The Senate

Rural and Regional Affairs and Transport Legislation Committee

Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)

March 2013

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LIST OF RECOMMENDATIONS

Recommendation 1

2.28 The committee recommends that the bill as drafted should not be passed.

Recommendation 2

2.45 The committee recommends that the government should consider developing a more effective country of origin (CoOL) framework (including a more effective definition of 'substantially transformed'), which better balances the interests of consumers, primary producers and manufacturers.

Recommendation 3

2.51 The committee recommends the government consider the potential benefits and drawbacks of creating a "negative list" for processes that do not satisfy the "substantial transformation" test for CoOL purposes.

Recommendation 4

2.80 Upon the development and implementation of a new CoOL labelling system as per Recommendation 2, the committee recommends that the government should develop an effective public education campaign for the new CoOL guidelines.

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.[1]

1.2 On 20 November 2012 the Senate granted an extension until 21 March 2013.[2]

1.3 The bill was referred to the committee in order to consult further with producers, industry and stakeholders.[3]

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.[4]

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.

bill needs some amendment to strike a better balance between the needs of Australian primary producers and those of Australian manufacturers and food processors.[5]

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; [6] 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 county *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

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 (accessed 7 March 2013); see also Standard 1.2.11 Country of Origin Requirements (Australia Only), www.comlaw.gov.au/Details/F2011C00565 (accessed 7 March 2013).

and/or to adjust to seasonal variation in availability of individual ingredients used. [7]

1.11 This 'confusing plethora of definitions' has led to general consumer confusion which the current bill seeks to address.[8]

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.[9]

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'.[10]

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.[11]

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.[12]

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.[13]

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].'[14]

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.'[15]

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 (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.

Chapter 2

Key issues

Submissions

2.1 The submissions received by the committee reflect a wide range of views: some submissions supported the amendment without qualification; several provided in-principle support; and others strongly opposed the bill.

2.2 However, it should be noted that some submissions that were against the provisions of the bill did, in fact, support its general intention to make country-of-origin labelling (CoOL) of food more transparent and clear.

Public hearing

2.3 At the public hearing evidence was given by a diversity of interest groups, some of which supported the amendment, others of which did not.

2.4 The committee also heard evidence from officers of two government departments that work closely on CoOL issues, The Treasury and the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE).

Committee clarification of the bill

2.5 The bill was introduced as a private senator's bill by Senator Christine Milne, the leader of the Australian Greens. In the hearing held in Hobart on 18 February 2013, Senator Milne was clear about the need to adjust the bill in order to strike a better balance between the interests of Australian primary producers and those of Australian manufacturers and food processors. Senator Milne said:

> …since releasing the bill and getting it into this process I have had a chance to talk to a lot of people and recognise that we have to retain a made in Australia or processed in Australia component of labelling because of manufacturing jobs. I have let people know that is clearly something we want to do.…We need to make sure that people know that a product is processed in Australia in terms of the jobs.[1]

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

Support for the bill

Consumer support for tighter CoOL legislation

2.6 Many submissions supported better CoOL for Australian food. This support clustered around two main themes:

- a desire to support local producers and industries; and
- the belief that current labelling terminology and standards are confusing or misleading.

The desire to support local producers and industry

2.7 The committee received a number of submissions from individuals whose submissions were based on form letters available online. Many of these used a generic text supporting the bill:

> Country of Origin Labelling is vital to the protection and promotion of this country's food and its producers.
>
> As a consumer I am eager to buy from local growers and processors but am unable to rely on food labels with misleading claims about the origin of food and fresh produce.[2]

2.8 Consumer support for more transparent CoOL labelling was also referred to by several submissions, citing CHOICE 2011 survey work on CoOL, which found that 90 per cent of Australian consumers would like clearer CoOL information on products they buy.[3] These submissions included those made by the Horticulture Taskforce, the Australian Manufacturing Workers Union (AMWU) and the People's Food Sovereignty Alliance.[4]

2.9 For example, the People's Food Sovereignty Alliance stated in its submission:

> There is clear evidence, produced by CHOICE and others, that the current proliferation of country of origin claims made on food labels creates confusion in the minds of Australian consumers. There is good evidence

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2 This text was included verbatim in submissions made by Mr Helen Lapin, Ms Kathryn Landreau, Mr Keelah Lam, Ms Simone Yakich, Dr Inke Falkner, Ms Sarah Dawson-Shepherd, and Ms Jane Scammell (*Submissions 3*, *4*, *5*, *6*, *10*, *11* and *28* respectively); variations on it also appeared in those made by Ms Michella Burgers and the Melbourne Community Farmers' Markets (*Submissions 19* and *24* respectively). Similar positions were also expressed by Mr Peter Sainsbury, Ms Mia Pithie, Ms Julie Schneider, Mr Alex Hodges and Ray Linkevics, Ms Jennifer Smith, Mr R.G.H Cotton, Mr Greg Wolfe, and Ms Christine Jones (*Submissions 1*, *2*, *7*, *8*, *9*, *26*, *27* and *32* respectively).

3 CHOICE, "Country of origin labelling" survey, www.choice.com.au/reviews-and-tests/food-and-health/labelling-and-advertising/nutritional-labelling/country-of-origin-labelling-survey-results.aspx (accessed 20 February 2013).

4 The People's Food Sovereignty Alliance, *Submission 15*, Australian Manufacturing Workers Union, *Submission 21* and Horticulture Taskforce, *Submission 30*.

> that a majority of people want to support local farmers and food producers, but that the current legislative and regulatory framework prevents them from doing so.[5]

2.10 Mr Kirkland from CHOICE elaborated on this theme at the hearing:

> …we feel there is a need to re-examine the system of county-of-origin food labelling in Australia. It is an important and priority consumer issue based on the research that we have done. When it comes to choosing what food to buy, our research shows that origin is second only to the actual ingredients themselves, so it is one of the biggest issues for consumers. While consumers care about where their food comes from, origin labelling is valued for some foods more than others. So, in general, the fresher the food, the less processed the food, the much more important it is for consumers. For very highly processed foods it tends to be less of a concern, but we still think it is important that the labelling system is accurate and understandable.
>
> We do feel—and our research bears out—that the current system of food labelling is confusing and is poorly understood by consumers.

Peak body support for new CoOL legislation

2.11 Many of the submissions made by peak bodies representing primary producers also argued that Australia needs better CoOL legislation. Some of these submissions maintained that Australia would be better served by new CoOL provisions than education campaigns informing consumers about the current framework.

