

**24 March 2015**  
**[04–15]**

## **Call for submissions – Application A1101**

### **Commencement of Dietary Fibre Claim Provisions**

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FSANZ has assessed an Application made by the Australian Food and Grocery Council to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims for 12 months, from and including 18 January 2016 until and including, 17 January 2017. Following the assessment, FSANZ has prepared two draft food regulatory measures - a new draft Standard and a draft consequential variation to Standard 1.2.7. Pursuant to section 31 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measures.

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

All submissions on applications and proposals will be published on our website. We will not publish material that is provided in-confidence, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. 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, certain 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](mailto: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) 5 May 2015**

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. Questions about making submissions or the application process can be sent to [standards.management@foodstandards.gov.au](mailto:standards.management@foodstandards.gov.au).

Hard copy submissions may be sent to one of the following addresses:

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## Executive summary

FSANZ has assessed an Application from the Australian Food and Grocery Council requesting a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the *Australia New Zealand Food Standards Code* for 12 months, from and including 18 January 2016, until and including, 17 January 2017.

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period. It imposed qualifying criteria for nutrition content claims about dietary fibre. FSANZ agreed to reconsider these criteria in 2013 following industry concern that they would adversely affect industry's ability to make nutrition content claims about dietary fibre. Some food businesses then elected to wait until this work was completed rather than proceeding with labelling and/or formulation changes required for compliance with the qualifying criteria. Other businesses elected to proceed with these changes before the outcome was known. After public consultation, FSANZ decided to maintain the qualifying criteria in Standard 1.2.7 and notified stakeholders of this decision in December 2013.

The Applicant asserts that, as FSANZ's decision on the qualifying criteria was not made until late 2013, 11 months after the gazettal of Standard 1.2.7, the transition period available for nutrition content claims about dietary fibre was effectively shortened by 11 months.

After accepting the Application, FSANZ undertook an initial round of public consultation in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application. Submissions were received from 10 stakeholders, with three providing cost data. From the information available, it appears that for those food businesses that delayed transitioning to the requirements for nutrition content claims about dietary fibre in Standard 1.2.7 pending the FSANZ consideration of the qualifying criteria in 2013, compliance costs could be minimised if the end of the transition period was delayed for 12 months. There was no opposition to the proposed delay from the five industry submitters. A further two submitters also supported the proposed delay. Three submitters did not support the delay stating that they considered two years from December 2013 was sufficient time for food businesses to make labelling and/or product changes.

Clause 11 of Standard 1.2.7 imposes the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre listed in Schedule 1 of that Standard. FSANZ is proposing a new draft Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims, to delay the requirement in clause 11 to comply with the qualifying criteria for nutrition content claims about dietary fibre<sup>1</sup>. The transitional period established by draft Standard 1.1A.8 will commence on 18 January 2016 and continue until the Standard ceases to have effect on 1 March 2016, which is the date on which the revised Code takes effect. The revised Code will also be amended before that date, so that the revised Code continues the above transitional arrangement from 1 March 2016 until and including 17 January 2017. Food businesses will be required to comply with all other aspects of Standard 1.2.7, including provisions for health claims about dietary fibre, from 18 January 2016.

In preparing these draft food measures, FSANZ has had regard to the Ministerial *Policy Guideline on Nutrition, Health and Related Claims*, which states that a regulatory system for health, nutrition and related claims should *allow for all transition issues to be clearly identified and steps taken to justify and to minimise costs of change and transition*.

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<sup>1</sup> For the purposes of this report the term *qualifying criteria for nutrition content claims about dietary fibre* refers to the minimum amount of dietary fibre required in food carrying *source*, *good source*, *excellent source* (or synonyms), and *increased* claims (in relation to the amount of dietary fibre in the reference food).

# 1 Introduction

## 1.1 The Applicant

The Application was made by the Australian Food and Grocery Council (AFGC). The AFGC is the national organisation representing Australia's food, drink and grocery manufacturing industry. The AFGC has the support of the following organisations for the Application: Grains & Legumes Nutrition Council, the New Zealand Food & Grocery Council and the Food and Beverage Importers Association.

## 1.2 The Application

The Application, received from the AFGC on 15 August 2014, seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims of the *Australia New Zealand Food Standards Code* for 12 months, from and including 18 January 2016 until and including 17 January 2017.

## 1.3 The current Standard

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period. Food businesses must comply with the new Standard, from and including, 18 January 2016.

Clause 11 of Standard 1.2.7 generally requires nutrition content claims to comply with the conditions listed in Schedule 1 of that Standard. Schedule 1 includes conditions for nutrition content claims about dietary fibre. Foods carrying *source*, *good source* or *excellent source* (or synonyms of these) claims about dietary fibre must have 2 g, 4 g and 7 g dietary fibre per serving, respectively (see Table 1). In addition, foods carrying *increased* claims must contain at least 25% more dietary fibre than the same quantity of reference food (the reference food must contain at least 2 g of dietary fibre per serving). These qualifying criteria were developed during Proposal P293 – Nutrition, Health & Related Claims.<sup>2</sup>

For the purposes of this report the term *qualifying criteria for nutrition content claims about dietary fibre* refers to the minimum amount of dietary fibre required in food carrying *source* (2 g dietary fibre per serving), *good source* (4 g dietary fibre per serving), *excellent source* (7 g dietary fibre per serving) (or synonyms), and *increased* claims (reference food must contain at least 2 g dietary fibre per serving).

## 1.4 Justification for the Application

Before the gazettal of Standard 1.2.7, there were no qualifying criteria for nutrition content claims about dietary fibre in the Code. A voluntary code of practice, the 1995 *Code of Practice on Nutrient Claims in Food Labels and in Advertisements* (CoPoNC) (National Food Authority, 1995), which included qualifying criteria for dietary fibre claims (see Table 1) was available in Australia. The *New Zealand Food Regulations (1984)* included qualifying criteria for *good source* claims only (4 g dietary fibre per serving); however these regulations were revoked in 2002.

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<sup>2</sup> Reports prepared for Proposal P293 are available at <http://www.foodstandards.gov.au/code/proposals/Pages/proposalp293nutritionhealthandrelatedclaims/Default.aspx>

**Table 1: Qualifying criteria for nutrition content claims about dietary fibre**

Descriptors for the dietary fibre nutrition content claim	CoPoNC qualifying criteria	Standard 1.2.7 qualifying criteria
	g dietary fibre per serving	
Source	1.5	2
Good source	3	4
Very high or Excellent source	6	7
Increased	reference food contains at least 1.5 g per serving and the food contains at least 25% more dietary fibre than the same quantity of reference food	reference food contains at least 2 g per serving and the food contains at least 25% more dietary fibre than the same quantity of reference food

In 2012, towards the end of the review of Standard 1.2.7, several breakfast cereal and bread manufacturers expressed concern that the qualifying criteria were set above the criteria in CoPoNC and that this would affect their ability to make nutrition content claims about dietary fibre. In response to this concern and after the gazettal of Standard 1.2.7, FSANZ further considered the issue in 2013.

