

Food (Labelling of Seafood) Amendment Bill 2021

Explanatory Notes

Short title

Food (Labelling of Seafood) Amendment Bill 2021.

Policy objectives and the reasons for them

The primary policy objective of the *Food (Labelling of Seafood) Amendment Bill 2021* is to require by law mandatory Country of Origin Labelling (CoOL) of seafood sold in the food service sector, through “dining outlets”, across Queensland. The purpose of this is two-fold: 1) To increase consumer awareness around the origins of seafood being purchased and consumed, and 2) To subsequently support the Australian, and Queensland, seafood industry and the thousands of local jobs it supports.

Australia, specifically Queensland, has a strong food safety reputation and a trusted agricultural and aquacultural supply chain. As a result, Australian consumers have developed over time high expectations around food safety, authenticity and trust in their purchases and, since 1986, food retailers operating across the country have affixed information on where products and the ingredients contained within them have originated from. On July 1, 2018, and by virtue of the *Country of Origin Food Labelling Information Standard 2016* made under section 134 of the Australian Consumer Law, it became mandatory for food sold in the Australian retail sector to be labelled with its country of origin.

However, businesses preparing food for immediate public consumption (food service provided through “dining outlets”) across Australia have long been exempt from mandatory CoOL. This food service exemption has existed in the Australia New Zealand Food Standards Code since 2005, and it was maintained when the new *Country of Origin Labelling Information Standard 2016* was introduced. This has led to a significant gap in the retail and hospitality sectors with regards to consumer awareness around the country of origin of the food, namely seafood, purchased. This is with the exception of the Northern Territory, which in 2008 legislated at the territory-level to make it a legal requirement for all venues to identify imported seafood at the point-of-sale to the consumer.

When it comes to seafood, which Australia has a capacity to produce in abundance, only 30-40 per cent of what is consumed across the country is produced locally. In 2019-20 a total of 334,615 tonnes of seafood was consumed in Australia, equating to an average of 12.4kg per person. A total of 61.9 per cent of this total was imported, down from an import high of 68.6 per cent in 2013-14. Overwhelmingly, Australian consumers want to eat local seafood and support Australian seafood producers. The *Food demand in Australia: trends and issues 2018* report found demand for Australian-grown produce was on the rise domestically, however consumers cannot buy Australian seafood if they cannot tell where it’s from.

While nearly all domestic consumption of other major food service proteins such as beef, lamb and chicken is of Australian origin, close to between 60-70 per cent of domestic seafood consumption is imported annually. Australian seafood consumers are often not aware of this, resulting in an elevated risk of inappropriate pricing, import substitution and reputational damage to Australian seafood suppliers and/or producers. Many Australian seafood industry representative bodies, such as the Australian Barramundi Farmers Association (ABFA) and the Seafood Industry Australia (SIA), explain that this exemption is to the economic and social detriment of their industry, to local jobs and to the overall Australian (and Queensland) consumer. For example, the absence of CoOL for seafood served

at dining outlets negatively impacts consumer awareness and understanding, with more than 50 per cent of people (often incorrectly) assuming the seafood they purchase is produced in Australia if there is no stated country of origin.¹

The Australian seafood industry has significant, and demonstrated, ability for growth. For example, national production of farmed barramundi in 2018-19 was valued at more than \$90 million. This represented a doubling of production since 2014, and ABFA members have a realistic target to double production to become a \$200 million industry by 2025. ABFA members farm in all mainland states and the Northern Territory, providing stable local employment in regional areas. Understandably, many consumers think all barramundi is Australian with its Aboriginal name and long-standing position as the “national fish”, but the reality is very different with 60 per cent of barramundi eaten in this country being imported from Asia.

Across Australia, there is strong consumer demand for CoOL information to be provided for seafood sold in the food service sector. The political debate around the Federal *Competition and Consumer Amendment (Country of Origin) Bill 2016* repeatedly reinforced this point, and support for the rights of consumers to have access to country of origin information was bipartisan and undisputed. Nationally there have been numerous inquiries supporting a labelling solution, including:

- The Senate Rural and Regional Affairs and Transport References Committee “Inquiry into the Current Requirements for Labelling of Seafood and Seafood Products” (2014);
- Joint Select Committee on Northern Australia “Scaling Up: Inquiry into Opportunities for Expanding Aquaculture in Northern Australia” (2016);
- The government response to Senator Xenophon’s (and other co-sponsors) *Food Standards Amendment (Fish Labelling) Bill 2015*, which recognised consumer desire to know the origin of their food;
- The Standing Committee on Agriculture and Industry’s “A Clearer message for consumers” report, which stated: “The Committee acknowledges that many consumers want to support Australian businesses by purchasing Australian-made products – consumers express a strong preference to support local industries including food processing and manufacturing”;
- *The Food demand in Australia: trends and issues 2018* report, which found demand for Australian-grown produce was on the rise domestically, with Australians wanting to support local farmers and choosing to buy Australian produce. The report showed consumers want clear food labelling and to be informed;
- Research conducted by the Federal Department of Industry, Innovation and Science in 2015 found being able to identify country of origin was either “important” or “very important” to 74 per cent of consumers surveyed.

