

# **Health (National Cervical Screening Programme) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Health (National Cervical Screening Programme) Amendment Bill (the **Bill**) amends Part 4A of the Health Act 1956 to enable National Cervical Screening Programme register (**NCSP register**) staff, health professionals who provide services to women along the cervical screening pathway (such as smear takers and laboratory and colposcopy staff and associated administration staff), and screening support services staff to directly access information from the register for the purposes of conducting their work.

Currently smear takers in primary care need to wait for clinical information to be faxed to them by authorised NCSP register staff, and access to the register for laboratory and colposcopy staff needs to be authorised by the Director-General of Health. The amendments would enable direct (look-up) access to the register for these groups, and for this access to be incorporated into the future redesign of the register.

The relevant provisions of the Privacy Act 1993, the Health Information Privacy Code 1994, health professional regulatory constraints, and employment and contract law are unaltered by the amendments. The National Cervical Screening Programme manager retains administrative control over granting secure access to the NCSP register and access to the register will remain an auditable activity.

The existing offence provisions that apply to the disclosure of information from the NCSP register have been amended to reflect the introduction of direct access to the register. A new offence will be created for amending the register without the authorisation of the National Cervical Screening Programme manager.

### Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=26>

### Clause by clause analysis

*Clause 1* relates to the Title.

*Clause 2* provides that the Act will come force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Health Act 1956 is the principal Act amended by this Bill.

*Clause 4* amends section 112A of the principal Act, which states the purpose of Part 4A of the principal Act. Part 4A provides the legal basis for the National Cervical Screening Programme (NCSP) continued by that Part. This clause adds a *new subparagraph (iii)* to section 112A(b) and provides that an element of the purpose of Part 4A is to facilitate the operation and evaluation of the NCSP by enabling access to information by specified classes of persons for the purpose of providing cervical screening, assessment, and treatment services and by researchers.

*Clause 5* amends section 112B of the principal Act, which defines certain terms used in Part 4A.

*Subclause (1)* amends the definition of NCSP register to provide that it includes any part of the register that is replaced.

*Subclause (2)* inserts the following definitions:

- cervical screening service, which means any service provided for the purpose of providing cervical screening, assessment, and treatment services in relation to a particular woman as part of the NCSP;
- NCSP information, which means register information and also information held by the NCSP as a result of an evaluation conducted in accordance with Part 4A;
- register information, which means information held on the NCSP register.

*Clause 6* replaces section 112J of the principal Act with *new sections 112J and 112JA*. Section 112J currently prohibits any person from disclosing information from the NCSP register or information that is held by the NCSP as a result of an evaluation, if that information identifies a woman, unless that disclosure is authorised by that section.

*New section 112J* provides separately for access to, and use, retention, and disclosure of, NCSP information.

*Subsection (1) of new section 112J* states a general prohibition against accessing, using, retaining, or disclosing NCSP information if that information identifies a woman. The prohibition applies unless the action is authorised under this section.

*Subsection (2) of new section 112J* allows direct access to register information by—

- a health practitioner engaged by or on behalf of a woman, for the purpose of providing cervical screening services in relation to that woman:
- a health practitioner engaged to provide cervical screening services in relation to the woman by or on behalf of a health practitioner referred to above, for the purpose of providing cervical screening services in relation to that woman:
- administrative support staff engaged by the health practitioner who access the information at the direction of the health practitioner, for the purpose of providing cervical screening services in relation to that woman:
- district health board NCSP team staff performing the functions of NCSP register administrators and any other person or class of persons authorised for that purpose by the NCSP manager, for the purpose of supporting the operation of the NCSP:
- a person engaged by the Ministry of Health or a district health board, and any other person or class of persons authorised for that purpose by the NCSP manager, for the purpose of providing support services to women experiencing barriers to accessing cervical screening services:
- a person authorised by the NCSP manager, for the purpose of providing information to any person authorised to receive it under *subsection (3) or (4) of new section 112J*.

*Subsection (3) of new section 112J* allows disclosure of register information to—

- a person authorised to access the NCSP register under *subsection (2)*, for the authorised purpose:
- a person engaged by the Ministry of Health or a district health board, and any other person or class of persons authorised by the NCSP manager, for the purpose of enabling results from a screening test or a diagnostic test to be followed up:
- a person engaged by the Ministry of Health or a district health board, and any other person or class of persons authorised by the NCSP manager, for the purpose of enabling notices related to the NCSP to be sent to women who are enrolled in the NCSP, including reminder notices to women who are due for another screening test.

