

**TRADE PRACTICES AMENDMENT (COUNTRY OF ORIGIN  
REPRESENTATIONS) BILL 1998**  
Second Reading

[Senator WOODLEY](#) (QLD) (11.40 a.m.)—The Australian Democrats welcome this bill, the [Trade Practices Amendment \(Country of Origin Representations\) Bill 1998](#). In doing so, I want to thank the many people who have consulted with us on this issue about their concerns on labelling. That goes not only to this particular piece of legislation but to the fact that the government were so tardy in bringing in any legislation along these lines, despite the fact that it was one of the issues they trumpeted in their pre-election propaganda. I wonder about the coincidence, having myself introduced a bill to deal with labelling, that it was just a few weeks after that that we then saw the government legislation. I would not want to make any inference from that; I am sure it was simply a coincidence.

In thanking a lot of people who had great concerns about the issue and still have concerns about this legislation, I would like to mention particularly the Victorian Strawberry Growers Association and the Australian Strawberry Growers Association, who brought to my attention a range of products which all purported to be Australian products or made in Australia. They had no description like that but simply had an address on them which was an address of some particular office in Australia. The inference in all of those cases was that somehow or other the product which contained strawberries was a product of Australia or was made in Australia. The growers pointed out, in putting this range of products before me—I do not think I should mention the product names—that every one of those products contained Mexican strawberries. In fact, there were virtually no Australian strawberries in any of those products; they were all imported strawberries. On only one of those products was there any indication that perhaps some of the contents may not be totally Australian.

So there is a real difficulty which this legislation seeks to address. I think it is an improvement on previous legislation. We need to say to the Labor Party that this is an improvement on previous legislation that had been enacted by the previous government.

[Senator Neal](#)—It is almost identical.

[Senator WOODLEY](#)—But it does have a lot of problems, Senator Neal. That is what I want to address, and I know you are seeking to address this by some of your amendments, as we will and as the Greens will in the amendments they bring forward. Let me also thank Harry Wallace from the Australian Owned Companies Association and congratulate him once again for the work he has done on behalf of Australians with his AusBuy guide, which the Democrats give away in their hundreds. We continually run out of them because people really want to know what is Australian and how they can buy Australian products. Harry Wallace, a successful businessman himself, set up the Australian Owned Companies Association, which he has funded himself, in order to put in people's hands a tool which they can use to identify genuine Australian products. I think that this country owes him a tremendous debt of gratitude for the work that he did, which he funded himself, in order to support Australian companies. He is a great Australian and he has done a great job.

I would like to thank the Australian Consumers Association, which made a very useful submission to the committee which inquired into the bill. I have had discussions with many farmers' organisations—particularly the South Australian Farmers Federation and the National Farmers Federation—which were concerned that the government did not seem to be moving on something they had promised and which the organisations saw as essential to their attempts to allow Australian consumers who wished to do so to buy Australian primary products.

As I have said, we introduced our own bill, and I might indicate the process that we entered into. We do not think that our ideas are so perfect that we cannot benefit from discussion with

other people. I know that my bill—if we had proceeded with it—now needs amendment. It is important that legislation always goes through a process of discussion with the people most affected by it. I recommend that as a process to the government: it really is helpful to get input from other people. I indicate that my colleague Senator Meg Lees some years ago conducted a trial of a Democrat proposal for labelling, and we did that through one of the food chains in South Australia.

[Senator Stott Despoja](#)—Foodland.

[Senator WOODLEY](#)—Foodland. We discovered that consumers were enthusiastic about the proposal that we had put up because they really wanted to buy **Australian made** products. It was a scheme in which there was a scale A, B, C and D. A represented entirely Australian product with Australian owned companies, D represented totally imported product, while B and C were somewhere in between. I simply say that to underline that people really do want legislation which enables them to address this issue.

Let me now turn to the legislation itself. Currently, section 53 of the Trade Practices Act prohibits false or misleading representations being made about the origin of goods offered for sale in Australia. There has, however, been a good deal of trouble establishing just what constitutes false or misleading representation for the purposes of this section. The legislation before us today seeks to address that issue. It does that by establishing that a corporation making a claim about the country of origin of a particular good will not breach the Trade Practices Act where the claims it makes meet certain criteria. For example, to be able to claim that a good is the product of Australia all the ingredients contained within that good must be from Australia, and virtually all production processes must have been undertaken within Australia. That is a good piece of legislation. To be able to claim that a good was made in Australia, it will have to have been what is referred to as 'substantially transformed' here in Australia and that at least 50 per cent of the cost of producing the product was incurred in Australia. That would rule out the misleading labelling of those strawberry products that I described earlier.