Following public consultation in mid-2013, FSANZ decided to maintain the qualifying criteria in Standard 1.2.7 and notified stakeholders of this decision in December 2013.<sup>3</sup>

As mentioned above, Standard 1.2.7 was gazetted in January 2013 with a three-year transition period, which ends on 18 January 2016. At that point, industry must comply with the Standard's qualifying criteria for nutrition content claims about dietary fibre.

The Applicant asserts that, as FSANZ's further consideration of the qualifying criteria was not completed until late 2013, the transition period available for nutrition content claims about dietary fibre was effectively shortened by 11 months. The Applicant therefore seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre for 12 months, that is, until and including 17 January 2017.

## 1.5 Reasons for accepting the Application

The Application was accepted for assessment because:

- FSANZ was satisfied that information requirements relating to regulation impact would best be met by consultation with industry and the public following the Application's acceptance;
- the Application otherwise complied with the procedural requirements under subsection 22(2); and
- the Application related to a matter that warranted the variation of a food regulatory measure.

## 1.6 Procedure for assessment

The Application is being assessed under the General Procedure.

<sup>3</sup> The consultation paper and final report are available at <http://www.foodstandards.gov.au/industry/labelling/Pages/Qualifying-criteria-for-nutrition-content-claims-about-dietary-fibre.aspx>

## 2 Summary of the assessment

### 2.1 Summary of issues raised in submissions

An initial round of public consultation was undertaken in October 2014 to gather cost-benefit information and seek stakeholder views to inform the assessment of the Application in accordance with the FSANZ Act, particularly paragraphs 29(2)(a) and (b).

Ten submissions were received.<sup>4</sup> Five were from food businesses or bodies representing food businesses, three were from public health organisations and two were from jurisdictions. Of the ten submitters, seven supported the proposed delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre.

A summary of issues raised by submitters and the FSANZ response are provided in Table 2. Cost data provided by three submitters are provided in section 2.3.

Overall, those in support of the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre noted that industry's decision to await the FSANZ review of the qualifying criteria in 2013 led to an 11 month delay in changing products and/or labels. Therefore, submitters consider an additional 12 months transition time is needed to reduce compliance costs, particularly for anticipated product withdrawals and packaging write off (refer to section 2.3 for details).

Submitters not supporting the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre considered that two years from December 2013 should be sufficient time to make product and/or label changes to comply with Standard 1.2.7. They also noted that label changes could likely be combined with other labelling changes made over the two year period, thereby minimising the cost of compliance.

Some submitters made comments about the level of the qualifying criteria for nutrition content claims about dietary fibre. FSANZ considers this topic is out of the scope of the Application.

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<sup>4</sup> Submissions can be viewed at <http://www.foodstandards.gov.au/code/applications/Pages/A1101-DietaryFibreClaimProvisions.aspx>

**Table 2: Summary of issues from submissions**

Submitter	Support for delay in requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre	Issues	FSANZ Response
<p><b>Cancer Council Australia</b> <b>Cancer Council New Zealand</b></p>	<p>No, does not support</p>	<p>Three-year transition period has provided ample time for food businesses to consider the implications of Standard 1.2.7 for their product range. This is a year longer than the 2-year transition period generally applied to other food standards. Still have another 12 months. Companies should not have 'stopped the clock' on their work while the FSANZ review was underway in 2013. Consider that the absence of new evidence to justify lowering the criteria meant there was no reason for FSANZ to change the criteria. Therefore there was no reason for industry to assume that FSANZ would change the criteria.</p>	<p>A three-year transition period was provided for Standard 1.2.7, instead of a two-year transition period, as the 2012 updated cost-benefit analysis indicated that compliance costs could be reduced with the longer time period and that the estimated overall net benefit from Standard 1,2,7 would be higher.<sup>5</sup> FSANZ understands that some food businesses made a decision to wait until consideration of the qualifying criteria was completed in 2013, in order to avoid relabelling costs in the event that the criteria in Standard 1.2.7 were not maintained. Other businesses decided to proceed with labelling and/or formulation changes to comply with the Standard.</p>
		<p>There is evidence that a diet high in fibre can decrease the risk of bowel and oesophageal cancer, obesity, type 2 diabetes and cardiovascular disease. Consumers should therefore expect that any product making a dietary fibre claim makes a significant contribution to their adequate intake of dietary fibre. Retention of current transition period is one small step that may help consumers choose healthier foods.</p>	<p>We note that a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre may result in some foods carrying these claims having lower levels of dietary fibre for a further 12 months. However, given some of the foods involved will have a shelf-life of several months, it is likely that food businesses will phase-in compliance with the new requirements during a 12 month extension to the transition period.</p>
		<p>As food companies regularly change product packaging as new competitions and promotions are introduced, there is no reason why an extension should be granted when manufacturers are making other voluntary labelling changes over this period.</p>	<p>According to submissions, some food businesses are able to combine labelling changes related to nutrition content claims about dietary fibre over the next 12 months while others are not. Note that the major cost appears to be for packaging write-off.</p>

<sup>5</sup> Refer to the updated 2012 cost-benefit analysis (Attachment 6.2 to the Review Report) at <http://www.foodstandards.gov.au/code/proposals/pages/proposalp293nutritionhealthandrelatedclaims/p293reviewreport.aspx>

