27 February 2020

Project Manager
Food Standards Australia New Zealand
PO Box 10559
The Terrace
Wellington 6143
NEW ZEALAND

Email: submissions@foodstandards.gov.au

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Second Call for submissions –Proposal P1044 Plain English Allergen Labelling.*

Yours sincerely

Katherine Rich
Chief Executive

Second Call for submissions –Proposal P1044 Plain English Allergen Labelling

Submission by the New Zealand Food & Grocery Council

27 February 2020

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council ("NZFGC") welcomes the opportunity to comment on the ***Second Call for submissions – Proposal P1044 Plain English Allergen Labelling.***

2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over $40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over $34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

THE PROPOSAL

3. FSANZ is conducting a second round of consultation on plain English Allergen Labelling, a programme of work that has been underway for over five years. In this final consultation, FSANZ considers three options: maintain the status quo (do nothing); Declare allergens using mandatory specific terms in bold font; or Declare allergens (in addition to existing allergens requiring molluscs, individual tree nuts and the cereals wheat, barley, rye, oats or spelt or their hybrids) using mandatory specific terms in bold font in the statement of ingredients AND a separate allergen summary statement using summary terms that include tree nuts and gluten if present. FSANZ favours the third option and has drafted amendments to the Code to reflect this. The transition is proposed as two years with a 12 month stock in trade at the end of that period.

OVERARCHING COMMENTS

4. NZFGC is strongly supportive of allergen labelling and well aware that consumer identification of allergens is an often critical step for consumers with allergies. We are therefore generally supportive of measures that would assist consumers in this process.

5. NZFGC supports the emboldening of allergens in the ingredients list. Many of our members already do this and mandating this requirement would ensure consistency not only for Australia and New Zealand but with overseas jurisdictions including the EU, Canada and the US.

6. While we agree that if a summary statement is mandated it should generally appear directly AFTER the statement of ingredients, we do not agree it should appear BELOW and separated from the list in all cases, especially where this could otherwise negatively impact the ingredients list format on smaller packages. In our view, the allergen summary statement should not be mandated to be on a separate line with no other text. When space is restricted, the allergen summary statement sometimes has to follow the ingredient list and be placed on the same line as the last item in the ingredient list. Providing flexibility would not necessarily impact the majority of products.

7. We note that precautionary allergen labelling is not within the scope of Proposal P1044. However, NZFGC believes that consideration needs to be given to permitting the allergen summary statement to be collocated with the precautionary allergen labelling statement so that all allergen information for consumers is together. This is not provided for in the option favoured by FSANZ but we believe such other text must be permitted with the allergen summary statement.

8. NZFGC supports consistent terminology and supports the use of common terms in parentheses in the ingredients list but there should be flexibility for those same more specific prescribed terms to be used in the allergen summary statement. This is still consistent, informative, clearly linked and confirmatory of the information.

9. NZFGC supports standardising on the terms 'fish' (in preference to finfish), 'crustacea' and 'molluscs' but considers that in the ingredients list, the specific species of any of these collective terms could also be used. NZFGC supports the terms 'crustacea' and 'molluscs' in the ingredients list (optional use) and the summary statement (mandatory terms) not he singular crustacean and mollusc. Manufacturer's should also have the flexibility of adding the specific fish, crustacea or mollusc names after the collective terms in the allergen summary statement so as to enhance consistency and consumer understanding.

10. As noted above, in relation to 'tree nuts' NZFGC supports the prescribed nut terms in the ingredients list and flexibility for these same terms to be used in the allergen summary statement irrespective of whether a product contains one or more tree nuts on the basis of consistency, clarity and clear English. Similarly, NZFGC supports flexibility in the declaration of the term gluten on its own in the allergen summary statement for barley, rye, oats and spelt rather than the prescribed terms that can be used in the ingredients list. Manufacturer's should have the flexibility of adding the specific cereal names after the term 'gluten' in the allergen summary statement to enhance consistency and consumer understanding.

11. NZFGC is uncertain about whether the proposed variations are requiring the inclusion of ingredient lists and summary statements on individual portion packs (IPPs) or not. If so, this is very different to the current Food Standards Code requirements, and has the potential to have a significant impact. NZFGC believes that section 1.2.3—6(1)(b) of the proposed drafting is very convoluted and difficult to interpret, and that the proposed variations may have changed the requirements for displaying allergens on IPPs.

