

Submission to: **Food Standards Australia New Zealand**

In response to:

Second call for Submissions – Proposal P1044

Plain English Allergen Labelling (PEAL)

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Executive Summary

Sanitarium is generally supportive of clarifying Standard 1.2.3 – Information requirements – warning statements, advisory statements and declarations of the Australia New Zealand Food Standards Code (the Code). We recognise the challenges consumers with food allergies face. While we believe our current allergen labelling practices do provide clear and consistent allergen labelling for consumers, we recognise the inconsistency and ambiguity that exists in allergen labelling in the wider marketplace due to the non-prescriptive nature of the Code. Sanitarium supports many of the proposed changes to the code for this reason; however, we would recommend that they are less prescriptive in terms of where the mandatory specified terms must be used, and when allergen summary statements are required. In this way, **Sanitarium is supportive of Option 3, but with modifications.**

We appreciate the opportunity to put forward our views on allergen labelling in this second consultation paper.

Introduction

Sanitarium Health Food Company, previously Sanitarium Health and Wellbeing, began in 1898 with the vision to help people ‘learn to stay well’. Our mission is to **‘inspire and resource our community to experience happy, healthy lives’**. We have been committed to this philosophy for over 100 years and it is the reason we exist today. Sanitarium also believes that good business is based on trust, respect and community involvement.

Sanitarium has a strong history of educating the community about healthy eating and healthy lifestyles. All of Sanitarium’s activities have twin goals in mind - to provide healthy foods that actively improve our community’s health and well-being, and to offer easy-to-understand nutrition information and practical health advice.

Sanitarium Australia and Sanitarium New Zealand are owned and operated by Australian Health & Nutrition Association Limited and New Zealand Health Association respectively. We produce over 150 products and employ over 1000 people in our manufacturing and distribution sites throughout Australia and New Zealand.

Sanitarium welcomes the opportunity to comment on the development and evolution of the Australia & New Zealand Food Standards Code. We believe we can provide a unique perspective and give valuable suggestions into the food policy and standards development in Australia and New Zealand.

Information contained in this submission has been drawn from the experiences of Sanitarium, and contains no commercial-in-confidence material – unless otherwise highlighted.

Discussion

Sanitarium appreciates the opportunity to make this submission to FSANZ in response to the call for submissions on Proposal P1044 Plain English Allergen Labelling (PEAL).

1. What proportion of foods are likely to be affected by the change?

In general, Sanitarium's allergen labelling process is to declare allergens both in bold font in the ingredient listing and in an emboldened allergen summary statement; however, we do not always use the suggested mandatory specified terms. Where applicable, we also make voluntary precautionary allergen declarations, in line with the principles of VITAL.

We have conducted an internal audit of our allergen labelling against the suggested changes to the Code under Option 3. Nearly all (90%) of our products may have to change their ingredients listing and/or allergen statement as a result of this proposal (Table 1).

Table 1: Proportion of Sanitarium products that would be affected by Option 3 of Proposal P1044	
Reason for change	Number of products
Ingredients list does not align with proposed changes e.g. font size, bolding, use of mandatory specified terms	29
Allergen summary statement does not align with proposed changes e.g. location, formatting, use of mandatory specified terms	176
Total number of products requiring change (note: some products require changes to both ingredients listing and allergen summary statement)	170 / 188 90%

A large proportion of these changes would be due to the declaration of gluten (61%) and wheat (53%), with some products being affected by both of these proposed changes.

If "cereals containing gluten" or "gluten containing cereals" is a permitted allergen declaration in the allergen summary statement, this would reduce the number of products to be changed down to 156 (83%).

The declaration of wheat in the allergen summary statement will affect more than half of our products (53%).

The required declaration of "tree nut" in the allergen summary statement as opposed to the specific nut name (i.e. cashew, almond etc) will impact over 20% of our products.

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

The difference in costs will depend on which mandatory specified terms are decided on for Option 2. In most cases, we already use at least one of the terms proposed in Column 3 or 4 of the Mandatory Declarations table (S9-3), either in our ingredient listing or allergen summary statement. However, in the case of Option 3, we are not necessarily using the proposed terms for both the ingredient listing and the allergen summary statement.

