

Food Safety Law Reform Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Food Safety Law Reform Bill and recommends that it be passed with the amendments shown.

Introduction

The bill addresses the recommendations of the independent Government Inquiry into the Whey Protein Concentrate Contamination Incident that need statutory change to implement.

Although the inquiry focused solely on the dairy sector, the bill would amend all three of New Zealand's main food safety Acts—the Animal Products Act 1999, the Food Act 2014, and the Wine Act 2003—to improve their alignment, operation, and design to better protect human health, and maintain and strengthen New Zealand's reputation as a supplier of safe and suitable food, both domestically and internationally.

This commentary covers the main amendments that we recommend to the bill. It does not cover minor or technical amendments.

Commencement clause

Clause 2 of the bill specifies that it would generally come into force on the day after Royal assent. It also provides that two clauses (64 and 176) would come into force on a date to be appointed by the Governor-General by Order in Council. This delayed commencement is intended to enable regulations to be developed.

We consider that this delayed commencement should not be open-ended and that the bill should specify a fall-back commencement date to bring the provisions of these clauses into force automatically. We recommend amending clause 2 of the bill to provide that these two provisions come into force two years after commencement, unless brought into force sooner by Order in Council.

Exemption clauses

Clause 136, which would amend section 121 of the Animal Products Act, and clause 222, which would amend section 92 of the Wine Act, are equivalent provisions that would allow regulations to provide exemptions from the payment of certain levies.

These exemptions are intended to be used when the levy to be charged would be unfair, such as when a charging mistake has occurred or when an operator has been subject to levies under one regime and then changes regimes part way through a year.

We consider that, as a legal safeguard, these exemptions should have set expiry dates. We recommend amending clauses 136 and 222 to require that regulations made under section 121 or 92 set an expiry date for any exemption of no later than five years from the granting of the exemption.

Operator to send, and verifier to hold, full copies of risk-based plan and programmes

The bill would require operators to send full copies of, and all amendments to, their risk-based plan and programmes to their verification agency. The bill would also require verifiers to hold an up-to-date copy of the food plan for the businesses they verify.

A majority of us consider that these requirements are unnecessary and onerous. Some operators' risk-based plans and programmes are large and updated frequently. This would result in additional costs and burden for the operator to produce the information, and for the verifier to store and maintain it. There would also be unnecessary duplication of places where the risk-based plan and programmes are stored.

Additionally, we consider that existing legislation is already sufficient to manage risks. Currently, operators are required to identify, maintain, and notify their registration authority of all amendments to their risk-based plan and programmes. The verification agency has access to the plans at the time of verification, and the operator is required to have the plans available on request within 48 hours and to store them for four years.

We recommend amending the following clauses to remove from the bill the requirement for operators to send full copies of, and all amendments to, their risk-based plan and programmes to their verification agency:

- clause 8, which would amend section 46 of the Food Act
- clause 69, which would insert new section 26A into the Animal Products Act
- clause 181, which would insert new section 23A into the Wine Act.

We also recommend amending the following clauses to remove from the bill the requirement for verification agencies to hold a copy of the risk-based plans and programmes for the operators that they verify:

- clause 24, which would amend section 155 of the Food Act
- clause 25, which would amend section 156 of the Food Act

- clause 127, which would amend section 112G of the Animal Products Act
- clause 213, which would amend section 82G of the Wine Act.

We also recommend removing clause 9, which would amend section 53 of the Food Act. As introduced, this would require an operator to provide a full copy of their template food control plan to their registration authority. We believe that the current provisions in the Food Act adequately set out the parts of a food control plan that must be provided to territorial authorities.

Some of us have concerns that removing these requirements for verification agencies to have immediate possession of the most up-to-date version of each operator's risk-based plan and programmes runs the risk of similar avoidable incidents to the whey protein contamination incident that this bill aims to avoid.

If verification agencies are not in possession of the operators' plans, and if amendments have been made to those plans since their last audit, the agencies will potentially be unaware of changes operators have made to their manufacturing processes that may inadvertently cause contamination issues. We believe this could undermine the ability of authorities to respond quickly and effectively in any future contamination incident.

Requirements to consult

Regulations

Currently, section 163 of the Animal Products Act provides that consultation must occur before certain Orders in Council, regulations, and notices are made. These consultation requirements apply only if the specific empowering provisions are listed in section 163(1) of the Act. However, we note that new regulation-making powers that the bill would introduce are not listed in section 163(1), so there is no specific requirement for consultation on these provisions.

We recommend amending clause 149 of the bill to ensure that section 163 of the Act requires consultation to occur before any regulations are made under the new regulation-making powers that would be introduced under new sections:

- 77C (tracing and recall)
- 77F (verification)
- 77H (record keeping and reporting)
- 125E (infringement offences)
- 166(1) (risk management programmes, recognised persons and agencies, and other matters).

Notices

The bill would repeal section 163(2) of the Animal Products Act, removing the requirement to consult on notices that supplement regulations.

To remedy this drafting oversight, we recommend amending clause 149 of the bill to provide that consultation is required before the Director-General makes any notices to supplement any of the regulations set out in section 163(1) of the Act.

Country-of-origin labelling

New Zealand law does not currently require foodstuffs to carry a statement identifying in which country the food, or its ingredients, were made, produced, or grown. The Office of the Clerk advised us that amending the bill to require country-of-origin labelling would be outside the scope of the bill.

Of the 43 submissions we received, 17 submissions sought mandatory country-of-origin labelling for food products. Although we recognise that countries have varying levels of food-safety practices and standards, we consider that the Food Act 2014 protects consumers by requiring that all food sold in New Zealand meet the criteria of safe and suitable food.

We note that most countries that have introduced mandatory country-of-origin labelling regulate under consumer law, rather than food safety law.

Some of us believe that country-of-origin labelling should be mandatory for foodstuffs.

Recognising that consumers increasingly seek to make more informed food product choices, we support voluntary initiatives by industry that provide information to consumers on the country of origin of food products.

For example, the two major supermarket chains, Progressive Enterprises and Foodstuffs New Zealand, which account for more than 70 percent of the retail market for foodstuffs, have signed up to the New Zealand Retailers Association's Statement of Commitment on Country of Origin Labelling of Single Ingredient Foods.

Under this arrangement, signatory retailers commit to displaying country-of-origin information for single-ingredient fresh products at point of sale. Any information provided is subject to the legal requirements of the Fair Trading Act 1986.

Compliance requirements for small food producers

We heard evidence from several artisan cheesemakers who said that they are subject to the same food safety compliance requirements as large dairy corporations and exporters.

They submit that they are disproportionately affected by these high compliance costs, which risk putting them out of business. They note that they spend up to 40 percent of their revenue on meeting compliance requirements. For example, one submitter said that the cost of verifying one batch of cheese is approximately \$1,000. Whereas a large producer might pay this fee to have many hundreds of kilograms of cheese verified, for this submitter one batch equates to one cheese, and she produces only 10 cheeses per year.

These submitters asked us to consider a separate regulatory verification regime that would not stifle small food producers. The submitters also suggested that the compli-

ance requirements for New Zealand raw-milk cheese be relaxed to be more equitable with the compliance requirements for imported raw-milk cheese.

We were advised that the microbiological limits set to ensure the safety of foods can vary from country to country. However, all domestically produced and imported raw-milk cheese has to meet the same end-product limits set out in the Australia New Zealand Food Standards Code. The Ministry for Primary Industries advised us that these microbiological limits are currently being reviewed.

We consider that food-safety risk is determined by the food and type of processing, and not by the size or viability of the business. However, we also consider that artisan food producers perform a vital role in their various sectors, including developing new products, testing the market, and expanding New Zealand's reputation as an innovative developer and exporter of quality food products.

Although the submitters' concerns fall outside what is intended in this bill, we consider that they have merit and warrant further consideration. We will encourage further opportunities to examine the food-safety compliance regimes that regulate small food producers.

Genetically modified and irradiated food

Under the Australia New Zealand Food Standards Code, all genetically modified food and irradiated food must be labelled. Under section 18 of the Food Act, the Director-General has a role in monitoring and implementing the enforcement system. Some of us would like the bill to insert a requirement for the Director-General of the Ministry for Primary Industries to regularly and extensively monitor and enforce that genetically modified foods containing novel DNA and ingredients and irradiated foods, as defined in the Food Standards Code, be clearly labelled.

Some of us consider that this issue may need to be closely monitored in the future as changes in technology could have implications for the food industry.

Appendix

Committee process

The Food Safety Law Reform Bill was referred to the committee on 16 August 2016. The closing date for submissions was 22 September 2016. We received and considered 43 submissions from interested groups and individuals. We heard oral evidence from 11 submitters at hearings in Wellington.

We received advice from the Ministry for Primary Industries.

The Regulations Review Committee reported to the committee on the commencement clauses and exemption-making powers in the bill.

Committee membership

Ian McKelvie (Chairperson)

Todd Barclay

Hon Chester Borrows

Steffan Browning

Barbara Kuriger

Hon Damien O'Connor

Richard Prosser

Stuart Smith

Rino Tirikatene

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Jo Goodhew

Food Safety Law Reform Bill

Government Bill

Contents

| | Page |
|---|------|
| 1 Title | 13 |
| 2 Commencement | 13 |
| Part 1 | |
| Amendments to Food Act 2014 | |
| 3 Principal Act | 14 |
| 4 Section 18 amended (Role of chief executive) | 14 |
| 5 Section 41 replaced (Food control plan: form) | 14 |
| 41 Food control plan: form | 14 |
| 6 Section 42 amended (Food control plan: contents) | 14 |
| 7 Section 43 amended (Regulations about food control plans) | 14 |
| 8 Section 46 amended (Operator may amend food control plan not based on official template or model) | 15 |
| 9 Section 53 amended (Application for registration: form and content) | 15 |
| 10 Section 56 amended (Criteria for registration of food control plan) | 15 |
| 11 Section 58 amended (Applicants for registration must notify registration authority of significant change in circumstances) | 16 |
| 12 New section 61A inserted (Clarity of food control plans not based on official template or model) | 16 |
| 61A Clarity of food control plans not based on official template or model | 16 |
| 13 Section 62 amended (Mandatory suspension) | 16 |
| 14 Section 67 amended (Cancellation of registration) | 16 |
| 15 Section 74 amended (National programme: general description) | 16 |
| 16 Section 75 amended (How national programme may be imposed) | 17 |
| 17 Section 76 amended (Regulations about national programmes) | 17 |

Food Safety Law Reform Bill

| | | |
|---|---|-----------|
| 18 | Section 78 amended (Requirements of national programme to prevail in cases of inconsistency with other regulations or specifications made under this Act) | 17 |
| 19 | Section 83 amended (Application for registration: form and content) | 17 |
| 20 | Section 103 amended (Regulations about monitoring programmes) | 17 |
| 21 | Section 104 amended (Chief executive may specify certain matters by notice) | 17 |
| 22 | Section 110 amended (Duties of importer) | 18 |
| 23 | New Part 3A inserted | 18 |
| Part 3A | | |
| Tracing, recall, and verification | | |
| Subpart 1—Tracing and recall | | |
| 133A | Application of this subpart | 18 |
| 133B | Tracing and recall | 18 |
| 133C | Regulations and notices relating to tracing and recall of food | 18 |
| Subpart 2—Verification | | |
| 133D | Application | 19 |
| 133E | Verification | 19 |
| 133F | Regulations and notices relating to verification | 19 |
| 24 | Section 155 amended (Duties of recognised agencies) | 20 |
| 25 | Section 156 amended (Duties of recognised persons) | 20 |
| 26 | New section 157A inserted (Recognised agency and recognised person accountable to chief executive) | 20 |
| | 157A Recognised agency and recognised person accountable to chief executive | 20 |
| 27 | Section 174 amended (Duties of territorial authority) | 20 |
| 28 | Section 204 amended (Regulations may impose fees and charges) | 20 |
| 29 | Section 292 amended (Require production of information for purpose of determining safety and suitability of food) | 21 |
| 30 | New section 292A inserted (Chief executive may require information to determine safety of food) | 21 |
| | 292A Chief executive may require information to determine safety of food | 21 |
| <u>30A</u> | <u>Cross-heading above section 294 replaced</u> | <u>22</u> |
| <i><u>Rights of access of verifiers, verification agencies, recognised persons, and recognised agencies</u></i> | | |
| <u>30B</u> | <u>Section 294 amended (Verifiers' rights of access and certain verifier powers)</u> | <u>22</u> |
| <u>30C</u> | <u>Section 295 amended (Recognised persons' rights of access)</u> | <u>22</u> |

Food Safety Law Reform Bill

| | | |
|------------|---|-----------|
| 31 | Section 321 amended (Matters may be completed by different food safety officer) | 23 |
| <u>31A</u> | <u>Section 322 amended (Application for search warrant)</u> | <u>23</u> |
| 32 | Section 381 amended (Regulations: what they can apply to and what they can do) | 23 |
| 33 | Section 383 amended (Regulations about standards in relation to food) | 23 |
| 34 | Section 384 amended <u>amended</u> (Regulations about risk-based measures and related matters) | 24 |
| 35 | Section 385 amended (Regulations about grading schemes) | 24 |
| 36 | Section 387 amended (Regulations about imported food) | 24 |
| 37 | Section 388 repealed (Regulations about verification functions in relation to importers) | 25 |
| 38 | Section 389 amended (Regulations about recognised agencies, persons, and classes of persons) | 25 |
| 39 | Section 390 amended (Regulations about information) | 25 |
| 40 | Section 395 amended (Regulations about other matters) | 25 |
| 41 | Section 405 replaced (Notices relating to general matters) | 25 |
| | 405 Notices | 25 |
| 42 | Section 406 repealed (Notices relating to specifications or requirements for specific matters) | 26 |
| 43 | Section 409 amended (Application of Legislation Act 2012 to certain notices) | 26 |
| 44 | Section 445 amended (References to standard works) | 26 |
| 45 | Schedule 2 amended | 26 |
| 46 | Schedule 6 amended | 27 |

Part 2

Amendments to Animal Products Act 1999

| | | |
|----|---|----|
| 47 | Principal Act | 27 |
| 48 | Section 3 amended (General scheme of Act) | 27 |
| 49 | Section 4 amended (Interpretation) | 27 |
| 50 | Section 5 amended (Product processed fit for intended purpose) | 29 |
| 51 | New section 6C inserted (Transitional, savings, and related provisions relating to amending Acts) | 29 |
| | 6C Transitional, savings, and related provisions relating to amending Acts | 29 |
| 52 | Section 7 amended (Products and material to which Act generally applies) | 29 |
| 53 | Section 8 replaced (Products and material excluded from ambit of Act) | 29 |
| | 8 Products and material excluded from ambit of Act | 29 |
| 54 | Section 9 amended (Exemptions from ambit of Act by Order in Council) | 29 |
| 55 | Section 12 amended (What is a risk management programme?) | 29 |

Food Safety Law Reform Bill

| | | |
|-----------|--|---------------|
| 56 | Section 13 amended (Who must have a risk management programme?) | 29 |
| 57 | Section 14 amended (Director-General may grant limited exemption from requirement to have risk management programme) | 30 |
| 58 | Section 15 amended (Certain persons may be required to have risk management programme by Order in Council) | 30 |
| 59 | Section 16 amended (Duties of operators of risk management programmes) | 30 |
| 60 | Section 17 amended (Contents of and requirements for risk management programmes) | 30 |
| 61 | Section 17 further amended (Contents of and requirements for risk management programmes) | 31 |
| <u>61</u> | <u>Section 17A amended (Multi-business risk management programmes)</u> | <u>31</u> |
| 62 | Section 19 amended (Matters to be shown in register of risk management programmes) | 31 |
| 63 | Section 20 amended (Applications for registration of programmes) | 31 |
| 64 | Section 20 further amended (Applications for registration of programmes) | 32 |
| 65 | Section 22 amended (Registration of risk management programme) | 32 |
| 66 | Section 24 amended (Registration may not be transferred) | 32 |
| 67 | Section 25 amended (Significant amendments to risk management programme) | 32 |
| 68 | Section 26 amended (Updates of minor amendments to risk management programmes) | 33 |
| 69 | New sections 26A and 26B inserted <u>section 26B inserted</u> <u>(Director-General may require amendment to improve clarity of registered risk management programme)</u> | 33 |
| | 26A Operator must give verifying agency updated programme | 33 |
| | 26B Director-General may require amendment to improve clarity of registered risk management programme | 33 |
| 70 | Section 27 amended (Suspension of operations under registered programme) | 34 |
| 71 | Section 28 amended (Deregistration of risk management programme) | 34 |
| 72 | Section 28A replaced (Removal of animal product business from coverage of wider risk management programme) | 34 |
| | 28A Removal of animal product business <u>Removal of animal product business or part of business</u> <u>from coverage of wider risk management programme</u> | 34 |
| 73 | Section 29 amended (Surrender of registration) | 35 |
| 74 | Section 30 amended (Risk management programme in conflict with regulations or specifications) | 35 |
| 75 | Section 31 amended (Object of sections 32 to 34) | 35 |

Food Safety Law Reform Bill

| | | |
|----|---|----|
| 76 | Section 33 amended (Implications of failure to elect in case of animal product which is food whose export requires an official assurance) | 35 |
| 77 | Section 34 amended (Alternate or intermittent use of risk management programmes and food safety programmes) | 35 |
| 78 | New section 34A inserted (Regulations may grant or provide for exemptions from this Act or Food Act 2014) | 36 |
| | 34A Regulations may grant or provide for exemptions from this Act or Food Act 2014 | 36 |
| 79 | Cross-heading above section 35 amended | 37 |
| 80 | Section 35 amended (References to recognised risk management programme verifying agency) | 37 |
| 81 | Section 38 amended (Nature of regulated control schemes) | 37 |
| 82 | Sections 39 and 40 replaced | 37 |
| | 39 Scope of regulated control scheme | 38 |
| | 40 Regulations about regulated control schemes | 38 |
| 83 | Section 41 amended (Emergency control schemes) | 39 |
| 84 | Part 4 heading amended | 39 |
| 85 | Section 42 replaced (Object of this Part) | 39 |
| | 42 Animal product standards | 39 |
| 86 | Section 43 amended (Application of standards and specifications) | 39 |
| 87 | Section 44 amended (Regulations may prescribe animal product standards) | 39 |
| 88 | Section 45 repealed (Director-General may issue specifications supplementary to animal product standards) | 40 |
| 89 | Section 46 amended (Emergency animal product standards and specifications) | 40 |
| 90 | Section 48 amended (Exporters of animal products for human or animal consumption, and certain other animal material and products, must be registered) | 40 |
| 91 | Section 49 amended (Registration of exporters of non-edible, etc, material or products may be required by Order in Council) | 40 |
| 92 | Section 50 amended (Director-General may exempt certain consignments) | 41 |
| 93 | Section 51 amended (Duties of exporters) | 41 |
| 94 | Section 53 amended (Matters to be shown in register of exporters) | 41 |
| 95 | Section 54 amended (Applications for registration) | 41 |
| 96 | Section 58 amended (Deregistration of exporters) | 41 |
| 97 | Section 60 amended (Export requirements) | 41 |
| 98 | Section 60A amended (Director-General to notify or make available export requirements) | 42 |
| 99 | Section 60B amended (Exemption from requirements of food standards where appropriate) | 42 |

Food Safety Law Reform Bill

| | | |
|-----|---|----|
| 100 | Section 61 amended (Director-General may issue official assurances) | 42 |
| 101 | Section 62 amended (Form and content of official assurance) | 42 |
| 102 | Section 63 amended (Obtaining of official assurance) | 42 |
| 103 | Section 65B amended (What is a game estate?) | 43 |
| 104 | Section 65C amended (Use and disposal of animal material and product from game estate animals) | 43 |
| 105 | Section 65F amended (Matters to be shown in list of game estates) | 43 |
| 106 | Section 67 amended (Homekill allowed) | 43 |
| 107 | Section 68 amended (Processing of recreational catch) | 43 |
| 108 | Section 69 amended (Homekill and recreational catch service providers) | 43 |
| 109 | Section 71 amended (Requirements for dual operator butchers) | 43 |
| 110 | Section 72 amended (Product processed by homekill or recreational catch service provider ceases to be regulated animal product) | 44 |
| 111 | Section 74 amended (Matters to be shown in list of homekill and recreational catch service providers) | 44 |
| 112 | New Part 6A inserted | 44 |

**Part 6A
General obligations**

| | | |
|-----|--|----|
| 77A | Interpretation | 44 |
| | Subpart 1—Tracing and recall | |
| 77B | Tracing and recall requirements | 44 |
| 77C | Regulations relating to tracing and recall | 45 |
| | Subpart 2—Verification | |
| 77D | Verification | 45 |
| 77E | Obligation of persons subject to verification requirements | 45 |
| 77F | Regulations relating to verification | 46 |
| | Subpart 3—Record keeping and reporting | |
| 77G | Record-keeping and reporting requirements | 46 |
| 77H | Regulations and notices relating to record keeping and reporting | 47 |
| 113 | Cross-heading above section 78 replaced | 47 |

Animal product officers and official assessors

| | | |
|-----|--|----|
| 114 | Section 79 amended (Appointment of official assessors) | 47 |
| 115 | Section 80 amended (Director-General may issue notices) | 47 |
| 116 | Section 81A amended (Director-General may require declarations as to supply or movement of animals, animal material, or animal products) | 48 |
| 117 | Section 81B amended (Director-General may impose movement and related controls) | 48 |

Food Safety Law Reform Bill

| | | |
|-------------|--|-----------|
| 118 | Section 82 amended (Power to direct disposal, etc, of animal material or product in certain circumstances) | 48 |
| 119 | Section 83 amended (Director-General may give statements as to New Zealand animal product standard) | 48 |
| 120 | Section 84 amended (Privileged statements by Director-General) | 48 |
| 121 | New sections 86A and 86B inserted | 48 |
| | 86A Power to issue improvement notice | 48 |
| | 86B Review of improvement notice | 49 |
| 122 | Section 90 amended (Power to condemn and require disposal of animal products that are diseased, contaminated, etc) | 49 |
| 123 | New sections 91B and 91C inserted | 49 |
| | 91B Matters may be continued by different animal product officer | 49 |
| | 91C Opinion or belief of animal product officer | 50 |
| 124 | Section 93 amended (Powers of official assessors) | 50 |
| 125 | Section 99 amended (Outline of this Part) | 50 |
| 126 | Section 100 amended (Interpretation) | 50 |
| 127 | Section 112G amended (Duties of recognised agencies) | 50 |
| <u>127A</u> | <u>Section 112H amended (Duties of recognised persons)</u> | <u>50</u> |
| 128 | New section 112IA inserted (Recognised agency and recognised person accountable to Director-General) | 50 |
| | 112IA Recognised agency and recognised person accountable to Director-General | 50 |
| 129 | Section 112T amended (Contents of public register) | 51 |
| 130 | Section 112Y amended (Director-General may require notification of termination of contracts) | 51 |
| 131 | Section 113 amended (Principles of cost recovery) | 51 |
| 132 | Section 115 amended (Cost recovery to relate generally to a financial year) | 51 |
| 133 | Section 115A repealed (Application of section 115(1) to assurances in respect of export licences issued under Dairy Industry Restructuring Act 2001) | 51 |
| 134 | Section 117 amended (Fees and charges to be prescribed by regulations) | 51 |
| 135 | Section 118 amended (Regulations may impose levies) | 52 |
| 136 | Section 121 amended (Exemptions, waivers, and refunds) | 52 |
| 137 | New sections 125A to 125E and cross-headings inserted | 52 |
| | <i>Infringement offences</i> | |
| | 125A Proceedings for infringement notices | 52 |
| | 125B Issue and cancellation of infringement notices | 53 |
| | 125C Form of infringement notice | 54 |
| | 125D Payment of infringement fees | 54 |
| | 125E Regulations about infringement offences | 54 |
| | <i>Offences</i> | |

