

Chapter 4

Food labelling

4.1 This chapter covers issues raised with the committee about the labelling of processed foods. While Australia's food labelling requirements deal with a broad range of topics, from country of origin requirements, to nutritional information and other health and animal welfare claims, the written and oral evidence presented to the committee predominantly dealt with country of origin requirements. This makes sense given the primary focus of the inquiry is on the competitiveness and future viability of the Australian food processing sector—many submitters saw the current country of origin labelling requirements as being a major inhibitor in the growth of the food processing industry. That is, they believed that Australians would pay a premium for food processed in Australia and made from Australian ingredients, but that current country of origin labelling laws allowed imported food to be presented as Australian.

4.2 Accordingly, this chapter will focus on country of origin labelling requirements. Other labelling issues will only be dealt with insofar as they arise out of the recent review of Australia's food labelling regime, conducted by Dr Neal Blewett AC.

Country of Origin Labelling Regime

4.3 Australia's country of origin labelling requirements derive from a number of sources. Some of these sources, such as the *Australian New Zealand Food Standards Code* (Food Standards Code) and Codex Alimentarius, are specific to food; others, such as the *Competition and Consumer Act 2010* (Cth) (CCA), apply more generally to goods and services.

4.4 It is helpful to understand how these regimes interact before examining some of the evidence received by the Committee about the effect of country of origin labelling laws on the Australian food processing industry. In short, the Food Standards Code requires that certain foods display their country of origin and, if applicable, manufacture. The CCA, on the other hand, provides guidance about the terminology to be used in making claims about the country of origin or manufacture of goods, including produce.

Food Standards Code

4.5 The Food Standards Code sets out the minimum standards for the supply of food in Australia and New Zealand. These standards are set by an independent statutory authority, Food Standards Australia New Zealand (FSANZ), under the *Food Standards Australia New Zealand Act 1991* (Cth). FSANZ summarised its objectives in setting these standards in its submission to the committee:

FSANZ is established to give consumers confidence in the quality and safety of the food supply chain, provide a regulatory framework that establishes an economically efficient environment for industry, give consumers information relating to food that enables them to make informed choices, and provide consistency in domestic and international food regulation in Australia and New Zealand, without reducing the safeguards applying to public health and consumer protection.¹

4.6 While many of the standards set by FSANZ concern public health and nutrition, a number also regulate the labelling of food products. Standard 1.2.11 is most relevant to the committee's report as it deals with country of origin labelling.

4.7 The Standard requires certain food products to identify the country of origin of the ingredients in the food product and, if it was processed, the country in which the food was processed for retail sale. The below table sets out these requirements:

| Food | Labelling requirement |
|--|---|
| Packaged food (other than food falling in the categories below) | <ul style="list-style-type: none"> (a) a statement on the package that identifies where the food was made or produced; or (b) a statement on the package: <ul style="list-style-type: none"> (i) that identifies the country where the food was made, manufactured or packaged for retail sale; and (ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients as the case may be. |
| Fish, including cut fish, filleted fish, fish that has been mixed with one or more other foods and fish that has undergone any other processing including cooking, smoking, drying, pickling or coating with another food | A label on or in connection with the display of the food: <ul style="list-style-type: none"> (a) identifying the country or countries of origin of the food; or (b) containing a statement indicating that the foods are a mix of local foods or imported foods or both. |
| Fresh pork, whole or cut, except where the product has been mixed with food not regulated by subclause 2(2) of the Standard | |
| Pork, whole or cut, that has been preserved by curing, drying, smoking or by other means, except where that product has been mixed with food not regulated by subclause 2(2) of the Standard (other than those foods used in the preserving) | |
| Fresh whole or cut fruit and vegetables (if it is displayed otherwise than in a package) | |
| Whole or cut fruit and vegetables where that produce has been preserved, pickled, cooked, frozen or dehydrated except where that produce has been mixed with food not regulated by subclause 2(2) of | |

1 FSANZ, *Submission 46*, p. 1.

the Standard (other than with those foods used in the preserving, pickling or cooking as the case may be).

Fresh whole or cut fruit and vegetables (if it is displayed in a package that does not obscure the nature or quality of the food)

A label on the package or in connection with the display of the food:

- (a) identifying the country or countries of origin of the food; or
- (b) containing a statement indicating that the foods are a mix of local foods or imported foods or both.

Source: Food Standards Australia New Zealand, Food Standard 1.2.11.

4.8 The Standard does not itself set out the criteria for determining the origin of food or the location of its making, manufacture or packing. These criteria are set out in the Australian Consumer Law (ACL) in the CCA and are dealt with below. It is notable that the criteria in the ACL apply generally to the advertising of all goods and services, not only food.

4.9 While FSANZ is responsible for setting the standards in the Food Standards Code, the enforcement of the Code is the responsibility of State and Territory authorities, who have incorporated the substance of the Code into their food safety legislation.²

Codex Alimentarius

4.10 The Codex Alimentarius (Codex) is a collection of international standards, guidelines and advisory texts dealing with the production and safety of food. It is administered by the Codex Alimentarius Commission, which was established in 1963 by the United Nations' Food and Agricultural Office and the World Health Organisation. Australia is a member of the Commission.³ The World Trade Organisation and the Codex Commission collaborate about the use of international food standards in relation to global trade issues, particularly under the Agreement on the Application of Sanitary and Phytosanitary Measures.⁴ The Commission notes that:

The reference made to Codex food safety standards in the World Trade Organizations' Agreement on Sanitary and Phytosanitary measures (SPS Agreement) means that Codex has far reaching implications for resolving trade disputes. WTO members that wish to apply stricter food safety measures than those set by Codex may be required to justify these measures scientifically.⁵

2 See section 21 *Food Act 2003* (NSW), section 16 *Food Act 1984* (Vic), section 39 *Food Act 2006* (Qld), section 22 *Food Act 2008* (WA), section 21 *Food Act 2001* (SA), section 21 *Food Act 2003* (Tas), section 27 *Food Act 2001* (ACT) and section 20 *Food Act* (NT).

3 <http://www.codexalimentarius.org/codex-home/en/> (accessed 13 June 2012).

4 World Trade Organisation: http://www.wto.org/english/thewto_e/coher_e/wto_coden_e.htm (accessed 13 June 2012).

5 <http://www.codexalimentarius.org/about-codex/en/> (accessed 13 June 2012).

4.11 Codex forms the international context to the standards set by FSANZ.

4.12 Codex contains a general standard on the labelling of pre-packaged foods. The standard requires that pre-packaged food show the country of origin of the food if its omission would mislead or deceive the consumer. If food from one country is processed in a second country in a way which changes its nature, then the second country is regarded as the country of origin for the purposes of the standard.⁶

Competition and Consumer Act 2010

4.13 Among other things, the CCA contains a number of provisions dealing with consumer protection. These provisions are set out in the ACL, which forms Schedule 2 to the CCA. While the ACL is relevant to the labelling of food, it applies broadly to the advertising of all products and services. There are a number of provisions of the ACL which affect the manner in which food can show its country of origin:

- (a) the prohibition against misleading or deceptive conduct, or conduct that is likely to mislead or deceive (section 18);
- (b) the prohibition against making false or misleading representations about the standard, quality, value, grade, composition, style, model or history of goods (paragraphs 29(1)(a) and 151(1)(a));
- (c) the prohibition against making false or misleading representations about the place of origin of goods (paragraph 29(1)(k) and 151(1)(k)); and
- (d) the prohibition against conduct liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for purpose or quantity of goods (section 33).

