

Proposal P293 – Nutrition, Health & Related Claims Consultation March 2012

The Department of Health and Human Services Tasmania (the Department) appreciates the opportunity to comment on the latest consultation paper for Proposal P293 Nutrition, Health and Related Claims.

The Department notes that that no evidence has been presented that nutrition, health and related claims will inform consumers or improve health. The potential for nutrition, health and related claims to confuse and mislead consumers has been demonstrated. The Department supports regulatory measures that will mitigate these risks.

In general, the Department considers the proposed changes to the structure and revised text of the draft Standard 1.2.7 – Nutrition, Health and Related Claims has improved clarity which will assist industry to comply with and jurisdictions to enforce the Standard.

Of the Options suggested in relation to fat free and %fat free claims, the Department supports Option 3, that fat free and %fat free claims be regulated with additional regulatory requirements. The Department believes option 3(a) that fat free and % fat free claims should only be permitted on foods that meet the nutrient profiling scoring criterion is the most practical solution. However, the Department has concerns with all options presented as they do not address the issues adequately and are likely to create inconsistencies in treatment of different products within the standard.

In response to specific questions on Revised draft Standard 1.2.7

Submitter name: Department of Health and Human Services Tasmania	
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’.	
The Department believes the revised drafting of Standard 1.2.7 generally accurately captures the regulatory intent. It is more user-friendly due to increased clarity and it will help enable more streamlined and efficient enforceability, both within and between jurisdictions.	
Some minor issues on specific clauses are addressed below	
Clause number	Comment
2 interpretation food groups	Nuts, seeds and poultry are not classified in the food groups. In the Australian Dietary guidelines these would be considered with meat, fish, eggs and legumes. However, the nutrient profiling scoring criterion calculator groups nuts and seeds in the fruit and vegetables category where they are eligible for V points. Further clarification is required.
Schedule	Comments
Schedule 1	Diet There is some ambiguity in relation to whether foods with (i) <i>the average energy content of the food is no more than 80kj per 100mL for liquids or 170kj per 100g for solid food</i> also need (b) the food meets the NSPC.
	Protein typographical error in increased protein conditions

Consequential variations	Comments
Standard 1.2.8 Clause 7(2) Daily Intake Information	<p>The proposed variation to subclause 7(2) modifies the statement required to accompany percentage daily intake information included in a panel. The statement currently prescribed is “<i>*Percentage daily intakes are based on an average adult diet of 8700 kJ. Your daily intakes may be higher or lower depending upon your energy needs.</i>”</p> <p>The proposed variation provides that either of the following statements must be included – “<i>based on an average adult diet of 8700KJ</i>” or “<i>Percentage daily intakes are based on an average adult diet of 8700KJ</i>”.</p> <p>The shorter statement reduces the comprehensibility of this information. For completeness of information the Department supports retention of the statement “<i>Your daily intakes may be higher or lower depending upon your energy needs</i>” if Daily Intake Information is included on the label.</p> <p>There is evidence that consumers do not understand energy/kilojoules[1-3]. Consumers may perceive that they need to achieve an energy intake of 8700kJ and nutrient levels (particularly sodium, saturated fat and sugar) which will exceed individuals’ requirements. While individuals with higher requirements may also perceive they need energy and nutrient levels that are insufficient, the primary public health nutrition concerns are related to overconsumption.</p>
Standard 1.28 Clause 7A (4)	<p>Clause 7A(4) requires clarification. There is an inconsistency in the drafting with the use of <i>recommended dietary intake (RDI)</i> and <i>percentage recommended daily intake</i>. Attachment B- Explanatory Information refers to recommended dietary intake (RDI)</p> <p>If clause 7A(4) refers to %RDI, clarification is required that the RDI are those specified in Clause 8 in Standard 2.9.2.</p> <p>The current wording in clause 7A(4) could be interpreted as referring to the %DI specified in Clause 7(2) because of the use of <i>recommended daily intake</i> as opposed to <i>recommended dietary intake</i>. Including percentage daily intake information on food for infants standardised in part 2.9.2 would be meaningless. Infants aged 6-12 months have an estimate energy requirement of 2500-3500kJ [4]. Percentage daily intake information is based on an average adult energy of 8700kJ.</p>

