



Office of Hon Judith Collins

MP for Papakura
Minister of Justice
Minister for ACC
Minister for Ethnic Affairs

24 AUG 2012

Joshua Grainger
Fyi-request-469-0054ce37@requests.fyi.org.nz

Dear Mr Grainger

Official Information Act request – Public Protection Orders

I refer to your email of 1 August 2012 seeking the following information under the Official Information Act 1982:

... any information or advice dealing with public protection orders, including: Cabinet papers, memos, reports, or other such documents. I am particularly interested in any documents dealing with the New Zealand Bill of Rights Act and the International Covenant on Civil and Political Rights”.

Appendix 1 lists the documents that have been identified as falling within the scope of your request and our decision on whether to release them to you or not.

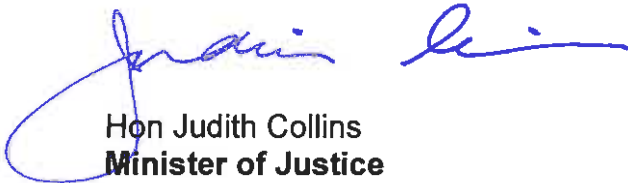
Some of the information in these documents has been withheld under the following sections of the Official Information Act:

- section 9(2)(a): in order to protect the privacy of natural persons
- section 9(2)(f)(ii) and (iv): in order to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials
- section 9(2)(g)(i): in order to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers or officers and employees of any department or organisation in the course of their duty, and
- section 9(2)(h): in order to maintain legal professional privilege.

I am satisfied that there are no other public interest considerations that render it desirable to make the information that is being withheld available.

You have the right under section 28(3) of the Official Information Act 1982 to complain to the Office of the Ombudsmen about the decision to withhold some of the information requested.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Judith Collins', with a large loop at the end of the first name.

Hon Judith Collins
Minister of Justice

APPENDIX 1 – TABLE OF DOCUMENTS WITHIN SCOPE OF REQUEST

Doc number	Document Description	Doc Date(s)	Status
1	Memorandum from the Ministry of Justice to the Office of the Minister of Justice – “Public Protection Orders”	23 February 2012	<p>Released with deletions.</p> <p>Deletions made under:</p> <ul style="list-style-type: none"> • section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials • section 9(2)(h) to maintain legal professional privilege.
2	Briefing paper – “Public Protection Orders”	12 March 2012	<p>Released with deletions.</p> <p>Deletions made under:</p> <ul style="list-style-type: none"> • section 9(2)(a) to protect the privacy of natural persons • section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials • section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers or officers and employees of any department or organisation in the course of their duty • section 9(2)(h) to maintain legal professional privilege. <p>Attachment (draft Cabinet paper) withheld under section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials.</p>

3	Cabinet Social Policy Committee paper SOC (12) 16 – “Public Protection Orders: Establishing a Civil Detention Regime”	23 March 2012	<p>Cabinet paper withheld under section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials.</p> <p>Attachment (Regulatory Impact Statement) released with deletions. Deletions made under section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials.</p>
4	CAB Min (12) 11/9	2 April 2012	<p>Withheld under section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials.</p>
5	Briefing paper – “Public Protection Orders: Issues for Ad Hoc Ministerial Group”	11 May 2012	<p>Released with deletions.</p> <p>Deletions made under:</p> <ul style="list-style-type: none"> • section 9(2)(a) to protect the privacy of natural persons • section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials • section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers or officers and employees of any department or organisation in the course of their duty • section 9(2)(h) to maintain legal professional privilege.
6	Briefing paper – “Public Protection Orders: Further issues for Ad Hoc	6 July 2012	<p>Released with deletions.</p>

	Ministerial Group consideration*		<p>Deletions made under:</p> <ul style="list-style-type: none"> • section 9(2)(a) to protect the privacy of natural persons • section 9(2)(f)(ii) and (iv) to maintain the constitutional conventions which protect collective and individual ministerial responsibility, and the confidentiality of advice tendered by Ministers of the Crown and officials • section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers or officers and employees of any department or organisation in the course of their duty • section 9(2)(h) to maintain legal professional privilege.
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Title: Public Protection Orders:

Date: 23 February 2012

From: Sarah Turner, General Manager, Public Law

To: Sandra Preston, Private Secretary, Office of the Minister of Justice

Discussion

1.

