



# Country of origin claims and the Australian Consumer Law

March 2019

A guide for businesses that choose to make representations to their customers about where their goods were grown, produced or made.

It will help businesses to understand when they can safely make these claims without raising concerns under the Australian Consumer Law.



# Contents

Who this guide is for	1
Introduction	2
The Australian Consumer Law	2
Special food labelling rules	3
Use of the 'Australian made, Australian grown' logo	3
Labelling of imported goods	3
Role of the ACCC	4
1. Making a country of origin claim	5
'Grown in' claims	6
'Product of' claims	7
'Made in' claims	9
Country of origin labelling under the Food Labelling Standard	13
2. Overview of the ACL	15
False or misleading representations	15
Misleading or deceptive conduct	16
Other country of origin labelling issues	17
Substantiating your claim	20
Relying on assurances from a third party	20
3. Penalties and consequences	21
ACCC powers and priorities	21
4. More information; complaints	23
Free ACCC information networks	23
How to make a complaint	23

# Who this guide is for

This guide is for businesses that make representations to their customers about their goods being grown, produced or made in a particular country. It will help you to understand:

- the circumstances in which you can safely make a country of origin claim (chapter one)
- how the Australian Consumer Law regulates country of origin claims and other origin labelling issues to be aware of (chapter two)
- the penalties and consequences for making a false or misleading origin claim (chapter three)
- where to find more information and how to make a complaint to the ACCC (chapter four).

Note that there are special separate rules that apply to certain foods sold in Australia. You can find out more about this on page 3 or refer to the ACCC [Country of origin food labelling guide](#).

# Introduction

Many businesses, either because they have to or choose to, make claims about where their products were grown, produced or made.

Associating a product with a particular country is one way in which businesses attempt to differentiate their goods from those of their competitors. Country of origin claims are 'premium claims' in the sense that they are often used to imply that a product has some kind of added benefit or is of a certain quality when compared to other goods (e.g. 'German engineered' for automotive vehicles, 'Swiss chocolate' or 'Made in Japan' for electronics).

In Australia, there are a variety of different laws that may affect the origin claims businesses can make about their goods. The Australian Consumer Law (ACL) is one of them. This guide will help you to understand when you can safely make a country of origin claim without it raising concerns under the ACL.

## The Australian Consumer Law

The ACL is the national law for fair trading and consumer protection in Australia. Under the ACL, businesses have the same obligations and responsibilities across Australia.

Whether you choose to make a country of origin representation about your goods, or are legally required to do so, the ACL requires that it be clear, accurate and truthful.

Country of origin representations include:

- explicit claims that a good was grown, produced or made in a certain country
- the use of images and/or words which suggest that a product originated in or from a particular country.

To provide certainty to businesses, the ACL sets out four situations where you can safely make a country of origin claim without it raising concerns under the law. A business will need to satisfy certain criteria to be eligible.

The ACL applies equally to claims you make on your products (e.g. on packaging or swing tags), in your advertising or promotional materials (print, radio, television or online) as well as oral statements made by a person representing your business.

The ACL is contained in Schedule 2 of the *Competition and Consumer Act 2010*.

### Tip

If you want to try to reduce the risk of claims or representations breaching the ACL you should ensure:

- you provide ACL training to your staff
- all promotional materials are checked against the requirements of the ACL
- your business has clear procedures for signing off on product labelling and advertising materials
- effective procedures are in place to deal with customer complaints
- existing promotional materials are reviewed regularly.

## Special food labelling rules

Under the ACL, there are special rules around the country of origin labelling of certain food products.

If you sell or supply food for sale to consumers in stores, markets, online<sup>1</sup> or from vending machines it is likely that you will be required to comply with the *Country of Origin Food Labelling Information Standard 2016* (**Food Labelling Standard**), which is made under the ACL.

The Food Labelling Standard requires food to display information about its origin if it is for retail sale in Australia or suitable for retail sale without further processing, packaging or labelling. Depending on the type of food, the origin of its ingredients and the processing undertaken in Australia, this information may take the form of a text statement or a text and graphic label known as a 'Standard Mark'.

### Examples of Standard Marks



If you believe you sell or supply food that may be covered by the Food Labelling Standard, you should refer to our [Country of origin food labelling guide](#) for information on how to comply.

## Use of the 'Australian made, Australian grown' logo

The kangaroo logo is a registered trade mark that is administered by Australian Made Campaign Limited (AMCL).

Australian made, Australian grown food products offered for sale in Australia are permitted to use the kangaroo logo (without cost) as long as they comply with the requirements of the Food Labelling Standard.



Use of the kangaroo logo for non-food goods is optional and the logo may only be used under licence from AMCL. For more information, visit [www.australianmade.com.au](http://www.australianmade.com.au).

## Labelling of imported goods

Beyond the ACL, special labelling rules also apply to goods which are imported into Australia.

The *Commerce Trade Descriptions Act 1905* and the *Commerce (Trade Descriptions) Regulations 2016* require that certain imported goods be labelled at the time of importation with a true trade description, including the name of the country in which the goods were made or produced.

Imported goods are regulated by the Department of Immigration and Border Protection (DIBP). For more information on the labelling requirements for imported goods, you can contact DIBP at <http://www.border.gov.au/about/contact/make-enquiry>.

