AUSTRALIAN FOOD & GROCERY COUNCIL

AFGC SUBMISSION

CHEMICAL MIGRATION FROM PACKAGING INTO FOOD – RESPONSE TO FZANZ CONSULTATION PROPOSAL P1034

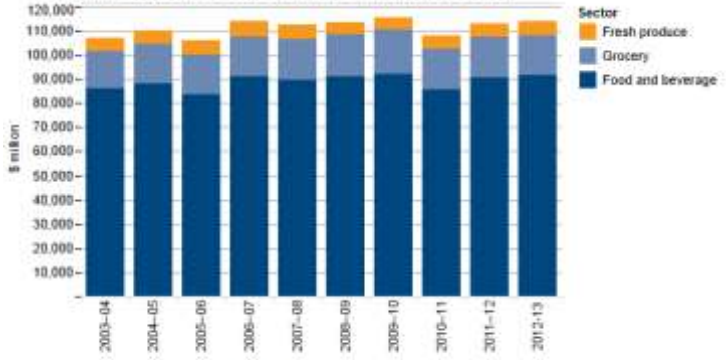
Sustaining Australia

PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of AFGC comprises more than 178 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors.

Fig 4.1: Composition of the industry's turnover ($2012-13)



Source: Based on ABS, catalogue number 8221.0, 8159.0 and 6155.0
Note: As outlined in chapter 3 of the State of the Industry 2014 report, caution should be applied when comparing data before and after the 2006 ANZSIC code changes.

With an annual turnover in the 2013-14 financial year of $114 billion, Australia's food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector is Australia's largest manufacturing industry. Representing 27.5 per cent of total manufacturing turnover, the sector accounts for over one quarter of the total manufacturing industry in Australia.

The diverse and sustainable industry is made up of over 27,469 businesses and accounts for over $55.9 billion of the nation's international trade in 2013-14. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. Industry spends $541.8 million in 2011-12 on research and development.

The food and grocery manufacturing sector employs more than 299,731 Australians, representing about 3 per cent of all employed people in Australia, paying around $12.1 billion a year in salaries and wages.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost half of the total persons employed being in rural and regional Australia. It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

Australians and our political leaders overwhelmingly want a local, value-adding food and grocery manufacturing sector.

EXECUTIVE SUMMARY

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to make this Submission in response to Proposal P1034 *Chemical Migration from Packaging into Food*.

Food packaging provides an enormous public benefit as one of the cornerstone technologies for securing a safe, nutritious food supply. Through carrying labelling, packaging also assists consumers to construct healthy diets. There is a risk that without care, proposal P1034 might be misinterpreted as identifying concerns regarding the safety of food packaging in Australia where none exist.

FSANZ must dispel any doubts as to the safety of food packaging as the consultation for P1034 progresses. The issue is whether the current very low level of risk can be lowered further through regulatory and/or additional industry actions. Ideally, the outcomes of P1034 will boost public confidence in the safety of food packaging, and the food supply.

P1034 concedes there is little evidence indicating there is a public health issue which needs addressing. Nevertheless, AFGC would support amendments to the Food Standards Code which clarify regulatory requirements (rather than adding to them) as this has the potential for cost reduction for industry.

Currently the Model Food Act describes the offence of 'unsuitable food' as inter alia containing a *chemical agent, or other matter or substance.. that is foreign to the nature of the food*. These prohibitions together with Standard 1.4.1 and Australian Consumer Law require unequivocally that packaging must be safe (fit for purpose) and so provide protection to consumers.

With regard to recycled packaging material the AFGC does not consider it likely that specific regulatory requirements will be required. If there are additional hazards associated with recycled material industry will develop technologies to manage them. For example a barrier layer might be added to the recycled packaging material to limit chemical migration.

The AFGC agrees with FSANZ's comments that acute health effects from chemical migration do not occur due to the very low levels of exposure and the major aim of the P1034 should be to manage risk arising from long term dietary exposure.

The AFGC considers that the most likely conclusions from FSANZ assessment of P1034 is that while there may be the potential for the migration of chemicals from packaging into food to have an impact on health the evidence of actual harm is insufficient to require more prescriptive regulation. Notwithstanding this, the AFGC's considers the Implementation Subcommittee for Food Regulation, in conjunction with industry, should prepare a new industry best practice guideline. The guideline would describe clearly current regulatory requirements and give practical guidance on how compliance can be achieved by companies.

