

17 February 2012
[4-12]

Call for submissions – Proposal P293

Nutrition, Health & Related Claims

On 6 June 2008, the COAG Legislative and Governance Forum on Food Regulation¹ (the Forum) asked Food Standards Australia New Zealand (FSANZ) to review its decision on draft Standard 1.2.7 – Nutrition, Health and Related Claims, arising from Proposal P293 – Nutrition, Health & Related Claims. FSANZ is required to provide a review response by 30 April 2012.

The Forum has asked FSANZ to undertake further public consultation on draft Standard 1.2.7 before making a final decision. FSANZ is therefore seeking comment on revised draft Standard 1.2.7 after considering issues raised in the Review Request (see Part I).

In addition, FSANZ is seeking comment on a new matter regarding ‘fat-free’ and ‘% fat-free’ nutrition content claims. Discussion of this matter is provided in Part II of this paper.

To aid submitters in providing comments, a set of questions on each matter that is the subject of this consultation is provided. A submission response sheet is also provided at Attachment D and submitters are encouraged to use this template.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

Under the Information Publication Scheme, all submissions on applications and proposals will be published on our website. We will not publish any material provided in-confidence. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#).

Submissions should be made in writing; be marked clearly with the word ‘Submission’ and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to submissions@foodstandards.gov.au.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 16 March 2012

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

¹ Previously known as the Australia and New Zealand Food Regulation Ministerial Council

Questions about making submissions or the application process can be sent to standards.management@foodstandards.gov.au.

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1. Executive summary

In May 2008, Food Standards Australia New Zealand (FSANZ), following assessment of Proposal P293 – Nutrition, Health & Related Claims (P293), approved draft Standard 1.2.7 – Nutrition, Health and Related Claims for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

In June 2008, the COAG Legislative and Governance Forum on Food Regulation² (Forum) requested a Review of draft Standard 1.2.7. The timeline for consideration of the review response has been extended on a number of occasions due to the independent Review of Food Labelling Law and Policy³. FSANZ is now required to provide a response to the Review Request by 30 April 2012.

FSANZ provided an interim report to Ministers on the Review Request at the December 2011 meeting of the Forum. At this meeting, the Forum also considered its response to the recommendations of *Labelling Logic: Review of Food Labelling Law and Policy (Blewett et al. 2011)*⁴.

Following the Forum's consideration of the interim report on the Review Request and the response to the Food Labelling Review, FSANZ was asked to undertake two further tasks. Firstly, FSANZ was asked to consult broadly on the draft Standard itself before presenting a final standard to Ministers for their consideration, and secondly, to further consider 'fat-free' and '% fat-free' claims as there are concerns that such claims may mislead consumers.

Since 2004, FSANZ has undertaken extensive stakeholder consultation on the development of draft Standard 1.2.7, with the most recent round of public consultation occurring in March 2009. Whilst acknowledging that there has been considerable stakeholder interest in P293 and a diverse range of views expressed in response, it is not the purpose of this paper to revisit issues previously considered as part of P293. FSANZ is also not seeking any further comment on issues raised in the Review Request.

This consultation paper specifically seeks comments on the structure and regulatory clarity of draft Standard 1.2.7 as discussed in Part I. A copy of draft Standard 1.2.7 is at Attachment A and to aid submitters, FSANZ has also prepared a background summary to explain and clarify the intent of each of the clauses in draft Standard 1.2.7 (refer to Attachment B).

Part 1 details the key changes to draft Standard 1.2.7 since previous consultation in 2009. These are:

- Pre-approval of food-health relationships underpinning all health claims i.e. both general and high level claims. FSANZ is recommending the inclusion of 115 pre-approved food-health relationships in the draft Standard. Further food-health relationships will be able to be added through FSANZ periodically translating appropriate food-health relationships that are the basis for health claims permitted in the European Union, and via applications which can be assessed confidentially to provide for industry exclusivity and market advantage.

² Previously known as the Australia and New Zealand Food Regulation Ministerial Council.

³ *Labelling Logic: Review of Food Labelling Law and Policy (2011)* www.foodlabellingreview.gov.au

⁴ *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy (2011)* www.foodlabellingreview.gov.au

- Removal of proposed provisions for the related claims relating to dietary information and cause-related marketing. Statements that are considered to be misleading can potentially be addressed by Australian and New Zealand consumer law.

A summary of all changes to draft Standard 1.2.7 since 2009 is at Attachment C.

Part II of this paper discusses and seeks comment on the matter of fat-free and % fat-free claims. The main issue is whether consumers are currently, or are likely to be in the future, misled by these claims, thereby warranting the application of additional regulatory measures, and whether there is evidence to support this view. A range of possible approaches are proposed for stakeholder feedback. Discussion on each approach identifies the issues that FSANZ would welcome comments on. FSANZ encourages submitters to provide documented or validated evidence.

A submission response sheet is provided at Attachment D and submitters are encouraged to use this template.

2. Introduction

Following receipt of the *Policy Guideline on Nutrition, Health and Related Claims*⁵ (Policy Guideline) from the Forum in December 2003, FSANZ prepared Proposal P293 – Nutrition, Health & Related Claims. In May 2008, FSANZ approved draft Standard 1.2.7 – Nutrition, Health and Related Claims for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

In June 2008, the Forum requested a Review of draft Standard 1.2.7. The timeline for consideration of the review response has been extended on a number of occasions due to the independent Review of Food Labelling Law and Policy. FSANZ is now required to provide a review response by 30 April 2012.

At its meeting in December 2011, the Forum considered a *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy (2011)* which supports the finalisation of draft Standard 1.2.7. The Forum also considered an interim report from FSANZ on the Review of draft Standard 1.2.7. FSANZ was then asked to undertake further consultation on the draft Standard itself before presenting its review response, including the Standard, to Ministers for their consideration.

In addition, there was discussion and consideration of nutrition content claims. Concerns were expressed regarding the use of fat-free and % fat-free claims, particularly where products with these claims were high in sugar or energy content. Ministers thought that some consumers may be misled by the 'fat-free' claim believing the products to be 'healthier'. On this basis, FSANZ was asked to give further consideration to these types of claims.

Since 2004, FSANZ has undertaken extensive stakeholder consultation on the development of draft Standard 1.2.7, with the most recent round of public consultation occurring in March 2009. Whilst acknowledging that there has been considerable stakeholder interest and a diverse range of views expressed, it is not the purpose of this paper to revisit issues previously considered as part of P293. In addition, FSANZ is not seeking any further comment on issues raised in the Review Request.

Therefore, the purpose of this consultation paper is to seek comments on:

- the proposed draft of Standard 1.2.7, specifically whether the further revision of text and structure undertaken since 2009 accurately reflects the regulatory intent and provides clarity, enforceability and user-friendliness (Part I)
- fat-free and % fat-free nutrition content claims (Part II).

⁵ The Policy Guideline is at [http://www.health.gov.au/internet/main/publishing.nsf/Content/00E8A0712A1A5C3BCA2578A7007FBE77/\\$File/nutrition_guidelines.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/00E8A0712A1A5C3BCA2578A7007FBE77/$File/nutrition_guidelines.pdf)

Part I – Draft Standard 1.2.7 – Nutrition, Health and Related Claims

3. Background

Standard 1.2.7 is intended to provide a regulatory management and substantiation framework for nutrition content and health claims. It aims to address ambiguities and limitations under the existing regulatory arrangements that restrict industry innovation and lead to difficulties with enforcement.

In the Final Assessment Report released in May 2008, FSANZ decided that nutrition content, general level and high level health claims be regulated via Standard 1.2.7⁶.

Nutrition content claims describe or indicate the presence or absence of energy, a nutrient or biologically active substance in food. For example: *this food is high in calcium*.

General level health claims refer to a nutrient or substance in a food and its effect on a health function. General level health claims may not refer to a serious disease or to a biomarker of a serious disease. For example: *calcium is good for healthy bones and teeth*.

High level health claims refer to a nutrient or substance in a food and its relationship to a serious disease or to a biomarker of a serious disease. For example: *this food is high in calcium. Diets high in calcium may reduce the risk of osteoporosis*.

It was proposed that there would be a 'step-up' approach in regulation from nutrition content claims to general level health claims to high level health claims and that:

- all claims would be substantiated
- general wording conditions⁷ and qualifying criteria for nutrition content, general level and high level health claims would be specified in Standard 1.2.7
- foods carrying general and high level health claims would be required to meet the nutrient profiling scoring criterion (NPSC) (i.e. to restrict use of health claims on products considered to be of lower nutritional quality)
- food-disease relationships underpinning high level health claims would be pre-approved by FSANZ
- food businesses could choose one of four methods to substantiate general level health claims and provide documentation to enforcement authorities on request.

A request for a review of draft Standard 1.2.7 was notified to FSANZ in June 2008. In summary, the grounds given by the Forum for the review request were that draft Standard 1.2.7:

- was not consistent with existing policy guidelines set by the Forum
- was not consistent with the objectives of the legislation which establishes FSANZ
- did not protect public health and safety
- was difficult to enforce or comply with in both practical or resource terms
- placed an unreasonable cost burden on industry and/or consumers.

⁶ The Final Assessment Report and all other previous relevant documents are available at <http://www.foodstandards.gov.au/foodstandards/proposals/proposalp293nutritionhealthandrelatedclaims/index.cfm>.

⁷ 'wording conditions' does not mean that the exact wording of a nutrition content or health claim is prescribed in the draft Standard.

4. Revised draft Standard 1.2.7

4.1 2009 consultation on the draft Standard

The review request raised concerns about potential difficulties for compliance and enforcement of Standard 1.2.7 due to the length, complexity and lack of clarity of the Standard as approved at Final Assessment in 2008.

In response, FSANZ undertook a comprehensive re-draft of the Standard to better achieve intent, and to improve clarity and ease of comprehension⁸. The re-drafting focused on three main areas:

- separation of concepts (so that clauses deal only with one concept, and similar concepts are grouped together)
- standardisation of provisions (similar provisions repeated throughout the Standard are expressed in similar language)
- simplification and clarification (wherever possible, the drafting was simplified and clarified).

In general, the submitter comments in response to the March 2009 consultation draft Standard were positive, with the majority of submitters who commented agreeing that the revised drafting improved clarity and reduced ambiguity.

In addition to the above, the March 2009 consultation also considered the regulation of general level health claims, specifically in relation to substantiation and enforceability. The 2009 drafting included the proposed pre-approval of general level health claims, incorporating a schedule of 'Permitted General Level Health Claims'. More detail on the changes to general level health claims since 2009 is provided in the next section.

4.2 Pre-approval of general level health claims

At Final Assessment (2008), FSANZ decided that industry self-substantiate general level health claims according to a Scientific Substantiation Framework⁹. It was proposed that the supplier of the food carrying the general level health claim have records that substantiated the claim and that these be made available to the enforcement authority upon request.

Concern was raised in the review request that this approach would be difficult to enforce and be resource intensive for enforcement authorities. There was general support for FSANZ to undertake pre-market assessment of systematic reviews and for the assessments to be conducted on a cost-recovery basis where industry bears the cost. Comments also suggested that consideration of pre-market assessment would need to address matters of industry exclusivity and market advantage.

The 2009 consultation paper proposed that food-health relationships be pre-approved by FSANZ with a list of pre-approved food-health relationships included in the draft Standard. This was to provide certainty that food-health relationships were valid, reduce the burden of enforcement and improve enforceability.

⁸ The re-drafted Standard is at Attachment 1 of the March 2009 consultation paper available at http://www.foodstandards.gov.au/_srcfiles/P293%20Health%20Claims%20Cons%20Paper%20FINAL1.doc

⁹ One of four methods of substantiation could be used:
Method 1: Prescribed list of pre-approved nutrient function statements
Method 2: Prescribed list of pre-approved food-disease relationships for high level health claims
Method 3: Prescribed list of authoritative sources
Method 4: Systematic review

While consumer and jurisdictional comments were supportive of this change, industry raised concerns with the proposed pre-approval of food-health relationships, suggesting that this would be time consuming, costly and could discourage innovation as the application process for recognition of new claims would allow commercially sensitive information to be exposed.

Following further stakeholder consultation and consideration of issues raised, FSANZ recommends that food-health relationships underpinning general level health claims be pre-approved. As pre-approval was recommended for high level health claims at Final Assessment, all food-health relationships underpinning health claims, both general and high level, will be pre-approved.

Currently, FSANZ is recommending the inclusion of 115 pre-approved food-health relationships in draft Standard 1.2.7, which upon gazettal, will provide food businesses with immediate access to pre-approved food-health relationships from which they can derive health claims. Food businesses have the opportunity to prepare their own wording of the health claim provided it is consistent with the relevant food-health relationship and meets other requirements and conditions in the standard.

FSANZ is also proposing to review the health claims that are expected to be approved by the European Union (EU) and plans to adapt acceptable claims for inclusion as food-health relationships in Standard 1.2.7. There are very few EU claims published to date, but around 200 are expected to be published in the first half of 2012. EU claims will be screened to ensure that they are appropriate for the Australia New Zealand food regulatory system. FSANZ will prepare proposals for the translation of EU claims into pre-approved food-health relationships and public comment will be sought during this process.

Food businesses will be able to make application to FSANZ for further food-health relationships where they have been established and substantiated. To support industry innovation, food businesses will have the option of having applications for the approval of new food-health relationships assessed confidentially, by virtue of the 'high level health claims variation' procedure in the *Food Standard Australia New Zealand Act 1991* (FSANZ Act)¹⁰. The high level health claims variation procedure allows applicants to have an application seeking approval of a new food-health relationship assessed without the normal public notification process. FSANZ is, however, required to seek advice from an expert committee and the jurisdictions as part of the assessment process. Avoiding public notification and consultation provides the opportunity for first-to-market advantage for applicants. Food businesses will also have the option of paying application fees to expedite the commencement of the FSANZ assessment processes according to current FSANZ procedures.

FSANZ considers that pre-approval of all food-health relationships (from which health claims are derived), will address the concerns expressed in the review request and subsequent consultation by:

- providing a structured process that provides clarity and certainty for all stakeholders
- providing food businesses with an extensive list of 115 food-health relationships for use on gazettal of the new Standard
- adding to the list of recognised food-health relationships through FSANZ periodically translating appropriate food-health relationships into the new Standard that are the basis for health claims published by the EU
- supporting industry innovation and confidentiality via the use of the 'high level health claims variation' procedure where industry makes application for further food-health relationships

¹⁰ Subdivision G of Division 1 of Part 3

- not placing an unreasonable cost burden on jurisdictions, food businesses or consumers
- meeting the needs of the jurisdictions with an enforceable Standard.

4.3 Changes to the draft Standard since the 2009 consultation

Since 2009, further revisions to draft Standard 1.2.7 have been made to improve the clarity of the Standard. The current draft Standard includes amendments made as a result of considering submissions to the 2009 consultation, issues raised by the Forum in its review request, as well as changes in drafting practice arising from the recent legislative audit of the Code¹¹.

Attachment A to this paper provides the latest revision of proposed draft Standard 1.2.7, Schedule 2 of which contains the list of pre-approved food-health relationships and their conditions and contexts for use, as well as the consequential amendments to the Code that are necessary as a result of draft Standard 1.2.7.

FSANZ has also prepared a background summary for draft Standard 1.2.7 to explain and clarify the intent of each of the clauses (refer to Attachment B). To aid submitters, this should be read in association with the proposed draft Standard.

Attachment C lists the changes to Standard 1.2.7 since the 2009 consultation and provides details on the changes including rationale. Of particular note, provisions relating to two related claims, namely dietary information and cause-related marketing, are no longer included in draft Standard 1.2.7. Details on the rationale for these changes are provided below.

4.3.1 Dietary information

In 2009, it was proposed that dietary information (i.e. dietary guidance of an educational nature that is not a nutrition content claim or health claim, such as 'choose foods low in fat') must be from an authoritative source and if about a property of food, the dietary information must be provided with an associated nutrition content claim. However, submitters were concerned about lack of clarity of the proposed definition of dietary information, in particular the reference to 'authoritative source'. Clarifying the terminology relating to the definition of dietary information in the Standard has proven difficult. Therefore, FSANZ now proposes not to include any specific provisions relating to dietary information in draft Standard 1.2.7.

Dietary information type statements referring to a health effect will be considered to be and regulated as a health claim. Australian and New Zealand consumer law could potentially deal with dietary information that is considered to be misleading. This approach is consistent with regulations in the EU, USA and Canada.

4.3.2 Cause-related marketing

The cause-related marketing provisions in the 2009 version of Standard 1.2.7 required a disclaimer be provided with a cause-related marketing statement (that was also a nutrition content or health claim) to prevent consumers from being misled about the food.

¹¹ During 2009-10, the Office of Legislative Drafting and Publishing carried out a legislative audit of the standards that make up the *Australia New Zealand Food Standards Code*. Refer to the following link for further information: [Improving our standards development outcomes -10 - Food Standards Australia New Zealand](#)

The statement was not required if a compliant nutrition content claim or health claim appeared on the same label or advertisement as the cause-related marketing statement.

FSANZ has reconsidered this requirement and now proposes to remove the requirement for the disclaimer. If the cause-related marketing statement is by definition also a nutrition content claim or health claim, the statement must meet the requirements of the Standard. As with dietary information, cause-related marketing statements that are considered to be misleading could potentially be addressed by Australian and New Zealand consumer law.

5. Questions to Submitters

FSANZ invites submitters to comment on the following:

1. Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of 'user-friendliness'.

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

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

To aid submitters in providing comments, a **submission response sheet is provided at Attachment D**. Submitters are encouraged to use this template.

Part II – Fat-free and % fat-free claims

6. The Issue

FSANZ has been asked by the Forum to further consider the matter of fat-free and % fat-free claims as there is concern about the potential for consumers to be misled by these types of claims. It is suggested that this may arise from consumers believing that products carrying such claims are inherently 'healthier' due to the low fat content, but that they may not recognise that some products may be high in sugar and thereby contribute to increased energy intake.

Concern has also been expressed that fat-free claims, particularly on foods high in sugar and energy that do not normally contain fat e.g. confectionery, may be inconsistent with public health messages. The current dietary guidelines of both Australia and New Zealand, in addition to recommending a reduction in total fat intake, recommend limiting intake of sugars and foods containing added sugars (Ministry of Health 2003; NHMRC 2003).

The main issue is whether consumers are currently, or are likely to be in the future, misled by fat-free and % fat-free claims, thereby warranting the application of additional regulatory measures, and whether there is evidence to support this view.

7. Background to the Issue

7.1 Proposed requirements in draft Standard 1.2.7

Fat-free and % fat-free claims are nutrition content claims which FSANZ has considered in the context of both *free* and fat claims as part of P293. Details of FSANZ's consideration of *free* and fat claims is in Attachment 5 to the Final Assessment Report.

Currently, the Code does not contain provisions for the use of *free* claims, except for claims about gluten and lactose¹².

Fat-free claims are not specifically addressed by draft Standard 1.2.7, rather, the deceptive and misleading provisions under the respective consumer protection laws, as regulated by the Australian Competition and Consumer Commission and the New Zealand Commerce Commission, are relied upon to ensure appropriate use of fat-free claims.

In relation to % fat-free claims, draft Standard 1.2.7 (see Schedule 1 of Attachment A) sets out the following conditions: *The food meets the conditions for a nutrition content claim about low fat*, which is, the food contains no more fat than – (a) 1.5 g per 100 mL for liquid food; or (b) 3 g per 100 g for solid food¹³.

