

31 January 2017

Hon Christopher Finlayson QC, Attorney-General

### **Consumers' Right to Know (Country of Origin of Food) Bill**

1. We have considered whether the Consumers' Right to Know (Country of Origin of Food) Bill ('the Bill'), a Member's Bill in the name of Steffan Browning MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. The purpose of the Bill is to provide a mandatory labelling system in New Zealand which provides consumers with information about the country of origin of single component foods (food or food products containing only one vegetable, fruit, meat, seafood, nut, grain, seed, or oil). The Bill requires all packaged and unpackaged single component foods on sale in New Zealand to have a statement identifying their country of origin.
3. The Bill further provides for offences relating to making false or misleading statements relating to the country of origin of single component foods on labels, packaging and signage, and in advertising.

### **Section 14 – The right to freedom of expression**

4. Section 14 of the Bill of Rights Act affirms the right to freedom of expression. This includes the freedom to seek, receive, and impart information and opinions of any kind and in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.<sup>1</sup>
5. The Bill contains a number of clauses which compel the provision of specific information. Clauses 6 and 7 require all packaged and unpackaged single component foods on sale in New Zealand to have a statement that identifies the country of origin on the label or which is clearly displayed in connection with the retail display of the food.
6. Mandating country of origin labelling for single component foods requires retailers to provide accurate information about where food products are grown, harvested or produced and avoids consumers assuming, in the absence of such information, that such food has been produced in New Zealand. This will allow consumers to make more informed purchasing decisions, which is a sufficiently important objective. The Bill extends to food products the current regime of country of manufacture labelling applying to clothing and footwear for sale. The Consumer Information Standard (Country of Origin) Regulations 1992 set out specific rules that require all new clothing or footwear for sale in New Zealand to be labelled with information that clearly states the country where the items were made or produced.

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<sup>1</sup> *RJR MacDonald v Attorney-General of Canada* (1995) 127 DLR (4<sup>th</sup>)

7. We are satisfied that the potential limits on freedom of expression in the Bill are justified in terms of s 5 of the Bill of Rights Act as they are rationally and proportionately connected to this objective. A mandatory regime of country of origin labelling avoids retailers and manufacturers using country of origin labels as a marketing tool, displaying labels only when it is in their interests to do so and is consistent with 47 other countries (including most of New Zealand's trading partners) that have mandatory regimes.
8. The offences provided for by clause 9 relating to making false or misleading statements relating to the country of origin of single component foods on labels, packaging and signage, and in advertising, have a maximum fine of \$10,000 for individuals and \$50,000 for body corporates (where intention to commit the offence is established, and \$5,000 and \$10,000 respectively in all other cases). These fines impair the right to freedom of expression no more than is necessary and are proportionate to the Bill's objective. They are, for example, of a much lower scale compared to the fines imposed for making misrepresentations under the Fair Trading Act 1986 (\$200,000 for individuals and \$600,000 for body corporates with no distinction made in terms of intention to commit the offence).

## **Conclusion**

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9. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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