

## **EXPLANATORY STATEMENT**

### ***Country of Origin Food Labelling Amendment (Packed in Australia) Information Standard 2016***

#### **Authority**

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

#### **Background**

The Country of Origin Food Labelling Information Standard 2016 (the Information Standard) commenced on 1 July 2016 (with a two year transition period) to give effect to a key element of a suite of regulatory changes aimed at addressing consumer dissatisfaction with the country of origin labelling framework. The Information Standard gives effect to a decision made by Australian Governments on 31 March 2016 through the Legislative and Governance Forum on Consumer Affairs (the Forum). That decision was based on a Regulatory Impact Statement (RIS) (<http://ris.dpmc.gov.au/2016/04/22/country-of-origin-labelling-for-food-2/>) which built on consumer research, stakeholder consultations and an analysis of regulatory options and their costs and benefits.

As set out in 5.2.2b of the RIS, one objective of the reforms was to ensure that food grown, produced or made in one country and packed in another (with or without minor processing, but without substantial transformation) would, first and foremost, require labelling with the country in which it was grown, produced or made, not just where it was packed. Section 22 of the Information Standard was intended to reflect this policy with respect to food packed in Australia.

After the Information Standard was made, but before it commenced, the Department of Industry, Innovation and Science (the Department) found that section 22 did not adequately reflect this policy. For food products that were made in a single overseas country with ingredients from one or more other countries, and that were subsequently packed in Australia, section 22 required a standard mark that included a statement that the food was packed in Australia and an indication of the proportion of Australian ingredients through text and a bar chart. It did not require the country in which the food was made to be included in the standard origin mark.

In June 2016, before the Information Standard commenced, the Department notified stakeholders that an amendment to section 22 of the Information Standard was required to reflect the policy intent adopted by Australian governments.

In addition to the need to amend section 22 of the Information Standard, the Department also identified some editorial changes that were required.

#### **Purpose and operation**

The purpose of this amending Information Standard is to make changes to sections 22 and 23 (dealing with imported food packaged in Australia), and section 26 (dealing with imported foods with Australian content) to better reflect the decision made by the Legislative and Governance Forum on Consumer Affairs on 31 March 2016, and to correct typographical errors.

#### **Consultation**

The Forum and other stakeholders were notified of the need to make amendments to section 22 in June 2016. Given the amendments are aimed at better reflecting the policy underpinning the 31 March 2016 decision by the Forum, they are considered to be minor or inconsequential.

## **Detailed explanation of the Instrument's provisions**

### **Part 1—Preliminary**

#### Section 1—Name of Instrument

This section provides the title of the amendment instrument: *Country of Origin Food Labelling Amendment (Packed in Australia) Information Standard 2016* (the amending instrument).

#### Section 2—Commencement

This section provides that the amending instrument commences the day after it is registered.

#### Section 3—Authority

This section provides that the amending instrument is made under section 134 of the Australian Consumer Law.

#### Section 4 - Schedules

This section provides for the amendment of each instrument specified in the Schedule to this instrument, as set out in the Schedule.

### **Schedule 1 - Amendments**

#### Section 1—Section 6

This section repeals Section 6 of the Country of Origin Food Labelling Information Standard 2016 (the Information Standard) and replaces it with a revised section 6. Section 6 provides an outline of the entire Information Standard. The new outline reflects changes to other sections and corrects typographical errors. The revised section also reflects that the requirement for a country of origin statement to be in a box applies to imported priority food only when it is packaged for retail sale.

#### Section 2—Example in subsection 8(2)

This section corrects a typographical error.

#### Section 3—Subsection 18(2)

This section adds an additional example of an acceptable format for a label to meet the requirements of subsection 18(2) of the Information Standard.

#### Section 4—Example in section 19

This section corrects typographical errors in section 19 of the Information Standard.

#### Section 5—Note in section 20

This section corrects a typographical error in section 20 of the Information Standard.

## Section 6—Section 22

Section 22 has been omitted and replaced. This is because the original section did not fully reflect the 31 March 2016 decision by Australian Governments through the Legislative and Governance Forum on Consumer Affairs (the Forum) on reforms to country of origin labelling. In particular, it did not require food that was made in a single overseas country with ingredients from one or more other countries, and subsequently packaged in Australia, to state first and foremost where it was made. It required a standard mark that included a statement that the food was packed in Australia and an indication of the proportion of Australian ingredients through text and a bar chart – but did not include the country in which the food was made. This amendment rectifies this oversight.