7.2 Overseas regulation

FSANZ's overall regulatory approach for nutrition content claims is similar to provisions in the EU. In Canada and the USA, only those claims listed in their regulations are permitted.

There is a range of approaches in relation to the application of disqualifying criteria or a generic nutrient profiling system to products with nutrition content claims. While draft Standard 1.2.7 includes disqualifying criteria for specific claims, Canada has no such provisions, while the USA requires a disclosure statement in some situations (see below), and the EU is proposing to use a nutrient profiling system although the details are yet to be determined.

In the USA, a disclosure statement ('See nutrition information for --- content') is required next to a nutrition content claim where the food contains one or more of specified nutrients at levels that exceed set quantities per serve. The specified nutrients are fat, saturated fat, cholesterol, sodium.

The regulation of fat-free and % fat-free claims in the USA and Canada is similar to that currently proposed in draft Standard 1.2.7. However, in the EU, while fat-free claims are permitted, % fat-free claims are not allowed irrespective of the composition of the food.

7.3 Current market practice

FSANZ has undertaken some preliminary market scanning for products currently carrying fat-free and % fat-free claims. A range of products have been identified with fat-free or % fat-free claims in the following categories: breakfast cereals, confectionery, snack foods (e.g. oven baked bars), dairy products and dairy desserts, simmer sauces, soups, crackers biscuits, certain canned foods (eg spaghetti, baked beans), salad dressings (eg mayonnaise) and sauces, processed meats and dried fruits.

¹² The voluntary *Code of Practice on Nutrient Claims in Food Labels and in Advertisements* (CoPoNC) includes conditions for free claims in relation to fat (including % fat-free), cholesterol, sodium and sugar

¹³ This approach reflects the conditions which are currently in place voluntarily under CoPoNC.

Products with fat-free claims, to be factually correct and compliant with consumer law, must be 'free' of fat, which limits the number of products which can carry this claim, whereas more products are eligible to make % fat-free claims.

A 2001 labelling survey of 6662 products across 40 food categories, sold in New South Wales, found that 51% of the products had at least one nutrient claim (Williams et al 2003). The most common nutrient claims related to fat; 18% of the foods carried some type of fat-related claim, with '% fat-free' being used almost twice as frequently as 'low fat'.

7.4 Consumer research on fat-free claims

To date, FSANZ has only undertaken a preliminary review of the available evidence on consumer perceptions relating to fat-free or % fat-free claims. The main source of information has been from the FSANZ Evaluation Report Series¹⁴ and this has been supplemented with identified relevant peer-reviewed literature (refer to section 13 for the bibliography).

The key points identified so far are that:

- Taste and price appear to be more important purchase drivers than fat-free claims.
- Many consumers are generally interested in the fat content of products.
- Fat-free claims are likely to have the most influence at time of first purchase.
- There appears to be no research on whether fat-free claims cause substitution behaviour, in particular if these claims are causing consumers to purchase foods of lower nutritional quality in place of foods of higher nutritional quality.
- Many consumers are sceptical about fat-free claims, particularly on foods of lower nutritional value.
- Some consumers appear influenced by fat-free claims, but there is no information on what these consumers would purchase/consume if the claims were not present.

FSANZ is engaging expert assistance to prepare a literature review on the available evidence in relation to fat-free claims.

8 Possible approaches

In considering possible approaches to this issue, FSANZ is required to look at a range of options including status quo, non-regulatory and regulatory options. Therefore, FSANZ is considering three possible approaches as outlined below. Discussion on each approach identifies the issues that FSANZ would welcome comments and evidence from submitters.

8.1 Option 1: Status quo

Adopting a status quo position would result in regulation of fat-free and % fat-free claims as currently proposed under P293. This would mean that fat-free claims would continue to be regulated as per existing Australian and New Zealand consumer law and % fat-free claims as proposed in draft Standard 1.2.7. Draft Standard 1.2.7 regulates % fat-free claims as nutrition content claims and sets out specific conditions (Schedule 1 of Attachment A).

A sub-option could be to increase consumer awareness and understanding i.e. status quo plus education as a means of minimising the likelihood of consumers being misled by fat-free and % fat-free claims.

¹⁴ Refer to these reports at <http://www.foodstandards.gov.au/scienceandeducation/publications/evaluationreportseries/>

If consumer awareness was raised such that consumers were aware of other food attributes such as energy, sugars, and able to obtain information from the label (ingredient listing, nutrition information panel), this may reduce the potential for them to be misled.

8.2 Option 2: Voluntary action through a code of practice

Where it is apparent that there is a risk to be managed ie further action is required, FSANZ is required to consider non-regulatory options such as industry codes of practice (CoP) to address issues or residual risks. In this case, an industry CoP might act to limit the use of fat-free and % fat-free claims on foods or a range of foods or establish additional conditions for making claims of this type, and may also include assistance in consumer education.

Industry CoPs are typically voluntary and are prepared by industry or an industry sector with or without participation of other stakeholders such as consumers or regulatory or enforcement agencies. This process can be led or facilitated by companies, industry peak bodies, or regulators with a range of participative arrangements. Companies are invited to recognise or sign up to the CoP. The overall effectiveness is related to the extent of uptake and compliance in relevant industry sectors.

8.3 Option 3: Regulate with additional conditions for fat-free and % fat-free claims

There are a number of different ways that additional regulatory requirements could be applied to fat-free and % fat-free claims in Standard 1.2.7. FSANZ has provided discussion on four possibilities below, noting each option has issues and limitations requiring further consideration.

8.3.1 Option 3(a): Require foods to meet the nutrient profiling scoring criterion

This option would permit fat-free and %-fat-free claims only on foods that meet the nutrient profiling scoring criterion (NPSC).

The NPSC has been developed by FSANZ to restrict the use of health claims on products considered to be of lower nutritional quality. The NPSC is a scoring system based on both risk-reducing (protein, dietary fibre, fruit/vegetable content) and risk-increasing components (energy, salt, sugar, saturated fat). Products score points for risk-increasing components which are off-set by risk-reducing components, giving an overall score that determines the eligibility of a food to make certain claims¹⁵. To date, FSANZ has proposed not to apply the NPSC to foods carrying nutrition content claims.

Because the NPSC considers the nutritional profile of a food, applying the NPSC to products carrying fat-free and % fat-free claims will restrict claims on products based on their overall nutritional profile rather than based on just sugar or energy content.

Information has been collected identifying food categories in which fat-free and % fat-free claims are currently used. A number of products within each category have been put through the NPSC to test whether or not they pass or fail. From these results, specific food categories have been identified that would most likely not be eligible to make a fat-free or % fat-free claim due to products in the category failing the NPSC. These categories and the reasons for failing are:

¹⁵ Refer to the FSANZ website for the Attachment 6 of the Final Assessment Report at: <http://www.foodstandards.gov.au/foodstandards/proposals/proposalp293nutritionhealthandrelatedclaims/index.cfm>

- breakfast cereals – sugar, sodium
- mayonnaise and salad dressings – sodium
- confectionery – sugar
- simmer and stir-fry sauces – sodium
- processed meats – sodium
- liquid stocks – sodium.

In these categories, it is estimated that over 100 products (stock keeping units (skus)) fail the NPSC. However, it is noted that this does not cover all food categories, and therefore is unlikely to capture all food products on the market which currently make a fat-free claim.

8.3.2 Option 3(b): Require a disclosure statement if above a sugar concentration threshold

Under this option, a disclosure statement would be required on foods that have a total sugar content above a specified threshold (a threshold is yet to be determined – see section 8.3.4 below). The disclosure statement would be required to be presented in association with the % fat-free or fat-free claim. The intent of the disclosure statement would be to alert consumers that despite the fat-free claim, the food is still high in sugar.

Examples of the disclosure statements that could be required are: *see nutrition information panel; see nutrition information panel for sugar content; this food is high in sugar; this food contains x% sugar.*

However, available evidence indicates that the effectiveness of this approach depends on the wording of the disclosure statement. For example, a FSANZ consumer study (FSANZ 2005) showed that a disclosure statement ‘See nutrition information for fat content’ did not significantly improve respondents’ understanding of the amount of fat in the product and, in addition, some respondents appeared to misunderstand the intent of the statement (about a third of respondents thought that ‘the manufacturer is trying to highlight the fat favourably’).

This approach raises practical implications such as impacts on availability of label space. Also, depending on the sugar threshold applied, the approach could result in disclosure statements being required on some foods that are eligible under the NPSC to carry health claims.

8.3.3 Option 3(c): Not permit claims on certain products by food category

Under this option, fat-free and % fat-free claims would be prohibited on certain foods, for example foods which are high in sugar and energy and that do not normally contain fat, such as confectionery.

This would require product category definitions to be developed for regulatory purposes and included in the Code. However, developing suitable definitions can be technically difficult so as to avoid inadvertently capturing foods not intended to be captured, or excluding foods intended to be captured.

8.3.4 Option 3(d): Not permit claims on foods above a sugar concentration threshold

This approach would not allow fat-free and % fat-free claims on foods with a sugar concentration above a specified level. Under this option, a threshold total sugar concentration would need to be determined. FSANZ proposes using a threshold based on total sugar (versus added sugars) because total sugar is required for declaration purposes on the nutrition information panel.

Prohibition of the fat-free and % fat-free claims on foods above the total sugar concentration threshold may prevent consumers from being misled from thinking that foods with fat-free and % fat-free claims are healthy when the food is high in sugar. The effectiveness of this approach depends on the sugar concentration threshold that is set and the foods that are affected. For example, depending on the sugar concentration threshold selected, dried fruit would likely be prevented from carrying fat-free and % fat-free claims. Furthermore, dried fruit passes the nutrient profiling scoring criterion (which may allow dried fruit to make health claims) and therefore this regulatory approach could result in an inconsistency that may inadvertently cause consumer confusion. Consideration would also need to be given to whether a threshold value is best expressed on a per serve or 100g basis.

9. Questions to Submitters

FSANZ invites submitters to comment on the following:

2. What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims?

FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance.

(Note: Please provide documented or validated evidence where possible).

3. Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat-free claims)? Please give your reasons.
4. Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) (refer section 8) as follows:
 - a. Which option do you support and why?
 - b. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)? Where possible, provide information and evidence to support your suggested threshold value.
 - c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.

To aid submitters in providing comments, a submission response sheet is provided at Attachment D. Submitters are encouraged to use this template.

10. Regulatory impact – update

FSANZ prepared a Regulation Impact Statement (RIS) including a cost-benefit analysis as part of the P293 Final Assessment Report (2008)¹⁶.

¹⁶ Refer to the FSANZ website for the cost-benefit analysis:
<http://www.foodstandards.gov.au/foodstandards/proposals/proposalp293nutritionhealthandrelatedclaims/index.cfm>

During the development of a review response, FSANZ has consulted with the Office of Best Practice Regulation (OBPR) which has advised that given the lapse in time, a revised RIS will be required in order to address changes arising from the review of draft Standard 1.2.7, and any further amendments relating to fat-free claims.

FSANZ will be preparing the revised RIS once submissions to this call for comment have been received and considered. FSANZ will be undertaking targeted consultation with industry and the jurisdictions on this revised RIS.

11. Transitional arrangements

There will be a two year transition period for Standard 1.2.7 with no additional stock-in-trade period. This means that on gazettal of Standard 1.2.7, for a period of two years, food businesses will be able to choose to comply with either the new Standard and other standards that have been amended as a consequence of the implementation of Standard 1.2.7 (for example Standard 1.2.8 – Nutrition Information Requirements and Standard 1.3.2 – Vitamins and Minerals) or comply with the Standard 1.1A.1 – Transitional Health Claims together with other standards (such as Standard 1.2.8 and 1.3.2) as they were prior to the gazettal of Standard 1.2.7.

Food businesses will have the option of submitting applications to FSANZ for assessment of new food-health relationships during the transition period.

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Attachments

- A. Draft variations to the *Australia New Zealand Food Standards Code*
- B. Explanatory Information – Standard 1.2.7 – Nutrition, Health and Related Claims
- C. Summary of drafting amendments since March 2009 Consultation
- D. Template for submissions – Proposal P293 – Nutrition, Health & Related Claims

Attachment A – Draft variations to the *Australia New Zealand Food Standards Code*



Standard 1.2.7 – Nutrition, Health and Related Claims

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

Dated XXXX

[Signature to be inserted]

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

STANDARD 1.2.7

NUTRITION, HEALTH AND RELATED CLAIMS

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Part 1 – Purpose and interpretation

Editorial Note:

Standard 1.1A.2 is a transitional standard that operates concurrently with this Standard 1.2.7 for a period of two years. During the two-year period Standard 1.1A.2 operates unchanged by this variation. If Standard 1.1A.2 is relied on, the changes made to other Standards by this variation also have no effect. A supplier can rely on this variation or Standard 1.1A.2, but not both. At the end of that period Standard 1.1A.2 ceases to operate. There is no stock-in-trade period at the end of the two-year period.

1 Purpose

This Standard –

- (a) sets out the claims that can be made on labels or in advertisements about the nutritional content of food (described as nutrition content claims) and the claims that can be made about the relationship between a food, a property or properties of a food and a health effect (described as health claims); and
- (b) describes the conditions under which such claims can be made, and
- (c) describes the circumstances in which endorsements can be provided on labels or in advertisements.

2 Interpretation

In this Standard –

average energy content is as defined in Standard 1.2.8.

biologically active substance is as defined in Standard 1.2.8.

carbohydrate is as defined in Standard 1.2.8.

dietary fibre is as defined in Standard 1.2.8.

endorsement means a nutrition content claim or a health claim that is made with the permission of an endorsing body.

endorsing body is a not-for-profit entity which has a nutrition- or health-related purpose or function that permits a supplier to make an endorsement.

fat is as defined in Standard 1.2.8.

food group means any of the following groups –

- (a) bread (both leavened or unleavened), grains, rice, pasta and noodles;
- (b) fruit, vegetables, herbs, spices and fungi;
- (c) milk and milk products as standardised in Part 2.5 and analogues derived from legumes and cereals mentioned in Column 1 of the Table to clause 3 in Standard 1.3.2;
- (d) meat, fish, eggs and dried legumes;
- (e) fats including butter, edible oils and edible oil spreads.

fruit means the edible portion of a plant or constituents of the edible portion that are present in the typical proportion of the whole fruit (with or without the peel or water), but does not include nuts, spices, herbs, fungi, legumes and seeds.

gluten means the main protein in wheat, rye, oats, barley, triticale and spelt relevant to the medical conditions Coeliac disease and dermatitis herpetiformis.

glycaemic index (GI) means a measure of the blood glucose raising ability of the digestible carbohydrates in a given food as determined by a recognised scientific method.

Editorial note:

A method for determining glycaemic index of carbohydrates in foods is described in the Standards Australia Australian Standard Glycaemic index of foods (AS 4694 – 2007). In particular, glycaemic index testing is carried out by the determination of glycaemic (blood glucose) responses in human volunteers (in-vivo testing).

The objective of AS 4694 - 2007 is to establish the recognised scientific method as the Standard method for the determination of glycaemic index (GI) in foods.

health claim means a claim which states, suggests or implies that a food or a property of food has, or may have, a health effect.

health effect means an effect on the human body, including an effect on one or more of the following –

- (a) a biochemical process or outcome;
- (b) a physiological process or outcome;
- (c) a functional process or outcome;
- (d) growth and development;
- (e) physical performance;
- (f) mental performance;
- (g) a disease, disorder or condition.

meets the NPSC means that the nutrient profiling score of a food described in Column 1 of Schedule 3 is less than the number specified for that food in Column 2 of that Schedule.

monounsaturated fatty acids is as defined in Standard 1.2.8.

NPSC means the nutrient profiling scoring criterion.

nutrient profiling score means the final score calculated pursuant to the method described in Schedule 4.

nutrition content claim means –

- (a) a claim about the presence or absence of –
 - (i) a biologically active substance; or
 - (ii) dietary fibre; or
 - (iii) energy; or
 - (iv) minerals; or
 - (v) potassium; or
 - (vi) protein; or
 - (vii) carbohydrate; or
 - (viii) fat; or
 - (ix) the components of any one of protein, carbohydrate or fat; or
 - (x) salt; or
 - (xi) sodium; or
 - (xii) vitamins; or
 - (b) a claim about glycaemic index or glycaemic load;
- that does not refer to a health effect.

polyunsaturated fatty acids is as defined in Standard 1.2.8.

property of food means a component, ingredient, constituent or other feature of food.

reference food means a food that is –

- (a) of the same type as the food for which a claim is made and that has not been further processed, formulated, reformulated or modified to increase or decrease the energy value or the amount of the nutrient for which the claim is made; or
- (b) a dietary substitute for the food in the same food group as the food for which a claim is made.

Editorial note:

An example for paragraph (a) is reduced fat milk compared to whole milk.

An example for paragraph (b) is milk alternatives compared to milk products.

salt is as defined in Standard 2.10.2.

saturated fatty acids is as defined in Standard 1.2.8.

serious disease means a disease, disorder or condition for which it is not appropriate to diagnose, treat or manage without consultation with or supervision by a health care professional.

small package is as defined in Standard 1.2.1

sugars is as defined in Standard 1.2.8.

trans fatty acids is as defined in Standard 1.2.8.

vegetable means the edible portion of a plant or constituents of the edible portion that are present in the typical proportion of the whole vegetable (with or without the peel or water) but does not include nuts, spices, herbs, fungi, dried legumes and seeds.

Part 2 – Claims framework and general principles

3 Nutrition content claims or health claims not to be made about certain foods

A nutrition content claim or health claim must not be made about –

- (a) kava; or
- (b) a food that contains more than 1.15% alcohol by volume, other than a nutrition content claim about energy content or carbohydrate content; or
- (c) an infant formula product.

Editorial note:

Kava is standardised in Standard 2.6.3.

Infant formula product is standardised in Standard 2.9.1

4 Standard does not apply to certain foods

This Standard does not apply to food that is –

- (a) intended for further processing, packaging or labelling prior to retail sale; or
- (b) delivered to a vulnerable person by a delivered meal organisation; or
- (c) provided to a patient in a hospital or other similar institution, other than food in a package.

Editorial note:

Vulnerable person is defined in Standard 3.3.1.

The facilities that are 'other similar institutions' are described in the table to clause 8 of Standard 1.2.1.

5 Standard does not apply to certain claims or declarations

This Standard does not apply to –

- (a) a claim that is expressly permitted by another Standard; or
- (b) a claim about the risks or dangers of alcohol consumption or about moderating alcohol intake; or
- (c) a declaration that is required by the Act.

6 Form of food to which provisions of this Standard apply

If this Standard imposes a prerequisite, condition, qualification or any other requirement on the making of a claim, that prerequisite, condition, qualification or requirement applies to the form of the food as determined in accordance with the Table.

Table to clause 6

Form of the food
The food as sold if the food can be either prepared with other food or consumed as sold.
The food as prepared if the food is required to be prepared and consumed according to directions.
The food after it is reconstituted with water and ready for consumption if the food requires reconstituting with water.
The food after it is drained and ready for consumption if the food requires draining before consuming.

Editorial note:

Clause 11A of Standard 1.2.8 provides additional nutrition information panel (NIP) requirements where a claim is based on food as prepared.

7 Claims must not be therapeutic in nature

A claim must not –

- (a) refer to the prevention, diagnosis, cure or alleviation of a disease, disorder or condition; or
- (b) compare a food with a good that is –
 - (i) represented in any way to be for therapeutic use; or
 - (ii) likely to be taken to be for therapeutic use, whether because of the way in which the good is presented or for any other reason.

