

3 October 2018

Hon Andrew Little
Minister of Justice
Parliament Buildings
Wellington

Dear Minister,

Reviewing New Zealand Law Regarding Malicious Tampering and Consumer Goods.

The high profile 'needles in strawberries' issue in Australia, plus copycat instances there and in New Zealand, once again proves the major financial and emotional impact that can be caused from malicious tampering. Whether the act is simple or sophisticated the result can cost millions of dollars in lost earnings, lost jobs and product waste.

You will recall in 2015 New Zealand had its own disaster with the 1080 threat to baby formula and the many millions of dollars in economic losses to the New Zealand industry, the consumer concern and threat to New Zealand's export markets that incident caused.

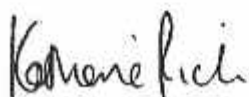
In 2015 I wrote to the Minister of Justice and the Minister for Food Safety and suggested it was important to do a review of the laws relating to food and grocery tampering and included a legal paper analysis done by Simpson Grierson. This wasn't a direct result of the 1080 incident, but more that over the years the NZFGC had received feedback from members that New Zealand law did not adequately deal with all aspects of tampering and could be strengthened.

Our paper identified some gaps in the law and offered some advice regarding potential reforms. A copy is attached. I note that officials pointed out that our paper missed one significant offence in the Crimes Act - 298B, which was an oversight in our advice.

At the time, we were advised that the current law was adequate and that there was no need for a review or for any further work to be done. We respectfully disagreed, but understood that with limited resources officials have to make choices about applying resources to work programmes.

In light of recent events, we believe it is worthwhile reconsidering the position and reviewing New Zealand's laws regarding malicious tampering of food, beverages, pharmaceuticals and other consumer goods to ensure that law is fit for purpose, particularly in terms of penalties.

Yours Sincerely,



Katherine Rich
Chief Executive

Katherine Rich

From: A Little Office (MIN) <a.little@ministers.govt.nz>
Sent: Monday, 8 October 2018 2:59 PM
To: Katherine Rich
Subject: Acknowledgement from the Office of Hon Andrew Little

Tēnā koe Katherine

On behalf of the Hon Andrew Little, Minister of Justice, thank you for your correspondence of 3 October 2018 regarding food tampering.

As this issue falls within the portfolio responsibilities of the Minister for Food Safety, we have transferred your concerns on to the Office of Hon Damien O'Connor for their consideration.

Regards,

Ngā mihi

Office of Hon Andrew Little MP

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Authorised by Hon Andrew Little MP, Parliament Buildings, Wellington 6160, New Zealand

From: Katherine Rich [mailto:katherine.rich@fgc.org.nz]
Sent: Wednesday, 3 October 2018 3:45 PM
To: A Little Office (MIN) <a.little@ministers.govt.nz>
Subject: Review of Laws Relating to Food & Grocery Product Tampering

Dear Minister, my letter regarding the New Zealand law with regard to food, beverage and grocery tampering is attached.

Thank you for your consideration.

Yours Sincerely,

Katherine Rich
Chief Executive

FG:C
NEW ZEALAND
FOOD & GROCERY COUNCIL

NZ Food & Grocery Council

Hon Damien O'Connor



MP for West Coast-Tasman

Minister of Agriculture

Minister for Biosecurity

Minister for Food Safety

Minister for Rural Communities

Minister of State for Trade and Export Growth

MIN18-1520

14 NOV 2018

Katherine Rich
katherine.rich@fgc.org.nz

Dear Katherine


Thank you for your correspondence of 3 October 2018 outlining your concerns regarding food tampering. Your letter has been forwarded to me as the Minister for Food Safety. Please accept my apologies for the delay in responding.

In response to the legal advice that the Food and Grocery Council shared in 2015 relating to food and grocery tampering, the Ministry for Primary Industries (MPI) reviewed the full range of offence provisions that could apply to threats against food safety, including tampering. This review found that there are a wide range of offences and penalty provisions, particularly in the Crimes Act that could be used to address such incidences. Our position on this matter has not changed, and our laws have continued to be fit for purpose.

During the recent response to a report of deliberately contaminated strawberries purchased from a New Zealand Countdown store, police led the criminal investigation with New Zealand Food Safety working to mitigate any public health risk. As part of the response it was agreed between the agencies that the potential offending could be considered for prosecution under the Crimes Act rather than food legislation.

It is important to continue to check our systems and make updates where necessary. New Zealand Food Safety is currently consulting on proposed changes to strengthen food recalls and improve risk-based plans and programmes. These proposals have their origins in the recommendations made from the independent Government inquiry into the whey protein concentrate contamination incident. The proposals do not specifically relate to food recalls due to deliberate contamination of food, however any steps taken to strengthen food recalls are likely to improve all kinds of food recalls. For more information about the consultation, see the proposals to strengthen food recalls and risk based plans and programmes at <https://www.mpi.govt.nz/news-and-resources/consultations>. The closing date for submissions on that consultation is Friday 7 December 2018.

Yours sincerely


Hon Damien O'Connor
Minister for Food Safety

TO: KATHERINE RICH, NEW ZEALAND FOOD AND GROCERY COUNCIL

FROM: PETER STUBBS / CISKA DE RIJK

MALICIOUS PRODUCT TAMPERING UNDER NEW ZEALAND LAW

20 MARCH 2015

1. Due to the recent rise of eco-terrorism, you have asked us to consider how adequately New Zealand legislation deals with malicious tampering of consumer products¹.
2. You have also asked us to review the law relating to malicious tampering of consumer products in the US, Australia, the United Kingdom, the European Union and Canada.
3. In this opinion we have construed tampering to include activities ranging in seriousness from threats of tampering to leaving messages/non dangerous items in products all the way through to contaminating products with dangerous items.