Food Safety Law Reform Bill

| | | |
|-----|--|----|
| 138 | Section 130 amended (Offence to export unless registered) | 54 |
| 139 | Section 133 amended (Obstruction of officers, etc) | 55 |
| 140 | New section 133A inserted (Offences involving automated electronic system) | 55 |
| | 133A Offences involving automated electronic system | 55 |
| 141 | Section 135 amended (Failure to comply with Act, etc) | 55 |
| 142 | Section 140 amended (Evidence in proceedings) | 55 |
| 143 | Section 145 replaced (Time limit for filing charging document for offence against section 129 or 135) | 55 |
| | 144A Order to pay amount because of commercial gain | 55 |
| | 145 Charging documents | 56 |
| 144 | Section 147 amended (Application for compliance order) | 56 |
| 145 | Section 152 amended (Change or cancellation of compliance order) | 56 |
| 146 | Sections 158, 159, and 160 and cross-headings replaced | 56 |
| | <i>Identification, differentiation, and security systems and devices</i> | |
| | 158 Identification, differentiation, and security systems and devices | 56 |
| | <i>Use of information</i> | |
| 147 | Section 161 amended (Disclosure of information for purpose of ensuring product safety, etc) | 58 |
| 148 | Section 162 amended (Right of review of certain decisions made under delegated authority) | 58 |
| 149 | Section 163 amended (Consultation requirements for making of certain Orders in Council, specifications, etc) | 58 |
| 150 | Section 164 amended (Notification of certain matters) | 59 |
| 151 | New sections 165B and 165C and cross-heading inserted | 60 |
| | <i>Automated electronic systems</i> | |
| | 165B Arrangement for system | 60 |
| | 165C Effect of use of system | 61 |
| 152 | Section 166 amended (Regulations) | 61 |
| 153 | Section 167 replaced (Notices) | 63 |
| | 166A Scope of regulations | 63 |
| | 167 Notices | 64 |
| | 167A Application of Legislation Act 2012 to notices | 65 |
| 154 | Section 168 amended (Incorporation of material by reference into regulations, notices, and orders) | 65 |
| 155 | New sections 168A and 168B inserted | 65 |
| | 168A Availability and proof of material incorporated by reference | 65 |
| | 168B Application of Legislation Act 2012 to incorporating instruments and incorporated material | 66 |

Food Safety Law Reform Bill

| | | |
|------------------------------------|---|-----------|
| 156 | New Schedule 1 inserted | 66 |
| Part 3 | | |
| Amendments to Wine Act 2003 | | |
| 157 | Principal Act | 66 |
| 158 | Section 4 amended (Interpretation) | 66 |
| 159 | New section 4A inserted (Transitional, savings, and related provisions relating to amending Acts) | 68 |
| | 4A Transitional, savings, and related provisions relating to amending Acts | 68 |
| 160 | Section 5 amended (Scope of Act) | 68 |
| 161 | Section 6 amended (Exemptions from application of Act) | 68 |
| 162 | Section 7 amended (Outline of this Part) | 68 |
| 163 | Section 8 amended (What is a wine standards management plan?) | 68 |
| 164 | Section 9 amended (Who must have a wine standards management plan?) | 68 |
| 165 | Section 11 amended (Limited exemption from requirement to have wine standards management plan) | 68 |
| 166 | Section 12 amended (Certain persons may be required to have wine standards management plan) | 69 |
| 167 | Section 13 amended (Duties of operators of wine standards management plans) | 69 |
| 168 | Section 14 amended (Contents of and requirements for wine standards management plans) | 69 |
| 169 | Section 14 further amended (Contents of and requirements for wine standards management plans) | 70 |
| <u>169</u> | <u>Section 15 amended (Multi-business wine standards management plans)</u> | <u>70</u> |
| 170 | Section 15A amended (Persons involved with both food and wine) | 70 |
| 171 | Section 15B amended (Application for intermittent use of food control plan as wine standards management plan) | 70 |
| 172 | Section 15C amended (Intermittent use of food control plan as wine standards management plan) | 71 |
| 173 | New section 15D inserted (Regulations may grant or provide for exemptions from this Act or Food Act 2014) | 71 |
| | 15D Regulations may grant or provide for exemptions from this Act or Food Act 2014 | 71 |
| 174 | Section 17 amended (Register of wine standards management plans) | 71 |
| 175 | Section 18 amended (Applications for registration of wine standards management plans) | 72 |
| 176 | Section 18 further amended (Applications for registration of wine standards management plans) | 72 |
| 177 | Section 19 amended (Registration of wine standards management plans) | 72 |

Food Safety Law Reform Bill

| | | |
|-----|---|----|
| 178 | Section 21 amended (Registration may not be transferred) | 72 |
| 179 | Section 22 amended (Significant amendment of wine standards management plan) | 72 |
| 180 | Section 23 amended (Updates of minor amendments to wine standards management plans) | 73 |
| 181 | New sections 23A and 23B inserted <u>section 26B inserted</u> (<u>Director-General may require amendment to improve clarity of registered wine standards management plan</u>) | 73 |
| | 23A Operator to give verifying agency updated plan | 73 |
| | 23B Director-General may require amendment to improve clarity of registered wine standards management plan | 74 |
| 182 | Section 24 amended (Suspension of operations under registered wine standards management plan) | 74 |
| 183 | Section 25 amended (Deregistration of wine standards management plan) | 74 |
| 184 | Section 26 replaced (Removal of wine business from coverage of wider wine standards management plan) | 74 |
| | 26 Removal of wine business or part of business from coverage of wider wine standards management plan | 74 |
| 185 | Section 27 amended (Surrender of registration) | 75 |
| 186 | Section 28 amended (References to recognised verifying agency) | 75 |
| 187 | Subpart 2 heading in Part 2 amended | 75 |
| 188 | Section 30 replaced (Outline of subpart 2) | 75 |
| | 30 Wine standards | 75 |
| 189 | Section 31 amended (Application of standards and specifications) | 75 |
| 190 | Section 32 repealed (Application to extension products, partial process products, and wine products) | 75 |
| 191 | Section 33 amended (Regulations may prescribe standards) | 75 |
| 192 | Section 34 amended (Prerequisites for prescribing standards) | 76 |
| 193 | Section 35 repealed (Director-General may issue specifications supplementary to wine standards) | 76 |
| 194 | Section 37 amended (Prerequisites for export) | 76 |
| 195 | Section 38 amended (Export eligibility requirements) | 76 |
| 196 | Section 39 amended (Exemption of certain consignments) | 76 |
| 197 | Section 40 amended (Duties of exporters) | 76 |
| 198 | Section 41 amended (Director-General to notify or make available access requirements for overseas markets) | 77 |
| 199 | Section 42 amended (Director-General may issue official assurances) | 77 |
| 200 | Section 43 amended (Form and content of official assurance) | 77 |
| 201 | Section 44 amended (Obtaining of official assurance) | 77 |
| 202 | Section 47 amended (Register of exporters) | 77 |
| 203 | Section 48 amended (Applications for registration as exporter) | 77 |
| 204 | Section 52 amended (Deregistration of exporters) | 77 |

Food Safety Law Reform Bill

| | | |
|-------------|---|-----------|
| 205 | Section 53 amended (Surrender of registration) | 77 |
| 206 | New subpart 4 of Part 2 inserted | 78 |
| | Subpart 4—General obligations | |
| 54A | Interpretation | 78 |
| | <i>Tracing and recall</i> | |
| 54B | Tracing and recall requirements | 78 |
| 54C | Regulations relating to tracing and recall | 78 |
| | <i>Verification</i> | |
| 54D | Verification | 79 |
| 54E | Obligation of persons subject to verification requirements | 79 |
| 54F | Regulations relating to verification | 79 |
| | <i>Record keeping and reporting</i> | |
| 54G | Record keeping and reporting requirements | 80 |
| 54H | Regulations and notices relating to record keeping and reporting | 80 |
| 207 | Section 56 amended (Director-General may issue notices) | 81 |
| 208 | Section 59 amended (Power to direct disposal, etc, of wine in certain circumstances) | 81 |
| 209 | New sections 61A and 61B inserted | 81 |
| 61A | Power to issue improvement notice | 81 |
| 61B | Review of improvement notice | 81 |
| 210 | New sections 68A and 68B inserted | 82 |
| 68A | Matters may be continued by different wine officer | 82 |
| 68B | Opinion or belief of wine officer | 82 |
| 211 | Section 69 amended (Outline of sections 70 to 82Z) | 82 |
| 212 | Section 70 amended (Interpretation) | 82 |
| 213 | Section 82G amended (Duties of recognised agencies) | 82 |
| <u>213A</u> | <u>Section 82H amended (Duties of recognised persons)</u> | <u>83</u> |
| 214 | New section 82IA inserted (Recognised agency and recognised person accountable to Director-General) | 83 |
| 82IA | Recognised agency and recognised person accountable to Director-General | 83 |
| 215 | Section 82T amended (Contents of public register) | 83 |
| 216 | Section 82Y amended (Director-General may require notification of termination of contracts) | 83 |
| 217 | Section 84 amended (Principles of cost recovery) | 83 |
| 218 | Section 86 amended (Cost recovery to relate generally to financial year) | 83 |
| 219 | Section 87 amended (Three-yearly review of cost recovery) | 83 |
| 220 | Section 88 amended (Fees and charges to be prescribed by regulations) | 84 |
| 221 | Section 89 amended (Regulations may impose levies) | 84 |

Food Safety Law Reform Bill

| | | |
|----------------------------------|---|----|
| 222 | Section 92 amended (Exemptions, waivers, and refunds) | 84 |
| 223 | New sections 96A to 96E and cross-heading inserted | 84 |
| <i>Infringement offences</i> | | |
| | 96A Proceedings for infringement notices | 85 |
| | 96B Issue and cancellation of infringement notices | 85 |
| | 96C Form of infringement notice | 86 |
| | 96D Payment of infringement fees | 86 |
| | 96E Regulations about infringement offences | 86 |
| 224 | Section 100 amended (Offence to export unless registered or in compliance with export eligibility requirements) | 87 |
| 225 | Section 101 amended (Obstruction of officers, etc) | 87 |
| 226 | New sections 101A and 101B inserted | 87 |
| | 101A Offences involving automated electronic system | 87 |
| | 101B Breach of compliance order | 87 |
| 227 | Section 103 amended (Failure to comply with Act, etc) | 88 |
| 228 | Section 105 amended (Evidence in proceedings) | 88 |
| 229 | Section 110 replaced (Time for filing charge for offence against section 102 or 103) | 88 |
| | 109A Order to pay amount because of commercial gain | 88 |
| | 110 Charging documents | 88 |
| <i>Compliance orders</i> | | |
| | 110A Compliance orders | 89 |
| | 110B Application for compliance order | 89 |
| | 110C Notification of application | 90 |
| | 110D Right to be heard | 90 |
| | 110E Decision on application | 90 |
| | 110F Interim compliance orders | 90 |
| | 110G Change or cancellation of compliance order | 91 |
| | 110H Compliance with compliance order | 91 |
| | 110I Appeals to High Court | 92 |
| | 110J Appeals to Court of Appeal or Supreme Court | 92 |
| | 110K Effect of appeal | 92 |
| | 110L Rules of court | 92 |
| 230 | Sections 112 and 113 and cross-heading replaced | 93 |
| <i>Use of border information</i> | | |
| 231 | Section 114 amended (Right of review of certain decisions made under delegated authority) | 93 |
| 232 | Section 115 amended (Consultation requirements for making of certain orders, specifications, etc) | 93 |
| 233 | Section 116 amended (Notification of certain matters) | 94 |
| 234 | New sections 118A and 118B and cross-heading inserted | 94 |

| | | | |
|-------------------------------------|------|--|-----|
| <i>Automated electronic systems</i> | | | |
| | 118A | Arrangement for system | 94 |
| | 118B | Effect of use of system | 95 |
| 235 | | Section 119 amended (Regulations) | 96 |
| 236 | | Section 120 replaced (Notices) | 97 |
| | 119A | Scope of regulations | 97 |
| | 120 | Notices | 98 |
| | 120A | Application of Legislation Act 2012 to notices | 99 |
| 237 | | Section 121 amended (Incorporation of material by reference into regulations, notices, and orders) | 99 |
| 238 | | New sections 121A and 121B inserted | 100 |
| | 121A | Availability and proof of material incorporated by reference | 100 |
| | 121B | Application of Legislation Act 2012 to incorporating instrument and incorporated material | 101 |
| 239 | | New Schedule 1 inserted | 101 |

Part 4

Consequential amendments to other enactments

| | | | |
|------------|--|--|------------|
| 240 | | Amendments to Summary Proceedings Act 1957 | 101 |
| 241 | | Amendment to Health Act 1956 | 101 |
| 242 | | Amendment to Biosecurity (National American Foulbrood Pest Management Plan) Order 1998 | 101 |
| <u>243</u> | | <u>Amendment to Search and Surveillance Act 2012</u> | <u>101</u> |

Schedule 1

New Schedule 1 inserted in Animal Products Act 1999

Schedule 2

New Schedule 1 inserted in Wine Act 2003

106

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Food Safety Law Reform Act **2016**.

2 Commencement

(1) ~~Sections 61, 64, 169, and 176~~ come into force on a date appointed by the Governor-General by Order in Council. 5

(1) Sections 64 and 176 come into force of the earlier of—

(a) a date appointed by the Governor-General by Order in Council; and

(b) the day that is 2 years after the date on which it receives the Royal assent. 10

- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 Amendments to Food Act 2014

- 3 Principal Act** 5
This **Part** amends the Food Act 2014 (the **principal Act**).
- 4 Section 18 amended (Role of chief executive)**
After section 18(2)(j), insert:
- (ja) undertaking contingency planning for incidents that may affect the safety and suitability of food; and 10
- 5 Section 41 replaced (Food control plan: form)**
Replace section 41 with:
- 41 Food control plan: form**
A food control plan must be in writing and—
- (a) be submitted for registration in a form acceptable to the appropriate authority; and 15
(b) comply with the requirements of this Act.
- 6 Section 42 amended (Food control plan: contents)**
After section 42(h), insert:
- (ha) if **subpart 1 of Part 3A** applies, any matters relating to the tracing of food and recall of food that are required by any regulations made under **section 133C** and any notice under **section 405**; and 20
- 7 Section 43 amended (Regulations about food control plans)**
- (1) In the heading to section 43, after “**Regulations**”, insert “**and notices**”.
- (2) Replace sections 43(1)(c) and (d) with: 25
- (c) requiring a food control plan to be differentiated from other information kept by the operator and prescribing how this must be done;
- (d) prescribing requirements for the registration of food control plans, including the manner and form in which the operator must provide the food control plan for registration: 30
- (3) ~~After section 43(1)(f), insert:~~
- ~~(fa) prescribing the time within which copies of amendments to a food control plan must be provided under **section 46(5A)**;~~
- (4) After section 43(2), insert:

- (3) The chief executive may, by notice under **section 405**,—
- (a) set requirements as to how persons who operate under food control plans are to demonstrate competency (in relation to the safety and suitability of food, food production, and food processing and handling), the appropriate training for those persons, and the staff training to be provided: 5
 - (b) set requirements for the validation and evaluation of food control plans:
 - (c) supplement regulations made under this section.
- 8 Section 46 amended (Operator may amend food control plan not based on official template or model)** 10
- After section 46(5), insert:
- (5A) ~~The operator must, within the time prescribed in regulations, give a copy of any amendment to the plan to the operator’s verifier or verification agency.~~
- 9 Section 53 amended (Application for registration: form and content)**
- (1) Replace section 53(2) with:
 - (2) For a food control plan that is based on an official template or model, the information referred to in subsection (1)(b) is— 15
 - ~~(a) a copy of the provisions of the food control plan; and~~
 - (a) the information required under section 42(a) to (e) that provides a comprehensive and accurate representation of all the requirements of those paragraphs; and 20
 - (b) the reference number of the official template or model; and
 - (c) confirmation of the operator’s verifier or verification agency.
 - (2) In section 53(3)(b), replace “by the chief executive on a case-by-case basis or by notice under section 405” with “under **subsection (4)**”.
 - (3) After section 53(3), insert: 25
 - (4) The chief executive may waive the requirement to provide an independent evaluation of the validity of a food control plan—
 - (a) on a case-by-case basis; or
 - (b) by notice under **section 405**.
- 10 Section 56 amended (Criteria for registration of food control plan)** 30
- (1) In section 56(d)(ii), replace “Act.” with “Act; and”.
 - (2) After section 56(d), insert:
 - (e) the plan is clear enough to be readily understood by the operator, the relevant registration authority, and the operator’s verifier or verification agency. 35

- 11 Section 58 amended (Applicants for registration must notify registration authority of significant change in circumstances)**
- Replace section 58(3)(a) with:
- (a) if the application is for registration of a food control plan under **section 53(3)**, any change in the information that the applicant—
 - (i) has provided in the food control plan to meet the requirements of section 42(a) to (e):
 - (ii) has provided under section 55:
- 12 New section 61A inserted (Clarity of food control plans not based on official template or model)**
- After section 61, insert:
- 61A Clarity of food control plans not based on official template or model**
- If a registration authority considers that a food control plan that is not based on an official template or model does not comply with **section 56(e)**,—
- (a) the authority may require the operator of the plan to amend the plan to comply with **section 56(e)**; and
 - (b) the operator must amend the plan accordingly within 6 months after the date ~~it~~ the operator received the authority’s requirement to amend the plan.
- 13 Section 62 amended (Mandatory suspension)**
- (1) In section 62(1)(d), after “it”, insert “; or”.
 - (2) After section 62(1)(d), insert:
 - (e) in the case of a registered food control plan that is not based on an official template or model, the operator has failed to comply with a requirement under **section 61A**.
- 14 Section 67 amended (Cancellation of registration)**
- (1) In section 67(1)(g), replace “fee.” with “; or”.
 - (2) After section 67(1)(g), insert:
 - (h) in the case of a registered food control plan that is not based on an official template or model, the operator has failed to comply with a requirement under **section 61A**.
- 15 Section 74 amended (National programme: general description)**
- In section 74(1)(a), replace “and registration requirements” with “registration requirements, and traceability and recall requirements”.

- 16 Section 75 amended (How national programme may be imposed)**
- (1) Replace section 75(1) with:
- (1) A national programme may be imposed by regulations made under section 76.
- (2) In section 75(2), replace “or specifications referred to in subsection (1)” with “made under section 76 or notice referred to in **section 76(3)**”. 5
- 17 Section 76 amended (Regulations about national programmes)**
- (1) In the heading to section 76, after “**Regulations**”, insert “**and notices**”.
- (2) After section 76(2), insert:
- (3) The chief executive may, by notice under **section 405**,—
- (a) set requirements as to how persons who operate under national programmes are to demonstrate competence (in relation to the safety and suitability of food, food production, and food processing and handling), the appropriate training for those persons, and the staff training to be provided; and 10
- (b) specify information or other material (including any declarations) that must be provided in an application for registration; and 15
- (c) supplement regulations made under this section.
- 18 Section 78 amended (Requirements of national programme to prevail in cases of inconsistency with other regulations or specifications made under this Act)** 20
- (1) In the heading to section 78, replace “**specifications**” with “**notices**”.
- (2) In section 78, replace “specifications” with “notices”.
- 19 Section 83 amended (Application for registration: form and content)**
- Replace section 83(i) with:
- (i) include any further information or other material (including declarations, if appropriate) that may be required by any regulations made under this Act or any notice under **section 405**; and 25
- 20 Section 103 amended (Regulations about monitoring programmes)**
- (1) In the heading to section 103, after “**Regulations**”, insert “**and notices**”.
- (2) After section 103(3), insert: 30
- (4) The chief executive may, by notice under **section 405**, supplement regulations made under this section.
- 21 Section 104 amended (Chief executive may specify certain matters by notice)**
- (1) Repeal section 104(2). 35
- (2) In section 104(3), delete “or (2)”.

22 Section 110 amended (Duties of importer)

- (1) In section 110(1)(c), delete “source or”.
- (2) In section 110(1)(d), replace “recognised person (other than a verifier) were a reference to any recognised person (including a verifier)” with “recognised person or recognised agency (other than a verifier or verification agency) were a reference to any recognised person or recognised agency (including a verifier or verification agency)”.

23 New Part 3A inserted

After section 133, insert:

| | |
|--|----|
| Part 3A | 10 |
| Tracing, recall, and verification | |
| Subpart 1—Tracing and recall | |
| 133A Application of this subpart | |
| This subpart applies to a person who— | |
| (a) trades in food; and | 15 |
| (b) is specified by regulations made under section 133C(1)(a) as a person to whom this subpart applies. | |
| 133B Tracing and recall | |
| A person to whom this subpart applies must, in accordance with any regulations made under section 133C and any notice under section 405 ,— | 20 |
| (a) have in place procedures for— | |
| (i) tracing food; and | |
| (ii) recalling food; and | |
| (b) conduct simulations or other tests of those procedures; and | |
| (c) implement those procedures to trace and recall food. | 25 |
| 133C Regulations and notices relating to tracing and recall of food | |
| (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes: | |
| (a) specifying a person who trades in food as a person to whom this subpart applies: | 30 |
| (b) setting requirements that apply to that person in relation to— | |
| (i) the content of procedures referred to in section 133B(a) ; and | |
| (ii) the conducting of simulations and other tests of those procedures; and | |

| | |
|---|----|
| (iii) the implementation of those procedures to trace food and recall food: | |
| (c) specifying matters in relation to tracing and recall that must be included (if applicable) in a food control plan or a national programme. | |
| (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379. | 5 |
| (3) The chief executive may, by notice under section 405 , supplement regulations made under this section. | |
| Subpart 2—Verification | 10 |
| 133D Application | |
| This subpart applies to a person who— | |
| (a) trades in food; and | |
| (b) is specified by regulations made under section 133F(1)(a) as a person to whom this subpart applies. | 15 |
| 133E Verification | |
| A person to whom this subpart applies must ensure that its <u>the person's</u> operations are verified in accordance with any regulations made under section 133F and any notice under section 405 . | |
| 133F Regulations and notices relating to verification | 20 |
| (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes: | |
| (a) specifying a person who trades in food as a person to whom this subpart applies: | |
| (b) specifying the operations or the part of the person's operations that must be verified: | 25 |
| (c) prescribing requirements relating to the exercise, carrying out, and managing of verification functions and activities: | |
| (d) specifying matters in relation to verification that must be included in a food control plan. | 30 |
| (2) Before recommending the making of regulations under this section, the Minister must be satisfied that there has been appropriate consultation on the regulations in accordance with section 379. | |
| (3) The chief executive may, by notice under section 405 ,— | |
| (a) prescribe requirements relating to the verification of those operations, including requirements relating to the frequency, intensity, and cost of verification; and | 35 |

- (b) supplement regulations made under this section.
- 24 Section 155 amended (Duties of recognised agencies)**
After section 155(1), insert:
- (1A) ~~A recognised agency that is a verification agency must ensure that it has, for each operator for which it carries out verification functions and activities, a copy of the operator’s food control plan (including any amendments to the plan that have been provided to it by the operator).~~ 5
- 25 Section 156 amended (Duties of recognised persons)**
In section 156, insert as subsection (2):
- (2) ~~If a recognised person is a verifier who is not working for a verification agency, the person must ensure that it has, for each operator for which the person carries out verification functions and activities, a copy of the operator’s food control plan (including any amendments to the plan that have been provided to it by the operator).~~ 10
- 26 New section 157A inserted (Recognised agency and recognised person accountable to chief executive)** 15
After section 157, insert:
- 157A Recognised agency and recognised person accountable to chief executive**
- (1) A recognised agency is, in carrying out its specified functions and activities in relation to a food business, accountable to the chief executive. 20
- (2) A recognised person is, in carrying out his or her specified functions and activities in relation to a food business, accountable to the chief executive.
- 27 Section 174 amended (Duties of territorial authority)**
- (1) In section 174(f), replace “under **section 405** (which reports must include any details specified in the notice under that section)” with “referred to in **subsection (2)**”. 25
- (2) In section 174, insert as subsection (2):
- (2) The chief executive may, by notice under **section 405**, specify the intervals at which the reports required by subsection (1)(f) must be provided and any details to be included in the reports. 30
- 28 Section 204 amended (Regulations may impose fees and charges)**
Replace section 204(5) with:
- (5) If regulations prescribe a formula for determining a fee or charge, the value to be attributed to a component of that formula may— 35
- (a) be specified in the formula; or
- (b) be specified by the chief executive by notice under **section 405**.

