

FOOD AND DRUGS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Food and Drugs Act 1947.

Clause 1 relates to the Short Title.

Clause 2: Subclause (1) rewrites and extends the definition of the term "drug". The main purpose of the new definition is to extend the application of the principal Act to various substances, sold for internal or external use, that may affect the human body. *Paragraph (a)* of the new definition re-enacts existing wording. *Paragraph (b)* is new, and is intended to give a more effective control over substances that purport to alter the nutrition or structure of the human body. *Paragraph (c)* is new, and is intended to cover substances intended to influence or modify physiological processes, or the desires or emotions connected with them, or the desire for tobacco. *Paragraphs (d) and (e)* follow existing wording. *Paragraph (f)* is new. It would cover not only such things as medicated dressings but also various devices and appliances alleged to have curative powers. *Paragraph (g)* extends the existing reference to soap so as to include not only laundry soaps but also toilet soaps, creams, and lotions, and synthetic detergents. *Paragraphs (h), (i), and (j)* are new. Cosmetics and dentifrices are defined in *subclause (2)*.

Subclause (2) inserts new definitions. The definition of "advertisement" is relevant to section 17 (4) of the principal Act, and also to *clauses 5 and 11* of this Bill. The definitions of "cosmetic" and "dentifrice" are for the purposes of the new definition of "drug" in *subclause (1)*. The definition of "local authority inspector" is for the purpose of the amendments made by *clause 6*.

Subclause (3): The amendment made by *paragraph (a)* is for the purpose of uniformity with the wording of the new definition of "drug". The amendment in *paragraph (b)* is consequential on *clause 6*.

Clause 3 empowers the Minister of Health to appoint advisory and technical committees for the purposes of the principal Act.

Clause 4: Section 6 (3) of the principal Act makes it an offence to sell a food or drug in a package which bears a false or misleading statement purporting to indicate the nature, quality, strength, purity, composition, weight, origin, age, or proportion of the article or of any ingredient. This clause extends that provision so as to make it apply also to a statement indicating the effects of any such article or ingredient.

Clause 5 substitutes the word "advertisement" for the words "statement, design, or device" in section 9 of the principal Act, which deals with offences in relation to advertisements.

Clause 6: Section 12 of the principal Act confers certain powers of entry, inspection, and seizure, etc., on "officers". Under sections 2 and 5 of the principal Act, an "officer" means an officer of the Department of Health or an officer appointed as such for the purposes of the Act.

Subclause (1) of this clause confers on local authority Health Inspectors, in their own districts, all the powers of an "officer" under section 12 (except the power to take samples for examination or analysis) in respect of any food.

The amendments made by *subclauses (2) to (4)* are consequential; but *paragraph (a)* of *subclause (4)* also makes it clear that the provision in section 12 (3) of the principal Act for the destruction or other disposal of a seized food or drug does not prevent its being kept as long as may be necessary for its production in proceedings under the Act.

Subclause (4) inserts a new subsection imposing a duty on local authorities to furnish to the Medical Officer of Health such reports as may be required relating to the exercise of the powers of local authority inspectors under section 12 as amended by this clause.

Clause 7 authorises the Director-General of Health, for the purpose of enabling regulations to be made under the principal Act, to require the manufacturer in New Zealand of a compounded food or drug sold under a trade name, or the importer into New Zealand of any such food or drug, to give information as to the nature and proportion of the ingredients. This provision must be read subject to section 13 (4) of the principal Act, which imposes on all officers an obligation to maintain the secrecy of any such information.

Clause 8 empowers an officer, acting in the exercise of his powers under the principal Act, to require a person in possession of a food or drug for sale, or for delivery upon sale, to state his name and address and, so far as he is aware of them, the name and address of the person from whom he obtained the food or drug.

