

[In Confidence]

Office of the Minister of Police
Chair, Social Wellbeing Committee

Amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016

Proposal

1. This paper seeks Cabinet policy approval for 26 amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the Act) and proposes four offences to be added to list of qualifying offences in Schedule 2 of the Act, to enhance the effectiveness of the Act, and further improve the sexual safety of children and young people in our community.

Executive summary

2. The Act came into force in October 2016. The purpose of the Act is to establish a Child Sex Offender Register that will reduce sexual reoffending against child victims, and the risk posed by serious child sex offenders.
3. A three-year evaluation of the Child Sex Offender Register was undertaken, as requested by Cabinet in 2014 [CAB Min (14) 20-3 refers]. Cabinet considered a paper reporting back on the findings from the evaluation on 20 October 2021 [SWC-21-MIN-0160 refers].
4. One of the recommendations from the evaluation was to *consider refinements to the Act to better support the operation of the Register and Risk Management Framework*. Cabinet noted that the then Minister of Police intended to seek policy approval for a number of largely administrative amendments to the Act in early 2022. This Bill is currently Priority 4 on the 2022 Legislation Programme.
5. There is also a Member's Bill, sponsored by Mr Greg O'Connor, Labour MP for Ōhāriu, seeking amendments to the Act. The Bill has been referred to Select Committee. The proposed amendments contained in this Cabinet paper also respond to the issues raised in the Member's Bill.
6. Overall, Police's view is that the Register is functioning as intended. However, the experience gained from applying the legislation for six years, and the findings from the three-year evaluation, have shown that there are aspects of the Act that are overly complex and difficult to understand. There are also gaps in the legislation and areas that require updating to reflect evolving technology.
7. The proposed amendments will improve the clarity of the Act and enhance the standard and consistency of practice by the Register and district case managers. It will also assist registered persons to more easily comply with the requirements placed

on them by the Act. This will help to ensure that the Register achieves the Act's purpose of protecting public safety, particularly the sexual safety of children.

8. The proposal includes 26 largely administrative amendments, and four proposed offences to be added to Schedule Two of the Act. It is proposed that the administrative amendments be retrospective, while the additional offences in Schedule 2 only apply from the date of commencement.
9. The retrospective nature of most amendments is likely to engage the New Zealand Bill of Rights Act 1990 (NZBORA) – specifically sections 26(2) (Freedom from double jeopardy) and 25(g) (Right to benefit from a lesser penalty when penalties change). It is expected that the Attorney-General will present a section 7 report noting the inconsistencies with the NZBORA.
10. I consider that the imposition of retrospective amendments is justified and proportionate under section 5 of the NZBORA, when balanced against the objectives of the Act. While the evidence for the effectiveness of the Register is unknown at this stage, the harm to children from sexual offending is acknowledged as severe.

Background

11. The Act) came into force in October 2016. The purpose of the Act is to establish a Child Sex Offender Register that will reduce sexual reoffending against child victims, and the risk posed by serious child sex offenders, by:
 - providing government agencies with the information needed to monitor child sex offenders in the community, including after the completion of their sentence, and
 - providing up-to-date information that assists Police to more rapidly resolve cases of child sexual offending.

The Child Sex Offender Register

12. The Commissioner of Police is responsible for the establishment and administration of the Child Sex Offender Register but must consult the Chief Executive of the Department of Corrections: Ara Poutama Aotearoa (Corrections) before making significant operational decisions.
13. A person who is convicted of a qualifying offence is automatically placed on the Register if they are sentenced to imprisonment. If the person receives a non-custodial sentence, the judge may order that the person be registered.
14. A registered offender remains on the Register for eight years (Class 1), 15 years (Class 2), or life (Class 3), depending on the seriousness of the offence. They are required to report to the Register in person for their initial report, either upon release from prison or upon sentencing. Following this, they are usually required to report to the Register every twelve months.
15. Section 16 of the Act lists the personal information that the registered offender is required to report to the Register. The Register must be advised when there are any changes to this information. This generally occurs via telephone or electronically, with the exception of changes of address, changes to tattoos and permanent distinguishing

marks, and overseas travel plans, which must be reported in person. Registered offenders must report each year in person to confirm that their information is correct.

Corrections and Police manage registered offenders in the community

16. Corrections and Police work together to manage registered offenders in the community. Corrections is the lead agency while the registered offender is subject to release or sentence conditions which are relevant to their qualifying offences. Police is the sole agency once those conditions expire.
17. The original defined purpose of the register was to enable monitoring and investigations. Cabinet agreed to establish the Register, complemented by a risk management framework. The extent of the oversight and support provided depends on the registered offender's assessed level of risk, and their willingness to voluntarily engage beyond that which is legally required.
18. As of 30 June 2022, 2,043 registered offenders were being managed in the community. A further 1,124 offenders were in custody, either serving a sentence for a qualifying offence, for breaching Register requirements or committing further offences while registered. A further 19 registered offenders are residing overseas, 85 have been deported, and two had their registration reporting obligations suspended.
19. There are now 50% more registered offenders being managed in the community than forecasted prior to the register being developed. This is partly due to the unanticipated number of returning offenders (New Zealand-born offenders returning from or being deported from overseas), and the number of orders associated with non-custodial sentences. This growth in registered offenders is placing pressure on existing resources. It is therefore essential that the legislation is fit-for-purpose and easily understood.

A Member's Bill seeking amendments to the Act has been referred to Justice Select Committee

20. A Member's Bill sponsored by Mr Greg O'Connor, Labour MP for Ōhāriu, seeks to amend the Act to require registered child sex offenders to provide additional information to the Register prior to them travelling overseas. The proposed additional information includes the countries and address of all places they will stay for more than 48 hours; the passport numbers of all passports held by the registered person; and a timely and reasonable explanation of any changes to their plans.
21. A Supplementary Order Paper (SOP) sponsored by Ms Erica Stanford, National MP for East Coast Bays is being considered by the Committee alongside Mr O'Connor's Member's Bill. The SOP would allow for the exchange of information between New Zealand Customs Service and Police, to enable a registered person to be located and to ensure compliance with the Act.
22. Amendments are being proposed in this paper that respond to the matters raised in the Member's Bill and the SOP.

