

Short-Form Supplementary Departmental Disclosure Statement

Health (Protection) Amendment Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation. It provides a limited supplement to the original disclosure statement for the Health (Protection) Amendment Bill, dated 9 July 2014, which can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2014/234/>.

This supplementary disclosure statement was prepared by Andrew Forsyth and Janet Lewin of the Ministry of Health.

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

13 October 2015.

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p><i>Clause 5 does not create a new offence of failing to notify infectious diseases. That already exists. However, as amended by the Supplementary Order Paper, the clause will extend the notification obligation, and corresponding offence provision for failing to do so, to health practitioners. In the Act and the Bill as introduced, only medical practitioners have this obligation. The policy rationale for this change is to bring notification of infectious disease requirements into line with current work practices. The penalty for such an offence is in the general offence provision in section 136 of the Health Act and there is a continuing penalty for every day the offence continues.</i></p>	

1.1. Was the Ministry of Justice consulted about these provisions?	YES
<p><i>No new offence or penalties are being created.</i></p> <p><i>The Ministry of Justice is happy with the proposal and agrees that it is appropriate to broaden the offence to cover “health practitioners” to better reflect the nature of current practice. While the Ministry of Justice has some concerns about the structure of the continuing offence penalty for this offence, which is not in line with the LAC Guidelines, it recognises this is a wider issue with the penalty regime in the Health Act. That is something that is out of scope of the proposed amendment. The Ministry of Justice suggests that it would be appropriate to reconsider the broader penalty regime in the Health Act at the next opportunity.</i></p>	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	YES
<p><i>The Supplementary Order Paper will amend the notification of infectious diseases obligation in clause 5, which amends section 74 of the Health Act 1956, so that suitably qualified health practitioners, rather than medical practitioners only, must notify infectious diseases. There will be a continuing expectation that those notifying infectious diseases will be expected to comply with the Health Information Privacy Code 1994, the Privacy Act 1993 and the specific privacy provisions in the Health Act 1956, including as amended by the Bill.</i></p> <p><i>The Supplementary Order paper will also amend clause 5 to clarify the meaning of “identifying information” in section 74(3C). Identifying information is information which cannot be disclosed in notifying infectious diseases, in order to protect the individual’s privacy. As reported back from the Select Committee, subsection (3C) contains an inclusive definition of “identifying information” as well as a separate item in para (b) – “any other information required by regulations made under this Act.” Only the latter is necessary. In addition, the inclusive words in the preamble to section 74(3C) introduce uncertainty about what comes within “identifying information” which cannot be disclosed. Those inclusive words may also have the unintended effect of preventing the National health index number (NHI), sex and date of birth of the individual from being disclosed in the notification.</i></p>	

2.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p><i>The amendment just described, relating to health practitioners, does not encroach on individual privacy, merely because a wider range of health practitioners will be required to notify infectious diseases.</i></p> <p><i>The other change is a drafting change to clarify what is intended to be included in "identifying information". The Office of the Privacy Commissioner has provided the following feedback:</i></p> <p><i>We agree with the Ministry's reasons for clarifying section 74(3C) in clause 5 of the Bill by removing the word 'including'. Allowing for additional forms of prohibited "identifying information" to be added by regulation is a sensible approach and we support it, and we acknowledge that the wording change removes an ambiguity that would otherwise exist in the interplay between the section and the related regulations.</i></p> <p><i>However, while we appreciate the clinical and policy reasons for wishing to use them, it is our firm view that NHI numbers are "identifying information" by definition; they are numbers assigned for the purpose of uniquely identifying an individual for health purposes. Defining NHI numbers as not being "identifying information" is inconsistent with those two words' clear meaning and has the potential to mislead the public.</i></p> <p><i>In response, the Ministry of Health's view is that:</i></p> <p><i>The Health Select Committee wished to omit NHI numbers from "identifying information" which cannot be disclosed, on the advice of the Ministry, after taking account of submissions received from sexual health specialists and epidemiologists. Access to the NHI number removes the risk of duplicative testing and is regarded as invaluable in improving the usefulness of the disease data. It also allows clinicians access to other valuable data, better enabling effective disease management. For example, it can assist with the clinical management of the case, the assessment of risk factors, contact tracing, and helps to minimise the possible further spread of infection to others. For these reasons, while the Ministry understands the Privacy Commissioner's concerns, the Supplementary Order Paper does not seek to amend clause 74(3C) to reinstate the NHI number as "identifying information" which must not be disclosed on notification.</i></p>	

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO
<p><i>Clause 5 extends the existing strict liability offence of medical practitioners failing to comply with the requirements of section 74 of the Health Act 1956 (relating to notification of infectious diseases) to health practitioners. The Ministry of Health considers this change is warranted and will benefit the public by facilitating notification of infectious diseases. This approach is also broadly consistent with the Health Practitioners (Replacement of Statutory References to Medical Practitioners) Bill, currently before the Health Select Committee.</i></p>	

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

8. Do the proposed amendments 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><i>The proposed amendment extends an existing obligation under section 74 of the Health Act 1956, to notify an infectious disease on reasonable suspicion that the individual concerned is suffering from a notifiable disease, to health practitioners. This is more in the nature of a diagnostic judgment than a legal determination. As a result of the medical officer of health receiving the notification, the individual (if not deceased) may be asked or required to refrain from certain activities or to undergo a medical examination, or submit to some other disease management measure in the Bill. The Bill contains statutory criteria for when each of these measures may be applied, appeal rights, and overarching principles – such as voluntary co-operation, informing the individual of the implications, proportionality, and choice of the least restrictive measure to address the public health risk the individual presents.</i></p>	

Powers to make delegated legislation

9. Do the proposed amendments 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
10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO