9 May 2001
14/01

Preliminary Assessment Report

Proposal P237

Country of Origin Labelling of Food

Note:
This Issues Paper is a proposal under section 21 of the *Australia New Zealand Food Authority Act (1991)*, for Country of Origin Labelling of food.

Public comments are now sought to enable a full assessment by ANZFA. Comments are due by **4 July 2001**.

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EXECUTIVE SUMMARY

ANZFA (then the National Food Authority) commenced a review of country of origin labelling, Proposal P90, in 1992. The purpose of that Proposal P90: Country of Origin Labelling of Food was to rationalise and clarify the existing provisions in the then Australian *Food Standards Code* and consider the need for new requirements. During the period of the original review several Federal Court decisions in Australia relating to the *Trade Practices Act 1974* (Cth) (TPA) created uncertainty about the meaning of "Made in Australia' and "Product of Australia' for goods in general. These developments affected ANZFA's ability to complete the review of country of origin labelling of food. The need to incorporate issues related to New Zealand, as a result of the formation of ANZFA in 1995 also impacted on the considerations in relation to country of origin labelling. It was therefore decided that the best way to approach country of origin labelling of food was to start afresh and raise a new proposal.

This Issues Paper is a preliminary document in the consideration of this proposal, P237. It presents an overview of the proposal and associated issues, to identify matters of potential interest to stakeholders in Australia and New Zealand and as a base from which to give full consideration to this proposal.

The issues identified thus far include:

- the previous review of country of origin labelling of food;
- trade practices and fair trading laws;
- enforcement issues;
- international issues; and
- possible options and their potential regulatory impact.

ANZFA recognises that the issues and questions raised in the paper may not be comprehensive. Accordingly, ANZFA invites comment on any matter not covered in this paper, or otherwise related to this matter, which may be relevant to country of origin labelling of food.

The deadline for submissions in this initial round of consultations is 4 July 2001.

There will be a further round of consultation in the fourth quarter of 2001, based on ANZFA's consideration of the issues raised in the initial round of consultations. It is important, however, that all groups and individuals with views or information they wish to be considered, make a submission in this initial round.

1. INVITATION FOR PUBLIC SUBMISSIONS

ANZFA now invites public submissions on any issue raised in this Issues Paper, or any other relevant matter, for the purposes of conducting a full assessment under section 23 of *the Australia New Zealand Food Authority Act 1991* (ANZFA Act). Ideally, information presented should be in sufficient detail to allow independent assessment. Where applicable, a number of specific questions have been raised to assist with the preparation of submissions.

An Advisory Group comprised of representatives from government, industry and consumers from Australia and New Zealand will be assisting ANZFA in examining this matter and the public responses received. There will be two opportunities for the public to comment on this proposal, of which this Issues Paper is the first. The second opportunity to comment will occur toward the end of 2001. At that time a Full Assessment report will be circulated for public comment.

A final decision on country of origin labelling will be made after the second round of comment.

The processes of ANZFA are open to public scrutiny. Any submissions received will ordinarily be placed on the public register of ANZFA and made available for public inspection. If you wish any information contained in a submission to remain confidential, you should clearly identify this and provide justification for treating it in confidence. The ANZFA Act requires ANZFA to treat in confidence trade secrets relating to food and any other information relating to food, the commercial value of which would be or could reasonably be expected to be, destroyed or diminished by disclosure.

All correspondence and submissions on this matter should be addressed to the **Project Manager – Proposal P237** at one of the following addresses:

Australia New Zealand Food Authority
PO Box 7186
Canberra Mail Centre ACT 2610
AUSTRALIA
Tel (02) 6271 2222
Fax (02) 6271 2278

Australia New Zealand Food Authority
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942
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ANZFA should receive submissions by no later than **4 July 2001**.

Submissions may be sent by Email to slo@anzfa.gov.au. However, ANZFA cannot guarantee accurate transmission and it is suggested that you also forward a hard copy by mail.

Queries regarding procedural aspects of this matter can be directed to the Standards Liaison Officer at the above address or by Email on slo@anzfa.gov.au. Requests for more general information on ANZFA can be directed to the Information Officer at the above address or by Email on info@anzfa.gov.au.

