



**Australian Made, Australian Grown Logo**

# Code of Practice

Incorporating the rules and conditions governing the use  
of the Australian Made, Australian Grown logo

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**This Code of Practice sets out the rules and conditions for use of the Australian Made, Australian Grown logo when used as a certification trade mark under licence from Australian Made Campaign Limited.**

**The use of the logo as an element of a food label in accordance with the *Country of Origin Food Labelling Information Standard 2016* is outside the scope of this Code of Practice.**

**More information about food labelling is available from [www.business.gov.au/foodlabels](http://www.business.gov.au/foodlabels)**

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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 logo provides information to consumers in Australia and overseas that goods using the logo have met particular requirements under Australian law to be able to be described as of Australian origin. The triangular logo encasing a stylised kangaroo is the most recognised and trusted country of origin symbol in Australia, enjoying a 99.6 per cent recognition level amongst Australian consumers. (Roy Morgan Research, 2017)

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.

The Logo is administered by AMCL under a Deed of Assignment and Management with the Australian Government.

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 (ACL – set out in Schedule 2 to 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).

On 1 July 2016, the Country of Origin Food Labelling Information Standard 2016 (the Information Standard) came into effect. The Information Standard sets out mandatory country of origin labelling requirements for food products sold (or offered for sale) in Australia. A key feature of the new labels is the inclusion of the Logo as part of the country of origin label for foods grown, produced or made in Australia. As a consequence of this, the Deed of Management between AMCL and the Australian Government was amended with the parties agreeing that AMCL will continue to manage the Logo in accordance with this Code in respect of non-food products sold, or to be sold, in Australia and all exported products (including food), but AMCL will no longer license the use

of, administer and/or promote the Logo in respect of food products sold, or to be sold, in Australia.

On 23 February 2017, amendments were made to the country of origin safe harbours defences set out in Part 5-3 of the ACL, the principal changes being the removal of the 50 per cent production cost test and a clarified definition of 'substantial transformation' for claims like 'made in'. These changes have necessitated changes to the rules for use of the Logo to ensure consistency.

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 is to be taken as being a reference to the graphic device or logo embodied in Australian registered certification 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 49, without the express authority of AMCL.

## PART II. THE CODE OF PRACTICE

### SCOPE OF THE CODE

This Code of Practice applies to AMCL as licensor of the Logo, all licensees of AMCL and other persons authorised to use the Logo in accordance with Rule 49. 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) or Licence Agreement 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 8 August 2017.

## 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

AMCL 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](http://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.

## USE OF THE LOGO ON FOOD PRODUCTS

As a consequence of the introduction of the Information Standard, since 1 July 2016 AMCL has no longer granted new licences to use the Logo on food products to be sold (or offered for sale) in Australia. Such products will be required to bear country of origin labelling in accordance with the requirements outlined in the Information Standard. Further information about the Information Standard is available at [www.business.gov.au/foodlabels](http://www.business.gov.au/foodlabels).

## Transition arrangements for food products sold in Australia

The Information Standard provides for a two-year transition period (from 1 July 2016 to 30 June 2018) before businesses are required to adopt the new labels.

The Information Standard also provides that all 'stock in trade', that is, stock that has been labelled under the requirements of the Australia New Zealand Food Standards Code (the Food Standards Code) before the end of the transition period, can continue to be sold, including after the transition period.

This means that existing labels which comply with the Food Standards Code can be applied to food products to be sold (or offered for sale) in Australia before 30 June 2018 and those food products can continue to be sold after 30 June 2018 using those labels. Food products to be sold (or offered for sale) in Australia and labelled after 30 June 2018 must comply with the new Information Standard.

The Food Standards 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 until 30 June 2018.

The Food Standards Code is available on the Food Standards Australia New Zealand (FSANZ) website at [www.foodstandards.gov.au](http://www.foodstandards.gov.au). Information can also be obtained by email to [info@foodstandards.gov.au](mailto:info@foodstandards.gov.au).

