

SUBMISSION

by the



PACKAGING COUNCIL
OF NEW ZEALAND (INC)
(PAC.NZ)

to

Food Standards Australia and New Zealand

on the

FSANZ Consultation Paper P1034

Chemical Migration from Packaging into Food

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This submission is from:

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SUMMARY

1.0 Introduction

- 1.1 The Packaging Council of New Zealand role is to represent the interests of industry in public policy and debate on packaging issues, including reducing the environmental impact of packaging through cost effective solutions and product stewardship.
- 1.2 The Packaging Council represents the whole packaging supply chain, including raw material suppliers, packaging manufacturers, brand owners, retailers and recycling operators.
- 1.3 The Packaging Council has approximately 100 members, representing more than 80% of the packaging industry by turnover. The New Zealand packaging industry is valued at NZ\$2 billion. 75% of New Zealand's top 100 food and grocery brands are manufactured by Packaging Council members, contributing NZ\$17 billion to the New Zealand economy.
- 1.4 The Packaging Council has been directly involved in the development of environmental policy affecting packaging since 1996 when it signed the 1996 Packaging Accord. The organisation was involved in developing the 2002 New Zealand Waste Strategy, provided data for the 2006 review of targets and assisted with the research behind the

Parliamentary Commissioner for the Environment's 2006 report 'Changing behaviour: Economic instruments in the management of waste'. The Packaging Council was a principal signatory to the 2004 New Zealand Packaging Accord (2004 – 2009).

- 1.5 The Packaging Council has developed a *Code of Practice for Packaging Design, Education and Procurement*. The objective of the Code is to assist stakeholders in the design, manufacture and end-of-life management of packaging to minimise its environmental impacts. This Code has recently been amended to address the new Fair Trading Act prohibition against unsubstantiated representations in trade (see details in response to Part 1 below).

2.0 Summary of submission

2.1 This submission addresses issues raised by P1034.

Specifically, our view is that the important issues of contamination and potential health effects arising from chemical migration from packaging into food are already addressed within New Zealand by compliance with:

- Existing FSANZ standards as set out in SD1;
- International standards (EU or US FDA): these are in effect global standards and can and should be followed efficiently, effectively and without confusion which might be caused by specific local standards;
- The Fair Trading Act 1986 and in particular the new prohibitions against unsubstantiated representations in trade, which came into force on 17 June 2014;
- Monitoring work carried out by the Ministry for Primary Industries (MPI);
- Workplace health and safety legislation.

In particular it is noted that:

- The issue of food safety is of paramount consideration to the packaging industry at every stage of the supply chain. Packaging is important in protecting food from chemical contamination, and even more importantly, microbial contamination;
- Chemical contamination of food in New Zealand is regulated by the Food Act and is monitored by the Ministry for Primary Industries;
- New Zealand is a significant importer of packaging material, both raw materials and production-ready materials, therefore the existing international standards are important;
- The consultation paper makes little or no distinction between packaging in contact with food (where migration is most possible) and shelf inner/outer packaging, where risks are minor if they exist at all.

Our comments below set out more detail. We understand that P1034 is a preliminary request for information, and thus have set out in this submission important points to take into consideration, which include a broadening of the background which would suggest that the existing standards and monitoring techniques are both satisfactory and sufficiently flexible to address future developments in packaging. We also note that the Proposal makes it clear that

there appear to be few if any problems arising from food packaging. We believe that this is because food manufacturers and their packaging suppliers are so conscious of the need for extreme care and high standards where packaged food is concerned.

The comments below relate to the relevant paragraphs of P1034, and also address (where relevant) the questions set out in the response template.

Part 1: Introduction

Packaging companies who supply into the food manufacturing sector are always concerned about food safety. The food manufacturers themselves have the primary responsibility for food safety compliance and for preparation of a food control plan, as required by Part 2 Subpart 2 of the Food Act 2014: Risk-based measures/Food Control plans. They therefore must require packaging suppliers to provide packaging which is inherently safe. Food manufacturers and packaging suppliers therefore share a common interest in ensuring safety. *Safety means a condition in which food, in terms of its intended use, is unlikely to cause or lead to illness or injury to human life or public health: see section 12 of the Food Act.* As well, food is not “suitable” if it “*contains a biological or chemical agent, or other substance or thing, that is foreign to the nature of the food and the presence of which would be unexpected and unreasonable in food prepared or packed for sale in accordance with good trade practice*” s 12(5)(d). So the threshold for food packaging is the lower one of suitability: if there is chemical migration which is unsuitable, the food manufacturer (and therefore its packaging supplier) is required to take steps to make the food suitable. In general terms, this is a “good manufacturing practice” issue.

Because New Zealand is typically a taker of technology in packaging, compliance with the international standards (particularly EU and US FDA standards) is paramount. In view of the size of the New Zealand market (tiny on a world scale for all except perhaps dairy products) it is unrealistic to expect packaging materials to be manufactured specifically for the New Zealand market. The Packaging Council strongly submits that no unique New Zealand standards should be produced, other than a requirement to comply with significant overseas standards.