<sup>1</sup> For the purposes of the Food Labelling Standard, online sales are treated the same as physical sales. Packaged products must display the mark or appropriate origin labelling as required by the Standard on their packaging. Businesses are encouraged to voluntarily display this information on their webpage as well.

## Role of the ACCC

The ACCC is an independent Commonwealth statutory body that administers the *Competition and Consumer Act 2010*, the ACL as well as other laws. The ACCC promotes compliance with these laws and, where appropriate, takes enforcement action against businesses that breach the law.

The ACCC's role complements that of state and territory consumer affairs agencies who also share responsibility for enforcing these laws.

While the ACCC is able to provide general information about the ACL to assist businesses to comply with the law, the ACCC cannot tell you what claim to make or whether your claim complies with the ACL.





# 1. Making a country of origin claim

In general, businesses are free to make any representation they wish to about their goods. However, any claims a business does make must not be false, misleading or deceptive.

When it comes to country of origin claims, it is up to individual businesses to determine what type of claim to make. This self-assessment should include a careful consideration of the origin of each ingredient or component in the good as well as the country or countries in which any manufacturing or processing has occurred.



The reality of a global economy means that it may be very difficult to assign a country of origin to some goods. Where there is no one clear country of origin, you should consider whether it is appropriate to make a country of origin claim. If you choose to do so, you should provide as much detail as possible to reduce the risk of breaching the ACL. See pages 16–17 for things you should consider if you intend to provide further information about your goods.

In order to give businesses some certainty, the ACL sets out four situations where you can safely make a country of origin claim without it raising concerns under the law. These situations cover representations that goods:

1. were grown in a particular country
2. are the product of a particular country
3. were made or manufactured in, or otherwise originated in, a particular country
4. carry a mark specified in an information standard relating to country of origin.

Businesses will need to satisfy certain criteria to gain the peace of mind that their country of origin representation does not breach the ACL. These criteria provide an objective standard as to what will and will not be regarded as a true and accurate country of origin representation.

It will be up to individual businesses to provide evidence to support their assertion that they meet the ACL threshold for that particular type of country of origin claim.

Failure to satisfy these criteria does not mean that a business is unable to make that particular type of country of origin claim. However, you will not have the benefit of an automatic defence against an allegation that the claim is misleading, deceptive or false. This means that you may still choose to make that type of claim provided you are confident that an ordinary and reasonable consumer would not consider the claim to be false, misleading or deceptive.

## Tip

The relevant ACL provisions are ss. 255(1)–(4). These provisions are often referred to collectively as the 'safe harbour defences'.

It is important to note that the defences only apply to country of origin claims. Businesses will need to show that other claims they make about their goods are not false or misleading without relying on an automatic defence.

Below is guidance regarding each of the four defences and the circumstances in which businesses will and will not be able to rely on a defence to safely make that type of claim.

## ‘Grown in’ claims

A claim that a good was ‘grown in’ a particular country is often used for food products but may also be used for other naturally derived products.

A good may safely represent to have been ‘grown in’ a country if:

- each significant ingredient/component of the goods was grown in that country, and
- all, or virtually all, processes involved in the production or manufacture of the goods happened in that country.

The term ‘grown’ has a specific meaning under the ACL. Goods (or their ingredients or components) are grown in a country if they satisfy one of the following requirements:

---

- materially increase in size or are materially altered in substance in that country by natural development e.g. a tree grown from a seedling



- 
- germinate, or otherwise arise in, or are issued in, that country e.g. the growing of wheat or bamboo from seed



- 
- are harvested, extracted or otherwise derived from an organism that was materially increased in size, or materially altered in substance, in that country by natural development e.g. wool harvested from a sheep.



---

In determining whether an ingredient or component is ‘significant’ businesses must consider whether the ingredient or component is critical in establishing the nature or function of the good. It is important to note that significance is not necessarily decided by the percentage content of the ingredient or component in the goods, as sometimes even small percentages of an ingredient can be critical in establishing the nature or function of a good.

For example, a preservative in an aromatherapy oil would be unlikely to be a significant ingredient in the product. However, blackcurrant juice in an apple and blackcurrant drink is likely to be a significant ingredient despite perhaps only comprising a small percentage of the overall content.

If an ingredient or component is significant then it must be from the country of the origin representation for the claim to be safe under the ACL.



## Examples

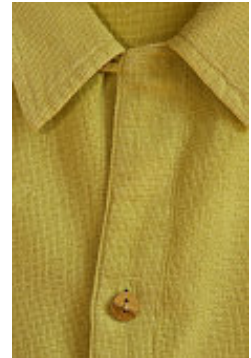
### 1. Flowers

- A florist attaches stickers to its arrangements to indicate that the flowers are 'Australian flowers' and 'Aussie grown'. These claims would be safe under the ACL if they were in fact all 'grown' in Australia.



### 2. Hemp shirts

- Hemp fibres grown in Queensland are died, dried, woven, cut and sewn into shirts in Australia. However, for some of the year, imported hemp from China is used to supplement Australian supplies.
- The resultant clothing is represented at all times as 'Australian grown product'.
- Although this claim is accurate for part of the year, the business is at risk of breaching the ACL as the claim doesn't accurately reflect the stock that customers are able to buy during the period where Australian and Chinese hemp is used. In this circumstance, the business would not satisfy the ACL criteria for a 'grown in' claim as the product contains significant components from another country.



