

# Chapter 1

## Introduction

### Conduct of the inquiry

1.1 On 20 September 2012 the Senate referred the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 5 February 2013.<sup>1</sup>

1.2 On 20 November 2012 the Senate granted an extension until 21 March 2013.<sup>2</sup>

1.3 The bill was referred to the committee in order to consult further with producers, industry and stakeholders.<sup>3</sup>

1.4 In accordance with usual practice, the committee advertised the inquiry on its website and in *The Australian*. The committee also wrote to relevant stakeholders inviting submissions. The committee received 32 submissions in total. A list of submitters can be found at Appendix 1.

1.5 A public hearing was held in Hobart on Monday, 18 February 2013. The hearing was conducted by a subcommittee chaired by Senator the Hon Lin Thorp, with Senator the Hon Richard Colbeck as deputy chair and Senator Christine Milne as the third committee member. A full list of witnesses who appeared at the hearing can be found at Appendix 2. A copy of the Hansard transcript is available at the committee website.<sup>4</sup>

### Background

#### *Key provisions of the bill*

1.6 This bill is designed to amend the *Competition and Consumer Act 2010*, in particular by implementing reforms to the designation and regulation of country-of-origin labelling (CoOL) for food in Australia.

1.7 The bill was introduced as a private Senator's bill by Senator Christine Milne, the leader of the Australian Greens. Senator Milne has subsequently suggested that the

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1 Commonwealth of Australia, *Journals of the Senate*, 20 September 2012, p. 3043.

2 Commonwealth of Australia, *Journals of the Senate*, 20 November 2012, p. 3325.

3 Selection of Bills Committee, Report No. 12 of 2012, Appendix 2.

4 See the Rural and Regional Affairs and Transport Legislation Committee website at [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=rrat\\_ctte/food\\_labelling/hearings/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/food_labelling/hearings/index.htm).

bill needs some amendment to strike a better balance between the needs of Australian primary producers and those of Australian manufacturers and food processors.<sup>5</sup>

### *Current country of origin labelling arrangements*

1.8 Australian CoOL requirements are enforced primarily by two mechanisms that operate independently from one another. They are:

- The Australia and New Zealand Food Standards Code (the Code), particularly Standard 1.2.11, which covers country-of-origin requirements for food for Australia only;<sup>6</sup> and
- The general provisions of Australian and New Zealand consumer laws on misleading or deceptive conduct. In Australia this is covered by the *Competition and Consumer Act 2010* Schedule 2, which replaced the *Trade Practices Act 1974* in 2010.

1.9 A summary of the CoOL provisions contained in the *Competition and Consumer Act 2010* can be found in Appendix 3.

1.10 Australia's CoOL conditions are set out in Standard 1.2.11 of the Code. Standard 1.2.11 sets out the circumstances where certain terms and labels may be used:

- "Made in..." (eg Made in Australia; Australian Made): For goods that have been substantially transformed in the specified country *and* where at least 50 per cent of the cost of production or manufacture has occurred in that country.
- "Product of/ Produce of..." (eg Product of Australia): When the specified country was the country of origin of each significant ingredient or significant component of the goods *and* all – or virtually all – the production or manufacture happened in that country.
- "Grown in..." (eg Grown in Australia; Australian Grown): Where each significant ingredient or component of the goods was grown in that country *and* all – or virtually all – processes involved in the production or manufacture happened in that country
- "Made in... from local and imported ingredients / Made in ... from imported and local ingredients": This is a qualified claim that can be used where it is not possible for a stand alone "Made in..." claim to be made. This could be because of uncertainty around the question of substantial transformation and/or whether 50 per cent of the cost of production or manufacture is met

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5 Senator Christine Milne, *Committee Hansard*, 18 February 2013, p. 2.

6 Australia New Zealand Food Standards Code, [www.foodstandards.gov.au/foodstandards/foodstandardscode.cfm](http://www.foodstandards.gov.au/foodstandards/foodstandardscode.cfm) (accessed 7 March 2013); see also Standard 1.2.11 Country of Origin Requirements (Australia Only), [www.comlaw.gov.au/Details/F2011C00565](http://www.comlaw.gov.au/Details/F2011C00565) (accessed 7 March 2013).

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and/or to adjust to seasonal variation in availability of individual ingredients used.<sup>7</sup>

1.11 This 'confusing plethora of definitions' has led to general consumer confusion which the current bill seeks to address.<sup>8</sup>

1.12 The key concept of 'substantially transformed' is discussed in chapter 2.

*CoOL arrangements proposed by this bill*

1.13 The Explanatory Memorandum of the bill states that, if it is passed, the two key amendments will:

- create a specific section in the Competition and Consumer Act that deals solely with country of origin claims regarding food. This will cease the treatment of food as just any other good and creates a single regulatory regime that retains mandatory labelling requirements, whilst superseding the CoOL stipulations of the *Food Standards Australia New Zealand Act 1995*; and
- provide that CoOL for food should be based on the ingoing weight of ingredients and components excluding water. This will allow Australians to know the origin of the food they are buying first and foremost, rather than informing them where processing and packaging took place.<sup>9</sup>

1.14 In doing so, the amendments proposed by this bill will remove the stand-alone claim 'Made in Australia' about food. The Explanatory Memorandum claims that this will provide unambiguous language and set benchmarks that Australian consumers can use to quickly and accurately evaluate where food products were grown.

