

**Submission to
Food Standards Australia and New Zealand
In relation to
P1044 – Plain English Allergen Labelling**

27 February 2020

The Allergen Bureau Ltd

ACN 162 786 389



The Allergen Bureau Ltd

The Allergen Bureau is the peak industry body representing food industry allergen management in Australia and New Zealand.

Our Mission – Consistent, science-based, allergen risk assessment and labelling.

The overall objective of the Allergen Bureau is to share information and experience within the food industry on the management of food allergens to ensure consumers receive relevant, consistent and easy to understand information on food allergens.

The Allergen Bureau was established in 2005 and operates on a membership basis.

The Members of the Allergen Bureau include icons of the food industry in Australia and New Zealand – and now globally - who have given the Allergen Bureau the strong foundation upon which it has built its reputation with business, food industry groups and government food authorities.

The Allergen Bureau is a wonderful example of cooperation amongst competitors in the food industry, with national and multi-national food manufacturing and marketing companies, suppliers, importers, exporters, retailers and consumer groups sharing information on managing the risks of food allergens in industry in the interests of consumers.

The growth in the incidence of food allergens is an international phenomenon. The Allergen Bureau draws on and disseminates information from all over the world on food regulations and the latest scientific research on food allergens including emerging food allergens.

The Allergen Bureau provides free helpline advice to questions concerning the management of food allergen risks in food ingredients and manufactured foods in Australia and New Zealand and internationally.

The Allergen Bureau has developed and provides key best practice allergen management and labelling guidance for the food industry, particularly the globally recognised VITAL[®] (Voluntary Incidental Trace Allergen Labelling) Program - a standardised allergen risk assessment process for food industry. The VITAL Program produces a 'labelling outcome' that summarises the food allergens present in a food due to intentional inclusion as part of a recipe and where food allergens, present due to cross contact, should be included (or not) on the label in the form of the precautionary statement '**May be present: allergen x, allergen y.**'

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Submission by the Allergen Bureau to Food Standards Australia in relation to P1044 – Plain English Allergen Labelling.

The Allergen Bureau welcomes the opportunity to make this submission on P1044 – Plain English Allergen Labelling.

The Allergen Bureau **supports** declaring food allergens in a clear and consistent manner that assists allergen sensitive consumers to make informed choices based on label information.

The Allergen Bureau **supports** some parts of the current proposal.

The Allergen Bureau is **unable to support** all aspects of the current proposal as we consider that it contains uncertainties and areas that require greater clarity, and that the likely outcome of introducing the proposal as currently written would be increased confusion for the food industry - and therefore more inconsistency in labelling information for consumers.

The Allergen Bureau considers it is important that **FSANZ address each issue raised in our submission** with the aim to simplify the proposed variations so that they are: practical and cost-effective to implement; easy for the food industry to read and interpret; and - when implemented – will result in improved safety of the food allergic consumer.

Questions for submitters

1. What proportion of foods are likely to be affected by the change?
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The Allergen Bureau does not have current data that shows the proportion of foods that are likely to be affected by the change. However, the current allergen labelling guidance provided by the Allergen Bureau, namely -

1. Allergen Bureau 2019 *VITAL® Best Practice Labelling Guide for Australia and New Zealand*,
2. AFGC & Allergen Bureau 2019 *Food Industry Guide to Allergen Management and Labelling for Australia and New Zealand*

- **does not fully align** with the proposed changes and therefore those businesses following this guidance will be required to make labelling changes.

Although precautionary allergen labelling (PAL) is not within the scope of this proposal, it makes sense that, whenever PAL is applied, it aligns with the new labelling requirements (such as the use of required names for a statement of ingredients) so that PAL statements are clear and easy to

understand for consumers. From this perspective, any label that currently makes a PAL statement may also require an update.

2. Is there likely to be a material difference in costs between Options 2 and 3? If yes, why?

Option 2: Declare allergens using mandatory specified terms in bold font.

Option 3: Declare allergens using mandatory specified terms in bold font, with additional requirements to declare in the statement of ingredients as well as in a separate allergen summary statement.

There is expected to be a cost to industry for either/both changes. This is discussed further by describing the impact of new requirements.

Required names are new and, although industry guidance promotes the use of clear and easy to understand terminology, the required names in the proposal are not included in the current guidance. Therefore, it is anticipated that ingredient lists will need to be updated.

