

## Australian Products - Labelling A new value proposition for consumers

### Introduction

A new Information Standard<sup>1</sup> under Australian Consumer Law (ACL) has been created which sets out the new country of origin labelling requirements for food sold in Australia.

The widely discussed Competition and Consumer Amendment (Country of Origin) Bill 2016 was introduced to the Parliament to amend safe harbour defences<sup>2</sup> under ACL on 4 May 2016. The Bill was not passed prior to the dissolution of both Houses on 9 May 2016, consequently, the legislation will be debated by the newly formed Parliament.

### What is the upshot?

On 13 April 2016, Christopher Pyne, Minister for Industry, Innovation and Science published an Information Standard. The Information Standard was effective from 1 July 2016. Industry will have two years to transition to the new arrangements. Current stock in trade can see out its shelf life without any penalty.

### Let's take a step back - why do we care?

To a food or wine lover 'provenance' or 'terroir' refers to the knowledge of where one's sustenance is sourced. Direct market connections between farmers and consumers like those found in farmers' markets can create a sense of value and appreciation for produce and the passion and skill that goes into farming and crafting the food on our tables. Provenance can also refer to the characteristics associated with a product originating from a specific place. In that sense, it is a selling point which may be concerned with nutrition, but is more likely to reflect an expected sensory benefit.

Establishing the provenance of food also has practical benefits including health, safety and quality. In the case of mad cow's disease in the UK, it is arguable that the beef industry would not have survived but for the efforts of retailers to trace the heritage and breeding of the British beef stock. In Australia, small producers are more likely to have contact with their customers, resulting in feedback regarding the quality and value associated with their product. As operations scale up the consumer can experience a disconnect— particularly in the level of confidence that they place in food which can seem to have no origin.

---

<sup>1</sup> The ACL allows the Commonwealth Minister to prescribe Information Standards about the information required to be provided by suppliers of consumer goods and of services. Section 134 of the Australian Consumer Law.

<sup>2</sup> the ACL provides 'safe harbour' defences for country of origin claims in relation to goods that meet certain criteria. If goods satisfy the criteria for a country of origin safe harbour defence, the business is deemed by s. 255 of the ACL not to have engaged in misleading or deceptive conduct or made a false or misleading representation under ss. 18, 29(1)(a), 29(1)(k), 151(1)(a) or 151(1)(k) of the ACL.

## The Information Standard<sup>3</sup>

In response to public concerns, an Information Standard was published which provides for mandatory country of origin labelling requirements for food that is sold (including offered or displayed for sale) in Australia.

The labelling requirements vary depending on whether the food falls within one of the following three categories:

- packaged food, other than fresh fruit and vegetables in transparent packages;
- fresh fruit and vegetables in transparent packaging; and
- unpackaged meat, fish, fruit and vegetables.

## New Labels<sup>4</sup>

Country of origin labels for food grown, produced, made in Australia will identify two key things:

- the food was grown, produced or made in Australia – indicated by the Australian Made Logo we are all familiar with and a statement that the food was grown, produced or made in Australia; and
- the percentage of the ingredients in the food which are Australian – shown by the bar chart.



If the food was grown, produced or made in Australia exclusively from Australian ingredients, the information must be in the form of one of the standard marks (e.g. the kangaroo logo) together with a statement that that the food was grown, produced or made in Australia and that its ingredients are exclusively Australian.

Things get a little more complicated when the food was grown, produced or made in Australia, however, some ingredients used in the product are not Australian. The percentage of the ingredients in the food, by ingoing weight, are also referenced and indicated by the bar chart.

---

<sup>3</sup> Country of Origin Food Labelling Information Standard 13 April 2016

<sup>4</sup> Australian Government Department of Industry Innovation and Science Country of Origin Food Labelling Fact Sheet



3

If the food was packaged in Australia (but not exclusively grown, produced or made in Australia), the labelling must include one of the standard marks. These marks do not include the kangaroo logo, but do include a bar chart, a Packed in Australia statement and an Australian ingredient statement, aligned with the bar charts set out above.