Summary

4. Based on our research, New Zealand does not have a specific piece of legislation that adequately protects all New Zealand businesses selling consumer products against malicious tampering. For example, there are no specific offences in relation to:
 - (a) tampering with or tainting non-food consumer products such as medicines or cosmetics, where such tampering would cause economic loss;
 - (b) maliciously causing economic harm as a result of altering labels or containers (such as over-stickering or inserting messages, like "Dolphin Killers" or "Beware Halal is barbaric and funds terrorism" (see below²) or "Orang-utan killers");



- (c) maliciously spreading false information that consumer products are tainted and that these tainted goods could result in health and safety issues; or
- (d) colluding to tamper with or alter consumer products.

¹ Note we have not considered the availability of economic tort remedies in New Zealand (which is judge made law as opposed to Parliament made law).

² <http://www.breitbart.com/london/2015/03/19/placing-banhalal-stickers-on-local-supermarket-meat-products-leads-to-court-appearance/>

5. New Zealand does have certain broad offence provisions under the Terrorism Suppression Act, however these would only be applicable where the malicious tampering was considered a "terrorist act". For example, where a person wishes to advance a political cause by tampering with consumer products and this then causes serious bodily injury to a person. The offences relating to any economic harm are limited, for example, to economic harm as a result of the release of disease-bearing organisms.

6. It could also be argued that the "blackmail" provisions under the Crimes Act 1961 provide some protection in relation to **threats** to tamper with consumer products. For example, where the threats relate to:

(a) causing serious damage to property or persons; or

(b) making an accusation against a company (such as that certain products are tainted),

and the person making the threat obtains any benefit or causes any loss to a company (or any other person).

However, the Crimes Act is not likely the best avenue to protect businesses³ against eco-terrorism. Particularly because offences under the Crimes Act require a higher burden of proof (ie. proof "beyond reasonable doubt") which may not be the correct standard to apply in respect of eco-terrorist threats.

7. There are also general offence provisions under the Food Act 2014. These provisions make it an offence to alter or tamper with food in certain situations. For example, it is an offence to tamper with food so that it does not conform with its label. However, these offences are more related to tampering to obtain a material benefit or avoid a material detriment and ensuring food law requirements are met, as opposed to tampering with the intent of causing bodily injury to a person or causing economic harm.

8. The remainder of this Memorandum expands on the above by providing a brief background to anti-tampering legislation in the United States of America (**USA**), analysing legislation in New Zealand of possible relevance to anti-tampering and then addressing our view as to why we consider the legislation in New Zealand is not adequate. It also provides a review of the legislation of possible relevance in Australia, the United Kingdom, the European Union and Canada. A summary of summarising the gaps in malicious product tampering and extortion legislation under each jurisdiction is attached to this Memorandum at Appendix B. Extracts from relevant legislation referred to in this Memorandum are also attached at Appendix C.

US Anti-Tampering Law – what is it?

9. Before we consider the New Zealand legislation, it is useful to understand the extent to which the USA has enacted laws against anti-tampering, and the reasons for this. This provides some context as to why these laws were needed in the USA and whether the same approach should be adopted in New Zealand.

10. In essence, the USA has a specific law that makes it a federal criminal offence to tamper with consumer products or engage in related conduct. This law is called the Federal Anti-Tampering Act 1983 (**US Act**). The US Act was introduced as a result of Tylenol poisoning deaths that occurred in Chicago in 1982 (Tylenol capsules were laced with potassium cyanide which killed seven people)⁴.

11. Under the US Act, a person commits a criminal offence if he or she:

³ Crimes against the person (such as poisoning) are of course dealt with in the Act

⁴ <http://content.time.com/time/nation/article/0,8599,1878063,00.html>

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- (a) tampers with or attempts to tamper with any consumer product⁵;
 - (b) taints any consumer product or renders its label or container materially false or misleading with intent to cause serious injury to the business of any person;
 - (c) knowingly communicates false information that a consumer product has been tainted, if such tainting would create a risk of death or bodily injury to another person;
 - (d) knowingly threatens to tamper with a consumer product, its labeling or container; and
 - (e) conspires to tamper with a consumer product, its labeling or container.

So the US Act targets both those who work as part of a group and "lone wolves".

- 12. In addition, the Product Packaging Act 2002 amended the US Act to apply to unauthorised materials that are either affixed to, or inserted in, packages. This was intended to stop activist groups from defacing product packaging or slipping unauthorized material into a box as, for example, a way of protesting the company or its products. (Because these materials do not actually touch the food product, the original US Act did not apply).
- 13. The amendment was in reaction to several reported incidences in the USA of people finding hate-filled, pornographic or political literature slipped into or onto containers of foods sold in stores.

Does New Zealand have similar legislation?

- 14. The question now turns to whether New Zealand has similar legislation which adequately regulates against malicious product tampering.
- 15. In short, our research indicates that **New Zealand does not have legislation that adequately protects New Zealand all businesses against malicious tampering.**
- 16. Businesses may have some protection under the Terrorism Suppression Act, however, this would only be applicable where the malicious tampering was considered a "terrorist act". There are also general offence provisions under the Food Act 2014. These provisions make it an offence to alter or tamper with food in certain situations. However, these offences are more strictly related to tampering to obtain a benefit or avoid a material detriment or ensuring food safety requirements are met, as opposed to tampering with the intent of causing bodily injury to a person or causing economic harm.
- 17. We address the relevant legislation in more detail below. Please also note that we have considered other consumer product legislation but we have not found any provisions that are directly on point.

Terrorism Suppression Act 2002

- 18. Although not directly related to tampering with consumer products, the Terrorism Suppression Act 2002 (**TSA**) will apply if malicious product tampering or extortion falls within the definition of a "terrorist act" under section 5.
- 19. An act is considered a "terrorist act" if it is intended to cause, in one or more countries:
 - (a) the death of, or other serious bodily injury to, one or more persons (other than a person carrying out the act);
 - (b) serious risk to the health or safety of a population;

⁵ A consumer product includes food, medicines, devices, cosmetics, and any other household product that is consumed by individuals or that is used for personal care or for household services. Household products include waxes, detergents, air fresheners, or any other product that is intended to be used up or consumed. They do not include durable goods, such as vacuum cleaners, brooms, or brushes, which are not intended to be used up or consumed.