29 Section 292 amended (Require production of information for purpose of determining safety and suitability of food)

Replace the heading to section 292 with “**Chief executive may require information from operator to determine safety and suitability of food**”.

30 New section 292A inserted (Chief executive may require information to determine safety of food)

5

After section 292, insert:

292A Chief executive may require information to determine safety of food

- (1) This section applies if the chief executive—
- (a) identifies that the consumption of a food may pose a serious risk of illness or injury to consumers; and 10
- (b) considers that urgent action may be needed to protect consumers from that risk.
- (2) The chief executive may require a person who is not an operator of a food business to provide the information described in **subsection (3)** if— 15
- (a) the chief executive reasonably considers the information is necessary and relevant to determine—
- (i) the safety status of food; or
- (ii) the extent of the risk referred to in **subsection (1)(a)**; or
- (iii) the action needed to protect consumers from that risk; and 20
- (b) the chief executive reasonably believes that the person has the information.
- (3) The information is information about—
- (a) food or anything that may become food or anything that has become food: 25
- (b) a food-related accessory used in producing or processing and handling food for sale:
- (c) any place used for the production, processing and handling, or sale of food:
- (d) anything that is or is likely to be a hazard. 30
- (4) A requirement to provide information under this section must be in writing.
- (5) The chief executive—
- (a) may require the information to be provided to the chief executive or a food safety officer; and
- (b) may require the information to be provided within a time specified by the chief executive; and 35

- (c) may copy the information or require a food safety officer to copy the information.
- (6) A copy that is made under **subsection (5)** and certified by the chief executive or the food safety officer as a true and correct copy is presumed to be a true and correct copy until the contrary is proved. 5
- (7) No person is excused from compliance with a requirement to provide information under this section by reason only that compliance with that requirement would constitute breach of any contract or agreement.
- (8) No evidence of any information that has directly or indirectly been obtained as a result of a person's compliance with a requirement to provide information under this section may be used against the person in any criminal proceeding, except in a criminal proceeding that concerns the falsity of the information. 10
- Compare: 2009 No 35 s 9(2)

30A Cross-heading above section 294 replaced

Replace the cross-heading above section 294 with: 15

Rights of access of verifiers, verification agencies, recognised persons, and recognised agencies

30B Section 294 amended (Verifiers' rights of access and certain verifier powers)

- (1) Replace the heading to section 294 with "**Rights of access and related powers and duties of verifiers and verification agencies**". 20
- (2) In section 294(1), replace "verifier" with "verifier or verification agency".
- (3) Replace section 294(2), with:
- (2) The following duties apply:
- (a) a verifier or verification agency must give the operator reasonable notice of the verifier's or verification agency's intention to carry out the verification; and 25
- (b) the verifier or each person authorised by the verification agency to carry out the verification must identify himself or herself on entry to the place and when asked at any time by any person at the place. 30
- (4) In section 294(3) to (6), replace "verifier" with "verifier or verification agency".

30C Section 295 amended (Recognised persons' rights of access)

- (1) Replace the heading to section 295 with "**Rights of access and related powers and duties of recognised persons and recognised agencies**". 35
- (2) In section 295(1), replace "must provide a recognised person (other than a verifier) with the following, so as to enable the person" with "must provide a

recognised person or recognised agency (other than a verifier or verification agency) with the following, so as to enable the person or agency”.

- (3) Replace section 295(2) with:
- (2) The following duties apply:
- (a) a recognised person or recognised agency must give reasonable notice of the person’s or agency’s intention to perform the functions or duties or exercise the powers; and 5
- (b) the recognised person or each person authorised by the recognised agency for the purposes of **paragraph (a)** must identify himself or herself on entry to the place and when asked at any time by any person at the place. 10
- (4) In section 295(3) to (6), replace “recognised person” with “recognised person or recognised agency”.
- 31 Section 321 amended (Matters may be completed by different food safety officer)** 15
- (1) In the heading to section 321, replace “**completed**” with “**continued**”.
- (2) In section 321(1), replace “completed” with “continued”.
- 31A Section 322 amended (Application for search warrant)**
- Replace section 322(2) with:
- (2) A constable or a food safety officer may apply to an issuing officer for a search warrant. 20
- 32 Section 381 amended (Regulations: what they can apply to and what they can do)**
- Repeal section 381(10).
- 33 Section 383 amended (Regulations about standards in relation to food)** 25
- (1) In the heading to section 383, after “**Regulations**”, insert “**and notices**”.
- (2) In section 383(4)(b), replace “section 406(1)(u)” with “**subsection (8)**”.
- (3) In section 383(4)(c), replace “section 406(1)(u)” with “**subsection (8)**”.
- (4) After section 383(7), insert:
- (8) The chief executive may, by notice under **section 405**,— 30
- (a) specify the maximum amount of contaminants or residues that may be present in food:
- (b) set requirements in relation to the matters specified in **paragraph (a)**:
- (c) provide for the matters referred to in subsection (4)(b) and (c):
- (d) supplement regulations made under this section. 35

- 34 Section 384 ~~mended~~ amended (Regulations about risk-based measures and related matters)**
- (1) In the heading to section 384, after “**Regulations**”, insert “**and notices**”.
 - (2) After section 384(2), insert:
 - (3) The chief executive may, by notice under **section 405**, supplement regulations made under this section. 5
- 35 Section 385 amended (Regulations about grading schemes)**
- (1) In the heading to section 385, after “**Regulations**”, insert “**and notices**”.
 - (2) After section 385(4), insert:
 - (5) The chief executive may, by notice under **section 405**, supplement regulations made under this section. 10
- 36 Section 387 amended (Regulations about imported food)**
- (1) In the heading to section 387, after “**Regulations**”, insert “**and notices**”.
 - (2) Replace section 387(1)(e) with:
 - (e) requirements relating to the safety and suitability of food and to good operating practice: 15
 - (ea) controls, restrictions, requirements, and prohibitions in relation to a food sector, including how a food sector must manage or deal with risks that arise from trading in food:
 - (3) After section 387(3), insert: 20
 - (4) The chief executive may, by notice under **section 405**,—
 - (a) set requirements relating to the form or manner of applications for registration as an importer; and
 - (b) specify—
 - (i) which imported food category a particular food fits into for the purposes of regulations made under this section; and 25
 - (ii) conditions and criteria that attach to a particular food fitting within or continuing to fit within a particular category; and
 - (iii) conditions and criteria that determine the basis for movement between particular categories; and 30
 - (iv) requirements for providing samples and information about imported food and monitoring imported food that will assist in determining the risk of an imported food or determining an imported food’s categorisation; and
 - (c) supplement regulations made under this section. 35

- 37 Section 388 repealed (Regulations about verification functions in relation to importers)**
Repeal section 388.
- 38 Section 389 amended (Regulations about recognised agencies, persons, and classes of persons)** 5
- (1) In the heading to section 389, after “**Regulations**”, insert “**and notices**”.
- (2) After section 389(1)(a), insert:
- (ab) prescribing requirements that agencies, persons, and classes of persons under subpart 1 of Part 4 must comply with in order to maintain recognition: 10
- (3) After section 389(2), insert:
- (3) The chief executive may, by notice under **section 405**, supplement regulations made under this section.
- 39 Section 390 amended (Regulations about information)**
- (1) In the heading to section 390, after “**Regulations**”, insert “**and notices**”. 15
- (2) After section 390(3), insert:
- (4) The chief executive may, by notice under **section 405**,—
- (a) set requirements for all or any of the matters described in subsection (1)(a) to (c):
- (b) set requirements for all or any of the matters described in subsection (2)(a) to (c): 20
- (c) supplement regulations made under this section.
- 40 Section 395 amended (Regulations about other matters)**
- (1) In the heading to section 395, after “**Regulations**”, insert “**and notices**”.
- (2) After section 395(2), insert: 25
- (3) The chief executive may, by notice under **section 405**, supplement regulations made under this section.
- 41 Section 405 replaced (Notices relating to general matters)**
Replace section 405 with:
- 405 Notices** 30
- (1) The chief executive may issue notices that—
- (a) set requirements or specify matters that are permitted by this Act; or
- (b) are permitted by a provision of this Act to supplement regulations made under this Act.

- (2) The chief executive must not issue a notice under **subsection (1)(b)** unless satisfied that the notice—
- (a) sets out matters of detail to elaborate on matters provided for in the regulations; or
 - (b) sets out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
 - (c) sets out how requirements imposed by the regulations may or must be met; or
 - (d) otherwise supplements matters of general principle set out in the regulations.
- (3) If a notice issued under this section is inconsistent with the regulations, the regulations prevail to the extent of the inconsistency.
- 42 Section 406 repealed (Notices relating to specifications or requirements for specific matters)**
Repeal section 406.
- 43 Section 409 amended (Application of Legislation Act 2012 to certain notices)**
- (1) In section 409(1), delete “104, 405, 406(1)(a) to (u), or (w) to (y),”.
 - (2) In section 409(1), after “or 438”, insert “or **section 405** by virtue of section 33, 39, 40, 44, 45, 46, 75, 103, 104, **133C, 133F**, 170, 174, 291, 347, 383, 387, 389, or 390,”.
 - (3) In section 409(2), replace paragraphs (a) to (c) with:
 - (a) under **section 405** by virtue of **section 53(4)(b)** in respect of a specified business; or
 - (b) under **section 405** by virtue of **section 387(4)(b)**; or
 - (c) under **section 405** by virtue of section 33(4), 45(5), 46(6), or 291; or
- 44 Section 445 amended (References to standard works)**
In section 445(4), replace “Examples are the *Food Chemicals Codex* and the *Pharmaceutical Codex*.” with “An example is the *Codex Alimentarius*.”
- 45 Schedule 2 amended**
- (1) In Schedule 2, Part 4, under the heading “**Manufacturers of crisps, popcorn, pretzels, or similar snack products**” and subheading “*What this food sector does not include*”, in the second bullet point, replace “food control plans” with “national programme level 2”.
 - (2) In Schedule 2, Part 4, under the heading “**Manufacturers of dried or dehydrated fruit or vegetables**” and subheading “*What this food sector does not*”

include”, in the first bullet point, replace “food control plans” with “national programme level 3”.

46 Schedule 6 amended

- (1) In Schedule 6, clause 5(3), after “standard”, insert “or a standard work of reference (as defined in section 445(4))”. 5
- (2) In Schedule 6, clause 9(2), replace “regulations that incorporate” with “a specified document that incorporates”.
- (3) In Schedule 6, clause 9(3), replace “regulations” with “a specified document”.

Part 2

Amendments to Animal Products Act 1999

10

47 Principal Act

This **Part** amends the Animal Products Act 1999 (the **principal Act**).

48 Section 3 amended (General scheme of Act)

- (1) In section 3(1)(c), delete “, and for the setting of any technical specifications required to meet those standards”. 15
- (2) In section 3(3)(a), delete “and specifications”.

49 Section 4 amended (Interpretation)

- (1) In section 4(1), repeal the definitions of **accredited person**, **accredited risk management programme verifier**, **animal product standard**, **recognised risk management programme verifier**, **recognised risk management programme verifying agency**, and **verification**. 20
- (2) In section 4(1), insert in their appropriate alphabetical order:

animal product standard means a standard prescribed by regulations made under section 44 or issued by order under section 46

automated electronic system means a system that is the subject of an arrangement under **section 165B** 25

export requirements means requirements specified by the Director-General by notice under **section 167(1)** for the purposes of section 60

infringement fee, in relation to an infringement offence, means the amount set out in regulations made under **section 125E** to be payable for the offence 30

infringement offence means an offence identified in regulations made under **section 125E** as an infringement offence

regulated person has the meaning given in **section 77A**

regulations means regulations made under this Act

supplementary notice means a notice issued under **section 167(2)** 35

verification includes the application of methods, procedures, tests, and other checks to confirm,—

- (a) in relation to a risk management programme or regulated control scheme,—
 - (i) whether operations that are subject to the programme or scheme are being carried out in compliance with it; and 5
 - (ii) the applicability of the programme or scheme to the operations of the relevant animal product business; and
 - (iii) the effectiveness of the programme or scheme:
- (b) in relation to animal material or animal products for whose export an official assurance is required, whether the animal material or animal products have been produced or processed in a way that meets the requirements for the official assurance: 10
- (c) whether a regulated person has complied with a requirement imposed by or under this Act 15

verifier means a recognised person whose specified functions and activities include carrying out verification functions and activities

verifying agency means a recognised agency whose specified functions and activities include managing and carrying out verification functions and activities 20

- (3) In section 4(1), definition of **dairy processor**, replace paragraph (b) with:

- (b) does not include—
 - (i) persons (such as airline or shipping staff or stevedores) handling dairy material at the port of export:
 - (ii) wholesalers or other persons (other than retailers) handling dairy material at the place of sale for consumption or use: 25
 - (iii) retailers doing any or all of the following at the place of sale for consumption or use:
 - (A) handling dairy material:
 - (B) dividing or combining dairy material into smaller or larger quantities: 30
 - (C) repackaging dairy material

- (4) In section 4(1), definition of **permissible functions and activities**, delete “verification functions and activities and other”.
- (5) In section 4(1), definition of **permissible functions and activities**, paragraph (a), delete “in relation to risk management programmes”. 35
- (6) In section 4(1), definition of **permissible functions and activities**, repeal paragraph (b).

- (7) In section 4(1), definition of **primary processor**, paragraph (d), replace “appropriate consultation” with “consultation”.
- (8) In section 4(2)(a), delete “specifications,” in each place.
- (9) In section 4(2)(b), replace “section 166” with “any other section”.
- 50 Section 5 amended (Product processed fit for intended purpose)** 5
In section 5, replace “and associated specifications set under Part 4” with “and any supplementary notices”.
- 51 New section 6C inserted (Transitional, savings, and related provisions relating to amending Acts)**
Before the cross-heading above section 7, insert: 10
- 6C Transitional, savings, and related provisions relating to amending Acts**
- (1) The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- (2) The Animal Products (Ancillary and Transitional Provisions) Act 1999 contains transitional, savings, and related provisions relating to the enactment of this Act. 15
- 52 Section 7 amended (Products and material to which Act generally applies)**
In section 7(3), replace “34” with “**34A**”.
- 53 Section 8 replaced (Products and material excluded from ambit of Act)**
Replace section 8 with: 20
- 8 Products and material excluded from ambit of Act**
This Act does not apply to any animal material or animal product if and to the extent that animal material or product of that kind is exempted from all or any of the provisions of this Act by Order in Council made under section 9.
- 54 Section 9 amended (Exemptions from ambit of Act by Order in Council)** 25
- (1) In section 9(3), replace “an order” with “a recommendation”.
- (2) ~~In section 9(4), delete “appropriate”.~~
- (2) Repeal section 9(4).
- 55 Section 12 amended (What is a risk management programme?)**
(1) In the heading to section 12, delete “?”. 30
(2) In section 12(4A), after “businesses”, insert “or part-businesses parts of businesses”.
- 56 Section 13 amended (Who must have a risk management programme?)**
(1) In the heading to section 13, delete “?”.

- (2) In section 13(1), after “business”, insert “~~or part-business~~ part of a business”.
- 57 Section 14 amended (Director-General may grant limited exemption from requirement to have risk management programme)**
In section 14(1), replace “section 167” with “**section 167(1)**”.
- 58 Section 15 amended (Certain persons may be required to have risk management programme by Order in Council)** 5
In ~~section 15(3)(b)~~, delete “appropriate”.
Replace section 15(3) with:
- (3) The Minister may not recommend the making of an order under this section unless satisfied that the order is necessary or desirable— 10
- (a) in the interests of achieving the fitness for intended purpose of the animal product concerned; or
- (b) for the purpose of facilitating access to overseas markets.
- 59 Section 16 amended (Duties of operators of risk management programmes)** 15
- (1) In section 16(1)(b), replace “and specifications” with “, notices, and orders”.
- (2) In section 16(2), delete “recognised risk management programme”.
- 60 Section 17 amended (Contents of and requirements for risk management programmes)**
- (1) Replace section 17(2)(c) and (d) with: 20
- (ba) make provision in relation to tracing and recalling animal material and animal products as required by regulations made under **section 77C** or any supplementary notice:
- (c) provide for appropriate corrective actions (including recall) to be undertaken where animal material or animal products may be not fit for intended purpose or not in accordance with its labelling or identification: 25
- (d) provide for appropriate and auditable documentation, record keeping, and reporting, including as required by—
- (i) regulations made under **section 77H(1)** or any supplementary notice; or 30
- (ii) any notice referred to in **section 77H(2)**:
- (da) make provision in relation to verification as required by regulations made under **section 77F** or any supplementary notice:
- (2) Replace section 17(2)(e)(i) with: 35
- (i) any relevant animal product standards, other regulations, and supplementary notices; and

- (3) In section 17(2)(e)(ii), replace “relevant specifications set” with “other notices issued”.
- (4) After section 17(2), insert:
- (2A) A risk management programme must comply with any regulations or supplementary notice requiring it to be differentiated from other information kept by the operator and prescribing how this must be done. 5
- (5) Repeal section 17(4).
- 61 Section 17 further amended (Contents of and requirements for risk management programmes)**
- Repeal section 17(4). 10
- 61 Section 17A amended (Multi-business risk management programmes)**
- (1) In section 17A(2)(a), replace “part-businesses” with “parts of businesses”.
- (2) In section 17A(2)(b), replace “part-businesses” with “parts of businesses”.
- (3) In section 17A(2)(c) and (d), replace “part-business” with “part of whose business”. 15
- 62 Section 19 amended (Matters to be shown in register of risk management programmes)**
- (1) Replace section 19(g) with:
- (g) the name of the verifying agency responsible for verification of the programme: 20
- (2) In section 19(j), after “recent”, insert “significant”.
- (3) In section 19(k), replace “update of” with “notifications of minor amendments to”.
- (4) Replace section 19(n) with:
- (n) any other particulars required by the regulations or any supplementary notice. 25
- 63 Section 20 amended (Applications for registration of programmes)**
- (1) Replace section 20(2)(c) with:
- (c) the name of the verifying agency that has indicated it is prepared to undertake verification of the programme; and 30
- (2) In section 20(2)(d), replace “regulations made under this Act” with “the regulations or any supplementary notice”.
- (3) In section 20(3)(a), replace “approved under” with “of a kind referred to in”.
- (4) After section 20(3), insert:

- (4) The information and other material accompanying the application must be provided in a way that complies with any requirements prescribed by the regulations or any supplementary notice.
- 64 Section 20 further amended (Applications for registration of programmes)**
- Replace section 20(2)(a)(ii) with: 5
- (ii) if the regulations permit part only of the programme to be lodged, a copy of that part of the programme; and
- 65 Section 22 amended (Registration of risk management programme)**
- (1) After section 22(1)(a)(ii), insert: 10
- (iii) is clear enough to be readily understood by the operator, the Director-General, and the operator’s verifier; and
- (1A) In section 22(1A), replace “part-business” with “part of a business” in each place.
- (2) In section 22(3)(c), delete “; and”.
- (3) Repeal section 22(3)(d). 15
- (4) In section 22(3A), delete “, at any time,”.
- (5) In section 22(4), replace “supply the operator’s recognised risk management programme verifying agency with an authorised copy” with “give the operator’s verifying agency a copy”.
- 66 Section 24 amended (Registration may not be transferred)** 20
- (1) In section 24(2A), replace “part-business” with “part of the business”.
- (2) In section 24(3), replace “section 167” with “**section 167(1)**”.
- 67 Section 25 amended (Significant amendments to risk management programme)**
- (1) In the heading to section 25, replace “**Significant**” with “**Registration of significant**”. 25
- (2) In section 25(1)(b), delete “(1)”.
- (3) In section 25(3), delete “, in a manner approved by the Director-General and on payment of the prescribed fee (if any),”.
- (4) After section 25(3), insert: 30
- (3A) An application under this section must be made in writing in a form or manner approved by the Director-General and be accompanied by—
- (a) any information and other material required by the regulations or any supplementary notice; and
- (b) the prescribed fee (if any). 35

- (3B) The information and other material accompanying the application must be provided in a way that complies with any requirements prescribed by the regulations or any supplementary notice.
- (5) In section 25(5)(c), replace “supply to both the applicant and the appropriate recognised risk management programme verifying agency a certified” with “give the applicant’s verifying agency a”. 5
- (6) Repeal section 25(9).
- 68 Section 26 amended (Updates of minor amendments to risk management programmes)**
- (1) In the heading to section 26, replace “Updates” with “Notification”. 10
- (2) In section 26(2)(a), after “in a”, insert “form or”.
- (3) Replace section 26(2)(b) to (d) with:
- (b) be made at the intervals set out in the regulations or any supplementary notice; and
- (c) be accompanied by— 15
- (i) any information and other material required by the regulations or any supplementary notice; and
- (ii) the prescribed fee (if any); and
- (d) comply with any requirements in the regulations or any supplementary notice. 20
- (4) Repeal section 26(4).
- 69 ~~New sections 26A and 26B inserted~~ section 26B inserted (Director-General may require amendment to improve clarity of registered risk management programme)**
- After section 26, insert: 25
- 26A ~~Operator must give verifying agency updated programme~~**
- The operator of a registered risk management programme must give its verifying agency an updated copy of the programme at the intervals required by the regulations or any supplementary notice.
- 26B Director-General may require amendment to improve clarity of registered risk management programme** 30
- (1) If the Director-General considers that a registered risk management programme is not clear enough to be readily understood by the persons referred to in **section 22(1)(a)(iii)**, the Director-General may require the operator to amend the programme. 35

- (2) The operator must amend the programme to meet the Director-General’s requirements under **subsection (1)** within 6 months after the date the requirement is received.
- (3) If the operator fails to do so, the Director-General may—
- (a) suspend operations under the programme in accordance with section 27; or
 - (b) remove the programme from the register in accordance with section 28.
- 70 Section 27 amended (Suspension of operations under registered programme)** 10
- (1) Replace section 27(1) with:
- (1) The Director-General may suspend any or all operations under a registered risk management programme for a period of up to 3 months if the Director-General has reasonable grounds to believe that—
- (a) the programme may not be or is no longer effective; or
 - (b) the animal product produced under the programme does not meet or no longer meets the requirements imposed by or under this Act; or
 - (c) suspension is permitted under **section 26B**.
- (2) In section 27(5), replace “appropriate recognised risk management programme” with “operator’s”.
- 71 Section 28 amended (Deregistration of risk management programme)** 20
- (1) In section 28(1), delete “at any time”.
- (2) After section 28(1)(b), insert:
- (ba) removal of the programme from the register is permitted under **section 26B**; or
- (3) In section 28(3)(b), replace “appropriate recognised risk management programme” with “operator’s”.
- 72 Section 28A replaced (Removal of animal product business from coverage of wider risk management programme)**
- Replace section 28A with:
- 28A ~~Removal of animal product business or part of business~~ from coverage of wider risk management programme** 30
- (1) The Director-General may remove any ~~animal product business or part business~~ business or part of a business from the coverage of a registered risk management programme that applies to more than 1 comparable business if the Director-General is satisfied that deregistration of the programme would be appropriate under section 28 if the ~~animal product business or part business~~ business 35

