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AUSTRALIAN MADE, AUSTRALIAN GROWN LOGO

CODE OF PRACTICE

**INCORPORATING THE
RULES AND CONDITIONS
GOVERNING THE USE OF THE
AUSTRALIAN MADE, AUSTRALIAN GROWN LOGO**

Revised edition effective 1 July 2014

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PART I The Australian Made, Australian Grown Logo

The Australian Made Logo certification trade mark was created by the Australian Government in 1986 to promote Australian made products in local and export markets. The triangular logo encasing a stylised kangaroo is the most recognised and trusted country of origin symbol in Australia, enjoying a 98.8 per cent recognition level amongst Australian consumers. (Roy Morgan Research, 2012)

In 2002, the Logo was assigned to Australian Made Campaign Limited (AMCL), a not-for-profit public company established in 1999 by the Australian Chamber of Commerce & Industry (ACCI) and its network of State and Territory chambers to rejuvenate the Australian Made Campaign.

Under the original rules for use of the Logo, the Logo's use was focused on products which met a two-part compliance test consistent with the provisions of the Trade Practices Act 1974 that provided certain legal protections for claims that goods were "made in Australia".

In 2007, the Logo was renamed the "Australian Made, Australian Grown logo" and the rules for use of the Logo were revised to introduce an 'Australian Grown' descriptor for use with the Logo on fresh produce.

In 2011 the legal protections on which the rules for use of the Logo are based were:

- incorporated in the Australian Consumer Law (set out in Schedule 2 of the Competition and Consumer Act 2010); and
- extended to include claims that goods are grown in a specified country (including 'Australian Grown' and similar claims).

In this document, the Australian Made, Australian Grown logo is referred to as "the Logo" and the rules for use of the Logo which are set out in Part VII of this Code of Practice are referred to as "rules and conditions". A reference to the Logo may also be taken as being a reference to the graphic device or logo embodied in Australian registered trade mark 451318 which covers classes of goods 1-34.

The Logo may not be used by any person, other than as provided in Rule 47, without the express authority of AMCL.

PART II The Code of Practice

SCOPE OF THE CODE

This Code of Practice applies to all licensees of AMCL and to AMCL as licensor of the Logo. The Code places a series of obligations on licensees, including compliance criteria that goods in specified categories must meet for the goods to be eligible to bear the Logo; record keeping obligations; and a process for resolution of complaints and disputes. In the event of a complaint or dispute, every licensee must comply with this process. It is a condition of licence approval that an applicant agrees to be bound by all of the rules and conditions contained in this Code of Practice.

This Code of Practice in its entirety constitutes the 'rules governing the use of the certification trade mark' prescribed by Section 173 of the Trade Marks Act 1995. The Licensee Undertaking (warranty and indemnity) required as a condition of a licence to use the logo may be varied for individual licensees by AMCL at its sole discretion, provided that every provision of the undertaking actually given by a licensee is consistent with this Code and with the Deeds of Assignment and Management of the Logo between AMCL and the Commonwealth of Australia.

A licence to use the Logo does not give any entitlement to be a Member (shareholder) of AMCL, and a licensee of AMCL does not, by becoming a licensee, acquire any rights, interests or other entitlements with respect to the ownership, management, administration or control of AMCL or the Logo.

This revised edition of the Code of Practice applies from 1 July 2014 to all existing and new licensees of AMCL and to AMCL as licensor of the Logo.

OBJECTIVES OF THE CODE

The objectives of the Code of Practice are to:

- provide information to licensees of AMCL on their rights and obligations to ensure the consistent, correct usage of the Logo;
- build consumer confidence that goods promoted in association with the Logo comply with established legislative consumer information and country of origin labelling standards and promote the benefits of buying Australian goods; and
- enable the Logo to be used to raise the domestic and international profile of goods that are produced in Australia.

The Code of Practice does not take precedence over statutory requirements. It is the responsibility of licensees to ensure that their usage of the Logo does not contravene any statutory requirements.

ADMINISTRATION OF THE CODE

Australian Made Campaign Limited is responsible for the administration of the Logo and the maintenance of this Code of Practice.

AMCL's contact details are available on the website www.australianmade.com.au.

AMENDMENT AND REVIEW

This Code of Practice in its entirety is subject to the approval of the Australian Government, as former owner of the Logo. Consistent with its role under the Trade Marks Act 1995, the rules and conditions for use of the Logo included in this code of practice have also been considered and approved by the Australian Competition and Consumer Commission having regard to and satisfying itself in relation to competition and consumer protection principles.

The Code of Practice is lodged with IP Australia and is available for public inspection during the hours that IP Australia is open for business. AMCL may make recommendations to the Australian Government regarding the efficiency and effectiveness of the Code of Practice. The Australian Government may also review the Code of Practice periodically to determine its efficiency and effectiveness in guiding the correct usage of the Logo, and the efficiency and effectiveness with which the Code of Practice has been administered.

PART III Becoming a Licensee

Any individual, business or organisation can apply for a licence to use the Logo. Licence fees are payable in relation to the use of the Logo and are levied according to the annual sales turnover generated (or in the case of products new to the market, expected to be generated during the initial year of use of the Logo) from goods promoted with the Logo. These goods must be identified on a product list incorporated in the licence application.

All goods promoted in association with the Logo must meet a compliance test and it is the obligation of the applicant or licensee to apply the compliance test relevant to each use of the Logo and to determine which goods can be promoted with one of the permitted origin claims and the Logo. Every applicant for a licence is required to:

- execute a Licensee Undertaking consistent with this Code of Practice confirming that the goods identified on their product list meet the compliance test that applies to the origin claim to be used on each good in conjunction with the Logo, and that their use of the Logo will be in strict accordance with the rules and conditions; and
- permit audit activity by AMCL and its audit representatives to ensure that each good bearing the Logo meets the compliance requirements applicable to the origin claim that is made.

License applications are available from AMCL and its agents, and from the website. Applications are assessed by and subject to the approval of AMCL. If an applicant does not agree to abide by the Code of Practice including the rules and conditions, or does not execute the required Licensee Undertaking, the application will be rejected.

In instances where a licence application is rejected by AMCL, the rules and conditions provide a mechanism for independent review of the decision.

