

# Parole Amendment Bill

Government Bill

## Explanatory note

### General policy statement

#### *Background*

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

The principal Act enables an extended supervision order (an **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 a sentencing court or the New Zealand 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 judgment*

On 27 June 2023, the High Court determined that section 107K(3)(bb)(ii) of the principal 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 those 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 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 principal 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 condition that is 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.

### **Departmental disclosure statement**

The Department of Corrections is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2023&no=287>

### **Regulatory impact statement**

The Department of Corrections produced a regulatory impact statement on 2 August 2023 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- [https://www.corrections.govt.nz/resources/policy\\_and\\_legislation](https://www.corrections.govt.nz/resources/policy_and_legislation)
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill comes into force on 31 August 2023. The Bill will therefore be in force for a limited period prior to its enactment.

*Clause 3* provides that the Bill amends the Parole Act 2002 (the **principal Act**).

## Part 1

### Substantive amendments

*Clause 4* amends section 107K of the principal Act, which provides that the Parole Board may impose special conditions on an offender who is subject to an extended supervision order. Some of the special conditions that may be imposed are subject to limitations including, in the case of a condition requiring an offender to participate in a programme, that the offender must not be required to reside with the programme provider (section 107K(3)(bb)(ii) of the principal Act). The amendment removes the latter limitation.

*Clause 5* inserts *new section 107RC* into the principal Act, which provides for the periodic review of concurrent special conditions imposed on an offender who is subject to an extended supervision order if those conditions require the offender to participate in a programme and reside with the programme provider. The conditions must be reviewed at least every 2 years, when the Board must consider whether to confirm the conditions or to vary or discharge any or all of them.

## Part 2

### Other amendments

*Clause 6* amends Schedule 1 of the principal Act, which sets out transitional, savings, and related provisions. *New Part 2* is inserted in Schedule 1 of the principal Act, comprising *new clauses 4 to 6* of Schedule 1.

*New clause 4* of Schedule 1 defines terms used in *new Part 2* of Schedule 1.

*New clause 5* of Schedule 1 provides for the validation of certain programme conditions imposed on offenders before *new clause 5* commences that have not expired or been discharged.

*New clause 6* of Schedule 1 provides for the validation of actions taken before *new clause 6* commences to ensure compliance with the programme conditions referred to in *new clause 5* of Schedule 1.



*Hon Kelvin Davis*

## **Parole Amendment Bill**

Government Bill

### **Contents**

		Page
1	Title	1
2	Commencement	1
3	Principal Act	2

#### **Part 1**

##### **Substantive amendments**

4	Section 107K amended (Board may impose special conditions)	2
5	New section 107RC inserted (Periodic reviews of certain special conditions imposed concurrently on offender)	2
	107RC Periodic reviews of certain special conditions imposed concurrently on offender	2

#### **Part 2**

##### **Other amendments**

6	Schedule 1 amended	3
---	--------------------	---

##### **Schedule**

##### **New Part 2 inserted into Schedule 1**

### **The Parliament of New Zealand enacts as follows:**

#### **1 Title**

This Act is the Parole Amendment Act **2023**.

#### **2 Commencement**

This Act comes into force on **31 August 2023**.

5

### 3 Principal Act

This Act amends the Parole Act 2002.

