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ECONOMICS LEGISLATION COMMITTEE

Reference: Food Standards Amendment (Truth in Labelling Laws) Bill 2009

MONDAY, 5 OCTOBER 2009

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BY AUTHORITY OF THE SENATE

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**SENATE ECONOMICS
LEGISLATION COMMITTEE
Monday, 5 October 2009**

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*) and Senators Cameron, Joyce, Pratt, and Xenophon

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Eggleston Joyce and Pratt

Terms of reference for the inquiry:

To inquire into and report on:

Food Standards Amendment (Truth in Labelling Laws) Bill 2009

WITNESSES

CROWE, Ms Lisa, Manager Administration and Compliance, Australian Made Campaign Ltd..... 1

HARRISON, Mr Ian, Chief Executive, Australian Made Campaign Ltd 1

Committee met at 2.27 pm**HARRISON, Mr Ian, Chief Executive, Australian Made Campaign Ltd****CROWE, Ms Lisa, Manager Administration and Compliance, Australian Made Campaign Ltd**

ACTING CHAIR (Senator Eggleston)—We will now move onto the inquiry into Food Standards Amendment (Truth in Labelling Laws) Bill 2009. Before we begin, I would say that this is a somewhat constrained inquiry because the movers of the legislation are not going to participate—that is, Senators Joyce, Bob Brown and Xenophon. So I think there will probably be fairly limited questioning, since those three are the people who put up this legislation. I understand that Senator Joyce is travelling. Senator Xenophon is unfortunately ill. And Senator Brown has other commitments today.

I now declare open this hearing of the Senate Economics Legislation Committee inquiry into the Food Standards Amendment (Truth in Labelling Laws) Bill 2009. On 10 September 2009 the Senate referred the provisions of this bill to this committee. The bill would require Food Standards Australia New Zealand to develop and approve certain food labelling standards to which producers, manufacturers and distributors would need to adhere. The standards would require greater detail about the content of food products, including the use of imported ingredients. They would ensure, among other things, that the word ‘Australian’ would only apply in relation to food that is 100 per cent produced in Australia from Australian products. The committee is due to report to the Senate on 26 November 2009.

These are public hearings, although the committee may agree to a request to have evidence heard in camera, or may determine that certain evidence should be heard in camera. I remind all witnesses that, in giving evidence to the committee, you are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt of the Senate to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request may also be made at any other time.

I welcome you to this hearing, Mr Harrison and Ms Crowe. I invite you to make an opening statement.

Mr Harrison—We have tabled a document. I know you have not had a chance to go through that document. If you can put up with me paraphrasing my way through it, I will do that. If that then gives rise to questions, well and good. I do understand the points you made about the movers of the legislation not being with us. We will take silence as a vote of absolute confidence!

ACTING CHAIR—We are accomplished speed readers, I assure you.

Mr Harrison—Our campaign is not-for-profit. The Australian Made logo is 23 years old. It was established by the federal government in 1986. We are talking, of course, about the stylised kangaroo in the triangle. The company, AMCL, administers this logo in accordance with a deed of assignment and then a deed of management, subject to that deed of assignment, under which the ownership of the logos were transferred from the federal government to this not-for-profit body. That occurred only seven years ago, in 2002.

The campaign is funded by licence fees that companies pay to use the symbol. We do not get financial support from government in respect of our core activities, although we receive some funding through the Department of Innovation, Industry, Science and Research, which we then have to match dollar for dollar, for an export project. That money comes to us as a three-year grant.

Since the introduction of the logo in 1986 it has been used primarily with two descriptors underneath it. One of those is ‘Australian Made’ and the other is ‘Product of Australia’. The criteria underpinning both those usages are consistent with provisions 65AA to 65AN of the Trade Practices Act. So the link was established very clearly to the act on the way through this campaign over 23 years. A couple of years ago, in 2007, the government introduced the ‘Australian Grown’ descriptor. They did that for use on fresh and processed foods with a high Australian content. The rules governing the use of the logo were rewritten to accommodate the new descriptor. In fact, we changed the name from the ‘Australian Made’ logo to the ‘Australian Made, Australian Grown’ logo at that time.

We did all those things, principally the rewrite of the rules, in conjunction with the Department of Agriculture, Fisheries and Forestry, the Department of Innovation, Industry, Science and Research, the ACCC and ultimately, for registration purposes, IP Australia. What we have, therefore, are certain criteria associated

with the term 'Australian Grown', which has its power when that description is used in connection with the AMAG logo. But the term 'Australian Grown' per se has no legislative support, such as the terms 'Made in Australia' or 'Product of Australia' have. When the AMAG logo is used, without a qualification, with 'Australian Grown' underneath it, it is equivalent to 'Product of Australia'. It has a very high level of compliance. All the processes and nearly all the components need to be Australian—grown here in Australia.

