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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* Consultation regulation impact statement (CRIS). 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.

The Commission provided feedback¹ to the *Country of origin labelling for seafood in hospitality settings* Discussion Paper. While the CRIS was informed by this earlier consultation, there does not appear to be any meaningful discussion or consideration of concerns raised by the Commission's submission.

This submission restates some of the concerns presented in the Commission's earlier submission and outlines concerns related to the policy rationale and practical ability for hospitality businesses to comply with any new CoOL requirements. This submission also:

- Provides targeted feedback from hospitality stakeholders indicating concerns about the cost of the proposed changes.
- Recommends additional analysis, evidence gathering and assessment to verify and confirm consumer benefits.
- Encourages additional and targeted engagement with hospitality businesses to better understand the impacts of CoOL requirements.
- Recommends consideration of exemptions for small businesses with more than 20 sites within a single jurisdiction of 50 sites nationally.

The Commission supports robust and comprehensive regulatory impact assessment and encourages detailed cost benefit analysis to inform decision makers. Further to this, given the inherent uncertainties associated with estimating the costs and benefits of proposals of this kind, the Commission's view is the proposal should clearly demonstrate that the benefits outweigh their cost.

Restatement of the Commission's concerns

The Commission remains highly concerned about costs associated with this proposal and notes the cost and impact of the options receive little attention in the CRIS. The Commission therefore recommends further attention in this regard as part of any final regulatory impact statement that may inform policy decisions in relation to this matter.

While the Commission's concerns are best set out in our earlier submission (which has been attached for further consideration), they relate to the costs and workability of this proposal. This gives rise to fears

¹ Submission to Department of Industry, Science and Resources – Country of origin labelling for seafood in hospitality (2023). smallbusiness.nsw.gov.au/sites/default/files/2023-03/Submission%20to%20Department%20of%20Industry%2C%20Science%20and%20Resources%20-%20Country%20of%20origin%20labelling%20for%20seafood%20in%20hospitality.pdf

costs will vastly outweigh any demonstrable consumer benefits, particularly given neither the RIS nor the earlier Discussion Paper provide compelling evidence of a problem.

Costs relating to proposed seafood CoOL requirements include initial and ongoing amendments to menus and other information boards to comply, such as where the country of origin of in-scope ingredients change. In addition to initial costs to become compliant with any new requirements, businesses will also be disadvantaged by the ongoing administrative burden of amending menus every time their supply arrangements change.

As the Commission has previously raised, 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. The Commission's February 2023 Small Business Survey (February survey) suggests around one in four businesses that sell food containing seafood regularly change their sourcing arrangements due to market pricing/availability or recipe substitutions.²

While the proposed Australian-Imported-Mixed (AIM) model set out under Option 2 would only differentiate between Australian and Imported supply (with a third option for 'Mixed' in circumstances where a dish contains both), it would create perverse incentives discouraging hospitality businesses from transitioning to Australian sources of supply as there would be menu costs associated with doing so. It may also encourage some hospitality businesses to avoid Australian sources of supply because they are afforded more flexibility under the much broader umbrella definition of 'Imported' which covers all countries except for Australia. This would mean they could more freely change their supply arrangements between imported sources without having to incur these additional menu costs (but only if they avoid Australian sources).

The Commission notes many stakeholder submissions to the earlier Discussion Paper, and indeed the CRIS itself, neglect to meaningfully consider the costs related to mandating compulsory seafood CoOL requirements. The Commission strongly emphasises that these costs are unlikely to be negligible, with requirements under the proposed models (set out in Options 2 and 3) not only impractical, but unworkable in some circumstances (such as listing the country of origin of every seafood ingredient on a seafood pizza).

Feedback received through the Commission's February survey suggests the costs could be significant. Businesses indicated the average costs associated with making substantial changes to physical printed menus was \$2,820. One in twenty (six per cent) report their total costs³ would be more than \$10,000. It is an undue burden for new regulatory requirements to impose these additional costs, particularly given the policy rationale and evidence warranting regulatory intervention is weak.

These costs are not insignificant for small businesses, particularly as they continue to be impacted by interest rate rises and increasing input costs. As the CRIS acknowledges:

"Industry capacity to lead action on this issue may also be limited given the current economic climate, especially as many businesses and industries across Australia are still gradually recovering from COVID-19 and other disruptions such as natural disasters and global crises." (p. 10)

While small businesses may appreciate this sentiment, the Commission strongly disagrees with the CRIS' conclusion that government intervention is therefore warranted to force small businesses to implement arrangements that, due to their current vulnerability, they are unable to implement on their own volition.

