

Previous reform proposals

- 6.1 Previous chapters of this report examined the current regulatory framework (chapter two) and the confusion amongst consumers and food producers (chapter four). That consumers and food producers are confused to the levels reported in chapter four indicates that a system which is designed to inform and guide these stakeholders is not meeting its stated objectives.
- 6.2 The Department of Health stated that the key priorities for the food regulation and labelling system relate to public health and safety, and enabling consumers to make informed food purchases.¹
- 6.3 The Australian Made Campaign Limited (AMCL) stated that an effective country of origin labelling system is one that is trusted and understood by consumers and business, adding that:
- ... changes can and should be made to the current legislative framework to ensure that the requirements of different country of origin claims are both clarified and made more stringent in relation to food.²
- 6.4 Country of origin food labelling has been the topic of many public reviews as well as a multitude of unsuccessful legislative reform attempts in the past decade. Table 4.1 chronologically lists these reviews and reform attempts.

1 Ms Kathy Dennis, Assistant Secretary, Healthy Living and Food Branch, Population Health Division, Department of Health, *Committee Hansard*, Canberra, 8 May 2014, p. 2.

2 Mr Ian Harrison, Chief Executive, Australian Made Campaign Limited, *Committee Hansard*, Canberra, 8 May 2014, p. 25.

Table 6.1 Reviews and reform attempts of country of origin food labelling

Date	Inquiry
2003	
October	Senate Inquiry into Truth in Food Labelling Bill 2003; inquiry launched [primarily dealing with GM foods]
2004	
March	Senate Inquiry into Truth in Food Labelling Bill 2003; report tabled
2009	
September	Inquiry into the Food Standards Amendment (Truth in Labelling Laws – Palm Oil) Bill 2009; inquiry launched
October	Review of Food Labelling Law and Policy launched; chaired by Dr Neil Blewett AC (Blewett Review)
November	Inquiry into the Food Standards Amendment (Truth in Labelling Laws) Bill 2009; report tabled
2011	
January	Blewett Review released: <i>Labelling Logic</i> - The Final Report of the Review of Food Labelling Law and Policy
March	Senate Select Committee on Australia's Food Processing Sector; inquiry launched
December	Government response to Blewett Review released
2012	
August	Senate Select Committee on Australia's Food Processing Sector; report tabled [chapter 4 and dissenting report address food labelling]
September	Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) [Senator Milne] and referred to Senate Rural and Regional Affairs and Transport Committee
2013	
March	Inquiry into Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) report tabled

6.5 Of those reviews and reform attempts listed above, this Chapter will discuss the most recent:

- the Blewett Review (*Labelling Logic*);
- the Food Standards Amendment (Truth in Labelling Laws) Bill 2009;
- the Senate Select Committee on Australia's Food Processing Sector; and
- the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012.

6.6 The chapter concludes with a summary of key areas of public concern arising during these inquiries, recommended areas of reform from the inquiries and apparent difficulties with previous reform proposals.

Labelling Logic - the Blewett Review

- 6.7 A significant review of food labelling law and policy commenced in 2009 (following a COAG announcement), and was chaired by former federal Minister for Health, Dr Neal Blewett AC. The review's terms of reference included examining policy drivers impacting on demands for food labelling. The final report was presented to government in January 2011, and released publicly.³
- 6.8 Of 61 recommendations concerning food labelling in general, three related to country of origin food labelling:
- that Australia's existing mandatory country of origin labelling requirements for food be maintained and be extended to cover all primary food products for retail sale (Recommendation 40)⁴;
 - that mandatory requirements for country of origin labelling on all food products be provided for in a specific consumer product information standard for food under the *Competition and Consumer Act 2010* rather than in the Food Standards Code (Recommendation 41)⁵; and
 - that for foods bearing some form of Australian claim, a consumer friendly, food-specific country of origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed (Recommendation 42)⁶.

