Comments on the

Competition and Consumer Amendment (Australian Food Labelling) Bill 2012

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Dear Secretary and Senators:

Thanks for the opportunity to comment on the Competition and Consumer Amendment (Australian Food Labelling) Bill 2012. We ask the committee to favourably consider our representations. We are available to appear or offer the committee further advice or information should it be required.

Senator Milne opens her Second Reading Speech by saying:

> "Australians tell us that they want to be able to easily identify and buy Australian-grown food. Yet the truth is that current food labelling thwarts this simple request."

We heartily agree!

We support the main points of the Second Reading speech on this Bill and also its provisions. We therefore ask the committee to recommend that the Senate and the Parliament pass the Bill without amendment.

Right to know

Everyone has a right to know where and how food was produced. We assert the right of all shoppers to know, understand and access complete information on labels that clearly and honestly states the local and foreign provenance, the ingredients, and the means of novel production processes (Standard 1.5), for all foods. A label should say what it means and mean what it says – no prevarication, no public relations, no dissembling, no unfair advantage to the seller – just the facts. The information required on labels should be objective, unambiguous, factual, value-free and honest.

We are entitled to honest, truthful and factual labelling that enables us to be fully informed shoppers who can make rational choices in the marketplace that allow every-one to optimise their own benefits and also serve the common good. If our policy-makers believe their own free-market rhetoric then they must deliver us the means to be responsible shoppers and citizens who support local food producers, processors and independent retailers. These are the people who create work for Australians and we want to affirm and support their efforts.

But current food labelling provisions betray our right to know where and how our food was grown and processed. A majority of Australians say they would prefer to spend as much as possible of their food budgets on local foods. But existing labels do us the great disservice of

being confusing, misleading, and deceptive. This alone is sufficient reason for the law to be reformed as this Bill proposes, especially as all political parties support the ACCC's role in and powers to ensure that all product labeling is truthful and not deceptive.

What use shoppers will or won't make of the information provided, and how they use it to arrive at buying decisions, is not the concern of policy-makers. Some people will decide to buy local foods and others will favour imported; some purchase organic and others conventional; many bloggers say they will buy GM foods as they are more tested, while others want the information needed to buy GM-free. All these diverse decisions deserve to be well informed by comprehensive labelling as they are all rational, legitimate and satisfy our right to know what we are buying.

Free markets require fair access to information

Free and fair access to full information is required to optimise the functioning of free markets. Insider trading is unacceptable and illegal in the stock exchange and is no more acceptable in the supermarket. The optimum performance of free markets, which governments and industry purport to support and promote, depends on all parties to every transaction having access to the same clear information. Misleading, or deficient labelling is a restraint of free trade so we call on free marketeers in government and business to embrace and support full and honest CoOL labelling.

The CoOL labelling of imported cheeses and wines, for instance, is generally clear, accurate and uncontentious so there is no sound reason why we continue to have such a dysfunctional system of CoOL in Australia.

Food is different from any other products and is much more than mere fuel for biological systems or a commodity to be traded without regard to its origins or processing. Food embodies many social, cultural, emotional and psychological identity values for us all. Food and its origins are part of who we are. Just as adopted and artificially conceived children are frequently motivated to discover their biological origins, so it is with our foods.

The National Labelling (Blewett) Review found that Australians use knowledge of the origin of food to identify local food of top quality and known provenance, to reward our own growers and processors. Also, as a means to selectively spend food budgets to decide on many other aspects of food purchases, including: local foods that are not genetically manipulated, provide jobs for Australians, minimize the depletion of non-renewable resources, favour animal welfare, and other social, environmental, health and philosophical values.

We also want to know that our food is produced with the least impact on the environment, by being transported the shortest distances and being minimally processed here. Many people want to assist Australia's transition to low input, agro-ecological, organic farming systems to cope with the end of oil and phosphates, loss of land and soil fertility, and more variable climates including drought as a result of climate change.

These are all legitimate information-based decisions that food labeling law should embrace and celebrate. They are ideally an indispensable component of robust competition in free and fair marketplaces.

By conflating the location of food processing and packaging with the origin of food ingredients, Australians are actively prevented from making informed decisions about which foods to purchase. The language is unacceptably confusing. The Bill would mandate clear labels to enable Australians to be fully informed of the true origins and processing history of all foods, particularly but not exclusively those grown and processed in Australia.