There is the capacity to use it with what we call a qualified claim. The example given in the paper is 'Australian grown potatoes'. They are the words that would appear under the symbol, and they would indicate a number of things, including that at least 90 per cent by weight of the aggregate product was grown in Australia. In this instance, with potatoes, 100 per cent of the potatoes need to be Australian. The product also needs to have had more than 50 per cent value added occur in Australia, and there are some other provisions as well—mainly that it cannot have been exported and reimported.

When 'Australian grown' was introduced, a qualified 'Australian grown' was introduced at the same time to cover the situation where not all of the components could be Australian, for all sorts of reasons: seasonality, drought, or simply that the product is not available in Australia. We have given an example here. It could be something like frozen potato wedges, made in Australia from Australian grown potatoes, with some minor added ingredients, like oil, spices and flavourings, that are imported. In that situation there would be a question of whether that product could use 'Australian grown' without any qualification. But the addition of the term 'potatoes' in that case—or 'peas', 'carrots', 'fish' or whatever it might be—allows the situation where not all of the product is Australian grown but the great majority, at least 90 per cent by weight, is.

I should emphasize that these criteria were worked out initially by a working party, chaired by the previous minister for agriculture, and then very much by the agencies that I have referred to: DAFF and DIISR. The ACCC were at the table, of course, as were IP Australia.

There are 1,550 companies currently using the 'Australian made' or 'Australian grown' logo. We think it is on about 10,000 products, and the number of companies registered is growing strongly. Thirteen per cent of our licensees operate in the food and beverage sector. The vast majority of our licensees use the term 'Australian made' under the symbol. Our rules prescribe that a descriptor must be used under the triangle. The triangle is in fact the certification trademark, and then a descriptor could be 'Australian made', 'product of Australia', 'Australian grown' or the qualified 'Australian grown'. But certainly one of those four must appear.

Moving to the issues of the proposed legislation, we have been aware for some time of growing consumer concerns about country of origin of fresh food and ingredients. Food safety matters emerge from time to time in the media. Not long ago we had the melamine problem with milk, of course. There are environmental matters recurring all the time. Food miles has emerged recently, during the last couple of years, as an issue for quite a number of people. Also we know that many consumers simply have a view about trying to support local farms and producers, fishermen and so forth, so they buy locally produced product wherever possible. Therefore, labelling becomes a very important issue. Truth in labelling is very important to us.

The 'Australian grown' label was created in response to those concerns. As I mentioned earlier, it was a federal government initiative. It came about in 2006 and there was a working party, of which we were not a member. We gave a presentation to them. They concluded their work in 2007 and the process was enacted. I think it was launched formally at a major function for the AUSVEG group. It was an industry function in Sydney on 31 May 2007.

The major retailers have been very enthusiastic in their take-up. Woolworths, Coles, ALDI and recently Franklins have become licensees or, as we call them, campaign supporters, of the overall program. They use the logo widely now with 'Australian grown', 'product of Australia' or 'produce of Australia'. Coles are using it, interestingly, across the country with a regional component to it. It could be 'Australian grown' in Perth; it could be 'Australian made' in Dubbo. They are using different ones for the local constituencies. It is getting very wide use in print media and of course electronically.

We are aware that there are some tensions with the different representations for the logo. We understand that the 'Australian made' claim—relating, as I said earlier, to the Trade Practices Act and consequently, therefore, the Food Standards Code—relates to the manufacturing processes and costs of production, rather than content. A food product which contains a high percentage of imported ingredients can still legally be described as Australian made provided it meets the twin criteria: one, it was substantially transformed in Australia; and, two, at least 50 per cent of the cost of producing that item had been incurred in Australia. It needs to meet both those criteria under the Trade Practices Act.

The cost criterion is relatively straight forward. It is either met or it is not. It is a measurable thing. Obviously, for companies, though, there are issues involved when they need to import product as part of the overall process. The exchange rate volatility, which we have seen for ever in this country, I suppose, but which has become quite dramatic in recent times, is an ongoing concern to companies because it is just possible that they may not comply with the 50 per cent requirement simply because of a change in the exchange rate.

Our major area of concern—and it is the issue we bring to this inquiry—is the interpretation of the term ‘substantial transformation’, particularly with regard to food products. The ACCC puts out booklets that are there to provide guidelines for people to use. We use them, of course. One of those booklets is called *Food and beverage industry: country of origin guidelines to the Trade Practices Act*. Under these guidelines, mixing and homogenisation, coating and curing are processes ‘likely to be considered a substantial transformation’. That means that mixed, diced vegetables; blended fruit juices; crumbed prawns—that has been highlighted before in your chambers—and ham and bacon, may all qualify as Australian made, even though the majority, or perhaps even all, of the ingredients may be imported. It qualifies providing it meets the 50 per cent costing rule and it has been substantially transformed here. In that same publication the ACCC booklet advises that the government has the power to make regulations stating that certain changes are not considered to constitute substantial transformation for the purposes of the legislation. Indeed, with our own code of practice which controls the use of the ‘Australian made, Australian grown’ logo, we have looked at that and have applications pending to tighten the restrictions under which the symbol can be used. In fact, it is our proposal to go beyond the measures of the Trade Practices Act to tighten down that definition of ‘substantial transformation’ so that we can influence the products on which the logo can be used, even though the act would still provide that they could be called ‘made in Australia’, ‘Australian made’ but not ‘product of Australia’.

