

Privacy Commissioner's submission to the Social Services Committee on the Births, Deaths, Marriages, and Relationships Registration (Preventing Name Change by Child Sex Offenders) Amendment Bill 75-1

Introduction and executive summary

1. I am pleased for the opportunity to submit on this Member's Bill. I recommend the Committee does not support its progression into law.
2. The Bill, presented by National Party MP Dr Jian Yang, seeks to amend the Births, Deaths, Marriages and Relationships Registration Act 1995 (the BDMRRA) to prevent specified offenders from formally changing their name to: "*protect vulnerable members of society from child sex offenders by preventing those individuals convicted of a child sex offence(s) from changing their name*".
3. The ability of any individual in the community to exercise a degree of autonomy over their identity, and how they present themselves in the world, is a fundamental and important right. As such, restrictions of that right should only be imposed where there is a demonstrably justifiable need to do so.
4. The proposal in the Bill will not and cannot achieve its objective of ensuring "*appropriate agencies can properly manage offenders to assist in their rehabilitation and to maintain public safety*".
5. The proposed restriction:
 - would not better equip authorities to monitor offenders;
 - could provide a false sense of security by implying an improvement in the safety of children that would not ensue;
 - does not address the fact that former offenders, and everyone else in the community are free to assert identities different from those registered under the BDMRRA, and therefore will be ineffective;
 - does not take into account the fact that there are many benign and legitimate cultural, religious and other reasons for seeking to change one's name.
6. I support and reiterate the Attorney-General's advice to Parliament¹ that the proposed prohibition is inconsistent with the right to freedom of expression under the New Zealand Bill of Rights Act 1990 (NZBORA).

¹Report of the Attorney-General, under the New Zealand Bill of Rights Act 1990 on the Births, Deaths, Marriages, and Relationships Registration (Preventing Name Change by Child Sex Offenders) Amendment Bill, presented to the House of Representatives pursuant to Section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 265 of the Standing Orders of the House of Representatives (J.4), at http://www.parliament.nz/en-nz/pb/presented/papers/51DBHOH_PAP67884_1/attorney-general-report-of-the-under-the-new-zealand.

A prohibition on registered name changes would unduly limit personal autonomy and could undermine opportunities to help reintegrate offenders and reduce the risks they pose to the community

7. The name an individual chooses to go by is their primary means of expressing their identity. A person's name is an integral part of their persona and a fundamental aspect of personal autonomy. Any move to restrict that right needs to be based on a sound rationale.
8. An individual may have many reasons for wishing to change their name that do not reflect any intention to deceive. An individual may wish to change their name for a range of cultural or religious reasons, or to better reflect their self identity as an expression of familial or ethnic relationships or gender identity.
9. I agree with the Attorney-General's view that the proposed prohibition is unjustified and inconsistent with the right to free expression provided for under section 14 of NZBORA which provides that "*everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form*".

A prohibition on registered name changes would not be effective in preventing fraudulent name changes or the use of unregistered aliases

10. Dr Yang noted in his first reading speech that one objective of the Bill is to enable authorities to be able to keep track of offenders and get information on any change in their circumstances that may increase their risk of reoffending.
11. However, introducing a statutory prohibition to prevent an offender registering a formal name change will not prevent that individual from using aliases, producing false documents, or fraudulently assuming the names of other individuals through identity theft. It would simply provide one less point-in-time reference for authorities to utilise in current and future information sharing initiatives aimed at managing convicted offenders and reducing the ongoing risk such individuals may pose to community safety.
12. Under common law in New Zealand, individuals are entitled to use whatever name they choose as long as the name is not assumed for a fraudulent or unlawful purpose. Furthermore, individuals do not have to use or provide to authorities their legally registered name unless there is a specific statutory requirement to do so.
13. The First Reading debate indicates a primary driver behind this Bill is a desire to address concerns arising from the 2012 conviction of a child sex offender who used false identities, and falsified identity documents (including a forged birth certificate and curriculum vitae), to gain employment as a teacher in a number of North Island schools despite having no formal teaching qualifications.²

² M Smith and J Aitken. 15 June 2012. *Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector*. Report to Hon Hekia Parata, Minister of Education.

14. That offender is thought to have used some 53 different aliases and assumed names at different times. He formally registered two official name changes (including legally assuming the name of a real registered teacher to take advantage of their qualifications).³
15. However, the primary issue identified by the Ministerial Inquiry into that incident was not that the individual could legally change his name, but that the Registrar-General was not able to require the individual to provide evidence of identity as part of the process of registering that name change.
16. This deficiency has now been addressed by the recent amendment to the BDMRR Act that enables the Registrar-General to require a person applying to register a name change to provide any means of identification that is reasonably necessary to confirm the identity of the eligible person or the guardian of the eligible person, or both. There is now no reason why a similar situation should occur.

Conclusion and recommendations

17. I recommended this Bill not proceed. The proposed amendment would adversely impact individual autonomy with no public good benefit.
18. I will be happy to speak to this submission if it would assist the Committee in its deliberations.



John Edwards
Privacy Commissioner

³ Both formal name changes are subject to permanent court suppression orders.