

The Senate

Economics
Legislation Committee

Food Standards Amendment (Truth in
Labelling Laws) Bill 2009

November 2009

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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.

Chapter 1

Introduction

Background

1.1 On 20 August 2009, the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 was introduced into the parliament. The bill is co-sponsored by independent Senator Nick Xenophon, the Leader of the Nationals in the Senate, Senator Barnaby Joyce, and the Leader of the Australian Greens, Senator Bob Brown.

1.2 The bill is designed to 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.

1.3 The Second Reading Speeches on the bill argued that 'current Australian labelling laws don't allow consumers the opportunity to know the origins of the food they are purchasing and consuming'¹. The current system was said to be 'deliberately obtuse':

... most Australians do not know what the terms "Made in Australia", "Product of Australia", or "Made in Australia from local and imported ingredients" even mean, let alone being able to comprehend the differentiation between those terms. There is real consumer and producer concern over this labelling confusion.²

1.4 Senator Brown stated that the Amendment would benefit both local consumers and Australian producers:

This Bill provides for a clear and accurate system of food labelling, specifically information on country of origin. Australian consumers need simple information to be able to make informed choices at the supermarket. The labelling regime facilitates the option for consumers, in the supermarket filling their trolley with products to support the Australian economy, Australian farmers, Australian manufacturers and producers. Under the current labelling regime consumers are being deceived by confusing laws and deprived of genuine choice.³

1 Senator Xenophon, Second Reading Speech, *Senate Hansard*, 20 August 2009, p 5496.

2 Senator Joyce, Second Reading Speech, *Senate Hansard*, 20 August 2009, p 5499.

3 Senator Brown, Second Reading Speech, *Senate Hansard*, 20 August 2009, p 5498.

Conduct of the inquiry

1.5 The Senate referred the bill to the Economics Legislation Committee on 10 September 2009 for inquiry and report by 26 November 2009.

1.6 The committee advertised the inquiry in the national press and contacted a number of organisations, inviting submissions to be lodged by 16 October 2009. The 34 submissions received are listed in Appendix 1.

1.7 Two public hearings were held: in Melbourne on 5 October 2009 and in Canberra on 30 October 2009. The witnesses who appeared before the committee are listed in Appendix 2.

1.8 The committee thanks all those who participated in the inquiry.

Structure of the report

1.9 This report is divided into five chapters. Chapter 2 outlines the requirements proposed in the bill, while chapter 3 provides background on the current requirements for country of origin food labelling, as well as the respective roles of Food Standards Australia New Zealand and the Australian Competition and Consumer Commission. Chapter 4 examines the range of broad views on merits of the bill, and Chapter 5 concludes with consideration of the specific clauses within the bill.

Chapter 2

Objects of the bill

2.1 The bill's intent is to limit the use of the word "Australian" on food labels to foods which are 100 per cent produced in Australia. Also, a food product which contains one or more imported ingredient would have to display this fact on its front label ensuring that consumers are well-informed of the imported ingredients of the product.¹

2.2 New provisions for fruit juices and drinks are also contained in the bill. A juice product with one or more imported ingredient would have to display a front label showing the percentage amount of imported ingredients and/or the inclusion of concentrate. The bill also requires that a product containing juice wholly or partly derived from orange skins cannot be labelled as "orange juice".

2.3 The bill inserts a new subsection 16A into Section 16 of the *Food Standards Australia New Zealand Act 1991*. Section 16A requires Food Standards Australia New Zealand (FSANZ), the independent statutory agency which sets food standards, to develop and approve labelling standards that oblige producers, manufacturers and distributors of food to implement more accurate labelling with regard to the use of the word "Australian".²

2.4 Section 16A states that the standards to be prescribed by FSANZ:

- a) may only use the word "Australian" on or in relation to the relevant food if it is 100% produced in Australia;
- b) in the case of food containing one or more imported ingredients – subject to paragraph (c), must display the inclusion in the food of imported ingredients in letters of at least 15 mm on the front label of the relevant food;
- c) in the case of juice, juice drink or any other drink product containing juice – must display:
 - i) in the case of the relevant product containing one or more imported ingredients – the percentage amount of imported ingredients included in the product; and
 - ii) in the case of the relevant product containing juice concentrate – the inclusion in the product of juice concentrate;

1 Food Standards Amendment (Truth in Labelling Laws) Bill 2009, Explanatory Memorandum, p 2.

2 Food Standards Amendment (Truth in Labelling Laws) Bill 2009, Explanatory Memorandum, p 1.

in figures and/or letters of least 25 mm on the front label of the product container;

- d) in the case of any drink product partly or wholly containing juice derived from orange skins – must not describe the juice so derived as orange juice;
- e) must not include the product container and the product label in any calculation of the percentage of Australian content in the product.³

2.5 The above paragraph (e) addresses the concern that under current food labelling laws, a product can be described as 'Made in Australia' when as little as 50 per cent of the product (including its packaging) is from Australia. This can result in cases where only a minority of the consumable content of a packaged food item labelled 'Made in Australia' is actually an Australian product. An example was given at a public hearing:

Particularly with liquid product such as soft drinks and the like, the biggest single component is the packaging. You could see a scenario where the contents could be entirely sourced overseas but the can is produced in another market, so the result could be that the majority of the value of the product is in fact local and consumers would think that that meant they were consuming locally-sourced product.⁴

2.6 Current labelling requirements are discussed in further detail in chapter 3.

3 Food Standards Amendment (Truth in Labelling Laws) Bill 2009.

4 Mr Richard Mulcahy, AUSVEG, *Proof Committee Hansard*, 30 October 2009, p 61.

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.¹

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.²

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.³

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.⁴

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.⁵

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.

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.⁶

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.⁷

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.⁸

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.⁹

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.¹⁰

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.¹¹

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.¹²

3.23 The ACCC's view¹³ 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).

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.¹⁴

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.¹⁵

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.¹⁶

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.¹⁷

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.

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.¹⁸

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.¹⁹

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.²⁰

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.²¹

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.²²

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.

21 FSANZ, 'Country of Origin Labelling: Advice for Consumers', June 2006, p 2, 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.²³

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.²⁴)

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.²⁵

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.²⁶

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

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.²⁷

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.²⁸

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.²⁹

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.³⁰

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'.³¹

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

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.³²

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.³³

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

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.³⁴

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.³⁵

"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.³⁶

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.

34 Senator Kerry O'Brien, 'Labor's Plan for Primary Industries', 19 November 2007, p 9, http://www.alp.org.au/download/now/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/now/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 (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.³⁷ 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.³⁸

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.³⁹

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.

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.⁴⁰

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.⁴¹

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.

Chapter 4

Views on the bill

Support for the bill

Consumer support for 'buying Australian'

4.1 In 2007, the Australian Made, Australian Grown Campaign commissioned Roy Morgan Research to conduct a survey of Australian consumer sentiment on 'buying Australian'. Key findings included:

- 89 per cent of consumers believe it to be 'very important' or 'important' that the fresh food they buy is Australian;
- 82 per cent of consumers believe it is 'very important' or 'important' that the processed food they buy is Australian;
- 74 per cent of consumers say that one of the reasons for buying Australian Grown is to 'support local farmers, fishermen and businesses'; and
- the most common reason for buying imported rather than Australian is 'Australian produce not available' (46 per cent).¹

4.2 A 2005 Auspoll survey found that 89 per cent of consumers believed that a food product labelled "Made in Australia" with most of the food grown overseas but packaged in Australia was misleading. 84 per cent also believed the label "Made in Australia from local and imported ingredients" was misleading when most of the food was grown overseas.²

4.3 The Horticulture Australia Council quoted a 2009 survey showing that 82.5 per cent of shoppers checked 'most of the time' whether fruit and vegetables in supermarkets were Australian grown.³

4.4 Some consumers may also be motivated to buy locally grown and produced food, recognising the environmental (or 'carbon footprint') impact of the transportation of imported food.⁴ Others may have concerns about the safety of imported food.⁵

1 Australian Made, Australian Grown Campaign, 'Australian research', <http://www.australianmade.com.au/research> (accessed 28 September 2009).

2 AUSVEG, *Submission 7*, p 5.

3 Horticulture Australia Council, *Submission 5*, p 3.

4 Senator Brown, Second Reading Speech, *Senate Hansard*, 20 August 2009, p 5498; see also *Submission 31* from Slow Food Melbourne.

5 See *Submission 28* from the Hon. Dr Bob Such JP MP for a range of labelling law issues.

4.5 The sponsors of the bill argue that consumers have a right to clear, unambiguous labelling as to the origin of a food product:

The first issue Australians want to know is whether the food comes from an Australian farm or what proportion comes from an Australian farm. Secondly, was the product fully manufactured in Australia or what proportion was manufactured in Australia? Australians want the choice, but they can't make the choice without clear information to identify the origin of the products we purchase and consume and what portion of that product is attributed to Australian processing.

Currently we have the capacity to advise expiry dates and daily price changes which is appropriate. We are bombarded with a myriad of information about the nutritive content of products and their relative ingredients, but what we want to know is whether the product came from Australia, which is not clear.⁶

4.6 At a public hearing, Riverina Citrus brought to the attention of the committee a Goulburn Valley orange juice, showing an FJ Holden ute on the front of the label, but with the statement "made in Australia from premium imported concentrates" on the back:

Senator JOYCE—When people stick an FJ ute on the label, do you think they are cognisant of the fact that people want to buy Australian, that they want to support Australia?

Mr MacDonald—I think that is a very good point. A couple of submissions ... make this very peculiar point. They bring up some polls from research from years gone by saying that it does not make any difference if something is Australian made ... But then you see that manufacturers very obviously think it is important. You would not put an FJ Holden on the front of an orange juice bottle if you did not think it was going to change behaviour.⁷

Need for greater transparency in labelling laws

4.7 The consumer group, CHOICE, argued that the current array of labelling claims on food products is extremely confusing. Consumers are faced with claims such as "Manufactured in Australia", "Made in Australia from local and imported ingredients", "Made in Australia from imported and local ingredients" and "Australian owned"—each referring to a different aspect and degree of "Australian-ness." CHOICE notes there are also endorsement campaigns and logos such as "Australian Grown" and "Ausbuy" and that many consumers do not fully understand the fundamental differences between these claims.⁸

6 Senator Joyce, Second Reading Speech, *Senate Hansard*, 20 August 2009, p 5499.

7 *Proof Committee Hansard*, 30 October 2009, p 32.

8 CHOICE, *Submission 6*, pp 3–4. See also *Submission 15* from Mr Geoff Fowler.

4.8 The Horticulture Australia Council gave the example of macadamia nuts to demonstrate the current ambiguity of labelling standards:

Most Australians know macadamia nuts are indigenous to this country. A “reasonable person” would assume that a packet of macadamia nuts with a ‘Made in Australia’ label means that the nuts were grown here, and packaged here. Indeed the previous Australian HomeGrown campaign highlighted that the large majority of consumers in fact **assume** that the majority of foods (fruit, nuts, vegetables, and meats) are currently grown in Australia.

Under the current standards, however, it is entirely possible that the nuts were imported from Hawaii (the Chinese know macadamias as ‘Hawaii nuts’), and it was only the value-add of more than 50% (eg fancy packaging), undertaken in Australia which entitled the end product to be labelled ‘Made in Australia’.⁹

4.9 AUSVEG asserted that existing laws currently undermine key economic principles, including that which states that the closer the consumer gets to having perfect knowledge, the more efficiently the market will operate:

... Inadequate or inaccurate labelling has resulted in market failure and distorted signals from consumers to producers ... The true nature of demand is unclear, producers misallocate resources, consumer economic utility is denied, and ... the economic efficiency of the market is undermined.¹⁰

4.10 Mr Richard Mulcahy, CEO of AUSVEG, told the committee that ultimately, consumers have a certain belief about what "Made in Australia" should mean:

Mr Mulcahy—...Consumers are not ... at all comfortable with the idea that ‘made in Australia’ should mean most of it is made in Australia ... I think it tends to reinforce the strength of the amendment—that this is what a reasonable person would assume. I think that for manufacturers to say that consumers do not understand these things underrates the perceptiveness of consumers.

Senator XENOPHON—It is a bit disingenuous.

Mr Mulcahy—Yes. I think they, more than anyone, know that with new product launches and the like consumers are extremely discerning in terms of a product’s taste, flavour and so forth. There is a suggestion that they simply may not understand what ‘made in Australia’ means. I think they may not understand the way it is being applied, but I think they would be very clear on what they assume the intent of that statement on a can or package would mean.¹¹

9 Horticulture Australia Council, *Submission 5*, p 4.

10 AUSVEG, *Submission 7*, p 4.

11 *Proof Committee Hansard*, 30 October 2009, p 62.

4.11 AUSVEG and Riverina Citrus also rejected any suggestion that their calls for greater transparency in food labelling are really a disguised form of trade protection.¹² They did not suggest that consumers should be forced to buy Australian produce:

Rather, what AUSVEG strongly supports is a greater degree of clarity, accuracy, and transparency ... so that consumers are able to make informed decisions as to whether they want to buy Australian grown products or not ...¹³

4.12 Riverina Citrus commented that requiring a percentage of imported and local juice to be clearly shown on a label:

...will not have grocery executives and processor executives leaping out of tall buildings or leaving Australia on leaky boats. It is still doable and simple.¹⁴

Views of unions

4.13 Although not making a submission to this inquiry, the Australian Manufacturing Workers' Union (AMWU) has in the past called for an overhaul of country of origin food labelling, arguing that local food industry workers are disadvantaged by the current misleading and confusing system. Tougher labelling requirements should include:

...the capacity for customers to clearly understand the origin of the goods purchased and whether the goods have been manufactured in an environmentally acceptable manner and that the workers producing the goods have been treated fairly and equitably and, at least, in a manner consistent with International Labour Organisation conventions.¹⁵

Supermarket house brands

4.14 The AMWU has also suggested that supermarkets are using loopholes to label produce as being packaged in Australia, despite the contents coming from overseas.¹⁶

4.15 AUSBUY, which represents Australian-owned companies, also highlighted the trend towards house brands in supermarkets:

12 Riverina Citrus, *Submission 24*, p 2; AUSVEG, *Submission 7*, p 5.

13 AUSVEG, *Submission 7*, p 5.

14 Mr Scot MacDonald, Riverina Citrus, *Proof Committee Hansard*, 30 October 2009, p 29.

15 Australian Manufacturing Workers' Union, Submission to the ACCC Grocery Inquiry, 12 March 2008, p 8, [http://www.accc.gov.au/content/item.phtml?itemId=812958&nodeId=28f69a7c01dfd83817ca15b881b07251&fn=123%20\(late%2012%20Mar\)%20-%20Australian%20Manufacturing%20Workers'%20Union%20\(11%20pages\).pdf](http://www.accc.gov.au/content/item.phtml?itemId=812958&nodeId=28f69a7c01dfd83817ca15b881b07251&fn=123%20(late%2012%20Mar)%20-%20Australian%20Manufacturing%20Workers'%20Union%20(11%20pages).pdf) (accessed 28 September 2009).

16 ABC Rural News, 'Union fight looms over food labelling', 8 July 2005, <http://www.abc.net.au/rural/content/2005/s1410075.htm> (accessed 28 September 2009).

Increasingly we see house brands replace Australian owned products ... These say "Made in Australia" e.g. tins of fruit, but do not indicate whether the fruit is local or imported. The company name is usually the local retailer with no reference to the source of the ingredients.

Currently local growers and manufacturers who supply the product and contract manufacture are being increasingly excluded from house brand business with no changes made to the labels to show changes in source of supply.¹⁷

4.16 CHOICE's submission put forward similar concerns from consumers:

My supermarket carries far too many house brands, many of which are sourced from overseas, and insufficient Australian brands ...

Generic products are very low priced and therefore tempting to purchase rather than usual brand ... especially Australian made ...¹⁸

Foreign ownership

4.17 AUSBUY, while supportive of the bill's intent, called for it to go further, with a requirement for food labelling to indicate Australian ownership. AUSBUY's submission drew attention to the diminished strategic position of the food industry in Australia, with increasing acquisition of major brands by foreign companies and consequently more profits going offshore. Deceptive labelling allows companies to maximise profit while hiding true ownership, AUSBUY argued.¹⁹

4.18 Ms Lynne Wilkinson, the CEO of AUSBUY, cited the recent example of National Foods, owned by Japanese company Kirin, selling Dairy Farmers branded products with the misleading labels 'Australian made and owned' when this was no longer the case. She also mentioned the US company Heinz, which recently acquired Golden Circle; AUSBUY claimed that 'Australian made and owned' still appears on Golden Circle products.²⁰

Criticism of the bill

4.19 The Australian Food and Grocery Council (AFGC) has led food manufacturers' opposition to the bill, asserting that the proposed reforms could make it more difficult for "Australian Made" products to compete and that the calls for stricter labelling were short-sighted and unnecessary.

17 AUSBUY, *Submission 17*, pp 6–7.

18 CHOICE, *Submission 6*, p 4.

19 AUSBUY, *Submission 17*, p 3.

20 Ms Lynne Wilkinson, AUSBUY, *Proof Committee Hansard*, 30 October 2009, p 43.

Little consumer demand

4.20 Several submitters argued that there is no evidence of market or regulatory failure in the area of food labelling. The Australian Dairy Industry Council, the AFGC and Coles all argued that consumers' primary concern is the price and quality of a product, not its provenance, suggesting that consumers are not willing to pay a premium price for Australian products over imported products. Coles quoted from a 2006 Centre for Economics Consumer Research Cost Benefit Analysis:

...which found that only "10 per cent of consumers value [country of origin labelling] information as highly important."

In addition, our internal Customer Care data has shown that our [country of origin labelling] is not a significant issue of concern for our customers with less than 0.3% of all customer enquiries received over the past 12 months about [those] issues and even less about the use of "Australian Made" on products with imported content.²¹

4.21 Similarly, Nestle stated that 0.25 per cent ('a very small number of consumers') of the 100 000 calls and inquiries to its consumer care line over the last 12 months related to country of origin labelling.²²

4.22 (In response, Riverina Citrus argued that the argument put forward by opponents of the Bill's intent is contradictory – on the one hand it is said that changes to labelling will have little impact on buyer behaviour, while on the other, it is also argued that the suggested changes to labels will cause significant job losses.)²³

4.23 The AFGC also argued that the proposed bill would 'totally destroy Australian manufacturing' because it would prevent acknowledgement on labels of processing undertaken in local factories by Australian workers:

Coca-Cola import concentrate but they employ 4,000 Australians in a range of different manufacturing facilities. Bottles and a whole range of things are made in Australia. I hope we are not going to suggest that, because Coke concentrate is made centrally—it is made in only a few places in the world—Coca-Cola cannot be 'made in Australia'. That is my view.²⁴

Consumer education

4.24 While stating that 'from an industry perspective, the current laws are workable'²⁵, the AFGC did acknowledge that consumer understanding of the meaning of current country of origin food labels was low. Instead of making further changes to

21 Coles, *Submission 13*, p 2.

22 Mr Peter Kelly, Nestle, *Proof Committee Hansard*, 30 October 2009, p 4.

23 Riverina Citrus, *Submission 24*, p 2.

24 Ms Kate Carnell, AFGC, *Proof Committee Hansard*, 30 October 2009, p 12.

25 Ms Kate Carnell, AFGC, *Proof Committee Hansard*, 30 October 2009, p 8.

labelling rules through legislation, manufacturers argued that the best way to address consumer confusion was through community education campaigns.²⁶

Seasonality and compliance costs

4.25 The AFGC, National Foods, the Australian National Retailers Association and the Australian Dairy Industry Council all argued that the Bill, if passed, would place an additional compliance burden on industry, the costs of which would necessarily be passed on to consumers.

4.26 To ensure a constant supply of a processed product, it is often necessary to import certain ingredients when they are out of season in Australia. The Australian Beverages Council gave evidence that Australian consumers drink more orange juice than can be supplied by Australian orchards. The Council stated that the current juice labels which state "Made in Australia from local and imported ingredients" allowed producers to account for seasonal produce and demand that was greater than supply.²⁷

4.27 Nestle stated that it recently imported its oat supply for one season from Canada for its Uncle Toby's oats because of local drought conditions. It was argued that any requirement to change labelling to accommodate such unforeseen seasonal variations in supply would be burdensome. Having around 2 500 packs in its product range, Nestle said that the cost of changing each of those packs, depending on materials used, would be between \$200 and \$1 000.²⁸

4.28 Manufacturers asserted that the requirement in the bill to state whether or not there are imported ingredients in a food product would require multiple labels for different times of the year. With such complications, manufacturers and retailers argued that there would be greater scope for accidental mislabelling and an escalation in the risk of product recalls.²⁹

4.29 The suggestion that a label showing the average percentage content of imported juice in a product over a whole year was rejected by the AFGC, which stated that:

This is effectively defeating the purpose of [the bill] 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.³⁰

26 Ms Carnell, AFGC, *Proof Committee Hansard*, 30 October 2009, p 4.

27 Mr Geoff Parker, Australian Beverages Council, *Proof Committee Hansard*, 30 October 2009, p 3.

28 Mr Kelly, Nestle, *Proof Committee Hansard*, 30 October 2009, p 4.

29 Australian Food and Grocery Council, *Submission 9*, pp 5–6.

30 Australian Food and Grocery Council, *Submission 9*, p 5.

4.30 Growcom and the National Farmers' Federation (NFF) also expressed concern about the increased regulatory burdens of a stricter labelling regime, which could in turn have negative effects on growers. As price takers, fresh food producers may have to accept a lower price from manufacturers. Growcom suggested that the costs of any new scheme should be shared equally throughout the supply chain and that government could assist with funding if required.³¹

4.31 The NFF told the committee that it was broadly supportive of efforts to improve truth in labelling:

Indeed, we believe that Australian farmers should have every opportunity to capitalise on their reputation as being one of the world's best suppliers of clean, green and quality food produce, and generate premiums for this reputation wherever possible.³²

