

SURVEY REPORT



Government of South Australia
Department of Health

Nutrition, health & related claims

**Pilot survey of nutrition, health and related claims
in South Australia**

FOOD POLICY AND PROGRAMS BRANCH, PUBLIC HEALTH

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Introduction

Health claims on food products are currently not permitted under the transitional Standard 1.1A.2 of the Australia New Zealand Food Standards Code (the Code). Such claims include references to disease or physiological conditions, weight loss, therapeutic or prophylactic action and medical advice. The *Food Act 2001* (South Australia) also prohibits misleading statements on food, including unsubstantiated claims about the nutritional content or benefits of consuming the food.

Standard 1.1A.2 will ultimately be replaced by the proposed *Nutrition, Health and Related Claims* Standard, which is yet to be finalised. This draft Standard proposes that claims will fall into two main categories; 'General Level' and 'High Level'. The classification of a claim will be based on the degree to which the potential health benefits arising from use of the claim are balanced against the potential risks of an adverse outcome arising from the misinterpretation or inappropriate use of the claim. The level of the claim will then determine the degree to which the claim will be regulated.

General Level (GL) Claims are those that do not reference a biomarker or serious disease or condition. A biomarker is a parameter which, when present outside of the normal levels in the body, predicts the risk of a serious disease or disorder, eg. high cholesterol levels in blood and heart disease. GL claims would include the sub category of Content claims, ie. a statement about the presence or absence of a nutrient, energy or biologically active substance in the food. It is proposed that GL claims will be permitted for use on food without pre-market assessment or approval. The manufacturer will be required to hold evidence in support of the claim.

High level Claims are those that reference a biomarker or a serious disease or condition. These claims will require pre market assessment and approval before they can be used on foods.

Health claims are intended to influence consumers in purchasing a particular product over a rival product and are a significant marketing tool.

The responsibility for ensuring compliance with the Labelling Standards in the Code, including health claims, lies with the Department of Health (DH) as part of its responsibilities under *the Food Act 2001* and a Memorandum of Understanding between the Minister for Health and the Local Government Association of SA Inc regarding the exercise of functions under the Act.

The information gathered from this pilot survey will give an indication of the types of health claims on the SA market and the level of compliance in relation to the requirements of the Code, the Food Act and the draft Standard for Health, Nutrition and Related Claims.

Background

The Department of Health has undertaken pilot sampling of a range of generally available foods to assess the scope of health claims made by manufacturers. All samples were packaged foods and purchased from a large retail outlet in metropolitan South Australia.

This survey was undertaken as part of the Department's monitoring and surveillance program. The aim of the survey was to verify that claims being made by manufacturers were in compliance with the FSANZ Food Standards Code and the Food Act 2001. It also aimed to assess and allocate the claims to the proposed categories of the Nutrition, Health and Related Claims Standard to give an indication of how current claims might be addressed under the proposed new Standard.

Legislation

Food Standards Code

Standard 1.1A.2 - *Health Claims* - is a transitional standard which prohibits health claims on food except for specified claims relating to maternal folate consumption for certain foods. Specifically Standard 1.1A.2 prohibits the use on a food label or in an advertisement for food:

- Claims or statements that the food is a slimming food or has intrinsic weight reducing properties;
- A claim for therapeutic or prophylactic action or a claim described by words of similar import;
- The word 'health' or similar as a part of or in conjunction with the name of the food;
- Any word, statement, claim, express or implied, or design that directly or by implication could be interpreted as advice of a medical nature from any person;
- The name of or a reference to any disease or physiological condition.

The proposed Standard for *Nutrition, Health and Related Claims* will ultimately replace Standard 1.1A.2 but is still being developed.

Nutrient content claims are considered separately in the Code under Standards 1.1.1(2) and 1.2.8. A voluntary code - *Code of Practice on Nutrient Claims in Food Labels and in Advertisements, 1995* (CoPoNC) - provides criteria for the use of additional claims. CoPoNC, while not enforceable by law, should be read in conjunction with the Food Standards Code.

CoPoNC details conditions under which claims may be made in areas such as fats, cholesterol, sugars, fibre, meal products, salt/sodium, diet and comparative claims between different foods.

