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Dear Sir/Madam

Food Standards Australia New Zealand Proposal P1028 Infant Formula – Response to Second Call for Submissions

The a2 Milk Company Limited (**a2MC**) welcomes the opportunity to contribute to the discussion led by Food Standards Australia New Zealand (**FSANZ**) regarding the changes proposed in this Second Call for Submissions – Proposal P1028 (**CFS2**) to the standards regarding the composition and labelling of infant formula products under the *Australia New Zealand Food Standards Code* (**Code**).

a2MC has had the opportunity to review and contribute to the Infant Nutrition Council (**INC**) P1028 CFS2 submission and supports in principle the position taken in that submission. The purpose of this submission is to highlight and provide further detail on key issues in CFS2 which are of particular concern to a2MC from a labelling and advertising perspective.

About a2MC

a2MC is a New Zealand company dual-listed on both the New Zealand Exchange and the Australian Securities Exchange.

a2MC is a global manufacturer and supplier of milk products under the trade mark "a2 Milk®". Due to careful herd selection, transportation, processing, and testing procedures used by a2MC and its partners, a2 Milk® naturally contains only the A2 type β-casein protein, and none of the A1 type β-casein protein found in regular cows' milk. In addition, a2MC manufactures and supplies a range of milk-based products, including infant formula products under the trade mark "a2 Platinum®", which are made with its a2 Milk® as an ingredient, in whole and/or skim formats.

a2MC has been at the forefront of developments over the last two decades in respect of the different types of β-casein protein (being a sub-type of casein protein) found in cows' milk. As a result of a2MC's pioneering approach, markets have emerged in Australia, New Zealand, and overseas for milk from cows that naturally produce milk with only the A2 type of β-casein and none of the A1 type (**A1 protein-free**) as well as products made with A1-protein free milk. The demand for such products has been led by powerful anecdotal evidence, which is backed by extensive research, including clinical trials conducted in China, the USA, and New Zealand, involving a statistically significant number of individuals of varying ages. The results of these clinical trials have been published in highly reputable

[redacted]

peer-reviewed journals, with new research funded by a number of industry participants emerging on a regular basis.[1]

This research demonstrates conclusively that there is a digestive difference in some individuals between consuming regular cows' milk (which contains A1 and A2 type β-casein proteins) and consuming A1 protein-free cows' milk. That is, some individuals are, as a matter of fact, intolerant to the A1 type β-casein protein but not the A2 type.[2] For these consumers, consuming A1 protein-free milk and milk products made with A1 protein-free milk may allow them to drink milk without experiencing symptoms such as bloating, diarrhoea and abdominal pain.

a2MC's products are supplied in a wide range of countries, including Australia, New Zealand, China, USA, and Canada, as well as other countries in the Asia Pacific region. a2MC takes its legal obligations very seriously in all countries in which its products are manufactured, imported, distributed, and marketed.

a2MC is also a proud signatory to the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement* (**MAIF Agreement**) and has been since entering the infant formula category over a decade ago. a2MC supports the aims of the MAIF Agreement to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution.

Executive summary of submission

a2MC is deeply concerned about the following changes outlined by FSANZ under CFS2 in respect of the labelling and advertising standards in the Code (**proposed changes**):

- The proposed prohibition in draft Standard 2.9.1 on providing any *"information relating to ingredients"* except in the statement of ingredients or otherwise where it has been expressly permitted or required by the Code (SD3 2023, B.15, p43; draft Standard 2.9.1—29(j));

- The proposed changes in draft Standard 2.9.1 to the wording of the protein source statement so as to limit this to a declaration of only *"the specific animal or plant source or sources of protein"* (SD3 2023, A.12, p14; draft Standard 2.9.1—20); and

- The proposed changes in draft Standard 2.9.1 which purport to prescribe the types of information which may be declared in a nutrition information statement (**NIS**), such as whey and casein protein, without permitting any of the sub-types of casein protein such as A1 type β-casein protein and A2 type β-casein protein to be mentioned (draft Standard 2.9.1—25(2)).