4.32 However, the NFF remained cautious about the proposed legislation, noting that any requirement to modify labels on a seasonal basis may:

...provide a disincentive to utilise any form of Australian labelling and, in doing so, devalue some of the benefits of striving for an Australian grown point of difference.³³

Response to the 'cost burdens' argument

4.33 However, the Horticulture Australia Council and AUSVEG found the cost argument unconvincing. They argued that changes to labels were simply an ongoing cost of doing business:

It must be borne in mind that manufacturers seem very willing to undergo the 'pain' of such re-printing/re-tooling where they perceive a benefit (for example, adding claims such as 'Good source of folate', 'NEW!!', '20% more FREE!' or 'GI of x' to labels.³⁴

4.34 AUSVEG also described to the committee the raft of overheads with which Australian producers are required to comply, including: occupational health and safety requirements; the award structure; quality assurance programs and certifications; regulations around the use of chemicals; and inspection processes—noting that offshore competitors would not be required to adhere to such strict regimes:

Senator JOYCE—It must be frustrating, then, when someone says they have a big concern about the increase in overheads they would have if they changed their artwork to represent on the packaging of their product what proportion comes from Australia—the country that puts all those overheads

31 Growcom, *Submission 2*, p 4.

32 Mr Charles McElhone, National Farmers' Federation (NFF), *Proof Committee Hansard*, 30 October 2009, p 35.

33 Mr McElhone, NFF, *Proof Committee Hansard*, 30 October 2009, p 35.

34 Horticulture Australia Council, *Submission 5*, p 5.

on you, apparently for the betterment of the Australian people—you cannot represent on products sold to the Australian consumer how much of it is actually from Australia.

Mr Mulcahy—Yes, I think it is a fallacious defence.³⁵

4.35 Riverina Citrus also suggested that it was disingenuous for manufacturers to claim that changing labels would be too difficult, given the stringent compliance requirements currently demanded by processors of primary producers:

We as a packer are required to put on it exactly how much is packed and where it is from, and we must have traceability. When our fruit arrives in the US market, they will be able to quote us the number or the bar code on the box, and we must have the traceability all the way back to be able to find out which grower that fruit in the box came from—and his spray diary has to be kept at hand. We have to follow such strict guidelines, and we cannot see why the manufacturers seem to say that it is too difficult, when they are the ones pushing us to have such a high degree of traceability. We find that very unusual. All our labels have to be printed with all that information, so I cannot see why they have difficulty doing in it.³⁶

4.36 AUSBUY also found the compliance cost argument to be a 'lame excuse'. Referring to a bottle of flavoured milk, Ms Wilkinson commented:

It is a fast-moving consumer good. You have got volumes in labelling. Given the volumes in which they are produced, the labels would cost no more than 5c to produce. It is a brand. Brands are sacred. Marketing departments really push brands. You have only got to see what Dairy Farmers have done. Dairy Farmers changed their 'owned and made' packaging over to 'National Foods'. They have now got a huge campaign showing the cows and the farmers walking along. They have spent more money on their advertising campaign, repositioning the brand of Dairy Farmers without even a mention of who owns them, than they would have spent on redoing the artwork.³⁷

The bill's inconsistency with food standards setting process

4.37 A number of submitters pointed out that the bill is inconsistent with food standards setting arrangements in Australia. The Department of Agriculture, Fisheries and Forestry noted that the bill does not appear to align with the provisions of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act):

Draft food standards developed or amended by FSANZ must be assessed against the objectives contained in section 18 of the FSANZ Act, subject to a cost-benefit analysis in the form of a regulatory impact statement and notified for public consultation. They must also take into consideration any

35 *Proof Committee Hansard*, 30 October 2009, p 64.

36 Mr Bart Brighenti, Riverina Citrus, *Proof Committee Hansard*, 30 October 2009, p 30.

37 Ms Lynne Wilkinson, AUSBUY, *Proof Committee Hansard*, 30 October 2009, pp 47–8.

matters relevant to stakeholders. Once the assessment and consultation process is complete and a draft food standard is approved by the FSANZ Board, it is reviewed by the Australia and New Zealand Food Regulation Ministerial Council.³⁸

4.38 The AFGC, National Foods and the Australian Dairy Industry Council have also criticised the bill on these grounds. The bill's intent appears to be the insertion of a clause into the Act which mandates that FSANZ develop and approve a new food standard on labelling. This essentially bypasses the established role of the FSANZ Board and the authority of the Ministerial Council in approving new food standards.³⁹

4.39 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:

The FSANZ Act, the Food Regulation Agreement and our treaty with New Zealand do not contemplate a process whereby the Commonwealth can unilaterally impose a law on the states, territories and New Zealand. This would require significant referral of powers from the states and territories and New Zealand.⁴⁰

4.40 The Consumers' Federation of Australia, while largely supportive of the bill's intent, stated that attempting to amend the FSANZ Act in this manner was not the best vehicle for effecting change:

Basically, the country of origin issues are very broad and complex. We suggest that they are taken up in the current food-labelling review. The provisions relating to juice are both valid and very specific. Those issues will probably be fairly mobile over time. My experience working on the standards project is that it is a good idea to consider the full range of regulatory responses when you are trying to resolve very specific consumer, producer and supplier concerns. By that I mean regulation and its important provisions; co-regulation through codes and standards that support or are called up in specific legislation, such as the Trade Practices Act; and voluntary and guidance standards, such as those that are produced by Standards Australia and Standards New Zealand.

38 Department of Agriculture, Fisheries and Forestry, *Submission 23*, p 1. See also Mr James Gruber, *Submission 3*, p 1.

39 See for example: Australian Dairy Industry Council, *Submission 8*, pp 7–8; Food and Beverage Importers Association, *Submission 30*, pp 1–2; Government of South Australia, *Submission 33*, p 3.

40 Mr Stephen McCutcheon, FSANZ, *Proof Committee Hansard*, 30 October 2009, p 17.

The benefit of standards is that, with the right processes and support, they can enable good, strong consumer participation from the very outset in a consensus oriented approach.⁴¹

Inconsistency with the Trade Practices Act 1974

4.41 The ACCC told the committee that the bill, if passed, could create an unusual circumstance, with a requirement for food labelling to meet a very specific threshold for an 'Australian' qualification, but without any changes to the TPA:

Mr Weymouth—...You could end up with a scenario where the ACCC would look through the trade practices prism and ask, 'Is this package being labelled in a manner that is misleading or deceptive?' The safe harbour tests say you are not in breach of misleading conduct if the product has been substantially altered in Australia—50 per cent. So you might pass the ACCC trade practices test but in fact not have complied with the potentially new requirement that is being spoken about here for food only.

Senator HANSON-YOUNG—So are you suggesting that, if we were going to be talking about, as the bill suggests, redefining what those definitions are, it would be simpler and clearer to ensure that that happened across the board for all products? I am not necessarily saying you are endorsing the idea. Is your point that the Trade Practices Act would have to adopt a new definition as well?

Mr Weymouth—For consistency, there are two ways forward. One would be that you would have a rule for food. The Trade Practices Act would then have a very unusual, quite product-specific rule in it, which is not typical of the act's structure. Or you would change the whole safe harbour provision in the Trade Practices Act, which could have consequences that have not been thought of at all in terms of general manufactured goods.⁴²

Committee view

4.42 The committee is of the view that the primary and insurmountable problem with this bill is its inconsistency with the current food standards setting arrangements. 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. Therefore, 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.

41 Ms Jo Higginson, Consumers' Federation of Australia, *Proof Committee Hansard*, 30 October 2009, p 67.

42 *Proof Committee Hansard*, 30 October 2009, p 52.

Other issues

4.43 A number of submitters to this inquiry have also proposed that the bill should be specifically amended to include the mandatory labelling of palm oil in the ingredients list on food products. It is claimed that palm oil production (often labelled as vegetable oil) contributes to significant deforestation and destruction of orang-utan habitat in Indonesia and Malaysia.⁴³

4.44 On 23 November 2009, Senators Xenophon, Joyce and Brown introduced into the parliament the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009 in response to these particular concerns.

43 See, for example, submissions from Humane Society International, Zoos Victoria, Royal Zoological Society of South Australia, Perth Zoo, World Wildlife Fund, Friends of the Earth, Palm Oil Action Group, The Australian Orangutan Project.

Chapter 5

Comments on specific aspects of the bill

100 per cent rule

5.1 Clause 16A(1)(a) states that a label may only use the word "Australian" on or in relation to the relevant food if it is 100 per cent produced in Australia.

5.2 The CEO of the Australian Food and Grocery Council (AFGC), Ms Kate Carnell, argued that this aspect of the bill was overly simplistic and populist, as it would not take into account the raw materials and additives (such as colourings, preservatives and flavourings) in processed food that are often only available from overseas sources. For example:

If we look at iconic Australian companies we can use a South Australian example, Haigh's Chocolates. You may have noticed that we do not grow too much cocoa in Australia; the climate is not quite right. So, for the vast range of chocolate products, such as chocolate ice cream, chocolate milk and so on ... the fact is that 100 per cent of the product is not from Australia so could not bear, in the words of the bill, 'the word "Australian"'. Bickford's, an old South Australian company, uses products that are made in Australia and products that are imported—products like citric acid, which is used broadly in manufacturing and not made in Australia. Those of you who do any cooking will know that in the essence section of supermarkets there is a range of Queen essences. Queen has been an Australian company for over 100 years. They manufacture in Brisbane. Even the little bottles and labels are manufactured in Brisbane. They have been around for a long time. They told me that they would not be able to say that any of their products that they could think of were made in Australia.¹

5.3 The dairy industry argued that its products would be severely disadvantaged were the bill to become law, resulting in a lack of recognition of Australian dairy products in both local and international markets:

The implications for the dairy industry are that only some white milks will be able to carry the Product of Australia label. It will effectively exclude all cheeses, natural/unflavoured yogurts and most dairy desserts that can currently make the claim. This would mean that most dairy products containing milk produced in Australia by Australian dairy farmers and converted into Australian dairy products in Australian factories employing Australian workers would not be able to claim Australian origin.²

1 Ms Kate Carnell, Australian Food and Grocery Council, *Proof Committee Hansard*, 30 October 2009, p 2.

2 Australian Dairy Industry Council, *Submission 8*, p 3.

5.4 Simplot told the committee that the 100 per cent rule would hurt its business, as it would not be able to sell processed products with minor imported ingredients to overseas markets with an Australian declaration on the label:

We like to promote 'Australian' wherever we sell our products, whether it is New Zealand, whether it is Asia or whether it is anywhere else in the world. 'Australian' has some strength and we definitely want to be able to support that market. A number of countries look for the Australian logo on our products ...³

5.5 An unintended consequence of the 100 per cent rule may be that such tough requirements could provide an incentive for manufacturers to use only imported products, as argued by the AFGC. The National Farmers' Federation also shared this concern. National Foods, however, suggested that the opposite could occur, but that this could create further supply issues 'as manufacturers will all attempt to source ingredients from an even smaller pool of suppliers, the ultimate result being a lack of supply of finished products to consumers'.⁴ Riverina Citrus said there was no evidence that processors would be forced to source a greater share of their supply from offshore.⁵

5.6 The 100 per cent rule has also been criticised as unworkable and potentially counter-productive, even by those who support the bill's broad intent.