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

³ 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.

Additional feedback from small businesses

The Commission undertook further survey analysis to inform this submission. The Commission's July 2023 Small Business Survey (July survey) suggests seven out of ten businesses are concerned about the cost of initial and ongoing menu changes and about keeping up to date with the origin of seafood products (if supply changes).⁴ Seven out of ten also indicated they were concerned about having enough time and/or resources to make ad hoc menu changes (if supply arrangements change).⁵

Response	Very or somewhat concerned
Cost of initial menu change	69.7%
Cost of ongoing menu changes	69.7%
Keeping up to date with the origin of seafood products (if supply changes)	69.7%
Having enough time and/or resources to make ad hoc menu changes (if supply changes)	68.4%
Knowing the origin of seafood products	65.8%
Having to make ongoing menu changes with third party platforms	61.8%
Having to make initial menu changes with third party platforms	60.5%
Engaging a third party to make initial menu changes	53.9%
Engaging a third party to make ongoing menu changes	52.6%
<i>n=76; Hospitality respondents indicating they sell food items containing seafood</i>	

Small business respondents were highly engaged when answering questions about proposed seafood CoOL requirements.

Sentiment received through the survey suggest some small businesses are highly concerned about proposals relating to seafood CoOL requirements. Sentiment analysis indicates 70 per cent of those who provided qualitative feedback had a negative view, 27 per cent were neutral and only 3 per cent positive. Some respondents were highly critical and raised legitimate practical concerns with their ability to comply with seafood CoOL requirements. Some examples of free text responses include:

"How ridiculous!!!!"

"The industry is already becoming so difficult to generate a profit, I believe moves such as those outlined above will end with many businesses being forced to shut down & have to retrain in other areas"

"By all means have Country Label of Origin on the product packaging but don't make retailer on-quote that information to customers - too costly and onerous"

"Why the onus is shifted to restaurants? Supplies constantly change due to cost pressures. We buy the cheapest one. We don't control supply of origin"

"I agree with the consumer being able to source this information but adding additional requirements of small business operators only puts additional stress and pressure financially, physically and emotionally on the honest compliant business owners."

"For small businesses which sell limited seafood, and have different supply changes, this would be an arduous challenge and an added expense to the business."

"Exactly what we don't need - pointless Government regulation to increase our costs."

⁴ 69.7 per cent of respondents indicated they were either 'very concerned' or 'somewhat concerned'.

⁵ 68.4 per cent of respondents indicated they were either 'very concerned' or 'somewhat concerned'.

“I am not convinced about the changes, but I am convinced about the cost that involved changing the menus.”

“It’s a huge extra cost to keep changing menu and confusing the customer, the decision maker needs to have first hand small food industry experience before they are allowed to make decisions.”

“Businesses are already struggling and owners are already drained out with other liabilities, especially after COVID there has not been any break. Adding another thing on top feels like a bit too much.”

“This is not a sustainable practice. You are placing more stress on businesses to enact these practices. Again why change something that is not broken? There are more important issues facing this country than this matter.”

“As a small takeaway business with no profit margin and to keep a float I as business owner am working 16-18 hour days and am already unable to get to all emails and admin duties. I feel this would add more work to an industry that is already overworked”

“All of my concerns are around the fact that this will cost me more money to implement.”

“More government changes that affect small businesses and creates more work and more costs. We should be getting help to reduce costs and stay in business not add more stress”

“We can easily remove fish from our offering if labelling becomes difficult”

Additional feedback suggested even businesses who already voluntarily disclose country of origin on their menus are concerned about keeping up to date should suppliers or supply availability change suddenly.

The Commission’s survey is exploratory in nature and the commissioning of more extensive research and data to improve understanding of concerns and potential impacts is warranted.

Consumer benefits and case for change has not been properly established

While the CRIS offers further explanation regarding the rationale for the proposed requirements, it does not include a robust and compelling case for reform. Rather it appears premised on speculative assumptions about the preferences of consumers, with little analysis and evidence gathering to test, estimate and verify the purported consumer benefits of seafood CoOL.

