

Enhancing Identity Verification and Border Processes Legislation Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Enhancing Identity Verification and Border Processes Legislation Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This omnibus bill seeks to amend a number of Acts to strengthen the ability of agencies within the justice and border security community to perform their law enforcement functions more effectively.

The bill responds to perceived weaknesses in legislation regarding offender and patient management that were identified in the Government inquiry, Matters Concerning the Escape of Philip John Smith/Traynor.

This commentary covers the main changes we recommend to the bill. It does not include minor or technical changes.

Requirement to notify victims if an offender absconds from temporary release

The Victims' Rights Act 2002 requires the Department of Corrections to notify victims of specified offenders, or their nominated representative, when an offender escapes from prison or absconds from home detention. There is currently no such requirement if an offender absconds from temporary release. As the inquiry noted, victims may equally be at risk from an offender who has absconded from temporary release, and not notifying these victims could lead to inadequate responses.

We therefore recommend inserting clause 57 to amend the Victims' Rights Act to require the Department of Corrections to contact victims of specified offences (or their nominated representative) when an offender absconds from temporary release.

Victims may be notified directly to protect their safety

Under the Victims' Rights Act, a victim may appoint a representative to receive notifications on their behalf. Victims might nominate a representative because they do not have the capacity to fully understand notifications, or because contact regarding the offender could re-traumatise them. Under current law, where a representative is appointed information must be provided to the representative, rather than the victim.

The inquiry noted that there are specific, and most likely rare, cases where victims may not be notified in a timely way if a representative is the first point of contact. It recommended allowing Corrections or the Police to contact victims directly in these circumstances.

We agree that there may be rare instances where victims should be contacted directly, and having the ability to do this would provide Corrections or the Police with greater flexibility to make case-by-case decisions to manage risks to victims. We are informed that Corrections would develop guidance on when victims should be notified directly.

We recommend that the Victims' Rights Act be amended by inserting clause 58 to provide that victims who have nominated a representative may be notified directly where the relevant agency believes it is necessary for their safety.

Expanded purposes for the collection of biometric information

The bill provides for the collection of biometric information from offenders who are subject to community-based sentences and orders that involve their management by a probation officer for identification purposes at New Zealand's borders. We see benefit in expanding the purposes for which biometric information may be collected.

The use of biometric information to verify identity in relation to community-based sentences would allow Corrections to better manage offenders. For example, it would allow a probation officer to ensure that the individual presenting to them is indeed the individual subject to that sentence or order.

To this end, we recommend changes to clauses 43, 45, and 54 to amend the Sentencing Act 2002 and the Parole Act 2002 to expand the purposes for which biometric information may be collected. These would include identity verification for the purpose of managing offenders to ensure public safety.

Collection of biometric information from offenders on community work

The bill as introduced does not cover offenders on community work because their interactions with probation officers are less frequent and their lower level of risk means they are not subject to border alerts. However, we believe it makes sense to allow bio-

metric information to be collected from any offender serving a sentence or discharging an order in the community.

Therefore, we recommend inserting clause 50A to include section 59A in the Sentencing Act to enable Corrections to collect biometric information from offenders on community work.

We also recommend including new clause 51A which would insert new section 71(1)(ab) into the Sentencing Act to provide that failure to provide biometric information under new section 59A would be a breach of a condition of a community work sentence. The offender would be liable on conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding \$1,000 (provided for by section 71 of the Sentencing Act). Section 68 of the Sentencing Act also provides for a probation officer to apply to the Court to vary or cancel a sentence of community work when there has been a change in circumstances, including breaching the conditions of the sentence. The sentence could then be substituted with any other sentence that could be imposed for the original conviction.

Collecting biometric information from prisoners and for wider purposes

Under the Corrections Act 2004, the Department of Corrections can obtain photographs and fingerprints of prisoners for the purpose of maintaining safety and security in prisons.

We recommend inserting clauses 12B, C, D, and E to amend sections 3, 41, 128, and 202 of the Corrections Act to allow the department to collect biometric information from offenders subject to custodial sentences, and to enable this information to be used to verify identity for the purpose of upholding public safety through the management of offenders.

This amendment would ensure that prisons use the same standard of identity verification that is used in other parts of the criminal justice system.

Prohibition of travel from New Zealand

The bill as introduced makes it clear that offenders on any sentence that involves regular management by probation officials are expected to remain in New Zealand unless they have permission from their probation officer to travel.

However, we understand that it is unnecessary and inefficient to include in border alert processes offenders who pose a low risk of flight. In practice, probation officers prohibit only a small proportion of offenders on supervision from leaving New Zealand. For an offender to be prohibited from travelling they would need to present risks, such as issues caused by absence from a drug and alcohol rehabilitation programme.

In addition, if all offenders on supervision were prohibited from travelling, they would need to be flagged at the border so that Customs could check whether they have the necessary permission to depart New Zealand. Expanding this check to a sig-

nificant number of people would place additional pressure on border alert processes. As of December 2016, there were 7,926 offenders serving a sentence of supervision. Of these, Corrections would only want to prohibit a small number from leaving.

We note that offenders with high-end community-based sentences, such as home detention and intensive supervision, would still be prohibited from travelling. Also, the court could impose a prohibition on offenders who pose a risk when leaving the country as a special condition of their sentence.