Government response

- 6.9 In its response, the Australian Government supported recommendation 40 and has subsequently extended country of origin food labelling requirements to cover almost all primary food products (see chapter two). However, the Australian Government did not support recommendations 41 and 42.
- 6.10 Mr Steve McCutcheon, Chief Executive Officer of Food Standards Australia New Zealand, discussed recommendation 40:
- So there are a number of meat species that are not covered – from kangaroo meat to rabbit and all those sorts of things. One of the recommendations out of the Blewett labelling review, and subsequently responded to by governments, was to basically look

3 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), available at www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/labelling-logic

4 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), [6.38].

5 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), [6.39].

6 *Labelling Logic: Review of Food Labelling Law and Policy* (2011), [6.45].

at what other primary foods were not covered by the standard. FSANZ has been developing a response to that recommendation and that will then be going to ministers for them to decide whether they want to go any further.⁷

- 6.11 When asked about certain products outside the parameters of country of origin labelling, Mr McCutcheon stated the key drivers are costs imposed on industry and the cost compared to the benefits to consumers:

With a lot of those minor species, it is a very small part of the market. A lot of those sorts of meats are sold through restaurants and the like, where you do not require country of origin labelling. Clearly some meats are Australian. With others, the cost for a manufacturer or a retailer to impose a country of origin labelling requirement would probably exceed the benefits to that very small part of the community who would be looking at it. That said, there is nothing stopping companies from doing it voluntarily. Again, some of our research over the years has shown, particularly for some of the mainstream meats – like beef, for example – that the big supermarkets have had country of origin labelling on those for a long time voluntarily.⁸

- 6.12 In response to recommendation 41, regarding a single regulatory framework, the Australian Government stated this ‘should not be pursued at this time’ and that ‘further internal consideration’ would be conducted before deciding to pursue any changes to the *Competition and Consumer Act 2010*.

- 6.13 Recommendation 42 was not supported on the basis of ‘practical difficulties with adopting a new framework’. However, a commitment was given to:

... review existing ... materials (including publications, guidelines and other educational material) in a consultative process and, if appropriate, develop an education campaign with the specific objective of clarifying country of origin food labelling.⁹

7 Mr Steve McCutcheon, Food Standards Australia New Zealand, *Committee Hansard*, Canberra, 8 May 2014, p. 12.

8 Mr Steve McCutcheon, Food Standards Australia New Zealand, *Committee Hansard*, Canberra, 8 May 2014, p. 12.

9 Legislative and Governance Forum on Food Regulation, (convening as the Australia and New Zealand Food Regulation Ministerial Council), *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, (2011), p. 45.

Food Standards Amendment (Truth in Labelling Laws) Bill 2009

- 6.14 In August 2009, the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 was introduced into the Senate by Senator Nick Xenophon, and co-sponsored by Senator Barnaby Joyce (then Nationals leader in the Senate) and Senator Bob Brown (then Greens leader in the Senate). The Bill immediately proceeded to the second reading and speeches were incorporated.
- 6.15 In his comments, Senator Joyce observed that the system is ‘deliberately obtuse’ pinpointing the significant consumer confusion reported in chapter three of that report.¹⁰ To correct this, the Bill’s intent was to limit the use of the word ‘Australian’ on food labels to foods which are 100 per cent produced in Australia. To assist consumers, the Bill would have required any goods with one or more imported ingredients, to have information displayed on a front label.¹¹ The Bill would have also introduced specific regulation for fruit juices and drinks.

Senate Economics Committee inquiry

- 6.16 In September 2009, the provisions of the Bill were referred to the Senate Economics Legislation Committee, chaired by Senator Annette Hurley (ALP, South Australia). The inquiry ran concurrently with the Blewett Review. Supporters and critics of the Bill stated that the issue of reforms to country of origin food labelling would be more appropriately addressed through that process. The Senate Committee made similar observations.
- 6.17 Concerns were expressed about the proposed 100 per cent rule, by a disparate range of stakeholders including the Australian Food and Grocery Council, the Australian Dairy Industry Council, Simplot Australia, the National Farmers’ Federation, AUSVEG, AMCL, CHOICE, and Dick Smith Foods.¹² For example, AMCL stated that they had major concerns about the 100 per cent rule, commenting that:

... the proposal, however well-intended, will cause further confusion for consumers and have the effect of disadvantaging a large number of genuine Australian manufacturers by precluding