- (c) destruction of, or serious damage to, property of great value or importance, or major economic loss or environmental damage, if likely to result in one or more of the outcomes specified in (a), (b) and (d);
 - (d) serious interference with, or serious disruption to, an infrastructure facility, if likely to endanger human life; and
 - (e) introduction or release of a disease-bearing organism, if likely to devastate the national economy of a country.
20. It must also be performed for the purpose of advancing an ideological, political, or religious cause with the intention to induce terror in a civilian population or to unduly compel or force a government or international organisation to do, or abstain from doing, any act.
21. Any person commits an offence when they engage in any terrorist act and is liable to imprisonment for life or a lesser term⁶.
22. Therefore, any malicious tampering that could fall within the definition of a "terrorist act" could be dealt with under the TSA. However, there could still be instances where malicious tampering occurs but is not considered a "terrorist act". Using the Tylenol poisonings mentioned above, we understand that there was no intention to advance an ideological, political, or religious cause – so this would then not be considered a "terrorist act".
23. In addition, and other than the introduction of disease-bearing organisms, there is limited emphasis on offences around intention to cause serious injury to the **business** of a person.

Crimes Act 1961

24. There is also the potential for any threats, or attempted threats, of tampering to be covered by the "blackmail" provisions under the Crimes Act 1961. Section 237⁷ of the Crimes Act 1961 provides that everyone commits blackmail who **threatens**, expressly or by implication, **to make any accusation** against any person (whether living or dead), **to disclose something** about any person (whether living or dead), **or to cause serious damage** to property or **endanger the safety** of any person with intent—
- (a) to cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and
 - (b) to obtain any benefit⁸ or to cause loss to any other person.
25. It is blackmail even if blackmailer believes that he or she is entitled to the benefit or to cause the loss unless the threat is reasonable and proper in the circumstances. Every person who commits blackmail is liable to imprisonment for a term not exceeding 14 years.
26. Therefore there may be situations where **threats** to tamper with consumer goods may be a criminal offence under the Crimes Act. In particular, where the threats relate to:
- (a) causing serious damage to property or persons; or
 - (b) making an accusation against a company (such as that certain products are tainted),
- and** the person making the threat obtains any benefit or causes any loss to another person (such as that company).
27. The blackmail provisions currently require evidence of intent. The US Act goes further and creates an offence where there is reckless disregard for safety.

Food Act 2014

⁶ Section 6A of the Terrorism Suppression Act 2002: <http://www.legislation.govt.nz/act/public/2002/0034/latest/DLM152705.html>
⁷ <http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM330263.html>

⁸ benefit means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

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28. The new Food Act 2014 does contain certain provisions against product tampering (noting that these provisions will not be in force until March 2016). For example, section 227 of the Food Act provides that it is an offence if a person, with the intent to deceive and for the purpose of obtaining any material benefit or avoiding material detriment:
- (a) alters, falsifies, misapplies, misrepresents⁹, misuses, removes, or fails to apply a form of identification of food, contrary to an applicable requirement of the Food Act; or
 - (b) adulterates, misrepresents, or tampers with food or a food-related accessory so that it does not conform with either its label, package or a statement under section 290 (a statement indicating that the food complies with New Zealand requirements).
29. Section 228 also provides that it is an offence if a person simply **commits** any of the acts listed under paragraphs 2B(a) or (b) above.
30. Therefore section 227 requires the offender to have the intent to deceive and to do a listed act for the purpose of obtaining any material benefit, or avoiding any material detriment, whereas section 228 has no intention requirement.
31. Importantly, and obviously, the provisions apply to food only.

Australia New Zealand Food Standards Code

32. The Food Code does have a general prohibition on altering labels. Essentially, unless a product is re-labelled to correct information, the label on a package of food must not be altered, removed, erased, obliterated or obscured except with the permission of the relevant authority (eg. Ministry of Primary Industries).
33. However, again, the intention of this provision is more around labels not being altered to ensure the label meets the specific requirements under the Food Code, as opposed to any **specific** prohibitions against tampering or altering products with malicious intent.

Is the legislation in New Zealand adequate to deal with malicious product tampering or extortion?

34. There is no doubt that tampering of consumer products is a foreseeable possibility in New Zealand, especially in the current political climate. It is also clear from our consideration of New Zealand laws, and the comparison to US laws, that our law is not adequate to deal with the range of issues that consumer product manufacturers, importers and suppliers may face.
35. Both the TSA and the Crimes Act have gaps, particularly in relation to economic harm, and require evidence of specified intent and a commitment to specified outcomes.
36. Our current legislation is not adequate in that it does not sufficiently protect New Zealand businesses or the general public. For example, there are no specific offences in relation to:
- (a) tampering with or tainting **non-food** consumer products such as medicines or cosmetics, where such tampering would cause economic loss;
 - (b) maliciously causing economic harm as a result of altering labels or containers (such as over-stickering or inserting messages, like "*Dolphin Killers*");
 - (c) maliciously spreading false information that consumer products are tainted and that these tainted goods could result in health and safety issues; or
 - (d) colluding to tamper with or alter consumer products.

⁹ Misrepresentation in relation to food or a food-related accessory is defined to include both a graphic and verbal misrepresentation as to the source, consignment, characteristics, description, labelling, safety and suitability, intended use, composition, ingredients or other constituents, and the proportion of ingredients or other constituents of the food or food-related accessory.

