

Departmental Disclosure Statement

Food Safety Law Reform Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

29 April 2016

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information.....	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features.....	8
Appendix One: Further Information Relating to Part Three.....	10

Part One: General Policy Statement

This Bill is an omnibus bill whose amendments deal with an inter-related topic and can be regarded as implementing a single broad policy. The Bill makes improvements and enhancements to three Acts governing the food safety system, improving their alignment, operation, and design so as to better protect human health, and maintain and strengthen New Zealand's reputation as a supplier of safe and suitable food both domestically and internationally.

The Bill addresses the recommendations of the independent Government Inquiry into the Whey Protein Concentrate Contamination Incident (the Inquiry) that need statute change to implement. The Inquiry was established in September 2013 following the Fonterra botulism scare that made global headlines and had significant consequences for New Zealand's reputation as a supplier of safe food. The Inquiry reported initially in December 2013 and again in November 2014.

The Inquiry found that the incident was not the failure of New Zealand's food regulatory system. However, it recommended some improvements, to ensure the system remains among the best in the world. Most of the Inquiry's recommendations have been able to be implemented through operational means. The Bill addresses the recommendations that need statute change to implement.

The Inquiry focused solely on the dairy sector. However, the Bill amends all three of the main food safety Acts - the Animal Products Act 1999, the Food Act 2014, and the Wine Act 2003 – to ensure the recommended improvements apply across the whole system.

The fundamental model of the current system is not being changed. Food enterprises are responsible for developing and operating under risk-based plans and programmes that identify the business's food safety risks and set out how those risks will be managed, with oversight by the relevant regulator (either the Ministry for Primary Industries or a territorial authority). Verification of compliance with these plans and programmes is undertaken by an officially-recognised third party.

To ensure sufficient information on risks is readily available throughout the system, the Bill enables regulations to set requirements for the form, manner and timeframes within which risk-based plans and programmes must be supplied to the regulator for registration. It also requires operators to supply copies of their plans and programmes to their verifiers, and verifying agencies to retain copies.

The Bill provides for regulations to set the traceability and recall requirements that are essential to food safety and maintenance of New Zealand's reputation.

To strengthen the verification function the Bill clarifies that the primary accountability of recognised persons and agencies when carrying out their functions is to the regulator, and enables information relevant to the competence of accredited agencies to be passed to the regulator. The Bill also provides for verification regulations to, where necessary, apply to businesses other than operators using risk management plans and programmes.

To standardise the compliance methods available across the system the Bill adds the main enforcement tools in the Food Act to the older Animal Products Act and Wine Act. The Bill also improves the statutory powers available for responses to food safety incidents by enhancing the ability for the Director-General to, when there is a serious risk to public health, require relevant information from persons who hold it. It also aligns provisions for Director-General Statements to both inform and protect the public.

The Bill improves the design of the delegated legislation under the three Acts by removing duplication and providing for best practice use of regulations and notices. It also specifically identifies those legislative instruments that are disallowable, in line with the Legislation Act 2012.

The Bill helps to modernise and future-proof the food regulatory system by making explicit the ability to use automated electronic systems for service delivery and transactions. It also includes technical amendments to clarify the intent of certain ambiguous provisions and correct drafting errors, and other minor enhancements.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Government Inquiry into the Whey Protein Concentrate Contamination Incident reports: <ul style="list-style-type: none">• <i>Report on New Zealand's Dairy Food Safety Regulatory System</i>, December 2013• <i>The WPC80 Incident: Causes and Responses</i>, November 2014 Both available from: https://www.dia.govt.nz/Government-Inquiry-into-Whey-Protein-Concentrate-Contamination-Incident Dairy Traceability Working Group reports: <ul style="list-style-type: none">• <i>Report A: Proposed Regulatory Requirements for Traceability</i>, December 2014.• <i>Report B: New Zealand Dairy Industry Best-Practice Guide to Proposed Regulatory Requirements for Traceability</i>, December 2014 Both available from: http://foodsafety.govt.nz/elibrary/industry/dairy-traceability-working-group-report/index.htm	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
--	-----------

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>Food Safety Law Reform Bill: policy proposals</i> , Ministry for Primary Industries, July 2015. Available from: http://mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/ and http://www.treasury.govt.nz/publications/informationreleases/ris	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The RIS identified above did not meet the threshold for receiving independent opinion on the quality of the RIS from the RIA Team based in the Treasury.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
--	-----------