10 Senator Barnaby Joyce, Second Reading Speech, *Senate Hansard*, 20 August 2009, p. 5499.

11 Food Standards Amendment (Truth in Labelling Laws) Bill 2009, *Explanatory Memorandum*, p. 2.

12 Senate Economics Legislation Committee, *Report on the Food Standards Amendment (Truth in Labelling Laws) Bill 2009*, November 2009, pp. 31-33.

them from using legitimate country of origin claims on their products.¹³

6.18 The AMCL explained that most, if not all, cheese made in Australia is made with imported rennet and that under this proposal, cheese made in Australia from 100 per cent Australian milk could not be labelled as an Australian product.¹⁴

6.19 In its November 2009 report, the Committee concluded that the 100 per cent rule would be impractical, setting an unrealistic threshold¹⁵, and recommended that the Bill not be passed. The Senate Committee commented that it was:

... inconsistent with the current food standards setting arrangements [and] effectively short-circuits established processes which have been nationally agreed through the Council of Australian Governments.¹⁶

Senate Select Committee on Australia's Food Processing Sector

6.20 In March 2011, the Senate established the Senate Select Committee on Australia's Food Processing Sector (the Select Committee) to review a range of matters relating to food processing in Australia, including country of origin food labelling. The Select Committee was chaired by Senator the Hon Richard Colbeck, a Liberal Senator from Tasmania.

6.21 The Select Committee's report, tabled in August 2012, made the following recommendations in relation to country of origin labelling:

- that country of origin labelling be reformed to be more clear, transparent and focused on consumers' understandings and expectations;
- extending country of origin food labelling to all packaged and unpackaged food for retail sale (enacting Recommendation 40 of the Blewett Review);
- consolidating country of origin food labelling regulation into the *Competition and Consumer Amendment Act 2010* (enacting Recommendation 41 of the Blewett Review);

13 Australian Made Campaign Limited, *Submission to Senate Economics Committee*, p. 4.

14 Australian Made Campaign Limited, *Submission to Senate Economics Committee*, p. 2.

15 Senate Economics Legislation Committee, *Report on the Food Standards Amendment (Truth in Labelling Laws) Bill 2009*, November 2009, p. 37.

16 Senate Economics Legislation Committee, *Report on the Food Standards Amendment (Truth in Labelling Laws) Bill 2009*, November 2009, p. 29.

- that the Government review the *Competition and Consumer Act 2010* broadly, and whether 'safe harbour' provisions in section 255 are 'sufficiently focussed on the consumer's understanding of country of origin claims on food products';
- that the ACCC investigate claims that country of origin labelling laws are being circumvented by staging imports through third countries, specifically under free trade agreements;
- that the Government consult with industry about the use of the term 'defining ingredient' as a method of determining country of origin of a food product; and
- that smart phone and barcode technology be used to provide additional information about country of origin.¹⁷

6.22 In making these recommendations, the Select Committee commented that the labelling system could be overhauled:

... there are flaws in Australia's current country of origin labelling system ... The committee's view is that there would be merit to reforming the current country of origin labelling laws to make them more transparent ... the focus of country of [origin] labelling laws should be on the consumer's understanding. This means that, first and foremost, claims about the country of origin of a product should be clear and not misleading.¹⁸

6.23 The Select Committee also observed that any proposed labelling regime changes should encompass all food types:

... there should be a level playing field across all foods. The current anomalies, [that] allow some foods to escape such labelling altogether, appear illogical and are unacceptable.¹⁹

6.24 Government Senators submitted a dissenting report on a variety of matters including bio-security issues and workforce issues, however their report did not dissent on the recommendations list above regarding country of origin labelling.

Government response

6.25 At the time of writing, there had been no response to the Select Committee's recommendations.²⁰ The advice released in December 2013 is

17 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, August 2012.

18 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, August 2012, pp. 87-89.

