Office of the Minister of Corrections

Office of the Minister of Justice

Cabinet

Urgent amendments to the Parole Act 2002 in response to a High Court judgment on extended supervision orders

Proposal

1 Cabinet approval is sought to amend the Parole Act 2002 (the Parole Act) to clarify that the Parole Act does not prevent the New Zealand Parole Board (the Parole Board) from imposing a special condition requiring an offender to reside, or result in them residing, with their programme provider at the programme provider's residence.

Executive Summary

2 Extended supervision orders (ESO) are post-sentence orders imposed by the Court and the Parole Board on offenders living in the community who have exhibited long-term patterns of serious sexual and/or violent offending and pose a real and ongoing risk of reoffending.[1] Upon release from prison, offenders on an ESO 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 (referred to as a programme condition) (see **Appendix One**).

3 On 27 June 2023, the High Court determined that s107K(3)(bb)(ii) of the Parole Act prevents the Parole Board from imposing residential conditions requiring, or resulting in, an ESO offender residing with their programme provider. This creates a public safety risk as Corrections currently manages 26 high-risk ESO offenders who are subject to conditions affected by the judgment.[2] These 26 offenders reside at six different locations, where they can come and go into the community depending on the level of restriction they are subject to. Corrections is also currently considering whether these conditions need to be put in place for additional offenders who pose a similar serious risk.

4 The key risk, following the 2023 judgment, is that these daytime conditions are no longer enforceable. This could give these individuals a significant increase in the amount of unstructured and unsupported 'free time', during which they may have an increased likelihood of reoffending.

5 Public safety is the paramount principle in the Corrections Act 2004 that governs all of Corrections' actions. Driven by this, since the High Court judgment, our officials have explored all possible options to respond to the judgment 9(2)(h) [redacted] 9(2)(h)

1 The Parole Act, s 107I(2) contains the legislative test for imposing an ESO.
2 As at 31 July 2023.

9(2)(h) [redacted]

6 Given the significant risk of reoffending for these people, we consider that the current situation is untenable and that an urgent amendment to the Parole Act is essential to enable the existing practice of having relevant offenders on an ESO reside with their programme provider. As the standard legislative process could take up to six to eight months to enact, and there are significant risks present during this time, our preferred approach is to seek an amendment to the Parole Act under urgency or with a truncated process agreed by the Business Committee.[3] This urgent process will provide the greatest protection to the public and ensure the continuous safe support and management of these offenders.

7 The retrospective aspect of the proposed legislative amendment will enable Corrections to maintain its intensive wrap-around support, enforce the daytime conditions for the existing 26 ESO offenders affected by the court judgment, and enable safe management of similar high-risk offenders in the future.

8 Since the ESO regime was enacted in 2004, there have been numerous s7 reports addressing the regime's implications on the New Zealand Bill of Rights Act 1990 (BORA). In the most recent report in 2014, the Attorney General determined that the restrictive conditions for an ESO adds a further penalty to the sentence the offender has already served, limiting the rights guaranteed by s26 of BORA.[4] Despite this, Parliament still passed that legislation to achieve the public safety outcomes. We anticipate that the proposal will result in a s7 report due to limitations on the rights contained in s26(2) of BORA, which are apparent throughout the ESO regime as a whole.

9 To improve compliance with BORA, we propose that the amendments 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. We further propose that where an offender has both residential and programme conditions, these are reviewed by the Parole Board every two years (with the offender participating in the reviews), which will efficiently align with an existing process relating to high-impact conditions.

10 We propose that Cabinet authorise the Minister of Corrections, in consultation with the Minister of Justice, to issue drafting instructions to the Parliamentary Counsel Office for an amendment to the Parole Act to give effect to these recommendations.

11 We propose that Cabinet's Legislation Committee consider an amendment bill at its meeting on 17 August (or as soon as possible thereafter if the process of

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3 Six months of this process is at Select Committee, but time at Select Committee can be shorted by way of agreement following debate in the House.

4 Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision Orders) Amendment Bill dated 27 March 2014.

drafting is more complex than currently anticipated) with the intention of this bill being introduced and passed through all stages in one go before the end of the Parliamentary term.