- ness or part of a business being removed were the only one operating under the programme.
- (2) Section 28(2) to (7) applies in relation to the removal of the business or ~~part-business~~ part of a business from the coverage of the risk management programme as if references in those subsections to deregistration of the programme were references to removal from the coverage of the programme. 5
- 73 Section 29 amended (Surrender of registration)**
- (1) In section 29(1), delete “at any time”.
- (2) In section 29(2)(c), replace “appropriate recognised risk management programme” with “operator’s”. 10
- 74 Section 30 amended (Risk management programme in conflict with regulations or specifications)**
- (1) In the heading to section 30, replace “or specifications” with “, notices, or orders”.
- (2) In section 30, replace “any regulations or specifications” with “the regulations or any notices or orders”. 15
- (3) In section 30, replace “or specifications prevail” with “, notices, or orders prevail”.
- 75 Section 31 amended (Object of sections 32 to 34)**
- (1) In the heading to section 31, replace “34” with “34A”. 20
- (2) In section 31, replace “to 34” with “to 34A”.
- 76 Section 33 amended (Implications of failure to elect in case of animal product which is food whose export requires an official assurance)**
- (1) In section 33(1), replace “overseas market access requirements as notified or made available by the Director-General under section 60” with “any export requirements”. 25
- (2) In section 33(2), replace “such additional requirements as may be notified or made available under section 60” with “any export requirements”.
- 77 Section 34 amended (Alternate or intermittent use of risk management programmes and food safety programmes)** 30
- (1) In the heading to section 34, replace “safety programmes” with “control plans”.
- (2) Replace section 34(2) with:
- (2) Sections 20(2) to (4) and 21 to 23 apply to the application as if it were an application under section 20(1). 35
- (3) Replace section 34(3)(b) and (c) with:

- (b) during or in respect of matters occurring during any period when the operator operates under the plan as a risk management programme, unless the regulations or any supplementary notice provides otherwise,—
- (i) the operator is to be treated as a person who is required to have a risk management programme in respect of those operations; and 5
- (ii) the Food Act regime does not apply to those operations; and
- (c) during or in respect of matters occurring during any period when the operator does not so operate, unless the regulations or any supplementary notice provides otherwise,—
- (i) the operator is to be treated as subject to the Food Act regime; and 10
- (ii) this Part does not apply in relation to that period or matters occurring during it; and
- (4) Repeal section 34(4)(b).
- (5) After section 34(4), insert:
- (4A) In imposing a condition under subsection (4)(a), the Director-General must have regard to— 15
- (a) the desirability of continuity in verification services, functions, or requirements; and
- (b) any export requirements; and
- (c) any requirements set out in the regulations or any supplementary notice for determining whether all or any classes of registered food control plans are to be subject to the verification regime of this Act or the Food Act 2014. 20
- (6) In section 34(6)(c), delete “recognised risk management programme”.
- (7) Repeal section 34(7). 25
- 78 New section 34A inserted (Regulations may grant or provide for exemptions from this Act or Food Act 2014)**
- After section 34, insert:
- 34A Regulations may grant or provide for exemptions from this Act or Food Act 2014** 30
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting, or providing for the exemption of, persons from specified requirements imposed by or under this Act or the Food Act 2014.
- (2) The Minister may not recommend the making under **subsection (1)** of regulations that grant an exemption unless satisfied that— 35

- (a) granting the exemption is necessary or desirable in the interests of avoiding unnecessary or undesirable duplication of equivalent duties or matters under this Act and the Food Act 2014; and
- (b) the extent of the exemption is not broader than is reasonably necessary for that purpose. 5
- (3) The Minister may not recommend the making under **subsection (1)** of regulations that provide for exemptions to be granted unless satisfied that the regulations permit an exemption to be granted only if—
- (a) granting the exemption is necessary or desirable in the interests of avoiding unnecessary or undesirable duplication of equivalent duties or matters under this Act and the Food Act 2014; and 10
- (b) the extent of the exemption is not broader than is reasonably necessary for that purpose.
- 79 Cross-heading above section 35 amended**
- In the cross-heading above section 35, delete “*recognised risk management programme*”. 15
- 80 Section 35 amended (References to recognised risk management programme verifying agency)**
- (1) In the heading to section 35, delete “**recognised risk management programme**”. 20
- (2) In section 35, delete “recognised risk management programme” in each place.
- 81 Section 38 amended (Nature of regulated control schemes)**
- (1) In section 38(1)(c), replace “access requirements of overseas markets as notified or made available under section 60” with “any export requirements”. 25
- (2) Replace section 38(2) with:
- (2) A regulated control scheme may be imposed—
- (a) by regulations made under **section 40**, which may be supplemented by supplementary notices; or
- (b) by the Director-General by notice under **section 167(1)** if— 30
- (i) export requirements have been specified under section 60; and
- (ii) the Director-General is satisfied that the risk management measures imposed by the scheme are necessary or desirable to meet those export requirements.
- 82 Sections 39 and 40 replaced**
- Replace sections 39 and 40 with: 35

| | | |
|-----------|---|----|
| 39 | Scope of regulated control scheme | |
| (1) | A regulated control scheme must set out— | |
| | (a) its prime purpose; and | |
| | (b) the risk management measures that are imposed by the scheme. | |
| (2) | The risk management measures may include (without limitation) requirements relating to the monitoring and testing (including surveying, monitoring, data collection, disease surveillance, sampling, testing, and analysis) of any or all of the following: | 5 |
| | (a) animal material: | |
| | (b) animal products: | 10 |
| | (c) anything in the environment that may affect the fitness for intended purpose of animal material or animal products. | |
| (3) | A regulated control scheme may also include (without limitation) requirements that could be prescribed by regulations made— | |
| | (a) under section 77C in relation to tracing and recalling animal material and animal products: | 15 |
| | (b) under section 77F in relation to verification of the scheme: | |
| | (c) under section 77H in relation to record-keeping and reporting. | |
| (4) | Section 166A(1)(a)(i), (d), and (e) applies in relation to a notice referred to in section 38(2)(b) as if it were regulations. | 20 |
| 40 | Regulations about regulated control schemes | |
| (1) | The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing regulated control schemes. | |
| (2) | The Minister may not recommend the making of regulations under subsection (1) unless the Minister is satisfied that <u>at least 1 of the circumstances set out in section 38(1) exists.</u> | 25 |
| | (a) at least 1 of the criteria set out in section 38(1) applies; and | |
| | (b) consultation has been carried out in accordance with section 163. | |
| (3) | In determining whether to recommend the making of regulations under subsection (1) , the Minister must have regard to the following: | 30 |
| | (a) the need to protect the health of consumers and users of animal products: | |
| | (b) the most effective way of handling the relevant risk factors: | |
| | (c) the desirability of facilitating market access: | |
| | (d) the desirability of maintaining consistency between New Zealand animal product standards and any relevant standards, requirements, or recommended practices that apply or are accepted internationally: | 35 |

| | |
|---|----|
| <p>(e) the relative costs of having the scheme or not having it, who bears the cost, and any positive and negative impacts on consumers and users:</p> <p>(f) whether the scheme option proposed or selected is the most cost-effective way of achieving its prime purpose:</p> <p>(g) any other matters the Minister considers relevant.</p> | 5 |
| | |
| 83 Section 41 amended (Emergency control schemes) | |
| (1) Replace section 41(1)(b)(i) with: | |
| (i) make or amend regulations under section 40 or issue or amend a supplementary notice or a notice referred to in section 38(2)(b) ; or | 10 |
| (2) In section 41(2), replace “of the matters specified in sections 39 and 40” with “matter that could be included in regulations made under section 40 or a supplementary notice”. | |
| (3) In section 41(8), delete “at any time”. | |
| | |
| 84 Part 4 heading amended | 15 |
| In the Part 4 heading, delete “ and specifications ”. | |
| | |
| 85 Section 42 replaced (Object of this Part) | |
| Replace section 42 with: | |
| 42 Animal product standards | |
| (1) This Part provides for the setting of standards that must be met before any animal product produced or processed for reward or trade or for export from New Zealand may be considered fit for intended purpose. | 20 |
| (2) The standards may be set— | |
| (a) by regulations made under section 44, which may be supplemented by supplementary notices; or | 25 |
| (b) by order made under section 46. | |
| | |
| 86 Section 43 amended (Application of standards and specifications) | |
| (1) In the heading to section 43, delete “ and specifications ”. | |
| (2) In section 43, delete “and specifications”. | |
| | |
| 87 Section 44 amended (Regulations may prescribe animal product standards) | 30 |
| (1) Replace section 44(1) with: | |
| (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing standards that must be complied | |

- with to ensure that animal products produced or processed for reward or trade or for export from New Zealand are fit for their intended purpose.
- (2) Repeal section 44(3), (4), and (6).
- (3) In section 44(7), replace “prescribing any standards” with “determining whether to make a recommendation”. 5
- (4) ~~In section 44(8), replace “prescribing” with “making”.~~
- (5) ~~In section 44(8), delete “appropriate”.~~
- (4) Repeal section 44(8).
- 88 Section 45 repealed (Director-General may issue specifications supplementary to animal product standards)** 10
Repeal section 45.
- 89 Section 46 amended (Emergency animal product standards and specifications)**
- (1) In the heading to section 46, delete “**and specifications**”.
- (2) In section 46(1), delete “and specifications”. 15
- (3) Replace section 46(1)(b)(i) with:
- (i) make or amend regulations under section 44 or issue or amend a supplementary notice; or
- (4) In section 46(2), replace “of the matters specified in sections 44 and 45” with “matter that could be included in regulations made under section 44 or a supplementary notice”. 20
- (5) In section 46(7), replace “or specification prescribed or issued under section 44 or section 45” with “or supplementary notice”.
- (6) In section 46(8), delete “at any time”.
- 90 Section 48 amended (Exporters of animal products for human or animal consumption, and certain other animal material and products, must be registered)** 25
- (1) Replace section 48(1)(b)(ii) with:
- (ii) by the regulations or any supplementary notice; or
- (iii) by notice as referred to in section 50. 30
- (2) Replace section 48(2)(b)(i) with:
- (i) export requirements apply; and
- 91 Section 49 amended (Registration of exporters of non-edible, etc, material or products may be required by Order in Council)**
- ~~In section 49(3)(b), delete “appropriate”.~~ 35
- Replace section 49(3) with:

- (3) The Minister may not recommend the making of an order under this section unless satisfied that the order is necessary or desirable—
- (a) in the interests of protecting the health of humans or animals, or otherwise to ensure the fitness for intended purpose of the animal product concerned; or 5
- (b) for the purpose of facilitating access to overseas markets; or
- (c) to protect the integrity or reputation of New Zealand exports of animal material and products.
- 92 Section 50 amended (Director-General may exempt certain consignments)**
- (1) In the heading to section 50, after “**consignments**”, insert “, **animal material or animal products, or persons**”. 10
- (2) In section 50(1), replace “section 167” with “**section 167(1)**”.
- (3) Replace section 50(1)(d) with:
- (d) of a kind that the regulations permit, or an Order in Council made under section 9 permits, to be exempted under this section. 15
- (4) Repeal section 50(2).
- 93 Section 51 amended (Duties of exporters)**
- (1) In section 51(b)(i), replace “and specifications” with “and any supplementary notices”.
- (2) Replace section 51(b)(ii) with: 20
- (ii) any relevant export requirements; and
- (3) Replace section 51(c)(iii) with:
- (iii) do not or no longer meet relevant export requirements; or
- 94 Section 53 amended (Matters to be shown in register of exporters)**
- Replace section 53(c) with: 25
- (c) any other particulars required by the Director-General by notice under **section 167(1)**.
- 95 Section 54 amended (Applications for registration)**
- In section 54(1), replace “regulations under this Act” with “the regulations”.
- 96 Section 58 amended (Deregistration of exporters)** 30
- In section 58(1)(c), replace “under” with “for the purposes of”.
- 97 Section 60 amended (Export requirements)**
- (1) In section 60(1), replace “issued under this section” with “under **section 167(1)**”.

- (2) In section 60(2), replace “In specifying requirements under subsection (1) the Director-General may, where he or she considers it necessary or desirable,” with “The Director-General may, in the notice,”.
- (3) In section 60(3), replace “Requirements specified under subsection (1) may include” with “The Director-General may, in the notice, specify”. 5
- 98 Section 60A amended (Director-General to notify or make available export requirements)**
- (1) In section 60A(1)(a), replace “export requirements specified under section 60” with “notices specifying export requirements”.
- (2) In section 60A(1)(b), replace “those requirements” with “those notices”. 10
- 99 Section 60B amended (Exemption from requirements of food standards where appropriate)**
- (1) In the heading to section 60B, after “standards”, insert “or animal product standards”.
- (2) In section 60B(1), replace “section 167” with “**section 167(1)**”. 15
- (3) In section 60B(1)(a), replace “standards specified by notice under section 167 of this Act” with “animal product standards or supplementary notice”.
- (4) Replace section 60B(2) with:
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations granting exemptions of the kind referred to in subsection (1)(a) or (b). 20
- (3) The Minister may not recommend the making of regulations under **subsection (2)** unless satisfied that it is appropriate to do so having regard to the requirements of the relevant overseas market.
- 100 Section 61 amended (Director-General may issue official assurances)** 25
- (1) In section 61(2)(b), replace “set under this Act” with “and any supplementary notices”.
- (2) In section 61(2)(c), replace “requirements specified by notice under section 60A” with “export requirements”.
- 101 Section 62 amended (Form and content of official assurance)** 30
- Repeal section 62(4).
- 102 Section 63 amended (Obtaining of official assurance)**
- After section 63(2), insert:
- (3) The Director-General may, by notice under **section 167(1)**, do either or both of the following: 35
- (a) set out requirements and procedures for the issue and control of official assurances:

- (b) set out other matters in relation to the obtaining of official assurances.
- (4) Matters set out in notices under **subsection (3)** are in addition to matters (if any) prescribed by regulations made under section 166(1)(g).
- 103 Section 65B amended (What is a game estate?)**
- (1) In the heading to section 65B, delete “?”. 5
- (2) In section 65B, replace “notice under section 167” with “the Director-General by notice under **section 167(1)**”.
- 104 Section 65C amended (Use and disposal of animal material and product from game estate animals)**
- In section 65C(4)(c), replace “section 167” with “**section 167(1)**”. 10
- 105 Section 65F amended (Matters to be shown in list of game estates)**
- Replace section 65F(e) with:
- (e) any other particulars required by the Director-General by notice under **section 167(1)**.
- 106 Section 67 amended (Homekill allowed)** 15
- In section 67(2)(b)(ii), replace “section 167” with “**section 167(1)**”.
- 107 Section 68 amended (Processing of recreational catch)**
- In section 68(2)(b)(ii), replace “section 167” with “**section 167(1)**”.
- 108 Section 69 amended (Homekill and recreational catch service providers)**
- (1) In section 69(1)(c), replace “regulations made under this Act” with “the regulations or any supplementary notice”. 20
- (2) In section 69(3)(b), replace “section 167” with “**section 167(1)**”.
- 109 Section 71 amended (Requirements for dual operator butchers)**
- (1) Replace section 71(1)(c) with:
- (c) the dual operator butcher must operate under a risk management programme in respect of all regulated animal products at the premises or place (and accordingly is deemed to have made an election under section 32 in respect of those animal products): 25
- (2) After section 71(2), insert:
- (3) For the avoidance of doubt, **subsection (1)(c)** does not prevent a person from operating under the Food Act regime in respect of food that is not animal product. 30

110 Section 72 amended (Product processed by homekill or recreational catch service provider ceases to be regulated animal product)

In section 72(1), delete “at any time”.

111 Section 74 amended (Matters to be shown in list of homekill and recreational catch service providers)

5

Replace section 74(e) with:

- (e) any other particulars required by the Director-General by notice under **section 167(1)**.

112 New Part 6A inserted

After section 77, insert:

10

Part 6A
General obligations

77A Interpretation

In this Part, **regulated person** means any of the following:

- (a) the operator of an animal product business: 15
- (b) the operator of a registered risk management programme:
- (c) an exporter:
- (d) a person subject to a regulated control scheme:
- (e) a game estate operator:
- (f) a homekill or recreational catch service provider: 20
- (g) a person who is in charge of animal material, animal products, or animals for the purposes of an animal product business or a game estate:
- (h) any other person—
- (i) who has, or is in a class of persons who have, any obligation under this Act; and 25
- (ii) who is, or is in a class of persons that is, specified by the regulations.

Subpart 1—Tracing and recall

77B Tracing and recall requirements

A regulated person must, as and when required by regulations made under **section 77C** or any supplementary notice,— 30

- (a) have in place any procedures for tracing and recalling animal material or animal products; and
- (b) conduct simulations or other tests of those procedures; and

- (c) implement those procedures to trace or recall animal material or animal products.

77C Regulations relating to tracing and recall

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements that apply to regulated persons in relation to tracing and recalling animal material or animal products. 5
- (2) The regulations may (without limitation) do any or all of the following:
 - (a) identify the regulated persons who are required to have procedures for tracing and recalling animal material or animal products:
 - (b) set requirements relating to— 10
 - (i) the content of those procedures:
 - (ii) the conducting of simulations and other tests of those procedures:
 - (iii) the implementation of those procedures to trace or recall animal material or animal products:
 - (c) specify matters in relation to tracing and recall that must be included in risk management programmes (*see* section 17). 15

Subpart 2—Verification

77D Verification

A regulated person must comply with any requirements relating to verification that are prescribed by regulations made under **section 77F** or any supplementary notice. 20

77E Obligation of persons subject to verification requirements

A person who is subject to verification requirements under this Act must—

- (a) give the verifier—
 - (i) the access to places, things, and information that the verifier reasonably needs to undertake the verification; and 25
 - (ii) any reasonable assistance requested by the verifier to undertake the verification; and
- (b) comply with any other requirements relating to the verification set out in any of the following: 30
 - (i) regulations made under **section 77F** or any supplementary notice:
 - (ii) if the person is the operator of a risk management programme, that programme:
 - (iii) if the person is subject to a regulated control scheme, that scheme. 35

77F Regulations relating to verification

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements in relation to verification of any or all of the following:
- (a) risk management programmes: 5
 - (b) regulated control schemes: 5
 - (c) animal material or animal products for whose export an official assurance is required:
 - (d) compliance by regulated persons with requirements imposed by or under this Act.
- (2) The regulations may (without limitation) do any or all of the following: 10
- (a) in relation to verification of risk management programmes or regulated control schemes, specify the operations, or the parts of the operations, that must be verified:
 - (b) set requirements relating to the frequency, intensity, and cost of verification: 15
 - (c) specify matters in relation to verification that must be included in risk management programmes (*see* section 17):
 - (ca) set out matters relating to the rights of verifiers and verifying agencies in relation to the undertaking of verification activities:
 - (d) set reporting requirements for verifiers (*see* section 112H): 20
 - (e) set out requirements relating to the exercise, carrying out, and managing of verification functions and activities (*see* sections 112G and 112H).

Subpart 3—Record keeping and reporting

77G Record-keeping and reporting requirements

- (1) A regulated person, recognised person, or recognised agency must— 25
- (a) collect the required information; and
 - (b) keep that information in the required manner and for the required period; and
 - (c) give that information to—
 - (i) the Director-General, an animal product officer, or an official assessor at all reasonable times on request; and 30
 - (ii) any other person as required.
- (2) In this section,—
- give**, in relation to information, includes—
- (a) to give access to the information; and 35
 - (b) to permit the inspection of the information; and

(c) to permit the making of copies of the information

required means required by any of the following:

- (a) this Act:
- (b) the regulations or any supplementary notice:
- (c) a notice referred to in **section 77H(2)**.

5

77H Regulations and notices relating to record keeping and reporting

(1) The Governor-General may, by Order in Council, make regulations prescribing requirements in relation to record keeping and reporting by regulated persons, recognised persons, and recognised agencies.

(2) The Director-General may, by notice under **section 167(1)**, prescribe requirements in relation to record keeping and reporting by regulated persons, recognised persons, and recognised agencies (in addition to requirements (if any) prescribed by the regulations).

10

(3) The regulations or notice may (without limitation) do any or all of the following:

15

(a) set requirements relating to—

- (i) what information must be collected:
- (ii) how, and for how long, the information must be kept:
- (iii) what information must be given under **section 77G(1)(c)** and when, how, and to whom it must be given:

20

(b) specify matters in relation to record keeping and reporting that must be included in risk management programmes (*see* section 17).

113 Cross-heading above section 78 replaced

Replace the cross-heading above section 78 with:

Animal product officers and official assessors

25

114 Section 79 amended (Appointment of official assessors)

(1) After section 79(2), insert:

(2A) A person must not be appointed as an official assessor unless the person has the competencies, qualifications, and experience, and meets any other prerequisites for appointment, set out in the regulations or any supplementary notice or by the Director-General by notice under **section 167(1)**.

30

(2) In section 79(5), delete “at any time”.

115 Section 80 amended (Director-General may issue notices)

In section 80, replace “from time to time issue notices as specified in” with “issue notices under”.