With respect to the bill that is before the inquiry, we have some major concerns about the interpretation and the possible effects of subsection 1A. Very few processed foods these days contain 100 per cent Australian ingredients.

CHAIR—Can I just stop you there. Senator Pratt and I thought we might go through these with you and ask you questions. If you finish on 1A we will talk about that a little bit.

Mr Harrison—Certainly. Our point there is that there are few products that are 100 per cent Australian. So if we enacted a subsection as proposed it would have the effect of excluding a very large number of products from using claims which, under the TPA, they are entitled to make. Some examples are—

Senator PRATT—Can I ask you about that. I accept that point. The motivator behind this bill might be that there would be some products out there purporting to be Australian that have a large amount of foreign content and still somehow manage to pass themselves off as Australian made. To what extent is that a problem? I fully accept that what you are saying is that it is legitimate Australian produce. This is something that you would be very much trying to protect because you have control of a trademark that is there to protect Australian content. To what extent do we have products that are passing themselves off as Australian made but would not meet the kinds of tests that you are talking about?

Mr Harrison—A lot of publicity came out a few years ago about crumbed prawns. I think Senator Heffernan was championing that. It was a Queensland issue, and what was alleged was that prawns could be imported into the country and they could be processed in Australia and crumbed in Australia and then sold with the ‘made in Australia’ claim, because the product had been made here. The crumbed prawn was in fact made in Australia and, secondly, the ex-factory cost of the product showed that more than 50 per cent of its cost had been incurred in Australia. Under the Trade Practices Act, that is it. It meets both tests for the safe harbour provisions, so it could be called ‘made in Australia’. A consumer might realistically expect a crumbed prawn to be an Australian prawn, and therein lies probably one of the most extreme cases that you would think about. But the extreme cases are the easy ones. The very great difficulty is the grey area that exists between those extremes.

Senator PRATT—But you need to work through those grey areas in choosing what you can and cannot give accreditation to, don’t you? And you manage to do it.

Mr Harrison—Yes, we do, but we get applications all the time from companies and it is very, very difficult for anyone to make a judgment on those applications. We cannot go to the ACCC. They will not make judgments. They will deal with a matter that is brought to them in a complaint, but trying to have a forum where someone can provide help at the determination stage is very difficult.

Senator PRATT—Hence you end up with something quite dictatorial like this, which says it is 100 per cent or nothing.

Mr Harrison—The problem with this, of course, is cheese. The great majority of cheeses in Australia have an imported rennet, and rennet is an essential component of cheese. It is a very small component. It will not measure on the scale of weight, but you cannot make cheese without it.

ACTING CHAIR—What is rennet, to a non-farmer?

Mr Harrison—It is an enzyme.

ACTING CHAIR—It is an enzyme. I read about that with interest.

Senator PRATT—None of our Australian wine would be Australian wine anymore.

ACTING CHAIR—In other words, the cheese is made from Australian products but you import an enzyme. Is that what that means?

Mr Harrison—Yes.

ACTING CHAIR—You quoted the crumbed prawns as an extreme example. I thought that, if most Australian cheese was actually made from imported milk products, that would be an even more extreme example.

Mr Harrison—But it is not.

ACTING CHAIR—But it is not, no.

Mr Harrison—What we are saying is that a very strict application of a 100 per cent provision would take out cheese because the rennet is imported. It is a small part, but it is an essential enzyme. That is one of our points about this.

ACTING CHAIR—How do you get around this issue, then, of a key component in the manufacturing process not being Australian? How would you see that being permitted?

Mr Harrison—The working party developed the guidelines that we then incorporated into our rules. They developed a series of guidelines, and I think we have attached them to this submission—

Ms Crowe—No, that was the code of practice.

Mr Harrison—Sorry, I think what we gave you was a copy of our code of practice.

ACTING CHAIR—Yes, you did. But it really means that the 100 per cent Australian label is quite often too exclusionary, is it?

Mr Harrison—Absolutely. If you talk about orange juice, it could be 100 per cent orange juice. If it is preservative free then there would perhaps be no reason to have anything else in it. It is the same for eggs, apples et cetera. You can do it easily at the produce end, but as soon as you process foods it becomes a little bit more difficult. The resolution of that was two years ago decided by a working party, as I said, chaired by the then minister. It was a very well constituted working party and it had all the resources of the various government agencies at its behest. It came up with seven conditions that allowed some variance from the 100 per cent, or from 'significant'. The Trade Practices Act never talks about 100 per cent; it talks about all the 'significant components' and 'significant processes'. That is when you can use 'product of Australia' or 'Australian grown'. 'Australian grown', in our rule book, basically reflects 'product of Australia', but it talks about 'grown', so it is just talking about produce, not letting packaging or anything like that come into it.