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
---	-----------

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Regulatory Impact Statement: <i>Food Safety Law Reform Bill: policy proposals</i> , Ministry for Primary Industries, July 2015, pages 7-11, 12-14 (links at 2.3 above).	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>As discussed in the Regulatory Impact Statement (links at 2.3 above) there will be costs and benefits related to the enhancement of risk-based plans and programmes, with some to be further determined as part of the regulation-making process.</p> <p>Because all risk-based plans and programmes are required to be registered, periodically verified, and made available on request, and because a business cannot operate without a valid plan, the likely level of compliance with requirements will be high.</p> <p>The Ministry for Primary Industries has a number of strategies to encourage compliance, including the provision of information and guidance, and training for verifiers.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

MPI's assessment is that the policy is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MPI's assessment is that the policy is consistent with the principles of Te Tiriti o Waitangi. MPI consulted Te Puni Kōkiri during the development of the proposals and on the Bill.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice will be accessible on the Ministry's website at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

See Appendix One

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on the policy proposals and the Bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

MPI consulted with the Privacy Commissioner on the Bill, who identified that there are no issues of concern from a privacy perspective.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Public consultation on proposals for inclusion in the Bill was undertaken.</p> <p>The following relevant documents are available at: http://www.mpi.govt.nz/news-and-resources/consultations/proposals-for-policies-under-the-food-safety-law-reform-bill/</p> <p>Consultation document [<i>Policy proposals for inclusion in the Food Safety Law Reform Bill</i>, March 2015]</p> <p>Summary of submissions [<i>Food Safety Law Reform Bill: policy proposals - Summary of submissions</i>, August 2015]</p> <p>The EGI Cabinet paper [<i>Food Safety Law Reform Bill: final policy approvals</i>, 15 July 2015].</p> <p>The Regulatory Impact Statement also describes the consultation undertaken at paragraphs 117-121 (links at 2.3 above).</p> <p>Government departments were consulted in a draft Bill before its finalisation and consideration by Cabinet Legislation Committee.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The proposals and Bill have been consulted within MPI with all areas involved with the implementation and administration of the legislation.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
---	----

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
---	----

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
--	----

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES

Existing strict liability and reverse onus offences under the Animal Products Act 1999, Wine Act 2003 and Food Act 2014

Failing to comply with requirements in regulations and notices is an offence under section 244 of the Food Act 2014. In a prosecution for an offence against this section, it is *not necessary to prove that the defendant intended to commit the offence*. A body corporate is liable on conviction to a fine not exceeding \$20,000, and an individual to a fine not exceeding \$5,000.

The defendant may prove a *defence* under section 251 of the Food Act.

Under section 135 of the Animal Products Act 1999 (the AP Act) and section 103 of the Wine Act 2003 a person commits an offence who, *without reasonable excuse*, fails to comply with regulations made under the Act (if the regulations specify failing to comply as an offence); or any direction, condition, notice, or requirement given under the Act. A body corporate is liable on conviction to a fine not exceeding \$100,000, and an individual to a fine not exceeding \$20,000.

The defendant may prove a *defence* under section 136 of the AP Act or section 104 of the Wine Act.

New provisions

- While the above provisions are not being amended, failing to comply with any new requirements set in regulations or notices related to tracing, recall, and verification will be an offence under these sections in the respective Acts (clauses 23, 112, 206). Failing to comply with an improvement notice under the AP and Wine Acts will also be an offence under section 135 AP Act and section 103 Wine Act (clauses 121 and 209).

The relevant requirements to be set in regulations and notices will be comparable with existing requirements that, when breached, trigger the offence provisions.

- Under clause 226 a person commits an offence who, *without reasonable excuse*, breaches or fails to comply with the terms of a compliance order or interim compliance order under the Wine Act (body corporate fine up to \$300,000; individual up to \$50,000, and a daily fine up to \$2,000). This is comparable with existing section 132 of the AP Act.

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Clause 30 inserts new section 292A into the Food Act 2014. This section may require a person (other than an operator of a food business) to provide certain information when the Chief Executive considers that urgent action may be needed to protect consumers from a serious risk of illness or injury related to the consumption of a food.</p> <p>No evidence of any information that has directly or indirectly been obtained as a result of the person's compliance may be used against the person in any criminal proceeding, unless the proceeding relates to the falsity of the information.</p> <p>Having essential information during an incident is crucial for determining the scale of response required, and this immunity will help to ensure the required information is provided.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
--	-----------

