

SA Health submission to Proposal P1028 Infant Formula

July 2022

SA welcomes the opportunity to provide comment to Food Standards Australia New Zealand on Proposal P1028 – Infant formula.

Breastfeeding is the normal and recommended way of feeding infants and formula fed infants have a higher risk of adverse health outcomes. Infants are a particularly vulnerable population predominantly relying on a single food as a source of nutrition and sustenance.

In the FSANZ Act, the primacy of public health and safety remains a key to its objectives. FSANZ is also required to show regard to the ministerial policy guideline for the regulation of infant formula products that sets out the principles for regulating infant formula in reviewing P1028.

SA Health supports in principle the approach FSANZ has taken in its review of the infant formula standard subject to viewing the finalised drafting for the standard. We thank FSANZ for progressing this important proposal to a conclusion after considerable work and consultation.

Technological justification of food additives

As discussed in our prior submission, it is important that food additives are not permitted in infant formula if they are not technologically justified for being present.

The technological justification provides the reason why the food additive is present in the infant formula. A technological justification is necessary to maintain trust in the food by the public.

The use of food additives is justified only when such use has an advantage, does not present an appreciable health risk to consumers, does not mislead the consumer, and serves one or more of the listed technological functions and only where these objectives cannot be achieved by other means that are economically and technologically practicable.

For new permissions for food additives in infant formula a completed Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) framework to evaluate the technological justification for use of food additives in infant formula products presented in the P1028 assessment report would demonstrate the justification reasoning and provide further trust in the decision process.

Trademarks

If FSANZ cannot address in this proposal, the issue of infant formula products labels making health claims through the use of trade marks on infant formula then it is important that in further work on the Food Standards Code that this issue be addressed in the future.

FSANZ could also seek a legal opinion if it could include a specific regulation in the infant formula standard that would make it illegal to use a health claim trademark on infant formula by providing grounds for rejection under the Trade Mark Regulations 42(b) (the trade mark is contrary to law). '[a]n application for the registration of a trade mark must be rejected if ... its use would be contrary to law'. In assessing whether a 'healthy' trade mark is contrary to law, the Registrar is obliged to take into account the operation of law and legislation other than the *Trade Marks Act 1995* (Cth).