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Office of the Chief Executive Officer

The Commissioners
Chemicals and Plastics Regulation Study
Productivity Commission
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Dear Commissioners

FSANZ Submission to Chemicals and Plastics Regulation Study

Food Standards Australia New Zealand (FSANZ) welcomes the opportunity to provide a submission to the Productivity Commission *Chemicals and Plastics Regulation Study*. While the Issues Paper indicates that the focus of this study is the regulation of chemical products and plastics, I believe that there are some food related aspects of these products which may be of relevance to the Commission in this study. These aspects are included in Attachment 1 for your information.

The role of FSANZ includes the development of food regulatory measures that are incorporated into the *Australia New Zealand Food Standards Code*. In accordance with Commonwealth of Australia, State, Territory and New Zealand food legislation, these measures then apply to food sold in and imported into Australia and New Zealand. Some standards apply in New Zealand only or in Australia only.

FSANZ develops food regulatory measures in accordance with the *Food Standards Australia New Zealand Act 1991*. This legislation implements the arrangements agreed by the governments of Australia in the *Food Regulation Agreement* and the arrangements agreed between the Commonwealth of Australia and the Government of New Zealand in the Australia New Zealand Food Standards System.

In general terms, FSANZ considers that current food regulatory measures and the processes for developing them, complement chemical products and plastics regulation in Australia. While these food regulatory measures are developed with the primary objective of protecting public health and safety, they are also assessed in the context of a thorough assessment of the costs and benefits of these measures and through open and transparent public consultation. I therefore believe that they represent effective measures which are of net benefit to the community.

I would be pleased to discuss the issues in this submission or any other food regulatory issues with the Commission, if this was considered necessary. I am aware that the Commission has a number of other reviews currently underway in relation to business regulation which will provide valuable insights to the FSANZ Board and staff on best practice approaches to regulation.

I look forward to receiving the Commission's draft report on this study.

Yours sincerely

Dean Stockwell
A/g Chief Executive Officer

October 2007

Attachment 1

FSANZ Submission to Productivity Commission Chemical and Plastics Regulation Study

The FSANZ submission has two parts with general comments on relevant food regulatory arrangements and specific comments on aspects of food regulation that may be of relevance to chemicals and plastics[1] regulation.

Chemicals and plastics are used in the production of food. As a result, the regulation of the use of these products is relevant to the food regulatory system generally so as to ensure that food produced with the aid of chemicals and plastics are safe and suitable for human consumption.

General Comments

Food regulation in Australia and New Zealand is implemented through co-operative and consultative arrangements that recognise and acknowledge the practical and legislative processes that exist in Australia and New Zealand. These arrangements reflect the need for:

- Food regulatory policy to guide the scope and range of food regulation;
- Food regulatory measures (eg. food standards) to be developed through consultative mechanisms and that are of net benefit to the community;
- Effective and consistent implementation of these measures;
- Monitoring and evaluation to ensure that food regulatory measures are achieving their objective.

The diagram on page 10 of the Issues Paper may not adequately portray the important elements of the food regulation system and the significant role of all the agencies involved in regulating food. The Commission may therefore wish to consider the attached brochure or view it at the following link as a more complete picture of food regulation in Australia and New Zealand.

http://www.health.gov.au/internet/wcms/publishing.nsf/Content/C26129AB38BDF918CA2572DC0082A8CA/$File/system-brochure.pdf

Key elements of the food regulation system that the Commission may wish to note include:

- The primacy of public health and safety in relation to food;
- That regulation should be cost-effective;
- The independent, risk-based and scientific evidence-based approach used in developing food regulation;
- The development of food regulation through consultative and transparent arrangements; and
- The promotion of consistency with international standards.

[1] 'Plastics' is considered to include monomers and polymers as well as compound materials including adhesives, plasticisers, curing agents and inks.

These elements are encapsulated in:

- the arrangements agreed by the governments of Australia in the *Food Regulation Agreement;*
- the agreed arrangements between the Commonwealth of Australia and the Government of New Zealand in the Australia New Zealand Food Standards System; and
- the provisions of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) including the objectives of food regulatory measures in section 18 of this legislation.

