



New South Wales

Food Amendment (Trans Fatty Acids Eradication) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Food Act 2003* (*the Principal Act*):

- (a) to require packaged food containing artificially produced trans fatty acids to be labelled with certain information, and
- (b) to require the presence of artificially produced trans fatty acids to be indicated to prospective purchasers by restaurants, take away food shops and home delivery food businesses along with a warning about the dangers of trans fatty acids, and
- (c) to provide for the staged introduction of offences in relation to the handling of food resulting in the presence of artificially produced trans fatty acids and the sale of food containing artificially produced trans fatty acids, and
- (d) to require the Minister for Primary Industries and the Minister for Health to take certain action to promote the adoption of such provisions on a national basis.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [2] inserts proposed section 10 into the Principal Act which defines trans fatty acids. The definition excludes trans fatty acids occurring naturally in food.

Schedule 1 [1] makes a consequential amendment.

Schedule 1 [3] inserts proposed Division 2A into Part 2 of the Principal Act containing proposed sections 23A, 23B and 23C.

Proposed section 23A creates an offence of selling or advertising for sale packaged food that contains trans fatty acids unless the food indicates the presence of those acids in the statement of ingredients required by the Food Standards Code and separately lists those acids in the nutrition information panel required by the Food Standards Code and is labelled with a warning that consumption of trans fatty acids is a health hazard. The proposed section also contains a 12-month exemption from the Commonwealth legislation relating to the mutual recognition of goods. The proposed section has effect from 3 months after its commencement and ceases to have effect on the commencement of proposed section 23C.

Proposed section 23B creates an offence for a person in charge of a restaurant (which includes a take away food business) to fail to provide information relating to the presence of trans fatty acids in food for sale and warnings of the danger of trans fatty acids, by means of signs or a menu. The proposed section also creates a similar offence in relation to home delivered food where a menu is provided for the food. The proposed section has effect from 3 months after its commencement and ceases to have effect on the commencement of proposed section 23C.

Proposed section 23C makes it an offence for a person to handle food intended for sale in a manner that causes the presence of trans fatty acids in the food. The proposed section also prohibits the sale of food containing trans fatty acids. The proposed section also contains a 12-month exemption from the Commonwealth legislation relating to the mutual recognition of goods. The proposed section has effect from 2 years after its commencement.

Schedule 1 [4] contains a consequential amendment to section 28 of the Principal Act.

Schedule 1 [5] inserts proposed section 133I into the Principal Act to require the Minister for Primary Industries and the Minister for Health to use their best endeavours to ensure that a proposed resolution for the amendment of the *Food Standards Code* of the Commonwealth is listed for consideration by the Australia and New Zealand Food Regulation Ministerial Council. The amendment of that Code would have the effect of including the same requirements as to labelling, and the prohibition on sale, of foods containing trans fatty acids as are contained in proposed sections 23A and 23C, including the same time frame for their operation.

Proposed section 133I also requires those Ministers to support the proposals for amendment of the *Food Standards Code* and to make representations to the Commonwealth Government for prohibiting the importation of food into Australia that does not comply with those proposals.

Schedule 1 [6] amends Schedule 2 to the Principal Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Food Amendment (Trans Fatty Acids Eradication) Bill 2008

Explanatory note

Introduced by Dr John Kaye, MLC

First print



New South Wales

Food Amendment (Trans Fatty Acids Eradication) Bill 2008

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New South Wales

Food Amendment (Trans Fatty Acids Eradication) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Food Act 2003* with respect to trans fatty acids in food; and for other purposes.

