



**Submission to Senate Rural and Regional Affairs
and Transport Legislation Committee
Inquiry into Competition and Consumer
Amendment (Australian Food Labelling) Bill 2012
(No. 2)**

5 November 2012

About CHOICE

CHOICE exists to unlock the power of consumers. Our vision is for Australians to be the most savvy and active consumers in the world.

As a social enterprise we do this by providing clear information, advice and support on consumer goods and services; by taking action with consumers against bad practice wherever it may exist; and by fearlessly speaking out to promote consumers' interests - ensuring the consumer voice is heard clearly, loudly and cogently in corporations and in governments.

To find out more about CHOICE's campaign work visit www.choice.com.au/campaigns and subscribe to CHOICE Campaigns Update at www.choice.com.au/ccu.

Summary:

CHOICE appreciates the opportunity to provide the following comments to the Senate Rural and Regional Affairs and Transport Legislation Committee's inquiry into the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2).

CHOICE has long supported mandatory country of origin labelling for food because it is an important issue for many consumers when it comes to making decisions about the food they buy. However, confusing and vague labelling makes it difficult for them to make informed decisions. CHOICE supports reform of the country of origin terminology used for food and the introduction of a simplified framework.

CHOICE does not object to the proposal in the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) for a specific section in the Competition and Consumer Act that would deal solely with food country of origin claims.

However, CHOICE does not support the introduction of a claims framework based on ingredients alone, primarily because consumers are also interested in where food is manufactured. z

The following recommendations and suggestions are intended to improve the bill from the consumer perspective. The recommendations are ways to address areas of consumer detriment caused by the current country of origin labelling framework while the suggestions should be subject to stakeholder consultation and, where necessary, consumer testing.

Recommendation 1: Extend mandatory country of origin labelling to all packaged and unpackaged food for retail sale.

Recommendation 2: Legislative amendment should simplify the current country of origin claim framework.

Suggestions:

- a) Retain 'Made in' claim and current definition but consider changing wording to 'Manufactured in'.
- b) Remove 'Grown in' claim, while retaining 'Produce of'/'Product of' claim with existing definitions.
- c) Introduce a new claim for all processed foods that don't meet the requirements for the new 'Manufactured in' claim, using wording based on consumer research.
- d) Prohibit all qualified claims that add generic ingredient origin statements to the permitted claim (such as 'Made in in Australia from local and imported Ingredients').
- e) Introduce a provision allowing additional detail around ingredient origin where the ingredient is a characterising ingredient of the product, and both ingredient and country are specified.

Recommendation 3: Introduce regulations to provide guidance on the meaning of substantial transformation.

Recommendation 4: Prohibit generic ingredient claims that refer to 'imported ingredients' without specifying the country or countries of origin.

Consumer interest in country of origin labelling

Country of origin labelling is a very important issue for consumers. The results of a recent CHOICE member survey¹ show that the origin of food is second only to actual ingredients in terms of the types of information valued in choosing food. Seventy one per cent of consumers said it was crucial or very important to know where food comes from.

Given the value consumers place on country of origin labelling, it is unacceptable that there are exceptions to mandatory country of origin labelling requirements. While labelling is required for all packaged food for retail sale and unpackaged fruit and vegetables, when it comes to meat, country of origin labelling is only required for pork and seafood. In addition to addressing confusing terminology, it is essential that country of origin labelling reform close these loopholes.

Recommendation 1: Extend mandatory country of origin labelling to all packaged and unpackaged food for retail sale.

Consumer confusion around country of origin claims

Notwithstanding the value consumers place on country of origin labelling, many of the claims currently used are confusing or vague. Consumers find it difficult to make informed decisions about the origin of food and so CHOICE has long called for reform of the country of origin framework.

In CHOICE's recent survey, we asked consumers about the meaning of four common claims which are defined in the Australian Consumer Law (ACL) and explained in guidance from the Australian Competition and Consumer Commission (ACCC):

- **Australian Grown**
ACL definition: only the 'significant' ingredients have to be from the country specified and, additionally, virtually all the processing is done there.
Consumer interpretation: eight in ten interpret 'Australian Grown' as meaning all the ingredients are grown in Australia.
- **Product of Australia**
ACL definition: only the 'significant' ingredients have to be from the country specified and, additionally, virtually all the processing was done there.
Consumer interpretation: two thirds of respondents interpret 'Product of Australia' as meaning all the manufacturing and/or all of the ingredients are Australian.

¹ CHOICE Member Survey - Country of Origin, October 2012, 743 respondents.

