

Departmental Disclosure Statement

Regulatory Systems (Economic Development) Amendment Bill (No 2)

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.

September 2018

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Part One: General Policy Statement

The Regulatory Systems (Economic Development) Amendment Bill (No 2) is an omnibus bill that contains amendments to legislation administered by the Ministry of Business, Innovation and Employment (MBIE). The policy objective of the Bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Principal Acts amended by the Bill and so reduces 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 systems up to date and relevant; and
- removing unnecessary compliance costs and costs of doing business.

The Bill is introduced under Standing Orders 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 9 May 2018 the Parliamentary Business Committee agreed that the Regulatory Systems Amendment Bills be approved as omnibus bills and be considered as cognate bills.

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 MBIE under section 32 of the State Sector Act 1988.

The Bill also responds 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 Bill is a vehicle for these 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.

This Bill the Regulatory Systems (Economic Development) Amendment Bill is a vehicle for these smaller regulatory fixes to be progressed in a timely and cost effective fashion in order to deliver the flow-on benefits to business and the wider economy. It includes the following amendments:

Amendments to Building Societies Act 1965

The Building Societies Act 1965 changes will bring the process for cancelling or suspending the registration of a building society in line with the cancellation and suspension requirements for other corporate forms.

Amendments to Companies Act 1993

The changes to the Companies Act 1993 are intended to clarify and update provisions to give effect to the purpose of the Companies Act and to remove unnecessary costs of doing business.

The changes to clarify and update provisions include:

- amending the disqualification criteria for directors to include where the Court has prohibited a discharged bankrupt from being a director or being concerned in the management of a company
- removing unnecessary provisions on the disclosure of information under the Official Information Act 1982 and the Privacy Act 1993
- adding some additional serious dishonesty offences to the criteria that prohibit people from managing companies or being appointed as a liquidator.

The changes to remove unnecessary costs of doing business include:

- allowing documents to be sent by email to overseas companies and bodies corporates
- allowing the notice for a meeting to extend the deadline in which electronic votes and proxies must be received.

Amendments to Credit Contracts and Consumer Finance Act 2003

The changes to the Credit Contracts and Consumer Finance Act 2003 are intended to clarify and update provisions to give effect to the purpose of the Act, address regulatory gaps, and to remove unnecessary costs of doing business.

The changes to clarify and update provisions include:

- The Bill clarifies that the overarching lender responsibilities in section 9C(2) apply to “relevant insurance contracts”. While it is arguable that they do apply because conduct by lenders in relation to relevant insurance contracts is closely linked to conduct by lenders in relation to credit contracts, the change is intended to clarify their application.

The changes to address regulatory gaps include:

- The Bill adds offences and infringement offences for breach of certain requirements for the publication of standard form contract terms (section 9J) and publication of costs of borrowing (section 9K). The omission of offences for breaches of these requirements appears to have been oversight and is inconsistent with related provisions – breaches of other disclosure requirements are offences or infringement offences.

The changes to remove unnecessary costs of doing business include:

- The Bill allows lenders to opt-in to the new repossession scheme introduced by the Credit Contracts and Consumer Finance Amendment Act 2014 for all loans which they administer. This will increase administrative efficiency for lenders, who will only have to comply with one set of notice requirements for repossession. Borrowers who are opted in to the new repossession scheme will receive the added protections of the new repossession scheme.
- The Bill provides that the Act's repossession regime does not apply to goods owned by companies or where a business declaration has been signed.

Amendments to Fair Trading Act 1986

The changes to the Fair Trading Act are intended to better reflect the nature and purpose of product safety standards, by clarifying that it is *goods* that must comply with a standard (before a person can supply the goods), rather than requiring the person supplying the goods to comply. The change is consistent with the interpretation of the existing provisions by the courts, and so is not expected to have a substantive effect.

Amendments to Financial Reporting Act 2013

The purpose of this amendment is to remove legal uncertainty on whether a standard on agreed upon procedures falls within the definition of auditing and assurance standards. The change will enable the External Reporting Board to issue a standard on agreed upon procedures.

Amendments to Geographical Indications (Wine and Spirits) Registration Act 2006

The purpose of the amendments is to clarify the process for expired Geographical Indicators.

Amendments to Insolvency Act 2006

The changes to the Insolvency Act are intended to clarify and update provisions to give effect to the purpose of the Act, address regulatory inconsistencies, and to minimise compliance costs in relation to the functions of the Official Assignee.

