

Country of Origin Labelling Presentation Transcript

SLIDE 1: Country of Origin Labelling for Food Business Forum

- Welcome to this presentation for businesses on country of origin labelling for food by the Department of Industry, Innovation and Science.
- This presentation will provide guidance and general advice to you regarding the changed country of origin labelling requirements but should not be regarded as legal advice.
- Individual businesses remain responsible for determining whether their labels comply with the new requirements. If you are unsure, it might be wise to seek independent legal counsel.

SLIDE 2: Forum Agenda

- This presentation will have two parts, beginning with details of the new requirements and exploring the Government's online tool for origin labelling. The tool will help you think about the kind of information you need to consider when labelling your products.
- The second part of the presentation will focus on compliance and enforcement and will be undertaken on behalf of the Australian Competition and Consumer Commission or the ACCC.
- A copy of this presentation is available online.
- The topics being covered in this presentation are extensively covered by guidance material available online. Details of where this guidance can be found will be covered later in this presentation.

SLIDE 3: What are the new requirements?

- On 31 March 2016, the Council of Australian Governments agreed a package of proposed reforms for country of origin labelling for food sold in Australia.
- This presentation will cover:
 - The key elements of the Country of Origin Food Labelling Information Standard 2016;
 - The amendments to the Australian Consumer Law; and
 - Resources that are available for business. For example, the country of origin labelling online tool, a Style Guide, on-line frequently asked questions, fact sheets and ACCC Guidance material.

SLIDE 4: Application of the Information Standard

- The new country of origin labelling requirements commenced on 1 July 2016.
- A two year transition period was provided, ending on 30 June 2018.
- For the remaining 15 months of the transition period, products can be labelled either according to the new rules, or the rules currently in the Food Standards Code.
- From 1 July 2018, all products must be labelled in accordance with the new Information Standard. The origin rules currently in the Food Standards Code will be removed from that date.
- All stock in trade can continue to be sold including after the transition period.
- The scope of food products covered by mandatory country of origin labelling requirements under the Food Standards Code is retained in the Information Standard.

- All foods that are currently required to label for country of origin, under the Food Standards Code, will continue to require a country of origin statement, with or without a defined box.
- Food currently sold without an origin label will continue to not need a label. This includes :
 - Food sold for immediate consumption or made on the premises where it is sold - in places such as restaurants, cafes, bakeries – as is currently the case;
 - Food packaged, delivered and ready for consumption such as home delivered pizza;
 - Food sold in canteens and hospitals and the like; and
 - Food sold at fund raising events.

SLIDE 5: Scope of the International Standard

- As part of the market research undertaken when developing the reforms, consumers were asked to rank the importance of country of origin information for nineteen food groups.
- The foods consumers most cared about were subsequently categorised as priority foods. However, there is no priority food list. Priority food is everything that is not on the non-priority food list.
- Australian priority foods are required to carry additional information in their label: the kangaroo logo, the bar chart and accompanying text. Together these three elements form the “Mark”.
- All information for priority foods, Australian or imported, needs to be in a defined box.
- A “Mark” comprises different elements depending on the country of origin claim.

SLIDE 6: Scope of the International Standard

- The rules for non-priority foods are no different to those under the Food Standards Code.
- Non-priority food is not required to provide the full mark but does need to provide a textual statement of origin only. It does not need to be in a defined box.
- These products can carry the mark voluntarily, but must comply with the same rules for use as priority foods.
- **For the remainder of this presentation, the focus is on priority foods and the “marks”.**

SLIDE 7: Origin Claims – Key Definitions

- There is a significant change to the criteria for making a ‘Grown or Produced in Australia’ claim under the new rules.
- If they are being used as part of the new Mark, they can only be applied to products with 100% Australian ingredients.
- This change is based on the strong consumer preference for products using these claims to contain nothing less than 100% Australian content.
- The change makes ‘Grown in and Product of Australia’ premium claims when used with the mark.
- For non-priority foods that do not voluntarily use the new Mark, and for imported foods, the rules for making a grown in or product of claim are unchanged.
- So for example, to be eligible for a Product of New Zealand claim, only the significant ingredients of the food would need to be of New Zealand origin. All or virtually all processing would need to take place in New Zealand.