Standard 1.2.8 Clause 7B	<p>The addition of Clause 7B Daily Intake Information or Recommended Dietary Intakes presented outside of the panel provides legislative support for the existing Australian Food and Grocery Council Daily Intake Guide labelling scheme. This will enable supporters of this labelling to continue to use it without fear of contravening the nutrition content claims requirements.</p> <p>The Department notes that there are concerns with individuals ability to use and understand the Daily Intake Guide [2, 3, 5, 6] as a front-of-pack labelling scheme.</p> <p>The Department believes that consideration of this amendment should not be made in advance of impending work on front-of-pack labelling agreed to by the COAG Legislative Forum on Food Regulation, due to be reported on by December 2012.</p>
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Fat-free and % fat-free claims

Submitter name: Department of Health And Human Services Tasmania	
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>Consumers look at fat content FSANZ consumer attitudes survey indicates that after the use-by/best before date the fat content is the most commonly referred-to information on food labels [7]. Internationally, the nutrients most commonly sought on food labels were fat [8] indicating its salience and relevance to consumers.</p> <p>Consumers misunderstand nutrient claims In practice, many consumers rely solely on health claims, not the nutrition information provided. There have been mixed reports as to whether consumers can determine whether claims are valid[8].</p> <p>Younger, female, educated and white participants are more likely to understand nutrition labels. Health conscious and frequent label users also demonstrate understanding of nutrition labels[8].</p> <p>However, Gorton et al found percentage fat free and no added sugar nutrition content claims on food are frequently misinterpreted by shoppers as meaning the food is healthy overall and appear to be particularly misleading for Maori, Pacific, Asian and low-income groups [9].</p> <p>An Irish study of consumer understanding of nutrition claims suggested high levels of self-reported understanding but found evidence of positivity bias and misinterpretation [10].</p> <p>Dixon et al found nutrient claims lead parents to</p>

	<p>perceive energy dense nutrient poor products as more nutritious than similar products without claims[11].</p> <p>Consumers who do not regularly use nutrition information may interpret nutrition claims to have meaning beyond the scope of the claim itself [12].</p> <p>Data indicated that low fat/calorie claims in food advertising can also lead people to perceive that such food products are nutritious and healthy overall[13].</p> <p>Most people don't understand the energy values or what contributes to them[14].</p> <p>Other factors impacting product perceptions Purchasing behaviour is influenced by a number of factors including price, taste, convenience and perceived healthiness of a product.</p> <p>Dean et al propose the main factor influencing perceived healthiness and intention to buy a product with a claim is personal relevance[15].</p> <p>Perceptions related to health claims also depend on the perceptions of the product [15].</p> <p>Previous experience with products with health claims and interest in healthy eating promoted the utility of all claims, regardless of whether they were health or nutrition claims [16].</p> <p>Consumers connect newly encountered nutrition information with both other nutrition information and their perceptions of the overall healthiness of food products[13].</p> <p>Nutrient claims influence purchase /consumption Claims such as low fat influence consumption [17]. Wansink and Chandon found low fat nutrition labels increase food intake by increasing perceptions of the appropriate serving size and decreasing consumption guilt. Low-fat labels lead consumers to over-eat snack foods[17].</p> <p>Labelling snacks as low fat increases food intake during a single consumption occasion by up to 50%[17].</p> <p>Nutrition label viewing is related to food purchasing, and labels are viewed more when a food's healthfulness is ambiguous[18]</p>
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	<p>Relevance influences perceptions of benefit and willingness to buy products with health claims[16]</p> <p>Nutrition labels are perceived as a highly credible source of information and many consumers use nutrition labels to guide their selection of food products[8].</p> <p>Low fat claims are associated with higher brand loyalty[19] resulting in purchasing behaviour regardless of comprehension or relevance of the claim.</p> <p>Conclusion Consumers are interested in fat content of foods and content claims on fat are likely to have personal relevance. Particular subpopulations are likely to misinterpret content claims such as percentage fat free and perceive such foods to be nutritious and healthy overall. These claims influence consumption, indicating that consumers are purchasing foods because they are being misled by fat-free or % fat-free claims.</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>Additional regulatory requirements are supported for all nutrition content claims. Picking out fat free and %fat free but not low fat or other nutrition claims would appear to be inconsistent.</p> <p>Option 1 Status quo The status quo does not address the concerns raised by Ministers that consumers may be misled by content claims such as fat-free.</p> <p>However the DHHS does support efforts to increase consumer and health professional understanding through a comprehensive education campaign</p> <p>Option 2 Voluntary Action through a code of practice Option 2 is not supported because:</p> <ul style="list-style-type: none"> • The existing code of practice on nutrient content claims (CoPoNC) has not been an effective mechanism by which to manage claims. • Where the goals of code of practice and goals of the signatories to the code of practice are not aligned there is unlikely to be any effective management. • If an industry code of practice was an appropriate response then industry would have promoted CoPoNC and likewise, if CoPoNC had been effective there would not be a push to put content claims in the Food Standards Code.