2.12 The submission made by the Horticulture Taskforce, which represents many peak bodies for regional and specific fruit and vegetable primary producers, supported all provisions of the bill: the proposed simplified CoOL system, the 90 per cent threshold for "Made of Australian Ingredients", the water-neutral position for processed goods, and the cessation of the terms "Produce of Australia" and "Product of Australia".[6]

2.13 In his opening statement, Mr Seymour elaborated on the Horticulture Taskforce's position:

> …we believe that an informed consumer is the bedrock of an efficient, effective and fair marketplace where foreign and local producers can properly compete. The current food labelling system is confusing and ambiguous. It does not allow consumers to make clear and informed

5 Australian Food Sovereignty Alliance, *Submission 15*¸ p. 2.

6 Horticulture Taskforce, *Submission 30*, p. 3.

choices based on the origin of their food. This, in turn, hurts Australian producers.[7]

2.14 This view was supported by evidence given by Ms Moloney of the Australian Food Sovereignty Alliance:

> We support this bill because it places Australian farmers in the spotlight. Currently non-Australian farmers and producers have a competitive advantage whereby they are allowed to declare their produce 'made in Australia' when that is not true to what this phrase implies. Through this bill there is an opportunity to financially and socially support our farmers through endorsing an appropriate country-of-origin labelling system. We live in a time when Australian farmers are an ageing population; they are literally walking off their farms at increasing rates. Research shows that levels of suicide and depression for farmers are double the national average. This bill is a very clear action that will help support our farmers in becoming more viable. In doing so, we will help rural and regional communities to not only survive but to thrive.[8]

2.15 The Horticulture Taskforce supplied the committee with specific examples of products where Australian growers are put at a disadvantage by current CoOL regulations. These included goods sold in pre-wrapped packages, trays or frozen bags, where a small proportion of local produce is mixed with imported produce so that the claim can be made that the goods are made from 'local and imported' ingredients, without specifying the proportion of imported product used. The examples provided were whole or processed mushrooms in trays, lemons, apples and other fruit and vegetables, either whole in trays or in processed products, as well as the imported pulp of bananas, avocados and passionfruit.[9]

2.16 The Horticulture Taskforce also highlighted the use of Australian place names on products that consist of entirely imported ingredients, particularly in the case of apples. It also drew the committee's attention to one case where the Australian flag was used on an imported product for an Australia Day promotion.[10]

2.17 Ms Dowell of the Australian Manufacturing Workers Union (AMWU) noted that changes in the country-of-origin of products used in supermarket home brands could also be misleading for consumers. She said:

> ...with supermarket own labels, quite often people will read them once to see where the country of origin is, but the country of origin will regularly change. However, the product will still have the same label on it, sitting on

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7 Mr Greg Seymour, Deputy Chair, Horticulture Taskforce, *Committee Hansard*, 18 February 2013, p. 29.

8 Ms Hannah Moloney, People's Food Plan Steering Committee member, Australian Food Sovereignty Alliance, *Committee Hansard*, 18 February 2013, p. 16.

9 Horticulture Taskforce, answers to questions on notice received 7 March 2013, pp 1–8.

10 Horticulture Taskforce, answers to questions on notice received 7 March 2013, pp 2–3.

> the same spot on the shelf. So you can pick up a can of peaches, which I did, and find that they are 'Product of Australia', but within a very short period of time they were 'Product of South Africa', which is what they still are. In many cases they will start out using Australian raw materials and making them in Australia in order...to get buyer loyalty, and then, when they have done that, they will go to another supplier. The suppliers change regularly, but there is nothing anywhere there that tells people that. A lot of consumers have only read it once and they think, 'Yes, that's good.' They do not read it again. You would have to read it every single time you pick those products up. Whereas labelled products will actually have clear labels that say, 'This is an Italian brand of tomatoes,' or whatever, supermarkets' own labels do not.[11]

Support for the bill's intention

2.18 Other submissions were more guarded, voicing support for the intention of the bill, but not its substance. For instance, the Australian Made Campaign (Limited) (AMCL) stated:

> AMCL acknowledges the shortcomings in the current labelling regime and welcomes the proposal before Parliament as stimulating discussion on an important issue. However we believe the proposal as it stands requires substantial revision before it could be considered an acceptable alternative to the current food labelling system.[12]

2.19 And Growcom, a peak body for Queensland agricultural producers, submitted that it strongly supported the intention of the bill, but not its detail. However, it claimed that further education programs about the current legislative framework for consumers would not address the real, underlying problem:

> The current labelling scheme is too vague, and many consumers easily misunderstand the intended meaning of the labels… It has been argued that the meaning of current labels can be better communicated to consumers, removing the need for changes to the labelling scheme. However, the vague messages and risk of misinterpretation would remain… Growcom argues that some simple modifications of the labelling scheme would provide a more elegant and enduring solution.[13]

Positive effects on Australian primary producers, manufacturers and retailers

2.20 Some submissions stated that better CoOL legislation would benefit parts of the Australian primary production, manufacturing and retail sectors.

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11 Ms Jennifer Dowell, National Secretary, Food and Confectionary Division, Australian Manufacturing Workers Union, *Committee Hansard*, 18 February 2013, p. 36.

12 Australian Made Campaign (Limited), *Submission 12*, pp 1–8.

13 Growcom, *Submission 13*, pp 3 and 7.

2.21 Coles stated in the hearing that the introduction of its Australian-sourced home-branded lines had been a success:

> **Senator COLBECK:** Okay. Back in 2005-06, you moved to a fairly deliberate policy of sourcing a number of your home-branded products locally and probably stole a march on the rest of the industry. Can you give us a sense of the consumer reaction to those products? Your Australian peas, for example, would be one that I would recognise, to start with. But can you give us a sense of the reaction to that and where they have fitted into the broader market?
>
> **Mr Mara:** Yes, we went into the market with Simplot, as you probably know, making Coles branded products down in Tasmania. The consumer response has been very positive. I will not give you a percentage over the phone, but we do provide those kinds of numbers in terms of the relative popularity of the leading brands. But they have been very successful for our frozen vegetable range…[14]

2.22 The Australian Seafood Industry Alliance applauded the underlying intention of the bill and the amendments it proposes. The Alliance stated that 'there is an urgent need for government intervention in mandating consumer value labels in the recent Blewett Review'.[15] However, it also stated that the bill needs to be developed further, especially as far as seafood CoOL provisions were concerned and proposed two additional amendments focussed on CoOL for seafood.[16]

2.23 The Australian Manufacturing Workers' Union (AMWU) expressed concern that the good reputation that Australia's manufacturing sector currently has, is being cheapened by vagaries in CoOL laws. The Secretary of the Food and Confectionary Division of the AMWU, Ms Dowell stated that:

> …[the Measurement Institute in Melbourne who do testing on imported goods] said to me that, depending on how high the risk is, that determines how much testing they might do. So, obviously, if a pallet of food comes in from New Zealand they do not really bother about that too much, because New Zealand has pretty good quality, and they might take a couple of samples. But if it comes in from China—which is a high-risk country—they will take more samples and they will be more rigorous about the testing.
>
> In many cases, they might not test a consignment at all if it comes from a low-risk country. That is what they told me. They said that when they do test things they test them for the normal things that they would test for here, which has proven to be a mistake in the past with, particularly, stuff from China where they still use DDT, which we do not test for here because we do not use it...

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14 Mr Chris Mara, Adviser, Government Affairs, Coles Group, *Committee Hansard*, 18 February 2013, p. 8.

