

Departmental Disclosure Statement

Regulatory Systems (Occupational Regulation) 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 included 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 (Tribunals) 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 improvements 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 House 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 occupational regulation.

This Bill will do this by—

- strengthening the ability of occupational regulators to protect consumers; and
- increasing the efficiency of the regulatory regimes; and
- removing inconsistent or redundant provisions in legislation; and
- aligning legislation affecting the regulatory regimes to increase industry transparency; and
- reducing unnecessary cost and compliance burdens by adjusting the level of regulation to reflect the level of potential risk to the consumer.

This Bill amends the following 3 Acts:

- the Lawyers and Conveyancers Act 2006;
- the Prostitution Reform Act 2003;
- the Real Estate Agents Act 2008.

This Bill also consequentially amends the following primary and secondary legislation:

- the Crown Entities Act 2004;
- the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008;
- the Real Estate Agents (Licensing) Regulations 2009.

Cumulatively, the amendments will support the maintenance and continuous improvement of the occupational regulation regimes, to ensure that regulated services are performed with reasonable care and skill and promote and protect the interests of consumers.

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>The New Zealand Law Society (NZLS) commissioned an independent review of the statutory framework that regulates lawyers due to concerns about the regulation of lawyers in the wake of several disclosures of inappropriate behaviour in the legal profession. The review identified that the current model is not resolving complaints effectively. Problems include the prescriptive legislative framework and inability to dismiss complaints that are made without cause. A copy of the final report be found here (pp.154-155): Regulation-of-lawyers-final-report-for-submission.pdf (lawsociety.org.nz)</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
<p>The Ministry of Justice has not identified any international obligations that conflict with the policies contained in this Bill.</p>	

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 RIS can be found on:</p> <ul style="list-style-type: none">the Ministry of Justice website: Regulatory Impact Assessments New Zealand Ministry of Justicethe Ministry for Regulation website: Regulatory impact statements (RISs) - Ministry for Regulation <p>The Treasury and the Ministry for Regulation granted exemptions for nine of 17 amendments 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 Assessment (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 policy included in this Bill is available in 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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>The changes proposed to occupational regulatory systems are mainly intended to reduce the regulatory compliance burden for regulated parties. Some new tools are provided for the Real Estate Authority to assist with enforcing existing standards. The definition of "unsatisfactory conduct" in the Real Estate Agents Act 2008 (REAA) is also changing. Costs associated with these changes are anticipated to be met within the Authority's existing baseline.</p> <p>From consultation with regulators, they are highly motivated to implement these changes to a high standard to maintain the reputation and efficiency of the regulatory regimes.</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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None of the amendments within the Bill give effect to or impact New Zealand's international obligations. As such, the Ministry of Justice considers that the amendments within the Bill are consistent with New Zealand's international obligations.
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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><u>Amendments to the Lawyers and Conveyancers Act 2006:</u></p> <p>Clause 7 of the Bill introduces a new administrative triage function which is not subject to an independent right of review but remains subject to judicial review.</p> <p><u>Amendments to the Real Estate Agents Act 2008:</u></p> <p>Clause 28 of the Bill inserts a new section 146A, which sets out an offence for failing to comply with a requirement to supply a document to the Authority under the new section 24A. The penalty is \$10,000 fine for an individual and \$50,000 fine for a company.</p> <p><u>Amendments to the Prostitution Reform Act 2003:</u></p> <p>Clause 13 of the Bill updates the list of offences cited disqualifying a person from holding a certificate to operate a brothel to correctly cross-reference to the offences in the Crimes Act 1961 and Misuse of Drugs Act 1975.</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><u>Amendments to the Real Estate Agents Act 2008:</u></p> <p>Yes, clause 19 of the Bill inserts a new section 24A that gives the Authority the power to require a licensee to supply it with any specified document to enable the Authority to investigate compliance by the licensee, or breaches of, the REAA and any regulations under the REAA or practice rules set by the Authority. The specified documents may contain personal information about the licensee or third parties. We expect that the Authority would only collect personal information to the extent that it is necessary for its investigations, and would not be used for other purposes, and comply with the privacy principles relating to the storage, security, and disposal of information.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner (OPC) was consulted on the Bill's Cabinet paper and RIS.</p> <p>For clause 19 of the Bill, OPC noted that, "based on the information they were provided, there appears to be a sound policy case for the power to request documents, which may include personal information. This power will need to be subject to appropriate limitations, including on the purpose for which information in the documents can be used or disclosed."</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
The 17 occupational regulation proposals were developed with input from other government agencies, relevant occupational regulators, and relevant professional bodies. The list of those consulted on the policy proposals and the Bill are provided as Appendix One .	

