

# **Child Protection (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Bill**

Member's Bill

As reported from the Justice Committee

## **Commentary**

### **Recommendation**

The Justice Committee has examined the Child Protection (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

### **About the bill as introduced**

Section 21 of the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (the principal Act) sets out when registrable offenders must report their travel plans to the Commissioner of Police, who maintains the Child Sex Offender Register. If they are travelling overseas for more than 48 hours, they must inform the Commissioner at least 48 hours before travelling (unless there are exceptional circumstances) of the dates they are leaving and returning to New Zealand or if they do not intend to return.

The bill is a Member's bill in the name of Greg O'Connor MP. It would amend the Act to require registered child sex offenders to provide additional information to the Police before travelling overseas for more than 48 hours.

A registrable offender who intends to return to New Zealand would also need to report:

- each address at which they intend to stay while overseas
- the dates on which they intend to travel to and out of the country.

This information would be required for each country that the offender intends to travel to and remain in for more than 48 hours.

A registrable offender who does not intend to return to New Zealand would also need to report the country where they intend to live.

The bill also requires registrable offenders travelling out of New Zealand to report the passport number, place of issue, and date of expiry of each valid passport they hold.

The purpose of the amendments is to allow the New Zealand Police and the New Zealand Customs Service to use their networks to better protect children in the countries where offenders travel, and to help identify cases of sex tourism. The amendments would also align the reporting requirements for domestic and overseas travel.

### **Supplementary Order Paper No 175**

Along with the previous Justice Committee, we also considered Supplementary Order Paper (SOP) No 175. The SOP, in the name of Erica Stanford MP, was released on 29 June 2022. The SOP aims to ensure that individuals listed on the Register are subject to Customs Service Border Alerts. The alerts notify overseas jurisdictions of the impending arrival of a New Zealand child sex offender, where considered appropriate. The SOP would allow for the exchange of information between the New Zealand Customs Service and the New Zealand Police to enable the Police to locate a registrable offender. It also seeks to ensure that offenders comply with the reporting obligations in sections 21 to 23 of the Act.

### **Legislative scrutiny**

As part of its consideration of the bill, the Justice Committee in the 53rd Parliament examined the bill's consistency with principles of legislative quality. We wish to bring the House's attention to several issues relating to the bill's consistency with the New Zealand Bill of Rights Act 1990 (NZBORA). We discuss them in more detail below.

### **Report of the Attorney-General under the New Zealand Bill of Rights Act**

Section 7 of NZBORA and Standing Order 269 specify the requirements for the Attorney-General when a provision in a bill appears to be inconsistent with any of the rights and freedoms contained in NZBORA. Under section 7, the Attorney-General must bring the provision to the attention of the House of Representatives. Standing Order 269(1) states that the Attorney-General must indicate the provision to the House and how it appears to be inconsistent with NZBORA.

On 8 November 2021, the Attorney-General<sup>1</sup> presented a report on the bill to the House under section 7 of NZBORA and Standing Order 269. He concluded that the bill appears to be inconsistent with the right to the benefit of the lesser penalty where penalties change, as affirmed in section 25(g) of NZBORA. The Attorney-General also identified a risk that the bill could be interpreted as applying retrospectively.

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<sup>1</sup> All references to the "Attorney-General" in our report are to the Attorney-General at the time.

If so, this would likely be inconsistent with the freedom from double jeopardy as affirmed in section 26(2) of NZBORA.

Previous Attorneys-General presented section 7 reports on the 2015 bill for the principal Act, and on 2017 and 2021 bills to amend the Act. They concluded that those bills appeared to be inconsistent with:

- the freedom from disproportionately severe treatment or punishment affirmed by section 9 of NZBORA, arising from the inability of registered offenders to seek review of their reporting obligations (2015)
- the freedom from double jeopardy as affirmed by section 26(2) of NZBORA because the bill applied to convicted sex offenders retroactively (2015, 2017, and 2021)
- the right to the lesser penalty where penalties increase between commission of, and sentencing for, the offence, as affirmed by section 25(g) of NZBORA (2017 and 2021).

#### **Right to benefit from the lesser penalty where penalties change**

In the section 7 reports on the 2017 and 2021 amendment bills, two Attorneys-General confirmed that the right affirmed in section 25(g) is truly fundamental. In the section 7 report on the bill, the Attorney-General stated that evidence is limited as to the effectiveness of sex offender registers in improving public safety. Therefore, he considered that the intrusion on that right was not in due proportion to the importance of the objective of the bill and could not be demonstrably justified.

The Attorney-General noted that his section 7 report on the 2021 amendment bill considered that the principal Act would impair an offender's rights less if it limited the duration of reporting requirements. Alternatively, the Act could include a review mechanism allowing for offenders' reporting requirements to be deregistered or suspended. Although these options would still deny the right affirmed by section 25(g), they would be less severe. The Attorney-General pointed out that he could not consider these options because they were not included in the bill.

