

House of Representatives

Supplementary Order Paper

Tuesday, 14 June 2016

Child Protection (Child Sex Offender Register) Bill

Proposed amendments

Hon Anne Tolley, in Committee, to move the following amendments:

Clause 2

In *clause 2*, replace “on **1 July 2016**” (page 4, line 4) with “30 days after the date on which this Act receives the Royal assent”.

Clause 4

In *clause 4*, definition of **class 1 offence**, **class 2 offence**, and **class 3 offence**, delete “to them” (page 4, line 23).

In *clause 4*, delete the definition of **corresponding law enforcement agency** (page 4, lines 31 and 32).

In *clause 4*, after the definition of **corresponding offence** (page 4, after line 35), insert:

corresponding overseas agency has the meaning given in section 95A of the Policing Act 2008

In *clause 4*, delete the definition of **IP address** (page 5, line 15).

In *clause 4*, definition of **qualifying offence**, replace “offence referred to in **clause 4** of **Schedule 2**” (page 5, line 19) with “equivalent repealed offence”.

In *clause 4*, after the definition of **register** (page 5, after line 21), insert:

registered residential address, in relation to a registrable offender, means an address of premises at which the offender generally resides and that the offender has reported under a provision of **sub-part 2 of Part 2**

In *clause 4*, definition of **relevant personal information**, replace “**15**” (page 5, line 25) with “**15(1)**”.

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In *clause 4*, definition of **reporting period**, replace “**35**” (page 5, line 28) with “**36A**”.

Clause 6

In *clause 6(1)*, after “respect of” (page 6, line 5), insert “a conviction for”.

In *clause 6(4)(a)*, replace “finding of guilt” (page 6, line 16) with “conviction”.

In *clause 6(4)(b)*, replace “original sentence.” (page 6, line 21) with “original sentence; or”.

After *clause 6(4)(b)* (page 6, after line 21), insert:

- (c) the registration order in respect of that offence is set aside by a court.

In *clause 6(5)*, replace “finding of guilt or in respect of a sentence” (page 6, line 23) with “conviction or in respect of a sentence or order”.

Clause 7

In *clause 7*, replace “found guilty” (page 6, line 27) with “convicted”.

Clause 8

In *clause 8(1)*, replace “finds a person guilty” (page 7, line 3) with “convicts a person”.

After *clause 8(3)* (page 7, after line 23), insert:

- (4) A registration order is made at the time of sentencing and is a sentence for the purposes of Part 6 of the Criminal Procedure Act 2011 (appeals).
- (5) However, for the purposes of section 31 of the Sentencing Act 2002 (general requirement to give reasons), a registration order is an other means of dealing with the offender.
- (6) The provisions of subparts 4 and 12 of Part 6 of the Criminal Procedure Act 2011, so far as they are applicable and with the necessary modifications, apply to an appeal in respect of a registration order.

Clause 9

In *clause 9(2)(b)*, replace “found guilty” (page 8, line 2) with “convicted”.

In *clause 9(2)(ca)*, replace “found guilty” (page 8, line 7) with “convicted”.

Clause 11

In the heading to *clause 11*, replace “**Notices**” (page 8, line 30) with “**Explanation and notices**”.

Replace *clause 11(1)* (page 8, lines 31 and 32) with:

- (1) This section applies—

- (a) when a court imposes a sentence of imprisonment for a qualifying offence; and
 - (b) when a court makes a registration order.
- (1A) The sentencing Judge must, at the time of sentencing, explain to the registrable offender that the offender is a registrable offender under this Act.
- (1B) Failure to give the explanation required by **subsection (1A)** does not affect the validity of the sentence or order or affect the offender's reporting obligations.

In *clause 11(2)*, replace “the sentencing court” (page 8, lines 33 and 34) with “a Registrar of the sentencing court”.

In *clause 11(3)*, replace “the registrar” (page 9, line 1) with “a Registrar”.

Clause 17

In *clause 17(2)*, delete “under **section 35**” (page 12, line 7).

Clause 20

After *clause 20(5)* (page 14, after line 17), insert:

- (6) For the purposes of **subsection (1)**, in relation to a registrable offender, **travel away from his or her registered residential address** includes travel between registered residential addresses.

Clause 21

Replace *clause 21(1) and (2)* (page 14, lines 21 to 32) with:

- (1) This section applies if a registrable offender who has travelled away from his or her registered residential address decides to change any details given to the Commissioner under **section 20(2) or (4)**.
- (2) As soon as practicable after making the decision, the registrable offender must report the changed details to the Commissioner.

