- 'Reduced fat' claims should result in a significant reduction in energy (National Starch);

- There is some merit in requiring a corresponding reduction in energy content, as some people may think that reduced fat foods be consumed unrestricted (Sanitarium Health Food Comp).

CML noted that they were generally supportive of this concept but were also happy with the Technical Expert Group suggestion to refer the customer to the Nutrition Information Panel. They recommended further research by FSANZ before any criteria are set.

Did not support an additional criterion

There were 35 submitters that did not support an additional criterion that relates to energy for 'reduced fat' claims (Aussie Bodies, AFGC, MasterFoods Aust. NZ, Nestle, Cadbury Schweppes, Dairy Aust., F&B Importers Assoc, Goodman Fielder, National Foods, Parmalat Aust, PB Foods, NZ MoH, NZFSA, ASA, Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers, Griffins Foods, Mainland Products, NZFGC, NZ Magazines, Heinz Aust./Heinz Watties NZ, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia).

Of these submitters, some added provisos to their answer, that they would not support an additional criterion unless:

- There has been a demonstrated market failure. If a product is reduced in a particular nutrient then the relative proportions of other ingredients will increase. Notwithstanding these slight increases in relative proportions of carbohydrate and protein the overall energy content is still reduced (Goodman Fielder);
- There is proven benefits to consumers helping them make better food choices (PB Foods);
- It does not meet other criteria set for all foods. Claims need to be based on evidence about the food to ensure consumer protection. There should be general qualifications about the nutritional criteria for foods making claims (NZ MoH).

Reasons provided by submitters for not supporting an additional criterion relating to energy were that:

- Fat and total energy, while related, are not always issues in common for consumer choice. Education is needed to alert consumers to the (often) high sugar levels in low fat foods (Aussie Bodies);
- Significant market failure has not been demonstrated; in the absence of this no additional criteria should be included (AFGC, MasterFoods Aust. NZ, Nestle);

- If fat is removed from a product, it is expected it would be replaced by either carbohydrate or protein, resulting in minimal energy reduction (Cadbury Schweppes);
- A reduction in fat would almost always be accompanied by a decrease in energy content, even if replaced by protein or carbohydrate (National Foods);
- The Nutrition Information Panel serves to answer any queries about the nutritional profile of a food (Dairy Aust.);
- Energy content is declared on the Nutrition Information Panel (National Foods, Parmalat, Heinz Aust./Heinz Watties NZ, NZFSA) and most consumers should be familiar with them by now and if not, consumer education should be considered as an important means of informing consumers (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA);
- As information on other nutrients is readily available consumers are in a position to make an informed decision about a product (NZFGC);
- The reduction in fat content from the reference food is the relevant condition (NZFSA);
- Criteria for ‘reduced’ should require a 25% reduction compared with the normal counterpart, regardless of what nutrient is reduced. Consistency will promote consumer understanding (Mainland Products);
- At this stage there are specified criteria for each of these claims and it could become confusing to start specifying energy criteria for a fat claim and blurring the distinctions between a specific component nutrient claim and an energy claim. In situations where a product makes a ‘reduced fat’ claim, it is also permitted to make a claim that it has reduced energy, provided it meets the criteria for each claim (Unilever Australasia).

General comments

Consumers look for, want and understand this information. Fats are an important dietary source of energy (CHC).

Disqualifying criteria for all claims should cover this (Canterbury DHB).

3.6 SATURATED AND *TRANS* FAT

Question 20

Should these saturated and trans fat claims be permitted? Briefly explain.

Out of 147 submitters, 46.9% (69 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	13	5	2	45
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	43	19	5	2	69

Overview

Fifty-three submitters supported permission of ‘low (in) saturated fat’ claims, 48 supported ‘low in saturated and trans fat’ claims, 51 supported ‘reduced in saturated fat’ claims, 46 supported ‘reduced in saturated and trans fat’ claims and 45 supported ‘saturated fat free’ claims. There were no submitters who opposed permission of ‘low (in) saturated fat’ claims. Five submitters opposed permission of ‘low in saturated and trans fat’ claims, five opposed ‘reduced in saturated fat’ claims, seven opposed ‘reduced in saturated and trans fat’ claims and seven submitters opposed ‘saturated fat free’ claims.

Supported permission of all claims

Of the 69 submitters that responded to this question, 40 specifically stated that they support these claims being permitted (Diabetes Aust., Dr R Stanton, GI Ltd, PHAA (supported by ACA), Aussie Bodies, ANIC, ASMI, CML, F&B Importers Assoc., GW Foods, Goodman Fielder, MLA, PB Foods, Sanitarium Health Food Comp, NCWA, NSW DoH – N&PA Branch, SA DoH, WA DoH, CSIRO – HS&N, Monash Uni - N&D Unit, NZ MoH, NZFSA, Public Health South, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, Heinz Aust/Heinz Watties NZ, Unilever Australasia, Cadbury Schweppes, AFGC supported by MasterFoods Aust. NZ, NZ Magazines, ASA supported by NPANZ, Assoc. of NZ Advertisers, NZTBC, Cadbury Confectionery, and Naturo Pharm.).

Six submitters generally supported saturated fat and *trans* fat claims being permitted with the exception of ‘saturated fat free’ claims (DAA, NZDA, Tomox, National Starch, The Solae Comp, Tas DoH&HS). Bakewell Foods only commented that the saturated fat free claim should not be permitted.

Some submitters supported the saturated fat claims only and opposed the claims relating to *trans* fat (Dairy Aust, Parmalat Aust., DAFF, National Foods, Canterbury DHB).

Although not specifically stating that they supported these claims, other comments that implied support of these claims were:

- Permitting these claims is a positive way that the food industry can assist consumers in identifying foods low in saturated and *trans*-unsaturated fats (NHF Aust., NHF NZ);
- Consumers look for, understand and want this information (CHC).

Two submitters stated that they supported the ‘low’ claims but were not fully in support of the ‘reduced’ claims (TCCA, NSW Food Authority).

Low (in) saturated fat

In addition to the 40 submitters listed above who supported all these claims be permitted, there were another 13 submitters who clearly supported permission of the ‘low (in) saturated fat’ claims (DAA, NZDA, Tomox, National Starch, The Solae Comp, Tas DoH&HS, TCCA, NSW Food Authority, Dairy Aust, Parmalat Aust., DAFF, National Foods, Canterbury DHB).

There were no submitters who stated that they did not support permission of these claims in response to this question.

Low in saturated and *trans* fat

In addition to the 40 submitters listed above who supported all these claims be permitted, there were another eight submitters who clearly supported permission of the ‘low in saturated and *trans* fat’ claims (DAA, NZDA, Tomox, National Starch, The Solae Comp, Tas DoH&HS, TCCA, NSW Food Authority).

There were five submitters that specifically opposed permission of claims in relation to *trans* fats (Dairy Aust, Parmalat Aust., DAFF, National Foods, Canterbury DHB).

Reasons given for opposing the *trans* fats were:

- Naturally occurring *trans* fats are not linked to adverse health conditions, and some are associated with a positive health claim (Parmalat Aust.);
- It is not a Codex requirement or a requirement anywhere else in the world except Canada, so it does not appear necessary to have these claims, particularly if there is some debate about the risk or benefit associated with them (DAFF);
- Public awareness of *trans* fats is not high and could lead to confusion. The consideration of *trans* fatty acid content is only indicated in limited circumstances therefore doesn’t warrant a claim (Canterbury DHB);
- The definition in Standard 1.2.8 does not distinguish between *trans* fatty acid isomers that have different metabolic actions i.e. conjugated linoleic acid

(CLA) and vaccenic acid which occur naturally in dairy fat have been shown to have health promoting properties in some cancers, heart disease, bone formation and immune function (National Foods).

National Foods added that they supported nutrition content claims being made for both saturated and *trans* fatty acids where the definition includes *trans* fatty acids derived from non-animal sources only. Parmalat Aust. also recommended distinguishing between good (natural) *trans* fats and bad (processed) *trans* fats.

Reduced (in) saturated fat

In addition to the 40 submitters listed above who supported all these claims be permitted, there were another 11 submitters who clearly supported permission of the ‘reduced (in) saturated fat’ claims (DAA, NZDA, Tomox, National Starch, Solae Comp, Tas DoH&HS, Dairy Aust, Parmalat Aust., DAFF, National Foods, Canterbury DHB).

There were two submitters (TCCA and NSW Food Authority) who were not fully in support of the ‘reduced’ claims.

Their reasons were that the ‘reduced’ claim has the potential to confuse the consumer and appears to be of little value (NSW Food Authority). TCCA said that the ‘reduced claim’ may mislead consumers and that FSANZ qualitative consumer research indicates that comparative claims do mislead consumers (salt example given).

Reduced in saturated and *trans* fat claims

In addition to the 40 submitters listed above who supported all these claims be permitted, there were another six submitters who clearly supported permission of the ‘reduced in saturated and *trans* fat’ claims (DAA, NZDA, Tomox, National Starch, Solae Comp, Tas DoH&HS).

There were seven submitters who stated that they were opposed to these claims, either because they did not support ‘reduced’ claims (TCCA, NSW Food Authority) or did not support claims in relation to *trans* fats (Dairy Aust, Parmalat Aust., DAFF, National Foods, Canterbury DHB).

Saturated fat free

In addition to the 40 submitters listed above who supported all these claims be permitted, there were another 5 submitters who clearly supported permission of the ‘saturated fat free’ claims (Dairy Aust, Parmalat, DAFF, National Foods, Canterbury DHB).

There were 7 submitters that specified that saturated fat free claims should not be permitted or should be prohibited (Bakewell Foods, DAA, NZDA, National Starch, Solae Comp, Tas DoH&HS, Tomox).

Tas DoH&HS explained that this was because of their potential to mislead consumers. TCCA noted that saturated fat free claims are not recommended as they do not refer to the total fat content of the product and have the potential to mislead consumers.

Trans fat claims

A number of submitters recommended that there should be provisions for making 'low *trans* fat' or 'reduced in *trans* fat' claims separately from saturated fat claims (NHF Aust., NHF NZ, CHC, NZFGC, National Foods), as these are the claims most likely to be used by the food industry (NHF Aust., NHF NZ). CHC added that *trans* fats are becoming increasingly important.

Also in support of *trans* fat claims, it was noted that *trans* fatty acids are an emerging issue in international markets, so it would be prudent to consider voluntary usage of such claims in the Australia/New Zealand market place that align internationally and minimise potential trade barriers (Cadbury Schweppes, CMA supported by Mandurah Aust., Palatinit GmbH, Kingford Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA).

Reasons for supporting saturated fat and/or *trans* fat claims

Submitters gave a variety of reasons for supporting saturated fat and/or *trans* fat claims:

- There is strong evidence linking high intakes of saturated fat with cardiovascular disease and emerging evidence linking it with the development of type 2 diabetes (Diabetes Aust., GI Ltd);
- They may be useful in assisting consumers to choose a diet lower in fat in keeping with dietary guidelines (PHAA (supported by ACA), Tas DoH&HS, SA DoH, WA DoH, Monash Uni – N&D Unit);
- Reducing/limiting saturated and *trans* fats in the diet are a recommendation of the NZ Food and Nutrition Guidelines (Public Health South);
- These claims are useful to consumers (NSW Food Authority ('low' claims only), NSW DoH – N&PA Branch, NZFSA);
- This information is becoming of greater interest to consumers (CML);
- The type of fat versus total fat in the diet is being looked at more closely by scientists and the medical profession (CML);
- Truthful claims should be allowed (PB Foods), unless there is very good reason to prohibit them, e.g. health and safety reasons (AFGC supported by MasterFoods Aust. NZ);
- These claims will encourage the food industry to continue to produce lower fat and lower saturated/*trans* fat foods (NZFSA);

- Consumers are being advised to reduce their fat intake and are becoming increasingly aware of the need to reduce saturated fat in particular, so these claims are particularly helpful (NZFGC);
- Consumers are being recommended to reduce these nutrients in their diet so it is important for them to be able to identify where significant reductions in these nutrients have occurred to assist them in reducing the amounts consumed as part of the total diet (Unilever Australasia);
- These claims are a quick and easy way for consumers to identify foods with the nutritional characteristics they are looking for (National Foods (saturated fat claims only), AFGC supported by MasterFoods Aust. NZ).

General comments

The NSW Food Authority pointed out the need to consider that some researchers suggest that only certain saturated fatty acids are detrimental to health. They also recommended including *trans*-fatty acids in the definition of saturated fatty acids, thus simplifying the labelling, as they have reservations about introducing too many categories of nutrient claims.

Nutra-Life H&F questioned if consumers understand the difference between types of fat and how extensively manufacturers would be allowed to describe benefits where these fats were balanced or excluded.

Responses for question 20 that relate to question 21

- ‘Low in saturated fat’/ ‘low in saturated and *trans* fat’ claims should be permitted using the preferred criteria (TCCA).
- NZ Magazines cannot comment on the figures.
- Nestle agreed with the proposed criteria.

Other comments provided but not in direct response to the question

Campbell Arnott’s Asia Pacific supports the use of low saturated fat claims.

Claims about different types of fat are important and beneficial (Beef & Lamb Marketing Bureau).

Question 21

If so, do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 38.1% (56 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	17	12	4	-	33
Government	6	2	-	-	8
Public health	7	4	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	34	18	4	-	56

Overview

Twenty-eight submitters agreed with FSANZ's preferred criteria for the 'low (in) saturated fat' claim and 11 disagreed. Twenty-four submitters agreed with FSANZ's preferred criteria for the 'low in saturated and *trans* fat' claim and 13 disagreed. Twenty-five submitters agreed with FSANZ's preferred criteria for the 'reduced (in) saturated fat' claim and 10 disagreed. Twenty-one submitters agreed with FSANZ's preferred criteria for the 'reduced in saturated and *trans* fat' claim and 14 disagreed. Twenty-five submitters agreed with FSANZ's preferred criteria for the 'saturated fat free' claim and six submitters disagreed.

General agreement with preferred criteria

Of these submitters, 21 specifically stated that they agreed with all of FSANZ's preferred criteria for saturated and *trans* fat claims (Dr R Stanton, ASMI, CML, CHC, NCWA, Tas DoH&HS, NSW DoH – N&PA Branch, NSW Food Authority, DAFF, CSIRO – HS&N, NZ MoH, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, Public Health South), including those who agreed with the preferred criteria for low and reduced claims but recommended in addition a notion about conformity with trade practices/fair trading definitions for the saturated fat free claim (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit).

A reason given for this is that they are consistent with CoPoNC and Codex (DAFF). In agreeing with the low and reduced saturated fatty acid claims criteria, Dairy Aust. also noted that these criteria are consistent with CoPoNC. Conversely, Heinz Aust/Heinz Watties NZ commented that the criteria are now a little tighter than in CoPoNC as the limits represent combined saturated and *trans* fats.

A small number of submitters specifically stated that they did not agree with FSANZ's preferred criteria (Diabetes Aust., GI Ltd, ANIC, MLA).

ASA (supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC) noted that they supported the concept but would not comment on the figures, as they are not experts.

Low (in) saturated

There were 28 submitters that clearly agreed with FSANZ's preferred criteria for the 'low (in) saturated fat' claim including the 21 listed above as well as TCCA, Aussie Bodies, Dairy Aust., Parmalat Aust., NZFSA, Canterbury DHB, and Fonterra.

Eleven submitters explicitly disagreed with the proposed criteria for 'low (in) saturated fat' (NHF Aust., NHF NZ, ANIC, Cadbury Schweppes, Goodman Fielder, GW Foods, National Starch, Sanitarium Health Food Comp, Solae Comp, GI Ltd, Diabetes Aust.).

Reasons given by submitters for not agreeing with the criteria for low (in) saturated fat' claim were because they would exclude foods such as margarines, oils, nuts and seeds from making claims (National Starch, Solae Comp, GW Foods, Goodman Fielder, Diabetes Aust. and GI Ltd), because they have over 1.5 g saturated fatty acids per 100 g (Sanitarium Health Food Comp). Although not explicitly stating that they disagreed with the criteria, DAA and NZDA agreed with this issue.

It was added that canola oil has the lowest saturated fat level and contains on average 8 g/100 g of saturated fat, so the proposed criteria will prohibit these claims on a category of food where the claim would be beneficial to consumers (Goodman Fielder). DAA (supported by NZDA) considered that this meant that FSANZ's preferred criteria for saturated and *trans* fat claims were not in line with Australian Guidelines to Healthy Eating. The balance of saturated to unsaturated fats is an important factor in the maintenance of optimal health (Diabetes Aust., GI Ltd).

It was recommended that the criteria be altered so that these foods can make a 'low in saturated fat' claim (National Starch, Solae Comp, DAA, NZDA). Sanitarium Health Food Comp recommended that FSANZ define claims and criteria, which identifies these types of foods as having a low proportion of saturated fat. Although agreeing with the criteria, Tas DoH&HS also noted that these criteria would exclude most nuts and high monounsaturated fat oils, and they recommended that it may be appropriate to consider levels for food groups and categories.

In relation to this, ANIC commented that foods that are high in total fat but provide most of their fat from polyunsaturated and monounsaturated sources are disadvantaged by the criteria suggested, for example tree nuts provide an average 5.9 g saturated fat per 100 g with 30 g monounsaturated fat and 18.8 g polyunsaturated fat. This means around 10% of the fat in nuts comes from saturated fat. The nut industry recommends the criteria for saturated fat be based on a percentage of the fat coming from saturated fat rather than a gram amount.

Cadbury Schweppes required clarification for the 'low' category. They queried whether the criteria is that both saturated and *trans* fats have to be below the criteria limit of ≤ 1.5 g in total of saturated and *trans* fatty acids per 100 g of solids; ≤ 0.75 g in total of saturated and *trans* fatty acids per 100 ml of liquids or the total of both must be below this level?

The NHF Aust. (supported by the NHF NZ) recommended that the criteria for 'low in saturated fat' and 'low in *trans* fat' claims (or any combination of these e.g. 'low in

saturated and *trans* fat') be the same. This is because *trans* fats act similarly to saturated fats in increasing in LDL cholesterol level (on an equal weight basis) (see next section for more details).

Low in saturated and *trans* fat

There were 24 submitters that explicitly agreed with FSANZ's preferred criteria for the 'low in saturated and *trans* fat' claim including the 21 listed above as well as TCCA, Aussie Bodies, and NZFSA.

Thirteen submitters clearly disagreed with the proposed criteria for 'low in saturated and *trans* fat' (NHF Aust., NHF NZ, ANIC, Cadbury Schweppes, Dairy Aust., Goodman Fielder, GW Foods, MLA, National Foods, Parmalat Aust., Fonterra, Diabetes Aust., GI Ltd). The main reason for not agreeing with these criteria were that submitters did not agree with the definition of *trans* fats (see *trans* fats section below).

GW Foods recommended an additional criterion, which would be an 'or' option, stating a '*low in saturated fat/low in saturated and trans fat claim, is permitted such that the total of saturated fatty acids and trans fatty acids comprises no more than 28% of the total fatty acid content of the food.*

The NHF Aust. (supported by the NHF NZ) recommended that the criteria for 'low in saturated fat' and 'low in *trans* fat' claims (or any combination of these e.g. 'low in saturated and *trans* fat') be the same. This is because *trans* fats act similarly to saturated fats in increasing in LDL cholesterol level (on an equal weight basis).

They also recommended that there should be two alternative definitions (manufacturer to choose), based on an 'absolute' low level or a 'relatively' low level. Their recommended definitions are:

- Saturated + *trans* fat of 1.5 g/100 g or less in a solid food (0.75 g/100 g or less in a liquid food); or
- Saturated + *trans* fat of 20% of total fats or less.

The latter option allows oils and high oil foods such as nuts and mayonnaise to make the claim and supports the notion that the ratio of saturated to unsaturated fatty acids is more important than a reduction in saturated fatty acid alone (NHF Aust, NHF NZ).

Although they agreed with the criteria in general, NSW Food Authority recommended consideration should also be given to include *trans*-fatty acids in the definition of saturated fatty acids, thus simplifying the labelling.

Reduced saturated fat

There were 25 submitters that clearly agreed with FSANZ's preferred criteria for the 'reduced (in) saturated fat' claim including the 21 listed above as well as Dairy Aust., Parmalat Aust., Canterbury DHB, and Fonterra.

Ten submitters explicitly disagreed with the proposed criteria for 'reduced (in) saturated fat' (TCCA, NHF Aust., NHF NZ, Aussie Bodies, AFGC, MasterFoods Aust. NZ, Nestle, Goodman Fielder, National Foods, NZFSA).

It was considered by some submitters that the criteria for reduced claims in this section are not clearly expressed, that the word ‘intake’ is incorrect and the appropriate word is ‘content’, and the following criteria were recommended instead:

- ‘The comparison should be based on a relative difference of at least 25% in the saturated fatty acid content and no increase in *trans* fatty acid content’ (AFGC supported by MasterFoods Aust. NZ, Nestle);
- ‘The comparison be based on a relative difference of at least 25% in the saturated fatty acid content’ (National Foods).

Aussie Bodies recommended that a relative difference of 30% (rather than 25%) is more appropriate for reduced fat claims (as these fats are the focus of a number of serious conditions).

NZFSA agreed with 25% as the value for ‘reduced’, but questioned the need for the percentage to be provided adjacent to the descriptor (as they do not support synonyms for “reduced”).

TCCA were not in support of permitting these ‘reduced’ claims.

Although agreeing with the criteria in general, NSW Food Authority had some reservation about the usefulness of the ‘reduced’ claim & about introducing too many categories of nutrient claims. This particular claim has the potential to confuse the consumer and appears to be of limited value.

NZ MoH commented that it was not appropriate to include lower and fewer on labels as synonyms for ‘reduced’ as these could be confused with the ‘low’ category.

Reduced saturated and *trans* fat

There were 21 submitters that explicitly agreed with FSANZ’s preferred criteria for the ‘reduced in saturated and *trans* fat’ claim, as listed above.

Fourteen submitters clearly disagreed with the proposed criteria for ‘reduced in saturated and *trans* fat’ (TCCA, NHF Aust., NHF NZ, Aussie Bodies, AFGC, MasterFoods Aust. NZ, Nestle, Dairy Aust., Goodman Fielder, MLA, National Foods, Parmalat Aust., NZFSA, Fonterra). The main reason for not agreeing with these criteria were that submitters did not agree with the definition of *trans* fats (see *trans* fats section below).

It was considered by some submitters that the criteria for reduced claims in this section are not clearly expressed, that the word ‘intake’ is incorrect and the appropriate word is ‘content’, and the following criteria were recommended instead:

- ‘There must be a reduction in both saturated and *trans* fatty acids contents and the comparison should be based on a relative difference of at least 25% in the combined saturated and *trans* fatty acid content’ (National Foods, AFGC supported by MasterFoods Aust. NZ, Nestle);

- ‘25% combined saturated and *trans* fatty acid reduction’ (Goodman Fielder).

The NHF Aust. (supported by NHF NZ) recommended that ‘reduced’ claims relating to saturated and/or *trans* fat should be based on a relative difference of at least 25% in the saturated + *trans* fat content, with the other requirements as proposed by FSANZ. In addition, there should be a disqualifier that there is no increase in *trans* fat level (this is because the science demonstrates that gram for gram, *trans* fats are potentially more harmful than saturated fats).

Sanitarium Health Food Comp disagreed that food claiming 'reduced saturated fat' should also have a reduction in energy content, as the aim of these claims is to communicate that the fat profile of the food has been improved in accordance with dietary guidelines. They suggested that claims regarding saturated fat be based on the proportion of total fat that is comprised of saturated fat.

Trans fat

Some submitters recommended that claims for *trans* fats should be able to be made in isolation from saturated claims under appropriate conditions (Public Health South, Unilever Australasia, PB Foods), which is consistent with the FSANZ approach to ‘saturated fat’ and ‘saturated and *trans* fat’ claims (AFGC supported by MasterFoods Aust. NZ & Nestle). Independent *trans* fat claims should be possible where useful, e.g. where it is known that manufacturing process could produce *trans* fatty acids as in margarine production. Dairy foods have naturally occurring *trans*-fatty acids, which have potential health benefits and could therefore be considered as a nutrient for possible health claims (PB Foods). There may be situations where a significant reduction in *trans* fatty acids can be made. This would be of importance and therefore should be permitted to be claimed in isolation (Unilever Australasia). Low *trans* fat claims should have the same criteria as those for low saturated and *trans* fat claims (AFGC supported by MasterFoods Aust. NZ, Nestle).

Goodman Fielder suggested that it is not clear whether *trans* fat claims could be made in isolation from saturated fat claims. Separate criteria listed in the table would be their preferred approach to avoid confusion. If the criteria of 0.75 g in 100mls of liquid was proposed for *trans* fats only then the liquid oils category may be able to make this claim. Liquid oils, through the process of deodorisation, will usually produce *trans* levels in the range of 0.5g to 1.5 g.

Dairy Aust. opposed the proposed claims for *trans*-fatty acids, as they did not agree with the definition of *trans* fats as per Standard 1.2.8. They supported nutrition content claims being made where the total of saturated and *trans* fatty acids comprises no more than 28% of the total fatty acid content of the food, with *trans* fatty acids coming from non-animal sources only. They recommended that when establishing qualifying and disqualifying criteria, naturally occurring sources of *trans*-fatty acids should be excluded from the equation.

It was noted that the definition of *trans* fats in the IAR does not distinguish between different *trans*-fats isomers that have different metabolic behaviours, in particular, the naturally occurring sources of *trans*-fats [such as conjugated linoleic acid (CLA) from

dairy fats and meats] (Dairy Aust.). A number of submitters recommended that for labelling purposes the definition for *trans* fatty acids includes *trans* fatty acids from non-animal sources only and excludes *trans* fats from natural sources (Fonterra, Parmalat Aust., National Foods, MLA, Dairy Aust.). This accounts for the metabolic differences in *trans*-isomers (as opposed to being based on a chemical definition) (Fonterra). Fonterra therefore agreed with the criteria for *trans* fat but only for *trans* fat that does not naturally occur in animals.

The reasons for recommending an amendment to the definition of *trans* fat were:

- There is evidence to suggest that the metabolic effects of animal and vegetable sources of *trans*-fatty acids differ. Dairy *trans*-fatty acids do not appear to have the same detrimental effects on heart health as other sources of *trans*-fatty acids formed during hydrogenation of vegetable oils (Fonterra);
- *Trans* fats from partially hydrogenated oils and heated oils are the main sources of *trans* fatty acids and have been associated with adverse health impacts. There is no evidence that *trans* fatty acids from animal fats have the same health impact (MLA);
- A report by the Danish Nutrition Council found that partial hydrogenated PU vegetable oils were the main source of *trans* fatty acids in the diet and that naturally occurring ruminant *trans* fatty acids do not possess the same unfavourable effects (MLA);
- Naturally occurring *trans* fats are not linked to adverse health conditions and some are associated with a positive health claim (Parmalat Aust.);
- Naturally occurring sources of *trans* fats have been found to have positive health attributes, such as anti-cancer properties (submission outlines different sources of *trans*-fatty acids and their health effects, including references) (Dairy Aust.);
- In light of increasing evidence indicating that not all *trans*-fatty acids are detrimental to health, the inclusion of *trans*-fat in a generic manner has the potential to be misleading and create consumer confusion (Dairy Aust.).

Two different definitions were proposed for *trans* fatty acids:

- That proposed by Codex Committee on Nutrition and Foods for Special Dietary Uses:

"*trans*-fatty acids are defined as all geometrical isomers of monounsaturated and polyunsaturated fatty acids having non-conjugated carbon-carbon double bonds in the *trans*-configuration..... This definition excludes those *trans*-fatty acids presented naturally in animal fats and their products, which include conjugated linoleic acid" (Fonterra).

- The Danish definition of *trans*-fats (DVFA 2003), which excludes naturally occurring contents of *trans*-fats (CLA):

“the sum of all isomeric fatty acids with 14, 16, 18, 20 and 22 carbon atoms and one or more *trans* double bonds, i.e. C14:1, C16:1, C18:1, C18:2, C18:3, C20:1, C20:2, C22:1, C22:2 *trans* isomeric fatty acids, but only polyunsaturated fatty acids with methylene-interrupted double bonds.” (DANISH EXECUTIVE ORDER NO. 160 OF 11 MARCH 2003) (Dairy Aust, MLA).

NZFSA queried the statement on page 218 of the IAR that stated that the amount of *trans* fatty acids in New Zealand and Australian foods are small compared to those in Canada. They also noted page 206 of this report, which stated that table spreads contain less *trans* fatty acids than previously. While this might be the case, other sources of *trans* fats, such as biscuits, crackers, snack foods, and fast foods might still contain moderate levels of *trans* fatty acids. NZFSA would like to see data on the *trans* fatty acid content of food on the NZ and Australian markets, including imported foods.

Recommendations were made for ‘reduced *trans* fat’ claims criteria:

- ‘The comparison should be based on a relative difference of at least 25% in the *trans* fatty acid content and no increase in saturated fatty acid content’ (AFGC supported by MasterFoods Aust. NZ, Nestle);
- ‘The comparison be based on a relative difference of at least 25% in the *trans* fatty acid content’ (National Foods).

Saturated fat free

There were 25 submitters that explicitly agreed with FSANZ’s preferred criteria for the ‘saturated fat free’ claim, including the 21 as listed above as well as Parmalat Aust., NZFSA, Canterbury DHB, and Fonterra. Five of these submitters recommended that a notion about conformity with trade practices/fair trading definitions be added to the criterion for this claim (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit).

Six submitters clearly disagreed with the proposed criteria for ‘saturated fat free’ (TCCA, AFGC, MasterFoods Aust. NZ, Nestle, Goodman Fielder, National Foods).

Public Health South pointed out that a saturated fat free claim should only be allowed if the food is completely free of saturated fat.

Other submitters recommended that saturated and *trans* fat free claims should be permitted (National Foods, AFGC supported by MasterFoods Aust. NZ & Nestle Aust/Nestle NZ). Some suggested that provisions should be specified for saturated and/or *trans* fat content of ‘free’ foods (TCCA):

- Either by way of maximum residual limits or by way of prescribed methods of analysis, with appropriate levels of detection/reporting. (National Foods, AFGC, MasterFoods Aust. NZ, Nestle);
- In line with Codex criteria (not more than 0.1g/100g or 100mL). Similarly where it is possible to demonstrate the absence of saturated fat, there is no case for a prohibition of this claim (Goodman Fielder).

National Foods recommended all criteria and conditions for ‘free’ claims should be included in a guideline.

NZFGC noted that comments they have made in respect of ‘free’ claims in other parts of their submission apply equally to ‘saturated fat free’ claims.

Heinz Aust/Heinz Watties NZ recommended the saturated fat free claim should be permitted in the Standard.

General comments

NHF Aust (supported by NHF NZ) supported the requirement of listing all four fatty acids in the panel for any claims relating to any fatty acids or cholesterol.

Nutra-Life H&F believed the amount of each type of fat should be stated if this is important to the consumer when choosing food.

Mainland Products recommended the criteria are in a guideline rather than a standard, and that the Food Standards Code refers to the guideline to help people source the information.

Responses to question 20 that relate to question 21

- TCCA believed that ‘low in saturated fat’/ ‘low in saturated and *trans* fat’ claims should be permitted using the preferred criteria;
- NZ Magazines cannot comment on the figures;
- Nestle agreed with the proposed criteria.

Other comments provided but not in direct response to the question

Campbell Arnott’s Asia Pacific recommend that low saturated fat claims should be permitted on foods containing:

- *Either* a low absolute level of saturated fat (no more than 1.5g saturated and *trans* fatty acids per 100g solids, 0.75g per 100ml liquid);
- *Or* a proportionally low level of saturated fat (no more than 28% saturated and *trans* fatty acids as a proportion of total fatty acids).

Beef & Lamb Marketing Bureau recommended that criteria for *trans* fat claims should distinguish between naturally occurring and manufactured *trans* fats, as health effects for each, differ.

Question 22

Is there merit in a disqualifier for ‘low in saturated fat/low in saturated and trans fat’? A possible option is that saturated fat must not provide more than 10% of energy.

Out of 147 submitters, 37.4% (55 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	17	13	4	-	34
Government	5	2	-	-	7
Public health	7	4	-	-	11
Consumers	1	-	-	-	1
Other	2	-	-	-	2
Total	32	19	4	-	55

Overview

Twenty-four submitters considered that there is merit in a disqualifier for ‘low in saturated fat’/‘low in saturated and *trans* fat’ claims. Conversely, a similar number of submitters (23) did not see the merit or rationale for having a disqualifier for ‘low in saturated fat’/‘low in saturated and *trans* fat’ claims.

Support for a disqualifier

Twenty-four submitters considered that there is merit in a disqualifier for ‘low in saturated fat’/ ‘low in saturated and *trans* fat’ claims (PHAA (supported by ACA), Aussie Bodies, ASMI, CHC, NSW DoH – N&PA Branch, SA DoH, WA DoH, Monash Uni – N&D Unit, NZ MoH, NZFSA, Canterbury DHB, NZ Dairy Foods, CML, Public Health South, Dr R Stanton, ANIC, Diabetes Aust., DAA, NZDA, GI Ltd, National Starch, Solae Comp, Tas DoH&HS). This is consistent internationally (NZFSA).

ANIC recommended that low saturated fat claims should not be allowed on high sugar, low fibre foods.

Three submitters agreed with the disqualifier suggested in this question, that saturated fat must not provide more than 10% energy (CML, Public Health South) as this would fit with dietary recommendations for fat intake (Dr R Stanton).

It was noted that at 10% of energy from saturated fat, nuts and olive oil would not qualify for a ‘low in saturated fat’ claim. It was suggested that a disqualifier of no more than 15% of energy from saturated fat would allow these foods to qualify (Diabetes Aust., DAA, NZDA, GI Ltd, National Starch, Solae Comp, Tas DoH&HS). Tas DoH&HS noted that this may permit other foods that predominantly contain saturated fat such as pastries to make a saturated fat claim and therefore it may be appropriate to consider levels for food groups and categories or a ratio of poly, mono and saturated fat.

Opposed a disqualifier

Conversely, the same number of submitters (23) did not see the merit or rationale for having a disqualifier for 'low in saturated fat'/'low in saturated and *trans* fat' claims (Dairy Aust., F&B Importers Assoc, Goodman Fielder, National Foods, DAFF, CSIRO – HS&N, Heinz Aust/Heinz Watties NZ, Unilever Australasia, NZ Magazines, ASA supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Fonterra, Griffins Foods, Mainland Products, Nestle, Parmalat Aust., NZFGC, Sanitarium Health Food Comp, AFGC, MasterFoods Aust. NZ).

Reasons for not supporting a disqualifier for low saturated/*trans* fats were that:

- If a statement is true it should be permitted (Fonterra), e.g. an oil-based salad dressing may be prohibited from making a claim that it is low in fat according to the serving size (Dairy Aust);
- It seems like this was proposed to make the claim eligible to only specific food types (Goodman Fielder);
- It is complicated from a manufacturer compliance and consumer education perspective (National Foods);
- It would add complexity to the Standard (NZFGC);
- Under the proposed criteria, it is unrealistic that saturated fat provide no more than 10% of energy content for "low in" claims (National Foods);
- It has been recognised that these fats have dietary significance and consumption of food containing these types of fats should be limited, therefore claims should be permitted on foods that meet the criteria for these claims without adding additional criteria (Unilever Australasia);
- The information is available in the Nutrition Information Panel (it was added that a disqualifier is consistent with Codex, the United States and the European Union)(DAFF);
- If a statement is substantiated it should be able to be used. The example of the disqualifier in question 22 would prevent the use of the statement on products where a claim could usefully be made (NZFGC);
- This is consistent with the FSANZ precedent and objectives of the review of the Code, which should equally apply to any changes to the Code (AFGC supported by Nestle and MasterFoods Aust. NZ);
- Applying additional criteria would be overly complicated, not consistent with the review of the Code, not consistent with FSANZ's other actions in removing criteria and achieve little or nothing in 'selecting' the types of foods

eligible to carry the claim (AFGC, supported by Nestle and MasterFoods Aust. NZ).

Sanitarium Health Food Comp commented that they could not see the rationale for disqualifying criteria regarding the energy content of low saturated fat foods as this would not allow manufacturers to communicate the low saturated fat content of healthy foods e.g. vegetable oils and nuts.

General comments

Some submitters did not specifically state whether they supported the use of a disqualifier for low in saturated/trans fat claims but made the following comments.

Cadbury Schweppes commented that there may be merit in having a disqualifier for low in saturated fat, i.e. 10% of energy, but they would like to see how this is determined before agreeing to any criteria.

NHF Aust. (supported by NHF NZ) recommended that all 'low' or 'reduced' fatty acid claims require a disclosure statement about energy content, e.g. 'see Nutrition Information Panel for energy content'.

TCCA suggested that FSANZ must conduct more research before the use of a disqualifier can be decided. They added that such a claim might confuse consumers if it addresses two separate food components and these claims remove the focus from the total fat claim, which still needs to be moderated for good health.

GW Foods were not sure in the value for low in saturated fat being less than 10% energy.

PB Foods only supported the use of a disqualifier if there is consumer research to show this is of benefit.

Nutra-Life H&F noted that it is generally agreed that saturated fats should not provide more than 10% of the energy provided from fats and the total caloric energy in the diet provided from fats should not exceed 30%, however for many consumers, taste and mouth feel are the key issues that govern food choices. They were concerned this issue is likely to result in new forms of existing foods with altered fat content and suggested that specific food standards could be developed to control the composition of fats in specific foods, e.g. margarine and similar fat spreads.

Question 23

Is there justification in considering a new criterion for 'low in saturated fat/low in saturated and trans fat' claims, such that the total of saturated fatty acids and trans fatty acids comprises no more than 28% of the total fatty acid content of the food? What advantages and disadvantages would such a criterion provide in comparison to FSANZ's preferred option?

Out of 147 submitters, 42.2% (62 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	22	13	4	2	41
Government	3	2	-	-	5
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	37	19	4	2	62

Overview

Seventeen submitters were in favour of a new criterion for ‘low in saturated fat’/ ‘low in saturated and *trans* fat’ claims such that the total of saturated fatty acids and trans fatty acids comprises no more than 28 per cent of the total fatty acid content of the food. Nineteen submitters were not in favour of this. Seven submitters agreed in principle with a new criterion but could not comment on the figures that were given.

