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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**Competition and Consumer Amendment (Australian Country of Origin Food
Labelling) Bill 2013**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Christine Milne)

Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2013

Outline

The Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2013 implements important reforms to the designation and regulation of country of origin labelling for food in Australia.

It is widely recognised that Australia's current country of origin labelling requirements for food are unsatisfactory and includes information that confuses and misleads consumers. This was confirmed by the independent review of food labelling law and policy, chaired by Dr Neal Blewett, in the review's report *Labelling Logic* (2011),¹ and by subsequent independent research carried out by the consumer advocacy organisation, CHOICE².

There are two key parts to the amendments put forward in this Bill. The first enacts Recommendation 41 of the Blewett Review, by creating a specific section in the Competition and Consumer Act that deals solely with country or origin claims with regard to food.

The new provisions create a single regulatory regime for most kinds of unpackaged and packaged food, retaining mandatory labelling requirements, but superseding the country of origin labelling requirements currently in the *Food Standards Australia New Zealand Act 1995*.

The second part of this Bill enacts recommendations arising from the Senate Inquiry into Senator Milne's private member's Bill, the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012*³. These amendments extend country of origin food labelling to all packaged and unpackaged food for retail sale; and clarify and restrict the range of labelling (and the meaning of key terms in country of origin labelling) to three kinds of claim. These changes simplify the system and provide greater transparency for consumers.

Key amendments provide new stipulations about the definition and wording of claims regarding food manufacturing in Australia; and are accompanied by a requirement to use the term "Manufactured in Australia" rather than "Made in Australia". This reflects consumer research that demonstrates that consumers find the words "Made in Australia" confusing and think it refers to the origin of the content that is additional to local manufacture. "Manufactured" is a more clearly understood term that removes this confusion.

The Bill also removes the ability to make qualified claims such as "Made from local and imported ingredients" that have been shown to be particularly misleading and uninformative for consumers, and replaces them with the claim of "Packaged in Australia", which reflects the situation where food has minimal Australian processing.

¹ <http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/home>

² Submission 31 found at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/completed_inquiries/2010-13/food_labelling/submissions.htm

³ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/completed_inquiries/2010-13/food_labelling/report/index.htm

NOTES ON CLAUSES

Clause 1 – Short Title

This is a formal provision specifying the short title.

Clause 2 – Commencement

This clause provides that the Act will come into effect the day after the end of the period of 12 months after the Bill receives Royal Assent. The 12 month period has been provided to allow sufficient time for affected businesses and organisations to transition to the new labelling requirements.

Clause 3 – Schedules

This clause provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule operates according to its terms.

Schedule 1—Amendments to the *Competition and Consumer Act 2010*

Item 1

Item 1 inserts a new definition of country of origin labelling requirements in subsection 2(1) of Schedule 2 of the *Competition and Consumer Act 2010*.

Item 2

Item 2 inserts a new definition of food in the *Competition and Consumer Act 2010*. The definition mirrors the definition of food in the *Food Standards Australia New Zealand Act 1991*.

Item 3

Item 3 refers to a clarified definition of “substantial transformation” provided in subsection 137A(5)

Item 4

Item 4 inserts Part 3-4A – Country of origin labelling requirements for food which comprises new sections 137A, 137B and 137C.

Section 137A designates two overarching categories of unpackaged and packaged food—that which contains some Australian content or has some level of processing in Australia, and that which does not.

Subsection 137A(1) explains that the table in subsection 137A(3) specifies country of origin labelling requirements for particular kinds of packaged and unpackaged food.

Subsection 137A(2) specifies that certain packaged and unpackaged food not covered by the items in the table in Section 137A may be subject to country of origin labelling requirements in Section 255 of Schedule 2 of the Act.