Submitter	Support for delay in requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre	Issues	FSANZ Response
<b>Dietitians Association of Australia</b>	Yes, does support	Did not support the qualifying criteria in Standard 1.2.7 as considered more work was required to provide evidence base on which to make a decision. Therefore support the delay. However, with the delay there may be claims based on the old and new criteria in the market at the same time which may cause consumer confusion. Suggests FSANZ communicate this to consumers via the FSANZ website.	This is the situation during the current transition period for Standard 1.2.7, that is, some foods with nutrition content claims about dietary fibre comply with the qualifying criteria in Standard 1.2.7 and others do not. FSANZ will consider if there is a need to provide information to consumers if the delay proceeds.
<b>Food Technology Association of Australia</b>	Yes, does support	The extension would provide more time for industry to complete development, if required and to ensure new labels are designed, checked for compliance etc prior to final commitment to print.	Noted
<b>Grains &amp; Legumes Nutrition Council</b>	Yes, does support	Many grain and legume foods with a shelf life of over 12 months require labelling changes well in advance of January 2016 and that product reformulation can take over 12 months. As the decision to retain the levels in as in Standard 1.2.7 was not made until late 2013, a number of grain and legume manufacturers delayed making reformulations or labelling changes. Consequently, food businesses are likely to have stock-in-trade in January 2016 that does not comply with Standard 1.2.7 and that costs incurred by manufacturers to write off packaging may be passed on to consumers.	Noted
<b>Nestlé Australia Ltd, Nestle New Zealand Ltd, Cereal Partners Worldwide</b>	Yes, does support	Extension of the transition period will reduce costs on business associated with packaging write off. The FSANZ review in 2013 effectively cut out 12 months of transition time which could have been spent making labelling and reformulation changes for those businesses that elected to put such work on hold while in a state of uncertainty.	Noted



Submitter	Support for delay in requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre	Issues	FSANZ Response
New Zealand Food and Grocery Council	Yes, does support	Understand that some businesses may have begun the transition process to meet the qualifying criteria. However, the changes involve in some instances, formulation changes and this takes time. Whether formulations change or not, labels must change on products currently carrying claims that do the meet the qualifying criteria. Formulation and/or label changes may well be coordinated with changes to accommodate the Health Star Rating System,	Noted
		With just over 12 months of the transition period left, businesses that awaited the outcome of the FSANZ review in 2013 before undertaking a review of formulations or labels are now disadvantaged compared with other businesses making changes. An extension of the transition period to January 2017 will assist businesses to meet the requirements of Standard 1.2.7 with least cost.	Noted
NZ Ministry for Primary Industries	No, does not support	Two years from December 2013 is adequate to allow for stock-in-trade. Some companies have implemented changes during the first two years of transition period.	Submitters claim that three years is required in order to minimise costs of compliance.
		Many products carrying nutrition content claims about dietary fibre also carry other claims, some of which will need to be altered in order to comply with Standard 1.2.7 by January 2016. Changes to dietary fibre claims could therefore be combined with other changes.	Noted – one submitter indicated that labelling changes for nutrition content claims about dietary fibre may be combined with other label changes in the next 12 months, while another submitter indicated this is not possible.
		More straightforward if all nutrition, health and related claims have the same date of application in order to align with implementation and enforcement plans.	Noted
Simplot Australia	Yes, does support	There is likely to be stock-in-trade in January 2016 that does not comply with Standard 1.2.7. If the application date is not extended to January 2017, costs will be incurred to withdraw stock and write off this stock as well as any packaging that has been printed.	Noted

Submitter	Support for delay in requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre	Issues	FSANZ Response
Victorian Departments of Environment and Primary Industries and Health	Yes, does support	Extension of transition period will reduce costs to industry.	Noted
		Suggests FSANZ does further work to modernise nutrient definitions in the Code, taking into account the latest science and international regulations. An updated definition of fibre could provide consumers with appropriate information about the fibre content through nutrition content claims being made only when it is reasonable to do so.	Noted, however a review of nutrient definitions is out of scope of the Application.

## 2.2 Risk assessment

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period, which ends on 18 January 2016. Application A1101 seeks a 12-month delay in the requirement for industry to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7. The rationale is to reduce the cost of compliance for industry. FSANZ considered the qualifying criteria during the assessment of Proposal P293 – Nutrition, Health & Related Claims and subsequently considered them again in 2013. Therefore the focus of Application A1101 is on the costs and benefits of delaying the requirement for industry to comply with the qualifying criteria for nutrition content claims for 12 months. We have undertaken an impact analysis based on the cost and other information provided by the Applicant and submitters and are satisfied that it is appropriate to proceed with the proposed regulatory measures.

## 2.3 Impact analysis

The Applicant provided information and data to support the proposed 12-month delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre. The Applicant claims that the additional 12 months will *provide industry with an adequate period of time in which to address the challenges and financial impacts resulting from the increased levels of dietary fibre required.*

The Applicant referred to information provided in their submission in response to the consultation paper released by FSANZ in mid-2013. In that submission, the Applicant reported that members of the AFGC indicated that between 10% and 100% of products and SKUs<sup>6</sup> making nutrition content claims about dietary fibre do not meet the qualifying criteria in Standard 1.2.7. It is not clear whether these figures remain current.

The Applicant reported data from a market survey conducted by the Grains & Legumes Nutrition Council in December 2013 and July 2014 (see Table 3). Methodology used for this survey was not provided.

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<sup>6</sup> SKU refers to a stock-keeping unit, a unique identifier for each distinct product that can be purchased in business.

**Table 3: Market survey conducted by Grains & Legumes Nutrition Council in December 2013 and July 2014**

Product Category	Survey Date	Number of products making dietary fibre claims	Number of products making dietary fibre claims that do not meet qualifying criteria in Standard 1.2.7	Latest product date mark
Breads and bread products	Dec 2013	150	16	
Breakfast cereals	Dec 2013	176	48	Aug 2015
Grains	Dec 2013	47	9	Oct 2014
Pasta	Dec 2013	22	5	Nov 2015
Soups with legumes	July 2014	10	2	May 2015
Liquid breakfast drinks	July 2014	29	6	Jun 2015
Legumes canned and dried	July 2014	77	9	Jun 2016
Muesli bars	July 2014	71	14	May 2015
Rice cakes	July 2014	7	7	Nov 2014
<b>TOTAL</b>		<b>589</b>	<b>116</b>	

Cost estimates for product withdrawal and relabelling based on these data are provided in Table 4. Table 4 also provides a summary of cost information provided by three submitters.

The Applicant noted that, with the decision on the qualifying criteria not being made until December 2013, one member of AFGC would not have sufficient time to reformulate products to meet the higher criteria. This member may therefore incur costs for relabelling in order to comply with the requirements by January 2016, followed by reformulation costs at a later date. The Applicant stated that this could cause confusion for consumers with changes in claims. The member advised the Applicant that if the delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre was granted then product reformulation could be completed, avoiding relabelling costs.

The Applicant stated that a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is unlikely to affect consumers, noting there is also potential for less impact on claims as more current claims may be maintained. The additional time would give food businesses more time to communicate any changes to claims to consumers. Since products carrying claims are required to declare the amount of dietary fibre in the nutrition information panel, the Applicant asserts that consumers will still have information on which to base an informed choice. We note that the Grains & Legumes Nutrition Council stated in their submission that if a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is not granted, consumers could be affected as costs incurred by industry to write-off packaging may be passed on to consumers.