We therefore recommend amending clause 49 to remove new section 49(1)(fa) of the Sentencing Act. This would dispense with the requirement that all offenders sentenced to supervision must not leave New Zealand without written permission from their probation officer. As a consequential amendment, the relevant clause from the Sentencing Regulations 2002 would also be removed.

Information-sharing between agencies

The submissions that we heard mainly focused on the information-sharing provisions in the bill. Clause 6 would insert new Part 10A and the accompanying new Schedule 4A into the Privacy Act 1993. The purpose of this Part is to authorise agencies, when carrying out specified functions, to verify the person's identity by accessing identity information held about them by a holder agency.

Submitters expressed concerns that Part 10A and Schedule 4A were unnecessary, as Approved Information Sharing Agreements (AISAs) between agencies are already available under the Privacy Act.

In their view, there was no clear rationale to support the inclusion of Part 10A, which would effectively cut across the existing and carefully crafted provisions of the Privacy Act that provide an existing legislative framework for AISAs. They believe that the matters listed in Schedule 4A could be achieved by having six AISAs covering the information exchanges between the accessing agency and the holder agencies.

After careful consideration of these arguments, we recommend no changes to the provisions as introduced. The purpose of Part 10A is to consolidate information flows into a single legislative instrument, and because of this, locating this Part in the Privacy Act makes sense.

The existing AISA process was designed to support personal information-sharing to facilitate public services, predominantly in the social sector, which includes non-governmental organisations. AISAs are suited to situations where a discrete and self-contained programme of work is being established, with a single approach to information-sharing processes.

AISAs are less suited, however, to the circumstances of this legislation. In this case multiple agencies all need to share information—but in different ways, at different times, and subject to different operational processes, some of which may be unforeseen.

There are also benefits for accessibility and transparency in consolidating the information-sharing framework into a single Schedule rather than dispersing it across a

number of AISAs. It also provides more flexibility, because the detail of the information-sharing arrangements can be agreed operationally between the relevant agencies, rather than needing to be specified in regulations.

Requirement to report and identify what information-sharing is occurring

We agree with a suggestion that a requirement to report on the operation of Schedule 4A would provide further accountability. Therefore, we recommend amending clause 6 to insert new section 109EA which would require agencies to report annually on the operation of the sharing provided for in the Schedule.

However, we do not propose prescribing how reporting should take place; this would ensure that agencies have sufficient flexibility to incorporate this process into their existing annual reports.

Amendments to the Schedule by Order in Council

Clause 6 would insert new section 109F, providing for Schedule 4A to be amended by Order in Council. Submitters and the Regulations Review Committee noted that this is a “Henry VIII” clause, and recommended that it be deleted so that any amendments to the Schedule would need to be made by primary legislation.

While we accept that section 109F is a form of Henry VIII clause, we note that such clauses are used in legislation, including in other parts of the Privacy Act. We note that orders made under section 109F would be legislative instruments under the Legislation Act 2012, and would therefore be subject to disallowance procedures and publication requirements. Further Orders in Council made under this section would need to be consulted on with the Privacy Commissioner.

Nevertheless, we acknowledge the concerns of submitters and the Regulations Review Committee about section 109F. To reinforce the existing safeguards, we recommend the following amendments to clause 6. Before recommending an Order in Council, the responsible Minister would need to be satisfied that:

- the purpose for which the identity information is to be accessed relates to a specified function of the accessing agency; and
- the identity information to be accessed is no more than is reasonably necessary to enable the accessing agency to achieve that purpose; and
- any potential conflicts or inconsistencies between the sharing of personal information under Schedule 4A and any other enactment have been identified and appropriately addressed.

Green Party of Aotearoa New Zealand minority view

The Green Party is opposed to this proposed legislation and recommends that it not proceed. We believe that the underlying purposes of the bill can be achieved by exercising existing provisions in law and by amending and improving practice within the relevant agencies. This would be a much better approach than the complex and intrusive measures proposed in the bill.

The commentary states that:

The bill responds to perceived weaknesses in legislation regarding offender and patient management that were identified in the Government Inquiry into Matters Concerning the Escape of Philip John Smith/Traynor.

That inquiry identified numerous failings of process, notably within Corrections, that contributed to Smith/Traynor's escape long before he got near the border. It also pointed to inadequacies in the border alerts system.

Ironically, we do not see any provision in this bill that would have prevented Smith/Traynor from making his escape.

The report states that:

As a matter of common sense and policy, criminal justice and associated agencies should be able to establish the correct identities of high-risk offenders, whatever name or identity they may use, so the public safety risks posed by such offenders are minimised . . . the ability of criminal justice sector agencies to share information about serious offenders should not be constrained in ways that adversely affect public safety and penal policy. [emphasis added]

This bill goes far beyond dealing with "high risk, serious offenders". This bill as drafted could capture even a very low risk offender subject to a sentence of community work.

Not only does the bill cast a very wide net, it is intrusive in the demands it makes. It enables a Customs officer to demand biometric information from any person leaving or arriving in New Zealand. Any person who refuses to comply may be detained, forcibly if necessary.

We agree with the submission of the Law Society that:

No clear policy rationale supports the introduction of proposed Part 10A. The [Smith/Traynor] inquiry did not identify any barriers in the Act that prevented information sharing; rather the inquiry noted that the cultures of the relevant agencies primarily explain why information was not shared.

