

# Departmental Disclosure Statement

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Electronic Interactions Reform Bill
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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 Department of Internal Affairs, in consultation with the Department of Conservation and the Ministry of Business, Innovation and Employment.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

August 2016

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## Part One: General Policy Statement

This Bill is an omnibus Bill introduced in accordance with Standing Order 263(a). The amendments in the Bill deal with an interrelated topic that can be regarded as implementing a single broad policy.

This Bill is a cross-agency Bill that amends a range of legislation to enable digital interactions between individuals, businesses, and government agencies. The Bill forms part of ongoing information management and digital transformation work in the State sector.

The Bill contains proposals from the Department of Internal Affairs (**DIA**), the Ministry of Business, Innovation, and Employment (**MBIE**), and the Department of Conservation (**DOC**) as follows:

- DIA is proposing amendments to allow certain services offered by Births, Deaths and Marriages to be completed without requiring statutory declarations, and to remove some restrictions on the use of photographs stored in the Identity Verification Service with the consent of the subject of the photograph; and
- MBIE is proposing amendments that relate to requirements to “appear before” government agencies in certain proceedings, and that would allow certain types of notices to be provided electronically; and
- DOC is proposing amendments relating to the online sale of game hunting licences and online voting for Fish and Game Council elections.

### Proposals from Department of Internal Affairs

#### *Removing requirement for statutory declarations for services offered by Births, Deaths and Marriages*

Government agencies commonly require individuals to complete a statutory declaration where it is considered necessary to minimise the risk of false or incomplete information being provided. It is an offence under the Crimes Act 1961 to make a false statutory declaration, punishable by up to 3 years’ imprisonment.

A statutory declaration requirement may enhance the integrity of an interaction, but it also restricts the development of end-to-end digital services. A statutory declaration cannot be completed remotely because it must be signed in the presence of a person authorised to witness the statutory declaration. The Electronic Transactions Act 2002 does not enable electronic statutory declarations.

The Bill will allow individuals to apply electronically for services offered by Births, Deaths and Marriages that cannot be applied for electronically because of a requirement to complete a statutory declaration. The information that is currently verified by way of statutory declaration would be verified in alternative ways in a manner specified in regulations or by the Registrar-General of Births, Deaths and Marriages, to maintain the integrity of those processes.

#### *Removing some restrictions on use of photographs stored in Electronic Identity Verification Service database*

DIA provides the Government’s common login and online identity verification service (**RealMe**) in partnership with New Zealand Post. The photographs of verified identity holders collected during the application process are stored in the identity verification service (**IVS**) database. IVS photographs may only be disclosed in accordance with the Electronic Identity Verification Act 2012 (**the EIV Act**).

Under EIV Act, the use of an IVS photograph is subject to several limitations, even if the individual consents to that photograph being used for another service or product. The limitations were originally put in place to help ensure that the use of IVS photographs is consistent with the principles of RealMe—a voluntary, consent-based service that permits the delivery of online services in a secure and privacy-protected way and that allows individuals to have control of their information.

Some organisations have expressed interest in using IVS photographs to replace manual requirements for physical photographs. The Bill will enable an IVS photograph, defined in the Bill as an electronic identity photograph, to be disclosed to organisations with the individual's consent in the following 3 situations:

- where an individual's photograph is displayed on a photographic identification card (for example, an 18+ card); and
- where an individual's photograph is displayed on a mobile app (for example, a future driver licence mobile app); and
- where an individual's photograph is displayed on a public register.

The Bill will also allow for future changes to the use of electronic identity photographs to be made through an Order in Council, rather than by amending the EIV Act.

## **Proposals from Ministry of Business, Innovation and Employment**

### *Individuals or businesses interacting with government agencies*

Certain legislation requires individuals or businesses to “appear before” government agencies. In the absence of specific provisions, providing this type of interaction in a digital environment is not permitted by the Electronic Transaction Act 2002.

The Bill amends certain Acts to specify that where the government agency agrees, the individual or business concerned can appear remotely using electronic means (such as an audio or video link).

### *Government agencies interacting with individuals or businesses*

A government agency will sometimes be required to send information, notices, etc. to individuals or businesses, either in response to a communication from an individual or business or on the agency's own initiative.

Although the Electronic Transactions Act 2002 allows for email communication if the recipient consents, individuals or businesses may unreasonably refuse consent to the communication being in electronic form; for example, the person may refuse consent to avoid receiving a notice. At other times, it may be difficult for a government agency to find a physical or postal address for the intended recipient of a document or notice.

Certain Acts within the Commerce and Consumer portfolio contain provisions that do not expressly allow for the sending of general notices by email. The Bill amends legislative provisions requiring paper-based communication from government agencies to allow for email transmission, with the qualification that recipients have a defence if they can prove that they did not in fact receive an emailed notice.