### 3. Restaurant food

- Although not required to provide country of origin information about its food, a restaurant chooses to advertise its steaks as 'Australian grown' and '100 per cent Aussie beef'. If the meat was sourced from Australian cows that were butchered in Australia, the steaks would meet the 'grown in' safe harbour.
- On the other hand, if the cows were raised in Australia and then exported elsewhere for processing prior to their meat being reimported into Australia, it would not be possible to satisfy the 'grown in' ACL defence due to the overseas processing. This does not mean that the business cannot make the claim; only that they should do so cautiously as they would not have the benefit of the 'grown in' automatic defence against an allegation that the claim is false, misleading or deceptive.



## 'Product of' claims

If you want to safely represent that a good is the 'product of' a certain country, you must be able to demonstrate that:

- each significant ingredient/component of the good originated in that country, and
- all, or virtually all, processes involved in the production or manufacture of the goods happened in that country.

'Product of' claims include variations such as 'Spanish product', 'Product of Vietnam', and 'Australian produce'.

The overlap in the tests for 'grown in' and 'product of' claims means that a good which can claim to have been 'grown in' a country could also, in most instances, claim to be a 'product of' that country. However, the 'product of' claim is notably broader as it includes things that may originate in a country but are not technically 'grown' e.g. iron ore, salt, water or gemstones.

As stated above, whether an ingredient or component is 'significant' will depend upon its importance to the nature or function of the good. If an ingredient or component is integral to the nature of the good, that ingredient has to be from the country of the origin representation to allow it to carry a 'product of' label.

For example, a business which advertises a crocodile tooth and leather cord bracelet as a 'Product of Australia' would need to show that the tooth as well as the leather 'originated' in Australia as the leather cord is an integral part of a bracelet. Similarly, a distributor supplying a lavender body lotion as a 'Product of France' would need to show that the lavender oil originated from France, even though the lavender component only makes up a small percentage of the total volume of the product. By comparison, an additive used to thicken the lotion is unlikely to be regarded as a significant ingredient.

Goods that undergo processing in a country (or multiple countries) other than the one claimed as the origin are less likely to be eligible to make a 'product of' claim and such representations should be made cautiously.

In the ACCC's view, the use of a 'product of' label on a good which has undergone a series of processes in, or contains significant ingredients from, two or more countries would be difficult to sustain and the manufacturer would be at risk of action under the ACL. In such circumstances businesses should consider whether it would be more appropriate to use a 'made in' claim.

## Examples

### **Alpaca blanket**

The outer packaging of an alpaca blanket advertises that it is a 'Product of New Zealand'. The blanket is made using exclusively New Zealand alpaca wool and the fibre is scoured, carded, spun, woven and sewn into a blanket in New Zealand.

The business's claim could be made with confidence as it meets the ACL criteria for the 'product of' automatic defence.

### **Makeup**

A beauty company markets its mineral makeup line as 'all Australian products'. While all of the processing occurs in Australia, two of the three key mineral ingredients in the products (mica and zinc oxide) are imported into Australia from overseas. These ingredients are likely to be considered 'significant' as they go to the nature of the good as mineral-based makeup.

The business would not be able to rely on the ACL's 'product of' defence as the makeup contains significant ingredients from a country other than the one claimed.

### **Leather accessories**

An Australian company imports clothing and accessories from Italy and sells the goods online to Australian consumers. The website states that the leather briefcases and handbags are a 'Product of Italy'. The products are made in Italy from Italian components (leather, fabric, thread and zipper) but are decorated with imported buttons.

It is likely the business could safely make a 'product of' claim. The imported decorative buttons are unlikely to be 'significant components' of the leather accessories as they are not central to the nature or function of the goods.

## ‘Made in’ claims

A claim that a good was made, manufactured, or otherwise originated in a particular country is simply a representation about where the good itself was created. Unlike the ‘grown in’ or ‘product of’ claims, the source of a product’s individual ingredients or components is not relevant to a ‘made in’ claim. This means that a good doesn’t need to contain any ingredients or components from a country to be able to claim that it was ‘made’ in that country.

Under the ACL, a good may safely represent that it was made in a particular country if the business can demonstrate that it underwent its last substantial transformation in the country claimed.

### Substantial transformation test

Goods are substantially transformed in a country if:

- they were ‘grown in’ or ‘produced in’ that country
- as a result of processing in that country, the goods are fundamentally different in identity, nature or essential character from all of their imported ingredients or components, or
- they underwent processing prescribed by the regulations in that country.<sup>2</sup>

#### Tip

The ACL does not define what ‘identity’, ‘nature’ or ‘essential character’ mean. If you are trying to determine whether you have substantially transformed something, you should consider the ordinary meaning of these 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.

According to the ACL, goods that are able to carry a claim that they were ‘grown in’ or ‘produced in’ a particular country may also safely claim to have been ‘made in’ that country. For example, a herbal supplement made in Australia from Australian ingredients could claim to be ‘Australian Grown’, ‘Produced in Australia’ or ‘Australian Made’. It would be up to the business to decide which label to use.