## Transition arrangements for existing licences

Licensees who were granted licences prior to 1 July 2016 to use the Logo on food products for sale (or offered for sale) in Australia, will be required to maintain those licences during the two year transition period until such time as they have sold all stock which has been labelled with the Logo in accordance with this Code of Practice or relabelled their products in accordance with the Information Standard. However such licences will not be extended beyond 30 June 2018.

Any stock of food products to be sold (or offered for sale) in Australia that was labelled with the Logo prior to 30 June 2018 can still be sold after 30 June 2018, provided the Logo was applied while the licensee held a licence from AMCL (or in accordance with the Information Standard as outlined above).

## Use of Logo on exported food products

AMCL will continue to license the use of the Logo on food products which are offered for sale in export markets.

The Logo must only be used on exported food products under a licence from AMCL, or consistently with the requirements of the Information Standard.

## 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 the Logo together with one of the permitted representations listed in Rule 20.

Every Australian-based applicant (i.e. a corporation registered in Australia or a person normally resident in this country) 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 representation 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 representation that is made and that the appropriate licence fee has been paid.

Where the applicant is based outside Australia (i.e. a corporation registered in another country or a person normally resident in another country), it will be required to execute a Licence Agreement consistent with both this Code of Practice and the Licensee Undertaking. (The Licence Agreement is available on the AMCL website.)

Licence applications are available from AMCL and its agents, and from the AMCL website. Applications are assessed by and subject to the approval of AMCL.

In instances where a licence application is rejected by AMCL, Rule 5 provides a mechanism for appeal and 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 or (for applicants based outside Australia) a Licence Agreement 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 of Practice.

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 AMCL website, [www.australianmade.com.au](http://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 have been approved by AMCL as meeting the rules and conditions of the scheme. 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 value of 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 25), 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 Australian 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 20 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 Rules 20 and 21.

There are six different groups of representations, each group having its own compliance criteria, which are detailed in Rule 20.

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"  
*(only available for products approved to carry the Logo with this representation prior to 12 September 2016)*
5. "Australian Seafood"
6. "Australian".

### CRITERIA FOR USE OF THE LOGO WITH AN 'AUSTRALIAN MADE' REPRESENTATION

Where a claim of "Australian Made", "Made in Australia" or "Manufactured in Australia" is used with the Logo, the good must comply with the provisions of Rule 20(b). These provisions are consistent with the 'safe harbour' provisions of Part 5-3 of the ACL, including a requirement for the last substantial transformation of the good to occur in Australia.

The following information is provided to help licensees understand this concept:

#### What is substantial transformation?

The ACL (subsection 255(2)) effectively states that a good has been substantially transformed in a particular country if the good:

- a. was grown in a particular country (where each ingredient or significant component of the good was grown in that country; and all, or virtually all, processes involved in the production or manufacture of the good happened in that country); or
- b. is the produce or product of a particular country (where the country was the country of origin of each significant ingredient or significant component of the good; and all, or virtually all, processes involved in the production or manufacture of the good happened in that country); or
- c. as a result of one or more processes undertaken in that country, is **fundamentally different in identity, nature or essential character from all of its ingredients or components that were imported** into that country.

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.

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* (2017) is available from the ACCC website, [www.accc.gov.au](http://www.accc.gov.au), and from AMCL. Such guidance may be withdrawn, replaced or updated from time to time.

If an applicant or licensee is in doubt about their compliance with these criteria, they should seek their own legal advice. However AMCL will ultimately make the decision whether to approve the use of the Logo on a particular product.

#### Former cost of production/manufacture test

Prior to 23 February 2017, the safe harbour provisions in Part 5-3 of the ACL included a further requirement that, for goods claiming to be 'made in' a country, at least 50% of the cost of producing those goods must be incurred in that country.

The amended ACL provisions which came into effect on 23 February 2017 no longer include this requirement.

This Code of Practice, in particular Rule 20(b), has been revised to maintain consistency with the safe harbours in the amended ACL.

### CLAIMS RELATING TO AUSTRALIAN GROWN INGREDIENTS

The ACL as amended also no longer includes a safe harbour defence for claims relating to ingredients or components, such as "Australian Grown Carrots & Peas". Such claims are also inconsistent with the Information Standard.