We also agree with the submission of the Privacy Commissioner, who similarly challenged the proposed Schedule 4A and Part 10A as "potentially unnecessary and confusing". The Commissioner also noted that "the information-sharing the Schedule seeks to enable could be achieved through existing legislative means" (such as Approved Information Sharing Arrangements (AISAs)). The Commissioner expressed other misgivings and made recommendations that have not been incorporated into the bill. As a result, in our view, this bill could compromise the privacy of information kept on databases for other, unrelated purposes.

Appendix

Committee process

The Enhancing Identity Verification and Border Processes Legislation Bill was referred to the committee on 13 September 2016. The closing date for submissions was 26 October 2016. We received and considered four submissions from interested groups and individuals. We heard oral evidence from three submitters.

We received advice from the Ministry of Justice. The Regulations Review Committee reported to us on the powers contained in clause 6.

Committee membership

Kanwaljit Singh Bakshi (Chairperson)

Mahesh Bindra

David Clendon

Ian McKelvie

Stuart Nash

Maureen Pugh

Aupito William Sio

Lindsay Tisch

Jonathan Young

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Legislation Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Amy Adams

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The Parliament of New Zealand enacts as follows:

- 1 Title**
- This Act is the Enhancing Identity Verification and Border Processes Legislation Act **2016**.
- 2 Commencement** 5
- This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Privacy Act 1993

- 3 Principal Act** 10
- This **Part** amends the Privacy Act 1993 (the **principal Act**).
- 4 Section 96B amended (Relationship between this Part and other law relating to information sharing)**
- (1) Replace the heading to section 96B with “**Relationship between Part 9A and other law relating to information disclosure**”. 15
- (2) Replace section 96B(2)(b) with:
- (b) this Part does not limit Part 10, **10A**, or 11.
- 5 New section 97A inserted (Relationship between Part 10 and other law relating to information disclosure)**
- After section 97, insert: 20
- 97A Relationship between Part 10 and other law relating to information disclosure**
- This Part does not—
- (a) limit the collection, use, or disclosure of personal information that—
- (i) is authorised or required by or under any enactment; or 25
- (ii) is permitted by the information privacy principles:
- (b) limit Part 9A, **10A**, or 11.

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New Part 10A inserted

After section 109, insert:

Part 10A Identity information		
109A	Purpose of Part The purpose of this Part is to authorise accessing agencies, when carrying out specified functions, to verify the identity of an individual by accessing identity information held about that individual by a holder agency.	5
109B	Relationship between Part 10A and other law relating to information disclosure This Part does not— (a) limit the collection, use, or disclosure of personal information that— (i) is authorised or required by or under any enactment; or (ii) is permitted by the information privacy principles; (b) limit Part 9A, 10, or 11.	10
109C	Interpretation In this Part,— access, in relation to a database, includes remote access to that database accessing agency means an agency specified in the first column of Schedule 4A biometric information, in relation to a person, means information that comprises— (a) 1 or more of the following kinds of personal information: (i) a photograph of all or any part of the person’s head and shoulders; (ii) impressions of the person’s fingerprints; (iii) a scan of the person’s irises; and (b) an electronic record of the personal information that is capable of being used for biometric matching database means any information recording system used by an agency to store information holder agency means an agency specified in the third column of Schedule 4A identity information, in relation to an individual, means any information that identifies, or relates to the identity of, the individual, and includes (without limitation) the following information:	20
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		30
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- (a) the individual's biographical details (for example, the individual's name, address, date of birth, place of birth, and gender):
- (b) the individual's biometric information:
- (c) a photograph or visual image of the individual:
- (d) details of the individual's—
 - (i) New Zealand travel document; or
 - (ii) certificate of identity:
- (e) details of any distinguishing features (including tattoos and birthmarks).

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109D Access by agencies to identity information

An accessing agency may, for the purpose specified in the second column of **Schedule 4A** opposite the name of the accessing agency, have access to an individual's identity information held by a holder agency specified in the third column of that schedule opposite the name of the accessing agency.

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109E Manner and form of access

- (1) Access to identity information permitted under **section 109D** may be facilitated between a holder agency and an accessing agency in the manner agreed by the agencies (for example, by direct access to information stored in a holder agency's database, or by exchange of information between the agencies).
- (2) Identity information that is held by a holder agency and accessed by an accessing agency under **section 109D** may be made available to the accessing agency in the form agreed by the agencies.

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109EA Annual reporting of requirement

The chief executive of an accessing agency must include in every annual report prepared by the chief executive for the purposes of section 43 of the Public Finance Act 1989, or any other applicable enactment requiring an annual report to Parliament, details of the operation of this Part and **Schedule 4A**.

