



Country of Origin Labelling

February 2015

**NSW Farmers' Association
35 Chandos St
St Leonards NSW 2065**

Contact: Justin Crosby
Ph: (02) 9478 1000
Fax: (02) 8282 4500
Email: crosbyj@nswfarmers.org.au

NSW Farmers' Association Background

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

TABLE OF CONTENTS

| | |
|---|----|
| Introduction | 3 |
| Draft Information Standard | 3 |
| Scope of Reform – Limitation to “priority foods” | 3 |
| Use of visual indicators and claims | 5 |
| Bar chart and text percentage claim..... | 5 |
| Food Grown or Produced in Australia | 6 |
| Food made in Australia..... | 8 |
| Labelling of characterising ingredients | 8 |
| Voluntary labelling of individual ingredients..... | 8 |
| Seasonal variability – proposal to allow averaging in labelling of Australian content | 8 |
| Safe Harbour Defences | 9 |
| Regulatory Impact Statement | 12 |
| Easy to read labels (RIS question 2) | 12 |
| Cost of Labelling (RIS question 5)..... | 12 |
| Targeted Education Campaign (RIS question 23) | 12 |
| Compliance (RIS question 44) | 12 |

Introduction

NSW Farmers is Australia's largest state farming organisation representing the interests of the majority of commercial farm operations throughout the farming community in NSW. Through its commercial, policy and apolitical lobbying activities it provides a powerful and positive link between farmers, the Government and the general public.

NSW Farmers welcomes the opportunity to provide comment to the Country of Origin Labelling (COOL) Consultation.

Transparency of the origin of food is an important issue for the Association's members. Understandable and accurate labelling of both imported and domestic products allows consumers to make informed purchasing decisions about food products. Labelling needs to reflect the origin of a product in an accurate manner, as well as providing consumers with an understanding of where any value adding transformative processes took place. This is essential in ensuring that Australian consumers can retain confidence in the products they choose. The need for reform to Australia's laws governing the use of COOL is evidenced by the finding that almost three quarters of consumers responding to Colmar Brunton's COOL survey indicated they believed changes were necessary.

NSW Farmers supports the present reforms proposed by Government as a stepping stone towards providing consumers with such transparency. At the same time NSW Farmers continues to advocate for the use of this reform process to improve this transparency across all fresh and processed food. As such, NSW Farmers opposes the limitation of the reform to those identified "priority foods" and calls for the enhancement of the proposal through disclosure of the origin of all *characterising ingredients* as defined in the *Food Standards Code*. Further, NSW Farmers advocates for amendments to the reform to provide a more meaningful definition as to when food products are able to claim to have been '*Made in Australia*'.

Draft Information Standard

Scope of Reform – Limitation to “priority foods”

NSW Farmers support the application of a legal COOL framework that informs consumers purchasing decisions through clearly disclosing the percentage of Australian grown/produced ingredients in processed foods. Key to the integrity of such a labelling system is the broad application of such a requirement to all foods.

Under existing COOL laws, market transparency that informs these consumer preferences are hindered, most particularly as a result of the use of the term made to almost exclusively attribute to manufacturing processes, as opposed to the origin of the ingredients. Consumer research undertaken by both Choice and more recently Colmar Brunton, indicates substantial misunderstanding by consumers over what is meant by the existing COOL claim of *Made in Australia*. Specifically, in both sets of research around a third of consumers identified a belief that the use of this claim represented a claim that all of its ingredients have been sourced in Australia.

As such, NSW Farmers is opposed to the proposal to limit the proposed reform of COOL laws to those identified as priority foods. In particular, one of the outcomes from the

proposed discriminatory approach will be the perpetuation of the use of the claim *Made in Australia* for foods of mixed origins for non-priority foods without other qualifiers to indicate this mixed origin. Section 22 of the Draft Information Standard, which governs the COOL requirements for non-priority food grown, produced or made in Australia, allows non-priority food where its '*last substantial transformation*' was undertaken in Australia to be labelled with the statement indicating '*the food was made in Australia*'.¹

For these foods, this will lead to a deterioration of information provided to consumers, compared to the current inadequate requirement under the *Food Standards Code* to label whether the ingredients of a food made in Australia are imported or are local and imported.²

Further, we are concerned that the implementation of this rationale leads to unnecessary confusion over the implementation of the reforms due to inconsistencies in the way the selection of the priority list will meet consumer preferences.

For example, the exclusion of snack foods will mean that products such as chips, crackers, rice cakes and ready to eat potato or vegetable crisps. Yet many of these products have only undergone minor transformation; for example Smith's herald the relative lack of transformation of their potato crisp from fresh potatoes (http://www.smiths.com.au/index.php/how_chips_are_made). It is likely that this form of promotion is based on the consumer preference, even for snack food such as potato crisps, to the origin of ingredients.

