



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

4 August 2023

Country of Origin Labelling Team

Department of Industry, Science and Resources

10 Binara Street

CANBERRA ACT 2601

via email: [OriginLabelling@industry.gov.au](mailto:OriginLabelling@industry.gov.au)

Dear Sir/Madam

### **Regulation impact statement policy options to evaluate opportunity cost of country-of-origin labelling**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to provide comments to the Department of Industry, Science and Resources regarding the regulation impact statement (RIS) for mandatory country-of-origin labelling (CoOL) for the sale of seafood by hospitality businesses in Australia.

Further to our submission on the CoOL discussion paper (Appendix A), we remain concerned about the proposed CoOL models and the high cost of compliance that the labelling rules will impose on small businesses. It is disappointing that option two is still being considered despite multiple stakeholder submissions to the discussion paper raising significant concerns about the cost of implementation; namely that it will be unduly onerous for hospitality businesses to navigate and maintain compliance if required to label on menus, display boards or anywhere fish for sale is advertised, whether seafood is either:

- Australian (A)
- Imported (I)
- Mixed origin (if food contains both Australian and imported seafood).

The conclusion of the 2021 report by Deloitte Access Economics, which evaluated the implementation of the *Country of Origin Food Labelling Information Standard 2016*, remains pertinent:

‘[R]esults indicate the costs of extending CoOL to foodservices would exceed the benefits, largely driven by costs to foodservice businesses to comply with CoOL regulations coupled with the sheer size of the foodservice industry – and the number of small businesses in the industry.’<sup>1</sup>

The third option (provided for the first time in the regulatory impact statement) requiring hospitality businesses to label the *specific* country of origin on menus, display boards or anywhere fish for sale is advertised would be even more onerous and costly for hospitality businesses to implement. For example, when a business is unable to source their usual seafood products from the same country of origin, or seafood is of a mixed origin, labelling on menus, display boards or

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<sup>1</sup> Deloitte Access Economics, [Evaluation of Country of Origin Labelling reforms: Cost Benefit Analysis](#), final report, commissioned by the Department of Industry, Science, Energy and Resources, July 2021.



anywhere fish for sale is advertised would need to be updated to capture each country of origin. More practical and proportionate approaches should be considered.

Unfortunately, key concerns and recommendations raised previously by the ASBFEO have not been addressed. In addition, the RIS policy options presented do not provide alternative methods for balancing the problem of information asymmetry (between the consumer and the seller) with that of implementation and ongoing costs to small and family businesses.

Making the CoOL proposal an 'opt-in' initiative, or an 'if asked by customer' model, would achieve the core policy objective of informing consumers and promoting local industry, without imposing a heavy regulatory burden on small and family businesses that are already motivated to attract and delight customers. We noted in our March 2023 submission that hospitality businesses that take pride in using local seafood already promote this to enhance their competitiveness.

### **1. Alternative methods for consideration as policy options for the RIS.**

The Office of Impact Analysis's *Australian Government Guide to Policy Impact Analysis* provides clear guidance on assessing the likely effects of policy changes in a robust and transparent way. It states that: '[T]he Impact Analysis should consider all practical policy alternatives that can be implemented to achieve the policy objective and address the identified problem.'<sup>2</sup>

However, the RIS presented does not consider all the practical alternatives that would achieve the policy objective. Further, two of the three options provided in the RIS are similar with the requirement to label seafood with the specific country of origin, rather than the broader 'imported' label. The variation between these two models is minimal in terms of the regulatory burden being imposed on hospitality businesses and the benefit to consumers.

The below suggestions provide genuine alternative policy options, thereby facilitating an informed and thorough RIS process:

- Introduce country-of-origin labelling for seafood as a voluntary national reporting standard that businesses may or may not choose to apply.
- Exempt the use of seafoods as minor-share ingredients from any CoOL for seafood in hospitality requirements. Food service businesses should be given discretion to determine if the seafood in a dish they are serving is a major component and therefore requires CoOL, and that enforcement of compliance takes this into account. It should be noted that Seafood Industry Australia's submission also recommended this option.
- Add an additional category of 'variable' to the proposed categories of 'Australian', 'imported' and 'mixed', to give hospitality businesses a simple indicator to alert consumers that the jurisdictional source of the seafood product is frequently changing, or the business cannot certify the origin of the product from its supplier.
- Only require seafood restaurants with 15 employees or more to comply with CoOL.