In summary, if the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is delayed by 12 months, from the information provided by the Applicant and submitters, it appears that costs particularly relating to product withdrawal and packaging write-off would largely be avoided. Some labelling costs may also be reduced. A delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre would also allow a further 12 months for the completion of product reformulation activities avoiding the need to put a hold on reformulation, re-label products and then complete the reformulation at a later date.

**Table 4: Summary of cost information provided by the Applicant and submitters (A\$)**

Item	Applicant/Submitter			
	Applicant (AFGC)	Grains & Legumes Nutrition Council	Simplot Australia	Nestle Australia Ltd, Nestlé New Zealand Ltd, Cereal Partners Worldwide
<b>Total number of products/SKUs carrying nutrition content claims about dietary fibre</b>	589 products <sup>1</sup>	402 products	111 SKUs	90 products (162 SKUs)
<b>Total number of products/SKUs that do not meet the qualifying criteria in Standard 1.2.7</b>	116 products <sup>1</sup>	84 products (breakfast cereals, breads, rice, noodles, crispbreads)	18 SKUs (frozen and canned vegetables)	25 products (25 SKUs) (breakfast cereals, snack bars)
<b>Cost of labelling changes made before October 2014</b>	No information provided	Estimate of at least \$400,000	Changes for 6 SKUs combined with other labelling changes	\$70,000 for 17 SKUs (partly combined with other changes)
<b>Cost of product reformulation before October 2014</b>	Partial cost of \$67,515 up to August 2013 (one food business)	Estimate of at least \$1.7 million (includes Nestle)	Nil products reformulated	Partial cost of \$50,000 for reformulating 12 products
<b><u>Direct cost of labelling changes:</u></b>				
<b>Transition period ending 18 January 2016</b>	Up to \$2.5 million (worst case scenario) (\$15,000 - \$25,000 per product with shorter shelf life)	NA	\$66,000 for 18 SKUs, but changes may be combined with other changes for 12 products, thereby costs avoided.	\$185,000 for 18 SKUs
<b>Transition period ending 18 January 2017</b>	No information provided	NA	Relabelling can be combined with other label changes, therefore costs avoided.	Cost likely to be a lot less than \$185,000 as costs can be shared with other changes
<b><u>Indirect cost of labelling changes:</u></b>				
<b>Transition period ending 18 January 2016</b>	<ul style="list-style-type: none"> <li>\$50,000 - \$75,000 per product for products with shelf life beyond January 2016; total cost - \$650,000 for withdrawal and relabelling or disposal of 9 legume products (worst case scenario)</li> <li>\$50,000 per food business to write off label stocks</li> </ul>	Costs associated with packaging write-off (estimate not provided).	Unable to provide cost estimate as need to know stock on hand just before January 2016. Could have up to 10 weeks stock to withdraw. Therefore would be costs to withdraw stock from trade and write the stock off along with costs of writing off packaging	\$500,000 for product withdrawal and packaging write off
<b>Transition period ending 18 January 2017</b>	Above indirect costs largely avoided	Above indirect costs largely avoided	Above indirect costs avoided.	Above indirect costs avoided

Item	Applicant/Submitter			
	Applicant (AFGC)	Grains & Legumes Nutrition Council	Simplot Australia	Nestle Australia Ltd, Nestlé New Zealand Ltd, Cereal Partners Worldwide
<b>Cost of product reformulation:</b>				
<b>Transition period ending 18 January 2016</b>	\$15,000 - \$25,000 per product	NA	Not reformulating any products	\$150,000 - \$200,000 for 12 products (includes relabelling costs) (to be completed by January 2016)
<b>Transition period ending 18 January 2017</b>	No information provided	NA	Not reformulating any products	Cost same as above

<sup>†</sup> Data were collected in December 2013 and July 2014 as shown in Table 3 of this report.

## 2.4 Risk management

As discussed above, those food businesses that elected to delay transitioning to the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 pending FSANZ's consideration of the qualifying criteria in 2013, may incur costs from labelling changes, product withdrawal and packaging write-off if the end of the transition period remains as January 2016. The issue is likely to be compounded for products with a longer shelf-life, given there is no stock-in-trade provision to allow non-compliant stock to remain on sale.

Information and data provided by the Applicant and food businesses suggest that compliance costs could be minimised if the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is delayed for 12 months. Although the information available does not allow a full understanding of the magnitude of the costs involved, it is apparent that compliance costs would be reduced for some food businesses. There appears to be no opposition to the proposed delay from the food industry in general.

The Cancer Council of Australia, the Cancer Council of New Zealand and the New Zealand Ministry for Primary Industries do not support the Application. The view from these submitters, that two years is sufficient for labelling and/or product changes, is contested by the food businesses that provided submissions. Even though the small number of submissions received suggests that the two-year transition period (December 2013 to January 2016) may be sufficient for many food businesses, for others the two-year period appears to lead to higher compliance costs that can be largely avoided with an additional 12 months' transition time.

The proposed new draft Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims (and subsequently the revised Code<sup>7</sup>) enables food businesses to either comply with clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, in relation to nutrition content claims about dietary fibre, from and including 18 January 2016 until and including 17 January 2017. Clause 2 of Standard 1.1A.8 permits the use of any descriptor for nutrition content claims about dietary fibre including *source*, *good source*, *excellent source* and *increased* without needing to comply with the qualifying criteria in Standard 1.2.7.

<sup>7</sup> Note that the current Code expires on 1 March 2016, when the revised Code developed under Proposal P1025 takes effect and Chapters 1 and 2 of the current Code are repealed. On that date, the transitional arrangements proposed under Application A1101 will be carried over into the revised Code and continue until and including 17 January 2017. See Attachment C.

Food businesses will need to comply with all other requirements in Standard 1.2.7 from and including 18 January 2016, including provisions for general level health claims about dietary fibre. Note that subclause 2(2) of draft Standard 1.1A.8 includes the requirement for foods with *increased* claims about dietary fibre to contain at least 25% more dietary fibre than in the same quantity of reference food. This is included in Standard 1.1A.8 because this provision is in Schedule 1 of Standard 1.2.7 but is not part of qualifying criteria for nutrition content claims about dietary fibre, for which the delay in the requirement for compliance is sought.

## **2.5 Risk communication**

### **2.5.1 Consultation**

Consultation is a key part of FSANZ's standards development process.

