

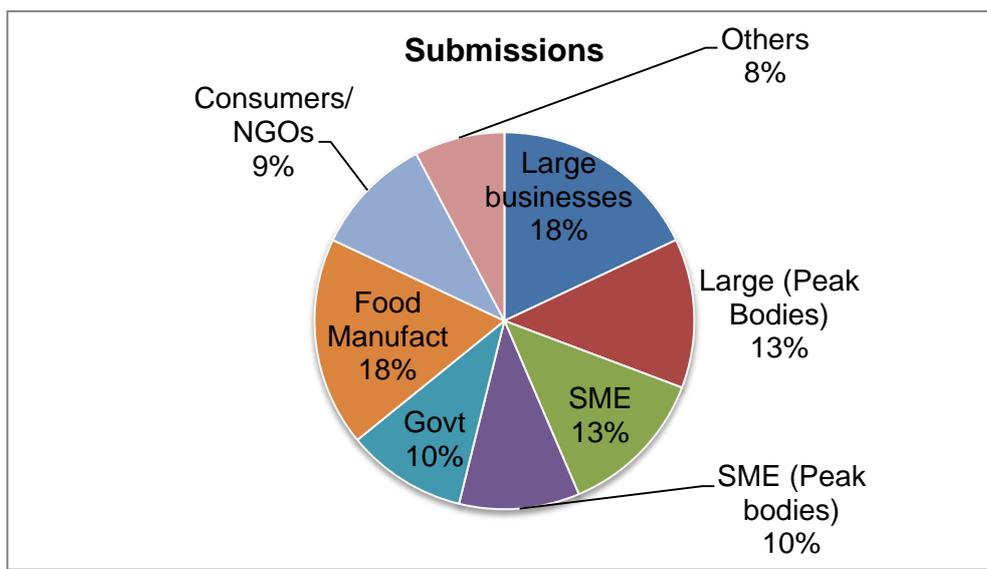
Supporting document 7

Summary of submissions – P1034

Chemical Migration from Packaging into Food

FSANZ's initial consultation paper on chemical migration from packaging into food¹ generated a high level of interest and was well received as evidenced by the number and quality of submissions². Thirty seven submissions and 2 late comments (which were taken into account) were received from a broad range of Trans-Tasman stakeholders including industry, government authorities and consumers. FSANZ also received other responses from the food industry that were not made publicly available. FSANZ was encouraged to continue its regular consultations with the Packaging Advisory Group (PAG) as this had been of great benefit for all involved in this Proposal.

A summary of the percentages of submissions from the various sectors is as follows:



General issues raised in submissions

A number of industry submitters³ claimed that there was a low risk to public health and safety from chemical migration from packaging into food (CMPF). Therefore, the raising of the proposal should not be viewed as identifying safety concerns with food packaging where none exists. This is because there was sufficient identification, characterisation and mitigation of risks already in place by a number of businesses in the packaging supply chain.

¹ <http://www.foodstandards.gov.au/code/proposals/Documents/P1034-Packaging-Consult-CFS.pdf>

² <http://www.foodstandards.gov.au/code/proposals/Pages/P1034ChemicalMigrationfromPackagingintoFood.aspx>

³ Raw material providers, packaging manufacturers, food manufacturers and industry peak bodies

Examples are the use of international regulations⁴, general food safety regulations⁵, codes of practice (CoPs)⁶, Good Manufacturing Practice (GMP) and quality assurance programs. In addition, emerging issues were continually being researched by industry to identify and address potential unmitigated risks from CMPF.

In contrast other industry submitters, government, consumers and non-government organisations expressed a view that there is a potential risk from CMPF, there are gaps in both the knowledge and awareness of regulations for CMPF (particularly for small-to-medium enterprises (SMEs)) and this could be addressed by a risk-based prescriptive requirement in the Code and further education on CMPF for specific industry sectors. There was a call for FSANZ to focus on areas that may present unmanaged risks from CMPF, for example, recycled materials, printing inks, and imported empty packaging.

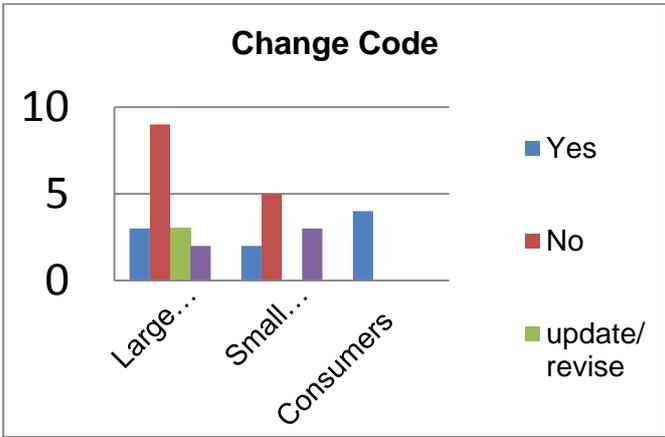
FSANZ was encouraged to adhere to the principles of best practice regulation, and if any new regulations in Australia and New Zealand were introduced there had to be robust scientific evidence that a risk from CMPF existed, otherwise this would impose unnecessary future costs for industry.