Supported the new criterion

Seventeen submitters indicated that there is justification for a new criterion for ‘low in saturated fat/low in saturated and *trans* fat’ claims such that the total of saturated fatty acids and *trans* fatty acids comprises no more than 28% of the total fatty acid content of the food (Diabetes Aust., GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Aussie Bodies, ANIC, Goodman Fielder, NSW DoH – N&PA Branch, SA DoH, WA DoH, CSIRO – HS&N, Monash Uni N&D Unit, Public Health South, Mainland Products, NZ Dairy Foods).

Some submitters agreed in principle but could not comment on the percentages (NZ Magazines, Cadbury Confectionery, ASA supported by Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers).

PB Foods would support this criterion only if there is consumer research to show it is of benefit.

Reasons given for supporting the use of the new criterion were:

- This may help to ensure the diets of New Zealanders are more in line with the NZ Food and Nutrition Guidelines (Public Health South);
- This would allow healthy margarines to make low saturated fat claims (CSIRO – HS&N);
- This would allow claims to be made for margarine spread and edible oils category manufactured from healthy oils like canola sunflower (Goodman Fielder);

- It is more in line with the recommendations of the Dietary Guidelines for Australians, encouraging the consumption of a moderate amount of margarines, oils, nuts and seeds, improving the P: S ratio (Diabetes Aust., GI Ltd);
- These criteria would allow all raw nuts to qualify for such a claim and this is considered appropriate in relation to guiding consumer choices consistent with the dietary guidelines (ANIC).

ANIC added that they supported a percentage criteria for low saturated fat/*trans* fat claims which would allow foods high in total fat but low in saturated fat, such as oils, margarines, nuts and avocados, to make low saturated fat claims. These foods are most relevant to carry such a claim.

Although they gave support for this alternative criterion, Diabetes Aust. and GI Ltd noted a potential disadvantage in that it may increase total fat consumption and concomitantly total kilo joule consumption.

The NHF Aust. (supported by the NHF NZ) recommended that the criteria for ‘low in saturated fat’ and ‘low in *trans* fat’ claims (or any combination of these e.g. ‘low in saturated and *trans* fat’) be the same. This is because *trans* fat act similarly to saturated fats in increasing in LDL cholesterol level (on an equal weight basis). They recommended that there should be two alternative definitions (manufacturer to choose) for ‘low saturated/*trans* fat claims, one of which was “saturated + *trans* fat of 20% of total fats or less”, which allows oils and high oil foods such as nuts and mayonnaise to make the claim (refer to question 21 for more detail on preferred criteria).

Opposed the new criterion

Conversely, there were 19 submitters who did not agree with the use of this new criterion (CML, CHC, Dairy Aust., F&B Importers Assoc., MLA, Parmalat Aust., NZ MoH, NZFSA, Dr R Stanton, Canterbury DHB, Fonterra, Griffins Foods, NZFGC, TCCA, National Foods, AFGC supported by MasterFoods Aust. NZ, Unilever Australasia, Nestle).

Reasons given for not supporting this alternative criterion for low saturated fat and *trans* fat claims were that:

- Seems more consistent to stick with 25% for them all (NZ MoH);
- Need to concentrate on saturated and total fat (Canterbury DHB);
- Criteria based on a proportion of total fatty acids such as 28% of total fatty acids would exclude many lean red meat products from making a low in saturated fat claim even though these products are low in saturated fat in terms of g/100g (MLA);
- No other country other than Canada has this criterion (CHC);
- Is not consistent internationally (NZFSA);

- Most consumers have no idea what ‘*trans*’ fats are (CHC);
- If the statement is true, it should be able to be represented (Dairy Aust., Fonterra);
- Saturated fats have no health benefits and 'reduced' claims should not be allowed for this reason (TCCA);
- The proposed criterion is confusing and appears to be there to suit margarine manufacturers. Food standards should not be made to suit manufacturers of particular products (Dr R Stanton).

Recommendations were made for alternative approaches to the suggested criterion as follows:

- CML indicated that they support the use of the disqualifier in preference to this criterion;
- MLA support criteria that set levels in terms of both percentage of fatty acids or g/100 g;
- Only *trans* fat that is not naturally occurring should be limited, if any limitation is imposed (as outlined in question 21) (Fonterra);
- Retain the FSANZ preferred criterion (National Foods, AFGC supported by MasterFoods Aust. NZ, Unilever Australasia, Nestle);
- FSANZ must conduct more research before this can be decided (TCCA);
- Low in saturated fat and low in *trans* fats should have the same criterion i.e. 10% of the energy (Dr R Stanton).

National Foods said that 'low' claims are based on the principle that low is an absolute term and should apply across the board. Making the criterion not more than 28% of fatty acids would mean that the actual saturated and *trans* fatty acid content of low saturated/low *trans* fat foods would be on a sliding scale, depending on the fat total content of the food. They believed that a wide range of saturated/*trans* fat contents being classed as low is inconsistent and would be confusing to both manufacturers and consumers.

General comments

Sanitarium Health Food Comp supported consideration for saturated fat claims based on the proportion of fat that is saturated.

There was general opposition to the combined *trans* and saturated fat claims with Tomox stating that it is confusing to bring *trans* fat into it, however the situation

where *trans* fat replaces saturated fat must not be allowed either. Some submitters also recommended that the criteria for ‘low in saturated fat/low in saturated and *trans* fat’ claims should not allow the possibility of substituting *trans* fats for saturated fats because the overall effect is the same (DAA, NZDA, National Starch, Solae Comp). TCCA submitted that these combined claims might confuse consumers as they address two separate food components. These claims remove the focus from the total fat content, which still needs to be moderated for good health.

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA) said that there should be scope to make claims however current conditions are over-prescriptive.

Cadbury Schweppes noted that it was difficult for them to comment as this is not criteria that they currently review but they suggested setting a maximum level for total fatty acids and have this allowable in the Nutrition Information Panel.

NCWA commented that consumers would need an in depth knowledge of nutrients to know the meaning.

Other comments provided but not in direct response to the question

Go Grains support consideration of a new criterion in which there is no more than 28% saturated and *trans* fatty acids as a proportion of the total fatty acid content of the food.

NZ King Salmon recommended that the disqualifying criteria for saturated and *trans* fat is not set below 30% of the total fatty acid content of the food, because their salmon does contain some saturated fat but the benefits of the Omega 3 fatty acids would outweigh this.

Question 24

*Is there merit in a disqualifier for ‘reduced in saturated fat/reduced in saturated and *trans* fat’, such that there should be no increase in *trans* fatty acids?*

Out of 147 submitters, 41.5% (61 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	23	13	5	2	43
Government	4	2	-	-	6
Public health	6	3	-	-	9
Consumers	1	-	-	-	1
Other	2	-	-	-	2
Total	36	18	5	2	61

Overview

Thirty-four submitters (out of 61) stated that there is merit in a disqualifier for 'reduced in saturated fat'/'reduced in saturated and *trans* fat' claims, such that there be no increase in *trans* fatty acids (if this claim is permitted). Thirteen submitters opposed the use of this disqualifier.

Supported the disqualifier

Of the 61 submitters that responded to this question, 34 specifically stated that there is merit in a disqualifier for 'reduced in saturated fat/reduced in saturated and *trans* fat' claims, such that there be no increase in *trans* fatty acids (Diabetes Aust., Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Aussie Bodies, ASMI, CML, CHC, GW Foods, Goodman Fielder, MLA, National Starch, PB Foods, Sanitarium Health Food Comp, Solae Co., Tas DoH&HS, SA DoH, WA DoH, CSIRO HS&N, Monash Uni N&D Unit, NZ MoH, NZFSA, Public Health South, Canterbury DHB, Griffins Foods, NZ Dairy Foods, NZFGC, Unilever Australasia, Nestle Aust/Nestle NZ, AFGC, MasterFoods Aust. NZ). TCCA does not support this claim being allowed but if it is, the disqualifier is warranted.

Comments in support of the use of this disclaimer

The criteria should not allow the possibility of substituting *trans* fats for saturated fats because the overall effect is the same (Tas DoH&HS). These fatty acids have similar metabolic effects (NZ MoH). The science demonstrates that gram for gram, *trans* fats are potentially more harmful than saturated fats (NHF Aust. supported by NHF NZ). The situation where the saturated fatty acids are decreased and *trans* fatty acids are increased needs to be avoided, however as this is not Codex consistent, the advantages of this disqualifier over possible trade barriers would need to be considered (NZFSA).

In suggesting alternative wording for the criteria for reduced claims (refer question 21) the AFGC has incorporated a 'no increase' in saturated/*trans* fatty acid requirement. This 'no increase' is in relation to the saturated/*trans* fatty acid content per 100g of the food, not in relation to proportionate increases in the fatty acid ratios (AFGC supported by MasterFoods Aust. NZ).

Opposed the disqualifier

There were 13 submitters that specifically opposed the use of this disqualifier for 'reduced in saturated fat/reduced in saturated and *trans* fat' claims (Dairy Aust., Fonterra, Mainland Products, F&B Importers Assoc., National Foods, Parmalat Aust., ASA supported by Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers, NZ Magazines).

Reasons given by submitters for not supporting the use of a disclaimer were that:

- If the statement is true, the claim should be permitted (Fonterra supported by Mainland Products) and consumers should be privy to the information on food products (Dairy Aust);

- It is unnecessarily complicated from a manufacturer compliance and consumer education perspective. The proposed criteria is likely to be confusing, particularly for small food manufacturers, as a reduction in saturated fat is likely to cause a proportionate increase in the fatty acid ratios. An increase in *trans*-fats from non-animal sources, which in dairy foods may include the *trans*-fat CLA, may provide consumers with positive health benefits (National Foods).

General comments

Cadbury Schweppes said that it was difficult for them to comment, as it is not criteria currently reviewed by them.

The NSW Food Authority recommended that it be considered that some researchers suggest that only certain saturated fatty acids are detrimental to health. They also recommended consideration should be given to including *trans*-fatty acids in the definition of saturated fatty acids, thus simplifying the labelling. They have some reservation about the usefulness of the 'reduced' claim and about introducing too many categories of nutrient claims. This particular claim has the potential to confuse the consumer and appears to be of limited value.

Heinz Aust/Heinz Watties NZ noted that monounsaturated fatty acids are defined in Standard 1.2.8 as the total *cis*-monounsaturated fatty acids. They recommended a definition in the guidelines under the condition for a fatty acid claim. This definition would prompt industry to subtract *trans* fatty acids from the monounsaturated fatty acid value in Nutrition Information Panel. Lab dependant monounsaturated fatty acid values often include *trans* fatty acids, if not deducted from the monounsaturated fatty acid value than total fatty acids will not represent the total fat in the product, thus creating consumer confusion.

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA)) commented that there should be scope to make claims, however current conditions are over-prescriptive.

3.7 POLYUNSATURATED, MONOUNSATURATED AND OMEGA FATTY ACIDS

Question 25

Should these polyunsaturated, monounsaturated and Omega fatty acid claims be permitted? Briefly explain.

Out of 147 submitters, 51.0% (75 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	26	16	5	2	49
Government	7	2	-	-	9
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	3	-	-	-	3
Total	46	22	5	2	75

Overview

Sixty-one submitters stated that they supported polyunsaturated, monounsaturated and Omega fatty acid claims being permitted, mainly because they are consistent with dietary guidelines and are currently in use in the market place. There was no specific objection to the permission of these claims.

Supported polyunsaturated, monounsaturated and Omega fatty acid claims

The majority of submitters (61) specifically stated that they supported polyunsaturated, monounsaturated and Omega fatty acid claims being permitted (TCCA, Diabetes Aust., DAA, NZDA Dr R Stanton, GI Ltd, PHAA (supported by ACA), Tomox, Aussies Bodies, AFGC, MasterFoods Aust. NZ, ANIC, ASMI, Bakewell Foods, Cadbury Schweppes, CML, CHC, Dairy Aust., DSM Nut. Prod, F&B Importers Assoc., GW Foods, Goodman Fielder, MLA, National Foods, National Starch, Parmalat Aust., PB Foods, Solae Comp, Wyeth Aust., NCWA, Tas DoH&HS, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, DAFF, WA DoH, CSIRO – HS&N, Monash Uni - N&D Unit, NZ MoH, NZFSA, Public Health South, Canterbury DHB, ASA, Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers, Fonterra, Functional Whole Foods NZ, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, NZ Magazines, Heinz Aust/Heinz Watties NZ, Unilever Australasia, Nestle, NHF Aust., NHF NZ).

Nutra NZ agreed to Omega fatty acid claims being permitted, as there is evidence to support claims, especially Omega-3, but had no comment on poly- and monounsaturated claims.

The Uni of Adel. & Uni of SA - Nutrition & Physiology Research Grp. agreed to these claims being permitted but with two modifications to the Omega-3 fatty acid claims (relevant to question 26):

- Docosapentaenoic acid (DPA) should be included as equivalent to Eicosapentaenoic acid (EPA) and (Docosahexaenoic acid) DHA in meeting the qualifying levels of long-chain Omega-3 for a content claim;
- Omega-3 levels should be doubled, as the qualifying levels are unreasonably low (compared to proposed intake recommendations);
- Therefore, a food should contain 400 mg of ALA, or 60 mg of EPA, DPA and/or DHA per serve to qualify as an Omega-3 source and to qualify as a good source, a food should contain 120 mg of EPA, DPA and/or DHA per serve (detailed justification of recommendations available on request).

Reasons provided by submitters for supporting permission of these claims were:

- This is consistent with the Dietary Guidelines for Australia and may help consumers improve their intake of unsaturated fats, improving their P: S ratio (Diabetes Aust., GI Ltd);
- They are currently used by manufacturers and are helpful particularly in reinforcing the dietary guidelines (NZFGC);
- Substituting saturated fats with these fats is a recommendation of the NZ Food and Nutrition Guidelines (Public Health South);
- These also help to support public health promotions and advice contained in dietary guidelines (PB Foods);
- They may be useful in assisting consumers to choose a diet in keeping with scientific evidence (PHAA (supported by ACA), Tas DoH&HS, NSW DoH – N&PA Branch, SA DoH&HS, WA DoH, Monash Uni - N&D Unit);
- These claims are a positive way to assist consumers in choosing better/healthy fats (NHF Aust., NHF NZ, NSW DoH – N&PA Branch);
- Helpful/useful to consumers (CSIRO – HS&N, NZFSA);
- Consumers look for, understand and want this information (CHC);
- These are important dietary constituents that consumers need to be educated about through food labels (Mainland Products);
- Consumers are becoming better educated on the different types of fat and their benefits/risks (CML);
- Allowing claims about these beneficial types of fats will play a valuable role in improving public health in Australia (Wyeth Aust);
- These claims are well established (National Foods) and there is no evidence of market failure (AFGC, MasterFoods Aust. NZ);

- They are currently used in the market place and pose no concerns to consumer health and safety (Dairy Aust);
- These claims have been used for a number of years and have been useful in helping to educate consumers about types of fats (Unilever Australasia);
- They are well accepted in the market place (Parmalat Aust);
- They are already encompassed in the Code (Cadbury Schweppes, National Foods);
- They are currently used on food products and there is no evidence of non-compliance (Nestle);
- The current Standard 1.2.8 facilitated claims on new products, which were especially developed for consumers that might have low intake of these nutrients (PB Foods);
- There is sufficient evidence to substantiate the beneficial effects of PUFA (DSM Nut. Prod);
- There is an increasing level of evidence that this is an area with potentially significant health benefits (NSW Food Authority);
- There is good evidence for positive health outcomes for using these products and consumption should be encouraged (Solae Comp);
- Evidence is increasing about the beneficial effects of Omega 3 and Omega 6 fatty acids (NZ MoH);
- They will encourage manufacturers to continue to produce and promote healthier products (NZFSA);
- These fit with the proposed criteria of the National Heart Foundation for next year (Bakewell Foods);
- The truth should not be suppressed (ASA, Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers).

TCCA noted that although the total fat content of the diet should be kept below 30%, there are identified health benefits associated with consuming the unsaturated fats (particularly the Omega-3 fats) and replacing saturated fats with monounsaturated or polyunsaturated fats.

CML recommended more education might be needed to explain the importance of the correct balance between Omega-3, -6 and -9 fatty acids

Functional Whole Foods NZ noted that with current market knowledge increasing about the benefits of polyunsaturated fats, this allows consumers the information to make informed choices. Consumer studies show that Omega-6:Omega-3 ratios can be as high as 30:1, so that consuming oils with an Omega-6 level of 39% will add a significant amount of Omega-6 to the diet and potentially exacerbate this imbalance.

Although they supported the labelling of foods that are sources of mono- and polyunsaturated and Omega fatty acids, they only support this on foods that are also low in saturated and trans-unsaturated fat (NHF Aust., NHF NZ).

PB Foods recommended moving the criteria to a guideline in line with their preferred regulatory Option (2), as these are general level claims. DAFF recommended that they are put in the Nutrition, Health and Related Claims Standard and Standard 1.2.8 is amended accordingly.

General comments

Twelve submitters did not specifically answer the question and their comments are below (Nutra-Life H&F, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, ACCC):

ACCC noted the increased market use of these claims and they acknowledged that consumers seek out mega fatty acid claims. They commented that manufacturers are taking advantage of this through introducing Omega fatty acids to various foods that are not known as being a natural source of Omega fatty acids. Regarding the descriptor 'good' in the claim 'good source of Omega-3 fatty acids', ACCC submitted that this might confuse consumers when the food is not a natural source of Omega fatty acids e.g. a loaf of bread versus a can of salmon.

Nutra-Life H&F believed that this would add substantial costs to manufacturers but very little benefit to consumers. They added that a substantial proportion of food is consumed outside the home without reference to nutritional analysis and suggested food standards could be developed for specific foods in relation to the levels of different types of fats.

Cadbury Schweppes noted that there is a risk of over prescribing. CMA believed there should be scope to make claims, but current conditions are over-prescriptive. Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA –NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA also supported this answer.

Question 26

If so, do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 40.8% (61 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	17	15	4	-	36
Government	7	2	-	-	9
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	36	21	4		61

Overview

Fifty-five submitters agreed with the preferred criteria for polyunsaturated and monounsaturated fatty acid claims. Fifty-seven submitters agreed with the criteria in relation to Omega-3 fatty acids, 56 agreed with the criteria for the 'good source of Omega-3 fatty acids' claim, and 55 agreed with the criteria in relation to Omega-6 and Omega-9 fatty acids. One submitter disagreed with all the preferred criteria.

Supported preferred criteria for polyunsaturated, monounsaturated and Omega fatty acid claims

The majority of submitters (55) agreed with the preferred criteria for polyunsaturated, monounsaturated and Omega fatty acid claims (TCCA, Diabetes Aust., DAA, NZDA, Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, ANIC, ASMI, Cadbury Schweppes, CML, CHC, Dairy Aust., F&B Importers Assoc., GW Foods, Goodman Fielder, MLA, National Starch, Parmalat Aust., PB Foods, Solae Comp, Wyeth Aust., NCWA, Tas DoH&HS, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH&HS, DAFF, WA DoH, CSIRO – HS&N, Monash Unit N&D Unit, NZ MoH, NZFSA, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Fonterra, Mainland Products, Griffins Foods, NZ Dairy Foods, NZFGC, NZ Magazines, Heinz Aust/Heinz Watties NZ, Unilever Australasia, Nestle, AFGC, MasterFoods Aust. NZ).

Aussie Bodies agreed with all of the preferred criteria except for the 'good source of Omega-3 fatty acids'. They recommended a level of Omega-3 should be specified for this claim.

Public Health South and Nutra NZ agreed with the criteria for Omega-3 only. Public Health South suggested that for monounsaturated and polyunsaturated fatty acid claims the criteria used should depend on what type of claim is made, and they could not comment on the criteria unless the claim is clarified. Nutra NZ did not comment on the criteria for the other fatty acid claims.

Reasons provided by submitters for supporting FSANZ's preferred criteria were:

- These claims are well established and there is no evidence of market failure (AFGC, MasterFoods Aust. NZ);
- These claims have been included in the Food Standards Code for several years and have not given rise to any difficulties (NZFGC) and there doesn't appear to be any demonstrated market failure or unnecessary manufacturing constraints in regard to the criteria (Goodman Fielder);
- They align with current practices (PB Foods);
- They are consistent with current requirements/Food Standards Code criteria (DAFF) which were agreed during the development of the Code (NZFSA);
- They help to support public health promotions and advice contained in dietary guidelines (Fonterra).

Fonterra noted that the current Standard 1.2.8 facilitated claims on new products, which were especially developed for consumers that might have low intake of these nutrients.

Cadbury Schweppes agreed with the FSANZ's preferred criteria but noted there is a risk of over prescribing.

A number of submitters noted that as these are general level claims the criteria could be moved to a guideline if Option 2 was adopted (from Standard 1.2.8) (NZFGC, Parmalat Aust., Dairy Aust., Fonterra).

In relation to this, Dairy Aust. noted that research has indicated that 19% of DHA/Omega 3 fatty-acids claims have been non-compliant with the Food Standards Code, primarily because the values for the nutrient being claimed don't appear in the Nutrition Information Panel (William et al 2003). Having a central reference point for all information on general level claims may increase manufacturers' compliance for Omega-3 fatty-acids claims (Dairy Aust.).

PB Foods recommended there should be a survey of suppliers if the inclusion of DPA in addition to EPA and DHA is general practice when determining the amount of long chain Omega-3 fatty acids. There is probably similar uncertainty on the conversion of DPA compared to alpha linoleic acid to the longer chain fatty acids and therefore the inclusion of DPA in the criteria for Omega-3 claims should be further considered.

Disagreed with preferred criteria

Functional Whole Foods NZ disagreed with the preferred criteria. They recommended that Omega-6 and Omega-9 content level claims should be set as with the Omega-3, in mg not as a percentage. They noted that in order to allow the public to have an informed choice about their fatty acid profile they should know how much Omega-6 and Omega-9 they are consuming.

Functional Whole Foods NZ noted the Working group from “The Workshop on the Essentiality of and Recommended Dietary Intakes (RDIs) for Omega-6 and Omega-3 Fatty Acids April 7-9 1999”, recommends an upper limit for Omega-6 of 6.67 g/day. They noted that there is no recommended dietary intake for Omega-9. They also referenced the Lyon Diet Heart Study which is a randomised, single-blind secondary prevention trial aimed at testing a Mediterranean-type diet, compared with a prudent Western-type diet. This found an increase in Omega-9 and Omega-3 levels and decrease in Omega-6 levels had a profound result. Functional Whole Foods NZ referred to the following link:
(<http://circ.ahajournals.org/cgi/content/full/99/6/779?ijkey=FCZ/tm9kxZZCM>).

Functional Whole Foods NZ recommended source claims for any oil containing more than 10% of either Omega-3, -6 or -9 fatty acids.

General comments

ACCC suggested that FSANZ may wish to consider clearer qualifying and in addition, disqualifying criteria for Omega fatty acid claims.

Nutra-Life H&F questioned whether manufacturers will need the analytical skill and facility to test fatty acid levels when they specify the levels. They also questioned the impact of natural variations in materials.

Question 27

Should the Code be clarified in relation to polyunsaturated and monounsaturated fat claims? Two possible options are that:

- (a) *The provisions should only relate to ‘source of’ claims in order to ensure consistency with Omega-6 and Omega-9 claims; or*
- (b) *There should be provisions for ‘source’, ‘good source’ and ‘increased’ claims to ensure consistency with other content claims.*

Out of 147 submitters, 36.1% (53 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	16	11	4	-	31
Government	5	2	-	-	7
Public health	8	3	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	33	16	4	-	53

Overview

Forty-five submitters agreed that the Code should be clarified in relation to polyunsaturated and monounsaturated fat claims, with 37 supporting Option b and six supporting Option a. Three submitters agreed the Code should be clarified but did not

support a particular option. Four submitters indicated that they supported clarification of the Code and made recommendations.

Support for Option b

The majority of submitters supported option b, ‘provisions for ‘source’, and good source’ and ‘increased’ claims to ensure consistency with other content claims’ (Diabetes Aust., DAA, NZDA, GI Ltd, Tomox, AFGC, MasterFoods Aust. NZ, Nestle, Cadbury Schweppes, CML, CHC, Dairy Aust., F&B Importers Assoc., Goodman Fielder, GW Foods, National Foods, National Starch, PB Foods, Solae Comp, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, DAFF, CSIRO – HS&N, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, NZTBC, Naturo Pharm, Griffins Foods, NZ Dairy Foods, NZFGC, NZ Magazines, Heinz Aust/Heinz Watties NZ, Unilever Australasia).

CML noted that they didn’t really understand the question but preferred Option b.

Reasons provided by submitters for preferring option b, in addition to consistency with other content claims were:

- It allows more flexibility to make a relevant claim (Unilever Australasia);
- To provide consumers with appropriate nutrition information (National Foods);
- It allows consumers to be more aware of the fat content of foods in each category, thereby enabling them to make better-informed food choices (Wyeth Aust);
- Consumers may want to know whether a food is just a source, a good source or an increased source of Omega fatty acids (CML).

Although in support of option b, PB Foods thought that in order to answer the question, consumer research is required. They noted that ‘increased’ has a similar meaning to ‘good source of’.

Support for Option a

Those in support of Option a, ‘the provisions should only relate to ‘source of’ claims in order to ensure consistency with Omega-6 and Omega-9 claims’, were PHAA (supported by ACA), NZ MoH, Public Health South, WA DoH, and Monash Uni N&D Unit. It was added that this was in addition to ‘good source’ claims, but ‘increased’ claims were not supported (PHAA (supported by ACA), WA DoH and Monash Uni N&D Unit). NHF Aust. and NHF NZ said there should be provisions for ‘source’ and ‘good source’ claims to ensure consistency with Omega-3 fatty acid claims.

Support in general

Those who supported the Code be clarified in general, without supporting a particular option were Aussie Bodies, ASMI, and NZFSA, with NZFSA adding that this is only if there is evidence the current requirements could be improved.

Some submitters recommended that for consistency, provisions for 'source', 'good source', and 'increased' claims should be reviewed for all fatty acid claims (National Foods):

- To bring them into alignment with other fatty acid claims (Unilever Australasia);
- To maintain consistency with other claims and to provide consumers with appropriate information to assist them in making informed choices (AFGC, MasterFoods Aust. NZ, Nestle);
- The provision for 'source', 'good source', and 'increased' claims in relation to Omega-6 & 9 should replace the current reference [in Standard 1.2.8, sub clause 13(6)] to a 'claim' (Goodman Fielder).

National Foods suggested that definitions for monounsaturated, Omega-3 or Omega-9 fatty acids, 'source', 'good' source and 'increase' should be drawn from the Food Standards Code and the CoPoNC. This was supported by Dairy Aust. who outlined Standard 1.3.2, which defines a 'source of' as a having a nutrient content of a least 10%, and a 'good source of' as a nutrient content of at least 25%. The criteria for 'increased' is already stipulated in the Initial Assessment Report (page 206), which also corresponds with the current CoPoNC statement, which infers 'increased' to mean the food must contain at least 25% more (refer to page 18). This information should appear in a guideline, as opposed to the Standard (Dairy Aust.).

Parmalat Aust. recommended that for Option (b) 'increased' should refer to 25% or more above the reference value.

Dr R Stanton noted that 'good source' claims could apply to Omega-3 fatty acids.

TCCA suggested that claims should only be allowed in relation to 'good source' and 'increased' (where the level has been increased so it becomes a 'good source'). Making a claim that a food is a 'source of' has little benefit to consumers unless consuming the food as part of a varied diet will significantly contribute to the total daily intake of that nutrient, e.g. claims that a food (breakfast cereal or muesli bar) is a 'source of' fibre (≥ 1.5 g fibre per average serve) provides little benefit to consumers when the 1.5 g of fibre consumed contributes only 5% of the total required daily fibre intake (30 g/day). Consumers may be misled by the use of the term 'provides' or is a 'source of.' They recommended further research and that such claims should not be allowed if they do indeed mislead consumers (TCCA).

GW Foods recommended there should be provisions for source, good source and increased, especially a 'good source' requirement for alpha linolenic acid at 400 mg per serve.

ACCC stated that the descriptor ‘good’ in the claim ‘good source of Omega-3 fatty acids’ might confuse consumers when the food is not a natural source of Omega fatty acids (e.g. a loaf of bread versus a can of salmon). They suggested that FSANZ may wish to consider clearer qualifying and in addition, disqualifying criteria for Omega claims.

General comments

Functional Whole Foods NZ referred to the Flax Council Study (attached to submission) that suggests that ALA needs to be treated like long chain polyunsaturated fatty acids and be allowed good source claims.

ASMI commented that Omega-3 fatty acid content might imply particular health benefits that fall under health claims considerations.

3.8 CHOLESTEROL

Question 28

Should these cholesterol claims be permitted? Briefly explain.

Out of 147 submitters, 46.3% (68 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	26	14	5	1	46
Government	6	-	-	-	6
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	44	18	5	1	68

Overview

Thirty submitters supported FSANZ’s proposal to prohibit ‘low cholesterol’, ‘reduced cholesterol’, and ‘cholesterol free’ claims. Of these 30 submitters, one supported prohibition of ‘cholesterol free’ claims only, and another supported prohibition of ‘low cholesterol’ and ‘reduced cholesterol’ claims only. In comparison, there were 36 submitters who supported that ‘low cholesterol’, ‘reduced cholesterol’ and ‘cholesterol free’ claims be permitted. Of these submitters, two supported permission of ‘low cholesterol’ and ‘reduced cholesterol’ claims only, and two supported permission of ‘cholesterol free’ claims only.

Thirty submitters supported or implied that they supported FSANZ’s proposal to prohibit all cholesterol claims (Public Health South; Canterbury DHB; NCWA; Tas DoH & HS; NSW DoH – N&PA Branch; NSW Food Authority; WA DoH; Aussie Bodies; ASMI; CHC; National Starch; CSIRO – HS&N; Monash Uni. – N&D Unit;

TCCA; Diabetes Aust.; DAA (supported by NZDA); Dr. R Stanton; GI Ltd; NHF Aust. (supported by NHF NZ); PHAA (supported by ACA); Tomox; Griffins Foods; Fonterra; Mainland Products; MLA; Nutra Life H&F, ACCC).

One submitter agreed that with the exception of '*cholesterol free*' claims, cholesterol claims should be prohibited (Heinz Aust./Heinz Watties NZ).

Fonterra stated that if the research carried out by FSANZ indicates that the claims are misleading consumers; there is justification for prohibiting these claims.

One submitter considered that these claims should be discontinued over time, as consumer understanding is not necessarily correct (NZ Dairy Foods).

Reasons in support of prohibiting cholesterol content claims included:

- Current evidence indicates that dietary cholesterol only has a limited affect on influencing blood lipid levels. This is an area of confusion for consumers and such claims could be potentially misleading. (NSW DoH – N&PA Branch, Canterbury DHB, Tas DoH&HS, WA DoH, Fonterra, Monash Uni. – N&D Unit; Mainland Products);
- Over consumption of foods containing no cholesterol may still contribute to the formation of cholesterol in the body (Nutra-Life H&F);
- Evidence linking total dietary cholesterol to disease risk is not as strong as that for saturated fat (Diabetes Aust; GI Ltd; Public Health South) and there are recommendations to reduce saturated fats rather than cholesterol in the diet (Griffins Foods);
- Many consumers do not understand that excess blood cholesterol is far more likely to come from synthesis of cholesterol within the liver when the diet is high in saturated fat. Dietary cholesterol is not as important as saturated fat and diverts attention from saturated fat (Dr. R. Stanton);
- 'No/low cholesterol' claims do not indicate the total or saturated fat content of the product and it is saturated fat intake and body weight, which have more impact on serum cholesterol levels (TCCA);
- It is better to focus claims around saturated fat content (Aussie Bodies);
- Such claims are often misused (ASMI). CHC notes they are consistently misused and abused;
- The usefulness of such claims is doubtful and are potentially misleading to consumers (CSIRO – HS&N; NSW Food Authority);
- These claims are too confusing without stating the amount of cholesterol per serving (Nutra-Life H&F);

- Manufacturers attempts to market ‘good’ and ‘bad’ cholesterol have the potential to mislead consumers (ACCC).

26 submitters considered that cholesterol content claims should be permitted (DAFF; ANIC; Cadbury Schweppes; CML; Dairy Aust.; F&B Importers Assoc; GW Foods; Goodman Fielder; National Foods; Solae Comp; NZFGC; NZFSA, Unilever Australasia; Nestle; Parmalat Aust.), AFGC (supported by MasterFoods); CMA (supported by Mandurah Aust.; Palatinit GmbH; Kingfood Aust; CMA NZ Branch; CMA NSW Branch; CMA Qld Branch; CMA Vic Branch; CMA of SA; ICA)

Sanitarium Health Food Comp indicated that they support ‘*cholesterol free*’ claims being permitted but consider the ‘*reduced*’ or ‘*low*’ claims are unlikely to be useful to consumers. Bakewell Foods on the other hand indicated their support for cholesterol claims except for ‘*cholesterol free*’. NZFSA is open to retaining all cholesterol content claims. NZ MoH also considered ‘low cholesterol’ and ‘reduced cholesterol’ claims should be permitted.

A number of submitters indicated that they support these claims being permitted if they sit alongside fat claims to provide full balanced information (NZ Magazines and ASA (supported by Cadbury Confectionery; Naturo Pharm; NZTBC; NPANZ; Assoc. of Advertisers).

There were a number of reasons provided by submitters in support of permitting cholesterol content claims including: harmonisation with codex and international requirements; that these claims have a history of use and that some consumers actively seek claims in order to consume low cholesterol diets; that prohibition should not be based entirely on evidence suggesting that reduction of saturated fat intake is more beneficial than reducing dietary cholesterol; and to prohibit such claims would have an impact on industry in terms of reducing product innovation and requiring re-labelling of products currently on the market.

Codex and International requirements

Codex has agreed to conditions for cholesterol claims, which means that internationally they are recognised as valid claims for consumers (Goodman Fielder).

Permitting these claims means that Australia and New Zealand would be consistent with Codex requirements (DAFF; Dairy Aust.) and consistent with international regulations i.e. Canada (all), US (low and free) (Dairy Aust.). Parmalat Aust. also mentioned that Canada and USA also permit cholesterol claims.

Being inconsistent with Codex and with other countries by prohibiting cholesterol claims would pose a number of costs for industry in terms of altering packaging (National Foods).

World Trade Organisation (WTO) issues will need to be considered and balanced against any health advantages arising from prohibiting cholesterol claims (NZFSA).

Consumer use of cholesterol claims

Consumers have a growing understanding of the link between diet and health and are looking for nutrition claims or messages about the products they consume (Goodman Fielder).

Cholesterol claims should be permitted, as this is a nutrient of interest to consumers (ANIC); consumers have a long history of use (GW Foods) and have become accustomed to purchasing products with cholesterol claims (Goodman Fielder). These claims are used as a simple tool by consumers to identify foods they wish to purchase for individual dietary requirements (CMA (supported by Mandurah Aust.; Palatinit GmbH; Kingfood Aust; CMA NZ Branch; CMA NSW Branch; CMA Qld Branch; CMA Vic Branch; CMA of SA; ICA). To prohibit the use of such claims may confuse consumers (GW Foods) or cause unnecessary consumer anxiety (Goodman Fielder).

Cholesterol claims are easy and quick to use with Nutrition Information Panel information (National Foods) and such claims assist in educating consumers about types of fatty acids (Unilever Australasia). ‘Cholesterol free’ claims will assist consumers in choosing foods with a healthier fat profile (Sanitarium Health Food Comp).

These claims assist with consumer education by providing clear nutrition information for those people who are at risk of developing coronary heart disease and have been advised to restrict their intake of cholesterol rich foods (Goodman Fielder). Cadbury Schweppes and CML also consider that these claims may provide those consumers at risk or falling into ‘special needs’ categories with beneficial information regarding food choices. This sub-group of the population should not be penalised or denied of this information by having such claims removed from the market place (Dairy Aust; NZFGC) and thereby limiting consumer choice (NZFGC).

The National Heart Foundation’s guidance for people with higher cholesterol levels suggests restricting cholesterol rich foods such as egg yolks and offal (National Foods, Dairy Aust, Sanitarium Health Foods Comp). Therefore cholesterol content claims can be considered as nutritionally relevant and useful to consumers (Dairy Aust) and prohibiting these claims would remove simple messages for consumers following NHF guidelines (National Foods).

Consumer Research

Consumer research by PB Foods shows that people affected by heart conditions look for information relating to dietary cholesterol (PB Foods).

FSANZ’s ‘Qualitative Consumer Study Related to Nutrition Content Claims on Food Labels’ (Series No. 5) indicates that respondents in the upper age group of 45-64 years were shown to pay attention to cholesterol claims (AFGC (supported by MasterFoods), Dairy Aust.) supporting that such groups should not be denied of this information (AFGC (supported by MasterFoods)).

Comprehensive consumer research, ongoing over several years, highlights that more than 50% of respondents, between November 2001 and February 2002, indicated that they are concerned about their cholesterol level (Goodman Fielder).

There is a need to confirm the scientific relevance of cholesterol messages and consumer understanding (PB Foods) but if there is evidence of consumer confusion this could be addressed through education (National Foods).

However, there is a level of consumer misunderstanding and confusion around 'cholesterol free' claims being made for plant-based foods, which is highly misleading to consumers (Dairy Aust.).

Dietary cholesterol versus saturated fat

A prohibition on all cholesterol claims on the basis that greater emphasis should be placed on the intake of saturated fats rather than dietary cholesterol in health education, is not a valid reason for prohibiting such claims (AFGC (supported by MasterFoods; NZFGC)). This is not justifiable under the Section 10 objectives of the FSANZ Act (AFGC (supported by MasterFoods)). The only valid reason for prohibiting true claims is if they represent a danger to public health and safety (AFGC (supported by MasterFoods)).

The evidence concerning dietary cholesterol and blood cholesterol is still to be resolved (NZFGC).