This exclusion is contrary to findings from the consumer research conducted by Colmar Brunton, which outlined a similar attribution of importance to country of origin for fresh foods and those that have undergone minor processing when making a purchase.³ Further, the consumer research indicates consumer preference for country of origin information for the fruit and vegetables used as ingredients in the production of these snack foods.

Likewise, the treatment of ice-cream is an example of where the limitation of the reform to the prescribed primary foods would frustrate consumer preference, noting that the consumer research undertaken by Colmar Brunton indicates that consumers consider dairy and egg products to be the third most important food grouping for knowing the origin of ingredients.⁴

Another example of this inconsistency arises with the treatment of cider and perry (pear cider) as a result of the exclusion of alcoholic drinks.

Cider and perry are defined as *Fruit Wine* by Food Standard 2.7.3 with apple or pear juice respectively being a characterising ingredient. The consumer research undertaken by Colmar Brunton found that fruit and vegetable juice drinks were the sixth highest priority

¹ See *Consultation Draft Country of Origin Food Labelling Information Standard 2016* section 8 (24 November 2015) for the definition of '*made*'.

² *Food Standards Code*, Standard 1.2.11 – Country of Origin Labelling, cl 2.

³ Colmar Brunton, 'Country of Origin Food Labelling Research' (Research commissioned by the Department of Industry and Science, July 2015) 36-37.

⁴ Ibid.

listed by consumers when wanting to know the country of origin, and on this basis has been included in the ‘Priority Food’ list as part of the reform.

Similarly, while alcoholic beverages have been included within the “Non-Priority Food” list; the importance of providing consumers with clear understanding of the origin of grape wine is something that has been considered important and therefore subject to its own legislative provisions.⁵

On the basis of the concern over the way that the priority list inconsistently treats foods of similar origin and to meet the indicated consumer demand for heightened disclosure of the origin of food, NSW Farmers considers the proposed limitation of the reform to the prescribed priority foods as inappropriate.

If the recommendation to apply the proposed regime across all foods is not adopted, NSW Farmers recommends that further deliberation be undertaken to develop and espouse a sound rationale upon which priority and non-priority foods are classified and then re-populate the prescribed lists on this basis.

Recommendation:

- That the reforms to Country of Origin Labelling not be restricted to ‘*Priority Foods*’.

Use of visual indicators and claims

Key to the proposed reform to Australia’s COOL laws is the use of visual indicators that will quickly and simply enable consumers to identify if a food product has been made in Australia and the amount of Australian content used in its production. This will be done through the use of the well known Australian Made Australian Grown kangaroo logo combined with a bar chart identifying the proportion (by weight) of ingredients sourced from Australia; the former identifying whether the food product has been manufactured/processed in Australia and the latter identifying the proportion of Australian content within a food product. NSW Farmers supports the inclusion of both elements within the proposed reform.

Bar chart and text percentage claim

To ensure that full benefit of the reform is realised, the requirements to display bar charts and percentage claims upon labels must be implemented in a manner that will satisfy consumer preferences to quickly identify the proportion of Australian content within the food product. The research by Colmar Brunton indicated that meeting this consumer preference will require the use of pictures and diagrams to complement text claims.⁶

To fulfil this objective, NSW Farmers recommends that deciles are prescribed for the graduation of the bar chart. Likewise, in order to enable food businesses the opportunity to demonstrate the provenance of their product, NSW Farmers supports the proposal to allow food businesses to state the actual percentage of Australian ingredients; however,

⁵ *Australian Grape and Wine Authority Act 2013* s 40F.

⁶ Colmar Brunton, ‘Country of Origin Food Labelling Research’ (Research commissioned by the Department of Industry and Science, July 2015) 50.

does not support the accompanying proposal to enable a tolerance of 5 percentage points in making such a declaration.

In forming this qualified support for the proposal, NSW Farmers draws attention to the obligation within the food standard to the methodology adopted for the calculation and declaration of the proportion of characterising ingredients. This requires food businesses to declare the percentage to the nearest whole per cent where the percentage is 5 per cent or greater.⁷ If a tolerance is to be provided for, it should only be for non-characterising ingredients.

Alternatively, a food business would be entitled to utilise an ‘*at least*’ statement in the same manner the proportion of Australian content will be required to be disclosed in the bar chart.

Method for calculating Percentage of Australian Content

With regard to determining the proportion of Australian content, NSW Farmers support the use of the ingoing weight of ingredients. This would also harmonise the obligation with that undertaken by food businesses when determining the proportion of a characterising ingredient.

