

Departmental Disclosure Statement

Returning Offenders (Management and Information) 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.

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Part One: General Policy Statement

The Bill establishes a regime for the identification and management of offenders returning to New Zealand after being sentenced to more than one year's imprisonment in an overseas jurisdiction.

Increasing numbers of offenders, including some who pose a risk to the safety of the public, are being removed or deported to New Zealand. At present, most offenders returning to New Zealand are not subject to any formal supervision or interaction with police.

Interaction with Police (all 'returning offenders')

The Bill will require all offenders returning to New Zealand following an offence involving conduct that would constitute an imprisonable offence against New Zealand law ('returning offenders') to provide New Zealand Police with identifying information (including photographs and fingerprints). This would supplement any information obtained from other jurisdictions in order for Police to have a reliable record of the offender's identity and to establish, among other things, whether they qualify for management by the Department of Corrections as a 'returning prisoner' under this Bill. Offenders whose conduct would amount to an imprisonable offence in New Zealand will also be required to provide Police with a sample of their DNA for the DNA profile databank. Similar powers to obtain information would have been available to Police had the offender committed the offence in New Zealand.

Interaction with the Department of Corrections ('returning prisoners' only)

Returning prisoners will be managed in the community by the Department of Corrections on a comparable basis to offenders released with conditions from a sentence of imprisonment in New Zealand. Once the Commissioner of Police has identified an offender as meeting the criteria for a returning prisoner, and serves them with a determination notice to that effect, they will automatically be subject to the standard release conditions provided in the Parole Act 2002. Offenders will have to be identified as returning prisoners within six months of their return to New Zealand.

The Department of Corrections will also be able to apply to the court for special release conditions to be imposed on the returning prisoner (including, on an interim basis, in advance of their arrival if the court considers it immediately necessary). The management of returning prisoners under standard and any special release conditions will assist their rehabilitation and reintegration into New Zealand, and reduce their risk of reoffending.

Other categories of returning offenders

Some returning offenders will not automatically qualify for management as a returning prisoner because they were released from an overseas prison into the supervision of a Correctional agency more than six months before their return to New Zealand. Where these offenders were subject to monitoring or supervision immediately prior to their return, the Bill empowers the courts, on application by the Department of Corrections, to impose conditions on these returning offenders to continue their management in the New Zealand community.

Some returning offenders may meet the criteria for the imposition of a public protection order under the Public Safety (Public Protection Orders) Act 2014 or an extended supervision order under the Parole Act 2002. In these cases, the Department of Corrections will be able to apply for these orders while the returning prisoner is subject to conditions under the Bill.

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?	YES
<p>To inform decisions on the policy of the Bill, the Ministry of Justice prepared a Regulatory Impact Statement entitled <i>Management of offenders returning to New Zealand</i>, dated 12 October 2015. A copy of the RIS can be accessed on the Ministry's website or from the following page on the Treasury's website:</p> <p>http://www.treasury.govt.nz/publications/informationreleases/ris</p>	

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 Regulatory Impact Statement did not meet the threshold for an independent assessment of its quality.</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?	YES
<p>The Regulatory Impact Statement did not provide an analysis of one aspect of the policy, which was developed at a later stage. This is clause 33, which empowers the courts to impose conditions, for a term to be specified by the court, on returning offenders who do not qualify for automatic management under the Bill because they have been managed in the overseas community for more than six months after their release from prison. A similar approach was analysed in the Regulatory Impact Statement (as option 4), which involved the courts imposing conditions at its discretion in all cases, rather than on an automatic basis. However, this option would have either limited the term of the conditions imposed by the courts or provided judicial guidance to ensure the term of the conditions reflects that of the prison sentence that was imposed overseas.</p>	

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
The Regulatory Impact Statement referred to above provides the most recent analysis of the potential costs and benefits of the policy the Bill gives effect to.	

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
<p>The Regulatory Impact Statement makes assumptions about the rate at which offenders would comply with the release conditions applying under the Bill and the rate at which determinations made and any special conditions imposed under the Bill would be judicially reviewed. Both of these assumptions affect the estimated costs and benefits of the policy.</p> <p>It is anticipated that both New Zealand Police and the Department of Corrections would take measures necessary to ensure their own compliance with the provisions of the Bill and that of offenders they are interacting with.</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?
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The Ministry of Foreign Affairs and Trade, the Ministry of Business, Innovation and Employment and the Crown Law Office were among the government agencies consulted during the development of the policy. The Ministry of Justice also used internal expertise to identify international obligations that might be affected by the policy. No inconsistencies with New Zealand's international obligations have been identified.

