

Departmental Disclosure Statement

Patents 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.

29 April 2025.

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Part One: General Policy Statement

The key purpose of this Bill is to amend the Patents Act 2013 (the 2013 Act) to apply stricter criteria for the grant of divisional applications filed under the Patents Act 1953 (the 1953 Act).

Currently, applications that were filed before the 2013 Act came into force, and any subsequent applications relating to them (known as divisional applications), fall to be considered under the 1953 Act. This is an issue because the 1953 Act criteria for examining patent applications is of a lower standard than the 2013 Act and can result in unmeritorious inventions being patented.

Third parties (such as other businesses) can later oppose the grant of these patents through a review process or apply to have the patents revoked. However, this is costly and time-consuming for businesses, with no guarantee of success.

The Bill will adjust the 2013 Act so that 1953 Act applications will be examined in broadly the same way as 2013 Act applications. This will avoid the likelihood of a third party having to oppose the grant of a patent. This will only apply to 1953 Act divisional applications that are filed after the Bill comes into force.

The Bill achieves this by providing that these 1953 Act divisional applications are only accepted for grant if the Commissioner of Patents is satisfied on the balance of probabilities that the invention claimed in the application meets the novelty, inventive step and support requirements of the 2013 Act.

The above criteria will also apply to any opposition, revocation, and re-examination proceedings concerning these 1953 Act divisional applications.

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?	NO

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?	YES
Title: Impact Summary: Intellectual Property Laws Amendment Bill Authorising agency: Ministry of Business, Innovation and Employment A copy can be accessed here: https://www.mbie.govt.nz/dmsdocument/30694-impact-summary-intellectual-property-laws-amendment-bill	

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
MBIE's Regulatory Impact Analysis Review Panel has reviewed the linked Impact Summary prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Summary meets the criteria necessary for Ministers to make informed decisions on the proposals.	

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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>Information on the size of potential costs and benefits can be found in Section 4 of the Impact Summary: Intellectual Property Laws Amendment Bill prepared by MBIE https://www.mbie.govt.nz/dmsdocument/30694-impact-summary-intellectual-property-laws-amendment-bill</p> <p>At the time of writing of the Impact Summary, the policy decision applied to approximately 700 patent applications. This now only applies to approximately 80 applications.</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>Information can be found in Section 4 of the Impact Summary: Intellectual Property Laws Amendment Bill prepared by MBIE https://www.mbie.govt.nz/dmsdocument/30694-impact-summary-intellectual-property-laws-amendment-bill</p> <p>Costs to the Intellectual Property Office of New Zealand to examine 1953 Act divisional patent applications to the new criteria are considered marginal as examiners have considerable experience examining under 2013 Act criteria for acceptance and grant.</p> <p>There is a potential increase in cost to applicants to comply with the new criteria. It is expected that this will be offset by third parties avoiding the time and resources required to oppose divisional applications that do not have an inventive step. Third parties will also avoid the potential uncertainty that the commercialisation of new products may be hindered by patents granted to the lower 1953 Act standard.</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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We have considered the policy against New Zealand's international obligations in respect of intellectual property.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), of which New Zealand is a member state, permits that member states may require inventions to involve an inventive step in order for a patent to be granted (Article 27).

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 policy to be given effect by this Bill is not expected to have implications for the rights and interests of Māori protected by the Treaty of Waitangi.

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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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/>

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)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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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
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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>A consultation document, which covered the issue relating to the policy of this Bill was released by MBIE on 4 June 2019. The document presented MBIE's analysis of the issue and options for addressing it.</p> <p>An exposure draft of the Bill was released for public consultation for 2 weeks on 18 March 2025. Submitters that commented on the drafting agreed that it implements the policy as intended.</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
<p>IPONZ patent examiners have over a decade of experience examining patents. No issues are expected from IPONZ applying the standard of the 2013 Act to 1953 Act applications.</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

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
<p>The Bill has some element of retrospectivity in that it affects patents already filed under the 1953 Act. However, it will only affect applications that are divided from these patents after the Bill passes into law.</p> <p>There are approximately 80 1953 Act applications from which divisional applications could be filed. The retrospectivity would apply to this limited number of patent applications.</p>	

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

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

