MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Stuart Nash	**Portfolio**	Economic and Regional Development
Title of Cabinet paper	Regulatory Systems Amendment Bill (No 3) Cabinet Policy Paper	**Date to be published**	22 June 2021

List of documents that have been proactively released		
Date	**Title**	**Author**
05/05/2021	Regulatory Systems Amendment Bill (No 3) Cabinet Policy Paper	*Office of the Minister of Economic and Regional Development*
05/05/2021	*Annex One*	*Papers prepared by MBIE*
05/05/2021	*Annex Two*	*Papers prepared by MBIE*
05/05/2021	*Annex Three*	*Papers prepared by MBIE*
05/05/2021	*Cabinet minute DEV-21-MIN-0088*	*Cabinet Office*

Information redacted **YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Maintaining legal professional privilege

Confidentiality of advice tendered by Ministers of the Crown and officials

In Confidence

Office of the Minister for Economic and Regional Development

Chair, Cabinet Economic Development Committee

REGULATORY SYSTEMS AMENDMENT BILL (NO 3): POLICY PROPOSALS FOR THE ECONOMIC AND REGIONAL DEVELOPMENT, IMMIGRATION, WORKPLACE RELATIONS, ENERGY, RESOURCES, BUILDING AND CONSTRUCTION PORTFOLIOS

Proposal

1 I am seeking Cabinet's approval for the amendments in Annex 1 of this paper to be included in Regulatory Systems Amendment Bill (No 3) (the Bill). I am also notifying Cabinet that there have been changes to amendments initially agreed to in 2019, and I seek Cabinet's approval for the Bill to be introduced to the House no later than November this year.

2 I intend for this Bill to be considered as three separate omnibus bills that are also cognate, and for them to go to relevant select committees within the year. The sections will be presented as:

2.1 Regulatory Systems (Economic and Regional Development) Amendment Bill (No 3)

2.2 Regulatory Systems (Immigration and Workforce) Amendment Bill (No 3)

2.3 Regulatory Systems (Building and Construction) Amendment Bill (No 3)

Relation to government priorities

3 Regulatory Systems Amendment Bills (RSBs), whilst being routine operational adjustments that require Cabinet approval, also contribute to wider Government priorities. Through amending numerous regulations from a wide array of Acts at the same time, RSBs can support the quality of New Zealand's regulatory environment by:

3.1 making regulation more resilient

3.2 ensuring regulation is adaptable to technological and social changes

3.3 reducing regulatory compliance costs, especially on small businesses.

Executive Summary

4 Regulatory Systems Amendment Bill (No 3) is an omnibus bill that improves regulatory systems that the Ministry of Business, Innovation and Employment (MBIE) is responsible for. The Bill will make amendments to 37 statutes that

fall under the following portfolios: Building and Construction, Commerce and Consumer Affairs, Digital Economy and Communications, Economic and Regional Development, Immigration, Energy and Resources, and Workplace Relations and Safety portfolios.

5 The policy objective of the Bill is to maintain the effectiveness and efficiency of the regulatory systems established by the Acts, and reduce the chance of regulatory failure.

6 Cabinet agreed to the Bill being on the 2019 Legislative Programme and applied it with a category 5 rating (to have final drafting instructions sent to Parliamentary Counsel Office (PCO) within the year 2019 [CAB-19-MIN-0049 refers]). In July 2019, Cabinet agreed to the initial range of regulatory amendments to be included in the Bill [CAB-19-Min-0362 refers].

7 However due to delays caused by the COVID-19 response, a legislative bid for the Bill was resubmitted for inclusion in the 2021 Legislative Programme with a category 4 rating, (to be referred to relevant select committees in 2021). During 2020, further amendments were identified as being suitable for inclusion into the Bill.

8 Under Standing Orders 267 and 274, the Business Committee may determine any two or more bills as cognate bills. Previous business committees have approved the Regulatory Systems Amendment Bill (1) and Regulatory Systems Amendment Bill (2) as cognate bills.

9 I will be seeking Business Committee determination for this Bill to be cognate in 2021, and have split the proposed amendments into parts that match the relevant select committee. These are:

9.1 Economic and Regional Development matters (including commerce and consumer affairs, and digital economy and communications) will be contained in the Regulatory Systems (Economic Development) Amendment Bill (No 3) and will be considered by the Economic Development, Science and Innovation Committee.

9.2 Immigration, workplace relations and safety and energy safety matters will be contained in the Regulatory Systems (Immigration and Workforce) Amendment Bill (No 3) and will be considered by the Education and Workforce Committee.

9.3 Building and construction matters will be contained in the Regulatory Systems (Building and Construction) Amendment Bill (No 3) and will be considered by the Transport and Infrastructure Committee.

10 If determined by the Business Committee as cognate, the Bills will have the full support of Opposition parties and the three Bills can be progressed through the Parliamentary process as one Bill.

Background

11 I am seeking Cabinet's approval of the attached policy proposals in Annex 1 for inclusion in an omnibus bill that amends legislation administered by MBIE. These amendments cover the Building and Construction, Commerce and Consumer Affairs, Digital Economy and Communications, Economic and Regional Development, Energy and Resources, Immigration and Workplace Relations and Safety portfolios.

12 The policy objective of the Bill is to improve the effectiveness and efficiency of the regulatory systems established by the Acts being amended, and to reduce the chance of regulatory failure. The amendments will achieve this by:

12.1 clarifying and updating statutory provisions in each Act amended to give effect to the purpose of that Act and its provisions;

12.2 addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation;

12.3 keeping the regulatory systems up to date and relevant; and

12.4 removing unnecessary compliance costs.

13 MBIE is focusing on ensuring its regulatory systems are performing to a high standard. Under section 52 of the Public Service Act 2020, the Chief Executive of MBIE has a responsibility for supporting Ministers to act as a good steward of the public interest. This includes activities that maintain public assets (such as regulatory systems) and the efficient and economical delivery of goods and services that a departmental agency is responsible for.

14 RSBs are one part of the work programme for the continuous improvement of regulatory systems. They provide a regular legislative vehicle for smaller regulatory fixes to be progressed in a timely and cost-effective fashion, in order to deliver flow-on benefits to business and the wider economy.

15 In September 2016, the Business Committee agreed that the Regulatory Systems Amendment Bill (No 1) be split into three Bills. Those Bills were approved as omnibus bills and were considered as cognate bills under Standing Orders 267 and 274.

16 Cognate means that the bills taken together for debate because they cover related matters and this makes for efficient use of house time. Since this initial determination in 2016, RSBs have been packaged as omnibus bills to be considered as cognate.

17 Regulatory Systems Amendment Bill (No 3) was submitted for inclusion in the 2021 Legislation Programme as a category 4 priority. This means that the Bill is intended to be sent to relevant select committees in 2021.

18 Subject to Cabinet's approval of the policy proposals, I will be seeking support from both the Leader of the House and the Business Committee to approve

the three Bills as omnibus bills, and for them to be considered as a cognate bill consistent with previous RSBs.

Analysis

19 As stated in this paper, the purpose of the RSB is to provide a legislative vehicle that allows for a large number of minor and technical amendments to various Acts administered by MBIE to be progressed at once. It is an efficient and cost-effective way for central government to provide benefits to New Zealand.

20 Table 1 below shows the range and breadth of the amendments, both proposed and already agreed to, for the 37 Acts that will be amended by RSB 3. The table lists the three omnibus Bills, the Acts within each Bill and the approximate number of amendments within each Bill.

Table 1: Outline of the Acts that will be amended by RSB 3

Regulatory System Bill (No 3)	**Name and number of Acts**	**Approx. # of proposed amendments**
Economic Development Amendment Bill (No 3)	*Auctioneers Act 2013* *Auditor Regulation Act 2011* *Auditor Regulation 2012* *Building Societies Act 1965* *Charitable Trusts Act 1957* *Companies Act 1993 [Note - Sch 7, CL3 removed from RSB 3]* *Contract and Commercial Law Act 2017* *Credit Contracts and Consumer Finance Act 2003* *Electricity Act 1992 Note – also in Immigration & Workforce Bill]* *Fair Trading Act 1986* *Financial Markets Conduct Act 2013* *Financial Reporting Act 2013* *Financial Service Providers (Registration and Dispute Resolution) Act 2008* *Friendly Societies and Credit Unions Act 1982* *Heavy Engineering Research Levy Act 1978* *Industrial and Provident Societies Act 1908* *Insolvency Act 2006 [Note S276 removed from RSB 3]* *Limited Partnerships Act 2008* *Motor Vehicle Sales Act 2003* *New Zealand Business Number Act 2016* *New Zealand Institute of Chartered Accountants Act 1996* *Partnership Law Act 2019* *Personal Property Securities Act 1999* *Receiverships Act 1993* *Standards and Accreditation Act 2015* *Takeovers Act 1993* *Telecommunications Act 2001* *Trade Marks Act 2002* *Weights and Measures Act 1987* **(29 Acts)**	*117*

Regulatory System Bill (No 3)	Name and number of Acts	Approx. # of proposed amendments
Immigration and Workforce Amendment Bill (No 3)	*Accident Compensation Act 2001 [Note - removed from RSB 3]* *Crown Research Institutes Act 1992* *Electricity Act 1992 [Note – also in Economic Development Bill]* *Gas Act 1992* *Employment Relations Act 2000* *Health and Safety at Work Act 2015* *Immigration Advisers Licensing Act 2007* *Mines Rescue Act 2013* *Parental Leave and Employment Protection Act 1987* **(8 Acts)**	*33*
Building and Construction Amendment Bill (No 3)	*Building Act 2004 [Note - S7 & BP Board proposals removed from RSB 3]* *Plumbers, Gasfitters and Drainlayers Act 2006 [Note – removed from RSB 3]* **(1 Act)**	*7*

21 All policy work for the proposals included in the annexes have been led by specific policy teams within MBIE. The development process included low level consultation with key stakeholders in both their specific sectors as well as with MBIE's legal teams. All amendments in both the annexes of this paper have had relevant Ministerial agreement for inclusion.

Changes to original 2019 Cabinet decisions

22 Legal professional privilege

23 Legal professional privilege

24 Legal professional privilege

25 Legal professional privilege

Legal professional privilege

26 Amendments regarding the Accident Compensation Act 2001 have Ministerial agreement to be removed from RSB 3 and included in its own upcoming amendment bill [BR 2021-1809 refers].

27 Amendments relating to the licensed building practitioners scheme under the Building Act 2004 (Section 7 – clarify "supervise" also applies to work that does not require a building consent in the Building Act, and enabling the Building Practitioners Board to have more capacity to handle complaints) and the Plumbers, Gasfitters and Drainlayers Act 2006 (clarify that plumbing and drainlaying are distinct areas of work and to include earthworks and excavations associated with drainlaying and done by people who are licenced drainlayers, within the definition of drainlaying) have indicated intent to be moved from RSB 3 into a planned Building and Construction Sector Occupational Regulation Bill.

Treaty of Waitangi/Tiriti o Waitangi Implications

28 The Bills and proposals will comply with the principles of the Treaty of Waitangi.

Financial Implications

29 The proposals will have either minimal or no financial implications.

Legislative Implications

30 The Regulatory Systems Amendment Bill (No 3) was submitted for inclusion in the 2021 Legislation Programme with a priority category level of 4 (to be sent to select committees in 2021).

Regulatory Impact Statement

31 A Regulatory Impact Statement (RIS) was prepared for the proposal under the Heavy Engineering Research Levy Act 1978. The RIS and Quality Assurance Statement are attached as Annex 3.

32 Due to the nature of the proposed content within this bill being minor and technical, Regulatory Impact Analysis requirements do not apply to the remainder of the proposals.

Human Rights

33 There are no implications for the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

34 The following organisations were consulted during the development of the proposed amendments for this Bill:

- Accident Compensation Corporation, WorkSafe New Zealand, Parliamentary Counsel Office, New Zealand Customs Service, Heavy Engineering Research Association (HERA), New Zealand Transport Agency, Ministry of Transport, Commerce Commission, Financial Markets Authority, Companies Office (MBIE), Office of the Privacy Commissioner, Reserve Bank of New Zealand, Southland Building Society, Nelson Building Society, Insolvency and Trustee Service (MBIE), Ministry of Justice, Ministry of Foreign Affairs and Trade, Ministry for the Environment, Te Puni Kōkiri, Department of Conservation, Department of Internal Affairs, Land Information New Zealand, Landcorp, the Treasury, Takeovers Panel, Building Practitioners Board and Plumbers Gasfitters and Drainlayers Board.

35 The proposed amendments to the dam compliance offences were consulted on publicly as part of the proposed dam safety regulatory framework. The Ministry of Justice's Offence and Penalty Vetting team are satisfied that the proposed offences and penalties are consistent with Legislation Design and Advisory Committee guidelines.

Communications

36 Cabinet is asked to note that MBIE proposes to publish this Cabinet paper on the MBIE website.

Proactive Release

37 I intend to proactively release this Cabinet paper, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.

Recommendations

The Minister for Economic and Regional Development recommends that the Economic Development Committee:

1. **Note** that the policy objective of the Regulatory Systems Amendment Bill (No 3) is to improve the effectiveness and efficiency of the regulatory systems established by the Acts detailed in Table 1;

2. **Agree** that the amendments in Annex 1 be included in the Regulatory Systems Bill (3), organised by their specific Select Committee, as detailed in the following:

    - Regulatory Systems (Economic and Regional Development) Amendment Bill (No 3)

    - Regulatory Systems (Immigration and Workforce) Amendment Bill (No 3)

    - Regulatory Systems (Building and Construction) Amendment Bill (No 3);

3. **Note** that the Regulatory Systems Amendment Bill (No 3) was submitted for inclusion in the 2021 Legislation Programme, with a category 4 priority (referred to select committee in 2021);

4. **Invite** the Minister for Economic and Regional Development to introduce the Bill into the House no later than November 2021 with the intent of submitting its contents to relevant select committees;

5. **Authorise** the Minister for Economic and Regional 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; and

6. **Note** that the Ministry of Business, Innovation and Employment will publish this paper on its website, in accordance with the provisions of the Official Information Act 1982.

Authorised for lodgement

Hon Stuart Nash
Minister for Economic and Regional Development

Appendices

Annex 1: Proposed amendments for Regulatory Systems Amendment Bill (No 3) that require Cabinet Approval.

Annex 2: Amendments that have Cabinet approval for inclusion in Regulatory Systems Amendment Bill (No 3).

Annex 3: Regulatory Impact Statement and Quality Assurance Statement for the Heavy Engineering Research Levy Act 1978 proposal.

Annex 1: Proposed amendments for Regulatory Systems Amendment Bill (No 3) that require Cabinet Approval.

Proposals requiring Cabinet approval for Regulatory Systems (Economic Development) Amendment Bill (No 3)

No.	Provision	Status quo	Proposed change	Reason for change
		Auctioneers Act 2013		
1.	Section 6(1)(e)	Any person who has been convicted of a crime involving dishonesty within the previous 5 years is disqualified from registration as an auctioneer. The Act does not define what a crime "involving dishonesty" is. This has created uncertainty about what a crime "involving dishonesty" is.	Amend section 6(1)(e) to include a reference to the definition of a crime involving dishonesty in section 2 of the Crimes Act 1961.	Amending section 6(1)(e) to include a definition of a "crime involving dishonesty" will clarify wording by cross-referencing the Crimes Act 1961, and will allow for alignment and consistency across Acts. This issue has arisen in a review of a refused application when there was uncertainty about this wording.
2.	Section 9(3)(c)	As part of an application for registration, a potential auctioneer must provide a physical address for service. The address for service cannot be a PO Box, rural delivery address, or a document exchange.	Amend section 9(3)(c) so an application for registration can be made with a rural delivery address for service	For those auctioneers who live in rural areas the requirement to have a physical address creates an unwarranted compliance burden. We understand potential auctioneers get around this requirement by arranging to have documents delivered to a lawyer/accountant, or in the case of smaller businesses, with relatives or friends.

