

# Regulatory Systems (Primary Industries) Amendment Bill

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Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

9 May 2024

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Regulatory Systems (Primary Industries) Amendment Bill (**Bill**).
- 1.2 This submission has been prepared with assistance from the Law Society's Public Law Committee and Environmental Law Committee,<sup>1</sup> and makes recommendations to improve some of the legislation intended to be amended by this Bill.
- 1.3 The Law Society does not wish to be heard in relation to this submission.

## 2 Amendments to Biosecurity Act

### *Duties of persons in biosecurity control areas (section 35)*

- 2.1 Clause 88 of the Bill amends section 35 of the Biosecurity Act 1993, which sets out the duties of persons in biosecurity control areas. The current provision requires persons in a biosecurity control area to provide their passport or evidence of identity if asked.<sup>2</sup> Clause 88 proposes to extend this ability to require documentation to include "any documentation relating to imported goods". Proposed new section 35(3B) states "the purpose for which the inspector may ask for information ... is to make a risk assessment about imported goods".
- 2.2 Even with the proposed 'purpose' provision in new section 35(3B), this clause grants inspectors a broad power to request documentation. It could, for example, require individuals to provide commercially sensitive and/or legally privileged material that is unlikely to assist in making risk assessments about the goods in question. While that may be an unlikely scenario, we query whether these broad powers are in fact needed to achieve the purpose in new section 35(3B).
- 2.3 The select committee should consider if it would be appropriate to narrow the scope of these proposed powers in order to ensure individuals are only required to provide documentation that may be relevant to assessing the risks posed by certain goods.

### *Section 154N offences*

- 2.4 Section 154N(21) states a person commits an infringement offence if they erroneously declare they are not in possession of any of the goods specified in the declaration. Clause 112 seeks to clarify that this includes declarations made both orally and in writing.
- 2.5 The issues outlined in the Regulatory Impact Statement (**RIS**) suggest individuals may be unaware verbal declarations and responses to questions could constitute an offence. Given the diversity of the individuals who are likely to be impacted by the proposed changes (many of whom speak different languages, and are unlikely to be familiar with the New Zealand legal system), it could be helpful to include a requirement to notify those who are arriving in New Zealand that erroneous oral declarations could also constitute an offence under section 154N(21).

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<sup>1</sup> More information on the Law Society's law reform committees can be found here: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

<sup>2</sup> Section 35(3).

2.6 We also note that an amendment which refers to declarations made "either orally or in writing" could create ambiguity about whether any erroneous declarations made in sign language would also constitute an offence under section 154N(21). We invite the select committee to consider whether the Act should be amended further to clarify this point (noting, for example, the Local Government Act 2002 was amended in 2014 to clarify that individuals can present their views to a local authority orally, and in New Zealand Sign Language (**NZSL**)).<sup>3</sup> If such an amendment is to be made, it would be appropriate for the legislation to refer to sign language more generally (rather than NZSL), as the amendment would also apply to individuals from other countries who may not speak NZSL.

### 3 Amendments to the Fisheries Act

3.1 Section 246 of the Fisheries Act 1996 provides that directors and managers of bodies corporate are, in certain circumstances, liable for the offences committed by the body corporate. However, the Act does not currently prescribe any penalties for those offences.

3.2 Clause 170 of the Bill now seeks to clarify the penalties which apply to the section 246 offences. The Law Society welcomes this clarification.

3.3 To further improve the clarity of the legislation, we recommend amending section 246(2) of the Act as follows (proposed amendment underlined):

"Every person to whom subsection (1) applies is liable on conviction to the appropriate penalty specified by this Act in respect of the provision creating the offence committed by the body corporate."

### 4 Amendments to the Food Act

4.1 Clause 235 of the Bill introduces a provision into the Food Act 2014 which enables the Minister to issue temporary food standards in circumstances permitted by a treaty with Australia.<sup>4</sup> New section 404A(3) requires the Minister to be satisfied there has been appropriate consultation on the temporary food standard that is reasonable and practical in the circumstances. However, new section 404A(4) provides that a failure to consult does not affect the validity of the temporary food standard.

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<sup>3</sup> Local Government Act 2002, s 83 (amended in 2014 by a 25 of the Local Government Act 2002 Amendment Act 2014).

<sup>4</sup> The Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (signed at Wellington on the 5th day of December 1995).

- 4.2 All administrative acts are valid until set aside as a matter of discretionary relief by a court on judicial review. In its discretion, the court could maintain the validity of the old standard until it is replaced with a new standard. Therefore, new section 404A(4) is either redundant, or may be read as intending to exclude any consequences for a failure to consult. We doubt this is intended as it would undermine the requirement in new section 404A(3) to consult. We therefore suggest deleting new section 404A(4).



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**Vice-President**