

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Food Standards Amendment (Fish Labelling)
Bill 2015

May 2015

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Membership of the committee

Members

Senator the Hon Bill Heffernan, Chair

Senator Glenn Sterle, Deputy Chair

Senator Joe Bullock

Senator Sean Edwards

Senator Rachel Siewert

Senator John Williams

New South Wales, LP

Western Australia, ALP

Western Australia, ALP

South Australia, LP

Western Australia, AG

New South Wales, NATS

Other Senators participating in this inquiry

Senator Nick Xenophon

South Australia, IND

Secretariat

Mr Tim Watling, Secretary
Dr Jane Thomson, Principal Research Officer
Ms Erin East, Principal Research Officer
Ms Bonnie Allan, Principal Research Officer
Ms Trish Carling, Senior Research Officer
Ms Kate Campbell, Research Officer
Ms Lauren Carnevale, Administrative Officer

PO Box 6100
Parliament House
Canberra ACT 2600
Ph: 02 6277 3511
Fax: 02 6277 5811
E-mail: rrat.sen@aph.gov.au
Internet: www.aph.gov.au/senate_rrat

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List of recommendations

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Recommendation 2

1.20 The committee recommends that, subject to the bill being passed into law, the Commonwealth encourage the states and territories to comply with and enforce the revised standard.

Chapter 1

Introduction and background

1.1 On 26 March 2015, the Senate referred the Food Standards Amendment (Fish Labelling) Bill 2015 (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 12 May 2015.

1.2 In December 2014, this committee's counterpart, the Rural, Regional Affairs and Transport References Committee (the References committee), tabled its report into the current requirements for labelling of seafood products. The report was the culmination of an inquiry which commenced in June 2014, received numerous public submissions, held hearings in Sydney and Darwin, and conducted a site visit in Darwin.¹

1.3 In its report, the References committee noted that since June 2006, it has been a legal requirement that all fresh seafood sold by retailers to the Australian public must be clearly labelled with country of origin. However, these regulations exclude or exempt cooked or pre-prepared seafood sold in the food services industry (restaurants, cafes, pubs, bars, clubs, fast food and takeaway outlets including fish and chip shops) where the majority of seafood is sold to the Australian public. Therefore seafood sold by food services for immediate consumption is exempted from being labelled as 'imported' or with country of origin in all states and territories except the Northern Territory (NT), where a licence condition requires imported seafood prepared for immediate consumption to be labelled as 'imported'.

1.4 At the outset, the committee makes the point that the bill is not aimed at excluding foreign seafood from the market, or protecting local producers. The References committee was told that around 70 per cent of seafood consumed in Australia is imported, and the local industry would be unable to meet total local demand were the foreign product to be unavailable.

1.5 Rather, the majority of submitters to the References committee inquiry argued that the labelling exemption on cooked or pre-prepared seafood created a void in the information provided to the consumer. The effect of the exemption is that consumers are denied the opportunity to make informed choices at the point of sale, while the industry is unable to distinguish its product from (often cheaper) imports. Generalised headings on menus such as 'fish of the day' do not provide any clear indication of where the fish is from and could lead a customer to believe that it was locally caught when it may in fact be an imported species.

1.6 Other arguments in favour of amending country of origin requirements under Standard 1.2.11 of the Australia New Zealand Food Standards Code (the Code), which

1 Senate Rural, Regional Affairs and Transport References Committee, *Current requirements for labelling of seafood and seafood products*, December 2014.

is administered by Food Standards Australia and New Zealand (the Authority) to include seafood sold for immediate consumption in the food services sector included:

- The extension of country of origin labelling to all retailed seafood being a matter of public health importance given concerns regarding biosecurity and the potential health hazards involved in fish sourced from outside of Australia, particularly the possible use of chemicals such as antibiotics and pesticides;
- Country of origin labelling providing a level playing field for both local and overseas producers and bringing surety to the local industry; and
- The need for Australian producers to be able to distinguish their product from imported product, in recognition of the extra costs to the local industry of achieving high standards in sustainability, safety and hygiene.

1.7 The References committee also considered the incidence of 'free riding', such as when seafood is advertised in a way that suggests it is Australian product. While such advertisements will indicate that their product is imported (albeit often very subtly), the overall impression deliberately created is that product is Australian. One example in point is that of 'Australis Barramundi' which produces barramundi in Vietnam that is sold by Coles and Woolworths. The point was made that such importers are riding on the back of Australia's image (as sustainable, healthy and fresh) while benefiting from the price differential between imported and local product.

1.8 Evidence to the References committee suggested that since the introduction of the labelling requirements in relation to the food services sector in the NT, consumers have become aware of the distinction between Australian and imported seafood products. This has permitted restaurants to charge a little more for local seafood. Far from favouring the cheaper, imported seafood, surveys have revealed that consumers in the NT have a preference for local seafood and are prepared to pay a premium for it. After freshness, supporting local industry and origin labelling were the key factors in consumer decisions.

1.9 Evidence provided by NT fish and chip shop, restaurant and bar proprietors suggested that while there was initial antagonism amongst some restaurant and take away owners at the prospect of additional compliance responsibilities, such concerns fell away when they realised that labelling provided an opportunity to actively market seafood on their menus.