8 Claims not to compare vitamin or mineral content

A claim that directly or indirectly compares the vitamin or mineral content of a food with that of another food must not be made.

9 Standard does not prescribe words

- (1) Nothing in this Standard is to be taken to prescribe the words that must be used when making a claim.
- (2) Any statement or information required by this Standard may be modified if the modification does not alter or contradict the intended effect of the statement or information.

Part 3 – Requirements for nutrition content claims and health claims

Division 1 – Nutrition content claims

10 Presentation of nutrition content claims

A nutrition content claim must be stated together with a statement about the form of the food to which the claim relates, unless the form of the food to which the claim relates is the food as sold.

11 Nutrition content claims about properties of food in Schedule 1

- (1) If a property of food is mentioned in Column 1 of Schedule 1 a nutrition content claim may only be made about that property of food in accordance with this clause.
- (2) A claim about the property of food mentioned in Column 1 of Schedule 1 must meet the corresponding general claim conditions, if any, in Column 2.
- (3) A claim about the property of food mentioned in Column 1 of Schedule 1 which uses a descriptor mentioned in Column 3 or a similar descriptor must meet –
 - (a) the general claim conditions for the relevant property of food in Column 2; and
 - (b) the specific claim conditions in Column 4 for the relevant descriptor.
- (4) If, in a claim mentioned in subclause (3), there is an inconsistency between a general claim condition in Column 2 and a specific claim condition in Column 4, the specific claim condition prevails.
- (5) A descriptor must not be used in a nutrition content claim about lactose or trans fatty acids unless the descriptor –
 - (a) is mentioned in Column 3 and corresponds with that property of food, or
 - (b) is a similar descriptor to the descriptor mentioned in paragraph (a).
- (6) A descriptor must not be used in a nutrition content claim about glycaemic load unless that descriptor is expressed as a number or in numeric form.
- (7) A nutrition content claim in relation to gluten may only –
 - (a) use a descriptor that is mentioned in Column 3 in conjunction with gluten; or
 - (b) state that a food contains gluten or is high in gluten.
- (8) Subject to this clause and clause 14 (*Nutrition content claims must not imply slimming effects, etc.*) any descriptor that is not mentioned in Column 3 of Schedule 1, including a descriptor expressed as a number or in numeric form, may be used in conjunction with a property of food that is mentioned in Column 1.

12 Nutrition content claims about properties of food not in Schedule 1

- (1) A nutrition content claim about a property of food that is not mentioned in Schedule 1 may only state –
 - (a) that the food contains or does not contain the property of food, or
 - (b) that the food contains a specified amount of the property of food in a specified amount of that food, or
 - (c) a combination of (a) and (b).
- (2) A statement made for the purposes of paragraph (1)(a) must not use a descriptor listed in Column 3 of Schedule 1 or any other descriptor except a descriptor that indicates that the food does not contain the property of food.

13 Nutrition content claims about folic acid

- (1) A nutrition content claim about folic acid may only state –
- (a) that the food contains folic acid, or
 - (b) that the food contains a specified amount of folic acid in a specified amount of that food, or
 - (c) a combination of (a) and (b).
- (2) A statement made for the purposes of paragraph (1)(a) must not use a descriptor listed in Column 3 of Schedule 1 or any other descriptor.
- (3) A nutrition content claim about folic acid may be made only if a health claim about folic acid is made in relation to the same food.

14 Nutrition content claims must not imply slimming effects

A nutrition content claim about energy must not use a descriptor that directly or indirectly –

- (a) refers to 'slimming' or other similar words; or
- (b) suggests that the food has weight loss or weight maintenance properties.

15 Comparative claims

(1) In this clause, a *comparative claim* means a nutrition content claim that directly or indirectly compares the nutrition content of one food or brand of food with another, and includes claims using the following descriptors –

- (a) light or lite;
- (b) increased;
- (c) reduced;

or words of similar import.

(2) A nutrition content claim using the descriptor 'diet' is a comparative claim if it meets the conditions for making that claim by having at least 40% less energy than the same quantity of reference food.

(3) A comparative claim about a food (the claimed food) must include together with the claim –

- (a) the identity of the reference food; and
- (b) the difference between the amount of the property of food in the claimed food and the reference food.

Division 2 – Health claims

16 New health claims deemed to be high level health claims

(1) A health claim that is not described in Schedule 2 is deemed to be a high level health claim.

(2) A variation to add a health claim that is not described in Schedule 2 to that Schedule is deemed to be a **high level health claims variation**.

Editorial Note:

High level health claims variation is defined in section 4 of the *Food Standards Australia New Zealand Act 1991*.

The effect of this provision is, for example, that an application to add a new health claim to the Schedule will be subject to the provisions in Subdivision G of Division 1 of Part 3 of the FSANZ Act.

17 Conditions for making health claims

- (1) A health claim must not be made unless –
- (a) the food to which it relates meets the NPSC; and
 - (b) the food or the property of food is mentioned in Column 1 of Schedule 2; and
 - (c) the health effect claimed for that food or property of food is mentioned in the corresponding row in Column 2 of that Schedule.
- (2) Despite subclause (1)(a) a food that is standardised in Part 2.9 of this Code does not need to meet the NPSC.

18 How health claims are to be made

- (1) A health claim must state –
- (a) the property of food mentioned in Column 1 of Schedule 2 or, if the claim is based on the food itself, the food mentioned in Column 1 of Schedule 2; and
 - (b) the specific health effect mentioned in Column 2 of Schedule 2 that is claimed for the property of food or the food.
- (2) A health claim must include together with the health claim -
- (a) if applicable, a statement of the relevant population group mentioned in Column 3 of Schedule 2 to which the specific health effect relates; and
 - (b) a dietary context statement according to the principles for a dietary context statement set out in subclause (3); and
 - (c) a statement of the form of the food to which the claim relates.
- (3) A dietary context statement must –
- (a) state that the health effect must be considered in the context of a healthy diet involving the consumption of a variety of foods; and
 - (b) be appropriate to the type of food, the property of food that is the subject of the claim and the health effect claimed; and
 - (c) describe any additional dietary context that supports achievement of the health effect; and
 - (d) include words to the effect of the relevant dietary context statement in Column 4 of Schedule 2, if any.
- (4) Despite paragraph (2)(b), a dietary context statement need not be included in a label on food that is contained in a small package.
- (5) Despite paragraph (2)(c), if the form of the food to which the claim relates is the food as sold, the form of the food to which the claim relates need not be stated.

19 Split health claims

In addition to the statements required by subclauses 18(1) and (2) (**the complete statement**), the matters referred to in paragraphs 18(1)(a) and (b) may also be presented in a separate statement (**the separate statement**) if the separate statement –

- (a) is on a label or advertisement on which the complete statement appears; and
- (b) indicates where on the label or advertisement the complete statement is located.

20 Statements for claims about phytosterols, phytostanols and their esters

A dietary context statement for a claim about phytosterols, phytostanols and their esters need not include a statement required by paragraph 18(3)(a) if the claim appears together with the mandatory advisory statement required by clause 2 of Standard 1.2.3.

Division 3 – Endorsements

21 Endorsements

- (1) An endorsing body must –
- (a) not be related to; and
 - (b) be independent of; and
 - (c) be free from influence by;

the supplier of food in relation to which an endorsement is made.

- (2) An endorsing body is related to a supplier if the supplier –
- (a) has a financial interest in the endorsing body; or
 - (b) established, either by itself or with others, the endorsing body; or
 - (c) exercises direct or indirect control over the endorsing body.

22 Criteria for endorsements

- (1) An endorsement may be made if it complies with clause 7 (*Claims must not be therapeutic in nature*) and this Division, but need not comply with any other requirement of this Standard.
- (2) An endorsement must not refer to a serious disease except in a reference to the endorsing body if the serious disease is part of the name of the endorsing body.

23 Record keeping requirement for endorsements

- (1) In this clause –

required records means a document or documents that demonstrate that –

- (a) the supplier using the endorsement has obtained the permission of the endorsing body to use the endorsement; and
- (b) the endorsing body has a nutrition or health function or purpose; and
- (c) the endorsing body is a not-for-profit entity; and
- (d) the endorsing body is not related to the supplier using the endorsement.

supplier using the endorsement means the supplier who includes an endorsement on a label or in an advertisement for food.

- (2) The supplier using the endorsement must –
- (a) keep the required records; and
 - (b) upon request by the relevant authority, make the required records available for inspection.
- (3) If the label of an imported food makes or includes an endorsement, the importer of the food is taken to be the supplier using the endorsement.

Division 4 – Labelling of food required to meet the NPSC

24 Labelling of food required to meet the NPSC

- (1) In this clause, **fvnl** has the meaning given by item 4 of Schedule 4.
- (2) This clause applies if a food must meet the NPSC in order to make a claim.
- (3) The method for calculating a nutrient profiling score is described in Schedule 4.

- (4) If –
- (a) a property of food, other than fvnl, is relied on to meet the NPSC; and
 - (b) particulars of the property of food are not otherwise required to be included in the nutrition information panel;

the particulars of that property of food must be declared in the nutrition information panel.

(5) Subject to subclause (5), if a food scores V points under item 4 of Schedule 4, the percentage of each element of fvnl that is relied on to meet the NPSC must be declared on the label.

(6) The percentage of fvnl need not be declared for –

- (a) a health claim about fruits and vegetables and heart health; or
- (b) a health claim about fruits and vegetables and coronary heart disease.

(7) If –

- (a) a food is classified in Category 3 for the purposes of determining the food's nutrient profiling score; and
- (b) the food is a cheese or processed cheese;

the calcium content of the food must be declared in the nutrition information panel.

(8) The declarations required by subclauses (4), (5) or (7) are not required on a label if food is presented in a small package.

SCHEDULE 1

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Carbohydrate		Reduced or light/lite	The food contains at least 25% less carbohydrate than in the same quantity of reference food.
		Increased	The food contains at least 25% more carbohydrate than in the same quantity of reference food.
Cholesterol	The food meets the conditions for a nutrition content claim about low saturated fatty acids.	Low	The food contains no more cholesterol than – (a) 10 mg per 100 mL for liquid food; or (b) 20 mg per 100 g for solid food.
		Reduced or Light/Lite	The food contains at least 25% less cholesterol than in the same quantity of reference food.
Dietary fibre	A serving of the food contains at least 2 g of dietary fibre unless the claim is about low or reduced dietary fibre.	Good source	A serving of the food contains at least 4 g of dietary fibre.
		Increased	(a) The reference food contains at least 2 g of dietary fibre per serving; and (b) the food contains at least 25% more dietary fibre than in the same quantity of reference food.
		Excellent source	A serving of the food contains at least 7 g of dietary fibre.
Energy		Low	The average energy content of the food is no more than – (a) 80 kJ per 100 mL for liquid food; or (b) 170 kJ per 100 g for solid food.
		Reduced or Light/Lite	The food contains at least 25% less energy than in the same quantity of reference food.
		Diet	(a) Either – (i) the average energy content of the food is no more than 80 kJ per 100 mL for liquid food or 170 kJ per 100 g for solid food; or (ii) the food contains at least 40% less energy than in the same quantity of reference food; and (b) the food meets the NPSC, unless the food is a food standardised by Part 2.9 of the Code.

SCHEDULE 1 (continued)

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Fat		% Free	The food meets the conditions for a nutrition content claim about low fat.
		Low	The food contains no more fat than – (a) 1.5 g per 100 mL for liquid food; or (b) 3 g per 100 g for solid food.
		Reduced or Light/Lite	The food contains at least 25% less fat than in the same quantity of reference food.
Gluten		Free	The food must not contain – (a) detectable gluten; or oats or their products; or (b) cereals containing gluten that have been malted, or their products.
		Low	The food contains no more than 20 mg gluten per 100 g of the food.
Glycaemic Index	(a) the food meets the NPSC, unless the food is a food standardised by Part 2.9 of the Code; and (b) the claim or the nutrition information panel under Standard 1.2.8 includes the numerical value of the glycaemic index of the food.	Low	The numerical value of the glycaemic index of the food is 55 or below.
		Medium	The numerical value of the glycaemic index of the food is at least 56 and not exceeding 69 .
		High	The numerical value of the glycaemic index of the food is 70 or above.
Glycaemic load	The food meets the NPSC, unless the food is a food standardised under Part 2.9 of the Code.		
Lactose	The nutrition information panel indicates the lactose and galactose content.	Free	The food contains no detectable lactose.
		Low	The food contains no more than 2 g of lactose per 100g of the food.
Monounsaturated fatty acids	The food contains, as a proportion of the total fatty acid content – (a) no more than 28% saturated fatty acids and trans fatty acids; and (b) no less than 40% monounsaturated fatty acids.	Increased	(a) the food contains at least 25% more monounsaturated fatty acids than in the same quantity of reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about monounsaturated fatty acids.

SCHEDULE 1 (continued)

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Omega fatty acids (any)	The type of omega fatty acid is specified immediately after the word 'omega'.		
Omega-3 fatty acids	(a) the food meets the conditions for a nutrition content claim about omega fatty acids; and (b) the food contains no less than – (i) 200 mg alpha-linolenic acid per serving; or (ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and (c) other than for fish or fish products with no added saturated fatty acids, the food contains- (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more saturated fatty acids and trans fatty acids than 5 g per 100 g; and	Good Source	(a) the food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and (b) the food may contain less than 200 mg alpha-linolenic acid per serving.
		Increased	(a) the food contains at least 25% more omega-3 fatty acids than in the same quantity of reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.
	(d) the nutrition information panel indicates the type and amount of omega-3 fatty acids, that is, alpha-linolenic acid, docosahexaenoic acid or eicosapentaenoic acid, or a combination of the above.		

SCHEDULE 1 (continued)

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Omega-6 fatty acids	<p>(a) the food meets the conditions for a nutrition content claim about omega fatty acids; and</p> <p>(b) the food contains, as a proportion of the total fatty acid content –</p> <p>(i) no more than 28% saturated fatty acids and trans fatty acids; and</p> <p>(ii) no less than 40% omega-6 fatty acids.</p>	Increased	<p>(a) the food contains at least 25% more omega-6 fatty acids than in the same quantity of reference food; and</p> <p>(b) the reference food meets the general claim conditions for a nutrition content claim about omega-6 fatty acids.</p>
Omega-9 fatty acids	<p>(a) the food meets the conditions for a nutrition content claim about omega fatty acids; and</p> <p>(b) the food contains, as a proportion of the total fatty acid content –</p> <p>(i) no more than 28% saturated fatty acids and trans fatty acids; and</p> <p>(ii) no less than 40% omega-9 fatty acids.</p>	Increased	<p>(a) the food contains at least 25% more omega-9 fatty acids than in the same quantity of reference food; and</p> <p>(b) the reference food meets the general claim conditions for a nutrition content claim about omega-9 fatty acids.</p>
Polyunsaturated fatty acids	<p>The food contains, as a proportion of the total fatty acid content –</p> <p>(a) no more than 28% saturated fatty acids and trans fatty acids; and</p> <p>(b) no less than 40% polyunsaturated fatty acids.</p>	Increased	<p>(a) the food contains at least 25% more polyunsaturated fatty acids than in the same quantity of reference food; and</p> <p>(b) the reference food meets the general claim conditions for a nutrition content claim about polyunsaturated fatty acids.</p>
Potassium	The nutrition information panel indicates the sodium and potassium content.		

SCHEDULE 1 (continued)

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Protein	The food contains at least 5 g of protein per serving unless the claim is about low or reduced protein.	Good Source	The food contains at least 10 g of protein per serving.
		Increased	(a) the food contains at least 25% more protein than in the same quantity of reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about protein.
Salt or sodium	The nutrition information panel indicates the potassium content.	Low	The food contains no more sodium than – (a) 120 mg per 100 mL for liquid food; or (b) 120 mg per 100 g for solid food.
		Reduced or Light/Lite	The food contains at least 25% less sodium than in the same quantity of reference food.
		No added	(a) the food contains no added sodium compound including no added salt; and (b) the ingredients of the food contain no added sodium compound including no added salt.
		Unsalted	The food meets the conditions for a nutrition content claim about no added salt or sodium.
Saturated and trans fatty acids		Low	The food contains no more saturated and trans fatty acids than – (a) 0.75 g per 100 mL for liquid food; or (b) 1.5 g per 100 g for solid food.
		Reduced or Light/Lite	The food contains – (a) at least 25% less saturated and trans fatty acids than in the same quantity of reference food; and (b) both saturated and trans fatty acids are reduced relative to the same quantity of reference food.
		Low proportion	(a) the food contains as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; and (b) the claim expressly states in words to the effect of 'low proportion of saturated and trans fatty acids of total fatty acid content'.

SCHEDULE 1 (continued)

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Saturated fatty acids		Free	(a) the food contains no detectable saturated fatty acids; and (b) the food contains no detectable trans fatty acids.
		Low	The food contains no more saturated and trans fatty acids than – (a) 0.75 g per 100 mL for liquid food; or (b) 1.5 g per 100 g for solid food.
		Reduced or Light/Lite	The food contains – (a) at least 25% less saturated fatty acids than in the same quantity of reference food, and (b) no more trans fatty acids than in the same quantity of reference food.
		Low proportion	(a) the food contains as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; and (b) the claim expressly states in words to the effect of 'low proportion of saturated fatty acids of total fatty acid content'.
Sugar or Sugars		% Free	The food meets the conditions for a nutrition content claim about low sugar.
		Low	The food contains no more sugars than – (a) 2.5 g per 100 mL for liquid food; or (b) 5 g per 100 g for solid food.
		Reduced or Light/Lite	The food contains at least 25% less sugars than in the same quantity of reference food.
		No added	(a) the food contains no added sugars as standardised in clause 1 of Standard 2.8.1, honey, malt, or malt extracts; and (b) the food contains no added concentrated fruit juice or deionised fruit juice, unless the food is standardised in Standards 2.6.1 or 2.6.2.

SCHEDULE 1 (continued)

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Sugar or Sugars (continued)		Unsweetened	(a) the food meets the conditions for a nutrition content claim about no added sugar; and (b) the food contains no intense sweeteners, sorbitol, mannitol, glycerol, xylitol, isomalt, maltitol syrup or lactitol.
Trans fatty acids		Free	The food contains no detectable trans fatty acids, and contains – (a) no more than 0.75 g saturated fatty acids per 100 mL of liquid food or 1.5 g saturated fatty acids per 100 g of solid food; or (b) no more than 28% saturated fatty acids as a proportion of the total fatty acid content.
		Reduced or Light/Lite	The food contains – (a) at least 25% less trans fatty acids than in the same quantity of reference food, and (b) no more saturated fatty acids than in the same quantity of reference food.
Vitamin or mineral (not including potassium or sodium)	(a) the vitamin or mineral is mentioned in column 1 of the Schedule to Standard 1.1.1; and (b) a serving of the food contains at least 10% of the RDI or ESADDI for that vitamin or mineral; and (c) a claim is not for more of the particular vitamin or mineral than the maximum claimable amount as prescribed by clause 4 of Standard 1.3.2; and (d) the food is not a food standardised by Standard 2.6.4, Standard 2.9.2, Standard 2.9.3 or Standard 2.9.4.	Good source	A serving of the food contains no less than 25% of the RDI or ESADDI for that vitamin or mineral.

