

Departmental Disclosure Statement

The Child Protection (Child Sex Offender Government Agency Registration) Amendment 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 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.

3 September 2024

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Part One: General Policy Statement

The Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill (the Bill) amends the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the Act).

The objective of the Bill is to improve the safety of children and young people in our community. It does this by:

- improving the clarity of the Act
- enhancing the consistency of the Act to support the practice of the Child Sex Offender Register staff
- assisting registrable offenders to more easily comply with the Act and the requirements placed on them under the Act
- updating the Act to reflect evolving technology and to address legislative gaps.

The key amendments the Bill makes to the Act are to:

- require registrable offenders to report that a child is going to be residing at the same address as them 48 hours before this occurs (rather than 72 hours after)
- require registrable offenders to report attendance at education or training courses, and clarify that voluntary work must be reported
- clarify the definition of locality for registrable offenders with no permanent address/fixed abode in New Zealand
- enable notices to be served to registrable offenders by electronic means (rather than just by post)
- require registrable offenders travelling out of the country to report this information at least seven days in advance (rather than the current 48 hours in advance)
- require registrable offenders to report their return to New Zealand no more than 72 hours after re-entering, electronically or by telephone (rather than the current 10 day in-person requirement)
- clarify that where there is a successful appeal against registration that information must be removed from the Child Sex Offender Register
- remove the requirement for an application for review to be made within 28 days of registration.

The Bill adds the following seven qualifying offences to Schedule 2 of the Act:

- intentionally or recklessly making an intimate visual recording of another person (section 216H Crimes Act 1961), if the subject of the visual recording is under 16 years of age
- knowingly importing or exporting objectionable publications (section 390 Customs and Excise Act 2018), if the subject or a subject of the publication is under 16 years and the publication deals with sex
- causing, facilitating, or encouraging a person under 18 years of age to provide commercial sexual services to any person (section 20 of the Prostitution Reform Act 2003), if the victim is under 16 years of age
- receiving a payment if a person knows, or ought reasonably to know, that it is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age (section 21 of the Prostitution Reform Act 2003), if the victim is under 16 years of age
- entering into a contract or arrangement under which a person under 18 years of age provides commercial sexual services (section 21(1) of the Prostitution Reform Act 2003), if the victim is under 16 years of age

- dealing in people under 18 years for sexual exploitation, removal of body parts, or engagement in forced labour (section 98AA Crimes Act 1961), if the victim is under 16 years of age and subject to sexual exploitation
- receiving commercial sexual services from a person under 18 years of age (section 22(2) of the Prostitution Reform Act 2003) if the victim is under 16 years of age.

The Bill also makes a range of other administrative amendments to the Act.

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>In 2014, Cabinet proposed that, following the establishment of the Child Sex Offender Register (the Register), the Register and its Risk Management Framework be evaluated after the first three years of operation (October 2016 to October 2019), with the initial findings reported back to Cabinet.</p> <p>The evaluation, which was undertaken by the Evidence Based Policing Centre, sought to consider whether the objectives of the Register and Risk Management Framework were effective, and to provide insight into potential enhancements.</p> <p>The evaluation findings have informed the proposed legislative changes. The evaluation, entitled: <i>Child Sex Offender & Risk Management Framework: Findings from a 3 year evaluation</i>, can be found here: https://www.police.govt.nz/about-us/publication/child-sex-offender-register-evaluation</p>	

