



Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021

Public Act 2021 No 5
Date of assent 22 March 2021
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Child Protection (Child Sex Offender Government Agency Registration) Act 2016.

Part 1**Amendment to Part 1 of principal Act****4 Section 9 amended (Court may make registration order)**

Repeal section 9(1A).

Part 2**Amendments to Schedule 1 of principal Act****5 Schedule 1 amended**

- (1) In Schedule 1, before clause 1, insert:

Retrospective application provisions as inserted in 2017 (with effect on and after 14 October 2016)

- (2) In Schedule 1, before clause 1(1), insert:

Subject to sentence of imprisonment, etc, on 14 October 2016

- (3) In Schedule 1, before clause 1(2), insert:

Convicted of qualifying offence before, but sentenced in respect of that conviction on or after, 14 October 2016

- (4) In Schedule 1, before clause 1(3), insert:

Convicted of corresponding foreign offence before, but sentenced, etc, as a consequence of that conviction on or after, 14 October 2016

- (5) In Schedule 1, before clause 1(4), insert:

Person to whom clause applies is registrable offender

- (6) In Schedule 1, before clause 2, insert:

Related provisions inserted in 2017

- (7) In Schedule 1, after clause 4, insert:

Further retrospective application provisions inserted in 2021

5 Further retrospective application to fill gap identified in *D (SC 31/2019) v New Zealand Police [2021] NZSC 2*

Committed qualifying offence before, but convicted and sentenced in respect of that offence on or after, 14 October 2016

- (1) This clause applies to a person who—

- (a) committed before 14 October 2016 a qualifying offence; and
- (b) was convicted on or after 14 October 2016 of the qualifying offence; and
- (c) on or after 14 October 2016, in respect of that conviction,—
 - (i) was or is sentenced to imprisonment; or
 - (ii) was or is sentenced to a non-custodial sentence, and was or is made subject to a registration order.

Committed corresponding offence in foreign jurisdiction before, but convicted and sentenced, etc, as a consequence of that conviction on or after, 14 October 2016

- (2) This clause applies to a person who—
 - (a) committed before 14 October 2016 a corresponding offence in a foreign jurisdiction; and
 - (b) was convicted on or after 14 October 2016 of the corresponding offence in a foreign jurisdiction; and
 - (c) as a consequence of that conviction, on or after 14 October 2016,—
 - (i) was or is sentenced to imprisonment; or
 - (ii) was or is required to report in that jurisdiction information about himself or herself to a person or body performing functions substantially similar to those of the Commissioner under this Act, and to keep that information current for a particular period (and would, if the person were currently in that jurisdiction, still be required to report that information); or
 - (iii) was or is deported from that jurisdiction.

Person to whom clause applies must be taken to have been, or to be, registrable offender

- (3) A person to whom this clause applies must be taken to have been, or to be,—
 - (a) a registrable offender for the purposes of section 7(1) and this schedule (if subclause (1) applies); and
 - (b) a corresponding registrable offender for the purposes of section 8 and a registrable offender for the purposes of section 7(2) and this schedule (if subclause (2) applies); and
 - (c) subject to all other provisions of this Act with any necessary modifications.

Related provisions inserted in 2021

6 Validation of specified registrations

This clause makes valid, from when it occurred, a registration—

- (a) under section 7(1)(a) or (2); and

- (b) that occurred on or after 14 October 2016 and before the commencement of the Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021; and
- (c) that occurred in respect of a person and a conviction specified in clause 5(1) or (2); and
- (d) that is invalid, but would be valid if clause 5 were in force when the registration occurred; and
- (e) even if the registration is in any way undone or deprived of effect by the Commissioner or a court before that commencement on the ground only that a person to whom clause 5 applies was not a registrable offender.

7 Validation of specified registration orders

This clause makes valid, from when it was made, a registration order—

- (a) made by a court under sections 7(1)(b) and 9; and
- (b) made on or after 14 October 2016 and before the commencement of the Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021; and
- (c) made in respect of a person and a conviction specified in clause 5(1) or (2); and
- (d) that is invalid, but would be valid if clause 5 were in force when the order was made; and
- (e) even if the order is in any way undone or deprived of effect by a court before that commencement on the ground only that a person to whom clause 5 applies was not a registrable offender.

8 Application for registration order

- (1) This clause applies in respect of a person who—
 - (a) committed before 14 October 2016 a qualifying offence; and
 - (b) was convicted on or after 14 October 2016 of the qualifying offence; and
 - (c) in respect of that conviction, was sentenced to a non-custodial sentence (for example, in substitution for a custodial sentence), but was not made subject to a registration order (whether or not one was applied for),—
 - (i) after judgment was delivered, on 9 February 2021, in *D (SC 31/2019) v New Zealand Police* [2021] NZSC 2; and
 - (ii) before the commencement of the Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021.
- (2) Despite section 9(4), the prosecutor may, in respect of a person described in subclause (1), apply to the court that imposed the sentence for a registration

order (which may be made because clause 5 and this clause apply to the person).

- (3) However, subclause (2) does not apply if, at the time of sentencing, the court declined to make a registration order because it was not satisfied that the person posed a risk to the lives or sexual safety of 1 or more children, or of children generally.
- (4) Section 9 applies, with any necessary modifications, to an application made under this clause.

9 Exceptions to clauses about further retrospective application, etc

- (1) Clauses 5 to 7 are subject to clause 10.
- (2) Clauses 5 to 8 are subject to clause 11.

10 Exception for obligations between decision and Amendment Act

- (1) Despite clauses 5 to 7, a person to whom clause 5 applies has, under clauses 5 to 7, no obligations of a registrable offender—
 - (a) after judgment was delivered, on 9 February 2021, in *D (SC 31/2019) v New Zealand Police* [2021] NZSC 2; and
 - (b) before the commencement of the Child Protection (Child Sex Offender Government Agency Registration) Amendment Act 2021.
- (2) This clause does not alter or affect a registrable offender's length of reporting period or period on the register.

11 Exception for particular appellant and decision as it relates to them

Clauses 5 to 8 do not—

- (a) apply to the particular appellant in *D (SC 31/2019) v New Zealand Police* [2021] NZSC 2; or
- (b) affect that judgment as it relates to that appellant.

Overriding any inconsistent other law

12 Clauses 1 and 5 to 8 override any inconsistent other law

- (1) The following clauses had effect, and have effect, despite any other law if, or to the extent that, the other law is inconsistent with them:
 - (a) clause 1 as inserted on 8 March 2017 with effect on and after 14 October 2016;
 - (b) clauses 5 to 8.
- (2) In particular, any **other law**, for the purposes of subclause (1), includes any law in all or any of the following:
 - (a) section 6(1) and (2) of the Sentencing Act 2002;
 - (b) sections 25(g) and 26(2) of the New Zealand Bill of Rights Act 1990:

(c) *D (SC 31/2019) v New Zealand Police* [2021] NZSC 2.

Legislative history

17 March 2021

Introduction (Bill 16–1), first reading, second reading,
committee of the whole House, third reading

22 March 2021

Royal assent

This Act is administered by the New Zealand Police.