

Short-Form Supplementary Departmental Disclosure Statement

Food Safety Law Reform Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of the proposed amendments.

It highlights a certain power or feature in the proposed amendments that may be of particular Parliamentary or public interest and warrant an explanation.

The attached statement provides a limited supplement to the original disclosure statement for the Food Safety Law Reform Bill 135-1, dated 2 June 2016, which can be found at this link:

<http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=135>

This supplementary disclosure statement for the Food Safety Law Reform Bill 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.

10 April 2017

Significant legislative features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments 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
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Powers to make delegated legislation

9. Do the proposed amendments 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
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The regulation-making power currently in section 9(1)(b)(vii) of the Food Act allows the Governor-General via Order in Council to declare a substance as 'food'. The proposal will extend this regulation-making power to also cover section 9(1)(c)(iii) of the Act, which currently excludes substances regulated under the Misuse of Drugs, Medicines, and Psychoactive Substances Acts. This could redefine part of the meaning of the term 'food' in the Act.

The regulation-making power is needed to provide a legal mechanism for New Zealand to adopt joint food standards approved by the Australia New Zealand Ministerial Forum on Food Regulation where those standards apply to substances also regulated under health legislation. Under the trans-Tasman Food Treaty New Zealand is required to adopt such approved standards "without undue delay".

This regulation-making power will also future proof the Act, to ensure that there is a way to deal with any issues arising with the interfaces between the food system and health legislation.

The empowering clause is consistent with, and supports the provisions of, the Food Act. Any use of the power will require the mandatory processes described in the response to question 10 below. Parliament retains full oversight of the use of this provision.

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
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The existing power for the Governor-General to declare, by Order in Council, that a substance is food in section 9(1)(b)(vii) of the Food Act will be extended to be able to apply to section 9(1)(c)(iii), which covers controlled drugs, medicines and psychoactive substances. This will mean that, potentially, a substance also regulated under health legislation could be declared to be 'food' if it is used in food at a level that is safe to consume.

This regulation-making power is necessary to allow adoption of particular joint food standards under the trans-Tasman food system. Governed by the formal Food Treaty, New Zealand is required to adopt a standard approved by the Australia New Zealand Ministerial Forum on Food Regulation "without undue delay". This amendment will give NZ a legal mechanism to, if we wish, adopt joint food standards where they apply to a substance also regulated under health legislation.

It is appropriate to use delegated legislation for this purpose. It provides flexibility in how the Act can be applied and helps to future-proof the food system by being able to deal with unforeseen matters that may be required to implement and administer the Act. It also allows for a speedy response to matters that arise as part of New Zealand's international obligations.

<p>Subsequent regulations to declare any particular substance as food would be made on a case by case basis. The Minister is required to consult interested persons before recommending the making of regulations. Formal regulatory impact analysis is required. Regulations will be drafted by Parliamentary Counsel, subject to Cabinet scrutiny, and not come into force until at least 28 days after their making. Regulations will be subject to the Legislation Act 2012, and subject to review by the Regulations Review Committee under Standing Order 318.</p> <p>Any substance declared as food via regulations made under this provision then falls under the Food Act regime with its safeguards that food must be safe and suitable to eat.</p>	
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Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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