Background to the relevant legislative framework

The Parole Board has the discretion to impose special conditions for offenders subject to an ESO

12 Sentencing courts may make an ESO for a high-risk offender, upon application by Corrections, and if satisfied the offender has met the threshold specified in the Parole Act. People on an ESO will then subsequently be subject to conditions imposed by the Courts and the Parole Board. These orders can be for up to 10 years in duration and can be renewed repeatedly if the risk remains high. Since 2004, 577 people have been placed on ESOs for an average of 7.7 years each.[5]

13 The focus of this paper is on the combined use of the following conditions:

13.1 directing where the person lives and/or what times they have to be at their residence (referred to together as 'residential conditions'), and

13.2 requiring the person to participate in rehabilitative and reintegrative programmes to reduce the risk of further offending (programme conditions).

14 Together, these conditions help support offenders to engage in purposeful activities that mitigate their risk of reoffending, support reintegration into the community, and therefore enhance public safety.

Programme conditions enable Corrections to support ESO offenders' daily reintegration and rehabilitation activities

15 Programme conditions can require offenders to engage in various daytime activities to create structure and connect them to people and services as they learn the skills to safely undertake everyday tasks such as shopping or recreational activities including gym and walking in public parks.[6] The goal is for relationships with these support structures to continue after the ESO ends. See **Appendix One** for two examples of offenders individualised weekly schedules put in place to satisfy their programme conditions. We note that their schedules may vary depending on their rehabilitative and reintegrative needs at the time.

16 Despite programme conditions sometimes stating that conditions can occur between, for example, 7am to 6pm, offenders are not required to be accompanied when not attending activities. Daily schedules for all existing offenders on an ESO living in the community allow for free time, as shown in grey in **Appendix One**. This is in keeping with the legislative parameters that

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5 Eleven offenders have had a second ten-year ESO imposed on them at the completion of the first ten year period.

6 Tasks can include shopping or being in public spaces.

require that ESO offenders do not experience residential restrictions equivalent to 24-hour monitoring unless a court has specifically imposed the "intensive monitoring" that can be used for up to the first 12 months after an offender leaves prison.[7]

17 In practice, ESO offenders come and go every day from their residences. The frequency and duration of these periods of absence, and whether they need to be accompanied by staff, is dependent on the person's safety levels. In one case, staff routinely accompany an offender when they leave their residence as the offender, and his programme provider, have agreed that this level of support is required for him to move about safely in public spaces. They are, nevertheless, unsupervised at times while at the residence.

In 2014, the Parole (Extended Supervision Orders) Amendment Act (Parole Amendment Act) came into force, inserting s107K(3) into the Parole Act

18 Section 107K(3)(bb)(ii) creates parameters around how programme conditions are provided for offenders on ESOs. It states that:

> *when the Parole Board imposes special conditions under s107K, any condition requiring that the offender participate in a programme must not require the offender to reside with, or result in the offender residing with, any person, persons, or agency in whose care the offender is placed.*

19 At the time of drafting, Corrections intended for this section to enable a single provider to deliver both residential and programme conditions, provided each condition was put in place separately and did not constitute 24-hour monitoring. Corrections and the Parole Board have applied the provision in line with that understanding. As a result, Corrections has long-standing relationships with a small and specialised group of providers with the expertise and facilities to work with this highly complex group of offenders.

The High Court have interpreted s107K(3)(bb)(ii) of the Parole Act differently

20 In 2021, the High Court found that a special condition requiring an ESO offender to be in the care of their programme provider and live at a property operated by their programme provider was unlawful and inconsistent with s107K(3)(bb)(ii).[8]

21 Following the 2021 High Court judgment, the Parole Board, supported by Corrections, sought a High Court declaration confirming that:

> *"Section 107K(3)(bb) of the Act does not prevent the Board from imposing a special condition that enables the offender to reside with his or her programme provider at the programme provider's residence."*

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7 "Intensive monitoring is a high tariff monitoring condition for people subject to an ESO who currently evidence poor self-management and need external management to mitigate their likelihood of reoffending. It requires someone to be actively monitored in person for 24 hours each day", s 107IAC of the Parole Act 2002.