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, <i>Amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016</i>, was developed by New Zealand Police and considered by Cabinet alongside the Cabinet paper <i>Amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016</i>.</p> <p>The Regulatory Impact Statement can be found here: https://www.police.govt.nz/about-us/publication/ris-amendments-child-protection-act-2016</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 was assessed by an internal New Zealand Police quality assurance panel and assessed as “meets.”</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>Cabinet approved a range of amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the Act) in November 2022. A Regulatory Impact Statement was prepared for some of the amendments, with Treasury granting an exemption to amendments that were considered to be minor and technical.</p> <p>Cabinet subsequently approved several additional amendments in July 2024. The Ministry for Regulation granted an exemption for these amendments as they were minor and technical.</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
<p>Police estimates that including the four additional qualifying offences will increase the number of registrable offenders by up to 10 per year, the majority of whom will be registered for eight years (the minimum period of registration). Police and the Department of Corrections' resources will be required to monitor and manage these additional offenders. Other amendments will require registrable offenders to provide additional information about their locations, activities and likely contact with children.</p> <p>These changes will allow Registry staff to monitor and manage the risks posed by people who have been convicted of the additional qualifying offences, and to better assess and manage the risks registrable offenders present when living in the community.</p> <p>There is additional information in the Regulatory Impact Statement on the costs and benefits of proposed changes.</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?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Some of the amendments will require registrable offenders to provide additional information about their locations, activities and their likely contact with children, within the framework already established by the Act.</p> <p>Registry staff will need to assess the additional information using the existing Risk Management Framework, to determine the individual's risk and whether any preventative action needs to occur.</p> <p>The effectiveness of the Register relies on the quality and integrity of the information reported by registrable offenders. Non-compliance with reporting obligations will impact the effectiveness of the Register. It is already an offence under the Act for a registrable offender to fail to comply with reporting obligations or to provide false or misleading information. A registrable offender who:</p> <ul style="list-style-type: none"> • fails to comply with reporting obligations is liable for a fine of up to \$2,000 and/or imprisonment of up to one year • provides false or misleading information is liable for a fine of up to \$4,000 and/or imprisonment of up to two years. 	

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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No specific issues were identified in the policy process that would have implications for New Zealand's international obligations but changes to overseas travel reporting requirements will allow additional information to be shared with overseas jurisdictions to better manage risk and help keep children safe.

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 amendments are technical and administrative amendments to an existing Act, and as such, do not alter the policy intent of the legislation or have implications for the rights and interests protected by the Treaty of Waitangi.
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Consultation has been undertaken with a range of government agencies, including Te Arawhiti, and no issues were raised in relation to the Treaty of Waitangi.

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

The Ministry of Justice is providing advice to the Attorney-General on whether the Bill complies with the New Zealand Bill of Rights Act 1990 (NZBORA).

The retrospective nature of the amendments may engage the following provisions in the NZBORA:

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| <ul style="list-style-type: none">• Section 26(2) – freedom from double jeopardy - the additional reporting requirements for offenders already on the Register may be considered as an additional punishment.• Section 25(g) – right to benefit from a lesser penalty where penalties change - adding reporting requirements between when the offender was first registered and when the amendments come into force, may be considered an increased penalty. |
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The Ministry of Justice has also indicated that the Bill could potentially engage section 14 (right to freedom of expression) due to the requirement to report information and changes of information.
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Previous Attorneys-General have presented section 7 reports on bills for the principal Act, the 2017 and 2021 amendment bills to the Act, and most recently, on the Child Protection (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Act 2024 for the above matters, with the exception of section 14 of NZBORA which has not been previously raised. Parliament examined the matters raised in these section 7 reports and passed each of the bills.

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 a Bill. Such advice or report will be accessible on the Ministry's website at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/section-7-reports/

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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>No new offences or penalties are included in the Bill. However, the new reporting obligations introduced by the Bill will have retrospective effect. The current offences and penalties will apply for failing to comply with reporting obligations or providing false or misleading information.</p> <p>The Bill removes the 28-day time limit within which a person may apply to the Commissioner of Police for a review of a decision to place them on the Register or the decision about the length of their reporting period. This amendment is being made because there is no justification for placing a time limit on the ability to review a potential error.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted on the Cabinet paper seeking policy approvals for the legislative changes and did not raise any concerns with the removal of 28-day time limit for seeking a review of a decision.</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
<p><u>Specified agencies (with who information can be shared)</u></p> <p>To enable information to be shared with all necessary relevant agencies, the interpretation section is being amended to include Oranga Tamariki – Ministry for Children and the Registrar-General appointed under section 124(1) of the Births, Deaths, Marriages, and Relationships Registration Act 2021 as specified agencies or an officer.</p> <p><u>Reporting of relevant personal information</u></p> <p>Section 16 of the Act is being amended to require registrable offenders to report the following information:</p> <ul style="list-style-type: none"> • place of birth • email addresses for the servicing of notices (if the registrable offender has an email address) • contact details of a child's principal caregiver • voluntary work • attendance or enrolment at educational or training courses • nationality • the name of each country a registrable offender is a citizen • the name of each country that has issued a registrable offender a passport • details of any New Zealand refugee travel documents or certificates of identity • additional details about internet services, computer systems and devices used, or intended to be used, by a registrable offender, including identifying details of any computer system or device capable of accessing the internet • additional details about usernames for online accounts. 	