PART IV Obligations on Licensees

Becoming a licensee of AMCL brings with it a range of obligations, as detailed in this Code of Practice. These obligations range from informational and procedural obligations that relate to the use of a certification trade mark to specific rules regarding the use of the Logo which have been developed to promote compliance with underlying statutory obligations. The obligations on licensees in relation to the use of the Logo are discussed in Part V of this Code of Practice. This section addresses informational and procedural obligations that apply to licensees of AMCL.

LICENSING REQUIREMENTS

As part of the licensing process, every applicant for a licence to use the Logo must execute a Licensee Undertaking in which the licensee warrants that it will be bound by the Code of Practice and the rules and conditions detailed therein and further warrants the compliance of the goods identified on their product list with the rules and conditions contained in the Code.

Annual licence fees are levied on each licensee of AMCL according to the annual sales turnover for those goods identified on the licensee's product list. Where a licensee exits the scheme voluntarily, or where its licence is suspended or revoked, these fees are forfeited to AMCL.

More information about licence fees is available in Part VIII of this document and on the website, www.australianmade.com.au.

SYSTEMS AND POLICIES FOR COMPLIANCE WITH THE RULES

In making application for a licence to use the Logo, every applicant must agree to abide by the rules and conditions relating to record keeping, information provision, compliance monitoring and complaints and dispute resolution. Every licensee of AMCL should establish systems and policies to effectively meet its obligations and ensure that its employees and agents know their responsibilities in relation to the use of the Logo.

Every licensee must advise AMCL in writing of changes to its contact details or product list, and must give written notice of intention to terminate a licence before its expiry date, or to not renew a licence.

THE PRODUCT LIST

The licence application incorporates a product list. The product list is a list of those goods the applicant wishes to promote with the Logo which meet the rules and conditions of the scheme, as well as all underlying statutory obligations. Upon acceptance of an application, AMCL retains the product list on file. If a licensee, for whatever reason, wishes to amend the product list, they should apply to AMCL. **The Logo can be used by licensees only in association with goods identified on the product list.**

COMPLAINTS AND DISPUTE RESOLUTION PROCESSES

The rules and conditions include a complaints and dispute resolution process that AMCL and every licensee must abide by. Every licensee should be aware that the complaints and dispute resolution process places obligations on it in relation to the provision of information to AMCL in the compliance investigation phase and, if necessary, its participation in the conduct of an independent compliance audit. Part VI of this Code of Practice provides more detailed information on the operation of the complaints and dispute resolution processes.

MAINTENANCE OF DOCUMENTARY RECORDS

It is a requirement of each licence that the licensee agrees to maintain sufficient documentary records to substantiate the compliance of the goods identified on its product list with the compliance test or tests contained in the rules and conditions, and to satisfy AMCL as to the sales of licensed products. Under current legislative arrangements, a licensee may be required to provide these records to a court of law or to a regulatory agency to substantiate its compliance with underlying statutory obligations. A licensee may also be required to provide these records to an independent compliance auditor from time to time.

COMPLIANCE MONITORING AND AUDITING

AMCL is required to undertake monitoring of the compliance of licensees with the rules and conditions contained in the Code of Practice. This includes an ongoing program of independent compliance auditing that places obligations on licensees in relation to the provision of documentary records. It also includes compliance investigation by AMCL and possible independent compliance auditing in relation to a dispute. Where a compliance investigation or independent compliance audit is undertaken, it must be conducted according to the rules and conditions contained at Part VII.

By entering into an agreement with AMCL to use the Logo, each licensee agrees to cooperate fully with AMCL or its representatives if it is selected for a compliance audit.

Part V Obligations in relation to the Logo

Licensees are subject to a range of obligations in relation to the use of the Logo. These are detailed in the rules and conditions contained at Part VII of this Code of Practice. These obligations are identified and discussed below.

RULES RELATING TO DESIGN, COLOUR AND SIZE

A licensee or other authorised user of the Logo is not permitted to alter the design of the Logo under any circumstance. This means that licensees or other authorised users cannot make alterations to the graphic proportions of the Logo or its individual elements. However, the Logo can be sized to meet a user's requirements and any colour combination can be applied to the elements of the design.

In the event that the form of the Logo is altered by AMCL (as per Rule 23), then licensees may be required by AMCL to use only the modified version of the Logo. Further, every licensee must immediately give effect to and observe any reasonable direction given by AMCL as to size and representation of the Logo.

RECOGNITION OF AMCL'S RIGHTS IN RELATION TO THE TRADE MARK

A licensee must not challenge or in any manner impugn the ownership of the Logo by AMCL (as provided in the Deeds of Assignment and Management of the Logo between AMCL and the Commonwealth of Australia) or AMCL's right to take appropriate measures for the protection of the Logo.

Every licensee acknowledges that:

- AMCL is the registered owner of the certification trade mark and holder of the exclusive rights conferred by s.20 and s.171 of the Trade Marks Act 1995; and
- A licensee has no right, title or interest in the Logo other than the rights granted by its licence.

Any licensee who becomes aware of a potential infringement of the Logo should report the matter to AMCL.

USE OF THE LOGO

A licensee may only use the Logo in association with goods identified on the licensee's product list, as amended from time to time. These goods must meet at least one of the compliance tests contained in Rule 18 in Part VII of this Code of Practice. The Logo must be used with one or more appropriate representations (words printed underneath the Logo), as described in Rule 18 and 19.

There are six different groups of representations, each group having its own compliance criteria, which are detailed in Rule 18.

The six groups are:

1. "Product of Australia" and similar
2. "Australian Made", "Made in Australia" or "Manufactured in Australia"
3. "Australian Grown"
4. "Australian Grown" followed by the name/s of the ingredient/s to which the claim relates, e.g. "Australian Grown Peas and Carrots"
5. "Australian Seafood"
6. "Australian".

Where a claim of "Australian Made", "Made in Australia" or "Manufactured in Australia" is used, the good must comply with the safe harbour provisions of Part 5-3 of the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010), including requirements for substantial transformation and for a

minimum of 50% of production costs to be incurred in Australia. The following information is provided to assist licensees understand these concepts:

What is substantial transformation?

The Australian Consumer Law (section 255(3)) states that for a substantial transformation to occur in a particular country, the goods must undergo a:

fundamental change in that country in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

The Australian Competition and Consumer Commission (ACCC) has expressed the view that simple processes, such as reconstituting imported juice concentrate into fruit juice, may not constitute a substantial transformation. Similarly, the mere assembly of imported components into household or other items may not be considered to be a substantial transformation.