The previous Justice Committee sought advice on whether the proposed new reporting requirement could be amended. Specifically, it asked whether the amendment could be designed so it would impair the rights affirmed in section 25(g) no more than was reasonably necessary to sufficiently achieve the objective of the bill. We received advice that the bill could be amended to limit the information a registered offender would need to provide to the Commissioner for putting on the Register. For example, the bill could require only information about the countries that an offender intended to visit and their dates of entry and departure. Each jurisdiction could then decide how to respond to that information. Those jurisdictions could also choose to request additional information from the offender when they arrived at the border.

We also received advice that it would be operationally impossible for the Commissioner to monitor the extent to which the registered offender stayed at the notified addresses while overseas. The Commissioner has no reciprocal agreements with over-

seas jurisdictions requiring them to monitor registered offenders while in their jurisdictions or to report non-compliance to the Commissioner in New Zealand. Overseas jurisdictions also have no legal obligations to do so. Further, individual agreements with each jurisdiction would be needed because there is no common approach to sharing information or managing the risks presented by child sex offenders. We were advised that this would be complex and involve substantial work even in the unlikely event of each jurisdiction agreeing.

We spent some time discussing these matters. The Member in charge of the bill pointed out that child sex offending is largely carried out by a relative or other person known to the victim. He explained that the bill is intended to give family members and those in the vicinity of the offender overseas the same protections as they have domestically. We acknowledge the concern that enforcement would be difficult but note that this is also the case for offenders travelling in New Zealand. The Member in charge of the bill also suggested that Interpol and Police Liaison Officers<sup>2</sup> could have a role in requesting an address check of an offender if there are concerns. However, it would still be up to the local jurisdiction to determine whether to action any requests.

### **Freedom from double jeopardy and retrospectivity**

Section 26(2) of NZBORA provides that no one who has been finally acquitted, convicted of, or pardoned for an offence shall be tried or punished for it again. In 2021, a Supreme Court decision confirmed that a registration order under the Act constitutes a punishment for the purpose of NZBORA.<sup>3</sup> In his report on the bill, the Attorney-General said he considers that the additional reporting requirements constitute a punishment for the purposes of section 26(2).

The Attorney-General interpreted the bill as only applying prospectively. To reach this view, he applied section 12 of the Legislation Act 2019 (which reenacted section 7 of the Interpretation Act 1999), which states the general principle that legislation does not have retrospective effect. He observed that the Legislation Design and Advisory Committee's Legislation Guidelines state that, if retrospective legislation is intended, it must be stated in the legislation. As the bill contains no specific transitional provisions for retrospective application of the amendments proposed to be made by the bill, the Attorney-General considered that the additional reporting requirements would only apply to people who became registrable offenders after the bill's enactment.

The Attorney-General concluded that if the bill were applied retroactively, it would be inconsistent with section 26(2) of NZBORA. The previous committee requested advice about the risk of the bill being interpreted as applying retrospectively. It was

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<sup>2</sup> Police Liaison Officers are based at several of New Zealand's overseas missions. They cooperate with international agencies to collect and share intelligence about drugs, terrorism, and other matters.

<sup>3</sup> *D (SC 31/2019) v New Zealand Police* [2021] NZSC 2.

advised that nothing specifically stated in the bill suggests that the amendments in the bill are intended to apply retrospectively. However, because the principal Act is retrospective (clauses 1 and 5 of Schedule 1 of the principal Act), retrospectivity could be assumed to automatically apply. However, we note that those clauses ensure retrospective application only to people who are registrable offenders because of offending before 14 October 2016. They also do not provide clearly for the bill's amendments to apply retrospectively. We understand that not applying the additional reporting requirements retrospectively would create operational challenges. This is because the two groups of registered offenders would need to be managed differently after the legislation came into force. Consequently, the Commissioner would be unable to identify or manage the risks presented by those offending after commencement to the same extent as those offending before commencement.

We agree with these concerns and consider that the bill should apply retrospectively. Accordingly, we propose an amendment to the bill to make this intention explicit. We explain the amendment in more detail in our "Proposed amendments" section of this commentary.

### **Our conclusion about the section 7 report**

In November 2022, the previous Justice Committee heard an oral submission from the Ministry of Justice in support of the Attorney-General's section 7 report. The ministry pointed out that the principal Act is considered inconsistent with sections 25(g) and 26(2) of NZBORA. Therefore, any amendments would also be considered inconsistent. The ministry observed that the additional reporting requirements proposed by the bill would place additional requirements on registered offenders. This would increase the scale of the inconsistency. It concluded that the lack of evidence for the effectiveness of sex offender registers means that the limitations placed on individuals' rights are disproportionate and therefore cannot be justified.

