

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(*Consumer Affairs*)

A BILL

FOR

**An Act to amend the *Trade Practices Act 1974*, and for
related purposes**

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Trade Practices Amendment (Origin Labelling) Act 1994*.

5 (2) In this Act, “**Principal Act**” means the *Trade Practices Act 1974*¹.

Commencement

2. This Act commences on the first day of the thirteenth month after the month in which this Act receives the Royal Assent.

Insertion of new Division

3. After Division 1A of Part V of the Principal Act the following Division is inserted:

“Division 1B—Representations about the origin of goods

“Subdivision 1—Definitions

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Definitions

“65VA. In this Division:

‘Australian origin representation’, in relation to goods, means a representation that the place of origin of the goods is Australia;

‘pre-production step’ includes design;

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‘production step’ means a step in manufacture or production, and includes finishing and packing.

Note: Section 4 has other definitions that are relevant to this Division (for example, the definitions of ‘corporation’; ‘goods’; ‘supply’ and ‘trade or commerce’).

Place of origin of marine produce

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“65VB. For the purposes of this Division, Australia is to be regarded as the place of origin of all marine produce that was first landed in Australia, regardless of where it was caught or taken.

When goods “carry” a representation

“65VC. For the purposes of this Division, goods **‘carry’** a representation if the representation is applied to the goods or to their packaging or labelling. For this purpose, **‘applied to’** includes printed on, woven in, impressed on, worked into or attached to.

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“Subdivision 2—Scope of this Division

Scope of this Division

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“65VD.(1) This Division applies to a supply by a corporation, in trade or commerce, of consumer goods. For this purpose, goods are **‘consumer goods’** if, and only if:

(a) the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption; or

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(b) the price paid to the corporation for the goods is not more than the amount that is the prescribed amount for the purposes of subsection 4B(1).

“(2) This Division does not apply to the supply if:

(a) the supply happens outside Australia; or

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(b) the goods are intended for export; or

(c) the goods were manufactured or produced in Australia, or were imported into Australia, before the day on which the *Trade Practices Amendment (Origin Labelling) Act 1994* commenced.

5 “(3) For the purposes of paragraph (2)(b), goods are presumed to be ‘intended for export’ if the goods carry a representation in words that the goods are for export only. This presumption does not apply if the contrary is established.

“Subdivision 3—Representations about origin

10 Supply of goods that carry an express Australian origin representation in words

“65VE.(1) The corporation must not supply goods that carry an express and unambiguous Australian origin representation in words except as authorised by subsection (2).

15 Note: The following are examples of express and unambiguous Australian origin representations: ‘made in Australia’; ‘product of Australia’; ‘produce of Queensland’s Darling Downs’; ‘produced in Tasmania’; ‘manufactured in New South Wales’; ‘processed in Wollongong’.

“(2) Goods may carry a representation set out in the following Table if the goods meet the corresponding conditions set out in the Table.

Category	Representations	Conditions
A	‘Produce of Australia’ or ‘Product of Australia’	Australia was the place of origin of each major ingredient or component of the goods and all operations involved in the manufacture or production of the goods happened in Australia.
B	‘Made in Australia’	The goods acquired their essential character or qualities in Australia.

20 Note: The following are examples of circumstances in which goods acquire their essential character or qualities in Australia:

- (1) The goods were given their essential function, shape or appearance in Australia.
- (2) The major processes which transformed the goods from their component parts into the finished goods happened in Australia.
- 25 (3) If the goods are promoted as having certain characteristics or functions, the goods were given the characteristics or functions in Australia.

Supply of goods that carry the Australian Made Certification Mark

“65VF.(1) Section 65VE does not apply to a supply of goods that carry the representation ‘Australian made’ as part of the Australian Made Certification Mark.

30 “(2) The corporation must not supply goods that carry the Australian Made Certification Mark unless the goods also carry a representation authorised by subsection 65VE(2).

“(3) In this section:

‘**Australian Made Certification Mark**’ means the certification mark whose use is licensed by the Advance Australia Foundation.

Supply of goods that carry a representation in words about an Australian production step

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“65VG. The corporation must not supply goods that carry an express representation in words that a production step happened in Australia unless the goods also carry a representation in words that identifies the place or places of origin of the components or ingredients of the goods.

Note: The following are examples of representations that are sufficient for this section: ‘Assembled in Australia from imported components’; ‘Packed in Australia. Imported and Australian ingredients’; ‘Carved in Australia from imported wood’; ‘Built in Australia from Australian steel and Malaysian rubber’; ‘Packed in Australia. Product of India’.

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Supply of goods that carry a representation in words about an Australian pre-production step

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“65VH. The corporation must not supply goods that carry an express representation in words that a pre-production step happened in Australia unless the goods also carry at least one of the following:

- (a) a representation authorised by subsection 65VE(2);
- (b) a representation in words that identifies one or more of the production steps that happened in Australia;
- (c) a representation in words that indicates that the place of origin of the goods is outside Australia.

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Note: The following are examples of representations that are sufficient for paragraph (c): ‘made in Korea’; ‘manufactured outside Australia’; ‘produced overseas’; ‘processed in Tokyo, Japan’; ‘produce of foreign countries’.