For this reason, Rule 20(d) stipulates that no new products can be approved to carry the Logo with this type of claim.

### CHANGE OF PRODUCTION PROCESS OR SOURCING OF INPUTS

Where there is a change to a production process or the 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.

**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 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.

### **Licence not to be granted for food products for sale in Australia**

- 3.** AMCL will not approve an application for a new licence in relation to any food product to be sold (or offered for sale) in Australia.

Licences approved prior to 1 July 2016 for such products may be renewed, but the term of such renewals will not extend beyond the transition period specified in the Information Standard.

Any stock of food products that was labelled with the Logo prior to the end of the transition period specified in the Information Standard can still be sold after this time, provided the Logo was applied while under a licence with AMCL.

A licence is not required for food products to be sold (or offered for sale) in Australia which have been labelled in accordance with the Information Standard, or for exported food products labelled consistently with the requirements of the Information Standard.

### **Approval of application for licence or renewal**

- 4.** AMCL will approve an application for a new licence or renewal of an existing licence where AMCL is satisfied that:
  - i.** 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 20; and
  - ii.** none of the products included in the list of approved products are food products to be sold (or offered for sale) in Australia other than those covered by the transition provisions in Rule 3; and
  - iii.** the granting of such a licence is not likely to bring the Logo into disrepute (as per Rule 29); and
  - iv.** 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
  - v.** the applicant has executed the required Licensee Undertaking or (for applicants based outside Australia) Licence Agreement; and
  - vi.** the applicant has paid the necessary fees (in accordance with the current or agreed fee scale in Part VIII of the Code of Practice).

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

- 5.** Where an application for a new licence or renewal is refused by AMCL on the grounds of failure to meet the requirements set out in Rule 4(i) or 4(iii), 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**

- 6.** 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 right to use this certificate expires upon the termination or expiry of the licence and it must be destroyed immediately upon termination or expiry.

## **Licensee register**

- 7.** AMCL will maintain a register of the following details relating to each current and former licensee:
  - i.** registered business name;
  - ii.** trading name/s;
  - iii.** Australian Business Number or Australian Company 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 the licensee's application, or as amended from time to time in accordance with these rules and conditions, that have been approved by AMCL to be promoted in association with the Logo.

## **Inspection of licensee register**

- 8.** 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](http://www.australianmade.com.au).

## **Amendment to details on licensee register**

- 9.** A licensee must notify AMCL within 30 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**

- 10.** 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**

- 11.** 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.** taking into account the information provided in the application and any other relevant criteria, the product meets the appropriate compliance criteria listed in Rule 20; and
  - ii.** the product is not a food product to be sold (or offered for sale) in Australia; and
  - iii.** the granting of a licence for this product is not likely to bring the Logo into disrepute (as per Rule 29); and
  - iv.** the licensee has paid the necessary fees (in accordance with the current or agreed fee scale in Part VIII of the Code).

## **Removal of product from product list or change to representation used**

- 12.**
  - a.** AMCL may at any time remove a product from a licensee's product list where AMCL is satisfied that:
    - i.** the product does not meet the compliance criteria to use the Logo with any of the representations set out in Rule 20; or

- ii. the product is a food product to be sold (or offered for sale) in Australia which is not covered by the transition provisions in Rule 3; or
  - iii. the product is likely to bring the Logo into disrepute (as per Rule 29).
- b. AMCL may direct a licensee to change the representation used with the Logo in relation to a product where AMCL is satisfied that the product does not meet the compliance criteria set out in Rule 20 for the representation being used, and that the product does meet the criteria to use the Logo with a different representation.
  - c. In each case, AMCL will advise the licensee in writing of its decision.
  - d. Where a decision is made to remove a product from the product list or to change the representation being used with a product, AMCL may direct the licensee to take action within a reasonable timeframe to remove the Logo or to change the representation being used with the Logo on the product in question and associated marketing material.
  - e. The licensee may request a review of the decision, to be conducted according to the procedures outlined in Rule 5.