For the avoidance of doubt NSW Farmers is not opposed to the information standard clarifying that the packaging is not food and therefore not to be considered in the calculation of the proportion of Australian content.

Recommendation:

- *That the bar chart to indicate the proportion of Australian content within processed food be graduated at least by deciles*
- *That food businesses are able to make a statement of the actual percentage of Australian ingredients as part of the text claim.*
- *Percentage of Australian content should be determined using ingoing weight.*

Food Grown or Produced in Australia

NSW Farmers welcomes the maintenance of the premium claims of “*Grown in Australia*” and “*Produced in Australia*” within the proposed reforms. However, as part of the reform, NSW Farmers believes that steps are open to the Government to harmonise terminology between the *Australian Consumer Law* and the *Food Standards Code*. This will further reduce the costs of compliance for food businesses.

Significant vs characterising ingredient

Specifically, NSW Farmers supports an alteration of the definition in the definition of ***Produced*** so that it replaced *significant ingredient* with *characterising ingredient* as a way to achieve this streamlining. Food manufacturers are already required to identify and label the weighted proportion of a *characterising ingredient* upon the food’s label,

⁷ *Food Standard Code*, Standard 1.2.10.

whereas the concept of *significant ingredient* is one limited to the safe harbour defences contained within the *Australian Consumer Law*.

In addition to the primary definition the Food Standards Code gives to characterising ingredients, it further contains an exclusion of ‘an ingredient or category of ingredients that is used in small amounts to flavour food’. Likewise the use of food additives is not considered to be the addition of a characterising ingredient.

This definition is analogous to that provided by the ACCC in its guide *Country of origin claims and the Australian Consumer Law*, which utilises the example of the both apple juice and cranberry juice being significant ingredients of an apple and cranberry juice product, yet would exclude any preservatives used.⁸

Given this, NSW Farmers believes that the substitution of characterising ingredient for significant ingredient within the Information Standard should lower the regulatory costs associated with the change in Australia’s COOL laws.

In the alternative, the term ‘*significant ingredient*’ could be defined within the information standard and the *Australian Consumer Law* as being *Characterising Ingredient* as defined by the *Food Standards Code*.

Flexibility for non-characterising ingredients

For the reformed country of origin laws to work appropriately, NSW Farmers supports the provision of a modicum of flexibility to food manufacturers who seek to exclusively source Australian produce; but however rely on importing certain non-characterising ingredients. Failure to do so could disadvantage the producers of some commodities, such as milk, where small amounts of imported additives are required to make quintessential derived food products.

An example of the flexibility required is illustrated in the making of Australian cheddar cheese. Presently the manufacture of Australian cheese is reliant on the use of imported non-characterising ingredients such as cheddar salt. However, NSW Farmers understands that the dairy industry has stated that a tolerance of at least 5% for necessary imported ingredients will meet the needs of dairy food manufacturers to appropriately claim their Australian origin.

Similarly, the Consultation Regulatory Impact Statement provides the example of the need to import bacon brine to produce bacon from Australian pork.⁹

As such, NSW Farmers recommends that where a company is seeking to make a claim of *Grown in Australia* or *Produced in Australia* a tolerance of 5% of non-characterising ingredients be allowed.

Recommendation:

- That where a company is seeking to make a claim of *Grown in Australia* or *Produced in Australia* a tolerance of 5% of non-characterising ingredients be allowed.

⁸ Australian Competition and Consumer Commission, *Country of origin claims and the Australian Consumer Law* (2014) 12.

⁹ Department of Industry, Science and Innovation, *Country of origin labelling (Consultation Regulation Impact Statement Consumer Affairs Australia New Zealand, 4 December 2015)* 14.

Food made in Australia

Labelling of characterising ingredients

NSW Farmers supports the inclusion of the requirement to disclose the origin of all characterising ingredients, as defined by Food Standard 1.2.10, for food labelled with the claim '*Made in Australia*'.

Characterising ingredients are ingredients usually associated with the name of the food, mentioned in the name of the food, or emphasised in the label of the food in words, pictures or graphics. The Standard provides the example of a vegetables being the characterising ingredient in spring rolls and minced beef and kidney beans in chilli con carne.¹⁰

Food manufacturers are already required to identify and label the weighted proportion of a characterising ingredient upon the food's label. Therefore the regulatory burden of this approach would be lower than the introduction of an additional concept of *significant ingredients*.

The disclosure of the origin of these characterising ingredients could be done within the list of ingredients in a similar manner to the disclosing of proportion of characterising ingredients.