## Part 1 Substantive amendments

<b>4</b>	<b>Section 107K amended (Board may impose special conditions)</b> Repeal section 107K(3)(bb)(ii).	5
<b>5</b>	<b>New section 107RC inserted (Periodic reviews of certain special conditions imposed concurrently on offender)</b> After section 107RB, insert:	
	<b>107RC Periodic reviews of certain special conditions imposed concurrently on offender</b>	10
	(1) This section applies if at any time there is imposed concurrently on an offender who is subject to an extended supervision order—	
	(a) a special condition requiring the offender to participate in a programme (referred to in section 15(3)(b)); and	15
	(b) 1 or both of the following special conditions that require the offender to reside with, or result in the offender residing with, the provider of the programme:	
	(i) a condition referred to in section 15(3)(a) relating to the offender’s place of residence:	20
	(ii) a condition referred to in section 15(3)(ab) relating to residential restrictions.	
	(2) The Board must review the conditions at least once every 2 years during the period when the conditions are concurrently imposed on the offender.	
	(3) Before a review under this section,—	25
	(a) the chief executive must make a recommendation to the Board on whether—	
	(i) all of the conditions are still appropriate; or	
	(ii) 1 or more of the conditions should be discharged or varied and, if applicable, how those conditions should be discharged or varied;	30
	and	
	(b) the Board must advise the offender that a review is to take place and that the offender may make a written submission to the Board; and	
	(c) the Board may seek any other relevant information from any other person it considers has, or may have, an interest in the review.	35

- (4) The review may be determined without the Board hearing from any person, unless the Board—
- (a) wishes to hear from any person orally; or
  - (b) is contemplating making the conditions more onerous, in which case the Board must give the offender an opportunity to appear before the Board. 5
- (5) In determining whether to confirm, discharge, or vary any of the conditions, the Board must consider all relevant matters, including whether the condition requiring the offender to participate in a programme—
- (a) continues to offer the offender rehabilitation and reintegration that reduce the risk of further offending by the offender (*see* section 15(3)(b)); and 10
  - (b) does not require that the offender be, or result in the offender being, supervised, monitored, or subject to other restrictions, for longer each day than is necessary to ensure the offender’s attendance at classes or participation in other activities associated with the programme (*see* section 107K(3)(bb)(i)). 15
- (6) Section 58(4) applies if the Board directs the variation or discharge of any of the conditions. 5
- (7) If time ceases to run on the offender’s extended supervision order for a period under section 107P, the time for completing a review under **subsection (2)** is extended for the same period. 20

## Part 2

### Other amendments

#### 6 Schedule 1 amended

In Schedule 1,—

25

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

**Schedule**  
**New Part 2 inserted into Schedule 1**

s 6

<b>Part 2</b>	
<b>Provisions relating to Parole Amendment Act 2023</b>	5
<b>4 Interpretation</b>	
In this Part,—	
<b>amendment Act</b> means the Parole Amendment Act <b>2023</b>	
<b>programme condition</b> means a condition requiring an offender to participate in a programme to reduce the risk of further offending by the offender through the rehabilitation and reintegration of the offender ( <i>see</i> section 15(3)(b))	10
<b>residential condition</b> means 1 or both of the following special conditions:	
(a) a condition relating to an offender’s place of residence ( <i>see</i> section 15(3)(a)):	
(b) a condition imposing residential restrictions ( <i>see</i> section 15(3)(ab)).	15
<b>5 Validation of special conditions relating to programmes</b>	
(1) This clause applies if,—	
(a) before it commences,—	
(i) a sentencing court imposes (under section 107IA), or the Board imposes (under section 107K), on an offender who is subject to an extended supervision order the following special conditions:	20
(A) a residential condition; and	
(B) a programme condition; and	
(ii) those special conditions have not expired or been discharged; and	
(b) taken together, the special conditions require the offender to reside with, or result in the offender residing with, the provider of the programme in which the offender is required to participate.	25
(2) Any programme condition referred to in <b>subclause (1)</b> that would have been determined as invalid under section 107K(3)(bb)(ii) is to be treated as valid if it could have been validly imposed had the amendment Act been in force at the time it was imposed.	30
(3) The programme condition is valid from when it was imposed.	



**6 Validation of actions taken in respect of special conditions relating to programmes**

- (1) An action taken by any person before this clause commences for the purpose of ensuring any programme condition referred to in **clause 5(1)** was complied with is valid if the action could have been validly taken had the amendment Act been in force at the time the action was taken. 5
- (2) The action is valid from when it was taken.