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

- 13. 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 5.

#### **Obligations on licensees**

- 14. Each licensee must:
  - 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 relevant 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 conditions and the appropriate fees have been paid, and provide access to information about the policies and systems maintained under Rule 14(i) sufficient to establish their effectiveness.

#### **Licensees not to misrepresent scope of licence**

- 15. 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**

- 16. 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 these 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**

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

#### **Termination of licence**

- 18.
  - 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, except that licences for food products to be sold (or offered for sale) in Australia may not be extended beyond 30 June 2018.
  - d. Notwithstanding that AMCL may terminate a licence under clause 18(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

19. 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 (except in relation to food products to be sold or offered for sale in Australia which are labelled in accordance with the Information Standard); 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

20. A licensee may only use the Logo in relation to a good in conjunction with one or more of the representations set out in 20 (a), 20 (b), 20 (c), 20 (d), 20(e) or 20(f) and where that good meets the compliance criteria set out in 20 (a), 20 (b), 20 (c), 20 (d), 20(e) or 20(f) 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 ACL); 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 ACL).

### 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 last substantially transformed in Australia (as defined in subsection 255(2) of the ACL); and
- ii. for products approved to carry the Logo after 12 September 2016, where the product is a food product not to be sold or offered for sale in Australia, and containing one or more primary ingredients which are fully or partly imported, the representation must include an additional statement of the origin of the primary ingredient(s), for example, "Made in Australia with Canadian pork" or "Made in Australia with Chilean blueberries and Jamaican sugar".

Where the primary ingredient is sourced from multiple countries the representation would be "Made in Australia with imported [ingredient(s)]". The name(s) of the imported ingredient(s) must be inserted, e.g. "Made in Australia with imported pork" or "Made in Australia with imported blueberries and Jamaican sugar".

Where the primary ingredient is a mix of Australian and imported ingredients, the label must specify this, e.g. "Made in Australia with Australian and New Zealand strawberries".

### 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 ACL); 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 ACL).

### 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. 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
- ii. 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
- iii. 100 per cent of each ingredient, component or category of ingredients or components specified in the representation must have been grown in Australia; and
- iv. the ingredients or components specified in the representation must not have been exported from Australia and re-imported; and
- v. the representation must always be used with the appropriate descriptor identifying the Australian grown component/s of the good, e.g. "Australian Grown Apples and Pears".

This representation may only be used on products approved to use the Logo with this representation prior to 12 September 2016.

**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 20(c) or 20(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 20(a) to (e); and
- iii.** where the good meets the criteria under Rule 20(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 20(a) to (e), or if a food product, in accordance with the Information Standard; 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:**

A **primary ingredient** is an ingredient of a food that represents more than 40% of that food (by ingoing weight, not including water) or whose name is included in the name of the food.

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 20(a),(c) and (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**

**21.**

- 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 20 and Rule 21(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 21(b)(i) or (ii).

In the case of Rule 21(b)(i) the absence of a representation must be redressed if changes to the manufacturing process or retooling occur.

In the case of Rule 21(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**

- 22.** A licensee shall only use the Logo in relation to those goods that are identified on its list of approved products as amended from time to time.

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

- 23.** 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 20, the licensee must advise AMCL immediately and cease using the Logo in relation to that good.

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

- 24.** 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 20; or
- ii.** any other event occurs such that the good no longer meets the compliance criteria set out in Rule 20;

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

### **Alteration of design of the Logo**

**25.**

- 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**

- 26.** AMCL, its licensees and other authorised users of the Logo may, subject to the requirements of Rule 21, alter the size, but not the relative proportions, of the Logo to meet their individual requirements.

### **Use of colour to meet users' requirements**

- 27.** 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**

- 28.** Each licensee shall maintain sufficient documentary records to substantiate the compliance of the goods identified on its product list, as amended from time to time, with the compliance criteria provided at Rule 20 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 14(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**

- 29.** 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 5.

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**

- 30.** 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 20.

