

Supporting document 1

Summary of state, territory and New Zealand Food Acts – Proposal P1034

Chemical Migration from Packaging into Food

Overview

Food businesses are responsible for ensuring the foods they sell are safe and suitable for consumption in Australia and New Zealand. All food sold must meet the requirements of the Food Acts in each Australian state and territory and in New Zealand.

The Australian and New Zealand Food Acts include provisions that make it an offence to sell food that is unsafe or unsuitable. A food is unsafe if it would be likely to cause physical harm to a person. A food is unsuitable if it, in brief: is damaged deteriorated or perished; comes from a diseased animal; or contains an organism or chemical that is foreign to the nature of the food.

The *Australian New Zealand Food Standards Code* (the Code) contains various requirements which apply to food businesses and to food for sale. Food Acts also make it an offence to contravene these requirements. The Code's requirements, in effect, prevent the sale of certain types of food, particularly those that have been assessed as being unsafe for human consumption.

1 Australia

1.1 Food Acts

Currently, general food law¹ in Australia and New Zealand requires that packaging must be safe to provide protection to consumers.

Australian state and territory Food Acts make it an offence for a person to sell food packaging that, when used, will make food unsafe. This offence/obligation can apply to manufacturers of food packaging and does not rely on standards in the Code to have effect.

The Food Acts also prohibit the wholesale and retail sale of a packaged food where the packaging does not meet a relevant requirement in the Code.

The Food Acts also prohibit the sale of unsafe or unsuitable food. The offence provisions relating to 'unsuitable food' can be relevant 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.

1.2 Australia New Zealand Food Standards Code

Food businesses in Australia also have responsibilities in meeting requirements in Standards 1.1.1, 1.4.1, 2.6.2, 3.2.2, 4.2.1 and relevant schedules (see SD2).

2 New Zealand

There are several pieces of legislation in New Zealand that relate to food business' use of packaging:

2.1 Food Act 2014

The *Food Act 2014* came into effect on 1 March 2016, replacing the *Food Act 1981*.

The Act does not currently impose obligations on manufacturers of food packaging (ie, as opposed to those who package food). The Act provides for a risk-based approach to food safety to be taken by all food operators and enables food safety regulations to be made in relation to 'food related accessories'. The latter term is defined by the Act to include food packaging.

Under the Act, new regulations for packaging and other food contact materials will require that:

¹<http://www.foodstandards.gov.au/about/background/foodlaw/pages/default.aspx>

- packaging and related accessories (e.g. gases, moisture absorbers) must, when manufactured, be suitable for intended use, and remain so during subsequent storage and transport e.g. not capable of imparting substances that may cause harm, distress or discomfort (such as heavy metal residues or foreign matter)
- packaging design and materials provide protection for products to minimise contamination, prevent damage and enable proper labelling
- reusable packaging is suitably durable and clean, and does not provide any misleading information (e.g. incorrect use-by dates on labels).

The composition and, where appropriate, the conditions of use of packaging will be required to comply with standards recognised as acceptable by the Ministry for Primary Industries. The regulation will be outcomes-based and have the flexibility to accommodate developments in technology including anti-microbial finishes and nanomaterials for food contact uses.

The Ministry for Primary Industries is undertaking work to identify whether there are any further requirements (in particular for food sectors) needed under the Act. This work will also consider whether more specific requirements for packaging are needed².

2.2 Animal Products Act 1999

Businesses operating a Risk Management Programme (RMP) under the *Animal Products Act 1999* or a Food Safety Programme (FSP) under the *Food Act 2014* take responsibility for identifying hazards and mitigating them in their operations. This includes hazards associated with materials that come into contact with food.

The Animal Products (Specifications for Products Intended for Human Consumption) Notice 2013³ has specific requirements for packaging:

(1) The composition and where appropriate, the conditions of use of packaging must:

- (a) comply with the requirements specified in the current US Code of Federal Regulations, Title 21, Parts 170–199 (21 CFR 170–199), which applies equally to coatings and linings of containers and cartons where these are the direct product contact surface; or*
- (b) comply with the requirements specified in the current "Australian Standard for Plastics Materials for Food Contact Use, Australian Standard AS2070–1999"; or*
- (c) be determined by the operator to be suitable for use, based on an analysis of hazards and other risk factors from the packaging.*

(2) The type and composition of the packaging must be appropriate for its intended use.

(3) If compliance with this specification is achieved through meeting the requirements of clause 7.2(1)a) or b), the risk management programme must state the full reference to the regulation, part, section or standard with which the packaging complies.

(4) If the packaging is damaged such that the suitability for processing of animal material or the fitness for intended purpose of animal product may be affected, the animal material or product must be:

- (a) handled in a manner that minimises contamination and the damage to the packaging rectified; or*
- (b) appropriately disposed of.*

(5) Reused and recycled packaging must not be a source of contamination to the animal material or product.

² <https://www.mpi.govt.nz/food-safety/food-act-2014/>

³ <http://www.foodsafety.govt.nz/elibrary/industry/animal-products-specifications-asd/index.htm>

2.3 Food Hygiene Regulations 1974⁴

Food businesses that do not have a RMP or FSP have to comply with the requirements of the Food Hygiene Regulations 1974⁵.

2.4 Wine Act 2003

There are also specific references to requirements for packaging under the *Wine Act 2003*⁶.

2.5 Australia New Zealand Food Standards Code

Food businesses in New Zealand also have responsibilities in meeting requirements in Standards 1.1.1, 1.4.1 and 2.6.2 and relevant schedules (see SD2).

⁴ At the end of the three-year introduction period, the *Food Hygiene Regulations 1974* will be revoked.

⁵ http://www.legislation.govt.nz/regulation/public/1974/0169/latest/DLM42658.html?search=qs_regulation_food+hygiene+regulations+1974_resel&sr=1

⁶ <http://www.foodsafety.govt.nz/industry/sectors/wine/>