

Departmental Disclosure Statement

Regulatory Systems (Immigration and Workforce) 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 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.

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Part One: General Policy Statement

The Bill 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 improve regulatory systems by ensuring that they are effective and efficient and that they accord with best regulatory practice. The amendments will achieve this objective by:

- reducing unnecessary compliance burdens for businesses and implementation costs for regulatory agencies;
- clarifying and updating statutory provisions to give effect to the purposes of the principal Acts and their provisions;
- addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation;
- responding to the changing environment (for example, by ensuring that legislation responds to changing technology or is technology-neutral).

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 12 of the Public Service Act 2020.

The Bill responds to the former New Zealand Productivity Commission's July 2014 report, *Regulatory Institutions and Practices*. The 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 those small regulatory fixes to be made in a timely and cost-effective fashion in order to deliver the flow-on benefits to business and the wider economy.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The changes to the Immigration Advisers Licensing Act 2007 (IALA) derive from a review carried out by MartinJenkins dated July 2014. The report is titled <i>Final report: Review of the regulation of immigration</i> and can be viewed on the website of the Immigration Advisers Authority at https://www.iaa.govt.nz/assets/documents/review-of-the-regulation-of-immigration-advice-final-report.pdf.</p> <p>Some of the changes to the Health and Safety at Work Act 2015 (HSW Act) derive from a targeted post-implementation review of the regulatory requirements applying to mines that were introduced following the Pike River Coal Mine tragedy. The review highlighted aspects of the regulatory framework that require minor and technical changes to the Act – those changes relate to section 24 and Schedule 3. https://www.mbie.govt.nz/have-your-say/implementation-review-of-the-health-and-safety-at-work-mining-and-quarrying-operations-regulations-2016/.</p>	

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
<p>All of the amendments in this Bill were exempt from the requirement for a Regulatory Impact Statement, because they have no or only minor impacts on businesses, individuals, and not-for-profit entities.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>No formal analysis was undertaken for any of the amendments, but information about the costs and benefits is provided below.</p> <p>No formal analysis was undertaken for the Employment Relations Act 2000 (ERA) amendment. The ERA amendment creates certainty for the Labour Inspectorate and businesses about the obligation to retain a copy of the employment agreement. This amendment will not lead to any group of persons suffering a substantial unavoidable loss of income or wealth.</p> <p>No formal analysis was undertaken for the Parental Leave and Employee Protection Act 1987 (PLEPA) amendments. The changes are expected to clarify and update statutory provisions to give effect to the purpose of the PLEPA and keep the regulatory system up to date and relevant. While it is not possible to quantify the size of these benefits, it is unlikely that the changes will lead to any group of persons suffering a substantial unavoidable loss of income or wealth.</p> <p>No formal analysis was undertaken for the IALA. The changes are expected to provide small net system benefits, including by clarifying and streamlining some processes, and by reducing the barriers to some complaints, including through allowing complainants to describe their grievances rather than referring to specific sections of the Act. While it is not possible to quantify the size of these benefits, it is unlikely that the changes will lead to any group of persons suffering a substantial unavoidable loss of income or wealth.</p> <p>No formal analysis was undertaken for the HSW Act amendments. The amendment to HSW levy invoicing will benefit ACC Cover Plus Extra customers with a reduction on average of \$20 of their annual HSW levy, with an overall estimated reduction in the total HSW levy revenue collected of \$890,000 per annum. The amendment clarifying that WorkSafe NZ may recover costs for enforceable undertakings has been estimated at \$10,000 on average per undertaking. Neither amendment has the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth.</p> <p>No formal analysis was undertaken for the proposed changes to the Electricity Act 1992 relating to sections 152 and 152A (regarding the Registrar's ability to delegate their functions, duties, and powers). The amendments allow the Registrar to functionally delegate to their team the administrative powers necessary to licence and register electrical workers, avoiding disruptions and allowing efficient and effective maintenance of the scheme. These amendments will not lead to any group of persons suffering a substantial unavoidable loss of income or wealth.</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

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 amendments in this Bill do not relate to New Zealand's international obligations.

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?

No inconsistencies between the proposals and the principles of the Treaty of Waitangi have been identified or raised through the policy process.
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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?	NO
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The proposals in this Bill are consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
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The Bill makes the following amendments to the Immigration Advisers Licensing Act 2007 relating to offences and penalties, and/or jurisdiction:

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| <ul style="list-style-type: none">• It confirms that the District Court may confirm, vary, or reverse any decision of the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal), including those set out in s50, and not just those referred to in section 81(1)(c)–(e); and it clarifies the intent of an interim order made under s82 of the Act, namely that the person is treated as if they are a licensed immigration adviser (and therefore is subject to the obligation to renew their licence annually and pay the requisite charges).• Proposed amendments to section 51 of the Act increase the duration that a person can be prevented by the Tribunal from applying for a licence from two years to a specified period or an indefinite ban (providing the Tribunal more flexibility), provides for a right for the person to apply to the Tribunal to vary such an order in certain circumstances, and gives a power to the Tribunal to vary a full licence to a limited or provisional licence (rather than cancelling a licence in its entirety).• The proposed amendment to section 81 allows for a person to appeal to the District Court against a decision of the Tribunal under section 50; where the proposed amendments to section 83 allow for the interim court orders to be modified to allow advisers to continue to provide immigration advice, to act as a stay on the relevant order or decision being appealed. Treating the interim order as a stay will mean the immigration adviser cannot credit time spent waiting for the appeal to be determined as time spent with a suspended or cancelled licence and will require the adviser to meet all licensing requirements. |
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3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>With regard to the IALA changes, the Ministry of Justice was consulted extensively when the MartinJenkins report and recommendations were developed in 2014 and agreed with the recommendations. The Ministry was consulted again in 2016 when the then Minister of Immigration was asked to agree to the policy proposals and to their inclusion in a regulatory systems amendment bill. Given the passage of time, the Ministry of Justice was updated regarding the policy proposals in 2024, during the finalisation stage of the Bill, and indicated at that point that it was comfortable with them.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>With regard to the IALA, the Bill increases the Registrar's discretion concerning the contents of the Register (ss 78-79). The purpose of the change is to enable the Registrar to, as appropriate, remove the name and details of persons whose licences have been cancelled, suspended or refused (at present that information must be retained, which may be confusing for members of the public who are seeking an adviser, and who may mistakenly contact a person who is not licensed) or to remove other information that is not relevant, or otherwise to include other information that is relevant.</p> <p>"Relevant" information is in terms of s77(2), which sets out the purposes of the register (to enable members of the public to know how to contact an adviser, whether a person is licensed, and whether a person's licence has been cancelled or suspended, or whether an application is refused; and to facilitate the Registrar or the Commerce Commission to enforce the IALA or other consumer protection legislation; and to facilitate the compliance, audit, and other supporting and administrative functions of the Registrar under the IALA).</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Privacy Commissioner was consulted on the above amendments. No concerns were identified.</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 proposed changes to the IALA went through an extensive consultation process during the review that led to them (undertaken by MartinJenkins in 2014) and were generally supported. They were consulted again with external stakeholders in 2018, who again were generally supportive.</p> <p>Some of the changes to the Health and Safety at Work Act 2015 derive from a targeted post-implementation review of the regulatory requirements applying to mines that were introduced following the Pike River Coal Mine tragedy. The review highlighted aspects of the regulatory framework that require minor and technical changes to the Act – those changes relating to section 24 and Schedule 3. The extractives industry was consulted on the policy proposals for change but was not consulted on a draft of the Bill.</p> <p>The Mines Rescue Trust was consulted on the change to the Mines Rescue Act but was not consulted on a draft of the Bill.</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?	YES
The drafting of the amendments to the HSW Act were consulted extensively with WorkSafe, the primary health and safety regulator, to ensure that the changes were workable. ACC was consulted on the amendments relating to the invoicing of the HSW levy in the HSW Act. The EPA was consulted on the consequential amendment being made to the HSW Act occurring as a result of the amendments being made to the Electricity Act and Gas Act.	

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?	NO

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?	YES
<p>It amends s17 of the IALA, which is effectively a narrow fit-and-proper person test (currently restricted to the excluding criteria spelt out in s17), to allow the Registrar to take more issues into account when considering an application for a licence. These are envisaged as including, for example, adverse Disputes Tribunal findings, dismissal from employment, or being subject to charges for providing unlicensed advice at the time of application for a licence.</p> <p>This extension of grounds for refusal is subject to the existing safeguards, namely that a person who is refused a licence must be advised in writing of the refusal and the reasons for it, and the person has the right to appeal that refusal to the District Court.</p> <p>Consequently, the proposed amendment to section 27 extends the circumstances in which the Registrar must cancel a licence where an adviser is no longer fit to be licensed (according to sections 16 and 17 of the Act). This would allow the Registrar to cancel a licence rather than waiting for the term of the licence to expire (as is currently provided for in the Act).</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?	YES
<p>The Bill will amend sections 169C – 169E of the Electricity Act and sections 65AB – 56AD of the Gas Act to insert provisions for legislative instruments (Electricity Safety Instruments and Gas Safety Instruments), which may provide for alternative pathways to comply with regulations. These instruments will provide an efficient legislative mechanism for the Regulator (WorkSafe New Zealand) to develop, modify, update or add detail to technical matters or standards in regulations, that require frequent updating, under the Electricity Act and Gas Act, but only to the extent that regulations permit these instruments to be used.</p> <p>These legislative instruments are modelled on Safe Work Instruments under the HSW Act and will be approved by the Minister for Energy, who may delegate this to the Regulator (WorkSafe New Zealand).</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?	NO