Bolded text takes up more room within an ingredient list than text that is not in bold font. Food companies that do not currently declare allergens in bold font, are likely to find that the formatting of the ingredient list will change (the ingredient list will become longer). Labels that are printed digitally (such as in store products or some small goods) are space limited and it may be difficult to accommodate the additional area needed. For pre-press printed labels, where label space is limited, other information may have to be relocated to accommodate the expanded ingredient list. In some circumstances, text in bold font may be less legible than text that is not in bold font. Examples include text in small font sizes, and ink jetted text. For this reason, the Allergen Bureau suggests that proposed bolding requirements may not be the best approach for all circumstances and therefore the requirement to use it in all ingredient lists and summary statements should be less prescriptive.

The inclusion of an **allergen summary statement** that is “directly below” and “distinctly separated” from the statement of ingredients is too prescriptive and, in some situations, may not be achievable without compromising other information on the label. The Allergen Bureau suggests that some flexibility is required with the placement of the summary statement, in that it should be at least within the same view of the statement of ingredients. Other considerations are: -

- In some circumstances it may make sense for the summary statement to be located directly above the ingredient list or directly beside it.
- Summary statements will require additional space. This has the potential to affect the location of other information within the label such as mandatory advisory statements. For smaller sized packages, where room is at a premium, the likely impact is a complete redesign of the existing label.
- There may be circumstances where text may be required on the same line as the summary statement (such as multilingual information).

The requirement to **declare the allergen** “for each ingredient that is or contains that food” (**each and every time it appears**) within the ingredient list (this applies to Options 2 and 3), will create similar issues related to space limitations because the ingredient list will change (become longer).

Material difference in costs – for both Options, ingredient lists will need to be changed. For Option 3, there is an increased likelihood that this will affect the entire label formatting which is more costly as it includes artwork design costs and additional printing plate changes.

Imposing highly prescriptive requirements will lead to increased costs and wastage.

For labels that adhere to current industry best practice guidance, the ingredient list and the allergen summary statement will display allergens using plain English terms, but not necessarily the terms set out in the proposal.

For example, both the ingredient list and the summary statement declare the presence of almond and walnut, but the term ‘tree nut’ is not displayed.

These labels, although providing transparent and clear allergen information, will need to be replaced with ones that include the prescribed terms for the allergen summary statement. The Allergen Bureau considers that an unnecessary level of prescription is being imposed, resulting in unnecessary costs to update labels and potential wastage in disposal of labels that declare the allergens clearly but no longer comply.

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| 3. Is there likely to be a material difference in the benefit to consumers between Options 2 and 3? |
| 4. Is Option 2 or 3 sufficient for consumers to make quick and reliable assessments of foods? |

The Allergen Bureau does not have data that measures the material difference in the benefit to consumers between Options 2 and 3 and is unable to comment on the consumer ease of assessment between the two options.

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| 5. What would be an appropriate duration of time for stock in trade provisions? |
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The Allergen Bureau proposes that the duration of time for stock-in-trade provisions is extended.

Food with long shelf lives require a longer duration time for stock in trade provisions. For example, foods with a three-year shelf life have the potential to be non-compliant within days after gazettal. Foods with a two-year shelf life will need to have labels updated within the first year of the transition period. Further complexity arises for foods which are produced in large volumes, on a seasonal basis, to meet a year’s worth of demand and which have longer shelf lives.

As mandatory allergen declaration is already in place, and the intention of this proposal is to make the existing allergen labelling clearer, there is no health and safety risk (the allergens are already

declared on the label) of extending the time of the proposed stock in trade provisions.

The Allergen Bureau asks FSANZ to consider the costs industry will incur due to other potential changes to legislation such as added sugar labelling, and the costs already incurred due to the Country of Origin changes.

Two approaches to extend the stock in trade provisions to account for the complexities of foods with long shelf lives are: -

1. that stock-in-trade provisions are extended beyond the 12-month period by an additional period that is both practical and cost effective to implement.
2. the food should be taken to be compliant for sale for the period of its shelf life beginning on the date of the variation. **This is the preferred option.**

An extension to stock in trade provisions will allow industry to manage minimum order quantity constraints, as well as minimise the number of label changes that are currently underway and in the future (i.e. HSR, added sugar labelling).