We recognise the tension between balancing rights and freedoms and minimising harm. We understand that the use of registers to monitor offenders reflects the significant harm that child sex offenders inflict on children, their families, and communities. We note that Waikato University is leading a phased longitudinal recidivism study to evaluate the effectiveness of the Register. It expects to report initial findings about reoffending data and other measures of effectiveness in 2027.

We note that Parliament examined the matters raised in the section 7 report when it considered the 2015 bill for the principal Act and the two subsequent amendment bills of 2017 and 2021. The Attorney-General submitted a section 7 report on all three occasions. The bills were all passed after taking these matters into account. We also consider that the additional reporting requirements that the bill proposes do not significantly increase the limitations placed on individuals who are subject to registration.

## Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss technical amendments or amendments designed to improve the bill's readability.

### Commencement of the legislation

Clause 2, as introduced, provides that the legislation would commence on the day after the date on which it received Royal assent. We note that the Police would need time to complete the necessary preparation for implementation—for example, to advise registrable offenders of the new overseas travel reporting requirements. We therefore recommend amending the commencement date to 3 months after Royal assent. The 3-month period will be calculated under section 28 of the Legislation Act.

### Requirement to provide passport information

Clause 4, proposed new section 21(4)(f), would require an offender to advise the Commissioner of the passport number, place of issue, and date of expiry of each valid passport that they hold. We consider that this provision is unnecessary because an offender is already required to report this information under section 16(1)(l) of the Act, as well as any changes to this information (sections 17 to 19, 20(1)(b) and (4)). We recommend deleting it.

### Information sharing between government agencies

We note that the Act already provides for registered offenders to be subject to border alerts when travelling. We were advised that the Police and Customs Service have developed and are operating a process for monitoring registered offenders through the Customs Service Border Alert process. We acknowledge that the SOP has the potential to improve processes for information sharing. However, we consider that the same outcome could be achieved by the proposed amendment we set out below.

Section 43 of the Act enables a specified agency<sup>4</sup> to disclose personal information in the register to another specified agency for:

- monitoring the whereabouts of the offender
- verifying personal information reported by the offender
- managing the risk that the offender may commit further sexual offences against children
- managing any risk or threat to public safety.

This provision is intended to allow specified agencies to share with each other relevant information that they hold about a registered offender.

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<sup>4</sup> The specified agencies, as defined in section 43(2) of the principal Act, include the Police and Customs.

The Police are the only specified agency with access to personal information held in the Register. Although other agencies hold relevant information about registered offenders, it is in their own information systems rather than the Register. We understand that some agencies consider that they are unable to disclose relevant information about a registered offender because it is not held in the Register. This can inhibit information sharing between specified agencies and impact the effectiveness of the legislation. As a result, some specified agencies are using the Privacy Act 2020 to provide information for the purposes of section 43, which was not the intent of the Act.

We recommend amending section 43(1) to better reflect the intent of the Act. Under our proposed amendment, a specified agency could disclose personal information about a registered offender to another specified agency, regardless of whether the information was in the Register.

#### **Applying the legislation retrospectively**

As previously noted in our section on double jeopardy and retrospectivity, we consider that that bill should apply retrospectively. This would mean that the additional reporting requirements will apply to people who are already registrable offenders required to be on the Register. They would also apply to people who are registrable offenders because of offending in the future. Specified agencies would be authorised to disclose personal information to other specified agencies about people who are already registrable offenders required to be on the Register. They would also be authorised to disclose personal information about people who are registrable offenders because of offending in the future. Therefore, we recommend inserting transitional provisions as new Part 2 of Schedule 1.

## Appendix

### Committee process

The Child Protection (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Bill was referred to the Justice Committee of the 53rd Parliament on 3 August 2022. That committee called for submissions on the bill with a closing date of 14 September 2022. The committee considered Supplementary Order Paper No 175, which was also referred on 3 August 2022. The committee received and considered submissions from 10 interested groups and individuals. It heard oral evidence from the Member in charge of the bill by videoconference.

Advice on the bill was provided by the New Zealand Police. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

We considered the bill and SOP alongside the Report of the Attorney-General on the (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Bill.

### Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Greg O'Connor participated in this item of business.

### Related resources

The documents received as advice and evidence are available on the Parliament website.

**Child Protection (Child Sex Offender Government  
Agency Registration) (Overseas Travel Reporting)  
Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Greg O'Connor*

**Child Protection (Child Sex Offender Government  
Agency Registration) (Overseas Travel Reporting)  
Amendment Bill**

Member's Bill

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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) (Overseas Travel Reporting) Amendment Act **2021**.

## 2 Commencement

This Act comes into force ~~on the day after the date on which it receives the~~  
3 months after Royal assent.