But where you talk about a qualified claim, there was a lot of debate about at what level you allow imported components so that the consumer is still fundamentally comforted by the fact that it is called Australian and it is Australian. They came up with those provisions that are set out in rule 18 of our code. As I said earlier, that code was rewritten with the agencies. The code that we have is an agreed code between us and the government. We cannot do things to that code without the formal involvement and approval of the government agencies that have the mandate of controlling this relationship between this not-for-profit company and the government over this logo. So in the end the level agreed was 90 per cent by weight—that was considered to be a threshold that was appropriate for product that could carry some imported component. As I said earlier, in the example of Australian grown potatoes all of the potatoes had to be Australian—you cannot say 'Australian grown spuds' and then have one or two local potatoes and a whole lot of imported potatoes. The product could not be exported and re-imported. Product had to overall meet the 50 per cent costing rules. There were seven of those conditions.

So it is not simple but I think a fair bit of the work has been done which Senator and Xenophon and others are heading towards with this bill—except that in the marketplace there remains extensive use of the terminology ‘made from local and imported product’ or ‘imported and local product’ if the balance is the other way. I guess it is of interest to us as the organisation that has carriage of the term ‘Australian grown’ on behalf of the government why it is that we do not get a greater take-up and use of the symbol for Australian grown. It is about this availability of inputs as much as anything. The whole program was launched in drought conditions, of course. We launched ‘Australian grown’ in 2007, which was smack in the middle of a pretty vigorous drought which some parts of this country are yet to move beyond.

CHAIR—Mr Harrison, I must interrupt you for a minute. I understand that we have now been joined by Senator Joyce via teleconference. Senator Joyce, what we are doing is going through the comments that have been made by the witnesses in relation to some of the sections of the bill. We have just done section 1(A) and I guess we will now move on to section 1(B) if there are no other comments on this from Mr Harrison.

Mr Harrison—There are some other issues. We think it is too restrictive. But there are some issues that it raises other than just simply this availability of product and components and inputs. If we are going to talk about restricting the use of the word ‘Australian’ then is that intended to preclude the use of terms like ‘Australian made’, ‘product of Australia’ or ‘made in Australia’—so the more general applications of the word as well as just the word ‘Australian’. Then you have variations on that such as ‘Aussie’ or ‘Oz’. There are products in the marketplace that use these sorts of descriptors to try and convey some meaning.

Senator JOYCE—From a distance it just seems like people are trying to be deliberately evasive about telling a consumer whether something is Australian or not. If we have to work on the area of grading then why don’t we have a coding scheme, as has been suggested before, where you have a gold disc and if it is 100 per cent Australian product then the disk is 100 per cent gold, if it is 75 per cent Australian product then you have 75 per cent of the disk gold, and if it is 20 per cent Australian product then you have 20 per cent of the disk gold. Then you could have the same idea for Australian manufactured—if it is 100 per cent manufactured in Australia then the disk would be 100 per cent gold; if it is 50 per cent manufactured in Australia then the disk would be 50 per cent gold. I do not see why this problem is so hard that we cannot get our minds around it. What we have at the moment—and I saw this on packaging when I was flying Qantas the other day—is these amorphous terms which are so grey that they are obviously there to obscure the facts. ‘Made of Australian and imported products’—what in God’s name does that mean?

Mr Harrison—I cannot defend ‘made from Australian and imported product’ because we do not support that either. I think that has emerged in the marketplace because companies do not feel confident enough to make a claim of country of origin as provided under the Trade Practices Act or indeed under our code of practice, which introduces the ‘Australian grown’ label. I think we see that issue across a range of food products—and we say later in our submission that you can extend that to medicines, vitamin tablets and complementary medicines; all of which you ingest. If we are going to treat one thing one way then we should be prepared to treat the other things that way. That becomes very difficult.

Senator JOYCE—We do everything else—we manage to tell consumers how much thiamine, iodine, sugar and carbohydrates there is. We manage to tell them a whole range of information on the packet. So why can’t we tell the consumer the most basic information, which they have a right to take or leave—that is, whether the product is Australia made or Australian goods? If it is not then that is fair enough, but let the consumer know.

Mr Harrison—I think that is in fact what we try and do, but we have set guidelines or parameters for conveying that information which have broad application and are not unduly restrictive. In the area of ‘Australian made’ there is a problem. The government came to the last election with a pre-election commitment to amend the Trade Practices Act in this area. We supported that in advance of the election. It followed only about seven or eight months or thereabouts after we had finalised the arrangements for introducing ‘Australian grown’ in 2007. That was introduced exactly for this purpose. The working party that defined the criteria for the use of the term ‘Australian grown’ sought to strike a balance about what the public would accept and what they could have confidence in. That was their decision—to use the Australian made logo, which, as I mentioned earlier, we have renamed ‘Australian made’ and ‘Australian grown’ to accommodate its broader public use. It has always been there to be used on apples and things because of ‘product of Australia’ but we renamed it, repackaged it and certainly rewrote the rules so that it could extend more easily into the area of food products—as was the requirement that the government of the day had identified.