19 Senate Select Committee on Australia's Food Processing Sector, *Australia's food processing sector*, August 2012, p. 87.

that the Government response is being considered and will be tabled in due course.²¹

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

- 6.26 In September 2012, the Leader of the Australian Greens, Senator Christine Milne introduced the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2) (the Milne Bill), which sought to amend the *Competition and Consumer Act 2010* in particular by implementing the two remaining Blewett recommendations:
- a single regulatory regime under the *Competition and Consumer Act 2010* rather than in the Food Standards Code (recommendation 41); and
 - that the country of origin labelling framework should be based on the ingoing weight of the ingredients and components (excluding water) (recommendation 42).
- 6.27 The Explanatory Memorandum states that a food labelling system based on origin of ingredients would allow Australians to know the origin of the food they are buying, rather than where it was processed and packaged.²²
- 6.28 In so doing, the Bill would have removed the stand-alone classification of 'Made in Australia'. The Bill retained the 'Grown in Australia' classification and its requirements, but introduced a new standard: where packaged food is made from 90 per cent or more Australian ingredients by total weight excluding water, it must be labelled 'Made of Australian Ingredients'.²³

Senate Rural and Regional Affairs Committee inquiry

- 6.29 In September 2012, the provisions of the Milne Bill were referred to the Senate Rural and Regional Affairs and Transport Legislation Committee, chaired by Senator Glenn Sterle (ALP, Western Australia).
- 6.30 In its March 2013 report, the Committee noted significant support for 'better country of origin labelling for Australian food', primarily arising

20 *Presidents Report to the Senate on Government responses outstanding to Parliamentary Committee reports as at 16 July 2014.*

21 *Government Response to Parliamentary Committee Reports – Response to the schedule tabled by the President of the Senate on 27 June 2013, tabled in the Senate on 11 December 2013.*

22 *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012, Explanatory Memorandum, p. 2.*

23 *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012, Explanatory Memorandum, p. 2.*

from a desire to support local producers and industries, as well as the belief that current labelling terminology and standards are confusing or misleading.²⁴

- 6.31 The Committee reported that some peak bodies (particularly those representing primary producers such as the Horticulture Taskforce) argued that Australia would be better served by a *new* country of origin labelling system rather than education campaigns informing consumers about the current framework.²⁵
- 6.32 Other peak bodies supported the Bill's intention, but not its method. For example, the AMCL, Growcom, and the Australian Seafood Industry Alliance all applauded the Bill's underlying intention, but argued that the Bill needed to be further developed.²⁶
- 6.33 Criticisms of the Milne Bill fell into four main categories:
- the Bill did not distinguish between packaged and non-packaged goods sufficiently and had the potential to create loopholes for imported fresh goods processed and packaged in Australia;
 - the Bill did not sufficiently define 'substantially transformed', with many stakeholders commenting that this term is also insufficiently defined in the current legislation;
 - the threshold of 90 per cent excluding water from the term 'Made of Australian ingredients' does not accommodate some industries where water is a defining part of the produce, particularly the brewing industry; and
 - compliance with the Bill may negatively affect Australia's manufacturing sector.²⁷
- 6.34 Opponents of the Milne Bill advocated for a more effective public campaign to increase awareness of the terminology and provisions of current country of origin labelling arrangements, rather than an overhaul

24 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 9.

25 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 9.

26 Australian Made Campaign (Limited), *submission 12 to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, pp 1-8;

Growcom, *submission 13 to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, pp. 3 and 7;

National Seafood Industry Alliance, *submission 23 to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, pp. 1-3.

27 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, pp. 14-15.

of the existing legislative framework.²⁸ Coles, the Australian National Retailers Association, the Brewers Association, and the Australian Food and Grocery Council were among stakeholders that opposed the Bill.

- 6.35 During its inquiry, the Senate Committee also explored the suggestion of creating a 'negative list' which would codify what processes would *not* meet the threshold to claim substantial transformation of goods had occurred in Australia.²⁹ AMCL and CHOICE supported the development of a negative list, however more sceptical views were expressed by the government departments.³⁰

Senate Committee recommendation and conclusion

- 6.36 The Senate Committee recommended that the Milne Bill, as drafted, should not pass the Senate.³¹ In making this recommendation, the Committee also commented:

The committee understands that Australian consumers have a substantial appetite for more information about where the food they buy is grown, processed and manufactured. However, the committee has seen in this inquiry that although support for the intention of the bill is substantial, support for the substance of the amendments is not. The committee is of the view that the proposed amendments need further consideration and work.³²

- 6.37 However, the Senate Committee made the additional recommendation that government should consider developing a more effective country of origin framework (including a more effective definition of 'substantially transformed'), which better balances the interests of consumers, primary producers and manufacturers.³³
- 6.38 The Senate Committee subsequently recommended that, upon the development and implementation of a *new* country of origin labelling

28 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 26.

