

Departmental Disclosure Statement

Enhancing Identity Verification and Border Processes Legislation 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 Ministry of Justice.

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

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Part One: General Policy Statement

The 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. That policy is to strengthen the ability of agencies within the wider justice community (including border-control agencies) to effectively and efficiently perform their functions related to law enforcement, including the detention of restricted patients, special patients, special care recipients, and other offenders.

To implement this policy, the Bill provides for better information flows between the agencies in relation to personal information (including biometric information). The collection and sharing of information will enable better identity verification of individuals for the purposes of preventing, detecting, investigating, and prosecuting offences. It will also enable better management of offenders, special care recipients, special patients, and restricted patients. In particular it will facilitate more robust mechanisms at the border to ensure that those classes of persons are not able to leave New Zealand without authorisation.

This Bill responds to weaknesses in legislation regarding offender and patient management identified in the Government Inquiry into Matters Concerning the Escape of Phillip John Smith/Traynor.

The Bill also contributes to the Government's priority of delivering better public services by reducing crime and reoffending.

Key policy decisions implemented in this Bill include—

- authorising specified agencies to access and use identity information, including biometric information, to verify the identity of individuals within the justice system and out to the border; and
- authorising the sharing of birth, death, marriage, civil union, and name change information with specified agencies for law enforcement purposes; and
- clarifying the ability of the New Zealand Customs Service to collect, use, and disclose biometric information about persons arriving in or departing from New Zealand; and
- clarifying that special care recipients, special patients, and restricted patients may not leave their secure facility or New Zealand unless authorised; and
- providing for the collection of biometric information from special care recipients, special patients, and restricted patients to strengthen the management of these patients, ensure their safety, and mitigate the risk of breaches of conditions; and
- authorising the sharing of photographic images of driver licence holders for law enforcement and identity verification purposes; and
- strengthening standard release conditions to prohibit offenders on sentences or parole conditions from leaving New Zealand without the prior written consent of their probation officers; and
- providing for the collection of biometric information from offenders to better identify offenders at New Zealand's borders and enforce the conditions specified for those individuals.

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
Government Inquiry into matters relating to Phillip John Smith/Traynor, Hon Dr. John Priestley, CNZM, QC, (Chair) and Mr Simon Murdoch, CNZM, (Member), 1 October 2015. Found here: https://www.ssc.govt.nz/govt-inquiry-smith-traynor	

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
Facilitating better information sharing: Using personal information for identity verification purposes in law enforcement, Ministry of Justice, 18 November 2015: http://www.justice.govt.nz/policy/regulatoryimpactstatements Identifying offenders attempting to unlawfully leave New Zealand, Ministry of Justice, 18 November: http://www.justice.govt.nz/policy/regulatoryimpactstatements Preventing special patients, restricted patients and special care recipients from leaving New Zealand without permission, Ministry of Health, 18 November 2015: http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements Access to Photographic Images of Driver Licence Holders, Ministry of Transport, 18 November 2015: http://www.transport.govt.nz/about/publications/ris-bccs/ Customs and Excise Review: Biometric information, New Zealand Customs Service, 16 September 2015: http://www.customs.govt.nz/news/resources/customs-and-excise-act-review/Pages/default.aspx	

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?	NO
The Ministry of Justice, Ministry of Health, Ministry of Transport and NZ Customs Service consulted the Treasury and it was agreed that the Regulatory Impact Statements did not meet the threshold for RIA Team assessment.	

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?	NO

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?	NO
(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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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?
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The Ministry of Justice, as the lead agency on this Bill which is also responsible for international obligations relating to individual rights, is comfortable with the contents of the Bill from an international obligations perspective. This includes the consideration of the International Covenant on Civil and Political Rights and the Organisation for Economic Cooperation and Development Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

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 Ministry of Justice, as the lead agency on this Bill which is also responsible for constitutional matters, is comfortable with the contents of the Bill from a Treaty of Waitangi and general constitutional perspective.

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

A draft version of the Bill was provided to the Crown Law Office on 16 May 2016. The final version of the Bill was provided to the Crown Law Office on 8 June 2016. The Crown Law Office vetted the Bill for compliance with the New Zealand Bill of Rights Act 1990. Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are 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:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?
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NO

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

Most clauses relate to personal information. Namely, clauses 3-11, 13-23, 25-26, 29, 31, 33-34, 38, 40, 42-45, 47-54.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The comments from the Privacy Commissioner were considered as part of agency consultation. The suggestion that direct access agreements in the Customs and Excise Act 1996 (clause 20) be published and any variations made to these agreements be consulted on with the Privacy Commissioner was incorporated into the Bill. Other drafting suggestions were considered unnecessary for primary legislation or unworkable. The remaining suggestions related to the policy being implemented in the Bill and were previously considered by Cabinet when it agreed to the policy proposal.</p>	

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?	NO
<p>Consultation has been limited to government agencies as users of the provisions to ensure it can be implemented effectively. Select Committee will provide the public with the opportunity to comment on the Bill.</p>	

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?	NO

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?	NO

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?	NO
(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
<p>Clauses 27 and 35 authorise the relevant Health Officials to direct special patients, restricted patients and special care recipients (specified patients) to allow the collection of biometric information. Additionally, clauses 43-45 and 49-54 enable the relevant Corrections Officials to collect biometric information from offenders being managed by probation officers. The existing threshold for when individuals are to be considered specified patients or offenders and that the information must only be collected to ensure these individuals are effectively managed provides the necessary safeguards to balance safety and individual rights.</p> <p>Clauses 28 and 36 provide that specified patients are not to leave the secure facility to depart from New Zealand without permission of the Minister or relevant Health Official. Clauses 49-53 provide that offenders being managed by a probation officer cannot leave New Zealand without written consent of the probation officer. The existing threshold for when individuals are to be considered specified patients or offenders and the existing threshold for granting leave provides the necessary safeguards to balance safety and individual rights.</p>	

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?	YES
<p>Part 1 creates a schedule in the Privacy Act 1993 to provide for the sharing of identity information. Clause 6 provides for items to be added, removed, amended or replaced to the schedule, or for the schedule to be repealed and substituted by the Governor-General by Order in Council (on recommendation of the responsible Minister). This is safeguarded by the empowering provision setting clear parameters for the schedule. Any amendments to the empowering provision will require legislative change. Any change to the schedule requires consultation with the Privacy Commissioner, which provides a check and balance on the process.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill amends the regulation making power in section 135(1)(f) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (clause 39 refers). The amendment to the existing power will include the ability to create and amend regulations relating the collection of biometric information from special and restricted patients.</p>	

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