

## **EXPLANATORY STATEMENT**

### *Country of Origin Food Labelling Information Standard 2016*

#### **Authority**

This *Country of Origin Food Labelling Information Standard 2016* (the Information Standard) is made under section 134 of the Australian Consumer Law (ACL).

#### **Background**

Consumers have been confused about country of origin food labelling for a long time. They have been calling for changes to simplify origin claims on foods and to make them clearer, more meaningful and easier to find. Businesses, though recognising the value of country of origin labelling, have often struggled to understand labelling requirements or to meet consumer expectations. Public concern has resulted in numerous inquiries, reports and proposals on this matter over several decades, but few regulatory changes have been made.

This Information Standard is part of a suite of regulatory changes aimed at addressing this consumer dissatisfaction with the current country of origin labelling framework. It builds on consumer research, stakeholder consultations and an analysis of regulatory options and their costs and benefits.

#### **Purpose and operation**

The purpose of this Information Standard is to provide clearer, more consistent, more informative and easier to find country of origin labels for food—so that consumers can make more informed choices about the food they buy, in line with their personal preferences. This Information Standard also aims to provide businesses with greater certainty and clarity about the claims they can make about the country of origin of the food they supply, and to do so without imposing excessive costs on those businesses.

The revised country of origin labelling framework will see the continuation of mandatory country of origin labelling for most food offered for retail sale in Australia, as is currently applied through the Australia New Zealand Food Standards Code (Food Standards Code). Current exemptions to mandatory country of origin food labelling in the Food Standards Code will generally still apply. For example, the Information Standard does not require country of origin labelling for food sold in places like restaurants, cafes, take-aways or schools.

There are different labelling requirements depending on whether the food is classified as priority or non-priority for the purposes of country of origin labelling, and whether it is:

- grown, produced or made in Australia
- packaged in Australia
- grown, produced or made in another country
- packaged in another country.

#### *Placement of labels*

Reflecting current provisions in the Food Standards Code, this Information Standard also imposes different requirements on the placement of country of origin statements and marks for packaged foods, unpackaged foods, and fresh fruit and vegetables in transparent packaging.

For packaged foods, country of origin statements or standard marks are required to be on the label and legible.

For fresh fruit and vegetables in transparent packaging, country of origin statements or marks may be on a label that is on the package, or on labelling that accompanies the food or is displayed in connection with the sale of the food.

For those unpackaged foods that are required to carry country of origin information (see subsection 17(1)), the statements or marks may either be on the food or accompany it or be displayed in connection with its sale. The text on labels that accompany, or are displayed in connection with, the sale of unpackaged food remains subject to the same minimum type size requirements that are currently set out in the Food Standards Code.

#### *Meaning and use of 'grown in', 'produced in', 'made in' and 'packed in' claims*

Food can claim to be 'grown in', 'produced in' or 'made in' a country only if it meets specific conditions:

- 'Grown in' and 'Produced in' mean that all of the significant ingredients of the food are from, and virtually all the processing occurred in, the country claimed as origin
- 'Made in' means that the food underwent its last substantial transformation in the country claimed as origin.

A food is said to have been substantially transformed in a country if the end product is fundamentally different from its ingredients. Even if a food is partially or totally comprised of imported ingredients, it can claim a country as its origin if it was last substantially transformed in that country.

Consequently, a 'Made in Australia' claim cannot be used where imported ingredients are only subjected to minor processes, such as: slicing, freezing, canning, bottling, crumbing, reconstituting or packing. For example: mozzarella cheese made from imported milk could claim to be 'Made in Australia', but imported mozzarella cheese that is shredded and packaged for resale could not be.

Where a food comprising ingredients from more than one country is packed in a country without undergoing substantial transformation, it cannot make a claim to have been 'grown in', 'produced in' or 'made in' that country or any other country. Accordingly, as a minimum, it is required to carry a statement indicating the country in which it was packed or packaged, and that it is of multiple origins.

Where food from a single country is packed in a second country, the country of origin statement must indicate that the food was grown, produced or made in the originating country. A supplementary claim that it was packed in the second country is permitted.

#### *Priority and non-priority foods*

Research has shown that consumer concern about country of origin varies across food categories. This Information Standard defines a set of non-priority foods—foods for which Australian consumers are least concerned about origin information—and applies lesser country of origin labelling requirements on these foods.

Non-priority foods comprise seven food categories:

- Seasonings
- Confectionery
- Biscuits and snack food
- Bottled water

- Soft drinks and sports drinks
- Tea and coffee
- Alcoholic beverages.

This Information Standard requires non-priority foods to carry a text statement of their country of origin on their labels. Use of the more detailed country of origin marks specified in the Information Standard, which are mandatory for most other foods (hereafter termed *priority foods*), is voluntary for non-priority foods. Where the country of origin marks are used voluntarily on non-priority food, they must comply with the requirements of the Information Standard.

#### *Country of origin labelling requirements for priority foods*

Priority foods are food products for which consumers care most about when it comes to origin information.

Priority foods that are produced, grown or made in Australia will be required to carry a mark consisting of a clearly defined box containing:

- a logo to assist the consumer to easily identify the food's Australian origin;
- a bar chart to provide a visual indication of the proportion, by ingoing weight, of the food's Australian content; and
- a statement indicating that the food was grown, produced or made in Australia and that indicates the proportion, by ingoing weight, of the food's Australian ingredients.

Priority foods that are produced, made or grown in an overseas country will require a statement in a clearly defined box, indicating that the food was grown, produced or made in that country.

For priority foods that are packaged in Australia—without having undergone substantial transformation here—requirements vary depending on the source of the food:

- if some—but not all—of the food in the package was grown, produced or made in Australia, or if the food was imported from more than one country, the labelling must include a mark consisting of a clearly defined box containing a statement indicating that the food was packed in Australia, and a bar chart and statement that indicates the proportion, by ingoing weight, of the food's Australian ingredients;
- if the food originates from one overseas country, the label must state in a clearly defined box that it was grown, produced or made in that country. The label may also include a statement that the food was packed in Australia—but, if so, the label must then also include a bar chart indicating that the food has no Australian ingredients.

