

Departmental Disclosure Statement

Regulatory Systems (Primary Industries) Amendment Bill
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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 (MPI).

MPI certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Date finalised: 7 June 2023.

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Part One: General Policy Statement

This Bill is an omnibus Bill that contain amendments to legislation administered by the Ministry for Primary Industries (MPI). The policy objective of the Bill is to improve regulatory systems by ensuring that they are effective and efficient and that they accord with best regulatory practice. The amendments will achieve that objective by—

- clarifying and updating statutory provisions to give effect to the purpose of various Acts and their provisions:
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation:
- ensuring the regulatory systems remain up to date and relevant:
- reducing administrative burden for regulators and regulated parties.

The amendments were identified as part of MPI’s wider regulatory systems work programme, which arises from the Director-General of MPI’s responsibility for the stewardship of the legislation administered by MPI under section 12 of the Public Service Act 2020.

The Bill also responds to the New Zealand Productivity Commission’s June 2014 report, *Regulatory institutions and practices*. The New Zealand Productivity Commission found that it can be difficult to find time on the parliamentary calendar for “repairs and maintenance” of existing legislation. As a result, regulatory agencies often have to work with legislation that is out of date or not fit for purpose. This creates unnecessary costs for regulators and regulated parties and means that regimes may not keep up with public or political expectations.

This Bill is a vehicle for those smaller regulatory fixes to be made in a timely and cost-effective fashion in order to deliver the flow-on benefits to business and the wider economy.

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
<i>Regulatory institutions and practices</i> , New Zealand Productivity Commission, June 2014 (accessible at https://www.productivity.govt.nz/inquiries/regulatory-institutions-and-practices/)	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
Clause 235 of the Bill amends the Food Act 2014 to give effect to Annex E of the Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System, signed in December 1995 (accessible at https://www.mpi.govt.nz/dmsdocument/21740-Agreement-between-the-government-of-Australia-and-the-government-of-New-Zealand-concerning-a-joint-food-standards-system) (the Food Standards Treaty).	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
Parliamentary treaty examination processes, including requirement for National Interest Analysis (NIA), were established in 2000. The NIA requirement did not exist at the time the Food Standards Treaty was negotiated and signed.	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement: Primary Industries Regulatory Systems Amendment Bill, Ministry for Primary Industries, 7 April 2022. The RIS is accessible at https://www.mpi.govt.nz/dmsdocument/52354/direct and can also be found at https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments	

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
MPI's internal RIA panel provided an independent opinion on the quality of the RIS.	

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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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?
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MPI's analysis has considered potential impacts and benefits of New Zealand's international treaties and obligations and considers that there are no significant issues raised by the proposed reform. Where relevant, international partners have been notified or consulted on specific changes in the Bill that affect their area of interest. MPI has consulted the Ministry of Foreign Affairs and Trade on the policy to be given effect by this Bill and no concerns were identified.
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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 analysis considered potential Treaty implications for the provisions in the Bill and considers there are no significant issues raised, and considers that the Bill's amendments are consistent with the principles of the Treaty of Waitangi. MPI has consulted Te Arawhiti and Te Puni Kōkiri on this Bill. No inconsistencies between the proposals and the principles of the Treaty of Waitangi have been identified or raised through the policy process.

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?	NO
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The proposals in this Bill are consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

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)?	NO
<p>Clause 63 of the Bill amends section 36 of the Animal Welfare Act 1999 to specify that a breach of subsection 36(1) is an offence with a maximum fine of \$900 upon conviction.</p> <p>Clause 112 amends section 154N(21) of the Biosecurity Act 1993 to clarify that a declaration at the border includes oral responses.</p> <p>Clause 113 amends section 156(1) of the Biosecurity Act 1993 to clarify that the liability provisions for principals and agents also apply to body corporates.</p> <p>Clauses 114 and 115 amend sections 159 and 159A of the Biosecurity Act 1993 to clarify when an infringement notice is deemed to have been served.</p> <p>Clause 132 amends a drafting error in section 118 of the Dairy Industry Restructuring Act 2001.</p> <p>Clauses 170-173 amend sections 252, 255C, 255E and 258 of the Fisheries Act 1996 to ensure that directors and managers who commit offences are eligible for prohibition from fishing when convicted of repeated fisheries offending.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice (Offences and Penalties Vetting team) was consulted on the proposed penalties, and no concerns were identified.	