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109F Amendment of Schedule 4A

- (1) The Governor-General may, by Order in Council made on the recommendation of the responsible Minister given after consultation with the Privacy Commissioner,—
 - (a) add, remove, amend, or replace any item in **Schedule 4A**; or
 - (b) repeal **Schedule 4A** and substitute a new schedule.
- (2) Before recommending the making of an Order in Council facilitating access by an accessing agency to identity information held by a holder agency, the responsible Minister must be satisfied that—
 - (a) the purpose for which the identity information is to be accessed relates to a specified function of the accessing agency; and

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(b) the identity information to be accessed is no more than is reasonably necessary to enable the accessing agency to achieve that purpose; and (c) any potential conflicts or inconsistencies between the sharing of personal information under Schedule 4A and any other enactment have been identified and appropriately addressed.	5
7 New section 110A inserted (Relationship between Part 11 and other law relating to information disclosure) After section 110, insert: 110A Relationship between Part 11 and other law relating to information disclosure This Part does not— (a) limit the collection, use, or disclosure of personal information that— (i) is authorised or required by or under any enactment; or (ii) is permitted by the information privacy principles: (b) limit Part 9A, 10, or 10A.	10
8 New Schedule 4A inserted After Schedule 4, insert the Schedule 4A set out in Schedule 1 of this Act.	15
Part 2 Amendments to other enactments	
Subpart 1—Amendments to Births, Deaths, Marriages, and Relationships Registration Act 1995	20
9 Principal Act This subpart amends the Births, Deaths, Marriages, and Relationships Registration Act 1995 (the principal Act).	25
10 Section 2 amended (Interpretation) In section 2, insert in their appropriate alphabetical order: approved information sharing agreement and information sharing agreement have the meanings given to them by section 96C of the Privacy Act 1993 non-disclosure direction means a direction made by the Registrar-General on a request under section 75A(2)(b) that a person’s birth information, marriage information, civil union information, or name change information not be disclosed to the public	30

11	Section 78AA amended (Disclosure of birth information, death information, marriage information, civil union information, and name change information under approved information sharing agreement) Repeal section 78AA(5).	
12	New section 78AB inserted (Disclosure of birth information, death information, marriage information, civil union information, and name change information for law enforcement purposes) After section 78AA, insert:	5
78AB	Disclosure of birth information, death information, marriage information, civil union information, and name change information for law enforcement purposes	10
(1)	This section applies if a specified agency has reason to suspect that a particular individual—	
(a)	is, or is liable to be, detained under an enactment:	
(b)	is, or is liable to be, arrested under a warrant issued by a court or any Registrar:	15
(c)	is contravening, or is about to contravene, an enactment or a court order:	
(d)	is liable to be prosecuted for an offence punishable by imprisonment:	
(e)	is, or is liable to be, detained or arrested in respect of a traffic offence:	
(f)	is endangering, or is threatening to endanger, the life, health, or safety of a person or group of persons:	20
(g)	is injured or dead.	
(2)	If this section applies, the Registrar-General may, despite the existence or absence of an approved information sharing agreement, share the following personal information about the particular individual with the specified agency:	25
(a)	birth information:	
(b)	death information:	
(c)	marriage information:	
(d)	civil union information:	
(e)	name change information.	30
(3)	This section does not limit section 74, 78A, or 78AA.	
(4)	Subsection (1) applies whether or not a non-disclosure direction is in force in respect of any or all of the personal information about an identifiable individual referred to in that subsection.	
(5)	For the purposes of this section, specified agency means any of the following:	35
(a)	the Department of Corrections:	
(b)	the Department of Internal Affairs:	

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<u>Part 2 cl 12A</u>		
(c) the part of the Ministry of Business, Innovation, and Employment referred to as Immigration New Zealand <u>that administers the Immigration Act 2009</u> ; (d) the Ministry of Justice; (e) the Ministry of Transport; (f) the New Zealand Customs Service; (g) the New Zealand Police; (h) the New Zealand Transport Agency. Compare: 1993 No 28 s 97; 1996 No 27 s 32C(1); 2009 No 51 s 4		5
<u>Subpart 1A—Amendments to Corrections Act 2004</u>		10
<u>12A Principal Act</u>	This subpart amends the Corrections Act 2004 (the principal Act).	
<u>12B Section 3 amended (Interpretation)</u>	In section 3(1), insert in its appropriate alphabetical order: biometric information has the same meaning as in section 2(1) of the Customs and Excise Act 1996	15
<u>12C Section 41 replaced (Photographing and measuring of prisoner)</u>	Replace section 41 with:	
<u>41 Collection of biometric information, etc, from prisoner</u>		
<u>(1) An officer may direct that a prisoner submit to—</u>		20
<u>(a) photographs being taken of the prisoner;</u>		
<u>(b) biometric information being collected from the prisoner;</u>		
<u>(c) measurements being taken from the prisoner;</u>		
<u>(d) any other prescribed procedure designed to create a record to enable the subsequent identification of the prisoner.</u>		25
<u>(2) No procedure that purports to authorise the taking of a bodily sample from a prisoner may be prescribed for the purposes of subsection (1)(d).</u>		
<u>(3) The powers conferred by subsection (1)—</u>		
<u>(a) may be exercised only for the purpose of—</u>		
<u>(i) facilitating the management and security of the prison; and</u>		30
<u>(ii) verifying the identity of prisoners upon release into the community to ensure public safety; and</u>		
<u>(b) must be exercised subject to the provisions of this Act and any other enactment.</u>		

- (4) If necessary, reasonable force may be used by an officer to compel the prisoner to submit to the taking of photographs, the collection of biometric information, the taking of measurements, or other prescribed procedures.
- (5) The chief executive must ensure that, if the prisoner is a person accused of an offence and subsequently acquitted, all information collected or taken from the prisoner under this section during the prisoner's detention in respect of the charge, and any record of identifying information created in reliance on **sub-section (1)** during that period, are immediately destroyed.

