

Departmental Disclosure Statement

Child Protection (Child Sex Offender Register) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the New Zealand Police.

The New Zealand Police certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 April 2015

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information.....	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features.....	9

Part One: General Policy Statement

General policy statement

The commission of sexual offences against children is a serious problem in New Zealand, and it causes significant and long lasting harm to victims, their families and to the community. Information sharing between relevant agencies is recognised as an effective way to minimise the harm from re-offending by known child sex offenders, when complemented by a structured risk management framework. Child sex offender registers help government agencies identify and manage the risk of sex offending in the community, and provide offenders with incentives and support to maintain a low-risk lifestyle.

The Child Protection (Child Sex Offender Register) Bill requires all child sex offenders to register if they were aged 18 years or over (when the offence was committed), are convicted of a qualifying offence, and are sentenced to imprisonment, or sentenced to a non-custodial sentence and directed to be registered at the discretion of the sentencing judge. An offender who has been found guilty of a corresponding offence in a foreign jurisdiction and sentenced to imprisonment or been subject to reporting requirements in that jurisdiction will also be on the register if they reside in New Zealand or intend to reside in New Zealand. All registered offenders, when residing in the community, will be required to provide a range of personal information to a central register administered by Police. The registered offender must update the information annually, within 72 hours of any change of details, and at least 48 hours prior to travel. This information will enable Police and the Department of Corrections to use accurate and up-to-date information to assess and manage the risk to public safety posed by known child sex offenders when living in the community.

Authorised staff employed by the Ministry of Social Development, and Housing New Zealand Corporation will have limited access to the information on the register, and will exchange relevant information in the interests of public safety. Other government agencies will be able to access relevant information on the register through the existing Police Vetting Service. Police and the Department of Corrections will be able to inform third parties that a person is on the register where this is considered necessary to protect the safety of at risk parties.

Offenders sentenced to imprisonment will remain on the register for 8 years, 15 years or for life depending on the qualifying offence committed. Offenders sentenced to a non-custodial sentence who are registered at the discretion of the sentencing court, will remain on the register for 8 years regardless of the qualifying offence committed. Failure to comply with the requirements of the register will constitute an offence carrying a penalty of imprisonment for a term not exceeding 1 year or a fine of up to \$2,000, and providing false or misleading information when reporting for the purposes of the register will carry a penalty of imprisonment for a term not exceeding 2 years or a fine of up to \$4,000.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
The Bill was informed by a review of international literature on the benefits and risks of child protection offender registers based on the experience of registers implemented in a number of overseas jurisdictions. This is discussed in the Regulatory Impact Statement referred to below.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
--	-----------

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
A Regulatory Impact Statement (RIS) was provided to inform the policy decisions leading to this Bill. Child Protection Offender Register and Risk Management Framework, New Zealand Police, June 2014, will be available on-line at: <ul style="list-style-type: none">• http://www.treasury.govt.nz/publications/informationreleases/ris• http://www.police.govt.nz/new-zealand-police-miscellaneous-reports	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	N/A
The RIS cited above did not meet the threshold for requiring an independent opinion on the quality of the RIS from the RIA Team based in the Treasury.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
--	------------

Additional policy approvals were given by Cabinet on 20 April 2015 as follows:

- including in the information to be reported to Police by a registered offender:
 - the name and age of any child or children residing at the same address as the registered offender; and the name of the child or children's caregiver
 - details of any online accounts, online aliases and email addresses used or intended to be used by the offender
- permitting the Commissioner of Police to share information with agencies administering corresponding registers in overseas jurisdictions
- that the information sharing provisions in the Bill apply also to registered offenders who have been granted name suppression
- introducing an offence of unauthorised disclosure of information from the register
- including on the register those who are serving Extended Supervision Orders for a qualifying offence when the Act comes into force
- including the suspension of the period of registration when the offender is in custody or overseas for more than seven days
- modifying reporting procedures for offenders who are protected witnesses.

Additional policy approval was also sought from the Cabinet Legislation Committee on 29 April, when approval was sought to introduce the Bill, to increase the maximum penalty for the offence of providing false or misleading information to imprisonment for a term not exceeding 2 years or a fine of \$4,000.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
---	-----------

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
Limited analysis is available in the RIS cited above.	
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
Analysis is available in the RIS cited above. Sanctions to encourage offenders to comply with registration requirements are included in the Bill, i.e. penalties for failing to report and provide required information and providing false or misleading information.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

The policy and the Bill have been considered by officials from New Zealand Police and the Department of Corrections with experience of international obligations in the justice sector. There has been external consultation with other government agencies.
--

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The likely impact on Māori was considered during the policy and external consultation process. Officials from Te Puni Kōkiri have been consulted on the policy.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
---	------------