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37. Adulteration of cosmetics with non-life threatening additives and the insertion of anti-manufacturer messages into non-food consumer products, in each case unaccompanied by threats, are two examples of acts not covered by NZ legislation that could cause substantial economic loss.

Is the legislation in Australia adequate to deal with malicious product tampering or extortion?

38. In short, our research indicates that Australia does not have legislation that adequately regulates against malicious tampering or extortion.
39. Australian Commonwealth law provides for public reporting of consumer product tampering, but only for therapeutic goods. There are no offence provisions relating to the commission of consumer product tampering under Commonwealth law, leaving it to be controlled by State law.
40. Queensland is the only state which provides for consumer product tampering in law. This law is restricted to public reporting of consumer product tampering – everyone who commits an offence of consumer product tampering is charged under existing criminal law. The remaining states leave consumer product tampering to be addressed by their existing criminal law.
41. We address the relevant legislation in more detail below.

Commonwealth Law

Therapeutic Goods Act 1989

42. The Therapeutic Goods Act 1989 contains provisions against failing to report either actual or potential product tampering or a demand relating to actual or potential product tampering. Section 42T¹⁰ of the Therapeutic Goods Act provides that everyone commits an offence who –
- (a) supplies, manufactures or is a sponsor of, or proposes to supply, manufacture or become a sponsor of therapeutic goods¹¹ and;
 - (b) either:
 - (i) knows that some or all of those therapeutic goods, or any other therapeutic goods, are or have been subject to actual or potential tampering; or
 - (ii) some or all of those therapeutic goods, or any other therapeutic foods, are or have been subject to actual or potential tampering, and the person is reckless to that fact; and
 - (c) the person fails to notify the Secretary or the National Manager of the Therapeutic Goods Administration within 24 hours after becoming aware of, or becoming aware of a substantial risk of, actual or potential tampering
43. Section 42T of the Therapeutic Goods Act further provides everyone commits an offence who:
- (a) supplies, manufactures or is a sponsor of, or proposes to supply, manufacture or become a sponsor of therapeutic goods; and
 - (b) the person receives information or a demand; and
 - (c) either:
 - (i) knows that the information or demand relates (either expressly or by implication) to actual or potential tampering with some or all of those therapeutic goods, or any other therapeutic goods; or

¹⁰ http://www.comlaw.gov.au/Details/C2014C00410/Htm/Text#_Toc393438954

¹¹ Therapeutic goods are defined as goods that are represented in any way to be, or that are, whether because of the way in which the goods are presented or for any other reason, likely to be taken to be for therapeutic use, for use as an ingredient or component in the manufacture of therapeutic goods or for use as a container or part of a container for therapeutic goods.

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- (ii) the information or demand relates (either expressly or by implication) to actual or potential tampering with some or all of those therapeutic goods, or any other therapeutic goods, and the person is negligent as to that fact; and
 - (d) the person fails to notify the Secretary or the National Manager of the Therapeutic Goods Administration of the information or demand within 24 hours of receiving it.
 - 44. For the purposes of subparagraph 7(c)(ii), the person is only taken to be negligent to the fact that the information or demand relates to actual or product tampering if:
 - (a) their acts or omissions involve such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
 - (b) there is such a high risk that the information or demand is of that kind;that the acts or omissions merit criminal punishment.
 - 45. It does not matter whether, at the time of receipt of the information or demand:
 - (a) the person has possession or control of the therapeutic goods to which the information or demand relates; or
 - (b) the therapeutic goods are in existence.
 - 46. Actual or potential tampering in relation to therapeutic goods is defined in section 42U to mean:
 - (a) tampering with the therapeutic goods; or
 - (b) causing the therapeutic goods to be tampered with; or
 - (c) proposing to tamper with the therapeutic goods; or
 - (d) — proposing to cause the therapeutic goods to be tampered with.
 - 47. Any person who commits an offence under section 42T of the Therapeutic Goods Act is liable to a term of imprisonment, or 1000 penalty units, or both.
 - 48. Therefore a supplier, manufacturer or sponsor, or proposed supplier, manufacturer or sponsor, commits an offence if they know or are reckless to the fact that a therapeutic good has been tampered, or potentially tampered with, and they do not report it.

State Law

Queensland

- 49. Queensland has a specific law requiring public reporting of tampering, specifically relating to food. However, people who commit this offence are charged under existing criminal law. We will address the relevant legislation in more detail below.

Food Act 2006

- 50. The Food Act 2006¹² contains provisions relating to the reporting of intentional contamination¹³ of food. These provisions require food businesses to notify the chief executive of local government when a reasonable suspicion has been formed that food at their premises has been intentionally contaminated. Food businesses are also required to follow all directions given by the chief executive

¹² <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/F/FoodA06.pdf>

¹³ Intentional contamination of food means contamination of food by a person who intends to contaminate the food, including by adding, mixing or putting a deleterious or poisonous substance of thing into the food.

of local government in relation to identifying the source of the contamination and preventing or minimising the risk to public health or safety from the potentially contaminated food.

51. The Queensland Government has also issued an industry protocol for the intentional contamination of food.¹⁴ It states that a person who carries out such an act commits a crime and can be charged by the police under the Criminal Code Act 1899 (CCA).

Criminal Code Act 1899

52. The crime committed against the CCA is not specified in the Queensland Government industry protocol. There is the potential that consumer product tampering may be covered by the "extortion" provisions under the Criminal Code Act 1899. Section 415¹⁵ of the CCA provides that a person (the demander) commits extortion who, without reasonable cause, makes a demand¹⁶:

- (a) with intent to –
 - (i) gain a benefit for any person (whether or not the demander); or
 - (ii) cause a detriment to any person other than the demander; and
- (b) with a threat¹⁷ to cause a detriment to any person other than the demander.