Like most regulatory systems, the food regulation system separates policy, standards development and implementation into three distinct but interrelated aspects. One point that the Commission may wish to consider in assessing the impacts of regulation in this study is the separation of 'regulation' into:

- the policy development (ie. need for and scope of regulation);
- development of specific regulatory measures (ie the standard to be achieved); and
- the implementation of the measures (ie. monitoring or ensuring compliance with the standard).

In practical terms, the food regulatory arrangements mean that there is some overlap between food regulation and chemicals and plastics regulation where this relates to uses of chemicals and plastics in food producing situations. This has long been recognised in the food regulation system and mechanisms have been instituted to reduce the impact of any overlap, while still ensuring that sufficient measures exist to retain community confidence in the food regulation system. A case in point is the regulation of residues of agricultural and veterinary chemicals in food (see 'Specific Comments' below).

As recognised by the Commission on page 13 of the Issue Paper, a key element of regulation is not simply the hazard posed by a chemical but its exposure to the community or select members of the community. While the hazards associated with a chemical can be identified, it is not possible to assess the risks and therefore determine appropriate risk management strategies, until the likely exposure to the hazard has also been assessed and the overall risk characterised. Regulatory measures for a chemical are also influenced by the data available, the specificity of the risk assessment conducted and the practical, cost-effective measures for managing these risks in accordance with community expectations. The Commission may wish to consider these points in assessing the impacts of regulation in this study.

In general terms, FSANZ has recognised the overlap of food regulation with chemicals and plastic regulation. FSANZ has developed food regulatory measures that minimise the impacts of this overlap, while still ensuring the integrity of the food regulation system with the community. FSANZ also considers that the food regulation system represents a contemporary approach to regulating food that can address innovative and future technologies for producing food, including where chemicals or plastics are used in food producing situations.

Specific Comments

There are three areas of chemical and plastics regulation where food regulation may be relevant. These are agricultural and veterinary chemical residues in food, food additives or processing aids; and contaminants in food, including contaminants from food contact materials such as packaging. The specific comments below demonstrate how food regulatory

measures have been developed to minimise the impacts of any overlap between food regulation and chemicals and plastic regulation, while still maintaining community confidence in the food regulation system. A section on 'Monitoring and Review' has also been provided to demonstrate the review elements of the regulatory measures.

Agricultural and veterinary chemicals

FSANZ acknowledges that veterinary chemicals are excluded from this study but has noted that pesticides have been included. While the Commission has decided to assess these chemical products separately, FSANZ's specific comments below are equally relevant to both agricultural and veterinary chemical products.

The use of agricultural and veterinary chemical products for food production may result in low levels of residues in food. As part of the assessment of the use of agricultural and veterinary chemical products, the Australian Pesticides and Veterinary Medicines Authority (APVMA) determines Maximum Residue Limits (MRLs) for these residues which may occur in food. These MRLs are primarily indicators of the appropriate use of chemical products and are not direct safety limits, although a chemical product will not be approved for use if the residues that may occur in food could represent an unacceptable risk to public health and safety.

As approved chemical products may be used in food production, it is necessary for the food regulatory system to recognise the residues of agricultural and veterinary chemical products that may legitimately be present in food produced with the aid of these chemical products. FSANZ ensures this by assessing the MRLs determined by the APVMA in accordance with the FSANZ Act and where appropriate, including them in the *Australia New Zealand Food Standards Code* (the Food Standards Code). This has the effect of allowing safe and legitimate residues from approved chemical products to be present in food sold in Australia and New Zealand, provided that these residues do not exceed the MRL. This ensures that the residues in food are as low as reasonably achievable and consistent with the effective and approved use of a chemical product.

As previously stated, FSANZ must develop food regulatory measures in accordance with the provisions in the FSANZ Act. This requires FSANZ to undertake certain processes in assessing MRLs for inclusion in the Food Standards Code that the APVMA does not need to undertake in assessing the use of chemical products. The separate processes undertaken by FSANZ are consistent with commitments agreed to in the *Food Regulation Agreement*. To minimise the impacts of these separate processes, FSANZ and the APVMA agreed on a Memorandum of Understanding (MoU) a number of years ago to streamline the notification of MRLs to FSANZ from the APVMA and to ensure that dietary exposure assessments are consistently undertaken in accordance with an agreed protocol. This allows FSANZ to more efficiently assess MRLs from the APVMA, without compromising the legislative requirements in the FSANZ Act.