Recommendation:

- *That the COOL reforms require labelling of all characterising ingredients*

Voluntary labelling of individual ingredients

NSW Farmers is not opposed to enabling a food manufacturer to voluntarily highlight the single origin of a characterising ingredient in association with the required COOL claim under the reform.

However, such a system of voluntary claims should not replace NSW Farmers' preference for the origin of all characterising ingredients to be labelled, nor of the requirement to label the percentage of Australian content by weight.

Seasonal variability – proposal to allow averaging in labelling of Australian content

Consumer research by Colmar Brunton has indicated that consumers have developed a perception that Australia's present CoOL laws have enabled food processing companies to legally misrepresent consumers over the origin of packaged food. Therefore, to reach the Government's proposed outcome as part of the proposed suite of reforms is to ensure clear rules that enable transparency to consumers on the origin of food ingredients.

It is the view of NSW Farmers, that rules allowing the averaging of Australian content in the labelling of the proportion of Australian content will perpetuate lack of clarity over origin of food and stymie consumer preference. Consumer research by Colmar Brunton,

¹⁰ Food Standard Code, Standard 1.2.10.

found that a proposals that allow flexibility for seasonal produce was ‘*well received*’, indicating that consumers are interested in the actual content of a food product that they are purchasing.¹¹

NSW Farmers acknowledges that the proposal to allow a food business to use a seasonally averaged label incorporates a requirement to provide a link to a website that indicates the actual content for that batch of food; however is concerned about the limitations of such a solution for informing in-store purchasing decisions. These limitations were pointed to in Colmar Brunton’s research in which consumer responses to the use of technological opportunities were described as ‘*luke-warm at best*’.¹² Primary to this was the lack of time during the process of shopping. Likewise, the opportunities that businesses saw from the use of such technology appear to be mostly related to strengthening customer loyalty through value-adding to the primary issue of provenance down to source.

As such, while NSW Farmers would support the use of such value adding technology as a voluntary marketing initiative by food businesses, the available evidence does not support reliance upon its use as part of a regulatory approach to COOL.

Recommendation:

- That the proposed system for seasonal labelling of food is not adopted.

Safe Harbour Defences

NSW Farmers believes that there are problems around the “substantial transformation” threshold required to make a “Made in” claim. Under the *Australian Consumer Law* goods, including foods, are substantially transformed in a country if 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.¹³

As outlined in the Regulatory Impact Statement, the issue of determining what constitutes substantial transformation is not only an issue that creates confusion for consumers. Evidence provided by Australian Made Campaign Limited (AMCL) in 2012 outlined ambiguity over what constitutes substantial transformation to meet the tests required within the *Consumer Law* to rely upon the safe harbour defence for the use of the *Made in Australia* claim. In response to this ambiguity, AMCL amended its rules to prescribe specific processes that are not considered to be substantial transformation.

NSW Farmers supports this approach, noting that not only does the use of a list prescribing certain manufacturing processes as being meeting a test of substantial transformation and proscribing those that do not provide greater certainty to consumers, it also reduces regulatory costs to businesses seeking to use the *Made in Australia* (RIS).

¹¹ Colmar Brunton, ‘Country of Origin Food Labelling Research’ (Research commissioned by the Department of Industry and Science, July 2015) 61.

¹² Ibid, 18-19.

¹³ *Competition and Consumer Act 2010 (Cth)*, Schedule 2, s 255 (3).

Despite supporting the proposal, NSW Farmers has concerns that the proposed prescribed and proscribed lists have discrepancies to those developed by AMCL.

The prescription of what constitutes substantial transformation for the purposes of determining whether a product has been made in Australia is a positive step with regard to providing certainty to consumers and manufacturers, and at the same time decreasing regulatory costs of Australia's COOL laws. As such, NSW Farmers supports the development of a regulatory instrument as part of the proposed reforms.

However, NSW Farmers believes that there are presently inadequacies associated with the list of proposed positive and negative processes for what constitutes substantial transformation. This is with respect to both the provision of information to consumers as to what constitutes the creation of value within the Australian economy through manufacturing processes, and to the provision of regulatory certainty to food processors.

Specifically with regard to the potential savings to industry through providing greater certainty to food processors as to what constitutes substantial transformation, NSW Farmers brings attention to the sparseness of the proposed positive and negative lists.

Through the development of more substantive positive and negative lists, the Australian Government not only has the opportunity to bring greater certainty to consumers, but also to further increase the cost savings to food businesses beyond the initially anticipated \$7.3 million per year.