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Supply of goods that carry a representation likely to be regarded as an Australian origin representation

“65VJ. The corporation must not supply goods that carry a representation in words, pictures or symbols that is likely to be regarded as an Australian origin representation unless the goods also carry at least one of the following:

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- (a) a representation authorised by subsection 65VE(2);
- (b) a representation in words that identifies one or more of the production steps that happened in Australia;
- (c) a representation in words that identifies one or more of the pre-production steps that happened in Australia;

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- (d) a representation in words that indicates that the place of origin of the goods is outside Australia.

5 Note 1: The following are examples of representations that might be regarded as Australian origin representations: '100% Australian'; 'Australian'; representations of kangaroos; representations of the Australian flag; representations of the map of Australia or an Australian State or Territory.

Note 2: The following are examples of representations that are sufficient for paragraph (d): 'made in Korea'; 'manufactured outside Australia'; 'produced overseas'; 'processed in Tokyo, Japan'; 'produce of foreign countries'.

10 **Supply of goods that carry composite or multiple representations**

"65VK.(1) The corporation must not supply goods that carry an Australian connection representation and a foreign origin representation unless:

- 15 (a) the foreign origin representation is as prominent as the Australian connection representation; and
(b) the representations are as close to each other as possible.

"(2) In this section:

'Australian connection representation' means:

- 20 (a) a representation in words that a production step happened in Australia;
(b) a representation in words that a pre-production step happened in Australia;
(c) a representation in words, pictures or symbols that is likely to be regarded as an Australian origin representation.

25 **'foreign origin representation'** means:

- (a) a representation that the place of origin of the goods is outside Australia;
(b) a representation that the place of origin of any of the ingredients or components of the goods is outside Australia."

30 **Further amendments of the Principal Act**

4. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 4

CONSEQUENTIAL AMENDMENTS

Subsection 5(1):

Omit "Parts IV, IVA and V", substitute "Part IV, Part IVA and Part V (other than Division 1B)".

Subsection 6(3):

Omit "and 1A", substitute ",1A and 1B".

Subsection 6(4):

Omit "Division 1 of Part V (other than sections 53A, 55 and 61)", substitute "Division 1 (other than sections 53A, 55 and 61) and Division 1B of Part V".

Paragraph 75AS(b):

Omit "or 1A", substitute ",1A or 1B".

Subsection 86(2):

Omit "or 1A", substitute ",1A or 1B".

Paragraph 86A(1)(b):

Omit "or 1A", substitute ",1A or 1B".

Paragraph 86A(4)(b):

Omit "or 1A", substitute ",1A or 1B".

Paragraph 86A(5)(b):

Omit "or 1A", substitute ",1A or 1B".

Paragraph 86B(1)(b):

Omit "or 1A", substitute ",1A or 1B".

NOTE

1. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; Nos. 8, 20, 87 and 120, 1988; Nos. 28 and 34, 1989; Nos. 11, 70 and 108, 1990; Nos. 49, 122, 136, 173 and 180, 1991; Nos. 22, 104, 105, 106 and 222, 1992; and No. 98, 1993.

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT (ORIGIN LABELLING) BILL

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Consumer Affairs,
the Hon. Jeannette McHugh MP)



TRADE PRACTICES AMENDMENT (ORIGIN LABELLING) BILL 1994

OUTLINE

The purpose of this Bill is to introduce a scheme to govern representations about the origin of consumer goods, by inserting a new Division 1B into Part V of the *Trade Practices Act 1974*. The Government's intention in introducing this scheme is to encourage Australian industry to label products which have their origin in Australia and to give consumers a reliable means of identifying Australian products.

2. The scheme therefore focuses on representations about Australian origin carried on consumer goods supplied in Australia. The scheme does not apply to goods intended for export; nor does it make any direct provision about representations on imported goods. Only where imported goods make a representation about Australia does the Bill require that further information be provided. This might involve a statement that the goods or their components had their origin outside Australia.
3. The scheme set out in the Bill applies only where a manufacturer or supplier chooses to make a representation that indicates that the place of origin of the goods is Australia, or if there is an obligation imposed by some other law to label the goods with their place of origin, and that place is Australia.
4. The Bill deals with four different types of representations commonly made on consumer goods: express claims that the goods were made in or are a product of Australia; claims that a step in manufacture happened in Australia, such as 'Assembled in Australia' or 'Packed in Australia'; claims that goods were designed in Australia; and representations in words or pictures that are likely to be regarded as claims that the goods were made in Australia. It also deals with the positioning of labels where goods carry composite or multiple representations.
5. Part VI of the TPA dealing with enforcement, defences and remedies will apply to the new Division. It is also the intention of the Government that sections 52 and 53(eb) of the TPA, dealing with misleading and deceptive conduct and false and misleading representations about the place of origin of goods, will still apply, and that other Commonwealth legislation which is not directly inconsistent with this Bill will continue to have effect.