Whilst there is a moderate level of evidence that suggests that a reduced intake of dietary cholesterol is less effective than a reduced intake of saturated and trans fatty acids in raising total and LDL cholesterol levels, the same level of evidence exists to support the statement that 'dietary cholesterol contributes to the development of coronary heart disease' (Goodman Fielder). It is commonly accepted that dietary cholesterol does play a role in blood cholesterol, as does the consumption of saturated fats (DAFF). As a Review of health and related claims will be undertaken in the future there is always the opportunity to amend the framework if new evidence comes to light (NZFGC).

There is also good scientific evidence that there are likely to be significant health issues associated with consumption of small amounts of cholesterol and it is important to recognise that cholesterol is essential for human metabolism (National Foods).

Impact on Industry

There is widespread use of absolute cholesterol claims generally associated with heart health outcomes (ACCC). Removal of cholesterol claims would have a big impact on the dairy industry (PB Foods) such as limiting product innovation and development (Dairy Aust.).

There are a number of dairy products such as skim milk that are currently labelled 'cholesterol free' (e.g. Pura Tone brand; Vitasoy), which generally have significantly reduced total fat and saturated fat levels (National Foods; Dairy Aust.). Such foods offer significant benefits to consumers (Dairy Aust.). It is these foods that consumers

choose to consume in order to reduce the risk of heart disease and the removal of cholesterol claims on these products will increase consumer confusion (National Foods).

The total dollar value for the Australian soymilk market is Aus\$113.7 million (source: AZTEC, MAT to 17/10/04). The Vitasoy brand represents 16.8% or Aus\$18.7 million of the entire soy market for value and is the fastest growing brand in the market, increasing by 21% year on year (National Foods).

In Australia, sales of low fat milk (including skim) have increased 24% over the last eight-years (Dairy Australia 2003). (Dairy Aust.)

In response to question 28, some submitters also mentioned possible approaches to setting criteria for cholesterol claims, should they be permitted.

Some submitters recommended that cholesterol claims be permitted using the current criteria in CoPoNC (AFGC (supported by MasterFoods); National Foods; CMA; Parmalat Aust.).

Low cholesterol should be permitted if food has less than 20 mg/100 g of food and reduced cholesterol should be permitted if there is 25% less cholesterol than the reference food (NZ MoH).

A condition around the use of cholesterol claims was suggested which requires the declaration of fatty acids in the nutrition information panel so that one can consider the full fatty acid profile of a product (Unilever Australia). Going one step further, it was also recommended that the criteria around the use of cholesterol claims should require a certain total fatty acid profile (e.g. saturated fat, polyunsaturated fatty acids etc) (CML).

FSANZ's position for cholesterol free should be to remain silent, in order to be consistent with other free claims. (CML)

Other Comments

ACCC sought clarification on whether the intention is to prohibit all cholesterol claims or to move cholesterol claims to fit within the health claims framework.

Queensland PHS considered that cholesterol content claims should be prohibited in keeping with the evidence for the role of dietary cholesterol in influencing blood fat levels. They should be considered as high level 'biomarker' claims.

Beef & Lamb Marketing Bureau agreed that cholesterol claims should not be permitted.

Question 29

If so, do you agree with FSANZ's preferred criteria.

Out of 147 submitters, 44.2% (65 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	13	4	1	42
Government	7	2	-	-	9
Public health	7	3	-	-	10
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	43	17	4	1	65

Overview

Twenty-seven submitters agreed with FSANZ's preferred criteria for 'low', 'reduced' and 'free' cholesterol content claims (i.e. prohibition), whereas 22 submitters did not support the prohibition of cholesterol claims. Submitters provided a number of suggestions in relation to setting criteria for cholesterol claims, should they be permitted, including aligning with CoPoNC criteria.

Agreed with criteria

Twenty-seven submitters specifically expressed their agreement with FSANZ's preferred criteria for 'low', 'reduced' and 'free' cholesterol content claims (i.e. prohibition) (NCWA; Tas DoH&HS; NSW DoH – N&PA Branch; NSW Food Authority; SA DoH; WA DoH; Aussie Bodies; ASMI; CHC; MLA; National Starch; Griffins Foods; CSIRO – HS&N; Monash Uni – N&D Unit; TCCA; Diabetes Aust; DAA (supported by NZDA); GI Ltd; NHF Aust (supported by NHF NZ); PHAA (supported by ACA); Tomox; NZ Dairy Foods; Nutra-Life H&F; Canterbury DHB)

Fonterra provided the same response as for Question 28. They noted that the evidence between dietary cholesterol and blood cholesterol is mixed and there is potential for consumers to be misled by such claims. If the research carried out by FSANZ indicates that the claims are misleading consumers, there is justification for prohibiting these claims.

There were some responses specifically related to certain types of cholesterol claims.

In relation to 'reduced' cholesterol claims, one submitter indicated that they are not very useful or currently utilised (Goodman Fielder). According to CoPoNC requirements, to make this claim the product must meet the criteria of a 'low' cholesterol claim and therefore this claim would most likely be used in preference to 'reduced cholesterol' (Goodman Fielder). NZFSA indicated that as there are no Codex provisions in relation to 'reduced' cholesterol claims, consideration could be given to not allowing this claim.

Public Health South and TCCA stated that this question was not applicable, given that FSANZ is not proposing any criteria because the proposed approach is to prohibit cholesterol content claims. These submitters did indicate support for prohibition in response to Question 28.

Cadbury Schweppes suggested that if there is not an analytical method that is accurate to a very low level, and ‘free’ cannot be quantified, and then cholesterol ‘free’ claims should be prohibited.

It was suggested that in addition to ‘low’, ‘reduced’ and ‘free’ the claim ‘cholesterol neutral’ may also need to be regulated (ASMI).

Disagreed with criteria

Twenty-two submitters did not support FSANZ’s preferred criteria for ‘low’, ‘reduced’ and ‘free’ cholesterol content claims (i.e. prohibition) (DAFF; AFGC (supported by MasterFoods); ANIC; CML; Dairy Aust.; F&B Importers Assoc; National Foods; NZFSA; NZFGC; Unilever Australasia; Nestle; CMA (supported by Mandurah Aust.; Palatinit GmbH; Kingfood Aust; CMA NZ Branch; CMA NSW Branch; CMA Qld Branch; CMA Vic Branch; CMA of SA and ICA)).

Parmalat Aust. referred to their response to Question 28 in which they supported these claims being permitted.

Some submitters suggested that cholesterol claims be permitted if they sit alongside fat claims to provide full balanced information (NZ Magazines; ASA (supported by Cadbury Confectionery; Naturo Pharm; NZ TBC; NPANZ; Assoc. of NZ Advertisers)).

Suggested criteria

Submitters provided a number of suggestions in relation to setting criteria for cholesterol claims, should they be permitted.

Aligning with CoPoNC Criteria

Nineteen submitters expressed that the current criteria set out in CoPoNC for cholesterol claims should be retained (AFGC (supported by MasterFoods); ANIC; DAFF; Dairy Aust.; F&B Importers Assoc.; National Foods; Unilever Australasia; Nestle; and CMA (supported by Mandurah Aust.; Palatinit GmbH; Kingfood Aust; CMA NZ Branch; CMA NSW Branch; CMA Qld Branch; CMA Vic Branch; CMA of SA and ICA)).

DAFF consider that the criteria should be “consistent with Codex requirements, at the very least, if not current CoPoNC requirements”.

Reasons provided by submitters in support of the retention of CoPoNC criteria for ‘low’ ‘reduced’ and ‘free’ cholesterol claims include:

- Current criteria in CoPoNC are highly restrictive ensuring that cholesterol claims can only appear on foods that are beneficial in terms of fat content and that consumers are not misled (AFGC, National Foods). MasterFoods and Nestlé noted they agreed with comments made by AFGC;
- There would be consistency with international standards practice and these claims will continue to provide a sub-group of consumers with cholesterol information that they currently use (National Foods);
- CoPoNC criteria has been used over a period of time, has had no demonstrated market failure and these claims are familiar to consumers (Unilever Australasia).

Criteria for ‘low cholesterol’ claims

Some submitters specifically discussed approaches to establishing criteria for ‘low’ cholesterol claims as follows.

NZFS consider that criteria for ‘low’ cholesterol claims should be as per CoPoNC but that there should be additional criteria as per the (now repealed) New Zealand Food Regulations in that if a food is intrinsically low in cholesterol, the claim shall be in the form of “a low cholesterol food”.

There was also a recommendation that criteria include the total fat profile (saturated fat, polyunsaturated fatty acids etc) (CML). Goodman Fielder suggested that the fatty acid criteria would need to be adjusted to reflect the current saturated fat plus trans fat maximum of 28% that is applied to monounsaturated, polyunsaturated and Omega fatty acid claims.

‘Low’ cholesterol claims should be permitted if food has less than 20mg/100g of cholesterol (NZ MoH) and that the same criteria for a ‘low saturated fat’ claim should be included as a condition for cholesterol claims (GW Foods).

There was a suggestion that the claims should specify that the product is low in ‘dietary cholesterol’ and relevant information on dietary cholesterol should also be included in the Nutrition Information Panel (DAFF).

Criteria for ‘reduced cholesterol’ claims

Some submitters specifically discussed approaches to establishing criteria for ‘reduced’ cholesterol claims as follows.

Two submitters reflected the importance of having the same meaning for all unqualified ‘reduced’ claims, indicating that there should be 25% less cholesterol than the reference food (NZFS, NZ MoH); however, NZFS also indicated that as there are no Codex provisions in relation to reduced cholesterol claims, consideration could be given to not allowing this claim.

There was also a recommendation that the criteria for ‘reduced’ cholesterol claims should include the total fat profile (saturated fat, polyunsaturated fatty acids etc) (CML).

It was also proposed that the same criteria for a ‘low saturated fat’ claim should be included as a condition for cholesterol claims (GW Foods).

Cholesterol claims should specify that the product is low in ‘dietary cholesterol’ and relevant information on dietary cholesterol should also be included in the Nutrition Information Panel when these claims are made (DAFF).

Criteria for ‘cholesterol free’ claims

Some submitters specifically discussed approaches to establishing criteria for cholesterol ‘free’ claims as follows.

Cholesterol 'free' claims should be allowed on products with no detectable cholesterol (Sanitarium Health Food Comp).

CML recommended that FSANZ should be consistent with its regulation of other ‘free’ claims and therefore remain silent on cholesterol ‘free’ claims. NZFSA indicated that fair trading provisions should apply (i.e. ‘free’ means free) and that the CoPoNC provisions regarding foods being intrinsically free of cholesterol should be retained (i.e. the claim must refer to the whole class of similar foods). It was also noted that New Zealand would be undertaking separate work on “free-from” claims due to international inconsistencies (NZFSA).

Whilst Cadbury Schweppes indicated that ‘cholesterol free’ claims should be treated like all other ‘free’ claims, they also suggested that if there is not an analytical method that is accurate to very low level, and ‘free’ cannot be quantified, the claim should be prohibited. They supported the criteria in CoPoNC in relation to cholesterol ‘free’ claims.

It was also proposed that the same criteria for a ‘low saturated fat’ claim should be included as a condition for cholesterol claims (GW Foods) and that cholesterol claims should specify that the product is low in ‘dietary cholesterol’ and relevant information on dietary cholesterol should also be included in the Nutrition Information Panel when these claims are made (DAFF).

Goodman Fielder provided reasons in support of permitting cholesterol ‘free’ claims as follows:

- Under the current [CoPoNC] conditions which specify certain fatty acid criteria, cholesterol ‘free’ claims are able to direct consumers to more healthy fat choices;
- People who have a moderate to high risk of coronary heart disease are instructed to restrict the intake of cholesterol rich foods. ‘Cholesterol free’ claims are usually prominently displayed on products allowing simple, clear and quick nutrition information to be communicated;

- Research conducted between November 2001 and February 2002 around the use of cholesterol free claims indicated that these claims are important to consumers. When asked what packet information was most important, 72% of respondents indicated that they looked for the claim ‘cholesterol free’. The main reason given was they felt the product was a healthier choice and that it was most likely a suitable food choice for the entire family;
- Full regulation of this claim and full compliance with criteria will address the issues raised around the continued use of cholesterol ‘free’ claims

Other comments

It was noted that these claims are used by manufacturers on some food products and provide information to consumers regarding those products (Nestle). Removal of cholesterol claims would have a big impact on the dairy industry (PB Foods).

One submitter considered that ‘low’ and ‘reduced’ cholesterol claims should still be permitted for foods that normally contain cholesterol, to cater for 'special needs' categories & groups (CML). One submitter stated that their consumer research shows that people affected by heart conditions look for this information and suggested that there is a need to confirm scientific relevance of cholesterol messages and consumer understanding (PB Foods).

Goodman Fielder noted that The Australian Guide to Healthy Eating recognises ‘cholesterol free’ and ‘low cholesterol’ claims as being useful in assisting consumers to eat a diet low in fat and in particular low in saturated fat.

ACCC sought clarification on whether the intention is to prohibit all cholesterol claims or to move cholesterol claims to fit within the health claims framework.

Other comments provided but not in direct response to the question

The Aust. Egg Corp. supported the preferred criteria in relation to cholesterol content claims. They noted that public health guidelines in both Australia and NZ place emphasis on reducing saturated fat as a key strategy for reducing CHD risk rather than dietary cholesterol. They stated that prohibiting cholesterol content claims is therefore in line with current public health recommendations and recent scientific evidence in the area and will assist consumers to focus on reducing saturated fat as the key dietary strategy for reducing coronary heart disease risk.

Goodman Fielder noted that the maximum cholesterol level outlined in CoPoNC (3 mg/100 g/100 ml) is not the same as Codex (5 mg/100 g/100 ml) but the difference is only marginal and considered insignificant. This maximum level is considered insignificant and nutritionally of no consequence in terms of a total diet.

3.9 CARBOHYDRATE

Question 30

Is there merit in including provisions for making ‘carbohydrate claims’? Please provide evidence to support any criteria for preferred ‘carbohydrate claims’, and suggest, with the support of evidence, where disqualifying criteria such as maximum sugar levels or minimum fibre levels would be required for foods to carry such carbohydrate claims.

Out of 147 submitters, 46.9% (69 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	23	15	5	2	45
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	41	21	5	2	69

Overview

Forty-four submitters supported the inclusion of criteria for ‘low carbohydrate’ claims, 43 supported the inclusion of criteria for ‘reduced carbohydrate’ claims, 48 supported the inclusion of criteria for ‘source of carbohydrate’ claims, 49 supported the inclusion of criteria for ‘high carbohydrate’ claims, and 47 supported the inclusion of criteria for ‘increased carbohydrate’ claims. Twenty-two submitters opposed the inclusion of criteria for ‘low carbohydrate’ claims, 17 opposed ‘reduced’ carbohydrate claims, and 16 opposed ‘source’, ‘high’ and ‘increased’ carbohydrate claims. Eight submitters opposed the use of disqualifying criteria, whereas two submitters supported the use of disqualifying criteria in relation to fibre, and three in relation to sugar levels.

Support for provisions for carbohydrate criteria

Of the respondents to this question 42 submitters supported the inclusion of provisions for making carbohydrate claims in general (ACCC, ASA, Assoc. of NZ Advertisers, Aussie Bodies, Cadbury Confectionery, AFGC, Cadbury Schweppes, CMA, CMA-NSW Branch, CMA-Vic Branch, CMA-Qld Branch, CM of SA, CML, DAFF, DA, Dairy Aust., F&B Importers Assoc., Fonterra, GI Ltd, Griffins Foods, Goodman Fielder, Heinz Aust/Heinz Watties NZ, ICA, Kingfood Aust., Mandurah Aust., MasterFoods Aust. NZ, NZ MoH, National Foods, National Starch, Naturo-Pharm Ltd, Nestle, NPANZ, NZ Dairy Foods, NZFGC, NZFSA, NZ Magazines, NZTBC, Palatinit GmbH, Parmalat Aust., PB Foods, Solae Comp, Unilever Australasia).

Sanitarium Health Food Comp supported provisions for ‘source of carbohydrate’ and ‘high carbohydrate’ only (not low or reduced), Naturalac Nutrition supported provisions for ‘high carbohydrate’ (on sports foods) and ‘low carbohydrate’, and

CSIRO-HS&N supported provisions for ‘reduced carbohydrate’ and ‘low carbohydrate’. Whilst supporting carbohydrate claims in general, DAA, GW Foods, Tomox, Tas DoH&HS and NZDA did not support ‘low carbohydrate’ claims.

Reasons for support

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA) and Dairy Aust. considered that carbohydrate claims should be permitted due to market pressures (particularly internationally), consumer demand and scientific developments in the area of carbohydrates and insulin resistance, metabolic syndrome and weight management. PB Foods and Fonterra also noted the latter point.

Other reasons provided by submitters for supporting provision of criteria of carbohydrate claims were that:

- An increasing number of foods are making low or reduced carbohydrate claims and, without definition of these claims, there is enormous potential for consumers to be misled (Diabetes Aust, GI Ltd, and CML);
- These claims have been made for some time without negative impacts (DAFF);
- It is important to have a benchmark for consistency (AFGC, Aussie Bodies, DAA, DAFF, NZDA, GW Foods, Goodman Fielder, MasterFoods Aust. NZ, National Starch, Naturalac Nutrition, Solae Comp, Tas DoH&HS, Tomox);
- Claims regarding carbohydrates are increasing, e.g. ‘total carbohydrates’, ‘impact carbohydrates’, and therefore guidance is needed (ACCC);
- There will be a requirement for consumer education in relation to different carbohydrate sources (Fonterra).

AFGC noted that they found the rationale provided in the IAR that providing carbohydrate claims might be necessary if health claims are based on products meeting certain criteria for content claims (e.g. high carbohydrate), less convincing. They also noted that interest in carbohydrate claims has increased since FSANZ consumer research was reported in 2003.

Complexities

The AFGC, National Foods and NZFGC noted that there are a number of complexities around the issue of carbohydrate claims, such as the relationships between carbohydrate, sugars, fibre, the uniqueness of other high and low claims for the same nutrient and the GI factor. These submitters therefore recommended that FSANZ raise a separate proposal to address the issue of carbohydrate claims. Nestle, Unilever Australasia and Goodman Fielder also agreed that the establishment of criteria for carbohydrate claims should be undertaken outside this proposal. Dairy Aust. and Fonterra noted that it is too early to define specific criteria and conditions

for carbohydrate claims. DAFF also recommended that consideration be given to claims regarding different types of carbohydrates.

DAFF, NZ MoH, NZFSA, and CML commented that consideration should also be given to claims regarding different types of carbohydrates (for example, complex and simple carbohydrates/sugars). Dairy Aust. questioned how ‘simple’ versus ‘complex’ carbohydrates will be defined/explained, how this will fit in with Glycaemic Index and Glycaemic Load and how ‘mixed foods’ (for example, dinner meals) will be defined/explained.

Criteria for ‘high carbohydrate’

A criterion of greater than or equal to 65% of energy from carbohydrate to make a ‘high carbohydrate’ claim was recommended (Diabetes Aust, DAA, GI Ltd, GW Foods, NZDA, National Starch, Solae Comp, Tas DoH&HS). This is based on the fact that common foods that are high in carbohydrate (for example, banana, apple white rice, carrot, breakfast cereal, pasta, boiled potato, white bread, crackers) exceed 65% of energy from carbohydrate. Tas DoH&HS noted that this is consistent with Australian Dietary Guidelines.

Griffins Foods suggested that high carbohydrate claims be permitted where more than 55% of energy is derived from carbohydrate and also suggested that FSANZ consider the suitability of statements such as ‘excellent source of energy from carbohydrates’.

Sanitarium Health Food Comp suggested a criterion of 20 g carbohydrate per serve, which is based on the amount of carbohydrate in a serving of breakfast cereal, white bread/rice and foods traditionally considered by nutritionists to be high in carbohydrate.

CML and Naturalac Nutrition recommended that high carbohydrate claims be permitted but did not suggest any criteria.

Criteria for ‘reduced carbohydrate’

The majority of submitters that recommended criteria for ‘reduced carbohydrate’ claims, recommended that ‘reduced carbohydrate’ claims have at least 25% reduction in total carbohydrate compared to their normal counterpart (Diabetes Aust, GI Ltd, CSIRO - HS&N, Unilever Australasia, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA, AFGC, MasterFoods Aust. NZ, Heinz Aust/Heinz Watties, National Foods).

Whilst opposed to ‘reduced carbohydrate’ claims, Go Grains advised that if such claims are permitted, the following criteria should apply:

- The carbohydrate content should be at least 25% lower than its corresponding reference food and the label should state this; and
- The energy content must be less than 50% of the conventional equivalent.

Diabetes Aust. and GI Ltd also considered that criteria for total energy should be included. CML recommended that FSANZ develop criteria for reduced carbohydrate claims but did not suggest any criteria.

Criteria for ‘low carbohydrate’

Cadbury Schweppes stated that low carbohydrate claims (and fibre claims) might be justified, as products containing polydextrose or a similar bulking agent will have lower carbohydrate and sugar levels than the standard product. Cadbury Schweppes did not propose a quantified figure but suggested that a similar level to that for ‘low sugar’ could be considered for making a low carbohydrate claim.

Naturalac Nutrition noted that there are a number of low carbohydrate foods on the market in New Zealand, particularly protein bars, sports foods and some confectionery, and that this will probably increase significantly. They commented that many of these products are imported and that it is important to have some form of definition to ensure a fair and level playing field. Naturalac Nutrition recommended that a criterion of 5 g of carbohydrate per serve or less be set for low carbohydrate claims.

Diabetes Aust. and GI Ltd recommended that the criteria for ‘low carbohydrate’ claims be defined as containing less than 10 g of carbohydrate per serve. This figure is based on dietary modelling conducted by Diabetes Aust. through GI Ltd when determining criteria for the GI Tested Program.

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA) suggested that FSANZ might refer to other ‘low’ claims as a precedent for establishing criteria for ‘low carbohydrate’ claims.

CML, National Starch, and Solae Comp recommended that FSANZ develop criteria for low carbohydrate claims but did not suggest a level.

Whilst opposed to low carbohydrate claims, GW Foods and Go Grains advised that if such claims were approved, the information should be meaningful and must not be misleading or deceptive.

These submitters made the following recommendations in relation to low carbohydrate claims:

- The energy value of a low carbohydrate food must be less than that of the conventional equivalent and there should be a comparison to reflect this on the label;
- If a low carbohydrate claim is made in respect of foods that are inherently low in carbohydrates, then the claim should refer to the whole class of food and not just one brand;
- Foods that make a low carbohydrate claim should be prohibited from making claims in respect to the glycaemic index of the food. If the carbohydrate content

is reduced sufficiently to make a low carbohydrate claim, then the nutritional relevance of GI becomes less meaningful; and

- Any accompanying wording should be consistent with the claim – for example statements such as ‘the food is a good source of energy’ should not be permitted (Go Grains only).

Aussie Bodies recommended that for ‘low carbohydrate’ claims, the sugar should contribute less than 10% of the total energy of the food.

Criteria for ‘source of carbohydrate’

Tomox recommended that ‘source of’ claims be allowed rather than ‘low’ claims. Sanitarium Health Food Comp supported the use of criteria for ‘source of carbohydrate’ claims and suggested that the product contain at least 10 g carbohydrate per serve, which is based on the amount needed to elicit a glycaemic response.

Disqualifying criteria

There were 8 submitters that disagreed with setting disqualifying criteria for sugar content (Diabetes Aust, GI Ltd, Heinz Aust/Heinz Watties NZ, Sanitarium Health Food Comp, Naturalac Nutrition, NHF Aust., NHF NZ, CSIRO - HS&N).

This was because many foods that are high in carbohydrate are high in sugar (for example, fruit and milk. Also, high starch foods are not necessarily of higher nutritional value than high sugar foods and many have a higher GI (Diabetes Aust, GI Ltd, Sanitarium Health Food Comp.). Sanitarium Health Food Comp indicated that some high sugar foods are promoted as being beneficial for certain groups (for example, sports drinks as a source of carbohydrate for athletes) and therefore it would not be appropriate to require a maximum sugar content in these drinks. Similarly, Naturalac Nutrition stated that, in the context of sports foods, disqualifying criteria for sugar are inappropriate, as products may be deliberately formulated with levels of sugar to promote rapid replacement of glycogen. NHF Aust. supported by NHF NZ did not support disqualifying criteria around sugar, so that the claim would be accurate and not misleading.

Sanitarium Health Food Comp did not support the inclusion of minimum fibre levels for carbohydrate claims as not all foods are a source of fibre (for example, white rice).

Griffins Foods stated that disqualifying criteria for maximum sugar levels and minimum fibre levels may be applicable, however they did not elaborate further.

Solae Comp and National Starch recommended that a minimum level for fibre should be required for low carbohydrate claims.

GW Foods recommended that fibre should be listed on the Nutrition Information Panel when a carbohydrate claim is made.

Did not support provisions for carbohydrate claims

There were 16 submitters (23% of those that responded to this question) who did not support the inclusion of provisions for making carbohydrate claims in general (TCCA, Canterbury DHB, CHC, Go Grains, Mainland Products, MLA, Monash Uni. - N&D Unit, NSW DoH - N&PA Branch, NHF Aust., NHF NZ, PHAA (supported by ACA), Public Health South, SA DoH, Dr. R. Stanton, WA DoH).

In addition to the 15 submitters above, six submitters did not support provision for 'low carbohydrate' claims specifically (Sanitarium Health Food Comp, DAA, GW Foods, Tomox, Tas DoH&HS and NZDA).

Reasons for supporting provisions

TCCA, Dr. R. Stanton and Go Grains considered that these claims are likely to further confuse consumers, with PHAA (supported by ACA), Public Health South, and Monash Uni. – N&D Unit, NSW DoH - N&PA Branch, SA DoH and WA DoH commenting that consumers may not distinguish between sources and types of carbohydrate. PHAA (supported by ACA) and Monash Uni. – N&D Unit, WA DoH also noted the potential for confusion between carbohydrate claims and glycaemic index/load claims. Tas DoH&HS also agreed with the above points although they opposed the inclusion of criteria for 'low carbohydrate claims only. Mainland Products considered that carbohydrates are too broad a group for such claims to make sense, although considered that there is a place for sugar, fibre and possibly complex carbohydrate claims.

Dr R. Stanton, PHAA (supported by ACA), Monash Uni. - N&D Unit, Canterbury DHB, CHC, MLA stated that there is no justification for carbohydrate claims. PHAA (supported by ACA), Monash Uni. - N&D Unit, WA DoH stated that there is no specific reference to carbohydrate claims in the Dietary Guidelines and they are of little interest to consumers. Canterbury DHB considered that carbohydrate claims are only used to take advantage of low carbohydrate diets that are not in line with public health guidelines. NHF Aust. and NHF NZ stated that they did not support provisions for high, low, increased or reduced carbohydrate claims, as it is extremely difficult to determine normal levels due to the widely varying needs of individuals.

Sanitarium Health Food Comp also considered that reduced carbohydrate claims should be prohibited, as they do not support the Dietary Guidelines for Australian Adults, which encourage consumption of carbohydrate foods. They also stated that such claims reinforce consumer misconceptions that carbohydrates are 'fattening'.

DAA, NZDA and Tas DoH&HS, whilst in agreement with carbohydrate claims generally, opposed the use of low carbohydrate claims and believed that they should be prohibited on the basis of their potential to mislead consumers. GW Foods, Go Grains, and Sanitarium Health Food Comp also opposed the use of low carbohydrate claims on the basis that it may reinforce consumer misconceptions that all carbohydrates are inherently unhealthy or 'fattening'. Go Grains also noted that low carbohydrate claims will promote a reduction in carbohydrate intake, whereas the focus should be on improving consumers' understanding of appropriate, high quality carbohydrates for regular consumption, as opposed to less nutritious forms.

Additionally, dietary survey data (NNS 1995) does not support the idea that Australians are over-consuming carbohydrates.

NHF Aust. and NHF NZ considered that consumer interest in low carbohydrate diets for weight loss might encourage an excessive use of low carbohydrate claims, potentially adding to consumer confusion about healthy, balanced diets.

The PHAA (supported by ACA), Monash Uni. - N&D Unit, WA DoH, Tas DoH&HS and SA DoH noted that in Canada, recent changes to food regulations have resulted in carbohydrate claims, including 'low carbohydrate', 'reduced carbohydrate', 'source of carbohydrate' being prohibited.

General comments

NCWA did not express a preference for whether carbohydrate claims should or should not be permitted, noting that consumers need an understanding of nutrition to understand what carbohydrate is. Similarly, Nutra-Life Health & Fitness NZ did not comment on the merit of including provisions for carbohydrate claims, however they made the following general comments:

- The Atkins Diet has drawn attention to the carbohydrate content of foods;
- Serving size versus actual consumption is an issue; and
- Low, reduced and high carbohydrate claims are meaningless to consumers without some comparator.

Other comments provided but not in direct response to the question

Axiome considered that carbohydrate is a complex issue and should be addressed in a separate proposal to P293. They also noted recent consumer interest in carbohydrate content and type, in food.

Campbell Arnott's Asia Pacific supported the inclusion of provisions for carbohydrate claims and recommended that claims should be covered by the ACCC if false or misleading. They also recommended that foods with at least 25% reduction in carbohydrate should be permitted to claim 'reduced carbohydrate', consistent with other 'reduced' type claims.

Queensland Health – PHS did not support content claims in relation to carbohydrates for the following reasons:

- There is no specific comment on carbohydrate claims in the Dietary Guidelines and they are of little interest to consumers; and
- They may confuse consumers who do not distinguish between sources and types of carbohydrate and confuse them with GI/GL claims.

Question 31

Are Glycaemic Index and Glycaemic load content claims? If so, what criteria should apply and what provisions should be made in relation to declaring the quantity for GI?

Out of 147 submitters, 49.7% (73 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	16	5	2	48
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	1	-	-	3
Total	43	23	5	2	73

Overview

There were 15 submitters who considered that GI and GL are content claims, whereas 38 submitters did not agree with this. The main reasons provided for not considering GI and GL as content claims revolved around that fact that they are indicators of an effect on the body, rather than just the ‘content’ of a food. Some submitters recommended qualifying criteria, such as those already used for ‘low’, ‘medium’ and ‘high’ GI and GL, and some based on level of carbohydrate in the food. The use of disqualifying criteria was recommended as well. Two submitters felt that GI and GL claims can be displayed on the Nutrition Information Panel, and two other submitters noted previous advice from ANZFA that GI values should appear in a separate box near the Nutrition Information Panel.

Support GI and/or GL as content claims

Of the respondents to this question, 21% (15 in total) considered that GI and GL are content claims (Bakewell Foods, TCCA, Diabetes Aust, DAA, GI Ltd, Heinz Aust./Heinz Watties NZ, NZFSA, Crop & Food Research, NZDA, Mainland Products, NZ Dairy Foods, CML, Go Grains, Wyeth Aust., DAFF). TCCA also noted that there is potential for an implied health claim with diabetes.

CSIRO-HS&N, Functional Whole Foods NZ, Nutra NZ and Sanitarium Health Food Comp considered that GL could be expressed as a content claim. Sanitarium Health Food Comp also noted that GL is related in part to the nutrient content of a food, that is, the amount of available carbohydrate.

Oppose GI and/or GL as content claims

52% of submitters (38 in total) that responded to this question did not consider that GI and GL are content claims (CMA, Mandurah Aust, Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA, Dr R. Stanton, Nestle, Monash Uni-N&D Unit, Unilever Australasia,

NSW DoH - N&PA Branch, NSW Food Authority, NZ MoH, Public Health South, Fonterra, Griffins Foods, CSIRO-HS&N, NZFGC, AFGC, MasterFoods Aust. NZ, Dairy Aust., F&B Importers Assoc., Goodman Fielder, MLA, National Starch, Parmalat Aust., PB Foods, NHF Aust., NHF NZ, PHAA (supported by ACA), ACCC, Tas DoH&HS, WA DoH).

The following reasons were provided for this view:

- GI and GL are indicators of the physiological effects of carbohydrate in food on the human body (CMA, Mandurah Aust, Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA, Nestle, AFGC, MasterFoods Aust. NZ, Dairy Aust., MLA, PB Foods, NHF Aust., NHF NZ) and are also influenced by other nutrients in the food e.g. protein and fat (PB Foods). They are not themselves part of the food (AFGC, MasterFoods Aust. NZ);
- GI and GL are more appropriately termed nutrient function claims (Nestle, Fonterra, Dairy Aust., NHF Aust., NHF NZ, Tas DoH&HS);
- GI and GL relate to the effect on blood glucose, which is a biomarker (Dr R. Stanton, Monash Uni-N&D Unit, NSW DoH - N&PA Branch, WA DoH, NZ MoH, PHAA (supported by ACA)). These claims should be subject to the high level substantiation process (NSW DoH - N&PA Branch, WA DoH, PHAA (supported by ACA));
- GI and GL are measurable biological parameters, however they are not strictly biomarkers, as they do not in themselves predict the risk of human disease, disorders, conditions or defects. However, if consumers perceive the claims as referring to the effects on blood glucose, then they would be considered as implied high level claims and would be subject to the high level substantiation and pre-approval process (Tas DoH&HS);
- GI and GL claims have implication far greater than mere 'content' (NSW Food Authority);
- Including GI and GL on food labels would create more confusion for the public (Public Health South);
- GI does not relate to a nutrient or a biologically active substance (Parmalat Aust, Tas DoH&HS, Goodman Fielder, National Starch). Since GI is used in the calculation of GL where $GL = GI \times \text{amount of carbohydrate in the food}$, then it follows that GL should not be considered as a content claim either (Goodman Fielder, National Starch);
- GI only measures available carbohydrate so any unavailable carbohydrate, e.g. resistant starch, is not taken into account (Goodman Fielder, National Starch). National Starch provided an example to indicate how GI fails to account for resistant starch.

- The inclusion of GI in content claims will impact negatively on commercial opportunities for resistant starch suppliers (National Starch).
- GI claims should be included in the health claims framework, as distinct from the nutrition claims framework, given its linkage to disease management and control (i.e. diabetes) (ACCC). ACCC also noted that GI claims continue to be the subject of consumer complaints and enquiries.

Sanitarium Health Food Comp commented that GI might not fit the technical definition of a content claim, given that is a measure of blood sugar response to food. However, they considered that GL is partially related to the nutrient content of a food.

Tomox considered that GI and GL constitute claims and should be permitted, however, they did not specify whether they are content claims. Griffins Foods and MLA recommended that GI and GL claims be covered under the general claims category and substantiated accordingly.

Cadbury Schweppes queried whether GI and GL are content claims, suggesting that they are more likely to be function claims. They advised that clarification is required to determine where these claims fit within the framework.

NCWA and GW Foods commented that they are unsure whether GI and GL are content claims. GW Foods believed that GI and GL are a measure of a physiological response to food, which is not a biomarker, nor a reference to a serious disease. NCWA suggested that GI and GL may be health claims and considered that criteria should be developed, given the increasing use of the claims on foods. They also questioned whether GI is based on the relationships between a number of nutrients.

Criteria for GI and GL

Submitters made the following comments regarding the criteria for GI:

- Foods should contain a minimum amount of total carbohydrate to ensure the claim is biologically relevant (Diabetes Aust, DAA, NZDA, GI Ltd);
- Foods should comply with inclusion and exclusion criteria (DAA, NZDA);
- The GI Tested program has disqualifying criteria for total energy, total and saturated fat and sodium; and qualifying criteria for total carbohydrate (10 g/serve), dietary fibre and calcium in appropriate food categories. Criteria are category specific (Diabetes Aust, GI Ltd);
- A serve of the food should contain at least 20 g of carbohydrate (CSIRO-HS&N, NHF Aust., NHF NZ);
- A serve of the food should contain at least 10 g of carbohydrate (GW Foods);
- The current criteria for 'high', 'medium' and 'low' should apply (Mainland Products, NZ Dairy Foods);

- Criteria for ‘high’, ‘medium’ and ‘low’ would need to be specified (CML, Sanitarium Health Food Comp.). These categories are preferable to using actual numbers, as differences in the numerical GI value of less than 20 are not clinically significant (Sanitarium Health Food Comp.). Also, GI values may be derived from pooling the results from 10 students who consume the test food and the confidence intervals are extremely wide (Dr R. Stanton);
- Disqualifying criteria based on dietary fibre and energy could be included to tighten up the misuse of GI claims (CML);
- The existing guidelines for GI set by Diabetics Association should be followed (Bakewell Foods);
- The claim must be based on foods in their altered/prepared state, given that food that needs to be altered before consumption may have an altered GI or GL. Consumers should be informed of the effect on GI or GL of altering a food before consumption (Wyeth Aust);
- The Standard should specify a reference quantity on which the GI and GL of a food should be based (Wyeth Aust);
- Qualifying criteria are not needed (Dairy Aust);
- Qualifying criteria are inappropriate as the more protein or fat in the diet, the lower the proportion of carbohydrate and hence the lower the glycaemic response (MLA)

Submitters made the following comments regarding the criteria for GL:

- The GL on a claim must equal the load for the specified food when it is prepared in the way it would typically be prepared before consumption. If there are a number of preparation methods and these affect the GL, this information should be included on the label (TCCA, Wyeth Aust.). Consumers should be informed of the effect on GI or GL of altering a food before consumption (Wyeth Aust.);
- The GL must be given per average serve and per 100 g in the Nutrition Information Panel (TCCA);
- The criteria for GL need to specify the quantity of food to which the claim applies, the content of total fat, saturated fat, sugar(s) and sodium, and energy density of the food (Monash Uni. -N&D Unit, PHAA (supported by ACA), Tas DoH&HS, WA DoH);
- The current criteria for ‘high’, ‘medium’ and ‘low’ should apply (Mainland Products, NZ Dairy Foods);
- The Standard should specify a reference quantity on which the GI and GL of a food should be based (Wyeth Aust);

- GL claims are based on GI values therefore GL claims should also have a minimum carbohydrate content. GI claims that do not meet specified criteria should be prohibited (NHF Aust., NHF NZ);
- Qualifying criteria are not needed (Dairy Aust);
- Qualifying criteria are inappropriate as the more protein or fat in the diet, the lower the proportion of carbohydrate and hence the lower the glycaemic response (MLA);
- If a food has a blood glucose response less than 10 Glycaemic Glucose Equivalents/serve (GGEs/serve) i.e. equivalent to less than 10 g of glucose/serve, it should be considered a low GI food (Crop & Food Research).

