



AUSTRALIAN
FOOD AND GROCERY
COUNCIL

Submission to
Senate Standing Committee on Economics

In response to
**INQUIRY INTO THE FOOD STANDARDS
AMENDMENT (TRUTH IN LABELLING) BILL 2009**

16 October 2009

PREFACE

The Australian Food and Grocery Council is the peak national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of the AFGC comprises more than 150 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. (A list of members is included as Appendix A.) The AFGC represents the nation's largest manufacturing sector. By any measure our members are substantial contributors to the economic and social welfare of all Australians. Effectively, the products of AFGC's member companies reach every Australian household.

The industry has annual sales and service income in excess of \$70 billion and employs more than 200 000 people – almost one in five of the nation's manufacturing workforce. Of all Australians working in the industry, half are based in rural and regional Australia, and the food manufacturing sector sources more than 90 per cent of its ingredients from Australian agriculture.

The AFGC's agenda for business growth centres on public and industry policy for a socioeconomic environment conducive to international competitiveness, investment, innovation, employment growth and profitability.

The AFGC's mandate in representing member companies is to ensure a cohesive and credible voice for the industry, to advance policies and manage issues relevant to the industry enabling member companies to grow their businesses in a socially responsible manner.

The Council advocates business matters, public policy and consumer-related issues on behalf of a dynamic and rapidly changing industry operating in an increasing globalised economy. As global economic and trade developments continue to test the competitiveness of Australian industry, transnational businesses are under increasing pressure to justify Australia as a strategic location for corporate production, irrespective of whether they are Australian or foreign owned. In an increasingly globalised economy, the ability of companies to internationalise their operations is as significant as their ability to trade globally.

Increased trade, rationalisation and consolidation of businesses, increased concentration of ownership among both manufacturers and retailers, intensified competition and dynamic, increasingly complex and demanding consumers are features of the industry across the globe. Moreover, the growing global middle class of consumers is more sophisticated and discerning, driving innovation and differentiation of products and services.

The AFGC is working with governments in taking a proactive approach to public policy to enable businesses to tackle the threats and grasp the dual opportunities of globalisation and changing consumer demands.

1 GENERAL COMMENTS ON THE PROPOSED BILL

The Australian Food and Grocery Council (AFGC) welcomes this opportunity to make a submission to Senate Economics Committee inquiry into the Food Standards Amendment (Truth in Labelling Laws) Bill 2009.

AFGC is **opposed** to the proposed Truth in Labelling Bill on the grounds that it fails to adhere to the Council of Australian Governments (COAG) agreement on the process for the development of policy and regulation through the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC), and attempts to over-ride State and Territory laws.

AFGC is **opposed** to the substance of the proposed Truth in Labelling Bill on the grounds that it imposes unreasonable and unwarranted conditions on the requirements for the use of the term Australian in labelling and advertising of foods and by extension, impacts on the declaration of country of origin labelling specified by the Australian Competition and Consumer Commission (ACCC) and the Australia New Zealand Food Standards Code.

In the introduction of the Bill to Parliament, Senator Xenophon stated:

The purpose of this Bill is to amend the *Food Standards Australia New Zealand Act 1991* (the Act) to require the Food Standards Australia New Zealand (the Authority) to develop and approve certain food labelling standards that producers, manufacturers and distributors are required to adhere to. The standards will require greater detail about the content of food products including the use of imported ingredients. They will ensure, among other things, that the word “Australian” will only apply in relation to food that is 100% produced in Australia from Australian products.

In the development of the Country of Origin Labelling Standard under proposal P292 in 2005, Food Standards Australia New Zealand (FSANZ) extensively examined options for country of origin labelling and costs imposed on the food industry and borne by consumers. The current requirements for country of origin labelling are consistent with international food standards, the *Codex Alimentarius*, recognised by the World Trade Organisation in international trade.

Under these requirements, the terms “Product of Australia”, “Made in Australia”, and the qualified terms “Made in Australia from local and imported ingredients”, or “Made in Australia from imported and local ingredients”, or “Packed in Australia” are permitted.

The ANZFRMC has previously rejected proposals for highly prescriptive requirements for country of origin labelling on grounds of excessive red tape and on economic grounds of no discernable benefit, only costs to consumers.

