

# Chapter 3

## Regulation of food labelling

3.1 Two key agencies regulate the Australian food and beverage industry—Food Standards Australia New Zealand (FSANZ) and the Australian Competition and Consumer Commission (ACCC).

3.2 In 2004, the ACCC and FSANZ signed a Memorandum of Understanding to facilitate cooperation and coordination between the two agencies, in relation to areas of overlap between the Australia New Zealand Food Standards Code and the *Trade Practices Act 1974*, particularly in the area of false or misleading labels.<sup>1</sup>

3.3 As explained by the ACCC:

A trader who supplies food products must comply with both the Code and the TPA; adhering only to the Code does not protect from otherwise misleading or deceptive conduct.<sup>2</sup>

### Role of Food Standards Australia and New Zealand

3.4 FSANZ is the Australian Government regulatory authority that develops, implements and reviews food standards, including labelling requirements, for food sold or prepared for sale in Australia and New Zealand, and food imported into Australia and New Zealand.

3.5 FSANZ is responsible for developing and administering the Australia New Zealand Food Standards Code (the Code), a collection of individual food standards.

3.6 However, FSANZ does not enforce the Code. The *Food Standards Australia New Zealand Act 1991* (FSANZ Act) outlines FSANZ's objectives (in descending priority):

- protection of public health and safety;
- provision of adequate information about food to enable consumers to make informed choices;
- prevention of misleading or deceptive conduct.<sup>3</sup>

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1 ACCC & FSANZ, Memorandum of Understanding, signed 29 April 2004, <http://www.accc.gov.au/content/index.phtml/itemId/525074>.

2 ACCC, Answers to Questions on Notice (received 13 November 2009), p 7.

3 *Food Standards Australia New Zealand Act 1991*, section 10.

3.7 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*.

3.8 Giving evidence to the inquiry, FSANZ explained how food standards are developed within an agreed framework:

At the apex of the food regulatory system sits the Australia and New Zealand Food Regulation Ministerial Council. The council is made up of ministers from each of the states and territories, the Commonwealth and a minister from New Zealand. The council has responsibility for setting food regulatory policy and for general oversight of the food regulatory system. The code contains standards relating to the production, processing, composition and labelling of food. The focus of the code is on public health and safety and ensuring consumers have adequate information to enable informed choice. Standards in the code are developed under the FSANZ Act, which has a number of requirements relating to public consultation. FSANZ's processes are open and transparent and we rely on input from industry, consumers and governments to inform our standards development work. The code does not have any legal effect of itself. Rather, the Food Regulation Agreement between the Commonwealth and states and territories of Australia provides that the states and territories will adopt or incorporate into state or territory law the standards which FSANZ develops. Australia and New Zealand have also entered into an agreement by which New Zealand also adopts the majority of FSANZ's food standards.<sup>4</sup>

3.9 While the processes for developing food standards have been criticised by industry in the past for being cumbersome and unreasonably protracted, reforms to the FSANZ Act introduced in 2007 have gone some way to streamline the food standards development process so as not to stymie opportunities for innovation or the need to respond to advances in food technology.<sup>5</sup>

### **Role of the Australian Competition and Consumer Commission**

3.10 The ACCC is an independent statutory authority responsible for bringing about compliance with the *Trade Practices Act 1974* (TPA). Part of this role is to ensure that businesses do not make representations about food and beverage products that are false or likely to mislead or deceive consumers.

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4 Mr Stephen McCutcheon, Food Standards Australia New Zealand, *Proof Committee Hansard*, 30 October 2009, p 17.

5 See Media Release, the Hon. Brett Mason MP, Parliamentary Secretary to the Minister for Health and Ageing, 'Quicker, better food regulation', 2 July 2007, [http://www.health.gov.au/internet/ministers/publishing.nsf/Content/A8F64A89C9A9A3F8CA25730C001EEFA5/\\$File/mas021.pdf](http://www.health.gov.au/internet/ministers/publishing.nsf/Content/A8F64A89C9A9A3F8CA25730C001EEFA5/$File/mas021.pdf).