FSANZ acknowledges the time taken by individuals and organisations to make submissions on the Consultation paper for this Application. Ten submissions were received in response to the consultation paper released for public comment on 23 October 2014. Information and comments provided by submitters have informed the assessment of the Application (see sections 2.1 and 2.3).

The process by which FSANZ considers standard development matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views of interested parties on issues raised by this Application and the effects of regulatory options. Every submission is reviewed by FSANZ staff, who examine the issues identified and prepare a response to those issues.

FSANZ develops communication plans to ensure stakeholders are aware of proposed changes to the Code. All calls for submissions are notified via the FSANZ Notification Circular, media release, FSANZ's social media tools and Food Standards News.

The draft variations will be considered for approval by the FSANZ Board taking into account comments received following this call for submissions. Anyone who is an interested party or who makes a submission will be notified at each stage of the assessment.

If the draft variations to the Code are approved by the FSANZ Board, that decision will be notified to the Australia and New Zealand Ministerial Forum on Food Regulation. If the decision is not subject to a request for a review, stakeholders will be notified of the gazettal of the variation to the Code in the national press and on the FSANZ website.

FSANZ will consider if there is a need to provide any information to consumers if the draft variations to the Code are approved and the requirement to comply with the qualifying criteria about nutrition content claims about dietary fibre, is delayed as proposed.

### **2.5.2 World Trade Organization (WTO)**

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

There are not any relevant international standards. Amending the Code to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is unlikely to have a significant effect on international trade as food businesses will be able to continue with current claims for another 12 months.

Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade was not considered necessary.

## 2.6 FSANZ Act assessment requirements

When assessing this Application and the subsequent development of the two food regulatory measures, FSANZ has had regard to the following matters in section 29 of the FSANZ Act:

### 2.6.1 Section 29

#### 2.6.1.1 Cost benefit analysis

Refer to Section 2.3 for a discussion of costs and benefits.

The available evidence suggests that a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 for 12 months, from and including 18 January 2016, until and including 17 January 2017, is likely to be the most cost-effective response. This determination is based mainly on qualitative analysis.

FSANZ has clarified the regulation impact requirements for the Application with the Office of Best Practice Regulation (OBPR). The OBPR's advice is that a regulation impact statement is not required as suggested changes are considered as minor, machinery and deregulatory in nature (OBPR ID: 17599).

Affected parties include the following:

**Industry:** The proposed food regulatory measures will benefit food businesses as they will minimise the costs of compliance with the qualifying criteria for nutrition content claims about dietary fibre. There has been no opposition to the proposed delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre from the food industry in general.

**Consumers:** It is not clear from the information available whether or not consumers will be affected by the proposed food regulatory measures, that is, by the possibility that foods with similar claims (e.g. *high fibre*) may have different amounts of dietary fibre (lower amounts) for a further 12 months. Since Standard 1.2.7 was gazetted in January 2013, there is the possibility that foods in the marketplace with similar claims about dietary fibre could have different levels of dietary fibre.

Information about the dietary fibre content of foods carrying claims will continue to be available in the nutrition information panel, which may help to address any confusion over the 12 month period. FSANZ will consider if there is a need to provide any information to consumers if the draft variations to the Code are approved and the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre, is delayed as proposed.

The Grains & Legumes Nutrition Council stated in their submission that if a delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre is not granted, consumers could be affected as costs incurred by industry to write-off packaging may be passed on to consumers.

**Government:** There is not likely to be additional costs to government from the draft variations. Although the New Zealand Ministry for Primary Industries noted in its submission that it would be more straightforward if all requirements for nutrition, health and related claims came into force at the same time, no reference to costs was made.



### **2.6.1.2 Other measures**

FSANZ is not aware of other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the Application.

### **2.6.1.3 Any relevant New Zealand standards**

The proposed food regulatory measures amend a joint Australia New Zealand standard.

### **2.6.1.4 Any other relevant matters**

There are no other relevant matters.

## **2.6.2 Subsection 18(1)**

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

### **2.6.2.1 Protection of public health and safety**

The draft variation is not expected to impact on the protection of public health and safety.

### **2.6.2.2 The provision of adequate information relating to food to enable consumers to make informed choices**

As there will be no change to Standard 1.2.8 – Nutrition Information Requirements, consumers will continue to be provided with information about the dietary fibre content of foods carrying nutrition content claims about dietary fibre. In addition, subclause 19(3) of Standard 1.2.8 permits the voluntary declaration of dietary fibre in the nutrition information panel if the food contains less than 2 g dietary fibre per serving.

### **2.6.2.3 The prevention of misleading or deceptive conduct**

The current mandatory nutrition information requirements for products carrying nutrition content claims about dietary fibre will assist to mitigate any potential for consumers to be misled about possible continued variation in the dietary fibre content of foods carrying similar claims, during the period commencing on 18 January 2016 until and including 17 January 2017.

## **2.6.3 Subsection 18(2) considerations**

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

Standard 1.2.7 was gazetted in January 2013 with a three-year transition period, which ends on 18 January 2016. Application A1101 seeks a 12 month delay in the requirement for industry to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7. The rationale is to reduce the cost of compliance for industry. FSANZ considered the qualifying criteria during the assessment of Proposal P293 – Nutrition, Health & Related Claims and subsequently considered them again in 2013. Therefore the focus of A1101 is on the costs and benefits of delaying the requirement for industry to comply with the qualifying criteria for nutrition content claims for 12 months. A qualitative analysis of costs and benefits has been undertaken.

- **the promotion of consistency between domestic and international food standards**

Not applicable, as the Application is about a delay in the requirement to comply with provisions in the Code, rather than the actual provisions.

- **the desirability of an efficient and internationally competitive food industry**

The proposed variation will help to reduce the costs of compliance with qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7, thereby supporting an efficient and internationally competitive food industry.

- **the promotion of fair trading in food**

This Application is only about a relatively short delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre.

- **any written policy guidelines formulated by the Ministerial Council<sup>8</sup>**

In December 2003, Ministers approved the *Policy Guideline on Nutrition, Health and Related Claims*<sup>9</sup>. The Policy Guideline sets out the policy principles underpinning the regulation of nutrition content claims (and health claims) and aims to permit claims and encourage industry to innovate, whilst ensuring consumers are not misled.

The Policy Guideline states that a regulatory system for health, nutrition and related claims should amongst other things *allow for all transition issues to be clearly identified and steps taken to justify and to minimise costs of change and transition*. The delay in the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre will help to minimise the cost of compliance with this aspect of Standard 1.2.7.