These alternative approaches still capture the policy intent of seafood CoOL (increasing the transparency of seafood origins for consumers) while reducing the administrative burden for

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<sup>2</sup> Office of Impact Analysis, *User Guide to the Australian Government Guide to Policy Impact Analysis*, Department of the Prime Minister and Cabinet, May 2023, p 24.



businesses. Without wider consideration of potential policy options, the RIS does not fully capture how alternative approaches may provide a greater net benefit.

**2. The costs described in the RIS do not capture the full extent of the costs imposed on small businesses.**

The RIS describes the costs for hospitality businesses as ‘updating menus, displays etc. as well as ongoing administration costs.’ This statement considers the immediate costs of complying with the proposed regulations but does not include the cumulative regulatory costs of compliance for small businesses or the demanding operating environment they currently face.

High inflation, labour market tightness, rising interest rates and input prices continue to drive up costs for Australian small and family businesses, placing constraints on cash flow that affect business viability. Further, small businesses are struggling to understand and absorb present and imminent increases in compliance obligations, including with regard to workplace relations, environmental, social and governance matters, and privacy.

In our consultation with Deloitte Access Economics for this RIS, we emphasised that any additional regulatory requirements have a multiplier effect on costs to business, not a simple addition. Smaller hospitality businesses are unlikely to have in-house legal expertise and without spending significant funds on external expertise, they may need to spend significant time interpreting new regulations. This is particularly the case here, given that there remains confusion about the definition of seafood ‘by-products’, which remain exempt from the proposed CoOL models.

Every hour that a busy small business owner spends understanding complex new obligations is an hour taken away from growing their business, and an additional unique stressor in an already challenging environment. Therefore, the opportunity cost and additional complications for small business owners must be factored into any accurate cost-benefit analysis undertaken on this topic, not just the material cost of changing printed information on menus.

Finally, we are interested to understand how the proposed seafood CoOL may significantly alter the assumptions Deloitte used in the 2016 cost-benefit analysis, which found that the cost of CoOL to industry would be \$3.5 billion, approximately triple the amount of the estimated benefits.<sup>3</sup>

If you require any further information, please contact the ASBFEO Policy & Advocacy team at [Advocacy@asbfeo.gov.au](mailto:Advocacy@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**  
Australian Small Business and Family Enterprise Ombudsman

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<sup>3</sup> Deloitte Access Economics, *Evaluation of Country of Origin Labelling reforms: Cost Benefit Analysis*, final report, commissioned by the Department of Industry, Science, Energy and Resources, July 2021. p 30.



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**Small Business and  
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21 March 2023

Country of Origin Labelling Team

Department of Industry, Science and Resources

**via email:** [OriginLabelling@industry.gov.au](mailto:OriginLabelling@industry.gov.au)

Dear Sir/Madam,

**Country-of-origin labelling (CoOL) for seafood in hospitality should be simple, useful and proportionate to the seller's offering**

We welcome the opportunity to provide comment to the Department of Industry, Science and Resources regarding the Australian Government's proposed model for mandatory country-of-origin labelling (CoOL) for the sale of seafood by hospitality businesses in Australia. While CoOL is intended to improve transparency for consumers and support Australian seafood producers, the current regulatory proposal is onerous, costly and an unhelpful addition to the growing regulatory burden borne by small and family businesses.

We recommend that the Australian Government reconsider the merits of this scheme, which has been assessed as unduly costly in an independent report previously commissioned by the department. However, if the government does proceed with country-of-origin labelling for seafood in hospitality, the government should make reporting voluntary where the seafood is a minor ingredient or a small proportion of the value of the offering, as well as provide an option to label a seafood product's country of origin as 'variable' in cases where it changes frequently or the hospitality business is unable at a point in time to verify the source from its supplier.