3.11 The ACCC's *Food Labelling Guide* explains:

The Trade Practices Act has two provisions dealing with representations in food and beverage labelling, packaging or advertising:

1. Businesses must not engage in misleading or deceptive conduct, or conduct likely to mislead or deceive consumers. For example, businesses must not make representations likely to mislead or deceive consumers about the most prominent ingredients or characteristics of a food or beverage product ...
2. Businesses must not falsely represent that a food or beverage is of a particular standard, quality, grade, composition or style in relation to the supply, or possible supply, of a food or beverage.<sup>6</sup>

3.12 The TPA also contains defences in relation to 'country of origin' claims on goods, including food, as discussed in the following section. Giving evidence to this inquiry, the ACCC explained that, unlike the Food Standards Code, which prescribes certain information on food labels, the TPA does not prescribe what information should be on labels or products, but does require that when representations are made, they must not mislead or deceive.

3.13 When asked whether the TPA included any rules about the use of the Australian flag or Australian images such as a kangaroo, the ACCC stated:

**Mr Ridgway**—...When we look at particular representations they can be in the form of logos, maps, images or words and phrases—and often they are a combination of the whole lot of those. We will look at the overall 'get up' for want of a better term of the particular representation and look at what impression, in our view and likely to be in the courts' view, that combination of images and words is giving to its consumer audience. We would ask: what is there on the label and what is the impression that flows from that?

**Mr Weymouth**—I would add that the important analysis we will be doing is looking at what is the representation. We have nothing prescriptive about when you can or cannot use a map, a flag or a symbol; it is a question of what is the impression that is being delivered and what is the representation that is being delivered overall? So it is conceivable that a flag with a very bold statement near it that makes it clear that this product came from somewhere other than the country represented by the flag may not create the impression that the goods came from the country where the flag comes from. So it is that mixture of words, symbols, images and advertising that goes with the product that will be what we need to be looking at to assess whether we have a breach of the Trade Practices Act.<sup>7</sup>

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6 ACCC, 'Food Labelling Guide', 18 June 2009, p 7, <http://www.accc.gov.au/content/item.php?itemId=877504&nodeId=29f8466040a226f19330c437193bea45&fn=Food%20labelling%20guide.pdf> (accessed 24 September 2009).

7 Mr Nigel Ridgway and Mr Robert Weymouth, ACCC, *Proof Committee Hansard*, 30 October 2009, p 51.

## Country of origin food labelling

3.14 Country of origin food labelling relates to the provision of information to consumers about the country or countries where the food they purchase is grown, produced, manufactured or packaged.

### *Amendments to the Trade Practices Act - 1998*

3.15 In 1998, provisions were inserted into the TPA in relation to country of origin representations (these provisions apply not only to food, but to other products – for example, cars and clothing).

3.16 The *Trade Practices Amendment (Country of Origin Representations) Act 1998* defined a set of defences (or 'safe harbours') to proceedings brought under certain provisions of the Act (relating to misleading and deceptive conduct or false or misleading representations). These defences are described below.

#### *"Product of" claims*

3.17 The TPA states that goods can be represented as the "product of" a particular country if:

- the country was the country of origin of each significant ingredient or significant component of the goods; and
- all, or virtually all, processes involved in the production or manufacture happened in that country.<sup>8</sup>

3.18 The 'significant ingredient' or 'significant component' does not necessarily relate to the percentage of that ingredient or component in the goods in question. In the Explanatory Memorandum to the 1998 amendment, the following example was given:

... for an apple and cranberry juice to be able to carry a 'produce of Australia' label, both the apple and the cranberry juice would have to be sourced from Australia. This is despite the cranberry juice being on average, about 5% of the total volume of the product. If, however, a local source can be found for the apple juice and the cranberry juice then it would be legitimate to employ a 'product of Australia' label, even if, say, a preservative was added to the juice and the preservative was imported. This is because the preservative does not go to the nature of the good.<sup>9</sup>

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8 *Trade Practices Act 1974*, Section 65AC.