35

- 116 Section 81A amended (Director-General may require declarations as to supply or movement of animals, animal material, or animal products)**
In section 81A(1), replace “section 167” with “**section 167(1)**”.
- 117 Section 81B amended (Director-General may impose movement and related controls)** 5
(1) In section 81B(7), delete “at any time”.
(2) In section 81B(8)(a), replace “of a kind listed in section 167” with “made under **section 167(1)**”.
- 118 Section 82 amended (Power to direct disposal, etc, of animal material or product in certain circumstances)** 10
In section 82(1)(e), replace “relevant regulations” with “scheme”.
- 119 Section 83 amended (Director-General may give statements as to New Zealand animal product standard)**
(1) In section 83(1), replace “standard.” with “standard and any supplementary notices.” 15
(2) In section 83(2), before “standard”, insert “animal product”.
(3) In section 83(4), delete “at any time”.
- 120 Section 84 amended (Privileged statements by Director-General)**
In section 84(1), after “protecting”, insert “or informing”.
- 121 New sections 86A and 86B inserted** 20
Before section 87, insert:
- 86A Power to issue improvement notice**
- (1) An animal product officer may issue an improvement notice to any person if the officer reasonably believes that the person is failing, or has failed, to comply with 1 or more requirements imposed by or under this Act. 25
- (2) An improvement notice must state—
- (a) the requirement that the officer reasonably believes the person is failing, or has failed, to comply with; and
- (b) the reasons for the officer’s reasonable belief; and
- (c) the nature and extent of the failure to comply with the requirement; and 30
- (d) the date by which the person must comply with the requirement; and
- (e) the person’s right, under **section 86B**, to seek a review of the decision to issue the improvement notice.
- (3) An animal product officer may, by written notice, withdraw an improvement notice, but may reissue it if **subsection (1)** applies. 35

| | | |
|------------|---|----|
| (4) | An improvement notice must be served in accordance with section 165. | |
| (5) | A person to whom an improvement notice is issued must comply with the notice, subject to any extension of the date by which the person must comply with the applicable requirement that the animal product officer may grant on the person's request. | 5 |
| 86B | Review of improvement notice | |
| (1) | A person to whom an improvement notice is issued under section 86A may apply to the Director-General to have the decision to issue it reviewed. | |
| (2) | Section 162(2) to (8) applies in relation to the application and review as if the decision to issue the notice were a decision to which that section applies. | 10 |
| (3) | The Director-General may initiate a review of a decision to issue an improvement notice on the Director-General's own initiative and without an application for review being made. | |
| (4) | For the purposes of subsection (3) , section 162(3A), (4), (6), (7), and (8) applies in relation to the review as if— | 15 |
| (a) | the decision to issue the notice were a decision to which that section applies and the person to whom it was issued had applied for a review; and | |
| (b) | the maximum time allowed under section 162(4) were 120 days from the date on which the improvement notice was issued. | |
| 122 | Section 90 amended (Power to condemn and require disposal of animal products that are diseased, contaminated, etc) | 20 |
| | In section 90(1)(a) and (c), replace “standards and specifications for the time being in force” with “animal product standards and any supplementary notices”. | |
| 123 | New sections 91B and 91C inserted | 25 |
| | After section 91A, insert: | |
| 91B | Matters may be continued by different animal product officer | |
| (1) | An action initiated or taken under this Act by an animal product officer may be continued by another animal product officer. | |
| (2) | Without limiting subsection (1) , if an officer has given any notice, authorisation, or consent under this Act (whether or not subject to conditions), any animal product officer may— | 30 |
| (a) | take further action in relation to that notice, authorisation, or consent; or | |
| (b) | revoke or withdraw it; or | |
| (c) | vary it; or | 35 |
| (d) | revoke or vary any condition on or subject to which it was given. | |

| | |
|--|----|
| 91C Opinion or belief of animal product officer | |
| If this Act requires an animal product officer to hold a particular opinion or belief about something before exercising a power, it is sufficient if a more senior animal product officer or the Director-General holds that opinion or belief and directs the animal product officer to exercise the power. | 5 |
| 124 Section 93 amended (Powers of official assessors) | |
| In section 93(3)(a), replace “issued by the Director-General by notice under section 167” with “prescribed by the regulations or any supplementary notice or by the Director-General by notice under section 167(1) ”. | |
| 125 Section 99 amended (Outline of this Part) | 10 |
| In section 99(a) and (b), delete “recognised risk management programme”. | |
| 126 Section 100 amended (Interpretation) | |
| In section 100, definition of requirements of this Act , replace paragraphs (b) and (c) with: | |
| (b) the regulations or any supplementary notice; or | 15 |
| (c) a notice issued under section 167(1) . | |
| 127 Section 112G amended (Duties of recognised agencies) | |
| (1) After section 112G(1)(f), insert: | |
| (fa) if it is a verifying agency, has for each operator for which it carries out verification functions and activities a copy of the following: | 20 |
| (i) the operator’s risk management programme or, if it has been given an updated copy of the programme under section 26A, the latest updated copy; and | |
| (ii) any subsequent amendments given to the verifier under section 25(5); and | 25 |
| In section 112G(1)(g), after “all”, insert “other”. | |
| 127A Section 112H amended (Duties of recognised persons) | |
| In section 112H(e)(ii), delete “recognised risk management programme”. | |
| 128 New section 112IA inserted (Recognised agency and recognised person accountable to Director-General) | 30 |
| After section 112I, insert: | |
| 112IA Recognised agency and recognised person accountable to Director-General | |
| (1) A recognised agency is, in carrying out its specified functions and activities, accountable to the Director-General. | 35 |

- (2) A recognised person is, in carrying out his or her specified functions and activities, accountable to the Director-General.
- 129 Section 112T amended (Contents of public register)**
- Replace section 112T(1)(e) with:
- (e) any other particulars required by the regulations or any supplementary notice. 5
- 130 Section 112Y amended (Director-General may require notification of termination of contracts)**
- (1) In section 112Y(1), replace “section 167, require any recognised risk management programme verifier or recognised risk management programme” with “**section 167(1)**, require any verifier or”. 10
- (2) Repeal section 112Y(2).
- (3) In section 112Y(3), delete “recognised risk management programme” in each place.
- 131 Section 113 amended (Principles of cost recovery)** 15
- In section 113(3), delete “appropriate”.
- 132 Section 115 amended (Cost recovery to relate generally to a financial year)**
- In section 115(1), delete “under this Part”.
- 133 Section 115A repealed (Application of section 115(1) to assurances in respect of export licences issued under Dairy Industry Restructuring Act 2001)** 20
- Repeal section 115A.
- 134 Section 117 amended (Fees and charges to be prescribed by regulations)**
- (1) Replace section 117(1) with:
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing fees and charges for the purposes of this Act, including fees or charges— 25
- (a) for applications, renewals, or related matters under this Act (for example, for applications for registration under Part 2 or 5 or for applications for recognition under Part 8); and 30
- (b) payable on an ongoing basis by a person given a particular status under this Act (for example, for ongoing registration under Part 2 or 5, for ongoing listing under Part 6, or for ongoing recognition under Part 8).
- (2) In section 117(2), after “fees”, insert “and charges”.
- (3) In section 117(4A), replace “under section 167” with “by notice under **section 167(1)**”. 35

135 Section 118 amended (Regulations may impose levies)

(1) Replace section 118(1) with:

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing levies for the purposes of this Act, including levies payable on an ongoing basis by a person given a particular status under this Act (for example, for ongoing registration under Part 2 or 5, for ongoing listing under Part 6, or for ongoing recognition under Part 8). 5

(2) Replace section 118(4) with:

(4) ~~Where regulations prescribe a formula for determining a levy, the formula may specify the value of 1 or more of its components as being an amount or amounts notified for those components by the Director-General by notice under **section 167(1)**.~~ 10

(5) ~~The Minister may not recommend the making of regulations under this section unless satisfied that,—~~

(a) ~~to the extent appropriate in the circumstances, the requirements of sections 113 and 115 have been met; and~~ 15

(b) ~~there has been consultation in accordance with section 163.~~

(2) After section 118(4), insert:

(5) Where regulations prescribe a formula for determining a levy, the formula may specify the value of 1 or more of its components as being an amount or amounts notified for those components by the Director-General by notice under **section 167(1)**. 20

136 Section 121 amended (Exemptions, waivers, and refunds)

(1) In section 121(1), replace “Regulations made under this Act” with “The regulations”. 25

(2) After section 121(2), insert:

(3) An exemption or a waiver granted under this section expires on the date specified in it, which must not be more than 5 years after the exemption is granted.

137 New sections 125A to 125E and cross-headings inserted

Before section 126, insert: 30

*Infringement offences***125A Proceedings for infringement notices**

(1) This section applies when a person is alleged to have committed an infringement offence.

(2) The person may— 35

(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

- (b) be served with an infringement notice as provided in **section 125B** and, in that case, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- (3) Proceedings commenced in the way described in **subsection (2)(a)** do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. 5
- 125B Issue and cancellation of infringement notices**
- (1) An infringement notice may be served on a person if an animal products officer—
- (a) observes the person committing an infringement offence; or 10
- (b) reasonably believes that the person is committing an infringement offence; or
- (c) reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may be cancelled by an animal products officer if— 15
- (a) the interests of justice require cancellation; and
- (b) neither the particulars of a reminder notice nor a notice of hearing relating to the infringement notice has been filed in a District Court.
- (3) An infringement notice is cancelled by the service of a cancellation notice.
- (4) An infringement notice or a cancellation notice may be served by an animal products officer personally delivering it to the person alleged to have committed the infringement offence. 20
- (5) Alternatively, an infringement notice or a cancellation notice may be served by post addressed to,—
- (a) if the person is a natural person,— 25
- (i) the address of the person’s last-known place of residence; or
- (ii) the address on the person’s driving licence; or
- (iii) the person’s address on the latest electoral roll; or
- (iv) the person’s last-known registered address, if the person has or has had a registered address for any purpose; or 30
- (v) the person’s address in the latest telephone directory; or
- (vi) the address of the person’s last-known place of business; or
- (b) if the person is not a natural person,—
- (i) the person’s last-known registered address, if the person has or has had a registered address for any purpose; or 35
- (ii) the person’s address in the latest telephone directory; or
- (iii) the address of the person’s last-known place of business.

- (6) For the purposes of the Summary Proceedings Act 1957, an infringement notice or a cancellation notice served under **subsection (5)** is treated as having been served on the person when it was posted.

125C Form of infringement notice

- (1) An infringement notice must be in the form set out in the regulations. 5
- (2) The form must contain the following details:
- (a) sufficient details to inform the person served with the notice of the time, place, and nature of the alleged offence; and
 - (b) the amount of the infringement fee for the offence; and
 - (c) the time within which the infringement fee must be paid; and 10
 - (d) the address of the place at which the infringement fee must be paid; and
 - (e) a statement of the person’s right to ask for a hearing; and
 - (f) a statement of the person’s right to ask for cancellation of the notice; and
 - (g) a statement of what will happen if the person does not pay the infringement fee or ask for a hearing or ask for cancellation of the notice; and 15
 - (h) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957.

125D Payment of infringement fees

All infringement fees paid for infringement offences must be paid to the Ministry. 20

125E Regulations about infringement offences

The Governor-General may, by Order in Council, make regulations to do all or any of the following:

- (a) identify the offences in or under this Act that are infringement offences:
- (b) identify as an infringement offence an offence against section 135 for failing to comply with a specified provision, direction, condition, notice, or requirement; 25
- (c) set out notices and forms required for the purposes of **sections 125A to 125D**:
- (d) set out the amounts, up to \$1,000, of infringement fees that are payable for infringement offences, including different fees for a first offence, a second offence, and subsequent offences. 30

Offences

138 Section 130 amended (Offence to export unless registered)

In section 130(1), replace “regulations made under this Act” with “the regulations or any supplementary notice”. 35

139 Section 133 amended (Obstruction of officers, etc)

- (1) In section 133(1)(a), delete “recognised risk management programme”.
- (2) In section 133(2), replace “official assessor, recognised risk management programme verifier or recognised risk management programme verifying agency,” with “an official assessor, or an agency”.

5

140 New section 133A inserted (Offences involving automated electronic system)

After section 133, insert:

133A Offences involving automated electronic system

- (1) A person commits an offence who intentionally obstructs or hinders an automated electronic system that is doing an action under **section 165B**.
- (2) A person commits an offence who knowingly damages or impairs an automated electronic system.
- (3) A person who commits an offence against this section is liable on conviction,—
 - (a) for a body corporate, to a fine not exceeding \$250,000;
 - (b) for an individual, to imprisonment for a term not exceeding 3 months and a fine not exceeding \$50,000.

10

15

141 Section 135 amended (Failure to comply with Act, etc)

Replace section 135(1)(b) with:

- (b) any provision of the regulations the failure to comply with which is identified in the regulations as an offence; or

20

142 Section 140 amended (Evidence in proceedings)

- (1) In section 140(1)(a)(i), delete “recognised risk management programme” in each place.
- (2) In section 140(1)(d), replace “section 167” with “section 168”.
- (3) In section 140(3), replace “or specifications” with “, notices, or orders”.

25

143 Section 145 replaced (Time limit for filing charging document for offence against section 129 or 135)

Replace section 145 with:

30

144A Order to pay amount because of commercial gain

- (1) This section applies to a person convicted of an offence against any of sections 126, 127 (other than paragraph (1)(c)), 128, 129, 130, 131, 132, **133A**, 134, and 135.

- (2) The court may make an order under **subsection (4) or (5)** if it is satisfied that the offence was committed in the course of producing a commercial gain.
- (3) The court may make the order in addition to, or instead of, a penalty that the court may impose under the relevant offence provision.
- (4) The court may make an order under this subsection whether or not the person is a body corporate. The order is that the person pay an amount up to 3 times the value of the commercial gain resulting from committing the offence. 5
- (5) The court may make an order under this subsection if the person is a body corporate and the value of the gain cannot be readily ascertained. The order is that the person pay an amount up to 10% of the combined turnover of the body corporate and every interconnected body corporate it has over the period of the offending. 10
- (6) The court must assess the value of a gain that is readily ascertainable.
- (7) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine. 15
- (8) In this section, **interconnected** and **turnover** have the same meanings as in the Commerce Act 1986.
- 145 Charging documents**
- Despite anything to the contrary in the Criminal Procedure Act 2011, a charging document in respect of any offence against this Act may be filed in any case within 4 years after the time when the offence was committed or within any longer time allowed by that other Act. 20
- 144 Section 147 amended (Application for compliance order)**
- In section 147(1), delete “at any time”.
- 145 Section 152 amended (Change or cancellation of compliance order)** 25
- (1) In section 152(1), replace “at any time apply to a District Court in the prescribed manner” with “apply to a District Court in the manner set out in rules made under section 157”.
- (2) In section 152(2), replace “prescribed manner” with “manner set out in the rules”. 30
- 146 Sections 158, 159, and 160 and cross-headings replaced**
- Replace sections 158, 159, and 160 and the cross-headings above sections 158 and 159 with:
- Identification, differentiation, and security systems and devices*
- 158 Identification, differentiation, and security systems and devices** 35
- (1) The Director-General may, by notice under **section 167(1)**, approve systems and devices for any of the following purposes:

- (a) facilitating the management and auditing of risks in relation to animal material and animal products:
- (b) marking the presence or absence in animal material or animal products of particular qualities or standards relating to the purposes of this Act:
- (c) indicating the intended purpose of any animal material or animal product: 5
- (d) supporting requirements in relation to official assurances.
- (2) In determining whether to approve a system or device, the Director-General must have regard to the need to—
- (a) provide unique, clear, and lasting identification, differentiation, or security having regard to the purpose for which identification, differentiation, or security is needed; and 10
- (b) not create confusion with any other generally used systems or devices; and
- (c) minimise the risk of misuse of approved systems and devices. 15
- (3) The Director-General may also, by notice under **section 167(1)**, do all or any of the following:
- (a) set out persons or classes of persons who may operate or use approved systems or devices:
- (b) if a system or device is approved only if it is manufactured by an approved manufacturer, approve persons as manufacturers of the system or device: 20
- (c) set out requirements relating to the use and security of approved systems or devices:
- (d) set out requirements relating to the security of the processes used to manufacture approved systems or devices: 25
- (e) set out requirements relating to the approval of systems or devices.
- (4) A person using an approved system or device for the purposes of this Act must comply with any requirements prescribed by the regulations or any supplementary notice in relation to its use. 30
- (5) In this section,—
- approved system or device** means a system or device that is approved under **subsection (1)**
- system or device** means a system or device that provides for the identification, differentiation, or security of animal material, animal products, premises or other places, or other matters or things. 35

Use of information

- 147 Section 161 amended (Disclosure of information for purpose of ensuring product safety, etc)**
- In section 161(5)(c), delete “recognised risk management programme” in each place.
- 148 Section 162 amended (Right of review of certain decisions made under delegated authority)** 5
- (1A) In section 162(1)(b), replace “part-business” with “part of a business”.
- (1) In section 162(1)(f), delete “or to suspend export operations”.
- (2) After section 162(1)(n), insert:
- (o) any decision specified by the regulations as a decision that is subject to review under this section. 10
- (3) In section 162(2), delete “or by a person designated by the Director-General who was not involved in making the original decision”.
- (4) After section 162(3), insert:
- (3A) The Director-General may conduct the review personally or designate another person who was not involved in the original decision to conduct the review. 15
- (5) In section 162(4), replace “, or a person designated by the Director-General who was not involved in the original decision,” with “or designated person”.
- (6) In section 162(8), after “Director-General”, insert “or a designated person”.
- 149 Section 163 amended (Consultation requirements for making of certain Orders in Council, specifications, etc)** 20
- (1) In the heading to section 163, replace “**specifications, etc**” with “**regulations, and notices**”.
- (2) ~~In section 163(1), replace “section 38” with “**section 40**”.~~
- (2) In section 163(1), replace “section 9 (exclusion from ambit of Act), section 15 (inclusion within requirement to have risk management programme), section 38 (regulated control schemes), section 44 (animal product standards), section 49 (inclusion within requirement for exporters to be registered), or section 118 (levies),” with “a provision listed in **subsection (2)**.”. 25
- (3) ~~Repeal section 163(2).~~ 30
- (3) Replace section 163(2) with:
- (1A) Before making a notice to supplement a regulation made under a provision listed in **subsection (2)**, the Director-General must—
- (a) carry out consultation in accordance with subsection (3); and
- (b) take into account the results of that consultation. 35
- (2) The provisions referred to in subsections (1) and **(1A)** are as follows:
- (a) section 9 (Exemptions from ambit of Act by Order in Council):

- (b) section 15 (Certain persons may be required to have risk management programme by Order in Council):
- (c) **section 40** (Regulations about regulated control schemes):
- (d) section 44 (Regulations may prescribe animal product standards):
- (e) section 49, if the order is made on the ground set out in **section 49(3)(a)** (Registration of exporters of non-edible, etc, material or products may be required by Order in Council): 5
- (f) **section 77C** (Regulations relating to tracing and recall):
- (g) **section 77F** (Regulations relating to verification):
- (h) **section 77H** (Regulations and notices relating to record keeping and reporting): 10
- (i) section 118 (Levies):
- (j) **section 125E** (Regulations about infringement offences):
- (k) section 166 (Regulations).
- (4) In section 163(3)(a), replace “order or regulations or the setting of the relevant specifications or requirements referred to in subsections (1) and (2)” with “Order in Council, regulations, or notice”. 15
- (5) In section 163(3)(b), after “Council”, insert “or proposed regulations”.
- (6) In section 163(4)(a), replace “order or set the specifications or requirements” with “Order in Council, regulations, or notice”. 20
- (7) Replace section 163(5) and (6) with:
- (5) This section does not apply in relation to any Order in Council, regulations, or notice if the Minister or Director-General considers it necessary or desirable in the public interest that the Order in Council, regulations, or notice be made or issued as a matter of urgency. 25
- (6) A failure to comply with this section does not affect the validity of any Order in Council, regulations, or notice.
- 150 Section 164 amended (Notification of certain matters)**
- (1) In the heading to section 164, replace “**certain matters**” with “**notices under section 167**”. 30
- (2) Replace section 164(1) with:
- (1) This section applies to notices issued by the Director-General under **section 167** (other than notices in relation to the matters set out in section 60).
- (3) In section 164(2)(b)(i), replace “specifications, requirements, exemption, or other matter concerned” with “notice”. 35
- (4) Replace section 164(3) with:
- (3) For any other notice, the Director-General must—

- (a) publish the notice, or notification that it has been issued, in the *Gazette*; and
- (b) where the Director-General considers it practicable, cause the notice to be brought to the attention of persons likely to be affected by it by notice or publication in any newspaper or trade journal, or by any other practicable means (including electronic means). 5
- (5) In section 164(4), replace “specifications, requirements, exemption, or other matter concerned are notified only, and not published,” with “notice is not published in full”.

151 New sections 165B and 165C and cross-heading inserted 10

After section 165A, insert:

Automated electronic systems

165B Arrangement for system

- (1) The Director-General may arrange for the use of an automated electronic system to do the actions described in **subsection (2)** that this Act or another enactment allows or requires the persons described in **subsection (3)** to do for the purposes of this Act. 15
- (2) The actions are—
- (a) exercising a power:
- (b) carrying out a function: 20
- (c) carrying out a duty:
- (d) making a decision, including making a decision by—
- (i) analysing information that a person described in **subsection (3)** holds or has access to about a person, goods, or craft; and
- (ii) applying criteria predetermined by the Director-General to the analysis: 25
- (e) doing an action for the purpose of exercising a power, carrying out a function or duty, or making a decision:
- (f) communicating the exercising of a power, carrying out of a function or duty, or making of a decision. 30
- (3) The persons are—
- (a) the Director-General:
- (b) animal products officers:
- (c) official assessors:
- (d) persons designated under section 65 to issue official assurances. 35
- (4) The Director-General may make an arrangement only if satisfied that—

- (a) the system has the capacity to do the action with reasonable reliability; and
- (b) a process is available under which a person affected by an action done by the system can have the action reviewed by a person described in **subsection (3)** without undue delay. 5
- (5) A system used in accordance with an arrangement may include components outside New Zealand.
- (6) The Director-General must consult the Privacy Commissioner about including in an arrangement actions that involve the collection or use of personal information. 10
- 165C Effect of use of system**
- (1) This section applies to an action done by an automated electronic system.
- (2) An action allowed or required by this Act done by the system—
- (a) is treated as an action done properly by the appropriate person referred to in **section 165B(3)**; and 15
- (b) is not invalid by virtue only of the fact that it is done by the system.
- (3) If an action allowed or required by another enactment done by the system is done in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action—
- (a) is treated as an action done properly by the appropriate person referred to in **section 165B(3)**; and 20
- (b) is not invalid by virtue only of the fact that it is done by the system.
- (4) If the system operates in such a way as to render the action done or partly done by the system clearly wrong, the action may be done by the appropriate person referred to in **section 165B(3)**. 25

152 Section 166 amended (Regulations)

- (1) In section 166(1), delete “from time to time”.
- (2) Replace section 166(1)(a) to (d) with:
- (aa) prescribing, in relation to risk management programmes (*see* section 17),— 30
- (i) requirements relating to the content of programmes:
- (ii) other requirements relating to programmes:
- (iii) how programmes are to be differentiated from other information kept by operators:
- (ab) prescribing, in relation to the registration of risk management programmes (*see* sections 19 and 20),— 35
- (i) the particulars to be shown in the register:

- (ii) when part only of a risk management programme may be lodged and the parts that must be lodged: 5
- (iii) information and other material that must accompany applications for registration: 5
- (iv) how accompanying information and material is to be provided to the Director-General: 5
- (ac) prescribing, in relation to significant amendments to registered risk management programmes (*see* section 25),—
 - (i) the kinds of amendments that require registration under section 25 and those that do not: 10
 - (ii) how long before a known change, event, or other matter an application for registration of an amendment to the programme must be made: 10
 - (iii) information and other material that must accompany applications for registration: 15
 - (iv) how accompanying information and material is to be provided to the Director-General: 15
 - (v) other requirements relating to registration of significant amendments: 15
- (ad) prescribing, in relation to minor amendments to registered risk management programmes (*see* section 26),— 20
 - (i) the intervals at which notification must be given to the Director-General: 20
 - (ii) information and other material that must accompany a notification: 25
 - (iii) other requirements relating to notification of minor amendments: 25
- (ae) ~~prescribing the intervals at which an updated registered risk management programme must be given to the verifying agency (*see* **section 26A**):~~
- (af) prescribing, in relation to the relationship between the Food Act regime and risk management plans (*see* sections 32 to 34),— 30
 - (i) when and to what extent **section 34(3)(b) or (c)** does not apply: 30
 - (ii) requirements for determining whether all or any classes of registered food control plans are to be subject to the verification regime of this Act or the Food Act 2014: 30
 - (iii) any other requirements relating to elections to operate under a risk management programme under section 34: 35
 - (iv) matters relating to the registration of food control plans as risk management programmes: 35
- (d) prescribing, in relation to exports,—

| | | |
|------------|--|----|
| | (i) exemptions for any class of consignment, animal material or product, or person for the purposes of section 48: | |
| | (ii) the kinds of consignments and animal material and products in relation to which the Director-General may grant exemptions under section 50(1): | 5 |
| (3) | After section 166(1)(ea)(ii), insert: | |
| | (ia) in order for an agency, a person, or a class of persons to maintain recognition: | |
| (4) | Replace section 166(1)(h) to (j) with: | |
| | (ga) specifying persons, or classes of persons, for the purposes of the definition of regulated person in section 77A : | 10 |
| | (h) prescribing requirements relating to the use of approved systems or devices (<i>see</i> section 158(4)): | |
| (5) | After section 166(1)(o), insert: | |
| | (oa) specifying decisions as decisions that are subject to review under section 162: | 15 |
| | (ob) permitting supplementary notices to be made to supplement specified provisions of the regulations (<i>see</i> section 167(2)(b)): | |
| (6) | Repeal section 166(2). | |
| 153 | Section 167 replaced (Notices) | 20 |
| | Replace section 167 with: | |
| | 166A Scope of regulations | |
| (1) | Regulations made under this Act may do any or all of the following: | |
| | (a) authorise the Minister or Director-General to— | |
| | (i) impose requirements, conditions, restrictions, or prohibitions: | 25 |
| | (ii) issue approvals, directions, instructions, or orders: | |
| | (b) authorise an animal product officer or official assessor to— | |
| | (i) impose requirements, conditions, restrictions, or prohibitions: | |
| | (ii) issue directions or instructions: | |
| | (c) exempt, or authorise the Minister or Director-General to exempt, any animal material, animal product, person, place, business, process, operation, activity, or other matter or thing from any provision of the regulations: | 30 |
| | (d) authorise the Minister, the Director-General, or an animal product officer to decide a matter: | 35 |
| | (e) confer any other discretion on the Minister, the Director-General, or an animal product officer. | |

