

OFFICE OF THE MINISTER FOR ECONOMIC DEVELOPMENT

The Chair
Cabinet Economic Growth and Infrastructure Committee

REGULATORY SYSTEMS AMENDMENT BILL (2) – new policy proposals

Proposal

1. This paper seeks Cabinet's policy approvals for amendments to be included in Regulatory Systems Amendment Bill (2) (the Bill) and to provide drafting instructions to the Parliamentary Counsel Office.

Executive Summary

2. The Bill is an omnibus bill to improve regulatory systems that the Ministry of Business, Innovation and Employment (MBIE) is responsible for. The Bill will make amendments to 19 statutes falling under the Social Housing, Building and Housing, Commerce and Consumer Affairs, ACC, Energy and Resources, and Workplace Relations and Safety portfolios.
3. The policy objective of the Bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Acts and so reduces the chance of regulatory failure.
4. Because of the large volume of the amendments the Bill has been split into four parts. These are:
 - Commercial Matters
 - Energy and Resource Matters
 - Social Housing and Housing Matters
 - Workplace Relations Matters.
5. There are four noteworthy policy matters: one under the Companies Act 1993 and three under the Accident Compensation Act 2001.
6. Under the Companies Act 1993 in order to deal with the privacy and/or safety concerns raised by directors, it is proposed that residential addresses are not made public but instead an alternative address for service is published.

7. Under the Accident Compensation Act 2001, there are three policy matters. The first is the proposed amendment to enable a surviving spouse to receive both weekly compensation and New Zealand superannuation for up to five years. The second proposal is to enable an injured person to receive both weekly compensation and New Zealand superannuation for up to two years. These changes aim to ensure consistency and fairness of entitlement regardless of age. The third matter is the proposed winding down of the historic Accident Compensation Appeal Authority (the Authority) and to transfer its functions to the District Courts. Moving these appeals to the District Courts will maintain the substantive rights of clients.
8. The remaining proposed amendments are presented in annex 1 through to annex 4.

Background

9. The Bill is an omnibus bill that contains amendments to legislation administered by MBIE. The Bill makes amendments in the Social Housing, Building and Housing, Commerce and Consumer Affairs, ACC, Energy and Resources, and Workplace Relations and Safety portfolios.
10. The policy objective of the Bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Acts and so reduces the chance of regulatory failure. The amendments will achieve this by:
 - clarifying and updating statutory provisions in each Act amended to give effect to the purpose of that Act and its provisions; and
 - addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation; and
 - keeping the regulatory system up to date and relevant; and
 - removing unnecessary compliance costs.
11. MBIE is focusing on ensuring its regulatory systems are performing to a high standard. Its regulatory systems work programme identifies the best elements from individual systems and seeks to extend these practices across all of its regulatory systems. The work programme arises from the chief executive's responsibility to relevant Ministers, under section 32 of the State Sector Act 1988, for the stewardship of the legislation administered by MBIE.
12. The Bill and the amendments it contains is one part of the work programme for continuous improvement of regulatory systems. The Bill provides a vehicle for smaller regulatory fixes to be progressed in a timely and cost-effective fashion in order to deliver the flow on benefits to business and the wider economy.
13. Currently, the Regulatory Systems Amendment Bill (2) holds a category 5 in the 2016 Legislation Programme (to be referred to a select committee). I intend to seek category 5 in the 2017 Legislation Programme.

Regulatory Systems Amendment Bill (1)

14. In September 2016, the Business Committee agreed that the Regulatory Systems Amendment Bill (1) be split into three Regulatory Systems Amendment Bills. The Bills were approved as omnibus bills and would be considered as cognate bills under Standing Orders 263 and 269.
15. In September 2016, Cabinet approved the Regulatory Systems Amendment Bills introduction to the House of Representatives [CAB-16-MIN-0498].
16. In October 2016, the three omnibus bills: Regulatory Systems (Building and Housing) Amendment Bill, Regulatory Systems (Commercial Matters) Amendment Bill and Regulatory Systems (Workplace Relations) Amendment Bill, were referred to three select committees to consider one Bill each.

Comment

Regulatory Systems Bill (2)

17. Table 1 shows the volume and diversity of the 87 proposed amendments for the 19 Acts. The table lists the four parts of the Bill, the Acts within each part and the approximate total number of proposed amendments within each Bill.

Table 1: Outline of the Acts with number of proposed amendments for inclusion

Regulatory System Bill - Part	Name and number of Acts	Number of proposed amendments
Commerce and Consumer Matters	Building Societies Act 1965 Companies Act 1993 Credit Contracts and Consumer Finance Act 2003 Financial Reporting Act 2013 Fair Trading Act 1986 Insolvency Act 2006 Limited Partnerships Act 2008 Personal Property Securities Act 1999 Takeovers Act 1993 Trade Marks Act 2002 Weights and Measures Act 1987 (11 Acts)	57
Energy and Resources Matters	Crown Minerals Act 1991 Continental Shelf Act 1964 (2 Acts)	13
Social Housing, Building and Housing Matters	Housing Restructuring and Tenancy Matters Act Retirement Villages Act 2003 (2 Acts)	6

Workplace Relations and Safety Matters	Accident Compensation Act 2001 Employment Relations Act 2000 Remuneration Authority Act 1977 Holidays Act 2003 (4 Acts)	11
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18. Subject to Cabinet approval I will be seeking support from the Leader of the House and the Business Committee to approve the bill as omnibus bills to be considered as a cognate bill consistent with the Regulatory Systems Amendment Bills (1).
19. I am seeking approval of the proposed amendments as detailed in:
- Commercial Matters (Annex 1)
 - Energy and Resources Matters (Annex 2)
 - Social Housing and Housing Matters (Annex 3)
 - Workplace Relations Matters (Annex 4).
20. The following paragraphs summarise each part and discuss the noteworthy policy matters.

Commercial Matters

21. From Commercial Matters, I am seeking approval for changes to financial reporting, corporate governance, insolvency, competition and consumer law statutes, along with repealing some redundant provisions. The changes are aimed at keeping the regulatory system up to date and addressing regulatory duplication, errors and inconsistencies. The noteworthy proposal is discussed below.

Companies Act 1993

Replacing director residential addresses on the Companies Register with an address for service

22. Under the Companies Act 1993, once the registration requirements for incorporation are met, the Registrar of Companies must register and issue a certificate of incorporation. The registered documents are placed on the company record on the Companies Register. These include documents containing the residential addresses of directors and shareholders.
23. The purpose of making director and shareholder residential addresses available is to ensure that officers and shareholders of the company are easily contactable. In addition, the Companies Act provides that the residential addresses of directors can be used as a point of service for legal and other documents on directors.
24. Directors and shareholders do not always want to have their residential address made public and, instead, will provide an alternative address. Privacy and/or safety concerns are common reasons raised by directors for this practice.

25. The proposal for inclusion this Bill is to replace the requirement for a director residential address to be published on the companies register with a requirement that an address for service must be published (which may or may not be a residential address). This would help to address the concerns raised by directors and shareholders, while ensuring they remain easily contactable, and therefore accountable.
26. The removal of a director's residential address on the Register does not limit the serving of legal and other documents on directors. This can still be achieved through service at the address for service provided by the director or the company's registered office.
27. The Registrar of Companies would still require, and hold, director residential addresses in its database. If a person was trying to contact a director and the director was evasive and could not be contacted at the address for service, the person would be able to contact the Registrar of Companies and request the director's residential address.

Director Identification Numbers

28. The Minister of Commerce and Consumer Affairs has informed me that he is progressing a separate work stream on Director Identification Numbers (DIN). The introduction of a DIN in New Zealand was recommended by the Insolvency Working Group [EGI-16-MIN-019]. This number would be allocated to existing and future directors after a proof of identity process. The number would be publicly available on the Companies Register.
29. The replacement of director residential addresses and the introduction of a DIN are closely related matters and it would therefore make sense to publically consult on both these proposals at the same time. The Minister intends to release for public consultation a discussion paper covering both the DIN and director residential address proposals in March 2017.

NOTE: From 15 May to 23 June 2017 MBIE undertook consultation on whether it was desirable to introduce a Directors Identification Number. Following that consultation, further work will be undertaken on what information about directors is made publicly available. We intend to undertake public consultation on these matters, including directors' residential addresses, in early 2018.

Energy and Resource Matters

30. From the Energy and Resources Matters, I am seeking approval for changes to the Crown Minerals Act 1991 to clarify and update statutory provisions in the Act to give effect to the purpose of the Act and its provisions.
31. I am also seeking approval for consequential changes to the Continental Shelf Act 1964 under this section.

Social Housing and Housing Matters

32. From the Social Housing and Housing Matters, I am seeking approval for changes to the Housing Restructuring Tenancy Matters Act 1992 and the Retirement Villages Act 2003. The changes are to remove unnecessary compliance costs and to clarify and update statutory provisions. Under the Retirement Villages Act 2003 the proposed amendments are to give effect to the purpose of the Act and its provisions.

Workplace Relations Matters

33. From the Workplace Relations Matters, I am seeking approval for changes to the Accident Compensation Act 2001, Employment Relations Act 2000, Remuneration Authority Act 1977 and Section 75 of the Holidays Act 2003. The noteworthy proposals are discussed below.

Accident Compensation Act 2001

Relationship between surviving spouse weekly compensation and superannuation

34. The Human Rights Review Tribunal issued a declaration that the requirement to elect between New Zealand Superannuation (superannuation) and surviving spouse weekly compensation is inconsistent with the right to be free from discrimination on the basis of age under the Human Rights Act 1993.
35. Following the declaration, in October 2015, Cabinet agreed in principle to amend the Accident Compensation Act 2001 (the AC Act) to remove the election requirement and allow superannuitants to receive both superannuation and weekly compensation as a surviving spouse for the five-year period [CAB-15-MIN-0149 refers]. I propose that the Bill is used as the legislative vehicle to give effect to Cabinet's decision.
36. This amendment will mean that a client's entitlement to weekly compensation as a surviving spouse or partner will no longer be affected by whether they are New Zealand Superannuation qualification age (NZSQA) or older. Most surviving spouses or partners, including those of superannuation qualification age or older, will be entitled to a maximum of five years of weekly compensation based on their deceased spouse or partner's earnings at the time of the fatal injury.
37. This will ensure consistency and fairness between entitlements received by surviving spouses regardless of age.

Estimated cost of proposed amendment

38. It is estimated this would affect around 25 ACC claims per annum at cost of between \$1.1 million in 2019 and \$1.4 million in 2021 and out years. It is estimated the cost for additional expenditure on superannuation (funded from Vote Social Development) would be between \$0.79 million in 2019 to \$0.81 million in 2021 and out years. The additional appropriation required to fund Vote Social Development has previously been agreed to by Cabinet [CAB-15-MIN-0149 refers].

Relationship between weekly compensation and New Zealand Superannuation

39. Superannuation is a universal entitlement available to everyone who reaches the NZSQA. It is not means tested and superannuitants are able to continue working and receive superannuation at the same time. However, after a year of receiving weekly compensation and superannuation, clients who first become entitled to weekly compensation for a personal injury, at or past NZSQA must elect between receiving either weekly compensation or superannuation for the next year.¹
40. I propose an amendment to the AC Act to remove the requirement to elect between weekly compensation and superannuation. This will allow clients who first become entitled to weekly compensation for a personal injury near to, or after reaching NZSQA to receive up to two years of weekly compensation together with any superannuation they may be eligible for.
41. This will provide for a fairer, more consistent relationship between weekly compensation and superannuation by allowing an injured person's financial situation to more closely reflect their income had they not been injured, as those people who continue to work past NZSQA are able to receive superannuation alongside any earnings from work.
42. As part of this amendment I am proposing that the transitional provisions be clarified so that all clients who first become entitled to weekly compensation for a personal injury when aged 63 years or above are eligible for a maximum of 24 months of weekly compensation.² This means that all clients within this transitional period can receive (if entitled) two years of weekly compensation and up to two years of superannuation.
43. It is difficult to justify why 64 year olds potentially receive a longer transitional period of weekly compensation than others of comparative age due to the timing of their injury. While this amendment may result in some clients aged between 64 and 65 receiving less weekly compensation, it is not considered that providing a maximum of 24 months of weekly compensation for all clients aged 63 and above impacts on the substantive rights of potential clients.
44. As is consistent with previous changes to the AC Act, the amendment will not be retrospective and will apply to new eligible recipients from when the proposed amendments are enacted. The transitional provisions will be structured to ensure that clients' existing rights will not be affected.

¹ Schedule 1: Clause 53 Election for purposes of clause 52. After this time they will receive only superannuation.

² Schedule 1: Clause 52, subclause (7) and (8).

Estimated cost of proposed amendment

45. ACC has estimated that approximately 150 clients per year currently make the election between receiving weekly compensation and superannuation. The cash cost for ACC is expected to range from \$1 million in 2019 to \$1.3 million in 2024.
46. However, in most cases, clients elect to receive weekly compensation and therefore a high proportion of the cost of removing the election will fall on Vote Social Development. The Ministry of Social Development estimates the cash cost to range between \$2.98m in 2019 to around \$3.6m in 2024.

Disestablishment of the historic Accident Compensation Appeal Authority

47. The Accident Compensation Appeal Authority (the Authority) is a historical entity that hears appeals under the repealed Accident Compensation Acts 1972 and 1982, rather than the District Courts. The winding down of the Authority was originally included in the Courts and Tribunals Enhanced Services Bill as part of the deferred proposal to establish a stand-alone accident compensation tribunal [CAB MINS (14) 14/5 refers]. In December 2015, a discussion document was released by the Minister for ACC seeking feedback on proposals for the proposed Accident Compensation Appeal Tribunal. In this document stakeholders were informed that it was intended that the Authority would eventually be disestablished.
48. Although the decision to form a tribunal was deferred until 2019 [CAB-16-MIN-0480 refers], the disestablishment of the authority is proposed to progress through the Regulatory Systems Amendment Bill as maintaining a separate Authority is no longer cost effective or efficient given the low number of appeals. Currently, there are four active cases before the Authority and seven new appeals have been received to date this year. While it is difficult to estimate the future volumes of disputes, it is likely to decline further given that the injuries must be more than 24 years old.
49. Following the disestablishment of the Authority all new cases will be heard by the District Courts. Moving these appeals to the District Court will maintain the substantive rights of clients.
50. The disestablishment of the Authority will not result in any additional costs to the Ministry of Justice.

Consultation

51. The following agencies were consulted by MBIE during the development of the policy proposals:
- *Commercial Matters*: Treasury, Ministry of Justice, the External Reporting Board, Inland Revenue, Takeovers Panel and Commerce Commission
 - *Energy and Resources Matters*: Ministry of Transport.
 - *Social Housing and Housing Matters*: Ministry of Social Development, Community Housing Regulatory Authority, the Commission for Financial Capability and the Retirement Villages Association.
 - *Workplace Relations Matters*: ACC, Treasury, Ministries of Justice and Social Development and Veterans' Affairs.
52. I intend on releasing the exposure draft of the Bill in August 2017. The exposure draft will provide an opportunity for stakeholders to scrutinise the wording in the Bill and to provide feedback on whether what is proposed will work in practice.