Clause 9: Subclause (1) makes a minor amendment to section 16 (4) of the principal Act, which permits the delivery to an Analyst of a sample taken under the Act by sending it in an insured parcel by any railway, road, or air service. As samples sent by rail at "railway risk" need not be specially insured, the amendment permits the sending of the parcel by rail in the ordinary way.

Subclause (2) includes packaged ice cream and other frozen confections in the provisions of the principal Act relating to the procedure to be followed on the taking of samples of bottled milk or cream.

Clause 10: Under section 17 of the principal Act a seller from whose stock a sample is taken may obtain a copy of the Analyst's certificate. The effect of this clause is that where there is no such certificate he may obtain a copy of the Analyst's report.

Clause 11 empowers the Director-General of Health, for the purpose of protecting the public, to publish statements in respect of a food or drug or of advertisements relating thereto.

Clause 12 protects from legal proceedings a person doing any act pursuant to the principal Act, unless he has acted in bad faith or without reasonable care. The clause follows similar provisions in the Poisons Act 1960 and the Health Act 1956.

Clause 13: Subclause (1) extends section 29 (2) (d) of the principal Act (which authorises the making of regulations for securing the cleanliness and freedom from contamination of a food or drug in the course of its manufacture, preparation, etc.) so as to include a reference to infection as well as to contamination.

Subclause (2) inserts a new paragraph authorising the making of regulations prohibiting, restricting, or regulating the sale or supply for human consumption of unpasteurised milk that is infected or is suspected by the Medical Officer of Health of being infected.

Subclause (3): Section 29 (2) (g) of the principal Act authorises the making of regulations prescribing the mode of labelling of a food or drug sold in a package. The amendment made by this subclause will enable regulations to be made requiring any matter to be printed, embossed, impressed, branded, stamped, or otherwise marked on a food or drug itself.

Subclause (4) inserts a new paragraph authorising the making of regulations requiring that a food or drug shall be artificially coloured in a prescribed manner.

Subclause (5): Regulations under the principal Act prescribe limits on the quantities or proportions of various substances that may be contained in various foods and drugs. The effect of the amendment made by this subclause is that regulations may authorise the Minister to vary by notice in the *Gazette*, for a prescribed period not exceeding 12 months, any prescribed limit on the quantity or proportion of any agricultural chemical or other contaminating substance that may be contained in any food or drug.

Hon. Mr McKay

FOOD AND DRUGS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Food and Drugs Act 1947

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Food and Drugs Amendment Act 1962, and shall be read together with and deemed part of the Food and Drugs Act 1947 (hereinafter referred to as the principal Act).

10 2. **Interpretation**—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “drug”, and substituting the following definition:

“‘Drug’ means—

15 “(a) Any substance or mixture of substances used or intended for use, whether internally or externally, for the purposes of the prevention, diagnosis, or treatment of any disease, ailment, disorder, deformity, defect, or injury of the human body:

“(b) Any substance or mixture of substances used or intended for use for the purpose of altering the nutrition or structure of the human body:

“(c) Any substance or mixture of substances used or intended for use for the purposes of influencing, inhibiting, or modifying any physiological process in human beings, or the desires or emotions connected with any such physiological process, or the desire for tobacco: 5

“(d) Any disinfectant, germicide, antiseptic, or preservative used for any purpose: 10

“(e) Any anaesthetic:

“(f) Any device or appliance used or intended for use for the purpose of producing the effect that would be produced by any drug within the meaning of any of the foregoing provisions of this definition: 15

“(g) Any laundry soap, any toilet soap, cream, or lotion, and any synthetic detergent:

“(h) Any cosmetic:

“(i) Any dentifrice: 20

“(j) Any chemical contraceptive.”.