As to whether a product with imported ingredients or components has been substantially transformed, this will require a closer assessment of the processing undertaken in that country and its effect on the final product. To be safe under the ACL, the good must have undergone its last substantial transformation in that country such that its inherent characteristics (i.e. its identity, nature or essential character) are fundamentally different when compared to each imported input.

Examples of substantial transformation in relation to imported ingredients or components include:

- the mixing and baking of raw ingredients into food items
- moulding of sheet metal into a car panel
- weaving of fibre into a rug
- cutting, assembling and finishing imported wood to make furniture.

<sup>2</sup> The [Competition and Consumer Regulations 2010](#) prescribe a process that would amount to ‘substantial transformation’ for complementary medicines in Australia.



Processes that merely change the form or appearance of imported goods will not be sufficient to result in a fundamentally different end product. It will not be enough for a product to be somewhat different from its imported ingredients or components. For example, importing a t-shirt and adding a print on the front would not amount to substantial transformation. However, if a business imported fabric and cut and sewed it to make a t-shirt, this would be a substantial transformation.

Where a supplier contemplates making a 'made in' claim about goods that have undergone significant processing in another country, the supplier should exercise caution about making the representation unless the processing in the country claimed has clearly resulted in a new product with identifiably different characteristics. If the processing undertaken in the country has only served to add decorative elements or 'finish off' the product, the person who made the representation will be at risk of breaching the ACL.

## Examples

### Insect repellent

A business imports insect repellent in bulk for sale in Australia. The business packages the liquid in roll-on bottles and markets the product as 'Made in Australia'.

The business would not satisfy the ACL threshold for a 'made in' claim because the imported liquid is unchanged. Whilst changing the method of delivery (i.e. bottle vs roll-on) may result in a more convenient product, it does not result in a product that is fundamentally different in identity, nature or essential character.



### Leather boots

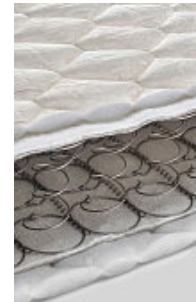
A company imports leather into Australia from China which it uses to manufacture boots. The cutting, sewing, construction and finishing of the shoes occurs in Australia. The business would be able to safely make a 'made in' claim as the final processing occurred in Australia and resulted in a product that is fundamentally different from the raw imported components (i.e. leather).

However, if the shoes were cut and constructed in China, then imported into Australia where the eyelets are added, this superficial change is unlikely to amount to substantial transformation.



### Mattresses

A company imports wire springs, fabric and padding materials into Australia. These materials are used to produce mattresses. Even if important parts of the manufacturing process had occurred overseas (e.g. manufacture of the wire coils, cutting of the padding) the business would still be able to claim that the final or 'last' substantial transformation occurred in Australia. This is because the final processing in Australia (e.g. quilting, assembly and edging) would still result in a fundamentally different product from any of the individual imported components that went into it.



### Necklaces

A jeweller produces a line of glass pendant necklaces from wholly imported components. These pieces are made by gluing a decorative image between an imported glass bead and the pendant backing. These necklaces are advertised as 'Made in Australia.' In this instance it is unlikely that the mere assembly of the imported necklace parts and the addition of a decorative element would result in a fundamentally different product. Accordingly, the business would be unlikely to be able to rely on the 'made in' safe harbour for the glass necklaces.



The following table sets out the ACCC's views on further instances where processing is likely or unlikely to result in a 'fundamentally different' product.

These examples are provided as general guidance only and businesses are encouraged to seek their own independent legal advice to determine the application of the test to their own circumstances.

<b>Furniture and flooring</b>	
<b>Processing</b>	<b>Substantially transformed?</b>
Cutting, assembling and finishing imported wood to make a chair	Yes
Constructing and upholstering a lounge frame using imported materials (e.g. springs, webbing, lining, foam, stuffing, pre-cut fabric)	Yes
Constructing a mattress using imported spring coils, foam and other materials	Yes
Processing imported yarn to make carpet	Yes
Adding a stain to imported wood flooring	No
Assembling a table using imported finished wooden pieces	No
Adding a fabric seat cover to an imported chair	No
Sewing fabric handles onto an imported mattress	No
Adding a secondary backing to imported tufted carpet	No
Dyeing imported carpet	No
<b>Clothing, footwear and textiles</b>	
<b>Processing</b>	<b>Substantially transformed?</b>
Cutting and sewing imported fabric to make a t-shirt	Yes
Cutting, sewing and finishing imported leather to make shoes	Yes
Lasting an imported shoe upper and injection moulding a sole onto it to produce an industrial boot or shoe	Yes
Adding a decorative print to an imported t-shirt	No
Adding buttons to an imported jacket	No
Adding trimming to imported shoes	No
Gluing a sole onto an imported shoe upper (e.g. ugg boot)	No
Cutting and sewing imported rolls of fabric to make towels and face washers	No
Hemming pre-cut/pre-spun imported sheets or blankets	No
<b>Cosmetics and personal care</b>	
<b>Processing</b>	<b>Substantially transformed?</b>
Imported soap noodles combined with pigments, fragrances and other components to create bars of soap	Yes
Imported wood pulp processed to make tissues	Yes
Mixing imported mineral powders to make a skin bronzer	No
Cutting blocks of imported soap into individual bars	No
Imported lotion combined with pigments and fragrances to make a fragrant body lotion	No



## Country of origin labelling under the Food Labelling Standard

Under the ACL, a representation in the form of a 'Mark' specified in an information standard relating to country of origin labelling will not be misleading if that mark is used in accordance with the requirements of that information standard.