4.14 The ACL also contains, in section 255, a number of provisions specifically guiding businesses on how to make country of origin claims. These provisions are often known as 'safe havens' as they operate to protect businesses from claims that statements about the country of origin of products are misleading or deceptive. The following table sets out the circumstances in which a business may make a claim about the origin of goods:

6 Codex Alimentarius, General Standard for the Labelling of Prepackaged Foods CODEX STAN 1-1985, cl. 4.5.

| Representation | Requirements to be met |
|--|---|
| 1. A representation as to the country of origin of goods | (a) the goods have been substantially transformed in that country; and (b) 50% or more of the total cost of producing or manufacturing the goods is attributable to production or manufacturing processes that occurred in that country; and (c) the representation is not that goods are the produce of a particular country or made by way of a logo specified in the regulations. |
| 2. A representation that goods are the produce of a particular country | (a) the country was the country of origin of each significant ingredient or significant component of the goods; and (b) all, or virtually all, processes involved in the production or manufacture happened in that country. |
| 3. A representation as to the country of origin of goods by means of a logo specified in the regulations | (a) the goods have been substantially transformed in the country represented by the logo as the country of origin of the goods; and (b) the prescribed percentage of the cost of producing or manufacturing the goods is attributable to production or manufacturing processes that happened in that country. |
| 4. A representation that goods were grown in a particular country | (a) the country is the country that could, but for the fact that a representation has been made of the kind referred to in item 1 or 2 of this table, be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each significant ingredient or significant component of the goods was grown in that country; and (c) all, or virtually all, processes involved in the production or manufacture happened in that country. |
| 5. A representation that ingredients or components of goods were grown in a particular country | (a) the country is the country that could, but for the fact that a representation has been made of the kind referred to in item 1 or 2 of this table, be represented, in accordance with this Part, as the country of origin of the goods, or the country of which the goods are the produce; and (b) each ingredient or component that is claimed to be grown in that country was grown only in that country; and (c) each ingredient or component that is claimed to be grown in that country was processed only in that country; and (d) 50% or more of the total weight of the goods is comprised of ingredients or components that were grown and processed only in that country. |

Source: Section 255 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

4.15 The operation of these safe haven provisions attracted significant criticism from witnesses throughout the inquiry. These comments will be addressed later in this chapter, however, it is worth noting that much of the criticism centred around the two tests for whether something can be said to have been 'made in' a country, being:

- (a) the requirement that the goods be 'substantially transformed' in that country; and

- (b) the requirement that 50 per cent or more of the total cost of producing or manufacturing the goods (including expenditure on materials, labour and overheads) is attributable to production or manufacturing processes that occurred in that country.

4.16 Under subsection 255(3), goods are 'substantially transformed' in a country where they 'undergo a fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change'. The Australian Competition and Consumer Commission (ACCC) has noted that processing imported and Australian ingredients into a finished product (such as a cake) would likely be considered a 'substantial transformation', but less significant changes to ingredients (such as the reconstitution of imported concentrated fruit juice into fruit juice for sale) may not.⁷

4.17 In its submission to the inquiry, the Australian Made, Australian Grown (AMAG) Campaign noted that the ACCC has previously issued guidelines suggesting that the 'substantial transformation' threshold is not high. These ACCC guidelines stated that mixing, homogenisation, coating and curing were all processes 'likely to be considered as substantial transformation' of food. The AMAG Campaign noted that homogenised milk, battered fish fillets, ham and bacon may all be regarded as 'substantially transformed' from their original ingredients. This means that, provided that at least 50 per cent of the cost of production is incurred in Australia, these products may be labelled as 'made in Australia', even if all the main ingredients have been imported.⁸

4.18 The ACCC has previously encouraged businesses to make qualified claims about the origin of ingredients used in their products if doing so would provide more complete information to consumers.⁹ Examples of such claims include:

- 'Made in Australia from local and imported ingredients', where the product satisfies the criteria for being labelled 'made in Australia' and is predominantly made from local ingredients; and
- 'Made in Australia from imported and local ingredients', where the product satisfies the criteria for being labelled 'made in Australia' and is predominantly made from imported ingredients.

7 ACCC, *Country of Origin Claims and the Australian Consumer Law*, <http://www.accc.gov.au/content/item.phtml?itemId=303666&nodeId=ca18a960c4a18fff7da324c16583bed9&fn=Country%20of%20origin%20claims%20&%20the%20ACL.pdf> (accessed 13 June 2012)

8 Australian Made, Australian Grown Campaign, *Submission 56*, p. 4. Note that the guidelines are no longer available on the ACCC's website.

9 ACCC, *Country of origin claims and the Trade Practices Act. 2006*, pp 18–19. <http://www.australianmade.com.au/assets/Uploads/Country-of-origin-claims-and-the-TPA.pdf> (accessed 13 June 2012).

4.19 It should be noted that a label on a product stating that it is 'made in Australia' is separate from and different to a label displaying the 'Australian Made' symbol. The 'Australian Made' symbol is used under license from the AMAG Campaign. A product must comply with more stringent criteria set out in the AMAG Code of Practice, before it can obtain a license to display the AMAG symbol, rather than a simple 'made in Australia' claim. These criteria are particularly stringent with respect to the 'substantial transformation' test, and the AMAG Campaign has specifically excluded a number of processes from being considered as substantially transforming food. These include freezing, canning, mixing or blending ingredients, homogenisation, marinating, curing, roasting and coating.¹⁰

Blewett Review

4.20 This inquiry occurs in the context of some government attention to the issue of food labelling. The Council of Australian Governments and the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) recently sought a comprehensive examination of food labelling law and policy. Dr Neal Blewett AC conducted the review, presenting his report, *Labelling Logic: Review of Food Labelling Law and Policy* (Blewett Review), to the government on 28 January 2011.¹¹

4.21 While the report dealt with all aspects of Australia's food labelling regime, including public health and food safety issues and dealing with new technologies, a number of its recommendations relating to 'consumer values issues' touch on the scope of the committee's inquiry. Suffice to say that, where they raised it as an issue, submitters' reactions to traffic light labelling were mixed.

4.22 The Legislative and Governance Forum on Food Regulation of the Ministerial Council released its response to the Blewett Review on 9 December 2011.

Findings

4.23 Much of the Blewett Review was concerned with the health and food safety implications of food labelling. In particular, the Review's recommendations that the government mandate a traffic light system for foods have attracted significant media and industry interest.

4.24 However, it is the Blewett Review's findings on the impact of consumer values issues on food labelling that are of particular relevance to this inquiry. The term 'consumer values issues' refers to the idea that 'many people feel strongly about

10 Australian Made, Australian Grown Campaign, *Submission 56*, p. 5.

11 Commonwealth of Australia, *Labelling Logic: Review of Food Labelling Law and Policy*, Dr Neal Blewett (Chair), January 2011. Copies of the report may be obtained from [http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/\\$File/Labelling%20Logic_2011.pdf](http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/$File/Labelling%20Logic_2011.pdf), (accessed 13 June 2012).

the origins of the food they buy and how and under what conditions it was produced'.¹² The Review distinguished between more generalised values issues about human rights, animal welfare, environmental sustainability and country-of-origin concerns on the one hand, and issues relating to food production, such as free range, organic and halal, on the other.¹³

4.25 The Blewett Review noted that country of origin considerations are particularly important in food labelling. The Review found that such issues 'may serve as a surrogate for many consumers for other information demands such as carbon miles, animal welfare or even perceived food safety'.¹⁴ Further, and consistent with the evidence before this committee, the Review uncovered 'widespread concern over the confusing plethora of definitions relating to the Australian nature of the product'.¹⁵ These two findings are of particular relevance to the committee because country of origin labelling is the only values-based label claim that has attracted government intervention.¹⁶

Country of origin recommendations

4.26 A number of the Blewett Review's recommendations concerned changes to the country of origin labelling regime for food. These recommendations were primarily aimed at making labels clearer and more accurate.

4.27 First, the Review recommended that Australia's existing mandatory country of origin labelling requirements for food be maintained and extend to cover all primary food products for retail sale (Recommendation 40). This recommendation was aimed at making country of origin labelling requirements consistent across all primary food products. Currently, beef, lamb and chicken products are not required to display any information about their country of origin.

4.28 The Review also recommended 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 CCA rather than in the Food Standards Code (Recommendation 41). The aim of this recommendation was to ensure that country of origin requirements were dealt with in a single regulatory framework, rather than the overlapping regimes of consumer and food laws, set out above.

4.29 Finally, the Blewett Review recommended that the government clarify the current regime about claims of Australian origin. The Review recommended that, for foods bearing some form of Australian claim, a consumer-friendly, food-specific

12 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.1, p. 97.

13 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.2, p. 97.

14 *Labelling Logic: Review of Food Labelling Law and Policy*, para 2.6, p. 33.

15 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.40, pp 108–9.

16 *Labelling Logic: Review of Food Labelling Law and Policy*, para. 6.31, p. 106.

country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed (Recommendation 42). As part of this recommendation, the Review proposed a simplified scheme of labels, replacing the words 'made in' with the words 'made of'. This recommendation addressed concerns raised with the Review about the confusing nature of the current labelling regime.

4.30 Essentially, the Blewett Review recommended creating a specific regime regulating food product country of origin labelling claims separate to the general laws governing country of origin claims for other products, such as manufactured goods.