a2MC strongly opposes the proposed changes on the basis that they will lead to outcomes which directly conflict with, and do not support, the objectives and mandatory principles set out in the *Food*

[1] See for example: Jianqin, S., et al. Effects of milk containing only A2 beta casein versus milk containing both A1 and A2 beta casein proteins on gastrointestinal physiology, symptoms of discomfort, and cognitive behavior of people with self-reported intolerance to traditional cows' milk. Nutrition Journal (2016) 15:35. DOI 10.1186/s12937-016-0147-z. He, M. et al. Effects of cow's milk beta-casein variants on symptoms of milk intolerance in Chinese adults: a multicentre, randomised controlled study. Nutrition Journal (2017) 16:72. DOI 10.1186/s12937-017-0275-0. Ramakrishnan, M. et al. Milk Containing A2-Casein ONLY, as a Single Meal, Causes Fewer Symptoms of Lactose Intolerance than Milk Containing A1 and A2-Caseins in Subjects with Lactose Maldigestion and Intolerance: A Randomized, Double-Blind, Crossover Trial Nutrients 2020, 12, 3855. doi:10.3390/nu12123855.

[2] See for example: Meng, Y. et al. Effectiveness of Growing-Up Milk Containing Only A2 β-Casein on Digestive Comfort in Toddlers: A Randomized Controlled Trial in China. Nutrients 2023, 15, 1313. https://doi.org/10.3390/nu15061313; and Sheng, X., et al. (2019). Effects of Conventional Milk Versus Milk Containing Only A2 β-Casein on Digestion in Chinese Children: A Randomized Study. J Pediatr Gastroenterol Nutr 69(3): 375-382. https://journals.lww.com/jpgn/Fulltext/2019/09000/Effects_of_Conventional_Milk_Versus_Milk.23.aspx.

Standards Australia New Zealand Act 1991 (Cth) (**FSANZ Act**) and the Food Regulation Standing Committee's *Policy Guideline for the Regulation of Infant Formula Products* (**Policy Guidelines**).

a2MC is particularly concerned that the proposed changes:

- **Restrict informed consumer choice:** The proposed changes will restrict the ability of manufacturers and suppliers of infant formula products to provide adequate information to consumers on labelling and in broader educational materials about the nature of their products, and the key points of difference between their products and others. This in turn will limit the ability of consumers to make informed choices about such products in the best interests of their infants and is not consistent with the regulatory objective of *"provision of information to enable informed choice"* under the Policy Guidelines;

- **Conflict with fair trading laws:** The proposed changes will inhibit the ability of manufacturers and suppliers of infant formula products to comply with New Zealand and Australian fair trading laws which prohibit persons from engaging in misleading and deceptive conduct. By being overly prescriptive about the types of information which can be provided to consumers on product labelling and in broader educational materials, FSANZ will prevent manufacturers and suppliers from providing key information to consumers which may be necessary to be included under fair trading laws. This in turn will create tension and uncertainty within the legal and regulatory landscape for food labelling and advertising in Australia and New Zealand, by introducing an inherent conflict between requirements under the Code and fair trading laws;

- **Are inconsistent with Policy Guidelines:** The proposed prohibition on providing *"information relating to ingredients"* contradicts, and fails to meet the key obligations prescribed for FSANZ under, the Policy Guidelines. There is no reference in the Policy Guidelines to any requirement for information about "ingredients" to be restricted from use in relation to infant formula products. Rather, paragraph (n)(i) of the Policy Guidelines requires FSANZ only to ensure that the specific prohibitions in the Code in respect of *"nutrient content, health, therapeutic, and prophylactic claims"* are clear and effective for infant formula products. These restrictions are reflected in Standard 1.2.7—4 (nutrient content and health claims) and Standard 1.2.7—8 (therapeutic and prophylactic claims). Further, contrary to the requirements of paragraph (n)(ii) of the Policy Guidelines, neither FSANZ nor any of the submissions in favour of the proposed changes have referred to any clear, cogent, or reliable evidence demonstrating the need for changes to be made to the current labelling regime on the basis that it is, in fact, leading to consumers being misled about the quality or effectiveness of infant formula products. If there is any criticism to be levelled against the existing regime, it is in respect of how it has been enforced by State and Territory food agencies, and not how it has been drafted by FSANZ;

