26th October, 2012

Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
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Dear Committee Secretary,

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

I write on behalf of the Australian National Retailers (ANRA) regarding the Committee's inquiry into the *Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No. 2)* – henceforth the *Bill*.

For background, ANRA was established in 2006 to represent the interests of Australia's leading national retailers, across the full spectrum of retail goods and services – including household names in supermarkets, department stores and specialty retail. ANRA's membership collectively accounts for more than $100 billion of Australia's $250 billion annual retail spending. Our members employ around 500,000 Australians; or roughly 40% of the retail workforce and four percent of the Australian workforce. Approximately 100,000 of these employees are located in regional and rural Australia. ANRA's grocery members include Coles, Costco and Woolworths.

Food retailing in Australia

Australian consumers currently spend more than $100 billion annually on food (including beverages) at supermarket and specialty retailers. [1] This is equivalent to more than 40% of total retail spending over the 2011/12 financial year – making food the largest sector, on a revenue basis, in the retail industry.

ANRA's grocery members are key participants in the food sector and significant supporters of Australia's primary food producers. More than 95% of the fresh food sold in the major supermarkets – Coles and Woolworths – is sourced from Australian producers. Moreover, imported produce is typically only sourced to maintain supplies of customers' favoured produce throughout the year, or where sufficient quantities of a product are not available in Australia.

Turning to packaged food grocery items, ANRA estimates that around three-quarters of private label grocery products sold in major supermarkets are supplied by Australian sources. This is likely to rise in the near future in response to both businesses efforts to increase the proportion of Australian suppliers for their private label ranges. It is important to note these changes are occurring in response to consumer demand, but there are also practical considerations that may limit the speed of change. In some instances the manufacturing capacity simply isn't available, or retailers may have entered into multi-year manufacturing contracts with their suppliers which need to run their course.

[1] Over the 2011/12 financial year. Seasonally adjusted estimates for Food retailing within ABS Table 8501012 (2012).

Country of Origin Labelling (CoOL)

Consumers are becoming increasingly interested in the origins of their food and where it was processed or manufactured, for a variety of reasons. Some consumers look to support Australian businesses, some use country of origin claims as a proxy for perceived food safety concerns and others may have moral considerations driving their consumption decisions.

Having CoOL that informs consumer choice means providing the information consumers want through labelling that is clear, unambiguous and is easily understood. ANRA members understand the importance of this to Australian consumers.

ANRA members have an established record of being leaders in extending CoOL labelling to a wider range of products than specified in Standard 1.2.11 of the Food Standards Code. Our members already largely had CoOL in place when the extension of Standard 1.2.11 to fresh chicken, lamb, beef etc. was considered in 2011. This action was largely taken to promote consistency in the display of information to customers.

Furthermore, our major supermarket members strive to use qualifying claims on their private label products wherever practical and are also partners of the Australian made, Australian Grown (AMAG) campaign.

Customer research has found that consumers do not have a great understanding of the terms currently used for CoOL and that consumers tend to expect claims are focused on 'core ingredients' of food products when making purchasing decisions. ANRA therefore supports Recommendation 42 of the *Blewett Review's* focus on delivering consumer friendly CoOL based primarily on the ingoing weight of ingredients and components (excluding water).

In short, ANRA supports the underlying intent of the *Bill*. However, our views on current CoOL requirements are more closely aligned with recent comments by ACCC Chairman Mr Rod Simms:[2]

'The ACCC does not believe there is an essential problem with the current classifications. The problem is people's understanding of what they mean.'

ANRA believes the current CoOL requirements should be augmented, rather than replaced entirely, to promote consumers making better informed consumption choices. ANRA is concerned that if the *Bill* were passed in its current form CoOL is likely to become less clear to consumers and potentially damaging to the Australian food manufacturing industry – the very industry this *Bill* intends to support.

Item 1 – 'made in' or 'product of' claims must not be made

ANRA does not support the abolition of 'made in' or 'product of' claims. These claims are important for products like seafood and dairy, and to significant segments of the consumer base who may wish to support Australian food manufacturing. Consumers are also quite familiar with this terminology; it is just that broader understanding of the terms needs to improve. This would be assisted with government led and industry supported education and awareness campaigns.