3.	Section 18(2)	Only a constable, an employee of the Commerce Commission who is authorised in writing to inspect auctioneer records and a vendor who has sold property through an auctioneer (limited to records that relate to the vendor and their property) can request an auctioneer record for inspection. An auctioneer record includes details of the vendor, the property and the auction.	Amend section 18(2) to include the Registrar of Auctioneers as someone else who can request an auctioneer record for inspection.	There is a prevailing practice of companies employing auctioneers who are not registered. This is prohibited under the Act and is a ground for the Registrar of Auctioneers to cancel a business' registration as an Auctioneer. Allowing the Registrar to access auctioneer reports will enable them to more easily identify whether the person conducting the auction on behalf of the registered auctioneer is disqualified.
4.	General amendments	The Act does not specify the definition of "company" in relation to who is able to register as an auctioneer. Overseas companies carrying on business in New Zealand must be registered with the New Zealand Companies Office under Part 18 of the Companies Act 1993 (Companies Act).	Clarifying in the interpretation section of the Act that "company" has the same meaning given to it in section 2(1) of the Companies Act 1993.	As overseas companies are excluded from the definition of company in section 2(1) of the Companies Act, this change would clarify that only companies incorporated in New Zealand under Part 2 of the Companies Act can be registered as auctioneers.
Auditor Regulation Act 2011				
5.	Section 93	The Act provides that accredited bodies are not liable for certain things they do in performance of their regulatory functions.	Amend section 93 to adopt the wording of section 73 of the Insolvency Practitioners Regulation Act 2019.	There is currently inconsistency between the provisions in the Act and the Insolvency Practitioners Regulation Act 2019 which provide for the protection of accredited bodies from liability. The protection from liability under both Acts is intended to be the same. This change will maintain consistency between

		A similar protection is included in the Insolvency Practitioners Regulation Act 2019 (section 73). The provision under the Insolvency Practitioners Regulation Act clarifies that the protection from liability "does not affect or limit any person's liability for an offence under this Act or any other enactment".		the two regimes. We consider that the formulation in the Insolvency Practitioners Regulation Act 2019 is the better formulation of this protection. Note: this change must commence on or after 31 December 2022 to allow for the FMA to consult and draft amendments to the relevant FMA notice. Section 36 of the Auditor Regulation Act requires that the FMA must consult before publishing or amending an FMA notice.
Auditor Regulation 2012				
6.	Clause 5A	There is an inconsistency in how the standards for different types of entities wishing to be registered as corporate audit firms are set. Clause 5A of the regulations sets the registration requirements for corporate audit firms which are companies. The registration requirements for partnerships are prescribed in the Auditor Regulation Act (Prescribed Minimum Standards and Conditions for Licenced Auditors and Registered Audit Firms) Notice 2012. That notice is issued by the FMA.	Remove clause 5A to enable the FMA to prescribe minimum standards for companies as well as partnerships in the Auditor Regulation Act (Prescribed Minimum Standards and Conditions for Licenced Auditors and Registered Audit Firms) Notice 2012.	Allowing the FMA to set the minimum registration requirements for both companies and partnerships will ensure that both sets of registration requirements can be appropriately maintained and updated (to avoid discrepancies over time). Setting out the requirements for different types of entities in the same place will also improve access to this information. The FMA recommends that these minimum standards are prescribed by notice, rather than regulations, to ensure they can be amended as required. Given the approach has been suitable for prescribing standards for partnerships we propose that standards for companies should also be prescribed by notice.

			Companies Act 1993	
7.	Section 2 definition of 'special resolution' Section 236A(4)(a)	The definition refers to a 'majority of 75% of the votes'.	Amend the definition of 'special resolution' and section 236A(4)(a) by removing the words 'a majority of'.	This is a technical correction as the word 'majority' is redundant because the 75% requirement speaks for itself. It is also incorrect in a literal sense; a majority of 75% means more than 37.5%.
8.	S22(2)	The provision states that the Registrar of Companies must not reserve the name of a company if one or more of four criteria are met. Criterion (b) is that the name is identical or almost identical to the name of another company.	Broaden the application of s22(2)(b) of the Companies Act to entities that are registered under s108 of the Limited Partnerships Act 2008.	The proposed change rectifies an inconsistency between the Companies Act 1993 and the Limited Partnerships Act 2008 in relation to identical or nearly identical names across entity types. The proposed change was the only amendment in the Companies (Limited Partnerships Identical Names Prohibition) Amendment Bill which was introduced in July 2020 and yet to have its first reading.
9.	Section 140	In the Companies Act 1993 all companies are required to keep interests registers and, if there is more than one director, disclose any interests to the Board.	Amend section 140 of the Companies Act 1993 to remove the requirement to keep an interest register if all of the shareholders are also directors of the company.	An interests register serves no purpose for these companies because the shareholders (also the directors) are the users of the information, who will also be the person disclosing the information.

10.	Section 151	Australia is a prescribed country for the purposes of section 151(2)(eb) – the effect of this is that a person prohibited from being a director in Australia is disqualified from being a director in New Zealand. However, Australia is not a prescribed country for section 151(2)(ec) which relates to persons who are prohibited from being general partners in certain overseas countries also being prohibited from being the directors of companies in New Zealand.	Amend section 10 of the Companies Act 1993 Regulations 1994 to add "and s151(2)(ec)"	The policy rationale for including Australia as a prescribed country for the purposes of section 151(2)(eb) also extends to s151(2)(ec). The relevant amendment to the regulations appears to have been unintentionally omitted when section 151(2)(ec) was inserted in 2014.
11.	Section 178(4)	Subsection (4) lists the grounds for refusing to provide information requested from a company by a shareholder. Privacy of a natural person or deceased person is not included as a ground for refusing request for information.	Amend section 178 to account for the privacy of a natural person or deceased person in subsection 4.	Privacy should be added as a ground for companies to withhold information from shareholders in order to align the Act with modern privacy standards as reflected in the Privacy Act 2020. This will ensure consistency with the Incorporated Societies Bill which has an equivalent section that includes privacy as a ground for refusal of request for information (clause 68(4)(a)).
12.	Section 208	Section 208 refers to "the board of a large company (within the meaning of section 198)" and their obligation to prepare an annual report.	Amend s208(4)(a) by deleting "large" and "(within the meaning of section 198)".	This was an omission when RSB 1 changes were made. The exemption to prepare annual reports was intended to apply to all companies covered by section 208 when the exemption was inserted by RSB1. The relevant Cabinet approval was to clarify that a company does not have to prepare an annual report if a) it is not required to prepare financial statements and, b) shareholders who together hold

				at least 95% of the voting shares have agreed that the report does need not be prepared.
13.	Section 239ACZB(2)	Section 239ACZB of the Companies Act requires an administrator at the end of an administration, or a deed administrator on the termination of a deed of company arrangement, to file with the Registrar of Companies a summary report (containing prescribed information).	Amend provision to provide clarity that the Registrar of Companies is required to register summary reports on the register and make them available to the public.	The Act is unclear as to whether administrators' reports are required to be made publically available by the Registrar once they are filed. We consider that these report should be registered and made available to the public – for transparency reasons and possible public interest in the conduct of an administration. This change will also support the Companies Office practice in respect of making publically available other insolvency documents that are registered with the Registrar.
14.	Section 257(1)(b)	Section 257(1)(b) of the Companies Act 1993 requires a liquidator to send or deliver their final liquidators report to the Registrar for registration. The Insolvency Practitioners Regulation (Amendments) Act 2019 amended section 257 of the Companies Act by also requiring liquidators to provide to the Registrar, in the manner specified by the Registrar, a summary report that contains the prescribed information.	Amend provision to provide clarity that the Registrar of Companies is required to register summary reports on the register and make them available to the public.	The Act is clear that a liquidator's first report and final report sent to the Registrar are to be registered (see sections 255(2)(b) and (d) and 257(1)(b)). However, the provision does not require the Registrar of Companies to register a summary report on the register and make it available to the public. The report should be registered and available to the public – for transparency reasons and possible public interest in the conduct of an administration. This change will also support the Companies Office practice in respect of making publically available other insolvency documents that are registered with the Registrar.
15.	Section 304(1) Section 305(4)	The unsecured creditor claim form in the Companies Act 1993 Liquidation Regulations 1994 does not ask for an email	Amend Schedule 1 of the Companies Act 1993 Liquidation Regulations 1994 to include e-mail address as one	With the increasing use of electronic communications, the form should be changed to collect e-mail addresses in addition to postal address. The amendment seeks to

		address. Instead, it asks for a business postal address.	of the contact details that needs to be provided in the unsecured creditor's form and secured creditor's valuation and claim form.	facilitate electronic communication and reduce unnecessary administrative costs.
16.	Section 320(2)	Under section 318(1)(e) the Registrar must remove a company from the register if a liquidator provides various documents. Where a company is being removed from the register on this ground, under section 320(2), the liquidator is required to advertise the notice of intention to remove a company from the Companies register.	Amend section 318 to allow the Registrar to advertise all notices of intention to remove companies from the Register.	This removes administrative burden on liquidators without any significant policy changes. The compliance cost for publishing a notice of intention is high. In other cases of removal, the Registrar advertises and can conduct omnibus advertisements. By advertising multiple companies in one advertisement, the Registrar can complete this notification at lower cost than liquidators. Compliance costs are increasing for insolvency practitioners and creditors, and there is not a strong policy reason to require liquidators to meet this cost.
17.	Clause 5(1) of Schedule 1	Clause limits voting at shareholders meetings to voting by voice or show of hands.	Amend clause 5(1) to include 'voting by a poll' as a default option.	The amendment seeks to clarify the law to allow companies to conduct voting by poll as a default option – instead of it needing to be called for by shareholders. This change will also make the shareholder meeting provisions consistent with the NZX listing rules. NZX Listing Rule 6.1 allows NZX listed companies to provide for voting by poll in their company constitutions.
18.	Clause 7 of Schedule 1	Heading of Clause 7 refers to 'postal votes'.	Amend the heading of Clause 7 of Schedule 1 to include direct voting by electronic means. For example "Postal votes (and direct voting by electronic means)"	This is a technical amendment which updates the heading in the legislation to recognise electronic voting. The use of online voting options is rapidly overtaking postal votes received through the postal system and is already enabled by the legislation - clause 7(1A) of Schedule 1 of the Act. However, the headings within Schedule 1 of the Act do not

				reflect this and could cause a lay person to think that electronic voting was not permitted
Contract and Commercial Law Act 2017				
19.	Section 218A	Before sections 218A-218D were included in the Contract and Commercial Law Act (CCLA), it was not possible for powers of attorney in relation to security interests to be signed as deeds electronically. As part of the COVID-19 response, these sections created a temporary modification for powers of attorney relating to a security interest to be entered into through electronic means. We have subsequently received feedback from stakeholders that an equivalent carve out should be made permanent.	Provide the permanent ability for powers of attorney, in connection with appropriate interests, to be signed as deeds through electronic means.	This provision was provided as temporary relief due to the effects of COVID-19. However, the ability for entry into powers of attorney by electronic means should be made permanent for appropriate interests. These interests may extend beyond just security interests. This is a pragmatic change that will enable businesses to grant powers of attorney more efficiently. There is no identifiable material risk of harm due to the existing protections in the CCLA relating to the reliability of electronic signatures.
Credit Contracts and Consumer Finance Act 2003				
20.	Section 9B(2)(f)	Section 9B(2)(f) provides that insurance is arranged by the lender if “the insurance is financed under the agreement	Amend section 9B(2)(f) to only apply where the insurance is financed with the lenders' knowledge	The current wording could be interpreted as capturing insurance that was purchased by the borrower using the credit without the lenders' knowledge. This is considered to be an oversight and should be fixed.

		entered into by the borrower and the lender".		
21.	Section 21	Section 21 requires the matters in section 18 (and subsequently 19) relating to specific ongoing disclosure requirements to be included on the website.	Amend section 21 to more accurately reflect running balance disclosures.	The requirement under section 21 currently includes the opening and closing balance which doesn't reflect the running balance nature of internet banking. Most lenders publish PDFs of paper statements online to meet disclosure requirements. This amendment allows for better use of new technological solutions available.
22.	Schedule 1	Schedule 1 doesn't require collateral to be specifically identified in security interests. Currently, lenders only have to give a clear explanation of the property that is, or is proposed to be, subject to a security interest.	Amend schedule 1 of the Act to require collateral to be specifically identified in line with section 83F(2).	This change will align initial disclosure with section 83F(2) which prohibits repossession of consumer goods unless specifically identified in a consumer contract.
Crown Research Institutes Act 1992				
23.	Part 3, Section 18	Crown Research Institutes (CRIs) are currently required to produce and table half-yearly reports.	Remove the requirement for CRIs to table a half-yearly report, and reference to half-yearly report in the CRI Act.	The requirement comes from s16 of the State-Owned Enterprises Act 1986, as CRIs are classified as Crown-owned companies. No other related Crown entities are required to produce half-yearly reports under the Crown Entities Act 2004. Half-yearly reports include a short overview of the organisation and financial results for that year. The reports are included in on CRIs' external websites but receive low traffic. As CRIs already produce quarterly performance reports and annual reports and annual reports, limited value is produced

				from the half-yearly reports, and it adds a compliance cost to CRIs and MBIE teams. All information in the half-yearly reports are included in the annual report, and quarterly performance reports.
			Electricity Act 1992 / Gas Act 1992	
24.	New provisions in the Electricity Act 1992 and the Gas Act 1992 – to establish dedicated electricity and gas safety instruments to modify and add detail to electricity and gas safety regulations.	Section 227 of the *Health and Safety at Work Act 2015* (HSWA) allows the Minister to approve "safe work instruments" (SWIs). SWIs are legislative instruments that can modify or add detail to regulations, where a regulation allows an SWI to be used. SWIs can be used broadly to "define terms, prescribe matter or make other provision in relation to any activity or thing". SWIs can be made under the HSWA to modify regulations made under the *Electricity Act 1992* and *Gas Act 1992,* to the extent regulations permit their use.	Amend the *Electricity Act 1992* and *Gas Act 1992* to allow the creation of "electricity safety instruments" and "gas safety instruments". These safety instruments will be legislative instruments that can be used to modify or add detail to regulations under the Electricity Act and Gas Act, to the extent regulations permit these instruments to be used. The Minister of Energy and Resources or the energy safety regulator may approve the proposed electricity safety instruments.	As an instrument created under the HSWA, SWIs are only able to address health and safety at work matters. Safety regulations under the Electricity Act and Gas Act have broader purposes to protect property and people from non-work related risks. To fully enable all areas of energy safety regulation to be modifiable by instrument, dedicated instruments under the Electricity Act and Gas Act are required. This proposed amendment will put into effect the original policy intent of SWIs for the electricity and gas regimes.
25.	Section 135(b) – Electricity Act 1992	Section 135(b) says that the Registrar may correct a mistake caused by any error or omission on the part of the Registrar or "any person to whom the Registrar has delegated his or her functions, duties or powers". This wording of the Act implies that the Registrar can delegate his/her functions. However,	MBIE proposes introducing a new section in the Act that explicitly allows the Registrar to delegate his or her functions.	There are currently over 30,000 registered electrical workers and it would be impossible for the Registrar to personally perform all tasks in relation to all applications.

		there is no explicit provision in the Act that allows the Registrar to do this.		
26.	Section 152(2)(a)	Section 152(1) says that, except as otherwise provided in this Act, the Board may from time to time delegate any of its functions and powers to the Registrar. Section 152(2)(a) says that no delegation under this section shall include the power to delegate under this section. We understand that this drafting was common when the Act was passed but has now become archaic.	MBIE proposes amending or repealing subsection 152(2)(a) to allow the Registrar to delegate the functions that were delegated to the Registrar by the Board. Subsection 152(2)(b) would remain in place and the functions and powers conferred or imposed on the Board by or under Part 11 (disciplinary provisions) would continue not to be able to be delegated.	Because of this section, the Registrar cannot delegate to his or her staff functions and powers that were delegated to him or her by the Board. This causes disruption because the Registrar cannot perform all functions delegated from the Board in addition to the running of the register and may need to delegate some to his or her staff.
Fair Trading Act 1986				
27.	Section 46H	Only the Commerce Commission can seek a declaration from the court that a term in a standard form contract is an “unfair contract term”.	Allow the Financial Markets Authority (FMA) to also be able to seek such a declaration for a term in a contract for a financial service or a “financial advice product”.	This change has already been agreed by Cabinet [DEV-19-MIN-0311 refers]. The change was to be given effect to through an Insurance Contracts Law Bill. We are now recommending the change be given effect to through the Regulatory Systems Bill because the Office of the Clerk has advised that the change is likely to be out of scope of the Insurance Contracts Law Bill. The change is appropriate because the FMA is the principal regulator of financial services and products, and the FMA’s regulation of bank and insurer conduct is expanded under the Financial Markets (Conduct of Institutions) Amendment Bill.

		Financial Markets Conduct Act 2013		
28.	Section 6 Section 461E	These provisions use the term "qualified auditor".	Change the definition of "qualified auditor" to "qualified FMC auditor".	"Qualified auditor" is also used in section 35 of the Financial Reporting Act 2013 to carry out a range of statutory audits. However, FMC reporting entity audits are reserved to a smaller number of practitioners who are licensed under the Auditor Regulation Act. It would be clearer if a different term was used in the FMC Act to distinguish between the two categories of auditor. The above change relating to "qualified auditor" also needs to be made: (a) to the definition of "financial markets participant" in section 4 of the Financial Markets Authority Act 2011; (b) in 13 places in the FMC Regulations; and (c) in two places in the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014.
29.	Schedule 4	Authorised financial advisers and qualifying financial entities are required to keep records for seven years under the current financial advice regulatory regime. This will be repealed on 15 March 2021. Transitional regulations (which expire on 14 March 2024) have been made requiring advisers and entities to retain records for another three years despite the repeal of the current regime.	Insert new provisions into schedule 4 of the Act requiring records to be maintained for remainder of the seven year period.	Records are necessary to support monitoring and enforcement activities. Transitional regulations able to address this issue for three years, an Act-level change is needed so that records are maintained for the remainder of the seven year period.
30.	Schedule 4	Transitional regulations (expiring 15 March 2021) provide that the financial advisers disciplinary committee may consider a complaint made about an authorised financial	Insert new provisions into schedule 4 of the Act allowing disciplinary committee to hear complaints about misconduct under the old regime.	Necessary to provide a mechanism for addressing breaches of the current regime that only come to light after the start of the new regime. Transitional regulations able to address this issue for three years, an Act-level change is needed to address issues that arise after three years.

		adviser after the commencement of the new financial advice regime where the complaint relates to pre-commencement conduct (or a failure to continue keeping records about pre-commencement conduct).		It is necessary to provide a mechanism for addressing breaches of the current regime that only come to light after the start of the new regime. Transitional regulations are able to address this issue for three years, an Act-level change is needed to address issues that arise after three years.
Heavy Engineering Research Levy Act 1978				
31.	S11(3)	The masculine pronoun “he” is used to refer to the Minister.	Amend this to the gender-neutral pronoun “they”.	Pronoun no longer appropriate.
32.	Schedule 2	Schedule 2 specifies tariff items for steel and iron products that attract the levy. Several tariff codes for prefabricated items have been introduced in recent years that were not envisaged when the Act was passed but which fit the policy intent of the legislation. Schedule 2 does not include these prefabricated items.	Amend Schedule 2 to include tariff item numbers 73.08.10.00, 73.08.90.90 (10C), 73.08.90.90 (15D), & 73.08.90.90 (29D). This will ensure that the policy intent of the legislation is met and ensure equitable distribution of levy payment.	The Harmonised Imports data shows that the import of these products is increasing significantly, and now represents approximately 10% of all imported steel and item products. While, domestically-produced items will have attracted the levy earlier in the product pathway whilst imported items will not. The omission of these items has created an inequitable levy payment distribution between importers and domestic producers of these items that is counter to the policy intent that items are treated equally independent of origin. These amendments have the support of the Heavy Engineering Research Association and the New Zealand Manufacturers and Exporters Association, both of whom have functions under the Act regarding the Levy.