SCHEDULE 1 (continued)

Conditions for nutrition content claims

Column 1	Column 2	Column 3	Column 4
Property of food	General claim conditions that must be met	Specific descriptor	Conditions that must be met if using specific descriptor in column 3
Vitamin or mineral (not including potassium or sodium) (continued)	If the food is a food standardised under Standard 2.9.2, the food meets the conditions for making a claim about vitamins and minerals in subclause 8(2) of Standard 2.9.2		
	If the food is a formulated meal replacement standardised under Standard 2.9.3, the food meets the conditions for making a claim about vitamins and minerals in subclause 3(2) of Standard 2.9.3		
	If the food is a formulated supplementary food standardised under Standard 2.9.3, the food meets the conditions for making a claim about vitamins and minerals in subclause 5(2) of Standard 2.9.3		
	If the food is a formulated supplementary food for young children standardised under Standard 2.9.3, the food meets the conditions for making a claim about vitamins and minerals in subclause 7(2) of Standard 2.9.3		

SCHEDULE 2

Conditions for permitted health claims Part 1 – Minerals

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary context	Conditions
Calcium	Reduced risk of osteoporosis	Persons 65 years and over	Diet high in calcium, and adequate vitamin D status	The food contains no less than 290 mg of calcium per serving
	Reduced risk of osteoporotic fracture			
	Enhanced bone mineral density		Diet high in calcium	The food contains no less than 200 mg of calcium per serving
	Necessary for normal teeth and bone structure			The food meets the general claim conditions for making a nutrition content claim about calcium
	Necessary for normal nerve and muscle function			
	Necessary for normal blood coagulation			
	Contributes to normal growth and development	Children		
Calcium and Vitamin D	Reduced risk of osteoporosis	Persons 65 years and over	Diet high in calcium, and adequate vitamin D status	(a) the food contains no less than 290 mg of calcium per serving; and (b) the food meets the general claim conditions for making a nutrition content claim about vitamin D
	Reduced risk of osteoporotic fracture			
Copper	Contributes to normal connective tissue structure			The food meets the general claim conditions for making a nutrition content claim about copper
	Contributes to normal iron transport and metabolism			
	Contributes to cell protection from free radical damage			
	Necessary for normal energy production			
	Necessary for normal neurological function			
	Necessary for normal immune system function			
	Necessary for normal skin and hair colouration			
	Contributes to normal growth and development	Children		

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 1 – Minerals**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary context	Conditions
Iodine	Necessary for normal production of thyroid hormones			The food meets the general claim conditions for making a nutrition content claim about iodine
	Necessary for normal neurological development			
	Necessary for normal energy metabolism			
	Contributes to normal growth and development	Children		
Iron	Necessary for normal oxygen transport			The food meets the general claim conditions for making a nutrition content claim about iron
	Contributes to normal energy production			
	Necessary for normal immune system function			
	Contributes to normal blood formation			
	Necessary for normal neurological development in the foetus			
	Contributes to normal growth and development	Children		
Manganese	Contributes to normal bone formation			The food meets the general claim conditions for making a nutrition content claim about manganese
	Contributes to normal energy metabolism			
	Contributes to cell protection from free radical damage			
	Contributes to normal growth and development	Children		
Magnesium	Contributes to normal energy metabolism			The food meets the general claim conditions for making a nutrition content claim about magnesium
	Necessary for normal electrolyte balance			
	Necessary for normal nerve and muscle function			
	Necessary for teeth and bone structure			
	Contributes to normal growth and development	Children		
Phosphorus	Necessary for normal teeth and bone structure			The food meets the general claim conditions for making a nutrition content claim about phosphorus
	Necessary for the normal cell membrane structure			
	Necessary for normal energy metabolism			
	Contributes to normal growth and development	Children		

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 1 – Minerals**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary context	Conditions
Selenium	Necessary for normal immune system function			The food meets the general claim conditions for making a nutrition content claim about selenium
	Necessary for the normal utilization of iodine in the production of thyroid hormones			
	Necessary for cell protection from some types of free radical damage			
	Contributes to normal growth and development	Children		
Zinc	Necessary for normal immune system function			The food meets the general conditions for making a nutrition content claim about zinc
	Necessary for normal cell division			
	Contributes to normal skin structure and wound healing			
	Contributes to normal growth and development	Children		
Biotin	Contributes to normal fat metabolism and energy production			The food meets the general conditions for making a nutrition content claim about biotin
	Contributes to normal growth and development	Children		
Folate	Necessary for normal blood formation			The food meets the general conditions for making a nutrition content claim about folate
	Necessary for normal cell division			
	Contributes to normal growth and development	Children		

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 2 – Vitamins**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary context	Conditions
Folic acid (but not folate)	Contributes to normal neural tube structure in the developing foetus	Women of child bearing age	(a) Diet containing food folate (b) Consume at least 400 µg of folic acid per day, at least the month before and three months after conception	(a) the food contains no less than 40 µg folic acid per serving; and (b) the food is not – (i) soft cheese; or (ii) pâté; or (iii) liver or liver product; or (iv) food containing added phytosterols, phytostanols and their esters; or (v) a food standardised in Standard 2.6.4; or (vi) a food standardised in Standards 2.9.2 or 2.9.4; or (vii) a formulated meal replacement standardised in Division 2 of Standard 2.9.3
Folic acid (but not folate)	Reduced risk of foetal neural tube defects	Women of child bearing age	Diet containing food folate Consume at least 400 µg of folic acid per day, at least the month before and three months after conception	(a) the food contains no less than 40 µg folic acid per serving; and (b) the food is not – (i) soft cheese; or (ii) pâté; or (iii) liver or liver product; or (iv) food containing added phytosterols, phytostanols and their esters; or (v) food standardised in Standard 2.6.4; or (vi) food standardised in Standards 2.9.2 and 2.9.4; or (vii) a formulated meal replacement standardised in Division 2 of Standard 2.9.3

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 2 – Vitamins**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary context	Conditions
Niacin	Necessary for normal neurological function			The food meets the general claim conditions for making a nutrition content claim about niacin
	Necessary for normal energy release from food			
	Necessary for normal structure and function of skin and mucous membranes			
	Contributes to normal growth and development	Children		
Pantothenic acid	Necessary for normal fat metabolism			The food meets the general claim conditions for making a nutrition content claim about pantothenic acid
	Contributes to normal growth and development	Children		
Thiamin	Necessary for normal carbohydrate metabolism			The food meets the general claim conditions for making a nutrition content claim about thiamin
	Necessary for normal neurological and cardiac function			
	Contributes to normal growth and development	Children		
Riboflavin	Contributes to normal iron transport and metabolism			The food meets the general claim conditions for making a nutrition content claim about riboflavin
	Contributes to normal energy release from food			
	Contributes to normal skin and mucous membrane structure and function			
	Contributes to normal growth and development	Children		
Vitamin A	Necessary for normal vision			The food meets the general claim conditions for making a nutrition content claim about vitamin A
	Necessary for normal skin and mucous membrane structure and function			
	Necessary for normal cell differentiation			
	Contributes to normal growth and development	Children		

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 2 – Vitamins**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary context	Conditions
Vitamin B ₆	Necessary for normal protein metabolism			The food meets the general claim conditions for making a nutrition content claim about vitamin B ₆
	Necessary for normal iron transport and metabolism			
	Contributes to normal growth and development	Children		
Vitamin B ₁₂	Necessary for normal cell division			The food meets the general conditions for making a nutrition content claim about vitamin B ₁₂
	Contributes to normal blood formation			
	Necessary for normal neurological structure and function			
	Contributes to normal growth and development	Children		
Vitamin C	Contributes to iron absorption from food			The food meets the general claim conditions for making a nutrition content claim about vitamin C
	Necessary for normal connective tissue structure and function			
	Necessary for normal blood vessel structure and function			
	Contributes to cell protection from free radical damage			
	Necessary for normal neurological function			
	Contributes to normal growth and development	Children		
Vitamin D	Necessary for normal absorption and utilisation of calcium and phosphorus			The food meets the general claim conditions for making a nutrition content claim about vitamin D
	Contributes to normal cell division			
	Necessary for normal bone structure			
	Contributes to normal growth and development	Children		
Vitamin E	Contributes to cell protection from free radical damage			The food meets the general claim conditions for making a nutrition content claim about vitamin E
	Contributes to normal growth and development	Children		

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 2 – Vitamins**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary context	Conditions
Vitamin K	Necessary for normal blood coagulation			The food meets the general claim conditions for making a nutrition content claim about vitamin K
	Contributes to normal bone structure			
	Contributes to normal growth and development	Children		

SCHEDULE 2

Conditions for permitted health claims Part 3 – Other

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary Context	Conditions
Saturated fatty acids	Reduction of total blood cholesterol or blood LDL cholesterol		Diet low in saturated fatty acids	The food meets the conditions for making a nutrition content claim about low saturated fatty acids
Saturated and trans fatty acids	Reduction of total blood cholesterol or blood LDL cholesterol		Diet low in saturated and trans fatty acids	The food meets the conditions for making a nutrition content claim about low saturated and trans fatty acids
Carbohydrate	Contributes energy for normal metabolism			(a) carbohydrate must contribute at least 55% of the energy content of the food; or (b) the food – (i) is a formulated meal replacement or a formulated supplementary food; and (ii) must have a maximum 10% of carbohydrate content from sugars
	Contributes energy for normal metabolism	Young children aged 1-3 years		The food – (a) must be a formulated supplementary food for young children (as standardised in Standard 2.9.3 Division 4); and (b) must have a maximum 10% of carbohydrate content from sugars
Dietary fibre	Contributes to regular laxation			The food meets the general conditions for making a nutrition content claim about dietary fibre
Protein	Necessary for tissue building and repair			The food meets the general conditions for making a nutrition content claim about protein
	Necessary for normal growth and development	Children aged 4 years and over		The food meets the general conditions for making a nutrition content claim about protein.
		Infants aged 6 months to 12 months		The food is a food for infants and meets the conditions in subclause 6(3) of Standard 2.9.2

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 3 – Other**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary Context	Conditions
Energy	Contributes energy for normal metabolism			The food must contain a minimum of 420 kJ of energy per serving
	Contributes energy for normal metabolism	Young children aged 1-3 years		The food must be a formulated supplementary food for young children (as standardised in Standard 2.9.3 Division 4)
	Contributes to weight loss or weight maintenance		Diet reduced in energy and regular exercise	The food – (a) meets the conditions for making a 'diet' nutrition content claim; or (b) is a formulated meal replacement as standardised by Division 2 of Standard 2.9.3 and contains no more than 1200 kJ per serving
Beta-glucan	Reduces blood cholesterol		(a) Diet low in saturated fatty acids (b) Diet containing 3 g of beta-glucan per day	The food – (a) must contain one or more of the following oat or barley foods – (i) oat bran; (ii) wholegrain oats; or (iii) wholegrain barley; and (b) must contain at least 1 g per serving of beta-glucan from the foods listed in (a)

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 3 – Other**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Dietary Context	Conditions
Eicosapentaenoic acid (EPA) and Docosa-hexaenoic acid (DHA) (but not Omega-3)	Contributes to heart health		Diet containing 500 mg of EPA and DHA per day	(a) the food must contain a minimum of 50 mg EPA and DHA combined in a serving of food b) other than for fish or fish products with no added saturated fatty acids, the food contains – (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more than 5 g per 100 g saturated fatty acids and trans fatty acids.
Phytosterols, phytostanols and their esters	Reduces blood cholesterol		Diet low in saturated fatty acids Diet containing 2 g of phytosterols, phytostanols and their esters per day	The food – (a) meets the relevant conditions specified in Columns 1 and 2 of the Table to clause 2 in Standard 1.5.1; and (b) must contain a minimum of 0.8 g total plant sterol equivalents content per serving
Potassium	Necessary for normal water and electrolyte balance			The food contains no less than 200 mg of potassium per serving
	Contributes to normal growth and development	Children		
Sodium or salt	Reduction of blood pressure		Diet low in salt or sodium	The food meets the conditions for making a nutrition content claim about low sodium or salt
	Maintenance of normal blood pressure			

SCHEDULE 2

Conditions for permitted health claims Part 4 – Foods

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Context claim statements	Conditions
Increased intake of fruit and vegetables	Reduced risk of coronary heart disease		Diet containing an increased amount of fruit and vegetables	<p>(a) claims are not permitted on –</p> <ul style="list-style-type: none"> (i) fruit juice or vegetable juice as standardised in Standard 2.6.1; or (ii) non-alcoholic beverages and brewed soft drinks as standardised in Standard 2.6.2; and <p>(b) the food contains no less than 90% fruit or vegetable by weight</p>
A high intake of fruit and vegetables	Reduced risk of coronary heart disease		Diet containing a high amount of both fruit and vegetables	<p>(a) claims are not permitted on –</p> <ul style="list-style-type: none"> (i) fruit juice or vegetable juice as standardised in Standard 2.6.1; or (ii) non-alcoholic beverages and brewed soft drinks as standardised in Standard 2.6.2; and <p>(b) the food contains no less than 90% fruit or vegetable by weight</p>
Fruits and vegetables	Contributes to heart health		<p>Diet containing an increased amount of fruit and vegetables; or</p> <p>Diet containing a high amount of fruit and vegetables</p>	<p>(a) the food is not –</p> <ul style="list-style-type: none"> (i) fruit juice or vegetable juice as standardised in Standard 2.6.1; or (ii) a food standardised in Standard 2.6.2; and <p>(b) the food contains no less than 90% fruit or vegetable by weight</p>

SCHEDULE 2 (continued)

**Conditions for permitted health claims
Part 4 – Foods**

Column 1	Column 2	Column 3	Column 4	Column 5
Food or property of food	Specific health effect	Relevant population	Context claim statements	Conditions
Sugar or sugars	Contributes to dental health		Good oral hygiene	<p>The food –</p> <p>(a) is confectionery or chewing gum; and</p> <p>(b) either –</p> <p>(i) contains 0.2% or less starch, dextrins, mono-, di- and oligosaccharides, or other fermentable carbohydrates combined; or</p> <p>(ii) if the food contains more than 0.2% fermentable carbohydrates, it must not lower plaque pH below 5.7 by bacterial fermentation during 30 minutes after consumption as measured by the indwelling plaque pH test, referred to in 'Identification of Low Caries Risk Dietary Components' by T.N. Imfeld, Volume 11, Monographs in Oral Science, 1983</p>

SCHEDULE 3

Nutrient profiling scoring criterion

	Column 1	Column 2
Category	NPSC category	The nutrient profiling score must be less than
1	Beverages	1
2	Any food other than those included in Category 1 or 3.	4
3	<p>(a) cheese and processed cheese as defined in Standard 2.5.4 (with calcium content >320 mg/100 g)*; and</p> <p>(b) edible oil as defined in Standard 2.4.1; and</p> <p>(c) edible oil spreads as defined in Standard 2.4.2; and</p> <p>(d) margarine as defined in Standard 2.4.2; and</p> <p>(e) butter as defined in Standard 2.5.5.</p> <p>*All other cheeses (with calcium content ≤320 mg/100 g) are classified as a category 2 food product.</p>	28

SCHEDULE 4

Nutrient profiling scoring method

1 Steps in determining a nutrient profiling score

- (1) For a food in Category 1 in Schedule 3, calculate the food's –
- (a) baseline points in accordance with item 2 of this Schedule; then
 - (b) fruit and vegetable points in accordance with item 4 of this Schedule (**V points**); then
 - (c) protein points in accordance with item 5 of this Schedule (**P points**); then
 - (d) final score in accordance with item 7 of this Schedule (**the nutrient profile score**).

Editorial note:

Category 1 foods do not score fibre (F) points.

- (2) For a food in Category 2 in Schedule 3, calculate the food's –
- (a) baseline points in accordance with item 2 of this Schedule; then
 - (b) fruit and vegetable points in accordance with item 4 of this Schedule (**V points**); then
 - (c) protein points in accordance with item 5 of this Schedule (**P points**); then
 - (d) fibre points in accordance with item 6 of this Schedule (**F points**); then
 - (e) final score in accordance with item 7 of this Schedule (**the nutrient profile score**).
- (3) For a food in Category 3 in Schedule 3, calculate the food's –
- (a) baseline points in accordance with item 3 of this Schedule; then
 - (b) fruit and vegetable points in accordance with item 4 of this Schedule (**V points**); then
 - (c) protein points in accordance with item 5 of this Schedule (**P points**); then
 - (d) fibre points in accordance with item 6 of this Schedule (**F points**); then
 - (e) final score in accordance with item 7 of this Schedule (**the nutrient profile score**).

2 Baseline points for Category 1 or 2 foods

- (1) Use the information in Table 1 and the formula in sub item (2) to work out the baseline points (up to 10 for each nutrient), for the content of each nutrient in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel).

Table 1
Baseline Points for Category 1 or 2 Foods

Baseline points	Average energy content (kJ) per 100 g/100 mL	Average saturated fatty acids (g) per 100 g/100 mL	Average total sugars (g) per 100 g/100 mL	Average sodium (mg) per 100 g/100 mL
0	≤335	≤1.0	≤5.0	≤90
1	>335	>1.0	>5.0	>90
2	>670	>2.0	>9.0	>180
3	>1005	>3.0	>13.5	>270
4	>1340	>4.0	>18.0	>360
5	>1675	>5.0	>22.5	>450
6	>2010	>6.0	>27.0	>540
7	>2345	>7.0	>31.0	>630
8	>2680	>8.0	>36.0	>720

Table 1 (continued)
Baseline Points for Category 1 or 2 Foods

Baseline points	Average energy content (kJ) per 100 g/100 mL	Average saturated fatty acids (g) per 100 g/100 mL	Average total sugars (g) per 100 g/100 mL	Average sodium (mg) per 100 g/100 mL
9	>3015	>9.0	>40.0	>810
10	>3350	>10.0	>45.0	>900

(2) Calculate the baseline points using the following formula –

Total baseline points = (points for average energy content) + (points for saturated fatty acids) + (points for total sugars) + (points for sodium)

3 Baseline points for Category 3 foods

(1) Use the information in Table 2 and the formula in sub item (2) to work out the baseline points (up to 10 for each nutrient), for the content of each nutrient in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel).

Table 2
Baseline Points for Category 3 Foods

Points	Average energy content (kJ) per 100 g or 100 mL	Average saturated fatty acids (g) per 100 g or 100 mL	Average total sugars (g) per 100 g or 100 mL	Average sodium (mg) per 100 g or 100 mL
0	≤ 335	≤1.0	≤ 5.0	≤ 90
1	>335	>1.0	>5.0	>90
2	>670	>2.0	>9.0	>180
3	>1005	>3.0	>13.5	>270
4	>1340	>4.0	>18.0	>360
5	>1675	>5.0	>22.5	>450
6	>2010	>6.0	>27.0	>540
7	>2345	>7.0	>31.0	>630
8	>2680	>8.0	>36.0	>720
9	>3015	>9.0	>40.0	>810
10	>3350	>10.0	>45.0	>900
11	>3685	>11.0		>990
12		>12.0		>1080
13		>13.0		>1170
14		>14.0		>1260
15		>15.0		>1350
16		>16.0		>1440
17		>17.0		>1530
18		>18		>1620
19		>19.0		>1710
20		>20.0		>1800
21		>21.0		>1890
22		>22.0		>1980
23		>23.0		>2070
24		>24.0		>2160

**Table 2 (continued)
Baseline Points for Category 3 Foods**

Points	Average energy content (kJ) per 100 g or 100 mL	Average saturated fatty acids (g) per 100 g or 100 mL	Average total sugars (g) per 100 g or 100 mL	Average sodium (mg) per 100 g or 100 mL
25		>25.0		>2250
26		>26.0		>2340
27		>27.0		>2430
28		>28.0		>2520
29		>29.0		>2610
30		>30.0		>2700

(2) Calculate the baseline points using the following formula –

Total baseline points = (points for average energy content) + (points for saturated fatty acids) + (points for total sugars) + (points for sodium)

4 Fruit and vegetable points (V points)

(1) V points can be scored for fruits, vegetables, nuts and legumes including coconut, spices, herbs, fungi, seeds and algae (**fvnl**) including –

- (i) fvnl that are fresh, cooked, frozen, tinned, pickled or preserved; and
- (ii) fvnl that have been peeled, diced or cut (or otherwise reduced in size), puréed or dried; and

(2) V points cannot be scored for –

- (a) a constituent, extract or isolate of a food mentioned in subitem (1); or
- (c) cereal grains mentioned as a class of food in Schedule 4 of Standard 1.4.2.

