

Departmental Disclosure Statement

Drug and Alcohol Testing of Community-based Offenders and Bailees 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 Department of Corrections.

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

31 July 2014

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

Part One: General Policy Statement

This Bill enables the Department of Corrections and the New Zealand Police to require community-based offenders and bailees, if they are subject to conditions prohibiting the use of drugs or alcohol, to undergo drug and alcohol testing to ensure compliance with these conditions. The Bill would give effect to this policy through amendments to the Bail Act 2000, the Sentencing Act 2002, and the Parole Act 2002.

A condition prohibiting the use of a controlled drug or the consumption of alcohol (a drug or alcohol condition) can be imposed by the court as a condition of bail or a sentence, or by the Parole Board as a condition of release on parole. The imposition and enforcement of a drug or alcohol condition plays an important role in preventing re-offending and ensuring public safety. However, current legislation does not provide a clear authority to test offenders or bailees for the presence of drugs and alcohol. This Bill addresses this position by creating an explicit legislative mandate for drug and alcohol testing of liable offenders and bailees.

The Bill allows the Chief Executive of the Department of Corrections and the Commissioner of Police to make and publish rules relating to drug and alcohol testing methods and procedures. The Bill establishes 3 principles with which these rules must be consistent: that testing should be no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; that testing should take place no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and that those liable to testing and monitoring should be afforded as much privacy and dignity as is reasonably practicable.

The Bill establishes that a positive test for the presence of a drug or alcohol can be used as evidence of non-compliance with a drug or alcohol condition, and sets out the consequences of non-compliance with a test, and of a refusal or failure to submit to continuous monitoring. The Bill also creates a new offence of refusing entry to an authorised person where the person requires entry for certain purposes related to continuous monitoring through a drug or alcohol monitoring device.

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
<p>"Admissibility of the SCRAM Remote Transdermal Alcohol-Monitoring Device Upheld by South Dakota Supreme Court", <i>The Journal of the American Academy of Psychiatry and the Law</i>, 39(1) 2011.</p> <p>"Effectiveness of the SCRAM Alcohol Monitoring Device: a Preliminary Test", <i>Drug Court Review</i>, National Drug Court Institute, Virginia, 6(2) 2009.</p>	

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?	YES
<p>A Regulatory Impact Statement was provided to inform the policy decisions leading to this Bill. Alcohol and Drug Testing of Offenders and Bailees in the Community, Department of Corrections, August 2013, will be available on-line at:</p> <ul style="list-style-type: none">• http://www.treasury.govt.nz/publications/informationreleases/ris• http://www.corrections.govt.nz/resources.html	

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
<p>The RIS identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury.</p>	

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
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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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Analysis is available in the RIS identified above.	

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?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
Analysis is available in the RIS identified above.	

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 policy and the Bill have been considered by officials from the Department of Corrections with experience of international obligations in the justice sector.
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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?

Policy consideration of the changes made by the Bill assessed the likely impact on Māori. Officials from the Department of Corrections consulted with Te Puni Kōkiri on the policy and the Bill.
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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:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

This Bill creates an explicit legislative mandate for alcohol and drug testing of offenders and bailees who have had a condition imposed by the court or Parole Board to abstain from alcohol or drugs. The Bill establishes that a positive test for the presence of alcohol or drugs or non-compliance with a test is a breach of the conditions of bail or community-based sentence/order. The Bill also creates a new offence of refusing or failing to provide entry to an authorised person for the purpose of servicing or inspecting testing equipment.

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

YES

Consulted with Justice on both the policy and the Bill, via email.
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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?	NO
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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?	YES
<p>Drug and alcohol testing of offenders has been a component of the Alcohol and Other Drug Treatment Court (AODT Court) pilot, which commenced operation at the Auckland and Waitakere District Courts in November 2012. The AODT Court provides selected defendants, who are facing a term of imprisonment of up to three years, with an opportunity to participate in an AoD treatment programme before sentencing.</p> <p>While the pilot not test the policy provided for in this Bill, it provides a useful operational example of the use of alcohol and drug testing technologies and procedures in a New Zealand context.</p> <p>An evaluation of the AODT Court pilot is available online at:</p> <ul style="list-style-type: none">• http://www.justice.govt.nz/courts/district-court/alcohol-and-other-drug-treatment-aodt-court-pilot-1	

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?	YES
<p>The following offences include a reverse onus component in that the defendant or offender is required to prove they have a “reasonable excuse”:</p> <ul style="list-style-type: none">Refusing or failing, without reasonable excuse,-<ul style="list-style-type: none">to undergo a testing procedure when requiredto submit to continuous monitoring when requiredto accompany an authorised person, when required, to a place where it is likely that it will be reasonable practicable for the offender to undergo testing (refer to amendments to: the Bail Act 2000 in s. 30U; the Parole Act 2002 in s. 71A, and; the Sentencing Act 2002 in s. 70AAA, 70AA and 80SA).The defendant or offender commits an offence if they refuse or fail, without reasonable excuse, to allow an authorised person to enter their residential address for the purpose of installing, servicing, inspecting or removing continuous monitoring equipment (refer to amendments to: the Bail Act 2000 in s. 36B; the Parole Act 2002 in s. 72A, and; the Sentencing Act 2002 in s. 80ZQ) <p>These offences have been treated in this way because the accused person is best placed to give evidence as to the existence of a reasonable excuse.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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
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The Bill creates an explicit legislative mandate to enable the Department of Corrections and New Zealand Police to require alcohol and drug testing of offenders and bailees who have had a condition imposed by the court or Parole Board to abstain from alcohol or drugs. The Bill allows the Chief Executive of the Department of Corrections and the Commissioner of Police to make rules, for eligible community-based offenders and bailees respectively, setting out testing methods and procedures. These rules must be consistent with the following three principles: that testing should be no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; that testing should take place no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition, and; that those liable to testing and monitoring should be afforded as much privacy and dignity as is reasonably practicable.

It is also important to note that the evidence obtained from testing may only be used to verify compliance with the conditions of bail or community-based sentence or order. The evidence must not, for example and without limitation, be used as evidence that the person has committed an offence against the Misuse of Drugs Act 1975.

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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