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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Food Amendment (Trans Fatty Acids Eradication) Act 2008</i> . | 3 4 |
| 2 Commencement | 5 |
| This Act commences on the date of assent to this Act. | 6 |
| 3 Amendment of Food Act 2003 No 43 | 7 |
| The <i>Food Act 2003</i> is amended as set out in Schedule 1. | 8 |
| 4 Repeal of Act | 9 |
| (1) This Act is repealed on the day following the day on which this Act commences. | 10 11 |
| (2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act. | 12 13 |

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| Schedule 1 | Amendments | 1 |
| | (Section 3) | 2 |
| [1] | Section 4 Definitions | 3 |
| | Insert in alphabetical order in section 4 (1): | 4 |
| | <i>restaurant</i> means any eating place at which food is sold and includes a take away food shop (whether or not provision is made for food to be eaten at the shop by purchasers). | 5 6 7 |
| | <i>trans fatty acids</i> has the meaning given by section 10. | 8 |
| [2] | Section 10 | 9 |
| | Insert after section 9: | 10 |
| | 10 Meaning of “trans fatty acids” | 11 |
| | (1) In this Act, <i>trans fatty acids</i> means unsaturated fatty acids that contain one or more isolated or non-conjugated double bonds in a trans-configuration. | 12 13 14 |
| | (2) For the purposes of this Act, food is taken not to contain trans fatty acids if trans fatty acids are present in the food only because they occur naturally in the food or they occur naturally in a substance that has been added to the food. | 15 16 17 18 |
| [3] | Part 2, Division 2A | 19 |
| | Insert after Division 2 of Part 2: | 20 |
| | Division 2A Offences relating to trans fatty acids in food | 21 |
| 23A | Labelling requirements relating to trans fatty acids in packaged food | 22 23 |
| | (1) A person must not sell packaged food, or advertise packaged food for sale, that contains trans fatty acids unless the packaged food is labelled in a manner that clearly indicates: | 24 25 26 |
| | (a) in the statement of ingredients required by the Food Standards Code, that the food contains trans fatty acids, and | 27 28 29 |
| | (b) in the nutrition information panel required by the Food Standards Code, trans fatty acids contained in the food separately listed from other fats contained in the food, and | 30 31 32 |

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| (c) | a warning that the consumption of trans fatty acids is a health hazard. | 1 2 |
| | Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation. | 3 4 |
| (2) | This section is declared to be a law to which section 15 of the <i>Mutual Recognition Act 1992</i> of the Commonwealth applies. | 5 6 |
| (3) | This section is, for the purposes of section 46 of the <i>Trans-Tasman Mutual Recognition Act 1997</i> of the Commonwealth, declared to be a law that is exempt from the operation of that Act. | 7 8 9 10 |
| (4) | This section has effect on and from the date that is 3 months after its commencement. | 11 12 |
| (5) | Subsection (1) ceases to have effect on the date on which section 23C first has effect. | 13 14 |
| (6) | In this section, packaged food does not include food that is sold as ready to eat and that is packaged by: | 15 16 |
| (a) | a restaurant that prepared it, or | 17 |
| (b) | a business that delivers the food to premises specified by a purchaser of the food. | 18 19 |
| | Note. Subsections (2) and (3) provide exemptions from the mutual recognition principles relating to goods contained in the <i>Mutual Recognition Act 1992</i> of the Commonwealth and the <i>Trans-Tasman Mutual Recognition Act 1997</i> of the Commonwealth. Those Commonwealth Acts provide that any such exemptions do not have effect for a period of more than 12 months. | 20 21 22 23 24 25 |
| 23B | Information to be displayed about trans fatty acids in ready to eat food | 26 27 |
| (1) | A person in charge of a restaurant must ensure that, if food sold by the restaurant contains trans fatty acids, the presence of the trans fatty acids and a warning that the consumption of trans fatty acids is a health hazard, is clearly indicated: | 28 29 30 31 |
| (a) | in a menu given to, or displayed for, prospective purchasers of the food at the restaurant, or | 32 33 |
| (b) | on a sign or signs prominently displayed at the restaurant in a way that would be noticeable to prospective purchasers of the food. | 34 35 36 |
| | Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation. | 37 38 |