In relation to food products, AMCL has a more restrictive definition of substantial transformation than that suggested by the ACCC guidelines. For the purposes of this Code of Practice, the following processes are not considered to be substantial transformation:

- packaging or bottling
- size reduction – cutting, dicing, grating, mincing, etc.
- reconstituting – e.g. of fruit juice concentrate
- freezing, canning or simple preserving processes associated with packaging
- mixing or blending of food ingredients, where the resulting product is not substantially different to the separate ingredients
- juicing – extraction of juice from fruit
- homogenisation
- pasteurisation
- seasoning
- marinating
- coating – as in crumbing prawns or battering fish fillets
- pickling
- dehydrating/drying
- fermentation – e.g. in the production of wine, cider or salami
- curing – the treatment of meat with curing salts, as in ham or bacon
- roasting or toasting – e.g. of coffee beans, nuts or seeds.

Elements which can be included in the cost of production/manufacture

In relation to the compliance criteria for any of the representations, the *Australian Consumer Law* (Section 256) sets out three broad categories of cost that may be considered to determine whether 50 per cent of production or manufacturing costs is attributable to production or manufacturing processes that occurred in Australia. Costs that are eligible to be included in the calculation are:

- expenditure on materials incurred by the producer/ manufacturer in the production or manufacture of the goods;
- expenditure on labour incurred by the producer/ manufacturer that relates to the production or manufacture of the goods and can be reasonably allocated to the production or manufacture of the goods; and

- expenditure on overheads incurred by the producer/ manufacturer that relates to the production or manufacture of the goods and can reasonably be allocated to the production or manufacture of the goods.

The country of origin labelling compliance guidelines produced by the ACCC will assist licensees to make determinations about the compliance of goods with these criteria. The booklet *Country of origin claims and the Australian Consumer Law (2014)* is available from the ACCC website, www.accc.gov.au, and from AMCL. Such guidance may be withdrawn, replaced or updated from time to time.

The Australia New Zealand Food Standards Code (the Code) contains standards to regulate food sold in Australia and in New Zealand. Standard 1.2.11 – Country of Origin Labelling sets out the requirements for country of origin labelling of food products sold in Australia.

The Country of Origin Standard is available on the Food Standards Australia New Zealand (FSANZ) website at www.foodstandards.gov.au. Information can also be obtained from the FSANZ Information Officer on (02) 6271 2241, or email info@foodstandards.gov.au.

If an applicant or licensee is in doubt about their compliance with these criteria, they should seek their own legal advice.

CHANGE OF PRODUCTION PROCESS OR SOURCING OF INPUTS

Where there is a change to a production process or the cost or source of inputs so that a good listed on a licensee's product list no longer meets the compliance criteria, the licensee must advise AMCL immediately and cease using the Logo in relation to that good.

COMPLIANCE WITH UNDERLYING STATUTORY OBLIGATIONS

The extent of underlying statutory requirements may depend on the corporate structure of the licensee organisation, the State or Territory of operation of the licensee's business or the existence of statutory requirements that apply to firms in specific industry sectors. If in doubt, a licensee should seek legal advice to determine that their usage of the Logo and any representations used with the Logo complies with these underlying statutory obligations.

LIABILITY OF THE LICENSEE

Every licensee of AMCL is liable in relation to the compliance of its usage of the Logo with underlying statutory requirements.

PART VI Consumers, Complaints and the Logo

CONSUMERS ARE A KEY STAKEHOLDER

Consumers who look for and purchase products promoted in association with the Logo are key stakeholders in the Australian Made, Australian Grown Campaign. It is vital, therefore, that consumers are certain that the Logo is being used according to the rules and conditions detailed in this Code of Practice, and that any consumer concern about the use of the Logo is addressed in an appropriate manner.

THE COMPLAINTS AND DISPUTE RESOLUTION PROCESS

Misuse of the Logo, whether by a licensee or a non-licensee, is a serious matter which could undermine the integrity and reputation of the Logo in the eyes of licensees and consumers.

AMCL undertakes to investigate every such complaint received, and to keep all parties to each complaint fully informed as to its progress and outcome.

The rules and conditions provided at Part VII of this Code of Practice establish a complaints and dispute resolution process that applies to AMCL and to every licensee. The process includes a compliance investigation phase, an appeals mechanism involving assessment of the complaint by AMCL and the possible initiation of an independent compliance audit to determine compliance with the rules and conditions.

PART VII Rules and Conditions

Owner of certification trade marks and approved certifier

1. Australian Made Campaign Limited ("AMCL") is the registered owner of the certification trade mark incorporating the Logo and is the only person who may certify that goods bearing the certification trade mark meet the criteria for use of the Logo. In certain circumstances, the Australian Government, as the former owner of the certification trade mark, may, from time to time, exercise rights and perform obligations of AMCL in relation to the Logo.

Application for a licence to use the Logo

2. Any individual, business or organisation can apply for a licence to use the Logo by completing and lodging the licence application.

Approval of application for licence or renewal

3. AMCL will approve an application for a new licence or renewal of an existing licence where AMCL is satisfied that:
 - i) the applicant has paid the necessary fees (in accordance with the current or agreed fee scale in Part VIII of the Code);
 - ii) the applicant has received a copy of the rules and conditions relating to the use of the Logo and agreed to abide by the rules and conditions; and
 - iii) the applicant has executed the required Licensee Undertaking; and
 - iv) taking into account the information provided in the application and any other relevant information, the products listed in the application meet the appropriate compliance criteria listed in Rule 18; and
 - v) the granting of such a licence is not likely to bring the Logo into disrepute (as per Rule 27).

Right to independent review of a decision not to grant or renew a licence

4. In instances where an application for a new licence or renewal is refused by AMCL, the applicant may request a review of the decision.
 - i) The principal executive officers of each party must confer within 7 days of receipt of the request for a review by AMCL to try to resolve the dispute.

