

COUNTRY OF ORIGIN LABELS – A FRESH LOOK AT FOOD LABELLING

Does your packaged food meet the new country of origin labelling (CoOL) requirements?

Food packaged after 1 July 2018 for sale in Australia must meet the CoOL requirements under the Australian Consumer Law Country of Origin Food Labelling Information Standard (**Standard**).

Existing stock with old labels may be sold until the end of its shelf life.

However, food businesses risk considerable penalties if labels applied after 1 July 2018 have not been satisfying the CoOL requirements. For corporations, the maximum penalty for a contravention is the greater of:

1. \$10,000,000
2. If the court can determine the value of the benefit that the company, and any related body corporate to that company, have obtained directly or indirectly and that is reasonably attributable to the contravening act or omission - 3 times the value of that benefit; and
3. If the court cannot determine the benefit obtained from the contravention, 10% of the annual turnover of the company in the 12 month period ending at the end of the month in which the contravening act or omission occurred or started to occur.

CoOL requirements have changed in relation to the:

1. 'Substantial transformation test' and how this applies to 'made in' origin claims; and
2. Mandatory labels for imported foods and packaged foods 'grown', 'produced', 'made' or 'packaged' in Australia.

WHAT IS THE SUBSTANTIAL TRANSFORMATION TEST AND WHY IT MATTERS

Food grown, or wholly produced, in a country is clearly 'made in' that country. No additional tests are required to make a claim of origin. But what about food of mixed origins, with imported ingredients or components?

The substantial transformation test is used to justify a claim that a food is 'made in' a country. If a food meets this test and is labelled according to the Standard, the producer can rely on the 'safe harbour defence' to lawfully claim the food was made in a country, even if it was technically made in several countries.

GROWN, PRODUCED, MADE – ANY DIFFERENCE?

'Grown and produced in'

Under the Standard, food is grown or produced in a country if:

1. Each significant ingredient or component was grown, or originated in that country; and
2. All, or virtually all, processing occurred in that country.

'Made in'

Food is made in a country if it underwent its last substantial transformation in that country.

Substantial transformation is defined as:

*'where, as a result of one or more processes undertaken in that country, the goods are **fundamentally different in identity, nature or essential character** from all of their ingredients or components that were imported into that country.'*

Minor processing, such as slicing, freezing, coating or crumbing food, is not considered 'substantial transformation'.

Processes changing the form or appearance of the goods, for example, mixing ingredients or adding colouring, are also insufficient to be regarded as substantial transformation.

A recent case has provided further guidance on this test. In Nature's Care Manufacture Pty Ltd v Australian Made Campaign Limited, Nature's Care claimed it was entitled to use the Australian made labelling because the encapsulation of fish oil and vitamin D3 occurred in Australia. The court held, however, that the mere encapsulation of the capsules in Australia (which contained vitamin D3 imported from China and fish oil imported from Chile) did not mean the capsules were last substantially transformed in Australia.

When comparing the finished capsules with the imported fish oil and vitamin D3, the court found the only differences were:

1. The contents were simply mixed together and encapsulated to provide an easy dosage form; and
2. The encapsulation concealed the unpleasant flavour of fish oil and reduced its oxidation and degradation.

LABELLING OF IMPORTED PACKAGED FOODS

The labels of all packaged foods imported into Australia must indicate:

1. The country of origin of the food; or
2. If the ingredients come from more than 1 country:
 - a. The country where the food was packaged, if applicable; and
 - b. That the food is of multiple origins.

Priority foods must have this information in a clearly defined box on the label. For example:



Priority foods are all foods excluding:

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

PROUDLY AUSTRALIAN

Priority foods grown, produced, made or packaged in **Australia** must also use the mandatory labels under the Standard.

Grown, produced or made in Australia

For priority foods grown, produced or made in Australia, labels must contain the following 3 elements:

1. Kangaroo logo
2. Proportion of Australian ingredients illustrated in a bar chart
3. Description of the percentage of Australian ingredients

For example:



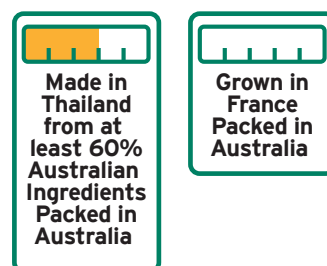
Priority foods containing exclusively Australian ingredients can use a simplified version of the label, such as:



Non-priority foods grown, produced or made in Australia must include a statement to that effect.

PACKAGED IN AUSTRALIA

Where a priority food is packaged in Australia, the proportion of Australian ingredients must be indicated using a bar chart in the form required under the Standard. For example:



WHAT SHOULD YOU BE DOING?

Food producers and importers should seek advice to ensure compliance with the Standard. There are great resources in the **CoOL Library** and our team at **Bespoke** is here to help.



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