53. It is extortion even if:

- (a) the demand or threat is made in a way ordinarily used to inform the public rather than a particular person;
- (b) the threat does not specify the detriment to be caused;
- (c) the threat does not specify the person to whom the general detriment is to be caused or specifies this in a general way; or
- (d) the detriment is to be caused by someone other than the demander.

54. Everyone who commits extortion is liable to life imprisonment if carrying out the threat causes or would be likely to cause:

- (a) serious personal injury to a person other than the offender; or
- (b) substantial economic loss in an industrial or commercial activity conducted by a person or entity other than the offender.

In all other circumstances, everyone who commits blackmail will be liable to 14 years imprisonment.

55. Therefore there may be situations where threats to tamper with consumer goods may be a criminal offence under the Criminal Code Act. In particular, where the threats relate to:

- (a) causing serious damage to property or persons; or
- (b) making an accusation against a company (such as that certain products are tainted)

and the person making the threat obtains a benefit or causes any loss to another person (such as that company).

¹⁴ http://www.health.qld.gov.au/ph/documents/ehu/susp_food_industry.pdf

¹⁵ <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CriminCode.pdf>

¹⁶ Making a demand includes causing someone to receive a demand.

¹⁷ Threat to cause detriment to any person other than the demander includes a statement that gives rise to threat of detriment to the other person.

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56. This extortion provision requires evidence of intent so would not extend as far as being reckless to the fact of product tampering.

Victoria

57. Victoria does not have legislation which specifically deals with product tampering or the public reporting of product tampering. Threats of product tampering may be dealt with by provisions of the Crimes Act 1958 in certain situations. We address the relevant provisions in more details below.

Crimes Act 1958

58. There is the potential for any threats of tampering to be covered by the "extortion with threat to kill" or "blackmail" provisions under the Crimes Act 1958.
59. Section 27¹⁸ of the Crimes Act 1958 provides that everyone commits extortion with threat to kill who makes a demand of another person with –
- (a) a threat to kill or inflict injury on a person (other than the offender or an accomplice of the offender); or
 - (b) with a threat in circumstances where, if the threat were carried out, the life of a person (other than the offender or an accomplice of the offender) would be endangered.
60. Every person who commits extortion with threat to kill is liable to imprisonment for a term not exceeding 14 years.
61. Therefore there may be situations where threats to tamper with consumer products may be an offence under the Crimes Act 1958. In particular, where the threats relate to tampering with consumer products in a way which would endanger the life of another if the tampering occurred.
62. Section 87¹⁹ of the Crimes Act 1958 further provides that everyone commits blackmail who, with a view to:
- (a) gain for himself or another; or
 - (b) with intent to cause loss to another.
- makes any unwarranted demand with menaces.
63. A demand with menaces is unwarranted unless the person making it does so in the belief that he has reasonable grounds for making the demand and that the use of the menaces is the proper means of reinforcing the demand.
64. It is blackmail regardless of the nature of the act or omission demanded and whether the menaces relate to action to be taken by the person making the demand or not.
65. Every person who commits blackmail is liable to imprisonment for a term not exceeding 15 years.
66. There may also be situations where unwarranted demands with menace to tamper with consumer goods may be an offence under the Crimes Act 1958. In particular, where the demands specify that a person will tamper with a consumer product if certain actions are not carried out by another and the person makes the demand intending to gain for himself or another or with intent to cause loss to another (such as that company).

New South Wales

Crimes Act 1900

¹⁸ http://www.austlii.edu.au/au/legis/vic/consol_act/ca195882/s27.html

¹⁹ http://www.austlii.edu.au/au/legis/vic/consol_act/ca195882/s87.html

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67. New South Wales does not have legislation which specifically deals with product tampering or the public reporting of product tampering. Product tampering may be dealt with by the "blackmail" provisions of the Crimes Act 1900 in certain situations. We address the relevant provisions below.
68. There is the potential for any threats of tampering to be covered by the "blackmail" provisions under the Crimes Act 1900. Section 249K²⁰ provides that everyone commits blackmail who makes any unwarranted demand with menaces²¹:
- (a) with the intention of obtaining a gain or of causing a loss; or
 - (b) with the intention of influencing the exercise of a public duty.
69. A demand for menaces is "unwarranted" unless the person believes that he or she has reasonable grounds for making the demand and reasonably believes that the use of menaces is a proper means of reinforcing the demand. The demand need not be a demand for money or other property.
70. Every person who commits blackmail is liable to imprisonment for a term not exceeding 14 years.
71. Therefore there may be situations where unwarranted demands with menace to tamper with consumer goods may be an offence under the Crimes Act. In particular, where the demands specify that a person will tamper with a consumer product if certain actions are not carried out by another and the person makes the demand intending to either gain, cause a loss to another person (such as that company) or influence the exercise of a public duty.

Australian Capital Territory

72. Australian Capital Territory does not have legislation which specifically deals with product tampering or the public reporting of product tampering. Product tampering may be dealt with by the "blackmail" provisions of the Criminal Code 2002 in certain situations. We will address the relevant provisions in more detail below.
73. There is the potential for any threats of tampering to be covered by the "blackmail" provisions under the Criminal Code 2002. Section 342 provides that every person commits an offence if the person makes an unwarranted demand with a menace of someone else with the intention of –
- (a) obtaining a gain;
 - (b) causing a loss; or
 - (c) influencing the exercise of a public duty.
74. Every person who commits blackmail is liable to imprisonment for a term not exceeding 14 years.
75. Therefore there may be situations where unwarranted demands with menace to tamper with consumer goods may be an offence under the Criminal Code 2002. In particular, where the demands specify that a person will tamper with a consumer product if certain actions are not carried out by another and the person makes the demand intending to either gain, cause a loss to another person (such as that company) or to influence the exercise of a public duty.

Is the legislation in the United Kingdom adequate to deal with malicious product tampering or extortion?