### 3 Draft variations

The draft Standard and consequential variation for the current Code are at Attachment A. Each is intended to take effect on 18 January 2016.

Draft explanatory statements to the draft Standard and consequential variation are at Attachment B. An explanatory statement is required to accompany each instrument lodged on the Federal Register of Legislative Instruments.

The current Code will be revised on 1 March 2016, when the revised Code developed under Proposal P1025 commences and Chapters 1 and 2 of the current Code are revoked. The revised Code must be amended before 1 March 2016 to include the transitional arrangements proposed under Application A1101 and to continue those arrangements until and including 17 January 2017.

The draft Standard and consequential variations for the revised Code are at Attachment C. These are intended to take effect on 1 March 2016. Draft explanatory statements for this draft Standard and consequential variations are at Attachment D.

<sup>8</sup> Now known as the Australia and New Zealand Ministerial Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)

<sup>9</sup> The Policy Guideline is available at: <http://www.foodstandards.gov.au/code/fofr/fofrpolicy/pages/default.aspx>

## 4 References

National Food Authority (1995) Code of Practice on Nutrient Claims in Food Labels and in Advertisements. Commonwealth of Australia

### Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statements
- C. Draft variations to the *Australia New Zealand Food Standards Code* (from 1 March 2016)
- D. Draft Explanatory Statements

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



### Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions) – Standard 1.1A.8

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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 18 January 2016.

Dated [To be completed by Standards Management Officer]

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

**Note:**

This Standard will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 20XX.

## STANDARD 1.1A.8

### TRANSITIONAL STANDARD FOR DIETARY FIBRE NUTRITION CONTENT CLAIMS

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#### Purpose

This Standard provides a transitional arrangement that operates concurrently with Standard 1.2.7 for a specified period to permit certain nutrition content claims about the presence or absence of dietary fibre to be made during that period.

#### Clauses

##### 1 Transitional Arrangement

(1) During the transitional period, a claim about the presence or absence of dietary fibre in a food must comply with clause 11 of Standard 1.2.7 or clause 2 of this Standard, but not a combination of both.

(2) To avoid doubt, this Standard only relates to the application of clause 11 of Standard 1.2.7 and does not affect the application of any other clause of Standard 1.2.7.

(3) Subclause 1(2) of Standard 1.1.1 does not apply to this Standard.

(4) In this clause –

**transitional period** means the period commencing on 18 January 2016 and ending on 1 March 2016.

##### 2 Transitional Requirements for Dietary Fibre Nutrition Content Claims

(1) A claim about the presence or absence of dietary fibre in a food may use any descriptor that is not mentioned in subclause (2), including a descriptor expressed as a number or in numeric form.

(2) If a claim about the presence of dietary fibre in a food uses the descriptor 'increased' or a synonym of that descriptor, that food must contain at least 25% more dietary fibre than in the same quantity of reference food.

(3) In this clause –

**food group** has the same meaning as in Standard 1.2.7.

**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 amount of dietary fibre; or
- (b) a dietary substitute for the food in the same food group as the food for which a claim is made.

**Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation**

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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 [To be completed by Standards Management Officer]

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

**Note:**

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**.

**1 Name**

This instrument is the *Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation*.

**2 Consequential variation to Standards in the *Australia New Zealand Food Standards Code***

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

**3 Commencement**

The variation commences on 18 January 2016.

**SCHEDULE**

**[1] Standard 1.2.7** is varied by inserting after the heading to Part 1 of that Standard “Part 1 – Purpose and Interpretation” –

“

**Editorial Note:**

Standard 1.1A.8 is a transitional Standard that applies to claims about the presence or absence of dietary fibre in a food and operates concurrently with Standard 1.2.7. The transitional arrangement permitted by Standard 1.1A.8 allows a supplier making a claim about the presence or absence of dietary fibre in a food to either comply with clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, but not both. This transitional arrangement under Standard 1.1A.8 commenced on 18 January 2016 and will cease on 1 March 2016 when the revised Code takes effect and that Standard is revoked. The revised Code will provide a similar transitional arrangement until and including 17 January 2017.

”

## **Attachment B – Draft Explanatory Statements**

### **Draft Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims**

#### **1. Authority**

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

FSANZ accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims, for 12 months (that is, until and including 17 January 2017). The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft new Transitional Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims and a draft consequential variation to Standard 1.2.7.

#### **2. Purpose**

The Authority has approved draft new Standard 1.1A.8 to permit nutrition content claims about dietary fibre to be made other than in accordance with Standard 1.2.7 during a transitional period. During the transitional period, suppliers will be able to comply with either clause 11 of Standard 1.2.7 or clause 2 of draft Standard 1.1A.8.

The transitional period established by draft Standard 1.1A.8 will commence on 18 January 2016 and continue until the Standard ceases to have effect on 1 March 2016, which is the date on which the revised Code takes effect. The revised Code will be amended before that date so that the revised Code continues the above transitional arrangement from 1 March 2016 until and including 17 January 2017.

#### **3. Documents incorporated by reference**

Draft Standard 1.1A.8 does not incorporate any documents by reference.

#### **4. Consultation**

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 will include one round of public consultation following an assessment and the preparation of a draft new Standard, a draft consequential variation and associated report.

A Regulation Impact Statement was not required because draft variation to the Code is likely to have only a minor impact on business and individuals (OBPR ID: 17599).



## **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## **6. Variation**

Clause 1 establishes a transitional arrangement for claims about the presence or absence of dietary fibre in a food.

Subclause 1(1) permits a claim about the presence or absence of dietary fibre in a food to be made during the transition period in accordance with either clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, but not a combination of both.

Subclause 1(2) explains that Standard 1.1A.8 only relates to the application of clause 11 of Standard 1.2.7. That is, a claim made under or in accordance with Standard 1.1A.8 must comply with all applicable clauses of Standard 1.2.7 other than clause 11.

Subclause 1(3) provides that subclause 1(2) of Standard 1.1.1 does not apply to Standard 1.1A.8. This means, for example, there will be no stock in trade exemption when the Standard commences.

Subclause 1(4) defines the term ‘transitional period’ used in subclause 1(1). The definition provides that the transition period will commence on 18 January 2016 and will end on 1 March, which is the date on which the revised Code takes effect and Chapters 1 and 2 of the current Code, including Standard 1.1A.8, will be revoked and replaced. As mentioned above, the revised Code will be amended before 1 March 2016 to establish and continue the same transitional arrangement for claims about the presence or absence of dietary fibre in a food made during the period from 1 March 2016 until and including 17 January 2017.