FINANCIAL IMPACT STATEMENT

6. Costs to Government arise through the need for an education campaign for industry and consumers and for the development of guidelines to assist industry in complying with the scheme set out in the Bill. Enforcement will remain the responsibility of the Trade Practices Commission. State and Territory health authorities will continue to enforce food labelling requirements and the Australian Customs Service will continue to enforce labelling provisions for imported products.

7. It is not possible to make a precise costing of the impact the Bill will have on industry. There will be some re-labelling costs where goods currently labelled do not meet the requirements of the new scheme but this cost will be minimised by a twelve month phase in period from the date of Royal Assent to the date of commencement.

8. The following products would have to be re-labelled:

- goods which are now labelled 'Product' or 'Produce of Australia' which will not qualify for this label under the new rules;
- goods which now use terms such as 'Assembled' or 'Packed in Australia', but which do not give information about the origin of ingredients or components;
- goods which are now labelled 'Designed in Australia' but do not carry information on their place of origin;
- goods which now carry Australian flags or maps or words such as '100% Australian' but do not carry information on their actual place of origin; and
- goods which are labelled 'Made in' or 'Product of' a town, region or State rather than 'in Australia'.

9. Suppliers will benefit from the scheme by having standard origin terms which will reduce the risk of non-compliance and which will enable them to promote the Australian content of their goods, confident that consumers will understand the messages they are sending. The scheme is also flexible enough to allow suppliers to tell a story about their products if they wish to do so, thus preserving their freedom to communicate with their customers in the way best suited to their products.

10. Informed consumers, acting on reliable information are an important aspect of market efficiency. This scheme provides easily identifiable labels to distinguish all Australian goods and goods made in Australia, so that where consumers want to buy Australian, they can do so with confidence. The provisions which require more detailed information about goods where only some processes have occurred in Australia, or where some implied claim is made about Australian origin, will reduce the possibility of consumers being misled by partial information.

NOTES ON CLAUSES

Clause 1 - Short Title

1. This clause provides for the Act to be cited as the *Trade Practices Amendment (Origin Labelling) Act 1994*. It also provides that the 'Principal Act' referred to in this Act is the *Trade Practices Act 1974* (TPA).

Clause 2 - Commencement

2. The Act commences on the first day of the thirteenth month after Royal Assent. The clause is worded so that, for convenience, the commencement date will be the first of the month rather than the date exactly 12 months after Assent. The period of 12 months is to allow time for an education campaign for industry and consumers and to give industry sufficient time to relabel goods in accordance with the Act.

Clause 3 - Insertion of New Division

3. This clause inserts a new Division 1B into Part V of the TPA to provide rules relating to representations about the Australian origin of goods.

Section 65VA - Definitions

4. All definitions in Part I of the TPA will apply to the new Division 1B so far as they are relevant. Section 65VA provides a number of additional definitions for the purposes of Division 1B. These definitions are self explanatory.

Section 65VB - Place of origin of marine produce

5. It is necessary for the purposes of this Bill to make some provision for when fish and other produce of the sea can be considered Australian. The *Acts Interpretation Act 1901* in section 17 defines 'Australia' as the Commonwealth of Australia and when used in a geographic sense includes the territories of Cocos Keeling and Christmas Islands. In addition, section 15B of that Act provides that unless the contrary intention appears Commonwealth Acts shall be taken to have effect in the coastal sea as if that sea were part of Australia. The coastal sea is defined as the territorial sea of Australia and the sea on the landward side of the territorial sea and not within the limits of a State or internal Territory. The territorial sea extends to the 12 mile limit. The Australian Fishing Zone extends to the 200 mile limit.

6. In certain circumstances, fish and other marine produce caught outside the territorial sea may legitimately be considered Australian fish. This Bill provides that marine produce shall be regarded as Australian if it is first landed in Australia, regardless of where it is caught. It is current Australian Government policy that only Australian ships shall be permitted to land fish in Australia unless specific authority is given under the *Fisheries Act 1952* or the *Fisheries Management Act 1991*. A small number of authorities have been granted to allow some foreign vessels to unload fish for processing at certain Australian facilities so that those facilities can continue in operation when supplies from Australian vessels are not sufficient.

Section 65VC - When goods "carry" a representation

7. This section limits the representations which are caught by the Division to representations 'carried' by goods, meaning representations that are applied to the goods or to their packaging or labelling. 'Applied to' is defined to include representations printed on, woven in, impressed on, worked into or attached to the goods. The Division therefore does not cover other representations made about the goods, for example in advertisements or on shelf labels. The other provisions of the TPA relating to misleading and deceptive conduct and false and misleading representations will continue to apply to these representations.

Section 65VD - Scope of this Division

8. Subsection 65VD(1) sets the boundary within which the Division operates by reference to the acts of supply and goods covered, that is, supply by a corporation, in trade or commerce, of consumer goods. The rest of the Division must be read with the limitations set by this section in mind. The meaning of 'corporation' and of 'trade or commerce' in this Division are the same as in the TPA and in the case law elaborating the meaning of those terms.