Under the current proposal, any seafood used in a dish will need to be listed on a menu as Australian, imported or mixed. The proposal excludes 'seafood by-products', meaning anchovy paste will not require labelling, but anchovies on their own would. This will be onerous for hospitality businesses to navigate and maintain compliance. Temporarily sourcing an imported product while an Australian seafood is sold out will require reprinting new menus for every change. Small businesses must rely on their supply chains to provide accurate information about the origin on their seafood and may not have the resources to verify this. Some may have to digitise their menus to counter reprinting them, an expensive initial outlay and requiring the use of technology they may have difficulty operating.

A 2021 report by Deloitte Access Economics evaluating the implementation of the *Country of Origin Food Labelling Information Standard 2016*, commissioned by the Department of Industry, Science, Energy and Resources (DISER), concluded that the costs of introducing CoOL of seafood in food services would exceed the benefits to the consumer:

*'[R]esults indicate the costs of extending CoOL to foodservices would exceed the benefits, largely driven by costs to foodservice businesses to comply with CoOL regulations coupled with the sheer size of the foodservice industry – and the number of small businesses in the industry.'*<sup>1</sup>

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<sup>1</sup> Deloitte Access Economics, [Evaluation of Country of Origin Labelling reforms: Cost Benefit Analysis](#), final report, commissioned by the Department of Industry, Science, Energy and Resources, July 2021.



According to the Australian Bureau of Statistics (ABS), on 30 June 2022 there were 88,320 small businesses (defined as having 0 to 19 employees) in the food and beverages industry in Australia, excluding in the Northern Territory, which has already implemented CoOL for seafood in hospitality.<sup>2</sup> In all circumstances, regulation should be the minimum effective intervention required to achieve the policy objective and ‘right-sized’ for small and family businesses.

Accordingly, we make the following recommendations to the Australian Government as detailed below.

**1. Reconsider the merit of requiring hospitality businesses to label the origin of seafood in their products, given the existing regulatory impact assessment (conducted in 2021 by Deloitte Access Economics) found that the business costs of compliance would outweigh the benefits to consumers**

Given the large number of small food services businesses and the additional regulatory burden that the proposed form of CoOL would impose on them, we recommend that the Australian Government considers making this proposal an ‘opt-in’ initiative, or an ‘if asked by customer’ model, rather than a blanket requirement. We note that hospitality businesses who take pride in using local seafood already promote this to enhance their competitiveness.

**2. If the scheme proceeds, require only voluntary reporting where the seafood is a minor ingredient or a small proportion of the value of the offering**

The use of seafoods as minor-share ingredients and ‘seafood by-products’ (such as anchovy paste or prawn crackers) should be exempt from any CoOL for seafood in hospitality requirements. Food service businesses should be given discretion to determine if the seafood in a dish they are serving is a major component and therefore requires CoOL labelling, and that enforcement of compliance takes this into account.

Where the seafood component is the substantial ingredient or feature or a materially significant component of the value of a food product, operationalising the labelling requirements should follow more extensive engagement with industry to address practical implementation considerations. This may include focusing on initial value-add/raw product transformation of the seafood/ingredient and examining potentially excluding substantially transformed input food products such as ‘crab sticks’, tuna-melts, fish cakes and pre-prepared/ready-to-heat fish ‘nuggets’ where detail about the origin of the seafood component may not be known.

**3. Ensure legislation and attendant regulations and guidance are clear and simple**

In a 2021 report prepared for the Food Regulation Standing Committee by MP consulting, it was found that hospitality businesses face inconsistency in food regulation and challenges in determining which government agencies are responsible for particular regulations. This in turn makes it difficult for small businesses to know which agencies they ought to approach for advice.<sup>3</sup> To support small business understanding any additional regulation should be sensible and easy to

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<sup>2</sup> ASBFE calculations based on the Australian Bureau of Statistics, [Counts of Australian Businesses including Entries and Exits](#), viewed 21/02/2023.

<sup>3</sup> MP Consulting (2021) [‘Key Areas of Inconsistency in Food Regulation’](#) final report, commissioned by the Australia and New Zealand Ministerial Forum on Food Regulation.





understand. For instance, we suggest the government explicitly state that, where labelling is required, businesses may use abbreviations (such as 'I' for imported) on their menu, should they choose.

