

Departmental Disclosure Statement

Regulatory Systems (Tribunals) 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 the Ministry of Justice.

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

December 2024

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Part One: General Policy Statement

This Bill is in a package of Bills amending regulatory systems administered by the Ministry of Justice.

The package also contains the following Bills that will improve the quality of existing regulation, court timeliness, efficiency, and access to justice:

- the Regulatory Systems (Courts) Amendment Bill;
- the Regulatory Systems (Occupational Regulation) Amendment Bill;
- the Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill.

These Bills will improve the effectiveness and efficiency of the courts and tribunals, occupational regulation, and the criminal law (anti-money laundering and countering financing of terrorism) regulatory areas.

Regulatory systems amendment bills capture the smaller issues and opportunities for improvement within the legislation governing regulatory systems. Opportunities to make these amendments may eventually come via bills progressing larger amendments to a specific Act. Many years can elapse between Act-specific amendment bills. Regulatory systems amendment bills allow for an efficient use of the House of Representative's time as numerous amendments can be made across multiple pieces of legislation.

For this Bill, the policy is to improve the operations and efficiency of tribunals and quasi-judicial bodies.

The Bill will do this by—

- removing barriers to accessing justice; and
- clarifying and resolving inconsistencies and gaps in legislation; and
- better enabling statutory authorities to conduct their prescribed functions; and
- ensuring independence of tribunals and quasi-judicial bodies.

The Bill makes amendments across the following 5 Acts:

- the Disputes Tribunal Act 1988;
- the Motor Vehicle Sales Act 2003;
- the Parole Act 2002;
- the Private Security Personnel and Private Investigators Act 2010;
- the Unit Titles Act 2010.

The Bill also amends the following associated primary and secondary legislation:

- the Remuneration Authority Act 1977;
- the Disputes Tribunals Rules 1989.

Cumulatively, the amendments will support the maintenance and continuous improvement of tribunals and quasi-judicial bodies. This will help to ensure that the tribunals system is accessible and fit for purpose.

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>Yes – the Rules Committee’s ‘Improving Access to Justice’ report [23 November 2022] informed the proposal at clause 35 (amends section 43 of the Disputes Tribunal Act 1988).</p> <p>The Rules Committee recommended that “the filing fee should be recoverable by an applicant who is wholly or partly successful in their claim” (see page 25). The report can be accessed at:</p> <ul style="list-style-type: none">• https://www.courtsofnz.govt.nz/assets/Rules-Committee-Improving-Access-to-Civil-Justice-Report.pdf; and• https://www.treasury.govt.nz/publications/guide/disclosure-statements-government-legislation-technical-guide-departments-html#section-9.	

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>The Ministry of Justice produced a Regulatory Impact Statement (RIS) on 19 June 2024: ‘Regulatory Impact Statement: Regulatory Systems (Justice) Amendment Bill’. A copy of the Regulatory Impact Statement can be found on:</p> <ul style="list-style-type: none">• the Ministry of Justice website: Regulatory Impact Assessments New Zealand Ministry of Justice• the Ministry for Regulation website: Regulatory impact statements (RISs) - Ministry for Regulation <p>The Treasury and the Ministry for Regulation granted exemptions for eight of the 10 proposals in this Bill.</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
<p>The RIS identified above did not meet the threshold for receiving an independent opinion of the quality of the RIS from the Regulatory Impact Analysis (RIA) Team at the Ministry for Regulation. The Ministry of Justice’s internal RIA panel provided an independent opinion on the quality of the RIS. It concluded the RIS met the Quality Assurance criteria.</p>	

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
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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
<p>Where applicable, analysis on the expected benefits and costs for the amendments included in this Bill is available on pages 16 and 17 of the RIS, which can be found on:</p> <ul style="list-style-type: none"> the Ministry of Justice website: Regulatory Impact Assessments New Zealand Ministry of Justice the Ministry for Regulation website: Regulatory impact statements (RISs) - Ministry for Regulation. <p>This information can also be found in the Cabinet paper 'Regulatory Systems (Justice) Amendment Bill Package: Policy Proposals' which is available on the Ministry of Justice website: Proactive-release-20240715-CAB-Regulatory-Systems-Justice-Amendment-Bill_Final.pdf.</p>	