SLIDE 8: Origin Claims – Key Definitions cont.

- Made in claims apply to products last substantially transformed in a single country.
- Products using a ‘made in’ claim may or may not contain ingredients from the country claimed as origin.
- For example, a cake baked in Australia from entirely imported ingredients would still be eligible for a ‘Made in Australia’ claim, as it was last substantially transformed in Australia.

- For products that cannot claim to have been grown, produced or made in a single country, the 'Packed in' claim applies. This claim should usually name the country where the product was packed, and indicate that it is of multiple origins.
- For example, a package of mixed nuts might be packed in Canada with nuts sourced from Canada, Brazil and Australia. As the product was not substantially transformed, it could be labelled as 'Packed in Canada with ingredients of multiple origins'.

SLIDE 9: What does 'Made in' and 'substantial transformation' mean...

- As noted, food can be described as having been made in a country if it underwent its **last** substantial transformation in that country.
- The definition of substantial transformation was recently amended by the *Competition and Consumer Amendment (Country of Origin) Act 2017*, which is now in force.
- The old definition allowed for changes in nature, form and appearance to qualify as substantial transformation. Under the new definition, the imported ingredients must change nature, identity or essential character to be considered substantially transformed.
- So a food is said to have been substantially transformed if the end product is something fundamentally different from its imported ingredients.
- As the example on the slide notes, making mozzarella from imported ingredients in Australia would be considered substantial transformation, as the end product is fundamentally different to the imported ingredients.
- If imported cheese was only shredded and packed in Australia, it would not be substantially transformed as the fundamental identity of the cheese has not changed.
- This definition aligns Australia with consumer expectations and international practice
- The ACCC has developed guidance on what is and is not substantial transformation.

SLIDE 10: Australian Origin Claims – The “Mark”

- When making a grown, produced or made in Australia claim on a product, the mark shown on the screen must be used.
- There are three components to the mark:
 - the logo, which indicates that the product was grown, produced or made in Australia
 - the bar chart, which provides a visual indication of the Australian content
 - and a text statement, which states if the food was grown, produced or made in Australia and the percentage of Australian content.
- The Information Standard requires that country of origin statements be distinct and legible. This is the overriding principle when it comes to what the mark should look like.
- There is a Style Guide available that provides suggestions of how best to meet this requirement.
- Some things to note:
 - You can use any colour scheme you like – green and gold, black and white, or monochrome – so long as the mark meets the distinct and legible requirement.
 - All three components must be displayed together inside a clearly defined box.
 - The size and positioning of the label is not specified on packaged products.
 - Unpackaged products can either be physically labelled, or the Mark can be displayed in association with the product.
 - If you are selling food online, the standard applies in the same way as it does to physical bricks and mortar sales.
 - Unpackaged food sold online can either be physically labelled when delivered to the customer, be delivered with a physical label included with the food or you can display the origin mark on your website in association with the product.

- Packaged products sold online must have a physical mark on their packaging. We would encourage you to consider displaying the origin mark on your webpage voluntarily as well.

SLIDE 11: Australian Origin Claims – The Bar Chart

- The Australian content claim made in the mark is a minimum claim. Your product may contain a higher amount of Australian content, but it cannot contain less than the amount stated in the Mark.
- Because it is a minimum claim, you must always round percentages down to the nearest whole number. For example, if your product contains 77.7% Australian content, the text statement may claim only 77% Australian content or less.
- While a specific percentage can be named in the text statement, the bar chart can only be filled in 10 percent increments. So for a product claiming 77% Australian content, the Mark should use a bar chart filled to 70%.
- The only exceptions are products claiming 95% or more Australian content, and those claiming less than 10%.
- Products claiming 95% or more can use a bar chart filled to 95%. Products claiming less than 10% can use a bar chart filled to 5%.