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12D Section 128 amended (Offences by prisoner)

Replace section 128(1)(m) with:

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- (m) contrary to a direction given under **section 41**, refuses to submit to—
- (i) photographs being taken of the prisoner:
 - (ii) biometric information being collected from the prisoner:
 - (iii) measurements being taken from the prisoner:
 - (iv) any other prescribed procedure designed to create a record to enable the subsequent identification of the prisoner.

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12E Section 202 amended (Regulations relating to safe custody of prisoners)

Replace section 202(c) with:

- (c) regulating—
- (i) the photographing of prisoners:
 - (ii) the collection of biometric information from prisoners:
 - (iii) the taking of measurements from prisoners:
- (ca) prescribing procedures to enable the identification of prisoners other than those that may be regulated under **paragraph (c)**:

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Subpart 2—Amendments to Customs and Excise Act 1996

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13 Principal Act

This **subpart** amends the Customs and Excise Act 1996 (the **principal Act**).

14 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

biometric information, in relation to a person, means information that comprises—

30

- (a) 1 or more of the following kinds of information:
- (i) a photograph of all or any part of the person's head and shoulders:
 - (ii) impressions of the person's fingerprints:
 - (iii) a scan of the person's irises; and

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- (b) an electronic record of the information that is capable of being used for biometric matching

personal information means information about an identifiable person (including, without limitation, biometric information)

15 New sections 32D to 32F and cross-heading inserted

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After section 32C, insert:

Information

32D Arrival and departure information

The Customs may, for the purposes of monitoring the movement of craft and persons, passenger and crew processing, and border security, collect and use the following information about craft and persons arriving in or departing from New Zealand:

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- (a) details of craft movements including the craft name and registration number or identifier, estimated date and time of arrival or departure, and place of origin and destination; and
- (b) personal information including the person's name, date of birth, gender, biometric information, passport number, nationality, and travel movements.

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Compare: 1996 No 27 s 279

32E Verification of identity using biometric information

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- (1) A Customs officer may, during the processing of a person's arrival in or departure from New Zealand, request that person to ~~verify his or her identity by providing biometric information for the purposes of biometric matching~~ provide biometric information for the purpose of verifying the person's identity using biometric matching.

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- (2) A person who fails to comply with a request made under **subsection (1)** may be directed by a Customs officer to remain in a designated place for either or both of the following purposes:

- (a) to enable the officer to make any inquiries necessary to establish the identity of the person:
- (b) to enable the officer to obtain the attendance of, or make inquiries of, another officer who is authorised, in respect of a matter specified in section 32C(1), to do 1 or more of the following:
 - (i) question the person:
 - (ii) ascertain or determine the status of the person:
 - (iii) detain the person:
 - (iv) arrest the person.

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identifying information means information that identifies, or relates to the identity of, a person, but does not include biometric information

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identifying information means information that identifies, or relates to the identity of, a person, but does not include biometric information

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identifying information means information that identifies, or relates to the identity of, a person, but does not include biometric information

After section 281(1), insert:

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Replace section 282(1)(j) with:

- (j) personal information:

Subpart 3—Amendment to Immigration Act 2009

This **subpart** amends the Immigration Act 2009 (the **principal Act**).

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biometric information, in relation to a person, means information that comprises—

- 30

Subpart 4—Amendments to Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

25 Principal Act

This **subpart** amends the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the **principal Act**).

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26 Section 5 amended (Interpretation)

In section 5(1), insert in its appropriate alphabetical order:

biometric information has the same meaning as in section 2(1) of the Customs and Excise Act 1996

27 New section 62A inserted (Collection of biometric information from special care recipients)

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After section 62, insert:

62A Collection of biometric information from special care recipients

- (1) This section provides for the collection of biometric information to—
 - (a) strengthen the management of special care recipients; and
 - (b) ensure the safety and security of special care recipients; and
 - (c) better manage the risk of special care recipients breaching **section 67A**.
- (2) A special care recipient must allow the collection of biometric information if directed by—
 - (a) the Director-General of Health; or
 - (b) the care manager for the special care recipient; or
 - (c) a compulsory care co-ordinator.
- (3) This section is subject to any regulations made under **section 150(ca)**.

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28 New section 67A inserted (Special care recipients not to leave secure facility or depart from New Zealand without permission)

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After section 67, insert:

67A Special care recipients not to leave secure facility or depart from New Zealand without permission

- (1) A special care recipient may not leave the secure facility in which the special care recipient is detained unless—
 - (a) authorised by the Minister under section 66; or
 - (b) authorised by the Director-General under section 67.
- (2) A special care recipient may not depart from New Zealand unless—
 - (a) the special care recipient is on authorised leave; and