Advice provided to the Attorney-General on consistency with the New Zealand Bill of Rights Act, or a section 7 report of the Attorney-General, is expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or report, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights .
--

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p><i>Offences and penalties</i></p> <p>The Bill creates the following new offences:</p> <p>(a) an offence by a registrable offender of failing to report and provide information as required by the Bill, punishable with a fine of up to \$2,000 or imprisonment for a term not exceeding 1 year</p> <p>(b) an offence by a registrable offender of providing false or misleading information to Police punishable with a fine of up to \$4,000 or imprisonment for a term not exceeding 2 years</p> <p>(c) offences by</p> <p>(i) a person authorised to have access to the register of disclosing that information to another person without authorisation</p> <p>(ii) a person to whom information from the register has been disclosed of disclosing that information to another person without authorisation</p> <p>punishable, in the case of an individual, by imprisonment for a term not exceeding 6 months, and in the case of a body corporate, by a fine up to \$25,000.</p> <p><i>Jurisdiction of a court or tribunal</i></p> <p>Under the Bill a court may order that a person must be placed on the Child Sex Offender Register if the court has found them guilty of a qualifying offence and imposed a non-custodial sentence. The court may make such an order only if it is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally. [Other offenders who are convicted of a qualifying offence and sentenced to imprisonment are automatically placed on the register.]</p> <p>There is no right of appeal against a court's ordering a person to be placed on the register,</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted when the Cabinet papers seeking approval for these provisions were being developed.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
A Privacy Impact Analysis has been completed. The Office of the Privacy Commissioner has been fully consulted and their feedback contained in the Cabinet paper seeking approval for a Bill to establish a Child Sex Offender Register.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The following agencies have been consulted: Department of Corrections, State Services Commission, the Treasury, Ministry of Justice, Ministry of Education, Ministry of Health, Ministry of Social Development, Department of Internal Affairs, NZ Customs Service, Housing New Zealand Corporation, Te Puni Kokiri, Ministry of Pacific Island Affairs, Ministry of Women's Affairs, Crown Law, Parliamentary Counsel, the Office of the Privacy Commissioner, and the Accident Compensation Corporation.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The Bill is based on operating models in both Australia and the United Kingdom. In addition to this, NZ Police has established the Centre for Impact on Sexual Offending, which operates on the model proposed in the Bill to the extent possible without the enabling legislation,	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
--	-----------

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
--	-----------

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
The Bill is retrospective in that it applies to all offenders currently serving a custodial sentence or subject to an extended supervision order for a qualifying sentence on the date the Act comes into force. Due to an oversight in the original Cabinet paper, policy approval was not given to include in the retrospective provisions those serving an extended supervision order (a post-sentence order) for a qualifying offence. Policy approval was subsequently obtained from Cabinet on 20 April 2015 (see also paragraph 2.3.2).	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
The Bill has one strict liability offence: <ul style="list-style-type: none">a person authorised to have access to the register commits an offence if he or she discloses that information to another person without authorisation, punishable, in the case of an individual, by imprisonment for a term not exceeding 6 months, and in the case of a body corporate, by a fine up to \$25,000.	
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
---	-----------

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
--	------------

The Bill creates a new decision-making power for the court to order that a person must be placed on the Child Sex Offender Register if the court has found them guilty of a qualifying offence and imposed a non-custodial sentence. The court may make such an order only if it is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally. [Other offenders who are convicted of a qualifying offence and sentenced to imprisonment are automatically placed on the register.] There are reporting obligations for those on the register.

There is no right of appeal against the court's ordering a person to be placed on the register, but a person can seek a review of the Commissioner of Police if they consider they have been placed on the register in error or that an error has been made in working out the length of the person's reporting period.

The Bill creates a power for constables to take fingerprints or finger scans of a registrable offender who is making a report to Police as required under the legislation if the constable is not reasonably satisfied as to the identity of the offender after the constable has examined all the material relating to identity provided or presented to him or her.

There is also a power for constables take photographs of a registrable offender who is making a report to Police as required under the legislation.

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
---	-----------

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
--	------------

The Bill includes the power for the Governor-General to make regulations for any of the following purposes:

- (a) prescribing certain laws of foreign jurisdictions to be corresponding Acts for the purposes of this Bill:
- (b) excluding any person or class of persons from being a registrable offender:
- (c) prescribing details relating to the administration of the register:
- (d) specifying, if a report is made otherwise than in person
 - (i) the circumstances in which information will be required concerning the identity of the registrable offender and the identity of the person making the report, or a document will be required verifying or supporting details in the report; and
 - (ii) the manner in which that information or document is to be provided:
- (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
--	-----------