The Australian Made Australian Grown code of practice published by AMCL outlines practices which it considers not to be substantial transformation for the purposes of the manufacture of food. The application of proscribed processes by AMCL within its code of practice was made in 2011 in response to concerns over unclear rules and a weak interpretation that enabled imported foods to be subjected to simple processes carry the claim "Made in Australia".

AMCL's most recent Code of Practice outlines the following:

In relation to food products, AMCL has a more restrictive definition of substantial transformation than that suggested by the ACCC guidelines. For the purposes of this Code of Practice, the following processes are not considered to be substantial transformation:

The Table 1 compares AMCL's Australian Made Australian Grown Code of Practice to the proposed lists of processes prescribed as constituting or not constituting substantial transformation.

Table 1: Australian Made Australian Grown Code of Practice

| AMCL – AMAG Code of Practice | Proposed reform |
|--|---|
| Not Substantial transformation <ul style="list-style-type: none"> • packaging or bottling • size reduction – cutting, dicing, grating, mincing, etc. • reconstituting – e.g. of fruit juice concentrate • freezing, canning or simple preserving processes associated with packaging • mixing or blending of food ingredients, where the resulting product is not substantially different to the separate ingredients • juicing – extraction of juice from fruit • homogenisation • pasteurisation • seasoning • marinating • coating – as in crumbing prawns or battering fish fillets • pickling • dehydrating/drying • fermentation – e.g. in the production of wine, cider or salami • curing – the treatment of meat with curing salts, as in ham or bacon • roasting or toasting – e.g. of coffee beans, nuts or seeds. | Substantial transformation <ul style="list-style-type: none"> • Baking a cake with some imported ingredients • Making apple pie with imported apples and spices • Crumbing domestic prawns with imported crumbs and spices • Making a frozen battered seafood snack from local flour, eggs and imported prawns, squid and seasoning. Not Substantial Transformation <ul style="list-style-type: none"> • Sultanas from one country packed in another • Canning apricots • Reconstituting and bottling orange juice from imported concentrate • Crumbing imported prawns • Packing frozen imported vegetables (including when packed with some Australian ingredients) • Mashing peas |

NSW Farmers recommends that the work undertaken by AMCL in determining the types of processes that will constitute Australian Made for the purposes of informing consumers over the contribution of food purchases to the Australian economy should be incorporated within the reforms to Australia's COOL laws.

Recommendation:

- That the Australian Made Campaign Limited's Australian Made Australian Grown Code of Practices' list for the purposes of identifying processes that do not substantially transform ingredients for the purposes of section 255 of the *Australian Consumer Law*.

Regulatory Impact Statement

Easy to read labels (RIS question 2)

The labelling of mandatory warnings and advisory statements and declarations is governed by the Food Standards Code. Given that these warnings are provided to inform those who are aware of potential allergies, NSW Farmers believes that the introduction of the proposed reform to Country of Origin labelling will not detract from the ability of those seeking to avoid foods with specific ingredients subject to advisory and warning statements to do so.

Cost of Labelling (RIS question 5)

NSW Farmers questions whether the initial estimate of labelling cycle used in the development of costings for the RIS has adequately accounted for voluntary changes to labels. In posing this question, NSW Farmers seeks further clarification with regard to assumptions underlying the calculation of the 2.7 year labelling cycle. Questions surrounding the arrival at this labelling cycle come as a result of the apparent frequency at which promotional labels are adopted by food businesses.

NSW Farmers also seeks enhanced detail behind the costing assumptions utilised in the development of the ongoing and administrative costs of labelling. Further, to better inform the regulatory decision making process the RIS should seek to identify an average cost per unit of purchase.

Targeted Education Campaign (RIS question 23)

NSW Farmers would welcome a commitment to community education with regard to the operation of Australia's country of origin laws; however believe that by itself this will not rectify the current difficulties of Australia's country of origin laws. Rather reforms, such as those proposed, which provide clear and readily accessible information about the origin of food ingredients are required.

Compliance (RIS question 44)

NSW Farmers agrees with the need for a graduated approach to compliance as part of the introduction of the proposed framework; however to implement such a graduated framework, there is a necessity to provide the regulator with powers appropriate to enforce compliance. Once provided with the appropriate powers, the ACCC would be able to enunciate protocols on how it will use its discretion as part of this graduated compliance approach.

Such a graduated approach should incorporate audit as a means to undertake targeted compliance monitoring and education activities and include a number of remedies, such as naming offenders up to issuing infraction notices as the new framework becomes more embedded.

NSW Farmers does not anticipate that there should be heavy compliance costs associated with the implementation of an audit regime, on the basis that necessary records will be maintained as part of compliance with the framework.

ENDS