

Ai GROUP SUBMISSION

Response to FSANZ second call for
submissions – Proposal P1044
Plain English Allergen Labelling

FEBRUARY 2020



About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which, along with its affiliates, represents the interests of more than 60,000 businesses in an expanding range of sectors: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

The Ai Group represents the Australian and New Zealand confectionery industry through its Confectionery Sector, comprising manufacturers of chocolate, sugar and gum confectionery; suppliers of ingredients, machinery, packaging materials and services to the industry, and wholesaler and distributor firms. The Ai Group has approximately 120 confectionery sector members. Major confectionery manufacturing plants are principally located in New South Wales, Tasmania and Victoria, including in a number of regional locations (eg Ballarat and Lithgow) and in South Australia, Queensland and New Zealand where SME businesses are based.

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Submission: Proposal P1044 – Plain English Allergen Labelling

The Australian Industry Group (Ai Group) Confectionery Sector welcomes the opportunity to make this submission in response to Food Standards Australia New Zealand (FSANZ) second call for comment in relation to Proposal P1044 – Plain English Allergen Labelling (PEAL).

General comments

The Ai Group Confectionery Sector has consulted with members which include manufacturers and brand owners of confectionery, ingredient suppliers and wholesaler distributors and a number of confectionery retailers. In doing so, we also acknowledge the impact of regulatory change for importers and the impact of shared labelling for multiple markets. We have also worked together with other industry bodies and organisations, particularly the Allergen Bureau (AB) and the Australian Food & Grocery Council (AFGC), in making this submission.

Importantly, the Ai Group Confectionery Sector recognises the need for consumer information in the area of food safety, that includes food allergens. This important attention to food allergen matters is reflective of their priority area in the context of the Food Labelling Hierarchy that guides the level of regulatory response. We also note that whilst labelling is key to ensuring consumer safety, so are the management systems and processes the confectionery and food industry have in place to ensure best practice in allergen management and labelling.

This includes confectionery industry initiatives such as allergen risk review programs that complement the mandatory regulatory environment and AB and AFGC resources and guidance for the food industry, including the 2019 *Food Industry Guide to Allergen Management and Labelling for Australia and New Zealand*.

The Ai Group Confectionery Sector supports the principles of P1044 to ensure allergen labelling is clear and consistent to support consumers and their carers to enable safe and appropriate food choices. As mandatory allergen labelling is already in place and the intention of P1044 is to make existing allergen labelling clearer, there is no health and safety risk. **We are therefore broadly supportive of the changes to the Food Standards Code, albeit with some exceptions, flexibility and extended transition time to reduce the impact on industry.**

We provide the following specific comments to FSANZ.

Specific comments

The Ai Group Confectionery Sector's comments focus on areas specifically affecting the confectionery industry. In principle, we support:

- The proposal to declare allergens in bold format in the ingredient statement
- The introduction of specified terms for declaring allergens in the ingredient statement
- The introduction of an optional allergen summary statement, with some flexibility to the presentation requirements, including:
 - Removing the prescriptive nature of the placement of the allergen summary statement
 - Removing the permission to only allow 'gluten' to be used in the summary statement, if individual cereals containing gluten are named

- Removing the restriction on only permitting the term 'tree nut' in the summary statement if individual tree nuts are named
- Allow for the plural term of 'tree nuts' and 'eggs' to be used in the summary statement where grammatically appropriate
- Allowing other internationally recognised allergens, eg mustard and celery, to be permitted in bold
- Allowing other warning and advisory statements and subheadings to be permitted in bold
- Extension of exemptions for small packages and inner portion packages (not intended for individual retail sale), and
- Extension of the transitional/stock in trade arrangements

Scope

Whilst FSANZ has specifically excluded voluntary precautionary allergen labelling (PAL) from the scope of this consultation, we note there are consequences from this review for PAL.

Presentation of allergen declarations

Location

The Ai Group Confectionery Sector acknowledges the valuable role of consistency in best practice allergen labelling. However, some flexibility to the prescriptive placement and presentation provisions proposed in P1044 are required to better balance the cost to industry and benefit to consumer equation.