				MBIE held public consultation, directly targeting affected stakeholders to inform the regulatory impact assessment of these changes.
Insolvency Act 2006				
33.	Section 310	Section 310 allows the Official Assignee to annul a bankruptcy initiated by a debtor application, on four grounds set out in subsection (2). The provision does not allow for the Assignee to annul a bankruptcy initiated by a creditor application. The provision also does not make it clear whether the Assignee is obliged to determine an application (i.e. to grant or dismiss it) where the facts are unclear or in dispute.	Amend section 310 by adding a subsection that: 1. allows the Assignee to annul a bankruptcy initiated by a creditor application, under the ground in (2(b)). 2. where the bankrupt or an interested party has applied for annulment, the Assignee is not obliged to determine an application for annulment where the facts are unsettled or in dispute.	1. Where the Assignee is satisfied that the bankrupt's debts have been fully paid or satisfied and that the Assignee's fees and costs incurred in the bankruptcy have been paid, (ground to annul bankruptcy under section 310(2)(b)), it is unjust that a person remains a bankrupt because the bankruptcy was initiated by a creditor. The cost of applying to the Court under section 309 can be prohibitive for bankrupts to apply for annulment with the court and it is unjust that such persons remain bankrupt once this has been achieved as their property remains vested in the Assignee and they continue to be subject to the restrictions of bankruptcy. 2. The Assignee should not have to determine applications for annulment where the law or facts are unsettled or in dispute; complicated applications for annulments should be dealt with by the court. The Assignee should therefore have the ability to require a person seeking annulment under section 310 to apply to the court under section 309. It should be clear that the Assignee is not obliged to determine every application. Consistent with section 309, persons interested under this proposal may be made by the bankrupt, creditors or, in some cases, a family member of a bankrupt or someone acting in a custodial role or holding a power of attorney.
34.	Part 5, subpart 2	There is no reference to holding a licence under the Insolvency	Include a reference in the Insolvency Act 2006 that a trustee or provisional trustee	Each other statute which provides for the appointment of a person to a role for which they must hold a licence under the Insolvency Practitioners Regulation Act 2019 clearly sign

		Practitioners Regulation Act 2019 in Part 5, subpart 2 of the Insolvency Act.	appointed under subpart 2 of Part 5 of the Insolvency Act 2006 must hold a licence under the Insolvency Practitioners Regulation Act 2019.	posts that requirement. Not including such a provision was an oversight in the development of the Insolvency Practitioners Regulation Act. Including such a reference will remove the risks that: • individuals who act as trustees under subpart 2 of Part 5 of the Insolvency Act 2006 will not be aware that they are required to be licenced to preform that role • persons will inadvertently be appointed as trustees under subpart 2 of Part 5 of the Insolvency Act 2006 when they are not qualified to perform that role.
Limited Partnerships Act 2008				
35.	Section 96	Section 96 provides that the Registrar of Companies must deregister a limited partnership on notification of the completion of the liquidation of the limited partnership. Section 92 provides that Part 16 of the Companies Act 1993 applies.	Amend section 96 to require the liquidator of a limited partnership to give public notice of deregistration.	This was an omission in the Limited Partnerships Act 2008 (Limited Partnerships Act). The sections of the Companies Act that relate to the liquidator advertising the removal of the limited partnership do not apply (when they should). This results in inconsistencies in the regime as the Limited Partnerships Act requires the liquidator to comply with section 257(1)(b) of the Companies Act (Part 16), but they are not required to give public notice of the deregistration (in Part 17). This is inconsistent given that the purpose of public advertising is to provide an opportunity for objections to be lodged.

		Motor Vehicle Sales Act 2003		
36.	Section 31	An application for registration as a motor vehicle trader must be signed. However, when accompanied by a signed statutory declaration, there is no need for a signed application. In the case of companies, secretaries often fill in the application form and directors sign statutory declarations	Amend section 31 to remove the requirement for applications for registration to be signed.	It is not necessary for both parts of the application to be signed, as statutory declarations already need to be signed. In practice, the applications tend to be filled out by administrative staff and this change would remove an unnecessary compliance burden from traders.
37.	Section 32	The Act does not require the trader to provide their NZTA Customer ID(s).	MBIE proposes requiring all applicants to provide their NZTA Customer IDs as part of their application. This information should be kept confidential.	With this requirement, important information (NZTA Customer IDs) would be used to identify the trader. Overall, this would also reduce processing delays. This is important information that would allow the correct identification of a trader. This would also reduce processing delays.
38.	Section 32(2)(a)(ii)	Section 32(2)(a)(ii) requires an address for service that identifies a street or road, and email address or fax number “if available”.	Requiring email addresses as part of the address for service. This would mean removing the wording “if available” and removing the requirement to provide a fax number.	With increasing use of paperless registrations, email is the main way that the registration team contacts registered traders and the same is true for most of the general public. Therefore, to fulfil the purposes of the Register in section 53, it is appropriate that the trader’s email address be a mandatory requirement and shown in the Register. The Register would also be able to be searched by email address.
39.	Section 32(a)(iii)	As part of an application, a potential trader must provide a physical address for service. This cannot be a PO Box, rural	Amend section 32(a)(iii) to allow an application for registration to include a rural delivery address for service.	For those traders who live in rural areas the status quo creates an unwarranted compliance burden by requiring them to arrange to have these documents delivered to a lawyer/accountant or, in the case of smaller businesses, to relatives or friends.

		delivery address or a document exchange.		
40.	Section 32(1)(a)(i) Section 32 (2)(b)	Section 32(1)(a)(i) and 32(2)(b) requires that the applicant provide their full name. It does not specify that the applicant needs to provide their full "legal" name (i.e. the name on the applicant's passport or drivers licence).	Amend section 32(1)(a)(i) and 32(2)(b) to require a full "legal" name for both the application and the statutory declaration. The proposed change will also involve requiring proof of identity (copy of passport or drivers licence) to cross check the legal name.	This is an important distinction in terms of aiding compliance when traders are not fulfilling their obligations. This also aids in the process of determining whether the individual or person concerned in the management of the company is disqualified from registration.
41.	Section 40A(2)	The period for notifying the Registrar of a new person concerned in the management of a company under section 40A(2) is 30 working days.	Reduce the period for notifying the Registrar to 20 working days to facilitate the notification by companies and align the timeframe with the Companies Act (20 working days).	The Companies Act requires that the Registrar of Companies should be notified within 20 days. By amending section 40A(2) to 20 workings, this will address the inconsistency between similar statutory requirements.
42.	Section 54	An individual trader's date of birth or the date of birth of chief executives are publicly available.	Amend section 54 to not allow the Register to be searched by reference to the individual's date of birth or company trader manager's date of birth.	It is not necessary to make the individual motor vehicle trader's date of birth publicly available for the purposes of the register. There is sufficient information required in the provision such as name of the company, address of the company's registered office and address for service, and a unique number assigned to the company on registration to enable a member of the public, and regulators to know who is responsible for a motor vehicle trading business; and to know how to contact the motor vehicle trader. The right to collect and publish this information is outweighed by the individuals' right to keep this information private.
43.	Sections 40A, 57, 75 & 79	The register can currently be searched by address or name.	Include an obligation to notify the Registrar the email address	Including an obligation to notify the Registrar the email address of the new person concerned in the management of

		Traders are not obligated to provide an email address to be listed on the Register.	of the new person concerned in the management of a company. As well as allow the list of banned persons to include the banned trader's email address and allow the list of banned persons to be searched by email address.	a company, and making this publicly available will fulfil one of the purposes of the register which is to know how to contact a motor vehicle trader, including to seek redress. This purpose extends to banned traders. With increasing use of paperless registration, email is widely and publicly accepted as an effective means of contacting another person efficiently. We consider public access to this information outweighs an individual's right to privacy as emails are commonly available and easy to access, they also do not provide a means of direct access to an individual person.
Partnership Law Act 2019				
44.	Section 47(1) Section 79(2)(b)	Section 79 provides that an outgoing partner (or their estate) is entitled to either a share of profits from their share in the partnership's assets, or 5% interest per year on that share of assets. This fixed interest rate approach was consistent with the way interest was calculated under a number of statutes by way of cross-reference to the now-repealed section 87 of the Judicature Act 1908. The same fixed interest approach is also used in section 47.	Amend sections 47(1) and 79(2)(b) to align the way of calculating interest with section 12(3) of the Interest on Money Claims Act 2016.	The fixed interest rate approach is no longer used under other legislation. The approach under sections 10-12 of the Interest on Money Claims Act 2016 provides for interest rates to be calculated using market interest rates. Interest under that Act is based on the base interest rate set out by the Reserve Bank of New Zealand plus a premium percentage. This is 0.15% or if some other percentage is prescribed as the premium that applies for the purposes of this section from a specified date, the prescribed premium, if day A is after the specified date.

			Receiverships Act 1993	
45.	Section 23	Provision contains the ability to prescribe content for inclusion in a Receiver's first report. The general ability to prescribe the content of reports by receivers is contained in section 395 of the Companies Act. However, that power does not extend to prescribing under section 23.	Expanding the regulation making power to enable this content to be prescribed as was the intent when the Act was enacted appears to be a historic deficiency in the regulation making power.	It is not possible to prescribe reporting requirements for inclusion in receiver's first reports.
46.	Section 24A	Section 24A requires a receiver at the end of a receivership to provide to the Registrar of Companies a summary report on the receivership.	Amend provision to clarify that the Registrar of Companies is required to register a summary report on the register and make them available to the public.	We are of the view that there is value in all the receivers reports (first, further and summary reports) being registered and available to the public – for transparency reasons and possible public interest in the conduct of a receivership. The current practice of the Companies Office is for the receiver's reports to be registered and available to the public. Will also be consistent with the amendments being proposed to the Companies Act.
47.	Section 26(4)	Section 26(4) of the Receiverships Act 1993 provides that receivers must (within 7 days after preparing a first or further report under	Amend provision to clarify that the Registrar of Companies is required to register first or further receiver reports on the	We are of the view that there is value in all the receivers reports (first, further and summary reports) being registered and available to the public – for transparency reasons and possible public interest in the conduct of a receivership.

		sections 23 or 24) send or deliver to the Registrar of Companies a copy of the report.	register and make them available to the public.	The current practice of the Companies Office is for the receiver's reports to be registered and available to the public. Will also be consistent with the amendments being proposed to the Companies Act.
Standards and Accreditation Act 2015				
48.	Sections 15(2), 18(1) and 25(1)	There is no statutory provision on the removal of members or the chairperson and, as a consequence, the Executive and the Board's corresponding powers are uncertain.	Amend the Act to clarify that the Executive may remove members or chairpersons of Standards Development Committees subject to the Board's approval. The removal process would follow natural justice considerations.	The NZ Standards Executive (the Executive) manages the processes for the formation of Standards Development Committees. The Executive appoints the committee members and the committee chairperson, following approval from the Standards Approval Board (the Board). Adding explicit removal powers will eliminate any ambiguity in regards to the powers of the Executive and the Board to remove committee members or chairpersons.
Telecommunications Act 2001				
49.	Section 69XB(i)	Section requires Chorus to supply a UBA service in a bundle with the local access and calling Resale Service.	Repeal Section 69XB(i)	Section 69XB (i) imposes an obligation on Chorus to supply a UBA service[1] with the local access and calling Resale Service. However, with the deregulation and removal of the local access and calling Resale Service from Part 2 of Schedule 1 of the Telecommunications Act 2001, we consider it illogical to continue to impose this undertaking on Chorus when the local access and calling Resale Service

[1] This is one of Chorus' wholesale broadband services.

				has been deregulated. Repealing section 69XB (i) will remove what is now effectively a redundant provision.
50.	Section 69XA	Section provides the interpretation of the "local access and calling service" (Resale Service) that is supplied in a bundle with Chorus' UBA service.	Repeal section 69 XA.	Section 69 XA is now a redundant interpretation because the local access and calling Resale Service has been deregulated and removed from Part 2 of Schedule 1 of the Telecommunications Act 2001.
Trade Marks Act 2002				
51.	Section 199(e)	The border protection measures under sections 136 to 155 were amended in 2018 to extend the regime to cover exports of suspected infringing goods, but the relevant regulation making powers were not amended to refer to "exportation".	Amend the provision to refer to both "importation" and "exportation"	This is considered to be an oversight and should be fixed. There is a risk that Custom may not be able to recover its costs through the letter of indemnity trade mark owners must provide in relation to suspected infringing exports.
Weights and Measures Act 1987				
52.	Section 17	This section does not specify, as the Act does for the sale of goods by retail in section 15A, that the purchaser and the seller must both be able to see the determination of the weight or measure at the time the determination is made	Amend section 17 to include that when the determination of the weight or measure is made by the purchaser; the purchaser commits an offence if the determination is not visible to both parties at the time the determination is made.	This amendment would align this section with section 15A of the Act where the purchaser and seller relationship is the inverse of the relationship in section 17 to provide consistent protection for individuals when they are selling goods by weight or measure but are not the party taking the weight or measurement.

53.	Section 28	Inspectors can require any person to produce records or documentation related to any goods sold or exposed for sale and any weights, measures or weighing and measuring instruments used for trade. This section also allows Inspectors to “take copies” of the documentation produced but does not explicitly allow for the retention of these copies by the Inspector.	Amend section 28(1)(h) to include reference to “digital” records and add the express provision allowing the retention of the copies made in the course of the examination of the documents produced.	Modern businesses use technology for their transactions and measurements. Many transactions are conducted electronically and the devices used may be controlled remotely. These copies may be evidence for a potential case against the seller so Inspectors need to be able to retain these documents, when necessary.
54.	Section 30	The letter of accreditation (for accredited persons) remains valid once a renewal is submitted until the application for renewal is dealt with by the Secretary (Chief Executive of MBIE).	We propose to repeal section 30C(5) and amend section 30C(3) to clarify that the application needs to be in writing and the supporting information needs to be provided. This information can be found listed in regulation 17 of the Weights and Measures Regulations 1999. There will also need to be a requirement where applications for renewal need to be made 3 months prior to the accreditations expiry date. Repealing section 30C(5)	This amendment will allow the Registrar to reject incomplete applications and will ensure that all applications supplied will have sufficient time to be processed before expiry. This benefits applicants as they are not penalised for administrative processing delays. .

55.	General Amendments	Although there are a couple of sections in the Act that imply that services are covered by the Act, the Act largely only include 'goods' and does not cover 'services'.	Include a definition of, and reference to, 'services' throughout the Act, notably to sections 8, 10, 11, 15A, 16, 17, and 18. This will include additional amendments such as to sections regarding offences.	There are a number of services, such as post or waste management, that are charged for by weight and parts of the Act do not apply to them. The change is intended to cover all retail (consumer to business) transactions. It will safeguard purchasers when they contract services, the same way that they are protected when they purchase goods.

