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Office of the Minister of Police

Cabinet Legislation Committee

Approval for Introduction – Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill

Proposal

- 1 This paper seeks approval for the introduction of the Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill (the Bill).

Relation to government priorities

- 2 The Bill supports the Government's restoring law and order priority by enabling the improved operation of the Child Sex Offender Register (the Register). The amended legislation will support Police and the Department of Corrections (Corrections) to keep children safe from harmful sexual behaviour.

Policy

This Bill will improve the effectiveness of the Act and the Register

- 3 An evaluation of the Register was undertaken in 2019 following three years of operation, and the findings reported back to Cabinet in 2021 [SWC-21-MIN-0160 refers]. The evaluation found that the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the Act) and the Register were broadly performing as intended, but recommended some refinements.
- 4 On 21 November 2022, Cabinet approved a range of amendments to the Act to better enable government agencies to manage the risk posed by child sex offenders in the community and to enhance the operation of the Register [SWC-22-MIN-0213, CAB-22-MIN-0513 refers]. The amendments aim to:
 - 4.1 improve the clarity of the Act
 - 4.2 enhance the consistency of the Act to support the practice of Registry staff and district case managers
 - 4.3 assist registrable offenders to comply with the requirements placed on them under the Act
 - 4.4 update the Act to reflect evolving technology (some references to technology have become outdated) and identify gaps (the addition of further qualifying offences).

IN C O N F I D E N C E

- 5 Several additional amendments were identified through the drafting process. On 29 July 2024, Cabinet agreed the additional amendments to further enhance the effectiveness of the Act and the Register [SOU-24-MIN-0082, CAB-24-MIN-0267 refers].
- 6 A Bill has been drafted that implements Cabinet's decisions, and I seek approval for the Bill to be introduced to the House.

The Bill makes a range of amendments to the Act

- 7 The Bill makes a range of largely administrative amendments to the Act, the most substantive of which are set out in the below table.

Amendment	Intended effect
Require registrable offenders to report that a child is going to be residing at the same address 48 hours before this occurs (rather than 72 hours after).	This amendment addresses an unintended gap in the legislation and better assists Registry staff to effectively manage and monitor risk.
Require registrable offenders to report attendance at education or training courses and clarifying that voluntary work must be reported.	
Clarify the definition of locality for registrable offenders with no permanent address/fixed abode in New Zealand.	This amendment makes it easier for registrable offenders to comply with reporting obligations and better enables Registry staff to collect the information needed to effectively manage and monitor risk.
Enable notices to be served to registrable offenders by electronic means (as well as by post).	This amendment enables registrable offenders to receive information in a manner that suits them and assists them to comply with their reporting obligations.
Require a registrable offender travelling out of the country to report this information at least seven days in advance (rather than the current 48 hours in advance).	This amendment provides Registry staff more time to make the necessary international notifications and border alerts.
Require the registrable offender to report their return to New Zealand no more than 72 hours after re-entering, electronically or by telephone (rather	This amendment ensures the registrable offender engages with Registry staff soon after returning to New Zealand and assists registrable

IN C O N F I D E N C E

Amendment	Intended effect
than the current 10 day in-person requirement).	offenders to comply with their reporting obligations.
Clarify that where there is a successful appeal against registration, that information contained on the Register that relates to the registrable offender must be removed.	This amendment addresses a gap in the current legislation.
Remove the requirement for an application for review to be made within 28 days of registration.	This amendment reflects the lack of justification for having a timeframe for the review of a potential error.

The Bill also adds seven additional qualifying offences to the Act

- 8 The Act lists the offences that qualify an offender to be registered. This Bill adds the following seven¹ qualifying offences:
- 8.1 provision of sexual services by a person under the age of 18 years if the victim is under the age of 16 years (sections 20, 21, 22(1) and 22(2) of the Prostitution Reform Act 2003)
 - 8.2 knowingly importing or exporting objectionable publications if the subject or a subject of the publication is under 16 years and the publication deals with sex (section 390 of the Customs and Excise Act 2018)
 - 8.3 dealing in people under 18 years for sexual exploitation, removal of body parts, or engagement in forced labour if the person is under 16 years and subject to sexual exploitation (section 98AA of the Crimes Act 1961)
 - 8.4 intentionally or recklessly makes an intimate visual recording of another person if the subject of the visual recording is under 16 years and the publication deals with sex (section 216H of the Crimes Act 1961).
- 9 The addition of the Prostitution Reform Act offences addresses an unintended omission when the Act was originally passed. The remaining three offences are being added because of their close alignment with other similar qualifying offences already covered by the Act.