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Part 2 cl 29	
(b) the special care recipient is permitted by the Minister, on terms and conditions specified by the Minister, to be absent from New Zealand during that authorised leave; and (c) the special care recipient’s departure from New Zealand is in accordance with the terms and conditions of the Minister’s permission given under paragraph (b).	5
(3) In subsection (2),— authorised leave, in relation to a special care recipient, means leave from the secure facility in which the special care recipient is detained that is authorised under section 66 or 67 depart includes— (a) attempt to depart: (b) prepare to depart.	10
29 Section 110 amended (Meaning of care recipient who has escaped)	
(1) After section 110(a), insert: (ab) who has breached any terms or conditions of authorised leave; or (2) In section 110(c), after “leave”, insert “; or”. (3) After section 110(c), insert: (d) who has departed from New Zealand in contravention of section 67A(2).	15
30 Section 150 amended (Regulations)	
After section 150(c), insert: (ca) restricting or otherwise regulating the collection under section 62A of biometric information from special care recipients:	20
Subpart 5—Amendments to Land Transport Act 1998	25
31 Principal Act	
This subpart amends the Land Transport Act 1998 (the principal Act).	
32 Section 200 replaced (Restrictions on access to photographic images of driver licence holders)	
Replace section 200 with:	30
200 Restrictions on access to photographic images of driver licence holders	
(1) Except as provided in this section or Part 10A of the Privacy Act 1993, no person other than a person acting in the course of the person’s official duties as an employee of the agency may access or use any photographic image stored under section 28(5).	35

- (2) A person who is acting in the course of the person's official duties as an employee of the Department of Internal Affairs may access or use any photographic image stored under section 28(5) to verify the identity of a particular individual.
- (3) A person who is the next of kin of a deceased individual to whom a photographic image stored under section 28(5) relates may access the photographic image— 5
- (a) on production to the Agency of—
- (i) a death certificate (within the meaning of section 2 of the Births, Deaths, Marriages, and Relationships Registration Act 1995) relating to the death of the individual; or 10
- (ii) the grant of probate of the will of the individual or of letters of administration to the individual's estate; and
- (b) only if the person who is seeking access to the photographic image satisfies the Agency that the person is the individual's next of kin. 15
- (4) A person who is acting in the course of the person's official duties as an employee of a specified agency may access or use any photographic image stored under section 28(5) to verify the identity of a particular individual for the purpose of law enforcement.
- (5) For the purposes of this section,— 20
- next of kin** includes a spouse, a civil union partner, and a de facto partner
- specified agency** means any of the following:
- (a) the Department of Corrections;
- (b) the part of the Ministry of Business, Innovation, and Employment that administers the Immigration Act 2009; 25
- (c) the Ministry of Justice;
- (d) the New Zealand Customs Service;
- (e) the New Zealand Police.

Subpart 6—Amendments to Mental Health (Compulsory Assessment and Treatment) Act 1992 30

33 **Principal Act**

This **subpart** amends the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the **principal Act**).

34 **Section 2 amended (Interpretation)**

In section 2(1), insert in its appropriate alphabetical order: 35

biometric information has the same meaning as in section 2(1) of the Customs and Excise Act 1996

35 New section 43A and cross-heading inserted

After section 43, insert:

Collection of biometric information

43A Collection of biometric information

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|--|----|
| (1) This section provides for the collection of biometric information to— | 5 |
| (a) strengthen the management of special patients and restricted patients in hospitals; and | |
| (b) ensure the safety and security of special patients and restricted patients; and | |
| (c) better manage the risk of special patients and restricted patients breaching section 52A . | 10 |
| (2) A person who is a special patient or a restricted patient must allow the collection of biometric information if directed by— | |
| (a) the Director of Mental Health; or | |
| (b) the Director of Area Mental Health Services; or | 15 |
| (c) the person in charge of the hospital in which the patient is detained. | |
| (3) This section is subject to any regulations made under section 135(1)(f) . | |

36 New section 52A inserted (Special patients not to leave hospital or depart from New Zealand without permission)

After section 52, insert:

52A Special patients not to leave hospital or depart from New Zealand without permission

- | | |
|---|----|
| (1) A special patient may not leave the hospital in which the special patient is detained unless— | |
| (a) granted leave of absence by the Minister under section 50; or | 25 |
| (b) granted leave of absence by the Director under section 52. | |
| (2) A special patient may not depart from New Zealand unless— | |
| (a) the special patient has been granted leave of absence under section 50 or 52; and | |
| (b) the special patient is permitted by the Minister, on terms and conditions specified by the Minister, to be absent from New Zealand during that leave; and | 30 |
| (c) the special patient's departure from New Zealand is in accordance with the terms and conditions of the Minister's permission given under paragraph (b) . | 35 |

(3)	A special patient who contravenes subsection (2) must be treated as having escaped.	
(4)	In subsection (2) , depart includes—	
(a)	attempt to depart:	
(b)	prepare to depart.	5
37	Section 53 amended (Escape and absence without leave) In section 53, after “escapes,”, insert “or who breaches any condition of his or her leave.”.	
38	Section 100 amended (Psychiatric security institutions) Repeal section 100(4).	10
39	Section 135 amended (Regulations) Replace section 135(1)(f) with:	
(f)	restricting or otherwise regulating the collection under section 43A of biometric information from special patients and restricted patients:	
	Subpart 7—Amendments to Parole Act 2002	15
40	Principal Act This subpart amends the Parole Act 2002 (the principal Act).	
41	Section 4 amended (Interpretation) In section 4(1), insert in its appropriate alphabetical order:	
	biometric information has the same meaning as in section 2(1) of the Customs and Excise Act 1996	20
42	Section 14 amended (Standard release conditions) After section 14(1)(f), insert:	
(fa)	the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:	25
(fb)	the offender must, if a probation officer directs, allow the collection of biometric information:	
43	New section 14A inserted (Purpose of collecting biometric information under section 14(1)(fb)) After section 14, insert:	30
14A	Purpose of collecting biometric information under section 14(1)(fb) Biometric information collected under section 14(1)(fb) may only be used for the purpose of helping—	

