



Cabinet

Summary

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Urgent Amendments to the Parole Act 2002 in Response to a High Court Judgment on Extended Supervision Orders

Portfolios	Corrections / Justice
Purpose	This paper seeks agreement to amend the Parole Act 2002 to clarify that the Act does not prevent the Parole Board from imposing a special condition requiring an offender to reside, or result in them residing, with their programme provider at the provider's residence.
Previous Decisions	None.
Proposal	<p>Extended supervision orders (ESO) are imposed post-sentence by the Court and Parole Board on offenders living in the community who have exhibited long-term patterns of serious sexual and/or violent offending and pose a risk of reoffending. Upon release from prison, offenders can be subject to conditions, such as requiring them to participate in a daytime reintegration programme that includes activities to reduce the risk of reoffending.</p> <p>On 27 June 2023, the High Court determined that the Act prevents the Parole Board from imposing residential conditions requiring, or resulting in, an ESO offender residing with their programme provider. Corrections currently manages 26 high-risk ESO offenders who are subject to conditions affected by the judgment.</p> <p>Given the significant risk of reoffending by this group, and the time it would take to implement other solutions, agreement is sought to amend the Act to enable the existing practice of having relevant offenders on an ESO reside with their programme provider.</p> <p>Bill of Rights Act 1990 (BORA) implications are summarised in paragraphs 66-72, pages 12-13.</p> <p>To improve compliance with BORA, agreement is sought for the amendments to clarify that an offender with both programme and residential conditions should not be subject to restrictions equivalent to 24-hour monitoring or full-time residential restrictions, and that, where an offender has both residential and programme conditions, these are reviewed by the Parole Board every two years.</p>
Impact Analysis	A joint Corrections and Police quality assurance panel consider that the

attached regulatory impact statement partially meets quality assurance criteria, as there is limited evidence available to support the analysis and the proposal has not been consulted on.

Financial Implications

None from this paper.

Legislative Implications

An amendment bill will modify the Act. The bill is proposed to be introduced and passed through all stages on the same day in the sitting week before the House rises (29-31 August).

Urgency is considered necessary as some conditions for high-risk offenders on ESOs that are affected by the High Court judgment are currently unenforceable, resulting in potential risk to public safety.

No Select Committee consideration is proposed to take place (to minimise publicity and therefore lower the risk that offenders become aware of the implications of the High Court decision).

Timing Matters

Outlined above. The Law Commission's review of preventative detention and post sentence orders is due to be published in December 2024.

Communications

No publicity will take place prior to the introduction of the bill.

Consultation

Paper prepared by Corrections and MoJ. Crown Law, the Treasury, Police and Oranga Tamariki were consulted.

The responsible Ministers indicate that the Cabinet, including the Minister of Finance, were consulted, and that discussion will occur with the government caucus.

The Minister of Corrections and the Minister of Justice recommend that Cabinet:

- 1 note that the High Court decision ((NZHC 1611) [2023]) found that section 107K(3)(bb)(ii) of the Parole Act 2002 prevents the New Zealand Parole Board from imposing a special condition that requires or results in an offender on an extended supervision order (ESO) residing with their programme provider;
- 2 note that as a result of the High Court judgment, Corrections cannot enforce any of the daytime programme conditions for 26 high-risk offenders who reside with their programme provider and that this increases the chance of them reoffending;
- 3 agree to amend the Parole Act 2002 (the Act) to enable programme conditions and residential conditions to be delivered by the same provider;
- 4 agree that the amendments include provisions for retrospective legislation to capture offenders currently managed under an ESO, alongside future offenders;

- 5 agree that the amendments include clarification that programme conditions must not have the effect of subjecting the offender to restrictions equivalent to 24-hour monitoring or full-time residential restrictions;

9(2)(h)



- 7 agree that to ensure that conditions are not more restrictive than necessary, the Act require the Parole Board to undertake two yearly reviews of any offenders on an ESO who are subject to a combination of programme and residential conditions and that the offender participate in these reviews;
- 8 invite the Minister of Corrections, in discussion with the Minister of Justice, to issue drafting instructions to the Parliamentary Counsel Office to amend the Act to give effect to these recommendations;
- 9 agree that an exposure draft of the amendment bill be shared with the Parole Board;
- 10 authorise the Minister of Corrections, in consultation with the Minister of Justice, to make further policy decisions in line with the policy decisions agreed by Cabinet;
- 11 authorise the Minister of Corrections to take the amendment bill to Cabinet's Legislation Committee seeking approval for introduction;
- 12 agree that subject to its availability, the amendment bill should be introduced and passed through all stages on the same day, either under urgency or by agreement of the Business Committee, with this to take place in the final sitting block of the Parliamentary term;
- 13 note that the Government's response to the Law Commission's review of preventative detention and post sentence orders including ESO and public protection orders (which is due to be published in December 2024) will enable a more systemic approach to the management of high-risk offenders.

Jenny Vickers
for Secretary of the Cabinet

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