The Evaluation of the Register recommended amendments to the Act

23. When Cabinet gave policy approval for the Child Sex Offender Register and Risk Management Framework (RMF) in 2014, it was agreed that there would be an evaluation and a report-back to Cabinet in year four of operation [CAB Min (14) 20-3 refers].
24. On 20 October 2021, Cabinet considered the paper *Child Protection (Child Sex Offender Government Agency Registration) Act 2016 – Evaluation report-back*, and the evaluation report *Child Sex Offender Register and Risk Management Framework: Findings from a 3-year evaluation* [SWC-21-MIN-0160 refers].
25. The evaluation found the Act and Register were broadly performing as intended by Cabinet. However, the evaluation recommended considering *refinements to the Act to better support the operation of the Register and RMF*. The evaluation noted that:

Registry staff have maintained a dossier of potential amendments to the legislation and have categorised these as to whether they are administrative, or to address inconsistencies ... There was a concern among some Registry staff that some child sex offences had been omitted from the inclusion criteria for registration There was also a concern that the legislation was not fully enabling the detection/prosecution of online offending, and that it needed to be modernised so that information gathering abilities could adapt as needed.
26. This recommendation was welcomed as an opportunity to enhance what is already an effective piece of legislation. Accordingly, recommendation five of the Cabinet paper noted that:

it is proposed that Cabinet's policy approval be sought in early 2022 for a number of largely administrative amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016.

Amending the Act would enable it to better achieve its purpose

27. Police has managed the introduction of the Register and RMF, and Police's view, consistent with the evaluation, is that the Register is broadly functioning as intended. Together, Corrections and Police have provided risk management support to individuals on the Register.
28. The experience gained from applying the legislation for six years, and the findings from the three-year evaluation, have highlighted aspects of the Act that are overly complex and difficult to understand. There are also gaps in the legislation and areas that required updating to reflect evolving technology.
29. The proposed amendments will allow the Register to better achieve the purpose of the Act, to protect public safety, particularly the sexual safety of children. They will improve the clarity of the legislation for both the registered offender and those managing the Register. This will enable an enhanced standard and consistency of practice by Police and Corrections across Aotearoa, New Zealand, as well as assisting registered offenders to comply with the requirements of the Act.

The majority of amendments will be retrospective

30. In order to fully achieve the benefit from the amendments to the Act, it is proposed that all amendments, other than the four additional qualifying offences proposed for Schedule Two, be retrospective. This means that, once enacted, the amendments will apply to all existing registered offenders, as well as those who commence registration following enactment. The existing offences¹ for non-compliance will apply to the new requirements.
31. Any amendment of this kind that applies to an existing group of registered offenders would have to be retrospective in order to effectively protect children from the risks posed by these individuals and already recognised by the courts.
32. Some of the amendments are purely administrative and place no additional obligations on a registered offender. Others benefit the registered offender by providing choices - for example, how they receive receipt of information provided.
33. Some amendments will require existing registered offenders to provide information that was not required when they were initially registered, at their next report after the amendments come into force. However, these registered offenders will only be required to report *current* information - for example, current voluntary work being undertaken, but not a list of all voluntary work undertaken since registration. Therefore, its application will be retrospective, but the information gathered, or options provided, will only be prospective. These transitional arrangements will be addressed in the Bill.
34. Managing two separate groups of registered offenders (those registered prior to, and those registered after, the new legislation comes into force) would result in the Register being unable to identify or manage the risks presented by one group of registered offenders to the same extent as those risks presented by the other group. This could ultimately impact the level of trust placed in the Register, as public expectation will be that all registered offenders are subject to the same requirements.

Proposed amendments to the Act

35. The following table provides a brief summary of each of the proposed amendments. A more detailed description of the amendments is provided in Appendix One. The Regulatory Impact Statement [to be lodged with the Cabinet paper] will provide additional detail on the more significant amendments.

Section	Proposed changes
3(a) Purpose	Amend to reflect the critical importance of the RMF to the purpose of the Act by including reference to <i>managing the risk</i> posed by child sex offenders in the community.
4 Interpretations	Amend the definition of 'personal information' to 'personal information on the register'.

¹ Section 39 – Failing to comply with reporting obligations; Section 40 – Providing false or misleading information.

	Add an interpretation that unless stated otherwise, all timeframes provided in the Act are to be taken as consecutive, rather than for example, working days.
7(2) Who is a reportable offender	Amend the meaning of ‘the intention to reside in New Zealand’ by adding the following clarification: <i>‘applies for or is granted a Permanent Resident Visa, or a Resident Visa under sections 70-75 (Residence class visas) of the Immigration Act 2009.’</i>
16 Relevant personal information to be reported	Add requirements to report attendance at education and training courses. Amend the existing requirements as follows: <ul style="list-style-type: none"> • report <i>place</i> of birth • for those without a permanent address, to provide a definition of <i>locality</i> • provide an alternative to a postal address for service of notices and documents • include <i>voluntary work</i> as work to be reported • require an authorised person to <i>sight and take a copy</i> of each valid passport held by the registered offender • require an authorised person, where applicable, to <i>sight and take a copy of all valid Refugee Travel Documents or Certificates of Identity</i> held by the registered offender • update the Act to include ‘<i>any devices capable of accessing the internet</i>’ • update the reference to ‘<i>social networks</i>’ by replacing it with ‘<i>online accounts, which includes, but is not limited to, online social networks (platforms to connect, communicate, or broadcast with others)</i>’ (s16(1)(o)).
20(1)(a) Requirements to report changes to relevant personal information	Amend to require a registered offender to notify the Register of the presence and details for any child living at their address and details for the principal caregiver for that child, at least <i>48 hours prior</i> to the child arriving or, if this is not possible, immediately after the child arrives. Currently this information is not required to be reported until <i>72 hours after</i> the child arrives.