Standard 2.9.4 (*Formulated Supplementary Sports Foods*) and Standard 2.6.4 (*Formulated Caffeinated Beverages*) in the Code deal with specific categories of food. These Standards require mandatory warning and advisory statements on the label. In the case of formulated supplementary sports foods, they also allow certain claims to be made regarding muscle development and recovery time.

The Food Act 2001

The *Food Act 2001* (Section 18) stipulates that; whether stated or implied, the message conveyed on labels to consumers must not be misleading or deceptive and any claim to be found to be deceptive or misleading is unlawful and penalties apply.

What foods were surveyed

The foods chosen for this survey were varied. Most of the foods surveyed were manufactured in Australia and distributed nationally. Four imported products were included.

The categories of foods sampled were:

- Dairy;
- Edible oils (including margarines and table spreads);
- Cereals and cereal products (including muesli and snack bars);
- Bakery products;
- Food for particular dietary uses (including formulated supplementary sports foods and slimming foods);
- Beverages.

These categories are based on the classification system used in Standard 1.3.1 of the Food Standards Code.

Method

A total of 34 samples were purchased from a major supermarket in the metropolitan area of Adelaide in January 2005. The samples were chosen on the basis of their marketing and/or labelling which could be interpreted as a claim either under existing or proposed Standards or misleading under the Act. Such claims included:

- Vitamin and mineral content and function
- Energy gain;
- Slimming/ weight management;
- Physiological functions;
- Therapeutic or medical advice.

Only one or two products were selected from each 'group' of similar claims; for example, Omega 3 is added to multiple baked products, but only muffins and one white bread were assessed. The survey was not intended to be a comprehensive assessment of all the claims currently used on food or the total number of products displaying claims.

The claims were tested against the current transitional Health Claims Standard (Standard 1.1A.2) Section 18 of the Food Act 2001 (Misleading) and the draft Standard for Nutrition, Health and Related Claims.

Survey results

Product Type	Made in	Claim/ Label Statement	Health claim? (Std 1.1A.2 F/S Code)	Misleading? (S18 Food Act 2001)	Claim Category in draft Std P293*	Comments
Formulated Supplement Sports Food (FPDU*)	NSW	'formulated supplementary food' 'enhanced protein supplement that improves your athletic performance, mentally & physically' 'boosts muscle size', 'faster recovery time'	Yes – reference to physiological condition (improved performance)	Yes	General Level Claim – Enhanced function	Does not comply with Std 2.9.4 - Formulated supp sports food. Claims re recovery time and muscle bulk allowed but not claims re: 'enhanced athletic performance' & beneficial physiological effects
Slimming Food (FPDU)	VIC	'Weight Loss Program' – Eat for breakfast, lunch and as a snack. For dinner eat a low fat, healthy meal. 'the ultimate fat stripper'	Yes – weight loss claim	Yes - under F/S Code	High Level Claim (related to obesity/ weight issue)	Weight loss reference not permitted under current standard and would be considered a high level claim in draft Standard.
Formulated Caffeinated Beverage	NZ	'Energy drink charged with Guarana, ginseng & B Vitamins'. 'Energises and refreshes' Advisory statements as required by Std. 2.6.4	No	No	General Level Claim Function	Formulated caffeinated beverage (Standard 2.6.4)
Formulated Caffeinated Beverage	NSW (imported)	'Especially developed for times of increased stress or strain', 'increases physical endurance', 'improves and increases concentration and reaction speed', 'improves vigilance', 'stimulates metabolism' Advisory statements as required by Std 2.6.4	Yes – reference to physiological condition	Yes	General Level Claim – Enhanced function	Formulated caffeinated beverage (Standard 2.6.4)
Formulated Caffeinated Beverage	NZ	Guarana energy 'improves mental alertness and enhances concentration'	Yes – reference to physiological condition	Yes – unless substantiated	General Level Claim – Enhanced function	Formulated caffeinated beverage (Standard 2.6.4)
Beverage (Juice)	VIC	'Echinacea and Vitamin C can help support healthy immune function'. 'helps nourish body and mind'	Yes – (reference to immune system)	Yes – unless substantiated	General Level Claim – function	Echinacea is not permitted as additive in fruit juice (Std 1.3.2) however echinacea can be considered a 'food' ie. can add to juice to create a mixed food.