Editorial note:

An example of a constituent, extract or isolate under paragraph 4(2)(a) is peanut oil derived from peanuts. In this example, peanut oil would not be able to score V points. Other examples of extracts or isolates are fruit pectin and de-ionised juice.

(3) Despite subitem (2), V points may be scored for –

- (a) fruit juice or vegetable juice as standardised in Standard 2.6.1 including concentrated juices and purees;
- (b) coconut flesh (which is to be scored as a nut), whether juiced, dried or desiccated, but not processed coconut products such as coconut milk, coconut cream or coconut oil; and
- (c) the water in the centre of the coconut.

(4) Calculate the percentage of fvnl in the food in accordance with the appropriate method in Standard 1.2.10 and not the form of the food determined in accordance with clause 6 of this Standard.

Editorial note:

The effect of subitem (4) is to make it a requirement to determine the percentage of fvnl using only the appropriate method in Standard 1.2.10. For this subitem only, it is not necessary to consider the form of the food determined by clause 6 of this Standard.

(5) Use Column 1 of Table 3 if the fruit or vegetables in the food product are all concentrated (including dried).

Editorial note:

For example, if dried fruit and tomato paste are the components of the food product for which V points can be scored, column 1 should be used.

(6) Use Column 2 of Table 3 if –

- (a) there are no concentrated (or dried) fruit or vegetables in the food product; or
- (b) the percentages of all concentrated ingredients are calculated based on the ingredient when reconstituted (according to subclauses 3(3) or (4) of Standard 1.2.10); or
- (c) the food product contains a mixture of *a mixture of concentrated fruit or vegetables and non-concentrated fvnl* sources (after following the formula mentioned in subitem (8)); or
- (d) the food product is potato crisps or a similar low moisture vegetable product.

(7) Work out the V points (to a maximum of 8) in accordance with Table 3.

**Table 3
V Points**

	Column 1	Column 2
Points	% concentrated fruit or vegetable	% fvnl
0	<25	≤40
1	≥25	>40
2	≥43	>60
5	≥67	>80
8	=100	=100

(8) If the food product contains a mixture of concentrated fruit and vegetables and non-concentrated fvnl sources, the percentage of total fvnl must be worked out as follows –

$$\frac{(\% \text{ non-concentrated fvnl}) + (2 \times \% \text{ concentrated fruits or vegetables})}{(\% \text{ non-concentrated fvnl}) + (2 \times \% \text{ concentrated fruits or vegetables}) + (\% \text{ non fvnl ingredient})} \times \frac{100}{1}$$

where –

%non-concentrated fvnl/concentrated fruit or vegetables means the percentage of fvnl in the food determined using the appropriate calculation methods outlined in Standard 1.2.10.

fvnl has the meaning given by subitem 4(1).

(9) For the formula in subitem (8), potato crisps and similar low moisture vegetable products are taken to be non-concentrated.

5 Protein points (P points)

(1) Use Table 4 to determine the 'P points' scored, depending on the amount of protein in the food product. A maximum of five points can be awarded.

(2) Food products that score ≥13 baseline points are not permitted to score points for protein unless they score five or more points for fvnl.

**Table 4
P Points**

Points	Protein (g) per 100 g or mL
0	≤1.6
1	>1.6
2	≥3.2
3	>4.8
4	>6.4
5	>8.0

6 Fibre points

(1) Use Table 5 to determine the 'F points' scored, depending on the amount of dietary fibre in the food product. A maximum of five points can be awarded.

(2) The prescribed method of analysis to determine total dietary fibre is outlined in clause 18 of Standard 1.2.8.

**Table 5
F Points**

Points	Dietary fibre (g) per 100 g or mL
0	≤0.9
1	>0.9
2	>1.9
3	>2.8
4	>3.7
5	>4.7

(3) Category 1 foods do not score F points.

7 Calculating the final score

Calculate the final score using the following formula –

$$\text{Final Score} = \text{baseline points} - (\text{V points}) - (\text{P points}) - (\text{F points})$$

Food Standards (Proposal P293 – Nutrition, Health & Related Claims – Consequential) Variation

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

Dated XXXX

[Signature to be inserted]

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

1 Name

This instrument is the *Food Standards (Proposal P293 – Nutrition, Health & Related Claims – Consequential) Variation*.

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

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

3 Commencement

These variations commence **on the date of gazettal** with the exception of Items [11] and [12], which commence **2 years from gazettal**.

SCHEDULE

[1] **Standard 1.1.1** is varied by –

[1.1] *omitting from subclause 1(6) –*

a Standard for which a corresponding transitional Standard in part 1.1A applies

substituting –

Standard 1.1A.6

[1.2] *omitting the definition of claim in clause 2, substituting –*

claim means an express or implied statement, representation, design or information in relation to a food or property of food which is not mandatory in this Code

[2] **Standard 1.2.8** is varied by –

[2.1] *omitting the Purpose, substituting –*

This Standard sets out nutrition information requirements in relation to food that is required to be labelled under this Code and for food exempt from these labelling requirements. This Standard prescribes when nutritional information must be provided, and the manner in which such information is provided.

Editorial Note:

Standard 1.2.7 – Nutrition, Health and Related Claims also sets out additional nutrition information requirements in relation to nutrition content claims and health claims.

This Standard does not apply to infant formula products standardised in Standard 2.9.1 – Infant Formula Products. Standard 2.9.1 sets out specific nutrition labelling requirements that apply to infant formula products.

[2.2] *omitting the definitions of gluten and nutrition claim in subclause 1(1)*

[2.3] *omitting the definition of average energy content in subclause 1(1), substituting –*

average energy content means the figure calculated in accordance with subclause (3)

[2.4] *inserting in alphabetical order in subclause 1(1) –*

claim requiring nutrition information has the meaning given in subclause 4(1).

[2.5] *renumbering subclause 1(2) as 1(4)*

[2.6] *inserting after subclause 1(1) –*

(2) Unless the contrary intention appears, the definitions in Standard 1.2.7 apply in this Standard.

(3) Average energy content is to be calculated by –

- (a) multiplying the average amount of each food component per 100 g of the food by the energy factor for that food component; then
- (b) adding the amounts calculated for each food component using the following formula –

$$E_{kJ} = \sum W_i F_i$$

Where E_{kJ} is the average energy content expressed in kilojoules per 100 g, W_i is the average weight of the food component expressed in grams per 100 g and F_i means the energy factor assigned to that food component expressed in kilojoules per gram.

[2.7] *inserting after clause 1 –*

1A Application

This Standard does not apply to a food standardised by Standard 2.9.1.

Editorial note:

Infant formula products standardised by Standard 2.9.1 are not required to carry a nutrition information panel in accordance with this Standard. Standard 2.9.1 prescribes specific nutrition information requirements for those foods.

[2.8] *omitting clause 4, substituting –*

4 Requirements for nutrition information panels when certain claims made

(1) A claim requiring nutrition information means –

- (a) a nutrition content claim; or
- (b) a health claim;

but does not include –

- (c) a declaration that is required by the Act, or
- (d) an endorsement.

(2) Subject to subclauses (3) and (4), if a claim requiring nutrition information is made in relation to a food, a nutrition information panel must be included on the label on the package of the food.

(3) If a claim requiring nutrition information is made in relation to a food which is not required to bear a label pursuant to clause 2 of Standard 1.2.1, the information prescribed in clause 5, must be –

- (a) declared in a nutrition information panel displayed on or in connection with the display of the food; or
- (b) provided to the purchaser upon request.

(4) Where a claim requiring nutrition information is made in relation to a food in a small package, the label need not include a nutrition information panel but must comply with clause 8.

[2.9] *omitting from paragraph 5(1)(e) –*

subject to clause 12,

substituting –

subject to subclause (1A)

[2.10] *omitting paragraph 5(1)(g), substituting –*

- (g) the name and the average quantity of any other nutrient or biologically active substance in respect of which a claim requiring nutrition information is made, expressed in grams, milligrams or micrograms or other units as appropriate, that is in a serving of the food and in the unit quantity of the food; and
- (h) any other matter which this Code requires to be included.

[2.11] *inserting after subclause 5(1) –*

(1A) If a claim –

- (a) is made about a food standardised in Standard 2.4.1 or Standard 2.4.2; and
- (b) relates to polyunsaturated fatty acids or monounsaturated fatty acids;

the properties set out in subclause (1B) may be set out in the panel as a minimum or maximum quantity in a serving of the food and per 100 g/mL.

(1B) The properties are –

- (a) saturated fatty acids; and
- (b) polyunsaturated fatty acids; and
- (c) monounsaturated fatty acids; and
- (d) trans fatty acids.

[2.12] *omitting from the editorial note after subclause 5(2) –*

Clause 12 explains when minimum and maximum quantities may be indicated.

[2.13] *omitting from subclause 5(4) –*

nutrition claim is made in respect of

substituting –

claim requiring nutrition information is made about or based on

[2.14] *omitting from subclause 5(5) –*

nutrition claim is made in respect of

substituting –

claim requiring nutrition information is made about or based on

[2.15] *omitting subclause 7(2), substituting –*

(2) If percentage daily intake information is included in a panel –

- (a) the percentage daily intake of dietary fibre per serving may be included in the panel; and
- (b) the following matters must be included in the panel –
 - (i) the percentage daily intake of energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving;
 - (ii) either of the following statements –

‘*based on an average adult diet of 8700 kJ’; or
‘Percentage daily intakes are based on an average adult diet of 8700 kJ’.

[2.16] *inserting after clause 7 –*

7A Percentage recommended dietary intake information

- (1) This clause applies if–
- (a) a claim requiring nutrition information is made about or based on a vitamin or mineral (the relevant vitamin or mineral); and
 - (b) the relevant vitamin or mineral has a RDI; and
 - (c) the food to which the claim relates is not a food for infants as standardised by Standard 2.9.2.
- (2) The percentage of the RDI for the relevant vitamin or mineral contributed by one serving of the food must be set out in the nutrition information panel.
- (3) The percentage RDI under subclause (2) must be calculated –
- (a) using the RDIs mentioned in the Schedule to Standard 1.1.1; and
 - (b) using the nutrient values set out in the nutrition information panel.
- (4) Despite paragraph (1)(c), percentage recommended daily intake information may be included in the nutrition information panel for a food for infants as standardised by Standard 2.9.2.

7B Percentage DI or RDI information presented outside the panel

- (1) In this clause, DI or RDI information means the information in a nutrition information panel that is permitted or required by clause 7 or 7A.
- (2) DI or RDI information may be presented outside the nutrition information panel if –
- (a) the serving size is presented together with DI or RDI information; and
 - (b) the food to which the DI or RDI information relates does not contain more than 1.15% alcohol by volume.
- (3) If more than one piece of DI or RDI information is presented outside the nutrition information panel, those pieces of information must be presented together.
- (4) DI or RDI information presented in accordance with this clause does not constitute a nutrition content claim.

[2.17] *omitting clause 8, substituting –*

8 Food in small packages

- (1) This clause applies if a claim requiring nutrition information is made on or about food in a small package.
- (2) The label must include a declaration of the average quantity of the food in a serving expressed –
- (a) in the case of a solid or semi-solid food, in grams; or
 - (b) in the case of a beverage or other liquid food, in millilitres.
- (3) In addition to the matters specified in subclause (2), if a claim requiring nutrition information is made about a matter in Column 1 of the Table to this subclause, the label must include the particulars specified in Column 2.

Table to subclause 8(3)

Column 1	Column 2
Claim is about	Label must include
Any nutrient or biologically active substance (other than a vitamin or mineral with a RDI)	Average quantity of the nutrient or biologically active substance present per serving of the food
Any vitamin or mineral with a RDI	(a) Average quantity of the vitamin or mineral present per serving of the food; and (b) Percentage of the RDI for the vitamin or mineral contributed by one serving of the food, and calculated in accordance with clause 7A
Cholesterol, saturated fatty acids, trans fatty acids, polyunsaturated fatty acids, monounsaturated fatty acids, omega-6 or omega-9 fatty acids	Saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Dietary fibre, sugars or any other carbohydrate	Average quantity of energy, carbohydrate, sugars and dietary fibre (calculated in accordance with clause 18) present per serving of the food
Energy	Average quantity of energy present per serving of the food
Fat-free	Average quantity of energy present per serving of the food
Omega-3 fatty acids	(a) Saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food; and (b) Type and amount of omega-3 fatty acids per serving of the food, namely alpha-linolenic acid, or docosahexaenoic acid, or eicosapentaenoic acid, or a combination of the above
Lactose	Galactose content per serving of the food
Monounsaturated or polyunsaturated fatty acids	Saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Potassium	Sodium and potassium content per serving of the food
Sodium or salt	Potassium content per serving of the food

(4) The particulars required by subclause (3) –

- (a) must be set out as minimum, maximum or average quantities unless specified in the Table to subclause (3); and
- (b) must clearly indicate whether the particulars are minimum, maximum or average quantities.

(5) The word ‘serving’ in a declaration required by this clause may be replaced by –

- (a) the word ‘slice’, ‘pack’ or ‘package’; or
- (b) the words ‘metric cup’ or ‘metric tablespoon’ or other appropriate word or words expressing a unit or common measure.

(6) To avoid doubt, the information required to be declared in accordance with this clause need not be set out in the prescribed panel format.

8A Carbohydrate claims on small packages

(1) This clause applies if a claim requiring nutrition information is made about carbohydrate on or about food in a small package.

(2) The label must include a declaration of unavailable carbohydrate if unavailable carbohydrate has been subtracted in the calculation of ‘carbohydrate by difference’ as defined in clause 1.

(3) The reference to ‘unavailable carbohydrate’ in subclause (2) does not include dietary fibre.

- (4) If –
- (a) the food contains any of the substances in Column 1 of Table 2 to subclause 2(2) other than organic acids (the relevant substances); and
 - (b) the relevant substances either singly or in combination are present in the final form of the food in an amount no less than 5 g/100 g;

the presence of the relevant substances must be declared on the label.

[2.18] *inserting in clause 11, the word 'in' after 'as set out'.*

[2.19] *inserting after clause 11 –*

11A Claims on food to be prepared or consumed with other food

If a claim requiring nutrition information is made about a food that is required to be prepared or consumed with at least one other food–

- (a) the nutrition information panel must include an additional column at the right hand side of the panel, specifying, in the same manner as set out in the panel –
 - (i) a description of the additional food or foods; and
 - (ii) the quantity of the additional food or foods; and
 - (iii) the average energy content of the combined foods; and
 - (iv) the average quantities of nutrients contained in the combined foods; and
 - (v) the average quantities of biologically active substances contained in the combined foods.; and
- (b) the weight or volume of the serving size of the food as prepared must be declared in the panel.

[2.20] *omitting Division 3, substituting –*

Division 3 – Deleted

[2.21] *inserting after clause 18 –*

19 Items in panel are nutrition content claims in some circumstances

(1) In this clause –

voluntary item means a particular which is permitted by this Code to be included in a nutrition information panel.

mandatory item means a particular which is required by this Code to be included in the nutrition information panel in some or all circumstances.

(2) To avoid doubt, the inclusion of a mandatory item in a nutrition information panel is not a nutrition content claim.

(3) The inclusion of a voluntary item in a nutrition information panel is a nutrition content claim unless –

- (a) this Code provides otherwise; or
- (b) the voluntary item is a declaration of –
 - (i) dietary fibre if the food contains less than 2g of dietary fibre per serving; or
 - (ii) trans fatty acid content; or
 - (iii) lactose content.

(4) A nutrition information panel that contains the prescribed declarations in paragraphs 5(1)(a) to 5(1)(f) on a product containing more than 1.15% alcohol by volume is not a nutrition content claim.

[2.22] *updating the Table of Provisions to reflect the amendments made by this variation*

[3] **Standard 1.3.2 is varied by –**

[3.1] *omitting from the first sentence of the Purpose –*

, and the claims which can be made about vitamin and mineral content of foods

[3.2] *omitting the definition of reference quantity from clause 1, substituting –*

reference quantity means –

(a) for a food mentioned in the Table to clause 3 –

- (i) the quantity specified in the Table for the food or,
- (ii) for a food that requires dilution or reconstitution according to directions – the quantity of the food that, when diluted or reconstituted, produces the quantity mentioned in column 2 of the Table; or

(b) for all other foods –

- (i) a normal serving; or
- (ii) for a food that requires dilution, reconstitution, draining or preparation according to directions, the quantity of the food which when diluted, reconstituted, drained or prepared produces a normal serving.

[3.3] *omitting clause 4, substituting –*

4 Claims in relation to the vitamin and mineral content of foods listed in the Table to clause 3

If a vitamin or mineral has been added to a food listed in Column 1 of the Table to clause 3, a claim must not be made that the food contains that vitamin or mineral, both added or naturally present, in the reference quantity of the food in greater proportions than that specified in Column 4.

[3.4] *omitting clause 5, substituting –*

5 Calculation of maximum quantity of a vitamin or mineral which may be claimed in a reference quantity of food

(1) If a final food contains more than one ingredient and at least one ingredient contains an added vitamin or mineral pursuant to a permission in Standard 1.3.2, the maximum claim permitted in relation to that vitamin or mineral in a reference quantity of the final food is calculated by summing the quantity of that vitamin or mineral calculated for each ingredient according to the formula set out below and rounded to the nearest 2 significant figures.

(2) In this subclause –

M_{rq} means the maximum quantity of a vitamin or mineral permitted to be claimed in a reference quantity of the final food calculated in accordance with the formula –

$$M_{rq} = Q_1 + Q_2 + \dots + Q_i$$

where –

Q_1 , is the quantity of a vitamin or mineral permitted to be claimed for the first ingredient in a reference quantity of the final food, Q_2 is the quantity of a vitamin or mineral permitted to be claimed for a second ingredient in a reference quantity of the final food, and so forth for all ingredients containing that vitamin or mineral.

- (3) The amount used for the quantity permitted to be claimed means either the –
- (a) average quantity of the vitamin or mineral present in the amount of unfortified ingredient in a reference quantity of the final food; or
 - (b) maximum permitted claim for the vitamin or mineral in the amount of fortified ingredient in a reference quantity of the final food.

