

Departmental Disclosure Statement

Policing (Police Vetting) Amendment Bill
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A departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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 New Zealand Police.

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.

18 September 2024

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Part One: General Policy Statement

The New Zealand Police (**Police**) provides a vetting service to a wide range of agencies. There are currently more than 14,000 agencies approved to access the Police vetting service and more than 650,000 vetting requests are received from those agencies each year.

A vetting request is a request made by an agency to Police to provide a Police vet in respect of a named individual. The resulting Police vet contains certain information (if any) held by Police about the individual. The purpose of a Police vet is to assist the agency to assess the individual's suitability for a particular role in order to contribute to public safety and national security.

The potential impact on individuals who are the subject of a Police vet warrants a robust and transparent statutory framework being established to formalise the operation of the Police vetting service.

The policy objectives of this Bill are therefore to:

- provide strong legal direction and a clear and consistent policy framework for Police and users of the Police vetting service; and
- enable services that could improve public safety and generate efficiencies through the provision of Police vets.

The Bill does this by:

- establishing a statutory framework that enables the current Police vetting service to continue operating in substantially the same manner as at present, by:
 - setting out the purposes of Police vetting;
 - setting out who can request a Police vet;
 - requiring a request for a Police vet to be made with the consent of the individual who is the subject of the request;
 - setting out the information that may be disclosed in a Police vet;
 - setting out the circumstances in which certain information may be disclosed in a Police vet; and
 - requiring Police to update a Police vet in respect of a children's worker, if Police subsequently becomes aware that the children's worker has been charged with or convicted of a specified offence;
- extending the current Police vetting service by—
 - enabling Police to provide updates of a Police vet to an agency if requested by an agency and if the individual who is the subject of the Police vet consents and Police is satisfied that the provision of updated Police vets is necessary; and
 - enabling an individual who is a member of a specified class of individuals to make a vetting request in relation to themselves, specifying the agencies they wish the Police vet is to be disclosed to (for example, an individual may wish to request that a Police vet about themselves be provided by Police to a number of prospective employers instead of having each of the prospective employers separately request a Police vet in respect of the individual).

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>A Police-initiated joint review on the Police Vetting Service by the Independent Police Conduct Authority and the Office of the Privacy Commissioner, published on 28 October 2016, found that a lack of legal and policy direction for the Police Vetting Service created uncertainties and legal risk for both Police and vetting service users.</p> <p>The review can be accessed on the Office of the Privacy Commissioner's website: https://privacy.org.nz/assets/New-order/Resources-/Publications/Statements-and-media-releases/EMBARGOED-28-Oct-2016-IPCA-and-OPC-Public-Report-Joint-review-of-the-Police-Vetting-Service.pdf</p>	

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>Regulatory Impact Statement: <i>Legislation for the Police Vetting Service</i>, New Zealand Police, dated February 2020, accessible at: https://www.police.govt.nz/about-us/publications-statistics</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?	YES
<p>A review panel with representatives from the Treasury Regulatory Quality Team and the Ministry of Business, Innovation and Employment reviewed the Regulatory Impact Assessment. The review team considered that it meets the Quality Assurance criteria.</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?	NO
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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>The Bill will enable new processes and services to be implemented in the future. These include enabling Police to provide updates where requested by an agency, agreed to by Police, and consented to by the vetting subject and enabling an authorised individual to request a vet be made in relation to them and provided to authorised agencies.</p> <p>Implementation of these future proposals may provide greater benefits for public safety, generate efficiencies, or improve safeguards for individuals. The RIS discusses the potential costs and benefits of these proposals.</p> <p>The RIS discussed these proposals and notes that duplication of vetting requests could potentially be reduced by approximately 90,000 vetting requests per year, or 15% of all vetting requests (from 2018 figures). The RIS noted that providing these services would depend upon investment in modernised Police vetting IT systems, which was estimated in 2018 at \$2-3 million. If these proposals were to progress, updated analysis, including on costs and benefits, will be undertaken.</p> <p>As Police vetting is a cost-recovered service, providing additional services may depend upon changes to the cost recovery model to fund these services.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected 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 New Zealand Police did not identify any inconsistency with New Zealand's international obligations during policy development.

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 New Zealand Police did not identify any inconsistency with the principles of the Treaty of Waitangi during the development of the Bill and its policy.
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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 Bill has been provided to the Ministry of Justice for consideration of compliance with the New Zealand Bill of Rights Act. The Ministry of Justice will provide advice to the Attorney-General. This is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice will be accessible on the Ministry's website at:

https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/

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)?	NO
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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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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 an alternative mechanism for Police to disclose, with the individual's consent, personal information to third parties. The Bill reflects the existing Police vetting service, which currently discloses personal information in a Police vet to an approved agency with the consent of the individual concerned, in line with the Privacy Act 2020. As such, the existing statutory scheme closely mirrors that approach.