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?	YES
<p>Clause 43 amends section 166 of the Animal Products Act 1999 to enable regulations requiring an animal product business, person, premises or matter to be listed with MPI.</p> <p>Clause 64 amends section 43 of the Animal Welfare Act 1999 to include reference to conditions imposed on previous animal welfare certificates when considering an application for an animal welfare export certificate.</p> <p>Clause 88 amends section 35 of the Biosecurity Act 1993 to provide an ability for officers to request documentation and take copies for the purposes of risk assessment in a biosecurity control area.</p> <p>Clause 165 amends section 186R of the Fisheries Act 1996 to enable fish farmer registration applications where resource consents under the Resource Management Act 1991 relate to farm area or a premises' consents for other use such as water take consents.</p>	

Clause 274(3) amends Schedule 2 of the National Animal Identification and Tracing Act 2012 to ensure that sharing of information gathered under the Act includes for the original purpose of holding the data.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commissioner was consulted on the above amendments. No concerns were identified.	

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
See Appendix One.	

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 relevant policies were shared with the Walking Access Commission to ensure they are workable.</p> <p>Proposed changes to the National Animal Identification and Tracing Act 2012 were discussed with OSPRI in January 2023.</p> <p>Proposed changes relating to deemed values rates in the Fisheries Act 1996 were discussed with FishServe to ensure they are workable.</p> <p>Proposed changes relating to publishing approval conditions in the Animal Welfare Act 1999 were discussed with the SPCA.</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?	NO
Clause 112 amends section 154N(21) of the Biosecurity Act 1993 to clarify that a declaration at the border can be oral or in writing. Section 154N sets an offence for erroneously declaring they are not in possession of goods specified in a declaration they are required to make about the goods.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

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?	YES
Clause 28 of the Bill amends section 4 of the Animal Products Act 1999 to enable regulations to amend the definition of “primary processor” and this replaces the ability to prescribe primary processors in notices.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
See Appendix Two.	

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

External consultation – question 3.6

MPI has not formally consulted on the Bill's policy or draft text as the Bill makes minor or technical amendments. The following amendments were consulted on, either at the policy development stage or the draft legislation.

Agricultural Compounds and Veterinary Medicines Act 1997

MPI conducted public consultation on options for managing inhibitors in agriculture in 2020. The discussion document for that consultation is here:

<https://www.mpi.govt.nz/dmsdocument/39671-The-regulation-of-inhibitors-used-in-agriculture>

MPI engaged with industry bodies (the Dairy Products Safety Advisory Council, Food and Beverage Forum, and ACVM Advisory Council) and provided a brief description of proposed amendments to the four Food Safety Acts (Agricultural Compounds and Veterinary Medicines Act 1997, Animal Products Act 1999, Food Act 2014, Wine Act 2003).

Animal Welfare Act 1999

Proposed amendments affecting research, testing and teaching were consulted with the National Animal Ethics Advisory Committee in December 2021.

Commodity Levies Act 1990

MPI has informally mentioned proposed changes to some industry groups in response to queries.

Fisheries Act 1996

Clause 175(3) and (4) was consulted at the Chatham Island Finfish Association AGM in August 2022 and again in July 2022.

Other parts of Clause 175, which affect deemed values rates, were consulted at Commercial Catch Balancing Forum meetings in December 2020 and December 2021.

National Animal Identification and Tracing Act 2012

Proposed changes were consulted with OSPRI in January 2023.

Walking Access Act 2008

Proposed amendments to the Walking Access Act were shared with the Walking Access Commission in 2022 and 2023.

Appendix Two: Further Information Relating to Part Four

Powers to make delegated legislation – question 4.8

Cross-cutting amendments

The Bill makes several cross-cutting amendments, where the same amendment is made across multiple Acts or within the same Act. To avoid repetition, those amendments are listed first.