Editorial note:

Example calculations

- (a) Vitamin C claim for an apple and blackcurrant fruit drink comprised of 80 mL apple juice and 4 mL blackcurrant juice in a reference quantity of 200 mL –

Maximum claim per reference quantity for vitamin C in apple juice = 120 mg/200 mL

Maximum claim per reference quantity for vitamin C in blackcurrant juice = 500 mg/200 mL

Q_1 (apple juice) = 120 mg x 80/200 = 48 mg vitamin C/200 mL

Q_2 (blackcurrant juice) = 500 mg x 4/200 = 10 mg vitamin C/200 mL

M_{rq} = 48 + 10 = 58 mg vitamin C/200 mL apple and blackcurrant fruit drink

The calculated maximum quantity of vitamin C that may be claimed in 200 mL of apple and blackcurrant fruit drink rounded to the nearest 2 significant figures = 58 mg (no change)

- (b) Iron claim for an uncooked beef schnitzel comprised of 115 g raw beef and 30 g iron-fortified breadcrumbs, in a reference quantity of 145 g –

Average quantity of iron in raw beef = 2.5 mg/100 g (from analysis or nutrient composition tables)

Maximum claim per reference quantity for iron in fortified breadcrumbs = 3 mg/50 g bread

Q_1 (raw beef) = 2.5 x 115/100 = 2.875 mg iron/115 g

Q_2 (iron-fortified breadcrumbs) = 3 mg x 30/50 = 1.8 mg iron/30 g

M_{rq} = 2.875 + 1.8 = 4.675 mg iron/145 g uncooked beef schnitzel

The calculated maximum quantity of iron that may be claimed in 145 g of uncooked beef schnitzel rounded to the nearest 2 significant figures = 4.7 mg

[3.5] *omitting clauses 6 to 9*

[3.6] *updating the Table of Provisions to reflect the amendments made by this variation*

[4] **Standard 2.6.2** is varied by omitting nutrition claim for the purposes of Standard 1.2.8 in subclause 2B(4), and substituting nutrition content claim for the purposes of Standard 1.2.7

[5] **Standard 2.6.4** is varied by omitting subclause 3(6)

[6] **Standard 2.9.1** is varied by –

[6.1] *omitting clause 28, substituting –*

28 Required statements for products under this Subdivision

The label on an infant formula product that is specifically formulated to satisfy particular metabolic, immunological, renal, hepatic or malabsorptive conditions must contain a statement that indicates –

- (a) that the product is not suitable for general use and should be used under medical supervision; and
- (b) the condition, disease or disorder for which the food has been specially formulated; and
- (c) the nutritional modifications, if any, which have been made to the infant formula product.

[6.2] *updating the Table of Provisions to reflect the amendments made by this variation*

[7] Standard 2.9.2 is varied by –

[7.1] *omitting paragraphs 9(1)(e) and 9(1)(f), substituting –*

- (e) clause 9.

[7.2] *inserting after subclause 9(1) –*

(1A) The conditions in Schedule 1 of Standard 1.2.7 that require the potassium content of a food to be indicated in the nutrition information panel do not apply to a food standardised by this Standard.

[8] Standard 2.9.3 is varied by –

[8.1] *inserting after subclause 3(2) –*

(2A) A claim, either express or implied, that a formulated meal replacement is a good source of a vitamin or mineral may be made if –

- (a) the vitamin or mineral is listed in column 1 of Table 1 or Table 2 in the Schedule; and
- (b) a serving of the food contains at least 25% of the RDI or ESADDI of that vitamin or mineral; and
- (c) where the vitamin or mineral has been added to the food, the claimed quantity of that vitamin or mineral in a serving is no more than the quantity set out in column 3 of Table 1 or 2.

[8.2] *inserting after subclause 5(1) –*

(1A) In this clause, claimable vitamin or mineral means a vitamin or mineral that is listed in –

- (a) the Schedule to Standard 1.1.1; or
- (b) Column 1 of Table 3 in the Schedule to this Standard.

[8.3] *omitting from subclause 5(2) –*

one or more of those vitamins or minerals listed in column 1 of Table 3 in the Schedule

substituting –

a claimable vitamin or mineral

[8.4] *inserting after subclause 5(2) –*

(2A) A claim, either express or implied, that a formulated supplementary food is a good source of a vitamin or mineral may be made if –

- (a) the vitamin or mineral is a claimable vitamin or mineral; and
- (b) a serving of the food contains at least 25% of the RDI or ESADDI of that vitamin or mineral; and
- (c) where the vitamin or mineral has been added to the food, the claimed quantity of that vitamin or mineral in a serving is no more than the quantity set out in column 5 of Table 3.

[8.5] *inserting after subclause 7(1) –*

(1A) In this clause, claimable vitamin or mineral means a vitamin or mineral that is listed in –

- (a) the Schedule to Standard 1.1.1; or
- (b) Column 1 of Table 3 in the Schedule to this Standard.

[8.6] *omitting from subclause 7(2) –*

one or more of those vitamins or minerals listed in column 1 of Table 3 in the Schedule

substituting –

a claimable vitamin or mineral

[8.7] *inserting after subclause 7(2) –*

(2A) A claim, either express or implied, that a formulated supplementary food for young children is a good source of a vitamin or mineral may be made if –

- (a) the vitamin or mineral is a claimable vitamin or mineral; and
- (b) a serving of the food contains at least 25% of the RDI or ESADDI of that vitamin or mineral; and
- (c) where the vitamin or mineral has been added to the food, the claimed quantity of that vitamin or mineral in a serving is no more than the quantity set out in column 3 of Table 3.

[9] **Standard 2.9.4** is varied by omitting paragraphs 5(2)(b) and 5(2)(c), substituting –

- (b) the amount claimed does not exceed the amount specified in column 2 of the Table to paragraph 2(a).

[10] **Standard 2.10.2** is varied by omitting subclause 5(2) and the following editorial note, substituting –

(2) A declaration in accordance with subclause (1) does not constitute a nutrition content claim or health claim for the purposes of Standard 1.2.7.

[11] **Standard 1.1A.2** is repealed

[12] **Standard 1.2.7** is varied by omitting the editorial note preceding clause 1

[13] **Transitional Provisions**

[13.1] **Transition period** means the period starting on the date of commencement of Standard 1.2.7 and ending on the date of omission of Standard 1.1A.2.

[13.2] In the transition period a food may comply with Standard 1.2.7 or a Standard (including Standard 1.1A.2) as if items [3] to [10] of this Schedule had not commenced, but not a combination of both.

[13.3] Subclause 1(2) of Standard 1.1.1 does not apply to the variation of this Code made by item [11].

Attachment B – Explanatory Information – Standard 1.2.7 – Nutrition, Health and Related Claims

Part 1 —Purpose and interpretation

Clause 1

The clause outlines the purpose of the Standard.

Clause 2

This clause sets out definitions for the Standard.

Endorsement – this is defined for the purposes of Division 3 – Endorsements. To be an endorsement for the purposes of the Standard, the endorsement must meet the definition of a nutrition content claim or health claim and be made with the permission of an endorsing body (also defined).

Endorsing body – is also defined for the purposes of Division 3 – Endorsements. An endorsing body needs to meet certain conditions in order to be considered an endorsing body for the purposes of the Standard.

Food group is defined for the purposes of comparative claims and is referred to in the definition of ‘reference food’.

Fruit is defined to clarify what parts of the fruit are captured and what types of plant products are excluded, when ‘fruit’ is mentioned in the Standard.

Gluten This definition has been moved from Standard 1.2.8 and provides a basis for the conditions for nutrition content claims about ‘gluten’ in Schedule 1.

The **glycaemic index (GI)** definition clarifies what GI is a measure of and requires that it must be determined by a recognised scientific method. The Editorial Note following the definition provides an example of a recognised scientific method for determining GI. Conditions for GI claims are in Schedule 1.

Health claim is a claim (as defined in Standard 1.1.1) which states or gives the impression that a food or property of food (defined in clause 2) has or may have a health effect (also defined).

Health effect is an effect on the human body. The definition provides examples (not an inclusive list) of the aspects of the human body that, when affected, are health effects.

Meets the NPSC – in order to ‘meet the NPSC’ (for example, for a food to carry a health claim) the nutrient profiling score of the food must be less than the number specified for that particular food in Schedule 3.

Nutrient profiling score – this definition clarifies that this term means the score that is calculated by following the method outlined in Schedule 4.

Nutrition content claim A claim is only a nutrition content claim if it refers to the presence or absence of certain substances, as listed in the definition, or is a claim about GI or glycaemic load. However a claim is not a nutrition content claim if it refers to a health effect, or if it refers to the presence or absence of a substance not listed in (i) to (xii) of the definition.

Reference food is defined for the purpose of comparative claim conditions ('reduced' and 'increased' – see Schedule 1). The definition provides for two different situations in which a food can be considered a reference food.

Serious disease is defined for the purposes of endorsements.

Vegetable is defined to clarify what parts of the vegetable are captured and what types of plant products are excluded, when 'vegetable' is mentioned in the Standard.

Part 2 — Claims framework and general principles

Clause 3

This clause prohibits nutrition content claims and health claims from being made about kava (as standardised in Standard 2.6.3), infant formula product (as standardised in Standard 2.9.1) and, subject to paragraph (b), food containing more than 1.15% alcohol by volume. Paragraph (b) permits a nutrition content claim about the energy content or carbohydrate content of a food containing more than 1.15% alcohol by volume.

Clause 4

This clause lists the foods that do not need to comply with the Standard.

First, paragraph (a) excludes food which is intended for further processing, packaging or labelling prior to retail sale. This has the effect that wholesale food, for example, intended to be further packaged and labelled for retail sale does not need to comply with this Standard. Likewise, paragraph (b) excludes from the operation of the Standard a meal delivered to a vulnerable person by a delivered meal organisation. 'Vulnerable person' is defined in Standard 3.3.1.

Paragraph (c) excludes food provided to a patient in a hospital or other similar institution from needing to comply with the Standard. However food provided to a patient in a hospital or other similar institution that is in a package must comply with the Standard. The intent is to exclude unpackaged foods such as plated food delivered to a hospital patient, from the requirements of the Standard. The 'other similar institutions' are mentioned in the Table to clause 8 of Standard 1.2.1. 'Package' is defined in clause 2 of Standard 1.2.1.

Clause 5

This clause makes it clear that the Standard does not apply to certain claims or declarations.

Under paragraph (a), a claim which is expressly permitted elsewhere in the Code is not required to comply with Standard 1.2.7. A claim permitted in another standard must, obviously, comply with any conditions that are imposed by that other standard.

Paragraph (b) provides that claims about the risks or dangers of alcohol consumption or moderating alcohol intake are also not regulated by the Standard.

Paragraph (c) means that any declaration which is required by the Act is not regulated by this Standard, for example, a declaration of the energy content of certain foods at the point of sale. The Act is defined in clause 2 of Standard 1.1.1.

Clause 6

Clause 6 describes how the requirements of the Standard apply to different forms of food.

The Table to clause 6 sets out different types of food and which form of food the requirements of the Standard apply. For example, for food that requires draining before consuming, the requirements of the Standard apply to the food after it is drained and ready for consumption.

The information on the label for the food, including the directions for use, and any information provided in an advertisement for the food should be taken into account to determine the form of the food to which the requirements of the Standard apply.

Clause 7

This clause has the effect of prohibiting claims that refer to prevention, diagnosis, cure or alleviation of a disease, disorder or condition. Note that according to clause 5, if such a claim is expressly permitted in the Code it does not need to comply with this clause. Presently, subclause 8(3) of Standard 2.6.2 permits a claim about the treatment of a condition (namely, mild dehydration).

Also, it is not permitted for a claim to compare a food with a good that is represented to be for therapeutic use or that is likely to be taken to be for therapeutic use.

Clause 8

Clause 8 is designed to prohibit claims that compare the vitamin or mineral content of one food with that of another.

Clause 9

Clause 9 clarifies that nothing in the Standard prescribes the actual wording that must be used in a claim. The statements or information required to be declared can be modified from the requirement as it appears in the Standard, as long as this does not alter or contradict the intended effect. For example, the health effects listed in Column 2 of Schedule 2 do not have to be stated in the health claim using exactly the same wording as that listed in the Schedule, as long as the modified wording does not alter or contradict the effect of that health effect.

Part 3 —Requirements for nutrition content claims and health claims

Division 1 – Nutrition content claims

Clause 10

This clause requires that the nutrition content claim must be presented together with the form of the food to which the claim relates. However, if the claim relates to the food in the form in which it is sold, it is not necessary to mention the form of the food. This clause relates back to clause 6 which describes how the requirements of the Standard apply to different forms of food.

Clause 11

This clause deals with nutrition content claims about properties of food set out in Schedule 1 of the draft Standard. Nutrition content claims can be made about the properties of food listed in Schedule 1 only if they comply with this clause.

Schedule 1 has two types of conditions in it: general claim conditions and specific claim conditions. Subclause (2) of clause 11 provides that any nutrition content claim about a property of food listed in Column 1 must meet the corresponding general claim conditions in Column 2, if there are any. Subclause (3) says that a claim using a specific descriptor listed in Column 3 (or a similar descriptor) must meet the relevant general claim conditions as well as the relevant specific claim conditions in column 4.

Subclause (4) makes it clear that if there are inconsistent obligations imposed by a general claim condition in Column 2 of Schedule 1 and a specific claim condition in Column 4, the specific claim condition prevails. For example, for a claim that a food is an 'excellent source of dietary fibre', the general claim conditions say that a serve of the food must contain at least 2 g of dietary fibre, whereas the specific claim condition says that a serve of the food must contain at least 7 g. In this example, subclause (4) makes it clear that the 7 g requirement prevails.

Subclause (5) means that only certain nutrition content claims about lactose or trans fatty acids can be made, as only the descriptors listed in Column 3 of Schedule 1 (or similar descriptors) applicable to lactose or trans fatty acids can be used.

Subclause (6) means that descriptors, for example 'high', 'low' or 'medium', cannot be used in relation to glycaemic load claims, however numbers of the measure can be used, for example, GL = 30.

Subclause (7) has the effect that the only nutrition content claims that can be made about gluten are 'low', 'free', 'high' and 'contains' (or claims using similar wording).

Subclause (8) makes it clear that any descriptor can be used to describe the amount of a property of food listed in Schedule 1, in addition to the descriptors listed in Column 3. For example, a 'high energy' claim is permitted. If descriptors other than those listed in Column 3 (or similar) are used, the general claim conditions must be met but there are no specific conditions that apply. For example, a 'good source of polyunsaturated fatty acids' claim could be made if the food meets the conditions in Column 2 that apply to polyunsaturated fatty acids. However this permission does not apply to nutrition content claims about gluten, lactose, trans fatty acids, glycaemic index and glycaemic load and nutrition content claims using descriptors referring to 'slimming' or similar words.

Clause 12

For nutrition content claims about properties not mentioned in Schedule 1, e.g. biologically active substances (see the definition of nutrition content claim in clause 2), descriptors listed in column 3 of Schedule 1 that describe a specific level of the property is present cannot be used. However claims that the food contains or does not contain the property can be made. For example, claims such as 'high in xxx' and 'low in xxx' are not permitted, however claims such as 'source of xxx' and 'free of xxx' are permitted.

Paragraph 1(b) permits nutrition content claims that specify a certain amount of the property of the food is present in a specified amount of the food, e.g. 'contains 10 g of x per serving'. These claims can be made either alone or in conjunction with a claim made under paragraph 1(a).

Clause 13

The clause permits a nutrition content claim about folic acid to be made about a food, but only if a health claim about folic acid is made about that same food. If such a nutrition content claim is made, it can only state that the food contains folic acid, and/or specify that a certain amount of folic acid is present in a specified quantity of food.

Clause 14

This clause is designed to make it clear that words which imply slimming, weight loss or weight maintenance properties cannot be used in a nutrition content claim about energy.

Clause 15

Clause 15 deals with nutrition content claims that are 'comparative': that is, they directly or indirectly compare the nutrition content of one food with that of another. Subclause (1) provides that claims using the descriptors 'light' or 'lite', 'increased' or 'reduced' are comparative claims. Subclause (2) says that a claim using the descriptor 'diet' is a comparative claim in some circumstances.

Subclause (3) sets out some additional information that must be provided with a comparative claim. The identity of the reference food and the difference between the amount of property in the reference food and the food on which the claim appears (for example, as an absolute amount or as a percentage) must be declared together with the comparative claim. 'Reference food' is defined in clause 2 of this Standard.

Division 2 – Health Claims

Clause 16

This clause has the effect that an application or proposal to add a new health claim to Schedule 2 will be subject to the provisions in the FSANZ Act that apply to high level health claims variations. For example, for an application to add a new health claim to Schedule 2, the application will be subject to the provisions in Subdivision G of Division 1 of Part 3 of the FSANZ Act.

Clause 17

This clause requires that if a health claim is made about a food, that food must meet the nutrient profiling scoring criterion (NPSC). However subclause (2) has the effect that foods standardised in Part 2.9 of the Code (Special Purpose Foods) do not need to meet the NPSC in order for a health claim to be made about them.

The method for determining the nutrient profiling score is in Schedule 4. The scores that the nutrient profiling score must be less than for different categories of foods are in Schedule 3. 'Meet the NPSC' is defined in clause 2.

This clause also means that a health claim cannot be made unless it refers to a relationship between a food or property of food and a corresponding health effect listed in Schedule 2.

Clause 18

This clause sets out what a health claim must say and the statements that must be made together with the health claim. Subclause (1) says that the health claim must state the property of the food or the food and the specific health effect claimed for that food or property of food, as mentioned in Schedule 2.

Subclause (2) requires that certain information must be stated together with the health claim, as follows:

- the relevant population group to which the health effect relates, as mentioned in column 3 of Schedule 2 (if any)

- a dietary context statement
- a statement of the form of the food that the health claim is based on (according to clause 6) (unless, as provided for in subclause (5), the form of the food is the food in the form in which it is sold).

Subclause (3) outlines what must be included in the dietary context statement. The dietary context statement must be appropriate for the claim being made.

Subclause (4) provides an exemption from the requirement to include a dietary content statement with the health claim if the claim is on a label of a small package.

Clause 19

This clause allows specific elements to be presented separately from the complete statement required by clause 18 (called a **split claim**). The separate elements are the property of the food and the specific health effect. However, those elements must appear on the same label or in the same advertisement as the complete statement required by clause 18. An indication of where the complete statement is located must be provided with the separate elements.

Clause 20

Clause 19 deals with a health claim about phytosterols, phytostanols or their esters. Advisory statements for phytosterols, phytostanols or their esters are required by clause 2 of Standard 1.2.3. The effect of clause 19 is that an additional 'healthy diet' context statement is not required if the health claim is presented together with the advisory statement. However, the remaining parts of the dietary context statement (identified in paragraphs 18(3)(b)-(d)) for a claim about phytosterols, phytostanols or their esters are still required.

Division 3 – Endorsements

This Division is designed to allow endorsements to be made without complying with many of the requirements of the Standard.

Clause 21

Subclause (1) sets out the conditions for an endorsing body. The terms 'endorsing body' and 'endorsement' are defined in clause 2.

An endorsement is a nutrition content claim or health claim that is made with the permission of another entity (called the **endorsing body**). The endorsing body permits a supplier to make a nutrition content claim or health claim (as an endorsement) on its behalf. The endorsing body must be a not-for-profit entity and have a nutrition- or health-related purpose or function. In addition the endorsing body must:

- not be related to the supplier of the food using the endorsement
- be independent of and free from influence by the supplier of the food using the endorsement.

Subclause (2) states when a supplier will be related to the endorsing body.

Clause 22

This clause sets out the requirements for an endorsement to be validly made. An endorsement must comply with clause 7 and Division 3 but is not required to comply with any other requirement of the Standard.