15 National Seafood Industry Alliance, *Submission 23*, p. 3.

16 National Seafood Industry Alliance, *Submission 23*, pp 1–3.

> Having worked in the food industry, the level of testing in a factory in Australia is pretty high. You are constantly testing what goes through the line and reviewing it. It is quite different to having a container load of food coming in and taking a can off every eighth pallet. Your chances of finding something in that sort of testing regime are not as high as the standards that we have here.
>
> **[CHAIR]**: So to be very clear: the country of manufacture is very important for Australian consumers because that will indicate to us whether or not that food was manufactured under particular hygienic or sanitary conditions that we have come to expect from an Australian standard?
>
> **Ms Dowell**: That is right.[17]

2.24 Ms Dowell also highlighted the central difficulty of amending CoOL laws – creating a regulatory environment that supports Australian primary producers, whilst also meeting the needs of the business and manufacturing sectors:

> There are a number of issues in the bill that we think need to be taken up, particularly how it reflects on manufacturing. We are quite supportive of the fact that obviously the original intent of what has been put forward is to deal with making sure that, as much as possible, raw materials can be sourced from within Australia, but we also want to make sure that there is an incentive for our manufacturers not just to use Australian raw materials but to provide the same high levels of quality in manufacturing as they do at this particular point in time.[18]

2.25 Although the AFGC opposed the bill, the matter of the safety, quality and standards of the Australian food processing industry as a positive selling point, both for domestic and international markets, was also drawn out during the public hearing:

> **[CHAIR]**: …Do you think the Australian public is aware of any differences [in Australia compared to other countries], if they do exist, in manufacturing standards when it comes to food preparation?
>
> **Mr Dawson**: I think the general view would be that we have high standards—and we do—around food safety through the manufacturing process. Consumers therefore would be more comfortable about food that is manufactured, processed in Australia, to the extent that they are concerned about those matters. So, yes, I do think it gives them some comfort if there is an indication that the food was processed and manufactured here versus offshore. Again, in a sense, even if all the ingredients came from overseas but the processing is done here, it abides by the regulatory system here, it generates jobs here, in our view, a 'Made in Australia' tag is still valid or still should be able to be used on those products. If we want the indication that the ingredients were predominantly or all imported, then we say 'Made

17 Ms Jennifer Dowell, National Secretary, Food and Confectionary Division, Australian Manufacturing Workers Union, *Committee Hansard*, 18 February 2013, p. 36.

18 Ms Jennifer Dowell, National Secretary, Food and Confectionary Division, Australian Manufacturing Workers Union, *Committee Hansard*, 18 February 2013, p. 36.

> in Australia with imported ingredients' and that tells the consumer that value-add occurred here, manufacturing was here, standards applied here and the raw ingredients came from overseas.[19]

2.26 This was supported by evidence given by the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE). The department's answers to questions put on notice stated:

> There is broad consensus within the Australian food industry, across both primary producers and food processors, that Australia's national reputation for food security and quality translates to an international brand identity that fosters positive consumer responses, particularly in Asia.[20]

Committee view

2.27 The committee understands that Australian consumers have a substantial appetite for more information about where the food they buy is grown, processed and manufactured. However, the committee has seen in this inquiry that although support for the intention of the bill is substantial, support for the substance of the amendments is not. The committee is of the view that the proposed amendments need further consideration and work.

Recommendation 1

2.28 The committee recommends that the bill as drafted should not be passed.

Opposition to the bill

2.29 Several organisations that made submissions commented that, although they strongly supported the intention of the bill in making CoOL clearer, the proposed amendments require additional clarification and modification to be fit-for-purpose.

2.30 Criticisms fell into four main categories:

- the amendment does not distinguish between packaged and non-packaged foods sufficiently and has the potential to create loopholes for imported fresh goods processed and packaged in Australia;
- the amendment does not sufficiently define 'substantially transformed';
- the threshold of 90 per cent excluding water for the term "Made of Australian Ingredients" does not accommodate some industries where water is a defining part of the product, particularly the brewing industry; and

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19 Mr Gary Dawson, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 18 February 2013, p. 5.

20 Department of Industry, Innovation, Science, Research and Tertiary Education, answers to questions on notice, received 7 March 2013, p. 1.

- compliance with the bill may affect Australia's manufacturing sector negatively.

Insufficient distinction between packaged and non-packaged foods

2.31 Some submitters were concerned that the proposed amendment does not distinguish between packaged and non-packaged foods. Australian Pork Limited, the peak body for Australian pork producers stated:

> APL is supportive of a distinction between food and other goods in labelling matters, but is concerned that the Bill as it is lacks internal consistency as it creates different labelling requirements for packaged and unpackaged foods.[21]

2.32 The Horticulture Taskforce provided an example of where the proposed amendments would introduce a potential loophole. This loophole could allow imported fresh food processed in Australia and sold in packages to be sold as Australian processed goods with no CoOL under the proposed amendments. Mr Seymour, the Deputy Chair of the Horticulture Taskforce, stated:

> Our primary objective is to point out to the Committee the need for the Bill to include a specific new provision to cover regulated fresh food displayed for retail sale in a package. The Bill in its current form does not specifically address the situation where fresh fruit and vegetables (whole or cut) is displayed and sold in a package (for example fresh oranges contained in a netting bag, or cut mushrooms packaged in a plastic tray and covered with plastic wrap). Items 4 and 5 of section 137A refer only to fresh food “other than in a package” or “unpackaged food”.
>
> It is unclear if Items 2 and 3 of section 137A, dealing with packaged food “comprised of ingredients or components” grown in Australia, are intended to cover regulated fresh food in a package. We do not believe that this was the intention.
>
> There appears to be a gap in the Bill, and the Taskforce believes that the legislation must mandate a clear statement identifying the country where packaged fresh food was grown.[22]

2.33 The Horticulture Taskforce felt this was important to include in the amendments to the current legislation because of the increasing popularity of packaged food and pre-processed packaged vegetables. The Taskforce commented that this was especially because these products are favoured by younger demographics of consumers, which could make these loopholes more of an issue in the future if they were not addressed now.[23]

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21 Australian Pork Limited, *Submission 14*, p. 3.

22 Mr Greg Seymour, Deputy Chair, Horticulture Taskforce, *Committee Hansard*, 18 February 2013, pp 28–29.

23 Mr Greg Seymour, Deputy Chair, Horticulture Taskforce, *Committee Hansard*, 18 February 2013, p. 29.

Committee view

2.34 The committee agrees that the amendments as drafted would leave a loophole for processed packaged goods and, moreover, that they do not sufficiently recognise the distinction between packaged and non-packaged fresh food.

'Substantially transformed' insufficiently defined

2.35 Many of the submissions and witnesses commented that both the current legislation and the proposed bill do not sufficiently define what constitutes 'substantial transformation' of products or goods. Although this is primarily to do with the current legislation – rather than the proposed amendments – the committee feels it is a significant enough issue to warrant some discussion here, as it may inform future work on new or amended CoOL standards.

2.36 Current CoOL legislation states that goods are 'substantially transformed' in a country when 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'.[24]

2.37 The Australian Competition and Consumer Commission (ACCC) has noted in its current guidelines for Australian CoOL legislation that processing imported and Australian ingredients into a finished product (such as a cake) would most likely be recognised as a substantial transformation, but that less significant changes to ingredients may not be. The example the ACCC cited in this second instance is the reconstitution of imported fruit concentrate, regardless whether Australian water, sugar, preservatives and packaging were used in this process.[25]

2.38 Evidence presented to the committee noted that the threshold for substantial transformation is, at present, set very low. Some goods may be labelled as 'made in Australia', even if all the main ingredients have been imported if they have undergone 'substantial transformation', and providing that 50 per cent of the cost of production is incurred in Australia, as per the current legislation.[26]

2.39 The importance of these arrangements was drawn out in AMCL's submission:

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24 Section 255(3) of Schedule 2 of the *Competition and Consumer Act 2010*, www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/sch2.html (accessed 8 March 2013). A summary of the provisions of CoOL in the *Competition and Consumer Act 2010* can be found in Appendix 3.

25 ACCC, *Country of Origin Claims and the Australian Consumer Law*, p. 9, www.accc.gov.au/content/item.phtml?itemId=303666&nodeId=ca18a960c4a18fff7da324c16583bed9&fn=Country%20of%20origin%20claims%20&%20the%20ACL.pdf (accessed 24 February 2013). At time of writing, the ACCC website is undergoing a transition to a new site; and this document is marked 'This publication is currently being reviewed'.