29 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 19.

30 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, pp. 19-21.

31 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 1, p. 14.

32 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 14.

33 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 2, p. 19.

system, the government develop a corresponding public education campaign for the new guidelines.³⁴

6.39 The Senate Committee also agreed that the Milne Bill would have left:

... a loophole for processed packaged goods and, moreover, that they do not sufficiently recognise the distinction between packaged and non-packaged fresh food.³⁵

6.40 The Senate Committee concluded that the Milne Bill as drafted could have negatively impacted Australian industry and manufacturers. However, it also commented that if the Milne Bill were to be improved to 'meet the needs of consumers, producers and manufacturers' as it recommended, these negative impacts could be negated or minimised.³⁶

6.41 The Senate Committee also made a recommendation on the tangential issue of a negative list:

The committee recommends the government consider the potential benefits and drawbacks of creating a 'negative list' for processes that do not satisfy the 'substantial transformation' test for [country of origin labelling] purposes.³⁷

Progress of the first Milne Bill and the Senate Committee's recommendations

6.42 In additional comments to the Senate Committee's March 2013 report, Senator Milne stated an intention to 'forward new legislation based on the valuable feedback received through this inquiry'.³⁸ The Bill was discharged from the Senate Notice Paper on 15 May 2013.

6.43 The Senate Committee's recommendations 2 to 4 (recommending a more effective country of origin labelling system, a subsequent education campaign and the development of a negative list) are held to require a

34 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 4, p. 28.

35 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 16.

36 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 26.

37 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, Recommendation 3, p. 21

38 Senate Rural and Regional Affairs and Transport Legislation Committee, *Report on Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)*, March 2013, p. 29.

government response, however at the time of writing, none had been reported by the Senate Committee.³⁹

Proposed re-introduction of legislation by Senator Milne

6.44 On 10 April 2014, Senator Milne advised this Committee of her intention to introduce a revised Bill: the Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2014 (the Second Milne Bill). At the time of writing, this had not yet occurred.

Key areas of public concern from earlier inquiries

- 6.45 Some commonly-expressed areas of concern during the inquiries described above include:
- whether Australia was the country of origin for all, some part or none of the ingredients or components of the food concerned;
 - whether all, some part or none of the processes involved in the production or manufacture of food occurred in Australia;
 - how to measure the percentage of the food that originated or was processed in Australia (for example by weight, volume or value);
 - whether measurement should include components or ingredients of the food product that are not part of the nature of the product (such as a preservative or the product's packaging);
 - how to manage variations in the Australian content of a particular food product arising from, for example, seasonal variations in the supply of ingredients or changes in their costs arising from fluctuations in exchange rates;
 - the effect on consumers of the wide variety of words and graphics on labels that relate to country of origin, and how the size and placement of these labels influences the interpretation of this information;
 - how country of origin labelling requirements interact with other food labelling requirements;

39 According to the President's Report to the Senate on Government Responses Outstanding to Parliamentary Committee Reports, dated 12 December 2013: Senate committees report on Bills and the provisions of Bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the Bill, and therefore require a response, are listed (see www.aph.gov.au/~media/02%20Parliamentary%20Business/24%20Committees/242%20Senate%20Committees/out_gov_response.pdf), accessed on 9 April 2014).