SLIDE 12: Labels for Products: Packed in Australia

- There are three types of Packed in Australia Marks:
 - If the product has **some** Australian ingredients but does not qualify for a made in Australia claim – then the mark will have the bar chart filled with a percentage of Australian ingredients and a ‘Packed in Australia from at least x% Australian ingredients’ statement.
 - If the product has **no** Australian ingredients, and the contents have **multiple** origins, it will indicate that it was ‘Packed in Australia’ with foods from multiple origins and include an empty bar chart.
 - If the product has **no** Australian ingredients, but the contents were entirely sourced from a **single** country, it will have a single country of origin statement. An empty bar chart and packed in Australia statement is optional.
 - Packed in Australia claims are not eligible to use the logo as they have not been grown, produced or made in Australia.

SLIDE 13: Labels for Imported Products

- Wholly imported products also need to identify the country of origin.
- Accordingly, the Mark for wholly imported products does not include a logo as it is not of Australian origin.
- However, it must include a statement identifying the country of origin
 - The first example on the left relates to food with a single country of origin, such as Made in New Zealand. Other examples could be Grown in France, Product of Canada, Made in Brazil. It is important to note that foods packed in a different country but still with a single country of origin must name the country of origin, not just where it was packed.
 - The middle example relates to food with multiple origins – if foods from more than one country are packaged in a different country, the label must indicate where it was packed and that it is of multiple origins. For example, Packed in Canada from imported ingredients or Packed in Brazil from multiple origins or Packed in the USA with ingredients from the USA and Canada

- The third example of the right hand side is optional and includes a bar chart and text – the label shows the proportion of Australian ingredients. For example, ‘Made in Vietnam from at least 50% Australian ingredients’.
- The statement must be in a clearly defined box for all packaged priority foods.

SLIDE 14: Food exported and re-imported to Australia

Australian origin – minor processing overseas

- For various reasons, some Australian foods are transported overseas, for minor processing - not substantial transformation - and without the addition of non-Australian ingredients, and then transported back to Australia either packaged or to be repackaged.
- To show that although the food is Australian and that not all the processing has been undertaken in Australia, a new label, which describes the minor processing, has been introduced.
- This is different to foods that have been substantially transformed in a country. Minor processing does not change the identity, nature or essential character of the food.
- For example, Australian macadamias that are shelled and packed in Fiji before being re-imported to Australia would need to state the overseas processing in the Mark.
- If Australian food undergoes minor processing in another country, and food from one or more other countries is added during that process, then the food is considered to be of multiple origins and can no longer claim Australian origin.
- A prawn sent overseas to be shelled, crumbed with non-Australian ingredients and packed cannot claim Australian origin. It would use a ‘Packed in’ claim and need to indicate that it is of multiple origins. If the food is sold unpackaged, the display will need to indicate multiple origins.

SLIDE 15: Providing Additional Information

Calling out Specific Ingredients

- The origin of specific ingredients can be included in the clearly defined box of most standard marks.
- If you call out the origin of a specific ingredient, all of that ingredient must come from the country named.
- For example, a pork smallgood made from Canadian pork might use the label ‘Made in Australia from at least 20% Australian ingredients with Canadian pork’

Additional product information

- Companies can voluntarily provide additional information about the origin of a food or drink product outside the country of origin mark, as long as the information is not false or misleading.

SLIDE 16: Labelling for Seasonality and Varying Content

- Because many Australian food products have seasonal produce, the proportion of ingredients may vary throughout the year.
- To allow for this new labels have been developed. The labelling includes:
 - Made in Australia or Packed in Australia
 - That the ingredient source varies
 - The average proportion of Australian ingredients
 - And directions on where customers can find further information – such as a website or phone number
 - When you provide customers with further information on a website or phone – you must provide the actual % of Australian ingredients in that

particular food product, rounded down to the nearest whole number, and time period used to calculate the average.

- This label also supplies information, such as a barcode or other device, batch number, lot, date of manufacture or date mark. This enables the customer to link to the ingredient information specific for that product. The supplier is responsible for providing the information via the method chosen, for example through their own website or customer contact centre.
- These labels do not allow for the origin of any specific ingredient to be highlighted.
- The average proportion can be calculated using one, two, or three year periods. The label is only valid for up to two years after the end of the period from which the average was calculated.
- Records must be kept to show how the average claim was calculated. As customers must be provided with a way to access information specific to the product they are purchasing, records must also be kept of the varying Australian content for the period the average label is used.
- If you have a product with varying Australian content, you could alternatively choose to make a single minimum claim reflecting the lowest year round Australian content. However, your Australian content should never be below the minimum claimed at any point.
- You might also consider running different labels for the affected periods of the year if practical.

SLIDE 17: Calculating Proportion of Ingredients

- The proportion of Australian content claimed in an origin mark is framed as an 'at least' statement – it is a minimum claim. This means that claims must always be rounded down to the nearest whole number.
- It is based on the ingoing weight of ingredients and processing aids should not be included in the calculation.
- On the screen is the calculation in its simplest format.

SLIDE 18: Calculating Proportion of Ingredients

- In this example, we apply the calculation to a tomato sauce, made in Australia from local and imported ingredients.
- We simply sum the total ingoing weight of Australian content against the total ingoing weight of all ingredients, and then multiply the result by 100 to get a percentage of Australian content.

SLIDE 19: Calculating Proportion of Ingredients

- In this example, the tomato sauce with 90% Australian content from our previous example is just one ingredient in a beef lasagne.
- When dealing with compound ingredients, that is, ingredients with two or more sub-ingredients, you need to consider the proportion of Australian content in the compound ingredient, and be sure to count only that proportion of the ingredient's ingoing weight towards the total Australian content.
- So here, the total Australian content is the sum of the beef, vegetables, and the Australian content in the sauce and the pasta, against the total ingoing weight of all the ingredients. So with the tomato sauce being 90% Australian content, 90% of the total amount of sauce used would count towards the Australian content of the final product.
- To allow for these calculations to be made, suppliers providing compound ingredients are required under the Information Standard to provide sufficient origin information to customers to allow them to make an accurate origin claim.

- The Australian Food and Grocery Council has added a country of origin labelling extension to the Product Information Form for those that use the PIF. If you have any questions on this, please contact the Australian Food and Grocery Council directly.

SLIDE 20: Treatment of Water

- There are a number of different ways water can be accounted for when determining the country of origin of a food.
- Water added as an ingredient takes the origin of where it was collected or harvested.
- Water that reconstitutes dehydrated or concentrated ingredients or other components of food is taken to have the country of origin of that ingredient or component. For example, water added to orange juice concentrate would take on the origin of the concentrate.
- Water that forms part of the liquid packing medium for a food is sometimes not to be counted when determining the proportion by weight of specified ingredients.
- A general rule of thumb when deciding whether the water in a liquid packing medium should be counted is to consider if the liquid is generally consumed. For example, the liquid in a tin of kidney beans isn't generally consumed, whereas the liquid in a tin of canned pineapple is.
- Where the packing medium contains more than just water, the other ingredients should be included in the calculation of Australian content. Only the water is exempt.

SLIDE 21: Food Exports

- There is nothing in the Information Standard preventing exporters from using their domestic label overseas. However, exporters will need to make sure they comply with the labelling rules in the importing country.
- Some businesses have expressed concern about using the bar chart on products exported overseas – that shows the proportion of Australian ingredients.
- Food companies wanting to use the logo in any other way, with or without the bar chart, on their products overseas will need to obtain a licence through Australian Made Campaign Limited.
- Businesses will need to make a commercial decision about the cost-benefit of using their domestic labels or changing their label for export purposes and paying Australian Made Campaign Limited a fee.

SLIDE 22: Resources

- Please read the country of origin labelling guidance material that is available online.
- Business.gov.au has a variety of resources available, including a style guide, label library, frequently asked questions and the online tool.
- The ACCC has made resources available on its website, and you can call its contact centre with queries regarding the application of the Information Standard.
- Additional information for importers is available from the Department of Immigration and Border Protection and the Department of Agriculture and Water Resources.
- Your industry association may also be able to provide assistance, and we understand there are some commercial offerings aimed at helping businesses with the country of origin labelling requirements.

SLIDE 23: Forum Agenda

SLIDE 24: Using the Online Tool

- This presentation will now take you through a few product examples to show you how the online tool works, and how it can help you identify appropriate labels for your products.