If wheat is present in a product, Sanitarium already always qualify wheat, by name and in bold font, at least once in the ingredient list statement. The 'contains' statement usually states 'contains cereals containing gluten'. We feel this approach clearly and simply informs both gluten intolerant and wheat allergic consumers, and therefore the declaration of wheat in the allergen summary statement is unnecessary.

If tree nuts are present in a product, we may declare the tree nut as its specific name (e.g. almonds) both in the ingredient listing and the allergen summary statement, as opposed to *almonds* in the ingredient listing and *tree nuts* in the allergen summary statement. We believe the declaration of the tree nut type in both the ingredients list and allergen summary statement provides sufficient information to consumers, and complies with the intent of the legislation. Penalising those who declare tree nuts in this way is overly prescriptive and does not improve the clarity of allergen labels.

3. Is there likely to be a material difference in the benefit to consumers between options 2 and 3?

We support the proposal to declare allergens in both the statement of ingredients and in a separate allergen summary statement (Option 3), except in the case of single component products.

Identifying all allergenic ingredients specifically by name in the ingredient listing provides additional information to the consumer to improve their understanding of where the allergenicity is coming from.

The allergen summary statement serves as a helpful summary for consumers to easily know what allergens are present without having to search the ingredients list, which can often be lengthy. In some cases, ingredient terms may not directly indicate the presence of these allergens, unless the consumer is well-educated on the matter.

We do not believe an allergen summary statement is always necessary, particularly for single component products, and also when the allergen is emphasised in the product name and ingredient listing. For example, we currently only declare the peanut allergen for our peanut butters in the ingredients listing, and do not provide an allergen summary statement e.g. 'Ingredients: **Peanuts** (100%)'. We believe it is clear to the consumer that peanuts are in the product based on the product name and ingredient listing.

4. Is Option 2 or 3 sufficient for consumers to make quick and reliable assessments of foods?
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

Both Option 2 and Option 3 will aid consumers to make quicker and more reliable assessments of foods by making allergen declarations more consistent through the use of mandatory specified terms.

Nevertheless, Option 2 still leads to variation in allergen declarations, as manufacturers may declare their allergens either in the ingredients list, or in an allergen summary statement. This does not improve the current situation whereby consumers may not be aware of this flexibility, and therefore may make incorrect assumptions (for example, that a product does not contain any allergens if it does not have an allergen summary statement).

We believe that Option 3 is superior as the inclusion of an allergen summary statement in bold will allow quick and reliable assessment of foods for their allergen status, whereas the allergen declarations in the ingredient statement offer further information about the origins of these allergens, if required by the consumer.

However, we would like to request more flexibility in the mandatory specified terms. While we appreciate that this proposal will result in more consistent allergen labelling in the marketplace, we are concerned that having mandatory specified terms for both the allergen summary statement and the ingredients listing makes the declaration of allergens overly and unnecessarily prescriptive, without increased benefit to the consumer.

For example, the declaration of both wheat and gluten from wheat could be achieved through both the ingredients listing and the allergen summary statement working together, as seen in the below example:

Ingredients: Wholegrain **wheat** (97%), raw sugar, minerals (calcium carbonate, iron), **barley** malt extract, vitamins (niacin, thiamin, riboflavin).

Contains cereals containing gluten.

5. What would be an appropriate duration of time for stock in trade provisions?

We would support a transition period of a minimum of two years, with the requirement that goods manufactured after a specific date need to comply with the new legislation. We recommend that stock in trade manufactured before this date would not be penalised to account for products with long shelf lives.

In addition, due to the number of other possible legislation changes currently in development that may affect labelling (eg NRV, added sugar, HSR review), this timeline should be aligned with as many of these other legislation changes as possible. This would reduce the costs to industry and allow for overall labelling redesign that takes into account multiple changes.

6. Do you expect to have any notification⁶, education⁷, permission⁸, purchasing, record keeping, enforcement, publication and documentation, procedural, delay, labelling or any other costs associated with the proposed changes to the Food Standards Code?