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
---	-----------

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p><i>Amending current powers to make delegated legislation</i></p> <p>The Bill improves the design of the delegated legislation under the AP Act and Wine Act by in general removing duplication (eg where either a regulation or notice could be made in a given circumstance) and providing for best practice use of regulations and notices (eg, where regulations provide for matters of detail and the notices supplement the regulations). A few similar amendments are being made to the Food Act for consistency.</p> <p>It also specifically identifies those legislative instruments that are disallowable under the AP and Wine Acts, in line with the Legislation Act 2012 (the Food Act already did so).</p> <p>A number of sections are amended in consequence of the restructure of the delegated legislation provisions.</p> <p><i>New regulation and notice-making provisions</i></p> <p>New powers provide for matters of detail in relation to risk-based plans and programmes, tracing, recall, verification, and the infringement regime, to be established in delegated legislation. This is consistent with the current use of delegated legislation under the three Acts. Existing safeguards include the procedural safeguards for making regulations and notices, and disallowance in relation to notices.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
--	-----------

Appendix One: Further Information Relating to Part Three

Offences, penalties and court jurisdictions – question 3.4

Tracing and recall and verification

Clause 23 inserts new Part 3A into the Food Act. Subpart 1 enables regulations or notices to be made relating to the tracing and recall of food. Subpart 2 enables regulations or notices to be made relating to verification. Failure to comply with a requirement in a regulation or notice is already an offence under section 244 of the Food Act 2014 (body corporate is liable on conviction to a fine not exceeding \$20,000, and an individual to a fine not exceeding \$5,000).

Clause 112 inserts new Part 6A into the AP Act, which enables regulations or notices to be made relating to tracing and recall, and verification. Failure to comply with a requirement in a regulation is already an offence under section 135 if the regulation specifies failure to comply as an offence. Failure to comply with a notice is also already an offence under section 135. A body corporate is liable on conviction to a fine not exceeding \$100,000 and an individual to a fine not exceeding \$20,000.

Clause 206 inserts new subpart 4 of Part 2 into the Wine Act. The new provisions have the same effect as new Part 6A of the AP Act. Failure to comply with a requirement in a regulation (when the regulation specifies failure to comply as an offence) or notice is already an offence under section 103 of the Wine Act 2003 (body corporate liable on conviction to a fine not exceeding \$100,000; an individual to a fine not exceeding \$20,000).

Knowingly damaging or impairing an automated system

Clause 140 inserts new section 133A into the AP Act which makes it an offence to knowingly damage or impair an automated system being used under new section 165B. The maximum penalty for a body corporate is a fine not exceeding \$250,000; for an individual a term of imprisonment not exceeding 3 months and a fine not exceeding \$50,000.

Clause 226 inserts new section 101A in the Wine Act to the same effect. These provisions align with section 239 of the Food Act 2014.

Standardising compliance and enforcement processes

A number of new sections are inserted into the AP Act and the Wine Act to standardise compliance and enforcement processes with those under the Food Act 2014, as set out below.

Improvement notices (see s302 Food Act 2014)

Clause 121 inserts new section 86A into the AP Act, which allows an animal product officer to issue an improvement notice to anyone the officer reasonably believes has failed, or is failing, to comply with the Act. Failing to comply with an improvement notice will be an offence under current section 135 (body corporate fine up to \$100,000; individual up to \$20,000).

Clause 209 inserts new section 61A into the Wine Act regarding improvement notices. Failing to comply will be an offence under current section 103 (body corporate fine up to \$100,000; individual up to \$20,000).

These provisions align with section 302 of the Food Act 2014.

Infringement offences (see ss218 to 221 Food Act 2014)

Clause 137 inserts new sections 125A to 125E into the AP Act to create an infringement regime.

Clause 223 inserts new sections 96A to 96E into the Wine Act to create an infringement regime.

The infringement regimes are consistent with the Legislation Design Advisory Guidelines and the Ministry of Justice Guidelines.

Orders for offenders to pay an amount because of commercial gain (see s269 Food Act 2014).

Clause 143 inserts new section 144A into the AP Act - a court convicting a person of any of the specified offences may, if satisfied that the offence was committed in the course of producing a commercial gain, order the offender to pay an amount based on the gain in addition to or instead of any other penalty available for the offence.

Clause 229 inserts new section 109A to the Wine Act to the same effect.

Compliance notices (see ss330 to 342 Food Act 2014; ss146 to 157 AP Act)

Clause 229 inserts new sections 110A to 110L to the Wine Act, which establish a regime to allow the District Court, on application by the Director-General, to make a compliance order, with appeal rights. A failure to comply with a compliance order is an offence under new section 101B (**clause 226**) (body corporate fine up to \$300,000; individual up to \$50,000, and a daily fine up to \$2,000).