To date, the only information standard relating to country of origin labelling is the *Country of Origin Food Labelling Information Standard 2016*, which applies to the retail sale of certain foods in Australia (e.g. food sold in stores, markets, online or from a vending machine).

A 'Mark' is a reference to the graphic and text based labels outlined in the Food Labelling Standard.

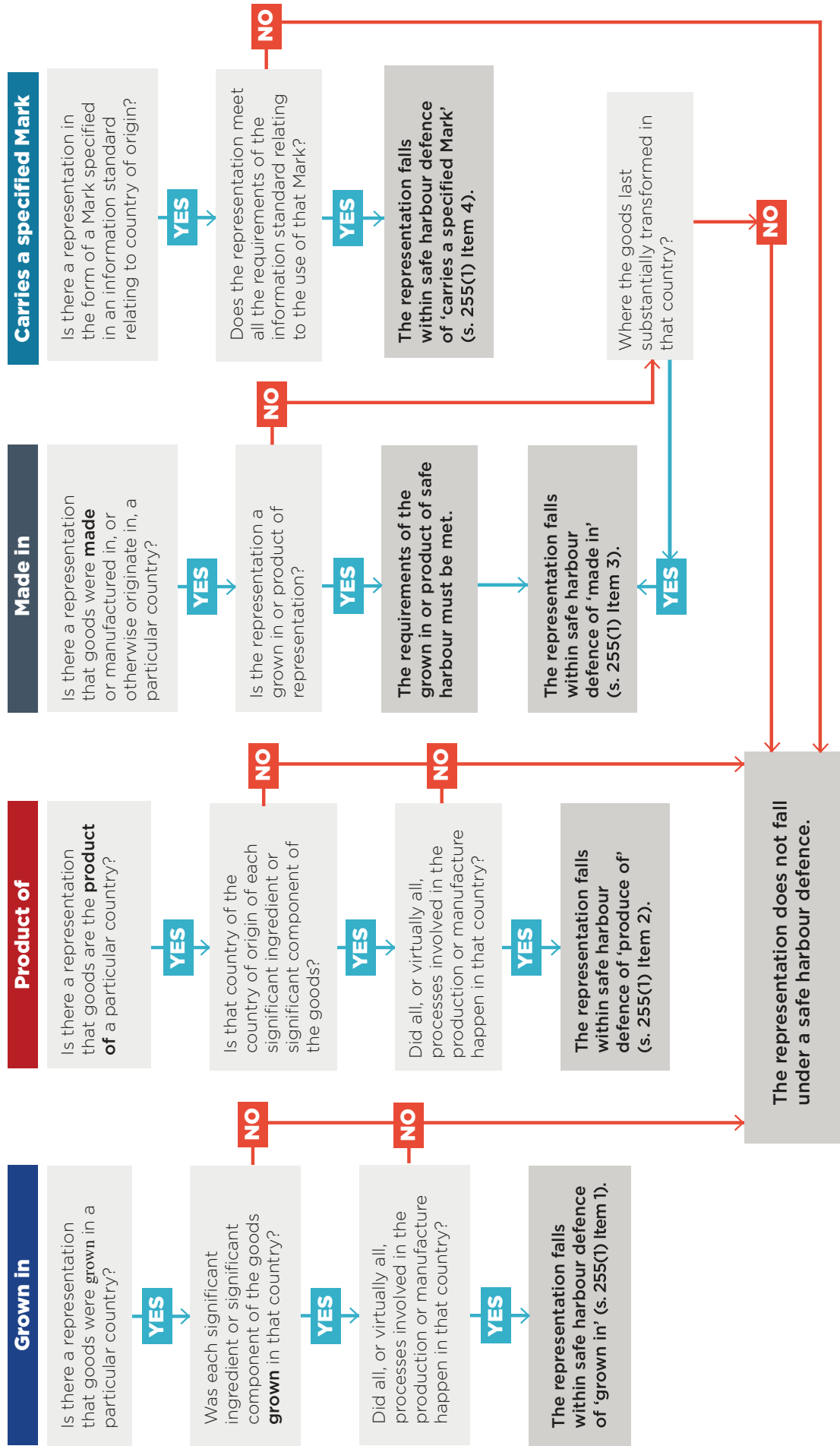
### Examples of Marks under the Labelling Standard



If you comply with the Food Labelling Standard's requirements for the use of a particular mark you will have an automatic defence under the ACL if someone later alleges that that claim is false, misleading or deceptive.

Please refer to the ACCC [Country of origin food labelling guide](#) for information about the requirements around the use of a mark.

## The safe harbour defences for goods<sup>3</sup>



<sup>3</sup> This chart does not reflect when a business will be able to make a particular origin claim under the Food Labelling Standard.

