

Departmental Disclosure Statement

Crimes 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 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.

13 March 2018

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Part One: General Policy Statement

This Bill repeals 3 provisions in the Crimes Act 1961 (the **Act**).

Section 71(2) of the Act protects spouses and civil union partners in cases where they would otherwise be an accessory after the fact to an offence. It gives an immunity to a person who assists their spouse or civil union partner and any other party to the offence to escape after arrest or to avoid arrest or conviction. Section 71(2) is inconsistent with the way that spouses and civil union partners are generally treated in the law. This protection also creates an anomaly in the law because it does not apply to other classes of people who are protecting someone in a close personal relationship.

Section 123 of the Act contains an offence of blasphemous libel. This offence has not been prosecuted in New Zealand since 1922 and may conflict with freedom of expression now protected under the New Zealand Bill of Rights Act 1990.

The Bill also repeals the year-and-a-day rule contained in section 162. The rule provides that no one is criminally responsible for the killing of another person unless the death takes place within a year and a day after the cause of death. There have been calls in New Zealand for the repeal of this rule for decades and most like-minded countries have already done so.

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
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Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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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
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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?

The Ministry of Justice has been cognisant of the rights under the International Covenant on Civil and Political Rights relating to freedom of thought, conscience and religion and the right to freedom of expression, including those rights as reflected in the New Zealand Bill of Rights Act in developing the policy.

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 analysed the Bill and did not identify any implications for the rights and interests of Maori protected by the Treaty of Waitangi.

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?

NO

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

(a) Clause 5 repeals the offence of blasphemous libel (section 123 of the Crimes Act).

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The policy was developed in the Ministry of Justice and consideration was given to the effect of repeal on the offence framework under the Crimes Act 1961 and rights recognised in the New Zealand Bill of Rights Act.

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?

NO

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 New Zealand Police and Crown Law Office were consulted on the policy and the draft Bill. Neither agency identified any problem with the policy nor the Bill.	

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
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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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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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?	YES
<p>Clause 4 removes the immunity from prosecution for spouses and civil union partners as accessories after the fact.</p> <p>Clause 6 removes the immunity from prosecution for those who cause the death of another where the victim dies longer than a year and a day after the relevant act or omission.</p> <p>The provisions are necessary to ensure that those who cause death or obstruct justice do not rely on outdated and unjustified protections to avoid prosecution. As the repeal of the immunities will not operate retrospectively this will ensure that defendants who are entitled to rely, or previously relied, on the provisions will not be adversely affected.</p>	

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