

# Short-Form Departmental Disclosure Statement

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Heritage New Zealand Pouhere Taonga Bill
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A short form disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

There was no original disclosure statement for this Bill.

This disclosure statement was prepared by the Ministry for Culture and Heritage.

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

30 April 2014

# Significant Legislative Features

## Offences, penalties and court jurisdictions

<b>1. Do the proposed amendments create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>(a) <i>The Supplementary Order Paper includes two new offences in the following provisions:</i></p> <p>(1) <i>Clause 89(1A) which provides, ‘Every person who fails to comply with the requirements of section 53(2) commits an offence’. Section 53(2) requires the owner of land over which an archaeological authority applies to give notice to Heritage New Zealand Pouhere Taonga and advise the successor in title of various matters before the change of ownership.</i></p> <p>(2) <i>Clause 89(1B) which provides, ‘Every person who contravenes, or permits a contravention of, an order made under section 90 commits an offence’. Section 90 provides Heritage New Zealand Pouhere Taonga may apply to the Environment Court for an enforcement order prohibiting any person from taking any action or omitting to act if that action or omission is likely to be an offence or a breach of a duty or obligation under the Act.</i></p> <p><i>These new provisions ensure there are sanctions for:</i></p> <ul style="list-style-type: none"> <li>• <i>actions that have an adverse effect on property rights (that is, not advising potential owners of obligations that affect land they may wish to purchase)</i></li> <li>• <i>contravening an order of the Environment Court.</i></li> </ul> <p><i>The Supplementary Order Paper also provides in Clause 89A that principals are liable for the acts of agents. This is modelled on the relevant provisions of the Resource Management Act 1991.</i></p> <p><i>The level of proof required for offences contained in clauses 83, 84 and 89 is amended to more closely follow the current Historic Places Act 1993 (HPA) and the Bill as first introduced. The changes involve reintroducing the concept of ‘reasonable cause to suspect’. This is a well understood concept in criminal law, and has been the subject of several decisions arising from prosecutions under the HPA.</i></p> <p>(b) <i>Clause 91 provides for the offence provisions being heard in the District Court and, except where otherwise directed by the Chief District Court Judge, by a District Court Judge who is an Environment Court Judge. Proceedings under section 90 (relating to enforcement orders) except for interim orders, must be heard by an Environment Judge sitting alone or by the Environment Court. Proceedings relating to interim enforcement orders are to be heard by an Environment Judge sitting alone. This provides each proceeding is heard in the appropriate jurisdiction.</i></p>	

<b>1.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<i>The Ministry of Justice reviewed the Supplementary Order Paper and provided comments on the draft provisions. In particular, the Ministry of Justice queried the drafting of the provisions. MCH advised the Ministry of Justice of the final drafting, which is modelled as much as possible on the Resource Management Act 1991 (RMA). The underlying policy intent of the Bill is to align with the RMA.</i>	

## Privacy issues

<b>2. Do the proposed amendments 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>
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<b>2.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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## Compulsory acquisition of private property

<b>3. Do the proposed amendments 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. Do the proposed amendments 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>5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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## Strict liability or reversal of the burden of proof for offences

<b>6. Do the proposed amendments:</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 any offence or civil pecuniary penalty proceeding?</b>	<b>NO</b>

## Civil or criminal immunity

<b>7. Do the proposed amendments create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<b>8. Do the proposed amendments 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>9. Do the proposed amendments 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>
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<b>10. Do the proposed amendments create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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## Any other unusual provisions or features

<b>11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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