

## Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Bill

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 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.

16 October 2015.

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## Part One: General Policy Statement

This Bill proposes 3 main things:

- an amendment to the grounds on which a person can oppose the grant of a patent under the Patents Act 2013:
- a single patent application process and single patent examination process with Australia:
- a joint registration regime with Australia for patent attorneys.

### *Amendment to grounds of opposition*

Since the Patents Act 2013 entered into force, an issue has been identified with the grounds on which third parties can oppose the grant of a patent on an accepted patent application. As enacted, the Patents Act 2013 allows a grant of a patent to be opposed on the ground that an accepted patent application claims patent protection for more than one invention ('lack of unity of invention'). This issue was not a ground of opposition under the Patents Act 1953, which was replaced by the Patents Act 2013. There was no policy intention to introduce lack of unity of invention as a ground of opposition in the Patents Act 2013. If this ground remains, patent applicants may be unfairly disadvantaged. The only way that patent applicants could deal with an opposition on this ground would be to amend the application so that patent protection is claimed for only one invention. The applicant would lose patent rights to the other invention or inventions. Under the Patents Act 2013, patents can only be granted for a single invention. However, if a granted patent is found to claim rights in more than one invention, the validity of the patent cannot be challenged on this ground. To address this issue, it is proposed to amend section 92(1) to explicitly exclude lack of unity of invention as a ground of opposition.

### *Single patent application process and single patent examination process with Australia*

Since the Patents Act 2013 entered into force, the documentation that must be provided for both Australian and New Zealand patent applications is essentially the same. The criteria for granting a patent are now similar to those in Australia, but there are some significant differences.

Much of the procedure for examining the 2 patent applications is the same. There is a significant degree of duplication of work between the Intellectual Property Office of New Zealand (**IPONZ**) and the Australian Patent Office (**IP Australia**) in examining corresponding applications. About 95% of the patent applications filed in New Zealand have a corresponding application filed in Australia.

This duplication of work increases costs and complexity for applicants, IPONZ, and IP Australia. Two initiatives have been proposed that go some way towards addressing this issue:

- a single patent application process (**SAP**):
- a single patent examination process (**SEP**).

The SAP and SEP are part of the Single Economic Market patents programme.

The SAP would be implemented by IPONZ and IP Australia establishing a single application portal on their Internet sites. Applicants wishing to apply for a patent for the same invention in both countries could visit either portal. Once there, applicants would file 1 set of documents and pay 1 fee. Once all the required information has been provided, the portal would generate 2 applications, a New Zealand application, which would be sent to IPONZ, and an Australian application, which would be sent to IP Australia, for further processing. As a result, applicants would have to provide information relating to the 2 applications only once, rather than having to do it twice, as at present. Applicants would not have to use the SAP, and the existing mechanisms for filing patent applications in Australia and New Zealand would remain in place.

Under the SEP, where there are corresponding applications, both could be examined by the same patent examiner. Corresponding applications examined under the SEP would be examined according to the law and practice of the country for which the application is filed. The examiner could be in either New Zealand or Australia, and the examiner would produce a single combined examination report covering both applications. Entry to the SEP is voluntary, so that patent applications would only enter the SEP if the applicant requested it or otherwise consented. Applicants could indicate their willingness to enter the SEP by ticking a box when filing an application or requesting examination of their application. Alternatively, entry to SEP could be compulsory, with the applicant being given no choice in the matter. IPONZ and IP Australia could identify pairs of corresponding applications that could be examined under the SEP, and these applications would be examined under the SEP. The SEP would end when the fate of the 2 applications has been determined (accepted or refused). All processes following acceptance or refusal of an application, including the grant of a patent, would be handled in the country for which the application was filed. There would be 2 separate patents granted, 1 for New Zealand and 1 for Australia.

The objectives of the SAP and SEP are as follows:

- reduction of time and resources spent by businesses applying for and obtaining patents in both New Zealand and Australia:
- minimising the administrative costs of running the patent regime:
- ensuring patents granted in Australia and New Zealand are of a similar, highquality standard:
- ensuring examination approaches are consistent between Australia and New Zealand.

The SAP and SEP will improve efficiencies through joint processes and shared resources and will increase the robustness of patent examination. Single examination will make it easier for IPONZ to manage the increased workload resulting from the new and higher examination standards required by the Patents Act 2013 (as compared with the Patents Act 1953).