5.7 AUSVEG stated that any changes to food labelling laws should recognise the complexity of food processing and should not disadvantage producers on a technicality. Growcom was concerned that banning any product that is not 100 per cent local from using the word "Australian" could give the impression that products that are 99 per cent local are actually 100 per cent imported:

An example from the horticulture industry is potato wedges made from 100 per cent grown Australian potatoes, with some imported flavourings or oils. Under the proposed bill, this product could not have the word "Australian" on its label.⁶

5.8 CHOICE also suggested that the 100 per cent rule goes too far:

Australian consumers would not be able to support local manufacturers and workers by choosing products that are made in Australia, particularly when there are no equivalent products that meet the higher hurdle set out in the "Product of Australia" provisions.⁷

3 Mr Philip Corbet, Simplot, *Proof Committee Hansard*, 30 October 2009, p 5.

4 National Foods, *Submission 16*, p 5.

5 Riverina Citrus, *Submission 24*, p 1.

6 Growcom, *Submission 2*, p 3.

7 CHOICE, *Submission 6*, p 5.

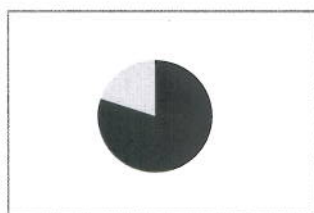
5.9 Dick Smith Foods argued that the 100 per rule was impractical, noting that its own slogan is 'As Australian as you can get':

Put simply, this means we have endeavoured to use as many Australian ingredients as possible, however in some cases, through absolute necessity, there may be some very minor foreign element due to lack of availability of an alternative. Under the current amendment, we would not be able to call the product Australian. Whilst this would be the same for other brands of the same product, you must acknowledge that in the absence of there being a 100% Australian content product, the consumer would be best served by being informed of the next best thing, i.e. the product with the highest possible Australian content.⁸

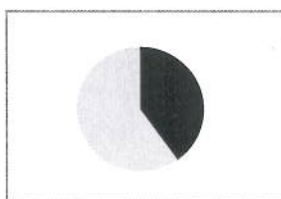
5.10 Dick Smith Foods suggested that the way to address this would be to provide a label which says "X% Australian product; Y% Australian owned."

5.11 Senator Joyce raised a similar suggestion during the public hearings—a proposal to show a mandatory diagrammatic representation of proportionality in the form of a pie chart or 'gold disc', indicating the percentage of Australian product and the percentage of Australian manufacturing value (and/or Australian ownership). For example:

Australian content



Australian ownership



5.12 Responses to this proposal varied. While the AFGC and the NFF were reluctant to comment on the merits of such a proposal, which was not included in the current bill, Riverina Citrus commented that a 'visual and graphic' symbol such as that would be useful for most consumers.⁹ AUSVEG was also supportive of such a representation.

5.13 McShane's Produce, a Queensland family-owned farming enterprise, suggested the following label¹⁰, arguing that there would be much less scope for manipulation with such a requirement:

8 Dick Smith Foods, *Submission 4*, p 1.

9 Mr Scot MacDonald, Riverina Citrus, *Proof Committee Hansard*, 30 October 2009, p 30.

10 McShane's Produce, *Submission 11*, p 3.

Contents		0%	25%	50%	100%
75%	Wheat Bran	Aust		USA	
21%	Wholegrain oats	Aust			
	Sugar	Aust			
	Malt Extract (Barley)	Canada			
	Minerals(calcium Carbonate,Iron)	Germany			
	Salt	China			
	Vitamins (Niacin,E,Bi,3-carotene)	Germany			
	Processed	Aust			
0%	Genetically modified organisms				

Sample label

5.14 The Australian Made, Australian Grown (AMAG) Campaign told the committee that the 100 per cent rule would be too exclusionary and unrealistic, and that a better threshold for the use of the word "Australian" would be 90 per cent of the product by weight. This definition was determined by a government and industry working party in 2007 and appears in the AMAG Code of Practice under Rule 18. Those who wish to use the green and gold AMAG licensed logo on their products can currently qualify under the 90 per cent by weight definition.¹¹ For example, a manufacturer could state "Australian Grown peas and corn" on a packet of frozen vegetables which may have some minor imported seasonings or coatings.¹²

5.15 Mr Ian Harrison, CEO of AMAG, was somewhat critical of Senator Joyce's proposal for a mandatory pie-chart showing proportionality, suggesting that to put another 'brand' or symbol into the marketplace was unnecessary, given the high level of recognition amongst consumers of the stylised green and gold kangaroo AMAG label.¹³

Requirement to state imported content

5.16 Clause 16A(1)(b) states that food that contains one or more imported ingredient must display this fact in letters of 15mm on the front label.

5.17 There was more support for this requirement from a number of submitters, including Australian Pork Limited and the Australian Made, Australian Grown Campaign.¹⁴ The Horticulture Australia Council noted, however, that the word 'imported' without a specification of an actual country of origin is not very useful.

11 Mr Ian Harrison, Australian Made, Australian Grown Campaign, *Proof Committee Hansard*, 5 October 2009, p 4.

12 Australian Made, Australian Grown Campaign, *Code of Practice*, May 2007, p 8.

13 Mr Ian Harrison, Australian Made, Australian Grown Campaign, *Proof Committee Hansard*, 5 October 2009, p 8.

14 See Australian Pork Limited, *Submission 14*, p 10; Australian Made, Australian Grown Campaign, *Submission 1*, p 4.

5.18 The Consumers' Federation of Australia told the committee that this clause was inadequate as it would not mandate the provision of enough relevant information:

Consumers are looking to find out where the imported ingredient comes from. For example, do the imported tomatoes come from Romania or Poland or is the orange juice imported from Spain or the USA. Just listing an ingredient as being imported does not provide this information, which in many cases is what the consumer really wants to know. Some consumers have indicated they do not want to consume products or ingredients coming from a particular country but unless this information is available to them via the label they have no means of making that choice. While the authorities maintain that there is no problem with ingredients such as additives and levels of pesticides and other chemicals in food produced or manufactured in this country—and most consumers probably accept that—they are not so believing of the same for imported products. Recent incidents, such as contamination, particularly from China, have led to this distrust.¹⁵

5.19 However, the AFGC and the Australian National Retailers Association argued that the requirement proposed in the bill could itself lead to a misleading impression being given to consumers. With the emphasis on imported content on the front of a product, even for one minor ingredient, consumers may be led to believe that the entire product is imported when that may not be the case.¹⁶

5.20 Coles also pointed out that the 15mm font was excessive. Its submission contained the following example of this font size on a can of salmon¹⁷:



Requirements for juice

5.21 Clause 16A(1)(c) states that for juice, the inclusion of concentrate and/or the percentage amount of imported ingredients must be displayed on a front label in 25mm font. Clause 16A(1)(d) requires that any drink derived from orange skins should not be described as orange juice.

5.22 Dick Smith Foods stated that the percentage amount of imported ingredients should be displayed on all food products, not just on juice.¹⁸

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

16 Australian National Retailers Association, *Submission 27*, p 3.

17 Coles, *Submission 13*, p 3.

18 Dick Smith Foods, *Submission 4*, p 2.

5.23 Manufacturers and retailers again highlighted the excessive font size mandated by this clause.¹⁹ Riverina Citrus agreed there may be some merit in the argument that the font size will distort existing labels.²⁰

5.24 National Foods argued that there is already a requirement to state the inclusion of concentrate and the presence of fruit skins in the Food Standards Code and that stating a percentage of imported product is also unnecessary.²¹ Riverina Citrus disagreed, saying it was not credible for National Foods to say there is no additional benefit to be gained from stating the percentage of imported product.²²

5.25 The committee heard from Riverina Citrus that imported concentrate was often mixed with fresh Australian juice:

Senator XENOPHON—So why is it that we are told by some of these big manufacturers that we have to bring in Brazilian concentrate when we can freeze and store our juice?

Mr Brighenti—That is really not an argument. We also grow mid-seasons. There are new varieties out there which actually carry the juicing variety right through. So that really is not an issue.

Senator XENOPHON—Is it because they are trying to save a buck? They pass it off, as Senator Joyce has pointed out, as made in Australia, but virtually all of it could be a foreign concentrate. Look at the marketing advantage.

Mr Brighenti—That is correct. Most Australian juice is used in fresh juice, not concentrate. The fresh juice is added to concentrate in the largest selling lines to give it a better flavour and make it more palatable. That is where they use a lot of our fresh juice—to make the concentrate taste better. They use the concentrate as a cheaper alternative to bulk it up. Consumers really should be able to see how much is in there, because we are talking about a premium product compared with the cheap concentrate. We find it very unusual that consumers are not able to judge orange juices by how much fresh orange juice is in it against how much concentrate is in it.²³

19 Australian Food and Grocery Council, *Submission 9*, p 4.

20 Riverina Citrus, *Submission 24*, p 2.

21 National Foods, *Submission 16*, p 8.

22 Riverina Citrus, *Submission 24*, p 2.

23 *Proof Committee Hansard*, 30 October 2009, p 33.

Exclusion of packaging from calculation of Australian content

5.26 Clause 16A(1)(e) states that the percentage of Australian content of a product should not take into account the product container or label.

5.27 Some primary producers expressed support for this amendment.²⁴ However, Dick Smith Foods did not support this clause and posed the question: are Australian packaging and printing industries any less worthy of support than Australian farmers?²⁵

5.28 The AFGC and National Foods argued that this provision would give licence to manufacturers to import packaging materials from cheaper offshore markets.²⁶

Committee view

5.29 '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. However, 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.

5.30 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.

5.31 Moreover, 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 this area. As discussed in chapter 4, the bill's requirement for 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) would be highly undesirable. As noted in chapter 3, the current labelling review which is being overseen by the Australia and New Zealand Food Regulation Ministerial Council is the appropriate forum in which to pursue a broad range of reforms, including country of origin labelling.

24 See Growcom, *Submission 2*, p 3; McShane's Produce, *Submission 11*, p 3.

25 Dick Smith Foods, *Submission 4*, p 2.

26 Australian Food and Grocery Council, *Submission 9*, p 5; National Foods, *Submission 16*, p 7.

Recommendation 1

5.32 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.

