



SUBMISSION OF THE FREE SPEECH UNION ON THE REGULATORY SYSTEMS (OCCUPATIONAL REGULATION) AMENDMENT BILL

INTRODUCTION

1. The Free Speech Union (“the FSU”) is a registered trade union with a mission to fight for, protect, and expand New Zealanders’ rights to freedom of speech, conscience, and intellectual inquiry. We envision a flourishing New Zealand civil society that values and protects vigorous debate and the expression of dissenting ideas.
2. The FSU supports the intent of the Regulatory Systems (Occupational Regulation) Amendment Bill (“the Bill”) to enhance the efficiency and operation of occupational regulation. While we recognise the Bill’s focus on operational improvements, it fails to address a fundamental concern, the potential for regulatory bodies to act in a politically biased manner, thereby compromising the freedom of expression of licensees.

SUMMARY OF SUBMISSION

3. We support the Bill but have concerns about Clause 27, which replaces section 72 of the Real Estate Agents Act 2008. This clause broadens the definition of unsatisfactory conduct to encompass personal actions and statements unrelated to professional duties, creating the risk of disciplinary action for expressing personal views. We strongly advocate for amendments to limit the scope of unsatisfactory conduct to professional activities and to establish clearer, objective standards that safeguard freedom of expression.
4. Moreover, we propose incorporating provisions from our draft Real Estate Agents (Political Neutrality) Amendment Bill 2024 to ensure political neutrality in the regulatory framework, protect licensees’ right to dissent, and prevent ideological compulsion. If these changes cannot be made immediately, we urge the Government to prioritise advancing our proposed Bill to protect freedom of expression and maintain public confidence in the integrity of the regulatory system.

SUBMISSION

Clause 27 and its Implications for Freedom of Expression

5. Clause 27 of the Bill, which replaces section 72 of the Real Estate Agents Act 2008, raises significant concerns regarding freedom of expression and the potential for regulatory overreach. The proposed changes expand the scope of what constitutes unsatisfactory conduct, potentially exposing licensees to disciplinary action for statements or actions made outside their professional real estate activities.

6. The new section 72 broadens the definition of unsatisfactory conduct in two key ways:
 - a. Extending its scope beyond professional conduct – The current section 72 limits unsatisfactory conduct to real estate agency work. Clause 27 removes this limitation, meaning personal statements or actions—entirely unrelated to professional duties—could now be grounds for disciplinary findings.
 - b. Introducing a vague and subjective standard – Clause 27 allows for findings of unsatisfactory conduct based on public expectations rather than professional standards, which could police personal expression and conduct unrelated to real estate work.
7. The FSU has consistently advocated for political neutrality in occupational regulation. The expansion of unsatisfactory conduct in Clause 27 raises three significant risks:
 - a. Risk of of Political Bias and Ideological Compulsion – If a licensee expresses views on contentious issues, they could face disciplinary action if their opinions are deemed to fall outside the expectations of a "*reasonably competent licensee*."
 - b. Chilling Effect on Speech – The vagueness of the proposed standard could discourage licensees from engaging in public debate or expressing personal views.
 - c. Undermining the Right to Dissent – The FSU supports allowing licensees to opt out of ideological training, but Clause 27 could limit the effectiveness of such provisions by allowing punishment for dissenting views expressed elsewhere.
8. We therefore propose the following amendments to the Bill:
 - a. Limit unsatisfactory conduct to professional activities – Amend Clause 27 to ensure disciplinary action applies only to conduct occurring in the course of real estate agency work.
 - b. Establish clear, objective standards – Replace the vague "*reasonably competent licensee*" test with criteria based on professional and legal obligations specific to real estate agency work.
 - c. Protect freedom of expression – Include a provision stating that personal views expressed outside work cannot constitute unsatisfactory conduct unless they demonstrably impact professional duties or breach the law.
 - d. Ensure political neutrality in regulation – Require the Authority, Registrar, and Complaints Assessment Committees to exercise their functions in a politically neutral manner, consistent with section 14 of the NZ Bill of Rights Act 1990 (further detail about this recommendation below).

The Need for Political Neutrality in Occupational Regulation

9. In 2024, the FSU drafted the Real Estate Agents (Political Neutrality) Amendment Bill 2024, which seeks to establish a duty of institutional viewpoint neutrality for the Real Estate Authority, the Registrar, and Complaints Assessment Committees on contentious political, ideological, religious, moral, or cultural issues.

10. The rationale for our proposed Bill the taking the first step towards ensuring that regulatory bodies remain impartial, preventing the imposition of prescribed ideological viewpoints on licensees. The key provisions are as follows:
 - a. Definition of "*contentious issues*" – The Bill defines contentious issues as those that generate significant public division in New Zealand, including but not limited to gender identity, sexual orientation, race relations, and the role of Te Tiriti o Waitangi.

 - b. Duty to uphold freedom of expression – The Authority must not take any action inconsistent with the freedoms set out in sections 13, 14, and 15 of the New Zealand Bill of Rights Act 1990, including the right to freedom of expression.

 - c. Requirement for institutional neutrality – The Authority must adopt a neutral stance when dealing with contentious issues, ensuring it acknowledges a diversity of perspectives rather than endorsing a particular viewpoint.

 - d. Protection against ideological compulsion – The Bill aims to minimise the risk of regulatory bodies using their authority to advance partisan agendas, which could undermine agents' rights and professional autonomy

 - e. New provisions on neutrality in practice rules and qualifications – Sections 19A and 19B require that:
 - Practice rules, qualifications, and professional standards must remain neutral and must not impose ideological conformity on agents.

 - Licensees must be able to opt out of any practice rule or training requirement if they have a reasonable belief that compliance would require them to endorse a contentious belief they do not hold.

Strengthening the Current Bill

11. The Regulatory Systems (Occupational Regulation) Amendment Bill provides an opportunity to reinforce neutrality and protect freedom of expression within the regulatory framework. Merely improving operational efficiency is insufficient if licensees remain vulnerable to ideological coercion.

12. We therefore propose the following amendments to the Bill:

- a. Directly incorporate key provisions from our draft Bill into the current Bill. Specifically:
 - Introduce a new section establishing a duty of neutrality for the Real Estate Authority and the right of licensees to opt out of prescribed ideological content.
 - This could be incorporated as an amendment to Part 2 of the Real Estate Agents Act 2008, which the current Bill already seeks to amend.
- b. Amend section 12 of the Real Estate Agents Act 2008 (which outlines the functions of the Authority) to explicitly require that the Authority maintain political neutrality in all regulatory actions and decision-making processes.
- c. Modify section 15 of the Real Estate Agents Act 2008 (which governs the development of practice rules) to explicitly state that all practice rules must be politically neutral and cannot compel ideological adherence.
- d. If these amendments cannot be incorporated immediately, we strongly urge the Government to progress the Real Estate Agents (Political Neutrality) Amendment Bill 2024 as a complementary legislative measure to ensure that occupational regulation respects freedom of expression and viewpoint diversity.