Fonterra noted that it is too early to set appropriate criteria for GI and GL claims. The AFGC and NZFGC stated that the establishment of criteria is unnecessary, as they do not consider GI and GL to be content claims.

Heinz Aust./Heinz Watties NZ commented that consideration should be given to unified acceptance of definitions of GI/GL, including low, medium and high.

GL versus GI

Several submitters noted that GL is more important/relevant than GI (Dr R. Stanton, Fonterra, Monash Uni. -N&D Unit, Crop & Food Research, PHAA (supported by ACA), Nutra NZ, Aussie Bodies, Functional Wholefoods NZ, WA DoH).

Submitters noted the following specific comments:

- GL is a more accurate measure of likely blood glucose response than GI (Monash Uni. -N&D Unit, Crop & Food Research, PHAA (supported by ACA), WA DoH);
- GI could be misleading as it does not take into account serving size and therefore total glycaemic load (Monash Uni-N&D Unit, Crop & Food Research, Functional Wholefoods NZ, Aussie Bodies, PHAA (supported by ACA), Tas DoH&HS, WA DoH);
- Low GI products may still have a high GL depending on the amount consumed (Nutra Life H&F);
- GL provides more useful information to the consumer than GI and could be incorporated in the Nutrition Information Panel with GL/serve and GL/100 g (Nutra NZ, Crop & Food Research). Consumers will be able to determine the impact of consuming foods containing different amounts of carbohydrates on blood glucose, and therefore will be easily able to compare products. This comparison is not possible with GI, as GI does not change with food intake (Crop & Food Research).

Monash Uni. -N&D Unit and PHAA (supported by ACA) also noted that in Canada, claims such as ‘low GI’ or ‘does not raise blood sugar’ are not acceptable, given the absence of a defined method for determining the GI of each food.

Diabetes Aust. and GI Ltd did not recommend the use of claims relating to GL for the following reasons:

- GL is a function of a food’s GI multiplied by its carbohydrate content. It is recommended that GI be only used to compare foods within a food group (WHO/FAO report ‘Carbohydrates in Human Nutrition’, 1998). By definition, macronutrient intakes are essentially the same within a food group and therefore selecting the lowest GI food would be the same as choosing the food with the lowest GL;
- Epidemiological evidence supports the consumption of higher carbohydrate, higher fibre and low GI diets in the prevention of type 2 diabetes and other chronic diseases. These diets have a lower GL because of their low GI, and not their low carbohydrate content; and
- Health risks may increase if decreasing the amount of total carbohydrate despite still eating high GI foods lowers the average GL of a diet. If low GL claims are allowed, a range of low carbohydrate, high GI foods may be produced and marketed with potentially detrimental health effects.

GI Ltd also considered that that there is no evidence to support the GL model proposed by New Zealand Crop & Food, and that their definition differs from GL defined and tested internationally.

CSIRO-HS&N stated that GL is problematic as very low carbohydrate foods deliver a low glycaemic load even though it cannot be computed according to current definitions. However, they noted that if GI is permitted on a low carbohydrate food, then a GL claim is probably not required.

Testing methodology

The ACCC considered that it would benefit from provisions relating to GI, particularly in relation to establishing the standard for GI testing (*in-vitro* vs. *in-vivo*). Cadbury Schweppes, GW Foods, Heinz Aust./Heinz Watties NZ, Tas DoH&HS also noted that clarification/definition of testing methodologies for GI or GL is required, with Heinz Aust./Heinz Watties NZ recommending that testing be *in vivo* rather than *in vitro*.

DAA and NZDA considered that GI should be tested using methodology in accordance with Standards Australia.

Nutra Life H&F commented that there is a substantial cost to testing which may disadvantage smaller manufacturers.

Provisions for declaration

Fonterra and Dairy Aust. commented that GI and GL claims could be displayed on the Nutrition Information Panel, provided that in doing so, it is not misleading to the consumer. Dairy Aust. noted that generally, information on GI appears in close proximity to the Nutrition Information Panel.

Diabetes Aust. and GI Ltd noted previous advice from ANZFA in March 2001 advising that the GI value should not be in the Nutrition Information Panel, as the value does not vary according to the amount consumed. Instead, it should appear in a separate box near the Nutrition Information Panel so that consumers can easily locate it.

Support GI and/or GL claims

ASA, Assoc. of NZ Advertisers, NPANZ, Naturo Pharm, NZ Magazines, NZTBC and Cadbury Confectionery supported the permission for GI and GL claims although they did not provide comment on the criteria that should apply for these claims. GW Foods also believed that GI and GL should be considered under the new standard, together with definitions for each.

CHC considered that GI and GL are health claims but did not provide further comment

ASMI and NZFSA believed that consideration should be given as to whether GI and GL are a form of health claim. NZFSA also noted that there is significant debate on the benefits of such claims, however, if these claims are considered further, only GI or GL should be permitted and not both. Similarly, NSW DoH - N&PA Branch stated that a thorough investigation of the validity of each measure should be conducted before authorising the use of these claims.

Nutra-Life H&F commented that GL and GI are useful comparators but need to be understood by consumers. They also suggested that packaging should state the comparisons between high, medium and low GI/GL claims.

NZFSA and PB Foods commented on the need for consumer education on GI and GL if these claims are permitted.

Oppose GI and/or GL claims

National Foods did not consider GI or GL to be health claims, either general level claims or high level claims, as they are indicators of the physiological or end-point of the food and not part of the food themselves. They noted that GI and GL is relevant to certain groups such as athletes and diabetics and provides a nutrition interpretation tool similar to the Australian Guide to Healthy Eating. Therefore, in their view, GI and GL should not be captured by the regulatory system for health claims; rather, Trade Practices provisions cover the requirements for false and misleading claims and the substantiation of GI measurements. National Foods also strongly recommended that FSANZ differentiate between dietary advice such as GI and GL and claims on foods.

Canterbury DHB believed that GI and GL claims should be banned as they are of limited use on individual foods and can be very confusing when misused. They recommended that the public should be encouraged to consider fibre content.

A number of submitters noted that there is no reference to either GI or GL in international regulations, as detailed in Appendix 1 of the IAR (Tas DoH&HS, WA DoH, Monash Uni. -N&D Unit, PHAA (supported by ACA)).

DAFF noted that Standards Australia is currently developing a standard for GI claims. Should GI and GL claims not be covered by the Code, DAFF recommended that FSANZ monitor the Standards Australia process to ensure that there is consistency between its requirements and those requirements for other claims on foods.

Other comments provided but not in direct response to the question

Axiome did not consider GI and GL to be content claims because they measure the physiological effect of food. As such, they do not support the need for criteria.

Queensland Health – PHS stated that GI and GL are related to properties of a food/diet but they also relate specifically to the physiological process of a rise in blood glucose. They believed that GI and GL claims are more appropriately classified as biomarkers and therefore a high degree of substantiation and pre-approval before they can be used.

Crop & Food Research recommended that the definition of nutrient content claim be amended to include other substances and proposed the following definition: ‘ A general level claim that describes or indicates [explicitly or implicitly] the presence or absence of energy or of a nutrient or biologically active substance or other substances in a food’. Other substances would be defined as ‘substances other than nutrients that have a nutritional or physiological effect’.

GI Ltd expressed concern about the proliferation of uncertified GI trademark/symbols on food labels, given their lack of credibility, no legal obligations and that some have been deliberately misleading. Issues of food safety for people with diabetes arise if GI information is incorrect.

GI is acknowledged as a more accurate guide to the rate of CHO digestion/absorption and subsequent effects on blood glucose levels, than proportions of CHO, sugars and fibre. The AusDiab Study showed that one in 4 Australian adults have impairments in glucose metabolism (Diab Care 2002; 25: 829-834). The Diabetes Prevention Program (DPP) (N Engl J Med 2002; 346: 393-403) and the Lyon Heart Study (Circulation 1999; 99: 779-785) amongst other studies provide clear evidence that intensive diet/exercise interventions are more effective than drug therapy to prevent/delay type 2 diabetes or cardiovascular disease. The DPP study found intensive diet/lifestyle interventions were as cost effective as metformin, one of the cheapest drugs for improving insulin sensitivity (Diabetes Prevention Program Research Group, Diabetes Care 2003; 26: 2518-2523) (GI Ltd).

3.10 SUGAR

Question 32

Should these sugar claims be permitted?

Out of 147 submitters, 49.7% (73 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	24	16	5	3	48
Government	7	2	-	-	9
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	43	22	5	3	73

Overview

Sixty-one submitters supported permission of ‘low sugar’ claims, 60 supported permission for ‘reduced sugar’ and ‘unsweetened’ claims, and 59 supported ‘no added sugar’ and ‘sugar free’ claims. In opposition to permission of these claims, four submitters did not support permission for ‘low sugar’ and ‘unsweetened’ claims and five did not support ‘reduced sugar’, ‘no added sugar’ and ‘sugar free’ claims.

Agree all sugar claims should be permitted

The majority of submitters agreed to all sugar claims being permitted (Dr R Stanton, NHF Aust., PHAA (supported by ACA), Aussie Bodies, AFGC, MasterFoods Aust. NZ, ASMI, Cadbury Schweppes, CML, Dairy Aust., National Foods, F&B Importers Assoc., GW Foods, Goodman Fielder, Parmalat Aust., Sanitarium Health Food Comp, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, DAFF, WA DoH, CSIRO - HS&N, Monash Uni - N&D Unit, NZ MoH, NZFSA, NHF NZ, Public Health South, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, NZ Magazines, Griffins Foods, NZ Dairy Foods, NZFGC, Nutra NZ, NZJBA, Frucor, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Heinz Aust/Heinz Watties NZ, Nestle, Unilever Australasia, William Wrigley Junior).

Canterbury DHB added that this support was given providing there were disqualifying criteria also.

NSW Food Authority supported these claims if research shows that provision of this information has a role in improving the overall diet of consumers that require a sugar-controlled diet.

‘Low (in) sugar’ claims

There were 61 submitters who agreed these claims should be permitted, including the 58 listed above as well as Bakewell foods, Mainland Products and TCCA.

Four submitters were opposed to all sugar claims being permitted, including ‘low (in) sugar’ claims (Diabetes Aust., DAA, NZDA, GI Ltd).

‘Reduced sugar’ claims

There were 60 submitters who agreed these claims should be permitted, including those listed above as well as Bakewell foods and Mainland Products.

Five submitters were opposed to ‘reduced sugar’ claims being permitted (Diabetes Aust., DAA, NZDA, GI Ltd, TCCA).

TCCA believed that ‘reduced sugar’ claims had potential to mislead consumers, as supported by FSANZ Qualitative Consumer Research.

‘No added sugar’ claims

There were 59 submitters who agreed these claims should be permitted, including the 58 listed above and Bakewell Foods.

Five submitters were opposed to ‘no added sugar’ claims being permitted (Diabetes Aust., DAA, NZDA, GI Ltd, Mainland Products).

Nutra NZ considered that the ‘no added sugar’ statement would be useful when the nutrition information panel indicates high sugar content due to lactose in a dairy-based product for instance.

‘Unsweetened’ claims

In addition to the 58 submitters above who agreed these claims should be permitted, Bakewell Foods and Mainland Products also supported permission of ‘unsweetened’ claims.

Four submitters were opposed to all sugar claims being permitted, including ‘unsweetened’ claims (Diabetes Aust., DAA, NZDA, GI Ltd).

Cadbury Schweppes pointed out that ‘unsweetened’ and ‘no added sugar’ claims would be prohibited on foods containing milk (i.e. due to the naturally present lactose).

‘Sugar free’ claims

In addition to the 58 submitters above who agreed these claims should be permitted, Mainland Products also supported permission of ‘sugar free’ claims.

Five submitters were opposed to 'sugar free claims being permitted (Diabetes Aust., DAA, NZDA, GI Ltd, Bakewell Foods).

National Foods commented that 'sugar free' was a simple, clear message that had been used for several years. Heinz Aust/Heinz Watties NZ believed the 'sugar free' claim should be permitted in the standard.

Griffins Foods proposed that given the 'sugar free' claim is no longer strictly valid, then 'very low in sugar' claims could be introduced using existing CoPoNC 'sugar free' criteria.

FSANZ notes that issues regarding 'sugar free' need to be considered in conjunction with the answers to question 11 in attachment 6.

Reasons for supporting or not supporting permission of sugar claims

Reasons provided by submitters for supporting the sugar claims in general were:

- They might help to reduce sugar consumption, in keeping with dietary guidelines (Dr. R. Stanton, PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni - N&D Unit and Public Health South);
- They are useful in assisting consumers to choose a healthy diet (NSW DoH - N&PA Branch);
- Sugar is a major area of interest for consumers (Aussie Bodies);
- The claims were well established (Goodman Fielder, NZFGC, Nestle), and with no evidence of market failure they should continue to be permitted (AFGC, MasterFoods Aust. NZ, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia);
- They are currently permitted (Griffins Foods);
- These claims would assist consumers make informed food choices especially those with an interest in blood glucose control, dental health and weight management, as supported by dietary guidelines (Dairy Aust., National Foods, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Nestle, William Wrigley Junior);
- Consumers and specific groups such as people with diabetes, who are concerned about the sugar content of their diets, may find information about which products are lower in sugar to be beneficial (Wyeth Aust.);
- They would be useful in addressing obesity and dental health problems (NZFGC);

- The messages to be simple and clear messages, which have been used for several years and are well understood by consumers, as evidenced by the increase in demand for these products in the fruit juice and confectionery categories (National Foods);
- They would be of value to consumers (Sanitarium Health Food Comp, NZFSA, NZ MoH);
- Consumers look for, understand and want this information (CHC); and
- Recent research has linked high, added sugar intakes, particularly in the form of drinks, with increased obesity risk (Sanitarium Health Food Comp).

Concerns regarding one or more of the proposed sugar claims were as follows (although some of the following submitters were in favour of permission for the proposed sugar claims):

Diabetes Aust. and the GI Ltd, considered all sugar claims to be potentially misleading. They pointed out that the GI of sugars range from very low (fructose = 19) to very high (glucose = 100) and on average foods high in sugar have a lower GI than foods high in complex carbohydrates (Foster-Powell, et al. 2003). In addition they commented that manufacturers would add highly refined starches that have a high GI and no nutritional value other than energy, therefore it was illogical and potentially misleading to consumers to single out the sugar content of a food as a rationale for food purchasing decisions.

DAA, NZDA, Solae Comp, Tas DoH&HS and National Starch believed that sugar claims have the potential to mislead consumers and they noted FSANZ research that showed that only 38% of consumers were aware that ‘no added sugar’ labelled foods could be low/medium/high in sugar. Tas DoH&HS referred to an objective for developing food regulatory measures in Section 10 of the FSANZ Act which related to prevention of misleading or deceptive conduct. They suggested that ‘no added sugar’ claims should carry a disclaimer adjacent to the claim in a font and size equally as noticeable as the claim if the product contains naturally occurring sugars or is not reduced in energy compared to the reference product.

Although not specifically stating that they did not support permission of these claims, Tomox considered ‘no added sugar’ and ‘unsweetened’ claims to be potentially confusing. Mainland Products considered ‘no added sugar’ claims to be misleading if a food is intrinsically high in fructose or other sugars and they suggested that disqualifying criteria apply to such products on the basis of energy derived from sugars.

NCWA stated that many consumers do not know the names of sugars added to food.

Question 33

Do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 46.3% (68 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	10	5	5	45
Government	6	2	-	-	8
Public health	7	4	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	42	16	5	5	68

Overview

Thirty-seven submitters agreed with the preferred criteria for 'low (in) sugar' claims whereas four disagreed with these criteria. Thirty-five submitters agreed with the preferred criteria for 'reduced (in) sugar' claims, whereas four disagreed. Twenty-three submitters agreed with the preferred criteria for 'no added sugar' claims, whereas 29 disagreed. Twenty-six submitters agreed with the preferred criteria for 'unsweetened' claims, whereas 16 submitters disagreed. Twenty-eight submitters stated that they agreed with the preferred criteria for 'sugar free' claims, whereas 26 submitters did not agree with these criteria.

Agreement or disagreement with the preferred criteria

There were:

- 37 submitters that clearly stated that they agreed with the preferred criteria for 'low (in) sugar' claims whereas four submitters did not agree with these criteria;
- 35 submitters that clearly stated that they agreed with the preferred criteria for 'reduced (in) sugar' claims whereas four submitters did not agree with these criteria;
- 23 submitters that clearly stated that they agreed with the preferred criteria for 'no added sugar' claims whereas 29 submitters did not agree with these criteria;
- 26 submitters that clearly stated that they agreed with the preferred criteria for 'unsweetened' claims whereas 16 submitters did not agree with these criteria; and
- 28 submitters that clearly stated that they agreed with the preferred criteria for 'sugar free' claims whereas 26 submitters did not agree with these criteria.

The numbers above relating to those in disagreement with the proposed criteria include two submitters (Diabetes Aust., GI Ltd) who did not support that these claims be permitted and therefore did not support the criteria either.

The remaining submitters did not specifically answer the question but made comments (DAA, NZDA, National Starch & Solae Comp, Tas DoH&HS, PB Foods, NZFSA).

General comments

NSW Food Authority agreed with the proposed criteria because they appear to be based on CoPoNC principles and the extra disqualifiers are sensible.

Solae Comp, National Starch, Tas DoH&HS, and Griffins Foods suggested that a disclosure statement informing consumers if a product contains natural sugar should be included for the proposed sugar claims. Public Health South, DAA, NZDA supported the proposal for a disclosure statement if the food is high in natural sugars or energy.

Nutra-Life H&F stated that for consumers and even some well-informed people, the term 'sugars' is not well understood.

Low (in) sugar(s)

There were 37 submitters that clearly stated that they agreed with the criteria for 'low (in) sugar' claims that were proposed at Initial Assessment (TCCA, Dr R Stanton, PHAA (supported by ACA), ASMI, CHC, Sanitarium Health Food Comp, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, WA DoH, Monash Uni – N&D Unit, CSIRO HS&N, NZ MoH, Public Health South, Canterbury DHB, NZFGC, Nutra-Life H&F, Nutra NZ, NHF Aust., NHF NZ, Aussie Bodies, AFGC, MasterFoods Aust. NZ, CML, Dairy Aust, GW Foods, Goodman Fielder, National Foods, DAFF, NZJBA, Frucor, Griffins Foods, Mainland Products, Unilever Australasia).

Dairy Aust. have been included in this total however they also suggested adding the word 'or' after "... per 100g of food" for 'low sugar' claims.

There were four submitters who did not agree these criteria (NZ Dairy Foods, Heinz Aust./Heinz Watties NZ) including two submitters (Diabetes Aust., GI Ltd) who did not agree with the use of this claim.

NZ Dairy Foods noted the 'low in sugar' claim does not allow for natural sugars in whole foods such as milk and they suggested reviewing the criteria to 5 g/100 ml to allow for natural sugars.

Heinz Aust./Heinz Watties NZ requested that further criteria be set for 'low sugar' claims for solid and liquid foods e.g. 5 g per 100 g; less than or equal to 2.5 g per 100 ml liquid food where serving size exceeds 100 ml; 5 g per 100 ml liquid food where the serving size is less than 100ml; because there may be some inconsistencies between claims in Australia and NZ where units of measure for sauces in Australia

are traditionally in mL and in NZ they are traditionally in grams. If sauce is declared in grams, it would more easily meet the low in sugar' criteria than if declared in mL.

NZFSA questioned why a declaration of fibre is part of the criteria for making this claim.

Reduced (in) sugar(s)

There were 35 submitters that clearly stated that they agreed with the criteria for 'reduced (in) sugar' claims that were proposed at Initial Assessment (TCCA, Dr R Stanton, PHAA (supported by ACA), ASMI, CHC, Sanitarium Health Food Comp, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, WA DoH, Monash Uni – N&D Unit, CSIRO HS&N, NZ MoH, Public Health South, Canterbury DHB, NZFGC, Nutra-Life H&F, Nutra NZ, NHF Aust., NHF NZ, AFGC, MasterFoods Aust. NZ, Dairy Aust., GW Foods, Goodman Fielder, National Foods, DAFF, NZJBA, Frucor, Griffins Foods, Mainland Products, Unilever Australasia).

(Dairy Aust. recommended changing the word 'fat' to 'sugar'.)

TCCA backed up their support by commenting that for 'reduced sugar' claims, stating the difference in fat content and declaring fibre content might help consumers make an informed choice.

There were four submitters who did not agree with these proposed criteria (Aussie Bodies, CML) including two submitters (Diabetes Aust., GI Ltd) who did not agree with the use of this claim.

Aussie Bodies recommended that to be able to make a 'reduced sugar' claim, the comparison should be based on a relative difference of at least 30% (rather than 25%) of the sugar content.

CML stated that there was no need to declare the sugar content in conjunction with a 'reduced sugar' claim as this information is already on the Nutrition Information Panel.

NZFSA commented that they could not understand why fibre was included in the criteria for 'reduced' sugar claims.

No added sugar/sugars and unsweetened

There were 23 submitters who clearly stated that they agreed with all of the criteria for 'no added sugar' claims that were proposed at Initial Assessment (TCCA, Dr R Stanton, PHAA (supported by ACA), ASMI, CHC, Sanitarium Health Food Comp, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, WA DoH, Monash Uni – N&D Unit, CSIRO HS&N, NZ MoH, Public Health South, Canterbury DHB, NZFGC, Nutra-Life H&F, Nutra NZ, Aussie Bodies, CML).

There were 29 submitters who did not agree with one or more of the proposed criteria for 'no added sugar' claims (NHF Aust., NHF NZ, AFGC, MasterFoods Aust. NZ, Dairy Aust., GW Foods, Goodman Fielder, National Foods, Parmalat Aust., DAFF,

NZJBA, Frucor, Griffins Foods, Mainland Products, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Heinz Aust./Heinz Watties NZ, Nestle, Unilever Australasia) including two submitters (Diabetes Aust., GI Ltd) who did not agree with the use of this claim.

There were 26 submitters who clearly stated that they agreed with all of the criteria for ‘unsweetened’ claims that were proposed at Initial Assessment (TCCA, Dr R Stanton, PHAA (supported by ACA), ASMI, CHC, Sanitarium Health Food Comp., Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, SA DoH, WA DoH, Monash Uni – N&D Unit, CSIRO HS&N, NZ MoH, Public Health South, Canterbury DHB, NZFGC, Nutra-Life H&F, Nutra NZ, NHF Aust., NHF NZ, Aussie Bodies, CML, Mainland Products).

There were 16 submitters who did not agree with one or more of the proposed criteria for ‘unsweetened’ claims (AFGC, MasterFoods Aust. NZ, Dairy Aust., GW Foods, Goodman Fielder, National Foods, Parmalat Aust., DAFF, NZJBA, Frucor, Griffins Foods, Heinz Aust./Heinz Watties NZ, Nestle, Unilever Australasia) including two submitters (Diabetes Aust., GI Ltd) who did not agree with the use of this claim.

Disclosure statements

It was suggested that a disclosure statement informing consumers if a product contains natural sugar should be included for the proposed ‘no added sugar(s)’ claims (NHF Aust. and NHF NZ). Mainland Products suggested that ‘no added sugar’ claims should not be permitted on products that are naturally high in fructose or other sugars.

Criteria (i)

Parmalat Aust. questioned whether the inclusion of ‘lactose’ in criteria (i) would preclude a product from a ‘no added sugar’ claim if milk solids (52% lactose) were added to a food.

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA) acknowledged the intention of criteria (i) for ‘no added sugar’ provides for the presence of lactose through milk powder in a food, e.g. ‘no added sugar’ milk chocolate; however this precludes lactose when added directly as an ingredient.

Criteria (viii)

Heinz Aust./Heinz Watties NZ did not support the criteria for ‘no added sugar’ claims. They pointed out that under the criteria for ‘no added sugar’ claims, the composition/definition of sugar should be consistent with Std 2.8.1 – sugars. They commented that malt is added at 2% to Little Kids Mini Crackers (which currently make a ‘no added sugar’ claim) for flavouring, not sweetening. Removal of malt to retain the claim would make the flavour bland and would potentially result in loss of sales. Removal of the claim would impact on the purpose of the crackers and potentially result in loss of sales too. Malt is not just sugar, as it contains niacin, iron

and B vitamins so should not be considered 'sugar'. Alternatively, maltose is a disaccharide and should be considered 'sugar'.

Criteria (x)

A number of submitters commented on this criteria ("concentrated and/or deionised fruit juice where it does not constitute the essential character of the food;") particularly in relation to 'no added sugar' claims. It was felt that this clause required clarification of intent, specifically where claims are made using fruit juice concentrate or deionised fruit juice as a means of adding sugar rather than as an essential characterising ingredient (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA).

In relation to this Nestle commented that changes are required to clarify that it is the essential character of the fruit juice that is in question, not the essential character of the food as stated in the proposal. The use of the "essential character of the food" seems to be taken from food acts and is a general statement that is appropriately broad enough to cover all food. This is not the case for the nutrient criteria as it is specifically fruit juice that is the topic of concern. There can be confusion in that the reference to "food" could mean that it is the food that contains the deionised fruit juice for example. The legislation should also be clear that it is not fruit juice that has just been concentrated without the removal of the other components that characterise fruit juice (this applies to 'no added sugar' and 'unsweetened' claims).

Nestle also noted that the legislation needs to be clear that where there is milk or fruit juice (without the removal of essential characteristics) added, then the naturally occurring sugars within these foods are not the intention of the proposed legislation. For example, milk chocolate that contains milk powder and no added sugar or the other ingredients that are listed in the current CoPoNC, should still be able to be labelled as 'unsweetened' or 'no added sugar'.

AFGC (supported by MasterFoods Aust. NZ) commented that the statement "concentrated and/or deionised fruit juice where it does not constitute the essential character of the food" is unclear, and questioned whether this means "concentrated fruit juice and/or deionised fruit juice" or means "concentrated deionised fruit juice and/or deionised fruit juice"? They suggested that it should mean the latter as this is merely an unflavoured source of sugar, whereas fruit juice is a highly flavoured food.

Heinz Aust./Heinz Watties NZ suggested that for consistency with the definition of sugars in Standard 2.8.1, (x) "concentrated and/or deionised fruit juice" should be omitted from the criteria for 'no added sugars' (fits better with 'unsweetened'); or be replaced with (x) "deionised juice". Nutritionally and organoleptically concentrated fruit juices and deionised fruit juices are distinctly different. For products where sweetening is required for palatability, then concentrated fruit juice as a sweetener is superior to sugar, as it offered nutrients as well as energy. Including concentrated fruit juice in the criteria for a 'no added sugar' claim might encourage manufacturers to replace fruit juices with sugar which is a cost benefit for manufacturers but of questionable benefit for consumers.

Heinz Aust./Heinz Watties NZ added that concentrated fruit juice (and deionised fruit juices) can be added to infant foods for the purpose of sweetening and they agreed that ‘unsweetened’ claims should not apply to these foods.

AFGC (supported by MasterFoods Aust. NZ) questioned whether under the criteria numbers (vii) and (x) for ‘no added sugar’ and ‘unsweetened’ claims, is fruit sugar syrup and deionised fruit juice different or just different expressions of the same product? National Foods pointed out that fruit syrups are used in the preparation of the fruit ingredients for fruited yoghurts and questioned if compositionally, these are different from ‘fruit sugar syrups’. AFGC (supported by MasterFoods Aust. NZ) and National Foods recommended that FSANZ clarify whether there is any difference between fruit sugar syrup and deionised fruit juice and the exact meaning of clause (x) under ‘no added sugars’.

Dairy Aust. suggested omitting the words “concentrated and/or” from criteria (x) in ‘unsweetened’ claims.

Parmalat Aust. didn’t consider concentrated fruit juice to be ‘added sugar’.

Criteria (xi) for ‘no added sugar’ and (xiii) for ‘unsweetened’ claims

A number of submitters recommended that these criteria (“a reference to the declaration of sugars in the nutrition information panel must be made in conjunction with the claim to alert consumers to the sugar content of the food”) should be omitted (Dairy Aust., GW Foods, Parmalat Aust., Heinz Aust/Heinz Watties NZ, NZJBA and Frucor, AFGC, MasterFoods Aust. NZ, Unilever Australasia, Goodman Fielder, National Foods, DAFF, Nestle, CMA, Mandurah Aust., Palatinit GmbH, Kingford Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA).

Reasons given for this recommendation were:

- For consistency, as FSANZ has not included any requirement of this nature for any other claims (AFGC, MasterFoods Aust. NZ, Unilever Australasia, Goodman Fielder, National Foods, DAFF, Nestle, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingford Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA));
- A requirement to refer to the nutrition information panel in the old Food Standards Code when nutrition information panels were not mandatory expect when a nutrition claim was made may have been appropriate, but now consumers are well aware of these panels on food labels and can and do check them (according to FSANZ research) without the need for statements (AFGC supported by MasterFoods Aust. NZ and Unilever Australasia);
- Research also showed that these consumers were also well aware that naturally occurring sugars could be present in foods for which these claims are made (DAFF, AFGC, MasterFoods Aust. NZ, Unilever Australasia);

- Consumers are aware of the nutrition information that is provided on products (Nestle);
- This is a duplication of information and would have no merit, the requirement to alert consumers to the sugar content of the food already exists and the consumer who is particularly interested in the sugar content of a food will surely be reading the Nutrition Information Panel where this information is clearly provided (NZJBA supported by Frucor);
- This declaration is unnecessary and difficult to achieve due to size limitations on infant food labels (Heinz Aust/Heinz Watties NZ).

Sugar free

Regarding ‘sugar free’, some submitters also made reference to their answers to the questions relating to ‘free’ claims (Attachment 6, questions 11 and 12), and these comments will be considered under that section.

There were 28 submitters who clearly stated that they agreed with the criteria proposed at Initial Assessment for ‘sugar free claims (TCCA, Dr R Stanton, ASMI, CHC, Sanitarium Health Food Comp., Wyeth Aust., NCWA, NSW DoH – N&PA Branch, NSW Food Authority, CSIRO HS&N, NZ MoH, Public Health South, Canterbury DHB, NZFGC, Nutra-Life H&F, Nutra NZ, NHF Aust., NHF NZ, Aussie Bodies, CML, NZJBA, Frucor, Griffins Foods, Mainland Products), including five submitters who recommended that a notation about conformance with fair trading legislation is required (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit).

There were 26 submitters who did not agree with these criteria (AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, Dairy Aust., F&B Importers Assoc., GW Foods, Goodman Fielder, National Foods, Tas DoH&HS, DAFF, Fonterra, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Nestle, Unilever Australasia, Palatinit GmbH) including two submitters (Diabetes Aust., GI Ltd) who did not agree with the use of this claim.

Tas DoH&HS stated that ‘sugar free’ claims should not be permitted.

Fonterra pointed out that ‘sugar free’ used to be an absolute claim permitting up to an absolute amount and believed this should be retained. PB Foods stated that ‘sugar free’ claims should be allowed. Cadbury Schweppes wanted ‘sugar free’ claims permitted with a quantified level of <0.2% present via accidental means or as carryover only.

A number of submitters requested ‘sugar free’ claims are allowed as per CoPoNC (AFGC, MasterFoods Aust. NZ, Dairy Aust., F&B Importers Assoc., GW Foods, National Foods, DAFF, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Nestle, Unilever Australasia and Palatinit GmbH). National Foods said this was because they would harmonise with Codex and international food

standards and promote an efficient and internationally competitive food industry. AFGC (supported by MasterFoods Aust. NZ and Unilever Australasia) added that it would be internationally consistent to retain the CoPoNC provisions for 'sugar free' and whole lines of products have been built on the 'sugar free' claim and to no longer permit its use would be harmful to the companies that have built the branding and this would be inconsistent to an efficient and internationally competitive food industry. CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, and CM of SA) suggested this criterion should be in a Government endorsed guideline, which is legally enforceable.

Goodman Fielder requested 'sugar free' claims be allowed as per Codex. Goodman Fielder and Nestle noted that the maximum level for sugar free claims in Codex is insignificant and nutritionally of no consequence.

CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, and CM of SA) noted the Codex 'sugar free' threshold of 0.5g/100g and that through non-alignment with Codex, Australia and NZ will be out of step with other international markets, causing trade barriers for local importers and disadvantaging consumer choice. Setting criteria and leaving the issue for trade practices to arbitrarily enforce compliance is inadequate, as it provides no certainty to industry, consumer and government. There is variation in interpretation of the Food Standards code and in the absence of clear and prescribed conditions for 'sugar free' as currently in CoPoNC these misinterpretations will be compounded.

Palatinit GmbH noted that the criterion for residual sugars of no > 0.2g per 100g currently in CoPoNC is not in line with Codex which specifies 0.5g sugars/100g food. The Codex definition is widely accepted and followed in a number of countries. They stated that sugars are replaced by polyols for their nutritional benefits, e.g. isomalt does not promote dental caries, does not significantly affect blood glucose and insulin levels, and provides only half the calories of sugar and is beneficial for gut health (prebiotic properties). They commented that the residual sugars defined by Codex are meant to allow for trace levels caused as a by-product of the manufacture/carryover. Sugar replacers are carbohydrates derived from starch or sugar and it is unavoidable from a technical point of view that there are traces of residual sugars left in product that are detectable analytically. These trace levels are physiologically, clinically and nutritionally insignificant and there is no difference between the maximum limits and zero sugar(s), therefore they cannot be considered false or misleading and so are not contrary to the objectives of food standards. There is a significant trade in 'sugar free' products both exported and imported by Australia. Inconsistent regulations on claims exert a trade barrier on this market and consumers will be discriminated against, as they will find 'sugar free' foods whilst abroad but unable to obtain them at home. Palatinit GmbH pointed out that not having provisions for a 'sugar free' claim might be ambiguous to manufacturers, as in other countries they tend to refer to Codex where nutrient claims are possible but not defined. Analytical techniques could detect such small amounts so this could not be the criterion for the interpretation of 'free'. Palatinit GmbH strongly proposes that the criteria are consistent with Codex for the benefit of consumers and manufacturers. Mandurah Aust supported this view.

Nestle commented that there were products (e.g. confectionery) in the market that contain sugar replacers and carry ‘sugar free’ claims to indicate to consumers that these products are better for teeth. People with diabetes and others who wish to reduce their sugar intake also purchase these products. There are nutritionally insignificant levels of sugar in these products so they should be able to carry a ‘sugar free’ claim. The cost of removing current sugar free provisions would be \$5million for Nestle, which includes the cost of re-branding and label changes.

Responses to question 32 that relate to question 33

CML proposed that for ‘reduced sugar’ claims it was not necessary to declare the actual sugar content in conjunction with the claims because the information was already declared on the Nutrition Information Panel.

PB Foods commented that consumer understanding of these claims was important and mentioned that the double negotiation in the first sentence on ‘no added sugar’ could be simplified by “the claims cannot be made when a food contains ...”

Nutra-Life H&F commented that unless there is a comparator (e.g. low in sugar compared to standard honey) claims should be qualified with a statement i.e. low in sugars (≤ 5 g total sugars per 100g), as the amount consumed is still the issue as such claims may encourage over consumption.

Responses to question 34 that relate to question 33

Dairy Aust. noted potential issues with the ‘no added sugar’ claim not being permitted when lactose is added by way of milk solids, and fructose via fruit or concentrated fruit juice (sometimes added as a flavouring). National Foods supported this and added that fructose is added to alter the water activity in artificially sweetened fruit preparations. Dairy Aust. argued that fruit juice itself could be labelled as ‘unsweetened’ and therefore it is difficult to rationalise why the end product cannot be. They didn’t agree with the requirement that adding small amounts of fructose excludes a food from carrying a “no added sugar” claim as minor amounts of fructose are added to food preparations used to make yoghurt for food safety reasons. They also requested provision for a ‘% less sugar’ claim using the proposed criteria for ‘low sugar’.

Other comments provided but not in direct response to the question

Queensland Health – PHS agree with the preferred criteria for ‘no added sugar’, ‘unsweetened’, and ‘sugar free’ claims.

Langdon Ingredients, ICA and Nutrinova Australasia also proposed that with respect to sugar free, current provisions as in CoPoNC be retained in the new Guideline.

It was noted by several submitters that the CoPoNC requirement of sugar free as ‘no more than 0.2 g sugar(s) per 100 g food’ is against a background of international precedent where Codex has recently ratified its more flexible position of 0.5 g sugar(s) per 100 g food. This approach is based on elimination and substitution of sugars and 0.2 g tolerance is designed to accommodate trace levels caused as by-

products or the unintended carry-over in the conversion process of sugar alcohols. This level is physiologically, clinically and nutritionally insignificant. At these limits there is no difference between the maximum limits and zero sugar(s), they cannot be considered false or misleading and so are not contrary to the objectives of food standards. It is imperative that the Guideline is endorsed by fair trading agencies in Australia and NZ (regarding 'sugar free') (CMA, ICA, William Wrigley Junior, Palatinit GmbH, CM-SA, CMA – NZ Branch, CMA – Vic Branch, CMA NSW Branch, Med-Chem Ingredients, ICA, Nutrinova Australasia and Langdon Ingredients).

Kingfood Aust. added that they support option 2 conditional on the current sugar free criteria (CoPoNC) being retained, or preferably the recently ratified Codex position being adopted, and that the ACCC signs off on these levels and that the Guidelines are enforced.

William Wrigley Junior stated that the benefits of sugar free confectionery are that it does not promote dental caries and hence reduces the impact of tooth decay, as well as assists in re-mineralisation of tooth enamel, and these benefits have been recognised by consumers as evidenced by the rapid growth of this market segment.

National Foods suggested that FSANZ match the regulatory intent for criteria and conditions for sugar claims with the practical application of food manufacturing, of which they would be willing to input into.

National Foods also noted potential issues with the 'no added sugar' claim not being permitted when lactose is added by way of milk solids, and fructose via fruit or concentrated fruit juice (sometimes added as a flavouring). They added that fructose is added to alter the water activity in artificially sweetened fruit preparations.