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.

<b>Package contains</b>	<b>Ingredients</b>	<b>Relevant provision</b>
Food grown, produced or made entirely in a single overseas country	No Australian ingredients	Subsections 5 and 9
Food made in a single overseas country with Australian ingredients	All Australian ingredients	Subsection 2
	Some Australian ingredients	Subsections 3, 4 and 9
Food from two or more different countries that is combined for packing without substantial transformation	Some Australian ingredients	Subsections 6, 7 and 9
	No Australian ingredients	Subsections 8 and 9

Subsection 22(1) limits the application of this section to food products packaged in Australia that are not covered by sections 18 and 19.

Subsection 22(2) applies to products packed in Australia but made in a single overseas country (not Australia), the ingredients of which are exclusively of Australian origin. The labelling for these products must include a statement, in a clearly defined box, that the food was made in that country. Alternatively, a standard mark can be used, consisting of a full bar chart from section 10 and the text statement ‘Made in (Country) from Australian ingredients’ or ‘Made in (Country) from 100% Australian ingredients’. The phrase ‘Packed in Australia’ may be added, and ‘Packaged’ may be used in place of ‘Packed’.

*Example* Australian fruit is exported to Singapore and converted into juice before being shipped back to Australia in bulk for packaging here. The label could state in a clearly defined box that it was ‘Made in Singapore’. Alternatively, a standard label could be used that includes a fully shaded bar chart and a statement like ‘Made in Singapore from 100% Australian ingredients Packaged in Australia’, all in a clearly defined box. The label would **not** include the kangaroo logo – even though all of the ingredients are Australia, the juice was made in Singapore.

Subsection 22(3) applies to products packed in Australia but made in a single overseas country (not Australia), where some of the ingredients are of Australian origin. The labelling for these products must include a statement, in a clearly defined box, that the food was made in that country. Alternatively, a standard mark may be used, consisting of a bar chart filled to the appropriate mark (see Section 10) and the text statement ‘Made in (Country) from at least P% Australian ingredients’. The phrase ‘Packed in Australia’ may be added, and ‘Packaged’ may be used in place of ‘Packed’.

Example: Australian wheat exported to Malaysia where it is used to manufacture dried noodles before being returned to Australia for packaging could use a label stating ‘Made in Malaysia’ in a clearly defined box. Alternatively, the label could include a bar chart filled to 90% and the text statement ‘Made in Malaysia from at least 90% Australian ingredients. Packed in Australia’. The label would **not** include the kangaroo logo.

Subsection 22(4) provides an alternative standard mark for products packed in Australia but made in a single overseas country (not Australia), with less than 10 per cent Australian ingredients. This mark includes a bar chart filled to five per cent (see section 10) and the statement ‘Made in (Country) from less than 10% Australian ingredients’. The phrase ‘Packed in Australia’ may be added, and ‘Packaged’ may be used in place of ‘Packed’.

Subsection 22(5) applies to products packed in Australia but grown, produced or made in a single overseas country (not Australia), where all of the significant ingredients are from that country and/or one or more other overseas countries (not Australia). The labelling must include a statement, in a clearly defined box, that the food was grown, produced or made in that country. Alternatively, a standard mark can be used, including an empty bar chart and the statement ‘Grown/Produced/Made in (Country)’, ‘Product/Produce of (Country)’ ‘(Country) Grown/Produce/Product/Produced/Made’, or ‘(Country) (type of food)’, as appropriate, with an empty bar chart and the statement ‘Packed in Australia’. ‘Packaged’ may be used in place of ‘Packed’.

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. The label would **not** include the kangaroo logo.

Subsection 22(6) applies to products packed in Australia but *not* grown, produced or made exclusively in a single country, where some of the ingredients are of Australian origin – that is, where food from two or more different countries, including Australia, are combined and packaged without substantial transformation. Subject to subsection 22(7), the labelling must include a bar chart filled to the appropriate level (see section 10) and the statement ‘Packed in Australia from at least P% Australian ingredients’. ‘Packed’ may be replaced by ‘Packaged’.