76. In short, our research indicated that the United Kingdom does not have legislation that adequately regulates against malicious tampering or extortion.
77. Businesses may have some protection under the general offence provisions of the Food Safety Act 1990. These provisions make it an offence to render a food injurious to health by certain means.

²⁰ http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/nsw/consol_act/ca190082/s249k.html?stem=0&synonyms=0&query=blackmail

²¹ Menaces includes an express or implied threat of any action detrimental or unpleasant to another person and a general threat of detrimental or unpleasant action that is implied because the person making the unwarranted demand holds a public office.

Food Law Codes of Practice also requires public reporting of product tampering. Product tampering may also be caught by the blackmail, extortion or demand with menaces provisions. We address the relevant legislation in more detail below.

Food Safety Act 1990

78. The Food Safety Act 1990 (**FSA**) contains a general offence provision. Section 7²² of the FSA makes it an offence to render any food²³ injurious to health by adding any article or substance to the food or subjecting the food to any other process or treatment with the intent that it should be sold for human consumption. To determine whether food is injurious to health, consideration must be given to the probable effect of that food on the health of the person consuming it and the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities.
79. Every person who commits an offence under the FSA is liable:
- (a) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both; or
 - (b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment not exceeding six months or both.
80. Therefore in the situation of food tampering with the intent of causing bodily injury to a person section 7 of the FSA may apply. However, it would not apply in a food tampering situation where the intent was to cause economic harm.

Food Law Codes of Practice

81. Food Law Codes of Practice have been issued in England, Wales, Scotland and Northern Ireland. These codes specifically identify the situation of deliberate contamination and malicious tampering of food²⁴ and provide procedures to follow if a situation arises. For example the English Food Law Code of Practice²⁵ provides that arrangements have been established between the Food Standards Agency, the police force and, if required, the Serious Organised Crime Agency. Food Authorities are directed to contract the Food Standards Agency at the earliest opportunity if malicious tampering is suspected.

England and Wales

Theft Act 1968

82. There is also the potential for threats of tampering to be covered by the "blackmail" provisions under the Theft Act 1968. Section 21²⁶ of the Theft Act 1961 provides that everyone commits blackmail who makes any unwarranted demand with menaces with the intention to gain for himself or another or cause loss to another. A demand with menace is unwarranted unless a person makes it in the belief that –
- (a) he has reasonable grounds for making the demand; and
 - (b) the use of the menaces is a proper means of reinforcing the demand.
83. The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand. Every person who commits blackmail is liable to imprisonment for a term not exceeding 14 years.

²² <http://www.legislation.gov.uk/ukpga/1990/16/section/7>

²³ Food includes drink, articles and substances of no nutritional value which are used for human consumption, and articles and substances used as ingredients in the preparation of food.

²⁴ Malicious tampering is defined in the English Food Law Code of Practice to mean the deliberate contamination of food by terrorist activity, or with a view to blackmail or extortion.

²⁵ <https://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/food-law-code-of-practice-england-april-2014.pdf>

²⁶ <http://www.legislation.gov.uk/ukpga/1968/60/section/21>

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84. Therefore there may be situations where **threats** to tamper with consumer goods may be a criminal offence under the Theft Act 1968. In particular, where the threats relate to:
- (a) causing serious damage to property or persons; or
 - (b) making an accusation against a company (such as that certain products are tainted)
- and** the person making the threat (or another person) obtains any benefit or the person causes loss to another person (such as that company).

Ireland

85. There is the potential for any threats of tampering to be covered by the "blackmail, extortion and demanding with menaces" provisions under the Criminal Justice (Public Order) Act 1994. Section 17²⁷ provides that it shall be an offence for any person who, with a view to gain for himself or another or with intent to cause loss to another, makes any unwarranted demand with menaces.
86. For the purposes of this section –
- (a) a demand with menaces shall be unwarranted unless the person making it does so in the belief –
 - (i) that he has reasonable grounds for making the demand; and
 - (ii) that the use of the menaces is a proper means of reinforcing the demand.
87. The nature of the act or omission demanded is immaterial as is whether or not the menaces relate to action to be taken by the person making the demand.
88. Every person who commits blackmail, extortion and demanding with menaces is liable to a fine or a term of imprisonment not exceeding 14 years or both.
89. Therefore there may be situations where **unwarranted demands with menace** to tamper with consumer goods may be an offence under the Criminal Justice (Public Order) Act 1994. In particular, where the demands specify that a person will tamper with a consumer product if certain actions are not carried out by another **and** the person makes the demand intending to either gain, cause a loss to another person (such as that company).

Northern Ireland

90. There is potential for any threats of tampering to be covered by the "blackmail" provisions under the Theft Act (Northern Ireland) 1969. Section 20²⁸ provides that every person is guilty who, with a view to gain for himself or another or with intent to cause loss to another, makes any unwarranted demand with menaces. A demand with menaces is unwarranted unless the person making it does so in the belief –
- (a) that he has reasonable grounds for making the demand; and
 - (b) that the use of menaces is a proper means of reinforcing the demand.
91. The nature of the act or omission is immaterial as is whether the menaces relate to action to be taken by the person making the demand.
92. Every person who commits blackmail shall be liable to a term of imprisonment not exceeding 14 years.
93. Therefore there may be situations where **unwarranted demands with menace** to tamper with consumer goods may be an offence under the Criminal Justice (Public Order) Act 1994. In

²⁷ <http://www.irishstatutebook.ie/1994/en/act/pub/0002/sec0017.html>

²⁸ <http://www.legislation.gov.uk/apni/1969/16/section/20>

particular, where the demands specify that a person will tamper with a consumer product if certain actions are not carried out by another **and** the person makes the demand intending to either gain or cause a loss to another person (such as that company).

Is the legislation in the European Union adequate to deal with malicious product tampering or extortion?