The AFGC will also assist in promoting the guideline to its members and the broader industry, including to smaller food companies, where FSANZ is concerned greater risks from packaging may reside.

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RECOMMENDATIONS

The AFGC recommends that:

1. **the consultation on P1034 recognise the effectiveness of current food packaging in securing the safety of the food supply, protecting the environment, and helping consumers to select healthy diet choices.**

2. **FSANZ adhere closely the principles of best practice regulation in progressing P1034 through to proposals for regulatory change.**

3. **FSANZ note:**

   - **that current regulatory arrangements are comprehensive in requiring food packaging to be safe, including providing a basis for limiting the migration of packaging chemicals into food; and**

   - **increases in the sensitivity of chemical assays which show the presence of migrating packaging chemicals in food does not of itself indicate a health risk and is not a sound basis for proposing regulatory change, particularly if it is of a more prescriptive nature.**

4. **food safety standards aimed at reducing possible risks to health from the migration of chemicals from food packaging apply equally to virgin and recycled packaging material.**

5. **FSANZ consider carefully the potential unintended consequences arising from any regulatory response proposed under P1034 and develop communication strategies which avoid unwarranted concerns being raised regarding any particular packaging material.**

6. **the Implementation Subcommittee for Food Regulation in conjunction with industry prepare an industry best practice guideline to assist companies minimise chemical migration from packaging and demonstrate regulatory compliance; and**

7. **further systematic surveys of the level of chemicals migrating from packaging into foods be conducted to provide further data to better quantify the risk to health.**

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1. INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to make this Submission in response to Food Standards Australia New Zealand (FSANZ) Proposal P1034 *Chemical Migration from Packaging into Food* ("P1034").

The submission includes:

- **general comments** – the AFGC has consulted with its members and has gathered and collated a number of observations regarding appropriate regulatory frameworks for the chemical migration from packaging into food; and
- **specific comments** – responses to specific issues raised in the Consultation Paper.

2. GENERAL COMMENTS

2.1. Food Packaging provides an enormous public benefit

Food packaging provides an enormous public benefit. Without food packaging, food safety and quality would be greatly compromised, food wastage would be a magnitude greater, the impact of food production on the environment would be larger, food costs for consumers would be higher, and the diet of many consumers would be compromised for much of the year. Food packaging is an integral and fundamental component of the great majority of food products including those which are marketed in the "fresh" section of the supermarket, as they invariably have come into contact with some form of packing material. Packaging is a key component of the suite of technologies which work together to provide shelf stable foods, and it is integral to providing seasonal fruits and vegetables year round.

Apart from protecting the integrity of food products, food packaging allows food to be presented to consumers in more convenient formats (e.g. cooked, cooked chilled etc.) and with portion control. Packaging also conveys important information (i.e. on labels) which not only describes the product, but also helps consumers use the product appropriately to assist healthy diet construction.

Along with other aspects of food technology, food packaging technology has made extraordinary technical advances over the last 100 years. Packaging is more functional, more efficient and more effective than ever before. Packaging innovation is strong testament to the unceasing commitment of food manufacturers supported by food packaging companies to bring better products to the market for consumers.

The AFGC makes these comments to ensure that FSANZ management of P1034 is placed in the appropriate context. Food packaging needs to be recognised first and foremost as one of the cornerstone technologies for securing a safe food supply. The overwhelming evidence is that it delivers on this premise. FSANZ must ensure, therefore, that all of its deliberations on packaging are tempered by this reality. There is a risk that without due care, proposal P1034 might be misinterpreted as identifying concerns regarding the safety of food packaging in Australia where none exist. FSANZ must dispel any doubts as to the safety of food packaging as the consultation for P1034 progresses.

Recommendation

The AFGC recommends that the consultation on P1034 recognises the effectiveness of current food packaging in securing the safety of the food supply, protecting the environment, and helping consumers to select healthy diet choices.