9. Section 6 of the TPA deals with the additional operation of the Act under other Constitutional heads of power. By virtue of paragraph 6(2)(a), this Division will have the same extended operation as the rest of Part V, so that as well as covering acts of supply by corporations, the Division will apply to acts of supply by non-corporations engaged in interstate or overseas trade or commerce, or trade or commerce involving a Territory. By consequential amendments to subsections 6(3) and 6(4) of the TPA, as set out in the Schedule to the Bill, the Division is given as wide an application as possible.

10. Consumer goods are defined as

- goods which are of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- goods for which the price was the prescribed amount or less.

The prescribed amount is the same amount as prescribed for section 4B of the TPA. The current amount is \$40,000.

11. The Government's chief concern was with goods claiming Australian origin supplied in Australia to Australian consumers. This Bill therefore does not cover acts of supply which happen outside Australia (paragraph 65VD(2)(a)). Subsection 5(1) of the TPA is amended by the Schedule to exclude Division 1B from the extra-territorial application of the TPA.

12. Goods that are intended for export are not covered by the Bill (paragraph 65VD(2)(b)). Under this Bill goods will be presumed to be for export if they carry a representation that they are so intended. This paragraph picks up the provision in section 65VC so that to get the benefit of the presumption the representation that the goods are intended for export must be 'applied to' the goods or to their packaging or labelling in one of the ways set out in section 65VC.

13. The Division does not apply to goods which were manufactured or produced in Australia, or imported into Australia before the commencement date of the

Division (paragraph 65VD(2)(c)). The 12 months from Royal Assent to commencement will give industry time to relabel goods in accordance with the Division.

Section 65VE - Supply of goods that carry an express Australian origin representation in words.

14. The intention of this section is to provide consumers with reliable and easily identifiable representations to identify goods which are 'all Australian' or which have been made in Australia, and to ensure that those representations will always be in the same basic form. It provides that the corporation must not supply goods that carry an express and unambiguous representation that the place of origin of the goods is Australia except as authorised by the section. The only authorised terms are 'Product of Australia' / 'Produce of Australia' and 'Made in Australia'. Examples of the types of representations considered to be express and unambiguous are set out in a Note.

15. The effect of this section is to prohibit the use of representations such as 'Manufactured in Australia' or 'Produced in Tasmania' or 'Processed in Australia' or 'Made in Canberra' or any other unauthorised representation that might be considered an express and unambiguous representation that the place of origin of the goods is Australia or a place in Australia. If manufacturers or suppliers wish to identify the town, city, region or State of origin of goods, this may be done by adding that identification, provided it does not alter the authorised form. A label which now reads 'Made in Bendigo' will therefore have to be amended to read, for example, 'Made in Australia at Bendigo'.

16. Subsection 65VE(2) sets out in table form the three representations that may be used and their meanings. Goods may be labelled 'Product of Australia' or 'Produce of Australia' if Australia was the place of origin of each major ingredient or component of the goods and all operations involved in the manufacture or production of the goods happened in Australia. 'Major' is not defined, as what will be considered major, or minor, will vary depending on the type of product. For example, in food products small amounts of imported seasonings and flavourings may be acceptable in a product labelled 'Product of Australia', but in electronic goods the smallest components may be the most vital to the operation of the product.

17. The condition which must be met to be able to label goods 'Made in Australia' is that the goods acquired their essential character or qualities in Australia. This test is based on the decisions of the Federal Court of Australia in cases brought under paragraph 53(eb) of the TPA. That paragraph prohibits corporations from making false or misleading representations about the place of origin of goods. Examples of circumstances in which goods acquire their essential character or qualities in Australia are included in a Note to the section. These examples are also based on the case law and are not intended to limit in any way the circumstances which might be considered when deciding if particular goods acquired their essential character or qualities in Australia.

18. Guidelines will be developed to assist industry to make decisions about whether particular goods meet the conditions to be labelled either 'Product' or 'Produce of Australia' or 'Made in Australia'. These guidelines will have no statutory force but will assist industry in circumstances where doubt might otherwise arise as to the manner in which the Act will be enforced.

19. Other information about the goods, or about the ownership of the company, may be added to these basic representations, provided that it is not false or misleading and does not alter the basic form of the authorised representation.

Section 65VF - Supply of goods that carry the Australian Made Certification Mark.

20. The Australian Made Certification Mark is the green and gold triangular logo containing a representation of a kangaroo with the words 'Australian made' at the base of the triangle. The Commonwealth owns the logo and has licensed the Advance Australia Foundation to license, in turn, the use of the logo on goods which meet certain criteria, set by the Commonwealth.

21. Subsection 65VF(1) provides that section 65VE does not apply to the representation 'Australian made' when used as part of the logo. This ensures that the words 'Australian made', when used with the logo, are not prohibited by subsection 65VE(1). However, the logo can only be used in conjunction with one of the claims authorised by subsection 65VE(2). So all consumer goods which carry the 'Australian made' logo will also have to carry a representation that the goods are the 'Product' or 'Produce of Australia' or that they were 'Made in Australia'. The criteria set by the Commonwealth may have to be amended to ensure that consumer goods which are licensed to carry the logo meet the conditions to carry those authorised representations.

Section 65VG - Supply of goods that carry a representation in words about an Australian production step.