Senator Annette Hurley

Chair

Minority Report by Senators Joyce, Bob Brown and Xenophon

Introduction

- 1.1 This inquiry was established to assess the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 introduced to the Senate on 20 August 2009 by the Leader of the Nationals in the Senate, Senator Barnaby Joyce, Leader of the Australian Greens, Senator Bob Brown and Independent Senator Nick Xenophon.
- 1.2 The Food Standards Amendment (Truth in Labelling Laws) Bill 2009 is designed to require Food Standards Australia New Zealand in its authority to develop and approve certain food labelling standards regarding the use of the word "Australian" on packaging and also to require greater detail of the country of origin of ingredients used in food products.
- 1.3 The Amendment seeks to provide consumers with greater truth in labelling and to remove any possibly misleading or deceiving claims about the product, where it's been produced and where the ingredients come from.
- 1.4 As stated by consumer advocate, CHOICE, in its submission to the Committee:

"Public debate about country of origin of food and consumer feedback ... suggests that Australian consumers want to be able to identify Australian products. They need food labels to give them the information they need to make purchasing decision that support Australian farmers, Australian manufacturers and Australian workers. This does not mean that consumers will always purchase a product that is "Made in Australia" or a "Product of Australia" when it is available, but they do want to be able to confidently identify them when they do exist."¹
- 1.5 For example, under these current regulations, a meat pie could be labelled as "Made in Australia" when in fact none of the meat within the meat pie comes from Australia.
- 1.6 Section 65AC of the Trade Practices Act 1974 currently 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,

¹ CHOICE, *Submission 6*, Pg 3

- all or virtually all, processes involved in the production or manufacture happened in that country.²

Further, Section 65AB 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 percent 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.³

- 1.7 In the case of a meat pie, therefore, despite the fact that the meat and the ingredients for the gravy might be imported, under current regulations, because the packaging, the pastry and the gravy of the meat pie has been "transformed" and/or combined in Australia, it can be marketed and sold as "Made in Australia".
- 1.8 This is just one example of how consumers are not being provided with clear and accurate labelling information to enable them to make an informed choice about the products they are purchasing.
- 1.9 The Horticulture Australia Council advised the Committee in its submission that Australian consumers have a number of reasons as to why they desire and demand truthful labelling.

"Consumers' reasons for desiring this information may vary (eg. health reasons, desire to support locally-grown produce or economies, religious requirements, the 'country of origin effect', perceptions of food safety, environmental or human rights considerations, etc.), but the outcome remains the same – clear labelling which removes imprecise or ambiguous terms from packaging."⁴

- 1.10 Further, the Bill is aimed at benefiting Australian producers whose livelihoods have been affected by cheaper ingredients imported from overseas, but which, under current regulations, can be labelled as "Made in Australia" as long as it has been substantially transformed and 50 percent or more of the cost of manufacturing the product has been in Australia.
- 1.11 Orange juice, for example, may be contained in a carton which has been made in Australia, wearing a label which has been printed in Australia and the juice company is Australian-owned, but the orange juice itself is made from orange juice concentrate imported from Brazil.

² Trade Practices Act 1974, *Section 65 AC*

³ Trade Practices Act 1974, *Section 65 AB*

⁴ Horticulture Australia Council, *Submission 5*, Pg 3

Under current regulations, this juice can be sold as "Made in Australia" because more than 50 percent of the cost of producing the juice was in Australia and the ingredients were "substantially transformed" here, from a concentrate into juice.

However, whether consumers recognise the distinction when they pick up this carton of juice that states "Made in Australia", is another question.

The use of the word "Australia" implies the food product – not the packaging – is Australian. It suggests that the juice is from Australian-grown oranges and in this way it is misleading.

- 1.12 This Bill seeks to address these issues, and requires that Food Standards Australia New Zealand (FSANZ) implement labelling standards which require manufacturers to provide consumers with clear and accurate labelling.
- 1.13 Manufacturers and some industry groups have argued against this Bill on the basis that the cost of implementing these changes would be significant. Further, it contends that the logistics of how labelling requirements would 'fit' on packaging is difficult in terms of font sizing.

However, while these may be practical concerns, the ultimate focus has to be on manufacturers providing Australians with relevant and truthful knowledge to enable them to make an informed choice about the foods they purchase and consume.

Australians want to buy Australian

- 1.14 Multiple surveys have confirmed Australians want to buy Australian products – products which use ingredients grown in Australia and which contribute to the Australian economy in the way of jobs.

According to a 2005 Auspoll survey, 97 percent of Australians wanted to have clear information on the country of origin of their foodstuffs.

A 2009 survey also found that 82.5 percent of supermarket shoppers checked if the produce was Australian-grown fruit and vegetables and foodstuffs "most of the time".⁵

- 1.15 The Australian Food and Grocery Council argued in its submission to the Committee that:

"Many consumers do not read the product label in detail every single time they purchase the product."⁶

⁵ Growcom, *Submission 2*, Pg 2

⁶ Australian Food and Grocery Council, *Submission 9*, Pg 7

But, according to CHOICE:

"A 2003 study commissioned by Food Standards Australia New Zealand found that 49 percent of consumers reported that they use country of origin information. Country of origin ranked as the fourth most commonly used labelling element behind use by and best before dates (85%), ingredients lists (66%) and nutrition information panels (66%)."⁷

Further, as Senator Joyce stated during the Senate Committee hearing:

Senator JOYCE—Do you believe that the punter on the street knows the difference between ‘processed in Australia’, ‘made in Australia’ and ‘produced in Australia’?

Mr MacDonald (Riverina Citrus)—No. It is very difficult for most consumers. I think something visual and graphic like that—

Senator JOYCE—They would understand that very quickly.

Mr MacDonald—...whether it be a bar graph, a pie graph or something else, would be useful for most consumers. Whether they choose to change their behaviour or not is entirely up to them.

Senator JOYCE—That is choice; they have the choice. But at least then they could be saying: ‘I actually want to buy stuff from the Riverina; I’m a supporter of farmers in the Riverina, so I’m prepared to pay 20c more to support Australian farmers and that is my choice. Tomorrow I may choose something different.’⁸

- 1.16 The intent of the Bill is to provide clear and accurate labelling to enable consumers to make informed purchasing decisions.

Independent Member for Fisher in the Parliament of South Australia, Mr Bob Such, stated in his submission:

"Ethical eating is a growing trend among conscientious consumers and the current situation regarding the labels "Made in Australia", "Product of Australia" or "Australian Grown" is deceiving consumers. When consumers buy Australian made products they believe they are supporting Australian producers and businesses, with the profits staying in Australia to support our economy and Australian jobs. These labels need revision and tighter definition."⁹

- 1.17 Indeed, the importance of labelling was demonstrated in 2005 when Country of Origin Labelling standards came into effect under FSANZ. However, this was only applied to fresh produce, seafood and pork and was not adopted for other meats or dry goods.

⁷ CHOICE, *Submission 6*, Pg 3

⁸ Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 30

⁹ Mr Bob Such MP, *Submission 28*, Pg 1

- 1.18 Mr Sean McShane from McShane's Produce in North Queensland wrote to the Committee and stated that:

"Consumers have a right to know where their food comes from. It is their choice. It is increasingly difficult to decipher exactly where the food in the can/package has come from. The package may have the kangaroo on it but that doesn't mean the food is Australian. Australian growers want an equal opportunity to compete on an equal market. The current labelling system does not allow this, as consumers are confused by the labelling into believing the product they are buying is Australian."¹⁰

- 1.19 Without clear and accurate food labelling, consumers remain confused, misled and unclear about what they're purchasing and eating.

"... consumers are faced with an array of claims on food labels including: 'Manufactured in Australia', 'Made in Australia from local and imported ingredients', 'Made in Australia from imported and local ingredients', and 'Australian Owned', each referring to different aspects of the product and a degree of 'Australian-ness'.¹¹

- 1.20 It was agreed that consumer education on this issue remains crucial to provide clarity around these statements, and this Bill seeks to assist in this provision of guidance.

- 1.21 Mr Geoffrey Parker, CEO of Australian Beverages Council Ltd, along with Ms Kate Carnell from the Australian Food and Grocery Council, argued to the Committee that the current use of the word 'imported' on labels already identifies the use of non-Australian ingredients.

However, as Senator Xenophon explained in the Committee hearing:

Senator XENOPHON—The complaint I get from Riverland fruit growers in my home state, Ms Carnell, is about having to compete against fruit juice concentrate from Brazil. The content is around 70 percent from overseas sources and it says 'made in Australia'. How is that reasonable?

Mr Parker—We have proposed that the label should say 'made in Australia', and, in that case, if the majority of it is from overseas, then it should say 'made in Australia from imported and local products'. The word 'imported' should be on the label first.

Senator XENOPHON—But you have no idea how much is local and how much is imported, have you?

Mr Parker—Just to reiterate the enforcement issue, as I mentioned at the start, that is why Fruit Juice Australia, has developed and administers its own code of practice—to plug that gap of enforcement.

Senator XENOPHON—Let us look at legislation, though. Let us look at what the ACCC says. It says that if a business makes an equivocal claim, a

¹⁰ McShane's Produce, *Submission 11*, Pg 2

¹¹ CHOICE, *Submission 6*, Pg 3

qualified claim, such as 'made in Australia from local and imported ingredients', you could have 90 percent concentrate from overseas and 10 percent local produce and it could still be passed off as made in Australia from local imported ingredients. It could be a fraction of Australian produce. Correct?

Mr Parker—Sure, yes.

Senator XENOPHON—Isn't that inherently misleading to consumers?

Mr Parker—Once again, it probably comes back to that consumer education strategy.

Senator XENOPHON—How do you educate consumers with that sort of labelling, which you seem to be happy with?

Mr Parker—If the majority of the concentrate comes from overseas, then the word 'imported' has to be there first and foremost.

Senator XENOPHON—We are none the wiser as to how much is imported, are we?¹²

- 1.22 Similarly, the Horticulture Australia Council in its submission to the Committee stated that leaving the labels up to interpretation does not provide consumers with any greater knowledge about the origins of the food they are consuming.

"...a label which refers to produce being 'imported' without specifying which country or countries that produce was imported from, adds nothing of value to the consumer to meet their information needs."¹³

- 1.23 This opinion was shared by Mr Richard Mulcahy, CEO of AUSVEG Ltd:

Mr Mulcahy—I am very much of the view that the consumer is very much inclined to take things on face value. When we see the term 'made in Australia', it is a reasonable proposition that any consumer would assume that product is in fact produced here locally. The fact that there is a glaring loophole in the current arrangements which enables operators, importers and manufacturers to sidestep what I think is a reasonable expectation is certainly a matter of concern. Until these matters are adequately addressed, while these loopholes exist they will be taken advantage of. It is not a case of us just wanting to protect the Australian industry, although we are obviously here to represent those interests. It is a reasonable position to ensure that consumers know the full picture when they purchase these products. If they choose to buy an imported product, so be it. But if they are unwittingly buying a product that they think is Australian but which is in fact not wholly sourced from within Australia that is taking advantage of consumers and is a matter that we would respectfully urge the committee to consider addressing.¹⁴

¹² Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 6

¹³ Horticulture Australia Council, *Submission 5*, Pg 4

¹⁴ Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 60

The not-so Aussie Meat Pie

- 1.24 The Australian Made Campaign, which seeks to promote the identification of Australian produce through its iconic green triangle logo and kangaroo, and which broadly supports the intent of the Bill, explained in its submission to the Committee that:

"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."¹⁵

- 1.25 Indeed, under these regulations, the iconic "Aussie" meat pie, for example, could be labelled as "Made in Australia", even if all of the ingredients are imported, which Nestle Australia Ltd and the Australian Food and Grocery Council conceded during the Senate Committee hearings.