94. In short, our research indicates that the European Union does not have legislation that adequately regulates against malicious product tampering or extortion.
95. Although not directly related to tampering with consumer products, the European Union Council has enacted a framework decision on combatting terrorism. This may go some way to regulating against product tampering if it falls within the definition of a "terrorist offence". There are no other European Union legislation sources which could apply to consumer product tampering.
96. Framework decisions require European Union member states to achieve particular results but do not dictate the means of achieving such results. The European Commission cannot take enforcement proceedings for any failure to transpose a framework decision into domestic law. Framework decisions are subject only to the optional jurisdiction of the European Court of Justice.
97. We address the relevant decision in more detail below.

European Union Council Framework Decision of 13 June 2002 on Combatting Terrorism

98. The European Union Council Framework decision of 13 June 2002²⁹ on combatting terrorism requires member states to take measures necessary to ensure that certain terrorist offences are defined as offences under national law. Article 1 of the Framework decision specifies as terrorist offences both the releasing of dangerous substances which endanger human life and threatening to release dangerous substances which endanger human life.
99. Terrorist offences must be performed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.
100. Article 3 of the Council Framework Decision of 13 June 2002 further provides that each European Union member state shall take the necessary measures to ensure that terrorist-linked offences are provided for in legislation. These include extortion with a view to perpetrating releasing of dangerous substances which endanger human life or threatening to release dangerous substances which endanger human life.
101. Therefore the European Union has issued a strong message to its member states to ensure that terrorist offences are defined as offences under national law. Tampering with consumer goods or threats to tamper with consumer products may be terrorist offences where dangerous substances are released into food causing danger to human life.

Is the legislation in Canada adequate to deal with malicious product tampering or extortion?

102. In short, our research indicates that Canada has legislation that adequately regulates against malicious tampering or extortion, but in limited instances.
103. In essence, Canada has a specific law that makes it a criminal offence to tamper with a food commodity or engage in related conduct. This law is called the Safe Food for Canadians Act, SC 2012 c 24 (**Canadian Act**)³⁰.
104. Under the Canadian Act, a person commits a criminal offence if that person:

²⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1426113196029&uri=CELEX:32002F0475>

³⁰ <http://laws-lois.justice.gc.ca/eng/acts/S-1.1/FullText.html>

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- (a) tampers with any food commodity³¹ injurious to human health with intent to render the food commodity injurious to human health or cause a reasonable apprehension in others that the food commodity is injurious to human health; or
 - (b) threatens to render a food commodity injurious to human health; or
 - (c) communicates information, knowing that information to be false or misleading or being reckless as to whether it is false or misleading, with intent to cause a reasonable apprehension in others that a food commodity was tampered with in order to render it injurious to human health.

105. The Canadian Act is comparable with the US Act but fails to provide for the following situations which the US Act provides for:

- (a) tainting of a non-food, consumer product or rendering its label or container materially false or misleading with intent to cause serious injury to the business of any person; and
- (b) conspiring to tamper with a consumer product, its labelling or container.

³¹ Food commodity includes any article manufactured, sold or represented for use as food or drink for human beings, chewing gum, and any ingredient that may be mixed with food for any purpose whatsoever. Included also is any animal or plant, or any of its parts, from which food referred to as a food commodity may be derived. Anything prescribed to be a food commodity is also included.

Appendix A

We have considered the following legislation:

- Biosecurity Act
- Food Act 2014
- ANZ Food Standards Code
- Terrorism Suppression Act 2002
- Cosmetics Product Group Standard 2006
- Customs and Excise Act 1996
- Crimes Act 1961

We have also completed a general search through all New Zealand Acts using the search terms "tamper" and "threat".

Appendix B

Summary of jurisdictional review

This table shows which situations are provided for under the law of each country.

Situation	US	New Zealand	Australia	UK	EU	Canada
Tampering/attempting to tamper with all consumer products	√					
Tainting any consumer product/ rendering its label or container materially false or misleading with the intent to cause serious injury to the business of any person	√					
Knowingly communicating false information that a consumer product has been tainted (if such tainting would create a risk of death or bodily injury to another person)	√					
Knowingly threatening to tamper with a consumer product, its labelling or container	√	√	√	√		
Conspiring to tamper with a consumer product, its labelling or container	√					
Affixing or inserting unauthorised materials into packages	√					

Appendix C

Extracts from relevant legislation referred to in the opinion.

FEDERAL ANTI-TAMPERING ACT

U.S.C TITLE 18 – CRIMES AND CRIMINAL PROCEEDURE – PART I – CRIMES
CHAPTER 65 – MALICIOUS MISCHIEF

§ 1365. Tampering with consumer products

(a) Whoever, with reckless disregard for the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product, or attempts to do so, shall -

(1) in the case of an attempt, be fined under this title or imprisoned not more than ten years, or both;

(2) if death of an individual results, be fined under this title or imprisoned for any term of years or for life, or both;

(3) if serious bodily injury to any individual results, be fined under this title or imprisoned not more than twenty years, or both; and

(4) in any other case, be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever, with intent to cause serious injury to the business of any person, taints any consumer product or renders materially false or misleading the labeling of, or container for, a consumer product, if such consumer product affects interstate or foreign commerce, shall be fined under this title or imprisoned not more than three years, or both.

(c) (1) Whoever knowingly communicates false information that a consumer product has been tainted, if such product or the results of such communication affect interstate or foreign commerce, and if such tainting, had it occurred, would create a risk of death or bodily injury to another person, shall be fined under this title or imprisoned not more than five years, or both.

(2) As used in paragraph (1) of this subsection, the term "communicates false information" means communicates information that is false and that the communicator knows is false, under circumstances in which the information may reasonably be expected to be believed.

(d) Whoever knowingly threatens, under circumstances in which the threat may reasonably be expected to be believed, that conduct that, if it occurred, would violate subsection (a) of this section will occur, shall be fined under this title or imprisoned not more than five years, or both.