12. NZFGC considers the cost benefit analysis is deficient in not considering import and export impacts and in the basis for arguing benefit. Option 3 might provide more benefit to some consumers but the removal of choice for ALL consumers for EU products not reaching Australia and New Zealand is significant.

13. NZFGC estimates 90+% of packaged foods will be affected by the proposed changes and costs will be substantial.

14. NZFGC supports a two year transition period and use of summary allergen statements across the packaged food supply. We are strongly of the view that the stock in trade provisions should not be time limited. Stock in trade should focus on shelf life of products to address primarily long shelf life food and packaging waste.

15. NZFGC is strongly of the view that there is a special case for exempting both Infant Formula Products for Special Dietary Uses (IFPSDU) and Foods for Special Medical Purposes (FSMPs). The vast majority of IFPSDUs and FSMPs are imported in small specialist quantities for use under medical supervision. The supply of most of these products is especially critical for the vulnerable populations that they target. To do otherwise unnecessarily constrains compliance for a category of products that are almost all administered under the direction of specialist health professional, are often time-critical and the vast majority of which are imported. We therefore believe there are clear and overriding health and safety reasons (ie the product not being available at all) to exempt IFPSDUs under Standard 2.9.1 and FSMPs under Standard 2.9.5 from the requirements.

DETAILED COMMENTS

16. NZFGC is strongly supportive of allergen labelling and well aware that consumer identification of allergens is an often critical step for the 8-10% of consumers with allergies. We are therefore generally supportive of measures that would assist consumers in this process. Many of our members already embolden allergens in the ingredients listing of their food and beverage products required to carry such lists and many also provide a summary statement of the allergens for exactly the reason identified by FSANZ – to make it easier for consumers who need this information to find it at a glance.

Format

17. We note that no region/country considered by FSANZ mandates font size or type for allergens and nor does Codex. However, the practice of emboldening allergens appears widespread and NZFGC supports this proposal and the proposal that a summary statement if mandated be in a font size no less than the font size used for the ingredients list. NZFGC also supports standardisation of a prefix for a summary statement and the view that with emboldening, neither mandated parentheses for allergen sources nor colour is necessary but not excluded.

Location of summary statement

18. While we agree that if a statement is mandated it should generally appear directly AFTER the statement of ingredients, we do not agree it should appear BELOW the list where this could otherwise impact the ingredients list format and the summary statement in order to meet the requirement especially on smaller packages such as bars and sachets. Having said that, we note that it is more common for the statement to be below the list in Australia and New Zealand and overseas so providing some flexibility would not necessarily impact the majority of products. In our view, it should not be mandated for the allergen summary statement to be on a separate line with no other text. When space is restricted, the allergen summary statement sometimes has to follow the ingredient list and be placed on the same line as the last item on the ingredient list.

19. We note that precautionary allergen labelling is not within the scope of Proposal P1044. However, we believe that consideration needs to be given to permitting the allergen summary statement to be collocated with the precautionary allergen labelling statement so that all allergen information for consumers is together. This is not provided for in the option favoured by FSANZ but we believe such other text must be permitted with the allergen summary statement in addition to text at the end of the ingredients list on smaller packages.

Terminology

Terminology in the ingredients listing and allergen summary statement

20. The dilemma for ingredients listing is between accuracy, specificity and truth in labelling on the one hand and consumer understanding and plain English on the other. The two are not mutually exclusive and is why the use of common terms in parentheses should be provided for in the ingredients list in addition to prescribed terms. However, repeating only ‘tree nut’ in the allergen summary statement is inconsistent and potentially confusing rather than permitting the specific tree nut(s) to be listed. NZFGC recommends flexibility to use either the collective term ‘tree nut’ or the more specific terms ‘cashew, almond etc’ in the allergen summary statement.

21. This is informative and clearly linked, each piece of information confirming every other piece of information. The consumer should not have to read the summary statement then search the ingredients list for the type of tree nuts contained.

22. NZFGC is uncertain about whether the proposed variations are requiring the inclusion of ingredient lists and summary statements on individual portion packs (IPPs) or not. If so,

this is very different to the current Food Standards Code's requirements, and has the potential to have a significant impact. The current requirement is that the individual packing of IPPs need only declare the allergens (sections 1.2.1—6(3) and 1.2.1—8(3)).