1.10 The References committee was convinced by the evidence that the exemption for cooked or pre-prepared seafood should be removed, and made the following recommendation:

The committee recommends that the exemption regarding country of origin labelling under Standard 1.2.11 of the Australia New Zealand Food Standards Code for cooked or pre-prepared seafood sold by the food services sector be removed, subject to a transition period of no more than 12 months.

Provisions

1.11 The Explanatory Memorandum (EM) to the bill states that:

This Bill seeks to implement recommendations from the Senate Rural and Regional Affairs and Transport References Committee inquiry into the current requirements for labelling of seafood and seafood products, which reported on 18 December 2014.

Specifically, the Committee recommended that the exemption regarding country of origin labelling under Standard 1.2.11 of the Australia New Zealand Food Standards Code for cooked or pre-prepared fish sold by the food services sector be removed, subject to a transition period of no more than 12 months. This measure is consistent with those put in place by the Northern Territory Government to support the local seafood industry and promote Australian produce.

This Bill requires that Food Standards Australia New Zealand develop, within 12 months, a new standard to apply in Australia only that requires fish sold for immediate consumption to be labelled according to existing country of origin requirements. For the purpose of this Bill, the term 'fish' is taken to have the meaning set out in the Food Standards Code, which means 'any of the cold-blooded aquatic vertebrates and aquatic invertebrates including shellfish, but does not include amphibians and reptiles'. For example, a restaurant or pub selling a meal that includes fish would be required to list on the menu whether the fish is 'Product of Australia' or has a different or mixed country of origin, consistent with the country of origin definitions and requirements for fish already set out in Standard 1.2.11.²

1.12 Schedule 1 of the bill contains three items, which in summary would provide for the following:

- A new definition of 'food services sector', which would include restaurants, bars, takeaway shops, and other venues that may be specified by the Authority
- For the development and application of a new standard for country of origin labelling for fish (as defined in the bill³) which is offered for immediate consumption in Australia
- For the Authority to prescribe how the food services sector must identify the country of origin of such fish, including in regard to menus, signage, font size and other matters considered relevant to the Authority
- Exemption for the Authority from certain other provisions in the *Food Standards Australia and New Zealand Act 1991* (the Act) which might inhibit the timely and effective achievement of the bill's objectives. These exemptions operate only in respect of the first standard developed and implemented, and not subsequent standards or variations thereof, which are also provided for by the bill.

2 Explanatory Memorandum, p. 1.

3 The definition requires that the new Standard must use the current definition in the Standard, which is 'any of the cold-blooded aquatic vertebrates and aquatic invertebrates including shellfish, but [not] amphibians and reptiles'.

- That a Standard developed under the bill must be in force at all times after the first standard comes into force.

1.13 It is clear from a simple reading of the EM, together with an examination of the contents of the bill, that the effect of the bill would be to implement the recommendation of the References committee, which garnered broad support across the political spectrum.

1.14 It is in this context that the committee notes a joint media release by the Minister for Agriculture, the Hon Barnaby Joyce MP, and the Minister for Industry, the Hon Ian Macfarlane MP, announcing that consultations on food origin labelling were to begin immediately.⁴ In their release, the ministers indicated that consultations would 'deliver clearer and more consistent country of origin labelling for food sold in Australia', and that a key priority was the delivery of the information demanded by consumers without the imposition of additional costs on industry.

1.15 These consultations with food manufacturers, retailers, agricultural producers and consumers are expected to take place during April and May 2015, and a Working Group of ministers representing sectors including industry, agriculture, small business, health and trade would develop the government's position on how best to proceed with the reforms.

Conclusion

1.16 The committee supports the bill insofar as it applies to cooked or pre-prepared seafood products, but also applauds the government's move to address country of origin labelling more broadly. The committee recognises that it is likely to be some time before the government's consultation process leads to firm legislative proposals.

1.17 Indeed, the committee notes that the Commonwealth has limited legislative power in the area of food regulation, which would constrain the effectiveness of the bill in isolation. Complex jurisdictional arrangements are in place, and although standards may be developed by FSANZ, enforcement would rely on legislative action by the states and territories. In the committee's view, this bill provides a potential trigger for this action to occur.

1.18 It would be preferable to get state and territory support before progressing reforms to ensure the changes meet jurisdictional requirements. However, notwithstanding reliance on state and territory legislative change to achieve the bill's aims, given the committee's broad agreement on the measures contained in the bill, its relatively contained scope, and the fact that it would represent a first step toward broader reform, the committee recommends that the bill be passed, in anticipation of government's broader reform to country of origin labelling in the medium term.

Recommendation 1

1.19 The committee recommends that the Senate pass the bill.

4 Media Release, 'Consultations start on food origin labelling', 1 April 2015. www.agricultureminister.gov.au, accessed 7 April 2015.

Recommendation 2

1.20 The committee recommends that, subject to the bill being passed into law, the Commonwealth encourage the states and territories to comply with and enforce the revised standard.

Senator the Hon Bill Heffernan

Chair