Clause 22

In *clause 22(1)*, replace “intend” (page 15, line 3) with “intends”.

Clause 26

In *clause 26(3)*, before “authorised person” (page 17, line 20), insert “constable or”.

Clause 28

In *clause 28*, replace “constable has examined” (page 19, line 1) with “constable or authorised person has examined”.

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Clause 34

In *clause 34(2)*, replace “found guilty” (page 21, lines 33 and 36) with “convicted” in each place.

In *clause 34(3)*, replace “found guilty” (page 22, lines 5, 7, and 8) with “convicted” in each place.

After *clause 34(4)* (page 22, after line 11), insert:

- (5) If a registrable offender has reporting obligations in respect of more than 1 qualifying offence or corresponding offence, the reporting periods for each of those offences run concurrently (to the extent that they overlap), not cumulatively.

Clause 35

After *clause 35(1)(c)* (page 22, after line 21), insert:

- (ca) the offender’s reporting period has ceased to run under **section 348A** of the Criminal Procedure Act 2011; or

Clause 36A

In *clause 36A(1)*, replace “the District Court” (page 23, line 22) with “a District Court”.

In *clause 36A(2)(c)*, replace “the District Court” (page 23, line 30) with “a District Court”.

In *clause 36A(7)*, replace “the District Court” (page 24, line 16) with “a District Court”.

After *clause 36A(8)* (page 24, after line 23), insert:

- (9) The hearing and determination of an application under this section are an exercise of the court’s criminal jurisdiction.

Clause 39

Replace *clause 39(2) and (3)* (page 25, lines 13 to 27) with:

- (2) The Commissioner must issue guidelines in relation to access to information in the register to ensure—
 - (a) that persons authorised by the Commissioner can access information in the register for the following purposes:
 - (i) preventing, detecting, investigating, and prosecuting qualifying offences;
 - (ii) monitoring registrable offenders in the community;
 - (iii) the purposes specified in **section 41(1)**; and
 - (b) that access to information in the register is otherwise restricted to the greatest extent that is possible without interfering with the purpose of this Act.

- (3) Despite **subsection (2)**, the guidelines may authorise the use of information contained in the register for a purpose other than the purpose for which the information was obtained if an authorised person reasonably believes such use is necessary to prevent, detect, investigate, or prosecute an imprisonable offence.

Clause 41

In *clause 41(1)(d)*, after “risk” (page 26, line 9), insert “or threat”.

After *clause 41(2)(d)* (page 26, after line 14), insert:

- (da) the Department of Internal Affairs:
- (db) the New Zealand Customs Service:

Clause 42

Replace *clause 42* (page 26, lines 25 to 30) with:

42 Disclosure of information to corresponding Registrar or to corresponding overseas agency

The Commissioner may disclose personal information in the register to a corresponding Registrar or to a corresponding overseas agency for the purposes of—

- (a) a corresponding Act; or
- (b) informing that Registrar or agency of the intention to travel, or actual travel, to the Registrar’s or agency’s jurisdiction of a registrable offender who may pose a threat to the lives or sexual safety of 1 or more children, or of children generally, in that jurisdiction.

Compare: Child Protection (Offender Reporting) Act 2004 s 71 (Qld)

Clause 47

After *clause 47(1)* (page 28, after line 25), insert:

- (1A) However, this section does not apply to a person who has been placed on the register as a result of a registration order (and who may appeal against that order under **section 8(6)**).

Clause 47A

Replace *clause 47A* (page 29, lines 19 to 27) with:

47A Appeal

- (1) This section applies to a person who has received written notice from the Commissioner under **section 47(5)(d)** that the Commissioner has confirmed a decision specified in **section 47(2)**.
- (2) The person may appeal to a District Court against the review decision.

- (3) Sections 273 and 274 and subpart 12 of Part 6 of the Criminal Procedure Act 2011, so far as they are applicable and with the necessary modifications, apply to an appeal under **subsection (2)**.
- (4) No further appeal lies from the District Court's determination of an appeal under this section.

Clause 55

Replace *clause 55* (page 32, line 34 to page 33, line 4) with:

55 Criminal Procedure Act 2011 amended

Sections 56 and 57 amend the Criminal Procedure Act 2011.

