

Departmental Disclosure Statement

Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill
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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 Juliet Armstrong of the New Zealand Police.

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

11 March 2021

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Part One: General Policy Statement

This Bill amends the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the **Act**) to clarify that the Act provides for registration of all child sex offenders, irrespective of whether offending occurred before or after the Act came into force.

The Bill clarifies that the Act's retrospective application explicitly includes those persons who committed a qualifying offence before, but who were convicted and sentenced after, the Act came into force.

This clarification is in response to a recent Supreme Court decision (*D (SC 31/2019) v New Zealand Police* [2021] NZSC 2) (the **decision**), which determined that, where the qualifying offence was committed before the Act came into force, the Act is not sufficiently clear about eligibility for registration to displace the right in section 6 of the Sentencing Act 2002 (that is, the right to the lesser penalty if the penalty is varied between commission of the offence and sentencing).

To give effect to the Act's intent, the Bill inserts amendments, and new provisions in Schedule 1 of the Act, to clarify the Act's retrospective application. These new provisions include—

- A provision validating a person's placement on the Child Sex Offender Register (the **Register**), if their registration would have been valid if the amendments were in force at the time of their registration:
- A provision allowing the prosecutor to apply to the sentencing court to make or review decisions around a person's eligibility to be placed on the Register under section 9 of the Act, for those individuals covered by the amendment who were sentenced following the Supreme Court decision:
- A provision that explicitly clarifies that the Act's retrospective application overrides any other law, to the extent that the other law is inconsistent with the Act's retrospective application (including section 6(1) and (2) of the Sentencing Act 2002 and sections 25(g) and 26(2) of the New Zealand Bill of Rights Act 1990).

The amendments apply retrospectively to persons removed from the Register or rendered ineligible for registration due to the Supreme Court decision. Those persons include ones who committed a qualifying offence before 14 October 2016, and who have been sentenced after the Supreme Court decision on 9 February 2021. An exception ensures that no obligations arise, under the amendments, after the decision and before the commencement of this Bill. That exception does not alter or affect a registrable offender's length of reporting period or period on the Register. There is also an exception for the particular appellant in the Supreme Court case.

Registration of these individuals will continue to provide the New Zealand Police and the Department of Corrections with access to personal information that allows these agencies to proactively monitor and manage the risk of reoffending against children while registrable offenders are in the community.

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
On 9 February, the Supreme Court released a decision (<i>D (SC 31/2019) v New Zealand Police</i> [2021] NZSC 2) that has informed and is relevant to the policy to be given effect by this Bill.	

Relevant international treaties

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

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	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
<p>On 8 March 2021, Cabinet confirmed the paper <i>Amendment to retrospective provisions in the Child Protection (Child Sex Offender Government Agency Registration) Act 2016</i>, which clarified that if passed, the amendment will enable the reinstatement on the Register of those people who have been removed from the Register or rendered ineligible for registration due to the Supreme Court decision. Those persons include ones who committed a qualifying offence before 14 October 2016, and have been sentenced after the Supreme Court decision on 9 February 2021.</p> <p>The exception is the appellant in the Supreme Court Case.</p>	

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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Officials from New Zealand Police consider that there are no changes that require consideration of whether the policy to be given effect by this Bill is consistent with New Zealand's 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 policy and the Bill, and their consistency with the principles of the Treaty of Waitangi, have been considered by officials from New Zealand Police. Police considers that the Bill is consistent with the principles of the Treaty of Waitangi.
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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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Any section 7 report of the Attorney-General would be made available on the Ministry of Justice's website upon introduction of the Bill. The report will be accessible on the Ministry's website at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights
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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
<p>Offences and penalties</p> <p>The Bill clarifies that the Act's retrospective application explicitly includes those persons who committed a qualifying offence before, but who were convicted and sentenced after, the Act came into force.</p> <p>The amendments apply retrospectively to persons removed from the Register or rendered ineligible for registration due to the Supreme Court decision. Those persons include ones who committed a qualifying offence before 14 October 2016, and have been sentenced after the Supreme Court decision on 9 February 2021. The exception is the appellant in the Supreme Court case.</p> <p>Jurisdiction of a court or tribunal</p> <p>The Bill allows the prosecutor to apply to the sentencing court to make or review decisions around a person's eligibility to be placed on the Register under section 9 of the Act, for those individuals covered by the amendment who were sentenced following the Supreme Court decision.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during the development of the Cabinet paper seeking approval for these provisions. The Ministry commented on the Human Rights section of the paper and Police included significant commentary around how the proposed amendments would be likely to engage the same NZBORA considerations set out in the previous section 7 reports. Police also consulted with the NZBORA team at the Ministry on the draft Bill, following Cabinet approval.</p>	

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 provides that a person to whom the retrospective amendments apply has no obligations of a registrable offender (which includes reporting to Police) from the date of the Supreme Court judgement (9 February 2021) until the commencement of the amending legislation.

Police will not be collecting, storing, accessing, or correcting any new reportable information during that time. However, following commencement of the amending legislation, standard reporting obligations will be restored.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

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 following agencies have been consulted: Ministry of Justice, Ara Poutama Aotearoa – the Department of Corrections.

Both agencies were consulted during the development of the Cabinet paper and 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?

YES

Police policy and operational groups (including the Child Sex Offender Registry, Police Prosecutions Service and Legal Services) have assessed the practical implications of the Bill for those individuals who were de-registered following the Supreme Court decision and for those convicted of qualifying offences following the Supreme Court decision. Police has also consulted with Crown Law.

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?	YES
<p>The Bill clarifies that the Act's retrospective application explicitly includes those persons who committed a qualifying offence before, but who were convicted and sentenced after, the Act came into force.</p> <p>The amendments apply retrospectively to persons removed from the Register or rendered ineligible for registration due to the Supreme Court decision. Those persons include ones who committed a qualifying offence before 14 October 2016, and have been sentenced after the Supreme Court decision on 9 February 2021. The exception is the appellant in the Supreme Court case.</p> <p>The Bill also provides an ability for the prosecutor to apply to the sentencing court to make or review decisions around a person's eligibility to be placed on the Register under section 9 of the Act, for those individuals covered by the amendment who were sentenced following the Supreme Court decision.</p> <p>If Parliament approves the amendments, it is likely that the NZBORA considerations set out in the previous section 7 reports will again be engaged.</p>	

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?	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?	YES
Under the Bill the prosecutor has the ability to apply to the sentencing court to make or review decisions around a person's eligibility to be placed on the Register under section 9 of the Act, for those individuals covered by the amendment who were sentenced following the Supreme Court decision.	

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?	NO