	(aa) <u>to manage offenders to ensure public safety; and</u> (a) to identify offenders before they leave New Zealand; and (b) to enforce the condition specified in section 14(1)(fa).	
44	Section 107JA amended (Standard extended supervision conditions) After section 107JA(1)(e), insert: (ea) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer: (eb) the offender must, if a probation officer directs, allow the collection of biometric information:	5
45	New section 107JB inserted (Purpose of collecting biometric information under section 107JA(1)(eb)) After section 107JA, insert: 107JB Purpose of collecting biometric information under section 107JA(1)(eb) Biometric information collected under section 107JA(1)(eb) may only be used for the purpose of helping— (aa) <u>to manage offenders to ensure public safety; and</u> (a) to identify offenders before they leave New Zealand; and (b) to enforce the condition specified in section 107JA(1)(ea).	10 15
46	Parole Regulations 2002 amended Amend the Parole Regulations 2002 as set out in Schedule 2. Subpart 8—Amendments to Sentencing Act 2002	20
47	Principal Act This subpart amends the Sentencing Act 2002 (the principal Act).	
48	Section 4 amended (Interpretation) In section 4(1), insert in its appropriate alphabetical order: biometric information has the same meaning as in section 2(1) of the Customs and Excise Act 1996	25
49	Section 49 amended (Standard conditions of supervision) After section 49(1)(f), insert: (fa) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer: (fb) the offender must, if a probation officer directs, allow the collection of biometric information:	30

50 Section 54F amended (Standard conditions of intensive supervision)

After section 54F(1)(g), insert:

- (ga) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:
- (gb) the offender must, if a probation officer directs, allow the collection of biometric information:

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50A New section 59A inserted (Offender must allow collection of biometric information)

After section 59, insert:

59A Offender must allow collection of biometric information

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An offender who is subject to a sentence of community work must, if a probation officer directs, allow the collection of biometric information.

51 Section 69E amended (Conditions of community detention during sentence term)

After section 69E(1)(d), insert:

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- (da) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:
- (db) the offender must, if a probation officer directs, allow the collection of biometric information:

51A Section 71 amended (Offences relating to breach of sentence of community work)

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After section 71(1)(a) insert:

- (ab) fails, without reasonable excuse, to allow the collection of biometric information in accordance with **section 59A**; or

52 Section 80C amended (Detention conditions applying to offender sentenced to home detention)

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After section 80C(2)(c), insert:

- (ca) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:
- (cb) the offender must, if a probation officer directs, allow the collection of biometric information:

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53 Section 80O amended (Standard post-detention conditions)

After section 80O(e), insert:

- (ea) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:

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(eb) the offender must, if a probation officer directs, allow the collection of biometric information:

54 New subpart 2C of Part 2 inserted

After section 80ZM, insert:

Subpart 2C—Biometric information

80ZMA Purpose of collecting biometric information

- (1) Biometric information collected under **section 49(1)(fb), 54F(1)(gb), 59A, 69E(1)(db), 80C(2)(cb), or 80O(eb)** may only be used for the purpose of helping—
- (aa) to manage offenders to ensure public safety; and
 - (a) to identify offenders before they leave New Zealand; and
 - (b) to enforce the conditions specified in **sections 49(1)(fa), 54F(1)(ga), 69E(1)(da), 80C(2)(ca), and 80O(ea).**
- (2) Biometric information may be used only for the purpose referred to in **subsection (1).**

55 Sentencing Regulations 2002 amended

Amend the Sentencing Regulations 2002 as set out in **Schedule 3.**

Subpart 9—Amendments to Victims' Rights Act 2002

56 Principal Act

This **subpart** amends the Victims' Rights Act 2002 (the **principal Act**).

57 New section 35B inserted (Notice of offender on temporary release escaping from lawful custody)

After section 35A, insert:

35B Notice of offender on temporary release escaping from lawful custody

If the accused or offender is temporarily released from custody under section 62(1)(a) of the Corrections Act 2004, the chief executive of the Department of Corrections must give a victim to whom this section applies notice, as soon as practicable, of every instance the accused or offender is deemed to be unlawfully at large under section 63(3) of that Act.

58 Section 41 amended (Effect of appointment of representative)

In section 41, insert as subsection (2):

- (2) However, despite subsection (1)(b), if the information to which the appointment relates is a notice to be given to the victim under section 35(1)(b)(i),

35A(b)(i), **35B**, or 37(2)(c), that notice may be given to the victim directly in any case where the person giving the notice reasonably believes—

- (a) there is a risk to the victim's safety; and
- (b) that risk cannot in the circumstances be sufficiently managed by giving the notice to the representative.