23. The proposed variation for section 1.2.3—6(1)(b) (page 37 of the Second CFS) now indicates that IPPs should comply with section 1.2.3—6(2) which means that a statement of ingredients and a summary statement is required on IPPs.

24. NZFGC believes that section 1.2.3—6(1)(b) is very convoluted and difficult to interpret, and that the proposed variations have changed the requirements for displaying allergens on IPPs.

Mandating plain English allergen terms

25. NZFGC supports the use of plain English allergen terms but this should not be at the exclusion of accurate terms and truth in labelling. The approaches need not be mutually exclusive. We also support the use of synonyms for 'soy', 'soya' and 'soybean'*Fish, crustacea and molluscs*

26. NZFGC supports standardising on the terms 'fish' (in preference to finfish), 'crustacea' and 'molluscs' but considers that in the ingredients list, the specific species of any of these collective terms could also be used eg

    in the ingredients list 'shrimp (crustacea)' or scallops (molluscs) and in the summary statement 'crustacea (shrimp)' or 'molluscs (scallops)'.

    This is reinforcing a message consistently, informatively and in plain English.

27. The text in section 5.4 of the Second CFS and the summary in section 5.4.3 states that "fish, crustacea and molluscs are to be separately declared when they are present in food for sale". In Section 5.9, the list of specified terms refers to 'crustacean' and 'mollusc'. There is no justification for reverting to the singular terms when there is no discussion of the rationale and when the entire discussion refers to 'crustacea' and 'molluscs'. We also note that in section 5.10 summarising the FSANZ position, the term 'molluscs' features.

28. NZFGC supports the terms 'crustacea' and 'molluscs' in the ingredients list (optional use) and the summary statement (mandatory terms). We also believe manufacturer's should have the flexibility of adding the specific fish, crustacea or mollusc names after the collective terms in the allergen summary statement so as to enhance consistency and consumer understanding.

Tree nuts

29. FSANZ favours the term 'tree nut' in the summary statement irrespective of whether a product contains one or more tree nuts. It has based this decision on the prospect that a consumer would search the ingredients list for other tree nuts even if there was only one. NZFGC strongly opposes this on the basis of consistency, clarity and clear English. It is misleading for a summary statement to state 'tree nut' when a product contains several tree nuts. The plural term 'sulphites' is continued and is a precedent.

Cereal names

30. NZFGC supports the declaration of the terms prescribed for the ingredients list but not the substitution of these terms for the term 'gluten' on its own in the allergen summary statement for barley, rye, oats and spelt. Manufacturers should have the flexibility of adding the specific cereal names instead of the collective term 'gluten' in the allergen summary statement. This enhances consistency and consumer understanding.

Trade impacts and the Cost Benefit Analysis

31. As noted by FSANZ many manufacturers make allergen summary statements. We recognise the importance of consistency in this also but we have a significant trade concern with this both for imports and exports.

32. New Zealand imports around 50% of the food consumed in New Zealand and we export over 80% of the food we produce. Beyond Australia, imports are sourced from a wide variety of countries and export destinations are similarly broad.

33. Emboldening is reasonably widespread worldwide but the EU specifically prohibits the use of an allergen summary statement. FSANZ refers to the need for "universal and effective allergen labelling" but we believe this is misleading in justifying both emboldening and a summary allergen statement. For both imports and exports, mandating a summary allergen statement creates a significant barrier to trade requiring over-sticking all EU imports and separate packaging lines for all exports to the EU. By focussing only on domestic production for domestic consumption, a significant added cost has been omitted from the cost-benefit analysis (CBA).

34. The CBA is deficient as a result. The EU is not going to provide a different label on products for the 30million people in Australasia, and we will either simply not see the products or there will be a costly over-sticking required. Both are costly to consumer choice and to price. Option 3 might provide more benefit to some consumers but the removal of choice for ALL consumers for EU products not reaching Australia and New Zealand is significant. The ease for allergenic consumers will be heightened because they will have less food products to choose from.

Q1 What proportion of foods are likely to be affected by the change?

35. NZFGC estimates 90+% of packaged foods will be affected.

Q2 Is there likely to be a material difference in costs in the benefit to consumers between Options 2 and 3?