## 3 Principal Act

This Act amends the Child Protection (Child Sex Offender Government 5  
Agency Registration) Act 2016 (~~the principal Act~~).

### Part 1

#### Amendments relating to overseas travel reporting

#### 4 Section 21 amended (Travel plans to be reported)

After section 21(4)(c), insert: 10

(d) where ~~paragraph (b)~~ applies, any country that the offender intends to  
travel to and remain in for more than 48 hours, and for each of those  
countries the following details:

- (i) each address at which the offender intends to stay; and
- (ii) the date on which the offender intends to travel to the country; and 15
- (iii) the date on which the offender intends to travel out of the country:

(e) where ~~paragraph (c)~~ applies, the country that the offender intends to  
reside in after leaving New Zealand:

(f) the passport number, place of issue, and date of expiry of each valid  
passport held by the offender. 20

(1) In section 21(1), after “travel away from his or her registered residential  
address”, insert “(see **subsection (6)**)”.

(2) Replace section 21(4)(a) to (c) with:

*Date offender intends to travel out of New Zealand*

(a) the date on which the offender intends to travel out of New Zealand: 25

*Offender intends to return to New Zealand*

(b) if the offender intends to return to New Zealand,—

- (i) the date on which the offender intends to return; and
- (ii) the name of each country that the offender intends to travel to, and  
remain in for more than 48 hours; and 30
- (iii) for each of those countries, the specified details (see **subsection**  
**(6)**):

*Offender does not intend to return to New Zealand*

(c) if the offender does not intend to return to New Zealand,—

- (i) a statement of that intention; and 35

- (ii) the name of the country that the offender intends to generally reside in after leaving New Zealand.
- (3) Replace section 21(6) with:
- (6) In this section,—
- specified details**, for the purposes of **subsection (4)(b)(iii)**, in relation to a registrable offender, means—
- (a) each address at which the registrable offender intends to stay; and
- (b) the date on which the offender intends to arrive in the country; and
- (c) the date on which the offender intends to travel out of the country
- travel away from his or her registered residential address**, for the purposes of **subsection (1)**, in relation to a registrable offender, includes travel between registered residential addresses.
- 5 Section 43 amended (Information sharing between government agencies in interest of public safety)**
- Replace section 43(1) with: 15
- (1) A specified agency may disclose personal information about a registrable offender or a corresponding registrable offender (whether or not that information is in the register) to another specified agency for 1 or more of the purposes listed in **subsection (1A)**.
- (1A) The purposes are the following: 20
- (a) monitoring the whereabouts of the offender;
- (b) verifying personal information reported by the offender;
- (c) managing the risk that the offender may commit further sexual offences against children;
- (d) managing any risk or threat to public safety. 25

## Part 2

### Amendment to Schedule 1

- 6 Schedule 1 amended**
- In Schedule 1,—
- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and 30
- (b) make all necessary consequential amendments.

**Schedule**  
**New Part 2 of Schedule 1 inserted**

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**Part 2**  
**Provisions relating to Child Protection (Child Sex Offender  
Government Agency Registration) (Overseas Travel Reporting)**  
**Amendment Act 2021**

**13 Interpretation**

In this Part,—

**amendment Act** means the Child Protection (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Act 2021

**commencement** means the commencement of the amendment Act

**specified registrable offender** means a person—

*Offending before 14 October 2016*

(a) to whom clause 1 or 5 applies in respect of a qualifying offence, or a corresponding offence in a foreign jurisdiction, committed before 14 October 2016; or

*Offending on or after 14 October 2016 and before commencement*

(b) who is a registrable offender, or a corresponding registrable offender, in respect of a qualifying offence, or a corresponding offence in a foreign jurisdiction, committed on or after 14 October 2016 and before commencement; or

*Offending on or after commencement*

(c) who is a registrable offender, or a corresponding registrable offender, in respect of a qualifying offence, or a corresponding offence in a foreign jurisdiction, committed on or after commencement.

**14 Application of amendments about overseas travel reporting requirements**

On or after commencement, **section 21(4)** (as amended by the amendment Act) applies only to a specified registrable offender who intends to travel out of New Zealand for more than 48 hours.

**15 Application of amendments about information sharing between government agencies in interest of public safety**

On or after commencement, **section 43(1) and (1A)** (as inserted by the amendment Act) only authorises a specified agency to disclose personal information about a specified registrable offender (whether or not that information is in the register) to another specified agency.

**16** **Clauses 14 and 15 override any inconsistent other law**

(1) The following clauses have effect, despite any other law if, or to the extent that, the other law is inconsistent with them:

(a) **clause 14:**

(b) **clause 15.**

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(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.

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**Legislative history**

21 October 2021  
3 August 2022

Introduction (Bill 90–1)  
First reading and referral to Justice Committee