

APPENDIX C:

THE AUSTRALIAN LEGISLATIVE FRAMEWORK FOR DESCRIBING BEEF AND BEEF PRODUCTS

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Technical papers for the
Australian Beef Language
'WHITE PAPER'

Published by Meat and Livestock Australia, Sydney.

June 2016

Biddle R (2016) The Australian legislative framework for describing beef and beef products. Technical papers for the Australian Beef Language 'White Paper'. Meat and Livestock Australia, Sydney, 12 Pages

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CONTENTS

OVERVIEW	03
ELEMENTS APPLYING TO BOTH EXPORT AND DOMESTIC MARKETS	04
THE CODE	04
THE AUSTRALIAN MEAT STANDARD	05
ELEMENTS APPLYING TO EXPORT MARKETS	05
ORDERS UNDER THE EXPORT CONTROL ACT 1982	06
THE AUS-MEAT FRAMEWORK FOR BEEF DESCRIPTION	08
THE AUS-MEAT LANGUAGE	08
AUS-MEAT ACCREDITATION	09
MSA ACCREDITATION	09
REFERENCES	10

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THE AUSTRALIAN LEGISLATIVE FRAMEWORK FOR DESCRIBING BEEF AND BEEF PRODUCTS

OVERVIEW

The application of a reliable trade description to products offered for sale is fundamental to the sustainable operation of markets. The maintenance of consumer confidence in perishable products such as meat and dairy has seen governments institute a wide ranging legislative framework to underpin this objective. In addition to the general application of consumer law in Australia, specific trade description provisions apply to meat and meat products.

In respect of trade descriptions for beef and beef products, it is the product description component that is of particular relevance to this White Paper project. However, because of the degree of interdependence of the product description and other trade description elements, it is important to understand the broad scope of these elements.

These trade description elements typically include (in addition to product description provisions):

- A net weight or volume statement
- A country of origin statement (e.g. "Product of Australia")
- An indication of place of slaughter or further processing
- The date of packaging and packer details (if packaged)
- An ingredient list (for beef products)
- A batch identifier
- A storage statement (e.g. "Keep Chilled").

For the domestic market, a degree of flexibility exists as to how these trade description elements may be conveyed from the point of slaughter to the consumer of the beef or beef product. This flexibility is necessary given that beef may be purchased by the consumer, for example, from a butcher who breaks down a carcass; from a supermarket as fresh portions in a labelled tray; or in a packaged

and processed form with or without the need for further preparation before consumption. Essentially, the trade accommodates these trade description requirements by maintaining appropriate records so that an accurate label can be applied to packaged products or displayed with products sold in the unlabelled state or conveyed to the purchaser upon their request of the vendor.

Additionally, for public health and consumer protection reasons such as facilitating food recalls, Australian laws impose traceability and associated record keeping requirements, which in part rely upon elements of the trade description requirements.

The *Australian Meat Industry Guidelines for Numbering and Bar Coding of non-Retail Trade Items*, as developed in conjunction with Global Standards One (GS1) Australia, provide an European Article Number-Uniform Code Council (EAN-UCC) system compatible means of underpinning product traceability in the domestic and export sectors of the industry. Although use of the Guidelines is not mandated by legislation, their widespread use by industry significantly underpins their need to comply with current traceability requirements.

More detailed trade description, including product description, requirements apply to beef and beef products for export. There are clear historical reasons for this circumstance, in large part deriving from the need to meet requirements set by importing country authorities and to protect the reputation of Australian product.

A more detailed discussion of Australian product description requirements for beef and beef products follows under headings which describe elements which are common to both domestic and export markets and which describe elements specific to export markets.

ELEMENTS APPLYING TO BOTH EXPORT AND DOMESTIC MARKETS

Australian law provides broad protections for consumers, including for consumers of meat and meat products. The *Australia New Zealand Food Standards Code* (The Code, Anon 2002) plays a key role given its incorporation by adoption into the consumer protection laws of the States and Territories and, through reference, by the *Australian Meat Standard* (Anon 2007). As the latter Standard is called up by the export meat legislation and by State/

Territory legislation, the Code therefore operates so that a common set of minimal requirements apply to the export and domestic sectors of the meat industry.

Following is a discussion of the trade description elements of the Code and the *Australian Meat Standard* with particular reference to the operation of a beef product description language.