The CRIS does not present any examples of complaints made by consumers or complaints data received by consumer regulators. If there is a significant volume of complaints, the Commission’s view is complaints data should be provided with a critical evaluation of the nature of any complaints and whether they warrant a policy response.

Despite the apparent absence of consumer complaints, the case for change is established around the notion that consumers generally value CoOL information and do not get what they pay for. The CRIS summarises the problem as broadly:

“Consumers lack consistent access to origin information for seafood sold in hospitality settings and are therefore unable to make informed purchasing decisions in line with their personal preferences.” (p. 6)

However, the CRIS does not establish a compelling or unique case for why regulation is required to compel the provision of seafood CoOL information. It does not establish the presence of consumer detriment or harm, merely that the information would be useful if consumers had personal preferences related to the origin of their seafood. Seafood CoOL information may be valued by consumers, but a similar argument could be made for information about any other attribute of a good and service. In these other circumstances, policymakers are wisely cautious about intervening, given overly restrictive requirements can impose significant compliance costs and stifle innovation. Interventions of this kind are generally limited to where there is concrete evidence of consumer detriment or harm, or a clear efficiency argument (such as to solve coordination or standardisation problems).

While the Commission maintains this threshold has not been met on this occasion, the policy rationale presented in the CRIS partly relies on the assumption consumers are misled into purchasing food containing imported seafood because they assume all seafood in Australia is domestically sourced. The CRIS notes:

“Increased transparency in seafood origin information may help ensure an ‘equal playing field’ or fair competition in the marketplace for the Australian seafood industry. However, without clear and consistent seafood origin information, businesses may charge consumers higher prices for imported seafood that does not cost them what it would to sell Australian produce. The assumption made by consumers is they are paying for a product and due to information asymmetry, they are not getting what they paid for.” (p. 9)

The Commission contends this assumption is problematic and does not reflect the actual experiences and assumptions of consumers. Indeed, the CRIS elsewhere notes research indicating only half of consumers would make this assumption which is broadly in line with the actual proportion of imported seafood consumed in Australia. Any information asymmetry that does exist would be more effectively addressed through education and awareness that Australia is an open market economy which both imports and exports food produce.

Australia’s consumer laws are generally effective at creating a fair-trading environment where suppliers compete on their ability to offer goods and services that are in demand by consumers. The Commission notes existing consumer protections, including the general prohibition against misleading and deceptive conduct, exist to protect consumers from being misled into purchasing goods and services based on reasonable assumptions about their nature. Protections against misleading and deceptive conduct are capable of applying where false or misleading representations are made as well as acts of omission. Acts of omission could include if a consumer reasonably assumed seafood was domestically sourced but the supplier did not indicate it was imported. However, these protections would only apply in circumstances where consumers make reasonable assumptions, based on the circumstances, that seafood is domestically sourced (which is the problem highlighted in the CRIS). For this reason, the policy rationale established in the CRIS appears to target a perceived problem that existing consumer protections can address.

More generally, the CRIS appears overly suspicious of the capacity of markets to respond to the needs and preferences of consumers when it comes to the provision of information. In the Commission’s observations, small businesses are highly responsive to the information needs of consumers as they rely on their ongoing patronage to be successful. For example, a local fish and chip shop would not be successful if customers did not have the information needed to inform their purchase. In this example, it is common for fish and chip shops to provide a range of visual and written information about their products to encourage purchase. The CRIS refers to estimates suggesting only one per cent of businesses offered CoOL information without considering the possibility that this may reflect that consumers do not generally request this information in real-world environments (despite responding differently in a survey or submission).

Properly assessing consumer benefits

The CRIS partly establishes that consumers would generally favour more information when making purchasing decisions. Such a finding is unsurprising as this is true for almost any purchasing situation where consumers would benefit from as much information as possible, with some exceptions when considering behavioural phenomena. In properly assessing consumer benefits, the relevant question isn’t a ‘straw poll’ on whether consumers are favourably disposed to having CoOL information, but rather the extent to which they value this information and rely on it to inform their purchasing decisions.

