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Submission from Allergy & Anaphylaxis Australia (A&AA)

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Proposal P1044 - Plain English Allergen Labelling

Summary

Allergy & Anaphylaxis Australia (A&AA) acknowledges FSANZ for the extensive work completed to put together P1044. A&AA broadly supports the amendments to the Food Standards Code included in this proposal, option 3 in particular. The proposed revised standards however are quite complex and may be difficult for small to medium businesses to interpret. A&AA would like to see FSANZ develop a plain English labelling guide to accompany the legislation to facilitate compliance by all food manufacturers including small businesses. Consideration should also be given to translation of the revised FSC and any accompanying guide.

A&AA has identified some other issues which may require further consideration, as detailed below.

Questions for submitters

1. A&AA does not have details on the proportion of foods likely to be affected however as many foods contain at least one of the food allergens that must be listed we think changes would affect the majority of foods.
2. Option 3 will use more label space than option 2, however many companies already include a summary statement on the label.
3. Option 3 provides a higher degree of certainty for consumers in assessing the suitability of a product, and will increase their confidence with respect to that food, that brand and that company.
4. Option 2 and the lack of a summary statement makes the assessment of suitability for consumption more onerous, particularly with long ingredient lists and miniscule type. Option 3 is preferable as it provides an accurate summary statement which is a quick reference for consumers with food allergy to review. A&AA

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considers that option 1, retain status quo, is not a workable option as we often have summary statements which do not accurately reflect ingredients and foods are not withdrawn because summary statements are voluntary.

5. A&AA believes that the suggested timelines (two year transition with one year stock in trade) are generous and should not be extended.
6. A&AA will also have cost associated with education of consumers and health professionals and updating our website and other resources to reflect the changes. A&AA will have costs involved with reporting and progressing food recalls when businesses do not follow these new regulations.
7. Unintended consequences of Options 2 or 3: Option 2 leaves open the option for manufacturers to use a summary allergen statement which may not follow the same format as required in option 3, and which may serve to confuse consumers. This confusion may lead consumers to incorrectly assume a product is free of their allergen if they only read the allergen summary statement and that statement does not fully list all the allergens from the ingredient list. A&AA's experience is that on many occasions jurisdictions refuse to pursue recalls for summary allergen statements which do not accurately reflect the ingredient list as these statements are voluntary. Option 3 is supported over option 2. It will mean that consumers can have a quick source of information as to the allergen content of the food in the form of an allergen summary statement and the ability to double check this information against the ingredient list.

Fish

Fish species

A&AA supports separating fish from molluscs and crustaceans. However A&AA does not support the FSANZ statement "fish-allergic individuals are allergic to all fish" as this is not the case. People are often allergic to several but not all fish. A&AA does however support not listing individual fish species due to the number of fish species and the potential for labelling errors if fish species were substituted by the manufacturer. If however a manufacturer does specify fish species, the word fish must be bolded in brackets after the name of the fish. If a mistake is made and the manufacturer has communicated the wrong fish species on a food label, this would be seen as a food safety issue and the food should be recalled.

Definition of fish

Schedule 10 should be amended in line with schedule 9 with respect to the definition of fish.

Schedule 9 is proposed to be amended as follows

S9—3 Mandatory declarations

(2) For the purposes of the table to subsection (3):

(a) the definition of **fish** in subsection 1.1.2—3(2) does not apply; and

(b) **fish** excludes crustacea and molluscs.

Standard 1.1.2—3(2) states:

fish means a cold-blooded aquatic vertebrate or aquatic invertebrate including shellfish, but not including amphibians or reptiles.

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Because this proposed amendment to Schedule 9 does not affect Schedule 10, the meaning of “fish” in Schedule 10 would revert to the meaning in 1.1.2—3(2), that is to say it includes crustacea and molluscs. Thus any or all of fish, crustacea or mollusc can be declared in the ingredient list simply as “fish”, qualified by any or all of the terms “fish”, “crustacea” or “mollusc”. It would seem a potential source of confusion for consumers seeing the term “fish (**fish**)” or just “**fish**” in an ingredient list when Schedules 9 and 10 differ in defining the term.

A&AA suggests that the amendments be redrafted by requiring the amendment to schedule 9 also apply to schedule 10.

Crustaceans

A&AA does not support the FSANZ statement “crustacea-allergic individuals are allergic to all crustacea” as this is not the case. People are often allergic to several but not all crustaceans.

