Returning Offenders (Management and Information) Amendment Act 2023

Public Act	2023 No 3
Date of assent	27 February 2023
Commencement	see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Returning Offenders (Management and Information) Amendment Act 2023.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

3 Principal Act

This Act amends the Returning Offenders (Management and Information) Act 2015.

Part 1
Amendments to Parts 1 and 2 (preliminary and substantive provisions)

4 New sections 3A and 3B inserted

After section 3, insert:

3A Act's provisions apply retrospectively

(1) A provision of this Act applies to a person after the provision's commencement even if all or any of the following occurred before the provision's commencement:

(a) the person's conduct overseas that constitutes an imprisonable offence in New Zealand:

(b) the person's conviction for an overseas jurisdiction offence for that conduct:

(c) the person's having been sentenced to 1 or more terms of imprisonment overseas for the overseas jurisdiction offence:

(d) the end of the person's sentence of imprisonment overseas for the overseas jurisdiction offence:

(e) the person's release from custody in a prison overseas or, if the person is detained in an immigration or other facility overseas following release from prison overseas, release from that facility overseas:

(f) the person's deportation or removal to New Zealand on grounds that are or include their conviction for the overseas jurisdiction offence:

(g) the person's return to New Zealand:

(h) the person's conviction for the overseas jurisdiction offence being overturned:

(i) the person's being pardoned for the overseas jurisdiction offence:

(j) any other conduct of, or event relating to, the person that the provision requires to have occurred in order for the provision to apply.

(2) This section does not affect or limit—

(a) the validations in clause 8 of Schedule 1:

(b) the exception to those validations in clause 9 of Schedule 1.

(3) This section overrides any inconsistent other law.

(4) In particular, any **other law**, for the purposes of subsection (3), includes any law in all or any of the following:

(a) section 7 of the Interpretation Act 1999 (in force after this Act's commencement until the close of 27 October 2021):

(b) section 12 of the Legislation Act 2019 (in force after 27 October 2021):

(c) *G v Commissioner of Police* [2022] NZHC 3514.

3B Act's provisions override inconsistent other law

(1) This section applies to conduct—

(a) mentioned in, or otherwise necessary for carrying out, or giving full effect to, a provision of this Act; and

(b) after the provision's commencement.

(2) Examples of the conduct are—

(a) making, amending, revoking, or revoking and replacing, a determination or other decision:

(b) requesting a person to provide identifying particulars and taking them if the person provides them in response to a request, detaining the person (using reasonable force if necessary) if the person refuses, taking the identifying particulars of a person who has been detained for the purpose of taking them, giving a direction related to exercising those powers, or entering, recording, and storing on a Police information recording system the identifying particulars of a person that are provided in response to a request or otherwise taken:

(c) issuing, amending, revoking, revoking and replacing, or serving a notice (for example, a databank compulsion notice under section 14, or a determination notice):

(d) applying for, issuing, or executing a warrant for entry to any premises to serve a determination notice:

(e) applying for, imposing, varying, discharging, or revoking a standard release condition or a special condition (which, in this section, includes, without limitation, a condition imposed under section 33(1) and to which sections 26 to 31 apply under section 34):

(f) suspending under section 28(3) a standard release condition or a special condition:

(g) administering a standard release condition or a special condition (for example, monitoring compliance with a standard release condition or a special condition, and investigating and prosecuting an offence of breaching a standard release condition or a special condition):

(h) reviewing under section 22 a determination under section 17:

(i) doing, or omitting to do, any other act or omission mentioned in, or otherwise necessary for carrying out, or giving full effect to, the provision.

(3) The conduct must or may be done or omitted in accordance with the provision even if the conduct is, for an overseas jurisdiction offence for which the relevant person has been convicted and punished overseas, 1 or both of the following:

(a) punishment again:

(b) a variation and increase of penalty between commission of, and sentencing for, that offence.

(4) This section does not affect or limit—

(a) the validations in clause 8 of Schedule 1:

(b) the exception to those validations in clause 9 of Schedule 1.

(5) This section overrides any inconsistent other law.

(6) In particular, any **other law**, for the purposes of subsection (5), includes any law in all or any of the following:

(a) section 6(1) and (2) of the Sentencing Act 2002:

(b) sections 25(g) and 26(2) of the New Zealand Bill of Rights Act 1990:

(c) *G v Commissioner of Police* [2022] NZHC 3514.