9 Explanatory Memorandum, Trade Practices Amendment (Country of Origin Representations) Bill 1998, quoted in ACCC, 'Country of origin claims and the Trade Practices Act', February 2006, pp 13–14, <http://www.accc.gov.au/content/index.phtml/itemId/303666> (accessed 28 September 2009).

3.19 In its guide for businesses and consumers in relation to 'country of origin' provisions in the TPA, the ACCC comments on the above example:

This seems to make claims of 'product of Australia' difficult to sustain for any product with a significant imported component or ingredient. This may be particularly relevant to a number of processed foodstuffs and beverages.

For example, any food or beverage product that depended on an imported ingredient for its specific nature would not be eligible for the 'product of Australia' defence. The manufacturer may therefore be at risk of action by the ACCC, or another person who is able to commence private legal action.

Packaged or processed foodstuffs and beverages are often complex products. They may undergo a series of processes and may require a range of ingredients. The processing may be carried out at different locations, even overseas, and the ingredients may also come from several sources. If any of these processing locations or sources of ingredients are not Australia, it would probably be difficult to justify using the 'product of Australia' claim.<sup>10</sup>

3.20 The use of the claim "product/produce of Australia" is intended to be a 'premium' claim, reserved for products with no, or very little, imported content. A lower threshold applies for the "made in Australia" claim.

#### *"Made in" claims*

3.21 The TPA states that goods can be represented as "manufactured" or "made in" a particular country if:

- the goods have been substantially transformed in that country; and
- 50% or more of the cost of producing or manufacturing the goods (as the case may be) is attributable to production or manufacturing processes that occurred in that country.<sup>11</sup>

3.22 Goods are said to be 'substantially transformed' if they undergo:

...a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.<sup>12</sup>

3.23 The ACCC's view<sup>13</sup> is that substantial transformation might include the processing of imported and Australian ingredients into a finished product (e.g. the production of a cake from imported spices, fruit and flour and Australian sugar).

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10 ACCC, 'Country of origin claims and the Trade Practices Act', February 2006, p 14, <http://www.accc.gov.au/content/index.phtml/itemId/303666> (accessed 28 September 2009).

11 *Trade Practices Act 1974*, Section 65AB.

12 *Trade Practices Act 1974*, Section 65AE.

13 In providing its view, the ACCC notes that interpretation of the law will always ultimately be up to the courts.

However, substantial transformation would not be constituted by imported fruit juice concentrate being reconstituted into fruit juice—regardless of whether Australian water, sugar, preservatives and packaging were used.<sup>14</sup>

3.24 Giving evidence to the inquiry, Simplot (which markets brands such as Edgell, Birds Eye and John West) told the committee that the ACCC had visited one of its factories which manufactured fish fingers when trying to determine what constituted 'substantial transformation':

The bulk of fish consumed in the retail market in Australia in packets at supermarket level is caught and produced overseas. That is where the large seafood catches are done—generally around New Zealand and South Africa. They may even go over as far as the North Atlantic—around Canada and those sorts of areas ... They are generally a deep sea type catch and they are then produced into blocks. Companies such as ours will buy those blocks, which look nothing like fish at that stage, and we convert those into something such as a fish finger where they are cut into sections, coated, crumbed, fried and frozen for the market.<sup>15</sup>

3.25 Simplot admitted that interpreting whether certain manufacturing processes amounted to substantial transformation was often difficult under the existing legislation, particularly with the price of fish changing as the dollar fluctuated. Generally, its fish fingers would be labelled "made in Australia from local and imported ingredients", as the crumbing component would largely be based on Australian wheat products.<sup>16</sup>

3.26 Senator Pratt asked how proportionality was determined in situations where the dollar value of offshore processing or content may be constantly fluctuating. Simplot explained:

Generally, the changes to the particular imported good that the company may use run far slower than movements in the Australian dollar. Certainly, large manufacturing sanctions products one, two or three years out, and the products are made over that length of period. That is especially true for crop planting—very true. Generally, you are two or three years out to have seed prepared so that you can ultimately grow your crops. Fluctuations in the Australian dollar are managed by some forward planning, foreign exchange, deeds and bonds and so on to get over those types of issues so you can smooth the effect of financial fluctuations.<sup>17</sup>

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14 ACCC, 'Country of origin claims and the Trade Practices Act', February 2006, p 9, <http://www.accc.gov.au/content/index.phtml/itemId/303666> (accessed 28 September 2009).