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2.2. Regulatory arrangements should be reviewed

The AFGC recognises that there is a potential for health risks associated with the migration of chemicals from packaging. Some of the chemicals in food packaging do migrate into food, albeit at very low levels. As the current evidence suggests, the levels of migrating chemicals in foods is generally very low and the risks to health either at a population level or to individuals is not readily quantifiable. The AFGC supports the steps FSANZ has taken so far towards defining the issue and seeking a basis for sensibly determining the level of risk to public health from chemical migration. These steps include:

1. seeking to gain a better understanding of the way packaging is used in the food industry. FSANZ concedes that this information is difficult to secure from the small to medium size enterprises (SMEs);

2. determining the level of packaging chemicals in food samples. FSANZ reports very low levels in the foods tested, but these represent a comparatively small proportion of foods in the market. The AFGC notes that some of the surveys have been conducted regularly over the last 25 years and the accumulated results are strongly suggestive of a very low level of packaging chemicals occurrence in foods, which would indicate a very low level of risk;

3. acknowledging that a more comprehensive dataset regarding the levels of packaging chemicals in diets is required before dietary modelling can be of great assistance in estimating risk;

4. noting that packaging from recycled materials may present additional risks, although the AFGC is of the view that additional regulatory control of recycled material is unlikely to be warranted (see later), and

5. the importance of context in any statement regarding the level of residual risk. The AFGC agrees there is some uncertainty but this must be placed in context. There is a high degree of certainty that the levels of risk associated with packaging is low as there is no evidence that people are becoming ill from packaging chemicals. The issue is whether the current low level of risk is nevertheless appreciable, and if so, what steps can be taken to lower the risk even further.

Notwithstanding the comments above, the AFGC considers there is merit in conducting proposal P1034. As the consultation paper has described, recent years have witnessed a number of issues regarding packaging chemicals migrating into foods, with potential public health significance. The AFGC asserts, however, that in no case has a detrimental public health impact been demonstrated nor has any public health evidence been gathered that indicates greater regulation of packaging is required.

The public consultation will:

1. serve the purpose of confirming that current regulatory requirements are adequate; or alternatively;

2. lead to better regulatory arrangements providing appropriate guidance to industry to protect public health and safety; and/or

3. identify additional non-regulatory measures providing greater protection of public health and safety.

These outcomes will boost public confidence in the safety of the food packaging specifically and the food supply more generally.

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2.3. Regulatory policy – good regulatory principles must be followed

For over 20 years in Australia regulatory policy has required clear identification of regulatory objectives and an assessment that regulation is the most cost-effective option[1]. The Government recently confirmed this important regulatory policy in the *Australian Guide to Regulation*[2]. The guide reiterates the importance of establishing the benefit of a regulatory change (if proposed) through a *Regulatory Impact Statement* which also requires non-regulatory options to be considered.

In Proposal P1034 FSANZ concedes there is little evidence indicating there is a public health issue which needs addressing (no ill effects on the population from food packaging have been identified). Indeed, gathering further information on the use of packaging by industry is unlikely to indicate that the level of risk associated with food packaging is greater than can be managed by the current regulatory arrangements and current industry practice.

The AFGC notes that FSANZ has reported that some industry feedback suggests greater regulatory guidance would be useful. Certainly the AFGC would support amendments to the Food Standards Code which clarify regulatory requirements and facilitate industry meeting them – this would be a tangible benefit to industry (potential cost reduction) and justify a regulatory change.

Current industry practice ensuring the safety of food packaging includes:

1. packaging suppliers and food companies looking at regulations overseas, and particularly to the USA and EU;

2. referring to additional codes of practice and industry developed standards and guides;

3. companies conducting their own assessments of packaging materials and the potential for migration; and

4. stipulating performance requirements for packaging in contractual arrangements between food companies and packaging suppliers.

The AFGC is also developing a packaging specific Product Information Form (PIF) for packaging to capture packaging specification information in an industry standard format. This will assist the industry ensuring that packaging material is fit for purpose.

These efforts would suggest that the level of risk to public health and safety, from food packaging is low, supporting the results of food analyses reported by FSANZ in the P1034 discussion documents.

Recommendation

The AFGC recommends that FSANZ adhere closely the principles of best practice regulation progressing P1034 through to proposals for regulatory change or non regulatory options.

2.4. Current regulations already require food packaging to be safe

The Model Food Act offences in relation to 'unsafe food' remain the principal means by which food safety is guaranteed.