8 C v New Zealand Parole Board [2021] NZHC 2567. The Parole Board and Corrections were the respondents in this case.

22 In the 2023 judgment, the High Court responded to that request for a declaration and found that "s107K(3)(bb)(ii) of the Parole Act 2002 prevents the Board from imposing a special condition that requires or results in an offender residing with his or her programme providers".

23 Essentially, this means that, to be lawful, programmes need to be delivered at *different places* and by *different people*, to any residential conditions.

Issue: The High Court judgment decision has significant immediate implications for the wellbeing of affected offenders and public safety

24 The 2023 judgment means that Corrections cannot enforce the daytime programme conditions of 26 high-risk offenders on an ESO. Corrections also manage two further offenders on ESOs whose escalating risk level means there is an impending application for a programme condition.[9] However, given the impact of the judgment, Corrections cannot currently make such an application.

25 Corrections inability to enforce programme conditions presents a risk that these offenders, if unsupported, could be more likely to reoffend. This is because they would have 12 hours or more per day of unstructured and unsupervised time. This could impact public safety as Corrections expects the individuals will withdraw from their programmes upon learning that their conditions cannot be enforced. Should they leave the residence during the daytime, provided that they comply with their other conditions, Corrections would be unable to act or intervene.

26 The 2023 judgment is now publicly available; however, so far none of the affected offenders on an ESO have raised the judgment with Corrections or the Parole Board. The risk of non-compliance with programme conditions increases as they become aware their daytime conditions are unenforceable.

27 **Appendix Two** contains two case studies of current ESO offenders, who are affected by the High Court judgment, with offending histories typical for high-risk ESO offenders. Both individuals are at high risk of re-offending and have a significant history of sexual offences over several years - 9(2)(a) [redacted]

28 As discussed in paragraph 60, many of these offenders have complex mental health problems and developmental challenges such as Foetal Alcohol Spectrum Disorder, schizophrenia, and personality disorders.

[9] In total there are currently 256 ESO orders in place, but only about 220 are in the community right now as some are in custody. About two-thirds of all ESOs in the community are typically electronically monitored to ensure they comply with conditions that prevent them from visiting places they are more likely to offend.

The Parole Board is bound to amend the affected ESO conditions and has scheduled hearings in November 2023 to review the conditions

29 Upon review by the Parole Board, the programme conditions supporting the 26 ESOs during the day may be removed. In addition to these hearings, people subject to an ESO can request their conditions be reviewed at any time. If this should occur, the Parole Board would likely hear the application within two to three months of receipt.

Corrections expects to mitigate the immediate risks by continuing current operational processes as it prioritises public safety

30 In the interim, Corrections considers that continuing to support these offenders in line with their existing programme conditions is in their best interest to limit reoffending and therefore mitigate risks to public safety.

31 While programme conditions are currently not enforceable, many of the affected offenders are subject to other conditions that are enforceable, but do not provide the level of support and protection that is necessary during the daytime. Enforceable conditions include whereabouts requirements prohibiting them from going to particular places such as schools or public toilets. All are also subject to electronic monitoring. If the offenders breach conditions other than programme conditions, they can still be prosecuted and potentially sent back to prison for up to two years.

32 Corrections has some ability through electronic monitoring to identify non-compliance of whereabouts conditions and electronic monitoring conditions for those subject to an ESO to mitigate the risks. However, offenders who visit community spaces instead of using the support of programmes developed with their residential providers may be at risk of reoffending as described above.

33 We believe that continuing to support the ESOs with their daily programmes is in the best interests of public safety, and respectful of the needs of the victims and the wellbeing of these highly complex offenders.

9(2)(h)

[redacted]

Corrections is unable to address the risks stemming from the High Court judgment through operational change in a timely manner that effectively supports the offenders

35 The affected ESOs reside in five specialist residences with a sixth housed in a bespoke facility. Three of these residences are on prison land, but "outside

the wire". Additional service providers, staff, and residences would be required for Corrections to separately deliver programme conditions and residential conditions. It is extremely difficult to find staff and housing for these high-risk offenders and would take years to achieve.[10]

36 Corrections' experience is that it takes a significant amount of time to establish a new non-residential programme-based service. When the facility is for residential purposes, it takes even longer to establish due to resource management requirements and community notification requirements where those with child sex offending convictions are involved. As an example, Corrections is still negotiating one location in the North Island after over four years and that is for the housing of much lower risk offenders than the ESOs that are the subject of this paper.