Senator JOYCE—We obviously have proportional mechanisms so that produce, excluding water, can be 100 per cent Australian, 50 per cent Australian or 25 per cent Australian. Why not just, in the gradation of the extent to which it is Australian, let the public know? You could just make the call and say, ‘Well, this is 100 per cent Australian and that is 90 per cent.’ You could do that in a visual form—for example, having two gold discs. If there are two gold discs then that means it is 100 per cent Australian made or 100 per cent Australian manufactured. We have had an Australian made logo before. It appeared and then it sort of disappeared and became vague. People did their very best to sort of obscure the facts. The more there seems to be an intent to obscure the fact about whether or not it is made in Australia or made of Australian produce—or whether it has come from an Australian farm, for instance—the more I am inclined to believe that actually the consumer does respond to knowing where something comes from and therefore there is an intent by some to make sure that the consumers do not know.

Mr Harrison—I can say that we agree with the concerns that you have. We spend a lot of time pursuing the accurate compliance with this symbol. It is a major part of what we do. Where we do find examples of misleading advertising or simple misuse of the Australian made or Australian grown logo then we will pursue it relentlessly. But the sorts of issues that you are raising are not about what this bill is going to achieve. There are issues regarding the way that food is labelled, but we are here to talk about this bill.

We would willingly participate in a broad discussion about food labelling, but what we have been asked to come and talk on is a specific piece of legislation that is in the House and we have come to say that we have some concerns with some parts of that legislation. Other parts, by the way, we are very comfortable with. We have not got to those yet. We are only dealing with (1)(a), and we are saying that 100 per cent just simply will not be workable, will be far too restrictive, and will have an impact on areas that we think is unforeseen by the legislation. That was the point of my—

Senator JOYCE—What do you suggest is the threshold at which something is not Australian?

Mr Harrison—Sorry?

ACTING CHAIR (Senator Pratt)—Senator Joyce, you may need to speak a little more slowly.

Senator JOYCE—Sorry. What do you suggest is the threshold at which something is deemed to be Australian? Is it 90 per cent or 80 per cent?

Mr Harrison—Ninety per cent was the level decided upon by the government working party back in late 2006. I suppose early 2007 was when they finalised it in conjunction with the various government agencies, including the ACCC—they had a very significant role in this. It is only one of the provisions, but that is one of the provisions that related to threshold. It is by weight of ingredients. We exclude packaging and all that type of thing. Where a product has some imported components—and it might be a bag of mixed vegetables where one of the vegetables was imported—the Australian component has to total at least 90 per cent of the overall weight of the product. There were some other criteria as well. In fact, there are seven criteria that are brought to bear on the question of whether a product can be called Australian grown even though it has some imported components. In the processing of foods, it is very difficult because there are some additives that are just not available in Australia that might be central to a product. We had a discussion just a few moments ago here about cheese with rennet—an enzyme which is produced in Australia but not in very great quantities.

Senator JOYCE—But surely on the gold disc model, which I was talking about before, if you have something that looks 97 per cent Australian, that will—

ACTING CHAIR—Senator Joyce, you cannot be understood clearly unless you speak slowly.

Senator JOYCE—Okay. Who is that I am speaking to?

ACTING CHAIR—It is Senator Pratt. I am currently chairing the committee.

Senator JOYCE—Okay.

ACTING CHAIR—Thank you.

Senator JOYCE—Surely on the model I have just suggested, which is the gold disc model, that if something is 97 per cent gold—that is, 97 per cent Australian—that will do most people. What I am hearing is the argument, ‘Oh, well, there is a proportion of items in a product that will not be from Australia; therefore, we cannot go any further.’ I am saying that we can be honest with the consumer and tell them exactly what that proportion is and let them make their minds up as to whether they deem that Australian enough for them to buy.

Mr Harrison—In respect of that argument, I can say that there is a problem in how much information you can reflect on labels without putting far too much of a cost impost on the organisation, because those percentages would vary at different times of the year. Certainly in the fruit juice area there is a time when we export a lot of oranges to the United States and the rest of the time we import some. So the availability of produce that would then be reflected on labelling would be difficult. That would be a real challenge because labelling, which is an expensive part of the business, is often done in large volumes to get the unit price down and sometimes a fair period ahead of time. As I mentioned earlier—and perhaps that was before you were able to join us—the Australian Made, Australian Grown campaign was not on that government working party, although we have reflected in the rules for the Australian Made, Australian Grown logo the findings of that working party. But the decision to rest it at 90 per cent—and I am not yet talking about the gold labelling idea—was taken as a judgment. That was applicable across a wide range of sectors, because the legislation goes across a wide range of sectors.