	<ul style="list-style-type: none"> • Codes of Practice rely on wide uptake by industry and for example, if there is wide uptake by local industry but importers choose not to comply consistently, this does not promote fair trade. • There is also confusion for manufacturers when some labelling requirements are in the Food Standards Code and other recommendations are found in CoPoNC. <p>Option 3 Regulate with additional conditions for fat free and % fat free claims Additional regulation for fat free and % fat free is likely to create inconsistencies with other nutrient content claims. However this option can address some of Ministers concerns.</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>	<p>4a Which option do you support and why?</p> <p>The options provided only address part of the key concerns. Foods which make a claim by highlighting a single attribute that may be considered to reduce risk while remaining silent on other attributes which may increase risk of poor nutritional outcomes (and therefore resultant health effects) may mislead consumers as to their nutrition value.</p> <p>Option 3a: Require foods to meet the nutrient profiling scoring criteria</p> <p>Option 3a is likely to create inconsistencies with the treatment of other nutrient content claims.</p> <p>However there are some comparative claims such as 'diet' (in relation to energy), which are required to undergo nutrient profiling scoring criteria in order to be eligible to make the claim. Fat free and %fat free could be considered comparative claims similar to 'diet' claims for consistency.</p> <p>This option avoids increasing the complexity of the Standard for industry compliance and jurisdictional enforcement by using existing eligibility criteria for fat free and %fat free claims.</p> <p>Options 3b, 3c, 3d focus on fat free claims and sugar content. Focusing on sugar content does not assess the overall nutritional quality of the food. If just focussing on the negative nutrients FSANZ nutrient profiling scoring criterion identified energy, saturated fat, sugar and sodium for consideration in terms of eligibility for health claims. These options do not address energy content from ingredients other than sugar or high sodium content.</p> <p>Option 3b: require a disclosure statement if</p>

	<p>above a sugar concentration threshold</p> <p>DHHS does not support a regulatory measure that only imposes a sugar threshold for fat free/%fat free claims.</p> <p>This would be inconsistent with other claims undergoing nutrient profiling scoring criteria. It also does not address concerns with high energy or sodium in products that make fat free, %fat free claims.</p> <p>Consumer perception of healthiness of food is driven by the declared presence of protein, fibre, calcium and vitamin C and by the declared total absence of saturated fat and sodium. Total and added sugar contribute less to the perception of healthiness[20].</p> <p>Option 3c Not permit claims on certain products by category</p> <p>DHHS does not support limiting fat free/ %fat free claims by category. Categories of food are technically difficult to define. FSANZ has generally avoided using categories of food in managing health claims. Again focusing only on high sugar foods such as confectionary fails to address concerns with high sodium and high energy foods.</p> <p>Option 3c Not permit claims on foods above a sugar concentration</p> <p>DHHS does not support limiting fat free/ %fat free claims by setting a sugar threshold. This would enable a product to potentially make a health claim but not a fat free claim.</p> <p>4b What is an appropriate sugar concentration threshold for options 3(b) and 3(d)?</p> <p>4c Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims?</p> <p>There is some merit in disclosure statements when nutrients reach a certain threshold. This could be considered as an additional regulatory approach if nutrient profiling is not considered suitable.</p> <p>This approach would enable claims to be made but provide an alert to consumers when sugar, sodium or energy reaches a specific threshold that is consistent with the nutrient profiling cut points. This option would require extensive modelling to ensure compatibility with the existing proposal. The wording of the disclosure statements would also need to be tested to ensure that it is achieving its</p>
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	<p>intent.</p> <p>The paper is silent on low fat claims. Draft Standard I.2.7 proposes that low fat claims and %fat free claims should have less than 3 g fat per 100g or less than 1.5 ml per 100ml. The same foods are eligible to make a %fat free or low fat claims and these foods should be treated in the consistently.</p>
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References

