



COVERSHEET

Minister	Hon Scott Simpson	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Patents Amendment Bill: Approval for Introduction	Date to be published	24 June 2025

List of documents that have been proactively released

Date	Title	Author
30 April 2025	Patents Amendment Bill: Approval for Introduction	Office of the Minister of Commerce and Consumer Affairs
8 May 2025	Patents Amendment Bill: Approval for Introduction LEG-25-MIN-0076 Minute	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 the 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.

Some information has been withheld for the reason of confidential advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

Patents Amendment Bill: Approval for Introduction

Proposal

- 1 I am seeking approval to introduce the Patents Amendment Bill (the **Bill**) which amends the Patents Act 2013 (**2013 Act**).
- 2 The introduction and passage of this Bill is an action under the Government's Going for Growth - Pillar 2 (Competitive Business Settings). I propose to progress this change as a standalone Bill, introduced and passed on Budget night, so it can enter into force removing uncertainty and cost for businesses and allow them to manufacture and sell products with confidence.
- 3 The key purpose of this Bill is to amend the 2013 Act to apply stricter criteria for the grant of divisional applications filed under the Patents Act 1953 (the **1953 Act**).

Policy

Patent law settings help grow the economy through innovation

- 4 Patent law, allowing for protection and commercialisation of inventions supports innovative researchers and businesses to bring societal and economic returns to New Zealand.
- 5 A patent gives a person the legal right to stop others from making, using or selling their invention for up to 20 years. Patents can be of great benefit to a business. However, patents and pending patent applications can create barriers to entry for competitors and limit consumer choice, especially where the invention is undeserving of a patent.

There is a technical problem in patents law that is causing issues for some businesses

- 6 Currently applications that were filed before the 2013 Act came into force, and any subsequent applications relating to them ('divisionals'), fall to be considered under the earlier 1953 Act. The most common reason for a divisional is where the original patent application comprises two or more inventions. Some applicants are keeping these 1953 Act applications pending by continuing to file new divisionals,
- 7 These new filings are an issue because the 1953 Act criteria for examining patent applications is of a lower standard than the 2013 Act and allows undeserving

inventions¹ to be patented. Although businesses can later try to have the undeserving patents overturned, it is a cumbersome and expensive procedure and creates uncertainty and legal risk for them in the meantime.

- 8 I have heard that these pending applications are deterring business from developing, manufacturing and selling products for fear of infringing any subsequent patents granted. And that if they are granted, they are expending time and cost on trying to have them overturned.

The purpose of the Bill

- 9 The Bill will adjust the law so that all new applications, including 1953 Act divisionals, should be considered under the 2013 Act criteria for granting patents. This change will help alleviate the issue with pending the 1953 Act applications and discourage the filling of more divisionals for undeserving inventions.
- 10 It will ensure that undeserving applications are not granted, giving competitors the freedom to manufacture and sell products without legal risk of infringement.

The Policy was agreed by the previous Government in 2020

- 11 The Cabinet Economic Development Committee agreed to these amendments in 2020 as part of a wider package of amendments to intellectual property legislation (DEV-20-MIN-0109, paragraph 3.1, refers).

To make the Bill more effective, I propose that it comes into effect sooner

- 12 I recommend that Cabinet agree to the amendments applying to new divisional applications filed on or after the date of commencement.
- 13 When Cabinet agreed to amendment to the 2013 Act, it also agreed that the amendments would only apply to divisional applications filed more than three months after the date of entry into force of the amendments (paragraph 3.1.3 of DEV-20-MIN-0109 refers). At that time there were around 770 outstanding 1953 Act applications that could be impacted by the amendments. The three-month entry into force period was considered appropriate potentially affected applicants to assess the impact of the amendments and, if they wished file divisional applications before the amendments entered into force.
- 14 The number of outstanding 1953 Act applications is now 78. And their applicants have known of the intention to make this change for five years. Therefore, I consider it is not necessary to give applicants additional time to assess the impact of the amendments before they become law. Removing the three-month period also supports the policy intent of the Bill, for all new applications should be considered under the 2013 Act criteria.

¹ An underserving invention is one that lacks an “inventive step”, i.e. consists only of an obvious improvement to an existing product.

Impact analysis

- 15 A regulatory impact statement was prepared by MBIE and submitted at the time Cabinet decisions for this policy were sought [DEV-20-MIN-0109 refers].
- 16 The Ministry for Regulation has determined that this proposal to reduce the period for the Bill's provisions to commence is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor economic, social, or environmental impacts.

Compliance

- 17 The Bill complies with each of the following:
- 17.1 the principles of the Treaty of Waitangi;
 - 17.2 the [disclosure statement](#) requirements, with a disclosure statement attached at **Appendix one**;
 - 17.3 the principles and guidelines set out in the Privacy Act 2020;
 - 17.4 relevant international standards and obligations;
 - 17.5 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee
- 18 Assessment of consistency with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 is still underway. However, I do not envisage this assessment raising any issues.
- 19 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Consultation

- 20 The Department of Prime Minister and Cabinet and the Parliamentary Counsel Office have been informed.
- 21 A consultation document on this policy was released by MBIE on 4 June 2019 [DEV-19-MIN-0124 refers].
- 22 Submissions from patent attorneys and lawyers generally opposed any change, arguing that it would be unfair to applicants who had applied for patents under the 1953 Act because they would expect them to be examined under that Act. Two local manufacturers, Fisher and Paykel Healthcare, and Douglas Pharmaceuticals supported the change.
- 23 An exposure draft of the Bill was released for public consultation for 2 weeks on 18 March 2025. Most submitters agreed that the drafting achieves the policy intent.

Binding on the Crown

- 24 The Patents Act 2013 is binding on the Crown. The Bill's amendment do not warrant a change to this position.

Creating new agencies or amending law relating to existing agencies.

- 25 Not applicable.

Allocation of decision-making powers

- 26 Not applicable.

Associated regulations

- 27 Regulations will not be required to bring the Bill into operation.

Other instruments

- 28 Not applicable.

Definition of Minister/department

- 29 Not applicable.

Commencement of legislation

- 30 The Bill will come into force the day after Royal Assent.

Parliamentary stages

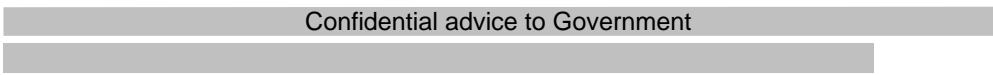
- 31 I propose that the Bill is introduced to the House and passed through all stages on Budget Night.

Proactive Release

- 32 In line with guidance, I intend to proactively release this paper within 30 business days of final decision being taken by this Cabinet Committee, with redactions consistent with the Official Information Act 1982 where necessary.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1  Confidential advice to Government
- 2 **note** that the Bill will make amendments to the transitional provisions of the Patents Act 2013 to apply stricter criteria for the grant of divisional patents applications made under the Patents Act 1953;

I N C O N F I D E N C E

- 3 **Rescind** the decision in paragraph 3.1.3 of DEV-20-MIN-0109 that the amendments apply to divisional applications with an actual filing date that is more than 3 months after the date of entry into force of the amendments; and instead
- 4 **Agree** that the amendments apply to divisional applications with an actual filing date that is on or after the date of commencement.
- 5 **approve** the Patents Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 6 **agree** that the Bill be introduced and passed through all stages on Budget night.

Authorised for lodgement

Hon Scott Simpson
Minister of Commerce and Consumer Affairs