

# Departmental Disclosure Statement

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Parole Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Corrections/Ara Poutama Aotearoa.

The Department of Corrections certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 August 2023

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## **Part One: General Policy Statement**

### **Background**

This Bill amends the Parole Act 2002 (the Act).

The Act enables an extended supervision order (ESO) to be imposed by a sentencing court on an offender who has exhibited long-term patterns of serious sexual or violent offending and who poses a real and ongoing risk of reoffending. An ESO is a post-sentence order that subjects an offender to conditions upon release from prison. Special conditions can also be imposed on an offender who is subject to an ESO (an ESO offender) by the sentencing court or the Parole Board (the Board). Special conditions can include requirements to reside at an approved address and remain at that address between certain times (residential conditions) and requirements to participate in rehabilitation and reintegration programmes to reduce the risk of reoffending (programme conditions).

### **High Court declaratory judgement**

On 27 June 2023, the High Court determined that section 107K(3)(bb)(ii) of the Act prevents the Board from imposing a special condition that requires an ESO offender to reside with, or results in an ESO offender residing with, their programme provider.

That determination by the High Court creates a public safety risk as approximately 27 of the highest risk offenders managed by the Department of Corrections in the community are affected by the determination. Those offenders reside primarily at 6 different locations and are subject to both residential and programme conditions that are delivered by the same provider.

The key risk is that for these ESO offenders the programme conditions will no longer be enforceable. This could give those offenders significantly more unstructured and unsupported time, impacting their rehabilitation and reintegration and increasing their risk of reoffending.

### **Urgent amendments to the Act are required**

Operational changes are considered insufficient to address the risks to public safety resulting from the High Court declaratory judgment. Legislative change is therefore required.

The Bill amends the Act to remove the limitation that there cannot be imposed on an ESO offender a programme condition that requires the ESO offender to reside with, or results in the ESO offender residing with, their programme provider. This reverses the effect of the High Court determination and enables current arrangements to continue.

To ensure that ESO offenders are not managed more restrictively than necessary, the Bill provides that, if both programme and residential conditions are imposed on an ESO offender, the conditions must be reviewed at least every 2 years.

When reviewing the conditions imposed on an ESO offender, the Board must consider the impact of the conditions on the offender. This includes ensuring that the offender is not required to participate in a programme longer each day than is necessary and that the programme condition is specifically designed to facilitate or promote the rehabilitation and integration of the offender alongside the other special conditions.

The Bill validates any programme conditions that are currently imposed on an ESO offender and that may be invalid as a result of the High Court judgment. Any action taken before the Bill commences in respect of those conditions is also validated.



## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>The High Court judgment of 27 June 2023 has impacts for the conditions of approximately 27 high-risk ESO offenders and this Bill amends the Parole Act in response.</p> <p>This judgment is available on the Ministry of Justice website, by searching NZHC 1611 here: <a href="https://www.justice.govt.nz/courts/decisions/jdo">https://www.justice.govt.nz/courts/decisions/jdo</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Programme conditions for Extended Supervision Orders</i>, Department of Corrections, 2 August 2023 will be available on the Corrections website after the Bill is introduced in the House of Representatives: <a href="https://www.corrections.govt.nz/resources/policy_and_legislation">https://www.corrections.govt.nz/resources/policy_and_legislation</a></p> <p>It will also be published on the Treasury website: <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The Regulatory Impact Statement (RIS) did not meet the threshold for Treasury's RIA Team assessment.</p> <p>A joint QA panel with members from the Department of Corrections and New Zealand Police reviewed the Regulatory Impact Statement and considered that it partially meets the Quality Assurance 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.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The RIS assesses the costs and benefits of the policy to be given effect by the Bill, but the evidence certainty for this assessment is low.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
The approximately 27 high-risk offenders impacted by the Bill are managed by Corrections, including through regular contact with probation offenders and electronic monitoring, to ensure compliance with their ESO conditions. If offenders breach conditions, they can be prosecuted with a maximum penalty of up to two years imprisonment.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The policy in the Bill was assessed against New Zealand's domestic and international human rights obligations as part of regulatory impact analysis, including the rights contained in the New Zealand Bill of Rights Act 1990 (NZBORA), the Human Rights Act 1993 and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

In particular, the Bill includes safeguards to ensure that the totality of programme conditions and residential restrictions/conditions are no more restrictive than necessary to satisfy the objectives in section 15(2)(a)(b) or (c) of the Parole Act, such as to facilitate or promote the rehabilitation and reintegration of the offender. The impact of these conditions is considered at the time when the conditions are imposed and during biennial reviews.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Of the approximately 27 ESO offenders subject to these orders, 14 have Māori whakapapa and Māori will therefore be disproportionately impacted by the Bill. However, the Bill enables the continuation of the status quo prior to the High Court judgment and will not result in additional impacts.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice provided to the Attorney-General by the Crown Law Office is expected to be available on the Ministry of Justice's website at:

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/>

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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The Bill clarifies that a person subject to an ESO may be required to reside with a service provider that also delivers any programme conditions.

This does not amend the jurisdiction of the Courts or Parole Board, but clarifies the Parole Board's ability to impose programme conditions that result in an ESO offender residing with their residential service provider.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Parole Act is jointly administered by the Ministry of Justice and Department of Corrections and the provisions in the Bill were developed with the Ministry of Justice.	

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>NO</b>
The Parole Board was consulted about the Bill and was provided with an exposure draft. No other external consultation was undertaken due to the need to respond urgently to the High Court judgment.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
Operational staff at the Parole Board and at Corrections have reviewed the Bill's provisions and consider it workable.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>Clause 6 of the Bill provides that any special conditions imposed before the Bill commences on an ESO offender, which require the offender to participate in a programme and reside with the programme provider, are valid so long as the special conditions could be imposed after the commencement of the Bill. Actions taken by any person before the commencement of the Bill to ensure compliance with the special conditions are also valid if the actions could validly be taken after the commencement of the Bill.</p> <p>The Bill also has a commencement date of 31 August 2023 which will be prior to receiving Royal assent.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
<p>The Bill clarifies that the Parole Board can impose programme conditions that result in an ESO offender residing with the service provider that provides their residential conditions. It also requires the Parole Board to review these conditions every two years.</p>	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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