2. BACKGROUND INFORMATION

2.1 Current Regulations & Transitional Arrangements

On 24 November 2000 Ministers adopted Volume 2 of the *Food Standards Code* (known as the new joint Australia New Zealand Food Standards Code). As a result of this the *Food Standards Code* now appears in two volumes. The previous *Food Standards Code* (known as the Australian Food Standards Code) is now referred to as Volume 1. [1]

Volume 1, Standard A1 clauses 4(a) & (b), requires the label on or attached to all packaged food to contain a statement that identifies the country or countries in which the food was made or produced. This requirement may be satisfied by including on the label a statement identifying the country in which the food was packed for retail sale, and, if any of the ingredients do not originate in this country, a statement to the effect that the food is made from imported ingredients, or local and imported ingredients, as applicable. In addition, certain unpackaged foods, namely uncooked fish, vegetables, nuts and fresh fruit that originate from anywhere other than Australia and New Zealand, are also required to be labelled with their country of origin, or a statement indicating that they are imported (see Standards D1, F1, M4 and N1 of Volume 1). There are also specific requirements in relation to labelling of fruit juice and fruit drink, and spirits (see Standards O2, O7, O9 and P13).

These Volume 1 country of origin labelling of food requirements have been included in Standard 1.1.3 of Volume 2, which covers transitional and temporary standards. Standard 1.1.3 does not apply to food produced in or imported into New Zealand.

During the two year transitional period between adoption of Volume 2 and the repeal of Volume 1 and the New Zealand *Food Regulations 1984* (NZFR), manufacturers, importers and retailers in Australia must manufacture and sell food in compliance with either Volume 1 or Volume 2, but not a combination of these. In New Zealand, manufacturers, importers and retailers will be able to comply with Volume 2, Volume 1, or the NZFR, but not a combination of these.

2.2 Previous Proposal, P90

ANZFA received three applications in 1992 seeking amendment of the provisions in the *Food Standards Code* relating to the country of origin labelling of foods. As a consequence of receipt of these applications, ANZFA prepared a proposal, Proposal P90: Country of Origin Labelling of Food, in October 1992 to more widely review the country of origin labelling provisions in the Code. The purpose of the review was to rationalise and clarify the existing provisions and consider the need for new requirements in Australia only.

Since 1992 several Federal Court decisions on the *Trade Practices Act (1974)* (TPA) created uncertainty about the meaning of 'Made in Australia' and 'Product of Australia' for goods generally. These developments affected ANZFA's ability to complete the review.

In 1997, ANZFA released an Interim Inquiry Report on Proposal P90 for public comment. This Report canvassed a three-tiered approach to mandatory country of origin labelling that would apply to products claiming Australian origin.

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[1] For further information regarding the Volume 2 and transitional arrangements please refer to the ANZFA web site: www.anzfa.gov.au.

Since then the Australian Parliament has amended the TPA to establish a legislative compliance regime for country of origin claims. The amendments made to the TPA by the *Trade Practices Amendment (Country of Origin Representations) Act 1998* came into effect on 13 August 1998. In addition to its general prohibition on corporations engaging in conduct that is misleading or deceptive (s.52), the TPA now provides that 'a corporation shall not… make a false or misleading representation covering the place of origin of goods' (s.53(eb)). The TPA also provides that certain country of origin representations made about goods do not contravene subsections 52 or 53 (eb), and provides a general test for country of origin representations (s65AB). This compliance regime applies to representations that goods are 'Made in' a particular country as well as the premium 'Product/Produce of' label.

As a result of the public comment received on ANZFA's Interim Inquiry Report for P90, as well as the increased clarity and protection afforded by the amendments to the TPA, ANZFA has developed a new proposal to ensure that all stakeholders have an equal opportunity to comment on any new approach to country of origin labelling of food. This new proposal to review all of the existing country of origin labelling provisions will be part of the approach in developing joint standards between Australia and New Zealand

2.3 International Regulations specific to food

2.3.1 Codex

The Codex General Standard for the Labelling of Pre-packaged Foods states in section 4.5 that:

- The country of origin should be declared if its omission would mislead or deceive the consumer.