Such 'Packed in Australia' claims cannot include the kangaroo logo, because the food is not of Australian origin—that is, the package contains food that was not grown, produced or made in Australia.

Where food that is grown, produced or made in Australia is exported, processed overseas without substantial transformation, and then reimported, the label will have to state, in brackets, what processing occurred overseas. For example, Australian macadamias exported to Fiji for shelling and roasting and then re-imported into Australia for packaging and sale would be required to describe the overseas processing as part of the country of origin statement

Where the sources of ingredients vary, the Information Standard makes provision for the label to include an average proportion of the food's Australian ingredients—rather than a minimum proportion. This average may be calculated over a one, two or three year period, and may be relied upon for labelling purposes for the following two years.

When such an average content claim is made, the label must also provide a way for consumers to get more information on the proportion of Australian ingredients that is in the actual food they have purchased or are considering purchasing. This information can be made available online or over the phone and by reference to the product's batch number or best before date, or by scanning a bar code or similar device printed on the package.

The Information Standard makes provision for the label to include a statement about the country of origin of one or more specific ingredients—provided any ingredient specified comes exclusively from the country nominated as the origin of that ingredient. This would enable, for example, a producer to highlight the exclusive use of Canadian maple syrup in a processed food product that is made in Australia, or an importer to highlight that the strawberries in a food made overseas are exclusively Australian.

## **Consultation**

The Information Standard is based on extensive research and consultations with consumers, food producers, manufacturers and interested stakeholders.

Industry round tables with around 200 participants were conducted in metropolitan and regional cities between April and June 2015 to ascertain business attitudes to possible reforms to country of origin labelling.

Market research was undertaken in early to mid-2015 to identify community views, perceptions, knowledge of, and attitudes to country of origin labelling for food and to seek community feedback on options for changes to the existing country of origin labelling framework. The research included a qualitative study with 18 consumer focus groups held in all capital cities (other than Canberra) and a questionnaire directed to over 1220 nationally representative participants. An online community self-selected questionnaire also received over 17 800 responses. The research also included face-to-face interviews with 20 businesses.

On 21 July 2015, the government announced its preferred country of origin labelling reforms, to be taken to states and territories for agreement. The proposed reforms were based on feedback from initial consultations and the outcomes of the 2014 House of Representatives Standing Committee on Agriculture and Industry inquiry into country of origin labelling for food (as well as submissions to and reports on a number of earlier reviews and inquiries dating back to 2006).

A consultation Regulation Impact Statement (RIS) on the proposed reforms was released on 4 December 2015, together with a package of supporting documents (including draft legislation). Trading partners were notified of the proposed reforms through the World Trade Organization on 7 December 2015.

Following release of the RIS, 50 face-to-face meetings were held with stakeholders, and over 380 people attended information sessions conducted in all capital cities and some regional centres. Over 230 submissions on the proposed reforms were received from a broad range of stakeholders, including consumers, consumer bodies, businesses, industry bodies, state and territory governments and trading partners.

## **Decision**

Based on feedback on the December 2015 consultation package, as well as the submissions to and outcomes of earlier consultations, reviews and inquiries, a decision RIS was prepared to guide a final decision on the proposed reforms to the country of origin labelling framework. The Decision RIS was approved by the Office of Best Practice Regulation on 3 March 2016, and can be found at [www.industry.gov.au/cool](http://www.industry.gov.au/cool).

The RIS canvassed three labelling options:

- maintaining the status quo (Option 1)
- adopting a mandatory system with visual aids and a revised origin statement (Option 2)
- a mandatory system with a revised origin statement only (Option 3).

The decision RIS was presented to the Legislative and Governance Forum on Consumer Affairs (the Forum) on 31 March 2016.

The Forum agreed to the implementation of Option 2, which the decision RIS assessed as the preferred option, representing the greatest net benefit to the community. Option 2 took into account a range of considerations aimed at delivering the country of origin information consumers most wanted in a manner that would be feasible for businesses to comply with—without imposing excessive regulatory cost.

Option 2 involves introducing a mandatory Information Standard on country of origin labelling for food under the *Competition and Consumer Act 2010*—with a transition period of 24 months. This Information Standard gives effect to this element of Option 2.

Option 2 also involves revoking Standard 1.2.11—Country of origin labelling—from the Australia New Zealand Food Standards Code 24 months after the commencement of the Information Standard, and simplifying and clarifying the country of origin safe harbour defences for country of origin labelling (including the definition of substantial transformation), in Part 5-3 of the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010*). These other changes will be introduced through separate regulatory processes.

## **Detailed explanation of the Information Standard's provisions**

### **Part 1—Preliminary**

#### **Section 1—Name of Regulation**

This section provides the title of the Information Standard: *Country of Origin Food Labelling Information Standard 2016*.

#### **Section 2—Commencement**

This section provides that the Information Standard commences on 1 July 2016.

#### **Section 3—Authority**

This section provides that the Information Standard is made under section 134 of the Australian Consumer Law.

#### **Section 4—Purpose**

This section states that the purpose of the Information Standard is to set out the requirements for providing country of origin information on labelling of food for human consumption sold (including on offer or display) in Australia.

#### **Section 5—Limit of application**

This section provides that the Information Standard does not operate to limit the exercise of a right given by or under the *Trade Marks Act 1995*, in relation to a registered trademark. In particular, this provision will allow the kangaroo logo referenced in subsection 10(1) to continue to be used for non-food products and for food products that are not for sale in Australia, as part of the Australian Made Australian Grown certified trade mark (see also section 29).

#### **Section 6—Outline**

This section provides an overview of the broad scope and structure of the Information Standard and summarises specific provisions, including when and how to use the logo, bar chart and/or statement to create standard marks.

#### **Section 7—Interpretation**

This section provides that certain terms used in the Information Standard have the meanings provided in the Dictionary of terms that is included at the end of the Information Standard.