- whether any particular aspect of country of origin food labelling is best addressed through legislative instruments, regulations, national standards, voluntary codes, or some combination of any of these mechanisms;
- whether country of origin food labelling requirements should apply equally to all sectors of the food industry, or whether some sectors should be subject to more stringent standards; and
- what impact country of origin food labelling requirements have on production processes, and what impact will they have on the cost of the food products concerned.⁴⁰

Recommended areas of reform from earlier inquiries

6.46 Throughout the course of the inquiries discussed in this chapter, some common areas of reform have been identified and are listed below:

- **all primary food products** for retail sale to display their country of origin
 - ⇒ Blewett Review recommendation 40;
 - ⇒ Senate Select Committee, recommendation 7;
 - ⇒ Senator Milne's (revised) Bill, and supported by the subsequent inquiry by Senate Rural and Regional Affairs Committee;
- **a single regulatory system** for Country of origin food labelling within the *Competition and Consumer Act 2010*
 - ⇒ Blewett Review, recommendation 41;
 - ⇒ Senate Select Committee, recommendation 12;
 - ⇒ Senator Milne's Bill;
- **a new and clearer system of food labelling** that would be more in line with consumers' expectations and understandings of those designations
 - ⇒ Blewett Review (which recommended an ingoing weight calculation), recommendation 42;
 - ⇒ Senate Select Committee, recommendations 8, and 10;
 - ⇒ Senators Xenophon, Joyce and Brown's Bill (via redefining the content requirements of 'Australian Made' designations);

40 These concerns have been compiled from previous inquiries, media articles and general public debate.

- ⇒ Senator Milne's Bill (which would have introduced an ingoing weight calculation) (the Senate RRA Committee supported a new, clearer system but believed the Bill as drafted, needed more work).

Apparent difficulties with previous reform proposals

- 6.47 Throughout the course of the inquiry, the Committee attempted on numerous occasions to explore the challenges posed by the complexity of the issues falling to the jurisdiction of many government departments and agencies, and the apparent consequent difficulty of establishing a single regulatory regime.
- 6.48 In addition to this overall challenge, the Committee identified three areas where obstacles may have been encountered.

'Do no harm'

- 6.49 The Blewett Review recommended that for foods bearing some form of Australian claim, a consumer friendly, food-specific country of origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed (Recommendation 42). Based on evidence received during the Committee's inquiry, a reform proposal which would specifically target food products with Australian content would likely place Australia in breach of its international trade obligations. These obligations are currently met by applying the requirements in the ACL to all country of origin claims, not simply Australian content. Further, food producers also raised concerns ('do no harm').

Constitutional limitations

- 6.50 The two central pieces of legislation at the heart of Australia's food labelling system – the Code (enabled by the FSANZ Act) and the ACL – are implemented by state and territory governments by those jurisdictions enacting these codified Commonwealth Acts within their own laws as determined in various COAG Agreements.
- 6.51 These concerns have been raised by Government Departments and agencies in parliamentary inquiries into the various Bills discussed above. For example, FSANZ commented in relation to the Food Standards Amendment (Truth in Labelling) Bill 2009:
- ... the FSANZ Act is enabling legislation designed to provide FSANZ with powers to develop food standards within the Commonwealth, state and territory government framework of the

Food Regulation Agreement and the Australian government treaty with New Zealand. The FSANZ Act has, of itself, no effect on state or territory food law due to constitutional restraints. The adoption, monitoring and enforcement of the standard are dependent on states and territories placing the standard into their law, meeting the conditions of their agreement with the Commonwealth. Therefore, a standard developed in accordance with the proposed section 16A of the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 is not likely to become law as states and territories are not bound to adopt something that is developed outside of the current framework. The FSANZ Act, the Food Regulation Agreement and our treaty with New Zealand do not contemplate a process whereby the Commonwealth can unilaterally impose a law on the states, territories and New Zealand.⁴¹

Regulation must be 'country neutral'

- 6.52 For Australia to comply with its international trade obligations to provide open markets, a proposal which would provide an advantage to Australian content would be likely to be seen to breach those obligations.
- 6.53 Complementary to this, current arrangements are drafted in such a way as to be 'country neutral' – that is, any product that states its country of origin is assessed against the same test under the ACL, regardless of whether it contains Australian ingredients or imported ingredients.

41 Mr Stephen McCutcheon, Chief Executive Officer, Food Standards Australia New Zealand, at hearing of Senate Economics Committee, *Committee Hansard*, Canberra, 30 October 2009, p. 17.