Example: For rice grown in Australia that is packaged in Australia together with less than 10 per cent imported wild rice, the text statement in the standard mark may state ‘Packaged in Australia from at least 90% Australian ingredients’. The label would **not** include the kangaroo logo – the imported rice in the package was not substantially transformed in Australia by simply combining it with Australian rice and packaging it in Australia.

If the packaged food contains less than 10 per cent Australian ingredients, subsection 22(7) provides an alternative standard mark. The labelling may include a standard mark, consisting of a bar chart filled to five per cent (see section 10) and the statement ‘Packed in Australia from less than 10% Australian ingredients’. ‘Packed’ may be replaced by ‘Packaged’.

Example: A pack of frozen lightly battered fish is packed in Australia using 8% Australian tempura batter and 92% imported fish by ingoing weight. The label could carry a standard mark that includes, within a clearly defined box, a bar chart filled to 5% and a statement like ‘Packed in Australia from less than 10% Australian ingredients’ (rather than a similar standard mark with a statement like ‘Packed in Australia from at least 8% Australian ingredients’, as would otherwise apply under subsection 22(6)). The label would **not** include the kangaroo logo – simply coating imported fish with a local tempura batter and packaging it in Australia does not make the imported fish Australian.

Subsection 22(8) applies to products packed in Australia but *not* grown, produced or made in a single country, and none of the ingredients are of Australian origin – that is, the package contains food that was grown, produced or made in two or more different countries, and none of the food is Australian or contains Australian ingredients. The labelling must include a standard mark consisting of an empty bar chart (see section 10) and the text statement ‘Packed in Australia from

0% Australian ingredients’ or ‘Packed in Australia from imported ingredients’. ‘Packed’ may be replaced by ‘Packaged’.

Example: A frozen mixed vegetables is packed in Australia using vegetables grown in New Zealand and the United States. The label must carry a standard mark that includes, within a clearly defined box, an unfilled bar chart and a statement like ‘Packed in Australia from imported ingredients’. The label would **not** include the kangaroo logo.

Subsection 22(9) permits an addition to the text statement in the standard mark required or permitted under section 22, other than marks in subsection 22(2), which 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: ‘Packed in Australia from at least 80% Australian ingredients with peanuts, almonds and macadamias from Australia and walnuts from the United States of America’. The label would **not** include the kangaroo logo.

‘Packed in Australia from imported ingredients with mangoes from the Philippines and cranberries from Canada’. The label would **not** include the kangaroo logo.

### Section 7—Subsection 23(1)

This section adjusts subsection 23(1) of the Information Standard to better reflect the policy agreed by Australian Governments on 31 March 2016. The amendment prevents food grown, produced or made in a single overseas country from using a label to indicate variance of ingredient origin over time. This is because section 23 provides for ‘average’ label alternatives to section 22 labels that require a statement that the food was packed in Australia and an indication of the minimum proportion of Australian ingredients through text and a bar chart. For food grown, produced or made in a single overseas country and packed in Australia, section 22 requires, as a minimum, that the label include a statement about where it was grown, produced or made – a statement that the food was packed in Australia and an indication of the proportion of Australian ingredients through text and a bar chart are optional.

### Section 8—Subsection 23(3)

This section amends typographical errors in subsection 23(3) of the Information Standard.

### Section 9—Subsection 26(3)

This section corrects typographical errors in subsection 26(3) of the Information Standard.

### Section 10—Example in subsection 26(5)

This section amends typographical errors in the example included in subsection 26(5) of the Information Standard.

### Section 11—Subsection 29(2)(a)

This section amends typographical errors in subsection 29(2)(a) of the Information Standard.

### Section 12—Section 1 of the Dictionary

This section corrects typographical errors in the definitions of food and sell in the Dictionary of the Information Standard.

Section 13—Section 2 of the Dictionary

This section corrects typographical errors in the Dictionary of the Information Standard.

Section 9—Subsection 26(3)

This section corrects typographical errors in the definitions of confectionary, soft drinks and sports drinks, and sugars in the Dictionary of the Information Standard.

## **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 Amendments (Packed in Australia) Information Standard 2016**

This instrument 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 Instrument**

The Instrument prescribes amendments to country of origin labelling requirements for food for human consumption sold in Australia.

#### **Human rights implications**

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

#### **Conclusion**

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

**The Minister for Industry, Innovation and Science, the Honourable Greg Hunt MP**