

Comments from the Victorian Departments of Health and Human Services and Jobs, Precincts and Regions.

Due 27 February 2020

General Comments:

The Victorian Departments of Health and Human Services and Jobs, Precincts and Regions (the departments) welcome the opportunity to comment on the issues raised in the second call for submissions of Proposal P1044 – Plain English Allergen Labelling.

The departments support FSANZ's preferred option (noting this was assessed as providing the greatest net benefit): 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. We do not support Option 2 (Declare allergens using mandatory specified terms in bold font) as it does not address the confusion caused by inconsistent location and presentation of allergen information.

The departments note and support the proposed requirements for co-locating, format and terminology for allergen declarations in the ingredients list and allergen summary statement. We note that many companies are following this format already and that the lack of prescription on colour, specific font size and location provides some flexibility for the food industry.

In terms of the Questions for Submitters, the departments have provided comment above in relation to Questions 3 and 4 on the relative merits of Options 2 and 3, and Question 5 on stock in trade provisions is captured below. The departments have no comments on the remaining questions.

Within the proposed changes under Option 3, there are four areas where we request further consideration by FSANZ:

1. Mandated term 'milk'

The departments note that the mandated term, 'milk' will be required to be listed in products containing ingredients derived from the milk of milking animals (the current definition of milk in the Code). We support the use of a single term to address the current situation where multiple terms can be used to represent the presence of milk.

However, the departments are concerned that the term 'milk' may itself cause some confusion for consumers in terms of what this encompasses. The departments are interested to know whether the single term 'milk' still clearly represents mammalian milk for Australian consumers and whether consumers automatically consider all dairy products to be captured by this term (such as yoghurt, cheese, butter etc.) This is in the context of the proliferation and common use of plant-based 'milks' and the decision to allow the name 'milk' on these products. This may be particularly relevant for mixed-ingredient products where dairy milk is not an obvious ingredient, for example, in a muesli bar containing soy, nuts and dairy ingredients. The departments are unsure whether it would be clear to consumers that a summary allergen statement with 'soy, milk, tree nut' indicates the presence of dairy products. We also note from *Supporting Document 2 – Consumer literature review* that a study commissioned by the UK Food Standards Agency in 2016 noted confusion among some participants over the term 'milk', as this was thought by some to include alternative milks such as soy and nut milks.

The Victorian Anaphylaxis Notification System collects some information when a person presents to a Victorian hospital for treatment of anaphylaxis, such as the person's history of medically diagnosed allergies. The data for the first 12 months indicates that when a person reports having a milk allergy, they are more likely to report this as a 'dairy' allergy than a 'milk' allergy, perhaps indicating a preference for the term 'dairy' (unpublished data). We note this is consistent with the information presented by FSANZ that indicated from submissions it was noted milk-allergic individuals refer to their allergy as being to

'dairy' rather than 'milk' and that consumers in the United States of America have a preference for the term 'dairy' over 'milk' (although the latter term is mandated). While we appreciate there is a preference to use the source food as the mandated term, consideration should be given to whether the term 'dairy' is less ambiguous and more likely to clearly convey the range of milk-derived food sources as well as the animal source.

Regardless of the final decision, the departments recommend the communication strategy should focus consumer education on the labelling of milk/dairy as an allergen to ensure consumers (both milk allergic individuals and others providing food for milk allergic individuals) can effectively use food labels to avoid mammalian milk.

2. Coconut

Standard 1.2.3 currently requires tree nuts, other than coconut from the fruit of the palm *Cocos nucifera*, to be declared when present in a food for sale. The proposal is to list nine individual tree nuts in ingredients lists, with the generic 'tree nut' permitted in the allergen summary statement. FSANZ considers the clarification that coconut does not need to be declared redundant and intends to remove it. In its consideration and response to a submitter linking coconut allergies to tree nut allergies, FSANZ conducted a further risk assessment on coconut allergies and concluded the declaration of coconut unnecessary as coconut allergies appear to be very rare, noting no reports in Australian literature.

However, in the first 12 months of the Victorian Anaphylaxis Notification System (VANS), of those presenting with anaphylaxis to a suspected food and reporting a history of food allergy (874 cases), 12 people reported a medically diagnosed allergy to coconut (1.4% of food allergic cases). At least one of these people presented with a suspected anaphylaxis episode due to coconut (noting this is self-reported data and the allergy histories and causes of anaphylaxis are not clinically verified). While allergies to coconut are not reported as frequently as those to tree nuts (and coconut is not technically a tree nut), this allergy is reported more frequently than other mandated allergens, such as lupin (4 reports, 0.4% of food allergic cases).

While this Proposal is not intending to review which allergens should be mandated on labels, its risk assessment did seek to consider whether coconut species cause allergic reactions. Given the self-reports of coconut allergies in the VANS and the recent popularity and growth in coconut products, the departments recommend FSANZ reconsider whether coconut should be labelled. Furthermore, with increasing allergy rates (presentations of anaphylaxis to hospitals are increasing by 13% each year on average in Victoria), the departments recommend a review into which food allergens should require mandatory declaration on labels, following completion of this Proposal.

3. Fish

The departments note and support the proposal to require fish, molluscs and crustacea to be declared individually as allergens. However, we are concerned that this will result in two different meanings of fish in the Code, with the definition for fish provided in the Code being inconsistent with the meaning of fish for allergen declarations. In Standard 1.1.2, the definition of fish will continue to include molluscs and crustacea and a clause will be included to state this will not apply to allergen labelling in Standard 1.2.3. For allergen declarations in Standard 1.2.3, a definition for fish will not be included, but will be taken to be the 'ordinary meaning of fish'. The departments consider this to be poor drafting, and all amendments to the Code should take care to maintain consistency in meaning of terms used across the Code. If the definition of fish under Standard 1.1.2 requires it to include molluscs and crustacea for trade purposes, consideration should be given to creating a replacement term for 'fish' in Standard 1.1.2 that encompasses molluscs and crustacea and does not conflict with other areas of the Code.

4. Transition arrangements

FSANZ is proposing to provide industry with a two-year transition period with a further 12 months stock-in-trade exemption for any product labelled during the transition period.

This gives the food industry effectively three years to comply with these proposed labelling changes. Given these changes are consistent with industry recommended guides for allergen labelling, the food industry has been made aware of the proposed changes and many manufacturers already use this style of allergen labelling, the departments consider the transition arrangements overly generous considering the risk posed to consumers with allergies. The departments recommend that the transition arrangements should be two years, as proposed, with no stock-in-trade exemption beyond that time.