- ii) If the dispute is not resolved within 14 days, the dispute may be submitted to an independent review.
- iii) The independent review will be conducted by a person or organisation selected by agreement between the applicant and AMCL or appointed by the Institute of Arbitrators and Mediators Australia.
- iv) The independent reviewer's fees and charges will be borne by the applicant.
- v) The independent reviewer will determine the capacity of the applicant to comply with these rules and conditions.
- vi) Where the independent reviewer determines that the applicant meets these rules and conditions, the applicant will be granted a licence and AMCL shall reimburse the applicant for any fees and charges levied by the reviewer.
- vii) Decisions of the independent reviewer are binding on all parties.

Licensee certificate

- 5. AMCL's approval of a licence application will be evidenced by issuing a certificate that is valid for the period specified on the certificate.

The certificate remains the property of AMCL and must be returned promptly to it on request or on termination of the licence.

Licensee register

- 6. AMCL will maintain a register of the following details relating to each current and former licensee:
 - i) registered business name;
 - ii) trading name;
 - iii) Australian Business Number (where applicable);
 - iv) street address;
 - v) postal address;
 - vi) business telephone number;
 - vii) business facsimile number;
 - viii) nominated contact officer and title of that officer; and
 - ix) a product list – being a listing of all products identified on each licensee's application, or as amended from time to time in accordance with these rules and conditions, that may be promoted in association with the Logo.

Inspection of licensee register

- 7. The licensee register, including each licensee's product list, will be made available for inspection by any party, including members of the public, during normal business hours at the head office of AMCL.

Information on current licensees and registered products will also be made available on the AMCL website. The website can be found at www.australianmade.com.au

Amendment to details on licensee register

- 8. A licensee must notify AMCL within 7 days of any change to the details relating to that licensee contained on the licensee register.

Application to remove a good from the product list

9. A licensee may apply to AMCL to remove a good from the product list.

Where a licensee applies to remove a good from the product list, all fees paid to AMCL in relation to that good are forfeited to AMCL.

Application to include a new good on the product list

10. A licensee may apply to AMCL to include a new good on their product list. The application will be approved where AMCL is satisfied that:

- i) the licensee has paid the necessary fees (in accordance with the current or agreed fee scale in Part VIII of the Code); and
- ii) taking into account the information provided in the application and any other relevant criteria, the products listed in the application meet the appropriate compliance criteria listed in Rule 18; and
- iii) the granting of a licence for these products is not likely to bring the Logo into disrepute (as per Rule 27).

Right of appeal against a decision not to include a new good on the product list

11. In instances where an application for inclusion of a new good on a licensee's product list is refused by AMCL, the applicant may request a review of the decision, to be conducted according to the procedures outlined in Rule 4.

Obligations on licensees

12. Following approval of a licence application, that licensee shall:

- i) establish and maintain policies and systems to meet their obligations under these rules and conditions including, where appropriate, establishing compliance programs; and
- ii) ensure that these policies and systems recognise all underlying statutory obligations; and
- iii) ensure that all employees and agents are aware of these rules and conditions; and
- iv) permit AMCL and any auditor appointed by AMCL or the Australian Government to obtain access during normal working hours to such records and to make such inspections and enquiries as are necessary to establish whether the Logo has been used in accordance with these rules, and provide access to information about the policies and systems maintained under rule 12(i) sufficient to establish their effectiveness.

Licensees not to misrepresent scope of licence

13. A licensee shall not misrepresent the scope of its licence nor use the Logo in any manner which contravenes the rules and conditions for its use.

Right to use the Logo conferred by licence

14. The Logo is available for use by each licensee in relation to the goods identified on its product list, as amended from time to time in accordance with the rules and conditions, and then only where the use of the Logo is in accordance with these rules and conditions and where the use of the Logo and associated representations does not conflict with any underlying statutory obligation.

Liability in relation to use of the Logo

15. Every licensee is liable in relation to the compliance of its usage of the Logo.

Termination of licence

16.

- a) AMCL will have the right to terminate a licence by notice in writing to a licensee upon the happening of any of the following events:
 - i) If the licensee fails to renew its licence within 3 months of the licence expiry date; or
 - ii) If the licensee ceases to carry on the business of selling the products identified on its product list; or
 - iii) If the licensee is found to have committed a breach of the rules and conditions set out in this Code of Practice; or
 - iv) If the licensee through any act or omission generates a circumstance that is reasonably likely to damage the reputation of AMCL, the Commonwealth of Australia or the Logo; or
 - v) If the licensee challenges AMCL's rights as the registered owner of the certification trade mark.
- b) A licensee wishing to terminate or not renew a licence shall give AMCL notice in writing and shall pay all licence fees due at the date such termination takes effect;
- c) The licence must be kept in force and the appropriate licence fee paid while the licensee is still selling products carrying the Logo;
- d) Notwithstanding that AMCL may terminate a licence under clause 16(a)(i) by written notice, a terminated licence may be reinstated where the former licensee completes the required renewal process and pays the applicable fees (as detailed in Part VIII of the Code), including any outstanding amounts. Fees payable in this circumstance will be calculated as if the licence remained in force after its expiry date.

Obligations of a licensee on termination of licence

17. Following termination of a licence, the licensee must:

- a) within 30 days or some other period determined by AMCL, cease to use the Logo in any manner whatsoever and will not at any time thereafter use the Logo or any other name or sign that is deceptively similar to the Logo; and
- b) immediately remove or cause to be removed from public display any sign, label or poster incorporating the Logo that is in the possession power or control of the licensee; and
- c) from the date of termination, not hold itself out as being in any way associated with AMCL or the Logo.

Compliance criteria relating to the use of the Logo

18. A licensee may only use the Logo in relation to a good in conjunction with one or more of the representations set out in 18 (a), 18 (b), 18 (c), 18 (d) or 18 (e) and where that good meets the compliance criteria set out in 18 (a), 18 (b), 18 (c), 18 (d) or 18 (e) and where the use of the Logo or the representation does not conflict with any statutory requirement.

- a) For the Logo to be used in conjunction with the representation "Product of Australia" or "Australian Product":
 - i) Australia must be the country of origin of each significant ingredient or significant component of the good (as defined in Section 255 of the Australian Consumer Law); and
 - ii) all, or virtually all, processes involved in the production or manufacture of the good must have happened in Australia (as defined in Section 255 of the Australian Consumer Law).