21(2)(c) Travel plans to be reported – Domestic	Amend to require that when a registered offender is travelling domestically with a child, they must report the <i>name of the child's principal caregiver</i> to the Register.
21(4) Travel plans to be reported - Overseas	Amend to require a registered offender to advise the Register, at least 48 hours prior to travelling overseas, <i>the countries they will be visiting, and the approximate dates they will be in each country</i> . Repeal section 21(3) which requires a registered offender to only report overseas travel plans if travelling overseas for more than 48 hours.
23(2)	Amend the requirement to report their return to New Zealand from overseas by simplifying the wording to: <i>'within 10 consecutive days of re-entering the country.'</i>
25 How a report is to be made	Amend the section to allow all reporting by a registered offender to be to a constable <i>or an authorised person</i> (The Commissioner of Police may appoint a Police employee as an <i>authorised person</i> , or an employee of Corrections nominated by the Chief Executive).
25(1)(c)	Repeal to allow a registered offender to notify the Register of a change of address <i>by telephone, or electronically</i> , as permitted for other reports under section 25(2).
27(2) Receipt of information	Amend to allow the registered offender to choose how they prefer to receive acknowledgement of reported information (in writing or <i>electronically</i>).
43 Information sharing between government agencies	Amend to clarify what information can be shared by specified agencies. Amend to include Oranga Tamariki, Ministry for Children and the Registrar General, Births, Deaths and Marriages, which have been Gazetted as specified agencies since 2016.
47(1)(a) Confidentiality	Amend to ensure absence of doubt to read: <i>'authorised by the Commissioner to disclose the information under this Act'.</i>
49 Review	Repeal to remove the 28-day limit on applications for review of a potential error in placing the person on the register, or for the duration of time on the register.
50 Appeal	Amend to clarify the removal from the Register of relevant personal information and identification details where there has been a successful appeal of placement on the Register.

Schedule 2 – Qualifying Offences	<p>Add the following offences:</p> <ul style="list-style-type: none"> • Prostitution Reform Act 2003 <ul style="list-style-type: none"> ○ Sections 20, 21, 22(1) and 22(2) in relation to the provision of sexual services by a person under the age of 18 years. • Customs and Excise Act 2018 <ul style="list-style-type: none"> ○ Section 390 - (Offences in relation to knowingly importing or exporting objectionable publications) (Class 1). • Crimes Act 1961 <ul style="list-style-type: none"> ○ Section 98AA - dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour (where the victim is under 16 years and subject to sexual exploitation) (Class 3). ○ Section 216H - intentionally or recklessly makes an intimate visual recording of another person (where the victim is under 16 years) (Class 1).
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Consultation

36. The following agencies were consulted on the draft Cabinet paper: Department of Corrections, Ministry of Justice, Department of Internal Affairs, Te Arawhiti, Te Puni Kōkiri, Treasury, Ministry of Business, Innovation and Employment, Kāinga Ora Homes and Communities, Ministry of Health, Ministry of Social Development, Oranga Tamariki, Customs and Whaikaha Ministry of Disabled People. The Department of the Prime Minister and Cabinet has been informed.
37. The Office of the Children’s Commissioner, Office of the Privacy Commissioner, and Office for Disability Issues have also been consulted.
38. The feedback received has been reflected in the Cabinet paper where appropriate.

Financial Implications

39. It is estimated that the four additional qualifying offences will increase the number of registered offenders by up to 10 per year, the majority of whom will be registered for eight years.
40. Following analysis of the cost pressure and additional funding required, new investment may be sought through the appropriate process at the time, which may be the Justice Cluster or funding through an alternative process, such as the annual cost pressures track.

Legislative Implications

41. Approval is sought for the drafting of the Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill 2022 to give effect to the proposed amendments.

Impact Analysis

42. The Treasury's Regulatory Impact Analysis team has determined that 20 of the proposals are exempt from the requirement to provide a Regulatory Impact Analysis. The exemptions are on the grounds that they either have no or only minor impacts on businesses, individuals, and not-for-profit entities, or they are suitable for inclusion in a Statutes Amendment Bill (as provided for in Standing Orders).
43. The remaining proposals are subject to Cabinet's impact analysis requirements. A Regulatory Impact Analysis has been completed and is attached at Appendix Two.
44. The Regulatory Impact Statement: Amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 was reviewed by Police's internal Quality Assurance team. The RIA was assessed as meeting the required criteria, with the following comment:

We considered that the RIS is complete and contains all relevant information to enable informed decision making.

Climate Implications

45. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the threshold for significance is not met.

Human Rights

46. The proposed retrospective nature of all the amendments, other than the four additional qualifying offences proposed, is likely to engage the NZBORA:
 - section 26(2) – Freedom from double jeopardy. Additional reporting requirements may be considered a punishment.
 - section 25(g) - Right to benefit from a lesser penalty where penalties change.
47. I consider that the imposition of additional reporting is justified and proportionate under section 5 of the NZBORA, when balanced against the objectives of the Act. While the evidence for the effectiveness of the Register is not strong at this stage, there is anecdotal evidence of the benefits provided by the Register and this should be balanced against the harm caused to children from sexual offending, which is known to be severe.
48. The Legislation Design and Advisory Committee (LDAC) Legislation Guidelines state that if retroactive application is intended it must be stated in the legislation. It is intended that this be included in the transitional arrangements and will be discussed with Parliamentary Counsel Office during the drafting of the Bill.

Treaty of Waitangi Implications

49. This paper proposes technical or minor amendments to an existing Act, and as such does not alter the policy intent of the legislation or the implications for the Treaty of Waitangi. There has not been widespread consultation with other stakeholders as the proposed changes are largely administrative.
50. Some amendments have come about as a result of suggestions from registered offenders - for example, the difficulties maintaining privacy when receiving communication from the Register by mail, rather than electronically; and the need, in some cases, to provide their personal information to their probation officer and then repeat it to a police constable.
51. The amendments will not significantly alter the existing impact of the legislation for registered offenders who are Māori. However, they are likely to have a positive impact for potential Māori victims and their whanau, by ensuring that the information needed to keep children safe is available, and any risks can be proactively managed by the Register.