ACCC further muddies the CoOL waters

We are sorely disappointed that on October 11, 2012, the ACCC claimed to launch shopper guidance on existing CoOL at: http://www.accc.gov.au/content/index.phtml/itemId/1084340 The document entitled "Where does your food come from?" available here: http://www.accc.gov.au/content/index.phtml/itemId/1084041 is nothing of the sort.

The ACCC must not be allowed to prevaricate over this key matter of public importance. The present CoOL system hasn't worked and a new approach is needed, taking jurisdiction away from FSANZ and placing the responsibility squarely on ACCC to adopt and enforce a regime that achieves the long-standing goals of CoOL.

ACCC Chair Rod Sims told a recent Australian Food & Grocery Council forum that:

> "The ACCC does not believe there is an essential problem with the current (CoOL) classifications. The problem is people's **understanding of what they mean**." So the ACCC was: "… releasing consumer friendly **advice** to **decode** the various origin claims of Made in Australia, Product of Australia and Grown in Australia."

But we want the labelling fixed, not its confusions and deceptions explained. The labels to be provided by this Bill would not need decoding or explaining, especially by arcane ACCC advice, only available electronically on the ACCC website. ACCC's so-called 'fact sheet' compounds existing confusions and does nothing to empower people to make their own well-informed decisions on how to buy local foods. Even with a massive communications campaign and budget, ACCC's sheet would reach just a small segment of the community and for a limited time only. It is a weak, patronising sop to trenchant community dissatisfaction and disquiet at being systematically misled and deceived.

Confusion and widespread misunderstanding of the meaning of the three present CoOL classifications should be resolved by passing the Bill to amend the label requirements so that their words and meanings are clear, unambiguous and fully comprehensible to everyone.

Long past time for real CoOL

The Australia and New Zealand Food Regulation Ministerial Council's joint communiqué of April 2003 said, among other things, that:

> "Food Standards Australia New Zealand (FSANZ) has asked the Ministerial Council for policy advice to guide it in its review of country of origin labelling of food. The Ministerial Council agreed to a policy direction on mandatory country of origin labelling of food. … The Council's support for country of origin labelling is on the grounds of enabling consumers to make informed choices. Ministers noted that access to information on country of origin was an important factor in consumers making choices.

> At present there is a temporary arrangement in place for mandatory country of origin labelling to continue in Australia. In New Zealand, there has been longstanding provision under fair trading legislation for voluntary country of origin labelling."

Then on Wednesday 26 May 2004, FSANZ invited public comment on Country of Origin Labelling of Food (Proposal P292 - Initial Assessment) saying:

> "In December 2003, the Ministerial Council agreed to policy guidelines for the regulation of Country of Origin labelling on food. These guidelines state that the Country of Origin labelling of food should be mandatory in order to:
>
> - Ensure that consumers have access to accurate information regarding the contents and production of food products.
> - Ensure that consumers are not misled or deceived regarding food products.
> - Be consistent with, and complement, Australia's and New Zealand's national policies and legislation including those relating to fair-trading and industry competitiveness.
> - Be cost effective overall, and comply with Australia and New Zealand obligations under international trade agreements while not being more trade restrictive than necessary."

These were worthy goals but only the fourth was achieved, despite a massive community response in support of a CoOL system that would work fairly in the public interest. The present travesty of CoOL has miserably failed. But government has not yet acted, almost two years after strong recommendations for reform from a thorough national review of all Australian food labelling. The review found that the present CoOL provisions need major reform to make them effective and we ask for action.

The National Food Labelling (Blewett) Review 2011

The 2011 National Food Labelling Review of Law and Policy resoundingly confirmed the community's general dissatisfaction and confusion over CoOL. It confirmed that markets have not delivered what people expect and that government must rectify this failure.

The Review acknowledges that CoOL is an example of trenchant and long-standing market failure when it asks (P3): **What principles should guide decisions about government regulatory interventions in food labelling?**

> "Regulatory actions in relation to consumer values issues should be initiated generally by industry [Rec. 37, 38]. These would rely on the 'misleading or deceptive' provisions in consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Code [Rec. 36]. The most significant consequence of this referencing is that country-of-origin labelling — a consumer values issue — **be provided for in a specific consumer information standard for food within consumer protection legislation rather than in the Code [Rec. 41].** … The modes of intervention for consumer values issues should be self-regulatory but **subject to more prescriptive forms of intervention in cases of market failure**, as the Panel argues in the case of country-of-origin issues [Rec. 40, 41] or the ineffectiveness of self-regulatory schemes [Rec. 39]."