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
<p>We have discussed the implementation of the proposed amendments to the three regulatory regimes with the relevant regulator who will be implementing these changes:</p> <ul style="list-style-type: none">• For amendments to the Lawyers and Conveyancers Act 2006, the New Zealand Society of Conveyancers (NZSOC) and NZLS evaluated the workability of the proposals relating to conveyancers' undertakings. We also tested the relevant amendments with High Court managers to test the workability of the new summary order process to enforce breaches of conveyancers' undertakings.• The NZLS also considered the workability of the proposals relating to the new triaging process, including the resourcing and capacity needed. NZLS also tested the proposals with experienced Standards Committee members, Lawyers Complaints Service staff and investigators to ensure the drafting was workable.• For the amendments to the REAA, we tested the policy details and the Bill with the Authority and the industry body, the Real Estate Institute of New Zealand (REINZ).• For the amendments to the Prostitution Reform Act 2003, we tested implementation of this amendment with the Certificate Issuing Officer for Prostitution Reform Authority.	

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
<p>Clause 19 of the Bill, which inserts new section 24A to the REAA, gives the Authority powers to require a licensee to supply specific documents to investigate compliance by the licensee (for example, claims of unlicensed trading). The absence of this power hinders the Authority's ability to carry out its responsibilities. These powers will also carry an associated strict liability offence (clause 28, new section 146A) for failure to comply with a notice without reasonable excuse.</p> <p>We consider that the use of a strict liability offence is reasonable. A person who fails to comply with a notice will be in the best position to provide a "reasonable excuse" to justify their apparent wrongdoing.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Yes, one of the triaging proposals (clause 7 of the Bill) extends civil immunity to Lawyer Complaints System staff members and Standards Committee members who hold active practising certificates as lawyers. This means any complaint made against a lawyer staff member or Standards Committee member in the course of carrying out the functions of their role in the complaints system will be treated as a complaint against the complaints system, rather than against the individual lawyer.</p> <p>This is consistent with an LCRO decision where it determined that Standards Committee members who hold an active practising certificate are not carrying out regulated services while acting in their role as a Standards Committee members.</p> <p>Clause 8 inserts new section 272A to the Lawyers and Conveyancers Act 2006, which codifies this LCRO decision and extends the immunity to lawyer staff members and volunteers of the Lawyers Complaints Service.</p>	

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
Yes, this Bill amends decision making in the Lawyers and Conveyancers Act 2006 because it introduces a new initial triaging step. However, triaging decisions are already made by Standards Committees under the same grounds when deciding to take no action or no further action. Rather than creating a new decision-making power, this Bill shifts where an existing decision-making power sits.	

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
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Appendix One: Further Information Relating to Part Three (question 3.6)

External consultation on the policy proposals:

- Specific amendments to the Lawyers and Conveyancers Act 2006 were consulted on with the New Zealand Law Society (NZLS) and legal profession, ANZ, BNZ, Kiwibank, ASB, Westpac, the New Zealand Society of Conveyancers (NZSOC), and the Legal Complaints Review Officer (LCRO).
- The amendments to the Real Estate Agents Act 2008 were consulted on with the Ministry of Housing and Urban Development, the Real Estate Agents Authority (the Authority), and the Real Estate Institute New Zealand (REINZ). With approval from the Associate Minister of Justice, officials invited REINZ to consult with its members, who were largely supportive of the proposed amendments to the Real Estate Agents Act 2008.
- The amendments to the Prostitution Reform Act 2003 were consulted on with the Ministry of Business, Innovation and Employment and the Auckland District Court.

External consultation on the Bill:

- The Ministry of Justice has consulted with the Real Estate Authority (the Authority) on the Bill. Their feedback has been implemented in the Bill.
- The Ministry of Justice consulted on the Bill drafting with the Auckland District Court (Processing Officer for Issuing Certificates for the Prostitution Reform Authority).
- The Ministry of Justice consulted with the New Zealand Law Society (NZLS) on three draft clauses and consulted with the Society of Conveyancers on the clause relating to conveyancing.