Population impacts

52. The immediate impact from these amendments will be limited to registered offenders who are already subject to a range of similar reporting requirements under the Act. The additional qualifying offences will slightly increase the scope of those eligible for registration (estimated at less than 10 per year).

Implications for Māori

53. The Register includes a significant and disproportionate number of Māori. As an indication, the Evaluation reported the following based on their research:

Table one: Ethnicity of registered offenders

Ethnicity	October 2019	June 2021
European	54%	55%
Māori	30.1%	29.1%
Pacific Island	11.0%	11.0%
Other	4.9%	4.9%

54. It is not currently possible to give an accurate breakdown of the ethnicity of registered offenders. The Evaluation noted in its finding that Police needs to improve its collection of ethnicity data. This is an issue that Police is addressing more generally. The Register is also working to develop better analysis and reporting capability through development of its IT system.
55. It is recognised that some of the required personal information provided by a Māori individual on the register must be treated as a taonga, as the personal information related to a person's whakapapa. Mātauranga Māori is not generally considered to be owned by the individual concerned but held by them as kaitiaki on behalf of past, current and future generations. The legislation provides for the security of this personal information to ensure it is kept safe and is only used for the purpose for which it was intended.

56. Some of the proposed amendments require both existing and future registered offenders to provide additional information about themselves, and in some cases their whanau. While this information will be required by legislation, the registered offender has the choice as to the extent of the information provided and is justified in providing only the minimum required. Where this requirement impacts on other members of the whanau, and information related to their whakapapa, such as in the case of the principal caregiver for a child with whom a registered offender may reside, the whanau member has no legal obligation to allow their contact details to be reported to the Register. If they decline, the registered offenders will be required to report this to the Register.
57. While registered offenders are being managed by Corrections, they may be referred to Māori support services and rehabilitation programmes as part of the sentence or order being served alongside the requirements of registration. Tikanga Māori based treatment and intervention is a focus of the Department's Hōkai Rangi strategy.
58. The Register is continuing to develop ways for Police to work more effectively with registered persons who are Māori. For example, Police case managers are being encouraged and supported to work alongside Police's Māori advisors at the district level to develop practice that will enhance current levels of engagement. Notwithstanding the obligation to comply with mandatory reporting requirements, Police's ability to support a registered offender is limited by the willingness of the registered offender to engage voluntarily.

Gender Implications

59. There are no direct gender implications from the proposals contained in this paper. However, the vast majority of registered offenders are male, with only 31 females currently registered. The Register acknowledges the differing experience of women and provides ongoing practice supervision sessions with the district teams and case managers to ensure gender appropriate practice.

Disability Perspective

60. Disabled children are at significantly increased risk of sexual abuse (at least three times more likely than non-disabled children). The risk of children with learning/intellectual and mental disabilities being exposed to sexual abuse is 4.6 times higher, compared with their non-disabled peers.
61. Much of this abuse goes unreported due to:
 - reluctance of children to report abuse by parents/parental figures
 - diagnostic overshadowing (characteristics of the impairment are considered a plausible explanation for the child's injury)
 - professionals over-identifying with the child's parents/caregivers
 - communication needs
 - socioeconomic status of abused children
 - professionals' lack of training.

Publicity

62. There is no publicity planned for this paper.

Proactive release

63. This paper will be proactively released when the Bill is introduced.

Recommendations

The Minister of Police recommends that the Committee:

1. **note** that in October 2021, Cabinet considered a report-back on the findings from the evaluation of the Child Sex Offender Register and Risk Management Framework, and noted a recommendation that policy approval be sought in early 2022 for a number of largely administrative amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016
2. **note** that the amendments will improve the clarity of the legislation and thereby better achieve the purpose of the Act to enhance public safety, particularly the sexual safety of children and youth in the community
3. **agree**, in principle, the following amendments to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016:

Definitions

- 3.1. amend section 3(a) to read 'providing government agencies with the information needed to monitor **and manage the risk posed by** child sex offenders in the community'
- 3.2. amend the definition in section 4 from *relevant personal information* to **personal information on the register**
- 3.3. include in section 4 clarification that unless stated otherwise, all timeframes referred to in the Act are **consecutive**
- 3.4. clarify in section 7(2) the meaning of '*the intention to reside in New Zealand* by adding **applies for or is granted a Permanent Resident Visa, or a Resident Visa under sections 70-75 of the Immigration Act 2009**
- 3.5. amend section 47(1)(a) where the Commissioner can authorise disclosure of information on the register, to specify that the authorisation must be given **under this Act**

Section 16(1) – Relevant personal information to be reported

- 3.6. New subsection to be add to section 16(1), a requirement to report **attendance at education and training courses**
- 3.7. (c) add **place of birth** to enable the full validation of a registered offender's identity

- 3.8. (d) provide a definition of *localities* for those with no permanent address, for example suburb or street where car is parked (wording to be confirmed at drafting)
- 3.9. (g) provide for the service of documents by **electronic means** (such as email or text) rather than just by postal address
- 3.10. (h) require the registered offender to report **voluntary work** as well as paid employment
- 3.11. (l) require an authorised person to **sight and take a copy** of all valid passports
- 3.12. New content to be added to section 16(1)(l), require an authorised person to sight and take a copy of all valid **Refugee Travel Documents or Certificates of Identity** held by a registered offender
- 3.13. (n) replace the wording *details of any routing or modem device* with **any devices capable of accessing the internet** to reflect current technology
- 3.14. (o) replace the reference to *social networks* with **online accounts, which includes, but is not limited to online social networks**