Proposals requiring Cabinet approval for Regulatory Systems (Immigration and Workforce) Amendment Bill (No 3)

No	Provision	Status quo	Proposed change	Reason for change
			Health and Safety at Work Act 2015	
1.	Sections 123-129	Section 123 of the Health and Safety at Work Act (HSWA) allows the regulator to accept enforceable undertakings from persons alleged to have breached HSWA or its regulations. An enforceable undertaking binds the person giving it to agreed actions, which can be enforced through court orders. The person giving the enforceable undertaking cannot have proceedings brought against them for the alleged breach subject to the undertaking while the undertaking is in effect or when it has been fully discharged.	Amend the HSWA so that: • the regulator may recover from the person giving an enforceable undertaking any reasonable costs or expenses it incurs in relation to: o the undertaking; or o the contravention or alleged contravention of the Act or regulations • the regulator may refuse to accept an undertaking that does not allow for the reimbursement of reasonable costs or expenses.	Administering and monitoring an enforceable undertaking is estimated to cost the regulator on average $10,300. The HSWA does not currently authorise the regulator to recover these costs from the party giving an undertaking. Recovering regulator costs as a condition of undertakings is the preferred cost recovery option, as it charges costs to the party benefiting from an undertaking and is more flexible and equitable than a fee-charging regime. Requiring cost recovery as a condition of undertakings was both within the original policy intent of the Act and the earlier practice of WorkSafe New Zealand. However a specific authorising legislative clause is needed to make it sufficiently clear that costs can be recovered in this way.
2.	Section 142 and 144	Section 142 of the HSWA allows interested persons to request the regulator gives them a written notice confirming whether any regulator is taking	Amend s142 of the HSWA so that: • The regulator is required to *make reasonable efforts* to establish whether a regulator or regulatory agencies is taking or intends to take action regarding a situation.	Current requirements for the information the regulator must confirm before issuing an s142 notice are unnecessarily burdensome, and may result in unjustified delays before

		enforcement action in respect of a particular situation. Parties are generally required to have obtained an s 142 notice before filing a private prosecution under the HSWA. For the regulator to provide an interested person a s 142 notice, the regulator is *required to establish*: • whether it or any other regulator has decided to take any enforcement action; and • whether *any regulatory agency* has decided to take any prosecution regarding the situation.	• The regulator is only required to establish whether any *relevant regulatory agency* has made a decision to take prosecution action in respect of the incident.	parties receive notices and become able to file private prosecutions. The requirement to confirm the prosecution decisions of all regulatory agencies requires the regulator to contact more than 100 entities. This is unnecessary as many entities will clearly not have jurisdiction over a given situation (such as local authorities outside of the relevant location). The requirement that the regulator *must establish* the decisions of all regulators and regulatory agencies requires the regulator to have received a response from all agencies before issuing an s142 notice. This may result in unjustified delays before notices are issued.
3.	Section 220	Section 220(1) of the HSWA allows the regulator to exempt any person or class of persons from complying with any regulatory provision. Exemptions expire five years after taking effect (unless sooner revoked or replaced). The HSWA does not currently allow the regulator to set an expiry term shorter than five years where granting an exemption.	Amend section 220(4)(b) of the Health and Safety at Work Act 2020 so that an exemption that is granted from compliance with any regulation: • expires on the date specified in the exemption or after five years, whichever is sooner (unless the exemption is replaced or revoked earlier) • if the term of an exemption is not specified, it must not be in effect for more than five years.	The policy intent of exemption provisions under the HSWA was for five years to be the maximum term for exemptions, rather than the term for all exemptions. Current provisions are not achieving this intent. Authorising the regulator to set shorter terms where appropriate will allow exemptions to be better tailored to the individual circumstances of each business.

Mines Rescue Act 2013				
4.	Sections 13 and 4(1)	The Mines Rescue Act establishes a levy on mine and tunnel operators to fund the Mines Rescue Trust Board. Operators are required to provide information to the Board so that this levy can be calculated. To support this duty, s 13 of the Act provides for an "authorised person" to inspect mining and tunnelling operations and records, to determine if the information is being provided correctly. An "authorised person" is defined as a person who has been authorised by the chief executive of the Ministry of Business, Innovation and Employment (MBIE).	Amend the definition of "authorised person" in s4(1) of the Mines Rescue Act to a person authorised by the chief executive of WorkSafe New Zealand.	MBIE's practice has been to delegate the power to authorise persons to conduct these mines rescue levy inspections to WorkSafe's Head of the High Hazard Unit. This Unit (which includes mines inspectors) is best placed to conduct any inspections that are required. However, delegation of this power is inefficient, as it requires periodic renewal and prevents WorkSafe from sub-delegating this authorisation power to managers within its organisation according to its business needs.

Proposals requiring Cabinet approval for Regulatory Systems (Building and Construction) Amendment Bill (No 3)

No	Provision	Status quo	Proposed change	Reason for change
		Building Act 2004		
1.	Section 96	Section 96 provides that a territorial authority may issue a Certificate of Acceptance (CoA) for building work that has already been completed without a building consent. The Act provides that a person must not carry out any building work except in accordance with a building consent. As an exception, building owners can apply for a CoA only in those circumstances where a building consent was not obtained. Subsection 96(3)(b) provides that applying for a CoA does not relieve a person from the requirement to obtain a building consent for building work.	Amend the Act to clarify that a building consent cannot be issued for work already completed.	Subsection 96(3)(b) is intended to allow for prosecutions for unconsented building work. However, the ambiguous wording has led to interpretations that, after completing building work and receiving a CoA, a building owner still needs to retrospectively apply for a building consent. This interpretation is not correct and leads to building owners unnecessarily applying for consents.
2.	Section 97	Subsection 97(d) provides that an application for a Certificate of Acceptance (CoA) must be accompanied by any fees and charges imposed by the territorial authority under section 219 of the Act. Section 219 provides two things: that a territorial	Amend the Act to clarify that territorial authorities may only collect the fees and charges they are able to impose under section 219(1)(a) for CoAs.	There is a risk that the wording around fees and charges in subsection 97(d) is interpreted wrongly as it refers to the entire section 219, rather than the relevant subsection 219(1)(a). Territorial authorities have interpreted this wording as requiring them to collect the building levy for CoA applications.

		authority (a) may impose a fee or charge; and (b) must collect a building levy under section 53. While the fee or charge applies to any function or service performed by the territorial authority under the Act, section 53 states that the building levy only applies to building consents.		The Act does not permit this as the building levy is only for building consent applications.
3.	Section 150(3)	Section 150(3) states that a dam owner must publicly display a copy of the dam compliance certificate in a prominent place on the dam. Section 150(1) is retained – dam owners will still be required to supply a dam compliance certificate to the regional authority in accordance with subsection (2).	Remove requirement in section 150(3).	The proposed changes to section 150 of the Building Act 2004 are the result of public consultation on dam safety that safety highlighted that the requirement to publicly display a copy of their annual dam compliance certificate on the dam is impractical, due to most dams being on private land and not accessible by the public. Cabinet agreed for the amendments to these offences be made through the next available legislative vehicle, which may be a regulatory systems amendment bill [CAB-21-MIN-0034 refers]. This proposal removes the requirement to publicly display dam compliance certificates on dams, and removes the corresponding offences and penalties for non-compliance. It is proposed to create offences which will instead enforce the remaining requirement to supply dam compliance certificates to Regional Authorities.

4.	Section 150(4)	Section 150(4) states: a person commits an offence if the person knowingly— (a) fails to display a dam compliance certificate that is required to be displayed under this section with a maximum fine of $5,000 for a person (b) Displays a dam compliance certificate otherwise than in accordance with this section with a maximum fine of $5,000 for a person (c) Displays a false or misleading dam compliance certificate with a maximum fine of $5,000 for a person	Remove section 150(4) offences and section 150(5) penalties which relate to section 150(3) requirement. A new strict liability offence will be created penalising: **failing to supply certificate to Regional Authority** Instead of, in reference to section 150(4)(a): *failing to publicly display certificate on dam* Instead of, in reference to section 150(4)(b): *knowingly displaying a dam compliance certificate otherwise than in accordance with this section* A new offence will be created: **knowingly supplying a false or misleading certificate** Instead of, in reference to section 150(4)(c): *knowingly displaying a false or misleading certificate*	Note: the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill proposes to raise maximum penalty amounts for offences in section 150(5) to a maximum fine of $20,000 for an individual and $60,000 for a body corporate in relation to the offences in subsections 4(a) and (c). It also proposes to raise maximum penalty amounts for offences to a maximum fine of $20,000 for an individual and $60,000 for a body corporate in relation to the offence in subsection 4(b). These proposals intend to apply the penalty levels set out in the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Bill.

Annex 2: Amendments that have Cabinet approval for inclusion in Regulatory Systems Amendment Bill (No 3).

Proposals that have prior Cabinet approval for inclusion Regulatory Systems (Economic and Regional Development) Amendment Bill (No 3)

No.	Provision	Status quo	Proposed change	Reason for change
		Auditor Regulation Act 2011		
1.	Sections 52, 55 & 73	The Act places a number of reporting obligations on the FMA. These include: a plan on its intentions and oversight of auditor regulation (s52), a report on the effectiveness of each accredited body (s55) and reports on the quality reviews it has carried out (s73). These reports must be prepared every year.	Require the FMA to meet its reporting requirements at least once every four years. The proposed new timeframe would align with how often the FMA must conduct quality reviews under s65.	Reports do not change much from year to year, so annual reporting may not have its intended impact. If the content, or likely content, of plans or reports remains unchanged, the FMA currently has no flexibility to amend its reporting timeframes.
2.	Section 68: Quality review must include certain matters	Under s 68(1)(c), the FMA must undertake a quality review of the systems, policies and procedures of registered audit firms and licensed auditors in respect of: • compliance with this Act and other enactments that relate to the conduct of FMC audits • compliance with auditing and assurance standards • the quantity and quality of resources used • compliance with competence programmes.	Rather than setting out mandatory criteria, provide the FMA with discretion about the matters that must be reviewed as part of the quality review of the systems, policies and procedures of an audit firm or licensed auditor under s68(1)(c).	At present, there is no room for flexibility as to the FMA's approach to quality reviews of the systems, policies and procedures of auditors. Circumstances are likely to arise where the FMA should have flexibility, particularly as the audit regime matures. For example, it may be appropriate for the FMA to undertake thematic reviews and concentrate on particular aspects of audit quality that are of public interest or concern.

3.	Section 69: Offence to hinder, obstruct, or delay FMA	The FMA has various powers and functions under the Act, including the power to conduct quality reviews (s66) and to conduct investigations into audit quality (s75). It is an offence to hinder, obstruct, or delay the FMA in connection with the carrying out of a quality review undertaken under s66. However, there is no corresponding offence in respect of investigations into audit quality and other powers and functions of the FMA.	Extend the ambit of this provision so that it applies in all circumstances where the FMA has been hindered, obstructed, or delayed in the course of carrying out functions or powers under the Act, not just in circumstances where the relevant conduct occurs in the course of carrying out a quality review.	For consistency, any conduct that hinders, obstructs or delays the FMA in the exercise of any of its supervisory powers under the Act should be prohibited.
4.	Section 70: FMA may issue directions	The FMA has the power to issue directions to an audit firm or a licensed auditor requiring the firm or auditor to amend their systems, policies and procedures. However, at present, that power can only be exercised after the FMA has first conducted a quality review under s66.	Allow the FMA to issue direction orders in any instance where it considers that the systems, policies and procedures of an audit firm or licensed auditor require amendment, rather than only having that power available after conducting a quality review.	In some circumstances, it may be in the public interest for the FMA to direct the audit firm or licensed auditor to undertake specific actions rather than taking more drastic actions such as suspension or cancellation of a licence.
			Building Societies Act 1965	
5.	Section 13: Mode of establishing society	Currently, for an entity to be registered as a building society, it is not required to satisfy the Registrar of Building Societies	Amend the Act so that members wishing to be registered as a society would be required to	There are instances where offshore controlled firms, typically with no apparent presence in New Zealand, appear to have obtained registration in order to take advantage of New

		that it has at least one director or officer who is either
		
		• living in New Zealand; or
		• living in an enforcement country and is director of a body corporate that is incorporated in that enforcement country.
		
		In addition, building societies registered in New Zealand might not offer any services here, nor have any New Zealand members. This means that there is no regulatory oversight (by the FMA or the RBNZ) of their activities.
			show to the Registrar's satisfaction that:
			
			• they have a director who
			  o lives in New Zealand, or
			  o lives in an enforcement country and is a director or officer of a body corporate that that is incorporated in an enforcement country.
			• the society's principal place of business is New Zealand.
			• if they are not a registered bank, they will have an open NBDT regulated offer of debt securities and carry on the business of borrowing and lending at all times after they become registered under the Act
			• At least 70% of the building society's depositors would be required to be persons who are ordinarily resident in New Zealand, and these persons would be required to hold at least 70% of the building societies deposits by value.
			• The first 20 members of a building society would need to be natural persons who
				Zealand's reputation as a well-regulated jurisdiction. This puts investors and New Zealand's reputation at risk.

			are ordinarily resident in New Zealand. Existing building societies will have a 12 month transitional period in which to meet this test. New building societies will need to be meeting this test within 12 months of registration, or be deregistered.	
6.	Section 103: Duty to make annual return	Building societies have two filing obligations. Under S461H of the Financial Markets Conduct Act, financial statements must be filed with the Registrar within 4 months of the balance date. Under S103(1) of the Building Societies Act, annual returns must be filed in the first 3 months of each financial year.	Amend the filing requirements for annual returns to align with the timeframes in the Financial Markets Conduct Act.	Aligning the timeframes for filing will reduce compliance costs.
			Charitable Trusts Act 1957	
7.	Section 10: Applications for incorporation	An application to incorporate a charitable trust must include the subscriber's address.	If a subscriber has email, include a requirement to provide their email address with their application.	Including an email address would allow the Registrar to be able to communicate with charitable trusts more quickly and support the improved online functionality of the register.
8.	Section 16: Change of name	The Registrar is unable to require a Board of a charitable trust to change its name if it is in contravention of the	Allow the Registrar to require a board to change the name of a charitable trust if the name does not meet the criteria in S15 or	The charitable trusts register is being converted to a fully electronic register with online services for users.

		requirements for a charitable trust's name (S15) or if the name is offensive.	the Registrar considers the name offensive. This may require an amendment to S15 to include an offensiveness criterion.	The changes will mean that charitable trusts are able to enter their information directly into the register. This is quicker and more efficient for users. However, it increases the risk that invalid names are entered on the register and need to be amended retrospectively.
9.	Section 26: Dissolution by Registrar	The Registrar must make a sworn declaration after a charitable trust is removed from or restored to the register.	Require the Registrar to give public notice when they remove or restore a charitable trust to the register.	The requirement on the Registrar to make a sworn declaration creates unnecessary compliance costs and is out of line with requirements for other similar entities.
10.	New: Acknowledging registration	Unlike other entities, charitable trusts are not required to provide an annual return. If a charitable trust is also a registered charity, they are captured by the reporting requirements in the Charities Act. There are around 24,000 charitable trusts. Around 8,000 charitable trusts are also registered charities.	Introduce an 'acknowledgement of registration' provision that requires charitable trusts that are not registered charities to confirm that their details are up to date and that the charitable trust is still operating. The Registrar would have discretion on how frequently this form would need to be completed. There would be at least one year between requests. We expect the form to be sent annually for the first two years, and then review whether it could be moved to a two yearly requirement. Allow for regulations to prescribe the content of the form. This information is likely to include the charitable trust's	As there is no requirement on charitable trusts that are not also registered charities to complete an annual return, the public register may have inaccurate or out-of-date information. Currently, the Registrar is able to require charitable trusts to confirm if they are still operating, but this mechanism takes a long time to complete. There is no requirement on a charitable trust to advise the Registrar if its details have changed. The proposal would have minimal compliance costs on charitable trusts as the acknowledgement would be an online form. We anticipate that it would take 1-2 minutes to complete if there are no changes. No fee would be payable. If a charitable trust is a registered charity, then the reporting requirements in the Charities Act would apply, and they would not be required to complete an acknowledgement form.

			name, address details (including email) and trustees.	
11.	New: Correcting the register	The Act does not contain a provision allowing the Registrar to correct information on the register that is incorrect or out of date.	Allow the Registrar to alter the register to correct information.	We are changing the functionality of the register to allow charitable trusts to enter their information directly into the register. This increases the probability of mistakes being on the register (e.g. incorrect spellings).
			Companies Act 1993	
12.	Sections 12 and 336: Application for registration	Applications to incorporate a New Zealand company or to register an overseas company must be signed by the applicant.	Remove the requirement for applications to be signed.	As applications are carried out online, a signature is not necessary. Applicants are required to confirm that they are authorised to make an application.
13.	Section 203: Recognition of overseas financial reporting systems Section 207A: Audit must be carried out in accordance with auditing and assurance standards	Where a registered overseas company wishes to file financial statements that are compliant with the law in their home jurisdiction, the Registrar is responsible for determining, upon receipt of the statements, whether the statements are fit for registration, and notify the overseas company accordingly. Similar issues arise under S207A(2). This requires the Registrar to be satisfied that standards relating to auditing or assurance in the overseas company's home jurisdiction	Amend S203 to give the Registrar the ability to notify on its website the countries that it will accept financial statements from, on the grounds that those countries' financial reporting requirements are compliant with IFRS or US GAAP. Amend S207A(2) to give the Registrar the ability to notify on its website the countries that it will accept audit reports from, on the grounds that those countries' auditing and assurance standards are substantially the same or	The current provisions create the following difficulties: • As a NZ regulator, the Registrar may not be familiar with financial reporting law in other jurisdictions. • Companies in some jurisdictions have either no, or very limited, financial reporting obligations (the practice of most of those companies will be to prepare statements that comply with IFRS or US GAAP). • The wording of the legislation suggests that the Registrar is required to focus on the law of the home jurisdiction, whereas in reality the focus is always on the financial statements themselves.