National Foods also noted that the 'sugar free' claim is currently permitted in CoPoNC for food containing no more than 0.2g of sugars per 100 g of food or 0.1 g of sugar per 100 mL of a liquid food, an amount that is no different (physiologically, clinically and nutritionally) to food with no detectable sugars, hence 'sugar free' claims do not mislead consumers.

Question 34

Should there be an additional criterion that relates to energy for ‘reduced sugar’ claims? If so, what criteria should apply and what evidence supports such an approach?

Out of 147 submitters, 41.5% (61 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	20	14	5	2	41
Government	5	2	-	-	7
Public health	6	4	-	-	10
Consumers	1	-	-	-	1
Other	2	-	-	-	2
Total	34	20	5	2	61

Overview

Thirty-five submitters disagreed that there should be additional criterion for energy for ‘reduced sugar’ claims whereas twenty-three agreed. Suggested criteria included an energy density of more than 1700kJ per 100g of food, and a requirement for a reduction in energy, for example 25 per cent, compared to the reference food.

Supported additional criterion

Twenty-three submitters agreed that there should be additional criterion for energy for ‘reduced sugar’ claims (TCCA, DAA, NZDA, Dr R Stanton, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, CML, GW Foods, National Starch, Solae Comp, Tas DoH&HS, NSW DoH – N&P Branch, NSW Food Authority, SA DoH, WA DoH, CSIRO - HS&N, Monash Uni N&D Unit, Public Health South, Canterbury DHB, Mainland Products).

WA DoH supported a criterion in light of the obesity problem.

Some submitters suggested criteria that should apply, as follows:

- Foods with energy density greater than 1700kJ/100g (TCCA);
- Disqualifying criteria based on the energy derived from sugars (Mainland Products);
- A minimum reduction of 25% energy for all ‘reduced sugar’ claims and there should be a statement of comparison with the normal counterpart (NHF Aust. and NHF NZ);
- FSANZ should come up with the criterion (CML);

- The energy level of the claimable food must be significantly less than the reference food and if not, then the product must clearly state that it is not lower in energy than the comparable food (GW Foods);
- The additional criteria should mirror the regulations for fat, as people believe that reduced sugar means reduced energy, unless there is another statement such as ‘enriched with protein or higher in fat’ (CSIRO - HS&N);
- The food making the claim should be required to be lower in energy in proportion to the reduction in sugar content for which the claim is made (PHAA (supported by ACA), Monash Uni – N&D Unit, NSW DoH- N&P Branch and SA DoH). It was added that this is in light of the obesity problem (PHAA (supported by ACA), Monash Uni – N&D Unit). NSW DoH – N&P Branch added that this criterion should apply to ‘less than’ claims as well.

National Starch, Solae Comp, Tas DoH&HS, NSW DoH – N&P Branch, DAA and NZDA stated that consumers who don’t readily differentiate between energy content, fat and sugar can perceive reduced sugar claims as reduced energy. They suggested that to overcome this, additional criteria to specify the reduction in energy content, or a disclaimer to the effect that “this product is not reduced in energy/kJ” could be added, and Tomox agreed with this approach.

Public Health South recommended a disclosure statement regarding the energy content of the food should be included, as overall energy content is the most important factor in maintaining or losing weight.

Canterbury DHB thought that additional criteria would be covered by disqualifying criteria as there are very few foods that are low in fat and sugar that are also high in energy.

Evidence for such an approach

Although they do not support the use of ‘reduced sugar’ claims, if they to be are allowed, TCCA stated that additional criterion relating to energy, fat, fibre and sodium should be provided to ensure ‘reduced sugar’ claims couldn’t be made on non-healthy foods. They referred to recent studies suggesting energy intake is affected by the energy density of a food (Rolls and Barnett, 2003; Westerterp-Plantenga, 2004; Stubbs et al, 2000; Porrini et al, 1995) and commented that the National Heart Foundation ‘Pick the Tick’ Program added energy criteria to existing fat, sugar, salt and dietary fibre criteria for some food items e.g. biscuits, cakes, cereal bars, breakfast cereals.

TCCA pointed out that Rolls and Barnett (2003) suggest using energy ranges with the highest energy density foods (chips, confectionery, takeaways), categorised as 4.0-9.0 kcal/g (or 1707-3841 kJ/100g), therefore if foods greater than 1700 kJ/100 g were prevented from making claims this could prevent over consumption of energy dense foods. They mentioned that other criteria would need to be considered, as this energy density criterion would not exclude foods high in sugar such as confectionery and high sugar breakfast cereals.

SA DoH, Monash Uni N&D Unit and WA DoH referred to the findings of studies by La Fontaine (2004) and Crowe et al (2004) that a number of foods for which low fat claims are made do not have a concomitant reduction in energy, which could be misleading to consumers.

Disagreed with additional criterion

There were 35 respondents that disagreed with having an additional criterion that relates to energy, for ‘reduced sugar’ claims (Aussie Bodies, AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, CHC, F&B Importers, Goodman Fielder, National Foods, Parmalat, Sanitarium Health Food Co., NZ MoH, NZFSA, ASA, Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers, Fonterra, Griffins Foods, NZFGC, NZ Magazines, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, and CM of SA) Heinz Aust/Heinz Watties NZ,, Nestle, Unilever Australasia) and three did not specifically indicate their preference (PB Foods, NZ Dairy Foods, Nutra-Life H&F).

The additional criterion was opposed for the following reasons:

AFGC, MasterFoods Aust. NZ, Nestle and Goodman Fielder did not support additional criteria, as it is not sugar alone that contributes to the energy content of a food and a reduction in sugar content of 25% will not equate to a reduction in the energy content of a food. This will vary between foods depending upon the proportions of macronutrients and what, if any replacement is used. This would be an arbitrary criterion, not based on science. AFGC added that there was no evidence of market failure to warrant such an inclusion.

Cadbury Schweppes said that if a product meets the ‘low’ or ‘reduced’ sugar criteria there is the potential that they also meet the ‘reduced’ energy claim, however they still do not believe an additional criterion is necessary for energy.

F & B Importers Assoc., CHC and National Foods felt it was unnecessary and/or complicated.

A number of submitters pointed out that energy content is clearly noted in the Nutrition Information Panel if consumers required this information (National Foods, Parmalat Aust., NZFSA, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, and CM of SA) and Heinz Aust./Heinz Watties NZ).

Sanitarium Health Food Comp pointed out that natural grain would replace sugar in reduced sugar breakfast cereal and breads (and therefore energy would not be reduced).

Sanitarium Health Food Comp and Fonterra commented that criteria for energy content assumes a ‘reduced sugar’ claim is only useful for people wanting to lose weight, whereas it could be useful to those interested in dental health.

Unilever Australasia considered that there was potential to over complicate the system and blur the distinction between specific nutrient claims and an overall energy claim.

PB Foods indicated that they would support an additional criterion if consumer research found that it was of benefit. NZ Dairy Foods noted that specifying an additional criterion for energy would probably be difficult.

General comments

Nutra-Life H&F stated that a comparative statement with the sugar content of the regular product must accompany 'reduced sugar' claims, to be meaningful (they did not mention energy).

3.11 FIBRE

Question 35

Is there merit in including disqualifying criteria for fibre claims? If so, what nutrients should be considered and what specific criteria should be applied?

Out of 147 submitters, 44.9% (66 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	23	15	5	2	45
Government	4	2	-	-	6
Public health	8	4	-	-	12
Consumers	1	-	-	-	1
Other	2	-	-	-	2
Total	38	21	5	2	66

Overview

Thirty submitters supported the inclusion of one or more disqualifying criteria for fibre claims. Various combinations of nutrients and energy were suggested, these nutrients being saturated fat, *trans* fatty acids, sodium/salt, fat, and sugar. Similar numbers (28) did not support the inclusion of disqualifying criteria.

Supported disqualifying criteria

Of the respondents to this question, 45.5% (a total of 30) supported the inclusion of one or more disqualifying criteria for fibre claims (TCCA, Diabetes Aust., DAA supported by NZDA, Dr R Stanton, GI Ltd, PHAA (supported by ACA), Tomox, Aussie Bodies, ANIC, ASMI, CML, CHC, National Starch, Solae Comp, Wyeth Aust., Tas DoH&HS, NSW DoH – N&PA Branch, NSW Food Authority, WA DoH, CSIRO – HS&N, Monash Uni- N&D Unit, NZ MoH, NZFSA, Public Health South, Canterbury DHB, Griffins Foods, Mainland Products, Naturalac Nutrition).

TCCA and CML recommended actual criteria should be determined following input from various health agencies/experts.

The nutrients suggested for disqualifying criteria for fibre claims were:

- Energy, saturated fat and sodium content (Diabetes Aust., GI Ltd);
- Energy, fat, sugar and sodium content (TCCA);
- Energy, fat, and salt content, or a disclaimer on products containing high proportions of these compounds (Mainland Products);
- Fat, sugar and salt/sodium (DAA supported by NZDA, Dr R Stanton, Tomox, NSW DoH – N&PA Branch, NZ MoH, Public Health South, Tas DoH&HS) unless consistent with dietary guidelines, e.g. nuts (Tomox);
- Fat (CHC, Wyeth Aust.), and fat content should be declared on the packaging (Wyeth Aust);
- Saturated and trans fat (criteria to be consistent with the criteria for low saturated fat claims) and sugar (ANCI);
- Fat and sugar (The Solae Comp) given that these lead to a significant reduction in energy (National Starch);
- Possibly high saturated fat and high sugar (CML);
- Saturated fat only (CSIRO – HS&N); and
- Sugar and salt (Tas DoH&HS).

Tas DoH&HS added that fibre is likely to be included as a protective factor in the proposed pre-approved high level claims and consumers are likely to associate fibre content claims with other health claims linked to CVD or cancer. Foods making fibre claims should be consistent with dietary guidelines and aim to provide clarity for the majority of the population overweight (65%) and at risk of chronic diseases.

Sanitarium Health Food Comp recommended that if fibre related high-level claims are approved then the issue of fibre enriched junk foods potentially being able to make a claim should be considered as part of the substantiation process, and approval of the claims could then exclude specified fibre containing foods if appropriate.

DAA, supported by NZDA, noted that CoPoNC suggests that fibre claims should not be encouraged on high fat foods.

Recommendations for specific disqualifying criteria that should be applied were:

- Saturated fat >30% total energy and sugars >20g per serve (Aussie Bodies);
- Total fat >30% of energy (Naturalac Nutrition) and $\geq 10\%$ of the average energy content from saturated and trans fatty acids (Griffins Foods);
- Foods should not have a poor nutritional profile (NSW DoH – N&PA Branch, Public Health South, Dr R Stanton);
- Disqualifying criteria should be similar as for other foods for which disqualifying criteria are relevant (Dr R Stanton); and
- Disqualifying criteria should be consistent with disqualifying criteria for other macronutrients (Diabetes Aust., GI Ltd).

PB Foods noted that the nutritional research on dietary fibre is constantly progressing and in change, hence criteria need to be very flexible to cater for new food ingredients so that truthful claims can be made.

Some submitters mentioned a reason for having disqualifying criteria as being the recent approval of polydextrose (and the pending approval for maltodextrin) as sources of fibre (PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit, DAA supported by NZDA, Tas DoH&HS, NZFSA). This opens the potential for foods of low nutritional value (i.e. confectionery, baked goods, snack foods, soft drinks) to make fibre claims. The criteria should be such that these foods would not qualify to make fibre claims (Tas DoH&HS, DAA supported by NZDA). NZFSA noted that these fibres are not limited by the foods to which they can be added. Disqualifying criteria will ensure that foods of low nutritional value and those with high fat, sugar(s) and sodium levels will not be subject to fibre claims (PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit).

Tas DoH&HS noted consumer research in the UK (Food Standards Agency 2002) concluded that, “a hierarchy of claims based on a purely scientific structure misses the point that a consumer’s response is often of a non-scientific nature... they look at claims in a wider and often ‘fuzzy’ context.”

Some submitters stated that they opposed certain nutrients as disqualifying criteria:

- Salt, as almost all commercially available breads and breakfast cereals would fail to meet strict salt requirements, and yet these products are important fibre sources (National Starch, The Solae Comp);
- Total fat, as avocados/nuts are high in fibre and fat and are a recommended food (Aussie Bodies, Sanitarium Health Food Comp);
- Percentage energy from fat (CSIRO – HS&N). CSIRO – HS&N suggested considering an energy limit rather than worrying about sugar or salt, as they believed more fibre-enriched low energy foods are needed. They added that this is

potentially problematic using the example of carbohydrate modified breakfast cereals where the total fat is increased.

Did not support disqualifying criteria

Conversely 43.1% (a total of 28) did not support the use of disqualifying criteria for fibre claims (AFGC, MasterFoods Aust. NZ, Goodman Fielder, F & B Importers Assoc., National Foods, Parmalat Aust., Fonterra, NZFGC, Unilever Australasia, Heinz Aust/Heinz Watties NZ, Sanitarium Health Food Comp, NZ Magazines, ASA supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm and NZTBC, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA).

Reasons for not supporting the use of disqualifying criteria for fibre claims were:

- Provisions relating to fibre claims are currently contained in CoPoNC and there are no disqualifying criteria attached to them (Goodman Fielder, AFGC supported by MasterFoods Aust. NZ);
- Development of further criteria should only be necessary if there is a demonstrated market failure (Goodman Fielder);
- Are unaware of any problems with these claims in the marketplace (AFGC, NZFGC, Nestle);
- The choice of qualifying criteria would be arbitrary (AFGC, NZFGC, National Foods). National Food added the question that would this be based on sugar, salt, total fat etc or a combination?
- Additional disqualifying criteria would be an unnecessary complication and complexity to fibre claims (AFGC, NZFGC, Unilever Australasia) from a manufacturer compliance and consumer education perspective (National Foods);
- Additional disqualifying criteria would be inconsistent with some of FSANZ's other decisions with respect to criteria (AFGC supported by MasterFoods Aust. NZ); and
- The issue of claims being made on nutritionally poor products fortified with functional fibres should have been considered when approval was given to these ingredients (Sanitarium Health Food Comp).

The CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA) stated it is inappropriate to exclude fibre claims on foods high in nutrients such as sugar, fat and energy, where such products, including confectionery, that have a role in a balanced diet, may be legitimate vehicles for fibre consumption which may be viewed as a benefit when making a food choice. They added that confectionery may contain polydextrose, inulin and resistant maltodextrin and with the proposed regulatory amendments for these ingredients, claims with respect to dietary fibre may

be permitted and will be of benefit to consumers and provide a mechanism for product differentiation. .

Nestle commented that the provisions contained in CoPoNC are acceptable.

Fonterra commented that given the diverse types of fibre, no specific criteria are recommended.

General comments

Nutra NZ, Cadbury Schweppes, Nutra-Life H&F, Nestle, NHF Aust. and NHF NZ, PB Foods and Bakewell Foods did not clearly state a clear preference but made comments as outlined below.

NHF Aust. and NHF NZ recommended a disclosure statement relating to kilojoule/energy content for 'high fibre' claims, to alert consumers to the energy density of the food.

Nutra NZ commented that from a nutritional perspective there is merit in including disqualifying criteria however this may restrict the composition of products that could be manufactured and result in more expensive products because of the use of more expensive ingredients used to replace high fat components.

Cadbury Schweppes recommended that disqualifying criteria should be based on the whole diet and not necessarily on individual foods. They noted that foods high in fibre may have a place in the whole diet and therefore to prohibit a high fibre claim just because the food also has a high fat or sugar content appears to contradict the whole of diet approach.

Bakewell Foods said that disqualifying criteria are acceptable as long as there is one standard, e.g. NHF asking for fibre claims next year.

Nutra-Life H&F recommended that dietary fibre should be included on the Nutrition Information Panel and that there should be a reference to the amount of fibre in a serving as a percentage of the recommended total daily intake (except for products specifically designed for digestive health as in food type dietary supplements).

Responses to question 36 that relate to question 35

TCCA suggested a variety of what appear to be disqualifying criteria:

Energy

- Rolls and Barnett (2003) suggest using energy ranges, with the highest energy density foods (chips, confectionery, takeaways) categorised as 4.0-9.0kcal/g (or 1707-3841.20 kJ per 100g). If foods greater than 1700kJ/100g were excluded from making claims this could prevent the over consumption of high, energy dense foods, by consumers who believe the 'reduced fat' foods they are eating are healthier;

- Other criteria would have to be considered (sugar/salt/fat) as this energy density would not exclude all foods, particularly high sugar foods such as some confectionery (jelly beans, jubes) and high sugar breakfast cereals;
- The research by Rolls and Barnett (2003) and others provides a basis on which criteria could be devised, via discussion with health agencies.

Fat

- ≤ 10 g per 100 g (as recommended by The Cancer Council Australia, The National Heart Foundation and Diabetes Australia)

Sugar

- ≤ 10 g per 100 g (as recommended by The Cancer Council Australia, The National Heart Foundation and Diabetes Australia).

Sodium

- ≤ 120 mg per 100 g (as recommended by FSANZ). (TCCA)

Disqualifying criteria should include nutrient profiling of ‘unhealthy’ foods (WA DoH).

NZFSA suggested that consideration should be given to prohibiting foods of low nutritional value from making a fibre claims. Criteria could be based around current nutritional guidelines relating to fat, saturated fat, sugar and salt.

Wyeth Aust. believed that there is potential for fibre claims to be misleading (e.g., if a product contains fibre at a certain level but there is a significant amount of fat, consumers may still perceive it to be a healthy product).

Sanitarium Health Food Comp supports the proposed criteria but are strongly opposed to the condition that fibre claims can only be made on food that have limited amounts of fat and saturated fat e.g. as in the situation for nuts.

Responses to question 37 that relate to question 35

Goodman Fielder recommended (in relation to a statement referring to fat on the Nutrition Information Panel) that no disqualifying conditions should be included as both the total fat and saturated fat values are always included in the Nutrition Information Panel. If the condition were based just on fat type it would be better to direct consumers, through education programmes, to the beneficial fats.

Cadbury Schweppes queried why disqualifying criteria should be placed on fibre claims.

The following disqualifying criteria were suggested for fibre claims:

- Fat, as (often) high fibre products are also high in fat. For consistency, would like low sugar to be included as a criterion? If fat & sugar are considered as the two primary 'culprits', you then send the same single message to the customer (CML);
- The food must contain a basic nutrient level (Dr R Stanton);
- Fat (including saturated fat) and sugar, which in turn should satisfy a reduction in energy claim (National Starch, Solae Comp);
- Foods making fibre claims should be consistent with dietary guidelines, i.e. not high in fat, sugar or salt. The claim should provide clarity for the majority of the population who are overweight (Tas DoH&HS);
- High fat, high sugar, high sodium food should be defined and excluded (NZ MoH);
- The energy/fat criteria could be the same as CoPoNC and consideration given to adding 'high' sugar foods as an additional disqualifying criteria;
- Consideration needs to be given to foods such as low fat ice cream, which are high sugar – should a high fibre claim be permitted? (NZFSA); and
- More than 30% energy from fat or more than 10% energy from saturated fat (Public Health South).

ANIC recommended criteria for saturated and trans fat that are consistent with those for making low and saturated fat claims.

Two reasons were provided in the IAR, which supported disqualifying criteria for fibre claims if the products contain $\geq 30\%$ energy from fat or $\geq 10\%$ energy from saturated fat:

- (a) Polydextrose and resistant maltodextrin are classed as fibre and as a result dietary fibre content claims can be added to foods of low nutritional value and subsequently content fibre claims can be made inappropriately;
- (b) The policy principles for vitamin and mineral fortification could be extended to fibre or to all 'positive nutrients' (AFGC supported by MasterFoods Aust NZ and PB Foods).

In regard to (a) above, AFGC states that Government policy is for minimum effective regulation and therefore regulation should be imposed only to ensure that minimum necessary regulations are maintained and detailed standards imposed only where necessary to correct market failure. FSANZ has not provided evidence of market failure and is merely theorising that there might be one. It is not government policy to introduce regulation on the possibility that there may or may not be a market failure (AFGC supported by MasterFoods Aust NZ and PB Foods).

In relation to (b) above, the policy principles were designed specifically for the addition of vitamins and minerals to foods; it was not designed to regulate the claims that can be made about food. It would be inappropriate to apply these policy principles to something for which they were not designed (AFGC supported by MasterFoods Aust NZ and PB Foods).

National Starch and Solae Comp recommended that salt should not be a disqualifying criteria given the important contribution to fibre intake from bread and breakfast cereals.

Other comments provided but not in direct response to the question

Queensland Health PHS noted that there is merit in including disqualifying criteria for fibre claims. They recommend that where a reference is made to disqualifying criteria those criteria should be quantified and included in a standard to ensure enforceability.

Axiome believed there is no merit in including disqualifying criteria for fibre claims. They also opposed the need for specific criteria for certain nutrients.

Kellogg's Aust stated that changes to conditions for fibre claims seems unnecessarily onerous and there seems to be no clear rationale as to why disqualifying criteria should apply to fibre claims alone.

Question 36

On what basis should criteria be set for fibre claims?

Out of 147 submitters, 42.2% (62 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	21	13	5	2	41
Government	6	2	-	-	8
Public health	7	2	-	-	9
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	38	17	5	2	62

Overview

Seven submitters were in favour of the criteria for fibre claims being based on fibre content per 100g rather than fibre content per serve. Another 32 submitters stated or implied that they preferred the criteria being based on fibre content per serve, as is currently in CoPoNC. This question was interpreted incorrectly by a number of submitters.

Per 100 grams

The following submitters were in favour of the criteria for fibre claims being based on fibre content per 100g rather than fibre content per serve: Tas DoH&HS, SA DoH, PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit, NSW DoH – N&PA Branch.

It was explained that this approach would help overcome problems associated with manufacturers artificially altering the ‘normal’ serve to achieve a ‘perceived’ higher fibre content than is actually present (Tas DoH&HS, SA DoH, PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit).

Per serve

AFGC (supported by MasterFoods Aust NZ and PB Foods), National Foods and Naturalac Nutrition favoured the criteria for fibre claims to be based on dietary fibre content as is currently specified in CoPoNC.

Whilst not specifically stating whether they supported criteria for fibre claims on the basis of grams per serve or per 100grams, some submitters stated actual criteria that were based on grams per serve (Public Health South, CSIRO- HS&N). Others mentioned that they supported the criteria in CoPoNC (Cadbury Schweppes, NSW Food Authority, Unilever Australasia, DAFF, GW Foods, Nestle, Goodman Fielder, ASA supported by NPANZ, Assoc. of NZ Advertisers, NZTBC, Cadbury Confectionery and Naturo Pharm, NZ Magazines, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA). (These criteria are based on per serving of food and per 100g for meal type products.) These are consistent with Codex (DAFF). Consumers have a long history of using these claims and there is no evidence of abuse or misconception (GW Foods). The criteria outlined in CoPoNC have been used extensively in the market place with no apparent issues with compliance (Goodman Fielder).

NZFGC supported the CoPoNC criteria but noted that the level of dietary fibre is linked to a serving, however as they assumed the requirements in Standard 1.2.8 (5) (a) and (b) (number of servings and average quantity of food in a serving must be included on the Nutrition Information Panel) will apply in a claims regulatory regime this should not be confusing for the consumer.

ANIC recommended the basis for establishing fibre claims should be grams per serving as is currently specified.

Dr R Stanton recommended that fibre content should be given for a realistic serve and also per 100 g, together with a statement in proximity stating the desirable intake of dietary fibre.

Other comments made which were not as relevant to this question were:

- Fibre claims should be stated as ‘g per serving’ and a percentage of the RDI. Terms such as low, high or medium need to be understood and considers aligning with the RDI a way of communicating this (Nutra-Life H&F);
- Dietary fibre content (F&B Importers Assoc., Goodman Fielder, Griffins Foods, Nestle, National Foods), e.g. dietary fibre per serving or per 100 g would be preferred and could easily be incorporated into the Nutrition Information Panel (Nutra NZ Ltd);
- Dietary fibre content as currently exists in CoPoNC (Cadbury Schweppes, National Foods, NSW Food Authority, NZFGC, Unilever Australasia, ASA supported by NPANZ, Assoc. of NZ Advertisers, NZTBC, Cadbury Confectionery and Naturo Pharm, NZ Magazines, AFGC supported by MasterFoods Aust. NZ and PB Foods);
- Believe there should be considerations for pre-biotics, soluble fibre, insoluble fibre and resistant starch (Heinz Aust/Heinz Watties NZ); and
- Criteria should be set to avoid consumer confusion (National Starch, Solae Comp, DAA supported by NZDA).

Other comments provided but not in direct response to the question

DAA, supported by NZDA noted that one problem with the CoPoNC guidelines has been that serving sizes in some instances are unrealistic and have resulted in misleading content claims. They recommended that either serving sizes be defined or that fibre content be calculated on a per 100g basis.

Responses to question 37 that relate to question 36

- Criteria should be based on grams per 100g (Public Health South).
- In addition to their support for current criteria for ‘high’ and ‘very high’ fibre claims, TCCA suggested that a definition of fibre as ‘high = X g per 100 g’ may be less confusing for consumers reading Nutrition Information Panels (in line with current low fat and sodium criteria which refer to the amount per 100 g).

Question 37

What qualifying criteria should apply to fibre claims?

Out of 147 submitters, 40.1% (59 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	22	12	5	2	41
Government	5	2	-	-	7
Public health	6	1	-	-	7
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	37	15	5	2	59

Overview

Thirty-nine submitters supported that ‘source of fibre’ claims should be permitted and of these 38 supported the use of CoPoNC criteria as the qualifying criteria. There were four submitters who did not support the use of this claim. Forty-two submitters supported that ‘good source of fibre’ claims should be permitted and of these submitters, 39 supported the use of CoPoNC criteria as the qualifying criteria. There were no submitters who did not support the use of this claim. Thirty-five submitters generally supported the use of CoPoNC criteria as the qualifying criteria for ‘increased fibre’ claims, whereas seven did not support the use of these claims.

CoPoNC criteria

Of the submitters that did answer this question, most were in favour of retaining the CoPoNC criteria for making fibre claims. Specifically, support was given for the following criteria for making a fibre claim in CoPoNC:

- Current CoPoNC criteria for ‘source of fibre’ and ‘high fibre’ (Diabetes Aust., GI Ltd);
- CoPoNC criteria for ‘source of fibre’, ‘high fibre or good source’ (Nutra NZ);
- Current ‘high’ and ‘very high’ (TCCA);
- Current CoPoNC criteria with the exception of meal type products (Heinz Aust/Heinz Watties NZ);
- Current CoPoNC criteria without additional criteria (National Foods, Nestle, Goodman Fielder, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA, AFGC supported by MasterFoods Aust NZ and PB Foods);

- Criteria in CoPoNC (in general) (F & B Importers Assoc., Parmalat Aust., Sanitarium Health Food Comp, NSW Food Authority, Griffins Foods, Unilever Australasia, Naturalac, NZ Magazines, NZFGC, ASA supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm and NZTBC) for the most part (see question 36 regarding serving sizes) (DAA supported by NZDA).

Although agreeing with the CoPoNC criteria for fibre claims in general, some of the submitters listed above added that they did not agree with the suggestion for a disclaimer to prevent manufacturers making fibre claims if their product contributes $\geq 30\%$ energy from fat and 10% energy from saturated fat (see Q 35) (National Foods, Goodman Fielder) or with the current CoPoNC requirement for foods with $\geq 30\%$ energy from fat to refer consumers to the Nutrition Information Panel (Nestle). Nestle went on to say that this is because this statement can be considered redundant now as Nutrition Information Panels are mandatory and consumers are now used to seeing these in food labels.

Goodman Fielder went on to explain that many foods would be unable to carry a fibre claim if the extra criteria were added, e.g. soybeans, sunflower seeds, sesame seeds, pistachio nuts, brazil nuts, peanuts and macadamia nuts would not be able to carry a fibre claim due to the total fat level even though they are excellent sources of fibre. The Dietary Guidelines recommend consumption of nuts and seeds as part of a balanced diet because of their desirable fatty acid constituents as well as their fibre content.

The AFGC (supported by MasterFoods Aust NZ and PB Foods) also recommended that there be no requirement for a statement referring consumers to the Nutrition Information Panel associated with fibre claims on high fat or any other fibre containing foods. Their reasoning for this was that they do not support the finding of Proposal P234 Draft Assessment that the approach (a statement to draw attention to the fat content in the Nutrition Information Panel) was not considered sufficient in addressing the issue of manufacturers making fibre claims on products high in fat or saturated fat. No evidence has been presented to demonstrate this is the case and even the La Fontaine study (2004) does not contain evidence in support of this assertion. This approach was included in CoPoNC when Nutrition Information Panels were not mandatory except when a nutrition claim was made. Consumers are now well aware of the presence of Nutrition Information Panels on food labels and can check claims against the Nutrition Information Panel without the need for statements such as these. AFGC (supported by MasterFoods Aust NZ and PB Foods) considers that in its assessment of fibre content claims, FSANZ should address identified problems not theoretical problems or those of mere conjecture such as this one.

In support of the qualifying criteria as per CoPoNC, National Foods and AFGC (supported by MasterFoods Aust NZ and PB Foods) noted that these claims have been well established in the market place for many years and were arrived at after wide and extensive consultation (as confirmed in the IAR). They considered that no scientific basis for departing from CoPoNC has been demonstrated in the P293 IAR.

Tas DoH considered that in order to take account of foods such as nuts, which have a high fat content as well as a high fibre content, qualifying criteria could be based on ratio of fibre to energy density per serve.

Specific claims

Some submitters suggested the claims for fibre that they considered appropriate:

- Support qualifying criteria for food that is a good source of fibre/high fibre rather than just having fibre present (ASMI);
- Foods must be a ‘good source of’, ‘high in’, or ‘very high’ fibre content (CHC);
- ‘Source of fibre’ and ‘high fibre’ (Diabetes Aust, GI Ltd);
- ‘Source of fibre’, ‘high fibre or good source’ (Nutra NZ);
- ‘High’ and ‘very high’ (TCCA).

‘Source of fibre’ claims

There were 39 submitters that supported that ‘source of fibre’ claims should be permitted (including Tomox) and of these submitters, 38 supported the use of CoPoNC criteria as the qualifying criteria (with exceptions as noted above) (Diabetes Aust., GI Ltd, Nutra NZ, Heinz Aust./Heinz Watties NZ, National Foods, Nestle, Goodman Fielder, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA, AFGC supported by MasterFoods Aust NZ and PB Foods, F & B Importers Assoc., Parmalat Aust., Sanitarium Health Food Comp., NSW Food Authority, Griffins Foods, Unilever Australasia, Naturalac, NZ Magazines, NZFGC, ASA supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm and NZTBC, DAA, NZDA, Axiome)

There were 4 submitters that indicated that they did not support permission for use of this claim (TCCA, ASMI, CHC, Public Health South).

TCCA suggested that consumers may be misled by the use of the term ‘provides’ or is a ‘source of. They also suggested that if such claims are to be used, the fibre requirement should be raised. Making a claim that a food is a ‘source of’ has little benefit to consumers unless consuming the food as part of a varied diet will significantly contribute to the total daily intake of that nutrient, e.g. claims that a food (breakfast cereal or muesli bar) is a ‘source of’ fibre (≥ 1.5 g fibre per average serve) provides little benefit to consumers when the 1.5 g of fibre consumed contributes only 5% of the total required daily fibre intake (30 g/day) (TCCA).

‘High fibre’ and ‘good source of fibre’ claims

There were 42 submitters that supported that ‘good source of fibre’ claims should be permitted (including ASMI, CHC, Tomox) and of these submitters, 39 supported the

use of CoPoNC criteria as the qualifying criteria (with exceptions as noted above) (Diabetes Aust., GI Ltd, Nutra NZ, TCCA, Heinz Aust./Heinz Watties NZ, National Foods, Nestle, Goodman Fielder, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA, AFGC supported by MasterFoods Aust NZ and PB Foods, F & B Importers Assoc., Parmalat Aust., Sanitarium Health Food Comp., NSW Food Authority, Griffins Foods, Unilever Australasia, Naturalac, NZ Magazines, NZFGC, ASA supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm and NZTBC, DAA, NZDA, Axiome).

There were no submitters that clearly stated that they did not support the use of this claim.

In answer to question 36 Public Health South recommended that criteria for a high fibre claim needs to be > 4 g of fibre per serve, at least 1/3 more than it's standard counterpart and should included a statement of comparison with the normal counterpart.

'Increased fibre', 'fibre enriched' and 'more fibre' claims, and 'fibre added' claims

There were 35 submitters that generally supported the use of CoPoNC criteria as the qualifying criteria, and that did not indicate that they did not support these claims (with exceptions as noted above) (Heinz Aust./Heinz Watties NZ, National Foods, Nestle, Goodman Fielder, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA, AFGC supported by MasterFoods Aust NZ and PB Foods, F & B Importers Assoc., Parmalat Aust., Sanitarium Health Food Comp., NSW Food Authority, Griffins Foods, Unilever Australasia, Naturalac, NZ Magazines, NZFGC, ASA supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm and NZTBC, DAA, NZDA, Axiome).

Seven submitters implied that they didn't support the use of these claims, by indicating their support for other fibre claims not including increased, enriched or more fibre (Diabetes Aust., GI Ltd, Nutra NZ, TCCA, Tomox, CHC, and Public Health South).

General comments

Bakewell Foods only concern mentioned was that there is only one standard, i.e. Heart Foundation asking for fibre claims next year.

CML recommended that the bioavailability of fibre should be considered (i.e. soluble vs. insoluble fibre). They also questioned whether this could be further explored due to the diseases that are linked to each type (i.e. bowel cancer is assisted by insoluble fibre, whereas, cholesterol is assisted by soluble fibre).

NCWA recommended that qualifying criteria should include a direct relationship to a dietary outcome.

CSIRO – HS&N suggested clarifying the definition of fibre. They also said they did not believe any qualifying criteria are needed and the food does not need to have contained fibre originally.

AFGC (supported by MasterFoods Aust NZ and PB Foods) noted the Go Grains submission recommending the inclusion of ‘wholegrain’ claims and the criteria suggested for them.

Other comments provided but not in direct response to the question

Axiome recommended that CoPoNC criteria and conditions have been effective and should remain the basis of fibre claims.

Qualifying criteria should be consistent with dietary guidelines (PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit) and qualifying criteria should include nutrient profiling of ‘healthy’ foods (WA DoH).

Foods should be in keeping with National Health and Medical Research Council National Dietary guidelines (Tas DoH&HS).

Responses to question 36 that relate to question 37

- Diabetes Aust, and GI Ltd recommended a minimal set to avoid consumer confusion. They suggested ‘source of fibre’ and ‘high fibre’;
- ‘Source’, ‘high’ or ‘good source’ (Tomox);
- Claims should only be made where the food is a ‘good source’ or ‘high in fibre’ (CHC);
- Criteria should be set for fibre claims due to the relationship between high fibre and constipation (NCWA);
- Wyeth Aust recommended that the amount of fibre should be high enough to make a significant contribution to the overall diet if consumed regularly;
- Australian Dietary Guidelines and NZ Food and Nutrition Guidelines (NZ MoH);
- Criteria should be >2g fibre per serve (CSIRO – HS&N);
- CML will be guided by the experts but were generally supportive of an increase in the level of dietary fibre (from 3 g to ≥ 4 g) needed to make a claim. They noted that it is well known that most Australians are not getting enough fibre in their diet and this change may encourage manufacturers to reformulate products or increase levels of fibre to enable them to retain the ‘source of’ claim;
- Foods should avoid making laxative and bowel motion claims if amount of dietary fibre is insufficient (ASMI).

Question 38

Is a 'very high fibre' claim necessary, given that there are no claims for 'very high' for any other nutrient?

Out of 147 submitters, 42.9% (63 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	20	14	5	2	41
Government	4	2	-	-	6
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	36	20	5	2	63

Overview

Thirty-four submitters did not support a 'very high fibre' claim. Twenty-seven submitters supported the use of this claim.

Supported a 'very high fibre' claim

Of the submitters who responded to this question, 42.9% (27) supported a 'very high fibre' claim (TCCA, DAA, NZDA, Nestle, AFGC, MasterFoods Aust. NZ, PB Foods, Goodman Fielder, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Griffins Foods, NZFGC, Unilever Australasia, CML, CHC, National Foods, National Starch, Solae Comp, Sanitarium Health Food Comp.).

DAFF explained that given this claim is not a risky or potentially harmful claim, then it should be permitted but only if other 'very high' claims are allowed for other nutrients, in order to keep the system simple.

Naturalac noted that they had no strong opinion.

Reasons given for considering a 'very high fibre' claim as necessary were:

- That this claim is currently permitted under CoPoNC (Nestle, NZFGC);
- That this permission has existed over a period of time and there has been no demonstrated market failure (Unilever Australasia);
- That in the absence of good scientific evidence demonstrating that a 'very high fibre' claim should not be used, provision for it as in CoPoNC should remain (Goodman Fielder, Griffins Foods, AFGC supported by MasterFoods Aust. NZ and PB Foods);

- That such food products are rare and it gives consumers the opportunity to choose a higher fibre product, which may indeed incur more health benefits, e.g. relieving constipation (TCCA);
- There can be no harm in having foods that contain very high levels of fibre and there is the potential for benefit (DAA supported by NZDA);
- Australian current fibre intake is low (CML);
- Dietary fibre intake is the most neglected component of the Australian diet (CHC);
- Most Australians struggle to achieve dietary fibre recommendations, and the food industry should be encouraged to produce very high fibre foods (National Starch, Solae Comp); and
- Such claims are useful to consumers (Sanitarium Health Food Comp).

Although ‘very high’ is not a claim made in respect of other nutrients, such a claim would have no relevance in respect of those nutrients, whereas in respect of fibre it would provide useful information and hence a distinction can be made in this situation (NZFGC). Nestle agreed that regardless of there being no other nutrients with ‘very high’ requirements this claim is appropriate for dietary fibre.

It was recommended by some submitters that the criteria for a ‘very high fibre’ claim should be those currently contained in CoPoNC. (Goodman Fielder, AFGC supported by MasterFoods Aust. NZ and PB Foods, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA).