The *Food (Labelling of Seafood) Amendment Bill 2021* seeks to address the above issues in the Queensland context by:

- Removing the CoOL exemption on food service to include the mandatory labelling of seafood sold in food service venues (“dining outlets”);
- Ensuring food service menus identify the origin of seafood through country, region or specific location, at the discretion of the business i.e. Australian Barramundi, or Northern Territory Barramundi, or Humpty Doo Barramundi;
- Requiring imported seafood products, sold at dining outlets, to be labelled with their country of origin or with “i” for imported; and
- Providing the food service sector with a minimum term of 12 months to implement the new labelling legislation.

¹ <https://frdc.com.au/sites/default/files/products/2015-702-DLD.pdf>

Importantly, this Bill does not seek to vilify imported seafood products nor the dining outlets that sell them as there is, of course, a place for a variety of seafood products at a variety of different price points across Queensland and Australia. Imported seafood can be similarly identified in terms of regional, state or national origin if so desired, but if not, the “i” labelling mechanism is to indicate that the seafood is imported. There is no requirement to identify the specific region or country of origin of imported seafood. This provides increased flexibility for businesses to manage variations in supply without the need to alter menus. For example, it would be appropriate for an “i” to be placed after the seafood species or descriptor that links to a footnote explaining this product is imported. An “i – imported” or similar statement or symbol that makes it clear the product is not Australian – in a similar way to “gf” being used to describe items which are gluten-free – would suffice.

Based on submissions to the *Seafood Origin Working Group Paper* and the *Standing Committee on Agriculture and Water Resources: Inquiry into the Australian Aquaculture Sector*, a majority of Australian consumers are prepared to pay more for locally-caught or produced seafood, however they cannot consciously do this without being provided by default the necessary country of origin information. The ABFA, for example, suggest this willingness to pay more is true for more than two thirds of consumers who have indicated they would be prepared to pay a premium of up to 30 per cent for Australian seafood. But, to be effective, Australian seafood industry bodies explain CoOL labelling must be mandatory. There is evidence of perverse outcomes when labelling is voluntary, with many consumers believing the absence of labelling indicates that the seafood is Australian. Moreover, there are industry-wide concerns that participants in the supply chain have taken the freedom afforded to them by the current voluntary CoOL scheme in the food service sector to price imported seafood products as if they were Australian.

Achievement of policy objectives

This Bill achieves its policy objectives by exclusively amending the *Food Act 2006*.

Specifically it amends s 8 (Main Purposes) through the insertion of an additional clause, see below:

- (ba) to ensure seafood for sale at dining outlets is identified by country of origin information.

Additionally it amends s 9 (How main purposes are primarily achieved) through the insertion of an additional clause, see below:

- (da) requiring country of origin information to be displayed for seafood sold at dining outlets;

All other amendments to the Act are elaborative, outlining the high degree of flexibility afforded to seafood dining outlet proprietors to ensure ease of compliance, or consequential in nature. Other amendments also specify a fair, two-tiered approach to penalties for non-compliance.

The Bill is designed to commence no sooner than 1 July 2023.

Alternative ways of achieving policy objectives

There are no effective alternative ways of achieving the policy objectives.

Estimated cost for government implementation

It is not anticipated that this Bill will significantly draw on any additional funds from the Queensland Government’s consolidated revenue.

Consistency with fundamental legislative principles

The Bill is consistent with the fundamental legislative principles as defined in Section 4 of the *Legislative Standards Act 1992*, with only one exception.

The Bill introduces a new offence for “failure to comply with a requirement to display country of origin information”. See the prescribed penalties below:

Maximum penalty—

- (a) for a first offence—1 penalty unit; or
- (b) for a second or subsequent offence—5 penalty units.

This is a simple offence carrying a maximum penalty of 5 penalty units for second and subsequent offences, which is reasonable for this offence type. Concerns that this new offence may impact upon a person’s rights or liberties are mitigated in that for the first offence, which may be committed inadvertently or accidentally, only a minimal penalty is to be applied (1 penalty unit).

Consultation

Consultation has been undertaken with key stakeholders, most importantly:

1. Queensland seafood producers;
2. Queensland seafood dining outlets;
3. Australia seafood industry representatives;

Consistency with legislation of other jurisdictions

This legislation is consistent in intent with the *Country of Origin Food Labelling Information Standard 2016*, made under section 134 of the Australian Consumer Law, however it proactively negates an exemption applied to businesses preparing seafood for immediate public consumption (food service provided at “dining outlets”). In this sense, it is consistent with the Northern Territory, where since 2008 Territory laws have required the menus for seafood prepared for immediate consumption – such as in restaurants, take-away shops, pubs and clubs – to clearly indicate whether the seafood product being sold is Australian or imported.