Plural terminology

Where there is more than one crustacean in an ingredient list A&AA would like to see the use of the term crustaceans (plural) in the summary statement, as using the term crustacean (singular) would be misleading and is potentially dangerous if a consumer for example only sees lobster in the ingredient list at a quick glance but it also contains prawn for example. We prefer to use the term crustaceans rather than crustacea for plural because that will make more sense to Australians thinking at a year nine education level and people from Culturally and Linguistically Diverse (CALD) backgrounds.

Specific names of crustacea

The proposed amendments to Schedule 10 also remove the conditions of use, namely “the specific name of the crustacea must be declared”. Consequently there would seem no obligation to include the specific name of the crustacea or mollusc. This would have the effect of limiting the choice of vulnerable consumers whose allergy may be limited to only one crustacean or mollusc. A&AA does not support this retrograde amendment.

Molluscs

A&AA supports the separate listing of molluscs to increase the dietary choices for those allergic only to molluscs and not fish or crustaceans. Consumers who are allergic to a mollusc such as mussels and may not be aware that a mussel is a mollusc. A&AA would prefer to allow listing to include the name of the mollusc and then mollusc bolded and in brackets e.g. mussel (**mollusc**).

Plural terminology

Where there is more than one mollusc in an ingredient list A&AA would like to see the use of the term molluscs (plural) in the summary statement, as using the term mollusc (singular) would be misleading and is potentially dangerous for example if a consumer only sees mussel in the ingredient list at a quick glance but it also contains oyster.

Tree nuts

Specific names of tree nuts

A&AA supports the identification of specific tree nuts in the Code, rather than the current generic approach. This will provide certainty as to which nuts are relevant to allergen declaration and which are, by omission, not captured.

Other nuts

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Generally, there remains a degree of confusion over the status of coconut, however A&AA accepts that including an exemption for coconut within the body of the Code may create further confusion as to the status of other nuts not specifically exempted. A&AA suggests including a note in schedule 9 to the effect that nuts, including tree nuts, which are not listed in column 1 of the schedule, are not subject to the allergen declaration requirements under Standard 1.2.3. Nuts not requiring allergen declaration would include coconut, kola nut, chestnut and many others.

Plural terminology

Where there is more than one tree nut in an ingredient list A&AA would like to see the use of the term tree nuts (plural) in the summary statement as using the term tree nut would be misleading and is potentially dangerous if for example a consumer only sees almond in the ingredient list at a quick glance but it also contains cashew as an ingredient.

Wheat

A&AA supports wheat being declared in all instances and not just gluten. A&AA supports the declaration of wheat as provided in columns 3 and 4 of the table in schedule 9

Contingency “if gluten is present”

However column 4 also requires that for wheat, gluten is to be declared in the summary statement only “if gluten is present”. This would seem to be problematic for a number of reasons.

1. It does not specify the source of the gluten, although it is presumably intended to refer only to wheat gluten.
2. It is a potential source of confusion in that susceptible consumers may be confused as to why the summary statement does not appear to reconcile with the ingredient list. Or that the absence of the term gluten in the summary statement means that the wheat derivative is required to be gluten-free.
3. The provision requiring gluten declaration in the summary statement only when gluten is present appears contrary to FSANZ’s usual approach to ensure public health and safety. Which is, as in the case of glucose syrups, where an exemption from the declaration of wheat, in that case, is permitted only under stringent conditions following assessment by FSANZ, and subject to maximum gluten protein level. This provision would now require the food industry to make its own determination as to whether gluten was present in the wheat product. And for enforcement agencies to analyse foods containing a wheat product for gluten content, to determine if the summary statement should have included the term “gluten”.
4. Wheat contains proteins other than gluten that individuals are allergic to.

A&AA does not support this provision.

Other cereals

Allergenicity of other cereals

A&AA notes that barley, oats, rye and spelt and their products are also subject to allergen labelling as required in columns 3 and 4 only if they contain gluten, as described in column 1 of the table to S9—3). A&AA has the same concerns with this provision as with wheat, with respect to the “if they contain gluten” provision; understanding that the number of people with a true allergy to barley, oats, rye and spelt are smaller in number than those allergic to wheat. A&AA suggests that further consideration be given to the cereals barley, oats, rye and spelt being included in columns 3 and 4 required names in the same manner as for wheat, irrespective of gluten content.

