

Chapter 1

Introduction

1.1 On 1 September 2016, the Competition and Consumer Amendment (Country of Origin) Bill 2016 was introduced by the government into the House of Representatives. On 15 September 2016, the Senate referred the provisions of the bill to the Economics Legislation Committee for inquiry and report by 10 October 2016.¹

Conduct of the inquiry

1.2 The committee advertised the inquiry on its website and on Twitter. It also wrote to relevant stakeholders and interested parties inviting submissions by 23 September 2016. The committee received six submissions, which are listed at Appendix 1.

1.3 The committee thanks all of the individuals and organisations that contributed to this inquiry.

Overview of the bill

1.4 The bill amends the Australian Consumer Law (ACL) (Schedule 2 of the *Competition and Consumer Act 2010*) to alter the definition of substantial transformation as it applies to the safe harbour provisions of the ACL.²

1.5 The intention of the bill is to simplify the tests used to justify a country of origin 'made in' claim by clarifying what substantial information means and removing the '50 per cent production cost' test.³

1.6 According to the Assistant Minister:

This bill forms part of the government's country of origin labelling reform package that was agreed by the states and territories in March this year. A key element of this reform package, the Country of Origin Food Labelling Information Standard 2016, actually commenced in July this year...

The reforms aim to provide consumers with clear, more meaningful and easier to find country-of-origin information so they can make informed purchasing decisions in line with their personal preferences.⁴

1.7 Explanatory Memorandum notes that the substantial transformation test in its present form is inadequate. Many consumers are confused or feel they are being

1 *Journals of the Senate*, 2015-16, no. 7 (15 September 2016), p. 211

2 Explanatory Memorandum, p. 1.

3 Explanatory Memorandum, p. 1.

4 Assistant Minister for Industry, Innovation and Science, The Hon Craig Laundy, *House of Representatives Hansard*, 1 September 2016, p. 20.

misled as it encourages meaningless claims like 'Made in Australia from local and imported ingredients' when food is only minimally processed in Australia.⁵

1.8 Businesses will have more certainty about what activities constitute, or do not constitute, substantial transformation. In addition, the amendments make clear that importing ingredients and undertaking minor processing that merely changes the form or appearance of imported goods, such as dicing or canning, are not sufficient to justify a 'made in' claim.⁶

1.9 According to the Explanatory Memorandum, the '50 per cent production cost' test is an unnecessary burden on business and means little to consumers. The complexities of sourcing components through the global supply chain and variability due to currency fluctuations mean that the test is difficult to administer. The test also becomes redundant for food producers with the introduction of labels showing the percentage of Australian ingredients.⁷

1.10 The Assistant Minister explained the benefits to businesses:

Businesses will find it easier to make reliable country-of-origin representations through a clarified substantial transformation test and the removal of the burdensome and capricious production cost test.⁸

1.11 The bill complements the Country of Origin Food Labelling Information Standard 2016 (made under the ACL) which came into effect on 1 July 2016. The information standard was separately tabled as a disallowable instrument in Parliament. The information standard provides for mandatory country of origin labelling requirements for food that is sold in Australia, including offered or displayed for sale. No labelling requirements are imposed on food sold outside Australia. The bill includes a new safe harbour defence for a representation in the form a mark specified in the information standard.⁹

1.12 It is anticipated that the removal of the '50 per cent production cost' test will significantly reduce the statutory burden for all businesses, not just food businesses. It is the main regulatory offset against the added costs imposed on food businesses by the information standard. The imposition of the standard was expected to cost businesses \$48.2 million per year, while the removal of the production cost test was estimated to result in savings for businesses of \$48.5 million per year.¹⁰

5 Explanatory Memorandum, p. 1.

6 Explanatory Memorandum, p. 1.

7 Explanatory Memorandum, p. 1.

8 Assistant Minister for Industry, Innovation and Science, The Hon Craig Laundy, *House of Representatives Hansard*, 1 September 2016, p. 20.

9 Explanatory Memorandum, p. 1.

10 Explanatory Memorandum, p. 1.