(2) Section 2 of the principal Act is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Advertisement’ means any words, whether written, printed, or spoken, and any pictorial representation or design or device, used to explain the use or notify the availability or promote the sale of any food or drug; and includes any trade circular, any label, and any advertisement in any trade journal: 25 30

“‘Cosmetic’ means any substance or mixture of substances used or intended for use for the purposes of cleansing, beautifying, improving, or altering the hair, skin, or complexion of human beings; and includes any perfume, any deodorant, and any dusting powder: 35

“‘Dentifrice’ means any substance or mixture of substances used or intended for use for the purpose of cleansing the mouths or teeth (natural or artificial) of human beings; and includes any denture fixative: 40

“‘Local authority inspector’ means any City Health Inspector, Borough Health Inspector, Town District Health Inspector, County Health Inspector, or Road District Health Inspector:”.

5 (3) Section 2 of the principal Act is hereby further amended—

(a) By omitting from the definition of the term “food” the word “man”, and substituting the words “human beings”:

10 (b) By adding to the definition of the term “officer” the words “and, in relation to the powers conferred on a local authority inspector by this Act, includes a local authority inspector”.

3. Advisory and technical committees—The principal Act
15 is hereby amended by inserting, after section 5, the following section:

“5A. (1) The Minister of Health may from time to time appoint such advisory or technical committees as he thinks fit to advise him for any of the purposes of this Act, and
20 may from time to time determine the functions of any such committee.

“(2) There may be paid out of money appropriated by Parliament for the purpose to the members of any committee appointed under this section remuneration by way of
25 fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the committee were a statutory Board within the meaning of that Act.

30 “(3) Subject to the provisions of this Act and of any regulations made under this Act, every such committee may regulate its own procedure.”

4. Offences in relation to sales—Section 6 of the principal Act is hereby amended by inserting in subsection (3), after
35 the word “age”, the word “effects”.

5. Offences in relation to advertisements—Section 9 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words “statement, design, or device”, and substituting the word
40 “advertisement”:

(b) By omitting from subsection (2) the words “ a statement, design, or device”, and substituting the words “an advertisement”.

6. Powers of entry and inspection—(1) Section 12 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Any local authority inspector may in respect of any food exercise, within the district or districts in which he is employed, any of the powers conferred on an officer by paragraphs (a) to (d) of subsection (1) of this section.” 5

(2) Section 12 of the principal Act is hereby further amended by omitting from subsection (3) the words “shall become the property of the Crown”, and substituting the words “shall, if the seizure was made by an officer other than a local authority inspector, become the property of the Crown, or, if the seizure was made by a local authority inspector, become the property of the corporation of the local authority in whose district he was employed at the time of the seizure”. 10 15

(3) Section 12 of the principal Act is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in subsection (3) of this section shall prevent— 20

“(a) The keeping by the Crown of any food or drug, or the keeping by the local authority of any food, seized under this section, for such period as may be necessary for its production in any proceedings under this Act; or 25

“(b) The release or return by any officer, whether a local authority inspector or not, of any food or drug seized under this section if he is satisfied that the food or drug is fit for sale or if any conditions or stipulations imposed by him for the purpose of making it fit for sale have been complied with to his satisfaction.” 30

(4) Section 12 of the principal Act is hereby further amended by adding the following subsection: 35

“(6) It shall be the duty of every local authority to furnish to the Medical Officer of Health from time to time such reports relating to the exercise of the powers of local authority inspectors under this section as the Director-General of Health or the Medical Officer of Health may require.” 40

7. Power to obtain particulars of certain ingredients—

Section 13 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) For the purpose of enabling the making of regulations under this Act, the Director-General of Health may from time to time, by notice in writing to the manufacturer in New Zealand of any compounded food or drug which is sold
5 under a trade name, or to the importer into New Zealand of any such food or drug, require such manufacturer or importer to state correctly in writing to the Director-General the nature of the ingredients of the food or drug and the proportions in which those ingredients are contained in it. For the
10 purposes of this subsection, the term “manufacturer”, in relation to a food or drug, means the person who, as owner, packs the food or drug for sale or causes it to be so packed.”