The changes that clarify and update provisions include:

- requiring a bankrupt to obtain consent to work for a relative, regardless of whether they are rewarded for that work or not
- clarifying that the value of necessary tools of trade and household furniture a bankrupt may retain is at the Official Assignee's discretion on a case-by-case basis
- requiring a person under examination to provide information to the Official Assignee to the best of the person's ability
- providing that creditors who files a claim after a distribution to creditors is declared are entitled to participate in any future distributions from the balance of available funds (earlier distributions are not to be disturbed)

- providing for undistributed monies from a summary instalment order to be paid to the Public Trust
- providing a mechanism for bankrupts who die before submitting a statement of affairs to be automatically discharged from bankruptcy three years after death
- changing the name of the Summary Instalment Order procedure to Debt Repayment Order.
- clarifying that student loans and child support payments must not be included in a summary instalment order
- removing the requirement for the Official Assignee to terminate a No Asset Procedure before applying to the court for a preservation order
- updating the information able to be shown on the Insolvency Register to include a person's date of entry and date of discharge from a summary instalment order and alternative names and aliases of debtors
- replacing the requirement for a business postal address of a summary instalment order supervisor to be displayed on the Insolvency Register with an email address.

The changes that address regulatory inconsistencies include:

- providing the Official Assignee with the power to reject an incorrect or incomplete statement of affairs for creditor-initiated bankruptcy applications
- providing the ability to extend the 5 year irregular transaction period in relation to insolvent gifts to align with the ability to extend the 2 year and 6 month extension period for other irregular transactions
- amending the Insolvency Act so that under a summary instalment order debts entered into fraudulently are not discharged
- providing the Official Assignee with discretion to deny admittance into the No Asset Procedure if the debtor's adjudication as a bankrupt would result in an outcome that is materially better for creditors
- providing the Official Assignee with the ability to reverse a discharge of from a No Asset Procedure, similar to the process of reversing a discharge from bankruptcy
- removing the requirement that a Crown Solicitor must certify that there are reasonable grounds for a prosecution before charges are laid.

The changes that minimise compliance costs in relation to the functions of the Official Assignee include:

- removing the requirement that a record of examination must be read back to the bankrupt
- removing the requirement for account records of the bankrupt to be kept in a prescribed manner.

Amendments to Limited Partnerships Act 2008

The purpose of the amendments to the Limited Partnerships Act 2008 is to clarify and update provisions to give effect to the purpose of the legislation and to remove unnecessary compliance costs. The changes will prohibit a bankrupt from directly or indirectly being concerned or taking part in the management of a company; provide that section 328(3)(a) of the Companies Act applies to give public notice of the restoration of limited partnerships to the register; and amend the information requirements on general partners who are resident in an enforcement country.

Amendments to Personal Property Securities Act 1999

The changes to the Personal Property Securities Act are intended to keep the regulatory system up to date and relevant by making amendments to the provisions on the location, contents and search criteria of the personal property securities register.

Amendments to Plant Variety Rights Act 1987

The purpose of this amendment is to allow for an address for service to be provided in either New Zealand or Australia. This will reduce compliance costs for applicants resident in Australia, and applicants who choose to use an Australian representative to prosecute their plant variety rights applications. It will facilitate greater competition between Australian and New Zealand patent attorneys under the new trans-Tasman Patent Attorney regime.

Amendments to Takeovers Act 1993

The changes to the Takeovers Act are intended to remove unnecessary compliance costs and clarify a statutory provision to give effect to the purpose of the principal Act. The changes will alter the definition of a Code company and clarify the status of a company which ceases to be a Code company during a Code regulated transaction.

Amendments to Trade Marks Act 2002

The changes to the Trade Marks Act 2002 are intended to clarify and update provisions to give effect to the purpose of the Act, keep the regulatory system up to date and relevant, address regulatory duplications, and to remove unnecessary costs of doing business.

The changes to clarify and update provisions include:

- clarifying the status of a prior certification mark registration, when an owner submits an application for registration for a standard trade mark
- allowing the Commissioner to issue a new registration certificate on application
- clarifying that if the grounds for revocation of a trade mark are made out, the Courts must revoke the registration.

The changes to keeping the regulatory system up to date and relevant include:

- aligning the conditions for requesting security for costs in a proceeding with the High Court Rules and the Patents Act 2013
- keeping a trade mark registration on the register for six months following expiry, except in relation to Part 4. This will enable the registration to be administered, eligible for revocation, and available for consideration under the 26 exceptions.

The changes that address regulatory duplications include:

- deleting section 191 of the Act as it is covered in more appropriate legislation.