Food packages come in varying shapes and sizes, particularly irregular novelty shaped confectionery items and confectionery that is typically in small packs (or small labels).

The Ai Group Confectionery Sector supports co-location of the ingredient statement, summary statement – and although out of scope – the PAL. However, we do not support the prescriptive requirement to locate the summary statement '**directly below**' and '**distinctly separated**' from the ingredient statement.

Providing the information on the label is legible and prominent (including delineation) the proposed prescriptive placement provisions, if mandated, will impose significant and unnecessary costs of relabelling for the confectionery industry.

Manufacturers should have the flexibility to determine the most appropriate placement, ie above, below, adjacent or on the same line as the ingredient statement to accommodate label space, pack configuration (eg small, novelty and linear) (Figure 1 and 2) and other mandatory information (eg characterising ingredients/components) (Figure 3).

Our approach to co-location equally applies to the voluntary PAL placement conditions.

Figure 1 : Small and linear configured packs



Figure 2 : Current 65g confectionery bar shows the summary statement below the ingredient list, but not on a separate line or with line space delineation



Figure 3 : Current pack layout illustrates the summary statement below the characterising ingredients/components



Despite the merits of emboldening text, we have some reservations resulting from the impact of differing printing techniques and packaging substrates that may compromise legibility, take up more pack space and trigger additional costs for redesign.

Industry also is concerned about the repercussions of 'non-compliance' with prescriptive emboldening requirements, potential mismatch between information in the ingredient list and summary statement and the trigger of expensive food recalls.

We welcome FSANZ's recommendation not to propose other prescriptive provisions, including colour contrast, symbols, text boxes or percentage declarations in lieu of boldening – for practical reasons, potential to confuse and reduce emphasis. For example percentage labelling and country of origin labelling which now has its own text box.

Legibility, prominence and co-location must be the test.

Font size and type

The Ai Group Confectionery Sector, in principle, supports FSANZ's proposal for allergen declarations in bold font in a size no less than the other text in the statement of ingredients and the same as the allergen summary statement.

With regard to bold text we are concerned that where some global companies embolden substances that are recognised as allergen ingredients in other international markets, eg celery and mustard, in the same way in the ingredient list and summary statement, that this may be a compliance issue.

Similarly, advisory statements such as 'CONTAINS PHENYLALANINE' may be highlighted with bold text and should remain permitted.

Clarification is therefore sought as to the permitted continuation of bold text for advisory statements, sub-headings and substance determined as allergens in other international markets without the prospect of non-compliance. Not permitting these statements in bold is over prescriptive and will result in additional cost to comply.

Prefix for the allergen summary statement

The Ai Group Confectionery Sector acknowledges that the confectionery industry has not fully adopted allergen summary statements. Widespread uptake of allergy summary statements has been compromised by smaller pack sizes with space constraints and consistency objectives.

Where companies have included summary statements, there are variations in the allergy summary statement prefix eg '**Allergen Statement: Contains**' (Figure 4).

Figure 4 : Allergen summary statement prefix/sub-heading 'ALLERGEN STATEMENT: CONTAINS'



It is also noted that the proposed prescribed allergen summary statement prefix 'contains' has consequences for small package ingredient labelling and ingredient labelling of 'inner portion packages' ie items not intended for individual sale.

'Contains' is already being used as the prefix of a modified ingredient statement on small packages, where only allergens must be declared (Figure 5) and on inner portion packages, where only the allergens must be declared where the pack size has a surface area of 30cm² or greater (Figure 6).

Figure 5 : Modified small package ingredient listing, prefixed by 'contains'



Figure 6 : Inner portion package ingredient labelling, prefixed by 'contains'



Recommendation: The Ai Group Confectionery Sector recommends that:

- use of the proposed summary statement prefix 'contains' be clarified in the context of the commonly used small packages and inner portion packages ingredient label prefix 'contains', and
- small packages and inner portion packs be exempt from allergen summary statements, provided a ingredient statement (albeit modified ie allergens only) is present.