SLIDE 25: Product Scenario – Apple Juice

- In our first example, we are looking at apple juice made from a concentrate. There are three important questions you should know the answer to before you start using the tool:
 - First, where was the product last substantially transformed – and if any further processing takes place overseas;
 - Second, is there any water content, and if so what purpose does it serve;
 - Third, what is the proportion of Australian content in the product.
- Here, we see that all the ingredients of the product are Australian, and all manufacturing occurred in Australia. The water used to reconstitute the concentrate is considered an ingredient, and takes the origin of the concentrate it is reconstituting. So in this case, the weight of the water should be included in the calculation of Australian content.
- Open the online tool.
- The first page you will come to asks you to agree to the disclaimer before using the tool. The tool is a guide only. Exercise your own judgement and care when using the tool. Your response to each question will determine the label the tool recommends. The information provided through the tool should not be regarded as legal advice and you should consider seeking your own legal advice as appropriate.
- Tick the box, and then click on 'Start Now'.
- The initial series of questions in the tool are standard and relate to whether your food is in scope of the Information Standard.
- Firstly, we will assume that the apple juice will be sold at a physical store or market, online or from a vending machine.
- Before we click next, you can see that this page and other webpages in the tool contain more information to help you to understand and answer the question.
- The tool also includes a 'Save' function that allows you to save your progress at any point when using the tool. You can save the link in your web browser bookmarks, or you can email yourself the link to return to the questionnaire later.
- For the next question, we will assume that the apple juice will be sold in different premises to where it has been grown, produced, made and packed. Then click on 'Next'.
- For the next question, given that the product is apple juice, we assume that the product will be sold in a package. Click on 'Next'.
- For this page, you're being asked to identify if the food is a priority or non-priority food. If the food is one of those listed under the first point, it is a non-priority food. You'll see here that there are help points throughout the tool. If you hover your mouse over the question mark it will provide you with more detail on the sorts of products covered by that category. Apple juice is a priority food and is not listed under the first point, therefore we will select 'not listed above'. Then click on 'next'.
- For the next question, we know that the apple juice was made in Australia, so we select 'Yes'. Then click next.
- For the next question, we know that the apple juice is 100% Australian. Then click 'next.'
- For the next question, we will assume that the product was not exported to an overseas country for processing before being re-imported to Australia by selecting 'No'. Then click on 'next'.
- This is the webpage where you can preview and download the standard mark for the apple juice product.

- There are seven different labelling options you can choose from which you feel best reflect your product.
- In this instance, we will use a custom label for Australian apple juice.
- You can preview the label in portrait or landscape mode before you download the label.
- There are two different label formats you can download. The PDF format are high quality files to be used if you wish to print the standard mark. Alternatively, if you wish to display the standard mark on screen, such as on a webpage, you can use the PNG format.
- You can also download a PDF summary of your responses you have provided for your label by clicking on 'Summary'. You enter the product name, in this case, Apple Juice, then click on 'download'. You can then open, or save the summary.

SLIDE 26: Product Scenario – Tomato Sauce

- The next example is tomato sauce, manufactured in Australia from local and imported ingredients. The tomato sauce includes water as an ingredient, and has a mix of imported and local content.
- The Australian ingredients in the tomato sauce by ingoing weight are 1350 grams and the total ingoing weight of the ingredients in the sauce are 1,500 grams. To calculate the proportion of Australian ingredients you divide 1,350 into 1,500 and multiply the result by 100.
- Based on the ingoing weight, the proportion of Australian content is 90 per cent.
- Taking this example through the online tool.
- We'll assume that the tomato sauce will be sold at a physical store or market, online or from a vending machine.
- Next, we'll assume that the tomato sauce will be sold in different premises to where it has been grown, produced, made and packed.
- Next, we'll assume that the tomato sauce will be sold in a package.
- Next, we know that tomato sauce is a priority food so we select 'not listed above'.
- We know that the sauce was made in Australia, so we select 'Yes'.
- We know that the ingredients in the tomato sauce are not all Australian, so we select 'No'.
- We know that the tomato sauce is not fresh fruit and vegetables in transparent packaging, so we select 'no'.
- We know that the tomato sauce was grown or produced in two or more countries (one of which is Australia), so we select the 2nd option.
- We know that the tomato sauce was last substantially transformed in Australia, so we select 'yes'.
- We know that the tomato sauce contains Australian ingredients, so we select 'yes'.
- We will assume that the tomato sauce contains a consistent proportion of Australian ingredients and select the first option.
- We will also assume that the food product was not exported to an overseas country for processing before being re-imported to Australia by selecting 'no'.
- This is the webpage where you can preview and download the standard mark for the tomato sauce product.
- We will choose the final custom option by entering 90% Australian ingredients with Australian tomatoes. Here is the landscape preview for the label.