Additionally, consideration should be given towards allowing for the availability of label designers and label printers considering that many labels will require updating throughout Australia and New Zealand within a relatively short period of time.

6. Do you expect to have any notification, education, permission, purchasing, record keeping, enforcement, publication and documentation, procedural, delay, labelling or any other costs associated with the proposed changes to the Food Standards Code?

The Allergen Bureau will update the following labelling guidance to align with the proposed changes.

1. Allergen Bureau 2019 VITAL® *Best Practice Labelling Guide for Australia and New Zealand*,
2. AFGC and Allergen Bureau 2019 *Food Industry Guide to Allergen Management and Labelling for Australia and New Zealand*
3. The Allergen Bureau VITAL Training Package

The Allergen Bureau will also reassess its guidance on precautionary allergen labelling and the outputs of VITAL Online, the web-based VITAL Calculator, for alignment with the proposed changes. It is anticipated that some changes will be required to the calculator, our industry guidance material and website communications.

7. Any views in relation to unintended consequences associated with Option 2 or 3.

The Allergen Bureau has identified some areas within the proposal that need further clarification or consideration.

Schedule 9

The Allergen Bureau does not support the following statement in section 5.5.2 of the CFS document.

‘Tree nut’ (singular) is proposed instead of ‘tree nuts’ (plural) to accommodate the situation where only one tree nut may be present in the food. The use of ‘tree nuts’ could mislead a food allergic consumer to search for more than one nut in the statement of ingredients, whereas the reverse is unlikely to occur.

The Allergen Bureau recommend that either the singular or plural term for tree nut be permitted wherever it is appropriate to do so. For example, a food may have three tree nut ingredients displayed in the ingredient list. In this situation, the allergen summary statement using the singular term is incorrect, could be misleading, or a consumer may only look for one tree nut and accidentally miss the tree nut that they are allergic to.

Use of plural or singular terminology-

- Clarification is needed as to whether either the singular or plural term can be used, wherever appropriate.
- There is some inconsistency with the terms - the table appears to list some terms as plural (e.g. oats) and some as singular (e.g. soybean).
- If the required name ‘peanut’ was used in a satay sauce which contains peanuts as the first ingredient, should it be interpreted that the ingredient list would state ‘peanut’ rather than the true form ‘peanuts’.

Specific words and mandatory statements

The Allergen Bureau seeks clarification as to how the proposed declaration requirements are intended to fit within section 1.1.1—8 Compliance with requirements for mandatory statements or words. Is a required name a ‘*specific word*’ and is an allergen summary statement a ‘*mandatory statement*’ as per section 1.1.1—8?

Allergen Summary Statements

The Allergen Bureau supports the use of the required names and supports the terms ‘tree nut’ and ‘gluten’ in allergen summary statements. These terms allow for shorter declarations which is very important when label space is restricted. However, the specific tree nut or cereal containing gluten should also be permitted to be declared in allergen summary statements when appropriate to do so.

Required names should be less prescriptive

The Allergen Bureau recommends that the information in PAL statements should not be confusing or conflict with the ingredient list and allergen summary statements. However, by prescribing the use of only required names within the summary statements, confusion may occur in some situations when PAL statements are also used. See the example below.

By allowing some flexibility in allergen summary statements (particularly for the terms ‘tree nut’ and ‘gluten’) a consumer is more informed about the presence of the cross contact and the intentionally added allergens (Scenario 2 & 3).

Example. This food for sale contains added almond, and walnut is present as (unavoidable and sporadic) cross contact.

Scenario 1. The required names are used as set out in this proposal.

Contains tree nut

May be present: tree nut

Scenario 2. The required names are qualified to provide clarity.

Contains tree nut (almond)

May be present: tree nut (walnut)

Scenario 3. The specific required names used, and the statements shortened to display the key information.

Contains almond

May be present: walnut

The Allergen Bureau recommends that all three scenarios above be permitted to be used where appropriate.

Emphasis of other allergens or ingredients of interest

Bolding additional allergens – When allergens that require mandatory declaration in other jurisdictions (e.g. mustard and celery in the European Union) are present in a food, can these be in bold font in the ingredients list?