Did not support a ‘very high fibre’ claim

Conversely, 54% (34) of the submitters who responded to this question did not think that a ‘very high fibre’ claim was necessary (Diabetes Aust., GI Ltd, Tomox, Aussie Bodies, Bakewell Foods, Wyeth Aust., NCWA, NSW DoH – N&PA Branch, CSIRO – HS&N, Public Health South, NZ Dairy Foods, NZ Magazines, Nutra NZ, Heinz Aust/Heinz Watties NZ, ASA, Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers, Mainland Products, Cadbury Schweppes, Dr R Stanton, NHF Aust., NHF NZ, PHAA (supported by ACA), Tas DoH&HS, WA DoH, Monash Uni – N&D Unit, Parmalat Aust., NZ MoH, NZFSA, Canterbury DHB).

NHF Aust supported by NHF NZ added that ‘excellent source’ claims are also not necessary and both these and ‘very high fibre’ claims should be prohibited. Public Health South suggested only allowing high fibre claims.

Reasons given for considering a ‘very high fibre’ claim as not necessary were:

- There are too many fibre claims (Public Health South);

- ‘Very high fibre’ claims are not in line with claims for other nutrients (Cadbury Schweppes);
- As there are no claims for very high in other nutrients there is no need for very high in fibre (Tas DoH&HS);
- Consumers can make a comparison with other products (Dr. R Stanton);
- Adds to the level of complexity around fibre claims and may be confusing to consumers (PHAA (supported by ACA), Tas DoH&HS, WA DoH, Monash Uni – N&D Unit);
- This claim seems irrelevant (Parmalat Aust.);
- Don’t want to subtract from high fibre claim (Canterbury DHB);
- Not necessary as it is likely to have added fibre. A lot of the evidence around fibre for health benefits related to the use of whole foods such as wholegrain or fruits and vegetables (NZ MoH);
- Foods able to make this claim might contain high levels of the non-traditional fibres, which do not necessarily have the properties of traditional dietary fibre, such as faecal bulking. High fibre claims are sufficient, and where higher levels are achieved, the Nutrition Information Panel will provide the information. The dietary guidelines recommend fibre rich foods, and it is important that consumers do not rely on processed foods with added, possibly non-traditional, fibre sources (NZFSA).

Other comments provided but not in direct response to the question

Queensland Health PHS recommended that statements such as ‘very high fibre’ should be avoided as it adds to the complexity around fibre claims and may be confusing to consumers.

Kellogg’s Aust said there seems to be no clear rationale as to why very high fibre claims should be disallowed. They stated that the removal of very high fibre claims would disadvantage consumers who are seeking very high fibre products to help them increase their fibre needs, and that a very high fibre product can provide >6g fibre/serve which can equate to >20% of the recommended fibre level for adults.

Question 39

Should there be any specific provisions for main dishes and meal type products? If so, what criteria should apply?

Out of 147 submitters, 31.3% (46 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	12	12	4	-	28
Government	2	2	-	-	4
Public health	7	2	-	-	9
Consumers	2	-	-	-	2
Other	3	-	-	-	3
Total	26	16	4	-	46

Overview

Twenty-two submitters supported the use of specific provisions for main dishes and meal type products for fibre claims. Fifteen submitters did not support these provisions. The criteria that were suggested included those currently specified in CoPoNC, as well as an increased level to those currently specified. The use of dietary modelling to determine appropriate criteria was also suggested.

Supported provisions for main dishes and meal type products

Of the submitters that responded to this question, 47.8% (22) explicitly indicated that they supported the use of specific provisions for main dishes and meal type products for fibre claims (Diabetes Aust., GI Ltd, Tomox, CHC, F & B Importers Assoc., NZFGC, Griffins Foods, Goodman Fielder, Unilever Australia, National Foods, National Starch, Solae Comp, NZFGC, Nestle, PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit, AFGC supported by MasterFoods Aust NZ and PB Foods).

Suggested criteria for main dishes and meal type products were as follows:

- Criteria should be as in CoPoNC (F&B Importers Assoc., National Foods, National Starch, Solae Comp, NZFGC, Griffins Foods, Nestle, Goodman Fielder, Unilever Australia, AFGC supported by MasterFoods Aust NZ and PB Foods);
- Greater than or equal to 4grams per 100grams per meal (CHC);
- Recommend an increase in qualifying fibre level for main meal products (PHAA (supported by ACA), SA DoH&HS, WA DoH, Monash Uni – N&D Unit);
- Dietary modelling needs to be performed to determine criteria (Diabetes Aust., GI Ltd).

These claims are specified in CoPoNC and been used in the marketplace for many years (Nestle) and there is no evidence to demonstrate a significant market failure (Goodman Fielder, Unilever Australia, AFGC supported by MasterFoods Aust NZ and PB Foods).

Did not support provision for main dishes and meal type products

Conversely, of those submitters that responded to this question, 33.3% (15) indicated that they did not support the use of specific provisions for main dishes and meal type products (Aussie Bodies, CSIRO – HS&N, NZ MoH, NZFSA, Canterbury DHB, NZ Magazines, CML, ASA supported by Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ and Assoc. of NZ Advertisers, Fonterra supported by Mainland Products).

CML could not understand why this food category has been singled out.

General comments

Other comments made were that claims should be based on serving size. If the fibre content in a complete meal meets the criteria for making a claim then it should be permitted (Cadbury Schweppes).

DAA, supported by NZDA, recommended that main dishes and meal type products for which health claims are made should comply with the Australian Dietary Guidelines.

It was suggested by Sanitarium Health Food Comp that fibre criteria for complete meals be specified, and that guidance be provided as to what defines a complete meal.

TCCA stated that there is likely to be less confusion if the standards for 'high' and 'very high' are continued, or changes are made so that the 'high' and 'very high' categories are defined as X g fibre per 100g. This will facilitate more effective public education on this matter.

Dr R Stanton recommended that main meals should meet some criteria for nutrients and also for disqualifying criteria.

NCEFF noted previous published research for content claims for biologically active substances (see reference 21 in submissions) and also referenced appendix 3(in confidence) of their submission.

NZFSA commented that silence on this aspect in the Code will not prevent a label from stating the amount of fibre in a particular ingredient, as long as the claim was not misleading and seen to apply to the whole meal.

Nutra NZ noted that a product designed as a meal would already carry a statement about the number of servings per pack and fibre content per serve on the Nutrition Information Panel, therefore probably no need for this claim.

It is unclear as to what a main dish or meal type product is, e.g. some canned foods may be consumed as a meal or consumed with other foods (Heinz Aust/Heinz Watties NZ).

NCWA found this to be difficult given that most foods consumed contain a variety of nutrients – we eat foods not nutrients.

3.12 SALT

Question 40

Should these salt/sodium claims be permitted?

Out of 147 submitters, 40.8% (60 in total) responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	18	13	4	-	35
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	3	-	-	-	3
Total	36	19	4	-	60

Overview

Permission for ‘low salt/sodium’ claims was supported by 51 submitters and was not opposed by any submitters. Permission for ‘very low salt/sodium’ claims was supported by 47 submitters and opposed by eight submitters. Permission for ‘reduced salt/sodium’ claims was supported by 55 submitters and opposed by one submitter. Permission for ‘no added salt/sodium’ claims was supported by 54 submitters. One submitter expressed concern regarding this claim. Permission for ‘salt free’ claims was supported by 52 submitters and opposed by five.

Support for permission of salt and sodium claims

There were 46 submitters that supported the permission of all the listed salt and sodium claims (Diabetes Aust, GI Ltd, NHF Aust., NHF NZ, Tomox, Aussie Bodies, ANIC, ASMI, AFGC, MasterFoods Aust. NZ, CML, CHC, Dairy Aust., F&B Importers Assoc., GW Foods, Goodman Fielder, National Foods, National Starch, Parmalat Aust., PB Foods, Sanitarium Health Food Comp, Solae Comp, NCWA, NSW DoH – N&PA Branch, NSW Food Authority, DAFF, CSIRO – HS&N, Uni of Adel. & Uni of SA – Nutrition & Physiology Research Grp, NZ MoH, NZFSA, Public Health South, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Griffins Foods, NZ Dairy Foods, NZFGC, NZ Magazines, Nutra NZ, Heinz Aust/Heinz Watties NZ, Nestle, Unilever Australasia).

Five submitters supported the permission of the ‘low’, ‘reduced’, ‘no added’ and ‘salt free’ salt/sodium claims (they did not support permission of ‘very low salt/sodium’ claims) (Dr R Stanton, PHAA (supported by ACA), Monash Uni N&D Uni, Mainland Products).

Two submitters supported the permission of the ‘low’, ‘reduced’, and ‘no added’ salt/sodium claims (Wa DoH, SA DoH) (Wa DoH did not support permission of ‘very low salt/sodium’ claims and ‘salt free’).

Two submitters supported permission of ‘low’ and ‘reduced’ salt/sodium claims only (Bakewell Foods and Cadbury Schweppes) (Cadbury Schweppes expressed concern about ‘no added salt’ and ‘salt free’ claims also).

One submitter supported permission of ‘low’, ‘very low’, ‘no added’ and ‘salt free’ salt/sodium claims (they did not support permission of the ‘reduced’ claim) (TCCA).

Two submitters supported the permission of ‘low salt/sodium’ claims (other claims were not mentioned). It was also noted by FSANZ that in answer to question 41 they agree with the criteria for reduced salt claims and do not recommend their prohibition (DAA, NZDA)

One submitter implied that they supported ‘low’ but not ‘very low’ salt/sodium claims (Tas DoH&HS). In question 41, FSANZ noted that they considered ‘salt free’ claims should also be prohibited.

One submitter did not support ‘salt free’ (and did not mention the other claims) (Nutra-Life H&F). It was noted by FSANZ that the Solae Comp and National Starch also stated in answer to question A41, that ‘salt free’ claims should not be permitted.

FSANZ notes that when considering submitter responses questions 40 and 41 in conjunction, it is unclear whether some submitters that do not support all claims being permitted, actually want these claims prohibited, as this has not been suggested in reference to the preferred criteria.

Stakeholders submitted to allow the above salt/sodium claims for the following reasons:

- There is considered to be sufficient evidence linking high sodium intakes to cardiovascular disease (Diabetes Aust, GI Ltd, NHF Aust and NHF NZ);
- These claims would help consumers control their salt intake by choosing a diet consistent with dietary guidelines (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni-N&D Unit, NZFSA, Public Health South, Uni of Adel. & Uni of SA- Nutrition & Physiology Research Grp);
- Salt/sodium claims have been used in the marketplace for many years under CoPoNC (Goodman Fielder, AFGC, MasterFoods Aust. NZ, National Foods, PB Foods). Goodman Fielder added that these claims are a useful marketing and communication tool;

- Salt/sodium claims are useful to consumers (NSW Food Authority, NZ MoH) wishing to control their sodium intake (National Foods, AFGC, MasterFoods Aust. NZ, Tas DoH&HS, Unilever Australasia);
- These claims should be allowed, as there has been no evidence of market failure (Nestle); and.
- DAFF wanted salt/sodium claims, as they are consistent with CoPoNC and Codex.

Nutra NZ noted that a benefit of a ‘no added salt claim’ is to remind consumers that the sodium reported on the Nutrition Information Panel of products without added salt is from natural sources.

Concerns expressed over permission for some claims

Cadbury Schweppes was concerned that the ‘no added’ and the ‘salt free’ claims may infer there is no salt/sodium present whereas the product may be intrinsically high in salt/sodium. Nutra-Life H&F were concerned salt free may infer that there is no salt when in fact there is sodium present. The CHC suggested that salt-free claims should be restricted to those foods that might otherwise contain sodium and that if sodium has been replaced then the replacement should be identified.

NSW Food Authority questioned the rationale for not having a provision for very low sodium as consumers on a very low sodium diet find this useful. On the other hand, Tas DoH&HS considered very low sodium claims add little benefit and are not consistent with other criteria and could increase complexity and potentially increase consumer confusion.

TCCA did not recommend reduced salt claims, as they are likely to mislead consumers.

Canterbury DHB suggested a statement be included on labels regarding the recommended total sodium intake for the day to avoid people eating large amounts of manufactured low salt foods and still exceeding recommended intake.

Mainland Products noted that because there are no provisions for ‘very low salt/sodium’, it does not mean anything and could be misleading.

Question 41

Do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 38.8% (57 in total) responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	16	13	4	-	33
Government	6	2	-	-	8
Public health	8	3	-	-	11
Consumers	2	-	-	-	2
Other	3	-	-	-	3
Total	35	18	4	-	57

Overview

Forty-four submitters agreed with the preferred criteria for 'low (in) salt/sodium' claims whereas three submitters did not agree with these criteria. Thirty-seven submitters agreed with the preferred criteria for 'very low (in) salt/sodium' claims whereas seven submitters disagreed. Forty-one submitters agreed with the preferred criteria for 'reduced (in) salt/sodium' claims whereas five submitters disagreed. Forty submitters agreed with the preferred criteria for 'no added salt/sodium' claims whereas one submitter disagreed. Thirty-two submitters agreed with the preferred criteria for 'salt free' claims whereas 13 submitters did not agree with these criteria.

Discussion

For those submitters that responded to this question, there were:

- 44 submitters that clearly stated that they agreed with the preferred criteria for 'low (in) salt/sodium' claims whereas three submitters did not agree with these criteria;
- 37 submitters that clearly stated that they agreed with the preferred criteria for 'very low (in) salt/sodium' claims whereas seven submitters did not agree with these criteria;
- 41 submitters that clearly stated that they agreed with the preferred criteria for 'reduced (in) salt/sodium' claims whereas five submitters did not agree with these criteria;
- 40 submitters that clearly stated that they agreed with the preferred criteria for 'no added salt/sodium' claims whereas one submitter did not agree with these criteria;
- 32 submitters that clearly stated that they agreed with the preferred criteria for 'salt free' claims whereas 13 submitters did not agree with these criteria.

Comments relating to the additional criteria for 'no added salt' as per question 42 have not been included in this question.

Nutra-Life H&F added that they only agreed with the preferred criteria, providing that consumers are aware of the 'normal' levels of sodium in the food.

Some submitters agreed with the concept but could not provide comment on the figures (ASA, Cadbury Confectionery, Naturo Pharm, NZTBC, NPANZ, Assoc. of NZ Advertisers).

Low salt/sodium

There were 44 submitters that clearly stated that they agreed with the criteria for ‘low (in) salt/sodium’ claims that were proposed at Initial Assessment (Diabetes Aust., Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, Aussie Bodies, ANIC, ASMI, F&B Importers, NCWA, NSW DoH, SA DoH, DAFF, WA DoH, CSIRO HS&N, Monash Uni – N&D Unit, Public Health South, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, Nutra-Life H&F, Nutra NZ, Nestle, Unilever Australasia, DAA, NZDA, AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, Dairy Aust., Goodman Fielder, National Foods, National Starch, Sanitarium Health Food Comp., Solae Comp., Tas DoH&HS, NSW Food Authority, NZFSA, NZ MoH, Heinz Aust/Heinz Watties NZ).

There were three submitters that did not agree with the criteria that were proposed for this claim (TCCA, CHC, Parmalat Aust.).

CHC believed the criterion for a ‘low salt’ claim should be <100mg per 100g meal.

Parmalat recommended retaining the provisions in CoPoNC.

TCCA recommended foods making this claim should also meet criteria for energy/fat/sugar and fibre for salt claims.

Very low salt/sodium

There were 37 submitters that clearly stated that they agreed with that there be no criteria for ‘very low (in) salt/sodium’ claims, as was proposed at Initial Assessment (Diabetes Aust., Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, Aussie Bodies, ANIC, ASMI, F&B Importers, NCWA, NSW DoH, SA DoH, DAFF, WA DoH, CSIRO HS&N, Monash Uni – N&D Unit, Public Health South, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, Nutra-Life H&F, Nutra NZ, Nestle, Unilever Australasia, CML, Dairy Aust., National Starch, Sanitarium Health Food Comp., Solae Comp., Tas DoH&HS, NZFSA, Fonterra, Heinz Aust/Heinz Watties NZ).

Mainland Products recommended that this claim should be excluded, as no other nutrient has a ‘very low’ category.

Seven submitters considered that provision for ‘very low salt’ claims could be included (NSW Food Authority), with six of these submitters recommending <40mg/100g as per the CoPoNC (TCCA, AFGC, MasterFoods Aust. NZ, Goodman Fielder, National Foods, Parmalat Aust.).

NSW Food Authority asked what the rationale was for not having a provision for ‘very low sodium’, as consumers on a low-sodium diet may find such a provision useful, if such products are actually made.

Conversely, some submitters agreed that no provisions are needed for ‘very low salt/sodium’ claims:

- Because this claim should be discouraged or prohibited as the remaining claims are sufficient (NZFSA);
- For consistency (Fonterra, Dairy Aust.); and
- Because a consumer avoiding salt is likely to refer to the Nutrition Information Panel (CML).

Reduced salt/sodium

There were 41 submitters that clearly stated that they agreed with the criteria for ‘reduced (in) salt/sodium’ claims that were proposed at Initial Assessment (Diabetes Aust., Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, Aussie Bodies, ANIC, ASMI, F&B Importers, NCWA, NSW DoH, SA DoH, DAFF, WA DoH, CSIRO HS&N, Monash Uni – N&D Unit, Public Health South, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, Nutra-Life H&F, Nutra NZ, Nestle, Unilever Australasia, DAA, NZDA, AFGC, MasterFoods Aust. NZ, Cadbury Schweppes, Dairy Aust., Goodman Fielder, National Foods, National Starch, Solae Comp., NSW Food Authority, NZFSA, Heinz Aust/Heinz Watties NZ).

NZFGC noted that the proposed criteria for ‘reduced salt/sodium’ claims are preferable over the criteria in CoPoNC.

There were five submitters that did not agree entirely with the criteria that were proposed for this claim (TCCA, Parmalat Aust., Sanitarium Health Food Comp, Tas DoH&HS, NZFSA).

TCCA considered ‘reduced salt’ claims to be misleading and therefore they shouldn’t be allowed. They added if such claims were allowed, an upper limit of sodium should be specified (e.g.<350mg).

Although they indicated that they agreed with the preferred criteria, Aussie Bodies noted that there are high sodium products, for example soy sauce, whereby the ‘reduced’ version is still very high in sodium. Sanitarium Health Food Comp recommended that ‘reduced salt’ claims should be prohibited on foods that are still very high in salt.

Tas DoH&HS suggested that the identity of the reference food and the percent, fraction or amount of difference in sodium value should be indicated adjacent to the comparative claim in an equally noticeable font.

Parmalat Aust. recommended retaining the provisions in CoPoNC.

NZFSA and Nestle agreed that all ‘reduced’ claims in the regulations should be 25% for consistency, but NZFSA queried the need for the percentage to be stated, particularly if synonyms are not permitted.

No added salt/sodium

There were 40 submitters that clearly stated that they agreed with the criteria for ‘no added salt/sodium’ claims that were proposed at Initial Assessment (Diabetes Aust., Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, PHAA (supported by ACA), Tomox, Aussie Bodies, ANIC, ASMI, F&B Importers, NCWA, NSW DoH, SA DoH, DAFF, WA DoH, CSIRO HS&N, Monash Uni – N&D Unit, Public Health South, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, Nutra-Life H&F, Nutra NZ, Nestle, Unilever Australasia, AFGC, MasterFoods Aust. NZ, Dairy Aust., Goodman Fielder, National Foods, National Starch, Parmalat Aust., Sanitarium Health Food Comp., Solae Comp., Tas DoH&HS, NSW Food Authority, NZFSA).

Although supporting the preferred criteria, AFGC, MasterFoods Aust. NZ, and National Foods recommended that the criteria for ‘no added salt’ be simplified to “the food and ingredient of that food contain no added sodium compound” which is consistent with other claims where the criteria refer only to sodium content.

CML were in support of retaining this claim, because consumers may look for ‘no added salt’ on products such as canned goods, nuts and popcorn.

Parmalat Aust. was in favour of retaining the provisions in CoPoNC.

Heinz Aust./Heinz Watties NZ suggested that because salt substitutes must be labelled with an additive class name (‘mineral salt’ is most appropriate), consumers may construe mineral salts as ‘salt’. They therefore wanted further clarification on ‘no added salt’ claims when mineral salts are in the ingredient list.

TCCA were the only submitter that specifically disagreed with the criteria that were proposed for this claim. They recommended that ‘no added salt’ required set criteria e.g. either zero or nil or an agreed figure such as <1mg/100mL or 100g.

Salt free

There were 32 submitters that clearly stated that they agreed with the criteria for ‘salt free’ claims that were proposed at Initial Assessment (Diabetes Aust., Dr R Stanton, GI Ltd, NHF Aust., NHF NZ, Tomox, Aussie Bodies, ANIC, ASMI, F&B Importers, NCWA, NSW DoH, DAFF, CSIRO HS&N, Public Health South, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, Nutra-Life H&F, Nutra NZ, Nestle, Unilever Australasia, Sanitarium Health Food Comp, NSW Food Authority, Heinz Aust/Heinz Watties NZ) including five submitters that recommended the addition of a notation as to conformity with trade practices /fair trading definitions for salt free claims (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit, NZFSA).

There were 13 submitters that did not agree entirely with the criteria that were proposed for this claim (TCCA, DAA, NZDA, AFGC, MasterFoods Aust. NZ, Dairy

Aust., National Foods, National Starch, Parmalat Aust., Solae Comp, Tas DoH&HS, NZ MoH, Fonterra).

Five of these submitters stated that these claims should be prohibited (DAA, NZDA, National Starch, Solae Comp. and Tas DoH&HS).

Eight submitters recommended that provisions should be made for 'salt free' claims (including Unilever Australasia) and:

- That the criteria extant in CoPoNC apply for consistency with other claims (AFGC, MasterFoods Aust. NZ, Dairy Aust, National Foods, Parmalat Aust and Fonterra);
- Gave examples, either zero or nil or an agreed figure such as <1mg/100ml or per 100g (TCCA).

General comments

Some submitters were concerned about foods making some of these claims that were intrinsically high in salt/sodium, as follows:

- If the sodium level was above a certain level, it should be indicated (NZ MoH);
- Cadbury Schweppes were concerned that foods with a 'no added sodium' or 'salt free' claim may infer to consumers that there is no salt/sodium present when in fact the product may have an intrinsically high salt level.

PB Foods suggested that the criteria should be the same as the criteria set by the NHF Tick Program to avoid confusion.

Uni of Adel. & Uni of SA Nutrition Physiology Research Group recommended that potassium content should also be declared, as the sodium/potassium ratio is more important than the sodium content in foods.

Dairy Aust. requested that all criteria and conditions related to salt/sodium claims are included in a guideline, including 'no added salt' which currently appears in the Food Standards Code.

Mainland Products added that if consistent criteria were developed for 'reduced', 'low' etc for all nutrients, then the inclusion of generic/simple definitions in the Dietary Guidelines would assist consumers. They also noted that consumer/competitor pressure would increase compliance in those manufacturers who do not meet the Guidelines, thus excluding the need for regulator input.

Responses to question 40 that related to question 41

GW Foods stated that CoPoNC requirements for salt free should be included.

Question 42

Should there be additional criteria for ‘no added salt/sodium’ claims to address the issue of manufacturers making the claim on products that are not low in sodium? Please comment on the usefulness of either of the following two criteria:

*The label or advertisement must include a statement adjacent to the claim drawing attention to the sodium content of the product as outlined in the nutrition information panel (for example, ‘See nutrition information panel for sodium content’); or
The food must be ‘low in salt’.*

Out of 147 submitters, 37.4% (55 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	14	13	4	-	31
Government	6	2	-	-	8
Public health	8	4	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	32	19	4	-	55

Overview

Thirty-one respondents supported the use of additional criteria for ‘no added salt/sodium’ claims to address the issue of manufacturers making the claim on products that are not low in sodium. Of these submitters, 13 preferred Option a, whereas 11 preferred Option b. Four submitters preferred that both criteria (a and b) be applied to this claim. Twenty submitters did not support the use of additional criteria for ‘no added salt/sodium’ claims to address the issue of manufacturers making the claim on products that are not low in sodium.

Supported additional criteria

Of the 31 submitters that supported the use of additional criteria for ‘no added salt/sodium’ claims, four indicated their support for this but did not specify which criteria they preferred (Aussie bodies & CSIRO – HS&N, Canterbury DHB, Heinz Aust/Heinz Watties NZ).

There were 13 submitters that preferred Option a (NHF Aust., NHF NZ, PHAA (supported by ACA), CML, NCWA, NSW DoH – N&PA Branch, SA DoH, WA DoH, Monash Uni – N&D Unit, NZ MoH, NZFSA, Griffins Foods).

Comments regarding the usefulness of option a were as follows:

- Option a is in keeping with requirements for no added sugar claims (PHAA (supported by ACA, SA DoH & WA DoH, Monash Uni – N&D Unit));
- Option ‘a’ deals with high intrinsic levels of sodium or even added sodium in the form of a food additive or processing aid (NZFSA);

- A disclosure statement alerting consumers to the natural sodium present in a food is necessary to help prevent consumer confusion relating to ‘no added salt’ and ‘unsalted’ claims (NHF Aust. and NHF NZ); and
- Consumers understand the issue in terms of ‘salt’, but not necessarily ‘sodium’ content/intake. The message must be consistent, and if sodium is the issue, the message can be translated via the ‘salt’ message. Customers should then find it easier to understand (CML).

There were 11 submitters that preferred Option b (Cancer WA, Diabetes Aust., DAA, NZDA, GI Ltd, Tomox, ANIC, Tas DoH&HS, NSW Food Authority, Public Health South, NZ Dairy Foods).

Comments regarding the usefulness of Option b were as follows:

- Option b is more consumer friendly (Tomox);
- Option b would be less likely to mislead consumers (TCCA and NZ Dairy Foods).

There were 4 submitters that preferred a combination of both Options a and b (Dr R Stanton, Cadbury Schweppes, CHC, Mainland Products).

CHC stressed that ‘no added’ statements must be relevant and not misleading.

Did not support additional criteria

Those submitters who disagreed with additional criteria for ‘no added salt/sodium’ claims were AFGC, MasterFoods Aust. NZ, PB Foods, Dairy Aust., F& B Importers, Goodman Fielder, National Foods, Parmalat Aust. DAFF, ASA, Cadbury Confectionery, NPANZ, NZTBC, Naturo Pharm, Assoc. of NZ Advertisers, NZ Magazines, Fonterra, NZFGC, Nutra NZ, Nestle, and Unilever Australasia.

It was added that they would support additional criteria only if the criteria could be scientifically justified and would correct a significant market failure (AFGC, MasterFoods Aust. NZ, PB Foods, Goodman Fielder, National Foods and Nestlé).

Reasons for not agreeing with the provision of additional criteria

Four submitters stated that consumers find the ‘no added salt/sodium’ claim useful and they did not think the claim implied salt free (AFGC, MasterFoods Aust. NZ, PB Foods, and Nestlé). They added that ‘no added salt/sodium’ claims are useful for manufacturers who could not make ‘reduced’ or ‘low salt’ claims, yet need to distinguish their product from others. They believed adding the extra criterion that foods carrying a ‘no added claim’ must meet the criterion for ‘low salt/sodium’ would disadvantage both these manufacturers and the consumers they are trying to help.

In addition they said that there was insufficient evidence to justify requiring food bearing a “no added salt/sodium” claim to also comply with requirements for “low

salt/sodium” (option b). F&B Importers Assoc. questioned what evidence there was for the need for this action.

It was pointed out that consumers are able to consult the Nutrition Information Panel if they required clarification, therefore it would not be necessary to need to draw attention to this panel for ‘no added salt’ claims (Dairy Aust., National Foods, Parmalat Aust., Fonterra, NZFGC and Nutra NZ).

Goodman Fielder believed the “no added salt” claim is beneficial for consumers and not misleading.

Other submitters noted that the statement must be truthful and if ‘no added salt’ infers that the product is low in salt, then the claim is misleading if the product is naturally high in salt (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm Ltd, NZ Magazines, NZTBC, NZ Magazines).

DAFF pointed out that FSANZ research indicates that consumers understand that this claim means that the product may contain natural salt.

Nutra NZ commented that the product must already meet the “low in salt” requirements to make a “no added salt/sodium” claim.

General Comments

Some submitters pointed out that additional criteria are already required by sub clause 17(2) of Standard 1.2.8 for salt and sodium claims, however these relate to the practice of including potassium levels where these claims are made (Dairy Aust., National Foods and Fonterra).

3.13 GLUTEN AND LACTOSE

Question 43

Should these gluten and lactose claims be permitted?

Out of 147 submitters, 49.0% (73 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	16	5	3	49
Government	7	2	-	-	9
Public health	7	4	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	43	22	5	3	73

Overview

Sixty-six submitters indicated their support for the permission of gluten claims in general. Sixty-seven submitters supported the permission of lactose claims in general. One submitter did not agree with permission for gluten claims and two submitters disagreed with allowing lactose claims.

Supported permission for gluten and lactose claims

There were 64 stakeholders (87.7% of submitters who responded to this question) who agreed that both gluten and lactose claims should be permitted (TCCA, Diabetes Aust., DAA, NZDA, Dr R Stanton, GI Ltd, PHAA (supported by ACA), Aussie Bodies, AFGC, MasterFoods Aust. NZ, ANIC, ASMI, Bakewell Foods, Cadbury Schweppes, CML, CHC, Dairy Aust., F & B Importers Assoc., GW Foods, Goodman Fielder, National Foods, National Starch, PB Foods, Sanitarium Health Food Comp, Solae Comp, Wyeth Aust., NWCA & ACCC (implied), Tas DoH&HS, NSW DoH – N&PA Branch, SA DoH, DAFF, CSIRO – HS&N, Monash Uni – N&D Unit, NZ MoH, NZFSA, Public Health South (except reduced lactose), ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Fonterra, Griffins Foods, Naturalac Nutrition, NZ Dairy Foods, NZFGC, NZ Magazines, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, William Wrigley Junior, Heinz Aust./Heinz Watties NZ, Nestle, Unilever Australasia).

The Coeliac Society of Aust. and Mainland Products indicated their support for gluten claims only. Parmalat Aust., NSW Food Authority (with reservations regarding ‘free claims noted previously) and Canterbury DHB indicated their support for lactose claims only.

Reasons provided by some submitters for supporting permission for these claims were that:

- A proportion of the population has lactose intolerance or coeliac disease and they find this information extremely useful for making appropriate food choices (NZFGC, Diabetes Aust., GI Ltd, AFGC, CML, Goodman Fielder, National Foods, PB Foods, Sanitarium Health Food Comp. Solae Comp, Wyeth Aust., Public Health South and ACCC);
- They are a public health and safety issue for a significant minority of the population (DAA, NZDA, The Solae Comp, Tas DoH&HS and Cadbury Schweppes);
- These claims are critical information for the health of people concerned (CHC, Dairy Aust., NCWA, Tas DoH&HS, NSW DoH - N&PA Branch, SA DoH, NZ MoH, NZFSA, William Wrigley Junior, Nestle);
- Gluten and lactose claims should be allowed within the Code to inform consumers to their presence or absence in foods and to protect public health and safety for those with these intolerances (PHAA (supported by ACA), SA DoH, Monash Uni – N&D Unit);

- These claims should be allowed so that the truth would not be suppressed (ASA, supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC); and
- These claims have been in marketplace for many years (F & B Importers Assoc., National Foods) and removal would disadvantage both consumers and manufacturers (AFGC supported by MasterFoods Aust. NZ, Goodman Fielder).

Cadbury Schweppes pointed out that these claims are currently established in Standard 1.2.8.

NCWA added that it is often difficult for consumers to find food products with these criteria now.

CMA believed gluten and lactose claims (as prescribed in the Code) should be permitted for health and safety reasons, they are not simple content claims but rather they provide essential information for those with allergies and intolerances (this view was supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA).

Naturalac Nutrition considered that gluten claims should be permitted because there is a number of products specifically manufactured and marketed for people suffering from celiac disease and many of these people depend on these products as a substitute for conventional bread. The use of the term 'gluten free' clearly identifies the intended purpose of these products and presumably constitutes a claim. Disallowing it would hamper the consumer's ability to identify these products (and similarly so for lactose claims).

The Coeliac Society of Aust pointed out that gluten claims enable appropriate food choices for people with coeliac disease.

National Foods noted that they currently make these claims and emphasised that prohibition of these claims would disadvantage consumers and would require packaging changes, which would cause consumer confusion regarding product formulations.

Did not support permission for gluten and lactose claims

Mainland Products stated that they did not support lactose claims. WA DoH disagreed with allowing gluten and lactose claims. WA DoH added that they did not consider it appropriate to include claims regarding allergens and additives in a standard for nutrition, health and related claims. Gluten and lactose relate to presence or absence of ingredients, not nutrition or health properties of a food, nutrient, energy or bioactive substance.

Mainland Products did not support lactose claims as believed this creates confusion and paranoia among the majority of people who wrongly perceive that they are lactose intolerant. In addition, they commented that such claims are not appropriate

for those with dairy protein intolerance, who would avoid purchasing such products, reducing their overall dairy (and calcium) intake at the expense of their health.

Public Health South did not support allowing 'reduced lactose' claims as they considered this claim might potentially cause confusion, which could pose adverse health problems for those at risk.

General comments and recommendations

PHAA (supported by ACA), SA DoH and Monash Uni – N&D Unit recommended that as these nutrients are of interest only to those with these intolerances and allergies it would be preferable to remove them from this section of the standard and incorporate them into a standard dealing with advisory statements.

Nutra-Life H&F, Nutra NZ and MFD did not specifically answer the question but provided several comments including:

- 'Gluten free' has not met the legal definition of 'free' meaning products containing gluten at very low levels have been allowed to claim 'gluten free' (Nutra-Life H&F);
- The FSANZ policy context for gluten as detailed in Attachment 6 is misleading. Gluten is significant in the context of coeliac disease and dermatitis herpetiformis only, as a health condition (MFD);
- There is no evidence that Clause 16, Standard 1.2.8 provides a high level of protection to people most sensitive to coeliac disease. There is no evidence of sensitivity to coeliac disease (MFD);
- There is a significant body of evidence that people with coeliac disease are able to tolerate gluten in very small amounts as in the low gluten standard (MFD);
- A 'lactose free' claim would always be vulnerable to retesting using the latest detection techniques and suggested that the outcomes of the review of gluten claims would need to be considered in this context (Nutra NZ);
- Inconsistency in the 'no-detectable' criteria for gluten free as with current technology advances the tests for detection meaning that foods previously considered gluten free are now able to have gluten detected even though they inherently contain no gluten (MFD);
- The 'low lactose' Standard defined at less than or equal to 0.3 g/100 g of food is of little use to consumers. The very few people with galactosaemia need a lactose free standard and there is significant evidence that those people with lactose intolerance are able to tolerate foods containing 6g of lactose or less per serving (reference JADA March 1996 Vol 96 No 3 p 243-246) (MFD);

- MFD repeated their suggestion from previous submissions that a reasonable low lactose standard for those with lactose intolerance should be ten fold FSANZ criteria, i.e. 3 g of lactose per 100 g of the food; and
- Manufacturers should declare the amounts contained in a serving in the Nutrition Information Panel if making a claim (Nutra-Life H&F).

TCCA commented that foods bearing ‘gluten free’ or ‘lactose free’ must contain no detectable gluten or lactose respectively.

It was recommended by some submitters that analytical methods for ‘free’ claims be defined in the standard (National Starch, Solae Comp, Tas DoH&HS).

ACCC pointed out that the criteria ‘none detectable’ satisfied it’s previously stated position with regards to ‘free’ claims.

Fonterra, NSW Food Authority, DAFF, PHAA (supported by ACA), NSW Food Authority and Canterbury DHB are waiting for the outcome of the Ministerial Review before making further comment.

Question 44

If so, do you agree with FSANZ’s preferred criteria?

Out of 147 submitters, 43.5% (64 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	25	12	5	2	44
Government	6	2	-	-	8
Public health	5	3	-	-	8
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	40	17	5	2	64

Overview

Thirty-two submitters agreed with the preferred criteria for ‘lactose free’ claims, 37 agreed with the preferred criteria for ‘low lactose’ claims, and 36 agreed with the criteria for ‘lactose reduced’ claims. Seventeen submitters disagreed with the preferred criteria for ‘lactose free’ claims (15 of these submitters implied disagreement by making recommendations regarding this criteria). One submitter disagreed with the preferred criteria for ‘low lactose’ claims (and did not support permission of this claim in the Standard). Two submitters disagreed with the criteria for ‘lactose reduced’ claims. Regarding gluten claims, preferred criteria were not provided in the Initial Assessment Report (as these are to be defined after the Ministerial Review). Nineteen submitters stated they would await the outcome of the Ministerial Review before commenting.

Agreed with preferred criteria for lactose claims

There were 32 respondents (50.0% of submitters that responded to this question) who agreed with the preferred criteria that have been defined for lactose claims (TCCA, Diabetes Aust., DAA, NZDA, Dr R Stanton, Aussie Bodies, ANIC, ASMI, Bakewell Foods, F & B Importers Assoc., National Starch, Solae Comp, PHAA (supported by ACA), Dairy Aust., Parmalat Aust., Sanitarium Health Food Comp, Wyeth Aust., NCWA, Tas DoH&HS, NSW DoH – N&PA Branch, SA DoH, DAFF, CSIRO – HS&N, Monash Uni – N&D Unit, Canterbury DHB, Griffins Foods, Naturalac Nutrition, NZ Dairy Foods, NZFGC (note reservation below), Nutra-Life H&F, Heinz Aust/Heinz Watties NZ).

AFGC (supported by MasterFoods Aust. NZ), National Foods, Nestle and Unilever Australasia all agreed with the proposed criteria for ‘low lactose’ and ‘lactose reduced’ claims. Public Health South agreed with the preferred criteria except for ‘reduced lactose’.

Did not support preferred criteria for lactose claims

WA DoH disagreed with the preferred criteria. They explained that this was because they disagreed with the preferred criteria being included in a nutrition, health and related claims standard because gluten and lactose relate to presence or absence of ingredients, not nutrition or health properties of a food, nutrient, energy or bioactive substance. CHC also stated ‘No.’ in answer to this question but followed this with “Lactose free should mean none”.

Public Health South did not agree with the preferred criteria for ‘reduced lactose’ (which could cause confusion and potential adverse health affects if people at risk consumed the food).