22. It is the current practice for some goods to carry representations identifying one or more production steps which occurred in Australia, for example, 'Assembled in Australia' or 'Finished and Packed in Australia'. To make it quite plain to consumers that only these limited processes took place in Australia, suppliers will be required to provide information about the source or sources of the ingredients or components of those goods. For some goods the supplier might wish to identify the actual country of origin of particular components or ingredients; however, it will be sufficient to identify that components or ingredients are imported. A Note to the section includes examples of acceptable representations about the origin of ingredients or components.

23. This type of representation is most likely to be used on goods which have a high imported component or for which no country can be identified as the country of origin as critical processes have occurred in a number of places, including Australia. It may be used also on goods which are labelled 'Product' or 'Produce of Australia' or 'Made in Australia' to provide a fuller description of the Australian origin of the goods. Thus a table which is a 'Product of Australia' may additionally be labelled 'Carved and crafted in Australia from fine Australian timbers'.

Section 65VH - Supply of goods that carry a representation in words about an Australian pre-production step

24. It is current practice for some goods to carry the representation that they were 'Designed in Australia' without any further information about the place of origin of the goods. The purpose of this section is to ensure that consumers are not misled or confused by this partial claim, but are given information as well on the place of origin of the goods.

25. Section 65VH provides that where a representation of this type is carried by goods, then there must also be some indication of the place of origin of the goods. If the goods have been made in Australia or are a product of Australia and this claim has not already been put on the goods, then the terms authorised by subsection 65VE(2) may be used. Alternatively, a representation that one or more production steps happened in Australia may be used, in which case the place of origin of the components or ingredients must also be identified in accordance with section 65VG. A further option is that a representation may be made that the goods originated outside Australia.

26. Though in many cases it may be desirable for marketing purposes to identify the actual country of origin, the section does not require this and an indication that the goods were made overseas would be sufficient. Examples are given in the Note to the section. Where the goods are imported and fall within the list of goods which must carry origin labelling under Regulation 7 of the Commerce (Imports) Regulations, then the goods must identify the actual country of origin. It is not intended that this provision, which deals only with additional requirements if goods carry representations that a pre-production step happened in Australia, should in any way affect the requirements of those Regulations.

Section 65VJ - Supply of goods that carry a representation likely to be regarded as an Australian origin representation.

27. The three previous sections dealt with three different types of express representations in words. This section deals with representations in words or pictures or symbols which are likely to be regarded as representations that the place of origin of the goods is Australia. When such representations are made, the goods must also carry information about the actual origin of the goods.

28. This additional information may take the form of one or more of the following representations dealt with in previous sections of the Bill:

- 'Product' or 'Produce of Australia' or 'Made in Australia';
- a claim that one or more production steps happened in Australia, accompanied by information on the source of ingredients or components;
- a claim that the goods were designed in Australia, accompanied by information on the source of the goods; or
- a representation that the goods had their origin outside Australia.

29. The effect of this section is that where goods do carry implied claims about Australian origin, those claims can remain on the goods but they cannot stand alone, they must be accompanied by further information about the actual origin of the goods. The purpose of this section is to encourage suppliers to label fully and

truthfully. If this is an unacceptable option for some suppliers, they may choose to carry no representations at all about origin and risk consumers making the assumption that the goods therefore have no connection with Australia and are fully imported.

30. An example of how this section operates, and how the different sections of the Bill interlink, is to consider goods carrying an Australian flag. As the design work was done in Australia, the claim 'Designed in Australia' is added. Because this is a pre-production step, further information on the actual place of origin must be supplied. The goods were not made in Australia but they were finished and packed here. The label now reads 'Designed, finished and packed in Australia'. However, because the label now carries a representation about production steps which happened in Australia, it must also carry information on the source of components. The label now tells a story about the product: 'Designed, finished and packed in Australia from imported materials'. This label must be given equal prominence and be as close as possible to the label with the Australian flag (see section 65VK and paragraph 34 below). The intention of these interlinking sections is to encourage suppliers to tell the whole story about their product so that consumers can make a fully informed choice.

31. In considering whether representations are likely to be regarded as claims about Australian origin, the perceptions of the potential audience should be taken into account in the same way as has been done by the Court when considering whether particular conduct is misleading or deceptive or likely to mislead or deceive under section 52 of the TPA, or whether particular representations are misleading under section 53 of the TPA.

32. There are likely to be many examples of representations which may fall within the ambit of this section - a Note to the section gives some of them. The most common pictures or symbols are likely to be the Australian flag, or a map of Australia, or a representation of a kangaroo, used in a way which indicates that the goods originated in Australia. There will be occasions when these symbols are used in trade marks or designs; however the fact they are part of a trade mark or design will not be conclusive that they fall outside this section - that will depend on the circumstances of each case, including the way the symbol is used and other information provided.

33. Examples of representations in words that may fall within this section are 'Wholly Australian', '100% Australian', 'Australian mangoes', 'Made by Australian workers', 'Tasmanian pate', or even, 'Manufactured by J. Smith Pty Ltd, 232 Smith Road, Smithfield, NSW'. As with the pictorial representations, whether these claims fall within the section or not will depend largely on the other information provided.