Senator XENOPHON—Isn't the lack of understanding inherent in the current labelling laws when you have a situation where a product says 'made in Australia', which is a big, bold statement? Going back to the meat pie situation, under the substantially transformed rule there might not be any Australian meat in the pie; the packaging, the pastry and the gravy might all be made here but the meat might be imported. How is that fair to consumers?

Mr Kelly (Nestle Australia Ltd)—We have a number of factories in Australia, and we make stuff within the factories. It is made in Australia.

Senator XENOPHON—If I am a consumer and a meat pie is labelled 'made in Australia', shouldn't I expect that the meat in that pie is Australian?

Mr Kelly—If it says 'product of Australia' then you would.

Senator HEFFERNAN—Why does this package say 'processed in Australia'?

Mr Kelly—I would say that that package and the package that you held up before are wrong.

Senator JOYCE—What if it says 'made in Australia' but the pastry comes in one shipment from China, the mix comes in another shipment from Taiwan and the pepper comes in from Pepperville in India or wherever they make pepper, and it all arrives here and the final part is that they bang it together and put it in a plastic cover that came in from Thailand. Is that now 'made in Australia'?

¹⁵ Australian Made, Australian Grown Campaign, *Submission 1*, Pg 2

Ms Carnell (Australian Food and Grocery Council)—Not unless it is substantially transformed and more than 50 percent of the value was introduced in Australia.

Senator JOYCE—No, it was substantially transformed, because the meat came from one section, the pastry came from another section and the plastic came from another section. It was transformed from plastic and pastry and meat into a pie, and it all happened in a shed in Cabramatta. So that is now ‘made in Australia’.

ACTING CHAIR—I ask the panel: under those circumstances, would it say ‘made in Australia from imported ingredients’?

Ms Carnell—Yes.¹⁶

- 1.26 However, a number of Senators questioned the fairness of this during the Committee hearings, given the confusion facing consumers.

Senator HEFFERNAN—This box has a label saying ‘made in Australia’; it is Seaport frozen seafood. It came from a restaurant in Canberra that for five years was selling its prawns as southern Queensland farmed prawns. I went there and said, ‘I’ll have the prawns, thanks’—it was an hors d’oeuvre, pre the main meal—‘if you can tell me which farm they came from.’ They came back and said, ‘We can’t’. I said, ‘I’ll have them anyhow; they look pretty good.’ At 10 o’clock the chef came back and said, ‘I went out to the garbage and got the packet’. He had been buying them for five years. These are Indonesian prawns, but the package said ‘made in Australia’. Even the shop thought they were buying Australian farmed prawns, and they were selling them on the menu as Australian farmed prawns. That is ridiculous. This bottle of water, Aqua, has on it ‘Proudly Australian’. I do not know whether you have seen it in supermarkets; I think it has gone now. If you tip it on its side you will read ‘Product of China’. We import Chinese bottled water. This is water from China. I rang up the mob on the label and I said, ‘What’s Chinese about your water: the bottle, the cap?’ They said, ‘It’s wholly imported from China.’ It comes in at 28c—this is a couple of years ago—and wholesales for 38c as a loss leader and retails for \$2.50. It is bottled water from China, but the label says ‘Proudly Australian’. This bottle says Disney Channel; it turned up in my office. It has no labelling on it; we do not know where it comes from as it has nothing on it except its name, Disney Channel water. I presume it is legal if you do not sell it; they might give it away. I have no idea where it comes from. This bottle is called NEWater, a product of PUB, and it says ‘Water for All: Conserve, Value, Enjoy’. It is actually recycled sewage water from Singapore.¹⁷

- 1.27 Furthermore, by allowing manufacturers to continue to not identify the country of origin or the proportion of the ingredients which are imported on its label, food safety concerns of consumers cannot be allayed.

¹⁶ Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 10

¹⁷ Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 5

- 1.28 At the time of this inquiry, the Government announced it was considering relaxing BSE-import laws. Under the current labelling regulations, this could make it possible for meat from BSE-affected countries to be used in meat pies in Australia, without the knowledge of the consumer.

Senator XENOPHON—With the substantial transformation rule of 50 percent, you could have the situation where someone buys something that says ‘made in Australia’—for instance, with Australia opening up to meat products from BSE-affected countries—and there is meat from a BSE-affected country but the packaging, the pastry and the gravy are Australian made, so it can still be passed off as made in Australia. Does that concern you, Ms Carnell?

Senator HEFFERNAN—The old Aussie meat pie.

Ms Carnell—It would certainly worry me if there was any doubt about the safety of the product.

...

Senator XENOPHON—That is not the issue. I do not want you to misinterpret what I am saying. As a consumer, if I want to buy a meat pie, if it says ‘made in Australia’, I think most consumers—you are talking about a low level of education of consumers—would expect that that pie is made in Australia and the meat in that pie is Australian. But, under the current rules, the substantial transformation rule, the 50 percent rule, you could get a situation, especially with the Aussie dollar going through the roof, where you have meat from a BSE-affected country. Leaving aside the question of safety, it is a question of an informed choice for the consumer. How can the consumer be confident that that food-labelling law is reasonable?¹⁸

Impact of current labelling standards on Australian industry

- 1.29 In 2008-09, exports of vegetables totalled \$252.7 million, according to the Australian Bureau of Statistics. Vegetable imports, by contrast, were \$637.2 million in total.

Mr Mulcahy from AUSVEG Ltd told the Committee:

"Despite the long history and strong community ties of the domestic vegetable industry, the local industry and by extension local growers have been in recent years continuously threatened by external influences, including imports from China and rising input costs such as labour."¹⁹

- 1.30 Australian food growers are suffering as a result of cheap imports being able to enter the market and be sold as "Australian".

¹⁸ Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 7

¹⁹ Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 59

The Horticulture Australia Council explained the impact on Australia's fruit growers as a result of cheap imported fruit juice concentrate being sold as "Made in Australia":

"The concerns of the Pome (apple and pear) Industry – specifically the juicing sector – continue to escalate, as the impact of cheap imported fruit juice concentrates takes ever greater market share from locally-produced juice. The industry believes that consumers are being misled when they read a label which states: "Made in Australia from local and imported ingredients". [APAL] believes that as little as 5% of Australian juice is being incorporated by juice manufacturers into reconstituted products – but it is still legal to describe the end-product as "Made in Australia from local and imported ingredients". It has even been reported that some manufacturers may not be incorporating any local concentrate at all, but simply adding Australian water to enable them to legally utilise this declaration."²⁰

1.31 This is supported by the submission to the Committee from Mr Bob Such MP:

"Indeed, there are a number of products that could be misleading consumers. Apple Juice being sold under the name of Goulburn Valley comprises 100 percent imported apple juice but the container states that it is made in Australia from imported ingredients ... According to apple growers, the use of these terms and the use of imported produce reduce the price offered to Australian growers for juice."²¹

1.32 While knowing the country of origin may not always guarantee consumers buy Australian, clearer labelling provides, as this Bill intends, greater and more accurate information to be given to consumers to enable a more informed choice.

Response to criticisms of the Bill

1.33 Submissions to the Committee inquiry identified a number of industry concerns around this Bill.

'Costs of compliance'

1.34 Groups including the Australian Food and Grocery Council, the Australian National Retailers Association, National Foods and the Australian Dairy Industry argued that the cost to manufacturers of changing their processes to adopt new labelling standards would result in significant and ongoing costs.

1.35 However, President of the Griffith Citrus Growers, Riverina Citrus, Mr Bartholomew Brighenti, told the Committee that, from a practical level,

²⁰ Horticulture Australia Council, *Submission 5*, Pg 7

²¹ Mr Bob Such MP, *Submission 28*, Pg 1

complying with the proposed labelling standards of this Bill would not be unreasonable, difficult or costly.

Mr Brighenti—We have read some of the other submissions, and they have said that it is going to be costly and difficult to put on the label what percentage of juice is in it and what percentage is Australian. We as a packer are required to put on it exactly how much is packed and where it is from, and we must have traceability. When our fruit arrives in the US market, they will be able to quote us the number or the bar code on the box, and we must have the traceability all the way back to be able to find out which grower that fruit in the box came from—and his spray diary has to be kept at hand. We have to follow such strict guidelines, and we cannot see why the manufacturers seem to say that it is too difficult, when they are the ones pushing us to have such a high degree of traceability. We find that very unusual. All our labels have to be printed with all that information, so I cannot see why they have difficulty doing in it. For that Nudie label, people said it was too difficult to put the percentage of juices on there. If you read that, it actually tells you on the back what percentage of each juice is in it. Yet they said it was going to be too hard to put where it comes from. I do not think that would be much extra.²²

- 1.36 Indeed, the labelling of products is continually updated, modified and changed and is considered a cost of doing business. As the Horticulture Australia Council stated in its submission to the Committee:

"It must be borne in mind that manufacturers seem very willing to undergo the 'pain' of such re-printing/re-tooling where they perceive a benefit (for example, adding claims such as 'Good source of folate', 'NEW!!', '20% more FREE!', or 'GI of x' to labels).²³

- 1.37 This was supported by AUSVEG Ltd, which stated that:

"Existing technology for packaging enables changes to be readily completed in a short timeframe and, furthermore, in a cost efficient way. Indeed, in a rapidly globalising world, where changes to marketing and renewal of product are a constant for firms seeking to maintain a competitive advantage, packaging remains a key competitive strategy that requires constant updating. Label changes are simply an ongoing cost of doing business."²⁴

²² Mr Bartholomew Brighenti, Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 30

²³ Horticulture Australia Council, *Submission 5*, Pg 5

²⁴ AUSVEG, *Submission 7*, Pg 5

- 1.38 Further, evidence suggests that many Australian consumers who seek to support Australian industries and jobs would likely be willing to pay slightly increased costs if they could be certain that the product was wholly Australian.

"Studies in the US in 2003, found that US consumers are willing to pay a range of premiums if they perceive that a product's origin is integral to its quality. Similar recent polls in Australia have mirrored these outcomes."²⁵

- 1.39 Riverina Citrus gave the example of the Use By Date which is a clear example of continually changing data on packaging.

"Criticisms of the Bill based on the cost and technical challenges of changes to labels is not credible. Current labelling technology and practices easily accommodate rapid and frequent changes to labels. With the technology in use today, there is minimal if any additional costs associated with changes to labels. Frequent label changes (such as Use By Dates) are a standard feature of all food packaging industries."²⁶

'Seasonal effects and/or the need for certain imported ingredients'

- 1.40 It became clear during the Committee hearings that seasonal changes and unexpected events may require certain ingredients to be imported.

Nestle, for example, advised that, due to local drought conditions, it recently imported oats for one season from Canada for its Uncle Toby's brand. Nestle argued that changing labelling to accommodate for this unique variation would cost between \$200 and \$1000.²⁷

- 1.41 However, a suggestion was made to the Committee to account for this whereby the labelling is averaged over a two-year period or similar, and consumers advised that it is an average calculation, so as to reduce the compliance concerns of industry.
- 1.42 Similarly, it is understood that there are some ingredients which cannot be sourced in Australia, such as enzymes for cheese, brine for ham or cocoa for chocolate, and it was put to the Committee that this Bill would result in no products being able to be labelled "Australian".