In addition, there were 17 submitters that made recommendations regarding the ‘lactose free’ claims, thus indicating they did not support this criteria (Cadbury Schweppes, AFGC supported by MasterFoods Aust NZ and Unilever Australasia, Nestle, National Foods, PB Foods, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA).

Recommendations for lactose claims

CML commented that for ‘lactose reduced’ claims, it might be necessary to declare the difference in lactose content in conjunction with the claim because this information is not usually available on the Nutrition Information Panel for the reference food.

Cadbury Schweppes agreed that where any claim was made in relation to the lactose content of a food, the particulars of the lactose and galactose content needed to be provided in the Nutrition Information Panel.

A number of submitters recommended that for ‘lactose free’ claims, the criterion are set at a specific value (Cadbury Schweppes, PB Foods) or the method of analysis for

detection of lactose be specified (AFGC supported by MasterFoods Aust NZ and Unilever Australasia, Nestle, National Foods, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA). DAA and NZDA also recommended that analytical methods for ‘free’ claims be defined in the standard.

The reasons given for these recommendations were:

- ‘No detectable lactose’ is inadequate (PB Foods) and there are health and safety risks involved with this (Cadbury Schweppes);
- ‘Free’ claims should be able to be made when the amount present is physiologically, clinically and nutritionally no different to food containing ‘zero’ amounts of the substance in question (AFGC supported by MasterFoods Aust NZ, Unilever and Goodman Fielder, National Foods);
- The criteria need to align with levels that are physiological relevant. “Not detectable” is not a realistic measure as many techniques are too sensitive, hence consumer choice would be restricted unnecessarily by eliminating suitable foods due to rigid testing requirements (PB Foods); and
- As methods of detection become more sensitive, some products may be disqualified from the market place that were considered acceptable to the relevant population (DAA and NZDA); or manufacturers have to change their labels/remove claims and this impacts on consumers and their ability to quickly find food that is safe and suitable for them (AFGC supported by MasterFoods Aust. NZ and Unilever Australasia, Goodman Fielder, Nestle).

National Foods and AFGC, supported by MasterFoods Aust. NZ and Unilever Australasia also recommended a similar approach be taken for gluten ‘free’ claims (after the Ministerial Review).

The CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA) added that this approach is in line with their recommendations regarding sugar free claims; and that industry and enforcement agents need clarity and certainty with regard to a threshold that is appropriate from a health and safety perspective for consumers, rather than operate in an environment where the ground rules are being changed due to advances in testing analysis

Regarding ‘free’ claims, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA) suggested that industry and enforcement agents needed clarity and certainty with regard to a threshold that is appropriate from health and safety perspective for consumers, rather than operate in an environment where the ground rules are being changed due to advances in testing analysis.

NZFSA commented that they would be undertaking work on ‘free from’ claims due to the international inconsistencies. Regarding gluten free claims, there should be consistency with international standards and they noted that FSANZ has undertaken

to review these claims once the CODEX standard is finalised (NZFSA). NZ MoH recommended that 'free from' should be clearly defined.

CHC noted that 'lactose free' should mean none. ACCC stated that the criteria "none detectable" satisfies their previously stated position on 'free' claims.

Criteria for 'lactose free' and 'gluten free' need to be reviewed in relation to allergen labelling (PB Foods).

CML believed that lactose and gluten free claims needed to be covered by Trade Practices law for consistency with other "free" claims (i.e. no provisions).

Nutra-Life H&F commented that natural products are subject to variation due to season/harvesting etc, therefore questioned how this will be policed from batch to batch. Would manufacturers be required to certify each batch to ensure it meets the claim?

Dairy Aust mentioned that the criteria and conditions relating to gluten and lactose claims are currently stipulated in Standard 1.2.8 and they stated that research shows that 10% of gluten claims are non-compliant due to the nutrient claims not being verified by values in the Nutrition Information Panel.

Dairy Aust recommended that for consistency, the criteria and conditions for these general level claims should be included in a Guideline. Having related information (on general level claims) in a central location may assist with improving compliance.

Goodman Fielder and National Foods pointed out that criteria for 'lactose reduced' is slightly different from current criteria but is consistent with other 'reduced' claims and ensures the degree of reduction is significant.

Goodman Fielder and National Foods also pointed out that 'low lactose' reflected the current FSC requirements so no relabelling or reformulation is necessary. They added that these claims would allow lactose intolerant consumers to readily identify foods.

Preferred criteria for gluten claims

PHAA (supported by ACA), Dairy Aust, Sanitarium Health Food Comp, Tas DoH&HS, NSW DoH – N&PA Branch, DAFF, Monash Uni – N&D Unit, CMA (supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA), Heinz Aust./Heinz Watties NZ and Unilever Australasia stated they would await the outcome of the Ministerial Review before commenting on gluten claims.

Goodman Fielder commented that a review of gluten claims criteria had just been completed under Proposal P264 so further elaboration is not required.

General comments

ASA (supported by NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm Ltd and NZTBC) agreed with the concept but could not comment on the figures.

GW Foods preferred CoPoNC requirements for gluten and lactose claims.

Other comments provided but not in direct response to the question

With increasing sensitivity of testing methods (current 5ppm) background contamination my mean no food will be absolutely gluten free. ACCC's position means 20ppm or less cannot be defined as gluten free (Coeliac Soc of Aust).

3.14 DIET CLAIMS

Question 45

Should this diet claim be permitted? Briefly explain.

Out of 147 submitters, 46.9% (69 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	23	14	4	3	44
Government	7	2	-	-	9
Public health	9	3	-	-	12
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	43	19	4	3	69

Overview

Forty-six submitters supported permission of the 'diet' claim. Fourteen submitters stated that the 'diet' claim should not be permitted, or should be prohibited. Reasons provided by submitters for supporting this claim related to the fact that they have been established in the market place for a long time and provide information that is used by consumers. Reasons provided for not supporting the use of this claim were mainly based around the claim causing confusion and misleading consumers.

Supported permission of 'diet' claims

Those submitters who supported the permission of 'diet' claims were: TCCA, Food Group Aust., Penelope Small, Aussie Bodies, AFGC, MasterFoods Aust. NZ, Dairy Aust., F&B Importers Assoc. GW Foods, Goodman Fielder, National Foods, National Starch, Parmalat, PB Foods, Sanitarium Health Food Comp, Solae Comp, NSW Food Authority, DAFF, CSIRO – HS&N, NZ MoH, NZFSA, Canterbury DHB, ASA,

NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Fonterra, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, NZ Magazines, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, and Nestle.

Reasons provided by some of these submitters for their support of 'diet' claims were that:

- Consumers have the right to be informed (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC);
- It would assist with consumer choice. To remove those recognised reference points on products would disadvantage consumers and companies which have developed relevant products that assist with the delivery of balanced nutrition outcomes (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA);
- The use of such a claim may assist some individuals with reducing their kJ intake and maintaining/reducing their weight as needed (TCCA);
- They are useful for those dieting (National Foods);
- These products are useful for reducing energy and sugar intake (Mainland Products);
- There is long-term, wide consumer acceptance for low fat, low sugar 'diet' alternatives to regular dairy products, particularly in yoghurts and dairy desserts. (Parmalat Aust.);
- Many 'diet' products such as diet cola and diet meals have established a solid presence on the market over many years and appear to serve a purpose for consumers on a weight –reduction 'diet' (NSW Food Authority);
- They clearly communicate to consumers that they are suitable products for specific dietary needs (Unilever Australasia);
- Consumer benefit for these products will keep pace with increasing trends toward overweight and obesity (Parmalat Aust.);
- The term 'diet' is in common usage now and consumers understand the term to mean low energy, e.g. Diet Coke (NZFSA);
- Consumers have been used to seeing this term for many years and actively seek it out (Solae Comp.);
- Whole product lines have been built on the claim (AFGC, MasterFoods Aust. NZ);

- It is a well-established claim (F&B Importers Assoc., National Foods);
- It is a claim that is used extensively (NZFGC); and
- It only applies to a small number of food products/categories, e.g. yoghurt, soft drink jelly, topping etc (Solae Comp).

These issues were expanded on by Nestle who noted that there are a number of manufacturers that use this claim on products and consumers particularly ask for these products across many areas of the industry. These products are widely accepted by consumers and if the claim is not permitted then there will need to be consumer education to ensure that consumers understand that the products they previously purchased are no longer available but carry another ‘brand’ name. The removal of such a claim would be detrimental to small businesses that would have to change references to ‘diet’ on their menus and other related paperwork.

National Foods commented that they currently make ‘diet’ claims for Frûche fromage frais dairy desserts and have invested heavily in this brand since 1989; including a reformulation and re-launch of the Frûche range in 2004 with a national marketing campaign costing Aus\$3m which included Aus\$400,000 to change packaging. They believed that removing ‘diet’ claims would reduce the return on this investment in establishing and maintaining the category. They added that prohibition of ‘diet’ claims would force further packaging changes, potentially causing consumer confusion about product formulation and the removal of ‘diet’ claims would disadvantage Diet Frûche consumers who would no longer be able to select a healthier alternative.

It was noted that the fat and sugar criteria are likely to be met with this claim, by TCCA.

Did not support permission of ‘diet’ claim

Those submitters who did not support permission of the ‘diet’ claim, or who considered that the ‘diet’ claim should be prohibited, were: Diabetes Aust., DAA, GI Ltd, NZDA, Dr R Stanton, ASMI, CHC, NCWA, Tas DoH&HS&HS, NSW DoH – N&PA Branch, SA DoH, WA DoH, Monash Uni – N&D Unit, and Public Health South.

Reasons provided by some of these submitters for not supporting permission of ‘diet’ claims were that:

- FSANZ consumer research determined that it was the “least trustworthy” of the existing claims and that it was a “nothing” term. It is unnecessary (Diabetes Aust., GI Ltd);
- The term ‘diet’ is ambiguous (DAA, NZDA, Tas DoH&HS, Public Health South);

- The term ‘diet’ can be misleading (SA DoH&HS) as no one food creates a ‘diet’. FSANZ consumer research has shown that consumers prefer more specific terms (DAA, NZDA, Tas DoH&HS);
- Having too many content claims may confuse and mislead consumers (Public Health South);
- There is a lack of usefulness of this claim for consumers (SA DoH&HS) and the potential for confusion with claims in relation to ‘slimming’ (NSW DoH – N&PA Branch, WA DoH, Monash Uni – N&D Unit), and in view of section 10 of FSANZ Act 1991 (Tas DoH&HS);
- ‘Diet’ claims could be considered as an implied health claim as ‘diet’ has been perceived by consumers to be associated with weight loss (Paterson et al 2003a). If overweight and obesity are classified as a serious disease or biomarker they are high level claims. Currently slimming claims are prohibited on the basis that they are misleading (Tas DoH&HS);
- The word ‘diet’ is confusing and too strongly related to slimming (Dr R Stanton);
- It implies energy control is the prime component of a diet (ASMI);
- ‘Diet’ is more than just energy control; the fat needs to be taken into consideration as well (CHC); and
- ‘Diet’ traditionally means the total of foods we intake. ‘Diet’ itself does not mean weight reduction so ‘diet’ should not be the claim (NCWA).

It was added that it is important that companies who can reduce the energy content of their product significantly more than is necessary for a ‘reduced joule’ claim, but not quite enough to make a ‘low joule’ claim, can convey this to consumers by way of a simple claim. Use of the word ‘diet’ has proved effective in doing this. One company estimates the cost to re-brand a well established product line would cost about \$43 million. FSANZ has shown no sound scientific reason for imposing this sort of cost to industry (AFGC, MasterFoods Aust. NZ).

General comments

Other submitters made general comments or recommendations as follows, but did not clearly state whether they supported the permission of ‘diet’ claims.

It was recommended that this ‘diet’ claim be prohibited, given the lack of usefulness this claim has for consumers and the potential for confusion with claims in relation to ‘slimming’, by PHAA (supported by ACA), however they also said that the proposal to have ‘diet’ the same as a low joule claim means there would be replication within the requirements, as there is already a requirement for a low joule food in the standard and therefore they suggested the alternative provision within CoPoNC be retained within the new system, allowing for products, such as Diet Desserts to still carry the Diet brand/claim.

Other recommendations made by submitters were that:

- ‘Diet’ is ambiguous and ‘low joule’ would be more beneficial as an education tool (Tomox);
- ‘Diet’ claims need to be more carefully reviewed especially in light of obesity issues (Cadbury Schweppes);
- ‘Diet’ could be added as a synonym for low joule, because the ‘diet’ claim is redundant; they agree that diet = low joule, but ‘diet’ seems to be a historical name that doesn't mean much to the consumer (but Cocoa Cola may tend to disagree i.e. Diet Coke) (CML);
- The term ‘diet’ is incorrect and should be referred to as a ‘regime’ or ‘regimen’. The terms ‘low energy’, ‘low joule’, or ‘low calorie’ are more meaningful for a weight loss/management product (Nutra-Life H&F);
- It should be considered that under the current NZ Medicines Act, altering weight, shape or size is a therapeutic claim (Nutra-Life H&F).

It was noted that consumers sometimes find the claim ‘diet’ confusing depending on the food it is claimed on, by ACCC.

Cadbury Schweppes noted that nutrition and health claims are going to be made in the context of the total diet and they would not like this be confused with the definition of ‘diet’.

Bakewell Foods noted that this claim is not applicable to their industry, so they did not answer the question.

Other comments provided but not in direct response to the question

‘Diet’ claims have been used in a misleading manner and do not offer any significant nutrition information to consumers unless defined in a standard. Used in conjunction with a nutrient claim, they are open to misinterpretation by consumers. It is supported that use of this term be prohibited (Queensland Health PHS).

Question 46

If so, do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 40.1% (59 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	23	13	4	2	42
Government	6	2	-	-	8
Public health	4	1	-	-	5
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	37	16	4	2	59

Overview

Twenty-one submitters agreed with FSANZ's preferred criteria for 'diet' claims, six agreed with the concept of the criteria (but could not provide comment on the actual figures) and 27 disagreed with these preferred criteria. Three submitters disagreed with the preferred criteria because they also did not agree with the permission of 'diet' claims or the use of the term 'diet'.

Agreed with the preferred criteria

The following submitters agreed with FSANZ's preferred criteria for 'diet' claims: TCCA, Aussie Bodies, ASMI, CML, CHC, Solae Comp, Sanitarium Health Food Comp, PB Foods, National Starch, NSW Food Authority, DAFF, NZ MoH, NZFSA, Canterbury DHB, Mainland Products, and NZ Dairy Foods. The following submitters agreed with these criteria if 'diet' claims are to be permitted, as they did not support their permission: Tas DoH&HS, SA DoH, and Monash Uni – N&D Unit. Two submitters noted that they agreed with the preferred criteria but only if the term 'diet' is not used as the permitted claim (NCWA, Nutra-Life H&F). 'Low joule' or 'low energy' was recommended instead (Nutra-Life H&F).

Other submitters agreed with the concept of these criteria but could not comment on the figures within the preferred criteria (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC).

Although they agreed with the preferred criteria, NSW Food Authority questioned whether there is a reason why the existing CoPoNC criteria for this category have been discarded. They added that many manufacturers already formulate to these criteria and will incur costs if they need to re-formulate and prepare new packaging.

PHAA (supported by ACA) agreed with the FSANZ's preferred criteria if these claims are to be permitted, but it was noted by FSANZ that this answer contradicts their answer to question 45, where they recommended alternative criteria (the proposal to have 'diet' the same as a low joule claim means there would be replication within the requirements and therefore they suggested the alternative provision within

CoPoNC be retained within the new system, allowing for products such as Diet Desserts to still carry the Diet brand/claim).

NZFSA added that the term 'diet' should be consistent with low energy and nothing else.

Disagreed with the preferred criteria

The following submitters did not agree with FSANZ's preferred criteria for 'diet' claims (AFGC, MasterFoods Aust. NZ, Dairy Aust., F&B Importers Assoc., Food Grp Aust., GW Foods, Goodman Fielder, Parmalat Aust., National Foods, ACCC, CSIRO- HS&N, Fonterra, Griffins Foods, NZFGC, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle, and Cadbury Schweppes). In addition, the following submitters did not agree with the preferred criteria because they did not agree that 'diet' claims should be permitted: Diabetes Aust., WA DoH, and GI Ltd)

The majority of these submitters recommended that the criteria for 'diet' claims as they are currently in CoPoNC, should be retained (AFGC, MasterFoods Aust. NZ, Dairy Aust., F&B Importers Assoc., GW Foods, Goodman Fielder, Parmalat Aust., National Foods, Fonterra, Griffins Foods, NZFGC, Unilever Australasia, Nestle), or CoPoNC criteria should be adopted with updated references (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, CM of SA).

Reasons provided by these submitters for retaining the CoPoNC criteria for 'diet' claims were that:

- They oppose a criteria change that would restrict the use of 'diet' claims for low fat/low sugar dairy products (Parmalat Aust.);
- They prefer CoPoNC criteria unless there is a scientific reason for making the criteria stricter. 'Diet' claims have been made on products for many years and if the criteria became stricter there would be an issue with products currently in the market place (Goodman Fielder);
- CoPoNC criteria are slightly more liberal and already in use (Griffins Foods);
- CoPoNC criteria are less restrictive and enable products with a significant kJ reduction to be marketed (NZFGC);
- These claims have been in use on products for a number of years and there has been no demonstrated market failure; and consumers are familiar with this type of claim (Unilever Australasia);
- CoPoNC criteria are very useful for foods that cannot be manufactured to the 'low joule' claim criteria but can still provide a significant reduction in energy content (National Foods, AFGC, MasterFoods Aust. NZ); and

- FSANZ must be able to justify any change to the criteria for ‘diet’ claims using sound science and risk analysis to show that there is a significant risk to public health and safety or of consumers being significantly misled (AFGC, MasterFoods Aust. NZ). There is no apparent justification for changing 'diet' claims in terms of the risk to public health and chance of consumers being misled (National Foods, AFGC, MasterFoods Aust. NZ).

In addition to these reasons, the following argument was provided by AFGC (supported by MasterFoods Aust. NZ). Although acknowledging that FSANZ research has shown that of those people interviewed there was an element of distrust of the claim, this does not detract from the fact that a considerable number of consumers are ‘brand loyal’ to this claim. To no longer permit its use on these particular diet products would be commercially damaging to the companies concerned and confusing to consumers who have purchased these brands.

The issue regarding consumer research was agreed with by Dairy Aust. who commented that despite consumer research (FSANZ 2003) reporting this claim to be the least trustworthy and most ambiguous, it is associated with weight loss products and deemed useful for people on weight loss diets. They added that this research was conducted in early 2003 and consumer trends, needs and public health issues have certainly changed since then (Dairy Aust.).

They went on to say that overweight and obesity are reaching epidemic proportions within Australia, affecting approximately one in four children and 60% of adults. Thereby, diet-claims have the potential to offer enormous benefits to consumers, innovative opportunities to manufacturers, and potential health care-cost savings to the government, if food choices and communication could positively influence the consumption patterns (Dairy Aust.).

The following argument for not agreeing with FSANZ’s preferred criteria for ‘diet’ claims was provided by Nestle.

They noted the restricted approach proposed would mean significant losses to a number of companies. The Nestle Diet Desserts will be particularly impacted by the proposed criteria for low energy. This product category for Nestle has grown by 2400% since the introduction of Diet Dairy dessert in the year 2000 indicating a lot of consumer interest in these types of products. People who are on weight loss or weight management diets should not be discriminated against.

They went on to say that they consider it to be 'foolhardy' to remove products that can be consumed as part of a healthy diet and allow the pleasurable experience of eating a dessert that is lower in fat, sugar and energy. These products are consistent with dietary guidelines (eating less saturated fat, moderate amounts of foods with added sugar) and consistent with need for specific groups to reduce their energy intake.

In addition, they noted the replication within requirements if 'diet' is to be the same as a low joule claim. They also submitted that where products do not qualify for a low energy claim, they have reductions of well over 25% in energy, fat and sugar. Limiting ‘diet’ claims to low joule products will mean that it will be difficult to

communicate to consumers that the product has fewer calories than a 'kJ reduced' product where the product does not qualify for a 'low joule' claim.

Many products bearing the word 'diet' have now become recognised by consumers as a distinct product in their own right, with the word 'diet' having significance beyond any mere nutritional claim that might normally be understood by that word. With these products, the term 'diet' has in fact taken on secondary meaning as a trademark and this significance is recognised by consumers. Removal of the word 'diet' from these products because they don't meet the new nutritional guidelines would have the effect of stripping a valuable intellectual property right from the manufacturers of these products without compensation and would only serve to cause consumer confusion, not reduce it.

To change to the contents of the product to comply with the new nutritional guidelines would also lead to public deception since a claim that has become a trade mark through acquired reputation indicates not only trade source of the product but consistency of product quality - 'NESTLE DIET' is a prime example in relation to trade marking of the term 'diet'. Nestle's research of the Australian Trade Marks database shows 82 registered or pending marks containing the word 'diet' (see attachment to submission). Nestle recommended that existing brand rights in the word 'diet' should not be adversely affected by the new nutritional guidelines.

Nestle's submission provides insight into how consumers perceive diet products, with two different points of view:

- (a) A person who consumes the products is on a diet;
- (b) People are conscious about what they eat, i.e. their overall diet.

To this latter group of consumers, 'Diet' for dessert and yoghurts means low in everything with good nutritional value.

After the release of Proposal P234, alternative product brands were evaluated by Nestle with consumers and the outcome was that no other brand for the users of 'Diet' created the understanding of both taste and nutritional value that the term 'Diet' already had for them. Nestlé Diet for consumers is a genuine and trusted diet/low fat option with the Weight Watchers endorsement supporting this and aiding credibility (see attachment to their submission for examples of diet plans from Weight Watchers that include their diet products).

Anecdotal evidence was provided from their consumer line that for some consumers, 'diet' can mean foods that contain intense sweeteners that they might prefer as part of their normal diet to manage diabetes - products are also low in fat which is consistent with dietary requirements for diabetics.

Regarding the costs of the proposed new criteria for 'diet' claims, Nestle noted that compliance to the proposed requirements for a 'diet' claim could require re-branding of a range of products at significant costs:

- Market research of new claims and a new product brand: \$200,000;

- Packaging redesign and production: \$900,000 (refer to submission for an outline of what entails design development and production); and
- Lost sales and rebuild of product image: \$43million (Dairy Aust. also noted this figure in their submission).

In summary they believe that the portion-control that these products provide and the combined reduction in energy, fat and sugar provide alternative choices that can only be of benefit in light of the current concerns with obesity, and that these products assist consumers to make intelligent choices, particularly where they are concerned with their energy intake. FSANZ should not change the criteria for this claim.

Other considerations for revising FSANZ's preferred criteria were that:

- The criteria make no reference to composition of the food other than energy. It is therefore questioned whether there may be scope to include other compositional requirements. The inference may be that just because a product is low in energy it will contribute all the necessary nutrients (including vitamins and minerals) for a person to go on a diet (Cadbury Schweppes);
- The criteria are too high and include hundreds of current standard foods including potato chips (CSIRO – HS&N);
- The claim could be qualified by total calorie value per serving and consumers should not have to seek the qualification of the claim within the energy value in the Nutrition Information Panel (ACCC); and
- The reference could be against 100 g or a specific serving (Nutra-Life H&F).

Responses to question 45 that relate to question 46

Food Grp Aust also did not agree with FSANZ's preferred criteria for 'diet' claims and they presented the following argument.

Some products that are currently available to consumers under the 'Diet' brand or claim will not be available when the changes are introduced. The product category that this will mostly be affected is Diet Desserts It would be unwise of the government to force manufacturers to change the branding of these products (paragraph supported by Penelope Small).

From a dietitian's perspective, 'Diet' desserts are useful for particular groups of people including those on weight management programmes and those with health conditions like diabetes and heart disease, where weight management is imperative. They are also useful for consumers watching their weight and health conscious consumers looking for treats that are significantly lower in energy, fat and sugar. 'Diet' claims allow people to choose these products quickly and easily and they can be consumed as part of a healthy diet and they allow a pleasurable experience of having a dessert product that is lower in fat, sugar and energy (supported by Penelope Small). Diet foods are generally very low in fat and sugar and have significantly

reduced energy levels compared to their normal counterpart foods (supported by Penelope Small). An example is the Nestle Diet Desserts range.

The threshold for a 'reduced' claim is proposed at 25%, however, these products, where they do not qualify for a 'low joule' claim have reductions of well over 25% in energy, fat and sugar. Limiting diet claims to low joule products will mean that it will be difficult to communicate to consumers that the product has fewer calories than a 'reduced energy' product. It will not be easy to communicate to consumers the benefit of all of the nutrient aspects that they associate with these products (paragraph supported by Penelope Small).

Penelope Small also presented a similar argument to Nestle and Food Grp Aust.

She also noted two viewpoints about how consumers view these products - one is that consumers who use these products are on a diet - this view is usually applicable to people that are not following a diet or weight management programme; and the other view is that people who consume and understand these products are conscious about what they eat, i.e. their overall diet, thinking about the overall balance of fat and sugar and that these products have a part in maintaining a healthy diet - 'diet' means 'sensible sustainable eating', not faddish diets.

She also stated that these products are useful for particular groups of people, and are particularly useful to her dietetic clients that are on weight management programmes. She added that for some, 'diet' indicates that the product has reduced energy and allows people to choose the product quickly. Knowing that dietitians have recommended it as well as other groups such as NHF or Weight Watchers who have endorsed it gives the product more credence.

In addition she stated that the labelling 'diet' has arisen because the legislation has not properly accommodated products that make worthwhile, nutritionally significant reductions in sugar, fat and/or energy levels, whilst maintaining sensory acceptability for the consumer ("extra light" and "super slim" have hence arisen on cheese slices).

Also noted was the proposal to have 'diet' the same as low joule claim means there would be replication within the requirements/standards. In summary it was recommended that the provision within CoPoNC be retained, allowing for products such as Diet yoghurts and Diet Desserts to still carry the 'diet' brand/claim (Penelope Small).

It was also suggested by another submitter that it might be more beneficial to relate energy intake to a serving size rather than a per 100g basis. This provides information to consumers, which is readily accessible for those consumers who are interested in their energy intake (CMA - NZ Branch).

3.15 LIGHT/LITE

Question 47

Should these light/lite claims be permitted? Briefly explain.

Out of 147 submitters, 48.3% (71 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	23	14	5	2	44
Government	7	2	-	-	9
Public health	8	4	-	-	12
Consumers	1	-	-	-	1
Other	4	-	-	-	4
Total	43	20	5	2	70

Overview

Forty-eight submitters supported permission for light/lite claims and 18 submitters did not support permission for these claims.

Supported permission

There were 48 submitters who supported permission for light/lite claims (NHF Aust., NHF NZ, Tomox, AFGC, MasterFoods Aust. NZ, Bakewell Foods, Cadbury Schweppes, CML, Dairy Aust., F & B Importers Assoc., GW Foods, Goodman Fielder, National Foods, National Starch, Parmalat Aust., PB Foods, Sanitarium Health Food Comp, Solae Comp, NCWA, DAFF, CSIRO – HS&N, NZ MoH, NZFSA, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Fonterra, Griffins Foods, Mainland Products, NZ Dairy Foods, NZFGC, NZ Magazines, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA, Unilever Australasia, Nestle).

Some of these submitters supported permission for these claims on the proviso that:

- They related to nutrients or energy and not aesthetic characteristics of the food, e.g. light in colour or flavour (NHF Aust., NHF NZ);
- They are framed in the context of FSANZ’s position on energy (CSIRO – HS&N);
- It clearly states the characteristics being described (Canterbury DHB);
- There is no confusion for the consumer about what it is light in, e.g. light olive oil, which is light in flavour not fat (NZ Dairy Foods); and

- The preferred criteria are used (NCWA, Solae Comp.). The use of lite/light without reference to the characteristic that made the food light/lite was confusing/misleading to consumers (Solae Comp.).

The reasons provided by submitters for supporting permission of these claims were that:

- They are already in the market place and have been for many years (Goodman Fielder, AFGC, MasterFoods Aust. NZ, Mainland Products, Unilever Australasia, National Foods, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA);
- They are widely used on a range of foods (CML, Unilever Australasia);
- These claims are in common usage, e.g. lite sour cream is understood as lower energy sour cream (NZFSA);
- Not to permit them would cause considerable problems for industry who have invested in brands carrying these claims and the consumers who use them to identify their products of choice (Goodman Fielder, AFGC, MasterFoods Aust. NZ, National Foods). Of the total lite segment of yogurts in the market in Australia, National Foods' Yoplait brand of light yogurts is 29% or Aus\$54 million and this is a growing segment of the total yogurt market. Refer to page 37 of their Submission for details of the market value of 'light/lite' milk (National Foods);
- Industry has invested in such brands and consumers rely on these claims as easy recognition points (CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA);
- They are well recognised by consumers (CML);
- These claims are generally well understood and well received by consumers (Mainland Products);
- Many consumers use the descriptor to guide their product choice (Unilever Australasia);
- There is no evidence that consumers are confused over these claims (National Foods);
- They are indicators to consumers (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC) that the food has a lower level of a specific nutrient than the reference food and therefore may provide additional choices (Cadbury Schweppes);
- They are important for promoting dairy foods (PB Foods); and

- Consumers do understand the claim (Fonterra).

Also in support of the use of these claims, it was outlined that consumer research suggests that ‘light’ and ‘lite’ claims are widely recognised and used within their perceived limitations, ranking as the fifth most frequently used type of nutrition content claim (FSANZ 2003). These claims were used to, at least, initially pick up a product before examining the nutrition information panel. Permitting such information assists consumers with food selection. These claims encourage manufacturers to strive to achieve lower levels of nutrients in their food products, such as fat, to qualify for such claims (Dairy Aust.).

It was noted that the apparent lack of compliance (as illustrated in the IAR – 60% of foods carry the claiming did not specify what the product was light in) is indicative of the need to have enforcement capability in relation to a Code of Practice or Guidelines (Nestle). CML also recommended that there is a need to tighten up on the use of the term.

Did not support permission

There were 18 submitters who did not support permission of light/lite claims (TCCA, Diabetes Aust., DAA, NZDA, Dr R Stanton, GI Ltd, PHAA (supported by ACA), Aussie Bodies, CHC, Tas DoH&HS, NSW DoH – N&PA Branch, SA DoH, WA DoH, Monash Uni – N&D Unit, Uni of Adel. & Uni of SA – Nutrition and Physiology Research Grp, Public Health South, Nutra Life H&F).

The reasons provided by submitters for not supporting permission of these claims were that:

- They have potential to mislead consumers (TCCA);
- The terminology is confusing and can result in confusion to the public (Public Health South);
- They are ambiguous and confusing for consumers (DAA, NZDA);
- They are confusing to consumers and misunderstood (NSW DoH – N&PA Branch);
- The claim is misused and many people do not understand the energy density of so-called lite products (Dr R Stanton);
- These claims are deliberately and consistently misused by manufacturers (CHC); and
- The term is too confusing due to a variety of applications, for example, in Australia light beers refers to low alcohol content, in the US light beers refers to low energy content (Uni of Adel & Uni of SA – Nutrition & Physiology Research Grp).

Other reasons were due to the lack of usefulness of these claims to consumers; the way consumers use these claims (misused) (FSANZ 2003) and the abuse of these claims by industry (Williams et al 2003) (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit).

It was noted that ‘light/lite’ claims are perceived as “ambiguous, misleading confusing, and /or outright ‘trickery. Most consumers surveyed did not know what the claim referred to” (Paterson et al 2003a, p56) (reference provided). Light/lite claims should be prohibited in view of Section 10 of FSANZ Act 1991 (Tas DoH&HS).

Some recommendations for alternative claims to light/lite were made:

- It is too easy for manufacturers to hide behind this statement and it is better for statements relating to the fats, sugars and total energy etc (Aussie Bodies); and
- Given the mixed level of understanding by consumers and poor industry compliance it would be simpler to use other content claims that got to the point, e.g. ‘low fat’, ‘low kJ’ etc (Diabetes Aust., GI Ltd).

General comments

Some submitters did not clearly state whether they preferred light/lite claims to be permitted but made the following comments.

It was noted that the success of products using these terms suggests that consumers attribute meaning to them that they see as beneficial. If there is a problem in usage, then better definitions are required (NCEFF).

ASMI considered there to be considerable concern about the current misuse of light/lite claims. NSW Food Authority had reservations about the usefulness of these claims.

Nutra Life H&F felt that these terms are misleading unless further explanation is given. ‘Low joule’, ‘low energy’, ‘low fat’, ‘low carb’, or ‘reduced’ before any of the nouns conveys the meaning better and defines the characterising benefit sought by the consumer. In answer to question 48 they stated that they didn’t agree with the terms.

It was recommended that consideration be given to canned fruit in light syrup – ‘light’ refers to the soluble solids level used within the canned fruit industry and therefore the canned fruit industry argue that the characteristic that makes the food light doesn't have to be stated on the label (Heinz Aust/ Heinz Watties NZ).

ACCC responded to this question in their response to question 48.

Question 48

If so, do you agree with FSANZ's preferred criteria?

Out of 147 submitters, 40.8% (60 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	21	13	3	2	39
Government	5	2	-	-	7
Public health	7	3	-	-	10
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	37	18	3	2	60

Overview

Thirty-five submitters agreed with all of the preferred criteria for 'light/lite' claims and there were 26 submitters who did not agree with all or some of these criteria.

Agreed with the criteria

There were 30 submitters that agreed with the criteria proposed by FSANZ at Initial Assessment (Tomox, AFGC, MasterFoods Aust. NZ, Bakewell Foods, CML, Dairy Aust., F&B Importers Assoc., GW Foods, Goodman Fielder, National Foods, National Starch, PB Foods, Solae Comp, NCWA, DAFF, CSIRO – HS&N, Canterbury DHB, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZTBC, Griffins Foods, Mainland Products, NZ Dairy Foods, NZ Magazines, NZFGC, Unilever Australasia, Nestle) including five submitters that did not support permission for these claims but if permitted, they supported the proposed criteria (PHAA (supported by ACA), WA DoH, Monash Uni – N&D Unit, SA DoH).

Reasons provided by submitters for agreeing with the preferred criteria for light/lite claims were that:

- The criteria are the same as in CoPoNC (Goodman Fielder, PB Foods, National Foods); and
- The requirement for the characteristic that makes the food light/lite to be adjacent to the claim is a useful one as it clarifies confusion (NZFGC).

Although agreeing with the preferred criteria, Dairy Aust. requested clarification on the meaning of the words 'adjacent to'. They added that the impact on industry from significant changes to the criteria and conditions for the term 'light' or 'lite' could equate to:

- A revenue loss of \$12 million (Devondale Light; AC Neilson MAT September 2004);

- Loss of approximately one-third of sales to Kraft cheese singles (Kraft 2004) (Dairy Aust.).

Some of the submitters that did not support the entire set of criteria indicated the sections that they agreed with:

- Agreed with the criteria that if a 'light' claim refers to a nutrient, then the product must comply with provisions for reduced claims (Sanitarium Health Food Comp);
- Agreed that the characteristic that makes the food 'lite' must be stated adjacent to the claim (NZ MoH, NZFSA). This term is now in common usage and is used beyond the nutrient 'fat' (NZFSA); and
- Agreed that the label of the food should make reference to the specific attribute of the food that is light/lite (Cadbury Schweppes, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA).

Did not agree with the preferred criteria

There were 25 submitters that indicated that they did not agree with all or some of the criteria proposed by FSANZ at Initial Assessment for light/lite claims (NHF Aust., NHF NZ, Sanitarium Health Food Comp, ACCC, NZFSA, NZ MoH, Cadbury Schweppes, Parmalat, CMA, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA) including seven submitters who did not agree with the preferred criteria because they did not support the use of these claims but made recommendations in the situation that these claims are permitted (TCCA, GI Ltd, Diabetes Aust., DAA, NZDA, Tas DoH&HS, CHC).

CHC noted that they didn't support the preferred criteria due to concerns relating to enforcement.

These submitters made recommendations for alternative criteria as follows:

- There should be a minimum reduction of 25% energy for all light/lite claims except light/lite claims referring to a reduction in salt (sodium). All light/lite claims should contain a statement of comparison with the normal counterpart (NHF Aust, NHF NZ);
- The criteria preferred by FSANZ are CoPoNC criteria but NZFSA considered this is confusing as the criteria refer to both the low and the reduced category. A reference to the 'reduced' category only, was therefore favoured. This is Codex consistent (NZFSA);
- The criteria should only refer to one category, either low or reduced, otherwise it is confusing for consumers (NZ MoH);

- ‘Light/lite’ should mean either ‘low’ or ‘reduced’ but not both (Cadbury Schweppes). The variation between low and reduced is too great for them to have the same meaning (CM, Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA – NZ Branch, CMA-NSW Branch, CMA – Qld Branch, ICA, CMA-Vic Branch, CM of SA);
- The qualifying/disqualifying criteria need to be clearly defined. This recommendation was made because of concern that the claim can be both a nutrient content claim and a general descriptor and that such criteria only serves in reinforcing consumer confusion. This confusion is often perpetuated by manufacturers combining the claim ‘lite’ with the claim ‘diet’ (ACCC);
- The characteristic that makes the food 'light' should be stated in similar font and size to the word 'light' so consumers can easily distinguish the characteristic that the food is 'light' in (Sanitarium Health Food Comp);
- If these claims are permitted, the characteristic they refer to should be adjacent to the claim and in a font type and colour the same as the claim (TCCA, GI Ltd, Diabetes Aust., DAA, NZDA)/equally as noticeable as the claim (Tas DoH&HS); and
- The criteria in CoPoNC should be retained (Parmalat Aust.). (FSANZ noted the difference being that CoPoNC stipulated that the “characteristic which makes the food ‘light’ must be stated on the label...”).

3.16 BIOLOGICALLY ACTIVE SUBSTANCES

Question 49

What are the most common claims in relation to biologically active substances? What criteria have been applied and what evidence is there to support them?