(e) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense, shall be fined under this title or imprisoned not more than ten years, or both.

(f) In addition to any other agency which has authority to investigate violations of this section, the Food and Drug Administration and the Department of Agriculture, respectively, have authority to investigate violations of this section involving a consumer product that is regulated by a provision of law such Administration or Department, as the case may be, administers.

(g) As used in this section -

(1) the term "consumer product" means -

(A) any "food", "drug", "device", or "cosmetic", as those terms are respectively defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

(B) any article, product, or commodity which is customarily produced or distributed for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is designed to be consumed or expended in the course of such consumption or use;

(2) the term "labeling" has the meaning given such term in section 201(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(m));

(3) the term "serious bodily injury" means bodily injury which involves -

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(4) the term "bodily injury" means -

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary.

PRODUCT PACKAGING PROTECTION ACT OF 2002

Sec. 2. Tampering With Consumer Products.

Section 1365 of title 18, United States Code, is amended--

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following:

'(f)(1) Whoever, without the consent of the manufacturer, retailer, or distributor, intentionally tampers with a consumer product that is sold in interstate or foreign commerce by knowingly placing or inserting any writing in the consumer product, or in the container for the consumer product, before the sale of the consumer product to any consumer shall be fined under this title, imprisoned not more than 1 year, or both.

'(2) Notwithstanding the provisions of paragraph (1), if any person commits a violation of this subsection after a prior conviction under this section becomes final, such person shall be fined under this title, imprisoned for not more than 3 years, or both.

'(3) In this subsection, the term 'writing' means any form of representation or communication, including hand-bills, notices, or advertising, that contain letters, words, or pictorial representations.'

TERRORISM SUPPRESSION ACT 2002

5 Terrorist act defined

- (1) An act is a **terrorist act** for the purposes of this Act if—
- (a) the act falls within subsection (2); or
 - (b) the act is an act against a specified terrorism convention (as defined in [section 4\(1\)](#)); or
 - (c) the act is a terrorist act in armed conflict (as defined in [section 4\(1\)](#)).
- (2) An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for the purpose of advancing an ideological, political, or religious cause, and with the following intention:
- (a) to induce terror in a civilian population; or
 - (b) to unduly compel or to force a government or an international organisation to do or abstain from doing any act.
- (3) The outcomes referred to in subsection (2) are—
- (a) the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act);
 - (b) a serious risk to the health or safety of a population;
 - (c) destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d);
 - (d) serious interference with, or serious disruption to, an infrastructure facility, if likely to endanger human life;
 - (e) introduction or release of a disease-bearing organism, if likely to devastate the national economy of a country.
- (4) However, an act does not fall within subsection (2) if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.
- (5) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person—
- (a) is carrying out an act for a purpose, or with an intention, specified in subsection (2); or
 - (b) intends to cause an outcome specified in subsection (3).

CRIMES ACT 1961

237 Blackmail

- (1) Every one commits blackmail who threatens, expressly or by implication, to make any accusation against any person (whether living or dead), to disclose something about any person (whether living or dead), or to cause serious damage to property or endanger the safety of any person with intent—
- (a) to cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and

(b) to obtain any benefit or to cause loss to any other person.

(2) Everyone who acts in the manner described in subsection (1) is guilty of blackmail, even though that person believes that he or she is entitled to the benefit or to cause the loss, unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose.

(3) In this section and in [section 239](#), **benefit** means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.

238 Punishment of blackmail

Everyone who commits blackmail is liable to imprisonment for a term not exceeding 14 years.

FOOD ACT 2014

227 Offences involving intentionally defeating purpose of Act or deceiving in relation to identifying or representing food

(1) A person commits an offence if the person, with intent to deceive and for the purpose of obtaining any material benefit or avoiding any material detriment,—

(a) alters, falsifies, misapplies, misrepresents, misuses, removes, or fails to apply a form of identification of food, contrary to an applicable requirement of this Act; or

(b) adulterates, misrepresents, or tampers with food or a food-related accessory so that it does not conform with—

(i) its label;

(ii) its package;

(iii) a statement made under [section 290](#).

(2) A person who commits an offence against this section is liable on conviction,—

(a) for a body corporate, to a fine not exceeding \$500,000;

(b) for an individual, to—

(i) imprisonment for a term not exceeding 5 years; and

(ii) a fine not exceeding \$100,000.

(3) In this section, **misrepresentation**, in relation to food or a food-related accessory, includes both a graphic and verbal misrepresentation in all forms as to the source, consignment, characteristics, description, labelling, safety and suitability, intended use, composition, ingredients or other constituents, and the proportion of ingredients or other constituents of the food or food-related accessory.

228 Offences involving identifying or representing food

(1) A person commits an offence if the person—

(a) alters, falsifies, misapplies, misrepresents, misuses, removes, or fails to apply a form of identification of food, contrary to an applicable requirement of this Act; or

(b) adulterates, misrepresents, or tampers with food or a food-related accessory so that it does not conform with—

(i) its label;

(ii) its packaging;

(iii) a statement made under [section 290](#).

(2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.

(3) Section 251 contains defences to a prosecution for an offence against this section.

(4) 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 a fine not exceeding \$50,000.

(5) In this section, **misrepresentation**, in relation to food or a food-related accessory, includes both a graphic and verbal misrepresentation in all forms as to the source, consignment, characteristics, description, labelling, safety and suitability, intended use, composition, ingredients or other constituents, and the proportion of ingredients or other constituents of the food or food-related accessory.

STANDARD 1.1.1 OF THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE

11 Prohibition on altering labels

(1) Subject to subclause (2), the label on a package of food must not be altered, removed, erased, obliterated or obscured except with the permission of the relevant authority.

(2) A package of food may be relabelled by placing a new label over the incorrect one provided that the new label is not able to be removed so that the incorrect information is visible.