Bolding other ingredients - Other ingredients that are of interest to consumers such as phenylalanine, caffeine, quinine (including other foods that require mandatory advisory or warning statements) may currently be declared in bold font that provides a distinct contrast with any other text. Clarification is required as to whether this will remain permissible for non-allergen substances. How should industry make these other statements more distinct from allergen labelling requirements?

Requirement for separate declarations between fish, crustacea and molluscs

It is proposed that molluscs are changed from being a ‘fish’ to an ‘ordinary meaning’. While the Allergen Bureau supports the intention of this, so that the consistency and clarity of mollusc declarations enable food allergic consumers make safer food choices, there is another consequence of this change.

The definition of mollusc includes garden snails, thus shifting aquatic/marine/shellfish-based

molluscs to a broader meaning. The impact this can have on the food industry is significant because industry will need to move beyond ordinary hygiene controls established for garden snails.

Where currently they are not allergens, garden snails will need to be incorporated into Allergen Management Programs. This will require the implementation of stringent controls, including validating and verifying that the removal of snails is effective from an allergen perspective. Fresh produce and products of fresh produce such as frozen diced or dehydrated leaf or stalk type produce will need allergen controls in place for snails.

Auditors of fresh produce will also have to include garden snails in their allergen audits, where at present fish (which includes mollusc) is rarely within the scope of fresh produce allergen controls. It also means a potential allergen recall if a food contains snail residue or a snail.

These consequences extend beyond mandatory allergen declarations into PAL where, in cases where the presence of snails are difficult to control (such as a bunch of fresh spinach at the supermarket), there is the potential for PAL statements on fresh produce (such as ‘May be present: mollusc’).

The Proposal P1044 scope states that it “will not be considering the introduction of declaration requirements for new allergens into the Code or exemptions from declaring existing allergens”. By allowing mollusc to have an ordinary meaning, it broadens the meaning of mollusc to outside of fish and is therefore is no longer in scope. The Allergen Bureau suggests that the definition of molluscs for allergen declaration is clearly set out in the Code.

Foods for special medical purposes (FSMP)

The Allergen Bureau does not support how the proposed variations to allergen declarations apply to FSMP. Such products already have clear guidelines for ingredient labelling and are used following the advice of a health care professional. To enable access to these products for consumers in Australia and New Zealand, their labels must often be shared with other countries. Labels shared with other countries are space restricted – they will require other information to be placed on the same line as the allergen summary statement which is not permitted under this proposal.

In addition, the EU specifically prohibits allergen summary statements. Sharing of labels with other English-speaking EU countries will not be possible under this proposal. Volumes are often small, particularly for FSMP’s that are for very specialised metabolic disorder. The ability to have a label just for Australia / New Zealand is not possible due to minimum label order quantities. To ensure the continuity and future availability of FSMP products to Australian and New Zealand consumers, an exemption is vital for these types of products

Given the restrictions to selling channels in place for these products, as well as the fact that they are recommended following the advice of a health care professional, **we do not support the application of P1044 to FSMP.**

Processing aids

Although processing aids are not required to be listed in a statement of ingredients, when the processing aid is an allergen, the *Allergen Bureau VITAL Best Practice Labelling Guide for Australia and New Zealand* currently recommends declaring processing aid in both the ingredient list and the allergen summary statement.

The example provided in this guide relates to lactoperoxidase and explains that *“Declaring the processing aid (allergen) only in the allergen summary statement and not also within the ingredient list is not recommended as it is confusing to consumers who are unable to identify where the milk originates from, and some may assume that it is an error.”*

The Allergen Bureau seeks clarification as to FSANZ’s intent for the declaration of substances that are processing aids and are an allergen within a summary statement. Additionally, if the processing aid was a tree nut or a cereal containing gluten, declaration in the summary statement only, may not provide the consumer with sufficient information.

Allergen labelling exemptions

The Allergen Bureau notes that the proposed variations do not include the existing section 1.2.3—4 (3). Clarification is required for the absence of the exemption of a food derived from a food that is exempt from mandatory allergen declaration.

Individual Portion Packs

The Allergen Bureau seeks clarification for the allergen declarations on the inner packages of individual portion packs when the outer layer displays all mandatory allergen declaration requirements. The proposed variations are very difficult to interpret and indicate that both a statement of ingredients and an allergen summary statement is required. This does not align with existing requirements.

The Allergen Bureau also **supports** the Australian Food and Grocery Council submission on this proposal.

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