If a particular ingredient is sourced exclusively from a certain country, text naming the origin of that ingredient can be added. E.g a statement such as Made in Australia using Mauritian vanilla beans.

If all the ingredients are from a single country, the label must at least state that the food in the package was grown, produced or made in that country. The goods may include a standard mark that also includes a statement that it was packed in Australia, together with an unfilled bar chart.

### Priority and Non-priority Food

The Information Standard covers all food for retail sale in Australia. However, 'non-priority foods' only require a text statement of origin on their labels.

Non-priority foods include:

- Seasonings
- Confectionery
- Biscuits and snack food
- Bottled water
- Soft drinks and sports drinks
- Tea and coffee Alcoholic beverages

Priority foods are all other food products.

For non-priority foods, the use of the standard mark is voluntary

## Imported food

There will be minimal impact on food imported into Australia. Imported products will continue to be required to be labelled with a country of origin. If the food was not grown, produced, made or packaged in Australia, the labelling will be required to identify:

- the country of origin of the food, if it is from a single country (it may also identify where the food was packaged if this was a different country), or
- if the food is from more than one country:
- the country where the food was packaged, if applicable; and
- that the food is of multiple origins.

Unless the food is classed as non-priority the country of origin information must be in a clearly defined box.

For priority foods, importers will be required to make their country of origin claim in a box on the label, so it can be easily found by consumers. Importers will not be allowed to use the kangaroo symbol as the product is not of Australian origin.

The presence of Australian ingredients in imported food, can be indicated by use of a standard label that includes a bar chart and text about the proportion of Australian ingredients.



For wholly imported food, a 'packed in' claim is required when the food cannot claim to have been grown, produced or made in a single overseas country. A label like 'Packed in Fiji from imported ingredients' would be used.

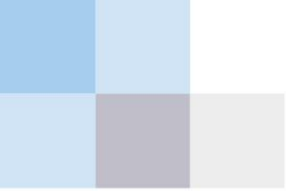
## Safe Harbour Defences

The ACL provides 'safe harbour' defences for country of origin claims in relation to goods that meet certain criteria. If goods satisfy the criteria for a country of origin safe harbour defence, the business is deemed by s. 255 of the ACL not to have engaged in misleading or deceptive conduct or made a false or misleading representation under ss. 18, 29(1)(a), 29(1)(k), 151(1)(a) or 151(1)(k) of the ACL.

The Safe Harbour Defences are said to provide businesses with certainty about the types of practices that will allow them to safely make country of origin claims without breaching the ACL.

Chapter 5 Part 5-3 of the ACL outlines defences relating to various kinds of country of origin claims:

- general country of origin claims (such as 'made in')
- 'product of / produce of' a country claims
- claims that goods were 'grown in' a particular country

- 
- claims that ingredients or components of goods were 'grown in' a particular country and
  - use of a prescribed logo.

## End Note

The proposed Competition and Consumer Amendment (Country of Origin) Bill 2016 and the in-force Information Standard will change the Safe Harbour Defences in the ACL and require compliance. It will be interesting to see how these amendments and the information standard change how food is labelled and whether the value proposition associated with Australian made produce will be strengthened.

Knowledge of provenance is more difficult to accomplish within the mainstream supply chain and let's face it, most of us will go to one of the 2 main supermarkets at some stage during the week. Despite this, the Australian public has demanded information about origin and the movement is only set to become more important, particularly when it comes to concerns of food safety and quality. For example, you may recall the 2015 contamination scare involving frozen berries. There was a widespread community concern over imported produce. The media referenced the origin of the berries, not merely the fact that the produce may be the source of a risk to public health. It is fair to say that buying local and safe produce is more important than ever to Australians.

## Contact

Rosan Santangelo, Partner  
D: \_61 (2) 2 9376 1144  
rosan.santangelo@hbalegal.com

[www.hbalegal.com](http://www.hbalegal.com)