Section 65VK - Supply of goods that carry composite or multiple representations.

34. This section covers the situation where goods carry a composite representation, for example, 'Assembled in Australia from imported components', or multiple representations, for example, 'Designed in Australia. Made in India'. Where, as in the above examples, there is a representation about Australia and a representation about a place other than Australia (even if only the generic terms 'imported' or

'overseas' are used), then the foreign representation must be as prominent as the Australian representation and the two representations must be as close to each other as possible.

35. This does not mean that the representations have to be in the same size type face, but it does mean that if the Australian connection is given prominence, then the foreign connection has to have equal prominence. The purpose of the provision is to ensure that all information about origin is easily accessible, and to stop such practices as having a large label carrying the flag of Australia obscuring a small label identifying the true place of origin.

Clause 4 - Further amendments to the Principal Act

36. The consequential amendments to sections 5 and 6 of the TPA have already been discussed - see paragraphs 9 and 11. Other amendments will insert reference to Division 1B into sections dealing with the TPA's cross-vesting scheme. These sections are 75AS, 86, 86A and 86B.

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT (ORIGIN LABELLING) BILL 1994

(Amendments to be moved on behalf of the Government)

- (1) Clause 2, page 1, line 7, omit "thirteenth", substitute "nineteenth".
- (2) Clause 3, page 3, line 18, proposed subsection 65VE(2), after "set out in the Table.", insert "A representation in the Table may be followed by words that identify a particular place in Australia or a particular part of Australia."
- (3) Clause 3, page 4, lines 8 and 9, proposed section 65VG, omit "also carry a representation in words that identifies the place or places of origin of the components or ingredients of the goods", substitute:
"also carry a representation in words that identifies:
 (a) the place of origin of the goods; or
 (b) the place or places of origin of the components or ingredients of the goods".

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1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT (ORIGIN LABELLING) BILL

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by the authority of the
Minister for Consumer Affairs,
the Hon. Jeannette McHugh MP)

54893 Cat. No. 94 4712 X



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AMENDMENTS TO THE TRADE PRACTICES AMENDMENT (ORIGIN LABELLING) BILL

OUTLINE

The purpose of these Government amendments to the Trade Practices Amendment (Origin Labelling) Bill is to provide for the identification of particular places within Australia or of particular parts of Australia in representations about Australian origin and to clarify the requirements of section 65VG of the Bill. The amendments also extend the phase-in time for the legislation to 18 months to give industry more time to adjust to the new labelling requirements.

An amendment to section 65VE(2) authorises the addition of information about particular places to follow the terms authorised by that subsection. Section 65VG is amended so that where goods carry a representation identifying a production step which occurred in Australia, they must either identify the place of origin of the goods or the place or places of origin of the components or ingredients.

FINANCIAL IMPACT STATEMENT

The amendment to clause 2 of the Bill, to allow a phase-in period of 18 months, will give industry more time to introduce new labels as old labels and packaging runs out, thus reducing costs for industry. The other amendments will have no effect on the financial impact of the Bill as set out in the Explanatory Memorandum.

NOTES ON AMENDMENTS

Amendment (1)

1. In the Report of its inquiry into this Bill, the House of Representatives Standing Committee on Industry Science and Technology recommended that the proposed 12 month phase-in period for the Bill be extended to 18 months. This amendment achieves this end by changing the word "thirteenth" in Clause 2 to "nineteenth". The provisions of the Bill will thus become effective on the first day of the nineteenth month after Royal Assent.

Amendment (2)

2. The purpose of this amendment to subsection 65VE(2) is to remove any doubt that where suppliers want to identify a particular town, city, region or State as part of an express and unambiguous claim that the goods are Australian, they can do so by adding the name of the place to the terms authorised by the subsection. Where this is done, the name of the particular place must follow the authorised term. Permitted representations under this provision would be 'Product of Australia - Tasmania' or 'Made in Australia at Bendigo'. This amendment relates only to the positioning of place names when the name is part of an express and unambiguous Australian origin representation.

3. When identifying a particular place, suppliers should be careful that the representation does not become false or misleading and therefore in contravention of section 53(eb) of the *Trade Practices Act. 1974*.

Amendment (3)

4. If goods carry a representation that a production step happened in Australia, the representation may identify the particular place where that step occurred, for example, 'Assembled in Melbourne, Victoria'. Section 65VG currently requires that where representations of this sort are made, information about the source of the components or ingredients must be included. The label would then read, 'Assembled in Melbourne, Victoria, from Australian and imported parts'.

5. The amended section 65VG clarifies the nature of the additional information which must be provided when there is a representation about a production step that happened in Australia. The alternative options are to identify the place of origin of the goods, or, as before, to identify the place or places of origin of the components or ingredients. There was a question whether an example given in the Note to the section, 'Packed in Australia - Product of India', met the requirement of the section. The difficulty with this type of representation is that the source of all the ingredients cannot be known with certainty. However, goods labelled with such representations meet the intent of the section, that is, that where there is a representation about a limited process occurring in Australia, further information should be provided to consumers about the overseas contribution to the goods. The section has therefore been amended to make it clear that representations such as 'Product of India' or 'Made in England' are acceptable as an indication of the overseas contribution to the goods.

