



1 November 2023

Ref: DOIA 2324-0751

Wayne Hudson

fyi-request-24324-69792e39@requests.fyi.org.nz

Tēnā koe Wayne Hudson

Thank you for your email of 3 October 2023 to the Ministry of Business, Innovation and Employment (MBIE) requesting, under the Official Information Act 1982 (the Act), the following information:

MBIE's website describes the Trans-Tasman patent attorney registration regime at <https://www.mbie.govt.nz/have-your-say/review-of-the-trans-tasman-patent-attorney-registration-regime/>. It contains a statement that "Only a registered patent attorney may provide you with professional assistance to ... get advice on the validity of patents and their infringement. It is an offence for anyone else to either provide such assistance...."

According to section 274(10) of the Patents Act, it is not an offence for someone who is not a patent attorney to give scientific and technical advice on the validity and infringement of patents.

Can you therefore please provide me with all information, internal memos and correspondence that resulted in the decision to use the particular wording on MBIE's website as a substitute for the legislative definition for offences (which effectively allows anyone to give scientific and technical advice on the validity and infringement of patents).

The webpage you refer to is one of many *Have your say* webpages about various public consultations that MBIE is either currently undertaking or has undertaken. All *Have your say* webpages follow the same format, including providing a brief description with appropriate background information for context, on the matter or issue that public is being (or was) invited to make a submission on.

The purpose of the paragraph you have identified in the *Have your say* webpage for the joint review of the Trans-Tasman patent attorney registration regime was to provide a high level description of the regulated services that only registered patent attorneys may provide in New Zealand and Australia.

We have not been able to identify any internal memos, correspondence or other documents related to any decision to use the particular words to which your request relates to. The paragraph was drafted by a senior advisor working with IP Australia on the joint review of the Trans-Tasman patent attorney registration regime. The particular choice of words used to describe the regime on the consultation page do not appear to have been subject to any internal decision-making process. Therefore, I must refuse your request under section 18(e) of the Act, as the requested information does not exist, or despite reasonable efforts to identify it, cannot be found.

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.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'G Sharp'.

Gillian Sharp

Manager, Corporate Governance and Intellectual Property Policy

Small Business, Commerce and Consumer Policy Branch