Requirement to report changes to relevant personal information

- 3.15. amend section 20(1)(a) to require a registered offender to notify the register of any child who will be living at the same address as the registered offender, and the details of the child's principal caregiver, where possible, **at least 48 hours prior to the change occurring**, rather than as currently required, within 72 hours of the change having occurred

Travel Plans

- 3.16. amend section 21(2)(c) to require the registered offender to report **details for the principal caregiver** for any child that is residing at any proposed address to which they are travelling within New Zealand
- 3.17. repeal section 21(3) which requires a registered offender to only report overseas travel plans if travelling overseas for more than 48 hours
- 3.18. amend section 21(4) to require a registered offender to report, at least 48 hours before travelling overseas, **the countries they will be visiting and the approximate dates they will be in each country**
- 3.19. amend section 23(2) to simplify reporting requirements upon returning from overseas, by requiring a registered offender to report their return to the Commissioner, **within 10 consecutive days of re-entering New Zealand**

How a report is made

- 3.20. repeal section 25(1)(c) so that a registered offender is **not required to attend in person** to report a change of address

- 3.21. amend section 25 to allow all reporting to be made to a constable **or authorised person**
- 3.22. amend section 27(2) to allow a registered person to **choose how they receive receipt of reported information**, rather than requiring receipt to be in writing

Information sharing between government agencies

- 3.23. amend section 43(1) to clarify what information agencies can share by replacing the reference to sharing *personal information in the register* (to which only Police has access) with **sharing relevant personal information about a registered offender**
- 3.24. amend section 43(2) to include two additional specified agencies that have been Gazetted since the Act came into force – **Oranga Tamariki, Ministry for Children** and the **Registrar General of Births, Deaths and Marriages**

Review of placement on the register

- 3.25. repeal section 49(4) to remove the 28-day limit on applications for review of a potential error in placing the person on the register, or for the duration of time on the register
- 3.26. amend sections 7 and 50 to reflect section 49(7) regarding the removal from the register of relevant personal information pertaining to a person who has been placed on the register in error or successfully appealed their sentence, requiring their removal from the register

Additions to Schedule 2: Qualifying Offences

- 3.27. **Prostitution Reform Act 2003** - where the victim is under the age of 16 years:
 - 3.27.1. section 20 – No person may assist person under 18 years in providing commercial sexual services (Class 1)
 - 3.27.2. section 21 – No person may receive earnings from commercial sexual services provided by person under 18 years (Class 1)
 - 3.27.3. section 22(1) - No person may enter into a contract or other arrangement under which a person under 18 years of age is to provide commercial sexual services to or for that person or another person (Class 1)
 - 3.27.4. section 22(2) - No person may receive commercial sexual services from a person under 18 years of age (Class 3)
- 3.28. **Customs and Excise Act 2018 – section 390** - Offences in relation to knowingly importing or exporting objectionable publications, where the subject of the publication is under the age of 16 years (Class 1)

- 3.29. **Crimes Act 1961 – Section 98AA** - Dealing in people for sexual exploitation, removal of body parts, or engagement in forced labour, where the victim is under the age of 16 years, and subject to sexual exploitation (Class 3)
- 3.30. **Crimes Act 1961 – section 216H** - Everyone is liable to imprisonment for a term not exceeding three years who intentionally or recklessly makes an intimate visual recording of another person, where the subject/s of the visual recording are aged under 16 years (Class 1)
4. **agree** that in order to fully achieve the benefits, all of the amendments will be retrospective, with the exception of the four additional qualifying offences proposed for Schedule 2 (Recommendations 3.26 to 3.29)
5. **note** that the retrospective nature of most of the amendments will likely engage sections 26(2) and 25(g) of the New Zealand Bill of Rights Act 1990, but that is considered justified when balanced against the objectives of the Act and the severity of the harm caused by child sex offending
6. **invite** the Minister of Police to issue drafting instructions to give effect to these recommendations
7. **authorise** the Minister of Police to make additional minor and technical amendments to give effect to the policy decisions that may arise during the drafting of the Bill
8. **note** that this Bill is currently Priority 4 on the 2022 Legislation Programme.

Authorised for lodgement
Hon Chris Hipkins
Minister of Police

Detail of proposed amendments

The following table provides a detailed description of each of the proposed amendments. Subject to Cabinet's policy approval, the actual wording of the amendments will be agreed with the Parliamentary Counsel Office when drafting the Bill.

Section	Current Provisions	Proposed Amendment	Rationale
3 Purpose	<p>Section 3 states that the purpose of the Act is:</p> <p>‘to establish a Child Sex Offender Register that will reduce sexual reoffending against child victims, and the risk posed by serious child sex offenders, by—</p> <p>(a) providing government agencies with the information needed to monitor child sex offenders in the community, including after the completion of the sentence.’</p>	<p>It is proposed that s 3(a) be amended to read:</p> <p>‘providing government agencies with the information needed to monitor <i>and manage the risk posed by</i> child sex offenders in the community, including after the completion of the sentence.’</p>	<p>This amendment does not propose any changes to how the Register operates or the requirements of registered offenders.</p> <p>This amendment reflects the Cabinet decision to <i>establish the Register, complemented by a risk management framework</i> ... [CAB Min (14)20-3. It acknowledges the critical importance of the current RMF to meeting the purpose of the Act. As currently worded, the purpose only reflects the provision of information and the monitoring function of the Register, not the ultimate purpose, which is to manage the risks and thereby reduce reoffending.</p>
4 Interpretation	<p>Section 4 defines relevant personal information as meaning information specified in section 16(1):</p> <p>‘the relevant personal information that must be reported by a registered offender.’</p> <p>However, other terms are used interchangeably throughout the Act, such as ‘information in the register’ or ‘reportable information.’ Information</p>	<p>It is proposed that the definition in section 4 is amended to <i>personal information on the Register</i> meaning information specified in section 10(2).</p>	<p>This is a complex area for the Register. The Office of the Privacy Commissioner has provided feedback regarding the need to ensure that sensitive personal information held on the Register is managed appropriately.</p> <p>The amendment notes the information that must be contained on the register, such as name and identifying particulars and</p>