## 2. Overview of the ACL

Under the ACL, any claims a business makes about its goods or services are subject to two overarching rules:

1. You must not make false or misleading representations about a good.
2. You must not engage in misleading or deceptive conduct in relation to a claim about a good.

These rules apply even if you didn't intend to mislead or deceive anyone, or if no one has suffered any loss or damage as a result of your conduct.

The definition of 'goods' is broad and includes both food and non-food products.

### Tip

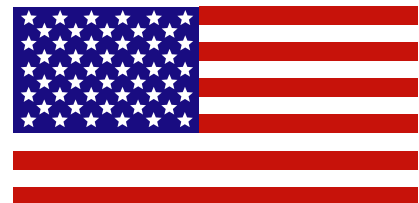
The relevant key ACL provisions regarding origin claims are:

- s. 18—misleading or deceptive conduct
- ss. 29(1)(a)—false or misleading representations that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or a particular previous use
- ss. 29(1)(k)—false or misleading representations concerning the place of origin of goods
- s. 33—conduct liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods
- ss. 151(1)(a)—criminal offence provision for conduct outlined in ss. 29(1)(a)
- ss. 151(1)(k)—criminal offence provision for conduct outlined in ss. 29(1)(k)
- 155—criminal offence provision for conduct outlined in s. 33.

## False or misleading representations

The ACL prohibits a business from making representations that are incorrect or likely to create a false impression. This includes false or misleading representations about the origin of goods, or their quality, value, price or age.

Representations can be made using words and/or pictures. This means that businesses must be careful when using recognisable symbols, images or logos on their goods; pictorial representations can be just as forceful and effective as written or oral representations at making consumers believe that goods originated from a particular country.



If a reasonable conclusion from the use of particular words or images is that the origin of a good is a particular country when that is in fact not the case, there is a risk of breaching the law. An exception to this rule is where an origin claim is an integral element of the good.

## Examples

- A t-shirt with a 'made in Australia' label sewn into it is making a country of origin representation. However, a t-shirt with the word 'Australia' emblazoned on it as part of the design is, in itself, unlikely to be making an origin representation that the t-shirt was made in Australia.
- A ceramic model of the Eiffel Tower is not making an origin representation. However, if the packaging stated the 'finest French craftsmanship', this would likely be an origin representation as it would lead a reasonable consumer to believe that the model had been made in France.
- Lollies produced in the shape of kangaroos, bilbies and koalas are not making origin representations. However, if the packaging they were sold in depicted Australian flags and a map of Australia, these images would likely be an origin representation.

Whether a representation is false or misleading will depend on the circumstances and the overall impression created. Ultimately, it is up to a court to determine whether someone has breached the ACL. In reaching its decision, a court will consider what an ordinary and reasonable customer would conclude from the representation.

This means that you should give careful consideration to how your promotional materials, product packaging or labels will be received by ordinary members of your target audience i.e. what impression will be created in their minds. If that impression is likely to be something other than the truth, then there is a risk of breaching the law. For example, if your product is made overseas but labelled as 'Australian fresh', this may raise concerns under the ACL by falsely giving the impression that your good is of Australian origin.

## Misleading or deceptive conduct

The ACL also prohibits a business from engaging in conduct that misleads or deceives (or is likely to mislead or deceive) consumers or other businesses.

If you make a false or misleading representation about the origin of your goods you also risk engaging in misleading or deceptive conduct.

When deciding if conduct is (or is likely to be) misleading or deceptive, a court will consider whether ordinary and reasonable consumers would regard the *overall impression* created by the business' conduct to be misleading or deceptive.

## Tips

If you are making any claims or statements, or using any images that could be considered to be a representation about the country of origin of your goods, you should ensure that:

- each representation is true and accurate
- the representations made accurately reflect the stock that consumers are able to purchase (e.g. campaigns and labels keep up with any changes to the contents of products)
- an 'ordinary consumer' would not consider the representation to be misleading
- you are able to substantiate your claim.

## Other country of origin labelling issues

The amount and type of information you provide to consumers about your goods is important. Origin representations are generally not restricted to claims that a good was 'grown in', 'produced in' or 'made in' a particular country. When it comes to making origin claims, it is usually up to the business to decide how detailed or explicit it wants to be.

When it comes to making labelling or marketing decisions about your goods, you should consider the effect on you customers of:

- providing additional information
- choosing to remain silent about origin
- making ambiguous claims
- making other (non-country) origin claims.

### Providing additional information

Situations may arise where a business might wish to elaborate on an origin claim in order to communicate something about the product. Additional information could include statements about the:

- quality of the goods e.g. 'Manufactured in Australia from premium imported components'
- origin of particular ingredients or components e.g. 'Made in Australia from Chinese fabric'
- percentage of the Australian ingredients or components that make up the goods e.g. 'Assembled in Australia from 70 per cent Australian parts'
- availability of ingredients or components e.g. 'Proudly made in Australia. We imported the angora wool because nobody grows it in Australia.'
- the ownership of the company e.g. 'Australian Made and Owned, providing Australian jobs'.

The ACCC encourages the provision of additional information where it is accurate, relevant, useful and doesn't give a false or misleading impression. However, businesses should be careful about relying on additional information to clarify or change the nature of claims made in their promotional materials.

