

# Departmental Disclosure Statement

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Health (National Cervical Screening Programme) 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 the Ministry of Health.

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

9 February 2018.

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## **Part One: General Policy Statement**

The Health (National Cervical Screening Programme) Amendment Bill (the Bill) amends Part 4A of the Health Act 1956 (the Act) to enable National Cervical Screening Programme Register (the Register) staff, health professionals who provide services to women along the cervical screening pathway (such as smear takers and laboratory and colposcopy staff and associated administration staff), and screening support services staff to directly access information from the Register for the purposes of conducting their work.

Currently smear takers in primary care need to wait for clinical information to be faxed to them by authorised Register staff, and access to the Register for laboratory and colposcopy staff needs to be authorised by the Director-General of Health. The amendments would enable direct (look-up) access to the Register for these groups, and for this access to be incorporated into the future re-design of the Register.

The relevant provisions of the Privacy Act 1993, the Health Information Privacy Code 1994, health professional regulatory constraints as well as employment and contract law are unaltered by the amendments. The National Cervical Screening Programme manager retains administrative control over granting secure access to the Register and access to the Register will remain an auditable activity.

The existing offence provisions that apply to the disclosure of information from the Register have been amended to reflect the introduction of direct access to the Register. A new offence will be created for amending the Register without the authorisation of the National Cervical Screening Programme manager.

## 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>YES</b>
<p>The Report of the Committee of Inquiry into Allegations Concerning the Treatment of Cervical Cancer at National Women’s Hospital and Other Related Matters (1988) (the Cartwright Enquiry) and the Report of the Ministerial Inquiry into the Under-Reporting of Cervical Smear Abnormalities in the Gisborne Region (2001) have shaped the law and practice surrounding cervical screening in New Zealand. The Bill is consistent with approaches adopted by these reports.</p> <p><a href="http://www.moh.govt.nz/notebook/nbbooks.nsf/0/64D0EE19BA628E4FCC256E450001CC21/\$file/The%20Cartwright%20Inquiry%201988.pdf">http://www.moh.govt.nz/notebook/nbbooks.nsf/0/64D0EE19BA628E4FCC256E450001CC21/\$file/The%20Cartwright%20Inquiry%201988.pdf</a></p> <p><a href="http://www.moh.govt.nz/notebook/nbbooks.nsf/0/a79b9e52f04d57e5cc256a9f006f1687/\$FILE/csireport.pdf">http://www.moh.govt.nz/notebook/nbbooks.nsf/0/a79b9e52f04d57e5cc256a9f006f1687/\$FILE/csireport.pdf</a></p>	

### 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>

### 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>
<p>A Regulatory Impact Statement was not required because the proposed amendments are technical revisions that substantially re-enact the current law to clarify the existing legislative intent</p>	

### 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>

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

<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>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>There would be costs to the National Cervical Screening Programme if the slightly increased number of people who will have direct access to the Register do not comply with their privacy obligations and professional restrictions. This could result in a loss of confidence in the Programme and a potential reduction in participation. To mitigate this risk, Programme staff will continue to communicate privacy obligations for new Register users and will reiterate privacy obligations during future upgrades to the Register and/or the screening programme itself.</p>	

## 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 Ministry of Foreign Affairs and Trade (MFAT) was included in departmental consultation on the 2016 policy development for the Bill and the February 2018 legislation development of the Bill. No issues were raised in respect of international obligations.

### 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?

Te Puni Kōkiri, district health boards, the chair of the Māori Monitoring and Equity Group, the Women's Health Action Group and the Federation of Women's Health Councils were all consulted on the policy development of the Bill. No Treaty of Waitangi issues were raised. Te Puni Kōkiri was consulted on the February 2018 legislation development of the Bill.

### 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

The Attorney-General will publish a determination of the Bill's consistency with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 in due course.

### 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

The existing offence provisions at section 112ZP of the Act (which apply to the disclosure of information from the Register) have been amended to reflect the introduction of direct access to the Register. The Bill otherwise substantively retains the existing offences in relation to Part 4A of the Health Act (National Cervical Screening Programme).

The Bill also creates a new offence to amend the Register without the authorisation of the National Cervical Screening Register manager. The new offence recognises that the existing offence provisions do not cover 'amending' the Register. The Bill would enable a small number of people to amend the Register in order to meet the policy aim of supporting the National Cervical Screening Programme and health care providers to deliver the primary objectives of the cervical screening programme.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was included in departmental consultation on the 2016 policy development for the Bill and in the February 2018 legislation development of the Bill.	

## 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 Bill provides for direct access to National Cervical Screening Register information for people who require the information to undertake their work. This access currently requires appointments to be made by the Director-General of Health.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
The Office of the Privacy Commissioner was included in the consultation on the 2016 policy development for the Bill and in the February 2018 legislation development of the Bill. In response to the 2018 consultation, the Privacy Commissioner <i>“is satisfied the proposed amendments are consistent with the principles set out in the Privacy Act 1993 and the Health Information Privacy Code 1994. The expanded access to the register will support the purpose and objectives of the NCSP. The proposed use and disclosure will either fall within the original purpose for collecting the information or will directly relate to that purpose. Expanded access comes with increased privacy risk, however the Bill provides for this risk to be mitigated by operational controls”</i> .	

## 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 2016 consultation on the policy development for the Bill included district health boards, the chair of the Māori Monitoring and Equity Group, the Women’s Health Action Group and the Federation of Women’s Health Councils.	

## 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>NO</b>

### 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>