Impact analysis

Regulatory Impact Statement

- 10 A Regulatory Impact Statement (RIS) was prepared in accordance with Cabinet's impact analysis requirements and was submitted when Cabinet

¹ Previous Cabinet papers have referred to four additional qualifying offences rather than seven. This is because the additional Prostitution Reform Act 2003 offences were grouped together. This paper does not add any additional qualifying offences to the Bill.

IN CONFIDENCE

approved policy amendments on 21 November 2022 [SWC-22-MIN-0213, CAB-22-MIN-0513 refers].

- 11 The Ministry for Regulation determined that the proposed amendments approved by Cabinet on 29 July 2024 were exempt from the requirement to provide a RIS on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities [SOU-24-MIN-0082, CAB-24-MIN-0267 refers].

Climate Implications of Policy Assessment

- 12 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirmed that the CIPA requirements do not apply to these proposals as the threshold for significance is not met.

Compliance

- 13 The Bill complies with the following:
- 13.1 the disclosure statement requirements (a disclosure statement has been prepared and is attached to this paper)
 - 13.2 the principles and guidelines set out in the Privacy Act 2020
 - 13.3 relevant international standards and obligations
 - 13.4 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 14 The principles of the Treaty of Waitangi were considered in the development of the policy for the Bill. Advice from the Treaty Provisions Oversight Group was not sought as the amendments proposed are technical and administrative amendments to an existing Act, and as such, do not alter the policy intent of the legislation or have implications for the rights and interests protected by the Treaty of Waitangi.

The New Zealand Bill of Rights Act 1990 is likely to be engaged

- 15 The amendments in the Bill will have retrospective effect, with the exception of the seven additional qualifying offences (see paragraph 8), which Cabinet has agreed will not have retrospective effect [SWC-22-MIN-0213, CAB-22-MIN-0513 refers]. The amendments will apply to all existing registrable offenders, as well as those who commence registration following enactment. This avoids having two separate groups on the Register when the amendments come into force, which could result in Registry staff being unable to identify and manage risks presented by one group to the same extent as the other.
- 16 The retrospective nature of the amendments is likely to engage the following New Zealand Bill of Rights Act 1990 (NZBORA) provisions:

IN CONFIDENCE

IN CONFIDENCE

- 16.1 Section 26(2) – Freedom from double jeopardy. This is because additional reporting requirements for offenders already on the Register may be considered an additional punishment.
- 16.2 Section 25(g) – Right to benefit from a lesser penalty where penalties change. This is because adding reporting requirements, between when the offender was first registered and when the amendments come into force, may be considered an increased penalty.
- 17 The Ministry of Justice has also indicated that the proposed amendments could potentially engage the NZBORA section 14 (Right to freedom of expression) due to the requirement to report information and changes of information.
- 18 Previous Attorneys-General have presented section 7 reports on Bills for the principal Act, the 2017 and 2021 amendment Bills to the Act, and most recently, on the Child Protection (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Act 2024, raised under sections 26(2) and 25(g). Parliament examined the matters raised in these section 7 reports and passed each Bill.
- 19 While the effectiveness of the Register is still being quantified, the available information suggests the reporting requirements are reasonable when balanced against the harm caused to children from sexual offending, which is known to be severe. Evidence for the effectiveness of the Register² is currently being evaluated.
- 20 The Ministry of Justice is understood to be advising the Attorney-General on the Bill. If there is a section 7 report, it will be referred to the Justice Committee.

Consultation

- 21 The following agencies were consulted on the Cabinet paper and the Bill: Department of Corrections, Ministry of Justice, Department of Internal Affairs, Te Arawhiti, the Treasury, Ministry of Business, Innovation and Employment, Kāinga Ora Homes and Communities, Ministry of Social Development, Oranga Tamariki Ministry for Children, New Zealand Customs Service and Ministry of Disabled People – Whaikaha.
- 22 Mana Mokopuna – Children & Young People's Commission and Office of the Privacy Commissioner have also been consulted.
- 23 The Department of the Prime Minister and Cabinet has been informed.