15 Mr Philip Corbet, Simplot, *Proof Committee Hansard*, 30 October 2009, p 6.

16 Mr Corbet, Simplot, *Proof Committee Hansard*, 30 October 2009, p 6.

17 Mr Corbet, Simplot, *Proof Committee Hansard*, 30 October 2009, p 14.

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*Qualified claims*

3.27 The ACCC advises in its guide on country of origin claims and the TPA that if a business cannot make an unequivocal claim, such as "made in Australia", it may wish to make a qualified claim, such as "made in Australia from local and imported ingredients":

The ACCC has adopted the view that qualified claims do not have to meet the substantial transformation or 50 per cent content tests. It also encourages the use of qualified claims where the extra information provided is accurate, relevant and useful and does not give a false or misleading impression.

Qualified claims for country of origin could include:

- Made in Australia from Australian and imported components;
- ... Proudly made in Australia. 85 per cent of this product was made HERE, providing Australian jobs. We imported the cranberries because nobody grows them in Australia.<sup>18</sup>

3.28 However, the use of qualified claims, such as "made in Australia from local and imported ingredients", can lead to ambiguity:

On the one hand the phrase is truthful, in that it alerts the consumer to possible imported product. On the other hand, it seems to emphasise the presence of local product when it is unclear what the local percentage is or what relative roles the imported and local products play in the final product.<sup>19</sup>

3.29 The ACCC also advises that a business may wish to state the actual country of origin of imported ingredients and the approximate proportions of them in the product.

3.30 Another problem might arise when a supplier makes the claim "Product of Australia" and then adds the qualification: "due to seasonal variations in availability, some of the contents may be imported". As well as throwing the primary claim into doubt, such labelling may invite further questions:

Does it mean that the contents are imported each year during the Australian off-season, or does it mean that in some years there is a shortage of supply and it is topped up by imports? The former means that there is a regular pattern of imports, the latter that imports are used in an ad hoc manner to bolster local shortages.<sup>20</sup>

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18 ACCC, 'Country of origin claims and the Trade Practices Act', February 2006, pp18–19, <http://www.accc.gov.au/content/index.phtml/itemId/303666> (accessed 28 September 2009).

19 ACCC, 'Country of origin claims and the Trade Practices Act', February 2006, p 22, <http://www.accc.gov.au/content/index.phtml/itemId/303666> (accessed 28 September 2009).

20 ACCC, 'Country of origin claims and the Trade Practices Act', February 2006, p 25, <http://www.accc.gov.au/content/index.phtml/itemId/303666> (accessed 28 September 2009).

3.31 In this scenario, the ACCC suggests that it might be clearer to say: "Local ingredients used most of the year; imported ingredients used from October to December", if at all possible.

### ***Amendments to the Food Standards Code – 2005***

3.32 The Food Standards Code currently requires country of origin labelling on all packaged and some unpackaged food products.

3.33 The most recent country of origin food labelling reforms took effect in December 2005, when FSANZ gazetted a new Country of Origin Food Labelling Standard for Australia (Standard 1.2.11, which is at Appendix 3).

3.34 Prior to this, it was sufficient to list the country of origin in the manufacturer's address on the food label. The new standard required that packaged food carry a separate statement identifying the country where the food was produced. In addition, mandatory country of origin labelling was introduced for:

- unpackaged fresh and preserved pork, ham and bacon products; and
- unpackaged fresh and processed seafood, vegetables, nuts and fruit.