56 Section 209 amended (Publication by or at request of Police, etc)

After section 209(2)(b), insert:

- (ba) any specified agency, corresponding Registrar, corresponding overseas agency, or affected person within the meaning of the **Child Protection (Child Sex Offender Register) Act 2016** in accordance with **sections 41 to 43** of that Act; or

57 New section 348A inserted (How appeal affects registration orders)

After section 348, insert:

348A How appeal affects registration orders

- (1) On a conviction to which an appeal relates where the court appealed from made a registration order under **section 8** of the **Child Protection (Child Sex Offender Register) Act 2016** in respect of the convicted person, the reporting period ceases to run on the day on which notice of appeal or of application for leave to appeal is filed.
- (2) The reporting period resumes from the date on which—
 - (a) the appeal is dismissed or abandoned; or
 - (b) leave to appeal is refused; or
 - (c) the appeal is decided, if neither the registration order nor the conviction on which it was imposed is set aside.

Schedule 1

In *Schedule 1*, delete *clause 1(1)(c)* (page 34, line 13), *(e)* (page 34, lines 16 and 17), and *(g)* (page 34, lines 20 and 21).

In *Schedule 1*, *clause 1(1)(d)*, replace “interim extended supervision order” (page 34, lines 14 and 15) with “interim supervision order”.

In *Schedule 1, clause 1(1)(f)*, replace “interim public protection order” (page 34, line 18) with “interim detention order”.

In *Schedule 1, clause 1(2)(b)*, replace “finding of guilt” (page 34, line 27) with “conviction”.

In *Schedule 1*, after *clause 1(2)* (page 34, after line 28), insert:

(2A) As soon as practicable after this Act comes into force, the chief executive of the Department of Corrections must cause written notice to be given to every registrable offender referred to in **subclause (1)(a)** of—

- (a) the offender’s reporting obligations; and
- (b) the penalties for failing to comply with those obligations.

In *Schedule 1, clause 1(3)*, replace “**subclause (1)(b), (c), (d), (e), (f) and (g)**” (page 34, line 31) with “**subclause (1)(b), (d), and (f)**”.

In *Schedule 1, clause 1(4)*, replace “**subclause (1)(b), (c), (d), (e), (f) and (g)**” (page 34, lines 34 and 35) with “**subclause (1)(b), (d), and (f)**”.

In *Schedule 1, clause 1(5)*, replace “**subclause (1)(b), (c), (d), (e), (f) and (g)**” (page 35, lines 1 and 2) with “**subclause (1)(b), (d), and (f)**”.

Schedule 2

In *Schedule 2*, before *clause 1(a)(i)* (page 36, before line 31), insert:

- (iaa) section 124A (indecent communication with young person under 16):

In *Schedule 2, clause 1(a)(iii)*, after “2003” (page 36, line 38), insert “, if the victim is under 16”.

In *Schedule 2*, replace *clause 1(a)(v)* (page 37, lines 2 to 4) with:

- (v) section 208(b) (abduction for purposes of marriage or sexual connection), if the victim is under 16:
- (vi) section 208(c) (abduction for purposes of marriage or sexual connection), if the victim is under 16 and the offender intends to cause the victim to have sexual connection with some other person:

In *Schedule 2, clause 1(b)(i)*, replace “124 (offences involving knowledge in relation to objectionable publications)” (page 37, lines 7 and 8) with “124(1) (offences involving knowledge in relation to objectionable publications), if the subject or a subject of the publication is under 16 and the publication deals with sex”.

In *Schedule 2, clause 1(b)(ii)*, replace “(exhibition to persons under the age of 18 years)” (page 37, line 9) with “(exhibition to persons under the age of 18 years), if the exhibition or display is to a person under 16 and the publication deals with sex”.

In *Schedule 2, clause 1(b)(iii)*, replace “131A (offences relating to possession of objectionable publications, involving knowledge)” (page 37, lines 10 and 11) with

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“131A(1) (offences relating to possession of objectionable publications, involving knowledge), if the subject or a subject of the publication is under 16 and the publication deals with sex”.

In *Schedule 2, clause 2(n)*, replace “144A(1)” (page 37, line 34) with “144A(1)(a) or (b)”.

In *Schedule 2, clause 3(o)*, replace “144A(1)” (page 38, line 34) with “144A(1)(a) or (b)”.

In *Schedule 2, clause 3(p)*, after “2003” (page 39, line 3), insert “, if the victim is under 16”.

Explanatory note

This Supplementary Order Paper amends the Child Protection (Child Sex Offender Register) Bill (the **Bill**).

Clause 2 of the Bill is amended. The Bill will now come into force 30 days after Royal assent.