- b) For the Logo to be used in conjunction with the representations "Australian Made", "Manufactured in Australia" or "Made in Australia":
 - i) the good must be substantially transformed in Australia (as defined in Section 255(3) of the Australian Consumer Law except for food products where a stricter definition as set out below applies); and
 - ii) 50 per cent or more of the cost of manufacturing and producing the good must be attributable to production or manufacturing processes that occurred in Australia (consistent with Sections 256 to 257 of the Australian Consumer Law).

- c) For the Logo to be used in conjunction with the representation "Australian Grown":
 - i) each significant ingredient or significant component of the good must be grown in Australia (as defined in Section 255 of the Australian Consumer Law) and not exported and re-imported; and
 - ii) all, or virtually all, processes involved in the production or manufacture of the good must have happened in Australia (as defined in Section 255 of the Australian Consumer Law).

- d) For the Logo to be used in conjunction with the representation "Australian Grown" followed by the name of one or more ingredients (e.g. "Australian Grown Peas & Corn), or category of ingredients (e.g. "Australian Grown vegetables"):
 - i) 50 per cent or more of the cost of manufacturing and producing the good must be attributable to production or manufacturing processes that occurred in Australia (consistent with Sections 256 to 257 of the Australian Consumer Law); and
 - ii) 90 per cent or more of the total ingoing weight of the good must consist of ingredients or components which have been grown in Australia and/or water harvested in Australia; and
 - iii) 50 per cent or more of the total ingoing weight of the good must consist of the ingredients, components or category of ingredients or components specified in the representation; and

- iv) 100 per cent of each ingredient, component or category of ingredients or components specified in the representation must have been grown in Australia; and
 - v) the ingredients or components specified in the representation must not have been exported from Australia and re-imported; and
 - vi) the representation must always be used with the appropriate descriptor identifying the Australian grown component/s of the good, eg "Australian Grown Apples and Pears".
- e) For the Logo to be used in conjunction with the representation "Australian Seafood":
- i) the good must be a seafood product as defined below; and
 - ii) the good must meet the compliance criteria set out in either 18 (c) or 18 (d) above.
- f) For the Logo to be used in conjunction with the representation "Australian":
- i) the good on which the Logo is used must be exported and not re-imported; and
 - ii) the good must meet all the criteria set out in at least one of 18 (a), 18 (b), 18 (c), 18 (d) or 18(e); and
 - iii) where the good meets the criteria under Rule 18 (b) (i.e. to use an 'Australian Made' representation), use of the 'Australian' representation does not give a misleading impression as to the origin of the major ingredients or components of the product; and
 - iv) Where a product using this representation is returned to Australia, the good must be relabelled so that it bears the appropriate representation under Rule 18(a) to (e); and
 - v) Marketing material specific to a particular product or products and carrying the Logo with the 'Australian' representation must not be used in Australia.

For the purposes of these rules:

The following processes are not considered to be substantial transformation:

- packaging or bottling
- size reduction – cutting, dicing, grating, mincing, etc.
- reconstituting – e.g. of fruit juice concentrate
- freezing, canning or simple preserving processes associated with packaging
- mixing or blending of food ingredients, where the resulting product is not substantially different to the separate ingredients
- juicing – extraction of juice from fruit
- homogenisation
- pasteurisation
- seasoning
- marinating
- coating – as in crumbing prawns or battering fish fillets

- curing – the treatment of meat with curing salts, as in ham or bacon
- pickling
- dehydrating/drying
- fermentation – e.g. in the production of wine, cider or salami
- roasting or toasting – e.g. of coffee beans, nuts or seeds.

Goods, or ingredients or components of goods, are **grown** in Australia if they:

- a) are materially increased in size or materially altered in substance in Australia by natural development; or
- b) germinated or otherwise arose in, or issued in, Australia; or
- c) are harvested, extracted or otherwise derived from an organism that has been materially increased in size, or materially altered in substance, in Australia by natural development.

For the purposes of rule 18(c) and 18(d) in relation to particular goods:

- a) packaging materials are not treated as ingredients or components of the goods; and
- b) disregard the weight of packaging materials in working out the weight of the goods.

“reconstituted products” means products ready for consumption that contain ingredients that have been dried or concentrated by the evaporation of water, to which water has subsequently been added.

In the case of reconstituted goods, the water used to reconstitute these ingredients must be included in the calculation of the ingoing weight of these ingredients. Any water (whether of Australian origin or not) which is added to reconstitute an ingredient that is not of Australian origin is deemed to have the same origin as the foreign ingredient.

“seafood” means all aquatic vertebrates and aquatic invertebrates intended for human consumption, but excluding amphibians, mammals and reptiles.

“seafood product” means a processed or unprocessed good of which the sole or principal or characterising ingredient is seafood.

Use of representations in association with the Logo

19.

- a) Representations used in association with the Logo must be located directly below the Logo and must be legible (not less than 1.5 mm high).
- b) Notwithstanding Rule 18 and Rule 19 (a) the Logo may be used without a representation in the following situations only:
 - i) where the Logo (without a representation) was, prior to May 2007, embedded into either the goods or the packaging in such a way as to render change difficult or unduly costly, or
 - ii) where it would be impossible, due to the size of the product or other reasons, for the representation to be reproduced legibly (not less than 1.5 mm high) in immediate association with the Logo

and AMCL is satisfied that the continued use of the Logo without a prescribed representation is not potentially misleading or confusing to consumers.

Licensees must seek approval from AMCL to use the Logo without a representation in accordance with Rule 19(b)(i) or (ii).

In the case of 19 (b)(i) the absence of a representation must be redressed if changes to the manufacturing process or retooling occur.

In the case of 19 (b) (ii) a clear representation located elsewhere (than directly below the Logo) on the product may be made.

Logo to be used in relation only to products included on the product list

20. Licensees shall only use the Logo in relation to those goods that are identified on the product list as amended from time to time.

Change to production process of a good included on the product list

21. Where there is a change to a production process so that a good included on a licensee's product list no longer meets the compliance criteria set out in Rule 18, that licensee must advise AMCL immediately and cease using the Logo in relation to that good.

Change to origin or costs of inputs, or other changes in relation to a good included on the product list

22. Where:

- i) the sourcing of a component of production or manufacture of a good included on a licensee's product list changes so that the good no longer meets the compliance criteria set out in rule 18; or
- ii) the costs of inputs change such that the good no longer meets the compliance criteria set out in rule 18; or
- iii) any other event occurs such that the good no longer meets the compliance criteria set out in rule 18;

the licensee must advise AMCL immediately and cease using the Logo in relation to that good.