Government response

4.31 The government released its response to the Blewett Review on 9 December 2011. In relation to recommendation 40, the government noted that FSANZ was considering amendment to the Food Standards Code that would extend country of origin labelling requirements to unpackaged beef, veal, lamb, hogget, mutton and chicken.¹⁷

4.32 The government's response explicitly rejected the idea of creating a separate regime governing country of origin claims for food, as proposed in recommendations 41 and 42 of the Blewett Review. The government noted that changes to the current country of origin labelling regime would impose costs on business and explained its rationale for rejecting the proposed changes in the following manner:

the proposed framework does not recognise the intent of 'made in' claims, which support the important contribution the manufacturing sector makes to the local economy (and community) by considering a range of inputs including raw materials (ingredients), packaging, labour and associated overhead costs. Depending on the type of claim used, the current regulatory framework gives recognition to the contribution of local production and manufacturing, as well as the origin of the ingredients and components of a food product.¹⁸

4.33 Instead, the government response stated that it would consult with relevant consumer protection agencies to review existing materials on country of origin labelling and, if appropriate, develop an educational campaign. In evidence to the committee, Mr Paul Trotman, General Manager of the Trade and International Branch,

17 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, pp 43–44.
<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home>
 (accessed 13 June 2012)

18 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 45.
<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home>
 (accessed 13 June 2012)

Department of Industry, Innovation, Science, Research and Tertiary Education, indicated that these reviews were in their early stages:

We have been actively engaged with Treasury in response to the recommendations that came out of the Blewett review. We are looking at the country of origin labelling materials with the specific objective of clarifying the requirements around country of origin labelling. As I said, the department has met with Treasury and also with officials from state and territory departments and agencies. We are working towards refining all of the information brochures and fact sheets that have been developed and also towards looking at developing a few more of those fact sheets to make it easier for consumers to understand.¹⁹

Committee view

4.34 Evidence before this committee suggests that the government's response misunderstands consumer and industry expectations about the purpose and clarity of country of labelling laws with respect to food. The committee believes that there may be a case for simplifying and clarifying these laws as they relate to food products. Whether or not country of origin labelling laws are simplified, the committee believes that consumer education is vital.

Concerns about Labelling

4.35 As stated above, the committee heard significant evidence suggesting that the current country of origin labelling regime did not accurately convey information to consumers. Submitters were particularly concerned that the current array of country of origin descriptions was misleading, poorly understood by consumers and open to abuse.

Lack of Transparency in Country of Origin Labels

4.36 The position of many submitters was put succinctly by Mr John Wilson, General Manager, Fruit Growers Victoria Limited:

We are aware that the current labelling laws in Australia are almost deceptive in their structure. We challenge any man in the street to know the difference between 'product of Australia' and 'made in Australia'. We understand that the laws are currently under review. Hidden behind that you also have the structure of the mathematics where water is taken into account as added Australian content.²⁰

19 Mr Paul Trotman, General Manager of the Trade and International Branch, Department of Industry, Innovation, Science, Research and Tertiary Education, *Committee Hansard*, 11 May 2012, p. 40.

20 Mr John Wilson, General Manager, Fruit Growers Victoria Limited, *Committee Hansard*, 8 March 2012, p. 8.

4.37 Other submitters argued that the current laws allow products made almost exclusively from imported products to be labelled as 'made in Australia'. For example, Australian Pork Limited (APL) noted that the current country of origin labelling laws made it 'very difficult for consumers to differentiate Australian from imported processed pork products'.²¹ This was because:

most ham and bacon made from Australian pork contains a small amount of imported curing ingredients (which can't be sourced in Australia), [so] it is theoretically excluded from using the *Product of Australia* label. Instead, it must use the obscure *Made in Australia* claim, alongside products made from imported pig meat. Products made from imported pig meat are permitted to use the *Made in Australia* claim if the product has been substantially transformed (made into ham or bacon) in Australia.²²

4.38 APL believed that there was a mismatch between the intent of the country of origin claim and consumer expectations. APL cited the results of internal research suggesting that consumers believed a claim that a product was 'made in Australia' meant that the pigs were raised in Australia.²³ It placed the blame for this mismatch directly on the 'substantial transformation' test, which classed relatively simple processing practices such as curing and smoking as substantial transformations.

4.39 APL was not the only submitter to express concern about the 'substantial transformation' test.²⁴ Others also noted that the second limb of the 'Australian made' threshold, that at least 50 per cent of the costs of production were incurred in Australia, was relatively easy to overcome. The relatively high labour and other input costs in Australia coupled with the high dollar could disproportionately skew the costs of the final product.²⁵ As with the 'substantial transformation' test, this allowed products to claim that they had been 'made in Australia' even where their defining ingredients were significantly removed from Australia.

4.40 According to APL, the effects of the leniency of country of origin labelling laws in Australia was 'a complete brick wall' in the face of its efforts to differentiate Australian products and provide the consumer with information.²⁶ APL drew the committee's attention to the manner in which the 'made in Australia' claim could undermine consumer confidence in other matters. For example, in Denmark, pigs do

21 Australian Pork Limited, *Submission 30*, p. 8.

22 Australian Pork Limited, *Submission 30*, p. 8.

23 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Ltd, *Committee Hansard*, 13 December 2011, p. 5.

24 These concerns were also raised in submissions from the Citrus Growers of South Australia, *Submission 45*, concerning orange juice; LEFCOL, *Submission 3*, concerning crumbed fish/prawns.

25 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 6*, p. 13.

26 Mr Andrew Spencer, Chief Executive Officer, Australian Pork Limited, *Committee Hansard*, 13 December 2011, p. 9.

not have to have access to the outdoors in order to be labelled as 'free range', however, in Australia, they do. As curing is regarded as a substantial transformation, bacon cured in Australia from Danish pork can be labelled as both 'free range' and 'made in Australia', even though the pork would not meet Australian free range standards.²⁷

4.41 Similarly, APL also noted that the lack of precision in labelling laws was undermining the pork industry's commitment to phase out the use of sow stalls by 2017; the inability of consumers to distinguish between pork products grown and made here and those made overseas undermined Australian farmers' significant investment and ongoing education to achieve this goal.²⁸

4.42 The Lakes Entrance Fishermen's Cooperative Society Limited (LEFCOL) made similar comments about seafood. Mr Dale Sumner, General Manager of LEFCOL, stated:

The labelling laws do not allow consumers to put a value on our sustainability credentials. ...Flathead is a very common name and, as I mentioned earlier, that is our main species in Lakes Entrance. Without looking at those boxes under a microscope, it is not easy to see where that fish is from, other than on the bottom box it says it is a product of Malaysia. The flathead is actually from Argentina. It is South American flathead that goes to Malaysia to have the coating put on it and it is then imported into Australia. The mum and dad consumers see those boxes, they see 'flathead' and think it is an Australian product.²⁹

4.43 The AMAG Campaign highlighted similar issues in its submission to the committee. It noted that it had recently modified its own Code of Practice to specifically exclude certain processes such as freezing, canning, juicing, homogenisation, curing and coating, from being considered a 'substantial transformation' of food. The AMAG Campaign believed that these processes alone were not sufficient transformations of food to attract the 'Australian Made' logo, irrespective of whether 50 per cent or more of the cost of production was incurred in Australia.³⁰

Support for current standards

4.44 The evidence before the committee about country of origin labelling issues was not universally negative. A number of submitters either did not raise it as an issue facing their business or saw it as masking the real issues confronting the industry: price, innovation and product research, development and marketing.

27 Australian Pork Limited, *Submission 30*, pp. 12–13.

28 Australian Pork Limited, *Submission 30*, pp. 7, 9.

29 Mr Dale Sumner, General Manager, Lakes Entrance Fishermen's Cooperative Society, *Committee Hansard*, 9 March 2012, pp. 32–33.

30 Australian Made Australian Grown, *Submission 56*, p. 5.

4.45 It is important to note that claims that current country of origin labelling laws harming Australian food processors rest on the assumption that Australian consumers will choose to buy Australian goods rather than imported goods when prices are comparable. Many submitters who raised the issue of country of origin labelling cited statistics in support of this fact. For example, according to a Roy Morgan poll commissioned by the AMAG Campaign in 2007, 89 per cent of consumers felt that it was important or very important that fresh food was Australian and 82 per cent felt that it was important or very important that processed food was Australian.³¹ APL cited similar statistics from Newspoll from 2008.³² The AMWU summed up this position in its evidence before the committee:

Australian consumers, as we have seen in the research, prefer to buy Australian made, particularly when it comes to food. This is because they want to know that the food is safe and of high-quality and they want to support Australian jobs. Nevertheless, consumers have great difficulty in finding and deciphering where products are actually produced.³³

4.46 But this consumer preference is not always born out in practice. Indeed, a 2010 Choice survey cited in APL's submission noted that only about half of the respondents would always try to buy Australian products if they were available.³⁴ Further, Mr Dick Smith stated in his evidence before the committee that he was uncertain about the depth of support for Australian made food. He explained his belief that high profile moves to promote Australian made food would not ultimately succeed:

I have a fear that what would happen initially when it got lots of publicity would be that most Aussie consumers would support it and then they would end up just going and buying the cheapest. Let me give you an example. You were referring to our peanut butter, which is on the bottom shelf in Woolworths and Coles. What happened there was that we brought out this Australian peanut butter, which is a really good product made by the farmers in Kingaroy, we priced it just a little bit above Kraft's and we got to 16 per cent of the market, which was absolutely fantastic. This was 13 years ago. It became, of our \$80 million turnover, the most successful line. Immediately, Kraft started discounting by a dollar and so what happened was that that everyone just went and brought the Kraft. Sales of our product dropped to below about seven per cent, which is when it would normally be dumped by the supermarkets, but I think they did think, 'Let's support

31 Australian Made Australian Grown, *Submission 56*, p. 3.

32 Australian Pork Limited, *Submission 30*, p. 7.

33 Ms Jennifer Dowell, National Secretary, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 2.

34 Available: <http://www.choice.com.au/reviews-and-tests/food-and-health/labelling-and-advertising/nutritional-labelling/country-of-origin-labelling-survey-results.aspx> (accessed 6 June 2012). Note that this study relates to all Australian manufactured goods, not just food.