## Independent compliance audit

**31.** 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 14(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

**32.** 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

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

## Appointment criteria for independent compliance auditor

- 34.** 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 (also referred to as Governing Members) are the Australian Chamber of Commerce and Industry and the various State and Territory chambers of commerce and industry and the National Farmers Federation. New Members may be admitted from time to time.]

## Report of the independent compliance auditor

**35.** 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

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

## Complaints and dispute resolution

**37.** 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

- 38.** 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

**39.** 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 request for relevant compliance-related information.
  - ii.** Upon receiving such notification from AMCL, the licensee will respond to AMCL, in writing within 14 days, attaching the requested information.
  - iii.** AMCL will evaluate the licensee's response to determine whether or not the complaint is valid. This evaluation may include further investigations and enquiries, including site inspections, provided that AMCL has given the licensee reasonable notice of such inspection.
  - 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

- 40.** 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 AMCL.

## Complainant to notify AMCL of failed direct negotiation

- 41.** 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

- 42.** 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 39.

## AMCL to report to all parties on compliance investigation

- 43.** 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

- 44.** 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

- 45.** 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.** recovery of any underpayments of licence fees;
  - iv.** suspension of a licence for a specified period; and
  - v.** termination of a licence under Rule 18.

## Right of appeal against a decision to impose a sanction

- 46.** 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 5.

## Licence fees forfeited if licence terminated, suspended or revoked

- 47.** 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.

## Promotion of the Logo

- 48.** 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.

## **Use of the Logo for purposes other than certification of products**

- 49.** The Logo may be used by the following persons for purposes other than certification of products:
- a.** AMCL, its Governing Members and Australian Government agencies may use the Logo for administrative, educational, advertising and promotional purposes (provided that the Logo is not used in relation to particular products 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 and also referred to as Governing Members are the Australian Chamber of Commerce and Industry and the various State and Territory chambers of commerce and industry 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 administrative, educational, advertising and promotional purposes by specified persons on terms determined from time to time by the Board, consistent with the objectives of the Code of Practice and providing that such use is not inconsistent with the Information Standard.
  - 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**

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

## **Lodgement of rules and conditions with IP Australia**

- 51.** 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**

- 52.** 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**

- 53.** 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**

- 54.** 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**

- 55.** 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 5 (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 2017. Sales of all registered products during the period 1 January 2017 to 31 December 2017 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 2017. Sales of all registered products during the period 1 July 2016 to 30 June 2017 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 2017. Sales of all registered products during the period 1 November 2016 to 31 October 2017 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 2016 to 31 October 2017 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 2017. A number of products have already been registered with a declared turnover of \$500,000. In September 2016, 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 licensed 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 licensed to carry the Logo. Total sales for the company for the year amount to \$5 million. Sales of products licensed 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.

<b>Date</b> (Insert date signed)  / /	<b>To:</b> <b>Australian Made Campaign Limited</b> (ACN 086 641 527) of Suite 105, 161 Park Street, South Melbourne, Victoria <b>(Licensor)</b>
<b>From</b> (Licensee registered company name)	
<b>ABN / ACN</b>	
<b>Address</b>	<b>State</b>
	<b>Postcode</b>
<b>(Licensee)</b>	

### BACKGROUND

- a. Under a Deed of Assignment dated 5 July 2002 (amended by a Deed of Variation dated 20 December 2016), 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 as amended from time to time.
- 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 may authorise 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 the 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 the Licensee 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><b>A.</b></p> 	<p><b>B.</b></p> 	<p><b>C.</b></p> 
<p><b>D.</b></p> 	<p><b>E.</b></p> 	<p><b>F.</b></p> 

# EXECUTION

## SIGNED FOR AND ON BEHALF OF

**Name of Licensee** (usually registered company name)

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<b>Name of authorised signatory</b> (please print)	<b>Position</b>
<b>Signature</b>	

## IN THE PRESENCE OF WITNESS

**Name** (any adult may witness)

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**Signature of witness**

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**AUSTRALIAN MADE CAMPAIGN LIMITED**

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