Alteration of design of the Logo

23.

- a) A licensee or other authorised user of the Logo is not permitted to alter or amend the Logo in any way.
- b) AMCL may alter the Logo by making application to IP Australia to amend the registered trade mark. Such amendment would require the written approval of the Australian Government as former owner of the certification trade mark.
- c) In the event that the form of the Logo is altered by AMCL, licensees may be required by AMCL to use only the modified version of the Logo. AMCL will specify a reasonable timeframe for implementation of such changes by licensees. Further, every licensee must immediately give effect to and observe any reasonable direction given by AMCL as to size and representation of the Logo.

Logo may be sized to meet users' requirements

24. AMCL, its licensees and other authorised users of the Logo may, subject to the requirements of Rule 19, alter the size, but not the relative proportions, of the Logo to meet their individual requirements.

Use of colour to meet users' requirements

25. AMCL, its licensees and other authorised users of the Logo may use any colour or colour combination in relation to the elements of the Logo to meet their individual requirements.

Maintenance of documentary records

26. Licensees shall maintain sufficient documentary records to substantiate the compliance of the goods identified on the product list, as amended from time to time, with the compliance criteria provided at Rule 18 and to satisfy AMCL as to the sales of licensed products. These records must be made available to AMCL and its audit representatives on request, in accordance with rule 12(iv), and under current legislative arrangements, these records may need to be provided in a court of law or to regulatory authorities to substantiate compliance with underlying statutory requirements.

Registered products not to bring Logo into disrepute

27. AMCL may refuse to grant a licence, or may withdraw a licence previously granted, where it considers that the product or products concerned are likely to bring the Logo into disrepute.

In such cases, the applicant or licensee may request a review of the decision, to be conducted according to the procedures outlined in Rule 4.

A licence would not be refused or withdrawn where the product is the subject of a voluntary recall resulting from faults or defects which are capable of being rectified or which involve particular batches of the product.

AMCL will include any such determinations in its annual report to the Australian Government.

Logo not to be applied outside Australia without permission

28. The Logo may not be applied to products, packaging or point of sale material where the products are packed outside of Australia except with the express permission of AMCL.

The licensee must advise AMCL when a product is to be packed overseas and must be able to demonstrate that such products meet the compliance criteria set out in Rule 18.

Independent compliance audit

29. A licensee may be required, from time to time, to permit audit activity by an independent compliance auditor, who will independently determine the compliance of that licensee with these rules and conditions. Such activity may include interviews with the licensee and inspection of manufacturing processes and products as well as the inspection of relevant documents in accordance with Rule 12(iv). Documents requested by the independent auditor may include sworn statutory declarations of compliance from time to time.

Selection of companies for annual compliance audit

30. AMCL shall conduct an annual compliance audit, to be carried out by an independent auditor and in accordance with arrangements agreed from time to time with the Australian Government, of a sample of licensees selected at random from its licensee register.

Appointment and remuneration of independent compliance auditor

31. The independent compliance auditor will be appointed and remunerated by AMCL.

Appointment criteria for independent compliance auditor

32. The independent compliance auditor must meet the following appointment criteria:

- i) the independent compliance auditor must hold appropriate tertiary or professional qualifications, or have appropriate industry experience; and
- ii) the independent compliance auditor shall not be a Member or a licensee of AMCL.

[Note: Members of AMCL as defined in the AMCL Constitution include the Foundation Members (being the Australian Chamber of Commerce and Industry and the various state and territory chambers of commerce) and the National Farmers Federation. New Members may be admitted from time to time.]

Report of the independent compliance auditor

33. The independent compliance auditor will report to AMCL in relation to the compliance of licensees with these rules and conditions.

Decision of the independent compliance auditor is final

34. The decisions of the independent compliance auditor are final and binding on all parties.

Promotion of the Logo

35. AMCL will undertake such activities as it deems appropriate to promote the adoption, recognition and relevance of the Logo in the Australian community and in export markets.

Complaints and dispute resolution

36. AMCL and every licensee shall abide by the procedures for complaints and dispute resolution as set out in these rules and conditions.

Complaints received by AMCL

37. Where AMCL receives a complaint about the use of the Logo:
 - i) it will inform the complainant, in writing or by email within 14 days of receiving the complaint, what actions the complainant may themselves take to pursue the matter, including their statutory consumer rights, and what actions will be taken by AMCL to investigate and resolve the complaint.
 - ii) AMCL will then initiate a compliance investigation in relation to the complaint.

Procedure for compliance investigation in relation to complaints

38. AMCL shall follow the following procedures in relation to complaints:
 - a) Where the complaint involves use of the Logo by a licensee:
 - i) AMCL will issue to that licensee a notice advising that a complaint has been received and describing the nature of the complaint together with a compliance investigation checklist.
 - ii) Upon receiving a compliance investigation checklist from AMCL, the licensee will respond to AMCL, in writing within 14 days, attaching the completed checklist.
 - iii) AMCL will evaluate the licensee's response to determine whether or not the complaint is valid.

- iv) As part of the compliance investigation process, AMCL may require a licensee to undergo an independent compliance audit, conducted according to these rules and conditions.
 - v) Should the compliance investigation determine that the complaint against the licensee is valid, the sanctions detailed in these rules and conditions become available to AMCL.
- b) Where the complaint involves use of the Logo by a non-licensee:
- i) AMCL will write to the non-licensee in question setting out the circumstances under which the Logo may legally be used, and requesting that the non-licensee take action to rectify the situation.
 - ii) if the complaint has not been resolved within one month of the initial notice, AMCL may have recourse to other action, including legal action and referral of the complaint to appropriate state or federal bodies.

Complaints received by licensees

39. Where a licensee receives a complaint about its use of the Logo, it will respond to the complainant in writing within 14 days of receiving the complaint. The licensee will take all reasonable steps, in good faith, to resolve the complaint directly with the complainant.

- i) In its response to the complainant, the licensee will explain the basis upon which the claim in question is or is not justified and what corrective action (if any) has been taken to remedy the complaint.
- ii) A copy of the response must be provided to the AMCL.