Cabinet decisions

2. On 12 September 2011, Cabinet considered a paper about the management of high risk sexual and violent offenders at end of a finite prison sentence. Cabinet:
 - noted that there is a significant risk to public safety posed by a very small group of offenders at very high risk of imminent and serious sexual or violent re-offending when they are released, and by a limited number of offenders currently subject to the most intensive form of extended supervision, and
 - invited the Minister of Corrections, in consultation with the Attorney-General and other Ministers as appropriate, to report back to Cabinet in due course with detailed policy proposals on the civil detention option.
3. The Ministry of Justice and the Department of Corrections are drafting a Cabinet paper that aligns with this decision.

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Proposed Approach

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Hon Judith Collins, Minister of Justice

Public Protection Orders

Date	12 March 2012	File reference	
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Action Sought	Timeframe/Deadline
Consider the approach and features of the proposed public protection order regime outlined in the attached draft Cabinet paper.	12 March 2012
Provide feedback to officials on the proposals.	

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	1st contact (a/h)	1st contact
Sarah Turner	General Manager, Public Law	04 494 1082		
Fiona Illingsworth	Acting Manager, Human Rights/Bill of Rights Team	04 494 9717		✓

Minister's office to complete

- Noted Approved Overtaken by events
- Referred to: _____
- Seen Withdrawn Not seen by Minister

Minister's office comments

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12 March 2012

Hon Judith Collins, Minister of Justice

Public Protection Orders

Purpose

- 1.
2. We understand that the Department of Corrections has also provided a copy of the draft Cabinet paper to the Minister of Corrections for her feedback.

Background

3. On 12 September 2011, Cabinet considered a range of options for the post-sentence management of a small group of individuals at very high risk of imminent and serious sexual or violent reoffending [CAB (11) 528 refers].
4. Cabinet agreed to further work to develop the option of a civil detention order with separate, secure facilities within prison precincts and invited the Minister of Corrections, in consultation with the Attorney General and other appropriate Ministers, to report back with detailed policy proposals [CAB Min (11) 33/6 refers]. The attached draft paper responds to those decisions.

Public Protection Orders

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Consultation

11. The Ministries of Foreign Affairs and Trade, Health, Social Development, the Police, the Treasury, State Services Commission, Te Puni Kōkiri and Crown Law have been consulted in the development of the attached draft paper. The Department of the Prime Minister and Cabinet and the Parliamentary Counsel Office have been informed.

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Implementation Issues

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Timeframe

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It is therefore proposed that the attached paper be considered by Cabinet Social Policy Committee (SOC) at its meeting on 26 March 2012.

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Next Steps

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20. The paper will then be submitted to the Officials Social Policy Committee (OSOC). A further copy of the paper will be provided to Ministers following feedback from OSOC, for further consideration before the paper is signed out and lodged with Cabinet Office on 22 March 2012.

Recommendations

21. It is recommended that you:

1. Consider the approach to, and features of, the proposed public protection order regime outlined in the attached draft Cabinet paper YES / NO
2. Provide feedback to officials on the proposals by 19 March 2012 YES / NO
- 3.
- 4.

STP *T.M.A. Luey*
Sarah Turner
General Manager
Public Law

APPROVED / SEEN / NOT AGREED

[Signature]

Hon Judith Collins
Minister of Justice

Date: *2/3/12*

Attachments: Draft Cabinet Paper: Public Protection Orders: Establishing a Civil Detention Regime (and regulatory impact statement)

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Regulatory Impact Statement

Management of High Risk Sexual and Violent Offenders at End of Sentence

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Corrections.

It provides analysis of options for reducing the risk to public safety posed by sex offenders and violent offenders who, when released at the end of a finite prison sentence or while subject to an extended supervision order, are at very high risk of imminent and serious sexual or violent re-offending.