Honest labelling is the only basis for shoppers to make the fully informed choices that the consumerist values underlying our mixed economy claim to offer. Accurate, honest and informative labelling that people can fully understand and trust remains elusive because of the vested interests at play, with the majority of Australia's agribusiness, food trading, processing and retail industries owned and controlled by corporate cartels, many of them foreign owned. They regard food as a mere commodity to be traded to wherever in the world it is most profitable for them. This is particularly unacceptable when it comes to identifying local foods. These corporate food supply chain participants have failed to honour their responsibility to our community so government must deliver on our legitimate aspirations now by supporting and passing this Bill.

The review also says that:

> "… consumers are primarily focused on the components and ingredients of foods and not with their substantial transformation, packaging or value adding."

This is the core flaw in the present CoOL system. Many Australians prefer to identify and purchase locally grown and processed foods and we have a right to do so. Yet the present food labelling regime misleads us and gives imported foods an unfair competitive advantage over comparable Australian products, by allowing imported ingredients to be labeled 'Made in Australia'. This is false, misleading and not in the national public interest, so the law must be amended and the ACCC empowered and required to rigorously enforce the new law.

The Blewett Review also observed that:

> "There are mutual market benefits (to buyer and seller) of promoting food with positive/aspirational origins (e.g., chocolate from Switzerland), yet non-reciprocal benefits from withholding such information when it relates to origins with perceived negative connotations (e.g., food products from countries with poor human rights records). This situation constitutes market failure and the reason for government intervention on the issue of country of origin labelling.

We agree. Just give us open, honest and transparent labels so that all food buyers can make our own well-informed decisions based on own set of values and priorities, whatever they are. That is the much-vaunted essence of free competition but the food marketplace is anything but free because we are kept in the dark, deliberately misinformed and confused.

Public sentiment, opinion and aspirations

Half of CHOICE members, and also citizens at large, do not understand what the terms 'Australian Made' and 'Made in Australia' mean. 90% say that country of origin labelling needs to be clearer and less confusing. The ACCC's misguided attempt to clarify the present labels with an online-only fact sheet compounds the public's confusion.

Gene Ethics has 7,000 constituents, the True Food Network 22,000, JustFood WA over 1,000, SA Gene Food Information Network 500, etc. We refute the claim that most Australians buy their food mainly on price. But if this were true it would be another reason that foreign foods must not masquerade as Australian. For Australian and imported foods to compete on

an equal basis, honest, accurate and transparent labelling is essential so that shoppers can make truly well-informed and rational decisions according to their own set of interests and preferences. Accurate labels do not discriminate for or against the products that carry them – they simply enable those making purchases to exercise their rights and to optimize the positive outcomes for everyone.

Change the law by passing this Bill

The Bill contains two key amendments, both of which we support. The first enacts Recommendation 41 of the National Labelling Review, by specifically inserting a section into the Competition and Consumer Act that would mandate country or origin claims on food labels.

This has the effect of treating food and food labeling as separate and discrete because everyone depends on it to survive and to create a unitary regime that moves country of origin labelling from the Food Standards Australia New Zealand Act - focused primarily on food health and safety - to ACCC's jurisdiction under the Competition and Consumer Act – which concern itself with accurate information for shoppers and prohibiting misleading claims. Thus, CoOL regulation rests more logically with the ACCC

The second part of the Bill enacts Recommendation 42 of the National Food Labelling Review, that country of origin labeling should reflect the ingoing weight of ingredients and components, excluding water. This would satisfy the aspirations of a majority of Australians to know the source of food items, independent of where processing and packing was done.

The Bill, if enacted, would remove the claim 'Made in Australia' from food labels and create easily understood and unambiguous language that would not require arcane extrinsic explanation. Australian-grown food would be clearly and honestly identified, as such. And processed foods comprising 90% or greater dry weight content of Australian ingredients would be labeled: "Made of Australian ingredients".

This will be a win for everyone, by establishing an easily understood, transparent, factual claim that would allow Australians to make fully informed shopping decisions.

Conclusion and recommendation

Government has a duty to enable Australians to buy locally grown (or imported) foods to satisfy people's right to know and to meet the requirements of a free and fair marketplace. We therefore commend the Bill to the Senate and the Parliament and request that it be passed without amendment.