- **Are inconsistent with international food standards:** The proposed prohibition on providing *"information relating to ingredients"* is out of step with international food standards set out under the Codex as well as laws in the USA and the EU, being major jurisdictions with highly respected legal and regulatory frameworks for food regulation. None of these jurisdictions restrict persons from providing factual information about the specific ingredients used (or not used) in infant formula products – rather, only nutrition content claims and health claims are prohibited; and

- **Reduce efficiency and international competitiveness of AU and NZ food industries:** The proposed prohibition on providing *"information relating to ingredients"* will reduce the efficiency and international competitiveness of Australia and New Zealand's food industries as well as the attractiveness of Australia and New Zealand as markets for investment by foreign

manufacturers of infant formula products. This is because the proposed prohibition will introduce uncertainty within industry regarding the scope of the laws and increase costs of compliance.

Detailed comments

Restriction on informed consumer choice

The FSANZ Act provides that, when FSANZ is developing or reviewing food regulatory measures and variations of food regulatory measures, one of its key objectives must be *"the provision of adequate information relating to food to enable consumers to make informed choices".*[3] The importance of informed consumer choice is also stated in the mandatory regulatory objectives considered in the assessment of Proposal P1028 under the Policy Guidelines, namely *"provision of information to enable informed choice and ensure caregivers are not misled"*.

Informed consumer choice is particularly important in relation to infant formula. While there are other products that are highly regulated, they generally do not have the same level of complexity as infant formula. Infant formula is also unique in that it can be the sole source of nutrition for a child, putting a degree of pressure on the caregiver to feel that they have made the "right decision" for the child.

The proposed changes will significantly restrict the ability of manufacturers and suppliers of infant formula products to provide adequate information to consumers about the nature of their products, and the key points of difference which their products have compared to competitor products, on labelling and in broader educational materials. This in turn will limit the ability of consumers to make informed choices about such products which are in the best interests of their infants. a2MC agrees that some degree of uniformity in labelling content can be helpful to consumers when comparing different products. However, the approach proposed by FSANZ is too prescriptive to facilitate genuine informed consumer choice, as it fails to take adequate account of recent developments in nutritional science and evolving consumer preferences.

As noted above, one key development in nutritional science in the past decade has been in respect of the development of infant formulas made with A1 protein-free milk. As a pioneer in the market for products made with A1 protein-free milk, a2MC has included the following statements on the product labelling for its infant formula products for many years:

- *"Made with a2 Milk®";* and
- *"Our milk is sourced from cows that naturally produce milk with only the A2 β-casein protein type."*

These statements are supplemented and supported by additional information in the NIS, which confirm the actual quantity of A2 type β-casein protein (in contrast to A1 type β-casein protein) in the product. There are two key (and interlinking) purposes served by the declarations in the NIS. First, this satisfies the requirement in Standard 1.2.10 of the Code that "characterising components" and "characterising ingredients" must be set out in the NIS. A component in, or ingredient of, a food will be regarded as a "characterising component" or "characterising ingredient" if it is *"emphasised on the label of the food in words, pictures or graphics"* (Standard 1.1.2—4). As reference is, and must necessarily, be made to the "A2 β-casein protein type" as part of the explanation of what a2 Milk® is and how it differs from regular milk, A2 type β-casein protein could potentially be regarded as either a "characterising component" or "characterising ingredient" in the finished product. Hence, the proportion of A2 type β-casein protein in the product must be declared in the NIS. The secondary

[3] *Food Standards Australia New Zealand Act 1991* (Cth), section 18(1)(b).

purpose is, from a fair trading and consumer choice perspective, to corroborate and explain, in a clear, reliable, and transparent manner, the statements about the a2 Milk® content of the products.