The implications of this Bill means that there will be **virtually no food currently with substantial Australian content, and processed and manufactured in Australia, will be able to be labelled as either ‘Product of’ or ‘Made in’ Australia.** Furthermore, foods imported in bulk and repackaged into smaller retail packages may not be labelled with the term Pack in Australia, irrespective of the current requirement to declare the origin of the ingredients.

Presently Australian requirements are consistent obligations under the World Trade Organisation through the labelling requirements set out under the *Codex Alimentarius*. Introducing onerous new requirements for labelling will result in Australia being accused of inconsistency, with one policy internationally and another policy domestically which disadvantages trade with developing countries and further disadvantages economic development in the Pacific Islands, Africa and Asia.

If adopted, this proposal will increase the detriment to Australian food industry, reducing international competitiveness, causing loss of manufacturing capacity in Australia and reducing returns to primary producers.

Ultimately, consumers will bear higher costs either through increased prices of locally manufactured product, or the reduced availability and increased cost of fresh local produce as a result of a declining horticultural sector.

2 SPECIFIC COMMENTS IMPACT OF BILL

2.1 COMMONWEALTH OBLIGATIONS IN THE ADOPTION OF FOOD LAW

Under the Australian system of government, the legislative power to establish and enforce laws governing the safety, composition and labelling requirements of foods falls to the States and Territories. The Australia New Zealand Food Standards Code is not a Commonwealth Act, but rather a Standard which is adopted by reference in each of the States and Territories in Australia.

This arrangement was established through an Inter-Governmental Agreement under COAG, which established the ANZFRMC with the power to accept or reject recommendations made by FSANZ for the amendment of the Food Standards Code (the Code)¹.

The IGA also establishes the authority of the ANZFRMC to create policy in respect of the development of food laws, for which FSANZ must have regard in the development of recommendations to amend the Code.

The development of both Regulatory Policy and the development of proposed Food Standards are undertaken through a consultation process specified under the IGA, using a flexible consultative mechanism to accommodate the diversity of views and interests across the spectrum of production, processing and manufacturing, transport and distribution, retail and catering and consumers.

The obligation imposed on FSANZ by this truth in labelling Bill is to prepare recommendations to amend the Code which requires FSANZ to undertake consultations stakeholders which may not be supportive of such a requirement. Furthermore, despite the intent of the Bill to force changes to the Code, the recommendations made by FSANZ may be rejected by the ANZFRMC.

The Bill attempts to circumvent the requirements of the COAG, in that it is effectively introducing a policy over the development of a Standard and thereby subverts the authority of the ANZFRMC.

The accepted process for established developing food standards through FSANZ is to make an application for the development of a standard, as outlined on the Standards Development webpage: <http://www.foodstandards.gov.au/standardsdevelopment/>

The AFGC therefore rejects the Bill on the grounds that it fails to comply with the COAG agreement on the process for the development of policy and regulation through the ANZFRMC, consultation with stakeholders, and attempts to over-ride State and Territory laws.

¹ http://www.coag.gov.au/intergov_agreements/index.cfm

2.2 AUSTRALIAN FOOD MANUFACTURING INDUSTRY

There are already detailed requirements for country of origin labelling specified in the Food Standards Code and under the Trade Practices Act. These were developed to provide consumers with relevant information and at the same time recognise the practical limitations of implementing and embracing such a system.

The term “Product of Australia” requires that each significant ingredient or significant component of the product must be Australian, and all processes involved in the production or manufacture of the goods must have happened in Australia.

The term “Made in Australia” requires that the goods must have been substantially transformed in Australia and that 50 per cent or more of the costs of production must have been carried out in Australia.

For almost all packaged foods sold at retail, it is estimated that about 90% now have imported packaging (can, plastic, aseptic packaging etc) and/or imported ingredients (yeast, cocoa, spices, specific oils etc). Some of these components are not available within Australia. Food deemed to qualify for “Product of Australia” still requires the significant component to be of Australian origin and be manufactured in Australia. Imposing a requirement that the use of the term ‘Australian’ to require 100% Australian content and 100% Australian production is even more restrictive than the current requirements for “Product of...”, however it will also impact on the term “Made in” or “Packed in”.

The drafting of the Bill is unclear and may be interpreted that clause 16A(1)(b) requires the word “Imported” to be displayed on the front of pack at a minimum height of letter of 15mm when one of more ingredients are imported.