²⁵ Horticulture Australia Council, *Submission 5*, Pg 5

²⁶ Riverina Citrus, *Submission 24*, Pg 1

²⁷ Mr Peter Kelly – Nestle, Senate Economics Committee, *Proof Committee Hansard, 30 October 2009*, Pg 4

- 1.43 However, the premise of this Bill is to provide greater knowledge for consumers to make an informed choice. As Senator Xenophon pointed out during the Senate Committee hearings, the main ingredient of the product is what most consumers are concerned about.

Senator XENOPHON—When the consumer is buying a fish finger, a meat pie or orange juice and it says ‘made in Australia’, shouldn’t they be entitled to expect that the principal ingredient that we are purchasing as consumers, which is very clear—in a meat pie it is the meat, in orange juice it is the juice, if it is ham then it is Australian ham, leaving aside issues of brine or seasoning—is Australian? Wouldn’t it be reasonable to expect that the principal ingredient, which is the basis upon which consumers are making their decision, ought to be 100 percent Australian if you are calling it ‘made in Australia’ or ‘product of Australia’?²⁸

- 1.44 Furthermore, current labelling standards allow packaging to be included within the calculations for what is or isn’t considered “Australian”, but as was fairly asserted during the Committee hearings, consumers don’t eat packaging.

While certainly the production of packaging does contribute to Australia's economy, most consumers would argue that when they read the “Made in Australia” claim, they believe it to be in relation to the food item itself, not the plastic which contains it.

Mr Harrison (Australian Made Campaign)—The Trade Practices Act never talks about 100 percent; 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.²⁹

'Little consumer demand'

- 1.45 The Australian Dairy Industry Council, the Australian Food and Grocery Council, Coles and Nestle Australia argued in their submissions that consumers’ primary concerns are the price and quality of a product, suggesting that the origin and “Australian-ness” of the product was not a concern for consumers.
- 1.46 However, numerous surveys provided to the Committee prove that this isn't the case, including a 2005 Auspoll survey which found that 97 percent of Australians wanted to have clear information on the country of origin of their foodstuffs and a 2009 also survey that found that 82.5 percent of supermarket

²⁸ Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 8

²⁹ Mr Ian Harrison, Senate Economics Committee, *Proof Committee Hansard*, 5 October 2009, Pg 4

shoppers checked if the produce was Australian-grown fruit and vegetables and foodstuffs "most of the time".³⁰

- 1.47 During the Senate inquiry, AUSBUY Ltd conducted a short national online survey of customer's needs and expectations.

It found that 97.7 percent of respondents believe it is important to buy food produced and made in Australia rather than imported foods.

Similarly, 94.9 percent answered that it is important to buy food produced and grown in Australia, based on knowing that the label is truthful.

95.5 percent of respondents said that they would want to know what percentage of the product was grown in Australia and 98.1 percent said they that would want to know the country of origin of their food products.

The survey also found that 99.1 percent think truth in labelling is important.³¹

- 1.48 The survey was conducted over 4 days with a sample of 437 people, which is a sufficient sample from which to draw conclusions.

- 1.49 Given these results, it is clear that Australians do want truth in labelling and do want to be provided with accurate information from which they can make an informed choice.

'Variations of the word "Australian"'

- 1.50 While this Bill does use the word "Australian", it was incorrectly assumed in a number of submissions and also during Committee hearings that this would subsequently disqualify the use of the word "Australia" or variations thereof.

- 1.51 However, under the Acts Interpretation Act 1901, section 18A:

"In any Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts and speech and grammatical forms of that word or phrase have corresponding meanings."³²

- 1.52 This is consistent across all legislation, and therefore FSANZ would allow for versions of the word "Australian" to be used, as long as it met with the intent of the Bill which is to provide consumers with more accurate information around how much of the product they are purchasing is "Australian".

³⁰ Growcom, *Submission 2*, Pg 2

³¹ AUSBUY, *Response to the Senators' Requests for Additional Information*, 30 October 2009

³² Acts Interpretation Act 1901, Section 18A

' Font size'

- 1.53 This Bill recommended that packaging include labels in 15mm font. While this may not be practical for certain products due to the size of the packaging (for example a 125ml can), manufacturers have, so far, been able to determine font sizes for other labelling requirements such as nutrition panels, on products of all sizes.
- 1.54 In the same way, determining an appropriate size and location could easily be undertaken.
- 1.55 Alternatives to a written label were proposed during the Senate inquiry, included a gold disc system.

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 percent Australian product then the disk is 100 percent gold, if it is 75 percent Australian product then you have 75 percent of the disk gold, and if it is 20 percent Australian product then you have 20 percent of the disk gold. Then you could have the same idea for Australian manufactured—if it is 100 percent manufactured in Australia then the disk would be 100 percent gold; if it is 50 percent manufactured in Australia then the disk would be 50 percent gold.³³

- 1.56 Dick Smith also suggested a percentage be used on the label to indicate how much of the product was 'Australian'.

"We would therefore suggest that it would be much more relevant to consumers to know the level of Australian content in a form of a percentage, rather than limiting the use of the term Australian to 100% Australian content. We believe the label should show the percentage as simply "x% Australian Product"."³⁴

- 1.57 These would all be valid options, and share the same purpose – to provide consumers with a clear understanding of how much of the food product they are purchasing is pure Australian content.

'The FSANZ inquiry'

- 1.58 The Committee Majority Report has recommended that the concerns this Bill is seeking to resolve would be more appropriately dealt with through the Australia and New Zealand Food Regulation Ministerial Council Review of Food Labelling and Policy currently underway.

³³ Senate Economics Committee, *Proof Committee Hansard*, 5 October 2009, Pg 5

³⁴ Dick Smith Foods, *Submission 4*, Pg 1

- 1.59 However, it is clear to see, even from the Terms of Reference for the review, that it will not address the issues of raising consumer awareness.

The Terms of Reference for the review are:

- Examine the policy drivers impacting on demands for food labelling
- Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory action?
- Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
- Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.
- Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against the terms of reference above.
- Make recommendations to improve food labelling law and policy.

- 1.60 FSANZ says its focus is to ensure health and safety of food products for sale, and if there are no concerns around health and safety then the issue of labelling is one for the Australian Competition and Consumer Commission to determine whether it is misleading or not.

However, two of FSANZ's objectives are to provide "adequate information about food to enable consumers to make informed choices and to prevent misleading or deceptive conduct."³⁵

While the ACCC may prosecute manufacturers for outright false and misleading representations or which may be likely to deceive or mislead consumers, it does not address the issue of provider greater information to the consumer with regards to percentages of imported ingredients which enables consumer choice.

Conclusion

- 1.61 During the 2007 election, the Labor Party made a commitment to strengthen and simplify food labelling laws. Then in Opposition, the Labor Party acknowledged that:

"... consumers are often confused and do not understand what is meant by 'Made in' and 'Product of' labels."³⁶

³⁵ *Food Standards Australia New Zealand Act 1991*, section 10

³⁶ Senator Kerry O'Brien, *Labor's Plan for Primary Industries*, 19 November 2007, pg 9

It was also stated that:

"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."³⁷

1.62 This Bill is designed to provide consumers with greater truth in labelling and to remove any possibly misleading or deceiving claims about the product, where it's been produced and where the ingredients come from, and to support Australian growers and food producers who are impacted by the use of cheap imported ingredients being marketed as "Australian".

1.63 Given FSANZ recognised in 2005 that Australians do in fact want to know the country of origin of their fresh fruit and vegetables, seafood and pork, it seems strange that this was not extended to all foodstuffs.

1.64 Furthermore, AUSVEG Ltd argues that accurate labelling can be seen as a business advantage:

"Accurate labelling of the source country for fresh unpackaged vegetables has been evident since changes were introduced in June 2006, and some producers have recognised a marketing advantage in the accurate labelling of Australian processed packaged vegetables as well. However, attempts to impose mandatory country of origin labelling for processed packaged vegetables with two or less whole ingredients were rejected."³⁸

1.65 It is disingenuous for groups to suggest that there is little consumer demand for greater, clearer information regarding their food.

And, given the number of varying claims that can currently be made on packaging – including: "Made in Australia", "Made in Australia from local and imported ingredients", "Made in Australia from imported and local ingredients", "Australian Owned", "Product of Australia" – there is no doubt many consumers are left confused and unable to differentiate between the claims.

1.66 Consumer education, as suggested by the Australian Food and Grocery Council, is needed, however industry also needs to play its part in providing Australians with easy, clear and identifiable information.

1.67 A number of submissions were also made to the Committee to include the labelling of Palm Oil on food products. Subsequently, Senators Xenophon, Bob Brown and Joyce introduced the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009 which has the same intent as this Bill in terms of providing clear and accurate information to aid consumer choice.

³⁷ Senator Kerry O'Brien, *Labor's Plan for Primary Industries*, 19 November 2007, pg 9

³⁸ AUSVEG, *Submission 7*, Pg 2

Recommendations

Recommendation 1

That this Bill be passed.

Recommendation 2

That consultation with manufacturers and industry groups take place to determine an appropriate size and placement of labelling with information to meet these standards and the intent of this Bill.



SENATOR BOB BROWN
Leader of the Australian Greens



SENATOR BARNABY JOYCE
Leader of the Nationals in the Senate



SENATOR NICK XENOPHON
Independent Senator for South Australia

APPENDIX 1

Submissions Received

Submission Number

Submitter

- 1 Australian Made Campaign Limited
- 2 Growcom
- 3 Mr James Gruber
- 4 Dick Smith Foods Pty Ltd
- 5 Horticulture Australia Council
- 6 Choice
- 7 AUSVEG
- 8 Australian Dairy Farmers Limited
- 9 Australian Food and Grocery Council
- 10 Dairy Australia
- 11 McShane's Produce
- 12 Humane Society International
- 13 Coles
- 14 Australian Pork Limited
- 14a Australian Pork Limited Supplementary Submission
- 15 Mr Geoff Fowler
- 16 National Foods Limited
- 17 Ausbuy
- 18 Zoos Victoria
- 19 Perth Zoo
- 20 Royal Zoological Society of South Australia
- 21 National Farmers' Federation
- 22 The Australian Orangutan Project
- 23 Department of Agriculture, Fisheries and Forestry
- 24 Riverina Citrus
- 25 Palm Oil Action Group
- 26 Friends of the Earth Australia
- 27 Australian National Retailers Association (ANRA)
- 28 Hon Dr Bob Such MP JP
- 29 WWF-Australia
- 30 Food & Beverage Importers Association
- 31 Slow Food Melbourne
- 32 Australian Barramundi Farmers' Association
- 33 South Australian Government
- 34 Name Withheld

Additional Information Received

- Received on 9 November 2009 from Ausbuy. Answers to Questions on Notice, taken on notice on Friday 30 October 2009.
- Received on 9 November 2009 from AUSVEG. Answers to Questions on Notice, taken on notice on Friday 30 October 2009.
- Received on 13 November 2009 from the Australian Competition & Consumer Commission. Answers to Questions on Notice, taken on notice on Friday 30 October 2009 and written Questions on Notice received 5 November 2009.
- Received 20 November 2009 from the National Farmers' Federation. Answers to Questions on Notice, taken on notice Friday 30 October 2009.