Australian, we'll keep the Dick Smith product,' so it was actually the consumers.³⁵

4.47 Mr Callum Elder, Executive General Manager, Quality and Innovation at Simplot Australia, similarly stated that the issue was that consumers said one thing in surveys but, when confronted by actual price differences in the supermarket, behaved very differently:

Previously, market research and consumer spending has said that when you ask a consumer on the street whether they want Australian produced food the answer is unequivocally yes. When they get into the supermarket that does not seem to be reflected in their behaviour. Certainly, I am sure they would want Australian produce, just about everybody would want Australian produced food, but how much of a premium are they prepared to pay for it when they can buy a can of corn from Thailand that can be half the cost of a can of corn produced in Australia?³⁶

4.48 Others put this view more starkly:

Some have trialled promoting 'Australian made' campaigns and have found these to be a dismal failure. The vast majority of consumers, in fact, purchase on the basis of price and taste factors. In reality, the level of loyalty to 'Australian made' product is low.³⁷

4.49 This is evident in the practices and evidence of both Coles and Woolworths. In their marketing material, both retailers appear at pains to emphasise the amount of fresh or processed food on their shelves that is made from Australian ingredients.³⁸ Both companies continued to emphasise these credentials in their submissions to and evidence before the committee.³⁹ But the companies' policies to look first at sourcing Australian produce are clearly subject to overriding considerations of price and taste.⁴⁰ These policies are apparent in Mr Smith's submission that Coles has refused to stock his fruit spreads because they are 30 cents more expensive than imported brands.⁴¹

35 Mr Dick Smith, Owner, Dick Smith Foods, *Committee Hansard*, 11 May 2012, p. 11.

36 Mr Callum Elder, Executive General Manager of Quality and Innovation at Simplot Australia, *Committee Hansard*, 12 April 2012, p. 20.

37 Dr David McKinna, Consultant, *Submission 32*, p. 17.

38 See, for example, Coles Group Limited, *Submission 22*, Attachments 1–4, Woolworths, *Meet our growers*, <http://www.woolworths.com.au/wps/wcm/connect/website/woolworths/freshfoodideas/meetthe growers/meet+our+growers> (accessed 13 June 2012) and Woolworths, *100% Australian Apples: Woolworths commits to Australian apples*, 25 January 2012, <http://www.woolworths.com.au/wps/wcm/connect/website/woolworths/about+us/woolworths-news/woolworthscommitstoaustralianapples> (accessed 13 June 2012).

39 Woolworths, *Submission 70*, pp. 4, 9; Coles, *Submission 22*, cover letter, p. 7, pp. 38 f.

40 Woolworths, *Submission 70*, pp. 4–5; Coles, *Submission 22*, pp. 17, 41, 48.

41 Dick Smith Foods, *Submission 63*, p. 1.

4.50 These are important factors to keep in mind when considering whether or not the current country of origin labelling regime should be reformed. It is particularly important given the cost to businesses resulting from any change in mandatory food labelling requirements. As the Treasury stated:

Food labelling requirements can generate significant compliance costs for businesses, and may constitute a barrier to entry or expansion for firms in the food processing industry. These costs need to be carefully balanced against the various public policy objectives of food labelling, such as for health or safety reasons, or to assist consumers to make informed purchasing decisions.⁴²

4.51 The submission from the Food Industry Advisory Group of the Chamber of Commerce of Western Australia (FIAG) gave further detail to these statements. It cited a 2003 study that estimated changes to mandatory label information cost individual small and medium enterprises about \$60 000. The FIAG also quoted a deli goods manufacturer member as estimating that changes to mandatory labelling standards would cost over \$200 000 for the 'overall change of artwork/printer plates, plus any residual stock of packaging material that [is] not exhausted inside a given grace period'.⁴³

4.52 The cost to manufacturers of changes to mandatory labelling requirements is an important consideration. This is particularly the case when the Australian food processing sector is already under significant pressure. Extra sales from increased consumer information would need to outweigh the additional costs involved in complying with changed mandatory labelling requirements.

4.53 Some submitters were also concerned that labelling issues were given undue importance in the industry. Mr Dean Rochfort, General Manager, Sustainable Development of the Greater Shepparton City Council, argued that the focus should be on processors better understanding their market and consumer behaviours:

What our manufacturers are telling us is that there needs to be some initiative and leadership in helping them develop a sense of brand equity and brand loyalty around Australian manufactured produce because where they see their competitors in those particular channels through the supermarket they do not have a level playing field. They are competing with cheap imported products and they are finding it very difficult. They are struggling with the same cost regimes and the same biosecurity regimes that are faced by them as local manufacturers. That comes back again to some of the issues that were mentioned about how we become smarter about production and leadership in terms of branding our local products. I

42 Department of the Treasury, *Submission 18*, p. 11.

43 Food Industry Advisory Group of the Chamber of Commerce of Western Australia, *Submission 15*, p. 6.

think 'country of origin' is at the lower end of sophistication of what we need to get to in terms of getting consumers to change behaviours.⁴⁴

4.54 Some evidence before the committee also brought into question the role of government in requiring mandatory country of origin labels. Ms Helen Hubble, a food technologist appearing in her private capacity, suggested that it is the role of industry and individual processors to explain the reasons why consumers should buy Australian produced food, rather than imported food. As she explained to the committee:

I think maybe the industry does not advertise that they are clean, that they are green, that we do not use this, that we have clean water, that we do not fish in dirty water—whatever it is. I do not think they sell themselves.⁴⁵

Committee view

4.55 It is clear that food labelling issues, particularly to do with country of origin requirements, loom large in the minds of many industry participants. This was especially the case for primary producers, but other witnesses, including food processors and retailers, gave evidence about the manner in which country of origin labelling laws affected their business. Some appeared to present it as a fundamental issue, the solution to which would level the playing field for a whole host of other issues confronting the industry, including the cost of imports, the high dollar and high input costs like labour and electricity.

4.56 But, as set out above, the evidence presented before the committee was equivocal about the role of country of origin labelling in addressing the issues confronting the food processing sector. While it is true that many Australian consumers felt that buying Australian products was important, it is also apparent that cost and quality were equally, if not more, significant factors on consumers' minds. In these circumstances, if country of origin labelling laws were changed, it is not entirely clear that the benefit (in terms of increased consumer sales) would outweigh the additional costs to industry (in interpreting new standards and changing labels).

4.57 The evidence points to a need for industry participants to fully understand the market for each of their products. For processors and farmers alike, this means thinking primarily about the consumer, not just the wholesaler or the retailer. Australia produces extremely high quality food, both at the farm gate and after processing. It is healthy, produced in stable, sustainable, clean and cruelty-free conditions and is subject to a rigorous health inspection system which ensures it is consistently of high quality. These factors are reflected in its generally higher cost to the consumer. But, in setting down ground rules for when and how country of origin claims can be made,

44 Mr Dean Rochfort, General Manager, Sustainable Development of the Greater Shepparton City Council, *Committee Hansard*, 8 March 2012, p. 8.

45 Ms Helen Hubble, Private capacity, *Committee Hansard*, 9 March 2012, p. 23.

governments can only do so much in promoting these benefits to consumers. It is primarily the responsibility of industry to sell the reasons why consumers should purchase food made of Australian ingredients, to make more of their fresh, clean and healthy image.

4.58 It is worth recalling that the Blewett Review found that consumers often used country of origin labels as a shorthand way of assessing a number of values-based concerns. This is a significant observation for the food processing industry; understanding the specific values that are hidden behind consumers' preference for Australian products and communicating those particular values to consumers may assist in overcoming any price differences with respect to imported products.