Consumers with an allergy to barley etc may expect that allergy labelling for cereals is uniform, and that if wheat is subject to specific individual declaration, then other cereals would also be subject to specific individual declaration.

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And if not shown in the summary statement, the assumption could be made that the cereal, or a derivative, is not present.

Hybrids

Triticale

With respect to triticale, the proposal discusses the labelling requirements for this hybrid of wheat and rye, which whilst seeming reasonable may not be obvious to either the manufacturer or the consumer from the wording of the proposed standard. Thus, if regarded as a hybrid of rye (Item 2 in section S9—3) rather than a hybrid of wheat, would seem to require declaration only as gluten in a summary statement. If regarded as a hybrid of wheat (Item 3 in section S9—3) it would require the summary statement of wheat, but not barley. A&AA suggests schedule 9 include an explanatory note to facilitate the allergy declaration of triticale.

Spelt and other types of wheat

With respect to spelt and other types of wheat such as freekeh, they are considered to be types of wheat, and should be categorised with wheat in item 3 in the table to schedule 9—3. A&AA suggests that an explanatory note be included in conjunction with the schedule to indicate that the term ‘wheat’ includes ‘spelt’, ‘freekeh’ and other wheat varieties/hybrids. A&AA suggests that wheat varieties/hybrids such as spelt and freekeh should be labelled in the following fashion:- spelt (**wheat, gluten**) in the ingredient list and “wheat, gluten” in the summary statement.

Cereals generally

Schedule 10 has retained the generic name “cereals”. Standard 1.1.2 gives some indication of the meaning of “cereals”, namely “**flours** or **meals** means the products of grinding or milling of cereals”, which would seem to indicate that the term “cereals” refers to the grain, and not to products derived from the grain. Accordingly the reference to “cereals” in schedule 10 would seem to apply to the whole grain only, and not the product of the grain. Is this the intention?

Mandatory declaration of cereals

Section 1.2.3—4(3) states that the section applies to (a) a food that is listed in Column 1 to section S9—3; or (b) a derivative of such food. Two separate entities. Section 1.2.3—5 then goes on to explain that a required name of a food listed in Column 1 of the table to section S9—3 is: (a), (b) or (c) etc. Column 1 refers to a number of foods including barley, oats, rye, spelt and wheat, but does not refer to any derivative of those foods as specified in Section 1.2.3—4(3)(b). Assuming it is not the intention to exclude derivatives from the operation of Division 3 of standard 1.2.3, perhaps Schedule 9 should be amended to indicate that column 1 applies also to derivatives of those foods in column 1. That would also make the operation of the standard potentially clearer to the food industry at all levels.

Ingredient listing

A&AA generally supports the Food Industry Guide to Allergen Management and Labelling from the Australian Food and Grocery Council and the Allergen Bureau. The guide proposes that an ingredient such as cheese containing an allergen such as milk would be declared as “cheese (**milk**)” or more specifically, “mozzarella (**milk**)”. This mode of declaration in an ingredient list is supported by A&AA.

Under standard 1.2.4—4(b), in the statement of ingredients each ingredient must be listed by:-

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- (i) a name by which the ingredient is commonly known; or
- (ii) a name that describes the true nature of the ingredient; or
- (iii) a generic name for the ingredient that is specified in Schedule 10, in accordance with any conditions specified in that Schedule.

Whereas section 1.2.3—6(2) requires that the declaration must be made by “listing in the statement of ingredients... the required name of the food to be declared”. A&AA expects that the proposed standard would make it very clear that the ingredient list must comply with both 1.2.4 and 1.2.3 such that the allergenic ingredient is declared first by its common name or true nature such as cheese (or more specific e.g. mozzarella) followed in brackets by the required name bolded and in brackets e.g. mozzarella (**milk**). Taken at face value proposed section 1.2.3 would allow for example mussels to be simply listed in the ingredient statement as “mollusc”, thereby depriving the consumer of specific information, and depriving the manufacturer of the option of fully informing the customer. A&AA favours the AFGC approach of specific name followed by the required name, in brackets, in bold. And that the standard should reflect that. This approach will assist consumers who are allergic to a mollusc such as mussels and may not be aware that a mussel is a mollusc. A&AA would prefer to allow listing to include the name of the mollusc and then mollusc bolded and in brackets e.g. mussel (**mollusc**).