- When a food undergoes processing in a second country, which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purpose of labelling.

The Codex Committee on Food Labelling has agreed to a review of country of origin labelling provisions with a view to widening the requirements for country of origin labelling to meet consumer demand for this information.[2]

2.3.2 United Kingdom & European Union

Codex Principles concerning country of origin labelling have been reflected in European Union and United Kingdom law.

[2] At the 28th Session of the Codex Committee on Food labelling (May 2000) the United Kingdom Delegation, supported the Delegations from Switzerland, Malaysia and the Observer from Consumers International, proposed that new work should be started on country of origin labelling. The proposal was prompted by concerns that labels are failing to provide consumers with the information they need to make informed choices. Country of origin labelling is being further addressed at the 29th Session of the Codex Committee in Canada from 1 - 4 May 2001.

2.3.3 United States of America

The law in the US does not specifically require that the country of origin statement be placed on the principal display panel, but requires that it be conspicuous. If a domestic firm's name and address is declared as the firm responsible for distributing the product, then the country of origin statement must appear in close proximity to the name and address and be at least comparable in size of lettering. Country of origin claims are regulated by the Federal Trade Commission and US Customs Service as part of general trade regulation, rather than by Food and Drugs Administration as part of general food regulation.

2.4 Proposal P237

The ANZFA Board has agreed to raise this new proposal to review country of origin labelling of food. Any approach to this issue will be developed in consultation with relevant sectors of the food industry (including primary industries), consumers groups, and Commonwealth, New Zealand, State and Territory Government agencies, and will take into account the implications for food labelling of the 1998 TPA amendments.

3. PRELIMINARY ISSUES AND QUESTIONS

This section of the paper is concerned with identifying some of the issues of importance to stakeholders in relation to the matter of country of origin labelling of food and seeks further information and views from stakeholders about these or any other related matter. ANZFA is also seeking information and comment on the potential regulatory impact should requirements for country of origin labelling of food be retained in Volume 2.

3.1 Review of Country of Origin labelling

The relative costs and benefits of different forms of food regulation need to be considered. Regulatory options range from mandatory standards, to the use of codes of practice or guidelines, which may be developed and managed by industry, with co-regulatory arrangements in between. There should be no unreasonable burden placed on the processed food industry in relation to country of origin labelling of food and issues about the availability of ingredients due to seasonality and sourceablity needs to be taken into account.

Consumers should be provided with clear and truthful information about the country of origin of food. Where claims of "Made in ……." or "Product of ……." are made, these should be reliable and able to be substantiated and consistent with legal requirements in relevant Australian and New Zealand law.

Consumers should be provided with sufficient information, which is not misleading or deceptive, to allow them to make appropriate choices. Alternatively, a declaration that deals with the identification of imported ingredients and products may also be useful in determining consumer choices. Costs need to be considered in relation to consumer benefits on such options.

You are invited to address these or any other issues relevant to this matter.

3.2 General Issues and Concerns

3.2.1 The *Australia New Zealand Food Authority Act 1991* (the ANZFA Act)

The ANZFA Act provides that ANZFA may develop regulations governing the regulation of food and industry codes of practice on any matter that may be included in a standard. This means that ANZFA may choose to develop a code of practice instead of developing a standard in Volume 2.

Any approach that ANZFA takes must be consistent with the objectives of the ANZFA Act in developing food regulatory measures and variations of food regulatory measure under the Act. In descending priority order, these are:

- The protection of public health and safety; and
- The provision of adequate information relating to food to enable consumers to make informed choices; and
- The prevention of misleading or deceptive conduct.

(subsection 10(1))

In developing food regulatory measures and variations of food regulatory measures, ANZFA must also have regard to the following:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food.

(subsection 10(2))

3.2.2 Regulatory Issues

- Volume 1 currently includes provisions for country of origin labelling (see Standards A1, D1, F1, M4, N1, O2, O7, O9 and P3). *The New Zealand Food Regulations 1984*, however, include no such provisions.

