

Policing (Storage of Youth Identifying Particulars) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Policing Act 2008 (**the 2008 Act**) to restore the legal position under the Police Act 1958 (**the 1958 Act**) in relation to the storage of youth identifying particulars by the Police. That legal position was not intended to be altered by the 2008 Act.

The Bill seeks to restore the Police's ability under the 1958 Act to store fingerprints and photographs (known collectively as **identifying particulars** or **IP**) of youths (children or young people) for whom there is a proven outcome in the Youth Court and in respect of whom an order is made under section 283(a) to (o) of the Children, Young Persons, and Their Families Act 1989 (**the CYPTF Act**).

Under the 2008 Act, the Police can only store youth IP following a conviction. This means that IP can only be stored for youths with a proven outcome in a Youth Court where a Youth Court makes an order under section 283(o) of the CYPTF Act (which relates to a conviction being entered and the youths being ordered to be brought before a District Court for sentence or decision). IP can no longer be stored for youths in respect of whom an order is made under section 283(a) to (n) of the CYPTF Act (which relate to responses that range from discharge to supervision with residence). This limit on the Po-

lice's ability under the 2008 Act to store youth IP was unintended, and not the result of a deliberate and specific policy decision.

About 1200 youths each year have proven outcomes in the Youth Court, and orders made under section 283(a) to (n) of the CYPTF Act, and the related youth IP are not currently able to be stored by the Police under the 2008 Act.

The storage of youth IP is vital for the detection of youth offenders who go on to re-offend. Early identification of repeat youth offenders is important for ensuring that interventions are put in place to help prevent repeat youth offenders from progressing to the adult court system. It is also vital to solving crimes and providing satisfaction to victims of youth crime.

Regulatory impact statement

The New Zealand Police produced a regulatory impact statement on 11 April 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.police.govt.nz/new-zealand-police-miscellaneous-reports>
- <http://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 identifies the principal Act amended; the Policing Act 2008. A reference in this analysis to a provision is, unless the context otherwise requires, a reference to a provision of that Act.

Part 1

Purpose and application of this Act

Clause 4 states the Bill's purpose, which is to amend the principal Act so that it indicates clearly when it authorises the storage, and when it requires the destruction, of youth identifying particulars.

Clause 5 makes it clear that the new sections substituted by *clause 6* apply, and must be taken to have applied at all times after the close

of 30 September 2008, to all identifying particulars obtained under the principal Act after the commencement, on 1 October 2008, of that Act (except section 130(2)).

Part 2 Amendment to principal Act

Clause 6 repeals section 34 as from its commencement on 1 October 2008, and substitutes, as from that commencement, *new sections 34 and 34A* which, like current section 34, relate to storage, etc, on a Police information recording system of identifying particulars.

Identifying particulars (as defined in section 32(5)) means, in relation to a person, any or all of the following:

- the person's biographical details (for example, the person's name, address, and date of birth);
- the person's photograph or visual image;
- impressions of the person's fingerprints, palm-prints, or footprints.

Identifying particulars may be obtained by the Police,—

- under section 32, from a person who is in the lawful custody of the Police, who is detained for committing an offence, and who is at a Police station or any other place being used for Police purposes; or
- under section 33, from a person detained at any place by a constable who has good cause to suspect the person of committing an offence and who intends to bring proceedings against the person in respect of that offence by way of summons.

New section 34(1) (like current section 34(a)) authorises the entry, recording, and storage, on a Police information recording system, of identifying particulars of a person that are obtained under section 32 or 33.

New section 34(2)(a) and (b) (like current section 34(b)(i) and (ii)) require certain identifying particulars, namely photographs or visual images of a person, and impressions of a person's fingerprints, palm-

prints, or footprints, that are obtained under section 32 or 33, to be destroyed as soon as practicable after—

- a decision is made not to commence criminal prosecution proceedings (as defined in *new section 34(3)*) against the person in respect of the offence for which the particulars were taken; or
- criminal prosecution proceedings (as so defined) that are commenced against the person in respect of the offence for which the particulars were taken are completed with an outcome (for example, an acquittal) that is not an outcome (specified in *new section 34A*) that authorises continued storage.

New section 34(3) defines criminal prosecution proceedings against a person in respect of the offence for which particulars were taken, for the purposes of *new sections 34 and 34A*, as proceedings—

- commenced against the person in respect of that offence or offences including that offence under the Crimes Act 1961, or under the Summary Proceedings Act 1957 (alone or, if the person is a child or a young person as defined in section 2(1) of the CYPTF Act, in conjunction with that Act); and
- some or all of which (for example, any committal process proceedings) are heard or determined, at first instance, in a District Court, the High Court, a Youth Court, or a combination of those courts.