This is inconsistent with the other labelling requirements of the Food Standards Code, which require that the information provided be legible and prominent. The difficulty imposed by such prescriptive labelling and placement is significant for small packages and for labels which already carry a lot of information on the front of pack. This is also inconsistent with the Trade Practices Act which requires that the consumer is not misled. If a packet of smoked ham contains, in big bold letters, “Imported” on the front, would the consumer realise that it is Australian pork with imported salts and brines used to produce the ham?

What is the justification for letter 25mm height on the front of a container of juice? This additionally restrictive requirement is entirely unnecessary, particularly in light of the previous comments about 15 mm lettering.

2.2.1 Implications to manufacturing and supply

Many ingredients have a several suppliers, which the manufacturing and processing industry will use depending on seasonality, availability, supply flexibility and price of the ingredient. Australian sourced ingredients, such as milk, wheat or salt, may be available throughout the year, but crops such as fruits and vegetables are seasonal and in order to ensure a supply of processed product it may be necessary to import such commodities when out of season in Australia. Often this may require that the commodity is sourced from more than one country. The consumer is advised of this through the current declaration “Made in Australia from local and imported ingredients”.

Processing aids and food additives which are used in very small amounts in the manufacture of the product may be imported, and again may be obtained from a number of sources depending on availability. Some food additives, such as flavouring, will be a compound ingredient with a variety of

components, some of which may be imported. However, securing exact information may be difficult due to Trade Secrets on exactly how the formula is prepared.

Food security and ensuring reliable supply lines for ingredient is essential for a sustainable industry, particularly given risks from climate change, changing economics with the biofuel industry and the risk of disease outbreaks. For example, glucose used to be sourced locally but with the change in the dynamics of the market, there is a need to reduce the supply risk by having an additional supplier offshore. Sugar is also sourced locally but industry is likely to have an imported option as a contingency.

If industry needs to change supply source it needs to act relatively quickly as ingredient stocks are typically no more than 1 -2 weeks on hand. However, typically it can take 6 to 8 weeks for labels to be produced and delivered on site, although this can increase dramatically around seasonal peak periods such as Christmas, Easter, End of Financial Year and other sales promotion points. Labels would need to be prepared and stocked in advance as there is a significant time lag in changing artworks and production plates, and getting artwork checked and printed. Maintaining the necessary flexibility of having alternative sources and suppliers would require manufacturers to carry additional inventories of product labels, just in case they needed to change suppliers.

If a manufacturer were complying with the requirements for product which is 100% Australian, they would be required to carry multiple labels for the same product where alternative source ingredients are used. This is associated with significant cost as a result of additional inventory, plate changes to the packaging, scheduling, write-offs, etc. At a minimum, industry would need an additional Stock Keeping Unit (SKU) for each supply option of raw material for each brand. As a guide, holding an extra SKU will double inventory costs, reduce available capital, and increase the financial risks placed on industry.

2.2.2 Processing and packaging

Managing packaging changes is extremely difficult and complex with the trade. Ingredient changes might require change to the product bar code for every SKU variation. This present great difficulty in the way that stock is managed, the way that product is identified for the purpose of traceability or recall, brand activities and consumer promotions with the trade.

Clause 16A(1)(e) requires that the cost of production of packaging material not be taken into account when considering the requirement for 100% Australian production. This clause therefore gives license to manufacturers to import packaging materials produced in cheaper markets in Asia for use in packaging Australian content. Cardboard and paper packaging businesses in Australia will be placed under significant threat from cheaper imported product, and with their loss the recycled paper industry will also be put at risk.

2.2.3 Compliance costs

In the case of clause 16A(1)(c)(i), the requirement to specify the percentage of imported juice becomes entirely unmanageable in the context of having enough labels to accurately identify the percentage present that is imported in a production lot. Taking into account the difficulty of managing labelling stock, and the costs and difficulties in managing labels and packaging materials, this would mean determining the percentage that is intended to be present, on average, over the course of a year. However, this is effectively defeating the purpose of this clause which is intended to provide more accurate information to the consumer about the content. In effect the only way that the juice industry would be able to comply with this requirement is to source imported content to ensure it can comply.

With the additional inventory for labelling and packaging materials, there is a proportionate increase in the risk of accidental mislabelling of product. This is further compounded by the volume of product and size or production runs, and the point at which the content of one batch of essentially identical product changes for another based on country of origin. This inevitably leads to a dramatic escalation in the risk of having to undertake a product recall due to mislabelling.