In the past, concerns have been expressed about the time between when the APVMA approves a chemical product for use and the associated MRLs are gazetted into the Food Standards Code. Recent amendments have been made to the FSANZ Act which should reduce the time between when the use of a chemical product is approved by the APVMA and the associated MRLs are gazetted in the Food Standards Code.

Before these legislative amendments were enacted both FSANZ and the APVMA had aligned their respective processes as much as possible under the previous legislative framework. The recent legislative changes are as a result of the two agencies identifying legislative changes needed to achieve further alignment and further reductions in the time between the APVMA approval of a chemical product and the gazettal of the associated MRLs in the Food Standards Code. In general, FSANZ currently takes between nine to twelve months to complete the assessment of MRLs from the APVMA. Under the new legislative requirements this should be reduced to between six to nine months.

On page 30 of the Issues Paper it is stated that FSANZ 'can prescribe residues limits for pesticides in food, independently of any pesticide-use controls imposed by APVMA or a state or territory'. This implies that FSANZ and the APVMA set different levels. In fact, FSANZ considers the MRLs determined by the APVMA for inclusion in the Food Standards Code. The only reason that FSANZ would not include these APVMA determined MRLs in the Food Standards Code is if the residues were of public health concern (which has never occurred) or higher MRLs were needed to facilitate trade and there were no public health concerns with the higher MRL (rare circumstance).

In summary, FSANZ considers that the food regulatory measures complement chemicals regulation and are developed as efficiently and as quickly as legislative and other restraints allow. FSANZ also considers that these measures are developed in timeframes which are consistent with those in other developed countries, and which have the support of the wider community. While FSANZ recognises that these timeframes may not suit certain members of the community, it is suggested that the Commission may need to consider the wider community expectations in relation to chemical product regulation and food regulation before recommending further reforms to the current arrangements.

Food additives and processing aids

FSANZ acknowledges that food colourings were excluded from this Commission study. However, chemical products may be used as food additives or processing aids in the production of food. For this reason, some comment on this aspect may be of value to the Commission.

FSANZ develops limits for food additives and processing aids in food in accordance with the FSANZ Act. These limits are included in Standard 1.3.1 – Food Additives and Standard 1.3.3 – Processing Aids. As stated above, these limits are developed through a consultative process with a strong emphasis on:

- The protection of public health and safety;
- The need for any regulatory measures to be cost-effective and of net benefit to the community;
- The promotion of consistency with international standards.

FSANZ therefore considers that food regulatory measures for chemicals such as food additives and processing aids in food are developed through an appropriate and timely process. FSANZ also considers that these measures are developed in a consultative manner, contribute to the fair trading of food and support an efficient and competitive food industry in Australia and New Zealand.

Contaminants in food

FSANZ develops limits for contaminants in food and this may include, for example, residues of plastics that may occur in food from the appropriate use of plastics in food production, packaging or presentation. The approach of FSANZ in developing food regulatory measures for these potential substances in food has three elements.

1. generic regulation with the general provisions in Commonwealth, State, Territory and New Zealand food legislation as they relate to requiring all food to be 'safe';
2. a performance based standard in the Food Standards Code (Standard 1.4.3) for plastic materials that may come into contact with food, which includes a reference to the Australian Standard for Plastics Materials for Food Contact Use AS2070 –1999;
3. regulation of residues of plastics in food as contaminants, with no general prohibition on residues in food (unless unsafe) but with specific limits for certain substances where there is a specific need and the data are available to support specific limits (eg. acrylonitrile).

FSANZ considers this approach to the regulation of residues of plastics in food as cost-effective, risk-based and practical, while still ensuring that public health and safety is protected.

Monitoring and Review

As highlighted by the Commission on page 14, an important element of any regulation is the monitoring and review of food regulatory measures to ensure that objectives are being fulfilled. In relation to chemicals in food, FSANZ uses a variety of means with the most well-known being the Australian Total Diet Study (ATDS). On a regular basis, FSANZ conducts this study to measure selected substances in food and to ensure that contemporary food regulatory measures are achieving the objectives of the food regulation system, including protecting public health and safety. Recent ATDS have included the investigation of chemical residues in food, food additives in food and contaminants that may be present in food. These are publicly available and have on occasion identified the need to revisit certain food regulatory measures, which FSANZ has undertaken to ensure that the overall objective of the food regulatory system is achieved – namely safe and suitable food.