

Short-Form Supplementary Departmental Disclosure Statement

Grocery Industry Competition Bill – Supplementary Order Paper

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 those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Grocery Industry Competition Bill, dated 3 November 2022, which can be found at this link: <https://disclosure.legislation.govt.nz/bill/government/2022/191>.

This supplementary disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 May 2023

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)?	YES
<p>The SOP makes amendments to strengthen, and minimise delays to, the dispute resolution processes set out in the Bill. These are set out in amendments to clauses 148, 157, and new clauses 157A to 157C, 159A, and clause 13(2)(ea) in Schedule 2.</p> <p>Clause 148 expands who may refer a dispute the dispute resolution scheme (DRS) to include former and actively intending suppliers and wholesale customers.</p> <p>Clause 157 provides that binding decisions by the DRS continue in force pending an appeal.</p> <p>Clauses 157A to 157C respectively provide for:</p> <ul style="list-style-type: none">• the power to refer certain questions of law to the High Court• giving privileges and immunities to parties before a DRS as if they were parties before a court• giving the DRS the power to receive evidence in any form that assists them to deal with the matter regardless of whether the evidence would be admissible in a court <p>Clause 13(2)(ea), Schedule 2 provides that the DRS rules provide for as little formality and technicality as is appropriate.</p>	

1.1. Was the Ministry of Justice consulted about these provisions?	Yes
MBIE consulted the Ministry of Justice on these provisions.	

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
---	-----------

Compulsory acquisition of private property

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

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
--	-----------

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
---	-----------

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
---	-----------

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
--	-----------

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
<p>Clauses 12-12B amend the Commerce Commission's power to create a grocery supply code by determination, including the processes that must be followed (clause 12A) and certain amendments to which the process requirements do not apply (clause 12B).</p> <p>Clauses 12 and 12C provide the Commerce Commission with a power to disapply the grocery supply code in specified cases. The purpose of this is to provide flexibility for the Commission in future, including the Code's application to large suppliers.</p>	

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p>Clause 4, Schedule 1 provides that the first grocery supply code will be made by Order in Council. This allows the Government to set the first grocery supply code, but leave the Commerce Commission to amend and create future grocery supply codes as necessary.</p>	

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
---	-----------