#### **Section 8 - Meaning of grown, produced and made**

This section provides definitions for 'grown', 'produced' and 'made' for the purposes of the Information Standard. These definitions are based on the country of origin safe harbour defences in Part 5-3 of the Australian Consumer Law.

In essence, food that is *grown* in a particular country must have been germinated, materially increased, harvested, extracted or otherwise derived from a living organism in that country. Alternatively, food is grown in a country if all of its significant ingredients were grown in that country and virtually all of its processing occurred in that country.

Food that is *produced* in a particular country includes all food grown in that country. It would also include other food in which all of the significant ingredients were not grown, but were still wholly obtained in that country, for example salt or water, provided virtually all of the processing occurred in that country.

Food that is *made* in a particular country must have undergone its last substantial transformation in that country. For the purposes of the Information Standard, the definition of *substantially transformed*, is provided in the Dictionary at the end of the standard and is the same as that provided in Australian Consumer Law country of origin safe harbour defences (Part 5-3 of Schedule 2 to the *Competition and Consumer Act 2010*).

Subsection 8(2) provides flexibility for the use of the terms ‘grown’, ‘produced’ and ‘made’ where a food meets the requirements of more than one of those terms. For example, a food that meets the requirements to use the claim ‘Grown in <Country X>’ would also meet the requirements to claim to have been ‘Produced in <Country X>’ or ‘Made in <Country X>’. This subsection permits use of any of those claims in that circumstance.

### Section 9 – Meaning of non-priority foods

This section defines certain categories of foods as being non-priority foods for the purposes of the Information Standard. There are seven non-priority food categories:

1. seasonings;
2. confectionery;
3. biscuits and snack food;
4. bottled water;
5. soft drinks and sports drinks;
6. tea and coffee;
7. alcoholic beverages.

Market research shows that consumers care the least about origin information for these foods. Definitions for these and other foods are provided in the Dictionary at the end of the standard.

### Section 10 - References to the logo and appropriate bar chart

Section 10 provides the logo and the table of the bar charts that are to be used in the standard marks required or permitted by the Information Standard.

The logo is a stylised representation of a kangaroo on triangular background.

The bar chart is a rectangular element with four evenly spaced internal markers. It is used to indicate the minimum or average percentage of a food’s Australian ingredients by ingoing weight. For percentages less than 10 per cent, the bar chart is filled to the five per cent level. For percentages of 10 per cent to 94 per cent inclusive, the bar chart is filled to the decile below the nominated percentage of Australian content. If the nominated percentage is from 95 to 99 per cent, the bar chart is filled to the 95 per cent level. A full bar chart is used to indicate the food contains 100 per cent Australian ingredients.

Example: Where 26 per cent of the total ingoing weight is Australian ingredients, the bar charts is filled to the 20 per cent level.  
Where 97 per cent of the total ingoing weight is Australian ingredients, the bar charts is filled to the 95 per cent level.

### Section 11 – Meaning of proportion and of average proportion of ingredients by weight

Subsection 11(1) provides the method to be used for calculating the proportion by weight of the Australian ingredients of a food (subject to the provisions for the treatment of water as an ingredient specified in section 12).

In calculating the proportion by weight of the Australian ingredients of a food, the ingoing weight of ingredients is to be determined before cooking, baking, frying or any other method of conserving, curing or preparing the end product. That is, the ingoing weight is calculated as per the recipe of the product, and not according to the final weight of ingredients in the product after cooking or other processing.

Example: A tomato sauce is made from: 1 kg tomatoes (Australian), ¼ cup of olive oil (170g, Australian), 1 large brown onion (130g, imported), 3 garlic cloves (20g, imported), 1 table spoon of sugar (20g, Australian), a handful of torn basil and chopped oregano (10g, Australian), and water (150g, Australian). The proportion of the Australian ingredients is the sum of the ingoing weights of all Australian ingredients (1350g) divided by the sum of the ingoing weights of all ingredients (1500g) expressed as a percentage (90%).

Subsection 11(2) defines the average proportion by weight of the Australian ingredients of a packaged food and provides that it be calculated over a 1, 2 or 3 year period. It further provides that it can be used, for the purposes of claims that rely on that average proportion, for a period of no more than two years after the end of that 1, 2 or 3 year period.

This methodology provides a practical solution to the challenges faced by businesses who routinely rely on variable ingredient sources (for seasonality or other reasons) and would otherwise have to repeatedly relabel their products to meet this Information Standard—while also reflecting relatively recent production or manufacturing conditions.

Sections 21 and 23 set out the conditions applicable to average proportion labels, including the requirement to provide consumers with information about the actual proportion of Australian ingredients in the food they are buying through some other means (see section 13).

Subsection 11 (3) provides that a substance or a food used as a processing aid is not an ingredient of a food for the purpose of these calculations. Subsection 11(5) provides that the term ‘used as a processing aid’ has the meaning given by section 1.1.2—13 of the Food Standards Code.

Example: Rennet used to separate curds and whey in the making of cheese would be considered to be a processing aid and, therefore, not an ingredient that needs to be included in the calculation of the proportion by weight of the Australian ingredients in the cheese.

Subsection 11 (4) effectively provides that, for the purpose of calculating the proportion by weight of the Australian ingredients of a food, an Australia grown or produced ingredient is from Australia, and only the Australian proportion of a compound ingredient of mixed origin is from Australia.

The Australian proportion of a compound ingredient is calculated by taking the sum of the ingoing weights of each sub-ingredient that is from Australia and dividing it by the sum of the ingoing weights of all sub-ingredients in the compound ingredient. That proportion must then be applied to the ingoing weight of the compound ingredient used in the final food when working out the proportion of Australian ingredients in that food.

Example: Calculating how much of a compound ingredient (pasta sauce) counts towards the proportion by weight of Australian ingredients in a food product (lasagne):

A pasta sauce is made in Australia from 70% Australian ingredients by ingoing weight.

If the pasta sauce is then used to make a lasagne in Australia for sale in Australia, 70% of the ingoing weight of the pasta sauce used in the lasagne is attributed to Australia and 30% to other countries.