SLIDE 27: Product Scenario – Beef Lasagne

- Here we have a beef lasagne, manufactured in Australia from local and imported ingredients, including two compound ingredients – the tomato sauce from the previous example, and some cooked pasta.

- The water content is a sub-ingredient in a compound ingredient and should be included in the calculation.
- With compound ingredients, remember to only include the proportion of Australian content in the compound ingredients in the total Australian content. As 80 grams of sauce with 90% Australian content is used, 72 grams of the sauce counts towards the total Australian content. Similarly 175 grams of pasta with 36% Australian content is used, 63 grams of the pasta counts toward the Australian content.
- The total ingoing weight of the Australian ingredients in the lasagne is 255 grams and the total ingoing weight of the food is 385 grams. Dividing 255 grams into 385 grams and multiplying the result by 100 gives you a percentage of Australian ingredients value of 66%.
- Taking this example to the tool.
- We'll assume that the lasagne will be sold at a physical store or market, online or from a vending machine.
- Next, we'll assume that the lasagne will be sold in different premises to where it has been grown, produced, made and packed.
- Next, we'll assume that the lasagne will be sold in a package.
- Next, we know that lasagne is a priority food so we select 'not listed above'.
- We know that the lasagne was made in Australia, so we select 'Yes'.
- We know that the ingredients in the lasagne are not all Australian, so we select 'No'.
- We know that the lasagne is not fresh fruit and vegetables in transparent packaging, so we select 'no'.
- We know that the lasagne was grown or produced in two or more countries, one of which is Australia, so we select the 2nd option.
- We know that the lasagne was last substantially transformed in Australia, so we select 'yes'.
- We know that the lasagne contains Australian ingredients, so we select 'yes'.
- We will assume in this instance that the proportion of Australian ingredients varies over time by selecting the 2nd option.
- We will also assume that we want to indicate that the content of Australian ingredients in the lasagne can vary over time, so we select 'yes'.
- We will also assume that the lasagne was not exported to an overseas country for processing before being re-imported to Australia by selecting 'no'.
- This is the webpage where you can preview and download the standard mark for the beef lasagne product.
- We will choose the final custom option by entering an average of 66% Australian ingredients, call 1800 000 000 for details. Here is the landscape preview for the label.

SLIDE 28: Product Scenario – Tinned Four Bean Mix

- In our final example we consider a tinned four bean mix with both imported and Australian beans.
- Here, there is no single country of origin. While the chickpeas come from Australia, the other beans are sourced from different countries. Because tinning a product is not substantial transformation, this product has no single country of origin.
- The water content here is part of a liquid packing medium that is not generally for human consumption, and so is completely excluded from the calculation of content.
- The ingoing weight of Australian ingredients is made up of the chickpeas and the salt in the brine. The total ingoing weight is all the beans, plus the salt.
- This gives us a percentage of Australian content of 25%.
- Moving now to the tool.
- We will assume that the four bean mix will be sold at a physical store or market, online or from a vending machine.

- We will also assume that the product will be sold in different premises to where it has been grown, produced, made and packed.
- We assume that the product would be packaged.
- We know that the product is a priority food, so we will select not listed above.
- In this example, the food product was not grown OR produced OR made in Australia because not all ingredients are Australian, and the product was not last substantially transformed in Australia.
- The food is not fresh fruit and vegetables in transparent packaging.
- We know that the food or its ingredient was grown or produced in two or more countries, including Australia.
- We know that the food was not substantially transformed in Australia.
- We know that the food contains Australian ingredients
- We also know that the food was not last substantially transformed in a single overseas country.
- We will assume that the food was packed in Australia.
- We will assume that the proportion of Australian ingredients does not vary over time due to seasonality and/or for other reasons by selecting the first option.
- This is the webpage where you can preview and download the standard mark for the tinned four bean mix.
- We will choose the final custom option by entering 25% Australian ingredients with Australian chickpeas. Here is the landscape preview for the label.