- Volume 2 addresses the issue of country of origin labelling of food in Standard 1.1.3, Transitional and Temporary Standards. Standard 1.1.3 applies the provision of Volume 1 that relate to country of origin labelling, to Volume 2. However, these provisions do not apply to food produced in or imported into New Zealand. Standard 1.1.3 remains in force until the Volume 1 and the New Zealand Food Regulations 1984 are repealed.

You are invited to address these or any other issues relevant to this matter.

3.3 Domestic Regulations addressing Country of Origin Labelling

3.3.1 Australia

3.3.1.1 Trade Practices Act 1974 (Commonwealth)

The *Trade Practices Amendment (Country of Origin Representations) Act 1998* came into effect on 13 August 1998. These amendments to the TPA provide a legislative regime for country of origin labelling claims. In addition to its general prohibition on corporations engaging in conduct that is misleading or deceptive (s.52), the TPA now provides that 'a corporation shall not… make a false or misleading representation covering the place of origin of goods' (s.53(eb)). The TPA also provides that certain country of origin representations made about goods do not contravene subsections 52 or 53 (eb), and provides a general test for country of origin representations (s65AB). The TPA applies to claims such as 'made in' as well as 'product of' claims.

The general test for country of origin representations is that:

- where a corporation makes a representation as to the country of origin of the goods (such as 'made in' but not 'product/produce of' or a prescribed logo), and
- the goods have been substantially transformed in the country represented, and
- at least 50% of the production or manufacturing costs are attributable to the production or manufacturing processes that occurred in the country represented the corporation will not contravene the TPA. This approach sets a clear minimum standard for ensuring that unqualified claims of origin are not misleading and deceptive.

Use of 'Product of …' representations do not contravene the TPA where all the significant ingredients or components come from the country represented, and all, or virtually all, of the production/manufacturing processes also occurred in the country represented. It is this premium label that indicates to consumers that a food both contains ingredients grown in Australia and was produced or manufactured in Australia.

However, there is nothing to prevent local producers and manufacturers from clearly identifying the actual amount of Australian (or other country) content or input in their products. Many businesses choose to provide this information to consumers as it may provide them with a market defence.

3.3.1.2 Commerce Trade Descriptions Act 1905

The *Commerce (Trade Descriptions) Act 1905* (Cth) makes it an offence to import goods to which a false trade description is applied (s.9), and prohibits the export of goods to which any false trade description is applied (s. 12). (A false trade description is defined as 'a trade description which…is false or likely to mislead in a material respect as regards to the goods to which it is applied…' (s. 3)).

The *Commerce (imports) Regulations 1940* (Cth) prohibits the import of a number of specified products, including articles used for food or drink, unless a trade description that contains the name of the country in which the goods were made or produced is applied to the goods Regulations 7(1)(a), 8(c)(i)). In complying with this requirement, importers should be mindful of the provisions of the TPA as well.

3.3.1.3 Australian State and Territory regulations

There is no specific legislation in state and territory food law that regulates country of origin labelling.

3.3.2 New Zealand

In contrast to Volume 1, there is no explicit requirement in the NZFR for packaged foods to carry information about the country of origin of the food (except in the case of wine and some cheese).

Regulation 225, provides the following origin requirement for wine and wine products:

> (1) There shall be borne on the label of each package of wine or wine product words that clearly indicate the country of origin of the wine or wine product.
>
> (2) If any of the grape juice, concentrated grape juice, potable spirit, or wine spirit used in any wine product originates in a country other than the country of origin of the wine, that country shall be named on the label as a source of ingredients used in the manufacture of the wine product.

Regulation 113 provides the following origin requirements in relation to cheese:

> "(11) The label on each package of cheese shall bear a statement of the country in which the cheese is manufactured if its omission would mislead or deceive the consumer; and in particular, in the case of cheese designated with the name of a variety specified in the first column of the table to subclause (9) of this regulation and not manufactured in the country specified in relation to that cheese in the fourth column of that table, the label shall bear a statement of the country of manufacture."

The Commerce Commission (NZ) enforces the *Fair Trading Act 1986* and the Commerce Act 1986. The Ministry of Economic Development is responsible for the administration of the Fair Trading Act. The Fair Trading Act is modelled on the TPA.