This Supplementary Order Paper makes several amendments to definitions in *clause 4* of the Bill to make the terminology consistent and to correct cross-references. The definition of corresponding law enforcement agency is replaced with a definition of corresponding overseas agency (as used in the Policing Act 2008), which has a broader meaning and includes Interpol. The definition of IP address is deleted because that term no longer appears elsewhere in the Bill. A new definition of registered residential address is inserted.

Clauses 6, 7, 8, 9, and 34 and clause 1(2)(b) of Schedule 1 of the Bill are amended by this Supplementary Order Paper to replace the terms “finding of guilt” and “found guilty” with “conviction” and “convicted”, among other minor amendments.

Clause 6(4) of the Bill is amended by this Supplementary Order Paper to clarify that a person ceases to be a registrable offender if the registration order in respect of each qualifying offence that makes him or her a registrable offender for the purposes of the Bill is set aside by a court.

The Supplementary Order Paper adds *new subclauses (4), (5), and (6)* to *clause 8* to clarify that a registration order is made at the time of sentencing, that it is an other means of dealing with an offender for the purposes of section 31 of the Sentencing Act 2002, and that subparts 4 and 12 of Part 6 of the Criminal Procedure Act 2011 apply to appeals in respect of registration orders as if the registration order were a sentence.

The Supplementary Order Paper amends *clause 11* to require the sentencing Judge to explain to a registrable offender at the time of sentencing that the offender is a registrable offender under the Bill. *Clause 11* is further amended to specify that it is a Registrar of the sentencing court who must provide the written notice to the offender.

The Supplementary Order Paper also—

- removes a cross-reference from *clause 17*:

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- amends *clause 20* to provide that, for the purposes of reporting travel away from a registered address under *clause 20*, travel between registered addresses is included:
 - amends *clause 21* to remove specific reference to a registrable offender having to inform the Commissioner of Police (the **Commissioner**) of a decision to extend a stay away from his or her registered residential address beyond 13 days because that requirement is merely a subset of the remaining requirement to notify any change in information reported to the Commissioner under *clause 20(2) or (4)*:
 - corrects minor errors and omissions in *clauses 22, 26, and 28*:
 - amends *clause 34* to confirm that, if a registrable offender has reporting periods in respect of more than 1 qualifying offence or corresponding offence, those periods run concurrently:
 - amends *clause 35* to include a pending appeal among the circumstances in which a registrable offender's reporting obligations are suspended:
 - amends *clause 36A* to clarify that the hearing and determination of an application to a District Court in relation to the suspension of a registrable offender's reporting obligations are an exercise of the court's criminal jurisdiction:
 - amends *clause 39* to clarify that the Commissioner's guidelines in relation to access to the register must enable access by persons authorised by the Commissioner for the purposes specified, but must also ensure that access to information in the register is otherwise restricted to the greatest extent possible without interfering with the purpose of the Act:
 - amends *clause 41* to include the Department of Internal Affairs and the New Zealand Customs Service as specified agencies:
 - replaces *clause 42* with a new clause that expands the purposes for which the Commissioner may disclose personal information in the register. Informing a corresponding Registrar or corresponding overseas agency of the travel or intended travel of a registrable offender who may pose a threat to the lives or sexual safety of a child or children is included as one of those purposes:
 - amends *clause 47* to provide that the clause (which provides for review by the Commissioner of a decision to place a person on the register or a decision about the length of a person's reporting period) does not apply to a person who has been placed on the register as a result of a registration order:
 - replaces *clause 47A* with a new clause that provides that a person who has received written notice of a decision by the Commissioner to confirm a decision that was under review may appeal to a District Court, and that certain provisions of Part 6 of the Criminal Procedure Act 2011 apply (with necessary modifications) to such appeals:
 - replaces *clause 55* with *new clauses 55, 56, and 57*, which insert provisions in the Criminal Procedure Act 2011 that set out how an appeal affects a registration order:

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- amends *Schedule 1* to make minor corrections to terminology and to provide that the chief executive of the Department of Corrections must give written notice of reporting obligations and penalties to persons specified in *clause 1(1)(a)* of that schedule (offenders who are still serving the sentence of imprisonment that was imposed for a qualifying offence):
- amends *Schedule 2* to add the offence of indecent communication with a young person under 16 to the list of class 1 offences, and to specify that the offences listed in *clauses 1(a)(iii), (b)(i), (ii), and (iii), and 3(p)* are qualifying offences only if the victim of the offence is under 16 and the publication deals with sex. Additional minor amendments are made to *Schedule 2* to describe certain offence provisions more accurately.

Departmental disclosure statement

The New Zealand Police considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

Wellington, New Zealand:

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