

Departmental Disclosure Statement

Conservation (Infringement System) 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 Paula Warren of the Department of Conservation.

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

1 February 2017

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Part One: General Policy Statement

The objectives of the Bill are to:

1. Improve the effectiveness of conservation compliance and law enforcement, to better protect conservation values
2. Ensure that penalties for offences are commensurate with the seriousness of the offence
3. Ensure that people do not risk criminal convictions if they commit minor offences
4. Make the treatment of offences consistent with those in similar regimes, such as fisheries
5. Remove unnecessary costs to the court system
6. Contribute to the Government's objectives of improving government interaction with New Zealanders and delivering better public services for less cost

These objectives were a response to problems that had arisen in implementing the current compliance system.

In particular, under the current compliance system offenders who commit minor offences are either warned or prosecuted in the courts. Issuing warnings is not always effective as a deterrent to future offending, and can be seen by the other users of the affected conservation value as ineffective and unfair. Equally, prosecutions can be a disproportionate response to less serious offending, as it risks the offender getting a criminal record. It is also a particular problem for protected area visitors (including tourists), as a prosecution requires them to attend the court nearest the area in which the offence occurred, rather than the court near where they live or where they are travelling when the case is heard.

The problem of disproportionate penalty is also created by the fact that the penalties for nearly all conservation related offences are designed to deter serious crimes (e.g. fines of up to \$200,000 for killing an endangered species), but the same offence and maximum penalty also applies to less serious actions such as killing a common native bird. The penalties were significantly increased in 2013 to deal with the significant offences that were not being adequately recognised in the previous penalties.

Analysis of the current compliance regime also identified unjustifiable costs of implementation by the Department of Conservation, local authorities and the courts.

In relation to local authority administered reserves, there was also an inconsistency between how compliance on reserves (administered under the Reserves Act) could be managed compared to compliance on comparable public lands held under the Local Government Act.

The Bill seeks to introduce an infringement system, which is the generally accepted approach for dealing with less serious offending in relation to public resources. No other compliance models have been used in New Zealand law for this purpose.

The Bill only amends conservation-related legislation (not all legislation administered by the Department of Conservation), and provides the infringement system only to central and local government agencies (not to other agencies with functions under those Acts). The Bill amends the following legislation:

Conservation Act 1987

Marine Mammals Protection Act 1978

Marine Reserves Act 1971

National Parks Act 1980

Reserves Act 1977

Trade in endangered Species Act 1989

Wild Animal Control Act 1977

Wildlife Act 1953

The infringement system included in the Bill would sit within the Summary Proceedings Act 1957 and Criminal Procedure Act 2011, which provide the standard legal framework for infringement offences. Given the range of seriousness of offending within most conservation-related offences (e.g. killing a common protected bird or killing a kakapo are covered by the same offence provision), the system is designed to allow a warning to be given, an infringement notice to be issued or a prosecution to be taken, with the choice depending on the seriousness of the case.

Not all current offences will have infringement notices as a compliance option, as they are considered to always be serious offences. That includes risking public safety when using firearms.

An infringement system will need to be developed once the legislation comes into force. That will include guidance to ensure that the choice of compliance tool is consistent and appropriate. That guidance will direct that an infringement notice is not an appropriate response to alleged offending that involved:

- significant risk to public safety;
- unsafe discharge of a firearm or other hunting weapon;
- commercial gain disproportionate to the level of infringement fee for the offence;
- significant harm or potential significant harm to conservation values.

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

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Proposal to introduce an infringement notice system for less serious offending against conservation legislation Department of Conservation 31 March 2016 http://www.doc.govt.nz/about-us/our-role/legislation/regulatory-impact-statements/	

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
RIS did not meet the threshold for independent assessment.	

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

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

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 information available is in the RIS. The proposals would not have any impact on income or wealth.	

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?
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The legislation is consistent with standard infringement system approaches, which would be consistent with 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?

The Bill amends legislation which must be administered to give effect to the Principles of the Treaty of Waitangi. The infringement system will enhance the ability to give effect to the principles.

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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No BORA issues identified. Advice will be available on https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/
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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)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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The Bill seeks to establish an infringement system. To create a workable system, new infringement offences have been created that are equivalent to the offences already in the legislation.
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3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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The Minister of Justice approved the new offences.
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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?	YES
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The Bill contains provisions that allow enforcement officers to require offenders to give basic information

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
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Will be consulted during the development of the system that will handle the information.
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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
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Te Urewera Board was consulted on whether the legislation should provide an infringement system for Te Urewera.

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
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Was discussed with LDAC.

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

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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
Where there are already such offences in the Acts, the new infringement offence that duplicates it may be of the same nature.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

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

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?	YES
The Bill includes regulation making powers to allow details of the infringement system, including fees, to be put in place.	

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

Appendix One: Further Information Relating to Part Two

Nor further information

Appendix Two: Further Information Relating to Part Three

No further information

Appendix Three: Further Information Relating to Part Four

Powers to make delegated legislation- question 4.8

The Bill allows regulations to be made on:

- To set the infringement fees and penalties (by agreement with the Minister of Justice)
- To determine which offences in regulations, bylaws and notices can be infringement offences (by agreement with the Minister of Justice)
- To prescribe information to be included in infringement notices and reminder notices.