37 Changing providers is highly likely to also have a potentially harmful, destabilising effect for the people on ESOs. This in turn impacts public safety and could impact victim's trust and confidence in the justice system to rehabilitate these offenders.

38 Regardless, operational changes could not occur in a timeframe that would meet the Parole Board's obligations to comply with the judgment in a timely manner. During the time it takes to put in place the substantial operational changes, affected offenders will not be fully covered by their ESO conditions.

39 Corrections do not consider that they could manage these ESO offenders with the higher category of order, public protection orders (PPOs), which results in individuals being detained in a secure civil facility on the grounds of Christchurch Men's Prison. These are rarely granted. It is highly unlikely that any of these 26 offenders would meet the requirements for a PPO as some previously had PPOs that were removed by the Court, and PPOs were applied for in other cases and the threshold was not met.[11]

The Law Commission has recognised the desirability of having the same provider deliver both programme and residential conditions

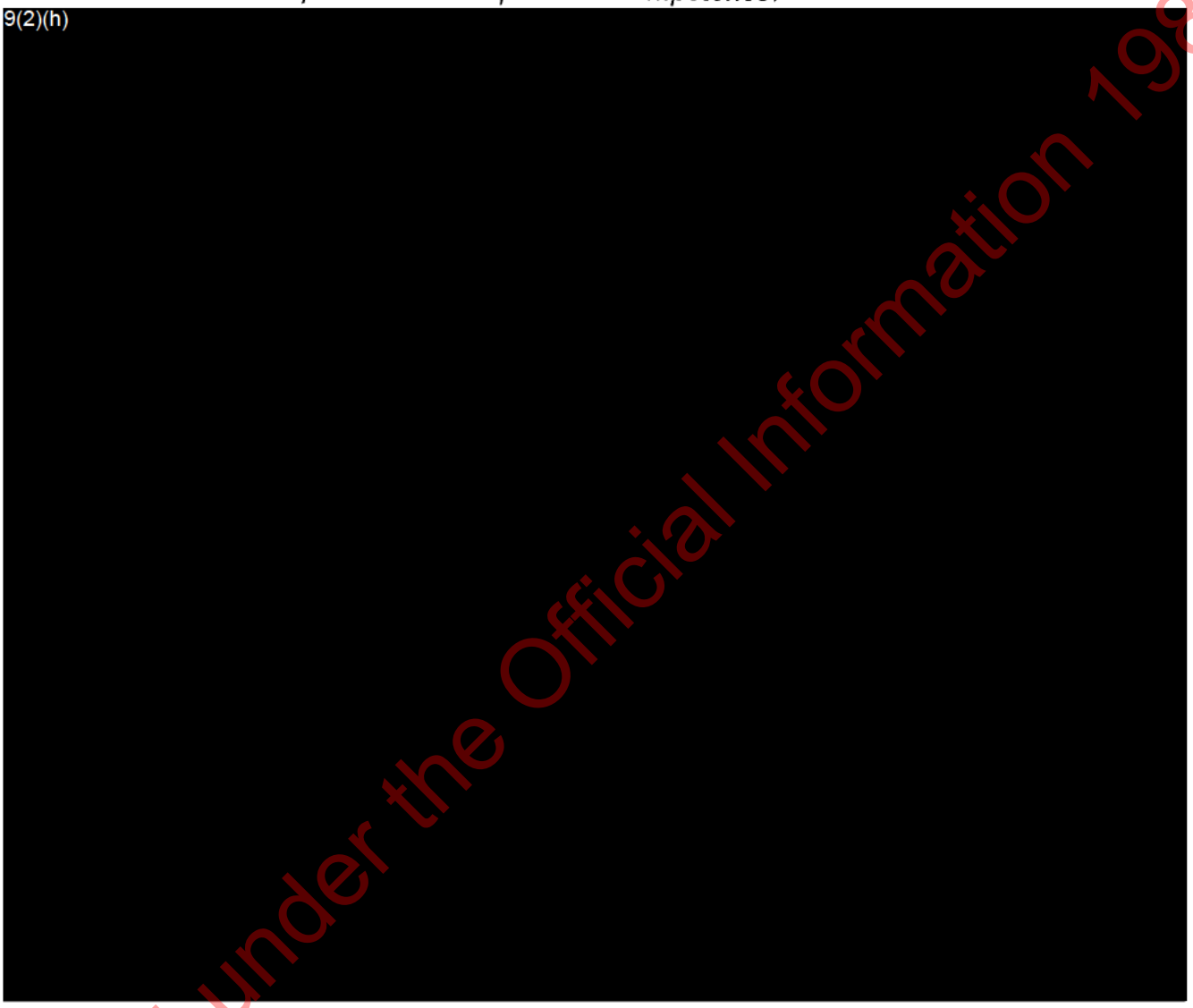
40 In their recent issues paper, released prior to the High Court declaratory judgment, the Law Commission discussed the potential legislative ambiguity around s107K(3)(bb)(ii). In this first issues paper that is part of a longer term substantive review of post-sentence orders including ESOs and PPOs (due to be completed in December 2024), they acknowledged the yet to be completed proceedings, and it was their preliminary view that if the court found that there needed to be separation of providers then this would be