*Subsection (4) of new section 112J* allows access to, and disclosure of, NCSP information—

- to a screening programme evaluator under section 112X(2)(a):
- to a review committee, in accordance with a request from that committee under section 112Q(1):

- for the purpose of research, in accordance with regulations made under section 112ZF(1)(a):
- for the purpose of enabling the compilation and publication of statistics that do not enable the identification of the women to whom those statistics relate, in accordance with any regulations made under section 112ZF(1)(b).

*Subsection (5) of new section 112J* provides that any person who accesses or receives information in accordance with *subsection (2), (3), or (4)* of that section may use and retain the information for the purpose of that subsection and any directly related purpose.

*New section 112JA* contains further provisions that relate to NCSP information.

*Subsection (1) of new section 112JA* provides that nothing in *new section 112J* prevents any person from accessing, using, retaining, or disclosing NCSP information about a particular woman with the consent of that woman or her personal representative. This preserves the existing section 112J(1)(a).

*Subsection (2) of new section 112JA* provides that nothing in *new section 112J* prevents any person from accessing, using, retaining, or disclosing NCSP information in accordance with Part 4A. Sections 112Q, 112X, 112Y, and 112ZE of the principal Act currently provide for access to, or disclosure of, information in specific circumstances.

*Subsection (3) of new section 112JA* provides that access to NCSP information is subject to any conditions and procedures that the NCSP manager thinks necessary to impose or establish for the purpose of ensuring privacy and security of the NCSP information.

*Subsection (4) of new section 112JA* prohibits the amendment of information stored on the NCSP register, without the authority of the NCSP manager.

*Clause 7* amends a related cross-reference in section 112ZF of the principal Act, which relates to regulations.

*Clause 8* replaces section 112ZP(1) of the principal Act, which creates offences for failing to comply with section 112J(1), 112Y(1), (3)(e), or (4)(b), or 112Z. The *new subsection (1)* aligns the existing offences in that provision with *new sections 112J and 112JA(4)*. The offences are—

- failing to comply with requirements:
- accessing, using, retaining, or disclosing any NCSP information or evaluation material in contravention of the relevant section:
- amending the NCSP register without authority.

The general penalty in section 136 of the principal Act applies to these offences, which is a fine not exceeding \$500 and, if the offence is a continuing one, a further fine not exceeding \$50 for every day on which the offence has continued.

*Clause 9* amends the Health (Cervical Screening (Kaitiaki)) Regulations 1995 by updating cross-references affected by the *new section 112J* in *clause 6*.

*Hon Julie Anne Genter*

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### **The Parliament of New Zealand enacts as follows:**

#### **1 Title**

This Act is the Health (National Cervical Screening Programme) Amendment Act **2018**.

#### **2 Commencement**

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

### **3 Principal Act**

This Act amends the Health Act 1956 (the **principal Act**).

### **4 Section 112A amended (Purpose)**

- (1) In section 112A(b)(ii), after “that programme”, insert “; and”.
- (2) After section 112A(b)(ii), insert: 5
- (iii) enabling access to information by specified classes of persons for the purpose of providing cervical screening, assessment, and treatment services and by researchers.

### **5 Section 112B amended (Interpretation)**

- (1) In section 112B, definition of **NCSP register**, after “section 112C”, insert “, and includes any part of the register that is replaced”. 10
- (2) In section 112B, insert in their appropriate alphabetical order:
- cervical screening service** means any service provided for the purpose of providing cervical screening, assessment, and treatment services in relation to a particular woman as part of the NCSP 15
- NCSP information** means—
- (a) register information; and
- (b) information held by the NCSP as a result of an evaluation conducted in accordance with this Part
- register information** means information held on the NCSP register 20

### **6 Section 112J replaced (Certain information held by NCSP must not be disclosed)**

Replace section 112J with:

- 112J Restriction on access to, and use, retention, and disclosure of, NCSP information** 25
- (1) No person may access, use, retain, or disclose NCSP information if that information identifies a woman, except as provided by this section.
- (2) The following persons may access register information by directly accessing the NCSP register:
- (a) a health practitioner engaged by or on behalf of a woman to provide cervical screening services to that woman, for the purpose of providing cervical screening services in relation to that woman: 30
- (b) a health practitioner engaged to provide cervical screening services in relation to the woman by or on behalf of a health practitioner referred to in **paragraph (a)**, for the purpose of providing cervical screening services in relation to that woman: 35

- (c) administrative support staff engaged by a health practitioner referred to in **paragraph (a) or (b)** who access the information at the direction of the health practitioner, for the purpose of providing cervical screening services in relation to that woman:
  - (d) district health board NCSP team staff performing the functions of NCSP register administrators and any other person or class of persons authorised for that purpose by the NCSP manager, for the purpose of supporting the operation of the NCSP: 5
  - (e) a person engaged by the Ministry of Health or a district health board, and any other person or class of persons authorised for that purpose by the NCSP manager, for the purpose of providing support services to women experiencing barriers to accessing cervical screening services: 10
  - (f) a person authorised by the NCSP manager, for the purpose of providing information to any person authorised to receive it under **subsection (3) or (4)**. 15
- (3) Register information may be disclosed by a person referred to in **subsection (2)(f)**, to—
- (a) a person authorised to access the NCSP register under **subsection (2)**, for the authorised purpose; or
  - (b) a person engaged by the Ministry of Health or a district health board, and any other person or class of persons authorised for that purpose by the NCSP manager, for the purpose of enabling results from a screening test or a diagnostic test to be followed up; or 20
  - (c) a person engaged by the Ministry of Health or a district health board, and any other person or class of persons authorised for that purpose by the NCSP manager, for the purpose of enabling notices related to the NCSP to be sent to women who are enrolled in the NCSP, including reminder notices to women who are due for another screening test. 25
- (4) NCSP information may be accessed and disclosed by a person authorised for that purpose by the NCSP manager, if the disclosure is— 30
- (a) to a screening programme evaluator under section 112X(2)(a); or
  - (b) to a review committee, in accordance with a request from that committee under section 112Q(1); or
  - (c) for the purpose of research, in accordance with regulations made under section 112ZF(1)(a); or 35
  - (d) for the purpose of enabling the compilation and publication of statistics that do not enable the identification of the women to whom those statistics relate, in accordance with any regulations made under section 112ZF(1)(b).

- (5) Any person who accesses or receives information in accordance with **subsection (2), (3), or (4)** may use and retain the information for the purpose of that subsection and any directly related purpose.

**112JA Further provisions relating to NCSP information**

- (1) Nothing in **section 112J** prevents any person from accessing, using, retaining, or disclosing NCSP information about a particular woman with the consent of that woman or her personal representative. 5
- (2) Nothing in **section 112J** prevents any person from accessing, using, retaining, or disclosing NCSP information in accordance with this Part (*see*, for example, sections 112Q, 112X, 112Y, and 112ZE). 10
- (3) Access to the NCSP register is subject to any conditions and procedures that the NCSP manager thinks necessary to impose or establish for the purpose of ensuring privacy and security of the material or information.
- (4) No person may amend the information stored on the NCSP register unless authorised for that purpose by the NCSP manager. 15

**7 Section 112ZF amended (Regulations)**

In section 112ZF(1)(b), replace “section 112J(1)(h)” with “**section 112J(4)(d)**”.

**8 Section 112ZP amended (Offences)**

Replace section 112ZP(1) with: 20

- (1) Every person commits an offence against this Act who, without reasonable excuse,—
- (a) fails to comply with the requirements of section 112Y(3)(e) or (4)(b) or 112Z; or
- (b) accesses, uses, retains, or discloses any NCSP information or evaluation material in contravention of section **112J(1)** or 112Y(1); or 25
- (c) amends any information stored on the NCSP register, without authority from the NCSP manager under **section 112JA(4)**.

**9 Health (Cervical Screening (Kaitiaki)) Regulations 1995 amended**

- (1) This section amends the Health (Cervical Screening (Kaitiaki)) Regulations 1995. 30
- (2) In regulation 3(1), replace “section 74A(5)(f)” with “**section 112J(4)(d)**”.
- (3) In regulation 11(a), replace “section 74A(5)(f)” with “**section 112J(4)(d)**”.