The final Australian content of the lasagne will subsequently depend on the origin of its remaining ingredients. These ingredients may be Australian and/or imported (for example lasagne sheets, mince, milk, flour, cheese, seasoning).

The proportion of Australian ingredients in the lasagne would be the sum of all of the ingoing weights of ingredients attributable to Australia (including 70% of the ingoing weight of the pasta sauce) divided by the sum of the ingoing weights of all ingredients, expressed as a percentage.



## Section 12 – Accounting for water when determining country of origin and proportion of Australian ingredients

Subsection 12(1) describes the purpose of the section—that is, to explain how to account for water for the purposes of the calculation of the proportion by weight of the Australian ingredients of a food or the average proportion by weight of the Australian ingredients of a packaged food.

Subsection 12(2) determines that water added to food for the purposes of rehydration or reconstitution of a dried, concentrated or dehydrated ingredient or component of a food is deemed to take on the origin of that ingredient or component, regardless of its actual country of origin.

Subsection 12(3) provides that any water otherwise added as an ingredient of a food is taken to have the country of origin in which it was collected or harvested.

Example: Water in a fruit juice drink manufactured in Australia by addition of water (and other ingredients) to an imported fruit juice concentrate is considered to be imported water to the extent that it reconstitutes the concentrate. If the drink contained more water than necessary to reconstitute the imported fruit juice concentrate, the additional water would be taken to be Australian (if it was collected or harvested in Australia).

Subsection 12(4) describes how to account for water that forms part of a liquid packing medium of a food. Where the packing medium is not generally consumed, water that is an ingredient of the liquid packing medium is not included in the calculation of the proportion by weight of specified ingredients.

Examples: Pickling brine in a jar of pickled onions, and fruit syrup in a can of peaches. The brine is generally not consumed, whereas the syrup is or can be. The water in the brine is therefore excluded from the calculation of the proportion by ingoing weight of Australian ingredients, but is taken into account in the case of the calculation for the canned peaches.

Subsection 12(5) provides a non-exhaustive list of examples of liquid packing mediums in which water may or may not be considered when calculating the proportion by weight of specified ingredients, in accordance with subsection (4).

## Section 13 – Varying Australian content – methods for providing consumers with content information

Section 13 applies to optional standard marks for packaged food product set out in sections 21 and 23. These marks include statements about the average proportion by weight of Australian ingredients. This section provides examples of methods and identifying phrases by which businesses can communicate to consumers more accurate information about the actual percentage of Australian ingredients by ingoing weight in the food they are buying.

Methods include a contact telephone number, a website, or a barcode or similar device that can be scanned by a smartphone app or other software.

## **Part 2 - Country of origin labelling requirements**

### **Division 1 - Application of this Part**

Division 1 sets out the circumstances in which this Information Standard applies, and exemptions to the Information Standard, including the types of food and places of sale to which the standard does or does not apply. The application and exemption provisions are intended to closely mirror those applying in the Food Standards Code at the time the Information Standard commences.

#### **Section 14 – Application of this part – retail sales and other sales for which labelling is required**

Subsection 14(1) provides that foods for retail sale in Australia and foods suitable for retail sale in Australia without any further processing, packaging or labelling are covered by this Information Standard.

Subsection 14(2) provides exemptions to the application of this Part for certain foods and certain types of retail sale.

Exemptions are provided for:

- food sold to the public for immediate consumption by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals or medical institutions;
- food that is made and packaged on the premise where it is sold or delivered (for example, bread in a bakery);
- food that is delivered, packaged and be ready for consumption, as ordered by the consumer, other than sold from a vending machine (for example, home delivered pizza);
- food sold at a fund-raising event (for example a cake stall at a school fete); and
- food that is food for special medical purposes as defined by section 1.1.2—5 of the Food Standards Code.

Subsection 14(3) provides that foods sold in small packages—that is, in packages with a surface area of less than 100 cm<sup>2</sup>—are exempted from the graphical elements (logo and bar chart) otherwise required by the standard.

### **Division 2 – Labelling requirements**

#### **Section 15 – Packaged food, other than fresh fruit and vegetables in transparent packaging**

Subsection 15 (1) specifies that the section applies to food that is for sale—whether or not the sale is a retail sale—and is in a package that requires a label under a standard in the Food Standards Code. These foods may be priority or non-priority foods.

Section 15 (2) provides that if Division 3 applies (that is, sections 18 – 25 for food that is grown, produced, made or packaged in Australia), the label must meet the requirements of that Division. This subsection does not apply to imported food that has not been processed or packaged in Australia.

Subsection 15 (3) provides that in all other cases—that is, imported packaged food not processed or packaged in Australia—the label on the package must state the overseas country of origin of the food in the package or, if the food was packaged using food from more than one country, a statement indicating the country where the food was packaged and that the food is of multiple origins or is comprised of ingredients imported into that country.

This subsection represents the minimum requirement for country of origin statements on imported foods. Section 26 allows for a standard mark that includes a bar chart (but not a kangaroo logo) to

be used voluntarily where an imported food that was not grown, made or produced in Australia includes Australian ingredients.

Subsection 15 (4) provides that for food to which subsection 15(3) applies, excluding non-priority foods, the requisite statement must be in a clearly defined box. This will assist consumers to find country of origin statements more easily on food about which they most wish to know origin information, enabling them to make informed purchasing decision.

### Section 16 – Fresh fruit and vegetables in transparent packaging

This section effectively allows these foods to be treated as either packaged or unpackaged food in regards to the placement of mandated country of origin labelling statements and marks. As per current requirements under the Food Standards Code, such statements or marks may be on a label on the package or, alternatively, accompany the food or be displayed in connection with its sale.

Subsection 16 (1) specifies that the section applies to food for retail sale that is solely unprocessed fruit and vegetables, whether whole or cut, and that are displayed in a transparent packaging that does not obscure the nature or the quality of the products. All of these foods are priority foods.

