

Food Safety (Trans Fats) Bill 2007

Explanatory Memorandum

Senator Nettle

GENERAL OUTLINE

The Food Safety (Trans Fats) Bill 2007 will prohibit within the bounds of Commonwealth constitutional competence, the addition of synthetic trans fatty acids to food.

Synthetic trans fatty acids are dangerous because they have been shown to be a significant contributor to coronary heart disease which kills thousands of Australians each year.

The bill prohibits manufacturing, distribution, offering for sale, selling or otherwise trading in food containing synthetic trans fatty acids by both constitutional corporations and individuals in particular circumstances.

The bill enhances food safety in Australia by replacing the inadequate food industry managed self regulation that is currently in place.

The bill sets the standard for the banning of dangerous synthetic trans fatty acids which the States and Territories should follow.

NOTES ON CLAUSES

1 Short title

The short title is the *Food Safety (Trans Fats) Act 2007*.

2 Commencement

The Act commences one year after Royal Assent to give industry a transitional period to change over to the new system.

3 Purpose etc.

The purpose of this bill is to protect the Australian public from consuming unsafe levels of synthetic trans fatty acids. The bill prohibits the manufacturing, distributing, offering for sale, selling or otherwise trading in food containing synthetic trans fatty acids by both constitutional corporations and individuals in particular circumstances.

Unlike some recent Government legislation, this bill is intended to operate within the bounds of Commonwealth constitutional competence and is not intended to override state legislation. Consequently this bill does not abuse the recent extensions to the Corporations Power.

The bill also expresses the intention of the Commonwealth Parliament that State Parliaments may adopt the provisions of this Act in their own legislation, and also in cooperation with the Commonwealth via the Australia New Zealand Food Standards Code.

4 Definitions

The bill defines a **constitutional corporation** as a corporation to which paragraph 51(xx) of the Constitution applies.

The bill defines **synthetic trans fatty acids** as non-naturally occurring fats formed by the hydrogenation of vegetable oils. This is to distinguish this substance from naturally occurring trans fatty acids that are found generally in relatively small quantities in some foods.

5 Prohibition—corporations

This item prohibits constitutional corporations from manufacturing, distributing, offering for sale, selling or otherwise trading in food containing synthetic trans fatty acids. This means a major proportion of business entities operating in Australia will be covered by this bill.

S5(2) expands this scope to individuals acting in the same manner where such action will, or would, be likely to have the effect of causing substantial loss or damage to the business of a constitutional corporation.

The penalty for a contravention of this item is 700 penalty units, which is consistent with analogous food safety legislation such as the *Queensland Food Act 2006*, paragraph 35(b) where the Maximum penalty for selling unsafe food is also 700 units.

6 Operation of State and Territory Laws

This item clarifies that it is not the intention of this bill to override State legislation where it is inconsistent with clause 5 of this bill.

The Australian Greens expect that State and Territory governments would be willing to enact complementary legislation to extend the coverage of the purposes of this bill across all Australian jurisdictions.