The NZ Fair Trading Act does not require all products to be labelled with a place of origin. However, where a product is labelled, any claims made about its origin must not be misleading or deceptive. In relation to food, this includes labelling of food products, and any advertising, promotional material, or verbal representation about those products.

While the NZ Fair Trading Act does not require that all products be labelled with a place of origin, where a product is labelled, any claims made about its origin must not be misleading. S.13 (j) provides that:

- 'No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services – (j) make a false or misleading representation concerning the place of origin of the good.'

What are the advantages and disadvantages of country of origin labelling in food law or should it be regulated by general trade practices legislation?

3.4 Enforcement

Enforcement of food labelling standards in the Volume 2 is the responsibility of Australian State and Territory and New Zealand health authorities or local governments. The Australian Competition and Consumer Commission (ACCC) is the agency charged with enforcing the TPA in Australia. Each State/Territory Fair Trading Act also mirrors the consumer protection provision in part V of the TPA. ACCC involvement in food labelling issues relates almost exclusively to enforcing breaches of sections 52 and 53 of the TPA, which deal with false, misleading or deceptive conduct.

The ACCC selects its consumer protection priorities by having regard to key issues in its operating environment and whether or not the conduct:

- is multi state, national or international;
- involves significant consumer detriment;
- Commission involvement has the potential to have a worthwhile national educative or deterrent effect;
- involves a significant new market such as one arising from economic or technological change;
- is detrimental to small business and/or the competition process;
- involves an opportunity to test the law in appropriate circumstance.

The Commerce Commission in New Zealand is responsible for the enforcement of fair trading laws. It investigates cases that meet its investigation criteria. The Commission has targeted the food industry for several years because it is a major market and consumer spending on food is to a large extent non discretionary.

In developing any regulations or legislation governing country of origin labelling of food ANZFA needs to consider who will enforce these regulations and how enforcement would be controlled, as well as any additional resource implications that may be imposed, on Australian State and Territory and New Zealand Health departments and other agencies.

You are invited to address these or any other issues relevant to this matter.

3.5 International obligations and World Trade Organization obligations

Australia and New Zealand are members of the World Trade Organization (WTO) and are bound as parties to WTO agreements. In Australia, an agreement developed by the Council of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the treaty between the Governments of Australia and New Zealand on Joint Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

The Codex General Standards define the country of origin as that in which the food last underwent processing which changed its nature. It also envisages the possibility that national governments may wish to introduce country of origin provisions for the purposes of preventing fraud and deception.

You are invited to address these or any other issues relevant to this matter.

4. Regulatory Issues

4.1 Possible Regulatory Options

There is a range of alternative options from mandatory standards, to the use of codes of practice and guidelines developed and managed by industry and government with many co-regulatory arrangements in between. Alternatives to mandatory food standards are considered in terms of the costs and benefits of each regulatory option measured against their ability to protect public health and safety, provide information to consumers and prevent false, misleading or deceptive conduct.

With respect to country of origin labelling there are four possible regulatory options.
1. Retaining the current Standards in Volume 1;
2. Relying on the fair trading laws and trade description laws;
3. Self-regulation; or
4. A new Standard in Volume 2.

The table below outlines some of the advantages and disadvantages relating to each option.

OPTIONS	ADVANTAGES	DISADVANTAGES
1. Status Quo (Retain current standards)	• Provisions straightforward and well known to Australian industry • For Australia, the TPA amendments (County of Origin labelling) complement the regulations in the code	• New Zealand has a different approach to Australia and this could disadvantage New Zealand • Could be perceived as trade restrictive • Inconsistent / not a broad approach to regulation • Inconsistent with Codex
2. Fair Trading Laws	• Already established in both countries • No additional work for Health Departments in implementation and enforcement	• Differences between Australia and New Zealand in terms of the definition of 'Made in' and 'Product of' • Resource issues for enforcing requirements of the fair trading acts • Inconsistent with Codex

3. Self Regulation	• Not in food law and Health Departments freed up to concentrate resources on enforcing matters of public health and safety	• Who will develop and maintain provisions? • Consumers possibly disadvantaged • Perception that manufactures can mislead consumers • Inconsistent with Codex
4. New Proposal / New Standards	• Could be based on the requirements of the Australian TPA and fair trading laws in both countries, but country of origin labelling recognised in food law	• Could potentially be inconsistent with other products, where TPA and Fair Trading Laws are sufficient and enforceable.