Similar labelling approaches have been adopted by other suppliers and manufacturers in the market for products made with A1-protein free milk, including infant formula products.

The statements on a2MC's product labelling are factual statements designed to communicate clearly and accurately to consumers the nature, source, and quality of the milk used in a2MC's infant formula products. This content, along with other information on a2MC's product website, has been developed over time specifically in response to consumer feedback seeking more information about the difference between a2MC's products and products made with regular cows' milk.

This type of factual information promotes transparency in the market for infant formula products by educating consumers about the key point of difference in products made with A1 protein-free milk, compared to products made with regular cows' milk. The removal of this information would leave consumers unable to compare infant formula products made from different types of cows' milk, to the detriment of some of the most vulnerable consumers in Australia and New Zealand.

a2MC maintains therefore that statements of this nature and the ability to refer to sub-types of casein protein in the NIS should be permitted for the same reasons as those which are currently driving the push for changes to be made to the protein source statement. That is, the protein source statement proposed to be introduced by FSANZ expressly calls out the nature of the milk used in the product (i.e. "cows' milk", "goat milk", or "plant milk"). According to FSANZ, the reason for this change is because, *"as supported by consumer evidence, a prominent protein source statement can provide additional assistance to those caregivers of infants with allergies and intolerances by making the protein source more visible".*[4] It is clear on the basis of the clinical trials which have been undertaken that there are some individuals, including young children, who experience symptoms of intolerance after consuming the A1 type β-casein protein found in most regular cows' milk. Accordingly, a2MC maintains that it is necessary to include information about the type of cows' milk (i.e. regular cows' milk vs A1 protein-free cows' milk) on labelling for infant formula products in order to provide a more fulsome disclosure to caregivers as contemplated by FSANZ.

The proposal at SD3 2023, B.15, which is very broadly drafted, could also prohibit provision of information about the country of origin of the milk and other raw ingredients (e.g. made with milk from Australia/New Zealand) or other characteristics about the ingredients which a consumer may consider important when comparing infant formula products, such as whether the ingredients are organic or sustainability considerations, such as whether the ingredients are sustainably sourced. Given that sustainability, particularly the reduction of emissions from dairy production which is a focus of the New Zealand and Australian governments, is likely to be an area of significant innovation for the infant formula industry in the next 10 years, consumers will need access to information about this topic.

In response, FSANZ has advised that such claims will be exempt on the basis that they are dealt with under separate legislation. With respect, it is difficult to understand the basis for this view. There are no carve outs proposed to be included in the Code which exclude organic or country of origin claims from being captured under the proposed prohibition against providing information relating to ingredients. Moreover, there is no requirement for such claims to be included on food labelling under any laws in Australia or New Zealand.

Conflict with fair trading laws

[4] Proposal P1028 – Infant Formula, Supporting document 3 (283-23 - 26 April 2023), section 4.3, p23.

The FSANZ Act also provides that, when FSANZ is developing or reviewing food regulatory measures and variations of food regulatory measures, one of its key objectives must be *"the prevention of misleading or deceptive conduct"*.[5] This is echoed in the mandatory considerations under the FSANZ Act, which require FSANZ to have regard specifically to *"the promotion of fair trading in food"*.[6]

Fair trading laws in Australia and New Zealand prohibit persons from engaging in misleading or deceptive conduct and making false and misleading claims about goods or services. In order to maintain compliance with these laws, every reasonable interpretation of a claim needs to be capable of being fully substantiated.

In determining whether a product label is likely to be misleading or deceptive, a Court will consider how that label would be likely to be interpreted by a reasonable consumer in the relevant target market. This requires a case-by-case assessment of the overall impression created, having regard to factors such as the product name, the company name, any claims or explanations set out upfront, and the overall design of the label (including any imagery, colours, or icons). Accordingly, given the complex nature of the overall impression test involved under fair trading laws, manufacturers and suppliers of infant formula products need be able to maintain a reasonable degree of flexibility over the types of information which can be supplied on-pack and where and how that information is depicted. Where, for instance, a particular element on the design of the product label could give rise to a reasonable interpretation which is not capable of being substantiated (e.g. prominent use of the colour green on a product label could be suggestive of either organic ingredients or a "greener" product from a sustainability perspective), then it will be necessary to include an upfront explanation to clarify and limit the meaning of the claim by reference to the actual ingredients used in the product.