Notification - *businesses face costs when they have to report certain events to a regulatory authority, either before or after the event has taken place.*

- No costs expected.

Education - *businesses face costs when keeping up to date with regulatory requirements*

- Appropriate staff would need to be trained on the changes to these allergen labelling requirements to ensure we correctly implement the changes. This would involve multiple departments across Australia and New Zealand.
- We recommend that FSANZ provide free training courses/seminars to educate food manufacturers on these changes if they are implemented.

Permission - *businesses face costs when applying for and maintaining permission to conduct an activity.*

- No costs expected.

Purchasing - *businesses face costs when having to purchase a service (advice) or a product (materials or equipment) to comply with a regulation.*

- The cost of changing packaging artwork to comply with these changes will likely be over AUD\$90,000. This is assuming that there will be sufficient notice to use up current packaging so that changes can be timed with the next print run, and that internal designers can be used to make the changes necessary.

Record keeping - *businesses face costs to keep statutory documents up to date*

A large number of documents will have to be updated with the implementation of this change.

Each product has associated:

- labelling information documentation,
- sales sheet information,
- PIF, in some cases.

Enforcement - *business costs when cooperating with audits, inspections and regulatory enforcement activities.*

- No costs expected.

Publication and documentation - *businesses face costs when having to produce documents for third parties.*

- PIFs and specifications for customers.
- Updating external distributor databases e.g. retailers.

Procedural - *businesses face non-administrative costs imposed by some regulations*

- There would be extensive updates required to internal procedures and documents which record product labelling information.

Delay - *businesses face costs when administrative delays result in expenses and loss of income.*

- Resource required in implementation of these changes may lead to delays in marketing campaigns or NPD launches, and therefore impact sales.

Labelling - *declaring the presence of allergens on labels or displaying or providing information to consumers about the presence of allergens where a label is not required*

- As per “purchasing”.
- All products currently have declaration of allergens on labels but many of these will require updates.
- Consumer information, such as company website information would also need to be updated.

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

Sanitarium requests further consideration or clarification of the following:

Allergen summary statement must be distinctly separated from the statement of ingredients

Prescribed formatting requirements such as the location of the allergen summary statement in relation to the ingredients list may lead to more significant redesigns of some labels, particularly for smaller packages. We suggest that the allergen summary statement should appear after the statement of ingredients, but not require ‘distinct separation’.

In addition, the term ‘distinctly separated’ is subjective and open to interpretation. Some products have the allergen summary statement on a line below the statement of ingredients, but without a clear space between the two. It is not clear whether this would be acceptable under these amends to the Code. A user guide with examples should be provided to ensure compliance with the intent of the standard.

Processing aids

Where an allergen is present from a processing aid, the allergen will be declared in the allergen summary statement but not in the statement of ingredients. With the proposed mandatory specified terms, the consumer may not be provided with sufficient information, or may be confused by this declaration. In the case of a processing aid containing a tree nut, the allergen summary statement will simply state “contains tree nuts”, and the consumer will not know which specific tree nut is involved. Similarly, if the processing aid contains gluten, it will not be clear as to which cereal is the source of the gluten.

Precautionary labelling

Although precautionary allergen labelling (“may contain” statements) is not in the scope of this proposal, these statements should ideally be aligned with the allergen summary statement (“contains” statement) in terms of terminology. For example, if wheat is introduced as an allergen, raw materials and manufacturing sites should be checked for any cross-contact with wheat, and the precautionary allergen labelling amended as a result.

The allergen summary statement should also be located near the precautionary allergen statement. The concept of “distinct separation” between the ingredients and allergen summary statement should take this into account as significant space may be required.

Export

This proposal could discourage export of Australian and New Zealand products, and discourage the import of global products into either country as it may be too prescriptive to allow for global policies around food allergen labelling, or universal labels.

Recall

We would also like to request clarification over what level of non-compliance with these changes would result in a recall, e.g. if an allergen was declared, but not by using the mandatory specified terms. We believe if the average consumer would correctly interpret the allergen declarations, a recall should not be required as there would be a very low risk of harm to the consumer.