

27 April 2016

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Food Safety Law Reform Bill

Purpose

1. We have considered whether the Food Safety Law Reform Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared with the latest version of the Bill (18149/11.0). We will provide you with further advice if the final version of the Bill includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (the right to freedom of expression), s 21 (the right to be secure against unreasonable search and seizure) and section 25(c) (the right to be presumed innocent until proved guilty). Our analysis is set out below.

The Bill

4. The Food Safety Law Reform Bill amends the Food Act 2014, the Animal Products Act 1999 and the Wine Act 2003 to address recommendations of the Independent Government Inquiry into the Whey Protein Concentrate Contamination Incident ('the Inquiry').
5. The Bill's main objective is to make improvements to the food safety system so that human health is protected and New Zealand's domestic and international reputation is maintained and strengthened. Although the Inquiry focused on the dairy industry, the Bill seeks to harmonise implementation of the Inquiry's recommendations across all sectors of the food safety system. This approach intends to help businesses by providing consistency across these Acts so that similar provisions apply to similar situations.

Consistency of the Bill with the Bill of Rights Act

Section 14 - The right to freedom of expression

6. 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.¹

7. There are a number of provisions in the Bill that compel the provision of specific information, including:
 - clause 30, which allows the chief executive of the Ministry for Primary Industries to require people to provide information regarding an urgent and serious risk of illness or injury to consumers; and
 - clauses 112 and 205, which require animal products or wine operators to provide record keeping information to specified people when requested.
8. 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 the objective of the Bill. For example, clause 30 links directly to the kinds of public health incidents the Bill seeks to prevent. Likewise, reporting requirements in relation to animal products and wine relate directly to ensuring public safety.

Section 21 - The right to be secure against unreasonable search and seizure

9. Section 21 of the Bill of Rights Act affirms the right to be secure against unreasonable search and seizure.
10. Clauses 112 and 205 authorise search and seizure by requiring animal products or wine operators to provide:
 - access to places, things and information that a person verifying that the requirements of the relevant Act have been met reasonably needs to undertake the verification; and
 - specified persons with information required to be collected and retained under the relevant Act.
11. We consider that the search and seizure provisions of the Bill are not unreasonable for the purposes of s 21. The powers are limited to the regulatory purpose of the Bill. Individuals and organisations that operate within a regulated industry can expect to be subject to scrutiny to ensure compliance with the law in the interests of public health and safety.

Section 25(c) - Right to be presumed innocent until proved guilty

12. Section 25(c) of the Bill of Rights Act affirms that everyone who is charged with an offence has, in relation to the determination of the charge, the right to be presumed innocent until proved guilty according to law.
13. The Bill creates an offence of breaching a compliance order 'without reasonable excuse' (clause 225). Previously, the effect of s 67(8) of the Summary Proceedings Act 1957 was that 'without reasonable excuse' provisions generally reversed the onus of proof (at least where the defendant was proceeded against summarily), thereby limiting a defendant's right to be presumed innocent until proved guilty. However, upon the

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

repeal of s 67(8), the Bill's offence provision is likely to be interpreted consistently with the presumption of innocence.

Conclusion

14. 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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