



AUSTRALIAN  
**FOOD &  
GROCERY**  
COUNCIL

# AFGC SUBMISSION

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CHEMICAL MIGRATION FROM PACKAGING  
INTO FOOD

FZANZ CONSULTATION PROPOSAL P1034

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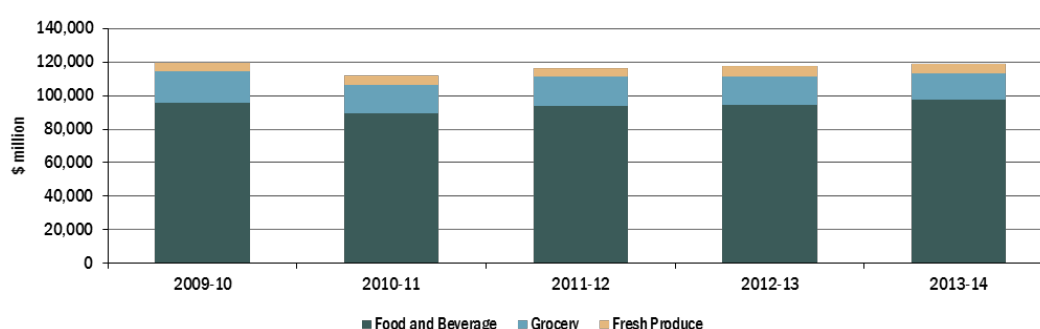
*Sustaining Australia*

## 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.

Composition of the defined industry's turnover (\$2013-14)



With an annual turnover in the 2013-14 financial year of \$119 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 30 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 26, 551 businesses and accounts for over \$61.7 billion of the nation's international trade in 2014-15. 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 322,900 Australians, representing about 3 per cent of all employed people in Australia, paying around \$16.1 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.

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.

Consistent with AFGC's initial submission to P1034, AFGC 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. This guideline should be supported by education, awareness and information programs for industry, targeting small to medium enterprises, to ensure they are both aware and equipped to deal with issues of chemical migration.

The AFGC is willing to assist in the development and promotion of such an industry best practice guideline, to both its members directly and the industry more widely.

## RECOMMENDATIONS

The AFGC recommends industry self-regulation, supported by education, awareness and information programs to address chemical migration from packaging into food.

Further, 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.
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. FSANZ add phthalates to the regular cycle of the Australian and New Zealand Total Diet Studies to track exposure over time and assess whether the outcomes of P1034 have served to reduce chemical migration from packaging into food.

## 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) 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.**

**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 two phthalates (DEHP and DINP) in diets is required before dietary modelling can be of great assistance in determining and estimating risk.
4. 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.

### **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<sup>1</sup>. The Government recently confirmed this important regulatory policy in the *Australian Guide to Regulation*<sup>2</sup>. 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 P1034, following testing for the presence of a large number of packaging chemicals FSANZ concedes that the results indicate that most chemicals used to produce food packaging are unlikely to pose a public health and safety concern, predominantly because of their low levels of migration into food. The AFGC notes that FSANZ identified two chemicals for which additional food concentration data are required to determine if dietary exposure to these chemicals poses a health risk.

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

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<sup>1</sup>. *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](http://www.coag.gov.au/sites/default/files/coag_documents/COAG_best_practice_guide_2007.pdf).

<sup>2</sup> [www.cuttingredtape.gov.au](http://www.cuttingredtape.gov.au).

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.

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 the past 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.



### 3. Specific Comments

P1034 puts forward six potential options for consideration. The AFGC has provided specific comments on each of these options below.

#### 3.1. Option 1 – Status quo

##### NOT SUPPORTED

The data collected by FSANZ has demonstrated that chemical migration from packaging into food is low, albeit with further work required to characterise any potential public health risks posed by the phthalates DEHP and DINP. The AFGC agrees that the initial consultations has highlighted gaps in knowledge of chemical migration from packaging into food and understanding of how to address it. As such, the AFGC strongly supports option 3a of providing education, awareness and information programs to industry.

#### 3.2. Option 2 – Prescriptive approach

##### NOT SUPPORTED

The AFGC concurs with FSANZ's assessment that a purely prescriptive approach to managing chemical migration from packaging into food is not warranted in Australia or New Zealand. The most important pillar of best regulatory practice is the concept of *proportionate regulatory response*. The AFGC does not consider that the evidence gathered to date forms sufficient argument, or basis, for introducing more prescriptive requirements into the Food Standards Code.

#### 3.3. Option 3a – Education, awareness and information programs

##### SUPPORTED

Regardless of the final outcome of P1034, the consultations to date have demonstrated a need for clear and consistent information regarding chemical migration from packaging into food for industry, with a particular focus on information and tools for small and medium enterprises. The AFGC supports and is willing to assist in facilitating an education, awareness and/or information program for industry to address specific gaps in knowledge and awareness of chemical migration from packaging into food.