[10] As an example of how difficult placements are for these offenders, 9(2)(ba)(i) 9(2)(ba)(i) As the affected ESO offenders are spread across six locations, Corrections would have to double the number of locations if they were to achieve physical separation of residential and programme conditions.

[11] For a PPO, the offender must be of a very high risk of imminent serious sexual or violent reoffending if left unsupervised or released from prison into the community. Section 7 of the Public Safety (Public Protection Orders) Act 2014 outlines the threshold for PPOs. Note that there are currently two people subject to a PPO as at 2 August 2023.

"undesirable because the regimes should provide for effective rehabilitation. We understand that residential programmes have advantages over non-residential programmes in this respect. They are more intensive and structured than non-residential programmes. They reduce recidivism and help with mental health, relationship development and interpersonal competence."[12]

9(2)(h)



Urgent legislative change is the only viable option to support public safety, and the rehabilitation and reintegration of ESO offenders

45 Amending the Parole Act urgently to legally enable offenders to reside with the providers of their programme condition is essential for the reintegration and rehabilitation of the 26 offenders subject to both programme conditions and residential conditions, and for the wellbeing and safety of both victims and the wider public. We do not propose a condensed select committee process, as this risks offenders becoming aware of the unenforceability of their conditions.

[12] Te Aka Matua o te Ture | Law Commission, Public safety and serious offenders: a review of preventive detention and post-sentence orders, NZLC IP51, 31 May 2023, at 10.116, p 168.

46 Getting Cabinet approval for the policy intent before the end of the Parliamentary term would give the Parole Board some confidence to postpone the process of removing the ESO programme conditions that the June judgment has made unlawful. However, urgent legislation passed through all stages before the House rises is required because the greater risk is that the people on an ESO themselves recognise that they are not bound to comply with their daytime programme conditions. 9(2)(g)(i)

9(2)(g)(i) [redacted]

47 To accomplish urgent legislation, we propose that drafting instructions be issued to the Parliamentary Counsel Office for an amendment to the Parole Act enabling programme conditions and residential conditions to be delivered by the same provider, and any other necessary amendments. This will ensure that the original policy intent of this important legislation is reflected in the Parole Act.

48 If passed, this amendment will enable the pre-judgment status quo, this being that a person on an ESO could be required to reside with the same service provider that delivers any programme conditions as long as the conditions are considered and imposed separately.

49 As discussed in more detail below, drafting will clarify that programme conditions:

49.1 must not have the effect of subjecting the offender to 24-hour monitoring and residential restrictions, and

49.2 must be reviewed every two years where an ESO offender has both programme and residential conditions.