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[2] '*Competition and consumer issues: State of play in the food and grocery sector*' (11/10/2012), speech delivered to AFGC Industry Leaders Forum.

ANRA feels it would be more appropriate to 'tighten up' the definition of substantial transformation for 'made in' or 'product of' claims. This could potentially take the form of specifying the processes or combination of processes required to satisfy a definition. The 'made in' and 'product of' claims would essentially become more exclusive, and if Australian consumers send clear signals through their purchasing patterns then retailers and manufacturers have a clear incentive to strive for these claims.

ANRA members note the Bill does not allow for the use of a 'Grown in Australia' claim, despite such claims being relatively straightforward and applied in the current marketplace.

Items 2 and 3 – 'made of Australian ingredients' claims

The Bill's explanatory memorandum claims that current CoOL requirements confuse and mislead consumers.[3] ANRA members are concerned item 2 could also mislead consumers. The 'made of Australian ingredients' claim infers that 100% of ingredients were grown in Australia. This could be misleading when considered against the 90% threshold stipulated in item 2.

Furthermore, the Bill would effectively create separate requirements for food and non-food products that have very similar wording – creating a risk of further consumer confusion. For example, a 'Made in Australia' claim could be made on a clothing product that satisfies the 50%, substantially transformed test but could not be made against a food product – that may be sold in the same store – that satisfies the current 50%, substantial transformation test. This is likely to add to, rather than address, consumer confusion.

ANRA also sees little benefit – in fact there would appear to be significant detriment to Australian industry – in restricting manufacturers' ability to make qualified claims about products that do not meet the 90% threshold for a 'made of Australian ingredients' claim. It is important to recognise the place of manufacture and therefore provide an incentive to manufacture in Australia.

To illustrate, consider a tin of processed peaches with 80% Australian fruit and the balance (excluding water) imported, and a fully imported tin of processed peaches. Both products would not meet the threshold for a 'made of Australian ingredients' claim and therefore consumers would not be provided with information they might otherwise act on to distinguish between a predominately Australian product and the fully imported item. This is clearly not a desirable outcome for promoting Australian manufacturing.

ANRA suggests there is a clear rationale for raising the current 50% substantial transformation threshold for 'product of' and 'made in' claims, but this should not be as high as 90% to preclude many predominately Australian products from being able to demonstrate themselves as such. The chosen threshold should also reflect those contained within the Food Standards Code for defining ingredients and ingoing weight.

Item 4 – CoOL for fresh food

Consistency is a desirable feature of any regulatory requirement, from both a consumer understanding and business implementation/compliance perspective. ANRA believes the *regulated fresh food* covered by the Bill does not extend to all fresh foods where it could be applied. ANRA would support the application of CoO across the full range of fresh food products to enhance customer understanding of CoOL.

[3] p.2

Practical Considerations

ANRA agrees that CoOL provisions are better placed within the Competition and Consumer Act and therefore supports Recommendation 41 of the Blewett Review. CoOL is predominately provided for consumer value purposes – food safety is addressed under the Food Standards Code – and therefore belongs within the Australian Consumer Law.

ANRA believes having the Bill '*prevail to the extent of any inconsistency*' creates an unnecessary compliance burden on business and could lead to confusion for consumers and industry alike. This could be addressed by either revoking Food Standard 1.2.11 or by changing Food Standard 1.2.11 to be consistent with the Bill's requirements.

ANRA believes the proposed commencement date of January 1st, 2014 is not appropriate. This is a peak trading time for many retailers; which makes it quite difficult to implement new ticketing, point-of-sale materials and to conduct staff training etc. whilst also meeting the demands of an elevated level of customers.

I also note that our members typically engage in multi-year manufacturing contracts. Retailers need time to 'sell through' stock acquired under existing laws, so bringing in changes to CoOL requirements with short implementation time frames increases the risk that retailers and manufacturers suffer unnecessary loss. ANRA suggests a minimum 24 month implementation period after the Bill receives assent, falling between March and October.

ANRA acknowledges that consumer confusion over the use of CoOL terms needs to be addressed, and therefore any changes to existing CoOL requirements will need to be fully explained to consumers through comprehensive Government led consumer education campaigns.

Thank you for considering ANRA's views on this matter.

Sincerely,

Margy Osmond
Chief Executive