Promotional materials are judged on a stand-alone basis. The provision of additional information at a later stage or in the 'fine print' of an advertisement won't excuse omissions or misleading representations in the initial material.

### Example

A business promotes itself on its website and in marketing materials as an 'Australian company' that 'supports Australian workers' by manufacturing its goods in Australia. Such claims would reasonably lead consumers to believe that all of the business' goods are 'Australian made'. Stickers on the individual products, however, indicate that a number of products are manufactured overseas and then imported into Australia.

Providing this additional information on the product won't offset the initial misleading representation. In such circumstances, the safest course of action would be to ensure that the claims in the promotional material more accurately reflect the levels of processing occurring in Australia and overseas.

## Case study

### Supabarn Supermarkets Pty Ltd and The Real Juice Company Pty Ltd

In 2015, the ACCC issued Supabarn, a supermarket operator, and The Real Juice Company, a juice manufacturer, each with a \$10 200 fine in relation to apple juice manufactured by the Real Juice Company and sold by Supabarn. The apple juice carried the phrases:

- 'It's produced locally using the freshest quality Apples'
- 'Straight from a Farm'
- 'Made in Griffith'

The ACCC considered that the labelling of the juice was misleading as it gave the impression that the product was made from fresh apples grown in Australia when it was made from reconstituted apple juice concentrate imported from China.

Media release: [ACCC acts on alleged false or misleading juice representations](#).



## Remaining silent

As a general principle, businesses are free to market their goods as they see fit. The instances in which businesses are compelled to make a country of origin representation in relation to goods other than food are limited (e.g. customs regulations state that some goods cannot be imported into Australia unless they are correctly labelled at the border with a trade description, including the name of the country where the goods were made or produced).

Despite this, businesses should be aware that failing to disclose information may be misleading in some circumstances. For example, it may be misleading not to state the origin of goods if aspects of the labelling or packaging (logos or pictures) carry misleading implications. It is your responsibility to make sure that the combination of what is said and what is left unsaid does not give consumers the wrong overall impression.

## Example

A business operating under the trading name, The Aussie Carpet Company, imports and sells carpet made overseas. The company's logo, which appears on all of the packaging and promotional material, is green and gold and includes an image of the Southern Cross. The business doesn't provide any explicit information about the origin of the carpet.

In this instance, failure to provide an explicit statement clarifying where the carpet was made could be misleading, as a reasonable and ordinary consumer looking at the product may gain the impression that the carpet is of Australian origin. To avoid any confusion, the business should consider adding clear and prominent country of origin claims for its individual products.



## Making ambiguous claims

A common consumer complaint about country of origin claims has been that they are unclear. The fact that a claim is unclear does not necessarily mean that it is misleading. This is particularly the case if the claim is clarified in a sufficiently obvious fashion. Of course, this approach is only valid if the initial claim is not misleading.

### Example

#### Clothing

An Australian company imports and sells clothing. The packaging carries a large, bolded statement '100 per cent Australian' (beneath an Australian flag symbol) with no further context as to what it is referring to. The statement is in fact a reference to the ownership of the company.

The use of such an ambiguous or unclear claim is likely to raise concerns under the ACL as a reasonable consumer could conclude that the representations are a reference to the origin of the clothing, not the ownership of the company.

Claims such as 'Made in Australia from local and imported ingredients/components' or 'of mixed origins' are unlikely to be regarded as false, misleading or deceptive if they are an accurate description of the goods. Care should be taken however if the 'local' content is only minimal. Small amounts of content from Australia or another country should not be used to assert its connection with that country. Furthermore, such a claim would obviously be misleading if the product was not 'made' in that country or did not actually contain any content from that country.

## Making other origin claims

Origin claims about goods are generally not limited to representations about which country a good originated in or from. Businesses may also choose to make a 'place of origin' claim such as 'Made in Melbourne' or 'Product of Tasmania' to indicate that a product originated from a particular place or region.

The 'safe harbours defences' in s. 255 of the ACL (discussed on page 13) apply to country of origin claims and not to place of origin claims.

### Case study

#### Basfoods Pty Ltd

In 2014, Basfoods was ordered to pay a penalty of \$30 600 following the the issuing of Infringement Notices by the ACCC in relation to its product 'Victoria Honey'.

The ACCC considered that by naming and labelling its product 'Victoria Honey', Basfoods had represented the product as originating from Victoria, Australia when in fact it was a product of Turkey.

Media release: [ACCC acts on Victoria Honey misrepresentations](#).



## Substantiating your claim

Businesses trading in Australia are expected to be aware of their obligations under the ACL. It's not a defence, or an excuse, to claim that you 'didn't know' you were doing something wrong.

It is your responsibility to ensure that you have a reasonable basis for any and all claims you make about your goods. If you make a country of origin claim or otherwise represent that your goods originated from a particular country, you should be able to substantiate it. Failure to do so could result in the ACCC issuing you with an infringement notice, or taking court action against you. Businesses are encouraged to put in place administrative and recordkeeping procedures to ensure that they keep the necessary documents to be able to substantiate their claims.

You should also regularly review your product labelling and promotional materials to ensure they remain compliant with the law.