26 Section 255 of Schedule 2 of the *Competition and Consumer Act 2010*, www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/sch2.html (accessed 8 March 2013).

> Our major area of concern is in the interpretation of the term 'substantial transformation' in regard to food products, particularly as set out in the ACCC booklet *'Food and beverage industry: country of origin guidelines to the Trade Practices Act'*. Under these guidelines, mixing, homogenisation, coating and curing are all processes "likely to be considered as substantial transformation".
>
> Thus, mixed diced vegetables, blended fruit juice, crumbed prawns and ham and bacon, may qualify as Australian Made even though all the major ingredients may be imported, as long as 50% of the cost of production is incurred in Australia.[27]

2.40 This issue was drawn out in AMCL's appearance at the public hearing:

> **Senator MILNE**: ...I wanted to go to one thing in your submission and is something that comes up all the time, which is part of the complexity of this issue—that is, the rules around substantial transformation. You have identified in your submission many of the concerns that people have about mixed diced vegetables, blended fruit juices or crumbed prawns et cetera. Can you tell me how you would redefine 'substantial transformation'?
>
> **Mr Harrison**: We are not seeking to amend the actual provisions in the act or how the act defines 'substantial transformation'. What we have sought to do is say that, certainly in the food area, there seems to be some slippage in the system with products that the consumer might generally think to be Australian; but, whilst they have been by definition substantially transformed here, the product itself is ostensibly an imported product. That is where imported pork can become bacon, imported concentrate juice can become reconstituted fruit juice and imported fish can be crumbed in Australia. There are a range of processes, such as those for coffee beans, slicing and dicing vegetables and seasoning and homogenising, that we have identified, and we have said that the problem is not so much the definition—because how you define 'substantial transformation' is always going to be a little bit problematic, but the act has a definition and we are comfortable enough with that—but, rather, working out what processes do not constitute 'substantial transformation'. It is a bit of an affirmative action thing. We are really doing it because we want to preclude some end results from meeting the 'substantial transformation' test. The impact of that is that, if a piece of crumbed fish cannot be called 'Made in Australia' because it has not met one of the two pillars to stand on—it might meet the 50 per cent-plus cost test but it does not meet the 'substantial transformation' test because we have said that process does not constitute substantial transformation—then for the purposes of the 'Australian made' logo, if that company want to use the logo, they need to go to one of the other logos used.[28]

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27 Australian Made Campaign (Limited), *Submission 12*, p. 1.

28 Mr Ian Harrison, Chief Executive, Australian Made Campaign Ltd, *Committee Hansard*, 18 February 2013, p. 11.

2.41 The Australian National Retailers Association (ANRA) supported this view:

> ANRA feels it would be more appropriate to 'tighten up' the definition of substantial transformation for 'made in ' or 'product of' claims. This could potentially take the form of specifying the processes or combination of processes required to satisfy a definition. The 'made in' and 'product of' claims would essentially become more exclusive, and if Australian consumers send clear signals through their purchasing patterns then retailers and manufacturers have a clear incentive to strive for these claims.[29]

2.42 This theme was drawn out by Mr Mara from Coles at the public hearing:

> **[CHAIR]**: In your submission you make the point that the loss of the substantially transformed test could benefit imports over products that are made in Australia by Australian workers. Could you elaborate on that please?
>
> **Mr Mara**: I guess for the 'Made in Australia' claim, the transformation test in itself is not a bad test. We would argue I guess that it is probably a little low. As a consequence of a combination, if you like, of not having things like pork using words like 'cured' it should have a higher threshold, essentially. The test itself is fine; it is just the threshold is probably too low.[30]

2.43 Furthermore, it was suggested in the hearing that the administrative process around making a claim under Australian Consumer Law should be expedited. Mr Harrison of the AMCL told the committee that:

> We also have a view...that there should be an administrative provision that enables companies to more easily get a ruling on whether a product meets the tests required to make a claim under the Australian Consumer Law. At the moment, the system is fundamentally litigious: you make a claim and the only way that that claim can be tested is ultimately in a court of law, when action is taken against the company making the claim. This is a grey area, and substantial transformation is not clearly defined. We are now saying it should be more strictly defined by way of precluding some processes. In any event, we think there is scope for an administrative provision to be put in.[31]

Committee view

2.44 The committee considers that the current definition of substantial transformation could be more precise and less open to interpretation and manipulation.

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29 Australian National Retailers' Association, *Submission 22*¸ p. 3.

30 Mr Chris Mara, Adviser, Government Affairs, Coles Group, *Committee Hansard*, 18 February 2013, p. 7.

31 Mr Ian Harrison, Chief Executive, Australian Made Campaign Ltd, *Committee Hansard*, 18 February 2013, p. 10.

The committee recommends that the government should consider ways in which the CoOL framework in general, and the definition of substantial transformation in particular, could be made more precise and more beneficial for consumers, primary producers and manufacturers alike.

Recommendation 2

2.45 The committee recommends that the government should consider developing a more effective country of origin (CoOL) framework (including a more effective definition of 'substantially transformed'), which better balances the interests of consumers, primary producers and manufacturers.

Creating a "negative list" for substantial transformation

2.46 Over the course of the hearings, there was some discussion on the creation of a "negative list", which would codify what processes would *not* meet the threshold to claim substantial transformation of goods had occurred in Australia. Although this matter is slightly tangential to the substance of this inquiry, the committee felt it should be raised as a potential area that government could examine to improve CoOL in the future.

2.47 There was some backing for the idea by witnesses. For example Ms Crowe, representing AMCL, stated:

> **Senator MILNE**: Do you support that—a negative list—as a regulation which could be updated from time to time as required?
>
> **Ms Crowe:** Absolutely. The current act, the Australian Consumer Law, has a provision for regulations to be made to specify which processes do not constitute substantial transformation. So the mechanism is already there and this is the path we have gone down. We already have a starter list, if you like. But we certainly support that proposal—that we list those processes which should not be considered substantial transformation. For example, blending imported pineapple juice and imported orange juice is not a substantial transformation, so such a regulation would mean that that product cannot be labelled 'made in Australia'.[32]

2.48 This perspective was shared by representatives from CHOICE, who saw regulation as a way of dealing with a complex issue in a way that would continue to provide a workable framework for CoOL as manufacturing technology and techniques develop in the future:

> We do not have detailed views around what the [negative list] regulation might look like. I would agree that it is likely that there will need to be, as well as any regulations, some guidance, because manufacturing techniques will continue to evolve, as will the sources of ingredients and the way in which different products are put together before you reach an end product.

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32 Ms Lisa Crowe, Administration and Compliance Manager, Australian Made Campaign Ltd, *Committee Hansard*, 18 February 2013, p. 12.