Subsection 16 (2) provides that if Division 3 (that is, sections 18 – 25 for food grown, produced, made or packaged in Australia) apply, the labelling must meet the requirements of those provisions.

Subsection 16 (3) provides that for all other food—i.e. imported food—the labelling must state the (overseas) country of origin of the fruit or vegetable or, if the fruit or vegetables are from more than one country, must indicate that the fruit or vegetables are of multiple origins or are imported into that country.

### Section 17 – Unpackaged meat, fish, fruit and vegetables

Subsection 17(1) applies country of origin labelling requirements to a list of foods—fruit and vegetables, certain meats, or a mix of any of those foods—for retail sale that are displayed for sale other than in a package for example on display in a cabinet. All of these foods are priority foods.

Subsection 17(2) provides that if the provisions of Division 3 that apply to the food grown, produced or made (but not packaged) in Australia (that is, sections 18, 19, 20, or 24), the food must bear a label, or have labelling that accompanies the food or is displayed in connection with its sale, which meet the requirements of the provisions of Division 3.

Subsection 17(3) provides that labelling for all other food not grown, produced or made in Australia—that is, imported unpackaged foods—must state the (overseas) country of origin of the food or, if it is from more than one (overseas) country, must indicate that the product is of multiple origins or is comprised of ingredients imported into that country.

Subsection 17(4) provides that, notwithstanding subsection (2) or Division 3, when a single ingredient food (for example, a fruit or a vegetable) is displayed for sale in mixed bins that contain Australian and imported items, then the food complies with this section if the labelling that is displayed in connection with its sale indicates the mixed origin of the produce.

This means the logo and bar chart are not required for mixed bins that include some unpackaged Australian food. This is because there is no guarantee that the proportion of Australian food would remain constant.

Where the seller chooses to label individual items of unpackaged food with the country of origin, rather than the display, the label on each item of food will need to meet the requirements of subsection 2 or subsection (3), as appropriate.

Example: A basket in a shop with lemons from both Australia and Chile could indicate that the fruit in the basket is of mixed origins, or that it contains Australian and Chilean lemons. Alternatively, each lemon would need to be labelled with its country of origin in accordance with subsection (2) or (3), as appropriate.

Subsection 17(5) clarifies that this section also applies to the unpackaged foods listed in subsection 17(1) if they have been processed in certain ways, including having been cut, filleted, sliced, minced, pickled, cured, dried, smoked, frozen, or preserved by other means, or marinated or cooked.

### **Division 3 – Labelling requirements for food grown, produced, made or packaged in Australia**

This division provides specific country of origin marks that must be applied to food that has been grown, produced, made or packaged in Australia. Where certain criteria are met, it also provides for alternatives to those marks, and for additional information that must or that may be added to those marks. Each provision sets out which elements of the standard marks—kangaroo logo, bar chart and/or text statements—must or may be used in the mark. Where a mark does not require or permit an element, such as the kangaroo logo, that element must not be included in the mark. The Division covers requirements for:

- Food grown, produced or made in Australia exclusively from Australian ingredients (section 18);
- Other food made in Australia (section 19);
- Food grown, produced or made in Australia covered by section 18 or 19 that is exported and re-imported (section 20);
- Food made in Australia with varying Australian content that would otherwise be covered by section 19 – or that would be covered by sections 18 and 19 at different times of the year (section 21);
- Food packaged in Australia that includes food which was not grown, produced or made in Australia (section 22);
- Food packaged in Australia with varying Australian content that would otherwise be covered by section 22 (section 23);
- Non-priority food grown, produced or made in Australia that would otherwise be covered by section 18 or 19 (section 24); and
- Non priority food packaged in Australia that would otherwise be covered by section 22 (section 25).

Food to which sections 18–21 apply are required to carry the kangaroo logo, bar chart and a text statement. Food to which Sections 22 and 23 apply—foods that are packaged in Australia, but that contain food that was not grown, produced or made in Australia—must carry the bar chart and a text statement, but not the kangaroo logo.

### **Section 18 – Food grown, produced or made in Australia exclusively from Australian ingredients**

Section 18 provides four choices of standard marks—each combining all three elements, in either a vertical or horizontal format—for food grown, produced or made in Australia from exclusively Australian ingredients, where all or virtually all processing has occurred in Australia. For food that is grown or produced in Australia a number of variations of those terms are permitted.

Example: Tasmanian grown salmon would carry the kangaroo logo, the full (100%) bar chart and any one of the following text statements: ‘Grown in Australia’, ‘Australian Grown’, ‘Produced in Australia’, ‘Product of Australia’, ‘Produce of Australia’, ‘Australian Produce’, ‘Made in Australia from 100% Australian ingredients’, ‘Made in Australia from Australian ingredients’ or ‘Australian Salmon’.

## Section 19 Other food made in Australia

Section 19 provides standard marks for food grown, produced or made in Australia where not all the ingredients are exclusively of Australian origin. There are four types of standard mark, dependent on the extent to which the food contains Australian ingredients. Each mark combines all three elements in either a vertical or horizontal format. The kangaroo logo is required to indicate that the food was made in Australia. The bar chart and text statement reflect the extent to which the ingredients are of Australian origin.

Subsection 19(2) applies if some of the food's ingredients are at least partly of Australian origin. It requires that the bar chart is the bar chart from Section 10 that appropriately represents the proportion of the food's Australian ingredients; and that the text statement be in the form 'Made in Australia from at least P% Australian ingredients', where P is a whole number, ranging from 1–99, that is not more than the proportion of the food's Australian ingredients calculated according to subsection 11(1).

Subsection 19(3) provides alternative to the standard marks set out in subsection (2) for food that is made in Australia but that has less than 10 per cent Australian ingredients. In this case, the bar chart is filled to the 5% level and the text statement is in the form 'Made in Australia from less than 10% Australian ingredients'.

Subsection 19(4) applies to food that is made in Australia but has no Australian ingredients. In this case, an empty bar chart is required, and the text statement must either state that the food is 'Made in Australia from 0% Australian ingredients' or 'Made in Australia from imported ingredients'.