Clause 2 lists the requirements for claims about the presence or absence of dietary fibre in a food that are permitted by clause 1 of Standard 1.1A.8.

Subclause 2(1) permits such a claim to use any descriptor that is not mentioned in subclause (2). This permission includes the use of a descriptor expressed as a number or in numeric form.

Subclause 2(2) imposes a specific condition for the use of the descriptor ‘increased’ or a synonym of that descriptor in such claims—the relevant food must contain at least 25% more dietary fibre than in the same quantity of reference food.

Subclause 2(3) provides definitions for terms used in clause 2 (“food group” and “reference food”).

# **Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation**

## **1. Authority**

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

FSANZ accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary Standard 1.2.7 – Nutrition, Health and Related Claims, for 12 months (that is, until and including 17 January 2017). The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation to the Code, which consists of a draft new Transitional Standard 1.1A.8 – Transitional Standard for Dietary Fibre Nutrition Content Claims and a draft consequential variation to Standard 1.2.7.

## **2. Purpose**

The Authority has approved a draft variation called *Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation* to make a consequential amendment to Standard 1.2.7 in order to provide an explanation of the transitional arrangement permitted under draft Standard 1.1A.8.

## **3. Documents incorporated by reference**

The draft consequential variation does not incorporate any documents by reference.

## **4. Consultation**

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 will include one round of public consultation following an assessment and the preparation of a draft Standard, a draft consequential variation and associated report.

A Regulation Impact Statement was not required because the draft variation to the Code is likely to have a minor impact on business and individuals (OBPR ID: 17599).

## **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## 6. Variation

Clause 1 provides that the name of the variation is *Food Standards (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential) Variation*.

Clause 2 provides that the Code is amended by the Schedule to the variation.

Clause 3 provides that variation will commence on 18 January 2016, which is also the date on which new Standard 1.1A.8 takes effect.

Item 1 of the Schedule inserts a new Editorial Note into Standard 1.2.7 explaining that –

1. Standard 1.1A.8 is a transitional Standard that applies to claims about the presence or absence of dietary fibre in a food and operates concurrently with Standard 1.2.7;
2. the transitional arrangement permitted under Standard 1.1A.8 allows a supplier making a claim about the presence or absence of dietary fibre in a food to either comply with clause 11 of Standard 1.2.7 or clause 2 of Standard 1.1A.8, but not both;
3. this transitional arrangement under Standard 1.1A.8 will commence on 18 January 2016 and will cease to operate on 1 March 2016 when the revised Code takes effect and that Standard is revoked; and
4. the revised Code will provide a similar transitional arrangement until and including 17 January 2017.

## **Attachment C – Draft variations to the *Australia New Zealand Food Standards Code* (from 1 March 2016)**



### ***Food Standards Australia New Zealand Code* – Revocation and Transitional Variation 2015 (Application A1101 – Commencement of Dietary Fibre Claim Provisions)**

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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 2 of this variation.

Dated [To be completed by Standards Management Officer]

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

**Note:**

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 20XX.

**1 Name of instrument**

This instrument is the *Food Standards Australia New Zealand Code — Revocation and Transitional Variation 2015* (Application A1101 – Commencement of Dietary Fibre Claim Provisions).

**2 Commencement**

This instrument commences on 1 March 2016 immediately after the commencement of Standard 5.1.1 – Revocation and transitional provisions — 2014 Revision.

**3 Variation of Part 1.2**

Schedule 1 varies the *Australia New Zealand Food Standards Code – Part 1.2 – Labelling and other information requirements*.

## Schedule 1 Variation of Part 1.2

[1] After “Standard 1.2.11 – Information requirements - Country of origin labelling requirements”, insert as a new Standard:

### “Standard 1.2.12 Transitional standard for dietary fibre nutrition content claims

**Note 1** This instrument is a standard under the *Food Standards Australia New Zealand Act 1991* (Cth). The standards together make up the *Australia New Zealand Food Standards Code*. See also section 1.1.1—3.

**Note 2** The provisions of the Code that apply in New Zealand are incorporated in, or adopted under, the *Food Act 2014* (NZ). See also section 1.1.1—3.

**1.2.12—1 Name**

This Standard is *Australia New Zealand Food Standards Code – Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims*.

**Note** Commencement:  
This Standard commences on 1 March 2016, being the date specified as the commencement date in notices in the *Gazette* and the *New Zealand Gazette* under section 92 of the *Food Standards Australia New Zealand Act 1991* (Cth). See also section 93 of that Act.

**1.2.12—2 Transitional arrangement**

- (1) A claim about the presence or absence of dietary fibre in a food must comply with section 1.2.7—12 or section 1.2.12—3, but not a combination of both.
- (2) To avoid doubt, this Standard only relates to the application of section 1.2.7—12 and does not affect the application of any other provision of Standard 1.2.7.
- (3) Subsection 1.1.1—9(1) does not apply to this Standard.

**1.2.12—3 Transitional requirements for dietary fibre nutrition content claims**

- (1) A claim about the presence or absence of dietary fibre in a food may use any descriptor that is not mentioned in subsection 1.2.12—3(2), including a descriptor expressed as a number or in numeric form.
- (2) If a claim about the presence of dietary fibre in a food uses the descriptor ‘increased’ or a synonym of that descriptor, that food must contain at least 25% more dietary fibre than in the same quantity of reference food.
- (3) In this section:  
**food group** has the same meaning as in Standard 1.2.7.

**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 amount of dietary fibre; or
- (b) a dietary substitute for the food in the same food group as the food for which a claim is made.

**1.2.12—4**

**Expiry of the transitional arrangement**

This Standard ceases to have effect on 18 January 2017.”

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***Food Standards Australia New Zealand Code – Revocation and Transitional Variation 2015  
(Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential)***

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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 2 of this variation.

Dated [To be completed by Standards Management Officer]

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

**Note:**

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**.

**1 Name of instrument**

This instrument is the *Food Standards Australia New Zealand Code — Revocation and Transitional Variation 2015 (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential)*.

**2 Commencement**

This instrument commences on 1 March 2016 immediately after the commencement of Standard 5.1.1 – Revocation and transitional provisions —2014 Revision.

**3 Variation of Standard 1.1.1**

Schedule 1 varies the *Australia New Zealand Food Standards Code – Standard 1.1.1 – Structure of the Code and general provisions*.

**4 Variation of Standard 1.2.7**

Schedule 2 varies the *Australia New Zealand Food Standards Code – Standard 1.2.7 – Nutrition, health and related claims*.