> It is important that the system of regulation has enough flexibility to deal with that. That is why we feel that a regulation is the correct way to deal with this, because it does allow for some flexibility for it to evolve over time without ever requiring to go through the normal parliamentary path that primary legislation would require, but that should be accompanied by guidance that could evolve even more rapidly and frequently.[33]

2.49 More sceptical views on the possible introduction of a negative list were expressed by the government departments that appeared at the public hearing. Officials from The Treasury and DIISRTE stated:

> **Senator MILNE**: …What is your response to the idea of a negative list to lift the threshold for what 'substantial transformation' is by ruling out things that clearly are not substantial transformation?
>
> **Mr Francis**: My understanding is that what substantial transformation is a question of law in Australia but will be dealt with in industry guidance material that is being prepared. Taking the issue of whether adding water to a juice constitutes a substantial transformation, that is a matter of law. If in the event it is not a substantial transformation then someone using the 'made in Australia' claim would be breaching the ACL, because they would be making a false and misleading representation.
>
> …
>
> **Ms Milward-Bason**: We have been considering the fact that substantial transformation can be regulated. At the moment, what we are trying to do is get together some guidance material on substantial transformation that is better than what we have at the moment. I believe that current guidance materials would suggest that adding water to a juice concentrate would not be substantial transformation. It says that making a cake from a whole lot of flour, eggs and sugar from other countries would be substantial transformation. There is really a black and white approach at the moment.
>
> Our objective with the industry guidance on country of origin labelling that we are about to start developing in consultation with industry is to work out what is and is not substantial transformation for some of the greyer areas. We would rather try doing that through better guidance as what may or may not be considered to be substantial transformation, knowing that it is ultimately a question of law and that law trumps guidance. It is certainly a first attempt to do something more on substantial transformation. We understand that there is an issue here. Moving straight to regulation could lead to unintended consequences. Our first step process is to develop the guidance material for industry. Once we have developed that and it has been disseminated we have the 2015 consumer survey coming out to measure whether or not that has improved matters. If we find that there is

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33 Mr Alan Kirkland, Chief Executive Officer, CHOICE, *Committee Hansard*, 18 February 2013, pp 44–45.

> still a problem that will be the time for you to consider increasing regulation.[34]

Committee view

2.50 The committee sees the development of a negative list as a potentially useful tool for making CoOL easier to understand – both for Australian consumers and for importers, businesses and manufacturers. The committee takes this opportunity to encourage the government to look into the benefits and drawbacks of a negative list for substantial transformation.

Recommendation 3

2.51 The committee recommends the government consider the potential benefits and drawbacks of creating a "negative list" for processes that do not satisfy the "substantial transformation" test for CoOL purposes.

Potential impact on the brewing industry

2.52 The Brewers Association stated in its submission that the amendments would damage Australian brewers, as their products contained a significant amount of local water and a proportionally high amount of imported ingredients, including hops. The Association stated:

> With specific reference to water as an ingredient, the water used in brewing is an integral part of the beverage and has a significant impact on the quality and character of the finished beer. For that reason we are strongly opposed to the total exclusion of water from the requirement to calculate the origin of ingredients.[35]

2.53 The potential disadvantage to the Australian brewing industry was also noted by the AFGC.[36]

Potentially negative effects on Australia's manufacturing sector

2.54 Several submissions stated that the proposed amendments would be damaging for Australian manufacturers due to the cost of adapting to a new regulatory environment. Moreover, there was some suggestion that dropping the "Product of…" and "Made in…" labels would make it difficult for consumers to actively choose to support Australian jobs in the manufacturing sector.

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34 Mr Geoff Francis, General Manager, Competition and Consumer Policy Division, The Treasury, and Ms Lyndall Milward-Bason, Manager, Customs Policy Section, Trade and International Branch, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 18 February 2013, pp 23–24.

35 Brewers Association, *Submission 16*, p. 2.

36 Australian Food and Grocery Council, *Submission 18*, p. 5.

2.55 Ms Milward-Bason of The Treasury was asked if the bill had any unintended consequences. She replied:

> The fact that the rules for Australian origin would be quite strict under legislation of the kind in the bill would mean that it would become quite costly for Australian industry to comply with those rules. You will have probably quite a number of producers who will not know what sort of origin they will be able to attribute to their goods, and you would possibly encourage some producers to go offshore, particularly those where there is no way that they will be close to a 90 per cent content—I am thinking of those where there is no real commercial availability of ingredients in Australia, such as for producers of chocolate or cranberry [sauce] They might be encouraged to go offshore.[37]

2.56 Food South Australia (Food SA) submitted that:

> The only manufacturer [the changes proposed in the bill] could feasibly benefit would be a niche producer, who differentiates on the basis of local, high-end production; and, whilst they are vital contributors to the diversity, culture and flair of the industry, represent a minority employer of the 226,750 Australians employed in the food and beverage sector in 2009-10. Over the longer term, as they grow, it is probable that this amendment would also represent a long-term disservice to them.[38]

2.57 Although Coles supported current food labelling laws being strengthened, it suggested that:

> …the Bill in its current form could add further consumer and industry confusion and disadvantage the Australian manufacturing sector.[39]

2.58 The Australian Food and Grocery Council (AFGC) felt the proposed amendment would inhibit Australian producers and manufacturers in overseas markets. It stated in a reply to a question on notice:

> By seeking to prohibit the use of the terms 'Product of' and 'Made in' in relation to food – this Bill will penalise food manufacturers from trading on the premium of brand Australia – a highly sought after brand particularly in Asian markets.[40]

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37 Ms Lyndall Milward-Bason, Manager, Customs Policy Section, Trade and International Branch, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 18 February 2013, p. 27.

38 Food South Australia, *Submission 25*, p. 3.

39 Coles, *Submission 17*, p. 4.

40 Australian Food and Grocery Council, answers to questions on notice, received 8 March 2013, p. 2.

Cost of adaptation

2.59 A common theme of the submissions was the concerns about the increased compliance costs on business and the manufacturing sector that could flow from the amended CoOL regulations.

2.60 The Brewers Association suggested that the current terms "Product of Australia" and "Made in Australia" should be maintained. This would 'mean substantial cost savings to the consumer as those products already meeting the requirements would not need to change labels'.[41]

2.61 Mr Talbot, Director of Corporate Affairs Australia and New Zealand, Kraft Foods Australia, also stated that the proposed amendments would have a negative influence on the performance of Kraft's brand Cadbury, especially its Australian-made chocolate: This was drawn out in the public hearing in Hobart:

> **…**if we have to name the top 3 ingredients, sugar, dairy and cocoa. The cocoa can be sourced from a variety of origins—Africa, Indonesia, the Solomon Islands, et cetera. We would not want to have our production processes held back by the fact that we had to relabel on a regular basis, because labelling is actually quite expensive.
>
> I will give you a broader example around food labelling which relates to what we are talking about today. It has taken us 15 years to get the one Cadbury dairy milk label accepted by 17 export countries, many of which are in Asia. If we have to change the label, even if it is as simple as stating 'Tasmanian dairy', it has to go through a regulatory process in probably half of those countries. At the moment I can switch the machine on at Claremont and run it flat out at about 85 per cent asset efficiency. I do not want to do label changes for different markets, which could mean diverse outcomes.[42]

2.62 Moreover, the submission made by the AFGC argued that some leeway should be given to manufacturers subject to fluctuations in price or seasonal variation of their primary goods:

> Industry requires flexibility in the way that legislation is applied to a particular batch or package, taking into account that sourcing of ingredients may be subject to variations in price and seasonal fluctuations in supply, while also ensuring that consumers are not misled about the origin of the food and its ingredients used by the manufacturer.
>
> The current test for "Made in Australia" focuses on substantial transformation – or where the jobs are. This is important and meaningful information for consumers that should not be lost.[43]

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41 Brewers Association, *Submission 16*, p. 2.

42 Mr Simon Talbot, Director, Corporate Affairs Australia and New Zealand, Kraft Foods Australia, *Committee Hansard*, 18 February 2013, p. 39.