Recommendation: Variations on consistency (ie exemptions), for practical reasons, ie layers of packaging, are appropriate when they enhance the clarity of allergen labelling for consumers in response to pack size and/or where multiple packaging layers are involved.

Terminology

PEAL terms

The Ai Group Confectionery Sector, in principle, supports the declaration of allergens using specified terms as proposed, ie ‘required names’ as in Schedule 9 to Standard 1.2.3, when making allergen declaration in the ingredient statement and summary statement.

We acknowledge this approach improves labelling consistency and supports consumers and their carers in making safe and appropriate food choices.

However, the Ai Group Confectionery Sector suggests that some flexibility be retained in the naming of allergens in the summary statement, where manufacturers choose to provide their allergenic consumers with more detailed information than prescribed, ie by naming individual tree nuts as in the ingredient statement. Prescribing the ‘required name’, in the case of ‘tree nut(s)’ and ‘gluten’ in the summary statement, is over prescriptive, will impose costs on industry to change labels which would otherwise be compliant.

If manufacturers choose to list individual tree nuts and cereals containing gluten in both the ingredient list and summary statement, this flexibility should be permitted.

Figure 7 provides an example where the allergen summary statement would need to change due to nomenclature changes. A costly exercise for change when the information is clearly available.

Figure 7: Current and proposed summary statements

Current summary statement	Contains: Tree nuts (almond, cashews) and soy
Proposed summary statement	Contains: Tree nut and soy

When the allergen source is not in the ingredient name eg cream, we are concerned that minor changes may be required to the approach used by companies. For example ‘cream (from milk)’ or ‘cream (contains milk)’ compared to ‘cream (milk)’. We are concerned that simple and unnecessary changes may be triggered by the amendments.

Use of singular and plural ‘required name’ terms are not consistently prescribed in the table to Schedule 9. For example, ‘oats’, ‘peanut’, ‘tree nut’ and ‘egg’. Where grammatically appropriate to do so, the singular or plural variation of the /required name should be permitted.

Recommendation: Clarification of the prefix ‘contains’ is required in the context of small packages and inner portion packages.

Recommendation: If the singular/plural flexibility for declaring the ‘required name’ is not acceptable, the Ai Group Confectionery Sector requests a longer transition period to minimise the cost impact to industry, where the information is grammatically accurate.

Synonyms

We note the use of synonyms to name allergens are prohibited, except for **soy, soya, soybean** in the ingredient statement and the summary statement only permits **soy**.

Recommendation: The Ai Group Confectionery Sector supports the flexibility to declare soy in the ingredient list using synonyms for soy and recommend that the limitation of 'soy' only in the summary statement to be overly prescriptive. If this flexibility is not retained, such minor changes should be allowed to be changed over time at the manufacturers discretion.

Declaring tree nuts

The Ai Group Confectionery Sector supports FSANZ's assessment that each of the nine tree nuts implicated with food allergy, ie almond, Brazil nut, cashew, hazelnut, macadamia, pecan, pine nut, pistachio and walnut be declared individually by name in the statement of ingredients of packaged foods and declared for food is not required to bear a label.

However, we do not support restriction on the declaration of tree nuts via the summary statement by the required name 'tree nut'. Where appropriate the plural or singular term should be permitted. The lack of flexibility to declare tree nuts by individual name in the summary statement is also unnecessarily prescriptive, imposes costs where the individual nut is currently declared and would take information away from the consumer.

If the singular term eg 'tree nut' is used in the summary statement the consumer may expect only one type of tree nut to be present. However, to use the singular term when multiple tree nuts are included has the potential to be misleading and confusing.

Declaring wheat and cereals containing gluten

The Ai Group Confectionery Sector supports the proposal to have declarations in the Code for 'wheat' separate from 'cereals containing gluten'. This will support wheat allergenic consumers to better identify the suitability of foods.

The clarity is especially helpful to industry and consumers who are gluten intolerant, wheat allergic and consumers that are allergic to one or a number of cereals, as it reduces the limitations around food choices.