8. Power to require name and address of seller—The principal Act is hereby further amended by inserting, after section
15 13, the following section:

“13A. (1) Any officer acting in the exercise of any of his powers under this Act may require any person who is in possession of any food or drug for sale, or for delivery upon sale, to state correctly his name and address and, so far as
20 he is aware of them, the name and address of the person from whom he obtained the food or drug.

“(2) Every person commits an offence against this Act who refuses or neglects to comply with any requisition made pursuant to this section.”

9. How samples to be taken—(1) Section 16 of the principal Act is hereby amended by omitting from subsection (4) the words “in an insured parcel by any railway, road, or air service”, and substituting the words “by any railway service or in an insured parcel by any road or air service”.

30 (2) The proviso to subsection (6) of section 16 of the principal Act (as enacted by section 12 of the Statutes Amendment Act 1951) is hereby amended—

(a) By inserting, after the words “bottled cream”, the words “or packaged ice cream or any other frozen confection”:

35 (b) By inserting, after the words “milk or cream”, the words “or two packages which purport to contain similar ice cream or a similar frozen confection under the same brand or label”.

10. Copy of Analyst's report on sample to be available— Section 17 of the principal Act is hereby amended—

- (a) By inserting in subsection (3), after the words "Analyst's certificate" where they first occur, the words "or, if there is no such certificate, a copy of the report made by the Analyst in respect of the sample": 5
- (b) By inserting in subsection (3), after the words "Analyst's certificate", where they last occur, the words "or report": 10
- (c) By inserting in subsection (4), after the words "Analyst's certificate", the words "or report".

11. Statements by Director-General of Health—The principal Act is hereby further amended by inserting, after section 28, the following section: 15

"28A. (1) Notwithstanding anything in this Act, the Director-General of Health may from time to time, for the purpose of protecting the public, publish statements in respect of any food or drug, or in respect of any matter contained or implied in advertisements (either generally or in any particular advertisement or any class or classes of advertisements) relating to any food or drug. 20

"(2) Every statement published under this section shall be privileged unless the publication is proved to be made with malice."

12. Protection of persons acting under authority of Act— 25
The principal Act is hereby further amended by inserting after section 28A (as inserted by section 11 of this Act), the following section:

"28B. A person who does any act in pursuance or intended pursuance of any of the provisions of this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he has acted in bad faith or without reasonable care." 30

13. Regulations—(1) Section 29 of the principal Act is 35
hereby amended by inserting in paragraph (d) of subsection (2), after the words "freedom from", the words "infection or".

(2) Section 29 of the principal Act is hereby further amended by inserting in subsection (2), after paragraph (d), the following paragraph:

5 “(dd) Prohibiting, restricting, or regulating the sale or supply for human consumption of unpasteurised milk (being milk within the meaning of the Milk Act 1944) that is infected or is suspected by any Medical Officer of Health, on reasonable grounds, of being infected:”.

10 (3) Section 29 of the principal Act is hereby further amended by adding to paragraph (g) of subsection (2) the words “and requiring any matter to be printed, embossed, impressed, branded, stamped, or otherwise marked on any food or drug (whether sold in a package or otherwise) in such

15 manner as may be prescribed in the regulations”.

(4) Section 29 of the principal Act is hereby further amended by inserting, after paragraph (j), the following paragraph:

20 “(jj) Requiring that any specified food or drug, or foods or drugs of any specified class or classes, shall be artificially coloured by the addition thereto of such colouring substance or substances as may be prescribed in the regulations, in such proportion or proportions as may be so prescribed:”.

25 (5) Section 29 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

30 “(2A) Any regulation under this section may empower the Minister of Health to vary by notice in the *Gazette*, for such period (not exceeding twelve months) as may be prescribed in the regulation any limit imposed by any such regulations on the quantity or proportion of any agricultural chemical (within the meaning of the Agricultural Chemicals Act 1959) or other contaminating substance that may be contained in

35 any food or drug.”