		are substantially the same or sufficiently equivalent to NZ auditing and assurance standards, and to notify the overseas company accordingly.	sufficiently equivalent to NZ standards.	
14.	Section 207S: Auditor's fees and expenses	Auditors appointed under S207P to audit the financial statements of companies must have the method of fixing their fees approved by a majority of shareholders at an AGM under S207S of the Act.	Clarify that the procedure that must be followed for fixing auditor's fees under S207S is not necessary if the auditor has been automatically reappointed under S207T (and has had their fees fixed at a prior year's AGM).	Where an auditor from a prior year is automatically reappointed in accordance with the procedure set out in S207T, it is unnecessary for the manner of fixing that auditor's fees to be reconsidered again by the shareholders at a further AGM.
15.	Section 209: Obligation to make annual report available to shareholders	Companies are required each year to send shareholders a copy of their annual report or notice telling shareholders how they can access a copy of the annual report.	Amend S209 to give non-FMC reporting entities the option of making their annual report publicly available online and sending a one-off notice to shareholders asking if and how they would like to receive it.	Changes were made in 2016/17 to provide FMC reporting entities with a more streamlined process for making annual reports available to their shareholders. That process provides for FMC reporting entities to make their annual report publicly available online and send a one-off notice to shareholders asking if and how they would like to receive the annual report.
16.	Section 214: Annual return	Annual returns are required to be signed by a director, solicitor or accountant.	Remove the requirement for annual returns to be signed.	As annual returns are online documents, it is not necessary for them to be signed. The person making the annual return is required to provide authorisation to make the return.
17.	Section 239AK: Appointment by secured creditor	S239AK(2) requires that a resolution (relating to voluntary administration) is adopted if a majority representing 75% in value of the creditors or class of	Remove the reference to "class of creditors".	The reference to class voting creates difficulties as it can hamper the objectives of voluntary administration.

		creditors vote in favour of the resolution.		
18.	Sections 310B and 239AEH: Application of set off under netting agreement	The Companies Act includes provisions to ensure the enforceability of netting agreements if one party goes into liquidation or voluntary administration. A netting agreement is a contract whereby each party agrees to 'set off' amounts it owes against amounts owed to it. These arrangements are often used by parties in conjunction with derivative products to hedge against risks in their businesses.	Amend the legislation to be clearer that the netting provisions are intended to apply where a security interest is created after a netting agreement is entered into or the holder of an existing security interest agrees to the netting agreement being entered into.	It is important for participants to netting agreements to have certainty about whether they can rely on those agreements. It is not clear if the provisions in the Act apply when a security has also been granted.
19.	Section 328: Registrar may restore company on New Zealand register	A company may be removed from the register on the request of a shareholder, director or liquidator (S318(1)(d) and (e)). If the company is to be restored, then the person who made the request for removal must advertise the restoration (S328(3)(b)).	Amend the requirements on who must advertise the restoration of a company. Require the Registrar to notify the public of an application to restore a company (irrespective of who applied for the company to be removed).	As the Companies Office does not advertise the restoration, it is difficult to calculate when the statutory period for objection to a restoration commences. The Companies Office may receive an objection to restoration before it receives an application to restore. A liquidator may fail to go to the Court first to have their final report overturned. The Registrar will be required to restore the company, and then remove it straight away because the final report is still in effect.
20.	Section 333: Name to be reserved before	An overseas company is required to reserve its name before it applies to be	Require overseas companies to provide evidence of their incorporation when they reserve	Because the reservation stage is the opportunity for the Companies Office to consider whether or not a name is suitable for an overseas company, the fact that evidence of

	carrying on business Section 336: Application for registration (overseas companies)	registered in New Zealand. This is to ensure that: • there are not two or more overseas companies on the register with an identical or almost identical name • the company's name would not contravene an enactment • the company's name would not be offensive. However, proof of the company's incorporation in its home jurisdiction (which includes its incorporated name) is only provided to staff within the Companies Office when it applies to be registered, which might occur quite some time after a name was reserved.	their company name, instead of when they apply to be registered.	incorporation only has to be provided later presents difficulties. For example, if the Registrar directs a company to change its name because of non-compliance with the Act, this will result in the company having a different name on the register to its legal name (i.e. the name it was incorporated under in its home jurisdiction).
21.	Section 357: Registrar and Deputy Registrars of Companies	The appointment of Deputy Registrars ensures business continuity and timely decision making in the exercise of the powers and functions of the Registrar. S357(2) provides for Deputy Registrars to exercise the powers, duties and functions of the Registrar under the Companies (CO) Act, Financial	Allow Deputy Registrars to be appointed for the purposes of FR Act and the AR Act (and confirm that any powers, duties and functions of the Registrar under the AR Act may be exercised by a Deputy Registrar subject to the control of the Registrar).	There is a risk that any exercise of the Registrar's powers under the FR Act and the AR Act by someone other than the Registrar could be challenged, on the basis that the person does not have the power to act.

		Reporting (FR) Act and Limited Partnership (LP) Act. S357(1) allows for the appointment of as many Deputy Registrars as is necessary for the purposes of the CO Act and LP Act. The FR Act is not included in S357(1). In addition, since July 2012 the Registrar of Companies has held certain powers under the Auditor Regulation (AR) Act. However, there is no reference to the AR Act in s357 of the CO Act.		
22.	New: Compromises with creditors	When a compromise is agreed to, it is placed on the Companies Register as a document filed against the company. This allows people who are doing business with the company to know that the company has (or has had) a compromise in place. There is a requirement to notify the Registrar of any changes to a compromise. This information is also publicly available.	Require a company to notify the Registrar when a compromise is terminated.	There is no public record when the compromise has terminated (either because it has run its course or the parties to the compromise have agreed to cancel it). This means that users of the register do not know what the status of the compromise is.
23.		Schedule 7 states that creditors providing funding to recover	Amend clause 1(1)(e) to provide that where more than one	The present position is potentially unfair to a funding creditor ('C1') in circumstances where the size of their debt is much

	Schedule 7, Clause 1(1)(e): Priority of payments to preferential creditors	property of the bankrupt (typically via Court proceedings) receive priority over other unsecured creditors in respect of both the funding provided and their unsecured claim. Where two (or more) creditors provide funding, it is usually in their interests to agree between them that the proceeds of any property realised by the OA as a result of that funding (after payment of the OA's costs) should be shared between the creditors on that same basis. However, under schedule 7, the full amount of the funding creditors' debt must be paid first before reimbursement of funding is provided.	creditor protects, preserves the value of, or recovers property of the bankrupt for the benefit of the bankrupt's creditors by the payment of money or the giving of an indemnity, any preferential treatment must first be determined with reference to the value of the payment or indemnity, rather than being determined with reference to the underlying claims of C1 and C2.	smaller that their funding counterpart ('C2'), and the property recovered is insufficient to repay C1 and C2 in full. In those circumstances, the extent of C1's preference will be much larger than C2's preference, so there is the potential for C1 to receive repayment of greater proportion of the total sum they are owed than C2.
24.	**(Note – Not to be progressed as part of RSB 3)** Schedule 7, Clause 3: index-linked change to	Cl 3 specifies the maximum amount that former employees of a company in liquidation can receive as a preferential payment (currently $23,960) in the event of a distribution to creditors. Sub-clause 2 sets out a mandatory formula for adjusting this figure via Order in Council every 3 years.	Amend cl 3 so that the dollar amount will instead be automatically adjusted by publishing the maximum dollar amount in the *NZ Gazette* and on a secure internet site maintained by MBIE, within 4 months after the end of the adjustment period.	The requirement for making an Order in Council to adjust the figure is cumbersome. The legislation does not provide for any discretion in setting the figure, so there is no risk involved in automatically making the adjustment without seeking Cabinet approval and making an Order in Council. The proposed change will substantially reduce the amount of work needed every three years to give effect to the statutory requirement, including avoiding the need to seek Cabinet approval.

	priority payments	The change is based on increases in average weekly earnings, calculated by reference to the Quarterly Employment Survey published by Stats New Zealand rounded to the nearest $20. The index adjustment must be made within 4 months after the end of the adjustment period.		
Credit Contracts and Consumer Finance Act 2003				
25.	New: Information sharing with the Financial Markets Authority (FMA)	The Commerce Commission is unable to share information with the FMA in relation to breaches of the Credit Contracts and Consumer Finance Act. It has this ability under the Fair Trading Act, and the FMA has the ability to share information with the Commission.	Provide the Commission with the ability to share information with the FMA in relation to investigations under the Credit Contracts and Consumer Finance Act.	There is an overlap between the Commerce Commission's regulation of consumer credit and the FMA's regulation of financial service providers. However, at present, the FMA may need to re-interview witnesses and compel information that the Commission already holds, if the source does not agree to this information being shared with the FMA.
26.	Section 83ZH: Extinguishing a creditor's security interest and subordinate security	If consumer goods have been sold following repossession, the security interest of the creditor, and all subordinate security interests in the consumer goods and their proceeds are extinguished. This appears to be inconsistent with s45 of the Personal Property Securities	Change the provision so that, if consumer goods have been sold following repossession, the security interests in the goods are extinguished, but security interests in respect of any proceeds continue.	In addition to the inconsistency with the Personal Property Securities Act, a potential issue with this provision is that the value of the sale of the repossessed good may not be sufficient to cover any unpaid amount owed to the creditor. However, because the creditor's security interest is extinguished after the good is sold, the creditor's claim for the remainder of the unpaid amount will be unsecured. The

	interests on sale	Act 1999, which provides that a security interest in personal property (collateral) that is dealt with or otherwise gives rise to proceeds continues, unless the secured party expressly or impliedly authorised the dealing, and extends to the proceeds.	In addition, clarify that any surplus that is distributed should include any proceeds (not just the proceeds from the sale).	proposed change will reduce the risk of this situation occurring.
Financial Markets Conduct Act 2013				
27.	Section 73: Replacement Product Disclosure Statement	A replacement PDS may sometimes be lodged to update information in the original PDS or to correct an error. The Act requires that a replacement PDS must be dated on the day that it is lodged with the Registrar, whereas the original PDS must be dated no more than 5 days before it is lodged. The regulations also require the date of the PDS to be the date on which the board consents to the lodgement of the PDS.	Amend S73 to provide that a replacement PDS must be dated no more than 5 days before it is lodged. This is consistent with the requirement for original PDSs.	For replacement PDSs, the current requirements of the Act and regulations effectively mean that the board must consent to the lodgement of a PDS on the same day as it is lodged. This effectively forces the board to delegate approval of a replacement PDS, which undermines the rationale for requiring board approval in the first place.
28.	Section 216: Manner of keeping registers	Issuers of financial products must keep a register recording all those that hold the product. S216 requires that the register by kept in NZ. The register must	Amend S216 so that the register must be kept in New Zealand, Australia or any other country prescribed in regulations for that purpose.	A register may be kept electronically in a data centre and accessed by the issuer through the internet. The data centre may not be in NZ. This should be permitted as long as investors in NZ can access the information on the register and authorities are able to directly access the register if issues arise (e.g. data is compromised).

	Section 222: Manner of inspection	be available for inspection at the place which it is kept.	Amend S222 so that the register must be available for inspection at the place notified by the issuer to the Registrar.	
29.	Section 461A: Financial Statements for registered schemes and funds	Registered managed investment schemes (e.g. KiwiSaver) are required to complete audited financial statements for each accounting period.	Amend S461A so that a manager need not comply if the scheme was established during the previous year, no financial products have been issued to members and the scheme has no liabilities.	Some newly formed schemes that have not had any members join or any liabilities in their first accounting period are being required to prepare financial statements with nil balances and have them audited.
30.	Section 462 When FMA may make stop orders Section 134: Changes to registration as particular type of registered scheme Section 195: Cancellation of registration	In 2016, NZ, signed a Memorandum of Cooperation with certain countries on the Establishment and Implementation of the Asia Region Funds Passport and regulations were recently made to implement the regime in New Zealand. A funds passport will allow a managed fund based in one jurisdiction to be offered more easily to investors in other participating jurisdictions. The Memorandum is an agreement amongst member countries to establish the Asia Region Funds Passport and to establish robust and practical	Add a regulation-making power to permit S462, S134 and S195 to be modified in order to allow NZ to give effect to international agreements (including this Memorandum).	When Cabinet authorisation was given to issue drafting instructions to give effect to the Memorandum it was envisaged that only regulations would be required to achieve this. Subsequently, the FMA and MBIE have identified that a small number of changes need to be made to the FMC Act 2013 to align the Financial Markets Conduct Act 2013 regime and the Memorandum. At present it is not possible to alter the application of the relevant provisions by regulation – and accordingly it is not possible to fully implement the Memorandum.

		arrangements for its implementation, operation and governance.		
		Financial Reporting Act 2013		
31.	Section 45: Meaning of Large (company)	Whether or not an entity is "large" for the purposes of the Act must be determined with reference to the previous two accounting periods of that entity. It is common for a newly incorporated company to be formed and then used to acquire all (or substantially all) of the shares in an existing large company. Accordingly, a company in that position will not be "large" for at least two more accounting periods.	Amend S45 so that if any company acquires a controlling shareholding in another large company it is deemed to be "large".	Following the change in shareholding, the financial reporting obligations of the newly incorporated company should be consistent with existing companies on the register that have a similar structure (i.e. subsidiaries that meet the "large" threshold) and, therefore, the reporting obligations ought to rest on the new company that has acquired the controlling shareholding, not the recently acquired subsidiary, or subsidiaries.
32.	Section 36A: Power of Registrar of Companies to approve associations and auditors* Section 36B: Approved	Audit reports for companies audited under the Act are able to be signed off by NZ audit firms. Audit reports are not able to be signed off by overseas audit firms because the Registrar	Allow the Registrar to approve overseas firms as qualified auditors under the Act, so that the firm, rather than one or more partners of the firm, is able to sign off audit reports, and report each year on the audits that have in fact been signed off.	Of the approximately 350 individual auditors who have applied to the Registrar for approval under S36(1)(g) approximately 60 of those are from several overseas audit firms that have registered individual partners so that they can be compliant with the Act. If an overseas firm was instead able to be approved, this would enable the firm to file one annual report under S36B

	associations and persons must report to Registrar*	does not have the power to approve them to do so. However, individual auditors (typically audit partners) of the overseas audit firm are able to sign off the audit report if authorised by the Registrar. As a result: • individual auditors must be approved under S36(1)(g) of the Act • individual auditors must also file a report with the Registrar under S36B to remain registered.	Some further work is required to identify appropriate criteria for the Registrar.	rather than individual partners of each of firm having to file their own report each year.
33.	Section 46: Meaning of specified not-for-profit entity	There are four tiers of accounting standards for specified not-for-profit entities. Entities are able to report on a cash (rather than accrual) basis (under Tier 4) if their total operating payments in both of the two preceding periods are less than $125,000. However, the current definition of "specified not-for-profit entity" refers only to the total operating payments of the entity itself and does not envisage situations	Amend the meaning of specified not-for-profit entity so that it takes into account the operating payments of the entity, plus all other entities that are under its control.	The manner in which a group structures itself should not determine which tier of reporting it is in. It should be required to report in accordance a higher tier when the total operating payments of the entity and all of the entity it controls are aggregated exceed $125,000.

		where the entity may control other entities.		
Financial Service Providers (Registration and Dispute Resolution) Act 2008				
34.	Section 34: Sharing information with other persons or bodies	The Registrar of Financial Service Providers is not authorised to update the financial service providers register to reflect updates on the NZBN register. This means that users may have to update their information on both the financial service providers register and the NZBN register.	Include the Registrar of NZBNs as a person that the Registrar of Financial Service Providers may share information with and allow the financial service providers register to be updated if it is inconsistent with the NZBN register.	The change will allow information to be shared between the NZBN and FSP registers. This will allow users to update their information on one register and have the changes flow through to the other register.
Friendly Societies and Credit Unions Act 1982				
35.	Section 70: Annual return	All friendly societies must file an annual return within three months of the end of the financial year. Some friendly societies may also be required to file financial statements under the Financial Markets Conduct Act within four months of the balance date.	Amend the annual return filing requirements to align with the timeframes for filing financial statements under the Financial Markets Conduct Act.	The different timeframes for filing annual returns and financial statements creates extra work for some friendly societies because they must file twice.
36.	Section 11: Societies which may be registered	Before a friendly society is registered, or a credit union is incorporated, it is not required to satisfy the Registrar of Friendly Societies and Credit	Require a society registered under Part 2 or a credit union incorporated under Part 3 to have at least one officer who:	It is very difficult for those responsible for the governance of a friendly society or credit union to be held accountable for any breaches of the FSCU Act (or other legislation) if they are not based in New Zealand or Australia.

	Section 100B: Incorporation of credit union	Unions that that the friendly society or credit union will have at least one officer who is living in New Zealand or an enforcement country.	• lives in New Zealand; or • lives in an enforcement country and is a director or officer of a body corporate that that is incorporated in an enforcement country.	
37.	Section 140A: Notice of intention to remove from the register	The Registrar has grounds to de-register a credit union if: • the Registrar receives a request for de-registration that complies with the credit unions' rules; or • the credit union is in liquidation and no liquidator is acting, or the liquidator who is acting has failed to file a liquidator's final report following conclusion of the liquidation.	Amend S140A(1) to make clear that the responsibility for issuing the notice of intention to remove rests with the Registrar.	Unlike S319(1) of the Companies Act, it is unclear whether the Registrar is responsible for issuing the notice of intention to remove to any prescribed persons, or whether any person is able to issue that notice.
Industrial and Provident Societies Act 1908				
38.	Section 3D: Registers to be kept	S3D requires a register to be kept in the office of each district register.	Amend the requirements for keeping registers to align with an electronic, online register.	The register is being converted to a full electronic register with online services for users. As the register will be publicly available online, a copy does not need to be kept in the office.
39.	Section 6: Cancelling and suspension of registry	This section sets out the requirements for suspending and removing societies from the register.	Remove the requirement for the Registrar to obtain authorisation from the Governor-General to remove or suspend a society.	The Registrar is required to obtain authorisation from the Governor-General to remove or suspend a society, except if the society requests its removal or it have ceased operating. This is inconsistent with the requirements in similar legislation and creates unnecessary compliance and delays.