Senator JOYCE—I do not concur with the argument that it is incredibly difficult. I am sure that, if we can change the price of goods, in some instances many times a day, then we can manage to get a gold disc onto something that shows the proportion of Australian made or Australian grown product in that item. If we wish to average it over 12 months then so be it—we can average it over 12 months. But, once more, each time this argument seems to get to the point of, ‘No, that is too difficult, so we will do nothing.’ I do not think that washes. People want to know what is Australian and to what proportion it is Australian. People feel they are being misled that they see the word ‘Australian’ but, when they dig down into it, they find there is not much Australian about the ‘Australian’ product they apparently just consumed. We need honesty and transparency where there is a variant through the year such that, at some point in time, say, oranges are turning up from California as opposed to oranges from the Murray-Goulburn, then you take the average over the year and say, ‘Well, the average over the year of this fruit juice is that it is 75 per cent Australian’. In that circumstance you would give yourself a 75 per cent gold disc. And you would have another one which is 100 per cent gold, because there are all-Australian manufactured or put together products in Australia. What is so difficult about that?

Mr Harrison—I do not have a problem with the idea of averaging. I think that it probably happens, in effect, where companies are caught in seasonality issues for short periods of the year when they just cannot get access to the produce that they normally rely upon. As to whether we can put gold markings, or starring on the logo—and I have had proposals put to us before about that—that really comes down to the best thing we can do for consumers. In my honest view, the best thing we can do for consumers is to give them a symbol they can trust, which is the case with the ‘Australian Made, Australian Grown’; to have a set of rules that are applied consistently to producers, so that once this symbol is on a label it means what it says; and then to set the benchmarks for that at levels that by and large—there will always be some who want a whole lot more information, for all sorts of reasons; and they can make a lot of noise about that—are workable for consumers and for the producers that are making the claim. The costs of introducing a scheme that has varying levels of starring, gold colouring or what you might be referring to—

Senator JOYCE—It is simple: a gold disc. I could draw a circle in front of you. And you just change it like a pie chart—the amount of gold that is within that gold disc is the amount that is Australian, averaged over a year. In Japan they can tell me not only what country beef comes from, for instance; they can tell me what paddock it comes from. I do not know why we are saying it is all so difficult for us, when other countries are quite competent at doing it.

Mr Harrison—I think the ‘Australian Made’ logo, when it is used with ‘Australian Grown’, whilst it will not go to regionality—although, as I said earlier, some of the major retailers, one in particular, are doing that—it gives that information, Senator Joyce: it actually tells the consumer that the product or produce has been grown in Australia.

Senator JOYCE—Okay, so what does it mean? Does it mean 100 per cent Australian owned? Does it mean 90 per cent Australian made? What does it mean?

Mr Harrison—If the symbol that 95 per cent of Australians recognise, and 86 per cent trust, has the term ‘Australian Grown’ under it, then it means everything that you are seeking. All the major components are grown here, and all the major processes have been undertaken here, if it is processed. If it is an apple then it is pretty straightforward. If it does have some imported component then that imported component cannot tally more than 10 per cent of the weight. If there is concentrate added, it needs to be reconstituted before the weight test is added.

So the government working party decided in 2007 that that is not a bad threshold. That is a minimum standard. Then we have to put on the label what the major components from Australia are. So, in the case of an orange and mango juice, if it says 'Australian grown oranges' on the label that means that all of the oranges in that bottle are Australian grown but the rules state that you could have as much as 10 per cent by weight of mangoes or whatever else. I am trying to draw an analogy.

Senator JOYCE—First of all, all the mechanisms and calibrations you are talking about there would, I imagine, be the same calibrations if it was delivered to you in a pie chart form, with the proportion of the circle being gold representing the portion that is Australian. So the arguments that you are putting forward about the difficulties in delivering a pie chart calibration of its Australianness are exactly the same tests that are going to have to be put forward in the mechanism that is currently there. Secondly, I have seen this Australian Made logo before but it has disappeared into the ether. Is it going to be mandatory on all produce or is it just going to be on some? It is an opt in, opt out system? We do not have optional declaring of weight or how much sugar, thiamine or niacin is in a product. Is this going to be in a mandatory form, because if it is not mandatory then it seems to be clearly left out?

Mr Harrison—It is certainly not mandatory. The current scheme is a voluntary scheme. Companies pay a licence fee to use this symbol to convey information to consumers. If the scheme were to be made mandatory then it would form part of the legislative prescriptions for labelling. That is not an area that has been put to us to consider. It is certainly not reflected in the legislation we are here to talk about.

As for the pie chart, I have seen an example of that. When we launched Australian Grown in 2007 we took it to a number of regional centres around Australia to talk to people and tell them what the plan was all about et cetera. I have had a look at a proposal that somebody else was trying to float that had pie charts. It just simply comes down to the dollars and cents of trying to put another brand into the marketplace and educate consumers as to what it means. We do not need to do that. We actually have a brand that is a global product symbol for Australia. The Australian Made, Australian Grown symbol does that absolutely fine. What we need to do—

Senator JOYCE—It is just not being used, that is the problem.

Mr Harrison—That is a good point. It is not being used as widely as it should be.

Senator JOYCE—Who do they pay the licensing fee to? When you said they pay a licensing fee, who does that go to?