Subclause (2) provides that an endorsement must not refer to a serious disease unless referring to that serious disease as part of the name of the endorsing body.

Clause 23

This clause is designed to create some record-keeping requirements for suppliers who use endorsements. 'Supplier using the endorsement' is defined in subclause (1). A supplier using an endorsement must keep records demonstrating that:

- the supplier making the endorsement has the permission of the endorsing body to use the endorsement
- the endorsing body has a nutrition or health function or purpose, is a not-for-profit entity and is not related to the supplier using the endorsement.

Those records must be presented to the relevant authority on request.

Subclause (3) is designed to deal with the situation of when an endorsement is placed on a label prior to importation. That subclause provides that the importer of the food is taken to be the supplier using the endorsement, and therefore the importer must comply with the record-keeping requirements of this clause.

Division 4 – Labelling of food required to meet the NPSC

This Division contains special rules about information that must be declared on a label for foods that are required to meet the nutrient profiling scoring criterion (NPSC).

Clause 24

Clause 24 makes it a requirement that, when a food must meet the NPSC in order to make a claim, additional information is provided.

Subclause (4) is designed to make it clear that if a property of food is relied on for a food to pass the NPSC (other than fvnI, as defined in item 4 of Schedule 4) and that property is not otherwise required to be declared in the nutrition information panel, then that property must be declared in the nutrition information panel. For example, if the dietary fibre content of a food is needed in order for the food to pass the NPSC, the dietary fibre content must be declared in the nutrition information panel.

Subclauses (5) and (6) require that, in certain circumstances, the percentage of fvnI be declared on the label.

Subclause (7) requires that the calcium content of cheese be declared in the nutrition information panel for a cheese that is calculated in the NPSC as a category 3 food (see Schedule 3).

Subclause (8) provides exemptions from these additional declarations for food in small packages. Small package is defined in Standard 1.2.1.

Schedule 1 – Conditions for nutrition content claims

This schedule contains conditions for making certain nutrition content claims (see clause 11).

Schedule 2 – Conditions for health claims

This schedule contains conditions for making health claims (see clause 18).

Schedule 3 – Nutrient profiling scoring criterion

This schedule provides the numbers that the nutrient profiling score must be less than, in order for a food to meet the NPSC (see definition of ‘meets the NPSC’ in clause 2). A food must meet the NPSC in order to, for example, carry a health claim.

Schedule 4 – Nutrient profiling scoring method

Schedule 4 gives the method that must be used to calculate the nutrient profiling score of a food.

AMENDMENTS TO OTHER STANDARDS

Item [1] Standard 1.1.1

Item [1.1] omits the transitional provision that had been provided to alter how subclause 1(2) applies to transitional Standard 1.1A.2.

Item [1.2] amends the current definition of ‘claim’ to make it clear that a claim can be express or implied.

Item [2] Standard 1.2.8

Item [2.1] The second paragraph of the current Purpose of Standard 1.2.8 has been incorporated into an Editorial note and updated to take account of the new Standard 1.2.7.

Item [2.2] The definitions of gluten and nutrition claim are removed as these have been incorporated into Standard 1.2.7 (where ‘nutrition claim’ has been revised and referred to as ‘nutrition content claim’).

Item [2.3] The existing calculation for determining average energy content has been incorporated into subclause 1(3) and reformatted. This amendment provides a cross reference to the calculation method in subclause 1(3).

Item [2.6] Subclause (2) means that the definitions in Standard 1.2.7 also apply in Standard 1.2.8.

Subclause (3) provides the calculation for determining average energy content referred to in item [2.3] above.

Item [2.7] Clause 1A has been inserted to clarify that Standard 1.2.8 does not apply to infant formula products.

Item [2.8] The existing clause 4 has been updated to refer to new terminology used in the new Standard 1.2.7. The term ‘claims requiring nutrition information’ has been introduced. Claims requiring nutrition information are nutrition content claims and health claims, but not endorsements or declarations required under the Act (Act is defined in clause 2 of Standard 1.1.1).

Items [2.10], [2.13] and [2.14] Current paragraph 5(1)(g) and subclauses 5(4) and 5(5) have been amended to incorporate the new term ‘claim requiring nutrition information’ (see item [2.8] above). Declarations of certain substances must be declared in the nutrition information panel when ‘claims requiring nutrition information’ are made.

Item [2.11] As clause 12 has been deleted from Standard 1.2.8, a new subclause (5(1A)) has been inserted to replace current subclause 12(2), which provides that the quantity of certain fatty acids can be declared as a minimum or maximum when certain nutrition content claims are made.

Item [2.15] Subclause 7(2) provides that when percentage daily intake (DI) information is included in a panel, the percentage daily intake of dietary fibre may be included, and the percentage intake of energy and certain other nutrients. This maintains the current provision in the Code however the requirement for these declarations to be on a per serving basis has been added.

Subparagraph 7(2)(b)(ii) requires certain statements to be included in the nutrition information panel if percentage daily intake information is provided. These statements are shorter than the statement currently required.

Item [2.16] This new clause (7A) set out requirements for percentage recommended dietary intake (RDI) information. Requirements for percentage RDI declarations were previously in Standard 1.3.2.

The clause applies if a claim requiring nutrition information (see item [2.8] above) is made about a vitamin or mineral which has an RDI (in the Schedule to Standard 1.1.1). Percentage RDI information is not required on food for infants (standardised by Standard 2.9.2) however subclause 7A(4) permits percentage RDI information to be provided in the nutrition information panel of these foods.

Subclause 7A(2) means that, where this clause applies, percentage RDI information must be provided in the nutrition information panel.

Subclause 7A(3) describes how the percentage RDI must be calculated.

Clause 7B is a new clause which sets out the requirements if the percentage RDI or DI information required or permitted by clause 7 or 7A, is also declared outside the nutrition information panel.

Paragraph 7B(2)(a) means that DI or RDI information may only be presented outside the nutrition information panel if the serving size to which the DI or RDI information relates to is presented with this information. Paragraph 7B(2)(b) means that DI or RDI information can not be presented outside the nutrition information panel on food containing more than 1.15% alcohol by volume.

Subclause 7B(3) requires that the DI or RDI information is presented together.

The information presented under this clause is not a nutrition content claim and therefore does not need to meet the conditions for making nutrition content claims in Standard 1.2.7.

Item [2.17] The existing clause 8 has been revised to provide clarity about the nutrient declarations required on the label of a small package if a claim requiring nutrition information is made.

Item [2.19] This new clause means that if a claim requiring nutrition information is made about a food that is required to be prepared and consumed according to directions, with at least one other food, the nutrition information panel must include the additional column at the right hand side, specifying certain information about the additional food or foods.

Item [2.20] Division 3, which contained conditions for making nutrition claims, has been deleted and these conditions are now contained in Standard 1.2.7.

Item [2.21] This new clause gives permission for certain nutrients to be voluntarily declared in the nutrition information panel, without requiring the declaration to meet the conditions for the applicable nutrition content claim in Standard 1.2.7.

Subclause 19(4) means that a nutrition information panel can voluntarily be provided on a food containing more than 1.15% alcohol by volume, and this declaration will not regulated as a nutrition content claim.

Item [3] Standard 1.3.2 – Vitamins and Minerals

Item [3.3] This clause (4) sets the maximum amount of a vitamin or mineral that can be claimed for certain foods (currently clause 5 of Standard 1.3.2).

Item [3.4] This clause provides the method that must be used to calculate the maximum quantity of a vitamin or mineral that can be claimed in certain foods containing vitamins or minerals that have been added in accordance with Standard 1.3.2 (currently clause 9).

Items [3.3], [3.4] and [3.5] Conditions for making claims about the presence of vitamins and minerals and good source claims about vitamins and minerals have been deleted and these conditions are now contained in Standard 1.2.7.

Item [5] Standard 2.6.4 – Formulated Caffeinated Beverages The current prohibition of formulated caffeinated beverages making nutrition content claims about vitamins and minerals has been moved into Standard 1.2.7 (conditions for making claims about vitamins and minerals in Schedule 1).

Item [6] Standard 2.9.1 – Infant Formula Products

Item [6.1] This amendment retains the existing requirement in clause 28, that certain statements are provided on a label of an infant formula product that is for infants with particular conditions, however the reference to 'claims' is removed.

Item [7] Standard 2.9.2 – Foods for Infants

Items [7.1] and [7.2] The current cross reference to the exemption (in Standard 1.2.8) from the requirement to declare the sodium and potassium content of a food for infants when a claim about the salt, sodium or potassium content of that food is made has been deleted. A new subclause has been included to provide the exemption from declaring the potassium content. The exemption from the requirement to declare the sodium content has not been included as it is no longer relevant, as the nutrition information panel must always include the sodium content.

Item [8] Standard 2.9.3 – Formulated Meal Replacements and Formulated Supplementary Foods

Items [8.1], [8.4] and [8.7] New subclauses have been added setting conditions for 'good source' of vitamin and mineral claims on formulated meal replacements and formulated supplementary foods. These reflect the same conditions as those prescribed in Standard 1.2.7 for these claims on other foods.

Items [8.2], [8.3], [8.5] and [8.6] Standard 2.9.3 has been amended to specifically permit nutrition content claims about the vitamins and minerals listed in the Schedule to Standard 1.1.1 on formulated supplementary foods, in addition to the vitamins and minerals listed in Column 1 of Table 3 to the Schedule of Standard 2.9.3. This will provide consistency with the permissions under Standard 1.2.7 for vitamin and mineral claims on other foods.

Item [9] Standard 2.9.4 – Formulated Supplementary Sports Foods The current specific requirement to declare certain information when a claim about the presence or absence of a vitamin or mineral is made has been moved from Standard 1.3.2 into Standard 1.2.8 (which applies to formulated supplementary sports foods). The cross reference to the requirement in Standard 1.3.2 has therefore been removed.

[11], [12] and [13] The effect of these variations is that the Transitional Standard 1.1A.2 – Health Claims will operate concurrently with Standard 1.2.7 for a period of two years. During this two year period Standard 1.1A.2 operates unchanged by the P293 variations. If Standard 1.1A.2 is relied on, the changes made to other Standards (outlined in items [3] to [10] above) also have no effect. For a particular food, a food business can rely on this variation or Standard 1.1A.2 but not a combination of both.

Two years after the gazettal of the variations to the Code resulting from P293, the Transitional Standard 1.1A.2 – Health Claims ceases to operate and the conditions in Standard 1.2.7 must be met. There is no stock in trade period at the end of the two year period – all food labels and advertising in the marketplace at that time must comply with Standard 1.2.7 and the other variations outlined above.

Minor technical amendments:

Items [2.4] [2.5] [2.9] [2.11] [2.12] [2.18] [2.22] [3.1] [3.2] [3.6] [4] [6.2] and [10] contain minor amendments that are necessary as a result of the new Standard and other amendments mentioned above. For example, in item [2.4] a cross reference to the definition of 'claim requiring nutrition information' is provided to clarify where this definition is located within the Standard; item [4] updates the existing clause to reflect new terminology and location of claim conditions in Standard 1.2.7.

Attachment C – Summary of drafting amendments since March 2009 consultation

Table 1: Summary of amendments to draft Standard 1.2.7 – Nutrition, Health and Related Claims, since March 2009 consultation, further to structural and minor technical changes

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Purpose	Included at start of the Standard.	Included as clause 1, wording generally revised and amended to exclude reference to other Standards in the Code.
Transitional provisions	Clause 2 provided that subclause 1(2) of Standard 1.1.1 does not apply to Standard 1.2.7 and that a nutrition content claim or health claim was taken to comply with Standard 1.2.7 for a period of 24 months after commencement of that Standard, if the claim complied with the Code before Standard 1.2.7 commenced.	The provisions relating to the transition period are provided in items 11 – 13 of the consequential amendments, not clauses in the draft Standard. Editorial note added under Part 1 to clarify the transitional provisions for Standard 1.2.7.
Biomarker definition	Defined	Definition removed as the term biomarker is no longer used in the Standard.
Cause-related marketing definition	Defined	Definition removed as cause-related marketing is no longer regulated by the Standard (refer below for details).
Dietary information definition	Defined	Definition removed as dietary information is no longer regulated by the Standard (refer below for details).
Endorsement and Endorsing body		New definitions – see endorsements below.
Fruit definition	Referred to 'dried pulses'.	'dried pulses' amended to 'legumes' for consistency with existing terminology in the Code.
Glycaemic index definition	Glycaemic index means the blood glucose raising ability of the digestible carbohydrates in a given food.	Inserted 'a measure' of the blood glucose raising ability... to clarify that glycaemic index is a measure. Inserted 'as determined by a recognised scientific method'. Although the actual method is not prescribed, this provides a link to the preferred method for determining GI as described in the Editorial note following the definition.

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Health claim definition	<p>Health claim means a claim that directly or indirectly refers to a relationship between –</p> <p>(a) a food or a property of food; and (b) a health effect.</p>	<p>Definition reworded to 'a claim which states, suggests or implies that a food or property of food has, or may have, a health effect.'</p> <p>This simplifies the definition and clarifies the meaning of 'directly or indirectly'.</p>
Health effect definition	<p>Health effect means an effect on the functioning of the human body including the presence of a disease state, or physical or mental performance or maintenance of a healthy functioning body.</p>	<p>Definition reworded.</p> <p>The reference to 'functioning' is not considered necessary as the intent is to capture any effect on the human body, not necessarily just that relating to the functioning of the body.</p> <p>The definition now more clearly identifies examples of the aspects of the human body that, when affected, can be considered health effects.</p>
General level health claim and high level health claim definitions	Defined	Definitions removed - no longer required.
Gluten definition	Defined in Standard 1.2.8	As the term will no longer be used in Standard 1.2.8 but is used in Standard 1.2.7, the definition has been moved into Standard 1.2.7.
Ineligible food definition	Defined (clause 11)	Definition removed as the term is no longer used in the drafting (clause 3 in the Standard now lists the foods that are not permitted to carry nutrition content or health claims).
Nutrition information panel definition	Defined as the nutrition information panel required by Standard 1.2.8.	Definition removed as nutrition information panel is already defined in Standard 1.1.1 (as a panel which complies with the requirements of Division 2 of Standard 1.2.8) and this definition applies to Standard 1.2.7.

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Nutrition content claim definition	Nutrition content claim means a claim about the presence or absence of a property of food, other than a claim that only mentions alcohol content.	<p>Due to the broad nature of the 'property of a food' definition, the 2009 definition could be incorrectly interpreted to capture substances not intended to be regulated as nutrition content claims, such as food additives. The definition has therefore been clarified to only include (ie list) properties intended to be captured. This makes it clear that claims about the presence or absence of properties listed in the definition only, are nutrition content claims.</p> <p>The words 'that does not refer to a health effect' have been added to the definition to clearly distinguish nutrition content claims from health claims.</p>
Property of food definition	Property of the food means any of the following (when associated with a nutrition or health purpose) – (a) energy, a nutrient or a biologically active substance; or (b) a component, ingredient or any other feature or constituent of the food; or (c) glycaemic index.	This definition has been simplified to 'a component, ingredient, constituent or other feature of food'. It is intended that the substances specifically mentioned in the 2009 definition are still captured by this revised definition.
Reference value definition	Defined	Definition removed as the term is no longer referred to in the Standard.
Salt definition	Not defined in Standard 1.2.7	A cross reference has been provided in Standard 1.2.7, to alert users to the definition of salt in Standard 2.10.2 – Salt and Salt Products.
Serious disease definition	Serious disease means a disease, ailment, defect or condition for which it is not appropriate to diagnose, treat or manage without consultation with or supervision by a health care professional, and includes obesity, but does not include being overweight.	<p>Reference to overweight and obesity has been removed. The original reason for referring to obesity and overweight was so that claims about overweight were general level health claims and claims about obesity a high level health claim. This term is now only used in relation to endorsements where that distinction is unnecessary.</p> <p>Amended 'disease, ailment, defect or condition' to 'disease, disorder or condition' for consistency with terminology elsewhere in the Standard (see therapeutic claim prohibition below).</p>
Small package definition	Not defined in Standard 1.2.7	A cross reference has been provided in Standard 1.2.7, to alert users to the definition of small package in Standard 1.2.1.

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Vegetable definition	Referred to 'dried pulses'.	'dried pulses' amended to 'dried legumes' for consistency with existing terminology in the Code.
Standard applies to labels and advertisements for food	Subclause 1(2) stated that a reference to making a claim means making or including on a label or in an advertisement for food a claim to which this Standard applies (i.e. nutrition content claims and health claims).	<p>This has been deleted. It is considered unnecessary because the definition of 'claim' (see amendment [2.2] to Standard 1.1.1) captures claims on both labels and advertisements.</p> <p>The Purpose states the intention that the Standard applies only to labels and advertisements for food.</p>
Claims about ethical, religious or environmental features of a food	Subclause 6(2) stated that the Standard did not apply to claims about ethical, religious or environmental features of food.	This has been removed as it is considered to be evident from the definitions of nutrition content claim and health claim that these types of claims are not regulated by the Standard.
Prohibition of claims	<p>Clause 7 specifically prohibited nutrition content claims and health claims unless specifically permitted.</p> <p>Clause 8 prohibited dietary information unless specifically permitted.</p>	<p>The explicit prohibition of nutrition content claims and health claims has been removed. These claims must meet the conditions specified in the Standard.</p> <p>Regulation of dietary information has been removed from the Standard (refer to section 4.3 of this report).</p>
Therapeutic claim prohibition	<p>Clause 10: Unless expressly permitted by this Code, a claim must not be made if –</p> <p>(a) the claim refers to the symptoms, prevention, diagnosis, cure or alleviation of a disease, ailment, defect or condition; or</p> <p>(b) the claim compares a food and a therapeutic good.</p>	<p>Clause 7: Removed reference to symptom and replaced 'disease, ailment, defect or condition' with 'disease, disorder or condition', for consistency with draft Standard 2.9.5 – Foods for Special Medical Purposes, as proposed under Proposal P242 – Food for Special Medical Purposes.</p> <p>Replaced the term 'therapeutic good' with a description of what was intended to be a therapeutic good, as this term does not have a definition in NZ.</p> <p>Removed 'unless expressly permitted by this Code' because clause 5 already permits therapeutic claims that are expressly permitted by another Standard.</p>

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Standard does not apply to certain foods	<p>Subclause 6(1): A claim about or in relation to (a), (b), or (c) is not a claim to which this Standard applies.</p> <p>(b) was 'meals provided to a client of a delivered meal organisation'.</p>	<p>This clause (now clause 4) has been reworded to say the Standard does not apply to foods in (a), (b) or (c) rather than to claims on those foods.</p> <p>(b) has been reworded to 'food that is delivered to a vulnerable person by a delivered meal organisation', e.g. meals on wheels.</p> <p>(c) reworded to clarify.</p>
Standard does not apply to certain claims or declarations	<p>Subclause 6(3) stated that claims about the risks or dangers of alcohol consumption or moderating alcohol intake are not claims to which the Standard applies.</p> <p>Clause 9 provided that if a claim to which the Standard applies is expressly permitted elsewhere in the Code, that claim must comply with clause 10 (therapeutic claims) but not the rest of the Standard.</p>	<p>Clause 5 has been developed to incorporate what was previously subclause 6(3) and clause 9 (i.e. the Standard does not apply to claims about the risks of alcohol consumption/moderation and to claims that are expressly permitted by another Standard).</p> <p>The requirement for claims expressly permitted by other Standards to comply with clause 10 (therapeutic claims) has been removed as it is unnecessary (according to clause 5, health claims of a therapeutic nature would need to be expressly permitted elsewhere in the Code to be permitted).</p> <p>A provision that the Standard does not apply to a declaration required by the Act (as defined in Standard 1.1.1) has also been added to clause 5. This means that any declarations required by an Act (such as the requirement to declare kilojoule content of certain foods) do not need to comply with Standard 1.2.7.</p>
Form of the food		Table reformatted.
Standard does not prescribe wording		A new clause (9) has been added to clarify that the actual wording to be used in nutrition content claims and health claims is not prescribed by the Standard.

