



SUBMISSION TO SENATE ECONOMICS COMMITTEE

**Inquiry into the Food Standards Amendment
(Truth in Labelling Laws) Bill 2009**

Australian Made, Australian Grown Campaign

October 2009

BACKGROUND

Australian Made Campaign Limited (AMCL) is the not-for-profit public company set up in 1999 to administer the Australian Made, Australian Grown (AMAG) logo. The logo, consisting of a stylised kangaroo inside a triangle, is a registered certification trade mark governed by a Code of Practice approved by the ACCC.

AMCL administers the logo in accordance with a Deed of Assignment and Management Deed with the federal government and reports annually to the Department of Industry, Innovation, Science and Resources on its operations.

AMCL's core funding is derived from licence fees paid by companies to use the logo. It receives no financial support from government for its core operations. DIISR currently provides some grant funding (matched dollar for dollar by AMCL) for a 3-year project to promote Australian products in export markets using the AMAG logo.

Since its inception in 1986 (by the federal Government), the logo has been available for use with two descriptors – 'Australian Made' and 'Product of Australia' – with compliance criteria consistent with sections 65AA – AN of the Trade Practices Act.

In 2007, the federal Government introduced the 'Australian Grown' descriptor for use on fresh produce and processed foods with a high Australian content. The rules governing the use of the AMAG logo were rewritten to accommodate this new label, and this was done in conjunction with the Department of Agriculture, Fisheries and Forestry, the Department of Innovation, Industry, Science and Research, the ACCC, and IP Australia. The result is that the term 'Australian Grown', whilst not currently defined in legislation, is defined when used in conjunction with the AMAG logo.

When used with the AMAG logo without qualification, 'Australian Grown' is equivalent to the 'Product of Australia' claim – that is, all the significant ingredients have been grown in Australia and all production or manufacturing processes have taken place in Australia.

When used with qualification, e.g. 'Australian Grown Potatoes', it indicates that at least 90% of the content (net weight) of the product is grown in Australia, and 100% of the named ingredient, in this instance potatoes, is grown here. An example of this would be frozen potato wedges made in Australia from Australian grown potatoes where some minor added ingredients (oils, spices, flavourings) are imported.

A copy of the Australian Made, Australian Grown Logo Code of Practice, including criteria for use of the logo at Rule 18, is attached.

Over 1550 companies are currently licensed to use the AMAG logo, with numbers growing strongly in recent years. 13% of licensees are in the food and beverage sector. The vast majority of AMAG licensees use the logo with the 'Australian Made' claim.

COUNTRY OF ORIGIN LABELLING FOR FOOD

AMCL has been aware for some time of growing consumer concerns about the country of origin of fresh foods and of ingredients in processed food products. Drivers of these concerns include anxieties about food safety (as in the melamine in milk scandal) and environmental impact issues (food miles). In addition, many consumers wish to support the Australian economy and the country's farmers by buying locally produced products whenever possible.

The Australian Grown label was created in response to these concerns of consumers and producers to provide a simple and effective method of identifying Australian produce, and has been enthusiastically taken up by major supermarkets including Coles, Woolworths, Aldi and, more recently, Franklins.

However, we acknowledge that some tension arises out of the differing meanings of the representations used with the logo.

The 'Australian Made' claim, as currently defined in the TPA and consequently the Food Standards Code, relates to 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 of 'substantial transformation' in Australia and 50% of costs incurred locally.

The cost criterion is relatively straightforward – it is either met or it isn't, although where there is a sizeable import component, it can be affected quite dramatically by movements in the exchange rate.

Our major area of concern is in the interpretation of the term 'substantial transformation' in regard to food products, particularly as set out in the ACCC booklet *'Food and beverage industry: country of origin guidelines to the Trade Practices Act'*. Under these guidelines, mixing, homogenisation, coating and curing are all processes "*likely to be considered as substantial transformation*".

Thus, mixed diced vegetables, blended fruit juices, crumbed prawns and ham and bacon may also qualify as Australian Made **even though all the major ingredients may be imported**, as long as 50% of the cost of production is incurred in Australia.

We note from the same publication 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 (TPA).

COMMENTS ON THE BILL

Subsection (1) (a):

AMCL has major concerns about the interpretation and possible effect of this subsection. Very few processed food products these days contain 100% Australian ingredients. This subsection 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:

- Cheese – most, if not all, cheese made in Australia today is made with imported rennet. Under this proposal, cheese made in Australia from 100% Australian milk could not be labelled 'Australian cheddar';

- Potato wedges made from 100% Australian potatoes with some imported flavourings or oils could not use the claim 'Australian Grown'.

We believe that the 100% requirement is unrealistic and excessively restrictive. Products which fall into this category already have access to the 'Product of Australia' claim and the AMAG logo with the 'Australian Grown' claim.

The other major concern relates to the problems of interpretation:

- "may only use the word 'Australian'..." – is this intended to preclude use of the claim 'Australian Made' or 'Made in Australia', as well as more general use of the word in product names, descriptions, etc.?

What about variants of the word 'Australian' e.g. Aussie (as in Aussie Juice Company as a brand name), Oz, Ozzie, and Australia (as in 'Made in Australia')? Would this also extend to visual representations such as maps and flags?

- The phrase "100% produced in Australia" needs clarification. Does it include the packaging, for example?

Subsection (1) (b):

AMCL would support a requirement to include a statement that imported ingredients are included in a food; however we are unsure whether this subsection is requiring a simple statement along the lines of "Contains imported ingredients", or a list of the imported ingredients. Clarification is needed.

We note also that any new labelling requirement has the potential to add to the cost of the product, and that seasonal availability of food ingredients may create difficulties in this area.

Subsection (1) (c):

Such a provision would complement the use of the AMAG logo with the qualified 'Australian Grown' claim, and as such AMCL would support this requirement.

Subsection (1) (d):

AMCL would support this requirement, or an alternative requiring an explicit statement such as "Orange drink derived from orange skins".

Subsection (1) (e):

Clarification is needed as to whether this refers to calculation of the cost of the product or the content by weight.

Subsections (2) – (5)

AMCL has no comment to make on subsections (2) – (5) of the Bill except to note that the reference in subsection (2) to section 18 of the Act appears to be an error – the correct section is section 10.

GENERAL COMMENTS

The proposal raises a number of issues relating to consistency in country of origin labelling laws. At present the provisions of the Food Standards Code are consistent with the Trade Practices Act. If the Bill were to become law, this would no longer be the case.

If food and beverages with one or more imported ingredients cannot be described as 'Australian Made', should this not also apply to medicines, vitamin tablets and the like; and what about skin creams, clothing, manchester and furniture – all things which come into contact with our bodies and which can have effects on our health?

In addition, we raise a general concern about consistency within the FSC – why does Standard 1.2.11 apply to fish and pork, but not to beef and chicken?

AMCL believes the proposal, however well-intended, will cause further confusion for consumers and have the effect of disadvantaging a large number of genuine Australian manufacturers by precluding them from using legitimate country of origin claims on their products.

RECOMMENDATIONS

AMCL considers that subsections (1) (b) to (e) have value, however subsection (1) (a) is impractical and indefensible. We suggest an alternative approach, including:

1. Development of regulations for the Trade Practices Act specifically excluding certain processes from being considered as 'substantial transformation' – including mixing, crumbing and curing.
2. Amendment of the TPA and FSC to include definition of an unqualified and qualified 'Australian Grown' claim, as defined in the AMAG Logo Code of Practice.
3. Consumer education programs to explain the different meanings of 'Australian Made', 'Australian Grown' and 'Product of Australia'.

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