50 9(2)(h) [redacted]

9(2)(h) 9(2)(a) [redacted]

9(2)(a)

51 We recognise that longer term work is required to address the interplay between the ESO and PPO regimes; however, we anticipate that the proposed amendments will reinforce the distinction between an ESO and PPO in the short term. The Law Commission's substantive review of these kinds of post-sentence orders is due to be completed in late 2024. When it responds to this review, the Government has the opportunity to make longer

term improvements to optimise the framework for ESOs. This could include ensuring that there are more distinctions between the experience of the offenders currently managed on ESOs and the more restrictive regime of PPOs.

As the High Court judgment applies to both future and current conditions, retrospective provisions are required to capture current ESO offenders

52 We propose that the urgent amendment is retrospectively applied to any persons who are currently on ESOs with relevant conditions, irrespective of whether their conditions came into force before or after the amendment is enacted. This would enable the same provider to deliver both programme and residential conditions for offenders who are subject to ESOs in the future, and for all current offenders with these conditions.

53 Retrospective provisions would minimise the risk to public safety from current ESO offenders and support them to retain their current support networks and daily routines.

Cost-of-Living Implications

54 There are no cost-of-living implications from the proposals contained in this paper.

Use of External Resources

55 No external resources were used in the preparation of this policy advice for Cabinet.

Legislative Implications

56 It is our intent that the bill should be introduced and passed through all stages on the same day, either under urgency or by agreement of the Business Committee, without prior publicity. This would occur in the final sitting week before the House rises, 29-31 August. No Select Committee consideration would take place, to minimise publicity around the bill, and therefore lower the risk that offenders become aware of the implications of the High Court decision.

9(2)(g)(i) [redacted]

58 It is necessary for the amendments to be passed under urgency as some of the conditions for the 26 high-risk offenders on ESOs that are affected by the High Court judgment are currently unenforceable, resulting in risks to public safety should the offenders realise that they do not need to comply with their daytime programme conditions that support them to be safe and reduce their risk of reoffending. It is also critical to minimise service disruptions for these offenders.

Impact Analysis

59 A joint Quality Assurance panel with members from Corrections and New Zealand Police has reviewed the Regulatory Impact Statement at **Appendix Three** and considers that it partially meets the QA criteria. The statement is clear, concise and overall convincing but, as noted in the RIS, there is limited evidence available to support the analysis and the proposal has not been consulted on.

Climate Implications of Policy Assessment

60 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it not expected to result in any significant, direct emissions impacts.

Population Implications

61 The potential population impacts of this proposal are set out in the table below.

Population group	How the proposal may affect this group
Māori	Of the 26 ESO offenders subject to these orders, 14 have Māori whakapapa. While Māori are overrepresented, this proposal would not result in additional impacts on Māori as it would legislatively enable current practice. As noted in the Law Commission issues paper, current practice can enable Māori to take responsibility for managing people subject to ESOs, as marae-based or tikanga-based programmes can involve a residential component. 9(2)(ba)(i) [redacted]
Pacific people	Of the 26 ESO offenders subject to these orders, 9(2)(a) [redacted] This proposal will not have any significant impacts on Pacific peoples as it would legislatively enable current practice.
Women	Of the 26 ESO offenders subject to these orders, 9(2)(a) [redacted] We note that the proposal contained in this paper will not have any significant impacts on women as it would legislatively enable current practice.
Disabled people, including people with mental illness	Of the 26 ESO offenders subject to these orders, 9(2)(a) [redacted] This proposal will not have any significant impacts on offenders with disabilities or mental illnesses as it would legislatively enable current practice. As discussed in this paper, we consider that current practice better supports the wellbeing of the offenders, including those with disabilities and mental illnesses.

Consultation

62 Feedback from the following government agencies has been incorporated into this paper: Police, Oranga Tamariki, Ministry of Justice, Crown Law, and the Treasury.

9(2)(g)(i) [redacted]

64 Given the role that the Parole Board has in imposing special condition on people subject to ESOs, and the potential impact that the proposed amendments will have on it, we propose that an exposure draft is shared with the Parole Board.