Assessments of ‘Willingness to Pay’ (WTP) can present a more accurate view of the potential consumer benefits. The CRIS does not engage in any discussion or assessment of consumers’ WTP. Based on the low proportion of businesses which currently provide this information voluntarily, the Commission contends that consumers’ WTP for seafood CoOL information, in most settings, is lower than the cost of providing this information. If this were untrue, there would be an opportunity for hospitality businesses to boost profitability by providing this information and passing costs onto consumers (with consumers willing to bear price increases that are greater than the cost of providing the information). That this opportunity appears unexploited is evidence that the costs may outweigh the benefits of mandatory CoOL in hospitality settings. It is noted that seafood CoOL is more frequently provided in upscale hospitality settings where the provenance of food is more routinely valued by consumers and the cost of providing this information may be less than the benefits to consumers.

To inform decision making, there is also a need to engage in behavioural research using a variety of methodologies to assess the actual impact of CoOL information on purchasing behaviours. Some consumers may indicate they support the proposals but remain reliant on other factors such as price and location when making purchasing decisions (leaving significant costs for business with limited justifying benefits).

Engagement with affected stakeholders

The CRIS is informed by a Discussion Paper which was open for public consultation. While it is important to ensure all stakeholders have an opportunity to contribute their perspective, the Commission notes that hospitality stakeholders (including those representing small business) represented only 13 per cent of submissions (excluding those who submitted as 'Anonymous').

While the Commission acknowledges public consultations can receive different levels of interest from different parties, it is nonetheless important to assess stakeholder feedback within the broader landscape of possible perspectives, including those who did not engage. Hospitality and seafood businesses are the only stakeholders that would be directly impacted by the proposed CoOL arrangements and it is essential to give proper weight to their views (though other stakeholders may be indirectly impacted).

The CRIS at times appears to favour the weight of support offered by some stakeholders without considering whether this stakeholder feedback is representative of stakeholders' relative interests. Some stakeholder groups, such as those representing consumer or other interests, may favour CoOL proposals because the benefits are perceived to exceed any costs to that stakeholder group. Given hospitality stakeholders were underrepresented in the submissions, the Commission encourages additional efforts to engage hospitality industry representatives and individual hospitality businesses to inform a comprehensive assessment of the impacts of the proposed options.

The Commission's stakeholder outreach to this sector suggests significant concerns and practical challenges associated with the proposals.

Support of Option 1: status quo approach

The Commission supports *Option 1: status quo approach* as outlined in the CRIS.

This option would not create added costs for businesses and has no detriment to consumers. Under status quo conditions, businesses may choose to provide seafood CoOL information to the extent that they see fit. If this information is genuinely valued by consumers, they may make educated informed choices in line with preferences by patronising businesses where this information is freely given or by enquiring. The market already operates freely and, for some businesses, there are incentives for providing it. However, in settings where seafood CoOL is not valued or is too costly to provide on menus, the business can make localised decisions about benefits versus costs.

The Commission is strongly opposed to *Option 2: ACL information standard – AIM model* and *Option 3: ACL information standard – country model* in the absence of robust evidence supporting either approach. It is inconceivable to the Commission how the benefits of either Options 2 or 3 would outweigh the costs, however further evidence gathering and analysis is encouraged to ensure confidence in any such assessment.

While part of the policy objective outlined in the CRIS is to help ensure fair competition in the marketplace for the Australian seafood industry, the Commission's view is that the AIM model may have the perverse impact of disadvantaging Australian seafood suppliers. If it is perceived to be easier to comply with seafood CoOL requirements when using imported seafood, many businesses may choose to only stock seafood sourced internationally.

Small business exemption

The Commission does not support the introduction of mandatory seafood CoOL arrangements in the absence of clear and compelling evidence. However, should such a proposal proceed it is essential to ensure it is appropriately targeted to eliminate requirements which are excessively burdensome with only a limited contribution to policy objectives.

Exempting small businesses is likely to improve the ratio of benefits to costs. Small business stakeholders would be acutely sensitive to any changes which would contribute additional costs or complexity for their business. Costs and benefits should be considered separately for small businesses as they may face different realities than some other larger businesses that can absorb regulatory costs within a much larger enterprise structure. Even if the benefits of seafood CoOL were found to exceed costs, this may not be true for the cohort of smaller businesses.

The Commission previously suggested an approach similar to nutritional labelling which in NSW only applies to businesses that sell standard items at 20 or more locations (in NSW or 50 locations nationally). It is the Commission's view that any exemption to seafood CoOL should be based on number of sites rather than employee headcount or turnover as this is more reflective of the ability to absorb menu costs.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

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Encl. Attachment A - Submission to Department of Industry, Science and Resources - Country of origin labelling for seafood in hospitality discussion paper