Amendments to Weights and Measures Act 1987

The changes to the Weights and Measures Act 1987 are intended to clarify provisions of the Act to address potential regulatory gaps. The changes to the provisions include:

- providing that Inspectors can require the production of documentation for goods that have been previously sold, rather than just those currently kept, displayed or offered or exposed for sale
- providing that offences relate to goods sold and hired, rather than just sold.

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 (<i>NZLC R130</i>), New Zealand Law Commission, 29 August 2013 (accessible at: http://lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R130.pdf).</p> <p>Proposed amendments to the Takeovers Code: Recommendations to the Minister of Commerce and Consumer Affairs from the Takeovers Panel, Takeovers Panel (March 2017) (accessible at http://www.takeovers.govt.nz/assets/Assets-2/Other-Panel-Documents/Recommendations-to-the-Minister-Technical-Amendments-March-2017.PDF).</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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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
<p>Regulatory impact statements were not completed for policy proposals in this Bill as they are technical revisions, and they have no or only minor impacts on businesses, individuals or not-for-profit entities. The proposals also repeal or remove redundant provisions.</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	N/A
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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
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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

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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

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.	

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?

Amendments to the Continental Shelf Act have international aspects of which the Ministry of Foreign Affairs and Trade was consulted with.

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
Credit Contracts and Consumer Finance Act 2003 – adds offences and infringement offences for breach of the requirements for contract terms (Section 9J) and publication of costs of borrowing (Section 9K). Companies Act 1993 – additional offences are being added to the grounds upon which someone can be prohibited from being involved in the management of a company (sections 382 and 383).	
3.4.1. Was the Ministry of Justice consulted about these provisions?	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES

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

Companies Act 1993 – repeals provisions in the Official Information Act 1982 and Privacy Act 1993 relating to the disclosure of information held by the Registrar of Companies. This proposal originated from the Office of the Privacy Commissioner.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES

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
The Takeovers Panel consulted upon the proposed changes to the Takeovers Act in 2016.	

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?	YES
Consultation occurred with the Intellectual Property Office of New Zealand, Insolvency and Trustee Service, External Reporting Board, Companies Office and the Takeovers Panel.	

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

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
New section 149 of the Insolvency Act will have some retrospective application. Anyone who was bankrupt immediately prior to commencement will be subject, after commencement, to stricter rules about whether they are prohibited from being employed by a relative, or company or trust associated with a relative without the Official Assignee's consent. However, whilst bankrupts will be subject to new obligations after commencement that they were not subject to prior to commencement, the retrospective effect on the bankrupt's rights will be ameliorated as anyone working without consent has the opportunity to apply for the Official Assignee's consent from commencement.	
New section 165(1)(b) of the Insolvency Act will have some retrospective application. From commencement, stricter rules will apply to existing bankrupts (and certain other persons who are required to assist the Official Assignee in the administration of that bankruptcy). However, whilst the bankrupt and certain other persons will be subject to new obligations after commencement that they were not subject to prior to commencement, the Act does not impose any sanctions for breach of the new rules retrospectively.	
Certain provisions in amended s 449 of Insolvency Act relating to the public registers maintained by the Official Assignee will apply retrospectively.	
Under new s449(1)(ab) the known aliases and trading names of existing bankrupts will be able to be listed on the public register of bankrupts from the commencement date. We understand that this reflects the Official Assignee's practice in relation to that register.	
Under new s449(1)(ga) the date of existing debt repayment orders will be able to be published from the commencement date, along with the email address of the supervisor of the debt repayment order. Both of these changes have no effect on the rights, freedoms, or obligations imposed on those subject to a debt repayment order ('debtor') and have been inserted for the benefit of the debtor and supervisor, respectively.	

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?	NO
(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

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
<p>New sections 377C to 377E of the Insolvency Act will provide the Court with the power to reverse the cancellation of a debtor's debts that occurs upon their discharge from the No Asset Procedure (NAP), which is the formal insolvency procedure set out in the Insolvency Act for dealing with a debtor who has no realisable assets. The power will be able to be exercised at any time within 2 years of the bankrupt's discharge. The effect of the reversal is that the cancelled debts become again enforceable (along with any penalties and interest that may have accrued on those debts).</p> <p>The exercise of this power may have a significant impact on the debtor's obligations to the creditors whose debts are covered by the NAP and in respect of which the debtor has received a discharge. However, the Court will only have grounds to reverse the cancellation if the debtor was wrongly admitted to the NAP, for example, because the debtor concealed assets or misled the Assignee.</p>	

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

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

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