			Allow the Registrar to publish a notice electronically instead of in a newspaper, e.g. on a website.	The Registrar is required to publish a notice in a newspaper as well as in the Gazette.
40.	Section 6: Cancelling and suspension of registry	One ground for suspension or removal requires the Registrar to show that the society has wilfully violated the Act.	Remove the 'wilful' element from the test.	The current test is subjective and difficult to prove.
41.	Section 7: Rules and Amendments	S7 sets out the requirements for the registration, amendment and access to the rules of a society.	Remove the requirements for: • the Registrar to confirm that they accept any amendments to the rules. • a society to provide a copy of the rules on demand by any person (these are available on the public register) • a society to provide a full set of its rules (not just the rule that has been amended) where there has been an amendment to the rules.	The requirements are out of date and do not reflect current practice in similar legislation. The changes should reduce unnecessary compliance for societies.
42.	New: Correcting the register	The Act does not allow the Registrar to correct information on the register that is incorrect or out of date.	Allow the Registrar to alter the register to correct and change information that is inconsistent with the NZBN register.	Moving to an online register will mean that societies are able to enter their information directly into the register. This increases the probability of mistakes being on the register (e.g. spelling mistakes). Allowing changes on the NZBN register to be reflected on the industrial and provident societies register will allow users to update one register and have the changes flow through to the other register.

		Insolvency Act 2006		
43.	Section 73: Assignee must call meeting of creditors	The Official Assignee (OA) must hold a meeting of creditors after a debtor is adjudicated bankrupt.	Amend S71 so that the Official Assignee "may" hold a meeting. Consequential changes will be required to S72 to S75.	In the great majority of the cases, meetings are dispensed with under S73 because they are unproductive and are often an avenue for confrontation and blame. The proposed change would save time by removing: • the need to dispense with the meetings • not having to hold a meeting (which occurs infrequently).
44.	Section 90: Number of persons for valid meeting	Under S83, only the OA has the power to call a creditors' meeting. S90 states that the OA and at least one creditor must be present. However, this appears to be inconsistent with S83, which makes it clear that persons other than the OA are able to chair a meeting and administer any oath that the OA could have administered if present.	Amend s90 to confirm that a meeting called by the OA is not invalid solely due to the fact that the OA is not present, provided a representative of the OA is present and that at least two creditors are present.	This change will allow a representative of the OA to attend and chair the meeting.
45.	Section 123: Assignee cannot claim interest in land if bankrupt remains in possession until discharge	Currently, the Assignee is unable to claim an interest in any land that: (a) is subject to a mortgage in favour of a third party; and (b) is registered in the bankrupt's name (either as sole proprietor or jointly with another person); and	Amend S123 to confirm that any land to which S122(1) of the Act applies will automatically re-vest in the bankrupt upon discharge, if the bankrupt has been making payments towards the mortgage between adjudication and discharge.	Under S101 and S123, land that remains in the bankrupt's name on discharge, which is subject to a mortgage that the bankrupt has been making payments towards between adjudication and discharge, cannot be dealt with by either the OA or the bankrupt unless either one of them applies to Court for a vesting order.

		(c) the bankrupt has remained in possession of between the date of their adjudication and discharge. Despite the fact that the OA is unable to claim an interest in the land, it remains vested in the OA under S101, and does not re-vest in the bankrupt upon discharge.		
46.	Section 218: Assignee must not sell bankrupt's property before first creditors meeting	S218 prohibits the OA from selling any of the bankrupt's property before the date set for the first meeting of creditors. Except in very rare cases, meetings of creditors are dispensed with by the OA under S73. Most assets are sold without a meeting being held.	Repeal S218.	The change will help clarify that the OA has the power to sell assets at any stage of the bankruptcy.
47.	Section 255: Set-off under netting agreement	The netting provisions in the Insolvency Act are intended to largely mirror the equivalent provisions in the Companies Act.	Amend the definition of bilateral netting agreement to align with the definition in the Companies Act.	This change will correct a drafting error in the definition of a bilateral netting agreement.
48.	Section 256: Set-off under netting agreement	This section is equivalent to S310B and S239AEH in the Companies Act. See item 18 above.	Amend S256 to reflect changes to s310B and S239AEH of the Companies Act. See item 18 above.	The equivalent sections in the Companies Act are to be amended to provide greater clarity about the application of netting when a security interest is granted.

49.	Section 267: Meaning of prescribed rate	S267 provides that, when calculating interest that has accrued on creditor claims since the date a person was adjudicated bankrupt, the interest rate to be used is the rate as defined in S12(3) of the *Interest on Money Claims Act 2016*. There is a very similar provision for calculating interest in respect of claims by creditors of companies placed in liquidation in S311(2) of the *Companies Act 1993*. However, S311(4) states that calculation is dependent on Schedule 2 of the Interest on Money Claims Act.	Amend S267 of the Insolvency Act so that the method of calculating interest aligns with the method set out in S311 of the Companies Act.	Having two different methods of calculating interest under the Insolvency Act and Companies Act results in different outcomes for creditors of a bankrupt or liquidated company, who are owed exactly the same sum of money. Other than being anomalous, having two methods requires the OA to maintain different systems for calculating the amounts creditors are entitled to. This means there is greater chance of error, which creates uncertainty for creditors.
50.	Section 274: Priority of payments to preferential creditors	S274 states that creditors providing funding to recover property of the bankrupt (typically via court proceedings) receive priority over other unsecured creditors in respect of both the funding provided and their unsecured claim. Where two (or more) creditors provide funding, it is usually in the interests of those creditors to agree between themselves that the proceeds of any	Amend sS274(1)(c) to provide that where more than one creditor protects, preserves the value of, or recovers, property of the bankrupt for the benefit of the bankrupt's creditors by the payment of money or the giving of an indemnity, any preferential treatment must first be determined with reference to the value of the payment or indemnity, rather than being	The present position is potentially unfair to a funding creditor ('C1') in circumstances where the size of their debt is much smaller that their funding counterpart ('C2'), and the property recovered is insufficient to repay C1 and C2 in full. In those circumstances, C1's preference will be much larger than C2's preference, so there is the potential for C1 to receive repayment of a much greater proportion of the total sum they are owed.

		property realised by the OA as a result of that funding (after payment of the OA's costs) should be shared between the creditors on that same basis. However, under S274, the full amount of the funding for creditors' debt must be paid first, before reimbursement of funding.	determined with reference to the underlying claims of C1 and C2.	
51.	**(Note – Not to be progressed as part of RSB 3)** Section 276: index-linked change to priority payments	S276(1) sets out a figure for preferential claims by former employees of a person adjudicated bankrupt under the Insolvency Act (currently $23,960). Subsection 2 sets out a formula for adjusting this figure via Order in Council on a three-yearly basis, to reflect the percentage increase over the preceding 3-year period in average weekly earnings under the Quarterly Employment Survey published by Stats NZ.	Amend S276(1) so that the dollar amount will instead be automatically adjusted by publishing the maximum dollar amount in the *NZ Gazette* and on a secure internet site maintained by MBIE.	The requirement for an Order in Council is administratively cumbersome. The legislation does not provide for any discretion in setting the figure, so there is no possibility of the power to adjust the amount being abused.
52.	**(Note – Not to be progressed as part of RSB 3)** Section 276: index-linked	The index adjustment referred to in the previous item must be made within 3 months after the end of the adjustment period.	Change 3 months to 4 months after the end of the adjustment period.	This will make the deadline consistent with the 4 month period specified under the Companies Act.

	change to priority payments			
53.	Section 290: Automatic discharge 3 years after the bankrupt files a statement of affairs	S290 states that a bankrupt is automatically discharged from bankruptcy 3 years after he or she files their statement of affairs. The timing of the filing of a statement of affairs by a debtor is critical.	Clarify that a statement of affairs is filed with the OA when it has been accepted by the Assignee. S46, S49 and S290 would have to be amended.	This change will remove the uncertainty around when a statement of affairs is filed with the OA.
54.	Section 295: When bankrupt must be examined concerning discharge	In order to summon a bankrupt to a public examination regarding an objection to discharge, the OA must wait until the automatic discharge period of 3 years has been met.	Allow the OA to challenge a discharge earlier.	This change will allow the OA to challenge an automatic discharge before the 3 years is reached. This would mean the bankruptcy is not extended any longer than necessary and would provide greater certainty to the bankrupt.
55.	Section 342: Form of application (summary instalment order) (SIO)	Under S342, a debtor's application for entry into an SIO must be in the prescribed form. S342(2)(c) states that the application must state the name and address of the debtor's proposed supervisor and annex written consent from that person.	Remove the requirement for the written consent of the debtor's proposed supervisor to be annexed.	This change will simplify the application process. In practice, the written consent of the SIO supervisor is merely a formality as the decision as to who will supervise the SIO will have been made before the application itself is made.

56.	Section 344: Summary instalment orders	S344 allows the OA to give additional orders in a summary instalment order to a debtor including to dispose of "goods" that are in the debtor's possession.	Amend S344(b) by replacing the word "goods" with "property".	This change will permit the OA to order the realisation of property such as shares or other financial instruments, which may have substantial value.
57.	New: Creditor's rights to inspect documents in a NAP	For bankruptcy, under s100 of the Act, creditors have the right to inspect certain documents and take copies of them. However, creditors do not have a similar right of inspection in respect of No Asset Procedures.	Amend subpart 3 of Part 5 of the Act by adding a provision similar to S100.	As a NAP is an alternative to bankruptcy, there should be consistency in terms of the information creditors are entitled to inspect during the course of the administration.
Limited Partnerships Act 2008				
58.	Section 4: Interpretation	The meaning of Registrar includes a deputy registrar under the Companies Act. It does not include assistant registrars.	Amend S 4 to include assistant registrars. Consequentially amend S358 of the Companies Act to allow assistant registrars to exercise powers under the Limited Partnerships Act.	Allowing for assistant registers to also carry out delegated duties on behalf of the Registrar ensures business continuity and timely decision making in the exercise of the powers and functions of the Registrar.
New Zealand Business Number Act 2016				
59.	Section 25: Public access to information in register	The Registrar has no ability to suppress "public" Primary Business Data. This can put individuals at risk.	Amend the Act to give the Registrar the power to suppress public Primary Business Data for unincorporated entities, for a class of such entities or a class	This change will protect the security and confidentiality of information and the privacy of individuals in line with the objectives of the NZBN Act 2016.

			of public Primary Business Data.	
New Zealand Institute of Chartered Accountants Act 1996				
60.	Section 2: Interpretation	The Registrar is defined in the Act as "the Registrar of Companies at Wellington".	Amend the interpretation of "Registrar" to mean the Registrar of Companies as defined in s2 of the Companies Act.	This change will remove an inconsistency between the NZICA Act and s357 of the Companies Act.
Personal Property Securities Act 1999				
61.	Section 170: Removal of data from register	Users may enter into a payment arrangement with the Registrar allowing the user to pay their registration or renewal fee at a slightly later date. However, if the user defaults on their payment, the Registrar does not have the power to remove the registration.	Amend S170 to allow a registration to be removed from the register if payment is not made in accordance with an arrangement permitted by S143(b).	Removes potential for the user to effectively obtain a free registration.
62.	New: Registrar discretion to waive fees	Users are required to pay a fee beforehand to register a financing statement on the personal property securities register, or to search the register to see if a statement is registered. The payment system is a separate system to the register. The Registrar is able to reach an agreement with users for	Provide the Registrar with the discretion to waive the payment of fees in exceptional circumstances. This could be done through an empowering provision in the Act and using regulations to set out the circumstances and type of fees that can be waived.	In the rare event of the payment system being unavailable, the Registrar has to make the register unavailable as users are unable to pay the fees required under statute. Given the volume of searches undertaken, unavailability of the register has a negative impact on users. This volume also means that creating agreements with users for a one off situation is administratively burdensome.

		payment to register a document to be made at a later time. There are no similar provisions for search fees.		
		Takeovers Act 1993		
63.	New: power for the Panel to publish documents on their website	The Panel receives documents from parties engaged in a Code-regulated transaction. If the Panel wants to publish the documents on its website, it must get the permission from the owner of the document. If it does not get permission, it would be in breach of the *Copyright Act 1994*. Many of these documents are already publicly available, as most Code-regulated transactions involve a company listed on the NZX. The NZX already requires these documents to be published on its website.	Provide the Panel with the power to publish documents it receives under the Takeovers Code on its website.	This change will facilitate the Panel's plans to build a publicly searchable database of takeovers documents as part of its education and transparency work. The database will benefit shareholders and potentially enable increased market commentary on unlisted Code company transactions.
64.	Section 2A (and consequential amendment to Rule 3A of the Takeovers Code in the Takeovers	The current definition of a "Code company" is any company that: • is a listed issuer that has financial products that	Remove the "50 or more share parcels" test from the definition of a Code company. Instead, specify that for the purpose of determining the number of shareholders that a company has, any shareholders jointly	The purpose of introducing the "50 or more share parcels" test was to exclude small companies with over 50 shareholders on their share register, but with a number of shareholders jointly holding shares (i.e. fewer than 50 share parcels), from the Takeovers Code.

	Regulations 2000)	confer voting rights quoted on a licensed market, or • met the definition above within a period specified in the Code, or • has 50 or more shareholders and 50 or more share parcels. The "50 or more share parcels" test was introduced by the *Takeovers Amendment Act 2012*.	holding financial products that confer voting rights must be counted as one shareholder.	The policy rationale for excluding small companies was that the compliance burden of the Code outweighs its benefit for these companies. However, "share parcels" is not defined in the Takeovers Act or Code and is potentially unclear. The proposed amendment would provide clarity about the definition of a Code company, while being consistent with the policy rationale above.
Weights and Measures Act 1987				
65.	Section 41: Regulations	S27 of the NZBN Act allows government agencies to access and use private primary business data (PBD) on the NZBN register if they have statutory authorisation to collect that information or permission from the NZBN entity. The Weights and Measures Act allows the Chief Executive of MBIE to appoint accredited persons to undertake specific functions under that Act.	Allow regulations to prescribe information that may be collected from persons applying for or renewing accreditation. The information required would include: • the legal entity's name • legal entity identifier (e.g. NZBN) • postal address, email, website and phone number.	The Act does not prescribe what information we can require an accredited person to provide to MBIE. This means MBIE is unable to automatically update records if a change is made to the accredited person's private PBD on the NZBN register (e.g. if an accredited person changes their address). Gaining each accredited person's permission to access this information is less efficient than having statutory authorisation to collect the information.

Proposals that have prior Cabinet approval for inclusion Regulatory Systems (Immigration and Workforce) Amendment Bill (No 3)

No	Provision	Status quo	Proposed change	Reason for change
			Accident Compensation Act 2001	
1.	**(Note – Not to be progressed as part of RSB 3)**		Enable ACC to use the latest employer filing to Inland Revenue when determining a client's weekly compensation.	This will assist ACC to process weekly compensation applications from claimants more quickly and efficiently using real payment information direct from Inland Revenue
2.	**(Note – Not to be progressed as part of RSB 3)**		Align ACC's penalty rules with IR's rules, by charging the one percent monthly interest rate from the date a levy invoice is due, rather than 30 days after the payment is due.	ACC currently applies penalties if a payment is not received one month after the due date. This does not align with the normal practice of charging a penalty on the day after a payment is due (e.g. in the Tax Administration Act 1994). ACC's rules currently incentivise levy payers to delay payment until one month after an invoice is due and this is a common practice among many large employers.
3.	**(Note – Not to be progressed as part of RSB 3)**		Exclude Veterans' Support Act 2014 (VS Act) weekly compensation top-up from abatement against ACC's weekly compensation payments.	This will rectify an anomaly between VS Act and the Accident Compensation Act 2001. The proposed amendment will make clear that the VS Act weekly compensation and weekly income compensation payments are be excluded from abatement against ACC weekly compensation, as current settings do not function as intended to ensure the effective interaction of the two entitlement systems.

