

# Departmental Disclosure Statement

---

Child Protection (Child Sex Offender Government Agency Registration) Amendment 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 Sue Montgomery of the New Zealand Police.

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.

02 March 2017

**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 ..... 8

Appendix One: Further Information Relating to Part Two..... 10

Appendix Two: Further Information Relating to Part Three ..... 11

Appendix Three: Further Information Relating to Part Four ..... 12

## Part One: General Policy Statement

The purpose of the Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill is to amend the retrospective application of the principal Act (Schedule One) so that all relevant child sex offenders will be registerable under the Act as originally intended.

The policy intent of the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the Act) was to provide retrospective provisions which, at the commencement of the Act, would provide for registration of all offenders subject to sentences of imprisonment or other forms of offender management, and those yet to be sentenced when the Act came into force, who would have been registrable offenders if they had been convicted after the commencement of the Act. Following commencement of the Act, it was determined that there are three groups of offenders who were intended to be subject to the Act but to whom the legislation did not in fact apply.

The additional groups are:

- I. Child sex offenders serving short-term sentences (two years or less imprisonment) who had reached their Statutory Release Date before 14 October 2016, had a Sentence Expiry Date after 14 October 2016 and were subject to release conditions at 14 October 2016.
- II. Child sex offenders on long-term or short-term sentences of imprisonment who reached their Sentence Expiry Date before 14 October 2016 and were on release or post release conditions at 14 October 2016.
- III. Child sex offenders who were convicted of a qualifying offence prior to 14 October 2016 and (i) sentenced to imprisonment after 14 October 2016, or (ii) sentenced after 14 October 2016 to a non-custodial sentence and ordered by the court to be placed on the register.

It is important that all child sex offenders who are serving a qualifying sentence, or are still subject to any conditions or requirements relating to that sentence, or yet to be sentenced for a qualifying offence when the Act came into force on 14 October 2016, be eligible for the child sex offender register.

Registration of these child sex offenders will provide New Zealand Police and the Department of Corrections with access to personal information that allows them to proactively monitor the individual child sex offender's risk of reoffending while in the community and to act accordingly to address that risk. It also provides the opportunity for the sharing of registered child sex offenders' personal information with other government agencies in the interest of public safety.

## 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?	NO

### 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?	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

<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 number of child sex offenders affected by this Bill is as follows:</p> <p><i>Group One</i> - child sex offenders serving short-term sentences (two years or less imprisonment) who had reached their Statutory Release Date before 14 October 2016, had a Sentence Expiry Date after 14 October 2016 and were subject to release conditions at 14 October 2016 – 29 child sex offenders affected as of 14 October 2016.</p> <p><i>Group Two</i> - child sex offenders on long-term or short-term sentences of imprisonment who reached their Sentence Expiry Date before 14 October 2016 and were on release or post release conditions at 14 October 2016 - 78 child sex offenders affected as of 14 October 2016.</p> <p><i>Group Three</i> - child sex offenders who were convicted of a qualifying offence prior to 14 October 2016 and (i) sentenced to imprisonment after 14 October 2016, or (ii) sentenced after 14 October 2016 to a non-custodial sentence and ordered by the court to be placed on the register – 68 child sex offenders affected as of 14 October 2016, which includes those not yet sentenced.</p> <p>This is the most up-to-date information.</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>
--

This is a technical amendment to reflect the policy intention of the principal Act. There are no additional implications for New Zealand's international obligation in this Bill.
---

### 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>
---

This is a technical amendment to reflect the policy intention of the principal Act. It is consistent with the principles of the Treaty of Waitangi.
---

### 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>	<b>YES</b>
---	------------

This is a technical amendment to an existing Act. The Attorney-General did conclude in his section 7 report on the Bill that became the principal Act that the retrospective provisions of the Bill did limit the rights in section 26(2) of BORA more than reasonably necessary. The application of these limitations on the rights against double jeopardy is continued in the Amendment Bill to reflect the original policy intent of the principal Act.
---

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	<b>NO</b>
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	<b>NO</b>

---

### 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>NO</b>
---	-----------

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of Privacy Commissioner was consulted and responded as follows:</p> <p><i>We've identified no issues we wish to comment on from our review of these papers and are pleased for the submission to note our Office was consulted.</i></p>	

### 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>
<p>The Department of Corrections has been consulted on, and supports, the draft of this Bill.</p> <p>The following agencies have also been consulted on the draft Bill: Ministry of Justice; Treasury; Accident Compensation Corporation; Crown Law; Ministry of Education; Ministry of Social Development; Ministry for Women; Ministry for Pacific People; Office of the Privacy Commissioner; Customs; Department of Internal Affairs; Te Puni Kokiri; State Services Commission. The Department of the Prime Minister and Cabinet has been informed.</p>	

### 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>

## 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>

### 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>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>The principal Act contains retrospective provisions that require qualifying child sex offenders be registered and subject to reporting obligations. The Attorney-General did conclude in his section 7 report on the Bill that became the principal Act that the retrospective provisions of the Bill did limit the rights in section 26(2) of BORA more than reasonably necessary.</p> <p>It is considered there are no additional human rights considerations in this Bill. While this Bill in effect seeks to give fuller effect to the retrospective application of the principal Act, the purpose is to reflect the original policy intent of the principal Act.</p>	

### 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>NO</b>

### 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>



### 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>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### 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>

## **Appendix One: Further Information Relating to Part Two**

*No further information*

## **Appendix Two: Further Information Relating to Part Three**

*No further information*

## **Appendix Three: Further Information Relating to Part Four**

*No further information*