The proposed changes will significantly inhibit the ability of manufacturers and suppliers of infant formula products to comply with existing fair trading laws. This is because, by being overly prescriptive about the types of information which can be provided to consumers on product labelling and in broader educational materials, FSANZ will prevent manufacturers and suppliers from providing key information to consumers which may be necessary to clarify and explain upfront impressions created about the product by the balance of representations on the label. This in turn will create considerable tension and uncertainty within the legal and regulatory landscape for food labelling and advertising in Australia and New Zealand, by introducing an inherent conflict between requirements for businesses under the Code as opposed to fair trading laws. This type of disjunct in legislative approach flies in the face of the objectives of the FSANZ Act, undermines domestic and international confidence in Australia and New Zealand's legal regimes, reduces efficiency and increases compliance costs for industry, and does nothing to further the regulatory objectives set out under the Policy Guidelines as discussed further below.

Inconsistency with Policy Guidelines

Two key requirements imposed under the Policy Guidelines are that FSANZ should:[7]

i. ensure that the prohibitions and restrictions on nutrient content, health, therapeutic, and prophylactic claims in the Food Standards Code are clear and effective for infant formula products; and

ii. consider whether the current labelling regime is leading to consumers being mislead (sic) about the quality or effectiveness of an infant formula product.

[5] *Food Standards Australia New Zealand Act 1991* (Cth), section 18(1)(c).
[6] *Food Standards Australia New Zealand Act 1991* (Cth), section 18(2)(d).
[7] Food Regulation Standing Committee, Guidelines for Regulation of Infant Formula Products, paragraph (n).

These principles have not been taken into account in the proposed changes.

First, FSANZ stated during CFS1 that *"Government submitters noted that specific policy principles for labelling and advertising in the Policy Guideline on Infant Formula Products capture ingredients in addition to nutrients and nutritive substances. FSANZ notes the definition of 'claim' refers in part to express or implied statements about a property of food which is not mandatory in the Code. A property of food may be an ingredient."*[8]

a2MC respectfully disagrees with this interpretation.

There is no reference in the Policy Guidelines to any requirement for FSANZ to ensure that manufacturers and importers of infant formula are restricted from providing any and all *"information relating to ingredients"*, unless expressly permitted under the Code. Rather, paragraph (n)(i) of the Policy Guidelines requires FSANZ only to ensure that the specific prohibitions in the Code in respect of *"nutrient content, health, therapeutic, and prophylactic claims"* are clear and effective for infant formula products. As a matter of construction, each of the individual terms "nutrient content", "health", "therapeutic" and "prophylactic" should be taken to modify and qualify the term "claims". That is, the Policy Guidelines should be read as referring to "nutrient content claims", "health claims", "therapeutic claims", and "prophylactic claims". There is no general prohibition on "claims" of any kind, as contemplated by FSANZ, from being made in respect of infant formula products. Moreover, the express restrictions contemplated under the Policy Guidelines are already reflected in the Code at Standard 1.2.7—4 (nutrient content claims and health claims) and Standard 1.2.7—8 (therapeutic claims and prophylactic claims). Accordingly, FSANZ would be far exceeding the scope of its authority under the Policy Guidelines if it were to introduce a new general prohibition on the provision of all *"information relating to ingredients"* in respect of infant formula products.

