

30th March 2012

This submission is made on behalf of the Infant Nutrition Council (INC), representing the collective views of its members. The INC represents the significant majority of companies marketing and manufacturing infant formula in Australia and New Zealand.

Members

- Bayer Ltd.
- Fonterra Co-operative Group Ltd
- H J Heinz Company Ltd
- Nestlé Australia Ltd and Nestlé NZ Ltd
- Nutricia Pty Ltd
- Pfizer Nutrition

Associate Members

- Biolife New Zealand Pty Ltd
- Dairy Goat Cooperative (NZ) Ltd
- Murray Goulburn Co-operative Co Ltd
- Sutton Group (NZ)
- Synlait Milk Ltd (NZ)
- Westland NZ Pty Ltd

The INC welcomes the opportunity to comment on the consultation paper for Proposal P293; Nutrition, Health & Related Claims.

The INC believes that breastfeeding is the normal way to feed infants as it has numerous benefits for both mothers and babies. When an infant is not breastfed the only suitable and safe alternative is a scientifically developed infant formula product. For these infants, infant formula is the sole nutrition at less than 6 months old and it is therefore important when their carers have not consulted a health professional, that they have good evidenced based nutrition and ingredient information on the labels of infant formula product.

Submitter name: Infant Nutrition Council

1. Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of 'user-friendliness'.
If not, please provide specific details in the table below. Ensure that the relevant clause number, schedule number or consequential variation item number that you are commenting on is clearly identified in the left column. Lines may be added if necessary.

Clause number

Comment

Part 2 – Claims framework and general principles
3 Nutrition content claims or health claims not to be made about certain foods (c) an infant formula products

The INC fully supports the promotion of and strategies to increase the rate of breast feeding. However in recognition that there are circumstances when an infant is not or cannot be breastfed or is partially breastfed, where commercial infant formulas are used, consideration must be given to supporting ongoing innovation in the development of infant formula nutritional and functional profiles. To exclude the ability to state nutritional contents of infant formula will discourage innovation in these products and subsequently restrict the potential for improved health outcomes for infants where breast milk is not available or only partially available.

INC supports evidence based regulation. However in this instance, there does not seem to be sufficient evidence to support the restriction of nutrition content claims on any product regulated under Standard 2.9.1. Products regulated under standard 2.9.1 are developed to meet the specific needs of infants. The development process of these products involves significant research and innovation at substantial expense. If there is no ability to communicate to the consumer the outcome of the research and innovation in terms of benefit to the consumer to enable informed choice, ongoing innovation and research will be difficult to justify on a cost benefit analysis basis. The resultant outcome will potentially be a restriction in improved health outcomes for the consumer.

Although we understand that FSANZ cannot consider the issue of the ability to communicate product innovation to improve health/performance outcomes for products regulated under standard 2.9.1 in relation to P293, there is an opportunity for FSANZ to consider this issue when they undertake the review of Standard 2.9.1, and believe it is critical for FSANZ to do so.

16. New health claims deemed to be high level health claims

The intention of clause 16 is unclear and clarification is required as to whether the clause is intended to reflect the process under which new claims would be considered, or if it relates to the level of evidence industry is required to submit when FSANZ considers a new claim.

INC notes that a high level health claim variation is defined in the Food Standards Act. Although we understand that the Act has provisions for confidentiality to ensure market advantage for applicants, it does not make it sufficiently clear as to what the process would be in relation to time, costs and who/how the claims would be considered. There is not enough information available for industry to make a considered submission on the question of the process of new claims consideration.

Should the clause be related to levels of substantiation required to make a new claim, the requirement provides no differentiation between the substantiation for current general level health claims and new claims.

The level of convincing should not be required for consideration of new general level health claims by FSANZ. Requirement for a level of convincing might have had it merits in providing a solution to the issues surrounding enforcement and the need for a definitive line, however since FSANZ will be considering all new claims a level of convincing should not be required.

The level of convincing is an onerous and near to impossible level of substantiation to meet, and unnecessary when the degree of promise made by a claim is low.

We encourage FSANZ to approach the substantiation of claims in the manner that was initially provided in the policy guideline on health claims and relative to the degree of promise. The level of substantiation required should therefore be commensurate with the degree of promise – in other words the degree of promise for general level claims is low and therefore the level of substantiation or convincing should be in alignment with this.

Submitter Name	Infant Nutrition Council
Question	Comment
<p>2. What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims?</p> <p>FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance. (Note: Please provide documented or validated evidence where possible)</p>	<p>FSANZ is investigating additional criteria based on the principle of informed choice by consumers and to ensure they are not being misled by fat-free claims. “FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance.”</p> <p>In this context INC takes the opportunity to point out that the need for consumers to have provisions to make informed choices is not limited to claims on the fat content of a food, but that the same principle applies in relation to making the most appropriate infant formula choice.</p> <p>We believe that food standards should be based on science and question the evidence or proof of harm to infants from the inclusion of a content or substantiated health claim on pack.</p> <p>Further, we request that you consider the commentary by Professor Berthold Koletzko in the Annals of Nutrition and Metabolism where he discussed the issue of health claims and made the following comment “<i>Preventing communication of scientifically assured benefits of optimised products bears the risk that it may slow or even stop the significant quality improvements of foods for infants that has occurred over the last decades in numerous single steps, and which has led to large benefits for child health</i>” (attached)</p> <p>Ideally a parent or carer should contact a health care professional before commencing infant formula feeding, however this will not always be the case. In addition, increasingly, infant formula representatives providing scientific and factual information on products are facing access restrictions to healthcare professionals¹. Nutrition and ingredient information on labels provide an important source of information for consumers when a health professional is not consulted.</p> <p>Although we understand that FSANZ will not consider this issue in relation to P293, there is an opportunity for FSANZ to consider permissions for nutrition and health claims when they undertake the review of Standard 2.9.1.</p> <p>The prohibition of claims on infant formula products, when Standard 1.2.7 is gazetted, will have an impact on a number of trade related issues.</p>

The first issue concerns the difficulty in meeting the stock in trade provisions especially for low volume imported products. Marketers are required by the distributors and supermarkets to have 6 months of stock available. The lead-time required for the ordering and transit of these low volume specialty products is approximately 6 months. INC would appreciate that the stock in trade period was extended to 3 years.

Despite the potential of an extended stock in trade period, it is likely that low volume imported specialty products will become unavailable to ANZ consumers, as the economics of getting them re-labelled to remove any claim from the pack will be cost prohibitive.

The second trade issue pertains to the export of infant formula products every year out of Australia and New Zealand. Many of these products are finished products and labelled to go into market. The requirement for export certification will be complicated by the potential need for consideration of exemptions for labelling claims. This may have the unintended consequence of a technical barrier to trade.

¹ INC is currently undertaking a research project related to infant formula company communications with health care professionals. The results of this project are expected to be released in the later part of 2012.