Beverage (Juice)	VIC	'natural source of antioxidants' 'helps nourish body and mind'	No	No	General Level Claim –function	.
Beverage (Juice)	VIC	Provides 125% of Vitamin C RDI and 12% of calcium, vitamin A & Folate RDI. Calcium is essential for strong healthy bones and teeth. Seaweed is a natural source of non dairy calcium.	Yes	No	General Level Claim – Function	Inferred claim
Dairy (cultured milk drink)	VIC	Healthy family drink, 'help maintain balance of digestive system', contains natural beneficial bacteria	No	No (assuming amount bacteria sufficient for benefit)	General Level Claim – Function	
Cereal Product	VIC	'excellent source of dietary fibre' 'good source of iron, vitamin B1, Vitamin B3' 'iron is important in transporting oxygen around body' 'vitamin B1 plays a part in development of red blood cells and the maintenance of muscles' Vitamin B3 is important in energy metabolism and maintaining healthy skin and the digestive system.'	Yes	No	General Level Claim –function	Inferred claim, ie. statement of vitamin function infers benefit conveyed to consumer of product.
Bakery product	NSW	'easy source of omega 3 DHA' Omega 3 DHA is the best type of Omega 3. 2 servings can increase your average daily intake of Omega 3 DHA by 50%' Heart- Omega 3 DHA helps maintain a regular heart beat and healthy veins and arteries when consumed as part of a healthy diet and lifestyle.' Brain – helps promote healthy brain development and function' Eye – helps to develop and maintain eyesight 'an essential fuel for your body'	Yes – reference to physiological conditions	Yes unless substantiated	General Level Claim – Enhanced function	
Bakery Product	VIC	'easy source of omega 3 DHA' Omega 3 DHA is the best type of Omega 3. 2 servings can increase your average daily intake of Omega 3 DHA by 50%' Heart- Omega 3 DHA helps maintain a regular heart beat and healthy veins and arteries when consumed as part of a healthy diet and lifestyle.' Brain – helps to promote healthy brain development and function' Eye – helps to develop and maintain eyesight 'an essential fuel for your body'	Yes – reference to physiological conditions	Yes unless substantiated	General Level Claim – Enhanced function	

Cereal Product (Breakfast cereal)	NSW	'high in fibre for digestive health' 'easy way to get the fibre you need for inner health' 'good source of 4 vitamins including folate 'source of magnesium and zinc' 'good source of iron'	No	No	General Level Claim – function	
Cereal Product (Breakfast Cereal)	NSW	Calcium – helps kids develop strong bones and teeth Iron – helps carry oxygen around kids bodies for daily activity Zinc – helps support healthy growth in kids B1, B2 & Niacin – helps release energy from food Source claims for above	Yes – inferred claim	Yes –claims inconsistent with high sugar content of product	General Level Claim –function	Claims on highly sugared food against NHMRC Guidelines for healthy eating. 'Calcium for strong teeth' claim conflicts with negative effect on teeth from consuming sugared foods.
Cereal Product (Breakfast Cereal)	VIC	Wholegrain foods are a rich source of antioxidants. Antioxidants work by helping the body to protect itself through life from damage by free radicals.	No	No	General Level Claim – Function	
Cereal Product (Breakfast Cereal)	VIC	Calcium, antioxidants and the proven health benefits of soy phyto-estrogens. Calcium for strong bones and teeth, folate for normal cell growth and development, fibre for healthy digestive system, magnesium for healthy metabolism, zinc and vitamin B6, C for a healthy immune system, soy phytoestrogens – increasing evidence for maintaining the wellbeing of the heart, bones and complementing natural hormone levels, Riboflavin for healthy skin.'	Yes - inferred claims Also, 'health' in name of food	Yes – unless substantiated; eg. health effects of Phytoestr'gns not proven - contradictory	General Level Claim - function	
Formulated supp sports food (FPDU)	VIC	Refreshing source of iron, zinc, vitamins B6 & B12 which can assist in maintaining a healthy immune system.	Yes – ref to immune system	No	General Level Claim – function	Does not comply with Sports Food Std 2.9.4; ie. warning re consumption by pregnant women and children required
Cereal Product (Breakfast Cereal)	VIC	Antioxidants, folic acid, iron, calcium source claims. Several source and function claims eg. calcium – vital for strong bones and teeth. Important for nerve transmission and muscle stimulation.	Yes – reference to physiological conditions	Yes – unless substantiated	General Level Claim – Function	
Cereal Product	VIC	'exceptionally high nutritive value, amino acid composition close to optimal for human requirements' Source claims for various vitamins, minerals, amino acids.	No	No	General Level Claim – Content	