Secondly, FSANZ stated also during CFS1 that *"Consumer evidence suggests that while some caregivers may find ingredient claims helpful, others may be misled and have a more favourable view of IF in response to such claims. In accordance with specific policy principle (n), we consider this potential for caregivers to be misled from ingredient claims needs to be addressed in the Code."*[9]

This type of vague and equivocal language falls far short of the standard required under the Policy Guidelines for FSANZ to consider whether the existing regime is, in fact, leading to consumers being misled about the quality or effectiveness of infant formula products. There is no precedent for a prohibition of this nature either in the international community or in any other guidance which has been adopted domestically, such as via the MAIF Agreement or the INC Code. Rather, the terminology which has been consistently and universally adopted is "nutrition content claims" and "health claims". This is all the more reason why any departure from this position within the food labelling regime of Australia and New Zealand should be based on clear and compelling evidence of consumer harm under the existing regime.

As a matter of fact, however, the current requirements under the Code are very clear and operate effectively in combination with the MAIF Agreement in Australia (and the INC Code in New Zealand) and the *Competition and Consumer Act 2010* (Cth) (and the *Fair Trading Act 1986* in New Zealand) to prevent promotional claims and misleading and deceptive claims in respect of infant formula products. The proposed changes are not necessary to address a shortcoming in the existing laws. This is clear from the fact that the examples cited by FSANZ of problematic claims are nutrition content claims and health claims which are already captured under the existing regime. For example, FSANZ referred to claims such as *"fish oil"*, *"unique prebiotics"*, *"fish oil to help support brain and eye development"*, and *"unique ingredients to help promote comfortable digestion"*.[10] Accordingly, if there is a compliance

[8] Proposal P1028 – Infant Formula, Supporting document 1 (169-22, 4 April 2022), section 6.3.5, p26.
[9] Proposal P1028 – Infant Formula, Supporting document 1 (169-22, 4 April 2022), section 6.3.5, p26.
[10] Proposal P1028 – Infant Formula, Supporting document 3 (169-22, 4 April 2022), section 6.3.2, p25.

issue in the labelling practices observed within the industry, then this is due to issues regarding enforcement of the existing food labelling laws rather than their scope.

On balance, the driving force behind the proposal to introduce a general prohibition on information relating to ingredients appears to be due to an assumption that such statements are essentially the same as nutrition content and health claims. If this is in fact the case, then the appropriate response would be to improve enforcement of the existing prohibitions against such claims rather than to introduce an entirely new, separate prohibition which is directed towards *"information relating to ingredients"*. The introduction of this new prohibition would therefore impose a significant burden on industry, for the reasons discussed above, with little to no corresponding benefit for consumers against the existing regulatory regime.

Inconsistency with international food standards

The FSANZ Act provides that, when developing or reviewing food regulatory measures and variations of food regulatory measures, FSANZ must have regard to *"the promotion of consistency between domestic and international food standards"*.[11]

As previously outlined in submissions during CFS1:

- **Codex:** The *Codex Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants (CXS 72-1981)* contain a general prohibition only on the use of nutrition and health claims for foods for infants and young children. There is no mention of any prohibitions on the provision of factual information relating to ingredients.

- **WHO Code and WHA Resolutions:** The WHO Code restricts only the advertising of infant formula to the general public. There has been no supplementary guidance issued by the World Health Assembly in any of its resolutions interpreting and supplementing the WHO Code which supports the notion that manufacturers and importers of infant formula should be prohibited from providing any factual information about ingredients used in their products, unless expressly permitted. In particular, WHA58.32 refers only to the need for Member States of the WHO *"to ensure that nutrition and health claims are not permitted for breast-milk substitutes, except where specifically provided for in national legislation"*. This prohibition is enforced through the MAIF Agreement in Australia.

- **European Union:** Article 8 of EU 2016/127 provides that *"Nutrition and health claims shall not be made on infant formula"*. Again, no general prohibition has been issued in respect of the provision of *"information relating to ingredients"*.

- **USA:** The US Food and Drug Administration has recently issued updated guidelines in the *Labeling of Infant Formula: Guidance for Industry (March 2023)* in respect of labelling requirements for infant formula products. These restrict the use of *"nutrient content claims"* and *"health claims"* in respect of infant formulas except where express statutory permission has been granted.