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?	YES
<p>Clause 75 inserts a new section 104 into the Private Security Personnel and Private Investigators Act 2010 (PSPPI Act), which allows the Complaints, Investigation and Prosecution Unit (CIPU) to issue a written notice to any person to require that person to produce documents or other information in the possession or control of the person. It will be an offence for a person, without reasonable excuse, to refuse or fail to comply with a requirement to provide information or documents in accordance with a notice. Potential costs and benefits will be impacted by the extent to which people comply with written notices and whether prosecutions need to be taken.</p> <p>Clause 35 amends section 43 of the Disputes Tribunal Act 1988 to enable a referee to order an unsuccessful respondent to pay the filing fee back to a wholly or partly successful applicant. This change relies on compliance from the debtor with the order of the Tribunal or enforcement action being taken by the creditor.</p>	

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?
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The Ministry of Justice has not identified any international obligations that conflict with the policies contained in this Bill.
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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 Ministry of Justice did not identify any inconsistency with the principles of the Treaty of Waitangi during the development of the Bill and its policy. The criteria ¹ that amendments were assessed against for inclusion in this Bill ruled out proposals with significant implications on constitutional arrangements, including the Crown's Treaty obligations.
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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
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Crown Law has been provided with a draft of the Bill and has provided advice to the Attorney-General on consistency with the New Zealand Bill of Rights Act 1990.

A copy of their advice is available at:

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports>

¹ Amendments were deemed suitable for inclusion in the Bill if they make continuous improvements and repairs or maintain the regulatory system (without major policy or system design changes, or significant financial implications), can be progressed in the timeframes for the Bill, and can attract broad political support.

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>Clause 63 inserts a new section 73AAA into the PSPPI Act. The effect of this change will support current practice and make clear the Private Security Personnel Licencing Authority (PSPLA) may grant leave to a complainant to file a complaint against an unlicensed or uncertified person (a person who is or may be in breach of section 23 or section 44).</p> <p>Clause 75 inserts a new section 104A. Section 104A creates a power for the CIPU to require information and a new offence, and new penalties. It is an offence if the recipient of a notice to provide information, without reasonable excuse, fails or refuses to comply with that notice. The penalty on conviction for an individual is a fine not exceeding \$10,000, or for a body corporate, a fine not exceeding \$20,000.</p> <p>Clause 76 amends section 105. This has the effect that giving false information, knowing it is false, or being reckless as to whether it is false, under the new section 104A is also an offence under section 105.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
The Ministry of Justice was the lead agency developing this Bill.	

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?	YES
<p>Clause 75 introduces a new section 104A to the PSPPI Act which creates an information-gathering power for the CIPU by written notice if the information or documents are reasonably necessary for carrying out one or more of CIPU's functions, which could include personal information. This power will partially override restrictions on the collection of personal information in the Privacy Act 2020. This power is considered necessary and justified to allow these bodies to carry out their regulatory functions.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>Yes, the Office of the Privacy Commissioner was consulted on the Cabinet paper and RIS for this Bill. The Office of the Privacy Commissioner provided feedback on the information-gathering power proposal for the CIPU. It stated there appeared to be a sound policy case for the power to obtain information, and noted there would need to be appropriate limitations and safeguards including limitations on the purposes for which the CIPU can use and disclose personal information obtained under the power. As drafted, the power may only be exercised if CIPU is satisfied that the documents or information are reasonably necessary for carrying out 1 or more of the functions of CIPU in section 101 of the PSPPI Act.</p>	

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
<p>The Ministry consulted on the Bill's policy with the Remuneration Authority, Community Law Centres o Aotearoa, New Zealand Law Society, Accident Compensation Corporation, Citizens Advice Bureau, Private Security Licencing Authority (PSPLA), Office of the Privacy Commissioner, Disputes Tribunal referees, and Tenancy Tribunal adjudicators. Overall, the feedback we received was supportive of the proposed amendments. Substantive issues raised by these groups have been addressed.</p> <p>The Ministry consulted with the Principal Disputes Referee (PDR) when developing proposals relating to the Disputes Tribunal and on the drafting of clause 35 which amends section 43 of the Disputes Tribunal Act 1988 to allow referees to award the filing fee back to the applicant if they are wholly or partially successful. Feedback from the PDR was incorporated into the draft Bill to specify the extent of the power and its application to settlement agreements.</p> <p>The Ministry also consulted with the PSPLA on the drafting of the amendments to the PSPPI Act.</p>	

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
Clause 75 introduces a new section 104A to the PSPPI Act. This section creates a new information-gathering power that allows the relevant regulator to require, by written notice, the recipient to produce documents or other information in the possession or control of that person. This section also creates a strict liability offence for failing or refusing to comply with a notice. We consider that the use of a strict liability offence to enforce the power is reasonable. The penalties are consistent with other offences in the regulatory regime, and a person who fails to comply with a notice will be in the best position to justify any apparent wrongdoing.	

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?	NO
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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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