THE CODE

The Standards which comprise the Code are legislative instruments under the *Legislative Instruments Act 2003*. Part 1.2 of Chapter 1 (General Food Standards) of the Code details labelling and other information requirements for foods. There are currently some 11 Standards included in Part 1.2 and all have application to meat and meat products, depending on the extent to which the food is packaged or transformed or on the extent of claims made about the food. Matters covered in Part 1.2 are:

- Standard 1.2.1 Application of Labelling and other Information Requirements
- Standard 1.2.2 Food Identification Requirements
- Standard 1.2.3 Mandatory Warning and Advisory Statements and Declarations
- Standard 1.2.4 Labelling of Ingredients
- Standard 1.2.5 Date marking of Packaged Food
- Standard 1.2.6 Directions for Use and Storage
- Standard 1.2.7 Nutrition, Health and Related Claims
- Standard 1.2.8 Nutrition Information Requirements
- Standard 1.2.9 Legibility Requirements
- Standard 1.2.10 Characterising Ingredients and Components of Foods
- Standard 1.2.11 Country of Origin Labelling.

In respect of meat and meat products, the general application of the Part 1.2 labelling provisions is qualified by Chapter 2 (Food Product Standards) and, specifically, by provisions contained in Standard 2.2.1. This Standard requires, *inter alia*, the declaration of the offal content of a meat product, the declaration of the fat content of minced meat, and the use of specified product descriptions for various types of fermented, comminuted meat whether or not the product is labelled at the point of sale.

Although the Code is largely silent on the need to use a specific language or languages to describe beef and beef products, its labelling provisions also need to be interpreted in the context of the *Australian Consumer Law* (Anon 2010) and the associated consumer laws of the States/Territories. Specifically, these broader laws contain powers which prohibit misleading and deceptive practices. In effect, the use of a product description for beef and beef products which is false or misleading exposes the person applying that description to the risk of prosecution under consumer law.

It is of interest to note that neither Standard 1.2.7 (Nutrition, Health or related Claims) nor other parts of the Code contain provisions regulating use of the terms “organic”, “bio-dynamic” or similar. This is in clear contrast to the export legislation (see later). Additionally, the Code has been amended in recent years to require the disclosure of the country of origin of fresh beef, including that sold unlabelled.

THE AUSTRALIAN MEAT STANDARD

This Standard was elaborated under the auspices of Primary Industries Ministerial Council and does not stand part of the *Food Standards Code*.

While this Standard is primarily concerned with the hygienic production of meat and meat products, it does include provisions related to labelling, product identification and product integrity.

Section 14 of the Standard relates to packaging and specifies the following outcome: “During packaging the wholesomeness of meat and meat products is not jeopardised and all packaging and labelling comply with the requirements of the Food Standards Code.”.

In relation to identification, traceability and integrity matters, Section 16 of the Standard specifies the following outcome: “Meat and meat products are appropriately identified. Meat and meat products that should be recalled are recalled.”.

While this Section is primarily concerned about batch identity and associated record keeping to facilitate a

product recall, Clause 16.7 does require that packaged meat and meat products are identified with the following information no later than at the time they are packed:

- The species of the animal from which it is derived
- The date of packaging
- The identity of the meat business of packaging.

Although the Australian Meat Standard is called up by the export legislation, the provisions of Clause 16.7 do not apply to export product as more stringent provisions are specified (see later).

Notwithstanding its referencing of the Food Standards Code, the Australian Meat Standard with its specific provisions for packed product (at Clause 16.7) would appear, with the exception of its reference to ‘species’, to not constrain the use of any beef product description language provided that language could not be construed to be deceptive or misleading in its application.

ELEMENTS APPLYING TO EXPORT MARKETS

As previously noted, more exacting trade description (including product description) requirements generally apply to meat and meat products for export. The legislative requirements of importing countries are an historical driver of this circumstance, as have been some notable market failures attributable to wrongly described and /or out of specification product.

The *Export Control Act 1982* was enacted in response to a major meat substitution incident, which threatened access to Australia’s then main export market for beef. Regulations and Orders made pursuant to this Act led to the repeal of the *Export (Meat) Regulations* made under the *Commerce (Trade Descriptions) Act 1905*. These legislative changes introduced significant penal provisions in relation to false trade descriptions and had the effect of restoring export market confidence in the integrity of

meat exported from Australia. It is of interest to note that the *Export (Meat) Regulations* included grading standards for beef and specified permitted quality types, aspects not included under the current export Orders.

The *Australian Meat and Live-Stock Industry Act 1997* provides an additional mechanism to underpin standards in the export meat industry, including by imposing through regulation licensing conditions on exporters. This regulatory framework allowed the establishment of AUS-MEAT Ltd. as a “Standards Body”, and provided for attaching AUS-MEAT Accreditation as a condition of licence for export abattoir and boning room operators. The requirement for AUS-MEAT Accreditation does not apply to the domestic meat sector. However, the operators of domestic sector abattoirs and boning rooms may elect to obtain this accreditation. >

AUS-MEAT Accreditation provides an important mechanism underpinning the operation of a uniform beef language for product description and the relevant AUS-MEAT Manual is referenced as a guidance document under the trade description provisions of the *Export Control Act 1982*.