6. The amended section will also have the effect that goods which meet the conditions for being labelled with one of the terms authorised by subsection 65VE(2) may also carry information about a particular process which happened in a particular place in Australia without having to identify the source of components or ingredients. Thus under the new section 65VG representations such as 'Product of Australia - Brewed in Adelaide' or 'Made in Australia - Carved and crafted in Victoria' will be permitted.

1993-94

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT (ORIGIN
LABELLING) BILL 1994

(Amendments to be moved by Mr Ronaldson)

- (1) Clause 3, page 2, at the end of proposed section 65VB, add the following subsections:
- “(2) Without affecting the operation of subsection (1), Australia is to be taken to be the place of origin of marine produce if that produce is landed by an Australian vessel authorised to do so under the *Fisheries Act 1952* or the *Fisheries Management Act 1991*.
- “(3) In this section ‘Australian vessel’ has the same meaning as in the *Fisheries Management Act 1991*.”.
- (2) Clause 3, page 3, proposed subsection 65VE(2), the Table, Category A, Representations, after “ ‘Product of Australia’ ”, add “or ‘Made in Australia’ ”.
- (3) Clause 3, page 3, proposed subsection 65VE(2), the Table, Category B, Representations, omit “ ‘Made in Australia’ ”, substitute “ ‘Manufactured in Australia’ ”.

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THIS Bill originated in the House of Representatives;
and, having this day passed, is now ready for
presentation to the Senate for its concurrence.

L. M. BARLIN
Clerk of the House of Representatives

House of Representatives,
Canberra, 1 February 1995

A BILL

FOR

An Act to amend the *Trade Practices Act 1974*, and for related purposes

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Trade Practices Amendment (Origin Labelling) Act 1995*.

5 **(2)** In this Act, “**Principal Act**” means the *Trade Practices Act 1974*¹.

Commencement

2. This Act commences on the first day of the nineteenth month after the month in which this Act receives the Royal Assent.

Insertion of new Division

3. After Division 1A of Part V of the Principal Act the following Division is inserted:

“Division 1B—Representations about the origin of goods

“Subdivision 1—Definitions 5

Definitions

“65VA. In this Division:

‘Australian origin representation’, in relation to goods, means a representation that the place of origin of the goods is Australia;

‘pre-production step’ includes design; 10

‘production step’ means a step in manufacture or production, and includes finishing and packing.

Note: Section 4 has other definitions that are relevant to this Division (for example, the definitions of ‘corporation’; ‘goods’; ‘supply’ and ‘trade or commerce’).

Place of origin of marine produce 15

“65VB. For the purposes of this Division, Australia is to be regarded as the place of origin of all marine produce that was first landed in Australia, regardless of where it was caught or taken.

When goods “carry” a representation

“65VC. For the purposes of this Division, goods **‘carry’** a 20 representation if the representation is applied to the goods or to their packaging or labelling. For this purpose, **‘applied to’** includes printed on, woven in, impressed on, worked into or attached to.

“Subdivision 2—Scope of this Division

Scope of this Division 25

“65VD.(1) This Division applies to a supply by a corporation, in trade or commerce, of consumer goods. For this purpose, goods are **‘consumer goods’** if, and only if:

(a) the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption; or 30

(b) the price paid to the corporation for the goods is not more than the amount that is the prescribed amount for the purposes of subsection 4B(1).

“(2) This Division does not apply to the supply if:

(a) the supply happens outside Australia; or 35

(b) the goods are intended for export; or

(c) the goods were manufactured or produced in Australia, or were imported into Australia, before the day on which the *Trade Practices Amendment (Origin Labelling) Act 1995* commenced.

5 “(3) For the purposes of paragraph (2)(b), goods are presumed to be **‘intended for export’** if the goods carry a representation in words that the goods are for export only. This presumption does not apply if the contrary is established.

“Subdivision 3—Representations about origin

10 **Supply of goods that carry an express Australian origin representation in words**

“65VE.(1) The corporation must not supply goods that carry an express and unambiguous Australian origin representation in words except as authorised by subsection (2).

15 Note: The following are examples of express and unambiguous Australian origin representations: ‘made in Australia’; ‘product of Australia’; ‘produce of Queensland’s Darling Downs’; ‘produced in Tasmania’; ‘manufactured in New South Wales’; ‘processed in Wollongong’.

20 “(2) Goods may carry a representation set out in the following Table if the goods meet the corresponding conditions set out in the Table. A representation in the Table may be followed by words that identify a particular place in Australia or a particular part of Australia.

Category	Representations	Conditions
A	‘Produce of Australia’ or ‘Product of Australia’	Australia was the place of origin of each major ingredient or component of the goods and all operations involved in the manufacture or production of the goods happened in Australia.
B	‘Made in Australia’	The goods acquired their essential character or qualities in Australia.