SLIDE 29: Forum Agenda

SLIDE 30: The ACCC and Country of Origin Food Labelling Information Standard 2016

- We will now commence the 2nd part of the presentation on compliance and enforcement on behalf of the ACCC.

SLIDE 31: What the ACCC Can and Can't Do

- **In relation to country of origin labelling, there are things the ACCC can and can't do.**
- **The ACCC Can...**
 - provide information about rights and obligations
 - investigate alleged breaches of the laws it enforces
 - direct you to useful resources
 - Refer you to other agencies (as appropriate)
- The ACCC can also, in some cases,
 - permit conduct otherwise caught by the law (by way of notification or authorisation)
- **The ACCC Can't...**
 - tell you what label to use or 'approve' your label
 - provide legal advice
- More broadly, the ACCC also can't
 - act on behalf of individual businesses
 - help you resolve disputes
 - set prices for goods and services e.g. groceries and petrol
 - tell you whether a breach has occurred (this is up to the court)

SLIDE 32: When is a food 'substantially transformed'?

- So, when is a food substantially transformed?
- A food will be substantially transformed in a country if:
 - It was 'grown in' or 'produced in' that country, or
 - 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.
- This means that:
 - A food that was 'grown in' or 'produced in' Australia may also claim to have been 'made in' Australia.
 - For foods with imported ingredients or components, a closer assessment is required of the processing undertaken in that country and its effect on the final product.
- **A tip for businesses:** The Standard does not define what 'identity' 'nature' or 'essential character' mean. If your business is trying to determine whether you have substantially transformed something, you should consider the ordinary meanings of those terms.
- **Identity** – the condition, character or distinguishing features of a thing.
- **Nature** – the particular combination of qualities belonging to a thing by birth or constitution, native or inherent character.
- **Essential character** – the necessary or indispensable qualities that distinguish one thing from others.

SLIDE 33: Recordkeeping

- **What records should a business keep in relation to food labelling?**
- If your business sells packaged food or unpackaged food with more than one ingredient, you must keep records supporting a country of origin claim for 12 months after the sale of the food item. Records should include:
 - Information regarding the proportion of Australian ingredients
 - Traceability information
 - Contact details of who the products were received from or who they were supplied to
 - Dates of transactions
 - Batch or lot identification
 - Volume or quantity of products
 - Relevant production records
- You will be required to provide this information to the ACCC or another Australian Consumer Law regulator upon request.

SLIDE 34: Non-compliance with the Standard and the ACL

- **Non-compliance with the Standard and the Australian Consumer Law**
- Failure to comply with the Standard is likely to contravene the Australian Consumer Law and expose a party to potential enforcement action by the ACCC.
- If a business is compliant with the country of origin labelling requirements of the Standard, they must still ensure that any country of origin representation made by the product, either express or implied, is not false or misleading.
- Pursuing businesses that engage in misleading or deceptive conduct or make false or misleading representations about their products is a priority for the ACCC.
- The maximum financial penalty for a breach of the ACL is \$1.1 million for a body corporate and \$220 000 for a person.

- Other orders a court may make include injunctions, compensatory orders and corrective advertising orders. A breach of the Australian Consumer Law may also result in third parties who have suffered loss or damage taking legal action.
- Upon request by the ACCC or another Australian Consumer Law regulator, a business will be required to provide any information that they have on hand or are able to access at the time that substantiates their claim.

SLIDE 35: ACCC Guidance Material

- The ACCC Website has information including frequently asked questions and more detailed guidance
- The ACCC has a small business information network to allow businesses to keep up-to-date on small business related work undertaken by the ACCC.
- The ACCC also has an agriculture network that may be more suited to farmers and growers.
- The ACCC has free small business online education programs to help you to understand your broader obligations under the Australian Consumer Law, and includes more detailed information on when a claim is likely to be false, misleading or deceptive.

SLIDE 36: Forum Agenda

SLIDE 37: Disclaimer

- This is the end of the presentation.
- The material presented to you today should be considered only general advice and guide.
- It is not legal advice.
- Businesses remain responsible for determining whether their labels comply with the new requirements.