The Democrats are generally supportive of this legislation. We will, however, be seeking to amend the bill, and I would like to briefly outline some of the concerns we will be aiming to address. Firstly, we believe that, where a corporation makes a claim about the country of origin of any ingredients within a product, that claim should be subject to the restrictions in this bill. This is in line with our belief that consumers should be given full information and not be taken for granted. I described to you the trial that we conducted in South Australia which showed that consumers were enthusiastic about a labelling process which actually enabled them to know what they were buying.

Secondly, the bill in its current form applies a 50 per cent cost test for the 'Made in Australia' descriptor. The Democrats believe that this 50 per cent threshold is too low and that a 75 per cent threshold is a more appropriate level. That was the advice we took from the Victorian strawberry growers, and that would be their preference. This higher cut-off would provide a greater level of credibility to the product that has a 'Made in Australia' label. It will also provide a boost to local producers, as it will encourage food manufacturers, such as yoghurt manufacturers, to use Australian soft fruit in their manufacture. I was interested to see that the Greens also have some amendments on this issue and indicate that the Democrats will consider those carefully in the committee stage.

Thirdly, we believe the regulations to this act should provide examples of what constitutes substantial transformation. Clearly this is a qualitative test and may turn out to be very difficult for people to interpret and/or enforce. We believe that the inclusion of examples in the regulations would be of great assistance to the courts, to industry and to those seeking to enforce this legislation. Fourthly, the Democrats believe that the legislation should be split into food and non-food amendments. We say this because we feel the needs of Australian food

producers are different from those who manufacture non-food products. We got that distinction in debate within the hearings for the inquiry which was conducted. Quite clearly, those who were concerned about labelling of food products, such as the strawberry growers, had quite distinct concerns to those who were perhaps involved in the TCF industry. Whilst the same provisions will apply to food and non-food products, we believe it is appropriate to separate those categories within the legislation.

As a final point, I would simply like to mention the situation that many people who go into delis or fruit and vege shops are faced with: that is, a cabinetful or bins full of produce with no labels indicating where the produce is from. A good example is the leg of ham that you might see in your deli cabinet. The purchaser has no idea whether that ham is from Australian pork or has been manufactured from imported pork. Whilst the scope of the current legislation does not really allow us to address that problem, I think it is important to put the government on notice that this is an issue that the Democrats and the pork industry and many others are very concerned about. Recent election results in Queensland underline that.

Consumers have a right to know where their goods are coming from, and those who want to buy Australian should be given sufficient information to allow them to do so. The concerns I have just outlined all relate to schedule 1 of the bill.

In relation to schedule 2, I indicate now that my colleague Senator Murray will also be moving some amendments. Schedule 2 seeks to give the ACCC the power to undertake representative actions in respect of breaches of part IV of the act. Part IV, of course, deals with various restrictive trade practices, such as misuse of market power, unfair trading and secondary boycotts.

The House of Representatives committee on fair trading—the Reid committee—recommended that the ACCC be given the power to undertake representative actions, particularly in respect of section 46, that is, the misuse of market power provisions. The committee in its report argued that this power 'will marginally improve small business access to justice'.

The Democrats support the general proposition of ACCC representative action powers, as recommended by the Reid committee, and broadly support the provisions in the act. But the Labor opposition has raised an important concern with these provisions, arguing that it would also give the ACCC the power to take representative action on secondary boycott provisions—and Senator Neal spelt this out very well in her speech.

The Democrats position is quite clear: unless a secondary boycott involves competition issues, we do not believe that the ACCC should be involved and, in fact, cannot see why it got involved in recent industrial action. That was the longstanding policy position of the ACCC predecessor, the Trade Practices Commission, from 1977 to 1996. Not once did the Trade Practices Commission ever engage in a secondary boycott action. Indeed, the TPC made its views known to the Senate employment committee's inquiry into secondary boycotts in late 1993. Its policy stance is the following:

It is the anti-competitive class of case that the Commission as a competition authority is primarily concerned with . . . The company damage class of case without substantially lessening of competition is better left to private action.

From 1994 to 1996 this position was also reflected in law, with section 45D secondary boycotts in the Trade Practices Act restricted to boycotts involving substantial lessening of competition and other boycotts in the Industrial Relations Act. In 1996 the secondary boycott provisions were transferred back to the Trade Practices Act.

In our discussions with the ACCC and the government at the time, it was made pretty clear that the ACCC's primary interest would be in the competition class of the cases. Indeed, one

would have thought the objects clause of the Trade Practices Act, which expressly refers to competition, would have restricted the ACCC's role in any case only to dealing with boycotts involving competition issues. However, over the last year, without any public announcement of a change of policy, the ACCC has changed a 20-year policy and started going after secondary boycotts that do not involve competition issues.

This, in our view, is an inappropriate use of the ACCC's scarce resources. If a company wants to use the secondary boycott provisions against a union, it should use its own money, not get public funding through an ACCC action. Our amendments will seek to reinstate in law the distinction between `competition' and `non-competition' secondary boycotts, and make it clear that the person suffering the damage must instigate boycott action if there are no competition issues involved.