In line with the approach under the Privacy Act 2020, the Bill only allows the release of information about a vetting subject with their prior consent, or the consent of a parent or

<p>guardian (if the vetting subject is under 16). No Police vet can be made with respect to a vetting subject under 14.</p> <p>The Bill provides that a Police vet must include any criminal conviction history. This is subject to the limitations of the Criminal Records (Clean Slate) Act 2004 that places restrictions on the release of criminal conviction history in certain circumstances.</p> <p>The Bill also provides that a Police vet may include a summary of non-conviction information. Non-conviction information can include any information Police holds about the vetting subject, such as active or past charges, warrants, infringement offences, demerits, overseas conviction, any family violence incidents the person may have been involved in, investigations that did not result in charges, interactions the vetting subject has had with Police, or information about the home environment of the vetting subject (in certain circumstances).</p> <p>The Bill sets out that non-conviction information can only be released if Police considers it is relevant to the role. An assessment of relevancy involves having regard to the risk the vetting subject could pose in the role for which they are being vetted, and whether the information could inform this.</p> <p>Police is also required to take reasonable steps to ensure the information is accurate and not misleading. The level of substantiation required will depend on the role of the vetting subject and the associated level of risk posed.</p> <p>There are additional specific disclosure tests related to the following four types of information:</p> <ul style="list-style-type: none"> • <i>suppression orders</i> – information subject to a suppression order (including criminal conviction history) can only be released if Police is satisfied that the agency has a genuine interest in receiving the information because the information is substantially relevant to the purpose of the vet • <i>youth information</i> – information about a vetting subject when they were under 18 can only be released if Police is satisfied that the agency has a genuine interest in receiving the information because the information is substantially relevant to the purpose of the vet • <i>mental health or substance abuse</i> – information that may relate to this can only be released if Police is satisfied there is a link between those issues and any criminal conduct of the vetting subject or the issues present a direct risk to another individual • <i>involvement in family violence as a witness or victim</i> – information of this kind can only be released if the purpose of the vetting request is to assess the suitability of the vetting subject: <ul style="list-style-type: none"> ○ for a role working in the vetting subject's home environment; ○ to be granted or to sponsor a New Zealand visa; or ○ to be granted New Zealand citizenship.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Bill responds to a review of the Police vetting service by the Privacy Commissioner and the Independent Police Conduct Authority, which recommended providing a statutory framework for the Police vetting service, including setting out the information Police considers for release.</p> <p>The Privacy Commissioner was consulted on the policy development of these proposals and the provisions in the Bill. The Privacy Commissioner generally supported the Bill but raised concerns with new section 54N <i>Indemnity for Commissioner and Police employees</i>. See section 4.5 for a summary of new section 54N and the concerns.</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>Public consultation on legislation for the Police Vetting Service was undertaken between 11 May and 13 July 2018. Police received 76 submissions from a cross-section of public and private sector agencies and individuals. There was overwhelming public and agency support for the proposal to establish a statutory framework for Police vetting (92%).</p> <p>The Privacy Commissioner was previously consulted at the policy approval stage, as well as on the draft Bill and related Cabinet Legislation Committee (LEG) paper. The Privacy Commissioner supports the establishment of a statutory framework. However, the Privacy Commissioner has concerns about new section 54N <i>Indemnity for Commissioner and Police employees</i>. See section 4.5 for a summary of new section 54N and the concerns.</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?	NO
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Strict liability or reversal of the 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?	YES
<p>New section 54N provides an indemnity for the Commissioner of Police and Police employees.</p> <p>If a Police vet is provided in good faith to an authorised agency in response to a vetting request, no proceedings, civil or criminal, may be taken against the Commissioner or any Police employee in respect of—</p> <p>(a) providing the Police vet; or</p> <p>(b) any consequences that follow from providing the Police vet.</p> <p>The Commissioner and Police employees are also immune from liability in civil or criminal proceedings for good-faith actions or omissions when performing or exercising, or intending to perform or exercise, their functions, duties, and powers under this Part.</p> <p>As noted in section 3.6 above, the Privacy Commissioner raised concerns with this provision:</p> <p><i>“Significant harms can result from the disclosure of potentially prejudicial information that may not be tested in a Court. If Police have failed to take adequate steps to be satisfied of the reliability of that information and ensure that the information is sent to the appropriate agency, it should be liable for the harm caused to the individual as a result. I suggest that indemnification should be associated with the individual officer rather than NZ Police as an organisation and recommend that the provision is amended to reflect this.”</i></p> <p>Police considers this indemnity balances the need to disclose information for public safety and national security purposes with individual privacy rights. A Police vet is a consented service in which information could be released which may, if prejudicial, have implications for an individual’s ability to be employed or engaged in a particular role. Given the strong policy imperatives behind providing Police vets, including the safety of children and vulnerable</p>	

people, it is appropriate that there is an indemnity to encourage Police to err on the side of releasing rather than withholding information.

These are equivalent protections to those available to government agencies releasing information under the Official Information Act 1983 or the Privacy Act 2020, and do not protect Police from liability where information is not released in good faith.

Police notes that new section 54J(1)(b) requires that non-conviction information is only released if the information is relevant and reasonable steps are taken to ensure the information is accurate and not misleading.

Importantly, a 'good faith' indemnity does not remove the current complaint mechanisms. A vetting subject will also continue to have access to the right to make a complaint to Police, the Privacy Commissioner, or the Independent Police Conduct Authority, if they consider Police's actions in releasing a Police vet were not appropriate.

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?	YES
<p>Currently, under section 102A of the Policing Act 2008, the Minister of Police can make regulations for cost recovery of specified demand services, including the provision of Police vetting. The Bill amends section 79E of the Policing Act. This sets out methods of cost recovery to enable regulations to be issued that differentiate between classes of persons requesting a police service or to whom the same policing service is delivered, and differ on whether an expedited service is provided.</p> <p>These changes are intended to clarify that the Minister can issue cost recovery regulations that set charges which differ based on:</p> <ul style="list-style-type: none"> the class of persons to which Police vets are delivered (for instance, whether the service is provided to an authorised agency or an authorised individual) the time taken to deliver the service (this is intended to allow Police to offer different fees for different service levels, such as charging a higher fee for a faster response time where the request is expedited). 	

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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