New section 34(3) also defines the offence for which the particulars were taken, for the purposes of *new sections 34 and 34A*, as including (without limitation) an offence that arose from the same event or series of events as, and that replaces, that offence.

If the person is an adult (of or over the age of 17 years, or married or in a civil union), the criminal prosecution proceedings will be in an ordinary (sometimes called an adult) court (that is, in a District Court or the High Court).

But the criminal prosecution proceedings will be youth justice proceedings in a Youth Court under Part 4 of the CYPTF Act if the person is—

- a child of or over the age of 10 years and under 14 years; or
- a young person (aged 14, 15, or 16 years, and neither married nor in a civil union).

Youth justice proceedings involving a young person can, if the requirements of section 283(o) of that Act are satisfied, result in a conviction being entered by a Youth Court and the young person being brought before a District Court for sentence or decision, in which case the Sentencing Act 2002 applies. Further, if a child or young person in youth justice proceedings can, and does, elect trial by jury, the committal proceedings will be in a Youth Court, but any resulting jury trial will be criminal proceedings in an ordinary (sometimes called an adult) court (that is, in a District Court or the High Court). *New section 34A* specifies the outcomes, mentioned in *new section 34(2)(b)*, authorising continued storage of certain particulars. These outcomes include, but are more extensive than, the outcomes specified in current section 34(b)(ii)(A) to (C). In particular, they include, in *new section 34A(b) and (c)*, outcomes that occur only in youth justice proceedings under Part 4 of the CYPTF Act.

Hon Judith Collins

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**Policing (Storage of
Youth Identifying Particulars)
Amendment Bill**

cl 1

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Policing (Storage of Youth Identifying Particulars) Amendment Act **2011**.

2 Commencement 5
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended
This Act amends the Policing Act 2008.

Part 1 10

Purpose and application of this Act

4 Purpose of this Act
The purpose of this Act is to amend the principal Act so that it indicates clearly when it authorises the storage, and when it requires the destruction, of youth identifying particulars. 15

5 Application of this Act
The **sections 34 and 34A** substituted by **section 6** of this Act apply, and must be taken to have applied at all times after the close of 30 September 2008, to all identifying particulars obtained under the principal Act after the commencement, 20
on 1 October 2008, of that Act (except section 130(2)).

Part 2

Amendment to principal Act

6 New sections 34 and 34A substituted 25
Section 34 is repealed as from its commencement, on 1 October 2008, and the following sections are, as from that commencement, substituted:

“**34 Storage, etc, on Police information recording system of identifying particulars**

“(1) The identifying particulars of a person that are obtained under section 32 or 33 may be entered, recorded, and stored on a Police information recording system. 5

“(2) But photographs or visual images of a person, and impressions of a person’s fingerprints, palm-prints, or footprints, that are obtained under section 32 or 33 must be destroyed as soon as practicable after—

“(a) a decision is made not to commence criminal prosecution proceedings against the person in respect of the offence for which the particulars were taken; or 10

“(b) criminal prosecution proceedings that are commenced against the person in respect of the offence for which the particulars were taken are completed with an outcome (for example, an acquittal) that is not an outcome (specified in **section 34A**) that authorises continued storage. 15

“(3) In this section and **section 34A**,—

“**criminal prosecution proceedings** against a person in respect of the offence for which particulars were taken, means proceedings— 20

“(a) commenced against the person in respect of that offence or offences including that offence under the Crimes Act 1961, or under the Summary Proceedings Act 1957 (alone or, if the person is a child or a young person as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989, in conjunction with that Act); and 25

“(b) some or all of which (for example, any committal process proceedings) are heard or determined, at first instance, in a District Court, the High Court, a Youth Court, or a combination of those courts 30

“**the offence for which the particulars were taken** includes (without limitation) an offence that arose from the same event or series of events as, and that replaces, that offence. 35

“Compare: 1958 No 109 s 57(3)

**“34A Outcomes authorising continued storage of
certain particulars**

The outcomes mentioned in **section 34(2)(b)** are as follows:

- “(a) the person admits to, and completes a programme of
diversion (being a programme conducted by the Police) 5
for, the offence for which the particulars were taken:
 - “(b) the person is convicted of the offence for which the par-
ticulars were taken (for example, by virtue of a Dis-
trict Court or the High Court entering a conviction, or a
Youth Court entering a conviction and making an order 10
under section 283(o) of the Children, Young Persons,
and Their Families Act 1989):
 - “(c) the Youth Court makes an order under any of paragraphs
(a) to (n) of section 283 of the Children, Young Persons,
and Their Families Act 1989 in respect of the person and 15
the offence for which the particulars were taken:
 - “(d) the person is discharged under section 106 of the Sen-
tencing Act 2002 in respect of the offence for which the
particulars were taken.”
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