43 Australian Food and Grocery Council, *Submission 18*, p. 6.

2.63 In its submission, Coles stated that, should the bill be implemented, a lead time of at least 24 months be given to business for compliance so as to avoid imposing extra costs on suppliers, manufacturers and retailers:

> Many food supply contracts operate across significant durations and product packaging is often printed well in advance of use. Without sufficient time to implement these changes, retailers and manufacturers would incur unnecessary regulatory costs and burden.[44]

2.64 The AFGC stated that the adoption of more complex systems of CoOL also had attendant problems, including increasing fiscal burdens on businesses:

> …the Centre of International Economics…found that [an approach where all the major ingredients in a product were listed on packaging] would significantly increase costs due to the complexity of the food system, and adding a significant burden due to additional labelling costs, particularly small businesses. Companies may source the same type of material from more than one country due to seasonal variability or other factors affecting supply. It is costly and impractical to have to keep changing the labels on foods to inform customers of the exact origin of the imported food.[45]

2.65 However, alternative views on this matter emerged over the course of the hearing. Ms Dowell from the AMWU recalled how one manufacturer changed its labelling quickly and easily, and in a way that appealed to consumers:

> **Ms Dowell**: …There are always issues raised about the cost to manufacturers, but we have a view that it is not necessarily a huge impost to manufacturers and if they really want to do these things they can.
>
> To give an example of that, which is an example I have given previously in discussions, we have a fruit juice factory that makes a particular brand of mixed fruit juices. When they could not source raspberries in Australia at one stage they sourced local plums and put a sticker on the juice that simply said they could not source raspberries and rather than import them they had decided to use local plums. Every consumer that I spoke to thought it was a fabulous thing for them to do.
>
> **Senator COLBECK**: Because they could not import them or they did not want to?
>
> **Ms Dowell**: They did not want to. Wherever possible they source locally. When they could not get the raspberries locally, they decided that rather than import them they would put local plums in.[46]

2.66 This proposition was supported by representatives from CHOICE. One of them, Ms McDougall, stated:

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44 Coles, *Submission 17*, p. 4.

45 Australian Food and Grocery Council, *Submission 18*, pp 5–6.

46 Ms Jennifer Dowell, National Secretary, Food and Confectionary Division, Australian Manufacturing Workers Union, *Committee Hansard*, 18 February 2013, p. 33.

> It was really interesting to hear from Cadbury. I have also been to the Arnott's factory, for instance, and seen how they do their labelling for the different regions that they sell into. At their Sydney based factory they provide a number of product lines to a number of markets, and they have the rolls of packaging there ready to go. There might even be a small change in the ingredients, and if that is the case, depending on what the requirements are in an export market, then they will do that on a separate day. If there is no change in their ingredients, it is simply a matter of changing the rolls over, and their packaging literally rolls off and is sliced at each point. So my understanding from Arnott's—and it is only one example and I am sure that they could provide you with more information, as could other manufacturers—is that it is relatively simple for them to change their packaging.[47]

2.67 Ms McDougall expanded upon this later in the hearing:

> We certainly hear transition as the main argument against reform in a range of labelling areas. It is always interesting to hear how a company expresses that difficulty. From what we see there seems to be no difficulty in getting a *Smurfs* promotion onto a number of labels because a [movie] is out, but when it comes to getting out information that consumers want they seem to invoke the 18-month estimation. So we do take a healthy scepticism towards those claims. At the same time, as I understand it, the rolls of labels are ordered in advance, and they are ordered in bulk. The argument there is that you would be wasting those labels if you had to basically bin them overnight and come up with a new set. So we do recognise the need for a transition period. We are by no means the best people to say how long that transition period should be, but I think we would want to see some evidence behind claims of 18 months to two years, and I think we have heard today some varying estimates from different industry representatives. So perhaps some more views on that would be helpful.[48]

Lack of information about the place of processing and manufacture

2.68 The AFGC stated that it would like to see consumers being given the option to choose to support Australian jobs in the processing and manufacturing sectors. It argued:

> …the AFGC is opposed to the proposed [amendment as it] fails to provide clear and unambiguous information about the origin of processed value added food products and where these products are made, and in doing so, fails to provide consumers with the option to support employment in Australia, particularly in rural and regional employment.[49]

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47 Ms Angela McDougall, Policy Adviser, CHOICE *Committee Hansard*, 18 February 2013, p. 43.

48 Ms Angela McDougall, Policy Adviser, CHOICE *Committee Hansard*, 18 February 2013, p. 45.

49 Australian Food and Grocery Council, *Submission 18*, p. 3.

2.69 Furthermore, the AFGC favoured keeping the status quo and maintaining the current test for "Made in Australia" as it:

> …focuses on substantial transformation – or where the jobs are. This is important and meaningful information that should not be lost.[50]

2.70 Coles took a similar position in its submission:

> …it is important to recognise the place of manufacture and/or transformation in order to support Australian manufacturers. In our view, criteria should be maintained in order to ensure sufficient incentive to the Australian manufacturing sector.[51]

2.71 Additionally, criticisms were levelled at the bill's suggestion that "Made of Australian Ingredients" is a readily understandable term. The Australian Industry Group (Ai Group) suggested in its submission:

> "Made of Australian Ingredients" doesn't mean that the product is Made in Australia. It is feasible that Australian glucose syrup, sugar and gelatine could be sent to China for the manufacture of sugar confectionary at much lower packaging, labour and overhead costs yet as long as there is more than 90% ingredients from an Australian source the country of origin declaration would read as "Made of Australian Ingredients" and consumers will be none the wiser as to where the product was actually made.[52]

Committee view

2.72 The committee can see that the amendments currently being examined may have some negative effects upon Australian industry and manufacturers. Again, the committee sees that there are opportunities for the current legislation to be improved to meet the needs of consumers, producers and manufacturers. However, it also considers that the proposed amendments need to be reworked and recalibrated to meet these ambitions (see Recommendation 1).

The need for an education campaign

2.73 A common theme in the submissions was a preference for more effective public campaigns to increase awareness of the terminology and provisions of current CoOL arrangements, rather than amendments being made to the current legislative framework.

2.74 Coles submitted that:

> Coles supports the recent comments on food labelling made by Mr Rod Sims, Chairman of the ACCC, at a speech to the Australian Food and Grocery Council in October 2012. 'The ACCC does not believe there is an

50 Australian Food and Grocery Council, *Submission 18*, p. 6.

51 Coles, *Submission 17*, p. 4.

52 Australian Industry Group, *Submission 20*, p. 6.

> essential problem with the current classifications. The problem is people's understanding of what they mean' Mr Sims further stated 'We need a classification system that deals with where a product is made. The problem is that they should be looking for a 'Product of Australia' label'. [53]

2.75 The Australian National Retailers Association (ANRA) also cited Mr Sims' comments as representative of their views on the proposed amendments.[54]

2.76 The Brewers Association shared this perspective. It said in its submission that:

> …the current labelling is perceived as not meeting consumer needs primarily because of a lack of understanding of [terminology's] meanings, rather than the terms being misleading.[55]

2.77 Food SA took a similar position, opposing the amendments and recommending that the government should seek:

> To leave regulatory provisions for CoOL within existing Food Standards Code and invest resources in making it easy for consumers to understand.[56]

2.78 The AFGC also argued that the problem in Australia's CoOL framework is not in the current legislation, but in public awareness of terminology. The AFGC suggested that there should be more attention given to educating the public that the label 'Product of Australia' is the premium claim for Australian food – both for product origin and place of manufacture:

> …Fundamentally, 'Product of Australia' is unknown by consumers, so we would say that the first port of call is to promote that properly as the premium brand and promote better consumer understanding of what 'Product of Australia' means. That is the gold standard, if you like. That does signal clearly that pretty much everything in the product was grown here, or, if it is a processed product, that the transformation took place in Australia and the jobs are here. We see that as the key priority, and I think that we would be in agreement with CHOICE on that. If you could manage that or deliver greater consumer understanding of what 'Product of Australia' means, we would go a long way to improving consumer understanding or bringing clarity into this system.
>
> …
>
> I come back to my key point. The key to that is proper promotion of what 'Product of Australia' means, and that has not occurred recently. I am not sure that it has ever occurred. I fully accept that consumers do not

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53 Coles, *Submission 17*, p. 3. See also Mr Rod Sims, "Competition and consumer issues: State of play in the food and grocery sector", 11 October 2012, www.accc.gov.au/speech/competition-and-consumer-issues-state-of-play-in-the-food-and-grocery-sector (accessed 26 February 2013).