Out of 147 submitters, 28.6% (42 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	19	6	3	2	30
Government	5	-	-	-	5
Public health	3	-	-	-	3
Consumers	1	-	-	-	1
Other	2	1	-	-	3
Total	30	7	3	2	42

Overview

Claims in relation to biologically active substances that were identified included probiotics, prebiotics/fructo-oligosachharides, various phytochemicals, antioxidants, caffeine, allium sulphur compounds, various culinary and non-culinary herbs, cranberry, alfalfa, choline, Omega-3, creatine, phytic acid, resistant starch, silica, psyllium, catechins, phseolamin, rutin, and wholegrain.

Regarding criteria for these substances, information was provided for phytoestrogens, antioxidants and lycopene. Crop and Food Research also noted that they have benchmark data for criteria for antioxidant claims and evidence of the benefits of biologically active substances if required. No other evidence was provided and some comments were made regarding the lack of evidence available, by some public health/government submitters.

Claims made regarding biologically active substances

The following claims that relate to biologically active substances were identified:

- Probiotics/live cultures (Tomox, Dairy Aust., Parmalat Aust., Nestle, Fonterra);
- Acidophilus bacteria (CML, NCWA) which is in Yakult (NCWA);
- Prebiotics (Dairy Aust., Parmalat Aust.) although this could be argued as being dietary fibre (Nestle, Fonterra);
- Polyphenols (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA, CSIRO HS&N);
- Phenolic compounds (anthocyanins, quercetin, proanthocyanidins, lignans, isoflavonoids) (Crop & Food Research);
- Phytoestrogens (CML, Dairy Aust., GW Foods, Nestle, Sanitarium Health Food Comp, Solae Comp, CSIRO HS&N, GW Foods, Fonterra), (soy isoflavones and lignans) – hormone-dependent breast and prostate cancers, osteoporosis, cognitive function, cardiovascular disease, immunity and inflammation, reproduction and fertility, reduction in post menopausal symptoms (TCCA);
- Isoflavones (Sanitarium Health Food Comp.) in soy products (Solae Comp);
- Plant sterols (Nestle) for lowering of cholesterol (Wyeth Aust);
- Stanols/Sterols – prevent cardiovascular disease (TCCA);
- Phytosterols (Parmalat Aust.);

- Folate (CML);
- Carotenoids (lycopene in particular, also lutein/zeaxanthin, beta-carotene) (Crop & Food Research);
- Lycopene (CML, Dairy Aust., GW Foods, Sanitarium Health Food Comp, WA DoH, Heinz Aust/Heinz Watties NZ, Nestle, GW Foods, Fonterra);
- Phytochemicals (lycopene, polyphenols, flavanoids, tocopherols, phenolic acids, etc) – prevent cancer, aging and other chronic diseases associated with aging (TCCA);
- Antioxidants (Dairy Aust., GW Foods, Crop and Food Research, Nestle, CSIRO HS&N, ASMI, GW Foods) and antioxidant activity (Sanitarium Health Food Comp, Wyeth, Crop and Food Research), which makes reference to their role in neutralising free radicals (Solae Comp.). Claims for these include preventing cancer, cardiovascular disease, aging and immunity and inflammation (TCCA);
- Caffeine (Dairy Aust., Nestle, Fonterra, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA);
- Fructo-oligosaccharides for gut health (Crop & Food Research);
- Glucosinolates (isothiocyanates and indoles) (Crop & Food Research);
- Allium sulphur compounds (Crop & Food Research); and
- Culinary herbs (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA).

The descriptors ‘source of’ and ‘rich in’ regarding the content of these biologically active substances were added by some submitters. Many claims refer to the presence only, of such substances (Mainland Products). There is scope to include permission on claims relating to the presence of biologically active substances (Cadbury Schweppes).

Phenolic compounds could be reported as individual compounds, categories or a total phenolic measurement. At a recent international conference there was agreement on reporting total phenolics and an agreed methodology (Crop and Food Research).

NCEFF provided the following two references:

Asp NG, Contor L. Process for the Assessment of Scientific Support for Claims on Foods (PASSCLAIM): overall introduction. *European Journal of Nutrition* 2003; 42; 3-5.’ This research details some of the content claims for biologically active substances in the market in 2001.

Richardson D, Affertsholt, et al, PASSCLAIM – Synthesis and review of existing processes. European Journal of Nutrition 2003: 42;I96-I111.’ This, as well as the previous reference, provides a systematic process for dealing with such claims.

A report was also attached to their submission:

Ridges, L and Williams, P, Study on Health and Related Claims used on Packaged Australian Foods – Implications for Regulations. A report on the preliminary findings. 2004.

This report lists the following biologically active substances other than recognised nutrients or energy which were the subject of health claims: alfalfa, antioxidants, bioflavonoids, catechins, chamomile, choline, citric acid, cranberry, creatine, cultures, Echinacea, GI, ginko, isoflavones, lemon, magnesium, Omega-3 fats, peppermint, phseolamin, phytic acid, phytoestrogens, polyphenols, prebiotics, probiotics, psyllium, resistant starch, rutin, silica, soy protein, St John’s Wort, and sterols and stanols (NCEFF).

Other claims in relation to biologically active substances that were identified by submitters were:

- Enhanced immune function (biologically active substance not specified) (Wyeth Aust);
- Certain amino acids and minerals are used in foods designed for the sports market, with claims reflecting the needs of that market such as stamina, strength, bulk, recover after exercise etc (NSW Food Authority, NSW DoH – N&PA Branch);
- Claims often appear on juice mixes, ‘sports waters’ etc and are represented by energy, alertness, immunity, strength, cleansing etc (NSW Food Authority, NSW DoH – N&PA Branch);
- Such claims are often associated with health of particular organ i.e. good for prostate health, good for eye health (ASMI); and
- “Enhanced well being’. ‘Prevention of disease’ (NZ Dairy Foods).

Evidence

References are available if required for evidence of benefits etc of biologically active substances (Crop & Food Research).

Other submitters provided no other specific evidence.

Nestle considered there would be significant evidence regarding live cultures (but did not provide any references). They noted that FSANZ has assessed the plant sterols under the novel food standard.

Regarding lack of evidence in relation to biologically active substances, the following comments were made:

- With regard to cancer, we are not aware of any “convincing” level of evidence linking these biological substances with reduced risk of cancer (TCCA);
- In relation to herbal components added to foods, there is little supporting evidence that most will have any effect in the body in the quantities consumed (Dr R Stanton);
- Regarding lycopene, there is no evident information about evidence used or explanation to consumers (WA DoH); and
- Evidence is lacking on benefit but content claims should be allowed (CSIRO – HS&N).

Criteria

References were provided for a USDA website for composition databases for carotenoids, flavanoids, isoflavonoids, and proanthocyanidins (www.nal.usda.gov/fnic/foodcomp/Data). The list of phytochemicals with potential health benefits keeps growing and there would need to be a process to keep including new substances once there is sufficient evidence (Crop & Food Research).

Crop & Food Research recommend that if ‘rich’ and ‘high’ (in antioxidants) claims are to be made these need to be qualified and criteria should be set - they have benchmark data for a range of foods. Just because a food contains antioxidants does not mean it has antioxidant activity and this will need to be considered with respect to wording.

The criterion that GW Foods has applied for these types of bioactive substances claims (phytoestrogens, antioxidants and lycopene) involves searching the literature for a daily level that is proven to have a benefit. Once this is established, the claimable food per serve should contain 10% of this level for a ‘source/contains’ claim and 25% for a ‘good source/rich’ claim. If a daily amount is not proven, for example total antioxidants, then they compare the product with other foods that contain the bioactive substance and make a judgement as to whether the food is a source or not.

No other specific criteria were identified, but some submitters noted that these claims would need to be substantiated:

- It is difficult to establish criteria and conditions for these substances as there are no recognised health reference standards, however, like all claims, either the proposed content or health function/benefit would be required to be substantiated (Dairy Aust.);
- Criteria will generally be based on substantiating evidence, and claims would include a quantitative declaration of the biologically active substance amount in the Nutrition Information Panel. The amount should justify the claim made

and would be based on the substantiating evidence held by the manufacturer (Parmalat Aust.);

- Criteria for health claims in relation to biologically active substances, including, vitamins and minerals, should meet the same levels of substantiation as other health claims (Tas DoH&HS);
- Substantiated general level and high level claims should be permitted for biologically active substances e.g. with antioxidants, isoflavones and Omega 3 (National Foods); and
- It seems appropriate that foods be permitted to make claims with respect to biologically active substances. Classification of these claims will depend on the context in which they are made and their ability to be scientifically substantiated (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA).

It was suggested that experience could be drawn from other countries that permit these claims without regulations. Canada permits ‘quantitative claims’ for biologically active substances. No implications on public health and safety have been reported (Dairy Aust.). It was also noted that it appears there is scope for innovation in this area, however it remains relatively untapped as no country has yet set relevant criteria (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA). It was also suggested that the criteria should be based on studies, which show what level is the critical intake to get the health benefit (NZ Dairy Foods).

Where sufficient scientific criteria exist to guide the use of claims then it is appropriate for that guidance to be provided. Consumers (like industry) refer to this guidance for clarification of the claim (ACCC).

For high-level claims these should be reviewed on a claim-by-claim basis. Once approved, they should be listed in the Standard, directly linked to a specific food or type of food. For general level claims, the onus is on the manufacturer to hold the evidence (Cadbury Schweppes).

Nestle consider that it does not seem possible to set a regulatory limit for these different components due to the variability of the claims and the components.

Regarding lycopene, there are no evident criteria (WA DoH).

General comments

It was considered that there is a large interface between foods, food type dietary supplements and complementary medicines, which sees the increased use of fortification of foods with these biologically active substances or selective highlighting of their presence in particular types of manufactured foods (ASMI).

CHC also noted there is a risk of confusion between foods, food type dietary supplements and therapeutic-type dietary supplements. The therapeutic type dietary supplements are measured by implied as well as direct claims and are required to deliver a relevant dosage. Foods should also meet these requirements except in the circumstances where the whole food is relevant in its own right e.g. tomatoes not lycopene.

Nutra-Life H&F thought that the usual reason for adding a biologically active substance and/or making a claim is due to its perceived health benefit, which strays into the realms of therapeutic claims, possibly misleading consumers. Reference to a biologically active substance should only be able to be made if it is normally found in food (e.g. phytoestrogens from soy but not from Red Clover). Ingredients/biologically active substances not part of the usual diet should be treated as Therapeutic Type Dietary Supplements or complementary medicines (e.g. Echinacea, and herbs added to drinks at 'juice bars') (Nutra-Life H&F).

National Foods noted that they manufacture several foods with biologically active substances, e.g. Yoplait Optimal probiotic drink; in which they have invested significant capital to launch, and prohibiting such claims would have a significant negative impact for them, in terms of the ability to deliver innovative foods and invest in research and development of commercial products (refer to p.38 of Submission for details of market value for probiotic drinks) (National Foods).

Heinz Aust/Heinz Watties NZ noted that HJ Heinz Company (USA) has recently petitioned the FDA for approval of a qualified health claim in relation to lycopene.

Although they could not provide examples of the claims currently made, NZFGC noted it is probable that research will increasingly show the benefits of bioactive substances and hence, understandably, claims in respect of such substances will be made (NZFGC).

Other comments provided but not in direct response to the question

Other examples of claims in relation to biologically active ingredients that are currently being communicated by the food industry were isoflavones in soy products, lycopenes in tomato-based products and Omega-3 fatty acids in fish product. These were noted as being scientifically substantiated claims (Kellogg's Aust.).

Question 50

Should criteria be set for certain claims and if so, what types of claims should be made and what criteria should apply? Please provide evidence and a cohesive argument to support your views.

Out of 147 submitters, 37.4% (55 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	20	6	3	2	31
Government	5	2	-	-	7
Public health	8	3	-	-	11
Consumers	2	-	-	-	2
Other	3	1	-	-	4
Total	38	12	3	2	55

Overview

Twenty-nine submitters supported the setting of criteria for certain claims for biologically active substances and five submitters did not. A number of submitters recommended that the criteria should be based on sound scientific evidence. The only specific criteria recommended were for lycopene.

Supported criteria

The following submitters indicated that they supported the setting of criteria for certain claims for biologically active substances: NHF Aust., NHF NZ, PHAA (supported by ACA), Aussie Bodies, Bakewell Foods, CML, CHC, National Starch, Sanitarium Health Food Comp, Solae Comp, NCWA, Tas DoH&HS, SA DoH, WA DoH, CSIRO – HS&N, Monash Uni – N&D Unit, NZ Dairy Foods, NZFGC, Nutra-Life H&F, Crop and Food Research, Dr R Stanton, ASMI, Dairy Aust. and TCCA.

In addition, it was recommended that it is imperative that this be done in conjunction with the development of the standard on the addition of vitamins and minerals and other bioactive substances to food (Diabetes Aust., DAA, NZDA, GI Ltd, Tas DoH&HS, PHAA (supported by ACA), SA DoH, Monash Uni – N&D Unit). This was because the Policy Guideline for the addition of vitamins and minerals to food, approved by ANZFRMC in May 04, stated that claims related to vitamins and minerals will be covered by the Nutrition, Health and Related Claims Standard (Diabetes Aust., DAA, NZDA, GI Ltd).

Tas DoH&HS went on to say that criteria should be set on a case by case basis once the standard for fortification with vitamins and mineral and other biologically active substances has been developed, to ensure that claims are not made that are likely to promote dietary patterns inconsistent with dietary guidelines i.e. by making claims on foods high in fat, salt or sugar. They recommended that vitamin and mineral claims currently regulated in Standard 1.3.2 in the Code should continue until the development of the fortification standards. Claims on other bioactive substances not

included in Standard 1.3.2 should be prohibited until the development of that standard (Tas DoH&HS).

Other submitters agreed that criteria should be set for claims such as bioactive compounds, vitamins and minerals (National Starch, Solae Comp.).

Four submitters specifically said that there should be both qualifying and disqualifying criteria. This is important to ensure that there is fair-trading and so that consumers are not misled or deceived (PHAA (supported by ACA), SA DoH, Monash Uni – N&D Unit, Tas DoH&HS). Dr R. Stanton agreed and recommended that the criteria should include qualifying criteria (enough of the biologically active substance) plus nutrients present; and the disqualifying criteria should be the same as those identified previously for other nutrients.

CSIRO – HS&N said that there should be criteria for quantitative claims only, e.g. 25% more polyphenols. This type of claim makes no judgements about the efficacy of the polyphenols or the dose and there is no in depth scientific analysis to determine whether such a claim should be allowed.

TCCA recommended that claims should only be allowed and criteria should only be set for biologically active substances for which the level of evidence for disease is “convincing.” Lower assessments on the totality of the evidence (such as “possible” or “probable”) are not acceptable levels for the approval of health claims in relation to biologically active substances, as they will mislead consumers and will very likely require review within a short period of time. They recommended that there are clear criteria for assessing the totality of the evidence; especially as individual study results (likely from observational studies) may be difficult to apply. Ideally randomised controlled studies showing an association between a dietary component and a disease should be available, but in reality it is difficult to conduct high quality randomised controlled studies assessing dietary components. Criteria for weighing up the totality of the available evidence need to account for the level, quality and evidence for causality in research studies reviewed (TCCA).

Other submitters made the following recommendations on which to base the setting of criteria for biologically active substances:

- Criteria should be set for certain claims that work on the basis of a minimum quantity within the food, preferably tied to a body of accepted evidence demonstrating intake of that food as part of the overall diet will provide certain health outcomes (ASMI);
- Claims must be based on sound scientific evidence that is relevant to the Australian diet (CML);
- Adequate scientific evidence is required to support the consumption of particular bioactive substances before claims be permitted (Sanitarium Health Food Comp.);
- Criteria should be set on a scientific basis otherwise there is potential for the public to be misled (Crop & Food Research);

- It is too early to set specific criteria and conditions for biologically active substances, however, as for other nutrition content claims, criteria such as ‘source of’, ‘good source of’, ‘reduced’ and ‘increased’ could be applied (Dairy Aust);
- Claims for 'source' and 'good source' should be based on the amount estimated for biological effects (Sanitarium Health Food Comp.);
- Claims should refer to the biologically active component only e.g. isoflavone content should be determined for the aglycone content (the isoflavone separated from the sugar molecule) as this is the biologically active form available to the body (Sanitarium Health Food Comp.); and
- Biologically active substances will need to be present in a certain concentration before a claim can be made. The concentration needs to be determined by a review of the evidence for their effectiveness (WA DoH).

Crop and Food Research recommended having an approved list of compounds and a process to keep this list up to date, however they noted that there is limited recommendation on daily intake. They suggested that there might be sufficient epidemiological evidence and some indications of normal daily intake to set some guideline values, at least for phytochemicals. They added that it would be important to consider upper levels and safety issues (Crop & Food Research).

CHC noted that claims should be quality related. They added that this question needs further consideration and should be considered together with the food type-dietary supplements proposal.

NZFGC considered that if such claims are permitted, criteria will need to be established as guidance in respect of ‘new’ claims would be helpful.

Nutra-Life H&F recommended that the addition of biological substances should be controlled as therapeutic type dietary supplements in cases where the biological substance is not part of the normal diet. They also suggested an alternative way to regulate biologically active substances is to consider these foods as ‘novel foods’ which would require safety evidence, similar to those subjected to complementary medicine, if that is their intended purpose.

NHF Aust and NHF NZ noted the difficulties of establishing criteria, as there are no officially recognised health reference standards for most of these.

It was recommended by a number of submitters that until criteria have been established, claims in relation to biologically active substances should be prohibited (PHAA (supported by ACA), SA DoH, WA DoH, Monash Uni – N&D Unit).

Did not support criteria

The following submitters indicated that they did not support the setting of criteria for making a biologically active substance claim: ANIC, PB Foods, NCEFF, Cadbury Schweppes and National Foods.

Reasons given for not supporting the use of these criteria were:

- Due to the extensive number of biologically active substances found in foods and the number of potential claims that could be made (ANIC);
- That they supported the requirement in the Food Standards Code currently that specifies that if a claim about a biologically active substance is made, the amount must be listed in the Nutrition Information Panel (ANIC);
- That these are very specific claims and depend on the food category. There is the overarching principle that claims must be truthful and not misleading. Substantiation would support the benefit (PB Foods);
- That if the onus is on proof of the claim, and the system of substantiation is robust, then claim criteria should not be required. (NCEFF);
- That they don't believe it's possible to set criteria for each biologically active substance. The onus is on the manufacturer to substantiate the claims and hold the evidence, FSANZ will approve the high level claims and biologically active substances should not be treated differently than mainstream nutrients (Cadbury Schweppes); and
- That there are no further nutrition claims, criteria and conditions that require regulation (National Foods).

National Foods went on to suggest that biologically active substances be included in the definition of a nutrient content claim.

General comments

The following comments were made that did not clearly indicate the submitters' preference for the setting of (qualifying) criteria for biologically active substance claims.

A number of these submitters noted that any claim for biologically active substances would need to be substantiated, such as Parmalat Aust. who said that the criteria will generally be based on substantiating evidence, and claims would include a quantitative declaration of the biologically active substance amount in the Nutrition Information Panel. The amount should justify the claim made and would be based on the substantiating evidence held by the manufacturer (Parmalat Aust.). Similarly, NZFSA noted that any claim must be able to be qualified and there must be evidence about levels that support the claims as appropriate, e.g. 'good', 'high', etc. Another similar comment was that the ability to make claims referencing biologically active substances should be based on scientific substantiation (CMA supported by Mandurah

Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA - NSW Branch, CMA - Qld Branch, ICA, CMA-Vic Branch, and CM of SA, CSIRO HS&N).

Fonterra stated that it is more difficult to set limits for these substances as there are no RDIs but this does not mean that evidence cannot be adduced to substantiate an appropriate claim.

Mainland Products just recommended a quantitative statement in the Nutrition Information Panel to support these content claims.

Although not specifically stating that they supported the setting of criteria for biologically active substances Heinz Aust./Heinz Watties NZ outlined the criteria that they apply for lycopene claims. They attached a document "Suggested Daily Intake of Lycopene", to their submission, which suggests daily intake of lycopene should be 5 - 7mg. The criteria that they use are:

- 25% of suggested daily intake per serving constitutes a source of lycopene claim;
- 100% of the suggested daily intake per serving constitutes a good source/high/rich in lycopene claim.

These criteria are based on per serving rather than per 100 g, and they added that the usual serving size for tomato sauce is 15 – 20 g/mL.

It was noted by two submitters that they have little information on the claims made in relation to the 'sports' market, but most other claims appear to be made without any evidence as to their truthfulness and based on the presence of minute quantities of herbs, e.g. ginseng. Some of these claims would be disqualified by the general criteria for making claims. Others will be affected by the Novel Foods and Non-Culinary Herbs standards, which will be developed in the next few years (NSW Food Authority, NSW DoH – N&PA Branch).

Nestle commented that these claims should be subject to the provisions for false and misleading information. They added that other countries permit content claims for biologically active substances. The question needs to be asked as to whether there is any form of market failure with these components currently not being regulated for content claims?

NZ MoH indicated a preference for disqualifying criteria, by saying that it is appropriate that only certain categories of food are allowed to make this type of claim, as they don't want unhealthy foods (not promoted by food & nutrition guidelines) to be promoted under this banner.

Public Health South indicated that they did not support the inclusion of claims regarding biologically active substances because this is likely to create more confusion for the public. These claims would place too much attention on ingredients or substances of food rather than a whole food or whole diet approach. Addition of biologically active claims would require extensive public educating to understand the terminology and impact on health. Any messages on food must remain simple (Public Health South).

Tomox said that vitamins, minerals and biologically active substances should be covered by the standard.

National Foods recommended substantiated general level and high level claims be permitted for biologically active substances e.g. with antioxidants, isoflavones and Omega 3. Sanitarium Health Food Comp noted their support of the inclusion of biologically active substances under the definition of a general level claim.

Other comments provided but not in direct response to the question

SA DoH pointed out that it is not always known what gives these substances their biological activity and an isolated food component may not be effective in providing a benefit. They added that the science relating to the effect/benefit of a biologically active substance is not well developed and this could pose challenges for the substantiation process, unless a biologically active substance is classified as a novel food and requires pre-market assessment of evidence and approval by FSANZ. They expressed concern that claims relating to biologically active substances (i.e. a single food component approach) would not be consistent with dietary guidelines, which have a whole of diet approach. They also recommended that the issue demonstrating bioavailability, pharmacokinetics and efficacy in different food matrices be addressed.

ACA believed that the health claims standard should apply to biologically active substances and that their placement within the standard should be dependent on the type of claim being made and where it falls within the claims classification framework. They stated that the conditions, criteria and substantiation requirements must be the same for nutrients and biologically active substances.

3.17 IMPLIED CLAIMS

Question 51

Should 'lean' and 'extra lean' claims be defined? If so, what criteria should apply?

Out of 147 submitters, 36.1% (53 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	14	11	4	-	29
Government	7	2	-	-	9
Public health	7	4	-	-	11
Consumers	2	-	-	-	2
Other	2	-	-	-	2
Total	32	17	4	0	53

Overview

Twenty-one submitters did not believe that the terms ‘lean’ and ‘extra lean’ should be defined, however, 16 submitters preferred that they were. Five submitters felt that these terms should not be permitted if they were not defined. Two submitters were in favour of defining the term ‘lean’ but not ‘extra lean’. The most commonly recommended criterion was that they meet the ‘low fat’ criteria.

Support for ‘lean’ and ‘extra lean’ to be defined

There were 16 submitters that clearly supported that these claims be defined (GI Ltd, Aussie Bodies, MLA, National Starch, Solae Comp, NCWA, ACCC, CSIRO, NZ MoH, Canterbury DHB, TCCA, Nutra Life H&F, Cadbury Schweppes, MLA, NHF Aust., NHF NZ).

A reason for this was that these claims generally attract a price premium so consumers should have some level of confidence in the claim being represented (ACCC). MLA commented that Standard 2.2.1 does not ensure consistency in use of terms such as ‘lean’ or ‘extra lean’.

It was stated by some submitters that these claims should not be permitted unless they are defined, as there is potential for consumers to be misled (SA DoH, WA DoH, Monash Uni – N&D Unit, PHAA (supported by ACA)).

PB Foods supported that these terms be defined only when there is a benefit to consumer choice.

NZFSA and Tas DoH&HS were in support of defining the term ‘lean’ but not ‘extra lean’. The reasons provided by these submitters for this were that:

- These terms are used widely and to have both is confusing (NZFSA); and
- ‘Lean’ requires definition to reduce the potential for consumers to be misled and deceived, however the inclusion of ‘extra lean’ is not appropriate. ‘Extra lean’ could be considered misleading especially if there are no defined criteria to differentiate lean from extra lean (Tas DoH&HS).

Criteria for ‘lean’ and ‘extra lean’

Some submitters that supported the use of definitions of ‘lean’ and ‘extra lean’ suggested the criteria that should be used for these definitions, as follows:

- ‘Lean’ claims should require that the food is reduced or low in fat (NHF Aust., NHF NZ);
- The criteria should be reflective of the low fat criteria (National Starch, Solae Comp, Canterbury DHB, NZFSA);
- The criteria should apply to the fat content (NCWA);

- ‘Lean’ should be defined as <5% fat and ‘extra lean’ as <2% fat (CSIRO – HS&N);
- ‘Lean’ should be the same as reduced and ‘very lean’ the same as low (NZ MoH);
- They should refer to energy/fat/sugar content of the food as the term ‘lean’ implies ‘reduced’. Low fat criteria (<3 g fat per 100 g), low sugar (< 10 g sugar per 100 g) and agreed low energy criteria should apply (TCCA);
- They should be referenced against a standard product the same way as a ‘reduced’ claim (Aussie Bodies); and
- ‘Lean’ and ‘extra lean’ should be considered as being similar to ‘light’ and ‘lite’. The terms should be specified against a standard product to help consumers understand, e.g. if ‘lean’ was considered to have 25% less fat, then ‘extra lean’ would have 50% less fat (Nutra Life H&F).

Although they had no strong position on the use of definitions, NSW Food Authority suggested the criteria for ‘reduced’ and ‘low’ could be applied.

While not explicitly stating whether definitions should be specified, CML suggested that these terms could be added to the synonyms previously mentioned, and that 'lean' means 'low fat' and 'extra lean' means 'very low fat' (CML).

It was recommended by MLA that specifications for using these terms as per requirements in the US and Canada for both muscle meat and mincemeat will help to ensure a standard description across retailers and improve consumer understanding. They have recently updated their nutrient composition data to reflect current practices amongst retailers and consumers, with data for lean (no external separable fat and minimal internal separable fat), semi-trimmed (no external separable fat), and untrimmed red meat (beef, lamb, veal and mutton) cuts. Fat content of lean meat cuts is generally less than 10g/100g. Regarding variety of mince, retailers classify mince according to 'chemical lean' (CL), lean mince is generally 90CL or higher, regular mince 85CL or higher, and hamburger mince less than 85CL. Lean mince is generally equal to or less than 10g/100g (MLA).

Cadbury Schweppes noted that ‘lean’ and ‘extra lean’ appear to relate to fat content and most consumers would relate these terms to meat and meat products only. Therefore these claims should only relate to these foods and in line with ‘low fat’ or ‘reduced fat’ criteria.

Did not support ‘lean’ and ‘extra lean’ to be defined

There were 21 submitters who clearly did not see a need for the terms ‘lean’ and ‘extra lean’ to be defined (CHC, Dairy Aust., F & B Importers Assoc., Goodman Fielder, National Foods, Wyeth Aust., DAFF, ASA, NPANZ, NZTBC, Cadbury Confectionery, NZ Magazines, NZTBC, Naturo Pharm, NZFGC, Fonterra supported by Mainland Products, Unilever Aust., Nestle, AFGC supported by MasterFoods Aust. NZ).

Some submitters added that they were in support of the TEG conclusion, that it is not necessary to define claims such as ‘lean’ or ‘extra lean’ (AFGC supported by MasterFoods Aust. NZ, Goodman Fielder, Unilever Aust., Nestle). AFGC added that this was in view of the requirements in Standard 2.2.1.

The response from NSW DoH to this question was “Not unless they are clearly defined.”

Reasons provided by some of these submitters for not supporting defining of these terms were that:

- The present enforcement system of assessing these claims on a case-by-case basis was sufficient, e.g., lean meat is described in many recipes and seems to be well understood by consumers (Nestle);
- These are synonyms for other criteria (refer to section 2.3, page 203, IAR), and where they fit will be a matter of common sense according to the context of the claim (Dairy Aust., Fonterra supported by Mainland Products);
- There is no market failure requiring regulation (Dairy Aust., Fonterra supported by Mainland Products);
- These claims should be regulated by false and misleading provisions of the Trade Practices legislation, with a statement referring to this included in the user-guide for industry direction (National Foods);
- This is covered adequately under other sections of P293 (Wyeth Aust.);
- Courts and tribunals take a commonsense meaning. If the claim is made then it must be substantiated when challenged (ASA, NPANZ, NZTBC, Cadbury Confectionery, NZ Magazines, NZTBC, Naturo Pharm); and
- The case-by-case basis by enforcement agencies is appropriate (NZFGC).

General comments

It was noted that these claims generally refer to meat products like mince and vary from butcher to butcher on a day-to-day basis. It was suggested that criteria could be set in line with the criteria for low fat food but enforcement would be difficult and it would be unrealistic to expect butchers to analyse their meat on a daily basis to ensure that it complies with the criteria (Diabetes Aust., DAA, NZDA, GI Ltd, Tas DoH&HS). Proxy measures such as no visible fat may be appropriate (Tas DoH&HS).

Public Health South submitted that these claims should be prohibited, because ambiguous claims such as these are confusing and misleading.

It was believed that the term ‘lean meat’ implies good quality meat that is free of excess fat and gristle, but doesn’t necessarily mean the product is low in fat, e.g.

‘lean’ might be used in a product that contains high fat ingredients (Heinz Aust./Heinz Watties NZ).

It was questioned what 'lean' and 'extra lean' really by Dr R Stanton, however she believed that 'fat reduced' or 'low fat' should cover them.

Other comments provided but not in direct response to the question

Beef and Lamb Marketing Bureau stated that the terms ‘lean’ and ‘extra lean’ are already covered by the Code and don’t need a specific definition.

Question 52

Should FSANZ develop a definition for implied content claims? If so, why?

Out of 147 submitters, 42.9% (63 in total) directly responded to this question. The distribution of these responses was as follows:

Sector	Australia	New Zealand	Trans Tasman	International	Total
Industry	20	12	5	2	39
Government	7	2	-	-	9
Public health	7	2	-	-	9
Consumers	2	-	-	-	2
Other	4	-	-	-	4
Total	39	16	5	2	63

Overview

Thirty-six submitters did not support the development of a definition for implied content claims. However, 22 submitters agreed that FSANZ should develop a definition of implied content claims. Another two submitters implied support. Reasons provided for support of a definition related to fair trading, clarity for manufacturers and for enforcement, and to prevent consumers from being misled.

Support development of a definition

There were 22 submitters that supported that FSANZ develop a definition of implied content claims (TCCA, Diabetes Aust., DAA, NZDA, Dr R Stanton, GI Ltd, PHAA (supported by ACA), Aussie Bodies, CHC, National Starch, Solae Comp, NCWA, Tas DoH&HS, NSW DoH, NSW Food Authority, SA DoH, WA DoH, Monash Uni – N&D Unit, Nutra Life H&F, Heinz Aust./Heinz Watties NZ, CML).

NSW Food Authority added that this was if such a definition is practically possible.

Reasons provided by some of these submitters for supporting development of implied content claims were:

- To ensure fair trading and reduce potential for consumers to be confused and misled/deceived (NSW DoH, SA DoH, WA DoH, Monash Uni – N&D Unit, PHAA (supported by ACA));
- That these claims can mislead consumers (NCWA);
- Because these claims have the potential to mislead consumers (CML) and must be regulated (TCCA);
- To give clarity to food manufacturers (Solae Comp.);
- That a definition would remove ambiguity and assist with enforcement (Heinz Aust./Heinz Watties NZ);
- To ensure that any implied content claim falls into the category of general level claims and are not considered by consumers to be health claims that would be assessed as high level claims (Tas DoH&HS);
- In order for these claims to be assessed as either high level or general level claims (DAA, NZDA);
- That this would make the enforcement of advertising and labelling much more simple (NSW Food Authority);
- That a definition might help enforcement agencies, manufacturers and marketers (with labelling and advertising etc) (CML); and
- Because case-by-case basis by enforcement agencies is unacceptable, is not transparent and appears to be ad hoc. It is far better to establish rules and guidance upfront (CHC). In addition, it was noted that an implied claim is a 'claim' (CHC).

CML questioned whether implied claims are covered by Trade Practices law and whether implied claims be standardised. They also asked about other implied claims such as: fresh, healthy, natural, traditional, nutritious, wholesome, goodness, real (e.g. real butter, as opposed to fake butter). They have classed these as 'implied' as they are subjective and difficult to measure (CML).

Some submitters gave examples of implied claims. It was suggested that the evidence relating to the abuse of lite/light claims (Williams et al, 2003) could signal what could result if implied claims are not defined (SA DoH, Monash Uni – N&D Unit, PHAA (supported by ACA)).

Concern was also expressed about implied claims arising from:

- 1) Food names (e.g. Kellogg's Body Smart cereal).
- 2) Other prominent words on the front panel of the label (e.g. Lowan Oat & Wheat Honey O's feature the words "Let's eat healthy" in large font on the front panel and Kellogg's Coco Pops feature the words "Tasty Nutrition" in large font on the front panel).
- 3) Other statements on the front panel of the label (e.g. Kellogg's Body Smart Cereal features the statement "High in fibre for digestive health" under the food name). In relation to this it was recommended that FSANZ prohibit the use of certain words on the front panel of food products high in energy, fat, sugar or sodium as these may imply a health claim. Such words include: 'health', 'nutrition', 'body' and variations of these words, and any words describing a body part (e.g. heart).
- 4) Images on the food label (e.g. Milo features images of Olympic swimmers – implying enhanced function/sports performance and Coco pops feature a cartoon image of the mascot, dressed as a child, standing at a height chart – implying function/enhanced function with respect to vertical growth). In relation to this it was recommended that FSANZ prohibit the use of images, which imply illness, body part or improved health/development (TCCA).

Nutra Life H&F believed that a standard should be developed to define all implied claims, and that although prepared food requires the full list of ingredients to be stated on the label, this issue could be addressed on the ingredients panel. Negative claims (e.g. no artificial colours) would be supported by not mentioning these items in the ingredients panel and the absence of artificial colours/flavours could be supported by listing terms such as 'natural flavours'.

Two submitters implied that they supported development of a definition of implied content claims but did not explicitly state this in their answer. ASMI noted that implied claims covers a wide scope often involving the selective declaration of particular ingredients, or use of body systems often subject to particularly well known diseases i.e. bone strength as a way of implying osteoarthritis. A greater control of this area is required to avoid using general claims in such a way that implies much more serious conditions (ASMI, TGACC).

Considered that a definition is not required

There were 36 submitters that did not support the development of a definition of implied content claims (NCEFF, AFGC supported by MasterFoods Aust. NZ, Dairy Aust., F&B Importers Assoc., Goodman Fielder, National Foods, Parmalat, PB Foods, DAFF, CSIRO, NZFSA, ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZ Magazines, NZTBC, Fonterra, Griffins Foods, Mainland Products, CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, and CM of SA; Unilever Australasia, Nestle, NHF Aust., NHF NZ).

A number of these submitters noted their support of the TEG conclusions, that implied content claims should be handled on a case-by-case basis by enforcement agencies (Goodman Fielder, DAFF, Unilever Australasia, AFGC supported by MasterFoods Aust. NZ). National Foods suggested that this present system is workable and enforceable.

Reasons provided by some of these submitters for not supporting the development of a definition were that:

- If a definition were developed, then regulatory authorities would need to enforce it, duplicating the function of the ACCC (NCEFF);
- Nutrient content claims purely provide reference to the amount of a nutrient present without necessarily implying a health benefit (Parmalat Aust.);
- This is an enforcement issue and should be considered on a case-by-case system (PB Foods);
- Believes implied content claims be handled by enforcement on a case-by-case basis (Griffins Foods) as in other countries (NHF Aust., NHF NZ);
- The content claim should refer to an absolute content and not rely on any implication (NZFSA);
- They should be dealt with on a case-by-case basis only, taking a common sense approach (ASA, NPANZ, Assoc. of NZ Advertisers, Cadbury Confectionery, Naturo Pharm, NZ Magazines, NZTBC);
- Overall impressions and implications are regulated in the TPA/Fair Trading Act, and development of definitions would be a waste of resources that may result in inconsistencies between fair trade legislation and the Food Code (Mainland Products);
- These claims will fit in according to the context (Fonterra);
- If a claim is defined, it cannot be implied, therefore it is not appropriate that FSANZ considers this regulation, but should approach these claims on a case-by-case basis (CMA supported by Mandurah Aust., Palatinit GmbH, Kingfood Aust., CMA NZ Branch, CMA-NSW Branch, CMA-Qld Branch, ICA, CMA-Vic Branch, CM of SA); and
- Generally there is a common understanding of an implied claim (Nestle).

It was noted that it is important to clarify that a nutrient content claim is not necessarily an implied claim of a health benefit (Dairy Aust., Fonterra, Nestle).

Nestle noted that there have been some discussions that a calcium claim, for example, is an implied health claim about osteoporosis.

It was added that the need to regulate implied claims on a case-by-case basis would be minimised if general level claims are pre-approved and listed in the standard (NHF Aust., NHF NZ).

General comments

Cadbury Schweppes submitted that in the interests of consumer protection and providing manufacturers with a level playing field, implied claims should not be permitted, nor can they be adequately captured in a Standard. They felt that there is adequate scope under general level claims so implied claims will not need to be made.

ACCC suggested that there is merit in developing a comprehensive guide for all implied content claims, particularly where such claims are made in a social, ethnic, religious or moral context e.g. ‘vegan friendly’, ‘Halal’, ‘kosher’.

NZ MoH noted that only what is specifically legislated should be allowed on labels, and that implied claims are hard to define or prosecute.

Other comments provided but not in direct response to the question

Queensland Health – PHS commented that the ‘lite’ and ‘lean’ claims have been used in a misleading manner and do not offer any significant nutrition information to consumer unless defined in a standard. They added that these claims used in conjunction with a nutrient claim are open to misinterpretation by consumers and they support prohibition of these words.