- (2) The regulations may—
- (a) apply generally, or in relation to any specified, or specified class of, animal materials, animal products, persons, places, businesses, processes, operations, activities, or other matters or things:
 - (b) make the same provision for all cases or different provisions for different cases or classes of case. 5
- (3) If a provision of this Act permits regulations to prescribe requirements, the regulations may prescribe requirements, specifications, criteria, procedures, conditions, or other matters of a similar kind.
- 167 Notices** 10
- (1) The Director-General may issue notices under this subsection to do anything that a provision of this Act permits to be done by notice under this subsection.
 - (2) The Director-General may issue notices under this subsection to prescribe matters,—
 - (a) if a provision of this Act refers to regulations and supplementary notices (for example by requiring something to be done in accordance with regulations and any supplementary notice), to supplement those regulations; or 15
 - (b) if the regulations permit supplementary notices to be made to supplement provisions of the regulations, to supplement those provisions of the regulations. 20
 - (3) The Director-General must not issue a notice under **subsection (2)** unless satisfied that the notice—
 - (a) sets out matters of detail to elaborate on matters provided for in the regulations; or 25
 - (b) sets out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
 - (c) sets out how requirements imposed by the regulations may or must be met; or
 - (d) otherwise supplements matters of general principle set out in the regulations. 30
 - (4) If a provision of this Act requires the Minister to be satisfied of any matter before recommending the making of regulations, the Director-General may not issue a notice under **subsection (2)** to supplement those regulations unless the Director-General is satisfied of that matter. 35
 - (5) A notice may—
 - (a) apply generally, or in relation to any specified, or specified class of, animal materials, animal products, persons, businesses, activities, or other matters or things:

| | |
|--|--------------------------------------|
| <ul style="list-style-type: none"> (b) make the same provision for all cases or different provisions for different cases or classes of case: (c) impose any conditions, restrictions, or prohibitions. | |
| <ul style="list-style-type: none"> (6) A notice issued under this section (other than one in relation to the matters set out in section 60) must be notified in accordance with section 164. | 5 |
| <ul style="list-style-type: none"> (7) If a notice issued under this section is inconsistent with the regulations, the regulations prevail to the extent of the inconsistency. | |
| 167A Application of Legislation Act 2012 to notices | |
| <ul style="list-style-type: none"> (1) The following notices issued under section 167(1) are neither disallowable instruments nor legislative instruments for the purposes of the Legislation Act 2012 and do not have to be presented to the House of Representatives under section 41 of that Act: <ul style="list-style-type: none"> (a) a notice issued for the purposes of section 38(2)(b) or 60: (b) a notice that— <ul style="list-style-type: none"> (i) is issued for the purposes of section 14, 24, 50, 81A, or 112Y; and (ii) applies only to a particular named person. (2) Any other notice issued under section 167(1), and any notice issued under section 167(2), is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. | 10 20 |
| 154 Section 168 amended (Incorporation of material by reference into regulations, notices, and orders) | |
| Replace section 168(6) with: | |
| <ul style="list-style-type: none"> (6) A standard work of reference is a work of reference that the Director-General considers is accepted internationally or by an industry as a standard one to refer to on its subject matter. An example is the <i>Codex Alimentarius</i>. | 25 |
| 155 New sections 168A and 168B inserted | |
| After section 168, insert: | |
| 168A Availability and proof of material incorporated by reference | |
| <ul style="list-style-type: none"> (1) If material (other than a standard work of reference) is incorporated by reference in an instrument under section 168, a copy of the material and any amendment to the material must be— <ul style="list-style-type: none"> (a) certified as a correct copy of the material by the Director-General; and (b) retained by the Director-General. (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the instrument of that material. | 30 35 |

- (3) The Director-General must—
- (a) make copies of all material incorporated in an instrument by reference available for inspection, free of charge, at the head office of the Ministry and at other places that the Director-General determines are appropriate; and 5
 - (b) make copies of the material available, free of charge, on an Internet site maintained by or on behalf of the Ministry; and
 - (c) either make copies of the material available for purchase, at reasonable cost, or advise where copies of the material may be obtained.
- (4) The Director-General may comply with **subsection (3)(b)** by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else. 10
- (5) The Director-General is not required to comply with **subsection (3)(b) or (c)** if doing so would infringe copyright in the material or be inconsistent with any other enactment or rule of law. 15
- 168B Application of Legislation Act 2012 to incorporating instruments and incorporated material**
- (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in an instrument under section 168 or to an amendment to that material. 20
 - (2) Subpart 1 of Part 3 of the Legislation Act 2012 applies to an instrument that incorporates material by reference.
 - (3) However, nothing in section 41 of the Legislation Act 2012 requires material that is incorporated by reference in an instrument to be presented to the House of Representatives. 25

156 New Schedule 1 inserted

Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Part 3 30

Amendments to Wine Act 2003

157 Principal Act

This **Part** amends the Wine Act 2003 (the **principal Act**).

158 Section 4 amended (Interpretation)

- (1) In section 4(1), repeal the definitions of **recognised management plan verifier**, **recognised verifying agency**, **verification**, and **wine standard**. 35

- (2) In section 4(1), insert in their appropriate alphabetical order:
- automated electronic system** means a system that is the subject of an arrangement under **section 118A**
- infringement fee**, in relation to an infringement offence, means the amount set out in regulations made under **section 96E** to be payable for the offence 5
- infringement offence** means an offence identified in regulations made under **section 96E** as an infringement offence
- regulated person** has the meaning given in **section 54A**
- regulations** means regulations made under this Act
- supplementary notice** means a notice issued under **section 120(2)** 10
- verification** includes the application of methods, procedures, tests, and other checks to confirm—
- (a) in relation to a wine standards management plan,—
- (i) whether operations that are subject to the plan are being carried out in compliance with it; and 15
- (ii) the applicability of the plan to the operations of the relevant wine business; and
- (iii) the effectiveness of the plan:
- (b) in relation to wine for whose export an official assurance is required, whether the wine has been produced or made in a way that meets the requirements for the official assurance: 20
- (c) whether a regulated person has complied with a requirement imposed by or under this Act
- verifier** means a recognised person whose specified functions and activities include carrying out verification functions and activities 25
- verifying agency** means a recognised agency whose specified functions and activities include managing and carrying out verification functions and activities
- wine standard** means a standard prescribed by regulations made under section 33 30
- (3) In section 4(1), definition of **extension product**, paragraph (d), delete “or partially fermented commodities”.
- (4) In section 4(1), definition of **industry organisation**, replace paragraph (a) with:
- (a) New Zealand Winegrowers Incorporated: 35
- (5) In section 4(1), definition of **industry organisation**, repeal paragraph (c).
- (6) In section 4(1), definition of **permissible functions and activities**, delete “verification functions and activities and other”.

- (7) In section 4(1), definition of **permissible functions and activities**, paragraph (a), delete “in relation to wine standards management plans”.
- (8) In section 4(1), definition of **permissible functions and activities**, repeal paragraph (b).
- (9) In section 4(1), definition of **wine**, replace paragraph (b) with: 5
 (b) to the extent specified in sections 12 and 15A, includes wine products, extension products, and partial process products; but
- (10) In section 4(2), replace “and associated specifications set under subpart 2 of Part 2” with “and supplementary notices”.
- 159 New section 4A inserted (Transitional, savings, and related provisions relating to amending Acts) 10**
 After section 4, insert:
- 4A Transitional, savings, and related provisions relating to amending Acts**
- (1) The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 15
- (2) Sections 129 to 132 contain transitional, savings, and related provisions relating to the enactment of this Act.
- 160 Section 5 amended (Scope of Act)**
- (1) In section 5(2), after “products”, insert “, extension products, partial process products,”. 20
- (2) In section 5(2), replace “10 and 12” with “12, 15A, and 32”.
- 161 Section 6 amended (Exemptions from application of Act)**
 Repeal section 6(4).
- 162 Section 7 amended (Outline of this Part)**
 In section 7(b), delete “and specifications”. 25
- 163 Section 8 amended (What is a wine standards management plan?)**
- (1) In the heading to section 8, delete “?”.
- (2) In section 8(4), after “businesses”, insert “~~or part-businesses~~ parts of businesses”.
- 164 Section 9 amended (Who must have a wine standards management plan?) 30**
 In the heading to section 9, delete “?”.
- 165 Section 11 amended (Limited exemption from requirement to have wine standards management plan)**
 In section 11(1), replace “section 120” with “**section 120(1)**”.

- 166 Section 12 amended (Certain persons may be required to have wine standards management plan)**
- (1) In section 12(1)(d), after “products”, insert “, extension products, or partial process products”.
 - (2) In section 12(2)(a), replace “or wine or wine product produced” with “, wine, wine product, extension product, or partial process product”. 5
 - (3) In section 12(2)(b), replace “or wine or wine product in question” with “, wine, wine product, extension product, or partial process product”.
 - (4) In section 12(2)(c), replace “or wine or wine product” with “, wine, wine product, extension product, or partial process product”. 10
 - (5) In section 12(2)(d), replace “or wine or wine product in question” with “, wine, wine product, extension product, or partial process product”.
 - (6) Replace section 12(3) and (4) with:
 - (3) The Minister may not recommend the making of an order under this section unless the Minister is satisfied that the order is necessary or desirable— 15
 - (a) in the interests of producing wine, wine products, extension products, or partial process products that are fit for intended purpose; or
 - (b) for the purpose of facilitating access to overseas markets.
 - (4) If an order under this section requires a wine standards management plan in respect of operations relating to wine, this Act (including the regulations and any notices under section 120) applies in relation to the wine unless the order provides otherwise. 20
 - (5) If an order under this section requires a wine standards management plan in respect of operations relating to commodities, wine products, extension products, or partial process products, this Act (including the regulations and any notices under section 120) applies to the commodities, wine products, extension products, or partial process products as if they were wine unless the order provides otherwise. 25
- 167 Section 13 amended (Duties of operators of wine standards management plans)** 30
- In section 13(f), delete “recognised”.
- 168 Section 14 amended (Contents of and requirements for wine standards management plans)**
- (1) After section 14(2)(b), insert:
 - (ba) make provision in relation to tracing and recalling wine as required by regulations made under **section 54C** or any supplementary notice: 35
 - (2) Replace section 14(2)(d) with:

- (d) provide for appropriate and auditable documentation, record keeping, and reporting, including as required by—
- (i) regulations made under **section 54H(1)** or any supplementary notice; or
 - (ii) any notice referred to in **section 54H(2)**: 5
- (da) make provision in relation to verification as required by regulations made under **section 54F** or any supplementary notice:
- (3) Replace section 14(2)(e)(i) with:
- (i) any relevant wine standards, other regulations, supplementary notices, and New Zealand food standards; and 10
- (4) In section 14(2)(e)(ii), replace “specifications set by the Director-General under this Act” with “notices issued by the Director-General under **section 120**”.
- (5) After section 14(2A), insert:
- (2B) A wine standards management plan must comply with any regulations or supplementary notice requiring it to be differentiated from other information kept by the operator and prescribing how this must be done. 15
- (6) Repeal section 14(4).
- 169 Section 14 further amended (Contents of and requirements for wine standards management plans)** 20
- Repeal section 14(4).
- 169 Section 15 amended (Multi-business wine standards management plans)**
- (1) In section 15(2)(a), replace “part-businesses” with “parts of businesses”.
 - (2) In section 15(2)(b), replace “part-businesses” with “parts of businesses”.
 - (3) In section 15(2)(c), replace “part-business” with “part of whose business”. 25
- 170 Section 15A amended (Persons involved with both food and wine)**
- In section 15A(4), replace “, and its provisions on verification, apply to their products as if they were wine” with “(including the regulations and any notices under section 120) applies to their extension products, partial process products, or wine products as if they were wine”. 30
- 171 Section 15B amended (Application for intermittent use of food control plan as wine standards management plan)**
- (1) Replace section 15B(2) with:
 - (2) Sections 18 to 20 apply to the application as if it were an application under section 18. 35
 - (2) Replace section 15B(4)(b) with:

- (b) export eligibility requirements and any supplementary notices; and
- (c) any requirements set out in the regulations or any supplementary notices for determining whether all or any classes of registered food control plans are to be subject to the verification regime of this Act or the Food Act 2014. 5
- (3) In section 15B(6)(b), replace “verification” with “verifying”.
- 172 Section 15C amended (Intermittent use of food control plan as wine standards management plan)**
- In section 15C(2) and (3), after “food plan,”, insert “unless the regulations or any supplementary notice provide otherwise.”. 10
- 173 New section 15D inserted (Regulations may grant or provide for exemptions from this Act or Food Act 2014)**
- After section 15C, insert:
- 15D Regulations may grant or provide for exemptions from this Act or Food Act 2014** 15
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting, or providing for the exemption of, persons from specified requirements imposed by or under this Act or the Food Act 2014.
- (2) The Minister may not recommend the making under **subsection (1)** of regulations that grant an exemption unless satisfied that— 20
- (a) granting the exemption is necessary or desirable in the interests of avoiding unnecessary or undesirable duplication of equivalent duties or matters under this Act and the Food Act 2014; and
- (b) the extent of the exemption is not broader than is reasonably necessary for that purpose. 25
- (3) The Minister may not recommend the making under **subsection (1)** of regulations that provide for exemptions to be granted unless satisfied that the regulations permit an exemption to be granted only if— 30
- (a) granting the exemption is necessary or desirable in the interests of avoiding unnecessary or undesirable duplication of equivalent duties or matters under this Act and the Food Act 2014; and
- (b) the extent of the exemption is not broader than is reasonably necessary for that purpose.
- 174 Section 17 amended (Register of wine standards management plans)** 35
- (1) In section 17(3)(g), replace “recognised verifying agency responsible for the verification function under” with “verifying agency responsible for verification of”.

- (2) Replace section 17(3)(j) and (k) with:
- (j) the date on which the most recent significant amendment to the wine standards management plan has been registered under section 22:
 - (k) the date of any notifications of minor amendments to the wine standards management plan under section 23: 5
 - (l) any other particulars required by the regulations or any supplementary notice.
- 175 Section 18 amended (Applications for registration of wine standards management plans)**
- (1) In section 18(1)(c), delete “recognised”. 10
 - (2) In section 18(1)(c), delete “functions in respect”.
 - (3) In section 18(1)(d), replace “regulations made under this Act” with “the regulations or any supplementary notice”.
 - (4) After section 18(1A), insert:
 - (1B) The information or material accompanying the application must be provided in a way that complies with any requirements prescribed by the regulations or any supplementary notice. 15
- 176 Section 18 further amended (Applications for registration of wine standards management plans)**
- Replace section 18(1)(a)(ii) with: 20
- (ii) if the regulations permit part only of the plan to be lodged, a copy of that part of the plan; and
- 177 Section 19 amended (Registration of wine standards management plans)**
- After section 19(1)(a)(ii), insert:
- (iii) is clear enough to be readily understood by the operator, the Director-General, and the operator’s verifier; and 25
- 178 Section 21 amended (Registration may not be transferred)**
- (1) In section 21(2)(b), replace “part-business” with “part of the business”.
 - (2) In section 21(3), replace “section 120” with “**section 120(1)**”.
- 179 Section 22 amended (Significant amendment of wine standards management plan)** 30
- (1) In the heading to section 22, replace “**Significant**” with “**Registration of significant**”.
 - (2) In section 22(3), delete “, in a manner approved by the Director-General and on payment of the prescribed fee (if any),”. 35
 - (3) After section 22(3), insert:

- (3A) An application under this section must be made in writing in a form or manner approved by the Director-General and be accompanied by—
- (a) any information and other material required by the regulations or any supplementary notice; and
 - (b) the prescribed fee (if any). 5
- (3B) The information or material accompanying the application must be provided in a way that complies with any requirements prescribed by the regulations or any supplementary notice.
- (3C) Sections 18(2) and (3), 19, and 20 apply to an application under this section, with any necessary modifications, as if it were an application for registration under section 18. 10
- (4) In section 22(4)(c), replace “supply to both the applicant and the appropriate recognised verifying agency a certified” with “give the applicant’s verifying agency a”.
- (5) Repeal section 22(8). 15
- 180 Section 23 amended (Updates of minor amendments to wine standards management plans)**
- (1) In the heading to section 23, replace “Updates” with “Notification”.
 - (2) In section 23(2)(a), after “in a”, insert “form or”.
 - (3) Replace section 23(2)(b) to (d) with: 20
 - (b) be made at the intervals set out in the regulations or any supplementary notice; and
 - (c) be accompanied by—
 - (i) any information and other material required by the regulations or any supplementary notice; and 25
 - (ii) the prescribed fee (if any); and
 - (d) comply with any requirements in the regulations or any supplementary notice.
 - (4) Repeal section 23(4).
- 181 ~~New sections 23A and 23B inserted~~ section 26B inserted (Director-General may require amendment to improve clarity of registered wine standards management plan)** 30
- After section 23, insert:
- 23A Operator to give verifying agency updated plan**
- The operator of a registered wine standards management plan must give its verifying agency an updated copy of the plan at the intervals required by the regulations or any supplementary notice. 35

| | | |
|------------|--|----|
| 23B | Director-General may require amendment to improve clarity of registered wine standards management plan | |
| (1) | If the Director-General considers that a registered wine standards management plan is not clear enough to be readily understood by the persons referred to in section 19(1)(a)(iii) , the Director-General may require the operator to amend the plan. | 5 |
| (2) | The operator must amend the plan to meet the Director-General’s requirements under subsection (1) within 6 months after the date the requirement is received. | |
| (3) | If the operator fails to do so, the Director-General may— | 10 |
| | (a) suspend operations under the plan in accordance with section 24; or | |
| | (b) remove the plan from the register in accordance with section 25. | |
| 182 | Section 24 amended (Suspension of operations under registered wine standards management plan) | |
| (1) | In section 24(1), delete “at any time”. | 15 |
| (2) | In section 24(1)(b), replace “of this Act.” with “imposed by or under this Act; or”. | |
| (3) | After section 24(1)(b), insert: | |
| | (c) suspension is permitted under section 23B . | |
| (4) | In section 24(5), replace “appropriate recognised” with “operator’s”. | 20 |
| 183 | Section 25 amended (Deregistration of wine standards management plan) | |
| (1) | In section 25(1), delete “at any time”. | |
| (2) | After section 25(1)(b), insert: | |
| | (ba) removal of the plan from the register is permitted under section 23B ; or | 25 |
| (3) | In section 25(3)(b), replace “appropriate recognised” with “operator’s”. | |
| 184 | Section 26 replaced (Removal of wine business from coverage of wider wine standards management plan) | |
| | Replace section 26 with: | |
| 26 | Removal of wine business or part of business from coverage of wider wine standards management plan | 30 |
| (1) | The Director-General may remove any wine business or part-business <u>business or part of a business</u> from the coverage of a registered wine standards management plan that applies to more than 1 comparable business if the Director-General is satisfied that deregistration of the plan would be appropriate under section 25(1) if the business or part-business <u>part of a business</u> being removed were the only one operating under the plan. | 35 |

- (2) Section 25(2) to (7) applies in relation to the removal of the business or ~~part-business part of a business~~ from the coverage of the wine standards management plan as if references in those subsections to deregistration of the plan were references to removal from the coverage of the plan.
- 185 Section 27 amended (Surrender of registration)** 5
- (1) In section 27(1), delete “at any time”.
- (2) In section 27(2)(c), replace “appropriate recognised” with “operator’s”.
- 186 Section 28 amended (References to recognised verifying agency)**
- (1) In the heading to section 28, delete “**recognised**”.
- (2) In section 28, replace “recognised verifying” with “verifying”. 10
- (3) In section 28, delete “recognised management plan”.
- 187 Subpart 2 heading in Part 2 amended**
- In Part 2, in the subpart 2 heading, delete “and specifications”.
- 188 Section 30 replaced (Outline of subpart 2)**
- Replace section 30 with: 15
- 30 Wine standards**
- (1) This subpart provides for the setting of standards that must be met by any wine intended for trade or export.
- (2) The standards may be set by regulations made under section 33, which may be supplemented by supplementary notices. 20
- 189 Section 31 amended (Application of standards and specifications)**
- (1) In the heading to section 31, delete “**and specifications**”.
- (2) In section 31, delete “and specifications”.
- 190 Section 32 repealed (Application to extension products, partial process products, and wine products)** 25
- Repeal section 32.
- 191 Section 33 amended (Regulations may prescribe standards)**
- (1) In section 33(1), replace “Regulations may be made under section 119, on the recommendation of the Minister,” with “The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations”. 30
- (2) After section 33(2)(a), insert:
- (ab) the information or other matters that must be specified, or that may or may not be specified, in any label on any bottle or other container of wine or any class or description of wine, and the requirements that must

be met for that information or other matter to be specified or not specified:

- (3) Repeal section 33(3) to (5) and (7).

192 Section 34 amended (Prerequisites for prescribing standards)

- (1) In section 34(1), replace “recommending the prescribing of standards” with “determining whether to recommend the making of a wine standard” 5
- (2) Repeal section 34(2).

193 Section 35 repealed (Director-General may issue specifications supplementary to wine standards)

Repeal section 35. 10

194 Section 37 amended (Prerequisites for export)

- (1) In section 37(1)(b)(i), after “those requirements”, insert “and any supplementary notices”.
- (2) In section 37(2), replace “under section 39 or under regulations made under this Act” with “by the regulations or any supplementary notice or by a notice referred to in section 39”. 15

195 Section 38 amended (Export eligibility requirements)

- (1) Repeal section 38(3).
- (2) In section 38(4)(b), replace “prescribe” with “set out”.
- (3) Replace section 38(4)(c) with: 20
- (c) set out procedures and requirements in relation to the export eligibility requirements.
- (4) Repeal section 38(5).
- (5) In section 38(6), after “requirements”, insert “and any supplementary notices”.

196 Section 39 amended (Exemption of certain consignments) 25

- (1) In the heading to section 39, after “consignments”, insert “, wine, or persons”.
- (2) In section 39(1), replace “section 120” with “**section 120(1)**”.
- (3) Replace section 39(1)(e) with:
- (e) of a kind that the regulations permit to be exempted under this section. 30
- (4) Repeal section 39(2) and (3).

197 Section 40 amended (Duties of exporters)

- (1) In section 40(b)(i), replace “standards and specifications” with “wine standards and any supplementary notices”.

- (2) In section 40(e), after “those requirements”, insert “and any supplementary notices”.
- 198 Section 41 amended (Director-General to notify or make available access requirements for overseas markets)**
- (1) In section 41(2), replace “section 120, issue specifications that set out” with “**section 120(1)**, specify” 5
- (2) In section 41(2), replace “the specifications” with “the notice”.
- 199 Section 42 amended (Director-General may issue official assurances)**
- In section 42(2)(b), replace “standards and specifications set under subpart 2 of Part 2” with “relevant wine standards and any supplementary notices” 10
- 200 Section 43 amended (Form and content of official assurance)**
- Repeal section 43(4).
- 201 Section 44 amended (Obtaining of official assurance)**
- After section 44(2), insert:
- (3) The Director-General may, by notice under **section 120(1)**, do either or both of the following: 15
- (a) set out requirements and procedures for the issue and control of official assurances:
- (b) set out other matters in relation to the obtaining of official assurances.
- (4) Matters set out in notices under **subsection (3)** are in addition to matters (if any) prescribed by regulations made under section 119(1)(g). 20
- 202 Section 47 amended (Register of exporters)**
- Replace section 47(3)(d) with:
- (d) any other particulars required by the Director-General by notice under **section 120(1)**. 25
- 203 Section 48 amended (Applications for registration as exporter)**
- In section 48(1), replace “regulations under this Act” with “the regulations”.
- 204 Section 52 amended (Deregistration of exporters)**
- (1) In section 52(1), delete “at any time”.
- (2) In section 52(1)(c), replace “under” with “for the purposes of”. 30
- 205 Section 53 amended (Surrender of registration)**
- In section 53(1), delete “at any time”.