Given the risk management principles espoused in the proposal, namely that allergens are declared consistently, in respect to location, format and terminology used, it would seem appropriate to make it abundantly clear via the drafting, that the format required be that the required name immediately follow the ingredient name in the ingredient statement, in bold, and preferably in brackets.

Summary statement

Allergens in the ingredient list need to be identical to those in the summary statement notwithstanding that the term tree nut which, for example, may be used in the summary statement if more than one tree nut is an ingredient. This also applies to the listing of cereals as people can be allergic to rye but not oats. A&AA would like to see varieties of wheat and wheat hybrids such as spelt, freekeh and triticale listed as wheat in the summary statement.

Label confusion

A&AA would like to avoid the label confusion such as is illustrated below. The product containing coconut milk powder in the ingredient list then has a summary statement listing milk as an allergen. Does the coconut milk powder contain cow's milk? Was a comma left out of the ingredient list making milk powder mean actual cow's milk? It is not clear whether someone with cow's milk allergy would need to avoid this product. A&AA hopes the changes in the Code will prevent the below example from being permitted.

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Small packages

A&AA notes that small packages are exempt from ingredient listing and a summary statement, but have to include in the label the “required name for declarations other than declarations in a summary statement”, i.e. the names in column 3 of the table in schedule 9. So for cereals the required name would be barley, oats, rye, spelt or wheat, rather than the name of the derivative. Thus for the nominated tree nuts, this would be the actual name of the tree nut. For the remainder, the required names would mirror the summary names, specifically crustacea, egg, fish, lupin, milk, mollusc, peanut, sesame and soy. Assuming that to be the case, A&AA endorses this aspect of the proposal.

Beer and spirits

A&AA maintains its opposition to the exemption given to beer and spirits for not only having an exemption from ingredient listing, but also an exemption from allergy labelling with respect to barley, oats, rye, spelt and wheat. We can no longer be reconciled to the acceptance that anyone with an allergy to wheat (or other cereal) knows to avoid beer, especially with the profusion of boutique beers appearing in the market.

Drafting issues

1. Standard 1.2.4—3(2) provides that a statement of ingredients need not list (a) an ingredient of a flavouring substance, although 7(5) and 7(6) give some exceptions. Those exceptions do not include the foods requiring mandatory declaration in 1.2.3—4. This conflict should be resolved by adding a further subsection for example 7(7) to include mandatory declarations in the exceptions to 1.2.4—3(2)(a).
2. Some aspects are just too convoluted. For example, small packages, defined in Standard 1.1.2, are not required to include an ingredient list by virtue of Standard 1.2.4—2(3)(c), but reference is made there to Standard 1.2.3. Subsection 1.2.3—6 subsection (2) requires an ingredient list and a summary statement, but subsection (4) then states that subsection (2) does not apply to foods to which subsection 1.2.4— 2(3) applies, which happens to

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include small packages, amongst others. So neither an ingredient list nor a summary statement is required? However subsection (5) then states that if a declaration is made in relation to subsection 1.2.4—2(3), then the declaration must be made by “the required name of the food”. What seems to be missing is any obvious specific requirement in this subsection for small packages to make any such declaration, although the general requirements under 1.2.3—4(1) and 1.2.3—6(1) would seem to apply. “If a declaration to which this section applies is made” could well be construed as optional and the section should be redrafted to make it clear that such declaration is required. Finally to find the “required name” requires the label designer to locate subsection 1.2.3—5(c) of the standard which cites subsection 1.2.3—6(5) and then supplies a cross-reference to column 3 of the table to section 3 of schedule 9. There are no specific print requirements in which case the general legibility requirements of standard 1.2.1—24 would apply.

3. Standard 1.2.3-7(4)(a) refers to typeface. There seems to be a great deal of discussion about the difference between type, typeface and font, and the terms are used indiscriminately in the assessment. This submission uses Calibri, which is described as a font. So perhaps “font” would be preferred to “typeface”.

Precautionary Allergen Labelling (PAL)

It is important to still progress this issue as a priority since it causes great confusion and unnecessary dietary restriction and conversely risk taking among consumers with food allergies.

The recent recalls with respect to peanuts in pesto illustrate the magnitude of the issue. Not only should the recalled products have been labelled with a PAL statement, but the level of peanut in some cases may have required the declaration of peanut as an ingredient, in accordance with VITAL procedures.

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