The Ai Group Confectionery Sector supports FSANZ's assessment to:

- Declare 'wheat' in the statement of ingredients and allergy summary statement when wheat or wheat hybrids are present, in all circumstances, unless an existing exemption applies, eg certain glucose syrup made from wheat starch.
- Declare cereals containing gluten by individual name in the ingredient statement eg 'wheat', 'barley', 'rye', 'oats' and 'spelt' or their hybrids when present

However, similarly to tree nuts, we propose that some flexibility be retained where the cereal containing gluten is individually named in the summary statement. Permitting only 'gluten' to be named in the summary statement is overly prescriptive, imposes unnecessary costs for industry to change and removes additional information that is otherwise currently available to consumers and is accurate.

Generic ingredient names

Nuts

The Ai Group Confectionery Sector recognises that through PEAL the generic name ‘nuts’ is redundant.

However, for clarity we recommend that coconut and the non-allergenic tree nuts be named and retained in the Food Standards Code, in conjunction with Standard 1.2.3 and Schedule 9 to avoid confusion.

Cereals, starch and fats/oils

The Ai Group Confectionery Sector supports retention of the class names ‘cereals’, ‘starch’, ‘fats’ or ‘oils’ as generic ingredient names for ingredients in these categories that are not associated with allergens.

Cheese, milk protein and milk solids

Retaining the generic names ‘cheese’, ‘milk protein’ and ‘milk solids’ is supported, in conjunction with the inclusion of additional clarification in Standard 1.2.4 that these ingredient names are subject to the allergen declaration requirements of Standard 1.2.3. In each case, reference to their source allergen is required, meaning ‘cheese (milk)’ will be required.

The Ai Group Confectionery Sector notes the continuing need for generic ingredient terms ‘cheese’, ‘milk protein’ and ‘milk solids’.

Recommendation: For consistency and clarity, the Ai Group Confectionery Sector also recommends that reference to the non-allergenic tree nuts be captured in the Code as being exempt from the mandatory declaration requirement, eg chestnut.

Recommendation: For consistency and clarity, the Ai Group Confectionery Sector recommends that the exemption to label coconut (as a tree nut) be retained in the Code.

Exemptions : Small packs and inner portion packs

In the same way ‘small packages’ and ‘inner portion packages’ are exempt from full ingredient labelling ie they must declare allergens in a modified ingredient statement, these exemptions should be extended for the allergen summary statement requirement (Figure 8a and 8b).

Figure 8 : Labelling for small packages and inner portion packages (with a surface area of 30cm² and more)

Figure 8a: Current approach

Ingredients	Contains: Peanuts, almonds and cashews
PAL	May be present/May contain: peanuts and other tree nuts

Figure 8b: Proposed approach

Ingredients	Contains: Peanut, almond and cashew
Summary statement	Contains: Peanut and tree nut
PAL	May be present/May contain: peanut and other tree nut

Additionally, on the subject of ‘inner portion packages’ labelling, requirements in the Food Standards Code are currently convoluted and difficult to follow. Reference to sections in the Code are made to other reference to yet again further references. Unless you know what subsection 1.2.1—8(3), 1.2.1—6(3), 1.2.3—3 and 1.2.3—4 are and can following the directional thread, it is not easy. The Code also needs to be written in plain English.

Recommendation: The Ai Group Confectionery Sector recommends that small package and inner portion packages are exempt from allergen summary statements.

Recommendation: The Ai Group Confectionery Sector also recommends that provisions in the Code be written in manner that is easy to follow and understand. This particularly relates to the provisions for ingredient and allergen declarations for inner portion packages.

Education

An education and awareness campaign for consumers will be an important part of P1044 to inform consumers of the label changes, where to find the allergen information, how to read and understand it, variations between regular retail packs, small packages, inner portion packages and foods not required to bear a label.

The changes in terminology need to be explained, as does the impact of the transition/stock in trade period during the label changeover. For example, currently the meaning of ‘tree nuts’ hasn’t been limited to the nine allergen implicated nuts ie chestnuts are not included in the nine.

