

Departmental Disclosure Statement

Returning Offenders (Management and Information) Amendment Bill 2023
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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 Jason Frick of 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.

17 February 2023.

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Part One: General Policy Statement

The Bill aims to preserve the position generally understood to exist prior to the High Court's ruling in *G v Commissioner of Police* [2022] NZHC 3514. In that decision, the High Court held that the Returning Offenders (Management and Information) Act 2015 (the principal Act)—

- was insufficiently clear that it applied to offenders whose substantive offending predated the principal Act coming into force in November 2015; and
- requires the Commissioner of Police to provide notice and the right to be heard before making determinations as to a returnee's status as a returning prisoner.

The Bill ensures the continued application of the principal Act to offenders whose substantive offending predates the principal Act coming into force. The Bill also provides that the Commissioner of Police must not provide notice or the right to be heard to the affected person before making determinations about their status as a returning prisoner.

Those amendments will ensure that the principal Act continues to put all returning offenders in roughly the same position they would have been in had they offended in New Zealand. That means that the New Zealand Police will be able to collect information from returnees to establish their identity and support future investigations, and that parole-like conditions will be available if a returnee has been deported after a prison sentence.

The continued application of the principal Act to returning offenders who offended or were sentenced before November 2015 will support public safety. In particular—

- as at January 2023, 265 returning offenders subject to management by the Department of Corrections under the principal Act. Of that cohort, 41 are being managed for convictions that predate November 2015, with 21 considered to be at high risk of reoffending, harming others, or both:
- returning offenders and New Zealand offenders re-offend at about the same rate. As at 30 November 2022, approximately 45% of offenders who returned to New Zealand have later been convicted of an offence in New Zealand:
- while many returning offenders who reoffend are involved in less serious offending, a small proportion is involved in serious violence and drug offending. That cohort is almost certainly contributing to organised crime in New Zealand.

Removing the requirement for notice and a hearing will prevent delays to imposing release conditions. Those conditions are currently set before a returnee arrives in New Zealand and notice of those conditions is served on them as soon as they enter the country.

The Bill validates past conduct under the principal Act that is consistent with the principal Act always having applied retrospectively.

The Bill confirms that the principal Act applies retrospectively even in cases where that may be inconsistent with the rights in the New Zealand Bill of Rights Act 1990 prohibiting double punishment and retrospective increases of penalties (see sections 23(2) and 25(g) of that Act and see *also* sections 6(1) and (2) of the Sentencing Act 2002).

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>Two reports are relevant to the policy being given effect to by this Bill:</p> <ul style="list-style-type: none"> • Regulatory Impact Statement: Management of returning offenders to New Zealand (treasury.govt.nz) • Review of the operation of the Returning Offenders (Management and Information) Act 2015 - New Zealand Parliament (www.parliament.nz) 	

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?	NO
<p>However, a RIA was prepared in relation to the principal Act that's being amended:</p> <ul style="list-style-type: none"> • Regulatory Impact Statement: Management of returning offenders to New Zealand (treasury.govt.nz) 	

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 General Policy Statement for the Bill outlines the scale of the impact of the proposals.	

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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Consideration has been given to the obligations in the International Covenant of Civil and Political Rights.
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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?

The Bill merely preserves the status-quo operation of the principal Act prior to the High Court's recent decision. Consequently, the Bill does not raise new Treaty of Waitangi issues beyond those the principal Act already creates.
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Māori are overrepresented in the returning offenders' population. Of the 2845 individuals deported from Australia between January 2015 and November 2022, 42 percent were Māori.
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While returning offender orders generally involve limits on returnees' freedom, there also provide rehabilitative and reintegrative benefits. These include access to a range of support services, such as health, disability, income, housing and employment services. There are also culturally specific rehabilitation services.

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

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

The Bill ensures that the offence provision at sections 13 and 31 of the principal Act continues to be effective for offenders who offended or were sentenced prior to the principal Act coming into force. It also validates past convictions for these offences.
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3.4.1. Was the Ministry of Justice consulted about these provisions?

NO

The Ministry of Justice prepared the Bill.
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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
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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?	NO
The Bill has been prepared under tight with urgency and the Justice committee recently reviewed the principal Act and concluded that it was operating as intended.	

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 merely confirms the status-quo operation of the principal Act. The principal Act has been in effect since 2015.	

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?	YES
This is the primary purpose of the Bill, confirming the principal Act's retrospective application. This is necessary to protect public safety as set out in the general policy statement.	

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
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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 amends the power of the Commissioner of Police to make determinations as to a person's status as a returning prisoner. The Bill confirms that the Commissioner must not provide notice and a right to be heard before making this determination. This is because providing notice and a hearing would delay the imposition of release conditions that are necessary to protect public safety, and because there is negligible realistic scope for the affected person to make a submission that would affect the outcome of the determination. This is because the statutory criteria guiding the determination are totally factual in nature and the determination operates as a consequence of the law (i.e. no discretion).</p> <p>Currently, returning prisoners have 15 days within which to seek a statutory review of their determination. This narrow time limit on applying for review is being removed to ensure returning prisoners are not unduly denied the review.</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
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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?	YES
<p>The Bill validates past conduct under the principal Act that is consistent with the principal Act always having applied retrospectively.</p> <p>The Bill confirms that the principal Act applies retrospectively even where this may be inconsistent with the New Zealand Bill of Rights Act 1990 rights prohibiting double punishment and retrospective increases of penalties at sections 26(2) and 25(g) respectively.</p>	