1. Garrett, S., *Research literature relating to nutrition labelling and product selection at point of purchase: a short review and conceptual treatment* 2007, UK Food Standards Agency.
2. TNS Social Research, *Qualitative research into the interpretation of %DI and %RDI labelling: a research report*. 2006, Food Standards Australia New Zealand: Canberra.
3. Carter, O., B. Mills, and T. Phan, *An independent assessment of the Australian food industry's Daily Intake Guide 'Energy Alone' label*. Health Promotion Journal Of Australia: Official Journal Of Australian Association Of Health Promotion Professionals, 2011. **22**(1): p. 63-67.
4. National Health and Medical Research Council, *Nutrient reference values for Australia and New Zealand, including recommended dietary intakes*. 2006, Canberra: Commonwealth of Australia.
5. Kelly, B., et al., *Consumer testing of the acceptability and effectiveness of front-of-pack food labelling systems for the Australian grocery market*. Health Promot. Int., 2009. **24**(2): p. 120-129.
6. Gorton, D., et al., *Nutrition labels: a survey of use, understanding and preferences among ethnically diverse shoppers in New Zealand*. Public Health Nutrition, 2009. **12**(9): p. 1359-1365.
7. Food Standards Australia New Zealand, *Consumer attitudes survey 2007: A benchmark survey of consumers' attitudes to food issues*, FSANZ, Editor. 2008, FSANZ: Canberra.
8. Campos, S., J. Doxey, and D. Hammond, *Nutrition labels on pre-packaged foods: a systematic review*. Public Health Nutrition, 2011. **14**(08): p. 1496-1506.
9. Gorton, D., et al., *Interpretation of two nutrition content claims: a New Zealand survey*. Australian and New Zealand Journal of Public Health, 2010. **34**(1): p. 57-62.
10. Lynam, A.-M., A. McKeivitt, and M.J. Gibney, *Irish consumers' use and perception of nutrition and health claims*. Public Health Nutrition, 2011. **14**(12): p. 2213-2219.
11. Dixon, H., et al., *Parent's responses to nutrient claims and sports celebrity endorsements on energy-dense and nutrient-poor foods: an experimental study*. Public Health Nutrition, 2011. **14**(06): p. 1071-1079.
12. Labiner-Wolfe, J., C.-T. Jordan Lin, and L. Verrill, *Effect of low-carbohydrate claims on consumer perceptions about food products' healthfulness and helpfulness for weight management*. Journal Of Nutrition Education And Behavior, 2010. **42**(5): p. 315-320.
13. Paek, H.-J., H.J. Yoon, and T. Hove, *Not all nutrition claims are perceived equal: anchoring effects and moderating mechanisms in food advertising*. Health Communication, 2011. **26**(2): p. 159-170.
14. Watson, W., et al., *How well do Australian shoppers understand energy terms on food labels?*. Public Health Nutrition, 2012. **In press**.
15. Dean, M., L. Lähteenmäki, and R. Shepherd, *Nutrition communication: consumer perceptions and predicting intentions*. The Proceedings Of The Nutrition Society, 2011. **70**(1): p. 19-25.
16. Dean, M., et al., *Perceived relevance and foods with health-related claims*. Food Quality and Preference, 2012. **24**(1): p. 129-135.
17. Wansink, B. and P. Chandon, *Can "low-fat" nutrition labels lead to obesity?* Journal of Marketing Research, , 2006. **43**,: p. 605-617.
18. Graham, D.J. and R.W. Jeffery, *Predictors of nutrition label viewing during food purchase decision making: an eye tracking investigation*. Public Health Nutrition, 2012. **15**(02): p. 189-197.
19. Krystallis, A. and P. Chrysochou, *Health claims as communication tools that enhance brand loyalty: The case of low-fat claims within the dairy food category*. Journal of Marketing Communications, 2010. **17**(3): p. 213-228.
20. Drewnowski, A., et al., *Testing consumer perception of nutrient content claims using conjoint analysis*. Public Health Nutrition, 2010. **13**(05): p. 688-694.