Such unpackaged food is now required to carry a declaration on a label or sign near the food stating country of origin.<sup>21</sup>

3.35 The new standard also included:

- a requirement for country of origin declarations for packaged and unpackaged foods to be consistent with trade practices legislation and trade practices law; and
- strengthened requirements for legibility and print size on labels and signs used to declare the country of origin for unpackaged foods.<sup>22</sup>

### **Case study – Australian pork**

3.36 Australian Pork Limited (APL) raised the issue of country of origin labelling in its submission to the 2008—09 Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into Meat Marketing, as well as in a submission to this inquiry.

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21 FSANZ, 'Country of Origin Labelling: Advice for Consumers', June 2006, p 2, [http://www.foodstandards.gov.au/srcfiles/CoOL\\_brochure\\_2006.pdf](http://www.foodstandards.gov.au/srcfiles/CoOL_brochure_2006.pdf) (accessed 24 September 2009).

22 The Hon. Christopher Pyne MP, Parliamentary Secretary to the Minister for Health and Ageing, Media Release, 'New country of origin food labelling standard gazetted', 8 December 2005.



3.37 APL highlighted the confusion and anomalies arising out of current definitions of "Made in Australia" and "Product of Australia" claims. For example, APL pointed out that theoretically:

...smallgoods processed in Australia from 100 per cent Australian pork are currently unable to use this label ["Product of Australia"] as brine, an essential ingredient in curing pork, is not produced locally and must be imported.

The "Made in Australia" claim is therefore the highest theoretical claim for Australian sourced pig meat in processed form, and also a possible claim for imported pig meat in packaged processed products if the local value-add is high enough. The result of this is that "Made in Australia" has not necessarily anything to do with Country of Origin when relating to the meat itself.<sup>23</sup>

3.38 (The Australian Barramundi Farmers Association's submission to the inquiry also cited cases where imported fish had been labelled "Made in Australia" under the current rules.<sup>24</sup>)

3.39 APL stated that in practice:

...despite the use of imported brine in all hams and bacons, "Product of Australia" claims are used in packaged and bulk pork products which use 100 per cent Australian sourced pig meat, and the industry/APL feels no motivation to correct this, as it is at least one mechanism for enabling consumers to choose Australian product if they so desire.<sup>25</sup>

3.40 Conversely, APL also pointed out that products derived from imported pig meat could qualify for the "Made in Australia" label. APL argued that this was misleading for consumers, as the claim did not necessarily relate to the source of the meat in the final processed product:

If a ham or bacon product has had more than 50 per cent of its value added in Australia, and has been substantially transformed in Australia, it may qualify to claim to be "Made in Australia". Ham or bacon made in Australia from imported fresh pork may have been substantially transformed and more than 50 per cent of the value of manufacturing process may have been added in Australia.<sup>26</sup>

3.41 The Senate Committee on Rural and Regional Affairs agreed with APL that the current definitions regulating the use of "Made in Australia" and "Product of

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23 Australian Pork Limited, *Submission 42*, Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into Meat Marketing, 2009, p 4.

24 The Australian Barramundi Farmers Association, *Submission 32*, p 3.

25 Australian Pork Limited, *Submission 42*, Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into Meat Marketing, 2009, p 12.

26 Australian Pork Limited, *Submission 42*, Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into Meat Marketing, 2009, p 12.

Australia" claims were unsuitable for food products. The report, tabled in June 2009, recommended that:

Subject to the current Australia and New Zealand Food Regulation Ministerial Council review into food labelling, the government create separate country of origin labelling regulations for food products that recognise the importance of the origin of ingredients in processed food as well as the place where production processes occurred.<sup>27</sup>

3.42 In its submission to the current inquiry, APL has applauded the intent of the bill, but notes the bill appears to have been drafted with a specific focus on the citrus industry and suggests it is inequitable to focus on the special requirements of one industry sector.<sup>28</sup>

### **Enforcement and effectiveness of country of origin labelling requirements**

3.43 In a submission to FSANZ's country of origin labelling review in 2005, the National Farmers' Federation (NFF) argued that there was:

...a lack of a concerted public awareness campaign from either FSANZ or the ACCC on the meaning of different Country of Origin claims, the absence of any coordinated enforcement of the current Country of Origin requirements, and the resultant proliferation of non-compliance among food companies with the requirements of the Act.<sup>29</sup>

