

## Executive Summary

**Complex considerations are involved in the development of food labelling standards.**

Food labelling standards must take into account the need to provide adequate information about food to consumers to enable them to make informed choices, as well as the need to prevent misleading or deceptive conduct in relation to food labelling.

Consideration needs to be given to the overall impression being given by labelling, which may include both words and graphics in a wide variety of sizes and combinations, when assessing what representations are being made by the label or labels on a product, and whether those representations are accurate and readily understood.

Consideration must also be given to the impact of food labelling requirements on the production of, and trade in, food products, particularly the impact on processes of production that occur in Australia and the overseas trade of products produced in Australia or by Australian companies, either wholly or in part.

These considerations apply to food labelling in general, and in relation to country of origin food labelling (the particular issue that the bill seeks to address).

In relation to country of origin food labelling, the particular issues that arise include:

- whether Australia was the country of origin for all, some part or none of the ingredients or components of the food concerned;
- whether all, some part or none of the processes involved in the production or manufacture of the food concerned occurred in Australia;
- how the percentage of the food that originated or was processed in Australia is to be measured (for example, by weight, volume or value);
- whether components or ingredients of the food product that are not part of the nature of the product, such as a preservative or the product's packaging, should be part of any such measurement or not;
- how to take into account variations in the Australian content of a particular food product arising from, for example, seasonal variations in the supply of ingredients or changes in their costs arising from fluctuations in exchange rates;
- what is the purpose of country of origin food labelling – for example, is the primary purpose of labelling a food product 'Australian' to let consumers know where the ingredients came from (and possibly, therefore, how fresh the product is, or what its quality is); or is it to let them know whether the profits

from its production remain in Australia; or is it to let them know whether Australian jobs will be created or maintained by their purchase of the product; or is it to assist them to determine whether the product has been produced in an environmentally appropriate manner;

- what impression is created amongst consumers by the wide variety of words and graphics that relate to country of origin, which are used on labels, either alone, or in combination, and how does the size and placement of these labels influence the interpretation of this information;
- how do labelling requirements in relation to country of origin interact with other requirements in relation to the labelling of food products;
- whether any particular aspect of country of origin food labelling is best addressed by means of legislative instruments, regulations, national standards, voluntary codes, or some combination of two or more of these mechanisms;
- whether country of origin food labelling requirements should apply equally to all sectors of the food industry, or whether some sectors should be subject to more stringent standards; and
- what impact will country of origin labelling requirements have on production processes, and what impact will they have on the cost of the food products concerned.

The committee is of the view that 'truth in labelling' through the provision of clear and accurate information for consumers on the Australian provenance or otherwise of a product is a commendable objective. Furthermore, the committee is persuaded by the evidence presented to the committee that there is significant community concern in relation to this issue and that the content and consistency of existing standards in relation to this matter merits review.

However, evidence given to the inquiry also confirms that any proposal for changes to country of origin food labelling requirements must take into account all of the complex factors listed above in order to ensure a balanced and sustainable approach to this matter.

Furthermore, evidence given to the committee, including evidence given by witnesses generally supportive of the intent of the bill, indicates that insufficient consideration has been given to these factors in designing the proposals for change to country of origin food labelling requirements embodied in the bill.

For example, it is clear from the evidence gathered that the proposed requirement to restrict use of the word 'Australian' only to products which can claim to be 100 per cent Australian is impractical and sets an unrealistic threshold. Given Australia's shrinking manufacturing base and the need to source small quantities of imported ingredients for use in processed food, such a requirement would be counter-productive and disadvantageous to the Australian food industry, as consumers

would be unable to distinguish a product with 99 per cent Australian content from a product with minimal Australian content.

This demonstrates that the bill does not meet its stated objective, namely, providing consumers with meaningful country of origin information in relation to food products, so that they may support the Australian economy and Australian food producers and manufacturers.

**Current processes for the development of food labelling standards reflect the complex considerations involved.**

The two key agencies that regulate the Australian food and beverage industry, Food Standards Australia New Zealand (FSANZ) and the Australian Competition and Consumer Commission (ACCC), have in place processes for the development of food labelling standards that reflect the complex considerations involved.

General oversight of the food regulatory system is provided by the Australia and New Zealand Food Regulation Ministerial Council, which sets policy in relation to labelling requirements, in the broader context of standards relating to the production, processing and composition of food.

Specific food standards are developed by the regulatory authority, FSANZ, which administers the Australia New Zealand Food Standards Code (the Code). The food standards in the Code are given legal effect by state, territory and New Zealand legislation. In Australia, state and territory health departments are responsible for enforcing and interpreting the Code. The Code's requirements must also be read in conjunction with relevant local food legislation, and the *Trade Practices Act 1974*.