54 Australian National Retailers' Association, *Submission 22*¸ p. 2.

55 Brewers Association, *Submission 16*, p. 4.

56 Food South Australia, *Submission 25*, p. 2.

understand that, and there is a responsibility, I guess, to work out how we properly promote that.[57]

Committee view

2.79 The committee is of the opinion that it is important for the Australian public to understand the terminology of our CoOL arrangements. It suggests that the development of any new CoOL legislation be accompanied by a comprehensive public education campaign about the meaning of the claims provided by that legislation, so as to encourage greater consumer awareness and knowledge on this issue.

Recommendation 4

2.80 Upon the development and implementation of a new CoOL labelling system as per Recommendation 2, the committee recommends that the government should develop an effective public education campaign for the new CoOL guidelines.

Senator Glenn Sterle

Chair

57 Mr Gary Dawson, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 18 February 2013, p. 1.

Australian Greens' Additional Comments

I thank the Committee and those who made submissions on my bill. I reiterate the Australian Greens' commitment to implement a country of origin labelling system that provides fairness and transparency for Australian producers and consumers, and provides clear labelling provisions for locally manufactured food.

I intend to bring forward new legislation based on the valuable feedback received through this inquiry.

Senator Christine Milne
Leader of the Australian Greens

Additional Comments by Nick Xenophon Independent Senator for South Australia

1.1 Enough is enough. In their current form Australia's food labelling laws – particularly as they relate to country of origin labelling – are woeful. They result in anomalies such as imported orange concentrate to be labelled 'Made in Australia' if it is reconstituted here. Australian consumers, and for that matter Australian producers, deserve far better.

1.2 Senator Milne's Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) was preceded by a bill I introduced with Nationals Senator Barnaby Joyce and then-Greens Leader, Senator Bob Brown in 2009. This Bill is a further attempt at reforming country of origin labelling as we know it.

1.3 Consistent with recommendation 41 of the 2011 report *Labelling Logic* by Dr Neal Blewett AC (commonly referred to as the Blewett Review), this bill sought to amend the *Competition and Consumer Act 2010* to create a specific section that deals solely with country of origin claims regarding food. The bill also sought to provide for country of origin labelling to be dependent on the ingoing weight of ingredients and components (excluding water) rather than on where processing and packaging took place.

1.4 It should be noted that the Blewett Review was criticised by many including the writer, as not going far enough in terms of country of origin food labelling reform. However, it was still a material improvement on the current laws where the 51 per cent substantial transformation rule can also mean that a meat pie could be labelled 'Made in Australia' even though the meat could be fully imported (because other ingredients are Australian and the processing and packaging takes place here). Notwithstanding the overly cautious approach of the Blewett Review, the Government's response was pathetic. It failed to recommend any substantial changes to food labelling laws. There has been a substantial lack of political will on the part of the Government to reform this crucial issue of consumer choice and information,

1.5 The Committee has acknowledged that while some concerns were raised regarding specific provisions of the bill, there was widespread support for the intention of the bill. Concerns raised included the absence of a definition of 'substantially transformed' and a lack of distinction between packaged and non-packaged foods which could lead to loopholes allowing imported fresh food to be sold as Australian if it is processed and sold in packages here. Concerns were also raised that the bill may affect Australia's manufacturing sector negatively.

1.6 In order to address these concerns the Committee has made a number of recommendations, such as recommending that the Government should consider developing a more effective definition of 'substantially transformed'. I fully support the Committee's recommendations in that respect.

1.7 However, while the current bill may have a number of technical shortcomings, these could be overcome with appropriate political will. Therefore this should not be

seen as an opportunity for the Federal Government to further delay much needed reform of Australian country of origin labelling laws, particularly given the Federal Government's poor track record when it comes to responding to previous food labelling reviews.

1.8 For instance, I believe the Federal Government's response to the Blewett Review was a win for multinational, foreign-owned companies who can export their products to Australia where unsuspecting consumers purchase them, believing they are supporting Australian producers. By ignoring the recommendations relating to country of origin claims, the Federal Government is effectively allowing Australian consumers to continue to be misled.

1.9 The urgency of country of origin food labelling reform needs to also be considered with the Closer Economic Relationship with New Zealand.

1.10 Arising out of a recent hearing of this Committee into biosecurity matters, AusVeg – the peak industry body of vegetable producers – issued the attached media release. The AusVeg release highlights a glaring loophole in our laws in that a vegetable from a third country could be packaged in New Zealand and labelled as a 'Product of New Zealand'. The clear definition of 'Product of Australia' is that the produce was grown and processed in Australia. The AusVeg revelations raise serious questions over the Closer Economic Relationship with New Zealand and the ability of consumers to be misinformed. This is another area of food labelling laws that must be dealt with urgently.

Recommendation 1

1.11 The bill be passed with significant and appropriate amendments, because of the imperative that consumers not be misled as they are under current food labelling laws.

Senator Nick Xenophon
Independent Senator for South Australia

AUSVEG

Media Release

14 March 2013 For immediate release

Horticulture New Zealand CEO publicly admits to importing vegetables from China and sending on to Australia

An admission by the New Zealand horticulture industry's Chief Executive has confirmed once again that the New Zealand processed vegetable industry is importing vegetables from China, repackaging them in New Zealand and sending them to Australia under the labelling claim, 'Made in New Zealand from local and imported ingredients'.

In a recent media release, Horticulture NZ Chief Executive, Mr Peter Silcock, conceded that New Zealand receives vegetables from China, freezes them and sends them to Australia.

"These sorts of practices are designed to mislead consumers about the origin of their food. If they see that something is a 'Product of New Zealand' they expect that it has been grown there, not sent from China to get a sprinkling of New Zealand product before being sent to Australia," said AUSVEG Chief Executive Officer, Mr Richard Mulcahy.

AUSVEG is the National Peak Industry Body representing Australia's 9,000 vegetable and potato growers.

The Horticulture New Zealand release claims that there is no difference between 'Made in Australia from local and imported ingredients' and 'Made in New Zealand from local and imported ingredients.'

"The deciding difference is that China has a Free Trade Agreement with New Zealand and that these practices are now so commonplace they are being endorsed by the New Zealand horticulture industry," said Mr Mulcahy.

AUSVEG has been campaigning for more stringent Country of Origin Labelling laws so that these sorts of loopholes are not possible.

"It's unfair that the goodwill of Australian consumers who buy New Zealand produce on the basis that it comes from New Zealand is being so badly abused. Consumers have a similar expectation when buying locally grown produce here in Australia - they expect it to be Australian," said Mr Mulcahy.