Beverage (energy drink)	VIC	High in calcium, iron and folic acid Assist in keeping family well nourished by supplying a unique nutritional blend of protein, carbohydrate, vitamins and minerals	No	No	General Level Claim – Content	
Cereal product	VIC	Contains soluble fibre which helps to promote heart health. Seeds are one of the best source of vitamin E that protects the red blood cells and is important in reproduction. Also has antioxidant properties.	Yes – reference to heart health, prophylactic action	Yes – unless substantiated	General Level Claim – Enhanced function	
Cereal product	VIC	Special kinds of fats that form the building blocks of cell membranes and have many important biological functions. Essential nutrient for liver function and plays a beneficial role in fat and cholesterol metabolism.	Yes	No – if substantiated	General Level Claim – Enhanced function	
Diet food (FPDU)	NSW	'works by restricting your body's access to carbohydrates'; 'you now become a fat burning machine', 'helps you meet your weight loss goals'.	Yes – weight loss claim	Yes – unless substantiated	High Level Claim – function	High level claim – weight loss claim = weight management)
Edible Oil	NSW	Contains essential omega 3 nutrients – 'beneficial to heart function and general wellbeing'	Yes	Yes	General Level Claim – Enhanced function	
Snack Food	VIC	'Source of energy'/ 'helps replace energy' promoted by Sports Dieticians Australia. 'Studies indicate the right snacks may improve attention, memory and problem solving. These tips can help your child make the most of nutritious snacking.'	Yes	No	General Level Claim – enhanced function	Inferred Claim, ie: Inclusion of 'smart snacking tips' on box infers that bars are a healthy snack and can improve attention etc.
Cereal product (Snack Food)	VIC	'Turn snack time into trim time', 'Supports your weight loss goals', 'for a slimming, satisfying lo carb treat'	Yes – weight loss claim	Yes – unless substantiated	High Level Claim – enhanced function	
Formulated supp sports food (FPDU)	VIC	'assists in restoring muscle glycogen and increasing protein synthesis after strenuous exercise', 'formulated supplementary sports food' No mandatory advisory statements re pregnant women, children.	No (allowable claims under Std 2.9.4)	Yes – unless substantiated	General Level Claim – Enhanced function	Std 2.9.4 (sports food) requires specified warnings against consumption by children and pregnant women

Beverage	NZ	Source claims, added dietary fibre (pre-biotic) promotes growth and prolongs life of specific good bacteria in your intestine and increases calcium uptake, added acidophilus (pro-biotic) adds to the population of good bacteria in your body to help limit proliferation of harmful microbes.	Yes – reference to physiological condition	Yes – unless substantiated	General Level Claim – Enhanced function	
Edible Oil	NSW	“With natural plant sterols to lower cholesterol absorption”	No (allowable under Novel Food Std)	No	High Level Claim – Biomarker (pre-approved)	Novel Food States ‘plant sterols’ in ingredient list
Edible Oil	NSW	“With natural plant sterols which reduce cholesterol uptake”	No (allowable under Novel Food Std)	No	High Level Claim – Biomarker (pre-approved)	Novel Food
Edible Oil	VIC	Contains Vitamin D which assists in the absorption of calcium, omega 3 for a healthy heart, source of vitamin A	Yes	No	General Level Claim – function	
Dairy	NSW	Low GI, protective antioxidants, healthy heart, strong bones, clear & active mind	Yes	Yes – unless substantiated	General Level Claim – function	
Cereal Product (snack food)	VIC	97% fat free Heart foundation tick Guilt free snacking – boosts levels of essential nutrients such as vitamins and minerals as well as fibre for inner health and well being. ‘Carbohydrates for energy, improving mood, memory and concentration	Yes	Yes	General Level Claim. – enhanced function	
Beverage	VIC	99% fat free High in fibre Helps support your healthy lifestyle	No	No	General Level Claim – ‘Whole of diet’ claim	