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[1]. *Best Practice Regulation. A Guide for Ministerial Councils and National standard Setting Bodies*. COAG 2007. www.coag.gov.au/sites/default/files/coag_documents/COAG_best_practice_guide_2007.pdf.

[2] www.cuttingredtape.gov.au.

The definition set out in the Model Food Act provides –

> *For the purposes of this Act, food is unsafe at a particular time if it would be likely to cause physical harm to a person who might later consume it …*

Further, the Model Food Act offences relating to 'unsuitable food' are of particular relevance to the migration into food of chemicals from packaging into food. The relevant definition provides –

> *For the purposes of this Act, food is unsuitable if it is food that:*
> *….*
> *(d)* ***contains a*** *biological or* ***chemical agent, or other matter or substance****, that is foreign to the nature of the food*. (emphasis added)

These prohibitions must then be read in conjunction with Standard 1.4.1, which specifies the maximum level of a specified contaminant which is permitted to be present in a nominated food. Provision is made in clause 3(3), for example, in relation to the maximum level of vinyl chloride permitted in all food except packaged water.

The Model Food Act provisions, as enacted by each jurisdiction, together with Standard 1.4.1 thus provide an existing basis for regulating packaging by reference to the safety of the food as consumed. To a degree, improvements in chemical detection have gone beyond such arrangements, and consideration might be given to a general allowance in Standard 1.4.1 for chemical migrations under a specified level unless specifically regulated to a different level.

Further, if packaging is not suitable in the sense that the contained food is rendered injurious, there exist legal regimes under contract, tort and statutory product liability laws for affected persons to seek redress. There are legal, moral and commercial reasons that, for decades at least, ensure manufacturers take care in relation to their food packaging materials. The fact that modern methods are identifying the presence of chemicals at levels not previously detectable should not equate to a rationale for regulation without some indication that the risk faced by consumers has also grown. In other words, detection *per se* does not equate to risk. Thresholds levels for demonstrated biological, physiological or more particularly toxicological effects are required for risk assessment.

Recommendation

The AFGC recommends that FSANZ note:

- **that current regulatory arrangements are comprehensive in requiring food packaging to be safe, including providing a basis for limiting the migration of packaging chemicals into food; and**
- **increases in the sensitivity of chemical assays which show the presence of migrating packaging chemicals in food does not of itself indicate a health risk and is not a sound basis for proposing regulatory change, particularly if it is of a more prescriptive nature.**

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3. Specific Comments

3.1. Scope of the proposal

The AFGC agrees with the scope of the proposal. The focus on chemical migration from packaging material is appropriate. Other issues are already well covered by general consumer law, or alternatively are relevant to a wider range of food and consumer products. The AFGC notes, however, that some of the chemicals which may migrate into food from packaging may also be derived from other food contact materials used in manufacture. Any risk assessment which FSANZ may undertake for individual chemicals, or classes of chemicals may need to take this into account.

3.1.1. Virgin vs recycled packaging material

FSANZ has indicated an intention to look specifically at additional risks which may be associated with the use of recycled material in food packaging. The AFGC recognises that this can help inform FSANZ regarding the levels of risk associated recycled material, and also potentially alert food manufacturers and food packaging companies to the issue. With regard to a potential regulatory response, however, the AFGC considers that performance requirements for virgin and recycled material should be the same. That is, the AFGC does not consider it likely that specific regulatory requirements for recycled material will be required. If there are additional hazards associated with recycled material industry will develop technologies to manage them. For example a barrier layer could be added to the recycled packaging material to limit chemical migration.

Recommendation

The AFGC recommends that food safety standards aimed at reducing possible risks to health from the migration of chemicals from food packaging apply equally to virgin and recycled packaging material.

3.2. Potential public health risks

The AFGC agrees with FSANZ's comments that acute health effects from chemical migration do not occur due to the very low levels of exposure and the major aim of the P1034 should be to manage risk arising from long term dietary exposure. A key part of risk management is being able to quantify the risk but the AFGC is concerned that this will not be an easy task. Certainly, the AFGC is unaware of any evidence that long term exposure to packaging chemicals is having a detrimental impact on the population generally, or population sub-groups. Indeed, the controversy in recent years regarding bis-Phenol A (BPA) followed decades of it being present in food packaging, and consequently decades of low level exposure to the populations of many countries. Despite many recent studies undertaken by health authorities and independent researchers seeking to find a link between this exposure and health outcomes, no convincing evidence of an exposure/health link has been reported to date.

