

Departmental Disclosure Statement

Regulatory Systems Amendment Bills

The departmental disclosure statement for a government bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 September 2016

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Part One: General Policy Statement

There are three Regulatory Systems Amendment Bills: Regulatory Systems (Building and Housing) Amendment Bill, Regulatory Systems (Commercial Matters) Amendment Bill and the Regulatory Systems (Workplace Relations) Amendment Bill (the Bills).

The Bills are introduced under Standing Order 269 and 263 which provides that the Parliamentary Business Committee may determine any two or more bills are cognate bills and that the bills are omnibus bills. On 7 September 2016, The Parliamentary Business Committee agreed that the Regulatory Systems Amendment Bills be approved as omnibus bills and be considered as cognate bills.

The three Regulatory Systems Amendment Bills are omnibus bills that contain amendments to legislation administered by the Ministry of Business, Innovation and Employment (MBIE). The policy objective of the Bills are to maintain the effectiveness and efficiency of the regulatory systems established by the Principal Acts amended by the Bills and so reduce the chance of regulatory failure. The amendments will achieve this objective by:

- clarifying and updating statutory provisions to give effect to the purpose of the principal Act and its provisions;
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation;
- keeping the regulatory system up to date and relevant; and
- removing unnecessary compliance costs and costs of doing business.

The amendments were identified as part of MBIE's regulatory systems work programme, which arises from the chief executive's responsibility for the stewardship of the legislation administered by the Ministry under section 32 of the State Sector Act 1988.

The Bills also respond to the New Zealand Productivity Commission's July 2014 report *Regulatory Institutions and Practices*. The New Zealand Productivity Commission found that it can be difficult to find time on the Parliamentary calendar for "repairs and maintenance" of existing legislation. As a result, regulatory agencies often have to work with legislation that is out of date or not fit for purpose. This creates unnecessary costs for regulators and regulated parties, and means that regimes may not keep up with public or political expectations.

The Bills are a vehicle for these smaller regulatory fixes to be progressed in a timely and cost effective manner in order to deliver the flow-on benefits to business and the wider economy.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Regulatory institutions and practices, New Zealand Productivity Commission, 30 June 2014 (accessible at http://www.productivity.govt.nz/inquiry-content/1788?stage=4).</p> <p>Review of the Law of Trusts (NZLC R130), New Zealand Law Commission, 29 August 2013 (accessible at: http://lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R130.pdf).</p> <p>Technical Amendments to the Takeovers Code: Recommendations to the Minister of Commerce from the Takeovers Panel, Takeovers Panel, 20 August 2012 (accessible at http://www.takeovers.govt.nz/the-panel/new-landing-page1-2/recommendation-to-the-minister-of-commerce/).</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory impact statements were not completed for policy proposals that involved technical revisions, as they would have no or only minor impacts on businesses, individuals or not-for-profit entities, or would repeal or remove redundant provisions.</p> <p>A Regulatory impact statement (RIS) was completed for three policy proposals under the Commerce and Consumer Affairs portfolios. Completed on 23 May 2014, this RIS can be accessed at: http://www.mbie.govt.nz/about/our-work/roles-and-responsibilities/regulatory-systems-performance/documents-image-library/RIS-commerce-portfolio-changes.pdf.</p> <p>Once the Bill has been introduced, the RIS can also be downloaded at: http://www.treasury.govt.nz/publications/informationreleases/ris.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
No, the RIS did not meet the threshold for RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The RIS contains information about the size of the potential costs and benefits of the relevant policy proposals at pages 4-5, 7-8 and 10, accessible at the links under Question 2.3.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
In line with the purpose of the Regulatory Systems Amendment Bills — to enhance the effectiveness and efficiency of the regulatory systems that MBIE is responsible for — many of the proposed policy changes in the Bills are intended to lower or clarify compliance requirements to better reflect commercial realities. Compliance levels, given the policy of generally lowered obligations and standards for organisations and individuals, will be a measure of the Bills' effectiveness.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