4.59 None of this should detract from the fact that the current country of origin labelling laws are not at all transparent and potentially mislead consumers. The impact of these laws appears to be different across the processing sector, affecting some industries more significantly than others. The effect of country of origin laws is particularly keenly felt in industries where the freshness of the product remains important to consumers even after it has been processed, such as with seafood.⁴⁶ Country of origin labelling will also be important where it affords an opportunity for a product to make claims about production standards that are illegitimate by Australian standards, but legitimate by the standards of the country from which the ingredients have been imported.⁴⁷

4.60 Potential options to change the current labelling regime are explored in the next section of this chapter. It is, however, clear that consumers need to be educated about whatever country of origin labelling regime is adopted. The current confusion about the labelling regime is unacceptable and may mislead those consumers who seek information about the origin of their food.

Options for reform

4.61 Submitters proposed a range of possible actions on country of origin labelling to the committee. Naturally, the solutions proposed depended on what submitters saw as the problem with country of origin labelling. These proposed solutions included adjusting the existing labelling regime to make labels less confusing or to provide greater detail, educating consumers and using technology to better connect consumers with the food they were purchasing.

Making existing labelling laws clearer

4.62 Many proposed solutions were aimed at making country of origin information on food products clearer. While some of these submissions went to the technical

46 LEFCOL, *Submission 3*, p. 3.

47 This is the case with Danish pork referred to earlier. See Australian Pork Limited, *Submission 30*, pp. 12–13.

aspects of making country of origin claims—the 'substantial transformation' and cost of manufacture tests—others were more general in their suggestions.

Consistency of labelling requirements

4.63 Not all food products are required to contain claims as to their country of origin. Few submitters commented at all on the uneven requirements for country of origin labelling for food and the fact that beef, lamb and chicken products are not required to display this information.⁴⁸ This may reflect the general lack of understanding of country of origin labelling laws, rather than indicating any particular satisfaction with the status quo. The committee notes that the Blewett Review recommended that country of origin labelling requirements be extended to cover all primary food products for retail sale.⁴⁹ In its response to the Review, the government indicated that FSANZ was examining a proposal to largely implement that recommendation.⁵⁰

Technical changes

4.64 In relation to the technical tests for country of origin claims, some submissions suggested that the 'substantial transformation' test was too broad and included changes to ingredients that consumers would not regard as 'substantial'. The AMAG Campaign noted that:

[a] major area of concern was in the interpretation of the term 'substantial transformation' in regard to food products, particularly as set out in the ACCC booklet '*Food and beverage industry: country of origin guidelines to the Trade Practices Act*'. Under these guidelines, mixing, homogenisation, coating and curing are all processes "likely to be considered as substantial transformation".

Thus, homogenised milk, mixed diced vegetables, blended fruit juices, battered fish fillets, crumbed prawns and ham and bacon may all qualify as 'Australian Made' even though all the major ingredients may be imported, as long as at least 50% of the cost of production is incurred in Australia.

48 Australian Made, Australian Grown Campaign, *Submission 56*, pp 3–4; Australian Food and Grocery Council, *Submission 12*, attachment 2, position statement.

49 Commonwealth of Australia, *Labelling Logic: Review of Food Labelling Law and Policy*, Dr Neal Blewett (Chair), January 2011. Recommendation 40, p. 108.
[http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/\\$File/Labelling%20Logic_2011.pdf](http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/48C0548D80E715BCCA257825001E5DC0/$File/Labelling%20Logic_2011.pdf), (accessed 13 June 2012).

50 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, pp. 43–44.
<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home> (accessed 13 June 2012)

This is out of step with community expectations and the source of much of the criticism in the media about Australia's "confusing" labelling laws.⁵¹

4.65 To remedy this, submissions proposed that the definition of 'substantial transformation' be made more restrictive to no longer include those processes which submitters saw as simple. These processes included freezing, canning or simple preserving processes, simple mixing or blending of food ingredients, juicing, homogenisation, seasoning, marinating, curing, roasting or toasting and coating.⁵² Removing these processes from the definition of 'substantial transformation' it was said, would provide consumers with more accurate information about the country of origin of products, including their primary ingredients.⁵³

Changing terminology

4.66 Some submitters believed that the terminology used in country of origin claims stood in the way of greater consumer understanding.

4.67 For example, some submitters suggested that qualified claims should be abolished in their entirety.⁵⁴ That is, products should not be able to claim that they are made in Australia from a combination of local and imported ingredients. AMAG stated that this claim was 'illogical and confusing for both consumers and manufacturers'.⁵⁵

4.68 This proposal would make a country of origin claim an all or nothing option; either the product meets the substantial transformation and cost of production requirements and can make a claim that it was 'made in Australia' or it does not and it cannot. It does not, however, take into account the rationale for allowing these qualified claims, identified in the Blewett Review as being, in part, to account for fluctuations in the availability of ingredients and the cost of inputs:

This is a qualified claim that can be used where it is not possible for a stand alone 'Made in' claim to be made, either due to uncertainty around the question of substantial transformation and whether 50% costs of production is met or to adjust to seasonal changes in availability of individual ingredients.⁵⁶

51 Australian Made, Australian Grown Campaign, *Submission 56*, p. 4. (emphasis in original).

52 Australian Made, Australian Grown Campaign, *Submission 56*, p. 5; Also note the example of curing, Australian Pork Limited, *Submission 30*, p. 8.

53 Australian Made, Australian Grown Campaign, *Submission 56*, p. 4.

54 South Australian Farmers' Federation, *Submission 24*, p. 1; Australian Made, Australian Grown Campaign, *Submission 56*, p. 6.

55 Australian Made, Australian Grown Campaign, *Submission 56*, p. 6.

56 *Labelling Logic: Review of Food Labelling Law and Policy*, p. 109.

4.69 The Blewett Review itself argued that the terminology for country of origin claims was in need of reform. After noting that the country of origin labelling requirements under the ACL apply to all goods, not just food, the Review argued that food should be considered separately.⁵⁷ The Blewett Review recommended a food-specific country of origin labelling regime on the basis that:

food is ingested and taken into ourselves, unlike most other consumer goods that are just used, [so] naturally consumers are primarily focused on the components and ingredients of foods and not with their substantial transformation, packaging or value adding. The Panel would therefore favour an Australian-origin claim based on the ingoing weight of the various components of the food, excluding water.⁵⁸

4.70 This labelling scheme was to remove claims about where a product had been made or packed, focusing the consumer's attention on its primary ingredients. The framework proposed contained the following four statements:

- (a) 'Made of Australian Ingredients', where at least 80 per cent by weight (excluding water) of all ingredients or components are of Australian origin;
- (b) 'Made of Australian and Imported Ingredients', where at least 50 per cent by weight (excluding water) of ingredients and components are of Australian origin;
- (c) 'Made of Imported and Australian Ingredients', where less than 50 per cent by weight (excluding water) of ingredients and components are of Australian origin; and
- (d) 'Grown in Australia' where foods are wholly grown in Australia (for unpackaged or unprocessed foods only).⁵⁹

4.71 The government response to the Blewett Review rejected this recommendation for two reasons. First, the government rejected the argument on economic grounds:

There may be considerable costs to food businesses in complying with a [country of origin labelling] scheme based on the ingoing weight of ingredients. Previous economic analysis suggests that this approach may have a negative impact on both food manufacturers and local suppliers, potentially decreasing the competitiveness of Australian food businesses and increasing the demand for imported foods.⁶⁰

57 *Labelling Logic: Review of Food Labelling Law and Policy*, para 6.41-6.43, pp. 109–110.

58 *Labelling Logic: Review of Food Labelling Law and Policy*, para 6.43, p. 110.

59 *Labelling Logic: Review of Food Labelling Law and Policy*, para 6.44, p. 110.

60 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 45.