Power to make minor or technical amendment to delegated legislation without full statutory processes

Some MPI delegated legislation contains incorrect logos (e.g. New Zealand Food Safety Authority or Ministry of Agriculture and Forestry logos), out of date cross-references, and spent provisions. Delegated legislation is repealed and replaced rather than amended like primary legislation, which means that currently mandated statutory processes apply to the entirety of the document for every minor change.

One proposal therefore allows the maker to amend or revoke an instrument drafted outside of PCO, without complying with certain statutory prerequisites, if the effect of the change is minor or to correct a minor or technical error.

The following clauses make this change:

Act	Bill clauses/Act sections
Agricultural Compounds and Veterinary Medicines Act 1997	Clause 9/Section 44ZN, 11/76A
Animal Products Act 1999	31/14, 33/38, 34/50, 35/60, 36/60B, 37/81A, 38/86AA , 41/158, 42/163, 44/167, 46/167C
Biosecurity Act 1993	83/23, 84/24B, 85/24F, 86/24H, 89/37, 90/39, 91/67, 92/87, 119/166B
Fisheries Act 1996	136/11, 137/12, 138/13, 139/14, 140/14B, 141/16, 142/21, 144/60, 145/72A, 147/75, 148/75A, 149/82, 151/97, 154/115, 161/186, 162/186A, 163/186B, 164/186Q, 167/188, 168/188A, 169/192A, 174/295, 175/296P, 178/303A, 179/310
Food Act 2014	224/33, 228/291, 229/347, 231/379, 232/380, 234/404, 235/404A, 236/405, 237/407, 238/410, 239/421, 240/443B
Forests Act 1949	251/63ZZD, 252/63ZZK, 253/63ZZN, 256/72AAB
National Animal Identification and Tracing Act 2012	266/12, 267/14, 268/19, 272/70B
Wine Act 2003	295/61AAA, 300/115, 303/120, 304/120C

Changing overly specific consultation methods to become a list of options the Director-General (or appropriate decision-maker) may choose from

Some Act-mandated consultation retains overly prescriptive methods that have not kept up with the times (such as an obligation to use specific regional newspapers). More recent drafting practice is for the decision-maker to instead be satisfied of the appropriateness of the consultation method.

The following clauses make this change:

Act	Bill clauses/Act sections
Biosecurity Act 1993	Clause 100/Section 114A, 106/131
Fisheries Act 1996	134/2 “publicly notify” definition, 135/2A, 155/123, 156/178, 174/295
Forests Act 1949	254/67G

Require publishing of instruments on an MPI website and only notification via the New Zealand Gazette

Some Acts administered by MPI require decision to be made via notice *in* the *Gazette*, rather than made somewhere else and simply notified in the *Gazette* (like regulations do). This leads to uncertainty about how to amend these notices, and long expensive additions in the *Gazette* that could be more conveniently located for users in one place on appropriate websites.

The following clauses make this change:

Act	Bill clauses/Act sections
<i>(Commencement)</i>	Clause 2(2)/(Not applicable)
Agricultural Compounds and Veterinary Medicines Act 1997	Clause 21/Section 76A, 22/78A
Animal Products Act 1999	56/4 “animal” definition, 57/41, 58/46, 59/81B, 60/167B
Animal Welfare Act 1999	70/76, 71/91, 72/96, 73/109, 74/112, 75/121, 76/123, 77/124, 78/184A, 79/189
Fisheries Act 1996	185/2 “publicly available” definition, 186/11, 187/11A, 188/152, 189/153, 190/154, 191/20, 192/35, 193/35A, 194/60, 195/75, 196/81, 197/82, 198/83, 199/98, 200/113B 201/113C, 202/115, 203/186, 204/186G, 205/186K, 206/186Q, 207/188, 208/188A, 209/190, 210/264, 211/265A, 212/282, 213/295, 214/296, 215/296P, 216/296Q, 217/297, 218/298A, 219/300, 220/303, 221/304, 222/310, 223/341
Food Act 2014	245/175, 246/408, 247/443A
National Animal Identification and Tracing Act 2012	278/12, 279/15, 280/16, 281/70A

Removing confirmation requirement from some secondary legislation.