Note: The table provided is not meant to be exhaustive. It is provided for the purposes of eliciting comment only.

What are the potential costs or benefits of the various options to you as a stakeholder? Do the benefits outweigh the costs?

- *-What are the costs and/or benefits for consumers in relation to public health and safety, consumer information and labelling, costs, savings, food quality etc?*
- *-What are the costs and/or benefits for business- compliance, reporting, costs, savings, alternative indicators, improved food safety and quality, trade etc?*
- *-What are the costs and/or benefits for government – administration, enforcement, public health and safety etc?*
- *Can you provide any evidence with your response to support your statements about the costs and benefits? If so, please attach.*

How will the potential conditions imposed by the proposal (e.g. products, labelling requirements etc) affect current policy or existing regulations and/or enforcement issues?

Are there implications for overseas regulators?

Are there effects on trade, import/export levels?

4.2 Potential Regulatory Impacts

ANZFA will consider the regulatory impact of this proposal on all sectors of the community including consumers, the food industry and governments in both countries. The Regulatory Impact Statement (RIS) will identify and evaluate, though not be limited to, the costs and benefits of the regulation, and its health, economic and social impacts. In the course of assessing the regulatory impact, ANZFA is guided by the Australian *Guide to Regulation* (Commonwealth of Australia 1997) and the *New Zealand Code of Good Regulatory Practice.*

As of 1 July 1998 all policy proposals, which result in government bills or statutory regulations in New Zealand, must also be accompanied by a RIS unless an exemption applies. This requirement replaces the previous compliance cost statement.

To assist in this process, comment on potential impacts or issues pertaining to the regulatory or non-regulatory options are sought from all interested parties. Public submissions should clearly identify relevant impact(s) or issues and provide supporting documentation where possible.

The remaining part of this Issues Paper raises some regulatory impact issues and questions. These questions are guided by specific requirements for the preparation of Regulatory Impact Statements.

You are invited to address these or any other issues relevant to this matter.

Identification of affected parties

- Consumers of foods and food ingredients.
- Industry- food manufacturers, processors and growers, and importers.
- Government agencies that regulate the food industry in Australia and New Zealand and those with an interest in food policy and regulation relevant to this proposal.

What are the potential costs or benefits of the various options to you as a stakeholder? Do the benefits outweigh the costs?

- *-What are the costs and/or benefits for consumers in relation to public health and safety, consumer information and labelling, costs, savings, food quality etc?*
- *-What are the costs and/or benefits for business- compliance, reporting, costs, savings, alternative indicators, improved food safety and quality, trade etc?*
- *-What are the costs and/or benefits for government – administration, enforcement, public health and safety etc?*
- *Can you provide any evidence with your response to support your statements about the costs and benefits? If so, please attach.*

How will the potential conditions imposed by the proposal (e.g. products, labelling requirements etc) affect current policy or existing regulations and/or enforcement issues?

Are there implications for overseas regulators?

Are there effects on trade, import/export levels?

While this Issues Paper has attempted to identify issues and questions relating to the proposal, these may not be a comprehensive range of issues and you are free to comment on any other matter relating to the proposal.

Appendix 1

Extract from Volume 2 *Food Standards Code*, Standard 1.1.3 Transitional and Temporary Standard

2 Country of origin labelling requirements

(1) This clause does not apply to food produced in or imported into New Zealand.

(2) For the purposes of this Code, the following provisions of the Australian Food Standards Code apply –

(a) clause (4) of Standard A1; and
(b) clause (4A) of Standard D1; and
(c) clause (5) of Standard F1; and
(d) clause 1 of Standard M4; and
(e) clause (2A) of Standard N1; and
(f) clauses 8 and 9 of Standard O2; and
(g) clauses (8) and (9) of Standard O7; and
(h) Part 3 of Standard O9; and
(i) paragraphs (1)(e), (12)(b), (12)(c) and (12)(d) of Standard P3.