Binding on the Crown

- 24 The Bill will amend the Act, which binds the Crown.

² Waikato University is leading a phased longitudinal recidivism study to evaluate the effectiveness of the Register. It expects to report initial findings about reoffending data and other measures of effectiveness in 2027.

Creating new agencies or amending law relating to existing agencies

- 25 The Bill will not create any new agencies or amend laws relating to existing agencies.

Allocation of decision-making powers

- 26 The Bill does not allocate decision-making power between the executive, the courts and tribunals.

Associated regulations

- 27 No regulations will be required to bring the Bill into operation.

Other instruments

- 28 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 29 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

- 30 The Bill will come into force three-months after the date of Royal assent. The three-month period provides Police with time to complete implementation activity, such as advising registrable offenders of their new reporting requirements, making necessary ICT changes and updating guidance for Registry staff. The three-month period will be calculated under section 28 of the Legislation Act 2019.

Parliamentary stages

- 31 I propose that the Bill be introduced the week beginning 16 September 2024 with First Reading taking place in September 2024.

Proactive Release

- 32 I propose to proactively release this Cabinet paper, alongside the policy approvals Cabinet papers, within 30 business days of Cabinet's decision to introduce the Bill. Any information that may need to be withheld will be done so in accordance with the provisions of the Official Information Act 1982 and guidance from the Cabinet Office.

Recommendations

I recommend that the Committee:

- 1 **note** that the Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill (the Bill) holds a priority of Category 5 on the Legislation Programme: to be referred to a Select Committee in 2024;
- 2 **note** that the Bill gives effect to Cabinet decisions [SWC-22-MIN-0213, CAB-22-MIN-0513 and SOU-24-MIN-0082, CAB-24-MIN-0267 refers] by making a range of largely administrative amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the Act), the most substantive of which are to:
 - 2.1 require registrable offenders to report that a child is going to be residing at the same address 48 hours before this occurs (rather than 72 hours after);
 - 2.2 require registrable offenders to report attendance at education or training courses and clarify that voluntary work must be reported;
 - 2.3 clarify the definition of locality for registrable offenders with no permanent address/fixed abode in New Zealand;
 - 2.4 enable notices to be served to registrable offenders by electronic means (as well as by post);
 - 2.5 require registrable offenders travelling out of the country to report this information at least seven days in advance (rather than the current 48 hours in advance);
 - 2.6 require registrable offenders to report their return to New Zealand no more than 72 hours after re-entering, electronically or by telephone (rather than the current 10 day in-person requirement);
 - 2.7 clarify that where there is a successful appeal against registration, that information contained on the Child Sex Offender Register that relates to the registrable offender must be removed;
 - 2.8 remove the requirement for an application for review to be made within 28 days of registration;
 - 2.9 add seven additional qualifying offences to the Act:
 - 2.9.1 provision of sexual services by a person under the age of 18 years if the victim is under the age of 16 years (sections 20, 21, 22(1) and 22(2) of the Prostitution Reform Act 2003);
 - 2.9.2 knowingly importing or exporting objectionable publications if the subject or a subject of the publication is under 16 years and the publication deals with sex (section 390 of the Customs and Excise Act 2018);

IN C O N F I D E N C E

- 2.9.3 dealing in people under 18 years for sexual exploitation, removal of body parts, or engagement in forced labour if the person is under 16 years and subject to sexual exploitation (section 98AA of the Crimes Act 1961);
 - 2.9.4 intentionally or recklessly makes an intimate visual recording of another person if the subject of the visual recording is under 16 years and the visual recording deals with sex (section 216H of the Crimes Act 1961);
- 3 **approve** the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agree** that the Bill be introduced the week beginning 16 September 2024;
- 5 **agree** that the government propose that the Bill be:
 - 5.1 referred to the Justice Committee for consideration;
 - 5.2 enacted by November 2025;
- 6 **agree** that Parliamentary Counsel Office can make additional minor or technical drafting changes prior to introduction of the Bill.

Authorised for lodgement

Hon Mark Mitchell

Minister of Police

Enclosed

Appendix 1: Bill *the Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill*

Appendix 2: Departmental Disclosure Statement *the Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill*

Appendix 3: The Legislation Design and Advisory Committee checklist *the Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill*

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