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
New health claims are high level health claims		A new clause (16) has been added for the purposes of determining whether a new health claim should be added to Schedule 2. This clause deems the new health claim to be a high level health claim and a variation to add a health claim to Schedule 2 to be a high level health claims variation. This then provides that an application or proposal to assess the addition of the claim to the Schedule is to be done following the provision for a high level health claims variation outlined the Food Standards Australia New Zealand Act.
Claims about properties naturally present or absent	Clause 13 required that claims about a property of food naturally present or absent in other similar foods must refer to the food and not the brand of food.	This requirement has been removed from the Standard. The risk that this requirement was managing is considered to be regulated by fair trade legislation, which requires that representations are not misleading.
Claims comparing vitamin and mineral content	Clause 14: A claim that directly or indirectly compares the vitamin or mineral content of a food with that of another food must not be made unless expressly permitted.	The words 'unless expressly permitted' have been deleted as there is no express permission in the Code to compare the vitamin or mineral content of a food with that of another food.
Nutrition content claims about trans fatty acids	<p>Conditions for 'free' and 'reduced' trans fatty acids were accidentally left out of Schedule 1.</p> <p>Clause 20 prohibited claims about low and percentage free trans fatty acids.</p>	<p>Conditions for 'free' and 'reduced' trans fatty acids added to Schedule 1.</p> <p>Subclause 11(5) prohibits the use of any other descriptor in relation to trans fatty acids (including 'low' and 'x per cent free').</p>
Nutrition content claims about gluten and lactose	The conditions for these claims were included as clauses (21 and 22) rather than in Schedule 1 – Specific Nutrition Content Claims.	<p>The conditions for claims about gluten and lactose content have been moved to Schedule 1 with subclauses (11(5) and (7)) stating the prohibition on using descriptors other than free and low (or words of similar effect). The actual conditions and prohibition mentioned above remain the same as in 2009.</p> <p>Permission for 'high gluten' and 'contains gluten' claims added, to clarify that the existing permissions in Standard 1.2.8 are retained.</p>
Nutrition content claims about properties in Schedule 1	Although it was intended that any descriptor could be used in a nutrition content claim about the properties of food listed in Schedule 1 even if there were no conditions for using that descriptor in the Schedule, eg 'low carbohydrate', this was not clear from the drafting.	Subclause 11(8) has been added to clarify that for properties in Schedule 1, descriptors not listed in the Schedule can also be used (conditions in column 2 of the Schedule must be met).

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Nutrition content claims where there is a reference value	Clause 18 permitted nutrition content claims about properties of food not mentioned in Schedule 1 that had a reference value (RDI, ESADDI or value under the Table to subclause 7(8) of Standard 1.2.8).	This clause has been removed. It is not necessary as all properties of food with reference values are listed in Schedule 1.
Nutrition content claims where there is no reference value/about properties not in Schedule 1	Clause 19 only permitted claims about the presence or absence or numerical expressions of a property of food not listed in Schedule 1.	<p>This clause (12) has been redrafted to clarify the types of descriptors that cannot be used for nutrition content claims about properties of food not listed in Schedule 1. Reference to the 'presence or absence' has been removed, as this could have been interpreted to mean that the use of descriptors implying that a certain quantity of the property is present, eg 'good source' and 'low', are permitted.</p> <p>The reference to numerical expression has been replaced with a permission to state that the food contains a specified amount of the property in a specified amount of the food, eg 'contains 10 g of x per serve'.</p>
Slimming claims	Clause 23 referred to nutrition content claim about energy using the descriptor 'diet' (must not refer to slimming/suggest weight loss properties).	The intent is that any nutrition content claim about energy cannot refer to slimming/suggest weight loss, rather than 'diet' claims per se. The clause (now clause 14) has therefore been reworded to refer to nutrition content claims about energy (must not refer to slimming/suggest weight loss properties).
Presentation of nutrition content claims	Clause 25: A nutrition content claim must mention the property of the food and the form of the food to which the claim relates. The entire nutrition content claim must be presented in the one place.	Reworded to require the nutrition content claim to be presented together with the form of the food to which the claim relates, to align with the definition of a nutrition content claim.
Nutrition content claims about folic acid	Clause 31 permitted a nutrition content claim about any property of food about which a health claim could be made. This clause was developed to allow nutrition content claims about folic acid if a health claim is made about folic acid (as such claims were prohibited by the conditions for making claims about vitamins) but was generalised to encompass nutrition content claims about any property of food.	This clause (now clause 13) now refers to nutrition content claims about folic acid only. The associated conditions remain the same as in 2009 but have been drafted as described above for clause 12.

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
What must a health claim say	<p>Clauses 28 (general level health claims and 34 (high level health claims) referred to the elements of a health claim as the property of the food or the food, the specific health effect claimed, the population group, the dietary context statement and the form of the food to which the claim relates (if applicable).</p> <p>The elements of a health claim must be stated 'in the one place'.</p>	<p>To better align with the definition of 'health claim', the reference to elements of a health claim has been removed and instead, the health claim (ie the food/property of the food and the health effect) must be presented together with the population group, the dietary context statement and the form of the food to which the claim relates (if applicable).</p>
Split health claims	<p>Subclause 29(2) required that the split claim (ie the property of food and specific health effect) must comply with the wording conditions for health claims.</p>	<p>Clause 19: This specific requirement has been removed because it is implicit that this part of the claim must meet the wording conditions for health claims (as specified in clause 18).</p> <p>The wording of the clause has also been amended for clarity, whilst retaining the same intent.</p>
Divisions and Schedules relating specifically to health claims	<p>The Standard included separate Divisions and Schedules for general level and high level health claims.</p>	<p>As there is now no distinction between general level and high level health claims, the Divisions and Schedules have both been merged into one Division/Schedule.</p>
Dietary context statement requirements for health claims	<p>Paragraph 28(4)(a): the dietary context statement must meaningfully describe the dietary context that supports achievement of the health effect.</p>	<p>This requirement (2009) did not accurately reflect the intent outlined in the Final Assessment Report, ie. that the health claim must state that the health effect must be considered in the context of a healthy diet involving the consumption of a variety of foods (as appropriate to the food, property of food and health effect). The requirement has therefore been redrafted to require with the health claim, wording to the effect that the health effect must be considered in the context of a healthy diet involving the consumption of a variety of foods (subclause 18(3)).</p>
Small packages	<p>Exemptions for small packages from the requirement to declare the dietary context and the properties relied on for the food to meet the NPSC were accidentally left out of the Standard.</p>	<p>Exemptions for small packages from these labelling requirements have been added (subclauses 18(4) and 24(8) respectively).</p>
Endorsements	<p>An endorsement was defined as a nutrition content or health claim which can only be lawfully used or made by a supplier (subclause 38(1)).</p>	<p>This definition has been simplified and moved to clause 2.</p>

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
	<p>'Endorsing body' definition (within clause 38(1)): referred to a person, body or government agency.</p>	<p>This has been replaced with a definition in clause 2 where 'person, body or government agency' has been replaced with 'entity'.</p> <p>The requirements for the endorsing body to have a nutrition or health purpose or function and operate on a not-for-profit basis have been moved into the definition of endorsing body in clause 2.</p>
	<p>Paragraph 38(1)(c) stated generally that the endorsing body was not related to the supplier using the endorsement, and examples of how a supplier could be related to an endorsing body were provided in subclause 38(2).</p>	<p>This generality has now been removed and the clause (21) now defines the specific situations in which an endorsing body is related to the supplier.</p> <p>That the endorsing body must also be independent of and free from influence by a supplier has been added, to strengthen the requirement that the endorsing body is not related to the supplier using the endorsement.</p>
	<p>Subclause 39(3) permitted an endorsement to refer to a serious disease only if that serious disease is part of the name of the endorsing body.</p>	<p>It has been clarified that the endorsement can only refer to a serious disease within the name of the endorsing body, if the serious disease is part of the name of the endorsing body (subclause 22(2)).</p>
NPSC	<p>Division 9 included the NPSC categories and the scores for foods to meet the NPSC.</p>	<p>Definitions ('meets the nutrient profiling scoring criterion' and 'nutrient profiling score') and Schedule 3 are now used to describe the NPSC categories and scores for foods to meet the NPSC.</p>
Cause-related marketing statements	<p>Division 7 provided conditions for cause-related marketing statements.</p>	<p>This Division and associated conditions have been removed from the draft Standard. See section 4.3 of this paper.</p>
Dietary information	<p>Division 8 provided conditions for dietary information.</p>	<p>This Division and associated conditions have been removed from the draft Standard. See section 4.3 of this paper.</p>
Declaration of fvnI for food scoring V points under NPSC	<p>Subclause 51(4) required the percentage of all fvnI (fruits, vegetables, nuts and legumes etc) to be declared on the label of a food that must meet the NPSC to make a claim.</p>	<p>This requirement has been amended to require only the fvnI that are relied upon for the food to meet the NPSC, eg if a food contains 35% fruit, 6% nuts and 2% spice, but doesn't need the spice component to pass the NPSC, only the percentage of fruit and nuts need to be declared, not the percentage of the spice.</p>

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Schedule 1 – nutrition content claims		
Glycaemic index claim conditions	Low – GI 55 and below Medium – GI between 56 and 69 High – GI 70 and above	The cut-offs for low, medium and high GI measures have been clarified: Low – GI 55 or below Medium – GI at least 56 and not exceeding 69 High – GI 70 or above.
Glycaemic load claims	No specific conditions. The claim could not use descriptors such as 'low'.	Food carrying a glycaemic load nutrition content claim must meet the NPSC. This new requirement has been added for consistency with GI claims, where foods carrying such claims must also meet the NPSC. Retained prohibition on the use descriptors.
Conditions for claims about vitamins and minerals in relation to foods standardised in Standard 2.9.2 - Foods for Infants and Standard 2.9.3 – Formulated Meal Replacements and Formulated Supplementary Foods	The conditions in Schedule 2 for health claims about vitamins and minerals required the food to meet the general conditions for making a nutrition content claim about the vitamin or mineral in Schedule 1. However the conditions in Schedule 1 did not apply to foods standardised in Standards 2.9.2 and 2.9.3, hence the conditions for making a health claim about these foods was not clear.	The intent was that for Special Purpose Foods, the conditions in the applicable Special Purpose Food Standard apply, not the conditions in Standard 1.2.7. Therefore specific conditions have been inserted into Schedule 1 to specify the conditions that must be met when making a health claim about these foods. (Note that if making a nutrition content claim that is expressly permitted in a Special Purpose Food Standard, the conditions for making that claim specified in that Standard must be met.)
Vitamin and mineral claims		The conditions for claims about sodium and potassium have been clarified by stating in Column 1 that the general conditions for vitamin and mineral claims do not apply to claims about potassium and sodium.
Schedule 2		
Format of Table in Schedule 2	Column 4 contained 'Population and context claim statements'	Added a column, splitting dietary context and conditions into two columns, for clarification.
	Healthy diet listed as part of dietary context for most food-health relationships	Removed words 'healthy diet' and 'variety of foods' from column and replaced with requirement applying to all health claims in paragraph 18(3)(a), that the dietary context statement must state that the health effect must be considered in the context of a healthy diet involving the consumption of a variety of foods.
Potassium	Listed in the 'Minerals' section of table	Moved to the 'Others' as food-health relationship is about the electrolyte function.

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Calcium and osteoporosis risk or osteoporosis fracture risk	Specific health effect contained 'or' options	Split the two options into separate rows
Calcium and vitamin D and osteoporosis risk or osteoporosis fracture risk	Specific health effect contained 'or' options	Split the two options into separate rows
Sodium or salt and reduction OR maintenance of blood pressure	Specific health effect contained 'or' options	Split the two options into separate rows
Phytosterols	Phytosterol esters and tall oil phytosterols	<p>Amended terminology 'phytosterols' to reflect terminology used in the current version of the Code.</p> <p>Also amended food-health relationship wording from 'reduces dietary and biliary cholesterol absorption' to 'reduces blood cholesterol' - based on comments in 2009 submissions.</p>
Energy and contributes to weight loss or weight maintenance		Set an upper limit on energy (kJ) in formulated meal replacements to be eligible for claim based on weight loss or maintenance relationship - based on comments in 2009 submissions.
Folic acid (but not folate) and normal neural tube defects in the developing foetus		<p>Minor amendments to the dietary context wording</p> <p>Removed exclusions for foods standardised by Part 2.7 as a blanket prohibition already applies to foods containing alcohol.</p>
Folic acid (but not folate) and reduced risk of foetal neural tube defects	<p>Specific health effect column contained the following words:</p> <p>Reduced risk of foetal neural tube defects healthy diet with a high intake of calcium from a variety of foods and adequate vitamin D status.</p>	<p>Removed error in the health effect column.</p> <p>Minor amendments to the dietary context wording.</p> <p>Removed exclusions for foods standardised by Part 2.7 as a blanket prohibition already applies to foods containing alcohol.</p>
Beta-glucan	Specific health effect 'reduces dietary and biliary cholesterol absorption'	Amended wording of specific health effect to 'reduces blood cholesterol' to simplify relationship.

Topic	Draft Standard 1.2.7 in March 2009 Consultation Paper	New draft Standard 1.2.7 (February 2012)
Carbohydrate and contributes energy for normal metabolism	Table contained two separate rows for the same property of food and specific health effect for a mixture of foods and population groups.	Minor formatting – merged the two rows for general population and separated the relationship relevant to young children. Amended wording of conditions for clarification.
Protein and necessary for normal growth and development	Column 4 listed population as ‘for older infants’	Clarified for infants from 6 -12 months
Schedule 3		
High level health claims	Schedule 3 listed the permitted high level health claims	Permitted high level health claims have been incorporated into Schedule 2, as the concept of general level and high level health claims has been removed from the Standard. Schedule 3 now lists the numbers that the nutrient profiling score must be less than, for the three categories of food (previously in clause 49).
Schedule 4		
V points for diced or cut fvnl	V points can be scored for fvnl that have been ‘reduced in size’.	The reference to ‘reduced in size’ has been clarified and now refers to ‘diced or cut (or otherwise reduced in size)’.
V points for coconut	The brand name ‘cophā’ was used instead of coconut oil.	Cophā has been amended to coconut oil.
V points for concentrated fruit and vegetables	Items 4(6)(c) and 4(8) referred to concentrated fvnl (fruits, vegetables, nuts and legumes).	Concentrated fvnl has been replaced with ‘concentrated fruit or vegetables’ as only fruits and vegetables can be concentrated, not all fvnl. This reflects the approach elsewhere in this Schedule.
Protein points	2 points were scored for protein content of >3.2g per 100 ml/g rather than ≥3.2g per 100 ml/g. This was a mistake and does not reflect the level in the NPSC calculator or in the drafting provided in the Final Assessment Report.	>3.2g per 100ml/g amended to ≥3.2g per 100 ml/g.
Amount of saturated fatty acids, total sugars and sodium in Table 1	Expressed as saturated fatty acids, total sugars and sodium	As it is expected that the amounts of these nutrients is the same as the amount declared in the NIP, which is an average amount, the word ‘average’ has been inserted before each of these nutrients.

Table 2: Summary of amendments to other Standards, since March 2009 consultation, further to structural and minor technical changes

Standard and topic	Drafting in March 2009 Consultation Paper	New drafting February 2012
Standard 1.2.8 Claim requiring nutrition information		A declaration that is required by the Act (as defined in Standard 1.1.1) has been excluded from a 'claim requiring nutrition information' in clause 4. This means that a declaration made as a requirement of an Act that could be a nutrition content claim, e.g. a declaration of the kilojoule content of a food as required by some Food Acts, will not trigger the requirements in clause 4 for nutrition information panels. This retains the current approach in Standard 1.2.8, whereby a declaration required by the Act is not a nutrition claim (see existing definition of nutrition claim in clause 1).
Standard 1.2.8 Declaration on small packages	Subclause 8(4) specified that the quantities must be set out as minimum or maximums unless otherwise specified.	Subclause 8(4) has been amended so that the quantities can be declared as a minimum, maximum or average quantity, unless it is specified that the average quantity must be declared. This maintains consistency with the permissions for these declarations on other packages.
Standard 1.2.8 Claims on food to be prepared or consumed with other food	The requirement for a third column in the nutrition information panel in accordance with clause 11 applied to all foods required to be prepared and consumed according to directions, not just those required to be prepared and consumed with other foods.	Clause 11A revised to clarify that the third column in the nutrition information panel only needs to be included if the food is required to be prepared with additional foods. Conditions in clause 11 replicated in clause 11A and discretionary element removed. An error in clause 11 in the Code is corrected (missing word).
Standard 1.2.8 Voluntary declaration of dietary fibre in nutrition information panel	Specified that voluntary declaration of less than 2 g of dietary fibre in the nutrition information panel was not a nutrition content claim.	Amended to clarify that this applied to foods containing less than 2g dietary fibre per serving (subparagraph 19(3)(b)(i)).
Standard 1.2.8 Voluntary declaration of lactose in the nutrition information panel	No explicit permission for voluntary declaration of lactose in the nutrition information panel provided.	Added that voluntary declaration of lactose in the nutrition information panel is not a nutrition content claim, to clarify that lactose can be declared in the panel without having to meet claim conditions (subparagraph 19(3)(b)(iii)). Such a declaration is not currently prohibited by the Code.

Standard and topic	Drafting in March 2009 Consultation Paper	New drafting February 2012
Standard 1.3.2 Formula for maximum vitamin and mineral claims		Formatting of formula revised.
Standard 2.6.2, subclause 2B(4)	Refers to 'a nutrition claim for the purposes of Standard 1.2.8'.	Amended to 'a nutrition content claim for the purposes of Standard 1.2.7'.
Standard 2.10.2 Editorial note following subclause 5(4)	Editorial note refers to Standard 1.2.8 in relation to requirements where nutrition claims are made.	Editorial note has been deleted as it is considered unnecessary.

Attachment D – Template for submissions – Proposal P293 – Nutrition, Health & Related Claims

To assist us in compiling submissions, please complete the tables below.

Table 1: Revised draft Standard 1.2.7

Submitter name:	
<p>1. Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of ‘user-friendliness’.</p>	
<p>If not, please provide specific details in the table below. Ensure that the relevant clause number, schedule number or consequential variation item number that you are commenting on is clearly identified in the left column. Lines may be added if necessary.</p>	
Clause number	Comment
Schedule	Comments
Consequential variations	Comments

Table 2: Fat-free and % fat-free claims

Submitter name:	
Question	Comment
<p>2. What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims?</p> <p>FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance.</p> <p><i>(Note: Please provide documented or validated evidence where possible)</i></p>	
<p>3. Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat-free claims)? Please give your reasons.</p>	
<p>4. Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) (refer section 8) as follows:</p> <p>a. Which option do you support and why?</p> <p>b. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)? Where possible, provide information and evidence to support your suggested threshold value.</p> <p>c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.</p>	