4.72 Second, and perhaps more fundamentally, the government disagreed with the premise of the Review's recommendation that food was deserving of separate treatment as compared to other goods:

the proposed framework does not recognise the intent of 'made in' claims, which support the important contribution the manufacturing sector makes to the local economy (and community) by considering a range of inputs including raw materials (ingredients), packaging, labour and associated overhead costs. Depending on the type of claim used, the current regulatory framework gives recognition to the contribution of local production and manufacturing, as well as the origin of the ingredients and components of a food product.⁶¹

4.73 The committee's view, set out more fully below, is that this response misunderstands consumer expectations about country of origin labels for food and will only perpetuate consumer confusion about the purpose and meaning of such labels. However, the response does point to an issue raised by other witnesses: that not all food products are a simple combination of ingredients; for some food products, the final product is greater than the sum of its component parts and the process of manufacturing is quite significant. As Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, noted:

we have indicated to government on a number of occasions that we are more than happy to negotiate or to sit down and try to sort out a scenario where you overcome the pork and, to some extent, the orange juice problem, but at the same time not mess up—as I think we have talked about before—the chocolate industry. Haigh's makes great chocolate in South Australia but the cocoa does not come from Australia and the vanilla does not come from Australia.⁶²

4.74 Ms Carnell went on to acknowledge that country of origin labelling had different effects in different sectors of the food processing industry. She suggested that, for some products, the country of origin labelling laws might better focus on the defining ingredient, rather than the process of manufacture. That is, where there is a defining ingredient in a product, for example pork in ham or bacon, then the country of origin of that ingredient should determine its label. For other products, Ms Carnell noted that it was the processing of the ingredients that was of fundamental importance to the consumer.⁶³ For Ms Carnell, the one-size fits all approach of the current regime does not appear to work:

There has been a white paper, a discussion paper, put out just to try to get discussion happening in this space. I think everyone accepts that there are

61 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 45.

62 Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 25.

63 Ms Kate Carnell, *Committee Hansard*, 13 December 2011, p. 25.

things that do not pass the nod test in country of origin. We just have to work out what it is that we have to change—not to mess up the fact that we have lots of manufacturers in Australia that produce great products that are made in Australia and should be able to say that they are made in Australia, because they are, while at the same time addressing the defining ingredient issue.⁶⁴

Greater detail in labelling

4.75 A number of witnesses suggested that the lack of clarity in country of origin labelling requirements could be overcome by requiring food products to display substantially more detail about the geographic origin of their ingredients. For example, Mr Mark Pickering, a committee member of the Citrus Growers of South Australia stated that:

We need to have truth in labelling. ... I would imagine that you could put in something like the country of origin. If you had different amounts, you could have the first five countries listed down on the label and you could even put the percentage. I think that is what happens in the States. You might have, for example, 'Australia 50 per cent; New Zealand 40 per cent; China 10 per cent.' That is one option. In regard to the processors saying that it is going to be very expensive, I would like to pose the question: who pays for it now? The consumer pays for it now and the producers pay it now.⁶⁵

4.76 Other witnesses in favour of more precise labelling laws proposed graphical representations of the percentage of Australian content in a particular product. These graphics included a traffic light system for Australian content⁶⁶ and shading out a letter in the word 'Australian' for each 10 per cent of the product that was imported.⁶⁷

4.77 There are obvious practical and cost issues involved in imposing such standards. Witnesses recognised that the more detailed standards were, the greater the cost that would be imposed on processors if the source of ingredients changed because of seasonal or other fluctuations in availability.⁶⁸ The AMWU also noted that

64 Ms Kate Carnell, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, 13 December 2011, p. 25.

65 Mr Mark Pickering, Member, Citrus Growers of South Australia, *Committee Hansard*, 17 April 2012, p. 19.

66 Fruit Growers Victoria, Additional information presented to committee, 8 March 2012.

67 Mr Ron Gray, Committee Member, Citrus Growers of South Australia, *Committee Hansard*, 17 April 2012, p. 19.

68 Mr Ron Gray, *Committee Hansard*, 17 April 2012, p. 22.

supermarket private label brands may regularly change processors, and that this would require an impractical weekly change of label.⁶⁹

4.78 Witnesses offered some solutions to this problem of seasonal variation, suggesting that changes in the origin of ingredients could be dealt with by placing stickers on products or labels in supermarket aisles explaining the change.⁷⁰ Indeed, the AMWU's submission suggested that more detailed requirements could actually encourage processors to deal with seasonal or other variations in ingredients by sourcing different local ingredients rather than looking overseas:

A good example of a relatively cost effective innovative solution was provided in recent weeks by Berri Fruit Juices (National Foods) who, when found itself with a shortage of raspberries on the market, decided to take the decision to use local plums as an ingredient instead, rather than sourcing raspberries from overseas. They explained this by placing a little round sticker onto their cartons of fruit juice.⁷¹

4.79 Witnesses did, however, acknowledge that the mechanised nature of food processing meant that even these mitigating measures would involve additional cost,⁷² whether through increased labour costs or changes to manufacturing procedures.⁷³ Further, it was not easy to reconcile these proposals with other evidence about the nature and purpose of food labelling, which was to provide readily intelligible information about the origin of ingredients to consumers.⁷⁴ Indeed, as Mr Peter Bush, Executive Officer of the Food Technology Association of Australia, pointed out in the context of using pictorial labels, there is a risk that providing too much information will simply confuse consumers further.⁷⁵

Consumer education

4.80 Underlying many of these proposals for reforms to the current labelling system was the idea that consumers should know what they are purchasing and, to the greatest extent possible, where it came from. Some witnesses suggested that these

69 Ms Jennifer Dowell, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 8.

70 Mr Peter White, President, South Australian Farmers Federation, *Committee Hansard*, 17 April 2012, pp 10–11.

71 Australian Manufacturing Workers' Union, *Submission 21*, p. 7.

72 Mr Peter White, South Australian Farmers' Federation, *Committee Hansard*, 17 April 2012, p. 12.

73 Mr Mark Pickering, Member, Citrus Growers of South Australia, *Committee Hansard*, 17 April 2012, p. 25.

74 Mr Callum Elder, Simplot Australia, *Committee Hansard*, 12 April 2012, pp. 20–21; Mr Peter White, South Australian Farmers Federation, *Committee Hansard*, 17 April 2012, p. 10.

75 Mr Peter Bush, Executive Officer, Food Technology Association of Australia, *Committee Hansard*, 9 March 2012, p. 2.

ends were ultimately a matter of consumer education: to know and understand what front of pack labels do and do not mean, both in terms of country of origin and health issues, and to explore these matters further if they so desired.⁷⁶ This approach recognised that there was only so much space on a product label, and only so much information that can usefully be conveyed in that space.⁷⁷

4.81 The committee received evidence about the potential role of technology in assisting consumers in this area. As noted by the Tasmanian Department of Economic Development, Tourism and the Arts:

While the cost and size of food labels restricts the amount and type of information included on labels, technology has developed to a point where consumers could track food origins and content throughout the supply chain with the use of a bar code and a smart phone where producers make this information available.⁷⁸

4.82 The Public Health Association of Australia (PHAA) noted that such technology already existed in relation to health information contained in food product labels. Adjunct Professor Michael Moore, Chief Executive Officer of the PHAA, told the committee that:

we are very conscious of new technologies that are becoming available. Just recently the George Institute released an app that goes on the iPhone—and I have it on my phone—where you can scan the product and it actually gives a traffic light labelling. That sort of thing may well actually provide better information on country of origin. ...

I would have thought that industry would want to be at the leading edge of these things. The George Institute is particularly concerned with salt. But with the support of Bupa they have been able to develop an application where you simply point your iPhone at the barcode and in a very short time you have not only information about the product but also suggestions for healthier alternatives. I think that industry will be looking very closely at that sort of information [although] I do not foresee a time where everyone is walking around to every single product with their iPhone in their hand. That does not tend to be how we shop.⁷⁹

4.83 Dr Christina Pollard, Co-Convenor of the Food and Nutrition Special Interest Group in the PHAA, noted that care would need to be taken to ensure that information provided through such technology was reputable and accurate:

76 Dr Christina Pollard, Co-Convenor, Food and Nutrition Special Interest Group, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, p. 35.

77 Ms Jennifer Dowell, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, p. 7.

78 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 6*, p. 12.

79 Adjunct Professor Michael Moore, Chief Executive Officer, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, pp 33–34.

On the point of iPhone apps and technology, it is very important that support material, which is the information that the app is based on, is from a credible, reliable source and reflects Australia's total food supply. It would be extremely useful if the foods that we saw in the supermarket had a front-of-pack labelling system that instantly told you which were healthier options. For people who are a lot more interested and techno-savvy and had financial access to instruments like iPhones, they could reinforce that or check out individual products from time to time. That tends to be how we shop.⁸⁰

Committee views

4.84 As set out in the previous section, the committee believes that there are flaws in Australia's current country of origin labelling system. The issue that confronts the committee is whether reform of that system would, in fact, benefit the Australian food processing industry. Clearly, any changes will have compliance costs and there would need to be evidence that the cost of the changes would be outweighed by increased sales. In this regard, the evidence before the committee was inconclusive.

4.85 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 committee's view, expressed in the previous section, was that industry must do more to understand consumer preferences and behaviour. Government can assist this by providing a strong and clear country of origin labelling regime upon which processors can more confidently base their claims.