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Schedule 1

New Schedule 4A inserted into Privacy Act 1993

s 8

Schedule 4A

Identity information

5

ss 109D, 109F

Accessing agency	Purpose of access	Holder agency
Department of Corrections	To verify the identity of— (a) a person under control or supervision (as defined in section 3(1) of the Corrections Act 2004): (b) a person who under section 30B of the Bail Act 2000 has been granted bail with an electronic monitoring condition	Department of Internal Affairs MBIE (Immigration) Ministry of Health and District Health Boards (only in relation to special patients, restricted patients, and special care recipients) Ministry of Justice New Zealand Police New Zealand Transport Agency
Department of Internal Affairs	To verify the identity of a person who has applied for— (a) the issue of— (i) a New Zealand travel document: (ii) a certificate of New Zealand citizenship: (iii) an electronic identity credential: (b) the registration of a name change	Department of Corrections MBIE (Immigration) Ministry of Health and District Health Boards (only in relation to special patients, restricted patients, and special care recipients) New Zealand Police New Zealand Transport Agency
MBIE (Immigration)	To verify the identity of a person— (a) who is seeking to travel to New Zealand: (b) who is arriving in or departing from New Zealand: (c) who is applying for a visa: (d) who an immigration officer has good cause to suspect— (i) has committed an offence against the Immigration Act 2009: (ii) has obtained a visa under a fraudulent identity:	Department of Corrections Department of Internal Affairs Ministry of Health and District Health Boards (only in relation to special patients, restricted patients, and special care recipients) Ministry of Justice New Zealand Customs Service New Zealand Police New Zealand Transport Agency

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Schedule 1

Accessing agency	Purpose of access	Holder agency
	(iii) is liable for deportation or turnaround:	
	(iv) is unlawfully in New Zealand	
Ministry of Health and District Health Boards	To verify the identity of a person who— (a) is being admitted, or returned, to a hospital as a special patient or restricted patient; or (b) is being admitted, or returned, to a secure facility as a special care recipient	Department of Corrections Department of Internal Affairs MBIE (Immigration) New Zealand Police
New Zealand Customs Service	To verify the identity of a person who— (a) is in a Customs controlled area; and (b) is departing, or attempting to depart, from New Zealand	Department of Corrections Department of Internal Affairs MBIE (Immigration) Ministry of Health and District Health Boards (only in relation to special patients, restricted patients, and special care recipients) New Zealand Transport Agency
New Zealand Police	To verify the identity of a person— (a) whose identifying particulars have been taken under section 32 or 33 of the Policing Act 2008: (b) whose identifying particulars have been taken under section 11 of the Returning Offenders (Management and Information) Act 2015: (c) who has breached, has attempted to breach, or is preparing to breach a condition of any sentence, or order imposed under any enactment, that the person not leave New Zealand	Department of Corrections Department of Internal Affairs MBIE (Immigration) Ministry of Health and District Health Boards (only in relation to special patients, restricted patients, and special care recipients) New Zealand Customs Service New Zealand Transport Agency

Note: A reference in this schedule to MBIE (Immigration) is a reference to the part of the Ministry of Business, Innovation, and Employment that administers the Immigration Act 2009.

Schedule 2

Amendments to Parole Regulations 2002 ~~(SR 2002/179)~~

s 46

Schedule

In the Schedule, form 1, under the heading “**Standard release conditions**”, after paragraph (f), insert: 5

- (fa) you must not leave or attempt to leave New Zealand without the prior written consent of a probation officer; and
- (fb) you must, if a probation officer directs, allow the collection of biometric information; and

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In the Schedule, form 2, under the heading “**Standard release conditions**”, after paragraph (f), insert:

- (fa) you must not leave or attempt to leave New Zealand without the prior written consent of a probation officer; and
- (fb) you must, if a probation officer directs, allow the collection of biometric information; and

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In the Schedule, form 3, under the heading “**Standard release conditions**”, after paragraph (f), insert:

- (fa) you must not leave or attempt to leave New Zealand without the prior written consent of a probation officer; and
- (fb) you must, if a probation officer directs, allow the collection of biometric information; and

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In the Schedule, form 4, under the heading “**Standard release conditions**”, after paragraph (f), insert:

- (fa) you must not leave or attempt to leave New Zealand without the prior written consent of a probation officer; and
- (fb) you must, if a probation officer directs, allow the collection of biometric information; and

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Schedule 3
Amendments to Sentencing Regulations 2002 ~~(SR 2002/178)~~

s 55

Schedule

In the Schedule, form 1, under the heading “**Standard conditions of sentence of supervision**”, after paragraph (f), insert: 5

(fa) ~~the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:~~

(fb) the offender must, if a probation officer directs, allow the collection of biometric information: 10

In the Schedule, form 2, under the heading “**Standard conditions of sentence of intensive supervision**”, after paragraph (g), insert:

(ga) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:

(gb) the offender must, if a probation officer directs, allow the collection of biometric information: 15

In the Schedule, form 4, under the heading “**Standard conditions of sentence of community detention**”, after paragraph (d), insert:

(da) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer: 20

(db) the offender must, if a probation officer directs, allow the collection of biometric information:

In the Schedule, form 6, under the heading “**Standard conditions of sentence of home detention**”, after paragraph (c), insert:

(ca) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer: 25

(cb) the offender must, if a probation officer directs, allow the collection of biometric information:

In the Schedule, form 6, under the heading “**Standard post-detention conditions of sentence of home detention**”, replace “Section 80N” with “Section 80O”. 30

In the Schedule, form 6, under the heading “**Standard post-detention conditions of sentence of home detention**”, after paragraph (e), insert:

(ea) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:

(eb) the offender must, if a probation officer directs, allow the collection of biometric information:

Legislative history

24 August 2016
13 September 2016

Introduction (Bill 147–1)
First reading and referral to Law and Order Committee