Response to the Proposed:

Competition and Consumer Amendment (Australian Food Labelling) Bill 2012

Prepared for: The Parliament of the Commonwealth of Australia
The Senate

Prepared by: Food SA

Food South Australia (Food SA) is South Australia's peak food industry association. Our charter is to support the sustainable development and growth of a profitable, diverse food industry.

The proposed legislative amendment to enact Recommendation 41 and 42 of the Blewett Review, to the specifications referenced, should be given careful consideration in view of their impact on the Australian food manufacturing industry. The current business climate is one of many challenges, and whilst enhancing consumer understanding is supported, any additional legislative burden which often involves difficult transition periods and high cost, is not.

This amendment should not be made in isolation of the current challenges of Australia's food manufacturing environment. Undergoing drastic change, the diversity, sustainability and competitiveness of the industry is under duress with contributing factors including:

- High Australian dollar
- Heavy corporatization
- Duopolistic retail scene
- Unprecedented expensive labour and manufacturing costs
- High-cost and cumbersome workplace and safety regulation
- Unlevel trade arrangements
- Off-shore manufacturing appeal (tax benefits, lower labour costs, less regulation)
- Cumbersome policy eg. a carbon tax which does not acknowledge or reward best practice manufacturing
- Cheap imports.

Already one of the world's most highly regulated, high cost and transparent food industries, this proposal appears to be based on an uncommon consumer bias, with minimal consideration of consequence for, or engagement with the amendment's most affected stakeholder – the Australian food industry.

Recommendation 41:

"Creating a specific section in the Competition and Consumer Act that deals solely with country or origin claims with regard to food".

The necessity to streamline and clarify processes is widely acknowledged, and areas of change should be prioritized on the basis of their effective, tangible improvements. However, with legislation for CoOL currently sitting within the Food Standards Code, and the absence of mandatory requirements within the Consumer and Competition Act, any 'streamlining' should occur within the existing Food Standards Code – rather than transferring legislation to a new authority.

The implication of this amendment which would require State and Territory enforcement is a major deterrent; responsibility would be hand balled across borders and agencies. The issue is a national one, with state boundaries not being relevant. With many manufacturers operating across multiple states, the probability of this recommendation creating additional confusion and paperwork is high as well as inconsistency of interpretation. A cost-benefit would be required to evaluate the net effects of the amendment, however, more immediate and tangibly effective areas of change, such as retail regulatory reform, should be prioritized for action.

The intent of ensuring consumers understand the contents of their food and where it comes from is supported, however, the mechanism should be around educating consumers and streamlining the current CoOL system.

FOOD SA POSITION:

- To leave regulatory provisions for CoOL within existing Food Standards Code and invest resources in making it easier for consumers to understand.

Recommendation 42:

"That country of origin labeling for food should be based on the ingoing weight of the ingredients and components, excluding water".

This amendment, imposed in its current format to suggested specifications that:

> *"processed food comprising 90% or more Australian ingredients by total weight excluding water will be labeled "Made of Australian ingredients",*

Is an extreme transition from the current system, and would have a detrimental impact on Australian manufacturing – creating loopholes where Australian manufacturers would be labeled as producing imported food items.

As succinctly cited in the Government response to Recommendation 42 in 'Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy (2011):

> *"The proposed framework does not recognize the intent of 'made in' claims, which support the important contribution the manufacturing sector makes to the locally 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.

There may be considerable costs to food businesses in complying with a CoOL 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".

Based on the notion that this amendment *"codifies the desire of Australians to know the origin of the food they are buying first and foremost, not where any processings and packaging took place"* as cited in the Bill's Explanatory Memorandum, circulated by authority of Senator Milne, may have merit in its intention for empowering consumers, however, is quite irrational in its lack of objectivity regarding economic and social consequences for Australia's food manufacturing. Given the changes in the industry over the past few years, in some instances it is simply impossible to use local ingredients even if Australian manufacturers have a policy to do so as they are no longer grown in Australia.

Remaining competitive in one of the world's most open economies, and a dominant and aggressive duopolistic retail environment is an increasingly daunting task for Australian food manufacturers. To transition from the current 'Made in' qualification, which allows for a 'majority' Australian made production, to requiring "90% inputs (excluding water)", is extreme in measure which is likely to cause consumer confusion; and, will:

- Reinforce to large manufacturers the economic and cultural necessity to move offshore.
- Allow Australian produced products to be categorized as 'imported' and the intent and actual production of, to be distorted.
- Remove incentive for Australian manufacturers to:
  - Aspire to use Australian ingredients; and,
  - Operate in Australia.