3.44 The NFF also argued that the relevant TPA provisions were in conflict with high level principles adopted by the Australia and New Zealand Food Regulation Ministerial Council which stated that any new country of origin labelling standard in the Code should:

Ensure that consumers have access to accurate information regarding the contents and production of food products; [and]

Ensure that customers are not misled or deceived regarding food products.<sup>30</sup>

3.45 Giving evidence to this inquiry, the Australian Food and Grocery Council agreed that compliance with food labelling laws was generally poorly monitored—and that enforcement was sometimes 'quite non-existent'.<sup>31</sup>

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27 Senate Standing Committee on Rural and Regional Affairs, Final Report on Meat Marketing, June 2009, p 39.

28 Australian Pork Limited, *Submission 14*, p 8.

29 Ben Fargher, National Farmers' Federation, Comment on FSANZ's Country of Origin Labelling Discussion Paper, 8 September 2005, p 2, [www.nff.org.au/get/2432157080.pdf](http://www.nff.org.au/get/2432157080.pdf)

30 Australia and New Zealand Food Regulation Ministerial Council Policy Guidelines – Country of Origin Labelling of Food, August 2003, [http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-policydocs.htm/\\$FILE/cool\\_guidelines.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-policydocs.htm/$FILE/cool_guidelines.pdf)

3.46 The Consumers' Federation of Australia also told the committee that enforcement was a major sticking point:

Enforcement is carried out at the state level and unless there is a gross misdemeanour, such as an allergenic food not being named, often no action is deemed necessary, particularly if it is not seen by the enforcement agency to be of particular importance. This usually gets back to finance available for enforcement, the priorities and of course the risks involved. Consumers are not unaware of the fact that much of the responsibility for consumer protection area is now being passed [to the] Australian Competition and Consumer Commission. However, the consumer movement would like to see food matters remain with the food authority.<sup>32</sup>

3.47 At a public hearing, the ACCC cited a recent case it had pursued involving the fruit juice provider, Bevco Pty Ltd, which had labelled its products as "100 per cent Australian made and owned" while the juice content was predominantly imported:

The company signed a court-enforceable undertaking, changed their labelling, published corrective notices and established and implemented a trade practices program. So the mechanism is there and it can work.<sup>33</sup>

## Current status of food labelling policy

### *2007 election commitment on country of origin food labelling*

3.48 The Australian Labor Party (ALP) made an election commitment in 2007 to strengthen and simplify food labelling laws. It acknowledged consumers' and producers' confusion around country of origin labelling:

Research has found that for packaged foods, consumers are often confused and do not understand what is meant by 'Made in' and 'Product of' labels.

... Producer groups have been calling for changes to labelling laws to provide for a 'Grown in Australia' label for packaged foods where the product contains a majority of Australian grown produce.

The recent rapid rise in food imports has increased competition and pricing pressure. Australian producers argue that a lack of clarity in labelling laws erodes the 'Australian' premium and undermines investment confidence in marketing and promotion in the domestic market.

Consumer groups argue the need for specific 'country of origin' labelling to allow consumers to clearly and easily distinguish between food products by origin. Food manufacturers require flexible labelling laws to minimise

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31 Ms Kate Carnell, Australian Food and Grocery Council (AFGC), *Proof Committee Hansard*, 30 October 2009, p 4.

32 Ms Elaine Attwood, Consumers' Federation of Australia, *Proof Committee Hansard*, 30 October 2009, p 66.

33 Mr Weymouth, ACCC, *Proof Committee Hansard*, 30 October 2009, p 56.

production costs and allow them to respond to rapid movements in global food commodity markets.<sup>34</sup>

3.49 In Senator Kerry O'Brien's policy document, 'Labor's Plan for Primary Industries', the ALP committed to:

- a new 'Grown in Australia' label under the Trade Practices Act for products that are not only made in Australia, but also grown in Australia; [and]
- consideration of amendments to the Food Standards Code to clarify country of origin labelling requirements.<sup>35</sup>

### ***"Grown in Australia" label***

3.50 Progress on the Government's "Grown in Australia" label has been slow. The Minister for Agriculture, Fisheries and Forestry, the Hon. Tony Burke MP, recently commented:

One of the things that we're trying to get working at the moment is the concept of a 'Grown in Australia' label, so that you're not actually talking about the packaging, you're talking about the actual product: the food itself. Because people want to support Australian jobs, but they also want the freshest product they can get. And that means they want something that was actually grown here.