TABLED DOCUMENTS

Melbourne VIC

Monday, 5 October 2009

Australian Made Campaign Limited

- *Australian Made, Australian Grown Logo
Code of Practice
Brochure*
- *Australian Made, Australian Grown Campaign
Helping your business grow
Brochure*

Canberra ACT

Friday, 30 October 2009

Riverina Citrus

- *Goulburn Valley Orange Juice
Labelled bottle picture*

APPENDIX 2

Public Hearings and Witnesses

MELBOURNE, MONDAY 5 OCTOBER 2009

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

HARRISON, Mr Ian, Chief Executive
Australian Made Campaign Ltd

CANBERRA, FRIDAY 30 OCTOBER 2009

ATTWOOD, Ms Elaine, Standards Consumer Representative
Consumers Federation of Australia

BRIGHENTI, Mr Bartholomew (Bart), President, Griffith Citrus Growers
Riverina Citrus

CARNELL, Ms Kate, Chief Executive Officer
Australian Food and Grocery Council

CORBET, Mr Philip, Manager, Quality and Technical Group
Simplot Australia Pty Ltd

HIGGINSON, Ms Jo, Standards Project Coordinator
Consumers Federation of Australia

JAMES, Mr Ian, Consultant
AUSVEG Ltd

KELLY, Mr Peter, Director, Food Policy and Regulation
Nestle Australia Ltd

LEIGHTON, Mr Kim, Director, Food Policy and Regulation
Australian Food and Grocery Council

MacDONALD, Mr Scot, Executive Officer
Riverina Citrus

McCUTCHEON, Mr Stephen, Chief Executive Officer
Food Standards Australia New Zealand

McELHONE, Mr Charles, Manager, Economics and Trade
National Farmers Federation

MULCAHY, Mr Richard, Chief Executive Officer
AUSVEG Ltd

NELSON, Dr Sam, Manager, Rural Affairs
National Farmers Federation

PARKER, Mr Geoffrey, Chief Executive Officer
Australian Beverages Council Ltd

RICH, Ms Nicole, Director, Policy and Campaigns
Consumers Federation of Australia

RIDGWAY, Mr Nigel, General Manager, Compliance, Research, Outreach and
Product Safety
Australian Competition and Consumer Commission

SIBLEY, Mr Cain, Acting General Counsel
Food Standards Australia New Zealand

WEYMOUTH, Mr Robert, General Manager, Enforcement Operations
Australian Competition and Consumer Commission

WILKINSON, Ms Lynne, Chief Executive Officer
AUSBUY

APPENDIX 3

Standard 1.2.11 Country of Origin Requirements

STANDARD 1.2.11
COUNTRY OF ORIGIN REQUIREMENTS

(Australia only)

Note:

Under Annex D of the *Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System*, New Zealand has varied from this Standard. Accordingly, this Standard does not apply in New Zealand.

Purpose

This Standard sets out the requirements for Country of Origin for packaged foods and certain unpackaged foods.

Table of Provisions

- | | |
|---|------------------------|
| 1 | Application |
| 2 | Labelling requirements |

Clauses

1 Application

- (1) Deleted
- (2) This Standard does not affect the operation of Standard 2.7.5 concerning geographical indications.
- (3) This Standard does not apply to food sold to the public by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals or other similar institutions listed in the Table to clause 8 of Standard 1.2.1 where the food is offered for immediate consumption.
- (4) The requirements in the Table to subclause 2(2) for fish, fruit and vegetables –
 - (a) commence on 8 June 2006; and
 - (b) apply exclusively.
- (5) The requirements in the Table to subclause 2(2) for fresh pork and preserved pork commence and apply exclusively from 8 December 2006.

2 Labelling requirements

- (1) The foods listed in column 1 of the Table to this subclause must comply with the labelling requirements in relation to that food listed in column 2 of the Table.

Table to subclause 2(1)

Column 1	Column 2
Food	Labelling requirement
Packaged food (except that to which subclause 2(2) of this Standard applies)	(a) a statement on the package that identifies where the food was made or produced; or (b) a statement on the package – (i) that identifies the country where the food was made, manufactured or packaged for retail sale; and (ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients as the case may be.

Editorial Note:

The provisions of subclause 2(1) follow the principles of the *Trade Practices Act 1974* (Commonwealth) and the *Fair Trading Act 1986* (New Zealand) which contain requirements concerning the place of origin of goods.

In particular, false or misleading representations concerning the place of origin of goods are prohibited. Country of origin statements are a sub-set of place of origin.

In complying with this Standard, manufacturers and retailers should be consistent with trade practices law. For Australia, the provisions of sections 65AA-AN of the *Trade Practices Act 1974* apply to statements as to the country of origin of goods.

There are conditions for the safe use of ‘product of’ representations and other statements as to country of origin, such as ‘made in’ or ‘manufactured in’ or other like statements. These statements may be used safely in the following circumstances –

- (a) ‘Product of’ is a premium claim and the country of origin claimed must be the country of origin of each significant ingredient of the food and all or virtually all the processes of production or manufacture of the goods must have happened in that country.

‘Product of’ includes other declarations such as ‘produce of’ and ‘produced in’.

- (b) ‘Made in’ – the goods must have been substantially transformed in the country claimed to be the origin and 50% of the costs of production must have been carried out in that country. Under the Trade Practices provisions, substantial transformation is defined as –

‘a fundamental change...in form or nature such that the goods existing after the change are new and different goods from those existing before the change’.

‘Made in’ includes other declarations such as ‘manufactured in’ or ‘Australian made’ for example.

Where it is not possible for a 'Made in' claim to be made, either due to uncertainty around the question of substantial transformation and whether 50% costs of production is met, or to adjust to seasonal changes in availability of individual ingredients, manufacturers may make a qualified claim. Common examples of a qualified claim are 'Made in Australia from imported ingredients' or 'Packaged in Australia from local and imported ingredients'.

The provisions of this Standard should also be read in conjunction with other applicable laws such as the State and Territory Fair Trading Acts and Food Acts. These Acts contain provisions governing misleading and deceptive conduct in the supply of food in trade and commerce and representations about food that are misleading or deceptive.

Suppliers should, therefore, exercise caution in their country of origin declarations and ensure that the representations that are made are not compromised by conflicting information. For example, having in large type on a label a map of Australia and the words 'Proudly Australian Owned' and in smaller type elsewhere on the label 'Product of' naming a different country, while technically compliant with this Standard, may still be misleading or deceptive.

Further information on country of origin claims may be found in 'Food and Beverage Industry – country of origin guidelines to the Trade Practices Act' available on the ACCC website.

All labelling must comply with the requirements of Standard 1.2.9, designed to ensure that food labels are clear. Standard 1.2.9 provides that each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.

Subclause 2(2), below, of this Standard provides for the Country of Origin Labelling requirements for fresh whole or cut fruit and vegetables which are displayed for retail sale in packages that do not obscure the nature or quality of the food, such as clear plastic or mesh bags. Under Standard 1.2.1, with some exceptions, this form of packaging is generally exempt from the labelling requirements of the Code. Country of Origin is one of those exceptions.

(2) Subject to subclause 3, the foods listed and displayed in the manner described in column 1 of the Table to this subclause must comply with the labelling requirements in relation to that food listed in column 2 of the Table.

Table to subclause 2(2)

Column 1	Column 2
Food	Labelling requirement
<p>Where the food is displayed for retail sale other than in a package</p> <p>Fish, including cut fish, filleted fish, fish that has been mixed with one or more other foods and fish that has undergone any other processing including cooking, smoking, drying, pickling or coating with another food</p>	<p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>
<p>Fresh pork, whole or cut, except where the product has been mixed with food not regulated by this subclause</p>	<p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>
<p>Pork, whole or cut, that has been preserved by curing, drying, smoking or by other means, except where that product has been mixed with food not regulated by this subclause (other than those foods used in the preserving)</p>	<p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>
<p>Fresh whole or cut fruit and vegetables</p>	<p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>
<p>Whole or cut fruit and vegetables where that produce has been preserved, pickled, cooked, frozen or dehydrated except where that produce has been mixed with food not regulated by this subclause (other than with those foods used in the preserving, pickling or cooking as the case may be)</p>	<p>A label on or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>

Table to subclause 2(2) (continued)

Column 1	Column 2
Food	Labelling requirement
<p>Where the food is displayed for retail sale in a package that does not obscure the nature or quality of the food</p> <p>Fresh whole or cut fruit and vegetables</p>	<p>A label on the package or in connection with the display of the food –</p> <p>(a) identifying the country or countries of origin of the food; or</p> <p>(b) containing a statement indicating that the foods are a mix of local and/or imported foods as the case may be.</p>

(3) Where the food listed in Column 1 to the Table to subclause 2(2) is displayed for retail sale other than in a package, and the requirements of Column 2 are being met by a label in connection with the display of the food, in addition to the requirements of Standard 1.2.9 –

- (a) the size of type on the label must be at least 9 mm; or
- (b) where the food is in a refrigerated assisted service display cabinet, the size of type on the label must be at least 5 mm.

Editorial note:

Subclause 2(2) governs the country of origin requirements for fresh and processed unpackaged produce, or fresh produce that is packaged in such a way that the nature or quality of the food is not obscured, such as in a plastic or mesh bag, that is currently available on the market.

Generally, retailers will have two options. They may label the individual commodities, such as with a sticker, as is a common practice with apples, oranges and lemons etc. Alternatively, they may place a label on a sign in association with the food in at least 9 mm type stating the country or countries of origin of the produce or make a ‘qualified claim’ that the foods are a mix of local and/or imported foods as the case may be. This would commonly be the case with soup mixes of whole vegetables that are displayed for retail sale in a plastic bag.

However, where the food is displayed in refrigerated glass display cabinets, such as in delicatessens, butchers or fish shops, the label placed in association with the food must be at least 5 mm type.

If the mix comprises Australian produce and produce from other countries, the retailer can either declare each country of origin, or that the food is a mix of local and imported produce.

If the mix comprises produce from other countries, the retailer may either declare the individual countries of origin, or declare that the food is made up of imported produce.

This subclause also applies to unpackaged fish, fruit and vegetables that have undergone some form of processing. In the case of fruit and vegetables, the subclause applies to food products such as olives that have been soaked in salt water or vinegar, sun-dried tomatoes in olive oil or tofu. Where those products have been mixed with other foods not regulated by the subclause, such as pasta, the country of origin provisions do not apply.

Standard 1.2.9 provides that each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.

Fruit and vegetables are defined in Standard 2.3.1, and that definition includes nuts.

‘Assisted service display cabinet’ is defined in Standard 1.2.1.