

**Comments from the Victorian Department of Health, the Victorian Department of Jobs, Precincts and Regions, and Dairy Food Safety Victoria.**

**Due date of submission – 5 August 2022**

The Victorian Departments of Health and Jobs, Precincts and Regions (the departments) welcome the opportunity to respond to this application to amend the Australia New Zealand Food Standards Code (the Code).

Application A1249 - *Addition of phytosterols, phytostanols or their esters as novel food to plant-based milk alternatives* seeks to extend current permissions in the Code to also allow the addition of phytosterols, phytostanols or their esters as novel food to plant-based milk alternatives (plant milk).

From the Food Standards Australia New Zealand (FSANZ) Assessment report it is understood that:

- Phytosterols, phytostanols or their esters (collectively referred to as plant sterols) are currently permitted to be added as a novel food to edible oil spreads, breakfast cereals (not including cereal bars), milk and yoghurt, subject to meeting specific conditions of use.
- Application A1249 seeks to extend permissions for plant sterol addition to include beverages derived from legumes, cereals, nuts, seeds, or a combination of those ingredients (collectively referred to as 'plant-based milk alternatives').
- Dietary modelling suggests exposure to plant sterols from current permitted use is around 2-3g per day at the mean and around 5g per day for high consumers. The proposed extended permission to include plant milk is estimated to increase intake by 0.1 – 0.3g per day among average and high consumers, respectively.
- FSANZ reviewed safety information available since their previous assessment and reaffirmed that there are no toxicological concerns with plant sterol consumption and no justification for establishing an adequate daily intake (ADI) given the absence of adverse effects in short-term and sub-chronic toxicity studies.
- FSANZ therefore proposes to permit the addition of plant sterols to plant-based milk alternatives, subject to the following compositional limits. Plant-based milk alternatives with added plant sterols must contain (after plant sterol addition):
  - at least 100mg calcium per 100ml
  - not more than 0.75g saturated fat per 100ml
  - between 0.8 – 2.2g of plant sterol equivalents per 250ml
- Existing labelling requirements for foods containing plant sterols would apply to plant milk containing plant sterols. This includes requirements for mandatory advisory statements, and conditions on nutrient content and health claims.

The departments support the addition of plant sterols to plant milk alternatives as it would enable an additional source of dietary plant sterols to be made available to consumers, which may be particularly useful for individuals that cannot or choose not to consume dairy products. Based on FSANZ's conclusion that there are no public health and safety issues with the proposed addition of plant sterols to plant-based milk alternatives, the departments support the progression of Application A1249. However, we highlight several matters below that should be considered to ensure robust and effective regulatory control of plant sterol addition in foods.

The departments question whether the proposed drafting will adequately prevent the addition of plant sterols to unintended products, such as sweetened and flavoured plant milk. We note FSANZ decided not to set a composition limit for sugar because products are expected to carry a health claim, and therefore are also expected to limit sugar content in order to meet the Nutrient Profiling Scoring Criterion (NPSC). However, under the NPSC, a protein enriched plant milk could contain up to 9g of sugar, which would not be consistent with dietary guidelines or the objectives of plant sterol permissions. The departments suggest compositional sugar limits should be reconsidered to prevent misleading promotion of 'cholesterol lowering' products where the composition is not consistent with health advice (i.e., where they contain a considerable amount of sugar).

We also note that the proposed permission introduces regulatory inconsistency which may create unequal barriers to innovation among industry sectors. Specifically, the proposed maximum permitted level of added plant sterols in plant milk (2.2g per 250ml) is four times that currently permitted in dairy milk (4g per L, equivalent to 1g per 250mL). Given that dairy-based and plant-based milk are consumed in a similar manner, the difference in plant sterol permission between these categories appears unjustified. The *Policy Guideline on the addition of substances other than vitamins and minerals* states that it may be necessary to review existing standards, noting the need to consider the cumulative impact of the addition of substances to multiple foods. Application A1249 is the most recent in a number of applications to amend the permitted food types or levels of plant sterols in foods. The ongoing applications to amend plant sterol permissions and the consistency issues discussed above indicate there is a need to review broader plant sterol permissions. The departments would support FSANZ raising a proposal to address this matter.