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Jane von Dadelszen, General Manager, Strategy, Policy, and Planning
Department of Corrections
[Signature]

[Date] 20/3/12

Executive Summary

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2 Under current legislation, public safety may be jeopardised by offenders who are assessed as presenting a very high risk of imminent and serious sexual or violent re-offending and who are released from prison on expiry of their finite sentence, or who are currently subject to extended supervision orders.

3 These very high risk offenders are currently supervised in the community following release for periods of either six months on parole style conditions or up to 10 years under an extended supervision order. While these offenders remain in the community they continue to pose a risk to public safety despite some being subject to the most intensive form of extended supervision.

4 International practices have been reviewed and the mechanisms used for dealing with these very high risk offenders in other jurisdictions, including civil commitment, have been examined. The options selected and our analysis of those options has been informed by international practice.

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The Status Quo and Problem Definition

Problem Definition

13 Under current legislation, public safety may be jeopardised by offenders who are assessed as presenting a very high risk of imminent and serious sexual or violent re-offending and who are released from prison on expiry of their finite sentence, or who are currently subject to extended supervision orders.

Status Quo

14 Offenders serving finite prison sentences may be released on parole after they have served the longer of one third of their sentence or the non-parole period. The Parole Board may only release a prisoner on parole if it is satisfied that the prisoner does not pose an undue risk to the safety of the community. If during the prisoner's sentence their risk level has not reduced sufficiently for them to be released on parole, the prisoner has to be released on their sentence expiry date. A very small number of prisoners may therefore be released while still at very high risk of imminent and serious re-offending.

15 There are three forms of supervision for offenders released at the end of their sentence. The first form of supervision is for child sex offenders assessed as being at high risk of re-offending who are managed under extended supervision

orders¹ for up to 10 years. These orders are not renewable. The intensity of supervision under these orders is determined by the risk the offender poses and may range from parole style supervision to very intensive supervision for those at very high risk of sexual re-offending against children and young people.

- 16 Offenders subject to the most intensive form of an extended supervision order² are monitored and/or accompanied at all times.

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- 18 Under the IDCCR Act, intellectually disabled offenders who would otherwise be released at the end of a prison sentence may be managed for up to three years (renewable) under care orders made by the Family Court. In 2010, 32 orders were made under the IDCCR Act.

- 19 Thirdly, all other prisoners released at the end of their sentence are subject to parole style supervision in the community for a period of six months. This group may include a very small number of offenders who have offended sexually against adults (adult sex offenders) and very high risk violent offenders who pose an imminent and serious risk to public safety.

¹ A court may make an extended supervision order in respect of an offender serving a finite sentence who poses a real and ongoing risk of committing sexual offences against children or young persons. The order imposes standard conditions on the offender and the Parole Board may impose additional special conditions. Currently around 200 offenders are subject to this order, most for the maximum 10 year period.

² The most intensive form of an extended supervision order includes a special condition imposed by the Parole Board that requires the offender to be at a specified residence at all times and to be accompanied and monitored 24 hours per day by an authorised person.

20 In-contrast-to-the very high risk offenders who have to be released from prison at the end of a finite sentence, offenders serving indeterminate sentences³ for sexual and violent crimes can be held in prison until they no longer pose an undue risk to the safety of the community or any person or class of persons. If paroled, an offender sentenced to an indeterminate sentence, may be recalled to prison if they breach parole-conditions or again pose an undue risk to public safety.

Objective

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³ There are two forms of indeterminate sentence; life sentences, which are mostly imposed on murderers, and preventive detention sentences that may be imposed on offenders convicted of sexual and violent offences specified in the Sentencing Act. Prisoners serving indeterminate sentences and who have served their non-parole period are detained until the Parole Board is satisfied that they "will not pose an undue risk to the safety of the community or any person or class of persons." Indeterminate sentences are imposed at sentencing.