The AFGC considers that such programs could be developed and delivered at relatively small cost to stakeholders. Such programs also have the ability to further reduce the already low levels of chemical migration, particularly if a focus is given to the chemicals of current concern (namely, phthalates).

It should be clearly noted that the AFGC only supports education, awareness and information programs targets to industry. The AFGC is concerned that any such program directed towards consumers (regardless of its scientific rigour) is likely to result in unwarranted concerns being raised regarding particular packaging materials. 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 (and consistent with the findings of FSANZ's recent modelling). 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 that any consumer targeted information programs may result in a similar response.

### **3.4. Option 3b – Industry self-regulation**

#### **SUPPORTED**

As recommended in AFGC's initial submission to P1034, AFGC supports the Implementation Sub Committee for Food Regulation (ISFR) in conjunction with industry developing an industry best practice guideline to assist companies minimise chemical migration from packaging and demonstrate regulatory compliance. Such a guideline reference the various other standards that are currently in use and aid SMEs in navigating their role and responsibility.

This approach poses minimal cost to government and consumers and also provides a flexible document that can be readily updated as technologies, environments and best practice evolve.

The Australian and New Zealand food industries have a proven track record for the development and implementation of best practice guides of this nature. The voluntary incidental trace allergen labelling (VITAL) developed by the Allergen Bureau is evidence of this.

Furthermore, as the data collected to date by FSANZ has not identified a public health and safety concern or any evidence of acute or chronic conditions resulting from chemical migration, self-regulation is an appropriate and proportionate regulatory response.

### **3.5. Option 3c – Co-regulation**

#### **NOT SUPPORTED**

The AFGC does not support the option of co-regulation. There is no evidence to suggest that industry self-regulation would be unable to address an issue in this space that could be solved by a co-regulatory model. Co-regulation would add unnecessary levels of administration and management structures, leading to additional costs for all parties involved.

### **3.6. Option 4 – Graduated approach**

#### **NOT SUPPORTED**

The AFGC does not consider a graduated approach is the most appropriate response to the issue of chemical migration from packing into food. FSANZ has stated that this approach would address:

- Chemicals assessed as low risk
- Chemicals assessed as high risk (specifically two phthalates, DEHP and DINP)
- A lack of clarity and certainty about the current requirements for some food businesses in Australian and New Zealand
- Gaps in awareness and management of chemical migration of packaging into food for some food businesses and uneven control practices across industry.

The AFGC considers that a combined Option 3a and 3b would be able to address these issues but do so with less cost to government and industry, quicker adoption and greater flexibility.

Pursuit of Option 4 would require further rounds of consultation and the completion of a regulatory impact statement. In contrast, a combined Option 3a and 3b could be commenced almost immediately through partnership between ISFR, FSANZ and peak industry bodies.

Whilst the impact costs of such measures are always difficult to estimate, any introduction of limits within the Code will increase the testing requirements on companies. Due to the low levels of even the higher risk chemicals, testing would need to be highly sensitive and coupled with sophisticated sampling methods to ensure accurate results. This would add considerable expense to industry, which is likely to have a flow on effect to consumers.

As no risk to public health has yet to be determined by dietary modelling of phthalates DEHP and DINP, at the very least, Options 3a and 3b should be pursued and assessed prior to the introduction of more onerous regulatory measures.

### 3.7. Post market surveillance

Post market surveillance is necessary to determine the success, or otherwise, of any intervention of this nature. The AFGC recommends that FSANZ add phthalates to the regular cycle of the Australian and New Zealand Total Diet Studies to track exposure over time and assess whether the outcomes of P1034 have served to reduce chemical migration from packaging into food.

#### Recommendation

**The AFGC recommends that FSANZ add phthalates to the regular cycle of the Australian and New Zealand Total Diet Studies to track exposure over time and assess whether the outcomes of P1034 have served to reduce chemical migration from packaging into food.**

## 4. Conclusions

In raising this proposal (P1034) FSANZ has conducted a comprehensive, scientifically rigorous body of work indicating unequivocally that the residual public health risk associated with the migration of chemicals from packaging into food is very low. Consequently, a proportionate regulatory response is appropriate, with no additional regulatory burden on industry imposed. The FSANZ proposal has, however, shown that there would be merit in clarifying the regulatory requirement that industry must ensure materials are safe and suitable when used as food packaging. The development and dissemination of clear industry guidelines will assist food companies, and particularly SMEs to appreciate the importance of appropriate packaging use to remain compliant with regulations and to protect consumers. The AFGC stands ready to assist with preparation of industry guidelines.