There was a suggestion for FSANZ to consider a tiered approach based on risk which may involve combinations of regulatory and non-regulatory measures. For example, prohibition or establishment of maximum limits if a chemical posed a very high risk to consumers or a CoP or guideline if a low risk was identified as these measures were commensurate with the different risk and aim to keep contamination from CMPF to as low as reasonably achievable (ALARA) levels.

Some submitters criticized FSANZ for narrowing the scope of the Proposal to exclude other packaging materials such as nanomaterials and smart packaging.

Comments on requirements in the *Australia New Zealand Food Standards Code*

A representation of the views of large, small businesses and consumers either in support, not supporting or suggesting that the *Australia New Zealand Food Standards Code* (Code) needed to be updated/revised is as follows:



⁴ Such as the EU and/or USA packaging requirements

⁵ For example, Model Food Act, Consumer laws, *Animal Products Act 1999*, *Food Act 2014*, Fair Trading Act 1986 and new prohibitions against unsubstantiated representations in trade, which came into force on 17 June 2014.

⁶ For example, the Australian Packaging Covenant and Code of Practice for Packaging Design, Education and Procurement (PCNZ) and other more specific CoPs for plastics, paper, and other packaging materials.

Specific submitters suggested that current regulations in the Code do not provide businesses with adequate information or direction to ensure that they only use packaging materials that are safe. In essence, the Code is of little use in providing practical guidance and direction for retailers, brand owners, manufacturers and raw material suppliers and lacks the detail and rigour of the US FDA and EU requirements.

Some submitters considered that robust and prescriptive measures are needed to assist industry and protect consumers. The Code needed to be revised and updated to reflect modern packaging requirements.

Use of other measures

Some industry submitters preferred an industry guideline prepared in conjunction with the Implementation Subcommittee for Food Regulation (ISFR), which would describe clearly the current regulatory requirements and give practical guidance on how compliance can be achieved by companies.

Others considered that it may not be necessary to introduce a prescriptive standard in the Code, but rather clarity of the existing requirements was needed. They suggested relying on combinations of general food and consumer (fair trading) laws, international regulations and CoPs would be less costly, allow sufficient flexibility for industry, without duplication of existing international standards and would accommodate different packaging materials. In addition, more prescriptive regulatory control may be counter-productive, not keep pace with new packaging developments and will add considerable costs into the food packaging market.

Specific submitters outlined the advantages and disadvantages of a co-regulatory approach which would allow Government to work more closely with industry to develop a framework and guidelines for management of CMPF. It was also recognised that a CoP may be a more suitable approach, rather than co-regulation, as it offered a prescriptive mechanism for adoption by businesses that wish to use it, while maintaining maximum flexibility for companies to develop their own systems and approaches based on a due diligence approach.

A CoP could be updated more readily than the Code to incorporate new packaging materials as these were developed.

Consumer concerns

Consumers raised concerns with FSANZ that the current very general requirements for food packaging to be safe may not be enough to safeguard consumers. They proposed that FSANZ should take a precautionary and a more prescriptive approach similar to the requirements in the EU and the US. There was no support for use of CoPs as it was suggested that not all manufacturers (or retailers) can be guaranteed to adhere to them.

Specific concerns were raised for the following areas:

- new technologies used in packaging: modified atmosphere packaging, nanoparticle and smart materials due to the lack of scientific data on the safety of these materials
- recycled packaging is not addressed by the current requirements
- there is confusion as to who takes responsibility for the quality and safety of food packaging
- there is no requirement for traceability of the packaging

- manufacturers/retailers appear to be using a number of different certifications and Standards from overseas to meet their customers' requirements which may or may not be acceptable to Australia.

Summary

In summary, FSANZ was encouraged to take a proportionate and informed risk-based approach for the Proposal and for any future regulatory measure introduced. Whilst international regulations are more prescriptive, they do not cover all packaging chemicals and may not necessarily be suitable for Australia and New Zealand. They are nevertheless useful for companies looking for current guidance on standards for packaging. A proportionate response would be for current regulatory requirements to be clarified and CoPs utilised for various packaging materials in association with guidance for compliance prepared. In contrast prescriptive requirements in the Code would provide certainty and a level playing field for industry and consumers could have confidence that the industry adhered to a Standard which protected their health. Should there be the need for an enhanced regulatory approach, any requirements should be achievable by industry and also appropriate for enforcement agencies, while addressing the risk identified.

Submitters noted that it was important that companies adopted 'good manufacturing practices' and had in place appropriate internal systems, quality assurance, compliance arrangements in the production and use of food packaging materials and kept a watching brief on emerging issues from CMPF.