Financial Implications

65 There are minimal to no anticipated financial implications from the proposal contained in this paper as it preserves current processes. In most cases the two-yearly review we propose will align with an existing review that and ESO offender has in relation to their electronic monitoring. In the rare case that an ESO offender captured by this new provision is not electronically monitored the Parole Board would have to expend resources on an additional hearing.

Human Rights

66 Compliance with the BORA was addressed during development of the Amendment Act 2014. At the time, the Attorney General determined that the Amendment Act was inconsistent with BORA as the restrictive conditions for an ESO adds a further penalty to the sentence the offender has already served, limiting the rights guaranteed by s26(2) of BORA.[13] The attorney General noted that despite the Parole Act being inconsistent with individual liberty by guaranteeing the right not to be arbitrarily detained as contained in s22 of BORA, that the biennial reviews in the Amendment Act brought the legislation into compliance with s22.[14]

67 Since the various s7 reports between 2004 and 2014, the extent to which the legislation is consistent with NZBORA has been extensively litigated in the High Court, Court of Appeal and now the Supreme Court (judgment awaited). If Cabinet agrees to amend the Parole Act as proposed in this paper, that the same BORA considerations set out in the previous s7 report may again be engaged.[15] The proposal engages a number of BORA rights which may be commented on in the BORA analysis.

[13] Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision Orders) Amendment Bill dated 27 March 2014.
[14] Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision Orders) Amendment Bill dated 27 March 2014, at paragraph 11.
[15] Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision Orders) Amendment Bill dated 27 March 2014.

68 We consider that the proposal will result in a s7 report due to the potential limitations on the rights contained in s 21 and s26(2) of BORA. Just as the changes in the Amendment Act were passed into law, we consider that the legislative amendments are necessary in light of the demonstrable risks to public safety.

69 We note that in the 2023 High Court judgment, the Human Rights Commission acted as an official contradictor and provided the Court with an alternative perspective to that of Corrections and the Parole Board. The Human Rights Commission stated that the purpose of s107K(3)(bb)(ii) is clearly to prevent ESO offenders from being subject to de facto 24-hour supervision or monitoring by a single organisation.

70 We consider that the proposal to retrospectively apply the amendments to current offenders subject to an ESO will be an additional BORA consideration to that in the principal Act with respect to s26 BORA.

71 As noted, we propose to reduce the intrusion into s26(2) of the BORA in the drafting process by clarifying that programme conditions must not have the effect of subjecting the offender to a 24-hour residential restriction, as was intended in the original drafting in 2014. This is to ensure there is a distinction between the 12-month intensive monitoring that courts can impose on offenders when they leave prison with how the combination of residential and programme conditions interact for ESOs not on intensive monitoring.

72 We further propose that the Parole Act is amended so that where an offender has a programme condition and residential condition that results in them residing with their programme provider, that these conditions are reviewed every two years. We propose that the offender will have the ability to participate in this review. During drafting, officials will work with Parliamentary Counsel to determine how best to give effect to this. It may be by using the list of high-impact conditions within the Parole Act.

Publicity

73 Arrangement for any associated publicity will be discussed and coordinated by Corrections and the Ministry of Justice. No publicity will take place prior to introduction of the bill. This is to try to reduce the risk of relevant ESO offenders becoming aware that their programme conditions are unenforceable and as a consequence not complying with them during the daytime.

Proactive Release

74 We propose that this paper be proactively released on the Corrections website following the introduction of a Bill. Proactive release is subject to redaction as appropriate under the Official Information Act 1982. Release following introduction of a bill on an expedited legislative process will help to mitigate risks to public safety that could arise from the 26 offenders subject to an ESO realising that their programme conditions are unenforceable. Should this paper be proactively released earlier, the risk will be present for a longer period of time.

Recommendations

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

1 **note** that the High Court decision ((NZHC 1611) [2023]) found that s107K(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 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

6 9(2)(h) [redacted]

7 **agree** that to ensure that conditions are not more restrictive than necessary, the Parole Act 2002 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 Minster of Justice, to issue drafting instructions to the Parliamentary Counsel Office to amend the Parole Act 2002 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.

Hon Kelvin Davis

Minister for Corrections

Hon Ginny Andersen

Minister of Justice