Recommendation: The Ai Group Confectionery Sector supports the need for an education and awareness campaign to support consumers resulting from P1044 amendments.

Costs

The Australian Industry Group (Ai Group) Confectionery Sector understands from member feedback that nearly every confectionery product will be affected by P1044, given virtually all confectionery include one or more allergenic substances.

Given also that P1044 draft variations do not fully align with industry best practice labelling guidance, it stands that the food and confectionery industry impact will be substantial.

Several major confectionery company have also estimated the impact of P1044 to affect most of their products. Many confectionery products also have more than one layer of packaging.

Our recommended suggestions to adopt some flexibility with respect to the proposed restrictive presentation provisions is aimed to introduce a degree of practicality and reduce the complexity and cost impact to industry while still providing consumers with clear and transparent information.

Depending on the degree of flexibility adopted there is likely to be some reduction to the labels requiring changed.

Industry costs are also offset by suitable transition timing.

The multitude of regulatory and non-regulatory changes currently on the agenda are a concern for the confectionery industry. Health Star Rating (HSR) System changes are imminent and could have a significant impact across the confectionery category. It is likely there will be changes to the labelling of sugars and PEAL amendments are anticipated. Lupin and country of origin food labelling are recent past changes, also of note.

In the confectionery category with thousands of products which invariably are presented in multiple layers, eg inner portion packs, retail packs and outers the impact multiplies. At an average cost of \$6500 per SKU, this puts the industry cost at a tally well in excess of \$10 million. Apply this three times over for multiple regulatory and non-regulatory changes (adding pressure to the limited pack space and complexity to implementation), in a period of three or four years, the cost of compliance is prohibitive to industry.

Transition arrangements

FSANZ is proposing that the P1044 draft variation take effect on the date of gazettal, with a two year transition period followed by a 12 month stock in trade period.

This means any product with a two year shelf life must be changing its labels within 12 months of gazettal to ensure it is out of the trade without becoming non-compliant.

If the various flexibilities the Ai Group Confectionery Sector has proposed, are not permitted, there is further weight of evidence for consideration of a longer transition period and stock in trade arrangement.

In consideration of the multitude of imminent label changes, complex supply chain arrangements, a coordinated and flexible implementation is required to offset prohibitive industry costs.

While the Ai Group Confectionery Sector remains supportive of clear food safety allergen information, given allergen labelling is already mandatory and in place, there is not an urgent need.

We therefore strongly recommended a flexible transition time that aligns with the proposed HSR changes and potential sugar labelling changes. Companies cannot afford to change multiple times in a short period of time and on the back of recent lupin and country of origin changes.

Consultation questions

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

See above comments under Costs.

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 will be significant cost to industry (and others) with both options.

Not all confectionery companies currently embolden allergens in the ingredient statement nor do all confectionery manufacturers currently use allergen summary statements.

Notwithstanding, boldening requirements may not be the best approach in all circumstances for technical reasons (print technology and packaging materials).

Beyond emboldening text, that also takes up more space, Option 3 is overly prescriptive and will impact package formatting and design and will have further impact on typically small confectionery labels.

Where summary statements are not currently in use, Option 3 will result in wholesale changes triggered by the new naming provisions, the prescriptive placement requirements and the follow on impact to achieve consistency with PAL.

Products with shared labels for sale in multiple countries may need to be deleted, thereby removing consumer choice or accept additional production costs to have Australia New Zealand compatible labels.

The industry impact will be somewhat eased by an extended transition/stock in trade provision that will provide industry a degree of flexibility to combine multiple regulatory and non-regulatory changes at the same time, ie PEAL, Health Star Rating System and sugar labelling.

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

The Ai Group Confectionery Sector does not have data that measures the material difference in the benefits to consumers between Option 2 and 3.

There is risk attached with Option 3 that if allergen ingredient are not included in the allergen statement there will be an effect on consumer confusion and risk of product recall.

The key to consumer benefit is understand the information and education is key to understanding.

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

The Ai Group Confectionery Sector does not have data relating to this question and is unable to comment on the consumer ease of assessment between the two options.