**5 Variation of Standard 5.1.1**

Schedule 3 varies the *Australia New Zealand Food Standards Code – Standard 5.1.1 – Revocation, transitionals etc*

**Schedule 1 Variation of Standard 1.1.1**

[1] In subsection 1.1.1—2(2), after the entry for “Standard 1.2.11 – Country of origin labelling requirements”, insert “Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims-2014 Revision”

**Schedule 2 Variation of Standard 1.2.7**

[1] After section 1.2.7—12, insert:

**“Note** Standard 1.2.12 is a transitional Standard that applies to claims about the presence or absence of dietary fibre in a food and operates concurrently with Standard 1.2.7. The transitional arrangement permitted by Standard 1.2.12 allows a supplier making a claim about the presence or absence of dietary fibre in a food to either comply with section 1.2.7—12 or section 1.2.12—3, but not both. This transitional arrangement under Standard 1.2.12 commenced on 1 March 2016 and ceases to have effect on 18 January 2017.”

**Schedule 3 Variation of Standard 5.1.1**

[1] Insert into section 5.1.1—2 in alphabetical order:

“(ca) Standard 1.1A.8—Transitional Standard for Dietary Fibre Nutrition Content Claims.”



## **Attachment D – Draft Explanatory Statements**

### ***Australia New Zealand Food Standards Code – Revocation and Transitional Variation 2015 (Application A1101 – Commencement of Dietary Fibre Claim Provisions).***

#### **1. Authority**

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

FSANZ accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary fibre in Standard 1.2.7 – Nutrition, Health and Related Claims, for 12 months (that is, until and including 17 January 2017). The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft new Transitional Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims and draft consequential variations to other Standards.

#### **2. Purpose**

The Authority has approved draft new Standard 1.2.12 to permit nutrition content claims about dietary fibre to be made other than in accordance with Standard 1.2.7 during a transitional period. During the transitional period, suppliers will be able to comply with either section 1.2.7—12 of Standard 1.2.7 or section 1.2.12—3 of draft Standard 1.2.12.

The transitional period established by draft Standard 1.2.12 will commence on 1 March 2016, and cease on 18 January 2017.

#### **3. Documents incorporated by reference**

Draft Standard 1.2.12 does not incorporate any documents by reference.

#### **4. Consultation**

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 will include one round of public consultation following an assessment and the preparation of a draft new Standard, a draft consequential variation and associated report.

A Regulation Impact Statement was not required because the draft variation to the Code is likely to have only a minor impact on business and individuals (OBPR ID: 17599).

## 5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## 6. Variation

Section 1.2.12—1 provides the name of the Standard is the *Australia New Zealand Food Standards Code* – Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims.

Sections 1.2.12—2 to 1.2.12—4 establish a transitional arrangement for claims about the presence or absence of dietary fibre in a food.

Subsection 1.2.12—2(1) permits a claim about the presence or absence of dietary fibre in a food to be made in accordance with either section 1.2.7—12 or section 1.2.12—3, but not a combination of both.

Subsection 1.2.12—2(2) explains that Standard 1.2.12 only relates to section 1.2.7—12 and does not affect the application of any other provision of Standard 1.2.7. That is, a claim made under or in accordance with Standard 1.2.12 must comply with all applicable sections of Standard 1.2.7 other than section 1.2.7—12.

Subsection 1.2.12—2(3) provides that subsection 1.1.1—9(1) does not apply to Standard 1.2.12. This means, for example, there will be no stock in trade exemption when Standard 1.2.12 commences.

Section 1.2.12—3 lists the requirements for claims about the presence or absence of dietary fibre in a food that are permitted by section 1.2.12—2.

Subsection 1.2.12—3(1) permits such a claim to use any descriptor that is not mentioned in subsection 1.2.12—3(2). This permission includes the use of a descriptor expressed as a number or in numeric form.

Subsection 1.2.12—3(2) imposes a specific condition for the use of the descriptor 'increased' or a synonym of that descriptor in such claims—the relevant food must contain at least 25% more dietary fibre than in the same quantity of reference food.

Subsection 1.2.12—3 (3) provides definitions for terms used in section 1.2.12—3 ("food group" and "reference food").

Section 1.2.12—4 provides that Standard 1.2.12 ceases to have effect on 18 January 2017.

# ***Australia New Zealand Food Standards Code – Revocation and Transitional Variation 2015 (Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential)***

## **1. Authority**

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

FSANZ accepted Application A1101 which seeks to delay the requirement to comply with the qualifying criteria for nutrition content claims about dietary Standard 1.2.7 – Nutrition, Health and Related Claims, for 12 months (that is, until and including 17 January 2017). The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation to the Code, which consists of a draft new Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims and draft variation consequential variations to other Standards.

## **2. Purpose**

The Authority has approved a draft variation called Food Standards Australia New Zealand Code — Revocation and Transitional Variation 2015 (*Application A1101 – Commencement of Dietary Fibre Claim Provisions – Consequential*) to make consequential amendments to Standards other than Standard 1.2.12.

## **3. Documents incorporated by reference**

The draft consequential variation does not incorporate any documents by reference.

## **4. Consultation**

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1101 will include one round of public consultation following an assessment and the preparation of a draft Standard, draft consequential variations and associated report.

A Regulation Impact Statement was not required because the draft variation to the Code is likely to have a minor impact on business and individuals (OBPR ID: 17599).

## **5. Statement of compatibility with human rights**

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

## **6. Variation**

Section 1 provides the name of the Variation.

Section 2 provides that the Variation commences on 1 March 2016 immediately after the commencement on that date of Standard 5.1.1 – Revocation and transitional provisions – 2014 Revision.

Section 3 provides that Standard 1.1.1 is varied in accordance with Schedule 1 of the Variation.

Section 4 provides that Standard 1.2.7 is varied in accordance with Schedule 2 of the Variation

Section 5 provides that Standard 5.1.1 is varied in accordance with Schedule 3 of the Variation

Item 1 of Schedule 1 of the Variation amends subsection 1.1.1—2(2) by inserting into that subsection a reference to Standard 1.2.12. Subsection 1.1.1—2(2) sets out the structure of the Code.

Item 1 of Schedule 2 of the Variation amends Standard 1.2.7 by inserting a new Note after subsection 1.2.7—12. The Note is to explain the transitional arrangement established by Standard 1.2.12 for claims about the presence or absence of dietary fibre in a food.

Item 1 of Schedule 3 of the Variation amends section 5.1.1—2 by inserting into that section a reference to Standard 1.1A.8. This will mean that Standard 1.1A.8 will be revoked on 1 March 2016.