... None of this happens as quickly as it should: completely up-front about that ... There's every level of Government involved – New Zealand actually shares some of the regulation on some of these issues. So it hasn't happened as quickly as it should, but the 'Grown in Australia' label – if we can get to that place – hopefully it will provide us with a better benchmark for people who want to know that what they're buying is being grown here and having a way to deliver that.<sup>36</sup>

### ***Ministerial Council Review of Food Labelling Law and Policy***

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

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34 Senator Kerry O'Brien, 'Labor's Plan for Primary Industries', 19 November 2007, p 9, [http://www.alp.org.au/download/nov/071119\\_labors\\_plan\\_for\\_primary\\_industries22.pdf](http://www.alp.org.au/download/nov/071119_labors_plan_for_primary_industries22.pdf) (accessed 28 September 2009).

35 Senator Kerry O'Brien, 'Labor's Plan for Primary Industries', 19 November 2007, pp 19–20, [http://www.alp.org.au/download/nov/071119\\_labors\\_plan\\_for\\_primary\\_industries22.pdf](http://www.alp.org.au/download/nov/071119_labors_plan_for_primary_industries22.pdf) (accessed 28 September 2009).

36 The Hon. Tony Burke MP, Minister for Agriculture, Fisheries and Forestry, Interview on 2GB 873AM Sydney Breakfast with Jason Morrison, 3 September 2009, [http://www.maff.gov.au/transcripts/transcripts/2009/september/tony\\_burke\\_-\\_interview\\_with\\_jason\\_morrison\\_2gb\\_873am\\_sydney\\_breakfast](http://www.maff.gov.au/transcripts/transcripts/2009/september/tony_burke_-_interview_with_jason_morrison_2gb_873am_sydney_breakfast) (accessed 28 September 2009).

(The Ministerial Council develops policy guidelines for the setting of domestic food standards by FSANZ).

3.52 In October 2009, the Ministerial Council stated in its latest communiqué that the former Australian Health Minister, Dr Neal Blewett AC, would chair the review.<sup>37</sup> 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.<sup>38</sup>

3.53 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.<sup>39</sup>

3.54 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.

3.55 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.

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37 Australia and New Zealand Food Regulation Ministerial Council, Final Communique, 23 October 2009, [http://www.health.gov.au/internet/main/publishing.nsf/Content/452348D8459F85FCCA256F190003AC15/\\$File/Final-Communique.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/452348D8459F85FCCA256F190003AC15/$File/Final-Communique.pdf).

38 Media Release, 'Expert Panel Announced for Food Labelling Review', the Hon. Mark Butler MP, Parliamentary Secretary for Health, 11 November 2009, <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-mb-mb033.htm?OpenDocument>.

39 Media Release, 'Expert Panel Announced for Food Labelling Review', the Hon. Mark Butler MP, Parliamentary Secretary for Health, 11 November 2009, <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-mb-mb033.htm?OpenDocument>.

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.<sup>40</sup>

3.56 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 Federation understands that a number of its member organisations will be making submissions to the Review.<sup>41</sup>

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40 Australia and New Zealand Food Regulation Ministerial Council, Final Communique, 23 October 2009, [http://www.health.gov.au/internet/main/publishing.nsf/Content/452348D8459F85FCCA256F190003AC15/\\$File/Final-Communique.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/452348D8459F85FCCA256F190003AC15/$File/Final-Communique.pdf).

41 Ms Attwood, Consumers' Federation of Australia, *Proof Committee Hansard*, 30 October 2009, pp 66 and 68.