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To whom it may concern

Thank you for the opportunity to provide feedback on the *Country of origin labelling for seafood in hospitality settings* Discussion Paper (Discussion Paper).

The NSW Small Business Commission (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

Country of Origin Labelling for seafood in hospitality settings (seafood CoOL) will impact a range of businesses in the hospitality sector and is likely to result in additional expense and a number of practical challenges for many small businesses. Furthermore, despite the original intention may disadvantage the Australian seafood industry.

The impacts and challenges of this proposal have the potential to result in significant new compliance costs, especially when considering the financial and time cost associated with updating menus as well as having to do so on a more frequent basis because of any new requirements. If poorly designed, requirements may be unworkable for many small businesses.

The Commission notes the hospitality sector was particularly hard hit by COVID-19 and continues to be impacted by labour shortages, interest rate rises and increasing input costs. The nature and timing of any new regulatory requirements should consider broader challenges in the operating environment of affected businesses. If there is insufficient confidence that the benefits of this proposal outweigh its costs, then it should not proceed.

Impact on small businesses: menu costs

A key concern is the cost associated with initial and ongoing changes to menus.

Costs associated with making initial changes to menus could be reduced by allowing for a suitably long implementation period (such that changes could be introduced when menus are updated as part of normal business processes). However, in some circumstances seafood CoOL requirements would give rise to a need to make more frequent changes to menus than would otherwise occur.

A requirement to indicate country of origin would require menus to be updated whenever the origin of a within-scope ingredient changes. Rather than being able to refer to the ingredient in more generic terms, hospitality businesses would be compelled to describe an additional attribute which may not be static over the normal life of a printed menu or menu board.

The Commission's February 2023 Small Business Survey (the Survey) suggests that around one in four businesses that sell food containing seafood regularly change their sourcing arrangements due to market pricing/availability or recipe substitutions.¹

Businesses may vary the country of origin of seafood ingredients for a range of reasons including seasonal availability, the volatility of supply chains, general product availability or commercial decisions relating to the cost of ingredients. This would have the effect of either restricting businesses from making commercially optimal decisions (to ensure the origin of ingredients match what is stated on their incumbent menu) or having to incur significant costs associated with reprinting and redesigning menus. In some cases businesses would be unable to meet the country of origin claims made on their menus such as in circumstances where domestic supply becomes temporarily unavailable.

For these businesses, seafood CoOL requirements would impose new costs or challenges. The Survey further found that of those businesses that sell food for onsite or takeaway consumption, 50 per cent estimate that making substantial changes to their menu would cost them \$1,000 or more. Businesses indicated that the average costs associated with making substantial changes to physical printed menus was \$2,820. One in twenty (six per cent) report their total costs² would be more than \$10,000.

Even if a seafood CoOL framework provided sufficient flexibility in the abovementioned circumstances, there would be a risk of non-compliance with other laws such as misleading or deceptive conduct and false or misleading claims under Australian Consumer Law. By compelling businesses to make country-of-origin representations, businesses will be at risk of breaching those laws even if the CoOL framework is itself designed in a manner that provides safe harbours in circumstances where supply arrangements change due to factors outside of their control. This issue is avoided at present, because businesses are not compelled to make country of origin representations.

Potential impacts on Australian seafood suppliers

Australian seafood suppliers may be disadvantaged if it is perceived to be easier to comply with seafood CoOL requirements when using imported seafood. It is plausible that some hospitality businesses will perceive that the more generic international/imported label is more flexible as it includes all countries bar Australia. Some hospitality businesses may decide to rely solely on imported seafood as this would provide additional flexibility in circumstances where supply arrangements change. Under the proposed model, menu changes would only be required if the country-of-origin changes from Australia to another country but not from one overseas location to another. This may be perceived as a risk and dissuade hospitality businesses from choosing to use Australian seafood.

It is not immediately clear how these risks could be avoided. While requiring more specific country-level information may neutralise this disadvantage, it would make the policy even more difficult to comply for hospitality businesses.

Policy objectives

Within the boundaries of providing information that is accurate and unlikely to result in consumer detriment, it is the Commission's strong view that small businesses are far better placed than government to decide how to provide information about their food offerings in a manner that meets the needs of their customers.

¹ 25 per cent of respondents indicated they either 'always' or 'usually' do so.

² Businesses were asked to estimate the total cost of any menu changes including printing costs, graphic design and/or signwriter fees, custom lightboxes or decals, cost of staff time or other incidental costs.

The Discussion Paper does not appear to clearly define the policy objectives of introducing seafood CoOL. The Discussion Paper very briefly notes under 2.1 there is an objective to improve consumer information with no explanation of the problem or evidence of consumer detriment. The objectives that follow (2.2-2.4) appear to be design principles in support of achieving 2.1 rather than policy objectives in their own right.

The Discussion Paper also does not provide a compelling policy reason why seafood has been recognised as the sole ingredient type for which CoOL be made mandatory in hospitality settings. As the Discussion Paper mentions, consumers can ask for origin information at any time. It is commonplace for restaurant and café menus to provide CoOL information voluntarily in a practical manner in circumstances where this information is valued by consumers, for example, waitstaff may provide this information if requested. This is preferable to mandating seafood CoOL, especially in circumstances where the information may not be valued by consumers and is costly and practically difficult to provide.

Regulatory impact analysis with alternative options

The Commission recommends a comprehensive Regulation Impact Statement (RIS) process that explores multiple policy options be undertaken.

Importantly, the RIS process should provide robust and clear evidence of the problem and clearly articulate policy objectives. While a CoOL regime may be one option to consider, its merits should be assessed against alternative approaches. While formal RIS requirements do not require alternative options to be considered where they relate to election commitments, the Commission's view is they should be considered on this occasion as part of a genuine commitment to sound and best-practice policymaking. It is the Commission's view that it is premature to be pursuing a CoOL regime in hospitality settings in the absence of a clear articulation of objectives and consideration of the alternatives.

The Commission would recommend no action be taken in the event there is insufficient evidence to support a regulatory change and/or the benefits not outweigh the costs to small business.

Small business exemptions or industry-led approaches should be considered

If a seafood CoOL requirement is to proceed, the Commission's view is that small businesses should be exempt from any new regulatory requirements. This is similar to the approach taken for other mandatory requirements which would be problematic for small businesses to implement, such as the kilojoule content in food which in NSW only applies to businesses which sell standard items at 20 or more locations (in NSW or 50 locations nationally).

Further exemptions should be provided to businesses that do not have reliable or standardised supply chains or that source ingredients from different locations based on market factors. The Commission is not generally supportive of mandating labels such as 'mixed' to indicate that a seafood ingredient may be of varying origin depending on when it is purchased. This is because this information is of limited value to a consumer (as it does not indicate the country of origin) and has the effect of creating cluttered and confusing menus, as well as additional compliance costs.

Voluntary industry-led approaches should also be explored as they may be preferable to mandatory labelling requirements. Industry-led approaches can be designed more flexibly, allowing hospitality businesses to identify more efficient approaches to implementing seafood CoOL in their business (without prescriptive approaches). This could include voluntary codes which allow hospitality businesses of all sizes to demonstrate to their customers a commitment to sourcing Australian seafood.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
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NSW Small Business Commission

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