4.	**(Note – Not to be progressed as part of RSB 3)**		Align the definitions of “moped” and “motorcycle” in the AC Act with the definitions in the Land Transport Act 1998 to ensure legal clarity.	This amendment addresses regulatory inconsistency between two different pieces of legislation
Employment Relations Act 2000				
5.	Sections 63A to 65		Redraft sections 63A to 65 of the Act in order to better reflect the original policy intent and clarify obligations regarding individual employment agreements.	The amendments will remove ambiguity in the current wording and better align with the original policy intent. This will provide greater clarity to employers and employees regarding their obligations
6.			Introduce a maximum infringement fine of $2,000 per infringement for infringement offences listed in the Act.	Although the Act clearly prescribes the infringement fee level for employment standards-related infringement offences, it does not currently provide for the prescription of maximum infringement fines. Amending the Act to clarify maximum infringement fines would align with best practice, provide clarity and certainty in the law, and ensure that fines are proportionate to the conduct
Health and Safety at Work Act 2015				
7.	Schedule 3, clause 1	The definition of tourist mining operation means an operation that has the purpose of mine education, mine research or mine tourism. There is confusion around the boundary of this definition.	Amend the definition of “tourist mining operations” to clarify that they are different from commercial mining operations and exclude mine tourism that does not involve any principal hazards of mining.	Resolve confusion about the boundaries of tourist mining and support upcoming proposals in the review of the Mining Regulations Confide [redacted] Confidential advice to Governm
8.	Section 24	A notifiable incident is an unplanned or uncontrolled incident that exposes a worker or any other person to a serious	Amend the definition of “notifiable incidents” to clarify that incidents specified in regulations related to the failure of safety critical equipment or processes, but where	Clarify the policy intent to require reporting of all such incidents to WorkSafe New Zealand as the regulator.

		risk to their health and safety. It must be notified to the regulator.	no one was directly imminently exposed to danger, are covered by the event notification requirements in the principal Act.	
9.	Schedule 2 clauses 28, 29 and 31	The Mining Board of Examiners examines applicants to see if they meet the competency requirements to perform safety-critical roles in mining, quarrying, and alluvial mining operations.	Clarify that the New Zealand Mining Board of Examiners' role includes functions related to quarries and alluvial mines, and amend that any future Board levy can be used to fund those functions.	Clarify and update statutory provisions to give effect to the purpose of the Act and to keep the regulatory system up to date and relevant.
10.	Schedule 3, clauses 2 and 3	The definitions of "mining operation" and "quarrying operation" include the extraction and processing of coal or any other mineral. This is at the place where the extraction is carried out, as well as any other place where the processing occurs.	Amend the definitions of "mining operation" and "quarrying operation" so that secondary processing and stockpiles from mining or quarrying operations are included only when they occur within or contingent to a mine or quarry.	Clarify and update statutory provisions to give effect to the purpose of the Act and to keep the regulatory system up to date and relevant
11.	Schedule 3, clause 3	The definition of "quarrying operation" includes extracting any material other than coal or other minerals.	Amend the definition of "quarrying operation" so that extracting aggregate solely for use on a farm, and extracting material alongside and associated with a particular roading, or other civil, commercial or residential construction project are excluded from the definition of "quarrying operation".	Clarify and update statutory provisions to give effect to the purpose of the Act and to keep the regulatory system up to date and relevant
12.	Schedule 3, clause 4	The definition of "tunnelling operation" is an operation involving the extraction of fill for the purpose of creating, enlarging or extending a tunnel or shaft.	Amend the definition of "tunnelling operations" so that it includes extraction of ground more broadly than "fill".	Clarify and update statutory provisions to give effect to the purpose of the Act and to keep the regulatory system up to date and relevant.
13.	Schedule 3, clause 1	A mine operator is the person who is responsible for	Amend the definitions of mining and quarrying operators to clarify that they are	Clarify and update statutory provisions to give effect to the

		managing and controlling the mining operation.	"persons conducting a business or undertaking" (PCBUs) in terms of the principal Act.	purpose of the Act and to keep the regulatory system up to date and relevant.
14.	Section 201	ACC must issue two invoices to a customer who has purchased CoverPlus Extra, for the Work, Earners' and Health and Safety at Work (Working Safer) levies.	Amend the HSW Act to enable ACC to issue a single invoice to cover the Work, Earners' and Working Safer levies for a customer who has purchased CoverPlus Extra.	This will assist in reducing the number of invoices for CoverPlus Extra customers, so that they are able to receive all their levies for a year in a single invoice. The proposal will improve administrative efficiency, customer experience and equity of levy collection
Immigration Advisers Licensing Act 2007				
15.	Section 15		Clarify that persons are prohibited from applying for a licence for the duration of a suspension order or the duration of an order preventing the person from reapplying for a licence made by the Tribunal.	Prevent persons who will inevitably be declined from applying for a licence.
16.	Section 15	Former INZ officers are required to meet the same standards regarding competence and fitness to be a licensed adviser as any other person.	Remove the 12 month stand down period preventing former Immigration NZ (INZ) officers from being licensed as immigration advisers.	They are also required to follow the Code of Conduct including provisions regarding conflicts of interest.
17.	Sections16, 17 & 27		Expand the persons subject to restrictions on being licensed to include a person convicted of an offence under the Act.	A conviction under the Act is a good indicator of the fitness of a person applying to be licensed as an immigration adviser.
18.	Section 17	Currently, the Registrar's power in relation to a fit and proper person to hold a licence is limited to specific prohibitions.	Strengthen the Registrar's discretion to take into account other matters relevant to determining a person's fitness to be licensed.	The proposal widens the Registrar's powers in line with the Act and occupational regulation guidance.
19.	Sections 16, 17 & 27		Extend 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.	The Registrar could cancel a licence during the term of the licence rather than waiting for the term of the licence to expire (as is currently provided for in the Act).

20.	Sections 5, 11 & 12		Clarify that employees of a lawyer or a law firm are exempt from the requirement to be licensed.	Lawyers and employees of lawyers are exempt from the requirement to be licensed, as they are regulated by the Lawyers and Conveyancers Act 2006.
21.	Sections 82 & 83		Modify interim court orders, which 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.
22.	Section 51		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, and provide for a right for the person to apply to the Tribunal to vary such an order in certain circumstances.	This change would give the Tribunal more flexibility as to the time during which a person may not apply to be licensed - either for a set period or indefinitely.
23.	Section 51		Give a power to the Tribunal to vary a full licence to a limited or provisional licence.	Rather than cancelling a licence in its entirety, this change would allow the Tribunal to vary the immigration adviser's full licence to a provisional or limited licence.
24.	Section 81		Make changes to immigration advisers' and complainants' appeal rights to the District Court, by creating a right of appeal against the decision of the Tribunal to uphold a complaint or dismiss a complaint.	Extending the right of appeal against the decision of the Tribunal to uphold a complaint or dismiss a complaint will confer the jurisdiction of the District Court to confirm, vary or reverse all components of the decisions of the Tribunal.
25.	Sections 78 & 79		Increase the Registrar's discretion as to the contents of the register of licensed immigration advisers.	Giving the Registrar discretion to include other information on the register will ensure that modifications can be made to the register without further changes to the legislation.

26.	Sections 35 & 49		Clarify that the functions of the Registrar include prosecuting complaints at oral hearings before the Tribunal and clarify that the Registrar is a party to, and may prosecute, the complaint at an oral hearing before the Tribunal.	This will confirm the Authority's role with respect to the hearing of complaints currently before the Tribunal.
27.	Section 44	Currently, the Act requires that a complaint is framed as negligence, incompetence, incapacity, dishonest, misleading or a breach of the code of conduct.	Simplify the process for making a complaint, so that a complainant can set out what happened, rather than having to cite specific legal grounds.	Simplifying the requirements will allow the Registrar and Tribunal to more easily consider if the complaint comes within the grounds for the complaint.
28.	Section 76	Former INZ employees can bring expertise and experience to roles within the Authority to benefit the Authority and consumers of immigration advice.	Remove the two-year stand down period preventing former INZ staff from being employed by the Authority.	Potential conflicts of interest can be managed through the code of conduct for Authority (MBIE) employees.
29.	Section 9		Ensure that INZ can refuse to accept or decline an application prepared by an unlicensed or non-exempt immigration adviser.	This will enable INZ to refuse to accept an application before a fee is taken or decline an application and INZ may consider refunding the application fee.
Parental Leave and Employment Protection Act 1987				
30.			Clarify that to be eligible for the paid parental leave entitlement, employees and self-employed persons other than the biological mother may stop work within a reasonable period of becoming the primary carer of a child under the age of six.	Clarify and update statutory provisions to give effect to the purpose of the Act and to keep the regulatory system up to date and relevant.
31.			Clarify that any period for preterm baby payments are additional to and not counted in the calculations for the maximum period of parental leave or payments.	Clarify and update statutory provisions to give effect to the purpose of the Act and to keep the regulatory system up to date and relevant.
32.	Section 72A		Clarify that section 72A will apply to the parental leave payment threshold test for	Clarify and update statutory provisions to give effect to the

			cases where the employee has taken a period of authorised leave, as it is necessary to establish whether they have worked a sufficient number of hours to be eligible for a parental leave payment.	purpose of the Act and to keep the regulatory system up to date and relevant.
33.			Clarify that a person who becomes entitled to a preterm baby payment and has not begun the parental leave payment period can take paid leave (e.g. annual leave) before the start of paid parental leave, aligning it with the treatment of all other employees.	Clarify and update statutory provisions to give effect to the purpose of the Act and to keep the regulatory system up to date and relevant.

Proposals that have prior Cabinet approval for inclusion Regulatory Systems (Building and Construction) Amendment Bill (No 3)

No	Provision	Status quo	Proposed change	Reason for change
		Building Act 2004		
1.	(Note – Not to be progressed as part of RSB 3) Section 7	The definition of "supervise" in Section 7 of the Building Act, has two sub-sections that are joined with an 'and'. This means it could be implied, on a strict reading, that both conditions are required to be met before building work could be said to be supervised. The legislation states: *supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—* *(a) is performed competently; and* *(b) complies with the building consent under which it is carried out* There have been competing views in cases before the Building Practitioners (BP) Board around the effect of the Section 7 interpretation of "supervise", in relation to work that does not require a building consent.	Clarify that "supervise" also applies to work that does not require a building consent in the Building Act.	The BP Board's interpretation, and the assumed Parliamentary intention, is that a purpose of the Building Act is to ensure that all building work complies with the Building Code whether consented or not.
2.	(Note – Not to be progressed as part of RSB 3)		Enable the Building Practitioners (BP) Board to have capacity to handle complaints.	A mechanism for promoting consumer confidence in the building system is the Licensed

			Increase the BP Board by up to two members, to a maximum of 10 members, to increase the BP Board's capacity to handle complaints.	Building Practitioners scheme complaints system.
3.	Section 450A	Achieve the policy intent of the Building (Pools) Amendment Act 2016	Repeal the transitional legislative section 450A of the Building Act 2004.	S450A is now redundant and confusing.
4.	Schedule 1	Schedule 1 of the Building Act 2004 provides for building work that is exempt from requiring a building consent. Schedule 1 was amended in September 2016 to allow some smaller low-risk pools to be built without consent (clause 21 of the Building Amendment Act 2016). However, this exemption inadvertently exempts the barriers to those pools as well.	Amend Schedule 1 of the Building Act 2004 to ensure building consents are required for building work involving residential pool barriers (other than covers for small heated pools).	This was not an intended policy change. The policy intent of the amendments was to allow low-risk pools to be exempt from needing a consent, while still requiring a consent for all building work involving residential pool barriers. The only form of barrier to a pool which is not intended to require a building consent is the installation of a safety cover for a small heated pool e.g. a spa pool.
5.	Schedule 1	There is no definition of "safety cover" under the Act. MBIE has received queries about whether just any "cover" will meet the exemption and thus exempt the pool from the inspection requirements.	Clarify that a reference to "safety cover" under Schedule 1 of the Building Act 2004 means a safety cover that meets the requirements under the Building Code.	This was not an intended policy change. The policy intent of the amendments was that only safety covers that meet Building Code requirements would be exempt from the inspection requirements in section 162D.
Plumbers, Gasfitters and Drainlayers Act (PGD Act) 2006				
6.	(Note – Not to be progressed as part of RSB 3)	The Plumbers, Gasfitters and Drainlayers (PGD) Board has identified that some drainlayers have been doing what the PGD Board interprets as sanitary plumbing, without being licenced as plumbers. Sanitary plumbing	Clarify that plumbing and drainlaying are distinct areas of work. The current definition of "drain" in section 4 is: drain—	The policy intention of the definition of drainlaying is that the trades are separate, and people need to be licenced and qualified for the trade that covers the work they are doing. The PGD Board has proposed making it clear under the PGD Act that there is no overlap between work that is "sanitary plumbing" and work that is "drainlaying".

		is any work involved in fixing or unfixing any pipe, plumbing fixture or appliance including: any trap, waste or soil pipe, ventilation pipe or overflow pipe and any pipe that supplies or is intended to supply water.	(a) means a pipe or series of pipes constructed or laid for the conveyance of foul water, stormwater, or industrial liquid waste; but (b) does not include— (i) a pipe or series of pipes that is vested in or under the control of or maintained by the Crown or by a local authority; or (ii) an open jointed or perforated drain for the collection and removal of ground water or a downpipe for the conveyance of water from the roof of a building Amend the definition so that it reads : *drain-* (a) means a pipe or series of pipes constructed or laid for the conveyance of foul water, stormwater, or industrial liquid waste; but (b) does not include- any trap, waste or soil pipe,	

			ventilation pipe, or overflow pipe connected with or intended to be connected with or accessory to any sanitary fixture or sanitary appliance (whether or not the sanitary fixture or sanitary appliance is there when the work is done);	
7.	(Note – Not to be progressed as part of RSB 3)	The definition of drainlaying does not currently include earthworks associated with drainlaying. Poor earthworks or excavation works can have health and safety implications. Currently the PGD Board is unable to take action in the case of poor work. The PGD Board has proposed that if a person is a drainlayer and doing earthworks associated with drainlaying, they should be required to perform them competently. Currently, if a drainlayer performs earthworks incompetently the PGD Board cannot deal with complaints about, or discipline the drainlayer.	Include earthworks and excavations associated with drainlaying (and done by people who are licenced drainlayers) within the definition of drainlaying	This proposal will not apply to all earthworks, just those carried out by people who are drainlayers. This amendment is justified based on the health and safety concerns and the inability of the PGD Board to hold practitioners accountable for poor work if the work does not fall within the definition of regulated drainlaying work.

Annex 3: Regulatory Impact Statement and Quality Assurance Statement for the Heavy Engineering Research Levy Act 1978 proposal.

Impact Summary: Prefabricated items in Schedule 2 of the Heavy Engineering Research Levy Act

Section 1: General information

Purpose
The Ministry of Business, Innovation and Employment (MBIE) is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis
Evidence and quality of evidence We have high confidence in the quality of the data provided by Customs and HERA used for this analysis. However, there is a gap in the import data available to MBIE at the time of writing this assessment. This gap is from 1 June 2018 (the end of import year 2017/18) to December 1 2019. Business and import interruptions in 2020 and the unknown effect of COVID-19 on the industry going forward will also increase the error margin in our predictions of costs to importers and increases in HERA's levy revenue. While these effects have limited the presentation of some data, we still have high confidence in the main assumptions within our analysis. *Options* MBIE considers that there are three options to approach this problem: • Option 1: Status quo – no change. • Option 2: Update the Act to allow levy collection on imported prefabricated steel and iron items. • Option 3: Increase the levy rate. *Criteria* We have assessed the options against their ability to fulfil the purpose of the legislation at two levels: • Equitable distribution of the cost of HERA's across industry members. • Supporting the heavy engineering industry, through research and science. *Assumptions*

We have assumed that in the COVID-19 economic recovery the increasing import of prefabricated steel and iron items[1] will resume at around 23 per cent per year from 2020/2021. We have based this assumption on previous growth and used it for our forecasts on levy payment by importers and levy revenue gained by the Heavy Engineering Research Association (HERA).

We have also assumed that the levying of imported prefabricated items will proportionally increase their retail price (by importer on sellers).

Consultation limitations
Our consultation was limited by a short time period of five weeks and timing over the summer holidays. We did not mass market the consultation, but we were able to directly contact 34 of the top 50 importers of the items. This limits our analysis of the effect on importers and consumers.

The changes are proposed for Regulatory Systems Bill 3, which will go through complete parliamentary process. Industry and the wider public will therefore have further opportunity to submit on this proposal when the Regulatory Systems Bill reaches the Select Committee phase. We have informed top importers of this submission opportunity.

Responsible Manager (signature and date):

Simon Wakeman

Innovation Policy

Science, Innovation and International

Ministry of Business, Innovation and Employment

22/01/2021

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
MBIE
Quality Assurance Assessment:
Reviewer Comments and Recommendations:

[1] Constructed from items levied under the Heavy Engineering Research Levy Act.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

The Heavy Engineering Research Levy Act 1978

The Heavy Engineering Research Levy Act ("the Act") legislates the collection of the Heavy Engineering Research Levy ("the levy"). Section 4 of the Act authorises the levying on all domestically manufactured and imported goods that are specified in Schedule 2 and Schedule 3 of the Act.

The levy provides around $2 million of revenue to the Heavy Engineering Research Association (HERA) each year. HERA uses this revenue to promote and conduct research and other scientific work into or relating to the heavy engineering industry (as outlined in Section 12). This includes facilitating research into advances of technology and techniques, to better inform members. HERA also uses independently sourced revenue to provide an industry network and act as an industry advocate with regulatory bodies.

Schedules 2 and 3 list the levied items by Tariff item number, in accordance with Customs Working Tariff Document[2] (the Tariff). HERA collects the levy on domestically manufactured items directly from the manufacturer (Section 6(2)). Customs collects on imported items as they enter the country then passes this on to HERA (Section 6(3)).

This Act, as with other research levies, intends to address the issue of business under-investment in research and development. The levy equitably distributes investment in HERA's services across the industry by requiring industry members to pay a research levy on the trade of items commonly used in heavy engineering practice. By applying the levy to both domestically manufactured and imported items, the Act minimises the risk of businesses free-riding HERA's services.