Note: The following are examples of circumstances in which goods acquire their essential character or qualities in Australia:

- 25 (1) The goods were given their essential function, shape or appearance in Australia.
 (2) The major processes which transformed the goods from their component parts into the finished goods happened in Australia.
 (3) If the goods are promoted as having certain characteristics or functions, the goods were given the characteristics or functions in Australia.

Supply of goods that carry the Australian Made Certification Mark

30 “65VF.(1) Section 65VE does not apply to a supply of goods that carry the representation ‘Australian made’ as part of the Australian Made Certification Mark.

“(2) The corporation must not supply goods that carry the Australian Made Certification Mark unless the goods also carry a representation authorised by subsection 65VE(2).

“(3) In this section:

‘**Australian Made Certification Mark**’ means the certification mark whose use is licensed by the Advance Australia Foundation. 5

Supply of goods that carry a representation in words about an Australian production step

“65VG. The corporation must not supply goods that carry an express representation in words that a production step happened in Australia unless the goods also carry a representation in words that identifies: 10

- (a) the place of origin of the goods; or
- (b) the place or places of origin of the components or ingredients of the goods.

Note: The following are examples of representations that are sufficient for this section: ‘Assembled in Australia *from imported components*’; ‘Packed in Australia. *Imported and Australian ingredients*’; ‘Carved in Australia *from imported wood*’; ‘Built in Australia *from Australian steel and Malaysian rubber*’; ‘Packed in Australia. *Product of India*’. 15

Supply of goods that carry a representation in words about an Australian pre-production step 20

“65VH. The corporation must not supply goods that carry an express representation in words that a pre-production step happened in Australia unless the goods also carry at least one of the following:

- (a) a representation authorised by subsection 65VE(2);
- (b) a representation in words that identifies one or more of the production steps that happened in Australia; 25
- (c) a representation in words that indicates that the place of origin of the goods is outside Australia.

Note: The following are examples of representations that are sufficient for paragraph (c): ‘made in Korea’; ‘manufactured outside Australia’; ‘produced overseas’; ‘processed in Tokyo, Japan’; ‘produce of foreign countries’. 30

Supply of goods that carry a representation likely to be regarded as an Australian origin representation

“65VJ. The corporation must not supply goods that carry a representation in words, pictures or symbols that is likely to be regarded as an Australian origin representation unless the goods also carry at least one of the following: 35

- (a) a representation authorised by subsection 65VE(2);
- (b) a representation in words that identifies one or more of the production steps that happened in Australia; 40

- (c) a representation in words that identifies one or more of the pre-production steps that happened in Australia;
- (d) a representation in words that indicates that the place of origin of the goods is outside Australia.

5 Note 1: The following are examples of representations that might be regarded as Australian origin representations: '100% Australian'; 'Australian'; representations of kangaroos; representations of the Australian flag; representations of the map of Australia or an Australian State or Territory.

10 Note 2: The following are examples of representations that are sufficient for paragraph (d): 'made in Korea'; 'manufactured outside Australia'; 'produced overseas'; 'processed in Tokyo, Japan'; 'produce of foreign countries'.

Supply of goods that carry composite or multiple representations

15 "65VK.(1) The corporation must not supply goods that carry an Australian connection representation and a foreign origin representation unless:

- (a) the foreign origin representation is as prominent as the Australian connection representation; and
- (b) the representations are as close to each other as possible.

"(2) In this section:

20 **'Australian connection representation'** means:

- (a) a representation in words that a production step happened in Australia;
- (b) a representation in words that a pre-production step happened in Australia;
- 25 (c) a representation in words, pictures or symbols that is likely to be regarded as an Australian origin representation.

'foreign origin representation' means:

- (a) a representation that the place of origin of the goods is outside Australia;
- 30 (b) a representation that the place of origin of any of the ingredients or components of the goods is outside Australia."

Further amendments of the Principal Act

4. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 4

CONSEQUENTIAL AMENDMENTS

Subsection 5(1):

Omit “Parts IV, IVA and V”, substitute “Part IV, Part IVA and Part V (other than Division 1B)”.

Subsection 6(3):

Omit “and 1A”, substitute “,1A and 1B”.

Subsection 6(4):

Omit “Division 1 of Part V (other than sections 53A, 55 and 61)”, substitute “Division 1 (other than sections 53A, 55 and 61) and Division 1B of Part V”.

Paragraph 75AS(b):

Omit “or 1A”, substitute “,1A or 1B”.

Subsection 86(2):

Omit “or 1A”, substitute “,1A or 1B”.

Paragraph 86A(1)(b):

Omit “or 1A”, substitute “,1A or 1B”.

Paragraph 86A(4)(b):

Omit “or 1A”, substitute “,1A or 1B”.

Paragraph 86A(5)(b):

Omit “or 1A”, substitute “,1A or 1B”.

Paragraph 86B(1)(b):

Omit “or 1A”, substitute “,1A or 1B”.

NOTE

1. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; Nos. 8, 20, 87 and 120, 1988; Nos. 28 and 34, 1989; Nos. 11, 70 and 108, 1990; Nos. 49, 122, 136, 173 and 180, 1991; Nos. 22, 104, 105, 106 and 222, 1992; and No. 98, 1993.