Timeframes for reporting changes to relevant personal information

- Section 20 is being amended to require a registrable offender to notify Registry staff of the presence of a child living at their address, and their principal caregiver's details at least 48 hours before the child arrives, or if this is not possible, immediately after the child arrives.
- Section 20A is being created to require changes to a registrable offender's telecommunication services, internet service, usernames, online account details and email addresses within 48 hours of the change occurring.

Domestic travel reporting

Section 21 is being amended to require a registrable offender to report 48 hours before travelling domestically:

- the name, sex and date of birth or any child likely to travel with them as well as the name of the child's principal caregiver and their contact details
- the sex and approximate age of any child present, or likely to be present, at any address the registrable offender intends to stay.

International travel reporting

Section 21A is being created to require a registrable offender intending to travel out of New Zealand to report:

- international travel plans seven days before leaving New Zealand
- if not intending to return to New Zealand, the date they intend to arrive in their new country of residence.

Reporting return to New Zealand

Section 23 is being amended to require a registrable offender to report their return to New Zealand no more than 72 hours after re-entering.

Section 23 is being amended to enable a registrable offender to provide a copy of their passport electronically, if required to do so by the Commissioner.

How a report is made

Section 25 is being amended to provide for a registrable offender to make a change of address report electronically or by telephone.

Section 25 is being amended to provide for a registrable offender to make a report to a constable or an authorised person.

Section 25 is being amended to require any change of information in relation to citizenship, nationality, place of passport issue and refugee travel documentation to be made in writing.

Acknowledging receipt of information

Section 27 is being amended to allow a registrable offender to choose whether they prefer acknowledgment of their information report to be made either in writing or electronically.

Removal of information after a successful appeal

Section 51C is being created to clarify that a registrable offender's information must be removed from the Register if there was a successful appeal.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted on draft Cabinet papers seeking approval to amend the Act.</p> <p>The Office of the Privacy Commissioner commented that, some proposals involve personal information, and as such introduce an increased privacy risk, but that the amendments are sound and there is good reason to justify any privacy intrusion.</p>	

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
<p>There was no public consultation due to the administrative and technical nature of the amendments. However, the amendments have been informed by the <i>Child Sex Offender & Risk Management Framework Evaluation</i> [refer to question 2.1] and feedback from:</p> <ul style="list-style-type: none"> • Registry staff and case management staff (Police and the Department of Corrections) • registrable offenders • government agencies, such as the New Zealand Customs Service • external legal experts in this area. <p>The following agencies were consulted on the policy proposals for this Bill:</p> <ul style="list-style-type: none"> • Department of Corrections • Ministry of Justice • Department of Internal Affairs • Te Arawhiti • Treasury • Ministry of Business, Innovation and Employment • Kāinga Ora Homes and Communities • Ministry of Social Development • Oranga Tamariki Ministry for Children • New Zealand Customs Service • Ministry of Disabled People – Whaikaha • Mana Mokopuna – Children & Young People's Commission • Office of the Privacy Commissioner. <p>The Policy Advisory Group (PAG) Advisor at the Department of the Prime Minister and Cabinet was informed.</p>	

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?	NO
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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
<p>All amendments, other than the seven additional qualifying offences, will have retrospective effect. This means that once enacted, the amendments will apply to all existing registrable offenders, as well as those who commence registration following enactment.</p> <p>Without retrospective application, managing two separate groups of registrable offenders (those registered prior to, and those registered after, commencement) would result in Registry staff being unable to identify or manage the risks presented by one group of registrable offenders to the same extent as those risks presented by the other group.</p> <p>This could ultimately impact the level of trust placed in the Register, as public expectation will be that all registrable offenders are subject to the same requirements.</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
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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?	NO
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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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