**4. Add an additional category of 'variable' to the proposed categories of 'Australian', 'imported' and 'mixed', to give hospitality businesses a simple indicator to alert consumers that the jurisdictional source of the seafood product is frequently changing, or the business cannot certify the origin of the product from its supplier**

While the proposed model of labelling seafood as either Australian, imported or mixed is reasonable, an additional category of 'variable' would be advisable. Because the origin of certain supplied seafoods may frequently change, or a hospitality business may not be able to certify the origin of certain seafoods from their supplier at a given point in time. Allowing businesses to use a fourth 'variable' label would remove the excessive cost of reprinting menus and avoid inadvertently attributing an incorrect or misleading country-of-origin label in these instances. A 'variable' category would also prompt interested customers to ask the business about a certain seafood's origin, should that be a determining factor for their purchase.

**5. Have compliance focus on targeted education over punitive measures**

The proposed changes pose several regulatory complexities for implementation. There are many instances where non-compliance may be a genuine mistake, beyond the businesses capacity to know, or an inadvertent error by the hospitality business and should not be penalised. For example:

- Small businesses cannot reasonably be expected to investigate external supply chains to ensure the authenticity of a supplier's country of origin claims about its products.
- An Australian seafood product is sold out and the business temporarily sources an imported product, but their menu hasn't been updated to reflect this on the day.
- Business may need to invest in unfamiliar technology and processes to digitise their menus to avoid ongoing costs of reprinting menus every time seafood becomes unavailable.

It is critical that non-compliant businesses under CoOL for seafood in hospitality be addressed through targeted education unless the enforcing body can demonstrate clearly deliberate wrongdoing. The Australian Taxation Office's pyramid model of compliance provides an example of a continuum of businesses attitudes to compliance and methods of intervention.<sup>4</sup> Initially, every effort should be made by the enforcing body to educate and assist non-compliant businesses in becoming compliant. Only after several phases of the compliance process, or multiple instances of intentional non-compliance should penalties be considered for small businesses.

Where CoOL for seafood in hospitality is implemented, businesses should be given a 24-month grace period to reach full compliance. This is consistent with the implementation of the *Country of Origin Food Labelling Information Standard 2016*, which allowed enough time for business to make the necessary changes and resulted in high levels of compliance. After this period, monitoring and

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<sup>4</sup> Australian Taxation Office, *Compliance Model*, 2019, viewed 15 February 2023.



enforcement of CoOL for seafood in hospitality should be consistent to maintain trust in the scheme and avoid disadvantaging compliant businesses.

#### **6. Promote and resource tailored and practical information to support small and family businesses**

A wide-reaching information campaign alongside any regulatory changes is essential to support awareness of CoOL for seafood in hospitality and ensure that all affected businesses understand their compliance obligations. Ongoing consultation and engagement with the hospitality industry, alongside a collaborative approach from all levels of government is essential to ensure that the information provided to small business operators is clear, reliable and ‘fit for purpose’. For example, simple checklists should be made readily available to assist affected businesses in understanding their compliance obligations with CoOL for seafood.

In the 2021 Census, 56% of food and beverage service small business owners in Australia spoke a language other than English at home.<sup>5</sup> Ensuring education and awareness materials are available in multiple languages, as well as consulting effectively with culturally and linguistically diverse communities is critical for the successful development and implementation of regulatory changes.

#### **7. Review the cost and effectiveness of country-of-origin labelling no later than two calendar years after the date of implementation**

The government should undertake a comprehensive review, no more than two calendar years from the date of implementation, to estimate the costs of the regulation on hospitality business, determine if any benefits to consumers have been realised, and assess if those benefits exceed the costs.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Jake Thomas on 02 5114 6146 or at [jake.thomas@asbfeo.gov.au](mailto:jake.thomas@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman

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<sup>5</sup> Using the ABS’s definition of small business as having 0-19 employees. ASBFEO calculations, Australian Bureau of Statistics, *2021 Census*, viewed 21 February 2023