Subsection 137A(3) includes a table which has 6 items. The items in the table specify country of origin labelling requirements for certain packaged and unpackaged food as follows:

- Item 1 in the table stipulates that packaged food where all the significant ingredients are Australian, and where all processing is in Australia, must be labelled with either “Product of Australia” or “Produce of Australia”. This is the same as the current claim standard for these labelling terms.
- Item 2 in the table stipulates that packaged food that meets the new definition of substantial transformation described in Subsections 137A(5); and where at least 50% of the cost of that transformation is incurred in Australia, must be labelled with “Manufactured in Australia” or “Australian Manufactured”. This replaces the current “Made in Australia” claim with a new term “Manufactured in Australia”, which is a more commonly understood term and is not conflated in a way that conveys the origin of the food ingredients. This item effectively removes the ability to make qualified claims such as “Made in Australia from local and imported ingredients”.
- Item 3 in the table stipulates that all other packaged food that has minimal processing in Australia, but is not substantially transformed in Australia, must be labelled “Packaged in Australia”. This item therefore removes the ability to make qualified and non-specific claims such as “Packaged in Australia” from local and imported ingredients”
- Item 4 in the table makes provision for the labelling of any significant ingredients of Australian origin in the country of origin labelling, for example, “Manufactured in Australia with Australian peanuts”. This item therefore makes specific provision for packaged food with significant Australian content that is unable to make other “Product of” claims for the purpose of highlighting local content.
- Items 5 and 6 in the table extend mandatory country of origin labelling to all unpackaged food for retail sale in Australia, subject to the exemptions detailed in Section 137A(5). Items 5 and 6 in the table stipulate the country of origin claims available for unpackaged food for retail sale that has been grown in Australia, and for some imported unpackaged food label requirements. In addition to “Product of Australia” and “Produce of Australia” claims, it also allows the term “Grown in Australia” to be used in identifying the country of origin.

Subsection 137A(4) provides further clarification to the claims that cannot be made about unpackaged food that is displayed for retail sale.

Subsections 137A(5) and 137A(6) stipulate that the Minister must take all reasonable steps to introduce a regulation that provides a definition of *substantial transformation* of food within six months of the date that this Bill receives the Royal Assent. The regulation must include a list of processes that do not qualify as *substantial transformation* of food.

Subsection 137A(7) provides a definition of what is meant by food being grown in a particular country.

Section 137B deals with the relationship between amendments in this Bill and other labelling requirements. It specifies that the new country of origin labelling requirements for food prevail over existing requirements under the *Food Standards Australian New Zealand Act 1991* and *Trade Marks Act 1995* and details exemptions relating to the *Wine Australia Corporation Act 1980*.

Section 137C creates new civil penalty provisions for contraventions of the new food labelling requirements, and incorporates exemptions from penalties for food that is supplied or intended to be supplied for immediate consumption by particular institutions such as restaurants and state facilities.

Items 5 and 6

Item 5 comprises of new Part 4-4A and new section 204A, which details new criminal penalties for not complying with food labelling requirements relating to country of origin. These penalties are consistent with penalties for other contraventions of information standards covered by the *Competition and Consumer Act 2010*.

Item 6 is consequential to Item 5.

Items 7 and 8

Item 7 amends section 210. It extends existing defences in the *Competition and Consumer Act 2010* involving goods acquired for the purpose of re-supply to the food labelling requirements offence in section 204A. Item 8 is a consequential amendment.

Items 9 and 10

Items 9 and 10 amend section 224 to apply pecuniary penalties for contravention of section 137C, and apply the same penalties as apply to other contraventions of information standards in the Act.

Item 11

Item 11 amends section 248 to enable a court to disqualify a person from managing a corporation for a period if the court is satisfied that the person has contravened, attempted to contravene or been involved in a contravention of section 137C.

This applies the same power available to the court in relation to other contraventions of information standards covered by the Act.

Items 12, 13, 14 and 15

Section 252 provides a defence for contraventions relating to safety and information standards involving consumer goods acquired for the purpose of re-supply. Items 12 to 15 amend this section to extend the defence to contraventions of food labelling requirements where the food was acquired for the purpose of re-supply.

Item 16

Item 16 amends section 254 to stipulate that for packaged and unpackaged food not covered by subsection 137A(3), the provisions in section 255 may nevertheless apply.

Items 17, 18 and 19

At present the *Imported Food Control Act 1992* reflects the *Australia New Zealand Food Standards Code Standard 1.2.11*. As this Bill will over-ride Standard 1.2.11. Items 17, 18 and 19 amend the Imported Food Control Act so that's measures pertaining to country of origin food labelling reflects Competition and Consumer Act amendments in this Bill.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill amends the *Competition and Consumer Act 2010* to create new provisions specifying new definitions and standards with regard to the country of origin labelling on packaged and non-packaged food.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

Senator Christine Milne

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