## Proposals from Department of Conservation

### *Enabling digital creation of game bird hunting licences*

Under section 19A(1) of the Wildlife Act 1953, the Minister of Conservation may require that a game bird habitat stamp “be affixed to every licence to hunt or kill game”. The requirement to attach a stamp enables the New Zealand Game Bird Habitat Trust Board to collect revenue for its work. However, this requirement creates an impediment for the online sale of game bird hunting licences.

Further, in the future there is expected to be a demand for electronic non-physical licences. These might be carried by recreational game hunters in the form of an image on a portable electronic device. Attaching a physical stamp to a non-physical licence is not possible. Allowing the incorporation of an image of a game bird habitat stamp within a game hunting non-physical licence will meet the anticipated future need.

The Bill amends section 19A of the Wildlife Act 1953 to allow the image of the current year’s game bird habitat stamp to be incorporated within a licence to hunt or kill game as an alternative to physically attaching an actual stamp to the licence. That change would allow the online sale of game bird hunting licences and would also support likely future demand for electronic non-physical licences.

### *Enabling online voting in Fish and Game Council elections*

Every holder of an adult whole-season licence for sports fishing or game hunting is entitled to vote in Fish and Game Council elections (see section 26Y(1) of the Conservation Act 1987). Currently, section 26Z(1) of the Conservation Act 1987 stipulates that voting in Fish and Game Council elections must be by postal ballot. This prevents voting in Fish and Game Council elections via the Internet.

The Bill amends section 26Z(1) of the Conservation Act 1987 to allow for voting via the Internet, alongside postal voting, in Fish and Game Council elections.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
The Regulatory Impact Analysis team advised that RIA requirements do not apply to the proposals in the Bill.	
<b>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?</b>	<b>NO</b>

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>The Department of Conservation considers that removing the requirement to attach a physical game bird habitat stamp will enable up to 37,000 transactions annually to be completed online.</p> <p>The Department of Conservation considers that enabling online voting alongside postal voting in fish and game council elections will enable up to 94,000 transactions to be completed online once every three years.</p> <p>The Department of Internal Affairs considers that allowing individuals to complete Births, Deaths and Marriages services that currently require a statutory declaration to apply electronically without a statutory declaration will enable up to 32,000 transactions to be completed online annually.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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The Bill's proposals do not make substantial policy changes and are expected to be consistent with New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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The Bill's proposals do not make substantial policy changes and are expected to be consistent with the principles of the Treaty of Waitangi.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>
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NO
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>
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YES
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The Bill has four clauses that introduce new offences and/or penalties. The clauses amend the offence provisions in the Births, Deaths, and Marriages and Relationships Registration Act 1995, the Civil Union Act 2004, the Marriage Act 1955 and the Electronic Identity Verification Act 2012.
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The new offence/and penalties provisions in the Births, Deaths, and Marriages and Relationships Registration Act 1995, the Civil Union Act 2004, and the Marriage Act 1995 relate to making false or misleading statements and false declarations. These clauses are included in the Bill as the Department of Internal Affairs will not be able to prosecute for false declarations under the Crimes Act 1961 in relation to declarations made electronically.
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The offence provision in the Electronic Identity Verification Act 2012 extends a current offence to include the inappropriate use of an individual's photo as well as their verified identity information.
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The Ministry of Justice has no concerns about any of the new offences or the penalties.
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>
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NO
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## Privacy issues

<b>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?</b>	<b>YES</b>
The Office of the Privacy Commissioner was consulted early with respect to the proposals concerning the use of the IVS photograph.	
<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Office of the Privacy Commissioner noted the need to go through the Privacy Impact Assessment process.	

## External consultation

<b>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?</b>	<b>YES</b>
The Department consulted with a range of service delivery agencies, primarily involved in Better Public Services Results 9 and 10. The Department received minor feedback on the policy proposals and this was incorporated in to the Cabinet paper where appropriate.	

## Other testing of proposals

<b>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?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
The Bill includes a clause amending an existing provision in the Electronic Identity Verification Act 2012 that provides the Crown or a Minister of the Crown, or any other person protection from liability over use of an electronic identity credential. The proposed amendment extends this protection to use of the IVS photograph.	

### Significant decision-making powers

<b>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?</b>	<b>NO</b>
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### Powers to make delegated legislation

<b>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?</b>	<b>YES</b>
The Bill has clauses that would allow the IVS photograph to be supplied to participating agencies for purposes set out in the Electronic Identity Verification Act 2012 and for additional purposes permitted by Order in Council made under this Act.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill includes clauses to make regulations under:</p> <ul style="list-style-type: none"> <li>• the Births, Deaths, Marriages, and Relationships Registration Act 1995 to prescribe the manner in which information on name change forms is verified when completed electronically; and</li> <li>• the Marriage Act 1955 and Civil Union Act 2004 to prescribe the information required on the forms for the services that currently require a statutory declaration.</li> </ul> <p>The Bill extends current regulation making powers under the Electronic Identity Verification Act 2012 to recommend regulations to omit names of participating agencies in relation to how the agency uses the IVS photo.</p>	

#### Any other unusual provisions or features

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