The costs of undertaking a food recall in Australia are significant, and dependant on the product range, volume of product in the marketplace, range of distribution, and resulting damage to reputation which impacts weeks of lost sales subsequent to the recall. Based on actual experience of industry in the last five years, it is estimated that a consumer-level recall for a single product line with limited national supermarket distribution will cost at least \$150,000; while the experience of larger companies with recalls of iconic brands costs in excess of several million dollars. For small to medium size companies these costs are a significant financial risk.

In order to reduce the risk of human error and costly recalls it is likely that manufacturers would move to source ingredients from a consistent and reliable supply rather than to source from several local suppliers

There would be increased internal costs for auditing and inventory control to ensure that we were adhering to the new regulations, the success of which depends on the development of a highly sophisticated traceability system for each and every manufacturer and importer.

There are practical limitations on both traceability and interpretation of the status of an ingredient for manufacturers to show that the food is 100% "Australian". Under this system it would preclude importing a base material into Australia and converted into an ingredient that could claim to be "Made in Australia" for use as an ingredient in an Australian food. For example, raw sugar can be imported to Australia and refined with a local supplier, while palm-based fats can be manufactured in Australia but are sourced from a range of Asia palm plantations.

2.3 TRADE AND OUR INTERNATIONAL REPUTATION WILL SUFFER

The introduction of mandatory country of origin labelling requirements beyond those already specified under the Trade Practices Act has already damaged Australia's international trade reputation.

New Zealand has recognised the harm to New Zealand internationally and has exercised its right under the Trans Tasman Treaty to opt out of the standard, delivering a competitive advantage to New Zealand manufacturers importing into Australia and creating an inequity for Australian manufacturers.

2.3.1 Impact on Australian Made logo

What will happen to the "Australian Made" logo? At the moment industry is not required to be 100% Australian produced in order to use this logo, but may use components that are processed or value-added in Australia consistent with the ACCC guide for Made in Australia. The use of the logo is controlled by agencies outside of the FSANZ Food Standards Code jurisdiction.

Results of research commissioned by country-of-origin logo, Australian Made, Australian Grown (AMAG) shows it has a positive impact on the export sales of products displaying the mark.

Research conducted by Roy Morgan found that AMAG licensees primarily used the AMAG logo in export markets to differentiate their product and to highlight its 'Australian-ness'. They rated the AMAG logo as the third most important selling point after quality and price.

Despite the global economic downturn, 38 per cent of AMAG licensees who display the green and gold logo experienced an increase in their export markets in the last 12 months, 41 per cent remained stable with no change, while 16 per cent experienced a decrease.²

Changes proposed under the Bill will prohibit the use of the Australian Made logo for products that are consistent with requirements for Made in Australia, and therefore put Australian export at risk.

2.4 PRIMARY PRODUCTION WILL BE THREATENED

Australian manufacturing employment associated with food and grocery processing is concentrated in Tasmania, Goulburn Valley (Vic), Ballarat (Vic), Riverina (NSW), Central West (NSW), the Darling Downs (Qld) and Perth and surrounding regions of the South-West (WA). There are about 10,000 jobs directly involved in fruit and vegetable processing.

Seasonality of supply means that even when sourcing Australian produce, there is often a period when other sources are necessary to maintain production. Manufacturers are then faced with costly labelling changes each time a source changes. The option of a single consistent source of produce at a price acceptable to consumers must be considered, and that may mean considering sourcing overseas rather than in Australia.

If the requirements imposed on industry are so tough that virtually no product can claim either “Product of” or “Made in” Australia, even when the imported components are a minority or seasonal, then there is no labelling advantage for manufacturers to attempt to use Australian produce.

The only real fully Australian product likely to be acceptable under this Bill will be fresh meat, fruit and vegetables, but even these may not qualify if imported labour is used, given the requirement is also for 100% Australian production. It is arguable that the use of imported labour is equivalent to sending product overseas for processing, and would therefore not qualify.

2.5 CONSUMERS WILL LOSE OUT

There has been no regulatory failure in the marketplace indicating consumers are being misled or deceived as to the true nature of the country of origin of these particular foods. While there are significant costs to introduce such a requirement, there are few tangible benefits to consumers.

However, the critical issue is that if only the country of origin declaration were to change from one batch to another, the consumer may not even know. Many consumers do not read the product label in detail every single time they purchase the product.

Retail sales data on the buying habits of consumers suggests that consumers’ primary concern relates to price and quality. Given a choice between Australian and imported produce of equivalent quality, few consumers alter their purchasing behaviour to pay a premium price for Australian produce.