The SAP and SEP will be implemented in the Patents Act 2013 and regulations. The Bill will amend the Patents Act 2013 to—

- enable the Commissioner of Patents to delegate his or her statutory powers to personnel of IP Australia:

- enable regulations to be made allowing the Commissioner of Patents to receive Australian applications and associated documents, together with the appropriate fees, on behalf of IP Australia:
- enable regulations to prescribe that certain documents and fees relating to New Zealand patent applications filed with IP Australia are deemed to have been filed and received with IPONZ.

#### *Joint registration regime with Australia for patent attorneys*

Patent attorneys in New Zealand make up a small profession who provide specialist advice to businesses on obtaining and protecting intellectual property, especially on obtaining patents and registering trademarks. There are approximately 199 registered patent attorneys domiciled in New Zealand and 769 domiciled in Australia. Australia and New Zealand each currently maintain independent, but similar, registration regimes for patent attorneys. The majority of Australian and New Zealand patent attorneys are currently registered to practise in both Australia and New Zealand pursuant to the Trans-Tasman Mutual Recognition Act 1997.

In August 2009, Prime Ministers Key and Rudd endorsed the development of a single trans-Tasman regulatory framework for patent attorneys as one of the intellectual property outcomes for the Single Economic Market agenda.

In November 2011, Cabinet agreed that New Zealand and Australian patent attorneys are to be regulated under a single trans-Tasman regulatory framework in order to reduce registration costs for, and to promote competition between, New Zealand and Australian patent attorneys.

The single trans-Tasman regulatory framework contains the following key features:

- a single trans-Tasman register for patent attorneys:
- a single definition of patent attorney services that may only be performed by a registered patent attorney:
- a trans-Tasman governance body, comprising Australian and New Zealand members, responsible for educating and disciplining patent attorneys:
- a single trans-Tasman disciplinary regime, including a single code of conduct with which Australian and New Zealand patent attorneys must comply and a trans-Tasman disciplinary tribunal to determine complaints about patent attorneys and, where appropriate, discipline patent attorneys.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<p>The Government has, however, signed a bilateral arrangement with the Australian Government on how the trans-Tasman registration regime for patent attorneys is to be implemented. A copy of the bilateral arrangement is available at <a href="http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Bilateral-arrangement-signed-March-2013.pdf">http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Bilateral-arrangement-signed-March-2013.pdf</a></p> <p>Officials are currently negotiating with Australian officials a bilateral arrangement to set out how the Australian and New Zealand Governments will implement the single patent application and examination processes. It is anticipated that Cabinet approval to sign the bilateral arrangement would be sought in 2016 after the details of how the process will be implemented are agreed to between IP Australia and the Intellectual Property Office of New Zealand.</p>	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><u>Trans-Tasman registration regime for patent attorneys</u></p> <p>Three regulatory impact statements (RISs) were prepared and published to inform the policy decisions that led to this Bill.</p> <p>A draft RIS (RIS One) was prepared in relation to Cabinet approval to release with IP Australia a joint discussion paper that set out a series of reforms aimed at delivering a single trans-Tasman regulatory framework for Australian and New Zealand patent attorneys. A copy of the draft RIS is available at <a href="http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Cabinet_paper_disc_doc_patent_attorney_regulation.pdf">http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Cabinet_paper_disc_doc_patent_attorney_regulation.pdf</a></p> <p>A RIS (RIS Two) was prepared in relation to Cabinet's decision to regulate Australian and New Zealand patent attorneys under a single trans-Tasman regulatory framework comprising certain key features. A copy of this RIS is available at <a href="http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Trans-Tasman-regulatory-framework-for-PA.pdf">http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Trans-Tasman-regulatory-framework-for-PA.pdf</a></p> <p>A further RIS (RIS Three) was prepared in relation to Cabinet's decision to sign the bilateral arrangement with Australia setting out how the trans-Tasman regulatory framework is to be implemented. A copy of this RIS is available at <a href="http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/bilateral-arrangement-cabinet-paper.pdf">http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/bilateral-arrangement-cabinet-paper.pdf</a></p> <p><u>Single patent application and examination process</u></p> <p>A RIS (RIS Four) was prepared in relation to Cabinet's decision to implement a single patent application and examination process with Australia. A copy of this RIS is available at <a href="http://www.med.govt.nz/business/intellectual-property/single-economic-market-intellectual-property-outcomes/sap-and-sep-cabinet-paper-and-ris-386-kb-pdf">http://www.med.govt.nz/business/intellectual-property/single-economic-market-intellectual-property-outcomes/sap-and-sep-cabinet-paper-and-ris-386-kb-pdf</a></p>	

<b>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?</b>	<b>NO</b>
None of the four RIS's met the threshold for the Treasury's RIA Team assessment.	