Consumer allergen inquiry will likely continue, regardless of P1044. Ultimately, Option 2 provides all the mandatory information and suitable education will determine consumer understanding.

5. What would be an appropriate duration of time for stock in trade provisions? The proposal gives 2 years transition + 12 months stock in trade.

The Ai Group Confectionery Sector has discussed the cost and transition impacts of P1044 above.

Noting there are multiple imminent regulatory and non-regulatory changes coming to fruition, aligned implementation is strongly recommended by the Ai Group Confectionery Sector to mitigate the resource burden on industry and waste involved.

Products with long shelf life will be unduly impacted as will products with long supply chains, for example where specialty foiled packaging is produced overseas with large volume orders, seasonal production timetabling and transported.

As mandatory allergen labelling is already in place and whilst we remain supportive of clear and transparent allergen labelling there is no real health and safety risk. We therefore propose the transition and stock in trade period be extended.

Regardless of the transition/stock in trade timeline, it is essential that consumers are educated about the changeover period and understand there will be different presentations during this 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 proposed P1044 changes will trigger changes beyond packaging purchasing, from artwork design, generation of new packaging and potential write off of old packaging materials.

Industry may be expected will refund or replace stock that is non-compliant after the stock in trade period expires.

Time for imported specialty packaging requires needs management, necessitating larger orders (the accommodate seasonal packaging eg Easter goods) and shipping.

Regulatory staff will required education, consumer support teams will need training, product specification records will need updating, ingredient information will require updating on websites and in industry guidance resources (Allergen Bureau VITAL, 2019 Food Industry Guide and potentially the Product Information Form). The mandatory provisions will also trigger adjustment and alignment with precautionary allergen labelling.

Compliance for export markets that receive Australian domestic labelled product or dual market labelled product need to be maintained with health authority registrations.

Consumers potentially will seek out more information to resolve confusion or clarify understanding between old and new packaging.

New barcodes will need to be generated and issued with GS1 that will impact significantly on both manufacturers and retailers if most products need to change their barcode.

These administrative tasks to update labelling diverts resources from planned new product development and launch activities to compliance.

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

The Ai Group Confectionery Sector has identified some areas in P1044 that need consideration and clarification.

The emboldening of allergens that are relevant to other international jurisdictions, for example celery and mustard to align with the European declarations and whether or not they will be permitted.

Clarification is required as to whether emboldening emphasis of other ingredients/components of interest to consumers will remain permitted, ie mandatory advisory or warning statements such as phenylalanine or royal jelly.

The use of singular and plural terminology in reference to the 'required names' is not approached consistent, for example 'oats', 'peanut', 'tree nut'.

Imports may need costly overstickering to comply with local prescriptive requirements around the allergen summary statement terminology and placement.

Prescriptive placement requirements of the allergen summary statement will likely be problematic when label space is limited or labels are shared by multiple countries.

Industry is concerned about the implications of non-compliance if bold text is not used in the ingredient list or there is a mismatch between the allergen details in the ingredient list and summary statement; the risk response by government jurisdictions and uniform approaches not being adopted consistently.

Preferred approach

The Ai Group Confectionery Sector recognises that P1044 represents an opportunity to reduce risk of adverse responses in food allergenic consumers – a shared goal of all stakeholders.

We note FSANZ's preferred approach is Option 3. Notwithstanding FSANZ's recommendation we can only support Option 3 with variations, as outlined – mandatory allergen labelling is currently required and consumers are not under health and safety risk as a result of the P1044 amendments. Failing the provision for some flexibility, where labels are otherwise accurate and have more information than proposed **our preference is for Option 2.**

Should Option 2 not be acceptable and Option 3 is adopted without variation, **the Ai Group Confectionery Sector strongly recommends the proposed two year transition and 12 month stock in trade provisions be extended to allow for the combined label updates required by multiple regulatory and non-regulatory changes, that are coming up, to offset the resource burden on industry.**

If you have any queries or require further information, please do not hesitate to contact Jennifer Thompson on jennifer.thompson@aigroup.com.au or 03-98670181.