A Memorandum of Understanding facilitates cooperation and coordination between FSANZ and the ACCC, in relation to areas of overlap between the Code and the *Trade Practices Act 1974*, particularly in the area of false or misleading labels.

Standards in the Code are developed under the *Food Standards Australia New Zealand Act 1991*, which has a number of requirements relating to public consultation. The committee heard evidence that FSANZ's processes are open and transparent, and that it relies on input from industry, consumers and governments to inform its standards development work.

**The bill seeks to circumvent existing processes in place for the development of food labelling standards without taking into account the complex considerations involved in the development of food labelling standards.**

In recognition of the highly complex issues involved in food regulation, the committee recognises that the development of any new food standard relies on an open and transparent process involving broad public consultation, undertaken by Food Standards Australia New Zealand and overseen by the Ministerial Council.

A number of submitters and witnesses, including the Commonwealth Department of Agriculture, Fisheries and Forestry, the Australian Food and Grocery Council, the Australian Dairy Industry Council, FSANZ, the Government of South Australia and the Consumers' Federation of Australia pointed out that the bill is inconsistent with food standards setting arrangements in Australia.

The ACCC also told the committee that the bill could potentially create inconsistencies between the existing 'safe harbour' tests in the Trade Practices Act in relation to country of origin labelling, and the new standard in relation to the use of the word 'Australian' to be prescribed by FSANZ under the provisions of the bill.

FSANZ itself told the committee that a standard developed in accordance with the proposed bill would be unlikely to become law, as states and territories were not bound to adopt something developed outside of the current standards development arrangements.

In short, according to FSANZ, the bill requires Food Standards Australia New Zealand (FSANZ) to circumvent the established food regulation system, which is recognised via an intergovernmental agreement as well as treaty arrangements with New Zealand. This framework does not contemplate a process whereby the Commonwealth unilaterally imposes a law on the states, territories and New Zealand. Such a process would require significant referral of powers from the states and territories and New Zealand.

In light of the above, the committee is of the view that the insurmountable problem with this bill is its inconsistency with the current food standards setting arrangements. This inconsistency illustrates the dangers inherent in implementing ad hoc legislation on food labelling matters outside of the current food standards setting arrangements. The committee believes that such a bill is not the correct vehicle by which to effect any changes to food labelling laws, as it effectively short-circuits established processes, which have been nationally agreed through the Council of Australian Governments.

**The concerns that the bill seeks to address can more appropriately be dealt with through the Australia and New Zealand Food Regulation Ministerial Council Review of Food Labelling Law and Policy currently underway.**

The Australia and New Zealand Food Regulation Ministerial Council has commissioned an independent comprehensive review of food labelling law and policy.

The Terms of Reference for the review are as follows:

1. Examine the policy drivers impacting on demands for food labelling.
2. Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?

3. Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
4. Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.
5. Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against terms of reference 1-4 above.
6. Make recommendations to improve food labelling law and policy.

The former Australian health minister, Dr Neal Blewett AC, will chair the review. Dr Blewett will be joined by an independent expert panel, consisting of public health law academic Dr Chris Reynolds, economic and consumer behaviour expert Dr Simone Pettigrew, food and nutrition policy academic Associate Professor Heather Yeatman, and food industry communications, marketing and corporate affairs professional Nick Goddard.

The Parliamentary Secretary for Health, the Hon. Mark Butler MP has explained the purpose of the review, in the following terms: “This extensive review is critical for improving policy to ensure consumers have clarity in food labelling and industry has certainty about their roles and responsibilities.”

The first round of public consultations is underway for brief submissions about issues that are within the scope of the Terms of Reference for the panel's consideration. This initial consultation process closed on 20 November 2009. There will be further opportunity for more comprehensive submissions as the review progresses.

In evidence given to the committee, the Consumers' Federation of Australia indicated that the consumer movement would like to see food matters remain with FSANZ and believes that the current Review of Food Labelling Law and Policy is a better means through which to achieve changes on labelling issues, including country of origin labelling standards, than ad hoc legislation.

The committee is unconvinced that amending the *Food Standards Australia New Zealand Act 1991*, as proposed by this bill, is the right way to attain greater transparency in relation to country of origin labelling. Rather, the committee accepts the evidence given to it, that the current Food Labelling Law and Policy Review is the appropriate forum in which to pursue a broad range of food labelling reforms, including country of origin labelling.

## **Recommendation 1**

**1.1 The committee recommends that the bill not be passed and that the changes to labelling laws proposed in the bill are taken up through the current review of food labelling under the Australia and New Zealand Food Regulation Ministerial Council.**