4.86 In this sense, there should be a level playing field across all foods. The current anomalies in country of origin labelling requirements, which allow some foods to escape such labelling altogether, appear illogical and are unacceptable. The committee endorses recommendation 40 of the Blewett Review, which recommended expanding country of origin labelling requirements to cover all primary food products for retail sale.

4.87 The committee welcomes the government's response to the recommendation and urges FSANZ to expand the Food Standards to align with the Blewett Review's recommendation 40. In the event that FSANZ does not extend Food Standard 1.2.11 to at least cover unpackaged beef, veal, lamb, hogget, mutton and chicken, the committee believes that it should give substantive reasons for its decision. This would assist the community to understand FSANZ's priorities in setting country of origin labelling standards.

80 Dr Christina Pollard, Co-Convenor of the Food and Nutrition Special Interest Group, Public Health Association of Australia, *Committee Hansard*, 10 February 2012, p. 35.

Recommendation 7

4.88 The committee recommends that the government expand the application of food labelling requirements to require all primary food products for retail sale to display their country of origin, in accordance with recommendation 40 of the Blewett Review.

4.89 The committee notes that, despite consensus on the fact that there are problems with Australia's country of origin labelling laws, there appear to be no easy or simple fixes. For some food products, the origin of the component ingredients may well be more important to consumers than its place of packaging or transformation. For other food products, the place of manufacture of the final product may be the most important consideration.

4.90 The cases of bacon and chocolate, explored in submissions and by witnesses in the committee's hearings and site visits, provide a useful comparison. On the one hand, a scheme in the form proposed by the Blewett Review—that is, to focus on the origin of the ingredients in a product alone—would not allow businesses like Haigh's to make claims regarding the Australian manufacture of their product, only about the origins of the ingredients. On the other hand, the current scheme and the government's response to the Blewett Review emphasises only the place of manufacture of goods. This emphasis is at the expense of a clearer indication to consumers about the origin of their food.

4.91 In the committee's view, it appears illogical to deny food processors acknowledgment of their significant role in turning raw ingredients into a product for retail sale. The committee also believes that the current country of origin labelling laws are out of step with consumer and industry expectations. The evidence before the committee suggested that consumers and industry alike did not see country of origin laws primarily as recognition of 'the contribution of local production and manufacturing' and secondarily as information about the origin of ingredients.⁸¹ Rather, the evidence suggested that whether one matter or the other was important depended on the product.

4.92 In this context, the committee believes that the focus of country of 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. This principle should guide the development and content of other aspects of Australia's country of origin labelling regime, including the 'safe harbour' provisions of the CCA.

81 *Response to the Recommendations of Labelling Logic: Review f Food Labelling Law and Policy*, December 2011, pp 44–45.

<http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/home>
(accessed 13 June 2012).

4.93 As discussed in paragraph 4.117 below, the committee believes that New Zealand's laws about place of origin representations may be a useful starting point.⁸² It has been the policy of successive New Zealand Governments that country of origin labelling for all food types is a voluntary practice for the food industry to use as a marketing tool. However, food labelling, voluntary or mandatory, must be true and accurate.⁸³ The success of these policies may be attributable to the provisions of the *New Zealand Fair Trading Act 1986* which specifically prohibit misleading and deceptive conduct and false representations—sections 9, 10, and subsection 13(j).⁸⁴ These provisions are attached in Appendix 4.

4.94 The committee notes that New Zealand's system cannot be directly translated into an Australian context, given there is no requirement in New Zealand to provide country of origin information and this potentially reduces the need for the 'safe haven' provisions which complicate the Australian position.

4.95 The committee notes that evidence was given that the progression of private label products that are packaged to look like a branded product. It is often difficult to determine the provenance of these products from the labels.

4.96 The committee also notes recent reports that Tesco's Chief Executive Officer, Sir Terry Leahy, was quoted as saying that there is a limit to how much private labelling can achieve. He warned against forcing customers to buy private label products. Sir Leahy indicated that a maximum threshold of between 30 and 50 per cent of sales could be generated by a supermarket's own house brands.⁸⁵

82 New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, <http://www.comcom.govt.nz/assets/Fair-Trading/Factsheets/FTA-Place-of-Origin-fact-sheet-January-2012.pdf> (accessed 5 June 2012).

83 Ministry for Primary Industries, 'Country of Origin labelling—Questions and answers', <http://www.foodsmart.govt.nz/whats-in-our-food/food/food-labelling/country-of-origin/> (accessed 6 August 2012).

84 It is also noted that subsection 27(1) of the New Zealand Fair Trading Act 1986 enables the Governor General to make regulations concerning consumer information including in relation to the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion or supply of the goods or services.

85 Megan Carlaw, 'Woolworths 'Official Range Profile' tries to counter House Brand war perception', 31 July 2012, <http://www.ausfoodnews.com.au/2012/07/31/woolworths-%E2%80%98official-range-profile%E2%80%99-tries-to-counter-house-brand-war-perception.html> (accessed 15 August 2012).

Recommendation 8

4.97 The committee recommends that the government reform country of origin labelling requirements for food so that these requirements are clearer, more transparent and focus on the consumer's understanding.

4.98 Precisely how a focus on the consumer's understanding is to be translated into legislation was the subject of some debate before the committee. The committee believes that the review of the CCA recommended in Recommendation 12 affords the government an opportunity to consider whether the 'safe haven' provisions in section 255 sufficiently focus on the consumer's understanding of country of origin labelling for food products.

4.99 The committee's preference is for country of origin labelling laws for food which allow processors the option to make claims about the location of manufacture of the food, but which also focus on the defining ingredient in the product. The committee considers that government should consult with industry to determine a precise definition for the term 'defining ingredient'. The committee is of the view that the term, in combination with the ability to make claims about the place of manufacture of food products, properly focuses the attention of country of origin labelling laws on the consumer.

Recommendation 9

4.100 The committee recommends that, as part of the review of the *Competition and Consumer Act 2010* (Cth) recommended in Recommendation 12, government should specifically consider whether the 'safe haven' provisions in section 255 are sufficiently focussed on the consumer's understanding of country of origin claims on food products.

Recommendation 10

4.101 The committee recommends that the government consult with industry about the use of the term 'defining ingredient' as a method of determining the country of origin of a product.

4.102 The committee believes that once rules about when a processor can claim that a food product is from Australia are consistent and meaningful for consumers, the ability of the industry to understand its domestic and international markets and successfully and innovatively market its products to consumers will be strengthened.

4.103 The committee notes that there may well be other benefits, tied to innovation and export opportunities, which attach to labelling Australian processed foods in this way. Coles' submission, for example, suggested that the future for Australian food processors was to develop niche products for both domestic and overseas consumption.⁸⁶ If Australia is looking to expand its food export capabilities to

86 Coles, *Submission 22*, pgs 37 and 49.

become, as recent media has labelled it, the 'food bowl of Asia'⁸⁷ then information accurately conveying the Australian origin of the primary ingredients and the location of their processing and product development will assist in overseas product differentiation.

4.104 If current labels are retained, then there should be some attempt to clear the confusion surrounding their meaning. This is particularly the case with respect to the difference between unqualified and qualified claims about when a product is 'made in Australia'. The committee believes that a concerted campaign to educate consumers about the meaning of different product claims is necessary. The committee welcomes the initial commitment made by the government in response to the Blewett Review to educate consumers about country of origin requirements. It notes, however, that these matters are ultimately subject to consumer demands for information about the country of origin of goods.

4.105 In this context, the committee notes the possibilities and opportunities for the use of technology, particularly smart phone technology, in providing consumers with information about the country of origin of their food. The committee encourages government and industry to examine the scope for the creation of online information, accessible via bar codes on products, with reputable and up to date country of origin information about products. Participation in such a system could be voluntary. It would enable consumers interested in the origin of their food to more easily connect with producers for whom country of origin information is important. Further, such a system could encourage a greater connection between consumers and their food, allowing them to track the seasonal variation in ingredients. The committee believes that there may be some scope to make the provision of such information mandatory for large processors and private label products.

Recommendation 11

4.106 The committee recommends that industry and government investigate the potential use of smart phone and barcode technology to provide additional information about the country of origin of food products.

4.107 The committee is aware of concerns, such as those raised by the AMWU, that private label food products do not clearly display their country of origin.⁸⁸ The committee understands that private label food products are, like other food products, subject to the Food Standards, which require certain products to display information about their country of origin, and the CCA, which regulates how that information should be displayed. The committee would be very concerned if private label food

87 Daniel Flitton, 'We can be food bowl of Asia: PM', *The Age*, May 4, 2012.
<http://www.theage.com.au/opinion/political-news/we-can-be-food-bowl-of-asia-pm-20120503-1y1w9.html> (accessed 14 June 2012).