	additional to that specified in section 16(1) is also required to be reported, such as travel plans, and this causes confusion as to which information is being referred to.		sentencing details, as well as information reported as per section 16(1).
4 Timeframes	Currently the legislation refers to timeframes throughout the Act mostly in terms of hours and days.	It is proposed to clarify in section 4, by including an interpretation that <i>unless stated otherwise, all timeframes are to be taken as consecutive</i> , rather than, for example, working days.	While there is nothing in the Act to suggest that these timeframes are other than consecutive hours or days, it has been challenged in the past.
7 Who is a registrable offender	Section 7(2) states that: 'a person who is a corresponding registrable offender and who resides in New Zealand or enters New Zealand <i>with the intention to reside in New Zealand</i> is also a registrable offender.'	It is proposed to amend the Act by replacing the words ' <i>with the intention to reside in New Zealand</i> ' with: ' <i>and applies for or is granted a Permanent Resident Visa, or a Resident Visa under sections 70-75 (Residence class visas) of the Immigration Act 2009.</i> '	To clarify the meaning of 'the intention to reside in New Zealand'.
16 Relevant personal information to be reported	There is no current requirement for a registered offender to report their attendance at education or training courses.	Add a requirement for registered offenders to <i>report their attendance at education or training courses</i> .	It is important for the Register to know this information in case it presents a potential risk - for example, attendance at training alongside children or youth. Education and training courses can provide an indication of a registered offender's intentions in relation to future work choices. Where these appear inappropriate, support can be offered to the registered offender to look at alternative options.

16(1)(c)	The Act requires only the registered offender's date of birth to be reported.	It is proposed to amend the Act to include <i>place of birth</i> .	New Zealand Customs Service and the Department of Internal Affairs have advised that place of birth is required to better validate a person's identity.
16(1)(d)	The Act requires that if a registered offender does not have a permanent address, they must notify the Register of 'the name of each of the localities in which he or she can generally be found.'	It is proposed to provide a <i>definition of 'localities'</i> in the Act to ensure a workable interpretation - for example, <i>a specific suburb, park or street where the registered offender may park and live in their car</i> , rather than just 'the Wellington region.'	The purpose of this sub-section is to enable the Register to identify if there are any specific risks associated with the localities frequented by registered offenders with no fixed address -for example, a park with a large children's playground. While the intention is clear, the drafting has left a loophole that potentially allows for significant risks to go undetected.
16(1)(g)	The Act requires a postal address for service of notices and documents.	It is proposed to amend the Act to provide for <i>alternative forms of service such as email or text</i> .	Registered offenders regularly ask for these documents to be sent electronically for privacy and security purposes - for example, where they reside in a shared flat or hostel.
16(1)(h)	The Act requires a registered offender to report the nature of their work, the name of his or her employer (if any), and the address of the premises or general location where they work.	It is proposed to amend the Act to specifically include any <i>voluntary work</i> undertaken by the registered offender.	As currently worded, it would be assumed that this section applies only to paid employment. Whether employment is paid, or voluntary is irrelevant to the identification and management of risk. For example, a registered offender may either undertake paid or voluntary work for an organisation that works with children.
16(1)(l)	Section 16(1)(l) requires the registered offender to report their passport number,	It is proposed that an <i>authorised person be required to sight and take a copy of</i>	This will ensure the accuracy of passport details held by the Register. At this stage

	place of issue, and date of expiry for each valid passport held.	<p><i>each valid passport held by the registered offender, including passports issued by other countries.</i></p> <p>It is further proposed, that where applicable, a registered offender who does not hold a valid passport provide a <i>Refugee Travel Document</i> (issued to non-New Zealand citizens who have been recognised as a refugee by Immigration New Zealand) or <i>Certificate of Identity</i> (issued to a non-New Zealand citizen who is unable to obtain a travel document from their country of nationality).</p>	<p>there is no way to verify that the information provided is correct.</p> <p>This amendment aligns with the proposed amendment to section 21 (overseas travel), and a recent agreement with the Department of Internal Affairs to share passport information about registered child sex offenders with Police (under section 43 of the Act).</p>
16(1)(n)	Section 16(1)(n) requires the registered offender to provide the name of any internet service provider and the details of any <i>routing or modem device</i> used or intended to be used by the registered offender.	It is proposed to update the Act by replacing the words ' <i>routing or modem device</i> ' with ' <i>any devices capable of accessing the internet</i> '.	s.6(c) OIA
16(1)(o)	The Act currently only requires a registered offender to report any username for any online social networks, online gaming accounts, or online storage accounts used, or intended to be used.	<p>It is proposed that this be amended to also include the <i>name of the social network</i> to which these details apply - for example, Facebook or Twitter.</p> <p>It is also proposed to update the reference to 'social networks' by replacing it with '<i>online accounts, which includes, but is not limited to, online social networks (platforms to connect,</i></p>	The ability to accurately identify and monitor the use of online accounts where a risk has been identified, is critical to the purpose of the Act. Social media is a significant enabler of child sex offending. Social media is continually evolving, and it is essential that legislation keeps up with these developments.

		<i>communicate, or broadcast with others).</i> '	
20 Requirement to report changes to relevant personal information	Section 20(1)(b) requires a registered offender to report that a child is residing at the same address as the registered offender within 72 hours <u>after</u> the change occurs.	An amendment to section 20(1)(a) is sought, to require a registered offender to notify the Register of the presence and details for any child living at that address (as per section 16(e)) and the principal caregiver for that child (as per section 16(f)) where possible, at least <u>48 hours prior</u> to the change occurring, or if this is not possible (for example, the unexpected arrival of a child at the address), immediately upon the change occurring.	<p>This is an example of the complex drafting of the Act, where a range of differing timeframes apply in an attempt to balance risk with fairness to the registered offender, and as a consequence, a significant risk has gone unnoticed.</p> <p>A registered offender could reside with a child for 72 hours before notifying the Register. It may be the case that a child has come to live at the registered offender's address, or the registered offender might have changed address to a residence where a child is already residing (and, as required, notified the Register 48 hours prior to changing address).</p> <p>This amendment is consistent with the intent of the Act and with other similar requirements - for example, section 21(2)(c) which requires a registered offender to notify of any domestic travel, including addresses, and the presence of any child likely to reside with the offender at any of the addresses, 48 hours prior to travelling.</p>
21 Travel plans to be reported	Section 21(2) requires the registered offender to advise the Register whether any child will, or is likely to, reside together with the registered offender at any of the	It is proposed to amend this to also require that the <i>name of the child's principal caregiver</i> be reported to the Register. This will allow the Register to	This is consistent with section 16(1)(f) of the Act which requires the details for the principal caregiver for any child with whom the registered offender is residing, and section 45 that provides for the Commissioner to disclose information to an affected person,

– Domestic travel	proposed addresses to which they are travelling.	notify the caregiver where there is an assessed risk to that child.	including the child's principal caregiver, where there is a threat to child safety or welfare.
21 Travel plans to be reported – Overseas travel	<p>Section 21(4) requires a registered offender to notify the Register only that they intend travelling overseas for more than 48 hours, the date of their departure and the date of their arrival back in New Zealand (or a statement saying that they are not returning to New Zealand).</p> <p>Section 44 provides that the Commissioner of Police may disclose personal information in the register to a corresponding registrar or overseas agency for the purposes of informing them of a registered offender's intention to travel. The receiving jurisdiction can also be informed about the risks posed by that registered offender to the lives or sexual safety of one or more children, or of children in general, in that jurisdiction.</p> <p>Section 22 contains provisions to address the requirement for notifying the Register of any changes to travel plans while away, through an online reporting tool which registered offenders can use for this purpose.</p>	<p>It is proposed to amend the Act to require a registered person to advise the Register 48 hours prior to travelling <i>the countries they will be visiting and the approximate dates they will be in each country.</i></p> <p>In addition to this, it is proposed that all overseas travel should be reported to the Register, <i>including where the travel period is for less than 48 hours.</i></p>	<p>There is currently no requirement for the registered offender to provide any details about where they will be travelling. While most registered persons provide this information voluntarily, where this information is not provided it makes it difficult to meet the requirement of section 44 of the Act.</p> <p>The amendment will provide sufficient information for the purposes of complying with section 44, without overburdening the registered offender with reporting obligations.</p> <p>These days it is not uncommon for New Zealanders to travel overseas - for example, to Australia, for a weekend. Where the registered offender is assessed as high risk, the overseas jurisdiction needs to be notified.</p>
23	Section 23(2) states:	It is proposed to amend this section to state that if the registered offender leaves New Zealand, they must report	Section 23(2) is currently drafted in a very complex way that could be difficult for the

Requirement to report return to New Zealand or decision not to leave	<i>'If the registrable offender leaves New Zealand, he or she must, within 72 hours after entering and remaining in New Zealand for 7 consecutive days (not counting any days spent in custody).'</i>	their return to the Commissioner <i>within 10 consecutive days</i> of re-entering the country.	registered offender to understand and therefore comply with.
25 How a report is made	Currently the Act requires the registered offender to report specific information to a constable, being the initial and periodic (annual) reports and overseas travel plans. Other information can be reported to a constable or an authorised person (The Commissioner of Police may appoint a Police employee as an authorised person, or an employee of the Department of Corrections nominated by the Chief Executive of the Department).	It is proposed to amend this section so that all reporting can be made to a constable <i>or an authorised person</i> . The details will be determined during drafting.	<p>There seems to be no operational reason for requiring that initial and annual reports, and travel plans be specifically made to a constable. Police and Corrections work jointly with registered offenders, and other information can be reported to either a constable or an authorised person.</p> <p>This amendment will allow registered offenders who are still currently being supervised by Corrections to report information to an authorised person from Corrections, such as a probation officer, during a regular report, rather than having to report some information to a probation office, and other information to a constable.</p> <p>Only persons authorised by the Commissioner of Police will be able to receive and manage information from registered offenders. Any authorised Police or Corrections employee will be trained and supervised to ensure that they understand and comply with the policy and procedures associated with the management and storage of that personal information.</p>

25(1)(c)	Section 25(1)(c) requires that a registered offender report a change of address in person, rather than by telephone, or electronically.	An amendment is sought to repeal section 25(1)(c), to allow a registered offender to notify the Register of a change of address <i>by telephone, or electronically</i> , as permitted with approval of the Commissioner for other reports under section 25(2).	Experience with the Register suggests that there is no benefit from this requirement and that it is unnecessarily burdensome for the registered offender. In practice, the case manager for the registered offender confirms the address by a visit to the property, regardless of how the change of address is notified.
27 Receipt of information to be acknowledged	Section 27(2) currently requires the Register to acknowledge information provided by a registered offender <i>in writing</i> .	It is proposed to amend the Act to allow the registered offender to <i>choose how they prefer to receive acknowledgement of reported information</i> . The acknowledgement will be recorded in the register.	Some registered offenders prefer to receive acknowledgment either verbally or electronically.
43 Information Sharing between Government agencies in the interest of public safety	<p>The Act states that a specified agency may disclose personal information <i>in the Register</i> to another specified agency for the purpose of monitoring, verification and managing risk. However, of the specified agencies, only Police has access to personal information held in the Register. There are no IT provisions that allow specified agencies (other than Police) to access the Register directly.</p> <p>As section 43 currently reads, some agencies take the view they are unable to disclose personal information held in the register as they do not have access to the register. Therefore they use the Privacy</p>	The amendment would be along the lines of 'a specified agency may disclose <i>relevant personal information about a registered offender</i> to another specified agency' for the specific purposes noted in the Act.	<p>This is a technical amendment to provide clarity and assurance around the mandate for specified agencies to share the relevant personal information about registered offenders that is held by each agency. The same information will be shared with the same agencies for the same purposes.</p> <p>There is no intent to widen the application of section 43, which is clear as to the purpose for sharing information, which is for:</p>