Complainant to notify AMCL of failed direct negotiation

40. If a complainant is dissatisfied with the outcome of their direct negotiation with a licensee in relation to a dispute, the complainant may advise the Chief Executive of AMCL that the dispute remains unresolved.

Compliance investigation in relation to an unresolved dispute

41. When a complainant advises AMCL that direct negotiation with a licensee has failed, AMCL will initiate a compliance investigation in relation to the unresolved dispute in accordance with the procedures set out in Rule 38.

AMCL to report to all parties on compliance investigation

42. The Chief Executive of AMCL will, in writing and within 14 days of receiving a compliance investigation response, indicate to all parties to the dispute whether AMCL is satisfied that the licensee is complying with these rules and conditions, what actions have been taken as a result of the compliance investigation and whether AMCL intends to pursue the matter further.

If AMCL does not intend to pursue the matter further, its response to the complainant should indicate that statutory consumer rights of action may be available.

Imposition of sanctions

43. A breach of these rules and conditions by a licensee constitutes immediate grounds for the imposition of appropriate sanctions by AMCL.

Sanctions available to AMCL

44. The following sanctions are available to AMCL:

- i) withdrawal of offending representations and/or publication of corrective statements, at the expense of the licensee and as directed by the Chief Executive of AMCL;
- ii) naming and publication of details of a breach of these rules and conditions in the annual report of AMCL;
- iii) suspension of a licence for a specified period; and
- iv) termination of a licence under Rule 16.

Right of appeal against a decision to impose a sanction

45. In instances where a sanction is imposed on a licensee by AMCL, the licensee may request a review of the decision, to be conducted according to the procedures outlined in Rule 4.

Licence fees forfeited if licence terminated, suspended or revoked

46. In any instance where AMCL suspends or revokes a licence in accordance with these rules and conditions, or where a licensee voluntarily terminates their licence, all licence fees are forfeited to AMCL.

Use of the Logo by non-licensees for purposes other than certification of products

47. The Logo may be used by the following non-licensees for purposes other than certification of products:

- a) AMCL, its Members and Australian Government agencies may use the Logo for administrative, educational, advertising and promotional purposes (provided that Australian Government agencies may not use the Logo for promotion of the sale of goods except where its use for this purpose has been licensed in accordance with this Code of Practice);

[Note: Members of AMCL as defined in the AMCL Constitution include the Foundation Members (being the Australian Chamber of Commerce and Industry and the various state and territory chambers of commerce) and the National Farmers Federation. New Members may be admitted from time to time.]

- b) The Board of AMCL may authorise the use of the Logo for similar purposes by specified persons including sponsors or sponsored organisations on terms determined from time to time by the Board, consistent with the objectives of the Code of Practice.
- c) AMCL may authorise the reproduction of the Logo in publications such as textbooks and newspaper or magazine articles.

Rules and conditions do not take precedence over statutory obligations

48. These rules and conditions do not take precedence over any Commonwealth, State or Territory statutory requirement.

Lodgement of rules and conditions with IP Australia

49. These rules and conditions are lodged with IP Australia and are available for inspection by any person during the hours when IP Australia is open for business, as required under the Trade Marks Act 1995.

Approval by Australian Competition and Consumer Commission

50. Consistent with its role under the Trade Marks Act 1995, the rules and conditions for use of the Logo included in this code of practice have been considered and approved by the Australian Competition and Consumer Commission having regard to and satisfying itself in relation to competition and consumer protection principles.

Amendment to rules and conditions at initiation of the Australian Government

51. These rules and conditions can only be amended with the written approval of the Australian Government as former owner of the certification trade marks in the Logo.

Amendment must be approved by Australian Competition and Consumer Commission

52. Any amendment to these rules and conditions must be approved by the Australian Competition and Consumer Commission and subsequently lodged with IP Australia and made available for public inspection.

Advice of amendment to rules and conditions

53. AMCL will advise all licensees of any change to these rules and conditions as soon as is practical.

PART VIII Licence fees

Annual licence fees for the Logo are based on the aggregated annual sales turnover for all products identified on the product list, as amended from time to time, that qualify for use of the Logo.

The fee schedule will be determined from time to time by the Board of AMCL and licensees will be given not less than six months' notice of any proposed changes.

AMCL will always publish and make available the fee schedule, and will publish a notice of changes to the fee schedule at least six months before any change, and give advice of the changes to the Australian Government at the time of publication of the notice.

The Board of AMCL may at its discretion waive or vary a licence fee in individual cases. Where AMCL seeks a licence fee greater than the scheduled amount, the applicant or licensee has the right to a review in accordance with Rule 4 (i), (ii), (iii), and (iv).

Licence fees will normally be payable for a twelve month period, but a licence for a period other than twelve months may be granted at the discretion of the Chief Executive of AMCL. In such cases the licence fee shall be calculated on a pro rata basis.

For new licences and renewals, the licence fee will be based on the aggregated sales turnover figure for the nominated products for the preceding 12 months. Where the products have been available for sale for less than 12 months, the turnover figure will be based on the projected sales figure for a full year.

EXAMPLES OF LICENCE FEE CALCULATION:

Example 1: Licence renewal – no changes to registered products

The licence expires on 31 December 2013. Sales of all registered products during the period 1 January 2013 to 31 December 2013 came to \$1 million. The renewal fee will be based on \$1 million turnover.

Example 2: Licence renewal – deleted products

The licence expires on 30 June 2013. Sales of all registered products during the period 1 July 2012 to 30 June 2013 came to \$750,000. However, the company is no longer selling some of its registered products, the sales of which totalled \$100,000 during the previous period. The renewal fee will be based on turnover of \$650,000 (the sales of the products remaining on the product list).

Example 3: Licence renewal – added products

The licence expires on 31 October 2013. Sales of all registered products during the period 1 November 2012 to 31 October 2013 came to \$1 million. The company applies to use the Logo on 5 additional products as part of their renewal.

- The new products have been on the market for a year or more. Sales for 1 November 2012 to 31 October 2013 came to \$400,000. The renewal fee for all registered products will be based on turnover of \$1,400,000

- The new products have been on the market for less than 12 months (including products which have just been or are about to be placed on the market). Estimated sales for these new products over the next 12 months is \$300,000. The renewal fee for all registered products will be based on turnover of \$1,300,000

Example 4: New licence – established products

- The products proposed to be registered have been on the market for a year or more and sales for the last 12 months amounted to \$600,000. The licence fee is based on turnover of \$600,000
- The products have been on the market for less than 12 months. Estimated sales for these products over the next 12 months is \$800,000. The licence fee will be based on turnover of \$800,000.