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International Practice

- 32 In other similar jurisdictions there are two ways of protecting the public from very high risk offenders who are likely to re-offend soon after they are released at the end of finite sentence. They are distinguished by the timing of their imposition or activation.
- 33 The first and most frequently used way is to impose indeterminate sentences or extensions to finite sentences at the time the offender is sentenced. The UNHRC and the European Court of Human Rights have considered these measures and found that, subject to suitable safeguards, they do not breach international human rights obligations if they are imposed at sentencing.
- 34 All similar jurisdictions, except the United States, have an equivalent of New Zealand's preventive detention which is imposed at sentencing.⁴ The degree to which they are used varies by jurisdiction.⁵ In Canada and Scotland the courts may also at sentencing order that an offender sentenced to a finite term of imprisonment be subject to supervision in the community for up to 10 years from their release date.
- 35 The second means of protecting the public from very high risk offenders is for an order to be imposed at or close to the end of an offender's finite sentence. Measures imposed at the end of sentence are much more problematic from a rights perspective and have the potential to be found to breach BORA and international obligations. The options being considered in this paper would be imposed at the end of sentence.
- 36 In all similar jurisdictions authorities have recognised that some offenders who have served a full finite sentence may still pose a very high risk of re-offending sexually or violently soon after their release from prison. They have responded by detaining sex offenders in prison (Australian states), detaining sex offenders in medical facilities (United States), and by closely supervising sexual and violent offenders (England and Wales) or sex offenders (Scotland) in the community.

⁴ The High Court may impose a preventive detention sentence when an offender is sentenced for one of the sexual or violent offences specified in the Sentencing Act. The court may only impose preventive detention if it is satisfied that the offender is likely to commit another specified sexual or violent offence if they were sentenced to a finite sentence and released. An offender serving a preventive detention sentence may be released when the Parole Board is satisfied that they "will not pose an undue risk to the safety of the community or any person or class of persons." Preventive detention sentences include a non-parole period set by the court that may not be less than five years.

⁵ For example as at 30 June 2010, Victoria had 54 prisoners serving indeterminate sentences, Queensland 350 and New Zealand 719.

Australia – Further detention

- 37 Four Australian states have detention/supervision orders under which a high risk sex offender at the end of their finite sentence may be detained in prison indefinitely or for a finite period (renewable). Prisoners not considered dangerous enough to be detained in prison or those released after a period of detention may have a supervision order imposed on them for a period of up to 15 years.
- 38 The UN Human Rights Committee has determined that these orders breach the International Covenant on Civil and Political Rights.⁶ The Australian Federal Government has yet to respond to this finding but intends to do so. At this stage no change to the state legislation is contemplated.

United States- Civil Commitment

- 39 In some states in the United States sexually violent predators are detained by civil commitment to a hospital, mental hospital or secure facility. Under this medical model, detention must be accompanied by some form of treatment although that requirement does not prevent untreatable offenders continuing to be detained. To be eligible for civil commitment an offender must have a history of violent predatory sexual offending and a "mental condition" (which is broadly defined to include personality disorders and "mental abnormality") that is likely to lead to further acts of sexual violence.
- 40 The form of civil commitment varies from state to state. In most states it is indefinite, but in California it is for two years, but is renewable. Decisions as to detention and release are made as part of a full court hearing process, which

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United Kingdom – Multi Agency Protection Arrangements

- 43 In the United Kingdom high risk sexual and violent offenders are managed by police, prisons and probation (and in Scotland, health boards) who are required by law to establish joint arrangements to manage offenders in the community.

⁶ The Human Rights Committee has found breaches of ICCPR Article 9(1) prohibiting arbitrary detention and ICCPR Article 15(1) prohibiting retroactive criminal laws in respect of two cases concerning Australian detention orders (*Fardon v Australia* (Communication No. 1629/2007) and *Tillman v Australia* (Communication No. 1635/2007)).

The management of the very highest risk "few" offenders is monitored by a board of senior officials from the three agencies who have statutory authority to require other agencies to provide support.