The 2020 *Inquiry into parliamentary scrutiny of confirmable instruments* found that confirmation processes might be inappropriate for secondary legislation in certain cases, such as where there is little, or no discretion involved in the substance of the secondary legislation. In such cases the Inquiry recommended requirement be removed as additional Parliamentary oversight is not necessary.

Confirmation processes in the following clauses are subject to this change:

Act	Bill clauses/Act sections
Agricultural Compounds and Veterinary Medicines Act 1997	Clause 12/Section 81E
Animal Products Act 1999	39/118
Biosecurity Act 1993	94/100L, 96/100ZB, 108/150
Commodity Levies Act 1990	125/4, 127/13
Fisheries Act 1996	146/74
Food Act 2014	225/207
Forests Act 1949	255/67ZM
National Animal Identification and Tracing Act 2012	270/62, 271/67
Primary Products Marketing Act 1953	283/3
Wine Act 2003	296/89

Repealing inactive legislation.

A number of Acts remain on the statute book despite their provisions having been spent. The Bill will repeal those Acts.

The following Parts make this change:

Part	Act
3	Animal Products (Ancillary and Transitional Provisions) Act 1999
10	Food Safety Law Reform Act 2018
12	Forests (West Coast Accord) Act 2000
13	Hop Industry Restructuring Act 2003
19	Wool Industry Restructuring Act 2003

Specific changes affecting delegated legislation – by Part

Part 1 – Agricultural Compounds and Veterinary Medicines Act 1997

Clause 4 enables substances to be defined as agricultural compounds by Order in Council.

Clause 9 amends requirements the Director-General must comply with when issuing a notice under section 44ZN.

Clauses 10 and 11 amend a drafting error which sees section 76A come before section 76.

Part 2 – Animal Products Act 1999

Clause 28(3) enables the definition of “primary processor” to be amended by Order in Council (see question 4.7).

Clause 43 inserts a power for the Director-General MPI to define minor amendments to risk management plans that must be notified to the Director-General, and requiring any person, thing or premises to be listed with MPI.

Clause 45 enables regulations about approved documents, materials, facilities, persons, or classes of persons.

Clause 56 enables the Minister to declare a creature or entity to be an animal for the purposes of the Act.

Part 4 – Animal Welfare Act 1999

Clause 65 clarifies that nothing in regulations made under the Act prevents animals being used in research, testing, or teaching (RTT), except where an activity is specifically prohibited in the course of RTT.

Clause 67 allows the period of approval for a code of ethical conduct to begin at a different date to the date of publication in the *New Zealand Gazette* of the notice of the approval of that code.

Part 5 – Biosecurity Act 1993

Clauses 95 and 97 clarify an ability for regulations to set a process for determining remuneration amounts for auditors or mediators.

Clause 99 revokes the prescribed form for a search warrant.

Clauses 109, 110 and 111 allow the power to change or cancel a compliance order to sit with a Chief Technical Officer or Principal Officer of a region.

Part 6 – Commodity Levies Act 1990

Clause 127 changes the extension for a levy order to six years rather than five, and allows the Governor-General to extend a commodity levy order by Order in Council at least 28 days before expiry rather than 12 months.

Part 9 – Fisheries Act 1996

Clause 147 allows interim deemed value rates to be set at the lowest annual rate for a stock, and allows deemed value rates to be adjusted within a fishing year.

Clause 160 empowers the Minister to recommend a declaration of taiāpure-local fishery if satisfied that the relevant grounds have been met.

Clause 161 enables customary fishing regulations to make bylaws to restrict possession of fish, aquatic life, or seaweed, as well as taking.

Clause 165 enables regulations prescribing requirements for fish farm registration, including aquaculture biosecurity.

Part 10 – Food Act 2014

Clause 226 ensures that any exemption, waiver or refund granted under regulations made under section 208 expire after a specified period, rather than causing the regulations to expire.

Clause 234 enables the Minister to issue a domestic food standard in cases where there is no joint food standard, and clarified that decision-making processes need to occur before a standard is issued.

Clause 235 enables the Minister to issue a temporary food standard.

Part 19 – Wine Act 2003

Clause 296 clarifies the ability for regulations to set a process for determining remuneration amounts for auditors or mediators.

Clause 301 enables regulations about approved items.