36. Yes. There is less redesign to embolden existing text than to amend and add text in the form of a summary allergen statement that potentially uses different terms to the ingredients list. We also understand that there may be limitations on equipment used to ensure clarity of text that is emboldened at the existing font size.

37. We are concerned about the information the OBPR had in order to reach its conclusion that the regulatory change would likely have a minor economic impact. The benefits appear conflated and no account seems to have been taken of the costs to imports or exports.

38. Specific examples are set out in the CBA (SD4) of benefit. We believe they are deficient. For example, in the first example, the research is dated 2000 (Primeau et al 2000), is not in the Literature review in SD2, reported on a single person's experience and predates the majority of measures taken in the last two decades to raise awareness and mandate requirements. The second specific example refers to Parikhal et al (2018) which is a study of 32 persons in two age groups 18-24 and 55-69 and which FSANZ states that it is unknown if the findings can be extrapolated to an Australian and New Zealand market. In the third example, mis-referenced as LimaBinsfeld et al (2009) (this should have been Binsfeld et al 2009) the validity is low because the methodology is unknown as are many other elements of the research. In the Wortman (2016) study while the validity is medium, it is exclusively online and self-reported and the Sheth (2010) research had a medium

validity but no methodology and no sample questionnaire to explore bias. The CBA assumes extrapolation to Australia and New Zealand when this is specifically not the case.

39. The CBA then states that the label changes would be minor since they are 'nuanced'. We fail to see how a label change is ever 'nuanced' where the label has to change, text changed and artwork re-designed. As noted above, the CBA makes no reference to the impact on imports or exports. Compounding the issues, the CBA reports one-off costs. This is incorrect as any manufacturer exporting would require ongoing costs to run two production lines.

40. In the SD4, it states (p8) that "FSANZ estimates that there is no material difference in industry implementation between options 2 and 3." This is patently incorrect. We agree that a summary allergen statement is helpful and many of the products manufactured by our members carry summary allergen statements but not at the expense of loss of products from the shelves for 100% of consumers (due to imports not continuing), not just the 10% of consumers who have allergies.

41. NZFGC suggests consideration be given to the summary allergen statement being presented as a mandatory voluntary arrangement. If used, it must meet mandatory provisions but use is voluntary. We strongly recommend the Cost Benefit Analysis be reviewed to factor in import and export impacts.

Q3 Is there likely to be a material difference in the benefit to consumers between Options 2 and 3?

42. Yes. Clearly repeated or different information in a summary allergen statement is beneficial but if prescription is inflexible in relation to placement or to summary versus prescribed more specific terms then availability and cost impacts will affect consumers. See above.

Q4 Is Option 2 or 3 sufficient for consumers to make quick and reliable assessments of foods?

43. Both Options 2 and 3 are sufficient for consumers to make quick and reliable assessments of foods. Emboldened information in the ingredients listing (Option 2) draws the eye so that scanning is straightforward. The additional benefit of the summary allergen statement is less in speed if consumers then have to search the ingredients list for specific ingredients otherwise presumed to be included in the specific term eg 'tree nut' instead of either 'almonds' or 'cashews and walnuts' (prescribed terms for ingredients).

Transition

Q5 What would be an appropriate duration of time for stock in trade provisions?

44. NZFGC supports a two year transition period but that a stock in trade provision should not be time limited (currently proposed as 12 months). Stock in trade should focus on the shelf life of products. There is a heightened awareness of food and packaging waste and to mandate wastage through a hard time-limited cut off date for stock in trade is to ignore the related need to limit food waste and promote sustainability. For trans-Tasman manufacturers, we understand this aligns with the approach for the Australian country of origin labelling arrangements whereby products manufactured before the end of the transition period could remain in the market until sold through but products manufactured after transition were required to comply with the new requirements.

Q6 Do you expect to have any notification, education, permission, purchasing record keeping, enforcement, publication and documentation, procedural, delay, labelling or other costs associated with the proposed changes to the Food Standards Code?