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 has given consideration to the Bill's consistency with the principles of the Treaty of Waitangi as part of the policy development process.
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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?	YES
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The Crown Law Office has provided this advice to the Attorney-General, which may result in any apparent inconsistency in the Bill with the New Zealand Bill of Rights Act 1990 being drawn to the House's attention under section 7 of that act.
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Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are accessible on the Ministry's website at:

http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

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)?	YES
<p>The Bill creates criminal offences and penalties for non-compliance with:</p> <ul style="list-style-type: none"> requests or directions made by Police in order to obtain accurate identifying information (including the deliberate provision of false or misleading information), which would be punishable by up to six months' imprisonment or a fine of up to \$5,000 (clause 13) any release conditions applying or imposed under the Bill, which would be punishable by up to one year's imprisonment or a fine of up to \$2,000 (clause 31). <p>The Bill also establishes procedural and decision-making powers that would be reviewable by a court or higher court, including decisions by a district court to impose release conditions on a returning offender.</p> <p>The Bill does not create an explicit right of appeal in relation to a determination that a person is to be automatically subject to release conditions. The Bill states that the relevant provision does not affect a returning prisoner's right to apply for judicial review (clause 22).</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
These proposals were developed by the Ministry of Justice.	

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?	YES
<p>Clauses 9-12 of the Bill provide for the collection, storage and use of 'identifying particulars' from returning offenders. This includes, for example, the person's biographical details and their intended address, as well as an authority to take their photograph and fingerprints.</p> <p>Clauses 14 and 15 of the Bill also make returning offenders liable to provide a DNA sample to Police, either by consent or by compulsion notice. Existing provisions in the Criminal Investigations (Bodily Samples) Act 1995, with certain modifications, govern the collection, storage and use of this information.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
The provisions in the Bill are consistent with existing provisions in other legislation and consultation with the Privacy Commissioner was consequently considered unnecessary.	

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
In the time available, only New Zealand Police, the Department of Corrections and the Crown Law Office were consulted on drafts on this 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?	YES
The Bill establishes procedures and offender management practices that are based closely on existing procedures and management practices for which Police and the Department of Corrections are responsible. Those agencies have been involved in the development of the Bill and ensuring that the Bill's provisions will be workable in practice.	

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?	-
Clause 18 provides that the Commissioner must make a determination that a person is a returning prisoner no later than 6 months after that person's return to New Zealand. If this provision is applied to those who returned to New Zealand before the effective date of the Bill, and they consequently become subject to a period of release conditions, it could be argued that the Bill is retrospectively affecting their rights and freedoms and imposing obligations on them.	

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
Clause 31 of the Bill is modelled on section 71 of the Parole Act 2002 and, accordingly, makes it an offence to, without reasonable excuse, breach a release condition applying or imposed under the Bill. Offence provisions are expressed this way to provide the accused person with an opportunity to defend the charge by establishing that they had a reasonable excuse for failing to comply with the condition in question. This modifies the usual burden of proof somewhat.	

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
<p>The Bill establishes several decision-making powers that would affect the obligations and interests of applicable offenders returning from overseas:</p> <p><u>Powers to take information</u></p> <p>Clauses 9 – 11 and 14 of the Bill empower Police to obtain information and a DNA sample from returning offenders. These decisions make offenders liable for detention and criminally obliged to cooperate with efforts to take that information.</p> <p>However, it is only an offence under clause 13 to not comply with a direction to provide information after being cautioned by the constable. The authority to take information and the process used may be judicially reviewed. There are a number of existing safeguards in the Criminal Investigations (Bodily Samples) Act 1995 (e.g. the right to consult a lawyer) that would also apply to returning offenders providing a DNA sample under the Bill.</p> <p><u>Determinations made by the Commissioner</u></p> <p>The Commissioner of Police is responsible for determining, under clause 18 of the Bill, whether a person is a returning prisoner. This determination makes the person liable to be managed under release conditions for a period specified by clause 24 of the Bill.</p> <p>The basis for a determination is the purely factual conclusion that the person is a returning prisoner as defined by clause 17 of the Bill. A person who believes this conclusion has been reached in error can apply for the determination to be reviewed by the Commissioner, which does not limit their right to apply for judicial review. Other safeguards include the requirement to serve a written notice of the determination on the person affected and for the notice to include a variety of useful information.</p> <p><u>Judicial power to impose conditions</u></p> <p>Clause 26 empowers the court to, on application by the Department of Corrections, impose any special conditions on a returning prisoner that it believes would fulfil the purposes specified in that section. The court could also impose special conditions on an interim basis, under clause 27, if it considers them immediately necessary. Clause 33 also empowers the court to impose any conditions it sees fit, on application by the Department of Corrections, in the case of a returning offender who does not qualify as a returning prisoner because, at the time they were returned to New Zealand, they had spent more than six months being managed in the overseas community since their release from prison.</p> <p>These judicial powers are all constrained by the express purposes for which release conditions may be imposed under the Bill. They could also be appealed to a higher court.</p>	

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

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?	YES
<p>Clause 33 has a feature that could be considered unusual. Although it provides that the court must specify when conditions imposed under Subpart 3 end, it does not state a maximum period of conditions. In comparable contexts in the Parole Act and the Sentencing Act, a maximum period is stated. This creates the possibility that offenders could be subject to conditions imposed under clause 33 for longer than if they met the criteria for a returning prisoner, despite the potentially long period they have already spent under supervision in the overseas community.</p>	