206 New subpart 4 of Part 2 inserted

After section 54, insert:

| | | |
|---|--|----|
| Subpart 4—General obligations | | |
| 54A Interpretation | | |
| In this Part, regulated person means any of the following: | | 5 |
| (a) the operator of a wine business: | | |
| (b) the operator of a registered wine standards management plan: | | |
| (c) an exporter: | | |
| (d) a person who is in charge of wine for the purposes of a wine business: | | |
| (e) any other person— | | 10 |
| (i) who has, or is in a class of persons who have, any obligation under this Act; and | | |
| (ii) who is, or is in a class of persons that is, specified by the regulations. | | |
| <i>Tracing and recall</i> | | 15 |
| 54B Tracing and recall requirements | | |
| A regulated person must, as and when required by the regulations or any supplementary notice,— | | |
| (a) have in place any procedures for tracing and recalling wine; and | | |
| (b) conduct simulations or other tests of those procedures; and | | 20 |
| (c) implement those procedures to trace or recall wine. | | |
| 54C Regulations relating to tracing and recall | | |
| (1) The Governor-General may, by Order in Council, make regulations prescribing requirements that apply to regulated persons in relation to tracing and recalling wine. | | 25 |
| (2) The regulations may (without limitation) do any or all of the following: | | |
| (a) identify the regulated persons who are required to have procedures for tracing and recalling wine: | | |
| (b) set requirements relating to— | | 30 |
| (i) the content of those procedures: | | |
| (ii) the conducting of simulations and other tests of those procedures: | | |
| (iii) the implementation of those procedures to trace or recall wine: | | |
| (c) specify matters in relation to tracing and recall that must be included in wine standards management plans (<i>see</i> section 14). | | |

Verification

54D Verification

A regulated person must comply with any requirements relating to verification that are prescribed by regulations made under **section 54F** or any supplementary notice. 5

54E Obligation of persons subject to verification requirements

A person who is subject to verification requirements under this Act must—

- (a) give the verifier—
 - (i) the access to places, things, and information that the verifier reasonably needs to undertake the verification; and 10
 - (ii) any reasonable assistance requested by the verifier to undertake the verification; and
- (b) comply with any other requirements relating to the verification set out in any of the following:
 - (i) regulations made under **section 54F** or any supplementary notice: 15
 - (ii) if the person is the operator of a wine standards management plan, that plan.

54F Regulations relating to verification

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements in relation to verification of any or all of the following: 20
 - (a) wine standards management plans:
 - (b) wine for whose export an official assurance is required:
 - (c) compliance by regulated persons with requirements imposed by or under this Act. 25
- (2) The regulations may (without limitation) do any or all of the following:
 - (a) in relation to verification of wine standards management plans, specify the operations, or the parts of the operations, that must be verified:
 - (b) set requirements relating to the frequency, intensity, and cost of verification: 30
 - (c) specify matters in relation to verification that must be included in wine standards management plans (*see* section 14):
 - (ca) set out matters relating to the rights of verifiers and verifying agencies in relation to the undertaking of verification activities:
 - (d) set reporting requirements for verifiers (*see* section 82H): 35
 - (e) set out requirements relating to the exercise, carrying out, and managing of verification functions and activities (*see* sections 82G and 82H).

*Record keeping and reporting***54G Record keeping and reporting requirements**

- (1) A regulated person, recognised person, or recognised agency must—
- (a) collect the required information; and
 - (b) keep that information in the required manner and for the required period; 5
and
 - (c) give that information to—
 - (i) the Director-General or a wine officer at all reasonable times on request; and
 - (ii) any other person as required. 10
- (2) In this section,—
- give**, in relation to information, includes—
- (a) to give access to the information; and
 - (b) to permit the inspection of the information; and
 - (c) to permit the making of copies of the information 15
- required** means required by any of the following:
- (a) this Act;
 - (b) the regulations or any supplementary notice;
 - (c) a notice referred to in **section 54H(2)**. 20

54H Regulations and notices relating to record keeping and reporting 20

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements in relation to record keeping and reporting by regulated persons, recognised persons, and recognised agencies.
- (2) The Director-General may, by notice under **section 120(1)**, prescribe requirements in relation to record keeping and reporting by regulated persons, recognised persons, and recognised agencies (in addition to requirements (if any) prescribed by the regulations). 25
- (3) The regulations or a notice may (without limitation) do any or all of the following:
- (a) set requirements relating to— 30
 - (i) what information must be collected;
 - (ii) how, and for how long, the information must be kept;
 - (iii) what information must be given under **section 54G(1)(c)** and when, how, and to whom it must be given:
 - (b) specify matters in relation to record keeping and reporting that must be 35
included in wine standards management plans (*see* section 14).

207 Section 56 amended (Director-General may issue notices)

In section 56, replace “from time to time issue notices as specified in” with “issue notices under”.

208 Section 59 amended (Power to direct disposal, etc, of wine in certain circumstances)

5

In section 59(1)(g), after “requirements”, insert “or any supplementary notice”.

209 New sections 61A and 61B inserted

Before section 62, insert:

61A Power to issue improvement notice

- (1) A wine officer may issue an improvement notice to any person if the officer reasonably believes that the person is failing, or has failed, to comply with 1 or more requirements imposed by or under this Act. 10
- (2) An improvement notice must state—
- (a) the requirement that the officer reasonably believes the person is failing, or has failed, to comply with; and 15
 - (b) the reasons for the officer’s reasonable belief; and
 - (c) the nature and extent of the failure to comply with the requirement; and
 - (d) the date by which the person must comply with the requirement; and
 - (e) the person’s right, under **section 61B**, to seek a review of the decision to issue the improvement notice. 20
- (3) A wine officer may, by written notice, withdraw an improvement notice, but may reissue it if **subsection (1)** applies.
- (4) An improvement notice must be served in accordance with section 117.
- (5) A person to whom an improvement notice is issued must comply with the notice, subject to any extension of the date by which the person must comply with the applicable requirement that the wine officer may grant on the person’s request. 25

61B Review of improvement notice

- (1) A person to whom an improvement notice is issued under **section 61A** may apply to the Director-General to have the decision to issue it reviewed. 30
- (2) Section 114(2) to (8) applies in relation to the application and review as if the decision to issue the notice were a decision to which that section applies.
- (3) The Director-General may initiate a review of a decision to issue an improvement notice on the Director-General’s own initiative and without an application for review being made. 35
- (4) For the purposes of **subsection (3)**, section 114(**3A**), (4), (6), (7), and (8) applies in relation to the review as if—

| | |
|---|----|
| <ul style="list-style-type: none"> (a) the decision to issue the notice were a decision to which that section applies and the person to whom it was issued had applied for a review; and (b) the maximum time allowed under section 114(4) were 80 days from the date on which the improvement notice was issued. | 5 |
| | |
| 210 New sections 68A and 68B inserted | 5 |
| After section 68, insert: | |
| | |
| 68A Matters may be continued by different wine officer | |
| (1) An action initiated or taken under this Act by a wine officer may be continued by another wine officer. | |
| (2) Without limiting subsection (1) , if an officer has given any notice, authorisation, or consent under this Act (whether or not subject to conditions), any wine officer may— | 10 |
| (a) take further action in relation to that notice, authorisation, or consent; or | |
| (b) revoke or withdraw it; or | |
| (c) vary it; or | 15 |
| (d) revoke or vary any condition on or subject to which it was given. | |
| | |
| 68B Opinion or belief of wine officer | |
| If this Act requires a wine officer to hold a particular opinion or belief about something before exercising a power, it is sufficient if a more senior wine officer or the Director-General holds that opinion or belief and directs the wine officer to exercise the power. | 20 |
| | |
| 211 Section 69 amended (Outline of sections 70 to 82Z) | |
| (1) In section 69(a), delete “recognised”. | |
| (2) In section 69(b), delete “recognised management plan”. | |
| | |
| 212 Section 70 amended (Interpretation) | 25 |
| In section 70, definition of requirements of this Act , replace paragraphs (b) and (c) with: | |
| (b) the regulations or any supplementary notice; or | |
| (c) a notice issued under section 120(1) | |
| | |
| 213 Section 82G amended (Duties of recognised agencies) | 30 |
| (1) After section 82G(1)(f), insert: | |
| (fa) if it is a verifying agency, has for each operator for which it carries out verification functions and activities a copy of the following: | |

- (i) ~~the operator’s wine standards management plan or, if it has been given an updated copy of the plan under **section 23A**, the latest updated copy; and~~
- (ii) ~~any subsequent amendments given to the verifier under section 22(4); and~~

5

In section 82G(1)(g), after “all”, insert “other”.

213A Section 82H amended (Duties of recognised persons)

In section 82H(e)(ii), delete “recognised management plan”.

214 New section 82IA inserted (Recognised agency and recognised person accountable to Director-General)

10

After section 82I, insert:

82IA Recognised agency and recognised person accountable to Director-General

- (1) A recognised agency is, in carrying out its specified functions and activities, accountable to the Director-General.
- (2) A recognised person is, in carrying out his or her specified functions and activities, accountable to the Director-General.

15

215 Section 82T amended (Contents of public register)

Replace section 82T(1)(e) with:

- (e) any other particulars required by the regulations or any supplementary notice.

20

216 Section 82Y amended (Director-General may require notification of termination of contracts)

- (1) In section 82Y(1), replace “section 120, require any recognised management plan verifier or recognised” with “**section 120(1)**, require any verifier or”.
- (2) Repeal section 82Y(2).
- (3) In section 82Y(3), replace “recognised management plan verifier or recognised” with “verifier or”.

25

217 Section 84 amended (Principles of cost recovery)

In section 84(3), delete “appropriate”.

218 Section 86 amended (Cost recovery to relate generally to financial year)

30

- (1) In section 86(1), delete “under this subpart”.
- (2) In section 86(2)(b)(i), delete “appropriate”.

219 Section 87 amended (Three-yearly review of cost recovery)

In section 87(2), delete “appropriate”.

220 Section 88 amended (Fees and charges to be prescribed by regulations)

- (1) Replace section 88(1) with:
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing fees and charges for the purposes of this Act, including fees and charges— 5
- (a) for applications, renewals, or related matters under this Act (for example, for applications for registration under subpart 1 or 3 of Part 2 or for applications for recognition under sections 70 to 82Z); and
- (b) payable on an ongoing basis by a person given a particular status under this Act (for example, for ongoing registration under subpart 3 of Part 2 or for ongoing recognition under sections 70 to 82Z). 10
- (2) In section 88(5), replace “under section 120” with “by notice under **section 120(1)**”.

221 Section 89 amended (Regulations may impose levies)

- (1) Replace section 89(1) with: 15
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing levies for the purposes of this Act, including levies payable on an ongoing basis by a person given a particular status under this Act (for example, for ongoing registration under subpart 3 of Part 2 or for ongoing recognition under sections 70 to 82Z). 20
- (2) In section 89(3)(f)(ii), replace “collect;—” with “collect—”.
- (3) After section 89(4), insert:
- (4A) Where regulations prescribe a formula for determining a levy, the formula may specify the value of 1 or more of its components as being an amount or amounts notified for those components by the Director-General by notice under **section 120(1)**. 25

222 Section 92 amended (Exemptions, waivers, and refunds)

- (1) In section 92(1), replace “Regulations made under this Act” with “The regulations”.
- (2) After section 92(2), insert: 30
- (3) An exemption or a waiver granted under this section expires on the date specified in it, which must not be more than 5 years after the exemption is granted.

223 New sections 96A to 96E and cross-heading inserted

After the Part 4 heading, insert:

*Infringement offences***96A Proceedings for infringement notices**

- (1) This section applies when a person is alleged to have committed an infringement offence.
- (2) The person may— 5
- (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
- (b) be served with an infringement notice as provided in **section 96B** and, in that case, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications. 10
- (3) Proceedings commenced in the way described in **subsection (2)(a)** do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

96B Issue and cancellation of infringement notices

- (1) An infringement notice may be served on a person if a wine officer— 15
- (a) observes the person committing an infringement offence; or
- (b) reasonably believes that the person is committing an infringement offence; or
- (c) reasonably believes that the person has committed an infringement offence. 20
- (2) An infringement notice may be cancelled by a wine officer if—
- (a) the interests of justice require cancellation; and
- (b) neither the particulars of a reminder notice nor a notice of hearing relating to the infringement notice has been filed in a District Court.
- (3) An infringement notice is cancelled by the service of a cancellation notice. 25
- (4) An infringement notice or a cancellation notice may be served by a wine officer personally delivering it to the person alleged to have committed the infringement offence.
- (5) Alternatively, an infringement notice or a cancellation notice may be served by post addressed to,— 30
- (a) if the person is a natural person,—
- (i) the address of the person's last-known place of residence; or
- (ii) the address on the person's driving licence; or
- (iii) the person's address on the latest electoral roll; or
- (iv) the person's last-known registered address, if the person has or has had a registered address for any purpose; or 35
- (v) the person's address in the latest telephone directory; or

| | |
|---|----|
| (vi) the address of the person's last-known place of business; or | |
| (b) if the person is not a natural person,— | |
| (i) the person's last-known registered address, if the person has or has had a registered address for any purpose; or | |
| (ii) the person's address in the latest telephone directory; or | 5 |
| (iii) the address of the person's last-known place of business. | |
| (6) For the purposes of the Summary Proceedings Act 1957, an infringement notice or a cancellation notice served under subsection (5) is treated as having been served on the person when it was posted. | |
| 96C Form of infringement notice | 10 |
| (1) An infringement notice must be in the form set out in the regulations. | |
| (2) The form must contain the following details: | |
| (a) sufficient details to inform the person served with the notice of the time, place, and nature of the alleged offence; and | |
| (b) the amount of the infringement fee for the offence; and | 15 |
| (c) the time within which the infringement fee must be paid; and | |
| (d) the address of the place at which the infringement fee must be paid; and | |
| (e) a statement of the person's right to ask for a hearing; and | |
| (f) a statement of the person's right to ask for cancellation of the notice; and | |
| (g) a statement of what will happen if the person does not pay the infringement fee or ask for a hearing or ask for cancellation of the notice; and | 20 |
| (h) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957. | |
| 96D Payment of infringement fees | |
| All infringement fees paid for infringement offences must be paid to the Ministry. | 25 |
| 96E Regulations about infringement offences | |
| The Governor-General may, by Order in Council, make regulations to do all or any of the following: | |
| (a) identify the offences in or under this Act that are infringement offences: | 30 |
| (b) identify as an infringement offence an offence against section 103 for failing to comply with a specified provision, direction, condition, notice, or requirement: | |
| (c) set out notices and forms required for the purposes of sections 96A to 96D : | 35 |

- (d) set out the amounts, up to \$1,000, of infringement fees that are payable for infringement offences, including different fees for a first offence, a second offence, and subsequent offences.

224 Section 100 amended (Offence to export unless registered or in compliance with export eligibility requirements) 5

- (1) In section 100(1), replace “regulations made under this Act” with “the regulations or any supplementary notice”.
- (2) In section 100(2), after “requirements”, insert “or any supplementary notice”.

225 Section 101 amended (Obstruction of officers, etc)
In section 101(2), replace “recognised verifying agency, or” with “an agency or” 10

226 New sections 101A and 101B inserted

After section 101, insert:

101A Offences involving automated electronic system

- (1) A person commits an offence who intentionally obstructs or hinders an automated electronic system that is doing an action under **section 118A**. 15
- (2) A person commits an offence who knowingly damages or impairs an automated electronic system.
- (3) A person who commits an offence against this section is liable on conviction,— 20
- (a) for a body corporate, to a fine not exceeding \$250,000;
- (b) for an individual, to imprisonment for a term not exceeding 3 months and a fine not exceeding \$50,000.

101B Breach of compliance order

- (1) A person commits an offence who, without reasonable excuse, breaches or fails to comply with the terms of a compliance order or an interim compliance order issued under **section 110A or 110F**. 25
- (2) A person who commits an offence against this section is liable on conviction to— 30
- (a) a fine not exceeding—
- (i) \$300,000, in the case of a body corporate; or
- (ii) \$50,000, in the case of an individual; and
- (b) an additional fine not exceeding \$2,000 for every day on which the breach or failure continues.

227 Section 103 amended (Failure to comply with Act, etc)

Replace section 103(1)(b) with:

- (b) any provision of the regulations the failure to comply with which is identified in the regulations as an offence; or

228 Section 105 amended (Evidence in proceedings)

5

- (1) In section 105(1)(a)(i), replace “recognised verifying agency” with “verifier, a verifying agency”.
- (2) In section 105(3), replace “or specifications” with “, notices, or orders”.

229 Section 110 replaced (Time for filing charge for offence against section 102 or 103)

10

Replace section 110 with:

109A Order to pay amount because of commercial gain

- (1) This section applies to a person convicted of an offence against any of sections 97 to 100 and **101A** to 103.
- (2) The court may make an order under **subsection (4) or (5)** if it is satisfied that the offence was committed in the course of producing a commercial gain. 15
- (3) The court may make the order in addition to, or instead of, a penalty that the court may impose under the relevant offence provision.
- (4) The court may make an order under this subsection whether or not the person is a body corporate. The order is that the person pay an amount up to 3 times the value of the commercial gain resulting from committing the offence. 20
- (5) The court may make an order under this subsection if the person is a body corporate and the value of the gain cannot be readily ascertained. The order is that the person pay an amount up to 10% of the combined turnover of the body corporate and every interconnected body corporate it has over the period of the offending. 25
- (6) The court must assess the value of a gain that is readily ascertainable.
- (7) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine.
- (8) In this section, **interconnected** and **turnover** have the same meanings as in the Commerce Act 1986. 30

110 Charging documents

Despite anything to the contrary in the Criminal Procedure Act 2011, a charging document in respect of any offence against this Act may be filed in any case within 4 years after the time when the offence was committed or within any longer time allowed by that other Act. 35

*Compliance orders***110A Compliance orders**

- (1) A compliance order is an order made by a District Court that may do 1 or more of the following things:
- (a) require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the court, contravenes or is likely to contravene this Act or any requirement imposed by or under this Act, and thus—
 - (i) is likely to endanger the health of the public through the sale of wine that has not been made in accordance with the requirements of Part 2 or that is otherwise not fit for its intended purpose; or
 - (ii) is likely to prejudice the reputation of New Zealand wine in overseas markets, or the integrity of official assurances given under this Act:
 - (b) require a person to remedy or mitigate any adverse effect arising from any action or matter that may be the subject of an order under **paragraph (a)**:
 - (c) require a person to do something that, in the opinion of the court, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect arising from any action or matter that may be the subject of an order under **paragraph (a)**:
 - (d) require a person to pay money to or reimburse the Crown for any actual and reasonable costs and expenses that the Crown has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect arising from the failure of the person to comply with a compliance order earlier made against the person under **paragraph (a), (b), or (c)**.
- (2) For the purposes of **subsection (1)(d)**, **actual and reasonable costs** includes the costs of investigation, supervision, and monitoring of the relevant situation and the costs of any actions required to avoid, remedy, or mitigate the relevant adverse effect.
- (3) A compliance order may be made on such terms and conditions as the court thinks fit, including the provision of security or the entry into a bond for performance.
- (4) If the court so orders, a compliance order applies to the personal representatives, successors, and assigns of the person to whom the order is addressed to the same extent that it applies to the person.

110B Application for compliance order

- (1) The Director-General may apply to a District Court for a compliance order of a kind specified in **section 110A**.

- (2) Every application to a District Court under this section must be made by originating application.
- (3) The rules relating to the practice and procedure of District Courts for the time being in force under the District Courts Act 1947 apply with respect to every application to the court under this section except as modified— 5
- (a) by **sections 110C to 110K**; and
 - (b) by any rules made under **section 110L**.
- 110C Notification of application**
- (1) Except as provided in **section 110F** (which relates to interim compliance orders), the Director-General must serve notice of the application on every person directly affected by the application. 10
- (2) The notice must be served within 5 working days after the date on which the application is filed in a District Court, or within such further time as a District Court may allow.
- 110D Right to be heard** 15
- Except as provided in **section 110F**, before deciding an application for a compliance order, the court must—
- (a) hear the applicant; and
 - (b) hear any person against whom the order is sought who wishes to be heard. 20
- 110E Decision on application**
- After considering an application for a compliance order, the court may—
- (a) make an appropriate order under **section 110A**; or
 - (b) refuse the application.
- 110F Interim compliance orders** 25
- (1) If a District Court Judge considers it necessary to do so, the Judge may make an interim compliance order without requiring service of notice in accordance with **section 110C** and without holding a hearing.
- (2) Before making an interim compliance order, the Judge must consider— 30
- (a) whether failure to make the order is likely—
 - (i) to endanger human health through the sale of the wine concerned; or
 - (ii) to prejudice the integrity or reputation of New Zealand exports of wine, or the integrity of official assurances under this Act; and
 - (b) whether the court should hear the applicant or any person against whom the order is sought; and 35

- (c) such other matters as the Judge thinks fit.
- (3) The Judge must direct the applicant or another person to serve a copy of the interim compliance order on the person against whom the order is made.
- (4) The interim compliance order—
- (a) takes effect from when it is served, or on and from such later date as the order directs; and 5
- (b) remains in force until the application under **section 110B** for a compliance order in respect of the same matter is determined, or until cancelled under **subsection (5)** or under **section 110G**.
- (5) A person against whom an interim compliance order has been made without the person having been heard may apply to a District Court Judge to change or cancel the order, and, after hearing from that person and the applicant for the order, the Judge may confirm, change, or cancel the interim compliance order. 10
- 110G Change or cancellation of compliance order**
- (1) Without limiting **section 110F(5)**, any person directly affected by a compliance order may apply to a District Court in the manner set out in rules made under **section 110L** to change or cancel the order. 15
- (2) The applicant must, within 5 working days after making the application, serve notice of the application in the manner set out in the rules on the Director-General and on any other person (outside the Ministry) who was directly affected by the original order. 20
- (3) Before deciding an application to change or cancel a compliance order, the court must hear the applicant, the Director-General, and any person directly affected by the original compliance order who wishes to be heard.
- (4) After considering the application, the court may— 25
- (a) change or cancel the compliance order; or
- (b) refuse the application.
- 110H Compliance with compliance order**
- (1) Where a compliance order is served on the person against whom it is directed, the person must— 30
- (a) comply with the order; and
- (b) unless the order directs otherwise, pay all the costs and expenses of complying with the order.
- (2) If the person fails to comply with the order, the Director-General may comply with the order on behalf of the person, and, for that purpose, may— 35
- (a) exercise, or direct the exercise of, any of the powers of a wine officer under this Act; and

- (b) recover the costs and expenses of complying with the order as a debt due from the person.

110I Appeals to High Court

- (1) This subsection applies to a decision of a District Court, on an application under **section 110B**, to— 5
 - (a) make or refuse to make a compliance order; or
 - (b) dismiss the proceedings; or
 - (c) otherwise finally determine the proceedings.
- (2) A party to proceedings in which there is made a decision to which **subsection (1)** applies, or any other person prejudicially affected by the decision, may appeal to the High Court against the decision. 10
- (3) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under **subsection (2)** as if it were an appeal under section 72 of that Act.

110J Appeals to Court of Appeal or Supreme Court

15

- (1) With the leave of the court appealed to, a party to an appeal under **section 110I** may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court in the appeal.
- (2) On an appeal under this section, the Court of Appeal or the Supreme Court has the same power to adjudicate on the proceedings as the High Court had. 20
- (3) **Subsection (1)** is subject to section 14 of the Supreme Court Act 2003 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court). 25

110K Effect of appeal

Except where the court making the order appealed from otherwise directs,—

- (a) the operation of a compliance order is not suspended by an appeal under **section 110I** or **110J**; and
- (b) every compliance order may be enforced in the same manner in all respects as if no such appeal were pending. 30

110L Rules of court

In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules—

- (a) regulating the practice and procedure of District Courts in proceedings under this Act that relate to compliance orders: 35

- (b) providing for such matters as are contemplated by or necessary or desirable for giving full effect to the provisions of this Act that relate to compliance orders.