The following discussion will consider relevant trade description provisions contained in Orders made pursuant to the *Export Control Act 1982* and in relation to product description provisions associated with AUS-MEAT Accreditation.

ORDERS UNDER THE EXPORT CONTROL ACT 1982

Regulations (Anon 2002) made under this Act provide a power to make Orders in relation to Prescribed Goods, a term which includes meat and meat products. In this regard the *Export Control (Prescribed Goods-General) Orders 2005* provide the powers to refuse export documentation for goods that do not comply with trade description requirements. Other sets of Orders lay down requirements for describing game meat (Anon 2013) and organic produce (Anon 2005a) for export, but largely lie outside the scope of this discussion. It is, however, of interest to note that game meat/products are covered by the Australian Meat Standard and there is no domestic regulatory counterpart to the Export Orders for organic produce.

As a general consideration, the Export Orders for meat and meat products need to be interpreted in light of the significant penalties (up to 5 years imprisonment) established by the present Act for making a false trade description. In this regard, the Act contains the following definitions:

- Trade description, in relation to prescribed goods means any description or statement (whether in English or any other language), a pictorial representation, indication or suggestion, direct or indirect: as to nature, number, quantity, quality, purity, class, grade, breed, measure, gauge, size, mass, colour, strength, sex, species, or age of the goods;

- False trade description means a trade description that, by reason of anything contained in or omitted from the description, is false or likely to mislead in a material respect as regards to the goods to which it relates, and includes any alteration of a trade description, whether by way of addition, effacement or otherwise, which makes the description false or likely to mislead;
- Label includes any tag, band, ticket, brand or pictorial or other descriptive matter.

It is thus evident that the broad scope of these trade description related definitions requires that any product description language cannot be construed in a way that would constitute a false or misleading trade description.

The *Export Control (Prescribed Goods-General) Orders 2005* do not add product description requirements for meat and meat products. However, these Orders include provisions for declaring official marks, such as the “Halal” mark and the “E-in-circle” stamp (applied to EU-eligible product). If necessary, these Orders could be amended in the future to provide for a mark designating a specific age or other category of beef.

The *Export Control (Meat & Meat Products) Orders 2005* provide several elements of prescription in relation to product description applying to beef and beef products and call up other standards that apply to these products.

These Orders include key definitions to inform their interpretation, including:

- “Beef” means meat derived from a) a female bovine animal or a castrate male bovine animal; or b) an entire male bovine animal showing no secondary sexual characteristics
- “Bull” means meat derived from a) an entire male bovine animal showing secondary sexual characteristics, or b) a castrated male bovine animal showing secondary sexual characteristics
- “Veal” means meat derived from a female, castrated male or entire male bovine animal a) that shows no evidence of eruption of permanent incisor teeth and b) the carcass of which is no more than 150 kilograms by reference to hot carcass dressed weight and c) that in the case of males shows no evidence of secondary sexual characteristics.

Thus any beef language used to describe export product would need to be congruent with these definitions or the Orders would need to be amended to allow use of that language.

Order 44 of these Orders further requires in relation to trade descriptions that export product must comply with the Australian Meat Standards (save for Clause 16.7 provisions – see above), and have an accurate trade description applied at the time of packaging for export, which includes the following:

- The species of animal from which the meat or meat product was derived
- Beef, bull or veal, as appropriate
- Net weight
- The country of origin
- The establishment of the last premises of packaging
- The name and address of the occupier of the registered establishment or the exporter or consignee

- The dates of packaging
- A list of ingredients for meat or meat products containing more than one ingredient
- The identity of the batch
- A keep chilled or frozen statement for non-shelf stable goods
- Certain other provisions for canned goods.

The requirement for a trade description to be accurate is further qualified in Schedule 6 of these Orders. Specifically, Clause 4.1 of Division II of this Schedule notes that guidance on the requirement for accuracy is provided by the *Australian Meat Industry Classification System Manual 1*, as published by AUS-MEAT Ltd.

Additionally, Clause 4.2 of the same Division provides that the use of the description “beef offal” is accurate if it is applied to offal derived from a beef, veal or bull carcass.

Schedule 7 of these Orders includes requirements for EU eligible beef (notably segregation and marking requirements for beef from animals not treated with HGPS) and in relation to categories of beef labelled as “Grain Fed”. Use of this latter term in a trade description requires that provisions contained in the AUS-MEAT Manual 1 are met.