Subsection 19(5) permits an addition to the text statement that identifies the country of origin of one or more specific ingredients of the food, provided each such ingredient is exclusively from the country indicated.

Examples: A frozen pecan pie made in Australia from local ingredients except for American pecan nuts might state: 'Made in Australia from at least 95% Australian ingredients' (according to subsection 19(2)). The statement might also include the addition 'with pecan nuts from the USA' (according to subsection 19(5)).

An oriental stir-fry sauce made in Australia that has 6 per cent Australian ingredients has two options. The label can either state 'Made in Australia from at least 6% Australian ingredients' (according to subsection 19(2)) or 'Made in Australia from less than 10% ingredients' (according to subsection 19(3)). In either case, the label might include the addition 'with peas, corn and carrots from New Zealand' (according to subsection 19(5)).

Pork sausages made in Australia from fully imported ingredients, including Danish pork, could state 'Made in Australia from imported ingredients' or 'Made in Australia from 0% Australian ingredients' (according to subsection 19(4)). The label might include the addition 'with pork from Denmark' (according to subsection 19(5)).

## Section 20 – Food grown, produced or made in Australia that is exported and re-imported

Section 20 provides additional mandatory labelling requirements for food to which sections 18 or 19 apply where that food has been exported and re-imported after having undergone minor processing overseas. In these cases, the processing that occurred overseas must not qualify as substantial transformation and must not include addition of non-Australian ingredients to the food. The text statement in the standard mark is required to include a description, in brackets, of the processing that occurred overseas, in addition to the logo, bar chart and statement of proportion of Australian ingredients, as appropriate.

Example: The label for Australian macadamias that are sent to Fiji for shelling, sorting and packaging and are then returned to Australia for sale need to include in the statement that they were '(shelled, sorted and packaged in Fiji)'.

## Section 21 – Varying Australian content – food made in Australia

Section 21 provides alternative labelling options to those imposed by sections 18 and 19 for foods where there is variability in the percentage of ingredients that are Australian. For example, one or

more ingredients might be subject to reduced availability due to seasonality, leading to them being imported for certain periods of the year. Alternatively for reasons of price fluctuations, the producer may regularly switch between Australian and overseas suppliers of an ingredient.

To allow for such variability without imposing frequent label changes on the food producer, this section allows for claims of Australian origin that include a statement of the average proportion of the food's Australian ingredients based on a defined period (1–3 years – see subsection 11(2)). Such claims are valid for up to two years beyond the period upon which the average is based. However, to avoid consumers being misled, the provision includes a requirement for lot-specific information to be available off-label, with information on how to access such information provided to consumers in the standard mark (see section 13).

Subsection 21(1) specifies that the section applies to foods where the proportion by ingoing weight of the food's Australian ingredients varies over time.

Subsection 21(2) provides that the requirements of sections 18 and 19 are satisfied if the labelling includes: one of the standard marks described in this section; any information that is needed to enable a consumer to obtain information on the food's actual proportion of Australian ingredients, (such as a barcode or other device, batch number, lot, date of manufacture or date mark, in accordance with section 13); and the period used to calculate the average (if not provided on the labelling).

Subsection 21(3) details the appropriate standard marks for food where the average proportion by weight of the Australian ingredients is not less than 1 per cent. These labels include the kangaroo logo, an appropriate bar chart in accordance with section 10, a statement that the food was made in Australia, a statement that reflects the average proportion of Australian ingredients calculated in accordance with subsection 11(2), and a statement about how to find details on the actual proportion of Australian food in accordance with section 13.

Subsection 21(4) details optional standard marks for food where the average proportion by weight of the Australian ingredients is less than 10 per cent. These labels include the kangaroo logo, bar chart filled to the 5% level, a statement that the food was made in Australia, a statement that the food contains less than 10% Australian ingredients (calculated in accordance with subsection 11(2)), and a statement about how to find details on the actual proportion of Australian food in accordance with section 13.

Example: A pasta sauce containing 50% tomatoes (by ingoing weight) is made in Australia exclusively from Australian ingredients for nine months of the year, but uses imported tomatoes for three months of the year due to seasonal availability of tomatoes.

Based on a 1 year 87.5% average Australian content, subsection 21(3) allows the producer to label the product with a standard mark that includes an average Australian content statement along the following lines: "Made in Australia – ingredient sources vary – average 87% Australian ingredients. Visit [website] for details".

The standard mark would also include the kangaroo logo and a bar chart filled to the 80% level.

The website address would enable a consumer to find out that the particular batch of the product they purchased, or were considering purchasing, had either 100% or 50% Australian ingredients, as the case may be, and would indicate the time period upon which the average content statement was based.

## Section 22 – Food packaged in Australia that includes food not grown, produced or made in Australia

Section 22 provides for the use of a standard mark on the labels of food packaged in Australia where some of the food in the package has not been grown, produced or made in Australia. The standard mark can state that the food is packed or packaged in Australia, but it cannot include the kangaroo logo because it contains food that was not grown, produced or made in Australia.

Subsection 22(1) specifies that the section applies to food packaged in Australia where some of the food in the package has not been grown, produced or made in Australia.

Subsection 22(2) applies if at least 1 per cent of the food in the package is of Australian origin. It requires that the bar chart is the bar chart from Section 10 that appropriately represents the proportion of the food's Australian ingredients; and that the text statement be in the form 'Packed in Australia from at least P% Australian ingredients', where P is a whole number, ranging from 1–99, that is not more than the proportion of the food's Australian ingredients calculated according to subsection 11(1).

Example: For rice grown in Australia packaged with less than 10 per cent of imported wild rice, the text statement in the standard mark may state 'Packaged in Australia from at least 90% Australian ingredients'.

Subsection 22(3) provides an alternative to the subsection (2) standard mark for food that is packed in Australia but has less than 10 per cent Australian ingredients. In this case, the standard mark includes a bar chart filled to the 5 per cent level and the text statement in the form 'Packed in Australia from less than 10% Australian ingredients'.