5 Section 4 amended (Interpretation)

In section 4(1), insert in its appropriate alphabetical order:

the provision's commencement or **this provision's commencement**, for a provision of this Act inserted, amended, or replaced after this Act's commencement, includes—

(a) this Act's commencement; and

(b) the commencement of any other related provision of this Act inserted, amended, or replaced after this Act's commencement; and

(c) the commencement of any legislation inserting, amending, or replacing the provision

6 New section 18A inserted (Notice and right to be heard)

After section 18, insert:

18A Notice and right to be heard

(1) A determination by the Commissioner that a person is a returning prisoner must be made without providing the person with notice or a right to be heard.

(2) This section does not prevent a person providing voluntarily to the Commissioner, in response to a request that the Commissioner may (but need not) make, information—

(a) about whether the person is a returning prisoner; and

(b) adding to other information available to the Commissioner about that matter.

(3) This section also does not affect a returning prisoner's right to apply for—

(a) review under section 22 of the Commissioner's determination:

(b) judicial review of the Commissioner's determination.

7 Section 22 amended (Review of Commissioner's determination)

In section 22(2), replace "within 15 working days" with "at any time".

8 Subpart 4 of Part 2 repealed

Repeal subpart 4 of Part 2.

Part 2
Amendments to Schedule 1 (transitional, savings, and related provisions)

9 Schedule 1 amended

In Schedule 1,—

(a) insert the Part set out in the Schedule of this Act as the last Part; and

(b) make all necessary consequential amendments.

Schedule
New Part 4 inserted into Schedule 1

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Part 4
Provisions relating to Returning Offenders (Management and Information) Amendment Act 2023

6 Interpretation

In this Part, **Amendment Act** means the Returning Offenders (Management and Information) Amendment Act 2023.

7 Application of amendments

(1) The amendments made by the Amendment Act apply only to conduct after the Amendment Act's commencement.

(2) However, this clause is subject to clauses 8 and 9.

8 Validations of specified conduct and specified determinations

Validation of specified conduct

(1) Conduct by a person or court that is invalid is validated if—

(a) the conduct was purportedly done or omitted under a provision of this Act after this Act's commencement and before the Amendment Act's commencement; and

(b) the conduct would have been valid had the Amendment Act been in force when the conduct occurred.

(2) The conduct is validated from when it occurred.

(3) Examples of conduct that may be validated by subclause (1) are—

(a) making, amending, revoking, or revoking and replacing, a determination or other decision:

(b) requesting a person to provide identifying particulars and taking them if the person provides them in response to a request, detaining the person (using reasonable force if necessary) if the person refuses, taking the identifying particulars of a person who has been detained for the purpose of taking them, giving a direction related to exercising those powers, or entering, recording, and storing on a Police information recording system the identifying particulars of a person that are provided in response to a request or otherwise taken:

(c) issuing, amending, revoking, revoking and replacing, or serving a notice (for example, a databank compulsion notice under section 14, or a determination notice):

(d) applying for, issuing, or executing a warrant for entry to any premises to serve a determination notice:

(e) applying for, imposing, varying, discharging, or revoking a standard release condition or a special condition (which, in this clause, includes, without limitation, a condition imposed under section 33(1) and to which sections 26 to 31 apply under section 34):

(f) suspending under section 28(3) a standard release condition or a special condition:

(g) administering a standard release condition or a special condition (for example, monitoring compliance with a standard release condition or a special condition, and investigating and prosecuting an offence of breaching a standard release condition or a special condition):

(h) reviewing under section 22 a determination under section 17:

(i) doing, or omitting to do, any other act or omission mentioned in, or otherwise necessary for carrying out, or giving full effect to, the provision.

Validation of specified determinations

(4) A determination that is invalid is validated if—

(a) the determination was purportedly made under section 17 of this Act after this Act's commencement and before the Amendment Act's commencement; and

(b) the determination would be valid if the person determined to be a returning prisoner had been provided with notice and a right to be heard before the determination was made.

(5) The determination is validated from when it was made.

Exception to validations

(6) However, this clause is subject to clause 9.

9 Exception for particular applicant and decision as it relates to them

The validations in clause 8 do not—

(a) apply to the particular applicant in *G v Commissioner of Police* [2022] NZHC 3514 (whose effect was stayed, for persons other than the particular applicant, by an interim order made in *G v Commissioner of Police* [2022] NZHC 3628); or

(b) affect that judgment as it relates to that applicant; or

(c) affect any party's rights of appeal in respect of that judgment.

Legislative history

21 February 2023	Introduction (Bill 232–1)
22 February 2023	First reading, second reading, committee of the whole House, third reading
27 February 2023	Royal assent

This Act is administered by the Ministry of Justice.

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