



16 November 2023

Ref: DOIA 2324-0979

Wayne Hudson

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Tēnā koe Wayne Hudson

Thank you for your email of 1 November 2023 requesting information under the Official Information Act 1982 (the **OIA**).

As you know, this request follows on from your OIA request of 3 October 2023 asking for information related to decisions taken about the drafting of a “Have your say” consultation webpage published by the Ministry of Business, Innovation and Employment (MBIE). Our response provided on 1 November was that we did not hold the information you requested.

I am writing to seek clarification on your request of 1 November 2023.

You have asked us to provide:

**all information around your consideration** of s274(10) of the Patents Act and the inclusion of section 274(9) and (10) when they were inserted (from the Australian legislation): “Compare: Patents Act 1990 ss 201, 201A (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e)” “Section 274: inserted, on 24 February 2017, by section 5 of the Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016 (2016 No 89). [**Emphasis added**]

In order to consider your request we will need to understand what you mean by “**all information around your consideration**” in the context of your request and what time period you are interested in as it would not be possible nor practicable to carry out a search without that.

It may help you if I explain that section 274 of the Patents Act was inserted by Parliament by section 5 of the *Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016* (the Amendment Act). The Amendment Act was enacted from the *Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Bill 2015* (the Bill), a Government bill introduced into Parliament by the then Minister of Commerce and Consumer Affairs.

When a bill is introduced to Parliament, and is making its way through the Parliamentary process, information about the bill is published on the Parliamentary website. Information about this Bill, including advice MBIE gave to the Commerce Select Committee (who considered the Bill), and its passage through Parliament, has been published here: [Patents \(Trans-Tasman Patent Attorneys and](#)

[Other Matters\) Amendment Bill \(bills.parliament.nz\)](#). I hope that the information that you are looking for is contained in these documents available on the Parliamentary website.

If you were hoping to obtain information relating to the drafting of section 274, I am afraid that we would not be able to help with that. This is because the Parliamentary Counsel Office (PCO) is responsible for drafting Government Bills and providing advice to Parliament on how legislative provisions in statutes being enacted should be drafted. PCO is not, however, subject to the OIA.

In the hope of assisting you, I understand that clause 3.3(e) of the *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys* (the Arrangement) required that New Zealand's implementing legislation (i.e. the Amendment Act) to provide, amongst other things: "substantially similar offences to offences in Australia in relation to patent attorneys and patent attorney services." Therefore, it appears PCO appears have drafted section 274 in a manner that replicated corresponding offence provisions found in the Australian Patents Act 1990 because of this clause in the Arrangement. The Explanatory Note, and in particular the *clause by clause analysis* therein, which was attached to the Bill when it was tabled in Parliament has more detail about this here: [Patents \(Trans-Tasman Patent Attorneys and Other Matters\) Amendment Bill 83-1 \(2015\), Government Bill Explanatory note – New Zealand Legislation](#). Again, I hope this information may include the information you are looking for.

I hope that the material I have provided contains the information that you are seeking. Can you please either confirm whether this letter contains the information you are seeking or, if not, clarify the information you are seeking from us by close of business **21 November 2023**, so that we are able to further consider your information request.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact [OIA@mbie.govt.nz](mailto:OIA@mbie.govt.nz).

Nāku noa, nā



Gillian Sharp  
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