Financial Implications

53. The removal of the election between superannuation and weekly compensation under the Accident Compensation Act 2001 is estimated to be between \$1 million in 2019 to \$1.3 million in 2024. It is estimated the surviving spouse weekly compensation amendment would affect around 25 ACC claims per annum at cost of between \$1.1 million in 2019 and \$1.4 million in 2021 and out years.
54. As the overall cost estimates of the policy proposals are relatively small, the impact on levies will be negligible with any impact absorbed by the current levy rates. There will be no impact on the Non-Earners' Account (funded through Government appropriation) as weekly compensation for these clients is funded from the levied Earners' Account.
55. The costs to the Ministry of Social Development of the removal of the election requirement between superannuation and weekly compensation under the Accident Compensation Act 2001 are estimated to be between \$2.98 million in 2019 to \$3.6 million in 2024.
56. As the amendments will increase the number of people who are entitled to receive superannuation, Vote Social Development will require additional funding in future budgets. However, as the Bill is unlikely to commence prior to 2019, a budget bid by the Ministry of Social Development is not yet required.
57. Cabinet has previously agreed to increase the funding to Vote Social Development required to fund the surviving spouse weekly compensation amendment [CAB-15-MIN-0149 refers]. Costs for this amendment are estimated to be \$0.79 million in 2019 to \$0.81 million in 2021 and out years.

Human Rights

58. The proposed amendment under the Accident Compensation Act 2001 regarding the relationship between surviving spouses' weekly compensation and superannuation responds to the Human Rights Review Tribunal declaration that this relationship is unfair as it discriminates on the basis of age. The proposal aims to ensure consistency and fairness of entitlement regardless of age.
59. The surviving spouse weekly compensation amendment is an equitable and consistent policy decision.

Legislative Implications

60. The Regulatory Systems Amendment Bill (2) holds a category 5 in the 2016 Legislation Programme (to be referred to a select committee). I will be seeking a category 5 in the 2017 Legislation Programme.
61. My intention is to provide drafting instructions to the Parliamentary Counsel Office by April 2017 and an exposure draft of the Bill be released in August 2017.

Regulatory Impact Analysis

62. The Regulatory Impact Analysis (RIA) was prepared for the proposals under the Accident Compensation Act 2001 and is attached as annex 5.
63. RIA requirements do not apply to the remainder of the proposals as the proposed changes are of a minor and/or technical nature.

Publicity

64. None

Recommendations

The Minister for Economic Development recommends that the Committee:

1. **Note** that the policy objective of the Regulatory Systems Amendment Bill (2) is to maintain the effectiveness and efficiency of the regulatory systems established by the Acts and so reduce the chance of regulatory failure;
2. **Agree** that the following amendments be included in the Regulatory Systems Bill (2) as detailed in the following:
 - 2.1 Commercial Matters (Annex 1)
 - 2.2 Energy and Resources Matters (Annex 2)
 - 2.3 Social Housing and Housing Matters (Annex 3)
 - 2.4 Workplace Relations Matters (Annex 4)

Financial implications

3. **Note** that as the amendments to the Accident Compensation Act 2001 will increase the number of people who are entitled to receive superannuation, Vote Social Development will require additional funding;
4. **Note** that the additional funding for Vote Social Development will be sought through an appropriation request in 2018/2019;
5. **Note** that Cabinet has previously agreed to the increase in Vote Social Development to fund the surviving spouse weekly compensation amendment [CAB-15-MIN-0149 refers];
6. **Note** that the impact from changes to weekly compensation on ACC levies will be negligible with any impact able to be absorbed by the current levy rates;
7. **Note** there will be no impact on the ACC Non-Earners' Account as weekly compensation for these clients is funded from the levied Earners' Account;

Legislative implications

8. **Note** Regulatory Systems Amendment Bill (2) holds category 5 in the 2016 Legislation Programme (to be referred to a select committee in 2016);
9. **Invite** the Minister for Economic Development to issue drafting instructions to Parliamentary Counsel Office in April 2017;
10. **Note** that the Minister for Economic Development intends on seeking Cabinet's approval to release the exposure draft of the Regulatory Systems Amendment Bill (2) in August 2017;
11. **Authorise** the Minister for Economic Development to make any necessary decisions on minor and technical matters that may arise during the drafting process, that are consistent with policy decisions, in consultation with the relevant portfolio Minister.

Authorised for lodgement

Hon Steven Joyce
Minister for Economic Development

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