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| (2) | A person in charge of a business that: | 1 |
| (a) | delivers food that is prepared at a restaurant to premises specified by a purchaser of the food, and | 2 3 |
| (b) | distributes or makes available a menu to prospective purchasers of the food, | 4 5 |
| | must ensure that, if the food contains trans fatty acids, the presence of the trans fatty acids and a warning that the consumption of trans fatty acids is a health hazard is clearly indicated in the menu. | 6 7 8 9 |
| | Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation. | 10 11 |
| (3) | It is a defence to a prosecution for an offence under subsection (2) against a person in charge of a business that delivers the food (but does not prepare the food) if the person establishes that any menu distributed or made available to prospective purchasers of the food was provided or authorised by the person in charge of the business that prepared the food for delivery. | 12 13 14 15 16 17 |
| (4) | This section has effect on and from the date that is 3 months after its commencement. | 18 19 |
| (5) | This section ceases to have effect on the date on which section 23C first has effect. | 20 21 |
| 23C | Prohibition on sale and handling of food containing trans fatty acids | 22 23 |
| (1) | A person must not handle food intended for sale in a manner that causes the food to contain trans fatty acids. | 24 25 |
| | Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation. | 26 27 |
| (2) | A person must not sell food, or advertise food for sale, that contains trans fatty acids. | 28 29 |
| | Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation. | 30 31 |
| (3) | This section is declared to be a law to which section 15 of the <i>Mutual Recognition Act 1992</i> of the Commonwealth applies. | 32 33 |
| (4) | This section is, for the purposes of section 46 of the <i>Trans-Tasman Mutual Recognition Act 1997</i> of the Commonwealth, declared to be a law that is exempt from the operation of that Act. | 34 35 36 37 |

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| (5) | This section has effect on and from the date that is 2 years after its commencement. | 1 2 |
| | Note. Subsections (3) and (4) provide exemptions from the mutual recognition principles relating to goods contained in the <i>Mutual Recognition Act 1992</i> of the Commonwealth and the <i>Trans-Tasman Mutual Recognition Act 1997</i> of the Commonwealth. Those Commonwealth Acts provide that any such exemptions do not have effect for a period of more than 12 months. | 3 4 5 6 7 8 |
| [4] | Section 28 Defence in respect of handling of food | 9 |
| | Insert at the end of section 28: | 10 |
| (2) | In any proceedings for an offence under section 23C (1), it is a defence if it is proved that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately upon becoming aware that the food contained trans fatty acids. | 11 12 13 14 15 |
| [5] | Section 133I | 16 |
| | Insert before section 134: | 17 |
| 133I | Ministers' duty to promote control and eradication of trans fatty acids in food | 18 19 |
| (1) | It is the duty of the Minister for Primary Industries and the Minister for Health to use their best endeavours to ensure that, within 6 months after the commencement of this section (or, if that period is not practicable, within such period as is practicable), a proposed resolution is listed for consideration by the Australia and New Zealand Food Regulation Ministerial Council that contains proposals to the effect of the following: | 20 21 22 23 24 25 26 |
| (a) | that the Food Standards Code should be amended to require, on and from 3 months after the amendment, the labelling of packaged food intended for sale in Australia that contains trans fatty acids, | 27 28 29 30 |
| (b) | that any such labelling should clearly indicate: | 31 |
| (i) | in the statement of ingredients required by the Food Standards Code, that the food contains trans fatty acids, and | 32 33 34 |
| (ii) | in the nutrition information panel required by the Food Standards Code, trans fatty acids contained in the food separately listed from other fats contained in the food, and | 35 36 37 38 |
| (iii) | a warning that the consumption of trans fatty acids is a health hazard, | 39 40 |

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| (c) | that the Food Standards Code should be amended to provide that, on and from 2 years after the amendment, food intended for sale in Australia must not contain trans fatty acids. | 1 2 3 4 |
| (2) | It is the duty of the Minister for Primary Industries and the Minister for Health: | 5 6 |
| (a) | to support the proposed resolution referred to in subsection (1) and, if either of those Ministers is entitled to vote on the proposed resolution on behalf of the State, to cast the vote in favour of the proposed resolution, and | 7 8 9 10 |
| (b) | to make representations to the Commonwealth Government to consider prohibiting the importation of food into Australia that does not comply with the proposals contained in subsection (1). | 11 12 13 14 |
| [6] | Schedule 2 Savings, transitional and other provisions | 15 |
| | Insert at the end of clause 1 (1): | 16 |
| | <i>Food Amendment (Trans Fatty Acids Eradication) Act 2008</i> | 17 |