Paragraph 1.5 of P1034 makes the comment that chemical migration into food from packaging other than that in direct contact with food should be considered. With respect, this is a matter which can be controlled in numerous ways: for example, in cereal packaging, potential migration (if any) from a cardboard shelf inner or product carton is likely to be managed by the

packaging which is in contact with the food, e.g. the use of a plastic liner. The Packaging Council is not aware of any concerns regarding this, and further notes that requiring food producers and packagers to supply carefully tested outers, shelf inners and product cartons, made of recycled materials would cut across the recycling requirements of the Waste Minimisation Act 2008 and Product Stewardship Schemes arising from that Act. The issue of food safety and recycled packaging that is not in contact with the food has never arisen. For example, egg packaging manufactured from recycled paper has been the norm for at least more than 60 years, and the Packaging Council is not aware of any difficulties arising from that.

The Packaging Council further notes that in New Zealand (but not to the same extent in Australia) there are new provisions in the Fair Trading Act, effective since 17 June 2014, which prohibit the making of unsubstantiated representations in trade. Although typically “representation” refers to a positive representation, it is well established in New Zealand law that a representation can occur through silence when there is an obligation to speak. The Food Act requirements clearly create an obligation to speak in relation to the safety of both food and its packaging. A breach of the relevant provisions (which are set out in sections 12 A to 12 D of the Fair Trading Act) is a criminal offence and can result in a fine on conviction of up to \$600,000 for a company or up to \$200,000 for an individual. The Packaging Code of Practice for Packaging Design, Education and Procurement has been updated to take account of this provision.

The Packaging Council’s conclusion is that because of the controls arising from the Food Act requirements alone, there is direct control on packaging manufacturers by their food manufacturing customers who are required to prepare and monitor a satisfactory Food Control plan. Competitive pressure within the packaging industry also assists with ongoing monitoring. Further, the Fair Trading Act prohibitions underscore the significance of providing appropriately safe packaging into the food industry.

Part 2 and part 3 of P1034

The Packaging Council expects that these aspects of P1034 will be addressed by those in specific areas of the industry.

Part 4 of P1034: Overview of the Packaging Supply Chain

The Packaging Council is a trade association. It is aware of relevant parties within its membership group who will have access directly or indirectly to those with expertise to offer

food safety advice on chemical migration from packaging into food to businesses within the packaging supply chain.

Part 5 of P1034: regulatory and non-regulatory control measures

The Packaging Council has set out the background to non-regulatory control measures in its response to Part 1 above. It expresses concern, however, at an apparent misunderstanding of the regulatory environment within New Zealand. In addition to the Fair Trading Act prohibitions referred to above, which are monitored and regulated by the Commerce Commission, there is indeed a regulatory regime. However, it is not as expressed in paragraph 5.2.3.

The packaging and handling of hazardous chemicals, whether in packaging or otherwise, have since July 2011 been regulated by the Environmental Protection Authority, which replaced ERMA as of that date. It is noted that within the EPA draft code for the packaging of hazardous substances, a clear distinction is made between the packaging which is in direct contact with the hazardous substance, and outer and shipping pack packaging. This could well form a model for considering the distinction between the packaging which is in contact with the food, and the packaging which is designed for shipping and handling of the food product.

Consumer product safety is not monitored or regulated by the Ministry of Consumer Affairs which was disestablished in 2012, but is monitored by The Ministry of Business, Innovation and Employment Trading Standards division.

The key agency which monitors food safety including chemical contaminants in food is the Ministry for Primary Industries.

Paragraph 5.2.4 asks whether using another country's legislation is suitable to ensure compliance with customers' needs. The Packaging Council assumes that this is a reference to compliance with international standards. It is of the view that this is not only suitable, but essential, because of the amount of product including raw materials which is imported into New Zealand. It is necessary to use an internationally known standards to ensure compliance. Taking into account the New Zealand legislative environment, including but not limited to the Fair Trading Act unsubstantiated representations prohibitions, it is incumbent upon importers, resellers and manufacturers to ensure that the product that they acquire and sell (including the export of packaged product overseas) has been tested by accredited testing laboratories and is compliant with international regulations.

The Packaging Council notes the commentary in clause 5.2.5 on the Australian Packaging Covenant, and refers FSANZ to its Packaging Code of Practice for Packaging Design, Education and Procurement, updated in 2014, and available on request.

With respect to the remaining questions of Part 5, these are matters which will vary according to the nature of the packaging manufacturer involved.

IN CONCLUSION

The Packaging Council is of the view that in view of the considerable non-regulatory pressures on packaging manufacturers and suppliers to monitor and minimise chemical migration into packaging, more prescriptive regulatory control is likely to be counter-productive, and to add considerable costs into the food packaging market. It strongly supports the use of international standards where the standards are relevant, whether in relation to chemical migration, prevention of microbial contamination and degradation, or otherwise in relation to food safety.