In summary, there is no international precedent for prohibiting manufacturers and suppliers of infant formulas from providing general information relating to ingredients on labelling for infant formula products. Rather, key jurisdictions have introduced restrictions only on *"nutrition claims"* and *"health claims"* as already reflected in the Code. Hence, if FSANZ were to introduce a prohibition on the provision of information relating to ingredients in respect of infant formula products, it would be

[11] *Food Standards Australia New Zealand Act 1991* (Cth), section 18(2)(b).

bringing the laws in Australia and New Zealand significantly out of alignment with the approach which has been endorsed and accepted by the international community.

Reduced efficiency and international competitiveness of AU and NZ food industries

The FSANZ Act also provides that, when developing or reviewing food regulatory measures and variations of food regulatory measures, FSANZ must have regard to *"the desirability of an efficient and internationally competitive food industry"*.[12]

The proposed general prohibition on all *"information relating to ingredients"*, except where expressly permitted or required under the Code, will significantly impair the efficiency and international competitiveness of Australia and New Zealand's food industry for the following reasons:

- FSANZ has indicated that it will not include a definition for "ingredients" in the Code. This means that that there will be no legislative certainty as to whether, and the extent to which, "information relating to ingredients" differs from a "nutrition content claim" or "health claim", creating uncertainty about the scope of the prohibition. While FSANZ has indicated that the "common law" definition of "ingredient" will be applied, difficulties with interpretation are anticipated given the complex formulations and manufacturing processes used for infant formula. Accordingly, the proposed prohibition would introduce considerable uncertainty about the scope of the amended food labelling regime and thereby increase the costs of compliance by industry;

- Previous submitters have raised concerns about the implications of this prohibition for statements about the use of organic ingredients and country of origin claims, which are discussed above. Information of this nature, as well as other information about the ingredients in products, is important for cross-border e-commerce sales into markets where New Zealand or Australian provenance is seen as desirable due to the high food safety standards in these markets. Removal of the ability to communicate information about ingredients in infant formula products will have implications for the competitiveness of the Australian and New Zealand infant formula industries. Given the relatively small size of the Australian and New Zealand infant formula markets, with consumers only remaining in the market for 12 months or less, the ability to export products is important for the long term viability of the Australian and New Zealand markets and the maintenance of a broad range of product options for consumers.

Conclusion

a2MC appreciates the valuable work undertaken by FSANZ over the past decade in respect of Proposal P1028. a2MC understands that the primary objective of FSANZ under Proposal P1028 is to give effect to the Policy Guidelines established by the then Australia and New Zealand Food Regulation Ministerial Council. One key aspect of this approach by FSANZ has been to introduce greater uniformity in labelling content across all infant formula products, to facilitate consumers making like-for-like comparisons between different products.

However, a2MC is concerned that some of the proposed changes to labelling and advertising standards under CFS2 will lead to less informed consumer choice and a greater risk of consumers being misled about the nature of different products. This is because FSANZ has adopted an overly prescriptive approach to certain provisions in the Code, which fails to take adequate account of key developments in nutritional science and changing consumer demand in the past decade. In particular, if passed, the proposed changes would strip consumers of their existing ability to identify and corroborate key

[12] *Food Standards Australia New Zealand Act 1991* (Cth), section 18(2)(c).

differences between A1 protein-free infant formula products and regular infant formula products. This in turn would prevent parents and caregivers of infants who are sensitive or intolerant to the A1 type β-casein protein found in most regular cows' milk from being able to identify and compare suitable products for their children.

a2MC refers to similar comments in the INC's CFS2 submission in respect of proposed changes by FSANZ to Lactose Intolerance product labelling, which would be likely to have the effect of confusing or even misleading consumers about the suitability of products for infants with lactose intolerance.

These concerns, which are widely held across industry, reflect the urgent need for FSANZ to take a more flexible and evidence-driven approach to updating the Code.

We would be happy to provide further information on any of the matters discussed and are available for a meeting to discuss this matter with you further if that would be useful.

Yours sincerely