## Relying on assurances from a third party

Businesses should be cautious about relying on third party information (e.g. from a product manufacturer or distributor) when making country of origin claims. Ultimately, you need to have confidence in the claims that you are making.

In the ACCC's view, businesses should take steps to verify any information provided to them prior to making any claims about a good. If in doubt about the accuracy or truthfulness of information provided to you, you should seek further information prior to making any claims.

Reasonable reliance on information supplied by a third party is not a defence to an allegation that you have contravened the law in relation to a country or origin claim. However, the ACCC may take this into account when considering what action to take against you in relation to a potential breach.

# 3. Penalties and consequences

A consumer or business who believes they have suffered loss or damage as a result of misleading or deceptive conduct may be entitled to claim for damages.

Just as you must adhere to the ACL, so must your competitors. As a business, you also have a right to take action against a competitor if you feel you have suffered loss or damage as a result of them breaching the ACL.

The ACCC, state and territory consumer protection agencies and any other individual or group can also take legal action against businesses for contraventions of the ACL.

## ACCC powers and priorities

The ACCC cannot pursue all the reports it receives or issues that come to its attention about the conduct of traders or businesses. While all complaints are carefully considered, the ACCC's role is to focus on those circumstances that will, or have the potential to, harm the competitive process or result in widespread consumer detriment. The ACCC therefore exercises its discretion to direct resources to matters that provide the greatest overall benefit for competition and consumers.

The ACCC's current compliance and enforcement priorities can be found at <http://www.accc.gov.au/cepolicy>.

The ACCC has a range of compliance and enforcement tools at its disposal to enforce the law. For example, the ACCC may:

- accept an **administrative resolution** whereby the business agrees to stop the conduct and/or to take measures necessary to ensure that the conduct doesn't reoccur. The business may also agree to compensate those who have suffered detriment because of the conduct.
- accept a court **enforceable undertaking** from the business pursuant to s. 87B of the *Competition and Consumer Act 2010*. In a s. 87B undertaking, for example, the business involved may acknowledge that its conduct is likely to have contravened the law, undertake to remedy the harm caused by the conduct and/or undertake to put in place measures to ensure compliance with the law. The ACCC can take the business to court if it breaches the s. 87B undertaking during the term of the undertaking.
- issue one or multiple **infringement notices** (fines) where it has reasonable grounds to believe that a person has contravened a relevant provision of the ACL (most contraventions will carry a penalty of \$126 000 for publicly listed companies, \$126 000 for corporations and \$2520 for individuals)
- take **court action**, seeking remedies that may include pecuniary penalties (up to the greater of \$10 million, three times the value of the benefit received, or where the benefit cannot be calculated, 10 per cent of annual turnover in the preceding 12 months for corporations and up to \$500 000 for individuals per contravention), declarations that a corporation has engaged in contravening conduct, compensation for affected consumers, orders disqualifying a person from managing corporations, injunctions to prevent ongoing or future conduct, compliance training and/or corrective advertising orders
- where concerns arise about the accuracy or honesty of an origin representation, the ACCC may call upon the business to substantiate it. One way the ACCC may do this is to issue a **substantiation notice**.

Businesses should be aware that conduct demonstrating a blatant disregard for the law will be given priority by the ACCC.

## Tip: five basic safeguards for your business

In order to reduce the risk of claims or representations breaching the ACL, you should ensure:

- all staff with responsibility for labelling, advertising, sales and marketing receive ACL training. Tailored compliance training will help equip staff to meet your business' obligations under the law
- all promotional material is checked against the requirements of the ACL
- that you have clear procedures in place for approving product labelling/packaging and advertising materials. Assigning responsibility for approval to specific people will reduce your risk of running problematic advertisements or labels
- effective complaints handling procedures are implemented at the 'shop front' level. For further information on effective complaints handling procedures, please refer to Standards Australia's *Guidelines for complaint management in organizations* (AS/NZ 10002:2014)
- existing promotional materials are reviewed regularly.

## 4. More information; complaints

More information about country of origin food labelling is available from the ACCC website, including a *Country of origin food labelling guide*. Visit [www.accc.gov.au/cool](http://www.accc.gov.au/cool) for more.

The ACCC's *Advertising and selling* guide will help businesses to understand their broader ACL obligations when it comes to promoting their goods or services. The guide is available from the ACCC's website: <http://www.accc.gov.au/publications/advertising-selling>.

Visit [www.accc.gov.au](http://www.accc.gov.au) for more information on business' rights and responsibilities under the ACL.

### Free ACCC information networks

Would you like to keep up with the latest news and events from the ACCC? The ACCC has a number of free newsletters focusing on small business, franchising, and agriculture.

Subscribe online by visiting [www.accc.gov.au/media/subscriptions](http://www.accc.gov.au/media/subscriptions).

### How to make a complaint

If you believe that another business may have breached the ACL, you should contact the ACCC.

You can lodge a complaint with the ACCC about a potential ACL breach that comes to your attention by using our [small business complaint form](#) or by contacting our small business helpline on 1300 302 021.

If you believe that you may have breached the ACL by making a country of origin claim, you should cease making the claim and seek legal advice. The ACCC cannot offer legal advice relating to your particular circumstances and cannot therefore advise you on which country of origin claim you should make in relation to your products.