Example: For organic bircher muesli with 8 per cent dried organic fruit grown in Australia and 90 per cent organic cereals from Switzerland, the label may state that the food was 'Packaged in Australia from at least 8% Australian ingredients' or 'Packed in Australia from less than 10% Australian ingredients'.

Subsection 22(4) provides that where none of the food in the package has been grown, produced or made in Australia and the ingredients originate exclusively from another country, the labelling must include a statement that the food was grown, produced or made in that country, as appropriate. The subsection alternatively permits use of a standard mark with an empty bar chart and a text statement that includes the required country of origin statement along with a statement that the food was packed in Australia. The kangaroo logo is not permitted.

Example: For quinoa grown in Peru and imported in bulk and packaged in Australia, the text statement could read 'Peruvian quinoa, packaged in Australia', as long as the standard mark included the empty bar chart.

Subsection 22(5) provides that where none of the food in the package has been grown, produced or made in Australia and the ingredients originate in more than one overseas country, the labelling must include a standard mark with an empty bar chart and a text statement that indicates that the food was packed in Australia from imported ingredients or, alternatively, from 0 per cent Australian ingredients.

Example: For organic bircher muesli with 5 per cent dried organic fruit grown in America, 5 per cent dried cranberries from Canada and 90 per cent organic cereals from Switzerland, the standard mark would include the empty bar chart and could state that the food was 'Packaged in Australia from imported ingredients'.

Subsection 22(6) permits an addition to the text statement in the standard mark required or permitted under section 22 that identifies the country of origin of one or more specific ingredients of the food, provided each such ingredient is exclusively from the country indicated.

Example: 'Packed in Australia from at least 80% Australian ingredients with peanuts, almonds and macadamia nuts from Australia and walnuts from the United States of America.'

'Packed in Australia from imported ingredients with mangoes from the Philippines and cranberries from Canada.'

## Section 23 – Varying Australian content – food packaged in Australia

Section 23 provides alternative labelling options to those imposed by section 22 for foods packaged in Australia where the proportion by weight of the food's Australian ingredients varies over time. The labelling options are similar to the alternative marks provided in section 21 for food made in Australia.

Subsection 23(1) specifies that the section applies to food to which section 22 applies but for which the proportion by weight of the Australian ingredients varies over time.

Subsection 23(2) provides that requirements of section 22 are satisfied if: the labelling includes one of the standard marks described in this section; any information that is needed to enable a consumer to obtain information on the food's actual proportion of Australian ingredients (such as a barcode or other device, batch number, lot, date of manufacture or date mark, in accordance with section 13); and the period used to calculate the average (if not provided on the labelling).

Section 23(3) details the appropriate standard marks for food where the average proportion by weight of the Australian ingredients is at least 10 per cent. These labels include an appropriate bar chart in accordance with section 10, a statement that the food was packed or packaged in Australia, a statement that reflects the average proportion of Australian ingredients calculated in accordance with subsection 11(2), and a statement about how to find details on the actual proportion of Australian food in accordance with section 13. The kangaroo logo is not permitted.

Subsection 23(4) details optional standard marks for food where the average proportion by weight of the Australian ingredients is less than 10 per cent. These labels include a bar chart filled to the 5 per cent level, a statement that the food was packed or packaged in Australia, a statement that the food contains 'less than 10% Australian ingredients' (calculated in accordance with subsection 11(2)), and a statement about how to find details on the actual proportion of Australian food in accordance with section 13. The kangaroo logo is not permitted.

#### Section 24 – Non-priority food grown, produced or made in Australia

Section 24 provides that non-priority food (as defined in section 9) that was grown, produced or made in Australia is taken to comply with a requirement under section 18 or 19 if, instead of a specified mark, the labelling includes a statement that the food was grown, produced or made in Australia, as appropriate. There is no requirement: to indicate the proportion of Australian ingredients; to provide a logo or bar chart; or to provide the statement in a clearly defined box.

Example: Anzac biscuit made in Australia from any combination of Australian and/or imported ingredients need only provide a legible country of origin statement on the label that indicates that the biscuits were made in Australia.

#### Section 25 – Non-priority food packaged in Australia

Section 25 provides that non-priority food that was packaged in Australia using food that was not exclusively grown, produced or made in Australia is taken to comply with a requirement under section 22 if, instead of a specified mark, the labelling includes:

- a statement of the country of origin of the food if the food is from a single country (it may optionally include a statement that the food was packaged in Australia); or
- if the food is from more than one country, a statement that the food was packaged in Australia and that indicates the food or its ingredients are from multiple origins or was imported.

There is no requirement: to indicate the proportion of Australian ingredients; or bar chart; or to provide the statement in a clearly defined box. The kangaroo logo is not permitted.

### **Division 4 – Imported foods with Australian ingredients**

#### Section 26 – Imported foods with Australian ingredients

As specified in subsection 26(1), section 26 provides for optional labelling of imported foods—that is, foods that cannot claim to have been grown, produced, made or packaged in Australia—with a standard mark that, in addition to a statement about the country in which the food was grown, produced, made or packaged, includes a bar chart and statement of the proportion by weight of the food's Australian ingredients. Such standard marks cannot include the kangaroo logo because the food is not grown, produced or made in Australia.



Subsection 26(2) provides for the standard mark on the label, where the food is made overseas from 100 per cent Australian ingredients, to include a full bar chart and a statement that the food is ‘made in the [specified country] from 100 per cent Australian ingredients’.

Example: Cheese made in New Zealand from 100% Australian ingredients might carry a standard mark with full bar chart and a statement that reads ‘Made in New Zealand from 100% Australian ingredients’.

Subsection 26(3) provides for the standard mark on the label, for food made or packaged overseas with at least 1 per cent Australian ingredients by weight, to include the bar chart from Section 10 that appropriately represents the proportion of the food’s Australian ingredients; and a text statement that indicates that the food was made (or packaged, as appropriate) in the specified country from at least P% Australian ingredients, where P is a whole number, ranging from 1–99, that is not more than the proportion of the food’s Australian ingredients calculated according to subsection 11(1).