Example 5: New licence – new products

The products on the licence application have just gone on the market or are about to be launched. Budgeted sales for the products for the next 12 months is \$250,000. The licence fee will be based on turnover of \$250,000.

Example 6: Existing licence – new products added part way through licence period

The licence expires 30 April 2014. A number of products have already been registered with a declared turnover of \$500,000. In September 2013, the company adds 3 new products. Budgeted turnover for these products over the next 12 months is \$240,000. The pro-rata figure for September to April is \$160,000.

The additional fee payable is the fee payable on the new combined turnover of \$660,000 (\$500,000 original figure plus \$160,000 pro rata new sales), minus the fee already paid.

NOTE: Where a licensee has products which are not registered to carry the Logo, sales of such products are not included in any calculation of the licence fee.

Example 7: Mix of imported and Australian products

The company has a range of imported products and a range of products which are made or grown in Australia and are registered to carry the Logo. Total sales for the company for the year amount to \$5 million. Sales of products registered to carry the logo total \$2 million. The licence fee is based on turnover of \$2 million.

Appendix: Licensee Undertaking (Warranty and indemnity)

Every applicant for a licence to use the Logo must provide AMCL with an undertaking in the terms stipulated by AMCL. AMCL reserves the right to modify the standard Licensee Undertaking from time to time at its sole discretion.

Date

To: Australian Made Campaign Limited (ACN 086 641 527) of Suite 105, 161 Park Street, South Melbourne, Victoria
(Licensor)

From:

(Licensee)

Background

- A Under a Deed of Assignment dated 5 July 2002, the Commonwealth of Australia assigned to the Licensor ownership of a certification trade mark details of which are set out in part 1 of the Schedule.
- B The manner in which the Licensor is entitled to use this trade mark and the logo representations details of which are set out in part 2 of the Schedule is governed by the rules contained in the "Australian Made, Australian Grown Logo Code of Practice" and by the Management Deed between the Commonwealth and the Licensor entered into at the same time as the Deed of Assignment
- C The Licensor is entitled to authorise specified persons to use the trade mark and the logo representations in accordance with the Code of Practice and has authorised the Licensee to engage in such use.
- D Pursuant to Part III of the Code of Practice, the Licensee now provides the Licensor and the Commonwealth with the following warranty and indemnity.

Agreed Terms

1. Definitions

"Code of Practice" means the Australian Made, Australian Grown Logo Code of Practice incorporating the rules and conditions governing the use of the Logo and the Trade Marks by both the Licensor and the Licensee;

"Logo" is the Australian Made, Australian Grown logo represented in Australian registered trade mark number 451318, details of which are set out in part 1 of the Schedule;

"Logo Representations" means the logo representations, details of which are set out in part 2 of the Schedule;

"Products" means goods registered with the Licensor under the Code of Practice as being approved to bear the Trade Marks; and

"Trade Marks" means:

- (i) the Logo;
- (ii) Australian registered trade mark number 451318, details of which are set out in part 1 of the Schedule;
- (iii) the Logo Representations, details of which are set out in part 2 of the Schedule; and
- (iv) such other registered or unregistered trade marks which the Licensor notifies in writing to the Licensee from time to time.

2. Warranty and indemnity

2.1 Warranty by the Licensee

In consideration of being authorised to use the Trade Marks by the Licensor and in accordance with Part III of the Code of Practice, the Licensee warrants that:

- (a) the Licensee agrees to be bound by the rules and conditions outlined in the Code of Practice;
- (b) the Licensee will ensure that Products at all times comply with the rules and conditions for the use of the Trade Marks as detailed in the Code of Practice and, in particular, that each of the Products meets the relevant criteria set out in the Code of Practice for use of the Logo with the origin claim to be made in respect of the Product;
- (c) The Licensee will maintain documentary records sufficient to demonstrate the compliance of the Products with the relevant criteria set out in the Code of Practice;
- (d) The Licensee will cooperate fully with the Licensor or its representatives if required to submit to a compliance audit or investigation in respect of its use of the Logo;
- (e) all material published by it on the AMCL website is true and correct, complies with the law and does not infringe the rights of any third party;
- (f) any sales information provided to the Licensor as the basis for calculation of any licence fee payable under the Code of Practice will be an accurate statement of actual sales or an honest projection of estimated sales of the Products, as the case may be; and
- (g) the person signing this warranty and indemnity is authorised to do so on behalf of the Licensee.

2.2 Indemnity by the Licensee

- (a) The Licensee must indemnify and keep indemnified the Licensor and the Commonwealth against any claims made by any third person in connection with the Licensee's use of the Trade Marks.
- (b) The Licensee will also indemnify the Licensor and the Commonwealth against all losses, costs, demands, expenses and liabilities whatsoever arising out of or referable to any circumstances which would not have arisen but for a breach of the warranties given in clause 2.1.

2.3 Continuing Obligation


The indemnity stated in clause 2.2 is a continuing obligation separate and independent from the Licensee's obligations under Code of Practice and survives the term of any authorisation to use the Trade Marks granted to the Licensee pursuant to the Code of Practice. It is not necessary for the Licensor to incur any expense or make payment before enforcing such indemnity.

3. Governing Law

This warranty and indemnity will be construed in accordance with and be governed by the laws of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of the State of Victoria including the Federal Court of Australia.

SCHEDULE

Part 1 – Logo

Registered Trade Mark Number	Description	Classes	Status
451318	The image: 	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34	Registered

Part 2 – Logo Representations

 <p>(a) PRODUCT OF AUSTRALIA</p>	 <p>(b) AUSTRALIAN MADE</p>	 <p>(c) AUSTRALIAN GROWN</p>
 <p>(d) AUSTRALIAN GROWN CARROTS AND PEAS</p>	 <p>(e) AUSTRALIAN SEAFOOD</p>	 <p>(f) AUSTRALIAN</p>

EXECUTION

Signed for and on behalf of: [insert name of Licensee - usually registered company name]	
by:	
Name of authorised signatory:	
Position:	
Signature:	
In the presence of:	
Name of witness: [any adult may witness]	
Signature of witness:	



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