<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p><u>Trans-Tasman registration regime for patent attorneys</u></p> <p><i>RIS Two</i> discusses the costs and benefits expected to arise from regulating patent attorneys in New Zealand and Australia under a single regulatory framework.</p> <p><i>RIS Three</i> discusses the costs and benefits for implementing the trans-Tasman registration regime in the manner set out in the bilateral arrangement and the Bill.</p> <p><u>Single patent application and examination process</u></p> <p><i>RIS Four</i> discusses the cost and benefits for implementing a single patent application and examination process. It notes that business compliance costs associated with Implementing the SAP can be substantially reduced by eliminating the need to prepare and filing separate patent applications in each country.</p> <p>The costs and benefits from implementing SEP have not been yet quantified because the detailed framework of the SEP is yet to be negotiated and agreed to between Australia and New Zealand. It is unclear whether patent fees would need to increase or decrease to accommodate SEP. However, the benefits of a more robust and efficient patent examination process and the flow-on benefits to businesses are likely to outweigh any potential increase in fees. An SEP pilot program will be undertaken to assess the costs and benefits of fully implementing the SEP to ensure that it provides the expected net benefit to businesses.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
Compliance and regulatory effort does not affect the effectiveness of the primary policies of the Bill to provide a single patent application and examination process, a joint regime for patent attorneys or to amend the grounds of opposition.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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There are no international agreements specifically covering patent attorneys and the services they provide. New Zealand is, therefore, free to determine whether or not to regulate patent attorneys and their services and, if they are to be regulated, how they are regulated.

Notwithstanding, steps were taken to ensure that the trans-Tasman registration regime for patent attorneys are consistent with New Zealand's international obligations in relation to trade in services arising from the WTO's General Agreement on Trade in Services and New Zealand's free trade agreements. These steps included consultation and discussion with the Ministry of Foreign Affairs and Trade in relation to ensuring:

- the trans-Tasman registration regime will comply with existing international obligations and commitments; and, where appropriate
- during the negotiation of free trade agreements covering trade in services sufficient domestic policy flexibilities are retained to enable the trans-Tasman registration regime to be implemented.

### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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An analysis of the current registration regime for patent attorneys under the Patents Act 1953 did not identify any rights or interests of Māori that are protected by the Treaty of Waitangi. The Ministry concluded that any reform to modernise and update the existing regulatory regime for patent attorneys would not impact on any rights or interest of Maori that are protected by the Treaty of Waitangi. The single patent application and examination process does not prejudice any rights or interest of Māori that are protected by the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>
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<b>NO</b>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>Clause 7 inserts a number of new sections into the Patents Act 1953 to create a number of offences and penalties to ensure the joint regime for patent attorneys is adhered to by persons in New Zealand and provides for Australian tribunals and courts to hear matters related to a person's compliance with the joint regime in New Zealand.</p> <p>Section 271 requires a person to be registered in Australia and complying the Australian regime for regulating patent attorneys in order to provide patent attorneys services in New Zealand.</p> <p>Sections 274 to 280 create a number of offences and penalties related to a person acting or holding out as a patent attorney without be registered. These offences mirror corresponding offences and penalties provided under Australian law. Section 290 permits the regulations to be made to adjust the penalties prescribed under sections 274 to 280 for the purpose of keeping the penalties aligned with changes to the penalties for the corresponding Australian offences.</p> <p>Section 281 gives the Trans-Tasman IP Attorneys Disciplinary Tribunal and the Australia's Administrative Appeals Tribunal powers in respect of persons in New Zealand to enable proceedings to be conducted in Australia. For example, the Disciplinary Tribunal subpoenas may be served in New Zealand and the Disciplinary Tribunal may take evidence and receive submissions by audio or audiovisual link from New Zealand.</p> <p>Section 282 and 283 provide for the Disciplinary Tribunal to sit in New Zealand and exercise all of its powers that the Disciplinary Tribunal has as if it was sitting in Australia, including the power to issue a summons for the purpose of a sitting in New Zealand.</p> <p>Section 284 provides an offence for a person who fails to comply with a summons. New Zealand's High Court determines whether a person should either be excused for failing to comply with the summons or impose a fine on the person for failing to comply.</p> <p>Decisions of the Designated Manager, the Trans-Tasman IP Attorneys Board and the Trans-Tasman IP Attorneys Disciplinary Tribunal can be reviewed by the Australia's Administrative Appeals Tribunal and Australia's federal courts.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>Advice and assistance was received from the Ministry of Justice during the development and negotiation of the bilateral arrangement for implementing the trans-Tasman registration regime. That arrangement requires the New Zealand government provide substantially similar offences to offences currently provided in Australia in relation to patent attorneys and patent attorney services.</p>	