1.15 Food grown in Australia will be able to state 'Grown in Australia' on the labelling, as it can currently. Where packaged food is made from 90 per cent or more Australian ingredients by total weight excluding water, it must be labelled 'Made of Australian Ingredients'.<sup>10</sup>

***The Blewett Review***

1.16 These two proposed key amendments will enact two recommendations made by the independent review of food labelling, commissioned by the Australia and New

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7 Neal Blewett AC, Nick Goddard, Simone Pettigrew, Chris Reynolds and Heather Yeatman, *Labelling Logic: review of food labelling law and policy* (2011), p. 109.

8 Neal Blewett AC, Nick Goddard, Simone Pettigrew, Chris Reynolds and Heather Yeatman, *Labelling Logic: review of food labelling law and policy* (2011), p. 109.

9 *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 Explanatory Memorandum*, p. 2.

10 *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012: Explanatory Memorandum*, p. 2.

Zealand Food Regulation Ministerial Council and led by Dr Neal Blewett AC. This was published on 28 January 2011 as *Labelling Logic* (Blewett Review).

1.17 Recommendation 41 of the Blewett Review states:

That mandatory requirements for country-of-origin labelling on all food products be provided for in a specific consumer product information standard for food under the *Competition and Consumer Act 2010* rather than in the Food Standards Code.<sup>11</sup>

1.18 And recommendation 42 states:

That for foods bearing some form of Australian claim, a consumer-friendly, food-specific country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed.<sup>12</sup>

1.19 Recommendation 41 of the Blewett Review was also referenced by recommendation 12 of the report made by the Senate Select Committee on Australia's Food Processing Sector (August 2012). That report stated:

The committee recommends that the government move mandatory country of origin labelling requirements for food to a specific consumer product information standard under the *Competition and Consumer Act 2010*, consistent with recommendation 41 of the Blewett Review.<sup>13</sup>

### ***The Government response to the Blewett Review***

1.20 The Government released a response to the Blewett Review on 9 December 2011. This response included a detailed response to all 61 recommendations made by the Blewett Review. Importantly, it stated that:

- Recommendation 41 should not be pursued 'at this time'. It stated that 'The Commonwealth will give further internal consideration to this issue before deciding to pursue any changes to the *Competition and Consumer Act 2010* in relation to this issue.'
- The Government did not agree with Recommendation 42. It concluded that 'there are practical difficulties with adopting a framework based on ingoing weight of ingredients and components. However the Commonwealth will give further internal consideration to this issue, including reviewing current

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11 Neal Blewett AC, Nick Goddard, Simone Pettigrew, Chris Reynolds and Heather Yeatman, *Labelling Logic: review of food labelling law and policy* (2011), p. 12.

12 Neal Blewett AC, Nick Goddard, Simone Pettigrew, Chris Reynolds and Heather Yeatman, *Labelling Logic: review of food labelling law and policy* (2011), p. 12.

13 Senate Select Committee on Australia's Food Processing Sector, *Inquiry into Australia's food processing sector* (2012), p. xvii.

information available to consumers and industry about [country of origin labelling].<sup>14</sup>

1.21 Furthermore, it should be noted that whereas the proposed amendment being considered by this report sets the threshold at which a product can use 'Made of Australian Ingredients' at 90 per cent of Australian ingredients by total weight excluding water, the Blewett Review set no precise thresholds in its recommendations. It did recommend that the threshold for 'Made of Australian Ingredients' should be above 80 per cent by weight (excluding water), although it conceded that it 'left the fine details of the framework to those with expertise in the matter.'<sup>15</sup>

### **Acknowledgements**

1.22 The committee wishes to thank all the organisations and individuals that made written submissions to the inquiry, as well as the representatives who gave evidence at the public hearing.

### **Report structure**

1.23 This report is divided into two substantive chapters. Whereas this chapter has outlined the background and policy context in which the legislation is proposed, the following chapter, Chapter 2, will discuss the issues raised by the inquiry. It will then outline the committee's views and conclusions, and lastly provide certain recommendations.

### **Note on references**

1.24 References to the committee Hansard are to the proof Hansard. As such, page numbers may vary between the proof and the official (final) Hansard transcript.

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14 The Hon Nicola Roxon MP, Minister for Health and Ageing, and the Hon Catherine King MP, Parliamentary Secretary for Health and Ageing, *Next Steps to Help Consumers Make Healthy Choices* (2011), [www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr11-nr-nr254.htm](http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr11-nr-nr254.htm) (accessed 12 December 2012).

15 Neal Blewett AC, Nick Goddard, Simone Pettigrew, Chris Reynolds and Heather Yeatman, *Labelling Logic: review of food labelling law and policy* (2011), p. 110.