- **Made in Australia**
ACL definition: the product was substantially transformed in the country specified and 50% of the processing occurred there.
Consumer interpretation: 12% of consumers interpret 'Made in Australia' in accordance with the technical definition and a further 40% believe it means the manufacturing was done in Australia. However, 32% believe it means the ingredients are from Australia as well as the manufacturing.
- **Made in Australia from local and imported ingredients**
Australian Competition and Consumer Commission guidance:² qualified claims that give more information than the standalone 'Made in Australia' claim do not have to meet the substantial transformation and 50% processing costs tests.
Consumer interpretation: only 3% of consumers interpret 'Made in Australia from local and imported ingredients' in accordance with the ACCC guidance. Almost two thirds of consumers believe it means that the same substantial transformation and processing cost requirements for 'Made in Australia' must be met, while 49% believe it means the majority of ingredients may have been imported (when placing 'local' before 'imported' generally means the majority of ingredients are local).

The survey results show that, with the exception of 'Made in Australia', consumers have very varied interpretations of these claims, suggesting a disjuncture between interpretation and technical definition.

CHOICE notes that the ACCC recently released a consumer information fact sheet that explains what these terms mean. However, the advice around qualified claims like 'Made in Australia from local and imported ingredients' does not tell consumers that these qualified claims are not required to meet the requirements for the standalone claim as the ACCC states in the earlier guidance document. CHOICE believes this inconsistency adds to the confusion around this type of claim, which consumers consistently tell CHOICE is their biggest country of origin frustration.

It is evident that the current country of origin terminology framework is confusing for consumers. The proliferation of vague, qualified claims fails to give consumers the information they need to make informed decisions. Consumers need legislative intervention to simplify the current framework and replace the current confusion with clearly defined claims that can be easily understood.

Recommendation 2: Legislative amendment should simplify the current country of origin claim framework.

² Australian Competition and Consumer Commission Country of origin claims and the Australian Consumer Law 2011.

Consumer expectations of country of origin labelling

In our recent survey, CHOICE asked about the importance of the origin of food. The results showed that consumers are not only interested in where ingredients are from, but also where food is manufactured:

- 84% said it was crucial or very important to be able to confidently identify if food was grown in Australia; and
- 80% said it was crucial or very important to be able to confidently identify if food was manufactured in Australia.

Similarly, when asked about their reasons for buying Australian food, two-thirds of consumers feel strongly about buying Australian to keep food manufacturing jobs in Australia, while three-quarters feel strongly about buying Australian to support Australian farmers.

Based on these findings, CHOICE believes any reform of country of origin labelling must retain claims that allow food companies to communicate information about the origin of the manufacturing as well as the ingredients.

Comments on the bill

Item 1: Insertion of a new additional section in the Competition and Consumer Act 2010 creating specific requirements for food country of origin labelling

Food is fundamentally different from other consumer products such as furniture or electronics. Recent research commissioned by the Australian Made Campaign Limited (AMCL) showed that consumers value country of origin labelling for food above other categories of consumer goods, with 87% of consumers saying they prefer to buy Australian food. For all other product categories, less than half of consumers said they prefer to buy Australian.

Notwithstanding that food is different from other goods, CHOICE does not object to moving the framework for country of origin labelling for food from the Food Standards Code (FSC) to the Competition and Consumer Act 2010 (Cth) (CCA). This would place responsibility for enforcement with the ACCC which is well placed to regulate potentially misleading country of origin labelling.

It would be essential to create food-specific provisions, as the bill proposes. It would also be essential to ensure the mandatory nature of country of origin labelling food is provided for, whether in the new provisions of the CCA or by provision in the FSC with reference to the CCA provisions detailing the requirements.

It would also be critical to allocate sufficient resources to the ACCC and state fair trading bodies to enable those agencies to enforce country of origin labelling laws for food.

Item 2: Insertion of a definition for food

If food country of origin labelling requirements are to be moved to the CCA, CHOICE supports the insertion of a definition of food mirroring that in the Food Standards Australia New Zealand Act 1991.

Item 3: Insertion of new country of labelling requirements for particular kinds of food

- ***Prohibit 'Made in' or 'Product of' claims for foods manufactured or produced in Australia***

CHOICE does not support the prohibition of the standalone 'Made in Australia' claim. This is because there is strong consumer interest in knowing where food was manufactured as the results of the CHOICE survey demonstrate. In the minds of consumers, the importance of knowing where food is manufactured is almost on a par with knowing where it is grown.

CHOICE believes the standalone 'Made in' claim needs to be retained. We recognise that there is a mistaken belief among some consumers that the claim goes to the origin of the ingredients, with 32% of respondents to CHOICE's survey interpreting the 'Made in Australia' claim to mean that there are Australian ingredients in the product. For this reason, we suggest the claim 'Manufactured in Australia' may be more appropriate as it may indicate more clearly that the country claimed was the source of processing rather than ingredients.