## Privacy issues

<b>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?</b>	<b>YES</b>
<p><b>Clause 8</b> repeals the registration regime for patent attorneys under the Patents Act 1953 and therefore the register of patent attorneys, which contained the names and addresses of registered patent attorneys.</p>	

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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
The Bill does not contain any provisions regarding collection, storage, use or disclosure of personal information in New Zealand and, therefore, the Privacy Commissioner was not consulted.	

### 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
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### Trans-Tasman registration regime for patent attorneys

In March 2011 a joint discussion paper setting out a series of reforms aimed at delivering a single trans-Tasman regulatory regime for patent attorneys was released jointly by IP Australia and the then Ministry of Economic Development. A copy of that discussion paper is available at <http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Discussion%20paper%20Trans-Tasman%20Patent%20Attorney%20Regulation.pdf>.

Five submissions were received from Australian stakeholders, mainly from Australian patent attorneys. Their submissions supported the implementation a single trans-Tasman registration regime. Several submissions noted that because the proposed regime would be largely similar to the existing regime in Australia, there would be no new or additional costs for Australian patent attorneys from implementing a single trans-Tasman regulatory framework.

Thirteen submissions were received from New Zealand stakeholders, most being from patent attorneys. In contrast to Australian patent attorneys, New Zealand patent attorneys raised concerns about the likely increased regulatory and business compliance costs to register and practice in New Zealand. The Ministry considers that an increase in costs to register and practice as a patent attorney in New Zealand is an inevitable consequence of any steps taken to update existing regulatory regime, which has remained essentially unchanged since it was implemented in 1954, to make is consistent with modern practise in occupational regulation.

New Zealand patent attorneys were also concerned that the trans-Tasman registration regime could result in an increase in competition from Australian patent attorneys. Increased competition could have a negative impact on the income on New Zealand patent attorneys if businesses preferentially used the services of Australian patent attorneys. A loss of income could in turn lead to fewer patent attorneys in New Zealand to support innovative businesses. The Ministry notes that one of the objectives of implementing a trans-Tasman registration regime is to facilitate increased competition between Australian and New Zealand patent attorneys. Businesses requiring the services of patent attorneys are expected to be the main beneficiaries of any increased competition. Increased competition is expected to constrain the fees charged by patent attorneys and assist to increase the quality of services provide by patent attorneys

During the negotiation of the bilateral arrangement the Ministry consulted with the Council for the New Zealand Institute of Patent Attorneys, Inc. (NZIPA) on how the registration regime is to be implemented and on some of the key elements of the registration regime such as the composition of the Trans-Tasman Intellectual Property Attorneys Board and the Trans-Tasman Intellectual Property Attorneys Disciplinary Tribunal.

### Single patent application and examination process

There has been no formal public consultation process on the SAP or SEP. However, The Intellectual Property Office of New Zealand (IPONZ) website has contained information on the SAP and SEP since February 2011 and updates on the development of SAP and SEP have been circulated to the IPONZ e-newsletter subscribers. The proposals have been discussed informally with patent attorneys through the IPONZ Patents Technical Focus Group, which comprises representatives from the major patent attorney firms. Furthermore, the SAP and SEP were discussed in a meeting with the President of NZIPA in November 2012.

Discussions were confined to basic principles, rather than the implementation details because these are still to be negotiated over with IP Australia. Generally feedback has been positive.

### Amendment to Grounds of Opposition

There has been no public consultation on the amendment to remove unity of invention as a ground for opposing the grant of a patent application. This issue was brought to the Ministry's attention by stakeholders.