230 Sections 112 and 113 and cross-heading replaced

Replace sections 112 and 113 and the cross-heading above section 112 with: 5

Use of border information

231 Section 114 amended (Right of review of certain decisions made under delegated authority)

- (1) In section 114(1)(d), replace “part business” with “part-business part of a business”. 10
- (2) In section 114(1)(f), delete “or to suspend export operations”.
- (3) Replace section 114(1)(i) with:
- (i) any decision specified by the regulations as a decision that is subject to review under this section.
- (4) In section 114(2), delete “or by a person designated by the Director-General who was not involved in making the original decision”. 15
- (5) After section 114(3), insert:
- (3A) The Director-General may conduct the review personally or designate another person who was not involved in the original decision to conduct the review.
- (6) In section 114(4), replace “, or a person designated by the Director-General who was not involved in the original decision,” with “or designated person”. 20
- (7) In section 114(8), after “Director-General”, insert “or a designated person”.

232 Section 115 amended (Consultation requirements for making of certain orders, specifications, etc)

- (1) In the heading to section 115, replace “**certain orders, specifications, etc**” with “**Orders in Council, regulations, and notices**”. 25
- (2) In section 115(2), replace “setting any specifications or requirements made pursuant to” with “issuing a notice under”.
- (3) In section 115(3)(a), replace “relevant order or regulations or the setting of the relevant specifications or requirements referred to in subsections (1) and (2)” with “Order in Council, regulations, or notice”. 30
- (4) In section 115(4)(a), replace “order or regulations or set the specifications or requirements” with “Order in Council, regulations, or notice”.
- (5) Replace section 115(5) and (6) with:
- (5) This section does not apply in relation to any Order in Council, regulations, or notice if the Minister or Director-General considers it necessary or desirable in 35

| | | |
|-------------|--|----|
| | the public interest that the Order in Council, regulations, or notice be made or issued as a matter of urgency. | |
| (6) | A failure to comply with this section does not affect the validity of any Order in Council, regulations, or notice. | |
| 233 | Section 116 amended (Notification of certain matters) | 5 |
| (1) | In the heading to section 116, replace “ certain matters ” with “ notices under section 120 ”. | |
| (2) | In section 116(1), replace “that are of a kind listed in section 120” with “under section 120 (other than notices issued for the purposes of section 41(2))”. | |
| (3) | In section 116(2)(b)(i), replace “specifications, requirements, exemption, or other matter concerned” with “notice”. | 10 |
| (4) | Replace section 116(3) with: | |
| (3) | For any other notice, the Director-General must— | |
| (a) | publish the notice, or notification that it has been issued, in the <i>Gazette</i> ; and | 15 |
| (b) | where the Director-General considers it practicable, cause the notice to be brought to the attention of persons likely to be affected by it by notice or publication in any newspaper or trade journal, or by any other practicable means (including electronic means). | |
| (5) | In section 116(4), replace “specifications, requirements, exemption, or other matter concerned are notified only, and not published,” with “notice is not published in full”. | 20 |
| 234 | New sections 118A and 118B and cross-heading inserted | |
| | After section 118, insert: | |
| | <i>Automated electronic systems</i> | 25 |
| 118A | Arrangement for system | |
| (1) | The Director-General may arrange for the use of an automated electronic system to do the actions described in subsection (2) that this Act or another enactment allows or requires the persons described in subsection (3) to do for the purposes of this Act. | 30 |
| (2) | The actions are— | |
| (a) | exercising a power: | |
| (b) | carrying out a function: | |
| (c) | carrying out a duty: | |
| (d) | making a decision, including making a decision by— | 35 |
| (i) | analysing information that a person described in subsection (3) holds or has access to about a person, goods, or craft; and | |

- (ii) applying criteria predetermined by the Director-General to the analysis:
- (e) doing an action for the purpose of exercising a power, carrying out a function or duty, or making a decision:
- (f) communicating the exercising of a power, carrying out of a function or duty, or making of a decision. 5
- (3) The persons are—
- (a) the Director-General:
- (b) wine officers:
- (c) persons designated under section 46 to issue official assurances. 10
- (4) The Director-General may make an arrangement only if satisfied that—
- (a) the system has the capacity to do the action with reasonable reliability; and
- (b) a process is available under which a person affected by an action done by the system can have the action reviewed by a person described in **subsection (3)** without undue delay. 15
- (5) A system used in accordance with an arrangement may include components outside New Zealand.
- (6) The Director-General must consult the Privacy Commissioner about including in an arrangement actions that involve the collection or use of personal information. 20
- 118B Effect of use of system**
- (1) This section applies to an action done by an automated electronic system.
- (2) An action allowed or required by this Act done by the system—
- (a) is treated as an action done properly by the appropriate person referred to in **section 118A(3)**; and 25
- (b) is not invalid by virtue only of the fact that it is done by the system.
- (3) If an action allowed or required by another enactment done by the system is done in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action— 30
- (a) is treated as an action done properly by the appropriate person referred to in **section 118A(3)**; and
- (b) is not invalid by virtue only of the fact that it is done by the system.
- (4) If the system operates in such a way as to render the action done or partly done by the system clearly wrong, the action may be done by the appropriate person referred to in **section 118A(3)**. 35

235 Section 119 amended (Regulations)

- (1) In section 119(1), delete “from time to time”.
- (2) Replace section 119(1)(a) to (d) with:
- (a) prescribing, in relation to wine standards management plans (*see* section 14),— 5
 - (i) requirements relating to the content of plans:
 - (ii) other requirements relating to plans:
 - (iii) how plans are to be differentiated from other information kept by operators:
 - (b) prescribing, in relation to the relationship between the Food Act regime and wine standards management plans (*see* sections 15B and 15C),— 10
 - (i) when and to what extent section 15C(2) or (3) does not apply:
 - (ii) requirements for determining whether all or any classes of registered food control plans are to be subject to the verification regime of this Act or the Food Act 2014: 15
 - (iii) any other requirements relating to elections to operate under a wine standards management plan under section 15B:
 - (iv) matters relating to the registration of food control plans as wine standards management plans:
 - (c) prescribing, in relation to the registration of wine standards management plans (*see* sections 17 and 18),— 20
 - (i) the particulars to be shown in the register:
 - (ii) when part only of a wine standards management plan may be lodged and the parts that must be lodged:
 - (iii) information and other material that must accompany applications for registration: 25
 - (iv) how accompanying information and material is to be provided to the Director-General:
 - (ca) prescribing, in relation to significant amendments to registered wine standards management plans (*see* section 22),— 30
 - (i) the kinds of amendments that require registration under section 22 and those that do not:
 - (ii) how long before a known change, event, or other matter an application for registration of an amendment to the plan must be made:
 - (iii) information and other material that must accompany applications for registration: 35
 - (iv) how accompanying information and material is to be provided to the Director-General:

- (v) other requirements relating to registration of significant amendments:
- (cb) prescribing, in relation to minor amendments to registered wine standards management plans (*see* section 23),—
- (i) the intervals at which notification must be given to the Director-General: 5
- (ii) information and other material that must accompany a notification:
- (iii) other requirements relating to notification of minor amendments:
- ~~(d) prescribing the intervals at which an updated copy of a registered wine standards management plan must be given to the verifying agency (*see* **section 23A**):~~ 10
- (3) Replace section 119(1)(f) with:
- (f) prescribing, in relation to exports,—
- (i) exemptions for any consignment for the purposes of section 37(2): 15
- (ii) the kinds of consignments and wine in relation to which the Director-General may grant exemptions under section 39(1):
- (4) After section 119(1)(g), insert:
- (ga) specifying persons, or classes of persons, for the purposes of the definition of regulated person in **section 54A**: 20
- (5) After section 119(1)(ha)(ii), insert:
- (iia) in order for an agency, a person, or a class of persons to maintain recognition:
- (6) Repeal section 119(1)(i), (j), and (l).
- (7) Replace section 119(1)(o) with: 25
- (o) specifying decisions as decisions that are subject to review under section 114:
- (oa) permitting supplementary notices to be made to supplement specified provisions of the regulations (*see* section **120(2)(b)**):
- (8) Repeal section 119(2). 30
- 236 Section 120 replaced (Notices)**
- Replace section 120 with:
- 119A Scope of regulations**
- (1) Regulations made under this Act may do any or all of the following:
- (a) authorise the Minister or Director-General to— 35
- (i) impose requirements, conditions, restrictions, or prohibitions:

| | | |
|------------|---|----|
| (ii) | issue approvals, directions, instructions, or orders: | |
| (b) | authorise a wine officer to— | |
| (i) | impose requirements, conditions, restrictions, or prohibitions: | |
| (ii) | issue directions or instructions: | |
| (c) | exempt, or authorise the Minister or Director-General to exempt, any wine, person, place, business, process, operation, activity, or other matter or thing from any provision of the regulations: | 5 |
| (d) | authorise the Minister, the Director-General, or a wine officer to decide a matter: | |
| (e) | confer any other discretion on the Minister, the Director-General, or a wine officer. | 10 |
| (2) | The regulations may— | |
| (a) | apply generally, or in relation to any specified, or specified class of, wine, persons, places, businesses, processes, operations, activities, or other matters or things: | 15 |
| (b) | make the same provision for all cases or different provisions for different cases, or classes of case. | |
| (3) | If a provision of this Act permits regulations to prescribe requirements, the regulations may prescribe requirements, specifications, criteria, procedures, or other matters of a similar kind. | 20 |
| 120 | Notices | |
| (1) | The Director-General may issue notices under this subsection to do anything that a provision of this Act permits to be done by notice under this subsection. | |
| (2) | The Director-General may issue notices under this subsection to prescribe matters,— | 25 |
| (a) | if a provision of this Act refers to regulations and supplementary notices (for example by requiring something to be done in accordance with regulations and any supplementary notice), to supplement those regulations; or | |
| (b) | if the regulations permit supplementary notices to be made to supplement provisions of the regulations, to supplement those provisions of the regulations. | 30 |
| (3) | The Director-General must not issue a notice under subsection (2) unless satisfied that the notice— | |
| (a) | sets out matters of detail to elaborate on matters provided for in the regulations; or | 35 |
| (b) | sets out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or | |

- (c) sets out how requirements imposed by the regulations may or must be met; or
 - (d) otherwise supplements matters of general principle set out in the regulations.
- (4) If a provision of this Act requires the Minister to be satisfied of any matter before recommending the making of regulations, the Director-General may not issue a notice under **subsection (2)** to supplement those regulations unless the Director-General is satisfied of that matter. 5
- (5) A notice may—
- (a) apply generally, or in relation to any specified, or specified class of, wine, persons, businesses, activities, or other matters or things: 10
 - (b) make the same provision for all cases or different provisions for different cases, or classes of case:
 - (c) impose any conditions, restrictions, or prohibitions.
- (6) If a notice issued under this section is inconsistent with the regulations, the regulations prevail to the extent of the inconsistency. 15
- (7) A notice issued under this section must be notified in accordance with section 116.

120A Application of Legislation Act 2012 to notices

- (1) The following notices issued under **section 120(1)** are neither disallowable instruments nor legislative instruments for the purposes of the Legislation Act 2012 and do not have to be presented to the House of Representatives under section 41 of that Act: 20
- (a) a notice issued for the purposes of section 41:
 - (b) a notice that— 25
 - (i) is issued for the purposes of section 11, 21, 39, or 82Y; and
 - (ii) applies only to a named person.
- (2) Any other notice issued under **section 120(1)**, and any notice issued under **section 120(2)**, is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 30

237 Section 121 amended (Incorporation of material by reference into regulations, notices, and orders)

- (1) In section 121(1)(b) and (c), replace “or requirements” with “, requirements, or recommended practices”. 35
- (2) After section 121(3), insert:
- (3A) Every reference in an instrument to the current edition of any standard work of reference is, unless the instrument otherwise specifies, to be construed at any

| | |
|---|----|
| particular time as the latest edition of that work available at that time, together with any amendments, additions, and deletions made to or from it up to that time. | |
| (3) In section 121(4), after “this section”, insert “(other than a standard work of reference)”. | 5 |
| (4) Replace section 121(5) with: | |
| (5) A standard work of reference is a work of reference that the Director-General considers is accepted internationally or by an industry as a standard one to refer to on its subject matter. | |
| 238 New sections 121A and 121B inserted | 10 |
| After section 121, insert: | |
| 121A Availability and proof of material incorporated by reference | |
| (1) If material (other than a standard work of reference) is incorporated by reference in an instrument under section 121, a copy of the material and any amendment to, or update of, the material must be— | 15 |
| (a) certified as a correct copy of the material by the Director-General; and | |
| (b) retained by the Director-General. | |
| (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the instrument of that material. | 20 |
| (3) The Director-General must— | |
| (a) make copies of all material incorporated in an instrument by reference available for inspection, free of charge, at the head office of the Ministry and at other places that the Director-General determines are appropriate; and | 25 |
| (b) make copies of the material available, free of charge, on an Internet site maintained by or on behalf of the Ministry; and | |
| (c) either make copies of the material available for purchase, at a reasonable cost, or advise where copies of the material may be obtained. | |
| (4) The Director-General may comply with subsection (3)(b) by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else. | 30 |
| (5) The Director-General is not required to comply with subsection (3)(b) or (c) if doing so would infringe copyright in the material or be inconsistent with any other enactment or rule of law. | 35 |

| | |
|--|----|
| 121B Application of Legislation Act 2012 to incorporating instrument and incorporated material | |
| (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in an instrument under section 121 or to an amendment to, or update of, that material. | 5 |
| (2) Subpart 1 of Part 3 of the Legislation Act 2012 applies to an instrument that incorporates material by reference. | |
| (3) However, nothing in section 41 of the Legislation Act 2012 requires material that is incorporated by reference in an instrument to be presented to the House of Representatives. | 10 |
| 239 New Schedule 1 inserted | |
| Insert the Schedule 1 set out in Schedule 2 of this Act as the first schedule to appear after the last section of the principal Act. | |
| Part 4 | |
| Consequential amendments to other enactments | |
| 240 Amendments to Summary Proceedings Act 1957 | |
| (1) This section amends the Summary Proceedings Act 1957. | |
| (2) In section 2(1), definition of infringement notice , in the first paragraph (ja) (relating to the Employment Relations Act 2000), replace “(ja)” with “(jaa)”. | |
| (3) In section 2(1), definition of infringement notice , after paragraph (jb), insert: | 20 |
| (jc) section 219 of the Food Act 2014; or | |
| (jd) section 125B of the Animal Products Act 1999; or | |
| (je) section 96B of the Wine Act 2003; or | |
| 241 Amendment to Health Act 1956 | |
| (1) This section amends the Health Act 1956. | 25 |
| (2) In section 69ZZZE(b), replace “specifications” with “notices”. | |
| 242 Amendment to Biosecurity (National American Foulbrood Pest Management Plan) Order 1998 | |
| (1) This section amends the Biosecurity (National American Foulbrood Pest Management Plan) Order 1998. | 30 |
| (2) In clause 14(2), replace “a standard or specification” with “an animal product standard”. | |
| 243 Amendment to Search and Surveillance Act 2012 | |
| (1) <u>This section amends the Search and Surveillance Act 2012.</u> | |

- (2) In the Schedule, item relating to section 322 of the Food Act 2014, replace “Requirements about applications for search warrant” with “Constable or food safety officer may apply for warrant”.

Schedule 1
New Schedule 1 inserted in Animal Products Act 1999

s 156

Schedule 1
Transitional, savings, and related provisions relating to amending Acts

s 6C

Part 1
Provisions relating to Food Safety Law Reform Act 2016

- 1 Operator of existing RMP to provide information now required with application to register programme** 10
- (1) The Director-General may, by notice under **section 167(1)**, require operators of existing RMPs to provide all or part of the additional information to the Director-General in the manner and within the period specified in the notice.
- (2) The operator must provide the information as required by the notice. 15
- (3) If the operator fails to do so, the Director-General may—
- (a) suspend operations under the existing RMP in accordance with section 27; or
- (b) remove the existing RMP from the register in accordance with section 28. 20
- (4) For the purposes of **subclause (3), sections 27(1)(c) and 28(1)(ba)** are to be read as including a reference to suspension or removal under this clause.
- (5) This clause is repealed on the date that is 2 years after the commencement date.
- (6) In this clause,—
- additional information** means information or material that the operator of the existing RMP— 25
- (a) has not provided to the Director-General; and
- (b) would have been required by section 20 to provide with an application for registration of the existing RMP had the application been made on the day on which the relevant notice under **subclause (1)** was issued 30
- commencement date** means the date on which **section 64** of the Food Safety Law Reform Act **2016** comes into force
- existing RMP** means a risk management programme that was registered before the commencement date.

*Saving of notices issued by Director-General***2 Interpretation**

In this clause and **clauses 3 to 5**,—

4-year date means the date that is 4 years after the commencement date

commencement date means the date on which **section 153** of the Food Safety Law Reform Act **2016** comes into force 5

existing notice means a notice that was issued by the Director-General under this Act and was in force immediately before the commencement date

new section 167 means **section 167** as inserted by **section 153** of the Food Safety Law Reform Act **2016**. 10

3 Saving of notices where empowering provisions continued or replaced

(1) This ~~section~~clause applies to an existing notice (a **continuing notice**) that—

(a) that was made only under 1 or more of the following:

(i) section 167(1)(a) (for section 14):

(ii) section 167(1)(f) (for sections 38 and 40): 15

(iii) section 167(1)(i) (for section 50):

(iv) section 167(1)(j) (for section 53):

(v) section 60 or 167(1)(ja) (for sections 60 and 60A):

(vi) section 167(1)(jb) (for section 60B):

(vii) section 167(1)(k) or (l) (for sections 62, 63, and 64): 20

(viii) section 167(1)(ld) (for section 81A):

(ix) section 167(1)(ma) (for section 117(4A)):

(x) section 167(1)(n) (for section 158):

(xi) section 167(1)(o) (for section 159); or

(b) is declared by Order in Council under **clause 5** to be a continuing notice. 25

(2) A continuing notice continues in force as if it were a notice issued under new **section 167(1) or (2)** (as the case requires) for the purposes of,—

(a) if the provision for the purposes of which it was made remains in force (with or without modifications), that provision; or 30

(b) otherwise, the provision of the Act that, with or without modification, replaces or corresponds to the provision for the purposes of which it was made.

(3) A continuing notice may be amended or revoked as if it were a notice issued under new **section 167(1) or (2)** (as the case requires). 35

- 4 Transitional arrangement for other notices**
- (1) This clause applies in relation to an existing notice that is not a continuing notice.
- (2) Until the 4-year date, a notice to which this clause applies—
- (a) ~~continues in force as if it were a notice issued under new **section 167(1) or (2)** (as the case requires); and~~ 5
- (a) continues in force as if—
- (i) it were a notice issued under new **section 167(1) or (2)** (as the case requires); and
- (ii) the provision for the purposes of which it was made had not been amended or repealed by the **Part 2** of the Food Safety Law Reform Act **2016**; and 10
- (b) may be amended or revoked by the Director-General by notice under section 167 as in force immediately before the commencement date as if **Part 2** of the Food Safety Law Reform Act **2016** had not commenced; 15
- (c) may be revoked by the Director-General by notice under new **section 167** or by the regulations.
- (3) On the 4-year date, any notice to which this clause applies that remains in force is revoked. 20
- 5 Order in Council declaring notices to be continuing notices**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare an existing notice, or a class of existing notices, to be a continuing notice or notices for the purposes of **clause 3**.
- (2) The Minister may not recommend the making of an order under this clause unless satisfied that, for each notice to which the order applies, there is an enactment in this Act as amended by the Food Safety Law Reform Act **2016**— 25
- (a) that, with or without modification, replaces or corresponds to the enactment under which the notice was made; and
- (b) under which the notice could be made. 30
- (3) An Order in Council cannot be made under this clause on or after the 4-year date.

Schedule 2
New Schedule 1 inserted in Wine Act 2003

s 239

Schedule 1
Transitional, savings, and related provisions relating to amending Acts

5

s 4A

Part 1
Provisions relating to Food Safety Law Reform Act 2016

1AA Operator of existing WSMP to provide information now required with application to register plan 10

(1) The Director-General may, by notice under **section 120(1)**, require operators of existing WSMPs to provide all or part of the additional information to the Director-General in the manner and within the period specified in the notice.

(2) The operator must provide the information as required by the notice. 15

(3) If the operator fails to do so, the Director-General may—

(a) suspend operations under the existing WSMP in accordance with section 24; or

(b) remove the existing WSMP from the register in accordance with section 25. 20

(4) For the purposes of **subclause (3), sections 24(1)(c) and 25(1)(ba)** are to be read as including a reference to suspension or removal under this clause.

(5) This clause is repealed on the date that is 2 years after the commencement date.

(6) In this clause,—

additional information means information or material that the operator of the existing WSMP— 25

(a) has not provided to the Director-General; and

(b) would have been required by section 18 to provide with an application for registration of the existing WSMP had the application been made on the day on which the relevant notice under **subclause (1)** was issued 30

commencement date means the date on which **section 176** of the Food Safety Law Reform Act **2016** comes into force

existing WSMP means a wine standards management plan that was registered before the commencement date.

*Saving of notices issued by Director-General***1 Interpretation**

In this Part ~~clause~~ and **clauses 2 to 4**,—

4-year date means the date that is 4 years after the commencement date

commencement date means the date on which **section 236** of the Food Safety Law Reform Act **2016** comes into force 5

existing notice means a notice that was issued by the Director-General under this Act and was in force immediately before the commencement date

new section 120 means **section 120** as inserted by **section 236** of the Food Safety Law Reform Act **2016**. 10

2 Saving of notices where empowering provisions continued or replaced

(1) This ~~section~~ clause applies to an existing notice (a **continuing notice**)—

(a) that was made only under 1 or more of the following:

(i) section 120(1)(b) (for section 11):

(ii) section 120(1)(j) (for sections 38 and 40(b)(i)): 15

(iii) section 120(1)(h) (for section 39):

(iv) section 120(1)(k) (for section 41):

(v) section 120(1)(l) and (m) (for sections 43, 44, and 45):

(vi) section 120(1)(i) (for section 47):

(vii) section 120(1)(o) (for section 88(5)): 20

(viii) section 120(1)(p) (for section 112); or

(b) that is declared by Order in Council under **clause 4** to be a continuing notice.

(2) A continuing notice continues in force as if it were a notice issued under new **section 120(1) or (2)** (as the case requires) for the purposes of,— 25

(a) if the provision for the purposes of which it was made remains in force (with or without modifications), that provision; or

(b) otherwise, the provision of the Act that, with or without modification, replaces or corresponds to the provision for the purposes of which it was made. 30

(3) A continuing notice may be amended or revoked as if it were a notice issued under new **section 120(1) or (2)** (as the case requires).

3 Transitional arrangement for other notices

(1) This clause applies in relation to an existing notice that is not a continuing notice. 35

(2) Until the 4-year date, a notice to which this clause applies—

- (a) ~~continues in force as if it were a notice issued under new **section 120(1) or (2)** (as the case requires); and~~
- (a) continues in force as if—
- (i) it were a notice issued under new **section 120(1) or (2)** (as the case requires); and 5
- (ii) the provision for the purposes of which it was made had not been amended or repealed by **Part 3** of the Food Safety Law Reform Act **2016**; and
- (b) may be amended or revoked by the Director-General by notice under section 120 as in force immediately before the commencement date as if **Part 3** of the Food Safety Law Reform Act **2016** had not commenced; and 10
- (c) may be revoked by the Director-General by notice under new **section 120** or by the regulations.
- (3) On the 4-year date, any notice to which this clause applies that remains in force is revoked. 15
- 4 Order in Council declaring notices to be continuing notices**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare an existing notice, or a class of existing notices, to be a continuing notice or notices for the purposes of **clause 2**. 20
- (2) The Minister may not recommend the making of an order under this clause unless satisfied that, for each notice to which the order applies, there is an enactment in this Act as amended by the Food Safety Law Reform Act **2016**—
- (a) that, with or without modification, replaces or corresponds to the enactment under which the notice was made; and 25
- (b) under which the notice could be made.
- (3) An Order in Council cannot be made under this clause on or after the 4-year date.

Legislative history

2 June 2016
16 August 2016

Introduction (Bill 135–1)
First reading and referral to Primary Production Committee