88 See, for example, Ms Jennifer Dowell, National Secretary, Australian Manufacturing Workers' Union, *Committee Hansard*, 10 February 2012, pp 7–8.

products were in some way exempt from the same provenance labelling requirements as other products.

4.108 The committee notes that an understanding that processed food is different from other kinds of manufactured goods and is therefore deserving of separate regulation underlies the above recommendations. This is consistent with the conclusions of the Blewett Review. The committee believes that country of origin claims for food products should be treated differently from those of other manufactured goods on the basis that, in consumers' minds, they are different. The origin of individual components of food is much more likely to be significant to a consumer than those of other consumer goods because, as the Blewett Review noted, we ingest food and take it into ourselves. Similarly, as noted by the Blewett Review and echoed by other witnesses, consumers often use country of origin claims as a short hand assessment of other values-based claims in a way that is quite different to other manufactured products.

4.109 The current system of country of origin regulation—where the requirement that a product make a country of origin claim is set out in the Food Standards (and administered by state and territory food safety authorities) but the rules governing how those claims should be made are set out in the ACL (and therefore administered by the ACCC and state and territory consumer protection agencies)—is unacceptable and, in the committee's view, contributes to the lack of consumer understanding. The committee believes that the issue of country of origin claims is primarily one of competition law, rather than food safety. The committee notes that recommendation 41 of the Blewett Review was that mandatory country of origin labelling requirements for food should be moved to a specific consumer product information standard under the CCA. The government's response to this recommendation was that:

Australia and New Zealand currently have different CoOL arrangements in place. These differences will remain whether mandatory CoOL requirements remain in the Food Standards Code or are moved to the CCA. Moving CoOL requirements for food to the CCA will decrease the amount of legislation; however, there would still need to be more than one area that would address CoOL. Within Australia, CoOL requirements also apply to imports under the *Commerce (Trade Descriptions) Act 1905* and *Commerce (Imports) Regulations 1940*. These requirements are enforced by the Australian Customs and Border Protection Service.⁸⁹

4.110 The committee believes that this response does not adequately address the substance of the Blewett Review's recommendation. It does not interact with the idea that country of origin labelling laws for food are unnecessarily complex and confuse consumers, or that food is deserving of specialised regulation. The committee therefore recommends that the government reconsider its response to

89 *Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy*, December 2011, p. 44.

recommendation 41 of the Blewett Review and move mandatory country of origin labelling requirements for food to a specific consumer product information standard under the CCA.

Recommendation 12

4.111 The committee recommends that the government move mandatory country of origin labelling requirements for food to a specific consumer product information standard under the *Competition and Consumer Act 2010*, consistent with recommendation 41 of the Blewett Review.

4.112 The committee does not believe that country of origin labelling laws should be unduly prescriptive. The committee does not agree with those suggestions that such laws should require details about the precise percentage of Australian content in food products. To do so would be unnecessarily onerous on processors and unlikely to produce any greater benefit than broad but more transparent requirements. The committee's view is that to require significant detail about the Australian content of a product would be counterproductive: it would increase the cost of products with Australian ingredients and would be out of step with consumer expectations about the availability and consistency of products. It is quite clear that consumption patterns now demand that products are available year round and without significant regard to seasonal availability. Country of origin labelling laws should be flexible enough to accommodate this expectation.

4.113 It is worth reiterating that the committee believes that government can only do so much with respect to labelling issues, particularly country of origin labels, to assist the food processing sector. Once more clear and well understood country of origin labels are in place, the onus is on industry to use this regime as a springboard. Government cannot and should not legislate consumer desires—it is up to industry to understand the consumer and what they want and to deliver it to them.

Australia–New Zealand Closer Economic Relations Agreement Issues

4.114 Some evidence before the committee raised concerns about imported foods from New Zealand.⁹⁰ In particular, submitters were concerned that food could be imported into New Zealand and given a label stating that it was the product of New Zealand.

4.115 Ms Jan Davis, Chief Executive Officer of the Tasmanian Farmers and Graziers Association, summarised the issue:

Another issue that causes significant difficulty dealing with our competitors from New Zealand is the fact that they are a gateway for product from other countries which is then rebadged, repackaged and sold as New Zealand produce. So their domestic production is only a very small part of their

90 For example: Department of Economic Development, Tourism & the Arts, *Submission 6*, p. 11.

export production, and that causes us great grief too, because none of that product imported into New Zealand must meet the conditions that we have to meet here in Australia.⁹¹

4.116 These concerns were echoed by the AMWU, which suggested that it was the voluntary nature of New Zealand's country of origin labelling laws that allowed these practices:

Unlike Australia (with the exception of wine) there is no mandatory requirement for CoOL [country of origin labelling] in New Zealand, instead suppliers may voluntarily opt to supply CoOL. Perhaps this is why in New Zealand goods can be imported, then packaged in New Zealand and labelled as a product of New Zealand.⁹²

4.117 The extent to which this is a real, rather than a perceived, issue is somewhat unclear. While New Zealand does not have mandatory country of origin labelling laws, the committee is aware that, where such claims are made, they cannot be misleading or deceptive under New Zealand fair trading laws.⁹³ Indeed, an example in material before the committee about New Zealand's laws on place of origin representations suggests that, where claims are made about the origin of a product, New Zealand authorities apply a more stringent test than their Australian counterparts:

Local companies implied by statements on the labelling of their products that their ham and bacon were produced in New Zealand. However a significant amount of the pork used to make the products was imported. The Commission's view was that this labelling was misleading as the essential character of ham and bacon was provided by the pork, which was of overseas origin. The Commission issued formal warnings to these traders.⁹⁴

4.118 Further, evidence before the committee from the Department of Foreign Affairs and Trade (DFAT) was somewhat vague about whether claims about the repackaging of products in New Zealand were, in fact, an issue. In response to senators' questions about New Zealand labelling laws and free trade agreements disadvantaging the Australian industry DFAT responded:

That is the question of what the rules of origin are in the CER agreement. The rules of origin in each trade agreement should make sure that [bringing

91 Ms Jan Davis, Chief Executive Officer, Tasmanian Graziers and Farmers Association, *Committee Hansard*, 12 April 2012, p. 8.

92 Australian Manufacturing Workers' Union, *Submission 21*, p. 8.

93 See the New Zealand Commerce Commission's fact sheet about Place of Origin Representations: <http://www.comcom.govt.nz/assets/Fair-Trading/Factsheets/FTA-Place-of-Origin-fact-sheet-January-2012.pdf> (accessed 5 June 2012).

94 New Zealand Commerce Commission, *The Fair Trading Act – Place of Origin Representations*, <http://www.comcom.govt.nz/assets/Fair-Trading/Factsheets/FTA-Place-of-Origin-fact-sheet-January-2012.pdf> (accessed 5 June 2012)

in products from elsewhere] does not happen. The way that the products are defined for preferential treatment require them not to be transhipped.⁹⁵

4.119 Other evidence before the committee suggested that any issues with New Zealand labelling were a variation on the issues already canvassed with respect to country of origin labelling. Dr David McKinna stated:

[C]onsumers are unknowingly being duped.... A recent project by this consultancy revealed an extreme example of this - a seafood product was being caught in the Atlantic Ocean, frozen at sea on a Korean vessel, landed in China for first stage processing, imported into New Zealand, repacked as product of New Zealand and then shipped to Australia to be thawed, reprocessed and crumbed here. This product was sold in Australia as 'Product of Australia', competing against Australian-caught fish from the local fishery on an equal basis.⁹⁶

Committee view

4.120 While a number of submitters raised claims about the inaccuracy of the country of origin labels placed on food imported from New Zealand, there was very limited specific evidence about these practices. Accordingly, the committee is unable to express an opinion either way about whether there are issues with New Zealand operating as a gateway for the importation and processing of foreign foods.

4.121 In any event, the allegations deserve further investigation to ensure that the information provided to Australian consumers is accurate and not misleading. This is particularly so with respect to the case raised by Dr McKinna; if true, it appears to be in breach of the CCA. The committee therefore recommends that the ACCC investigate these claims, and that individuals, businesses or groups with direct evidence of misleading practices concerning the use of the 'made in Australia' or 'made in New Zealand' labels contact the ACCC.

Recommendation 13

4.122 The committee recommends that, when presented with direct evidence, the Australian Competition and Consumer Commission investigate claims that country of origin labels on processed foods imported into Australia under free trade agreements and other international agreements are misleading and/or deceptive.

95 Ms Jan Adams First Assistant Secretary, Free Trade Agreement Division, DFAT, *Committee Hansard*, 11 May 2012, p. 48.

96 Dr David McKinna, *Submission 32*, p. 17.