Mr Harrison—It is a not-for-profit organisation that runs the logo, and the licensing fee pays for the running of that organisation. We are a public company limited by guarantee not-for-profit. The ownership of the symbol was transferred from government to that body seven years ago. The logo is 23 years old. It has enormous market capital. It should not be undervalued in any sense. We are pointing out to the government at the moment that the ideal symbol for Australia to use is the global product symbol in markets all around the world, not just in Sydney, Dubbo and Melbourne. We have a symbol. We have a set of rules that prevail as to how it can be used. Those rules are quite sufficient. The question of why it is not used more broadly in the sector is certainly something that has been occupying a fair bit of our minds, because it was introduced by the sector. One of the things the government working party did back in 2007 that I thought was entirely appropriate was agree to use the Australian Made symbol rather than try to invent yet another symbol.

Senator JOYCE—I think the problem is that, because it is optional, people do not go looking for it. To be frank, the Australian Made symbol you are referring to has just disappeared off the agenda. It is no longer there. It might be on one or two products, but if there was a mandatory branding for all products then all Australians would have the capacity to know at a glance exactly what proportion as determined by a pie chart of the product they are about to consume is from their nation as opposed to somebody else's nation. If the symbol that you had was mandatory and currently widely used then I would say your market capitalisation and investment in that was well founded. But it has just disappeared off the agenda.

Mr Harrison—I would certainly like to challenge that, if I can, because in the last couple of years since the launch of Australian Grown it has been used on every food bin in Woolworths stores, and there are 830 of them throughout the country. They use the symbol to advise customers that the product in that bin—this is in the fresh food area of the supermarkets—is Australian grown. As for the Coles supermarkets, you cannot open a mainstream newspaper in Australia without seeing within the first 10 pages an advertisement about produce—meat, fish, vegetables—carrying somewhere the symbol that it is Australian grown. Aldi use it extensively as a licensee. Franklins joined as a major licensee a month ago.

The profiling of this symbol at the moment is quite enormous. Roy Morgan did a major study for us recently, and 95 per cent of Australians recognise this symbol. More importantly than that, though, 85 per cent trust it more than any other country of origin symbol like maps, flags or pictures of animals. In fact—I find this a bit amazing—some trust it more than the term ‘made in Australia’. So we have a symbol. We have an asset that by any possible measure is a public asset. Sure, it is administered by a private sector not-for-profit public company, but that is only under an agreement in place, a deed of assignment with the federal government on which we report every year to the government as to what we are doing. As I mentioned earlier in this hearing, any changes to the rules covering that symbol can only be made after full consultation with the departments and the agencies nominated in the code as needing to be involved.

So we have a symbol that has all of the things you are looking for, and all that we have relied on in the last couple of years are the recommendations or the decisions of the government’s working party at the time of the introduction of the Australian Grown label. Whenever that symbol appears on a product, on a piece of produce or on a promotion for something like that, you know that the rules have been complied with, and those rules are satisfying to most Australians.

Senator JOYCE—I am on the road at the moment and I am going to stop at the next town and go for a wander into the supermarket and I am going to look for this symbol and report back to the committee on how often I saw it.

Mr Harrison—Thank you.

ACTING CHAIR (Senator Eggleston)—Senator Joyce, thank you very much. You have raised this idea of a symbol, which is a pie chart, but that is not actually in the legislation. What you are talking about is the percentage of Australian content. Perhaps you should devote some thought to proposing an amendment to provide an indication of the degree of Australianness, if that is what you want to do. Perhaps you should consider that.

Senator JOYCE—I shall do that. I think it is very important that people know not only whether or not it is Australian but what proportion of it is Australian. Unless it is compulsory then it just falls into disuse.

Senator PRATT—I am concerned about the extent to which this bill, I suppose because of the manner in which it insists things must be 100 per cent Australian, could potentially undermine the logo and the process that you put forward with the golden kangaroo and the green triangle. That is because suddenly the products carrying our dominant Australian made trademark, which is reliable and, as you have highlighted, the one that people most trust, could in some way be seen as lesser than those very few products which would ever meet that 100 per cent threshold. You have a process here that authentically interrogates each product to work out whether it should validly be able to purport to be Australian made or Australian grown. Is that the key thrust of your concerns about this bill?

Mr Harrison—We would certainly be concerned about any proposal to introduce another symbol. As the chairman just said, that was not part of this bill. A lot of that discussion with Senator Joyce is not reflected, specifically anyway, in what we have before us. But we support subsection (1)(b) about the statement that it contains some imported product. We have no worry with that. Our concern is really all about promoting Australian products and produce.

Senator PRATT—In effect you would probably have Australian products missing out, including some significant Australian products that are well recognised both here and overseas as being branded as Australian. Clearly sometimes they go overseas with the same labels on them that they have here and you would start to fall into difficulties in terms of undermining our own branding, surely.

Mr Harrison—I think we would all benefit from more consistent, concerted branding of Australian products and processes globally, including in Australia. So to us any diminution of that or any further spreading of the available resources with alternative symbols would be most wasteful. In fact, that was the decision that the working party arrived at. I repeat that we were not on that working party. It was chaired by a government minister. Its decision was that it would be appropriate to use this symbol and, ‘Let’s write a set of rules that underpin its use in this sector.’ There is a limit to the amount of information consumers absorb and there is certainly a limit to the amount of funds available to spread that message to consumers. I would be very, very willing—and I will endeavour to do so privately—to approach Senator Joyce about this. Is Senator Joyce still on the phone?