Example: Mixed nuts packaged in Indonesia using 20 per cent Australian macadamias might carry a standard mark with 20 per cent bar chart and a statement that reads ‘Packed in Indonesia from at least 20% Australian ingredients’.

Section 26(4) provides an alternative labelling option for food grown, produced, made or packed overseas where less than 10 per cent of the ingredients by weight is Australian. The labelling may include a standard mark including the 5 per cent filled bar chart and a text statement indicating that the food has been grown, produced, made or packed in the relevant country from ‘less than 10% Australian ingredients’.

Section 26(5) permits an addition to the text statement in a standard mark permitted under section 26 that identifies the country of origin of one or more specific ingredient of the food, provided each such ingredient is exclusively from the country indicated.

Example: A text statement included as part of a permitted standard mark under section 26 might state that the product is ‘Produced in New Zealand from less than 10% Australian ingredients with New Zealand lamb and Australian rosemary and mint’.

### **Part 3 – Other sales where country of origin information must be provided**

#### **Section 27 – Sales for which labelling is not required but in relation to which information must be made available**

Section 27 enables an Australian retailer or food processor who purchases foods or ingredients for on-sale to request and obtain from the original seller (in writing, if requested) any country of origin information needed to meet the requirements of this Information Standard.

### **Part 4 – Legibility requirements, prohibitions and providing additional information**

#### **Section 28 – General legibility requirements**

Section 28 provides general legibility requirements for marks and statements required or permitted under this Information Standard, including minimum type sizes for such information when it accompanies unpackaged food for sale or is displayed in connection with its sale.

The section also notes that, to ensure consistency with the Information Standard, a style guide has been published on the website of the Department of Industry, Innovation and Science. The Style Guide provides guidance on how the labels should be placed on products, their packaging or displays, and how those labels should look, including any colour specifications.

This guidance is based on the requirements of this information standard.

#### **Section 29 – Restrictions on other uses of logo and bar chart in relation to food sold in Australia**

Section 29 protects the use of the kangaroo logo and the bar chart in relation to food sold in Australia, including in off-label uses such as displays, brochures and websites. It requires the use of the bar chart and/or logo in these circumstances to comply with Part 2 of the Information Standard, whether or not Part 2 applies.

For example, if the kangaroo logo or a bar chart is used voluntarily:

- on a website or in a brochure when advertising food for sale in Australia;
- on unpackaged food sold in Australia that is not required to carry a country of origin label under subsection 17(1); or
- on a menu relating to food sold in a restaurant in Australia (exempted from the application of Part 2 of this Information Standard under subsection 14(2)),

the kangaroo logo or bar chart must be used as part of a standard mark that complies with the requirements of Division 3 or Division 4 of the Information Standard.

While the Information Standard does not seek to restrict the use of the kangaroo logo or bar chart on food that is not sold in Australia, such food may still carry a standard mark that meets the requirements of Division 3 or Division 4 of this Information Standard.

Where the kangaroo logo is used on a food product sold overseas, but it does not meet the requirements set out in Division 3 of this Information Standard, it will need to meet the requirements for the Australian Made Australian Grown certification trade mark managed by Australian Made Campaign Limited (see also section 5).

The use of the kangaroo logo on non-food products is also governed by the requirements of the Australian Made Australian Grown certification trade mark managed by Australian Made Campaign Limited. This Information Standard does not seek to restrict the use of the kangaroo logo or bar chart on these products (see also section 5).

### Section 30 – Provision of additional material not prevented

Section 30 provides that nothing in the Information Standard is intended to prevent additional information on country or region of origin to be provided on food labelling or in other ways, as long as such representations and claims comply with Australian Consumer Law provisions regarding false or misleading representations and misleading or deceptive conduct.

### Section 31 – Record keeping

Section 31 requires those selling food in Australia to keep the records they relied on to support country of origin representations about the food or its ingredients for at least 12 months after the sale of the food. Unpackaged single ingredient food is exempted from this requirement.

If the food sold in Australia carries an average proportion of Australian ingredients label, the records used to calculate the average under subsection 11(2) (as well as the actual proportion of Australian ingredients provided to consumers in accordance with sections 13 and 21 or 23) will need to be kept for 12 months from the sale of that food.

### Section 32 – Provision of information to the regulator

Section 32 provides that, on request, the seller of the food must provide to the regulator—for example, the Australian Competition and Consumer Commission (ACCC) or a state and territory consumer affairs regulator—any information that is relevant to an assessment of whether the sale complied with this Information Standard and that the seller holds or is able to access at the time of the request. This requirement includes, but is not limited to, records that must be kept under section 31, if any.

Note: See section 2 of the Australian Consumer Law for the meaning of ‘regulator’.

## **Part 5 – Transition provisions**

### **Section 33 – Food that complies with the Food Standard Code country of origin labelling requirements**

Section 33 provides that, during the transitional period of 24 months, foods that fall under sections 15, 16 or 17 are allowed to continue to be labelled under the Food Standards Code as it stood immediately before the day of commencement of the Information Standard.

Subsections 33 (2) and (3) provides for food that is labelled and already in stock or trade before the end of the transition period. If labelled correctly according to the Food Standard Code before or during the transition period, such products may remain on sale throughout the transition period, and after it ends.

Subsection 33 (4) allows the kangaroo logo to continue to be used during the transition period by a person in accordance with the licence provided by the Australian Made Campaign Limited.

Subsection 33 (5) provides for the interpretation of the term ‘commencement day’ and for when a label is considered to have been attached to food.

## **Dictionary**

The Dictionary provides for general definitions, the meaning of medical institutions and the definitions of particular foods—that is, non-priority foods and other foods.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Country of Origin Food Labelling Information Standard 2016**

This Information Standard is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Regulation**

The Regulation prescribes country of origin labelling requirements for food for human consumption sold in Australia.

#### **Human rights implications**

This Regulation does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Regulation is compatible with human rights as it does not raise any human rights issues.