* **FPDU:** Food intended for Particular Dietary Use

Definitions from the Macquarie Dictionary:

‘Therapeutic’ – pertaining to treating or curing of disease

‘Physiological’ – relating to the normal functioning of an organism

‘Prophylactic’ – defending or protecting from disease, preventative, preservative, protective

Summary

Current Legislation

(a) Food Standards Code

Of the 34 samples tested:

- 7 made no claim;
- 3 made allowable claims under current Standards (eg. Std 2.9.4 Formulated Supplementary Sports Foods and Std 1.5.2 Novel Foods);
- 24 made non-permissible health claims under the current Health Claims Standard 1.1A.2; including 3 slimming claims.

Type of product/ claim	Total samples	No claim	Permissible claims	Non permissible claims
	34	7	3	24
Formulated caffeinated beverages	3	1	-	2
Formulated supplementary sports foods	3		1	2
Slimming foods	3		-	3
Novel Foods/ pre-approved claims	2		2	

(b) Food Act

Of the 34 samples, 18 were interpreted to be misleading under Section 18 of the Food Act 2001.

Proposed Legislation

Draft 'Nutrition, Health and Related Claims Standard'

Under the proposed new Health Claims Standard, all samples carried claims which were able to be categorised as 'General' or 'High Level' (assuming the claim is able to be substantiated).

Type of claim	Total samples	General Level claim	High Level claims
	34	29	5
Function claim	14	14	-
Enhanced function	12	12	-
Content claim	2	2	-
Whole of diet	1	1	-
Novel Food (pre-approved claim)	2	-	2
Slimming foods	3	-	3

Outcomes

Each home jurisdiction has been supplied with the details of any perceived failures from products manufactured in their area.

The ISC Health Claims Watchdog was also supplied with details of failures.

The majority of the products sampled were manufactured in Victoria and NSW. Three products were made in New Zealand and one was manufactured in Austria and imported into NSW by a distributor.

Conclusion

The survey gives an indication of the number and type of health claims in use on food products in the SA market and their acceptance under current and potential future standards. It is *not* intended to be a comprehensive listing of all health claims currently used or reflect the total number of products carrying such claims.

Misleading claims

In this survey, claims were considered to be misleading on the assumption that no substantiating evidence is available for such claims. This may not always be the case however; it is necessary for the manufacturer to back up such claims with suitable scientific evidence. Such evidence was not sought on this survey. The new Standard for health and nutrition claims will require any claim to be substantiated.

Issues raised for the current transitional Health Claims Standard 1.1A.2

The area of health claims is subjective and interpretations differ depending on the perspective of the manufacturer, consumer or enforcement agency. For example, a general statement about 'heart health' on a product may not technically be a health claim under the definition of a 'therapeutic or prophylactic claim', however if the consumer associates the product with maintaining or improving the function of the heart and chooses it on this basis, it could be argued that this is a perceived claim.

One difficulty with interpreting a claim is what constitutes 'medical advice *from a person*'. One interpretation is that 'medical advice from a person' only captures statements which are specifically linked to a particular person's advice or opinion; as in 'Dr X states that this product aids in decreasing the risk of heart disease'.

Another broader interpretation is that 'a person' could refer to the manufacturer, retailer or wholesaler who places the advice on a food label.

Another difficulty exists with the lack of a clear definition of 'therapeutic' as used in Standard 1.1A.2. If strictly interpreted as a reference to disease, most claims do not fall into this category although they may allude to health issues. Similarly 'prophylactic' claims and references to 'a physiological condition' are ambiguous and are therefore often interpreted in their narrowest sense by industry.

This report has used the definitions of terms used in Standard 1.1A.2 as set out by the Macquarie Dictionary on the assumption that legal action would most likely use these definitions in the absence of any other.

It is imperative that a consistent approach be taken by enforcement agencies to the interpretation of health claims under the current standard and that the new standard avoids such ambiguity by clearly defining all terms used.