"Consumers are finding current labels declaring Country of Origin extremely confusing and difficult to understand. New regulations must be put in place to ensure that no claim of origin can be made that can deceive consumers," said Mr Mulcahy.

Recent surveys by consumer watchdog Choice show that only 12 per cent of respondents were able to accurately identify the meaning of 'Made in Australia', while only three per cent knew the correct definition of 'Made in Australia from local and imported ingredients'.

"It's obvious from the consistency of the survey results we keep seeing that something must be done to address the flaws in the regulations governing Country of Origin Labelling," said Mr Mulcahy.

ENDS

APPENDIX 1

Submissions Received

Submission Number	Submitter
1	Mr Peter Sainsbury
2	Ms Mia Pithie
3	Mr Helen Lapin
4	Ms Kathryn Landreau
5	Mr Keelah Lam
6	Ms Simone Yakic
7	Ms Julie Schneider
8	Mr Alex Hodges and Ray Linkevics
9	Ms Jennifer Smith
10	Dr Inke Falkner
11	Ms Sarah Dawson-Shepherd
12	Australian Made Campaign Ltd
13	Growcom
14	Australian Pork Limited
15	Australian Food Sovereignty Alliance
16	Brewers Association
17	Coles
18	Australian Food and Grocery Council
19	Ms Michella Burgers
20	The Australian Industry Group
21	Australian Manufacturing Workers' Union (AMWU)
22	Australian National Retailers' Association
23	National Seafood Industry Alliance
24	Melbourne Community Farmers' Markets
25	Food South Australia
26	Mr R.G.H Cotton
27	Mr Greg Wolfe
28	Ms Jane Scammell
29	Gene Ethics
30	Horticulture Taskforce
31	CHOICE
32	Ms Christine Jones

Additional Information Received

- Received on 27 February 2013, from the Australian Food and Sovereignty Alliance. Answers to Questions taken on Notice on 18 February 2013.
- Received on 6 March 2013, from the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE). Answers to Questions taken on Notice on 18 February 2013.
- Received on 6 March 2013, from the Horticulture Taskforce. Answers to Questions taken on Notice on 18 February 2013.
- Received on 8 March 2013, from the Australian Food and Grocery Council. Answers to Questions taken on Notice on 18 February 2013.
- Received on 12 March 2013, from The Treasury. Answers to Questions taken on Notice on 18 February 2013.

APPENDIX 2

Public Hearings and Witnesses

18 February 2013, Hobart, TAS

- AMIRTHANESAN, Mr Nirmalan, Policy analyst,
  Treasury
- COBURN, Mr Simon, Secretariat,
  Horticulture Taskforce
- CROWE, Ms Lisa, Administration and Compliance Manager,
  Australian Made Campaign Ltd
- DAWSON, Mr Gary, Chief Executive Officer,
  Australian Food and Grocery Council
- DOWELL, Ms Jennifer, National Secretary, Food and Confectionary Division,
  Australian Manufacturing Workers Union
- FRANCIS, Mr Geoff, General Manager,
  Treasury
- HADLER, Mr Robert, General Manager, Corporate Affairs,
  Coles Group
- HARRISON, Mr Ian, Chief Executive,
  Australian Made Campaign Ltd
- JOHNSTON, Ms Madeleine, National Industrial Officer,
  Australian Manufacturing Workers Union
- KIRKLAND, Mr Alan, Chief Executive Officer,
  CHOICE
- MARA, Mr Chris, Adviser, Government Affairs,
  Coles Group
- MATHEWS, Dr James, Communications Director,
  Australian Food and Grocery Council
- McCULLOCH, Mr Alan, Assistant Manager, Customs Policy Section, Trade and International Branch,
  Department of Industry, Innovation, Science, Research and Tertiary Education
- McDOUGALL, Ms Angela, Policy Adviser,
  CHOICE
- MILWARD-BASON, Ms Lyndall, Manager, Customs Policy Section, Trade and International Branch,
  Department of Industry, Innovation, Science, Research and Tertiary Education

- MOLONEY, Mrs Hannah, People's Food Plan Steering Committee member,
  Australian Food Sovereignty Alliance
- RAHMAN, Ms Azrianne, Policy analyst,
  Treasury
- RYAN, Mr Warwick, Director, Government Relations, KPMG
  Horticulture Taskforce
- SEYMOUR, Mr Greg, Deputy Chair,
  Horticulture Taskforce
- TALBOT, Mr Simon, Director, Corporate Affairs Australia and New Zealand,
  Kraft Foods Australia
  Cadbury
- TROTMAN, Mr Paul, General Manager, Trade and Industry Branch,
  Department of Industry, Innovation, Science, Research and Tertiary Education

APPENDIX 3

Country of origin claims in the Australian Consumer Law

The *Trade Practices Act 1974* (TPA) was renamed the *Competition and Consumer Act 2010* (CCA) with effect from 1 July 2010. Subsequent amendment created the Australian Consumer Law (ACL) which commenced on 1 January 2011.[1] The ACL is located in Schedule 2 to the CCA. When the ACL was created it moved the consumer protection provisions into Schedule 2 and updated the consumer protection provisions by using a more 'plain English' approach. However it did not fundamentally change the content of the laws about country of origin representation.

Under the ACL:

- section 18 provides a general prohibition against conduct that misleads or deceives or is likely to mislead or deceive;
- paragraph 29(1)(a) provides a broad prohibition against making a false representation that goods, among other things, have a particular history. Importantly, a representation about the country of origin of goods is a representation of the history of those particular goods;
- paragraph 29(1)(k) provides a specific prohibition against making a false or misleading representation about the place of origin of goods; and
- section 33 prohibits a person from engaging in conduct which is liable to mislead the public as to the nature, manufacturing process, the characteristics, suitability for their purpose or the quantity of any goods. A representation about country of origin may be a representation about the nature, manufacturing process or the characteristics of particular goods.

In addition, the ACL sets out the 'safe harbour' provisions in table form for easier reading. These provisions have been developed from court decisions that have been made using the legislation itself.

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[1]. See the bill homepage for the *Practices (Australian Consumer Law) Bill (No. 2) 2010*, which includes links to the bill, its first and second reading, and the Explanatory Memorandum, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4335%22 (accessed 13 March 2013).

Defences

Section 255 of the CCA provides that the sections above are not contravened if the requirements set out in the table below are met:[2]

Representation	Requirements to be met
1 A representation as to the country of origin of goods	(a) the goods have been substantially transformed in that country; and (b) 50% or more of the total cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that occurred in that country; and (c) the representation is not a representation to which item 2 or 3 of this table applies.
2 A representation that goods are the produce of a particular country	(a) the country was the country of origin of each significant ingredient or significant component of the goods; and (b) all, or virtually all, processes involved in the production or manufacture happened in that country.
3 A representation as to the country of origin of goods by means of a logo specified in the regulations	(a) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and (b) the prescribed percentage of the cost of producing or manufacturing the goods as worked out under section 256 is attributable to production or manufacturing processes that happened in that country.
4 A representation that goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each significant ingredient or significant component of the goods was grown in that country; and (c) all, or virtually all, processes involved in the production or manufacture happened in that country.

2 *Competition and Consumer Act 2010* Schedule 2, s. 255, www.comlaw.gov.au/Details/C2011C00003 (accessed 7 March 2013).

5 A representation that ingredients or components of goods were grown in a particular country	(a) the country is the country that could, but for subsection (2), be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and (c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and (d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country.

Note: The regulations may prescribe rules for determining the percentage of the total costs of production or manufacture of goods attributable to production or manufacturing.