In summary, these Orders place a clear obligation on an exporter to apply an accurate trade description and indicate that compliance with the product description language contained in the relevant AUS-MEAT Manual guards against the risk of applying a false trade description. Additionally in relation to the development of a new beef language for describing product, these Orders would, aside from the definitions of “beef”, “bull”, and “veal”, the requirement to disclose species and the preparation and segregation elements set down for some categories of product (e.g. “Halal Beef”), not appear to be significantly constraining of that objective.

THE AUS-MEAT FRAMEWORK FOR BEEF DESCRIPTION

The role of AUS-MEAT Ltd. as a “Standards Body” for product description under the *Australian Meat and Livestock Industry (Export Licensing) Regulations 1998* has been noted previously. In addition to the guidance role of AUS-MEAT product description standards specified in Orders made under the Export Control Act 1982, a Memorandum of Understanding (MOU) exists between the Department of Agriculture (now Department of Agriculture and Water Resources) and AUS-MEAT Ltd. in relation to verification of trade description requirements for export product.

Resulting from this MOU and its Standards Body designation, AUS-MEAT Ltd. therefore has an important role in the management of trade descriptions through its Australian Meat Industry Classification System, also termed the “AUS-MEAT Language”. In order to underpin the application and use of its product language, AUS-MEAT Ltd. has a system of National Accreditation Standards for meat industry enterprises.

THE AUS-MEAT LANGUAGE

The AUS-MEAT language for describing beef, bull and veal is set out in the *Handbook of Australian Meat* (Anon 2005b). This Manual defines some 11 alternative categories for beef (based on age as determined by dentition, sex, and absence of secondary sexual characteristics), some 3 alternative categories for bull (based on age determined by dentition and minimum hot carcass standard weight) and some 3 alternative categories for veal (based on age determined by dentition and specified ranges of hot carcass standard weight).

The Manual further specifies beef primal cuts, bone-in and boneless beef items, combination packs and manufacturing bulk pack types. Offal types (“Fancy Meats”) are also specified.

The level of specification provided by the Manual is intended to relate a given product description to an item number, which can be reliably ordered as true to description. It is relevant that the starting definitions in the Manual for beef, bull and veal are fully compatible with those outlined by Orders made under the *Export Control Act 1982*. Any future beef language would need to also be compliant or have definitional changes made to the Orders.

AUS-MEAT ACCREDITATION

Accreditation under the AUS-MEAT Standards is compulsory for export abattoirs and boning rooms. The completion of prescribed training courses is necessary to both attain and maintain this accreditation.

In order to underpin trade description integrity for the Australian meat industry, AUS-MEAT Ltd. offers more broadly based training, accreditation and verification services to both the producer and processor segments of the industry.

In this regard AUS-MEAT Ltd. has the capacity to recognise a range of Industry Programs through a combination of formal agreements and via accreditation and auditing arrangements. The National Feedlot

Accreditation Scheme underpins minimum standards for grain fed beef and is audited by AUS-MEAT Ltd. Under this Industry Program, the product descriptions “grain fed” and “grain fed young beef” may only be used for beef from cattle meeting certain feeding standards at accredited feedlots and that additionally complies with certain age limits (determined by dentition), fat cover and colour scores (for fat and muscle).

Such accreditation arrangements therefore operate to underpin the accuracy of product descriptions, especially where live animal production methods are essential to the beef product characteristics being described. Similar arrangements could equally be utilised to underpin key elements of a future beef language.

MSA ACCREDITATION

Meat Standards Australia (MSA) is a separate entity to AUS-MEAT Ltd. and was established to oversee a scheme to specify the eating quality of beef. Under MSA certification arrangements, the consumer is provided with a guarantee of the eating quality of a cut at three quality levels of tenderness in conjunction with cooking method.

Under the MSA arrangements, Meat and Livestock Australia is the owner of the MSA Trade Marks and grants a licence to use the trade marks. The licensing conditions are rigorous and operate to underpin the integrity of the scheme. Misuse of the MSA trade marks would constitute an infringement of rights which attach to the use of a registered trade mark under the applicable Australian legislation.

The MSA scheme provides an additional model for the control of product description provisions directed primarily at meeting consumer expectations of eating quality as distinct from describing a category of product. The MSA Scheme necessarily incorporates a strong consumer education element concerning the meaning of the various MSA trademarks. A future beef language which seeks to better define outcomes for the consumer could draw on trade mark protected approaches similar to the MSA scheme or directly incorporate eating quality descriptions into the language.

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