Problem: the levy is not currently collected from importers of prefabricated steel and iron items, which creates a levy payment inequity between domestic manufacturers and importers of prefabricated steel and iron items

The Schedules of the Act do not include prefabricated steel and iron items. We have identified four of these items, which have been increasingly used in heavy engineering practice.

The four Tariff item numbers fall under Tariff category 73.08:

- 73.08: *Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, or iron or steel.*

The four tariff codes specify subcategories of goods within that grouping:

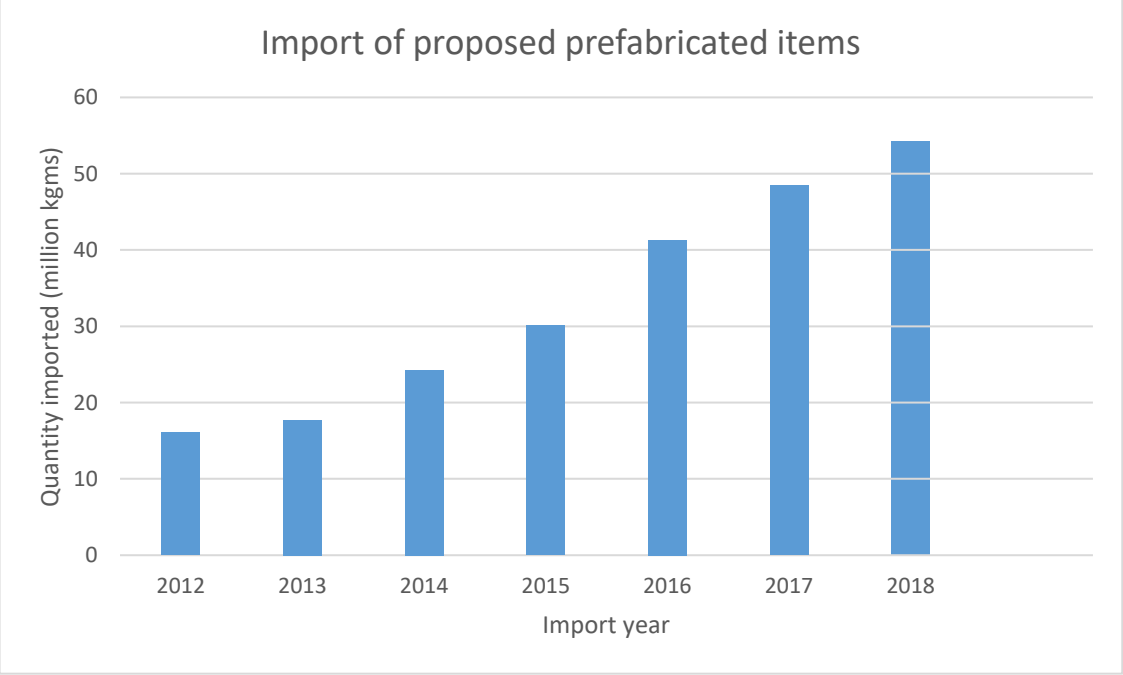
- 73.08.10.00 (00H): *Bridges and bridge sections*

[2] A document owned by the New Zealand Customs Service, listing the Tariff item numbers for all items imported at significant quantities.

- 73.08.90.90 (10C): *Other – Channels, joists, girders, beams and columns*
- 73.08.90.90 (15D): *Other – Tubes and the like, prepared for use in structures*
- 73.08.90.90 (29D): *Other – Other.*

The nature of the Act means that locally manufactured items are already levied (through the levy on the component steel items), but the imported items are not. It is not currently possible to collect the levy on the component items of imported prefabricated steel items. This is because Customs levy collection is restricted to collecting based on the Tariff item number an item is imported under.

Market changes, i.e. the increased use of prefabricated items in heavy engineering practice, have created this problem. These tariff codes were not originally included in the Act because the Tariff item numbers were not introduced to the Working Tariff Document (the Tariff) until 2010 and then 2012. This suggests that purchase of prefabricated heavy engineering items was not envisaged when the Act was passed. MBIE last updated the items listed in Schedule 2 in 2005. This also predates the introduction of these four prefabricated items to the Tariff. The chart below shows the increasing import of the four prefabricated items we propose to include in Schedule 2 of the Act.



Source: Customs import data for Tariff items 73.08.10.00 (00H), 73.08.90.90 (10C), 73.08.90.90 (15D) and 73.08.90.90 (29D).

The inability to collect the levy on these items is a problem because the exclusion of these items causes inequitable levy payment between importers and domestic manufacturers. The Act intends to treat all commonly used heavy engineering items equally, independent of origin (Section 4(2)). As locally manufactured items use materials that have already been levied, whereas imported prefabricated items do not, this has generated an unequal treatment of these products.

MBIE acknowledges that some imported items may have already been subject to a research levy in their country of manufacture. This does not affect our impact analysis.

How the situation will develop
If we do not address this issue, the levy payment inequity between domestic manufacturers and importers of these items will continue.

Addressing this issue now, through Regulatory Systems Bill 3
Addressing this issue by amending the Schedules of the Act would require Cabinet approval. Section 4(4) of the Act sets out powers for an Order in Council to amend the Schedules to ensure alignment with the Tariff. However, we do not recommend using these powers because the changes are out of scope of their intended purpose.

Instead, we recommend that any amendments be included in the next Regulatory Systems Bill (RSB3). This Bill is currently in legislative bid phase and is expected to progress for Cabinet approval in March 2021.

We are confident in the evidence for this problem
Import data from Customs, financial records from HERA and submissions by the industry all support our problem definition. We therefore have high confidence in this evidence. Consultation submissions from the industry also give us high confidence in our assumption that this problem is negatively affecting domestic manufacturers.

2.2 Who is affected and how?

Importers
This change will have a small direct effect on importers, as they will be required to pay the levy of $20 per tonne on the relevant prefabricated items. Importers of these prefabricated items may be either the end consumers and/or the on sellers of the items.

On average, the top 50 importers of these items import 1000 tonnes per year, with a value of $2 million. On average, the change would incur an additional annual levy payment of $20,000 for these importers (less than 1 per cent of the value of the items).

While importers who also consume the items will directly incur the cost of the levy, on sellers may pass the small cost on to the consumer by increasing their pricing of these items (and keep the same profit margin). The average import value per unit of these items is $39,340 and the average levy payment would be $257, 0.6 per cent of the items' import value. Assuming that on sellers increase the retail price of these items proportionally, we expect this will have little or no effect on the sales of these items.

MBIE acknowledges that some importers may oppose levy payment on these items. These businesses may believe that the cost of the levy is greater than the benefit that it provides. MBIE recommends that such businesses become involved in HERA's operations and help guide their services into areas that benefit them more directly.

Domestic manufacturers
This change will affect domestic manufacturers of these items, who will no longer bear an inequitable portion of levy payment. For example, domestic manufacturer Eastbridge

Steel is currently paying $30,000 of levied on these items each year, which is not equitably matched by importers of the items.

Support from the industry
MBIE has received written support for these changes from:

- HERA
- An industry body
- A domestic steel manufacturer.

2.3 What are the objectives sought in relation to the identified problem?

Objective: Equitable levy payment throughout the industry
MBIE's primary objective is to ensure equal distribution of HERA's legislated services across industry members. This meets the Act's intention outlined in Section 4(2), which intends to ensure items are treated equally, independent of origin (domestically manufactured or imported). This will also fulfil the Act's high-level purpose to support the heavy engineering industry.

Section 3: Options identification

3.1 What options have been considered?

We have assessed the options against their ability to fulfil the purpose of the legislation at two levels:

- Equitable distribution of the cost of HERA's across industry members.
- Supporting the heavy engineering industry, through research and science.

Option 1: Status quo – no change

Equitable distribution of the cost of HERA's legislated services

- \- Continuation of inequitable levy payment on prefabricated items between domestic manufacturers and importers of prefabricated items
- \- Under-contribution by importers of prefabricated items to HERA's services

Supporting the heavy engineering industry, through research and science

- \- Ongoing unfairness to local manufacturers, due to inequitable funding of HERA's services
- \- Opportunity loss of revenue for HERA decreases the amount of support provided to the industry in the form of research and science
- \+ Some importers may feel that lower levy payment is better for their business

Option 2: Update the Act to allow the levy to be collected on prefabricated steel and iron items

To amend Schedule 2 of the Act to include four prefabricated steel items (Tariff item numbers 73.08.10.00 (00H), 73.08.90.90 (10C), 73.08.90.90 (15D), 73.08.90.90 (29D)).

Equitable distribution of the cost of HERA's legislated services

- \+ The same levy amount is paid on prefabricated items, independent of origin
- \+ All members of the industry will fund HERA's legislated services equitably
- Domestic manufacturers will continue to pay the same amount of levy on these items (neutral)
    - o Domestic manufacturers may experience increased business due to the equitable levy payment removing this preferential cost advantage to overseas suppliers (indirect effect)
- \- Importers of prefabricated items will experience greater costs, due to paying the levy on these items

Supporting the heavy engineering industry, through research and science

- \+ Levy payment equity between domestic manufacturers and importers, supporting local industry
- \+ HERA's levy revenue is increased and there in an increase in the amount of research and science provided to industry, thus supporting a more productive and safe industry

Option 3: Increase the levy rate

Equitable distribution of the cost of HERA's legislated services

- \- Continuation of inequitable levy payment on prefabricated items between domestic manufacturers and importers of prefabricated items
- \- Under-contribution by importers of prefabricated items to HERA's services

Supporting the heavy engineering industry, through research and science

+ HERA's levy revenue is increased and there in an increase in the amount of research and science provided to industry, thus supporting a more productive and safe industry.

3.2 Which of these options is the proposed approach?

We recommend Option 2: Update the Act to allow the Levy to be collected on prefabricated steel and iron items

To amend Schedule 2 of the Act to include the four prefabricated steel items (Tariff item numbers 73.08.10.00 (00H), 73.08.90.90 (10C), 73.08.90.90 (15D), 73.08.90.90 (29D)). Customs can then collect the levy on the import of these items and there will be equity between domestic manufacturers and importers.

Domestically manufactured items will be levied either on the component steel items, or on the prefabricated steel items. Section 4(3) of the Act prevents HERA from collecting the levy on these items twice.

This will best fulfil the purpose of the legislation, as the cost of HERA's legislated services will be equitably distributed across industry members. HERA's services will be equitably funded by both domestic manufacturers and importers of the prefabricated items.

As an incidental effect, HERA will experience increased levy revenue. The association will therefore be able to provide significantly greater levels of support to the industry through the conduct and promotion of industry-good research and science.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	**Comment**: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	**Impact** *In NZD*
Additional costs of proposed approach, compared to taking no action		
Importers of the proposed prefabricated metal items	Levy payment at rate of $20 per tonne on the proposed prefabricated items (levy rate as per Schedule 2 of the Act). Assuming that total levy payment on these items increases at 23 per cent annually. Refer to Key Limitations or Constraints for assumptions and data limitations.	Annual levy payment per importers of these items (next five years) = $1578 **Total** annual levy payment by importers of the prefabricated items (next five years) **= $1.59 m**
Consumers of prefabricated metal items (where the consumer is not also the importer)	~ 0.6 per cent increase in retail prices of imported prefabricated items. Assumption that importers that on sell the items will increase prices to pass the levy on to consumers. Refer to Key Limitations or Constraints for assumptions and data limitations.	$256 per item
Total Monetised Cost	Total cost to industry, equivalent to total levy payment by importers of the items. Final distribution of cost across manufacturers and consumers unknown.	Total annual cost to industry (next five years) **= $1.59 m**
Non-monetised costs		N/A
Expected benefits of proposed approach, compared to taking no action		
Manufacturers of proposed prefabricated metal items	Equitable levy payment.	Small
HERA	An initial 48 per cent levy revenue increase. Then increasing at 23 per cent annually. Refer to Key Limitations or Constraints for assumptions and data limitations.	Total annual levy revenue on the prefabricated items (next five years) **= $1.59 m**
Total Monetised Benefit		Total annual levy revenue on the

		prefabricated items (next five years) **= $1.59 m**
Non-monetised benefits		Small

4.2 What other impacts is this approach likely to have?

There may be indirect affects to the following groups:

- Importers
- HERA
- Domestic manufacturers
- Wider industry
- Wider public

Importers
The levy on imported items may indirectly increase the likelihood of current importers purchasing domestically manufactured prefabricated steel and iron items instead. However, this is unlikely due to the very small cost margin shift.

MBIE acknowledges that, due to the national lockdown and other effects of COVID-19 throughout 2020, businesses may currently be experiencing low revenue. However, as RSB3 is enactment is anticipated in 2023, and the impact is expected to be negligible, we do not expect any effects of these changes to unfairly compound any financial challenges caused by COVID-19.

HERA
This change will indirectly affect HERA, by increasing their levy revenue. HERA's levy revenue determines the amount of legislated support and services HERA can provide. HERA's revenue dictates their number of employees and the number and scope of their research projects.

We estimate that the addition of these items would increase HERA's levy revenue by around 48 per cent in coming years. This will significantly increase their capacity to promote and conduct research and science that benefits the industry.

Domestic Manufacturers
Levying the import of these items will remove part of the preferential cost advantage of importers experience over domestic manufacturers. However, this is unlikely to significantly affect sales and revenue for domestic manufacturers of prefabricated steel and iron items.

Wider industry
This change may indirectly affect the wider heavy engineering industry, by increasing the amount of available research and science for their benefit. This will allow a safer and more productive heavy engineering industry in New Zealand.

Wider public
A safer and more productive heavy engineering industry may have beneficial downstream effects on the wellbeing of all New Zealanders. Safe heavy engineering practice ensures the integrity of all structures with metal components, from bridges to large buildings. This ensures that the New Zealand public is safe when conducting day-to-day activities.

A more innovative and productive industry will diversify and strengthen the economy and may increase national living standards.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

MBIE built the proposal in consultation with HERA and with the support of the New Zealand Manufacturers and Exporters Association (NZMEA).

MBIE has also conducted a public consultation on the changes. MBIE directly contacted 34 out of 50 top importers of the relevant prefabricated items. This follows initial policy approval by the Minister of Research, Science and Innovation and precedes Cabinet approval.

We received submissions from:

- A domestic manufacturer of these items
- An industry body.

These submissions did not modify our proposed approach to levy the prefabricated items. MBIE does not intend to undertake specific consultation with iwi/hapū.

HERA

Levies have contributed 59 per cent of HERA's revenue over the past five years. Levy revenue is used for promoting and conducting research and other scientific work into or relating to the heavy engineering industry as specified in Section 12 of the Act. HERA generates further revenue from membership fees and services such as workshops to fund any further activities.

HERA supports this change as they wish to provide maximal support to the industry and ensure levy payment equity amongst their members.

Industry bodies

NZMEA, now operating as The Manufacturers Network, is an industry group with a focus on supporting globally competitive manufacturers. They support the change as it will ensure equity between importers and domestic manufacturers.

Steel Construction NZ (SCNZ) shares this support. SCNZ submitted on behalf of its members (over 300), in consultation with its Executive Council.

Domestic manufacturers

Eastbridge Steel is a large domestic manufacturer, with around 110 staff and an annual turnover of $25 million. In their submission, Eastbridge Steel expressed that the technical support of the use of metals in New Zealand is being unfairly borne by domestic manufacturers.

Eastbridge also perceive the current ability to import prefabricated steel and iron items as an unfair advantage to offshore manufacturers and importers in competition with domestic manufacturers. They believe that equitable levying of these prefabricated items will remove a $30,000 disadvantage to their company, partially evening the playing field with overseas manufacturers. MBIE notes that Eastbridge Steel's CEO is a member of HERA's board.

Importers

We have not received any feedback from importers.

Customs
MBIE has consulted the New Zealand Customs Agency, which agrees to implement the levying of these prefabricated items.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Schedule 2 of the Act will be updated via Regulatory Systems Bill 3
These changes have been accepted for inclusion in the next Regulatory Systems Bill (RSB3). This Bill is currently in legislative bid phase and is expected to progress for Cabinet approval in March 2021.

Customs will implement the levying of the items added to Schedule 2 of the Act
From this point in time, the process for implementation follows:

- MBIE informs Customs' Revenue Policy Team of the Cabinet's policy approval and expected timing of enactment of the change.
- MBIE advises Customs when the legislation is enacted.
- The Customs' Revenue Policy team informs the Customs' Information Systems team of the upcoming changes.
- HERA is expected to communicate these changes and their implications to the industry.
- Custom's Information Systems team updates their electronic system, with review and support from MBIE and the Revenue Policy team. Where the coverage of the levy is extended, the Parties will allow at least three months between enactment and the commencement date.

Customs has been consulted on the changes and has agreed that they are able to implement the changes to the levy on imported items. This is business as usual for Customs' Revenue Policy and Information Systems teams.

A draft Memorandum of Understanding between HERA, MBIE and Customs outlines the transitional agreement for updates to the Schedules of the Act, as well as levy rate changes. This agreement is expected to come into effect in early 2021, ahead of the enactment of the proposed changes.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

HERA financial records will show whether their revenue has increased. These reports are made public annually, as legislated by the Act. With further data provision from Customs, MBIE will be able to review the distribution of levy payment across domestic manufacturers and importers.

MBIE does not have plans to review HERA's operations and the services that they provide.

7.2 When and how will the new arrangements be reviewed?

MBIE may review the Act when issues are raised. Issues are usually raised by HERA, but could also include NZMEA or other stakeholders.