	Act to provide information for the purposes of section 43.		<p>(a) monitoring the whereabouts of the offender;</p> <p>(b) verifying personal information reported by the offender;</p> <p>(c) managing the risk that the offender may commit further sexual offences against children;</p> <p>(d) managing any risk or threat to public safety.</p>
43(2)(g)	Section 43(2)(g) allows the Minister of Police, after consultation with the Privacy Commissioner, to identify any public sector agency as a 'specified agency' under section 43(2), by notice in the Gazette.	Section 43(2) requires updating with an amendment to include the Ministry for Vulnerable Children, Oranga Tamariki (now known as <i>Oranga Tamariki – Ministry for Children</i>), and the <i>Registrar, Births, Deaths and Marriages</i> in the list of specified agencies.	<p>Both these government agencies have been identified by the Minister of Police as specified agencies, and Gazetted accordingly, since the Act came into force.</p> <p>For completeness and ease of reference these agencies should be included in the Act.</p>
47 Confidentiality	Section 47(1)(a) states that 'A person authorised to have access to the register, or any part of the register, must not disclose any personal information in the register, unless the person is authorised by the Commissioner to disclose the information'.	It is proposed to amend the Act by adding ' <i>under this Act</i> ' at the end of section 47(1)(a).	<p>For the absence of doubt.</p> <p>This clause could be interpreted very broadly as enabling disclosure of personal information at any time, under any circumstance as long as it is approved by the Commissioner.</p>
49 Review where error in placement on	Under section 49(4) a registered offender must make an application for review within 28 days of being given notice of their reporting obligations.	It is proposed that this be repealed or amended so that there is <i>no time limit</i> on an application.	There is no justification for a timeframe for the review of a potential error. This amendment will reflect current practice.

register or reporting period			
49(7)	Section 49(7) relates to the removal from the Register of relevant personal information and identification where there has been an error in placement on the Register.	This requirement needs to be carried through to section 7 (Who is a registrable offender) and section 50 in the case of a successful appeal.	For clarity and certainty to ensure the correct management of personal information. This amendment will reflect current practice.
Schedule 2	Offence	Proposed Amendment	Rationale
Prostitution Reform Act 2003	<p>Schedule 2 currently includes as a Class 1 qualifying offence, section 144A(4) of the Crimes Acts 1961, <i>'breach outside of New Zealand of prohibitions on use in prostitution of persons under 18 years, in relation to an act specified in section 20, 21 or 22(1) of the Prostitution Reform Act 2003'</i> if the victim is under 16 years.</p> <p>However, the actual sections 20, 21, and 22 of the Prostitution Reform Act 2003 are not currently listed as qualifying offences.</p>	<p>An amendment is sought to include as qualifying offences, any offence against any of the following provisions in the Prostitution Reform Act 2003, where the victim is under 16 years:</p> <ul style="list-style-type: none"> • Section 20 – No person may assist person under 18 years in providing commercial sexual services (Class 1) • Section 21 – No person may receive earnings from commercial sexual services provided by person under 18 years (Class 1) • Section 22(1) - No person may enter into a contract or other arrangement under which a person under 18 years of age is to provide commercial sexual services to or for 	Offences relating to the use in prostitution of a person under 16 are qualifying offences if they occur overseas, but not if they occur in New Zealand. This is likely an omission in the original drafting.

		<p>that person or another person (Class 1)</p> <ul style="list-style-type: none"> Section 22(2) - No person may receive commercial sexual services from a person under 18 years of age (Class 3). 	
Customs and Excise Act 2018	<p>Section 390 (Offences in relation to knowingly importing or exporting objectionable publications).</p> <p>In the six years that the Register has been operating, 40 persons have been charged with an offence under section 390. Of those 40 persons, 28 have been convicted, one discharged and the balance have yet to have their cases heard.</p>	<p>An amendment is sought to include in Schedule 2 (Class 1), section 390 of the Customs and Excise Act (Offences in relation to knowingly importing or exporting objectionable publications).</p>	<p>Customs have sought the inclusion of this offence to ensure that persons who import or export child exploitation material are potentially eligible for registration. Customs may not always be able to establish offences of possession or distribution of objectionable publications, even when they can prove import or export offences under the Customs and Excise Act.</p> <p>This offence aligns with the intent of the Act and other offences in Schedule 2, such as 131A(1) of the Films, Videos and Publications Classifications Act 1993 (offences relating to possession of objectionable publications, involving knowledge) if the subject of the publication is under 16 years.</p>
Crimes Act 1961	<p>Section 98AA of the Crimes Act covers the dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour.</p>	<p>It is proposed that this offence be added to Schedule 2 (Class 1) where the victim is under 16 years and subject to sexual exploitation.</p>	<p>This offence aligns with the intent of the Act and with other qualifying offences currently included in Schedule 2, such as section 144(c)(1) (organising or promoting child sex tours) and section 208 (abduction for purposes of marriage or sexual connection).</p>

<p>Crimes Act 1961</p>	<p>Section 216H of the Crimes Act provides that everyone is liable to imprisonment for a term not exceeding 3 years who intentionally or recklessly makes an intimate visual recording of another person.</p> <p>Over the past five years there have been an average of around five convictions per year that may qualify for registration.</p>	<p>It is proposed to amend the Act to include section 216H as a qualifying offence where the subject/s of the video is under the age of 16 years. The visual recording could be made for example, in the child's home when they are showering, or in the changing room attached to a school gymnasium or pool.</p>	<p>An intimate visual recording can be made in any medium, using any device. It is made without the knowledge or consent of the person, and in a place in which they could reasonably expect privacy.</p> <p>This offence aligns with the intent of the Act and with other qualifying offences under the Films, Videos and Publications Classification Act 1993.</p>
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