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<p data-bbox="225 405 871 434"><u>Trans-Tasman registration regime for patent attorneys</u></p> <p data-bbox="225 450 1366 568">The trans-Tasman registration regime for patent attorneys is modelled on the existing Australian regulatory regime for patent attorneys in Australia, which has been in operation for more than a decade. The majority of New Zealand patent attorneys are registered to practise in Australia and, therefore, are already familiar with the Australia regime and how it functions.</p> <p data-bbox="225 589 826 618"><u>Single patent application and examination process</u></p> <p data-bbox="225 633 1366 725">The SEP will be introduced as a pilot program in 2016. The pilot program will be reviewed within three years of implementation, including public consultation about the cost and benefits of the program, before a Cabinet approval is sought to fully implement it.</p>	

## 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?	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
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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?	YES
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#### Trans-Tasman registration of patent attorneys

Under the registration regime, the Designated Manager determines whether an applicant for registration as a patent attorney has complied with the registration requirements. The applicant for registration may seek a review of the Designated Manager's determination not to register the applicant by Australia's Administrative Appeals Tribunal (**AAT**).

The Trans-Tasman Intellectual Property Attorneys Disciplinary Tribunal is responsible for hearing complaint about a registered patent attorneys and determining the appropriate sanction for a patent attorneys who has been found guilty of professional misconduct or unsatisfactory professional misconduct. Sanctions include suspension and cancellation of the patent attorney's registration. The Disciplinary Tribunal will comprise a three person panel, at least one of whom must be from New Zealand when the Tribunal hears and determines a complaint against a New Zealand patent attorney. A person may request the AAT review of the Tribunal's decision by the AAT.

A person may appeal to the Australian Federal Court against any question of law arising from an AAT decision.

Clause 7 (section 281) provides for Disciplinary Tribunal subpoenas may be served in New Zealand and for the Disciplinary Tribunal when sitting in Australia to take evidence by audio and audiovisual links from a person in New Zealand

Clause 7 (section 282) provides for the Disciplinary Tribunal to sit in New Zealand and exercise all its powers as if the Tribunal was sitting in Australia.

#### **Powers to make delegated legislation**

<b>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?</b>	<b>YES</b>
Clause 7 inserts new section 290 to clarify that the Governor-General may, by Order in Council, make regulations for the purpose of updating the penalties for offences set out in the Bill. This provision requires that any updating of the penalties must be for the purpose of maintaining consistency with any changes to the penalties for corresponding offences set out under Australian Patents Act 1990 (Cth).	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p><u>Trans-Tasman registration regime for patent attorneys</u></p> <p>Clause 7 inserts new section 290 that provides for the Governor-General, by Order in Council, to make regulations for prescribing:</p> <ul style="list-style-type: none"> <li>• Prescribing matters that are necessary or desirable for implementation of the bilateral arrangement with Australia;</li> <li>• Updating penalties (as discussed above);</li> <li>• Prescribing matters that are required or permitted under the trans-Tasman registration regime; and</li> <li>• Providing for any other matters contemplated by the Bill, necessary for its administration, or necessary for giving its full effect.</li> </ul> <p>The scope of the regulation making powers are intended to ensure that any unanticipated implementation issues that are within the scope of the arrangement with Australia for implementing the Trans-Tasman registration regime can be addressed through the development of Regulations. At this point in time, it is not anticipated that any Regulations will be required to implement the Trans-Tasman registration regime for patent attorneys.</p> <p><u>Single patent application and examination process</u></p> <p>Clause 6 inserts new section 220A to clarify the regulation making powers in the Patents Act 2013 includes the ability to make regulations for the purposes of prescribing when patent applications, documents and fees can be received by IP Australia on behalf of IPONZ ( and vice versa), and when an action done by IP Australia can be treated as being done by IPONZ (and vice versa). Clause 6 complements amendments introduced in to the Australia Patents Act 1990 for the purpose of implementing the single patent application and examination process.</p>	

### 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?	YES
<p>Clause 8 inserts Schedule 1A into the Patents Act 2013 containing certain transitional, savings and related provisions. These include provisions providing for:</p> <ul style="list-style-type: none"> <li>• every person who is registered as patent attorney under the Patents Act 1953 regime (the <b>1953 regime</b>) immediately before commencement of the joint regime is registered under the joint regime,</li> <li>• candidates part way through qualifying to register as a patent attorney under 1953 regime may continue to sit the patent attorney examinations prescribed under the Patent Regulations 1954 for a further period of four years after commencement of the joint regime for the purpose of registering under the joint regime, and</li> <li>• existing disciplinary proceedings under section 102 of the 1953 regime continues to apply to conduct of a registered patent attorney in New Zealand prior to commencement of the joint regime.</li> </ul>	



