

Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2013

Introduced into the Senate on 16 May 2013

Sponsor: Senator Milne

Summary of committee view

1.21 The committee seeks clarification on whether a civil penalty provision in the bill should be classified as 'criminal charges' within the meaning of article 14 of the International Covenant on Civil and Political Rights (ICCPR).

Overview

1.22 This bill seeks to make changes to Australia's current system of designation and regulation of country of origin labelling for food. The bill proposes the establishment of a new single regulatory regime for most kinds of unpackaged and packaged food, retaining mandatory labelling requirements, but superseding the country of origin labelling requirements currently in the *Food Standards Australia New Zealand Act 1995*.

Compatibility with human rights

1.23 This bill is accompanied by a self-contained statement of compatibility that states that the bill 'does not engage any of the applicable rights or freedoms' and is therefore 'compatible with human rights as it does not raise any human rights issues.'

Right to adequate food

1.24 The committee notes that the bill engages the right to food, which is part of the right to an adequate standard of living as guaranteed by article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.25 The UN Committee on Economic, Social and Cultural Rights has noted that 'the core content of the right to adequate food implies ...[t]he availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture'.¹⁴ Providing consumers with detailed information about the origins and content of the food which is available in the market can be viewed as a promotion of the right to food, as well as of the right to health.

14 CESCR, General Comment No 12 (1999), para 8.

Criminal procedure rights

1.26 The bill also introduces or amends a number of penalty provisions, including criminal offences. It proposes to insert a new section 137C into the *Competition and Consumer Act 2010*, which provides in part:

- (1) A person must not, in trade or commerce, supply food of a particular kind if:
 - (a) a country of origin labelling requirement applies to food of that kind; and
 - (b) the food does not comply with that requirement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

1.27 The section goes on to stipulate that a person must not offer, possess or have control of food that falls within subsection 137C(1). The explanatory memorandum describes these as 'new civil penalty provisions'.¹⁵ However, neither the explanatory memorandum nor the statement of compatibility provides further details about the procedure for imposing such a penalty, the maximum possible penalty, or the factors that are to be taken into account in assessing the amount of the penalty in a particular case.

1.28 As the committee has previously noted in relation to civil penalty provisions, these types of sanctions may give rise to questions of compatibility with articles 14 and 15 of the ICCPR, if they are viewed as 'criminal' for the purposes of human rights law. The committee has indicated that a statement of compatibility should address the issue of whether a particular civil penalty is 'criminal' for the purposes of human rights law. If a penalty is found to be criminal, this has implications for the appropriate procedures that are to be followed in imposing it.

1.29 The committee intends to write to Senator Milne to seek clarification on whether the civil penalty provision in proposed new section 137C should be classified as 'criminal' within the meaning of article 14 of the ICCPR.

15 Explanatory Memorandum, p. 5.