In doing so, it is stripping away the small competitive advantage remaining for Australian food manufacturers to leverage in Australia's globally open marketplace and domestically crippling retail environment. In essence, it is likely to dispirit the effort and intention of food manufacturers who are often aspirational in their vision, and dedicated in their action to using 100% Australian ingredients and production. The commercial reality is that often it is simply economically unfeasible or geographically prohibitive to source all products domestically; legislation enforcing 90% ingredient inputs excluding water to be 'Australian made', is, ironically 'unAustralian' in its intent and what it represents. The Australian food manufacturing industry is a large employer and any disincentive to continue manufacturing in Australia will further impact declining employment, with "total industry employment declining 2.2 per cent or almost 7,000 people in the 2011-12 financial year." (Australian Food and Grocery Council, State of the Industry 2012 Report)

The only manufacturer such a measure could feasibly benefit would be a niche producer, who differentiates on the basis of local, high-end production; and, whilst they are vital contributors to the diversity, culture and flare of the industry, represent a minority employer of the 226,750 Australians employed in the food and beverage sector in 2009-10. Over the longer term, as they grow, it is probable this amendment would also represent a long-term disservice to them.

Current 'Made in': The existing 'Made in' brand, (which also includes 'manufactured in', 'Australian made' etc), requires that goods must have been substantially

transformed in the country claimed to be the origin and 50% of the costs of production must have been carried out in that country. Under the Trade Practices[1] provision, substantial transformation is defined as – 'a fundamental change… in form or nature such that the goods existing after the change are new and different goods from those existing before the change'. (Standard 1.2.11 Country of Origin Requirements).

nb: Additional provisions such as 'Product of' and 'Grown in', provide further stringent standards to qualifying manufacturing labeling standards.

Whilst it is acknowledged that 'made in' labels can be confusing to consumers and industry, Government investment should focus on clarifying existing processes, and working with industry to determine the most viable short and long-term options through education and appropriate policy change.

In an age of unprecedented access to information and demands for transparency, the capacity for manufacturers to mislead consumers is growing ever slim; manufacturers also embrace it as their responsibility to educate consumers, with the majority appreciating that consumer, brand and product loyalty is not spontaneously established, but is rather an evolution of trust, transparency and relationship building.

Any change to the 'made in' requirements should be evaluated along the supply chain and guarantee equal application throughout. NOTE:

- **Retail Homebrand:** Retail homebrand labeling is lax, enabling retailers to conceal the name and address of the manufacturer. Legally, as private label continues to place Australian manufacturers under immense pressure, it should be mandatory to disclose the same level of detail as other branded products. It is unjustified for the Government to be considering such extreme measures to Australian manufacturing labeling, whilst such disparity exists in current legislation.

In short, this amendment is not the answer to protecting consumers; or, to ensuring accountability of manufacturers. If the Government is serious about making 'country or origin' change, it is essential the objectives for doing so are clarified, and it is done hand in hand with industry, through advice from industry, enabling the development of realistic and workable commercial models that support consumer, producer and government interests, and a sustainable Australian food manufacturing industry throughout the process. Additional legislation and bureaucracy without any tangible benefit is not supported.

Consultation with industry could explore alternative options, such as an alternate emphasis on 'Characterising ingredients and Components of Food', eg:

- **Refer "Standard 1.2.10, Characterising Ingredients and Components of Food":** An option could be to replace the 'made in Australia' concept with a simpler way for Australian manufacturers to identify themselves, ie. by focusing on 'Characterising ingredients' – ie. enforced declaration of country of origin of the primary ingredient/s. This builds on the 2002 labelling review; noting that in the absence of characterizing ingredients, a caveat would be necessary so as to not disadvantage these manufacturers.

FOOD SA POSITION:
- To not endorse this amendment in its existing form.
- Change should be introduced incrementally, enabling feedback into the process.
- Rules require simplification, without loopholes.

[1] Australian Consumer and Competition Act

- Australian manufacturers' interest is for a strong rule which excludes copying by competitors.
- To focus on change which contributes to industry competitiveness, eg. legislating and enforcing accountability of retail duopoly homebrand labeling and anti-producer behaviours; control measures or manufacturer support for rising utilities etc.

Should change to 'made in' labeling be necessary, we encourage:

- Circulation of previous research and economic modeling to industry and government stakeholders, as referenced in: Response to the Recommendations of Labelling Logic: Review of Food Labelling Law and Policy (2011) and 2002 Labelling Review.
- Clarify objectives of change, and liaise with stakeholders, particularly industry to evolve a workable, commercially and consumer astute model.
- Advocate incremental and streamlined change to enable integration by industry.
- Be clear on the cost benefit for any change