New Zealand's international obligations do not impact on the policies of the Bills.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The principles of the Treaty of Waitangi do not impact on the policies of the Bills.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is available on the Ministry of Justice's website upon the introduction of a Bill at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>There are new regulatory offences in clauses 77 and 114(14) of the Regulatory Systems (Commercial Matters) Amendment Bill added to the Financial Markets Conduct Act 2013 (FMC Act). The changes provide for infringement offences where there is a failure to make information available as required under the legislation. The proposed changes correct omissions in the FMC Act where consequences for breaches of the Act were inadvertently missed when it was enacted.</p> <p>The Regulatory Systems (Commercial Matters) Amendment Bill involves transferring a decision making power from the courts to the Takeovers Panel, giving the Takeovers Panel jurisdiction to adjudicate takeover-related expense disputes under Rule 49 of the Takeovers Code and providing a right of appeal to the High Court.</p> <p>The amendment to s142W of the Employment Relations Act in the Regulatory Systems (Workplace Relations) Amendment Bill brings the provision in line with the original policy intent. As currently drafted, the provision could be read that only officers of the employer could be found to be involved in a breach, ie that third parties who do not hold a position in the employer could not be found to be involved in a breach. It was always the intent of the provision that third parties who do not hold a position in the employer could be found to be involved in a breach, and the amendment makes this clear.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted on the new infringement offences and the potential options for the resolution of expense disputes under the Takeovers Code including a right of appeal. The Ministry of Justice agrees with the approach that has been taken.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
There has been external consultation on several of the policies to be given effect by the Bills. (Appendix One). In addition, an Exposure Draft of the Regulatory Systems Bill was released for consultation in December 2015.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Appendix One: Further Information Relating to Part Three

External consultation – question 3.6

Officials undertook consultation for certain policies in the Bills at different stages of the policy development process. The consultation processes for each Principal Act is discussed below.

Insolvency Act 2006

Details about consultation during the development of this policy can be found in the RIS at paragraphs 38-41, accessible at the links under Question 2.3 above.

Takeovers Act 1993

Details about consultation during the development of this proposal can be found in the RIS at paragraphs 59-60, accessible at the links under Question 2.3 above.

Postal Services Act 1998

Targeted consultation was undertaken with New Zealand Post and other postal operators during policy development of the update to the definition of a letter. They recognised the need to amend the Postal Services Act 1998 and were broadly supportive of the proposed amendment, on the understanding that its intent is to maintain the existing scope of the Act.

New Zealand Post, New Zealand Mail and DX Mail were consulted on the relevant draft provision changing the definition of a letter.

A second amendment clarifying that the Postal Services Act does not apply to courier services is included in the Regulatory Systems (Commercial Matters) Amendment Bill. The industry has been informed of this clarifying provision and stakeholder submissions are welcome at the select committee stage.

New Zealand Superannuation and Retirement Income Act 2001

The Retirement Commissioner was consulted on the draft provisions of the Bill relating to the functions of the Retirement Commissioner.

Unit Titles Act 2010

The Unit Titles Act 2010 proposals were originally intended to be included in a Unit Titles Amendment Bill. However, it was never introduced. A full consultation process was conducted on the proposals at that time, and submitters' views were considered and incorporated into the proposals.

Construction Contracts Act 2002

The original policy intention was for the retentions provisions in the Construction Contracts Amendment Act 2015 to apply only to contracts entered into after the commencement date of the provisions (31 March 2017). Targeted consultation with representatives of the construction sector and with banks was carried out in 2013 and 2014. Further feedback has now been received from engagement with stakeholders during 2016. Stakeholders consider that many industry participants will have difficulty complying with the retentions provisions in respect of contracts entered into before 31 March 2017. The amendments proposed in this Bill will clarify that the retentions provisions will not apply to contracts entered into before 31 March 2017.