The current legislated requirements for substantial transformation and 50% of processing costs set a threshold that ensures a considerable amount of processing occurred in the country claimed. CHOICE believes those requirements should be retained, although we recognise the difficulty some food companies experience in determining whether the substantial transformation test has been met. CHOICE recommends that additional regulations should provide guidance in this area.

Suggestion (a): Retain 'Made in' claim and current definition but consider changing wording to 'Manufactured in'.

Recommendation 3: Introduce regulations to provide guidance on the meaning of substantial transformation.

- ***Introduce 'Made of Australian ingredients' claim for packaged food with 90% or more of the total weight comprised of ingredients grown in Australia***

CHOICE does not support the introduction of a 'Made of Australian ingredients' claim for foods comprising at least 90% Australian-grown ingredients. The existing terms 'Grown in Australia', 'Product of Australia' and 'Produce of Australia' already provide a premium claim for foods with predominantly Australian-grown ingredients. CHOICE believes that introducing a new term could cause further confusion among consumers.

Another concern is that the 'Made of Australian ingredients' claim could be used on products with Australian grown ingredients which were transported offshore for processing and returned for sale. Consumers would be misled if they assumed the claim meant the processing was done in Australia. In this respect the 'Product of Australia' claim provides a higher standard by guaranteeing that virtually all of the processing was done in Australia, in addition to the significant ingredients having been grown here.

CHOICE suggests that this area of labelling could be simplified by merging the 'Grown in' and 'Product/Produce of' claims into a single claim because they have virtually identical requirements. We suggest that 'Produce of' be used for primary produce such as fruit, vegetables, seafood and meat, while 'Product of' would be used for processed foods where virtually all of the manufacturing took place in the country claimed and the significant ingredients were grown in the same country.

Suggestion (b): Remove 'Grown in' claim, while retaining 'Produce of' / 'Product of' claim with existing definitions.

- ***Prohibit use of 'Made of Australian ingredients' for packaged food with less than 90% total weight comprised of ingredients grown in Australia***

As explained above, CHOICE does not support the introduction of a 'Made of Australian ingredients' claim.

Further, we note that the bill does not provide for an alternative claim or claims for products which do not meet the premium claims of 'Grown in Australia' or 'Made of Australian ingredients'. This is why it is essential to retain the 'Made in' (or 'Manufactured in') claim.

CHOICE suggests that the current requirements for 'Made in' be retained, which are substantial transformation and 50% of processing costs. However, we note that these requirements can't be met for all processed products, for example where seasonal variations require processing to be done in different countries, or where the level of processing does not reach the level of substantial transformation.

CHOICE therefore suggests that in addition to retaining a 'Product/Produce of' and 'Manufactured in' claim, a third tier is necessary for all products that don't meet the higher standards. Consumer research should be conducted to determine the most appropriate wording to convey the impression of a lower level of processing with no inference of ingredient origin.

Suggestion (c): Introduce a new claim for all processed foods that don't meet the requirements for the new 'Manufactured in' claim, using wording based on consumer research.

- ***Unpackaged fresh food must be labelled with the country where the food was grown or that it is a mix of local, imported or a mix of local and imported food***

CHOICE supports mandatory country of origin labelling for unpackaged fresh food. CHOICE believes that unpackaged fresh food is comparatively easy to label when compared with processed foods with many ingredients and processing inputs. For this reason, we do not see the need for generic labelling such as 'imported' or 'mix of local and imported' as proposed in the bill.

CHOICE suggests that qualifiers such as 'imported ingredients' and 'local and imported ingredients' be prohibited because they are general and do not support informed decision making. Because labelling of fresh food should be straightforward, the country of origin can be stated. Further, unpackaged food does not present the same issues as packaged food around labelling changes where there is a change in source country.

CHOICE does not object to the provision of additional detail where it specifies the country of origin of a specified, characterising ingredient.

CHOICE believes that the terms 'Product of' and 'Produce of' cover the same ground as 'Grown in' and have wider application. Both 'Product of' and 'Produce of' can be used to describe primary produce while 'Product of' is appropriate for processed foods. In order to simplify the country of origin labelling framework, we suggest that 'Product/Produce of' be used instead of 'Grown in'.

Suggestion (d): Prohibit all qualified claims that add generic ingredient origin statements to the permitted claim (such as 'Made in Australia from local and imported Ingredients').

Suggestion (e): Introduce a provision allowing additional detail around ingredient origin where the ingredient is a characterising ingredient of the product, and both ingredient and country are specified.

Recommendation 4: Prohibit generic ingredient claims that refer to 'imported ingredients' without specifying the country or countries of origin.