It is interesting to note, that BPA is now being reduced or removed from packaging material around the world as industry responds to the very public debate regarding the potential public health implications of its occurrence in foods. What is not appreciated is that alternative packaging solutions by companies may also have public health implications. FSANZ should be mindful of the unintended consequences which might flow on from P1034 if the communication regarding the outcomes from the consultation and any regulatory response is not carefully managed.

Recommendation

The AFGC recommends that FSANZ consider carefully the potential unintended consequences arising from any regulatory response proposed under P1034 and develop communication strategies which avoid unwarranted concerns being raised regarding any particular packaging material.

3.3. Regulatory Response

3.3.1. Proportionate regulatory response

The most important pillar of best regulatory practice is the concept of *proportionate regulatory response*. The AFGC considers that the most likely conclusions from FSANZ assessment of P1034 is that:

1. While there may be the potential for the migration of chemicals from packaging into food to have an impact on public health there is very little evidence of actual harm to public health based on:

    a. low levels of chemicals being detected in foods;

    b. the high levels of awareness among food manufacturers and packaging companies of issues and the steps industry takes to minimise risks; and

    c. the absence of illness within the community associated with packaging;

2. the Food Standards Code provisions and other legislation currently makes it clear that there is a responsibility among manufacturers to ensure packaging is safe; and

3. overseas regulations are more prescriptive, but are not comprehensive in covering all packaging chemicals. They are nevertheless useful for food companies looking for guidance on performance standards for packaging.

The AFGC does not consider this will form sufficient argument, or basis, for introducing more prescriptive requirements into the Food Standards Code. A more proportionate response would be for current regulatory requirements to be clarified and guidance for compliance prepared.

As noted above an option would be for a general allowance in Standard 1.4.1 for chemical migrations under a specified level unless specifically regulated to a different level. The survey data which FSANZ has gathered can perhaps provide guidance as to appropriate levels in conjunction with aligning with overseas standards where similar approaches are used.

3.3.2. Minor regulatory changes supported by clearer industry guidelines

In the AFGC's view, the Implementation Subcommittee for Food Regulation (ISFR), in conjunction with industry, should prepare an industry best practice guideline which would include:

- a description of the regulatory requirements relating the public health risk from the migration of chemicals from packaging into food;
- identification of where the responsibility lies for the ensuring chemical migration risks are managed;
- steps industry might take to demonstrate compliance with the regulatory requirements – referencing overseas standards may well be part of industry demonstrating that packaging used is safe and suitable; and
- agreed enforcement strategies which will be pursued by the jurisdictions.

The AFGC stands ready to work with FSANZ, ISFR and colleagues in the packaging industry to assist in preparing the best practice guideline. The AFGC will also assist in promoting the guideline to its members and the broader industry. This will raise awareness of the issue, particularly among smaller companies which will help address FSANZ's concerns that some of those companies may be unaware of the potential risks to public health of inappropriate packaging use.

In addition, the AFGC considers a more systematic survey of chemicals migrating from packaging into food should be undertaken to establish the levels in the food supply. This will provide further data to assist dietary exposure assessments and better quantify the level of risk to health from migrating packaging chemicals. The AFGC is prepared to assist FSANZ and State and Territory jurisdictions in this work.

Recommendation

The AFGC recommends that

- **Implementation Subcommittee for Food Regulation in conjunction with industry prepare an industry best practice guideline to assist companies minimise chemical migration from packaging and demonstrate regulatory compliance; and**
- **systematic surveys of the level of chemicals migrating from packaging into foods be conducted to provide further data to better quantify the risk to health.**

4. Conclusions

Understanding the potential health risks from chemical migration into foods from packaging will be an ongoing challenge for regulators and industry. Good quantitative data on the level of chemicals in foods from packaging, coupled with dietary modelling can provide the evidence base required for regulatory action and complementary, or alternative, coordinated industry-led responses.

The AFGC stands ready to provide further input into the consultation on P1034, including more discussion of the further actions by industry which could help mitigate risk.

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