ACTING CHAIR—No, he is driving to St George.

Mr Harrison—He is off the phone now, is he?

ACTING CHAIR—He is off the phone, I think.

Senator PRATT—No, he is on the line.

ACTING CHAIR—Are you still there, Barnaby?

Senator JOYCE—Yes.

Senator PRATT—Mr Harrison, can I ask you why you think Australian made branding has become so fragmented? Is it because people do not want to pay a nominal fee to you and they prefer to come up with their own?

Mr Harrison—I hope I did not say that the use of the symbol has become fragmented.

Senator PRATT—Not your use of the symbol.

Mr Harrison—I am saying I would not want to see another symbol in the marketplace. There are different symbols in the marketplace today, of course.

Senator PRATT—But it is fragmented in that sense.

Mr Harrison—There are people seeking to spread an organic message. There are people seeking to spread a message about fats or about sugars. There are any number of things that consumers seek information on, and therein lies a challenge for the people in control of labelling laws because there is a limit to what we can put on a label, either economically or simply because of the space.

ACTING CHAIR—Do you want to make any comments about the other subsections you have mentioned here?

Mr Harrison—Subsection (1)(b) addresses some of the issues that Senator Joyce was raising. We are comfortable enough with that. We believe there should be recognition of imported product, most certainly. Subsection (1)(c) is similar. As for (1)(d), we thought that was okay. I am not too familiar with drinks made from skins, but we might say that you could put ‘orange drink derived from orange skins’. There is a way of dealing with that.

ACTING CHAIR—I must say I have never heard of that before, but it probably explains why some orange drinks are a bit anaemic, I suspect.

Mr Harrison—With (1)(e), there is a question of whether it is referring to the cost of the product or to weight. The criteria that we use in respect of Australian grown refers to weight, which we thought was a more widely acceptable measure amongst consumers of food related products rather than the value. Some food products have enormous value and many have a lesser value, so we thought of using weight, but that is a question here because it is not clear in the legislation where it sits.

We elected not to make any comment on proposed sections (2) to (5). They seem to us to be fairly institutional, although we do note there is an error in there. We think the bill has a mistake. It refers to section 18 of the act; it probably should read section 10.

ACTING CHAIR—Over the page you make general comments and you say that, if the bill became law, the food standards would no longer be consistent with the Trade Practices Act. Do you want to make some comments about that?

Mr Harrison—There is consistency at the moment between the Food Standards Act and the Trade Practices Act, and if these provisions were enacted then you would have a set of provisions in respect of food standards that were different, and would have a different impact, to the provisions of the Trade Practices Act. We think that would be a point of confusion.

ACTING CHAIR—You have made some recommendations there. Do you want to make any comments in relation to them, or do you think you have covered those?

Mr Harrison—We have pointed out in general that there are issues in this whole area. I have already raised the question of medicines and other things that people ingest. This can in fact extend to products that people come in contact with that have potential health implications. That goes as far as furniture. We had the issue last year with formaldehyde—the way you treat certain products which then could be made into cots for babies and all sorts of things. The food standards deal with fish and pork but not beef and chicken. We have always been unclear as to why that is the case. But our recommendations are that we need to oppose subsection (1)(a) of this proposed piece of legislation because we believe it is impractical and we do not believe the case is there for it to go forward.

As I said earlier, we think that with the application of the Trade Practices Act to the ‘Australian Made, Australian Grown’ logo regulations in respect of the act could be developed that might restrict or influence the definition of ‘substantial transformation’. I suspect there is a bit of a problem in the use of the term ‘Australian made’, and you can restrict that by dealing with ‘substantial transformation’, quite apart from the 50 per cent cost rule. We would recommend that the Trade Practices Act and Food Standards Code both be amended to incorporate into them the same criteria that are reflected in the ‘Australian Made, Australian Grown’ logo code of practice in the area of Australian grown, both the absolute claim and the qualified claim. That would at least bring statutory support for the code, as had always been the case previously with the term ‘Australian made’ or ‘Product of Australia’ in the Trade Practices Act.

Then, of course, there is just a never-ending requirement for consumer education in this area. I do not think we need to go down the path that Senator Joyce was referring to—that other discussion outside of this about a new symbol with pie charts. I have seen that before. I suspect I know who has put it to the senator. I have had discussions at the state government level with people looking for starrng of claims about being Australian made in the automotive industry. The Ford Falcon, the Holden and the Toyota cars have very different levels of Australian content. It was put to me we should have a starrng proposal for those, and the question is always: does the consumer want any more information about this and, if they do, who is going to pay to tell them anyway? They are serious questions.

ACTING CHAIR—Thank you very much. That concludes this first hearing on this matter. Thank you for appearing.

Mr Harrison—Thank you very much.

Committee adjourned at 3.30 pm