² <http://www.foodweek.com.au/main-features-page.aspx?articleType=ArticleView&articleId=5086>

3 CONCLUSION

AFGC is **opposed** to the proposed Truth in Labelling Bill on the grounds that it fails to adhere to the Council of Australian Governments (COAG) agreement on the process for the development of policy and regulation through the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC), and attempts to over-ride State and Territory laws.

AFGC is **opposed** to the proposed Truth in Labelling Bill on the grounds that it imposes unreasonable and unwarranted conditions on the requirements for the use of the term Australian in labelling and advertising of foods and by extension, is inconsistent with Trade Practices requirements and with the Australia New Zealand Food Standards Code.

AFGC is **opposed** to the proposed Truth in Labelling Bill on the grounds that it will cause significant costs to industry, damage Australia's reputation for exported product, reduce the demand for Australian primary production and agriculture by Australian manufacturers, and lead to reduced choice and reduced competition in the market.

AFGC is **opposed** to the proposed Truth in Labelling Bill on the grounds that primary producers, industry and consumers will ultimately be the losers.



AFGC MEMBERS LIST AS AT 16 OCTOBER 2009

Arnott's Biscuits Limited
Snack Foods Limited
The Kettle Chip Company Pty Ltd
Asia-Pacific Blending Corporation Pty Ltd
Barilla Australia Pty Ltd
Beak & Johnston Pty Ltd
BOC Gases Australia Limited
Bronte Industries Pty Ltd
Bulla Dairy Foods
Bundaberg Brewed Drinks Pty Ltd
Bundaberg Sugar Limited
Cadbury Schweppes Asia Pacific
Campbell's Soup Australia
Cantarella Bros Pty Ltd
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Clorox Australia Pty Ltd
Coca-Cola Amatil (Aust) Limited
SPC Ardmona Operations Limited
Coca-Cola South Pacific Pty Ltd
Colgate-Palmolive Pty Ltd
Coopers Brewery Limited
Dairy Farmers Group
Danisco Australia Pty Ltd
Devro Pty Ltd
DSM Food Specialties Australia Pty Ltd
DSM Nutritional Products
Earlee Products
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Fonterra Brands (Australia) Pty Ltd
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Frucor Beverages (Australia)
General Mills Australia Pty Ltd
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AB Food and Beverages Australia
AB Mauri
Cereform/Serrol
Don
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George Weston Technologies
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GlaxoSmithKline Consumer Healthcare
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Goodman Fielder Limited
Meadow Lea Australia
Quality Bakers Aust Pty Ltd
H J Heinz Company Australia Limited
Hans Continental Smallgoods Pty Ltd
Harvest FreshCuts Pty Ltd
Hoyt Food Manufacturing Industries Pty Ltd

Johnson & Johnson Pacific Pty Ltd
Pfizer Consumer Health
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Kerry Ingredients Australia Pty Ltd
Kraft Foods Asia Pacific
Lion Nathan Limited
Madura Tea Estates
Manildra Harwood Sugars
Mars Australia
Mars Food
Mars Petcare
Mars Snackfood
McCain Foods (Aust) Pty Ltd
McCormick Foods Aust. Pty Ltd
Merisant Manufacturing Aust. Pty Ltd
National Foods Limited
Nerada Tea Pty Ltd
Nestlé Australia Limited
Nestlé Foods & Beverages
Nestlé Confectionery
Nestlé Ice Cream
Nestlé Nutrition
Foodservice & Industrial Division
Novartis Consumer Health Australasia
Nutricia Australia Pty Ltd
Ocean Spray International Inc
Parmalat Australia Limited
Patties Foods Pty Ltd
Peanut Company of Aust. Limited
Procter & Gamble Australia Pty Ltd
Gillette Australia
PZ Cussons Australia Pty Ltd
Queen Fine Foods Pty Ltd
Reckitt Benckiser (Aust) Pty Ltd
Ridley Corporation Limited
Cheetham Salt Limited
Sanitarium Health Food Company
Sara Lee Australia
Sara Lee Foodservice
Sara Lee Food and Beverage
SCA Hygiene Australasia
Sensient Technologies
Simplot Australia Pty Ltd
Spicemasters of Australia Pty Ltd
Stuart Alexander & Co Pty Ltd
Sugar Australia Pty Ltd
SunRice

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