45. Yes. NZFGC is advised of the following:
    - Notification costs – there would be cost of training staff about the different formats of products in market in parallel (current and future changes).
    - Education costs – as noted above, staff training would be required to meet the regulatory requirements, interpret and apply the requirements and implement changes. There are also costs for verifiers and auditors for familiarising themselves with the regulatory changes.
    - Permission costs – we are not aware of costs associated with 'permissions'.
    - Purchasing – there are costs in amending regulatory changes in control and risk management programmes. NZFGC expects individual members to provide this information.
    - Record keeping – as with the purchasing costs, there will be record keeping costs especially during transition when there will be products in market displaying current labelling and future labelling. NZFGC expects individual members to provide this information.
    - Enforcement – as noted above, ensuring verifiers and auditors are up-to-date with changes will be important.
    - Publication and documentation – this will be particularly costly for exporters to ensure recipient markets permit the changes proposed.
    - Procedural and delay costs – NZFGC has not explored these costs with members.
    - Labelling – for manufacturers there will be a cost in supplying or generating the correct information to pass on to consumers should they be asked.

Q7 Any views in relation to unintended consequences associated with Option 2 and 3?

46. Yes. There is a special case for exempting both Infant Formula Products for Special Dietary Use (IFPSDU) and Foods for Special Medical Purposes (FSMPs) under Standard 2.9.5. NZFGC is aware that the Infant Nutrition Council has made it very clear in several consultations that the vast majority of IFPSDUs are imported in small specialist quantities for use under medical supervision. The same is true of FSMPs. The supply of most of these products is especially critical for vulnerable populations. In general, NZFGC aligns with INC in not supporting prescribed terms, warning statement or preparations for these products. NZFGC considers that to do so unnecessarily constrains compliance for a category of products that are often time-critical, almost all administered under the direction of specialist health professional and the vast majority of which are imported. We therefore believe there are clear and overriding health and safety reasons (ie the product not being available at all) to exempt IFPSDUs under Standard 2.9.1 and FSMPs under Standard 2.9.5 from the requirements.

47. We note that only one study in the *Literature review consumer knowledge, attitudes and behaviours relating to allergen labelling* (Supporting Document 2), refers to infants (Weber et al 2007) although a number mention children. This highlights the importance of special considerations for the most vulnerable population group and that a 'one size fits all' approach could have serious health and safety consequences.

Drafting

48. INC does not oppose the principle that "terminology used for allergens should always reflect the source allergen, and synonyms which are not the name of the source allergen should not be used" (p18, Second CFS). This approach is captured in new 1.2.3—4(a) and (b):

(3) This section applies to:
(a) a food that is listed in column 1 of the table to section S9—3; or
(b) a derivative of such a food.'

49. However, we believe it would be helpful for the information in 1.2.3—4(b) to also be clearly evident in the relevant section of S9 and suggest that the heading for column 1 for the new table to be inserted in S9-3 be amended from, "food," to, "food (and derivatives thereof)," or other similar wording. As this table will be the primary 'go to' place for information on allergens to be declared this would reduce the risk of derivatives of the foods concerned being overlooked by any stakeholders and further emphasise that the terminology used for allergens reflects the source of allergen. This would be similar to that in Codex (CXS 1-1985) which uses the qualifier "and products of these" or from the EU (EC 1169/2011) which uses the qualifier "and products thereof" to reflect the desired intent. In our view this better captures the importance of terminology used for allergens reflecting the source of allergen.

50. We note that the drafting for Standard 1.2.3—6(3) states that "the *required name of the food to be declared must be listed separately in the Statement of ingredients for each ingredient that is or contains that food". We understand this to mean that all ingredients derived from, for example milk, must be followed by '**milk**' emboldened in brackets. This could mean that '(**milk**)' could be repeated up to 5-6 times in a milk-based product eg whey protein concentrate (**milk)**, lactalbumin (**milk**), skim **milk**. INC suggests this prescribed term should only need to appear once at a minimum and be repeated in the allergen summary statement.

51. Finally, NZFGC understands that the proposed variations are requiring the inclusion of ingredient lists and summary statements on individual portion packs (IPPs). This is very different to the current Food Standards Code's requirements, and has the potential to have a significant impact. The current requirement is that the individual packing of IPPs need only declare the allergens (sections 1.2.1—6(3) and 1.2.1—8(3)).

52. The proposed variation for section 1.2.3—6(1)(b) (page 37 of the Second CFS) now indicates that IPPs should comply with section 1.2.3—6(2) which means that a statement of ingredients and a summary statement is required on IPPs.

53. NZFGC believes that section 1.2.3—6(1)(b) is very convoluted and difficult to interpret, and that the proposed variations have changed the requirements for displaying allergens on IPPs.