- 44 Sex offenders are required to notify the police of their address and other personal details, and to advise changes to those details, within three days. The police can also apply for a sex offender protection order which imposes restrictions (and in Scotland obligations) on an offender. Breaches of notification requirements or protection orders are prosecuted on a zero tolerance basis and may result in the offender being reimprisoned for up to five years. Similar violent offender orders have recently been introduced in England and Wales although relatively few orders have been made.

Canada

- 45 In Canada high risk offenders released at the end of their sentence and who are not subject to long term supervision orders are not supervised although they may be monitored by the Police.

Policing

- 46 In all jurisdictions where very high risk offenders are released into the community the police play a major role in preventing re-offending by strategically deploying significant resources in the surveillance and interception of these offenders. The resulting detection of breaches of orders and notification requirements, or minor offending, usually then results in the offender being prosecuted and returned to prison.

Summary of International Practice

- 47 All jurisdictions are grappling with the problem of how to reduce the risks to public safety posed by offenders released from prison at the end of their sentence who pose a very high risk of re-offending sexually or violently. Of the regimes in place in these jurisdictions, only the continuing detention of sex offenders in Australia and civil commitment in the United States, have the potential to eliminate the public safety risk these offenders pose. International experience has informed the options considered in this paper.

Regulatory Impact Analysis

Non-Regulatory Options

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Regulatory Options

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Options that might address the problem

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Analysis of the options

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Public Safety

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Human Rights

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Implementation

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Financial Implications

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Consultation

85 The following agencies have been consulted and their comments taken into account in the preparation of this paper: Ministry of Justice, Ministry of Foreign Affairs and Trade, Crown Law, New Zealand Police, Treasury, State Services Commission, Ministry of Social Development, Ministry of Health, Te Puni Kōkiri and the New Zealand Parole Board. The Department of Prime Minister and Cabinet have been informed.

86 The public would have an opportunity to comment on the option chosen by Cabinet when legislation is placed before a Select Committee.

Implementation

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Monitoring, Evaluation and Review

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Addendum

Purpose

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Public protection orders

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Analysis of the options

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Conclusions, and Recommendations

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Hon Judith Collins, Minister of Justice

Public Protection Orders

Date	11 May 2012	File reference	CRP-29
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Action Sought

Timeframe/Deadline

Agree to the recommendations set out in this briefing.	21 May 2012
Forward the attached copies of this briefing to the Attorney-General and Minister of Corrections for their consideration.	21 May 2012

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	(a/h)	1st contact
Sarah Turner	General Manager, Public Law	04 494 1082		
Fiona Illingsworth	Acting Manager, Human Rights Team	04 494 9717		√

Minister's office to complete

- Noted Approved Overtaken by events
- Referred to: _____
- Seen Withdrawn Not seen by Minister

Minister's office comments

Public Protection Orders:

Purpose

1. This briefing sets out four issues that require policy decisions that support the drafting of the Public Safety (Public Protection Orders) Bill.

Executive summary

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Background

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6. Public Protection Orders (PPO) are part of a civil detention regime that aims to protect the community from a very small number of high-risk offenders who are assessed as being at imminent risk of serious sexual or violent re-offending when released from jail at the end of their sentence. It is anticipated that the number of people who will be subject to a civil detention order is low, perhaps five to 12 over a 10 year period.

Discussion

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Issues identified in recent Cabinet paper

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Issues related to existing Cabinet decisions

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Consultation

33. Ministry of Justice officials developed this briefing in consultation with officials from the Department of Corrections, Crown Law and the Ministry for the Environment. The Department of the Prime Minister and Cabinet has been informed.

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Implementation issues and timeframe

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Next Steps

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Recommendations

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Sarah Turner
General Manager
Public Law

APPROVED / SEEN / NOT AGREED

Hon Judith Collins
Minister of Justice
Date:



Hon Judith Collins, Minister of Justice

Public Protection Orders: Further issues for Ad Hoc Ministerial Group consideration

Date	6 July 2012	File reference	CRP- 29
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Action Sought	Timeframe/Deadline
Agree to the recommendations on drafting matters for inclusion in the Bill.	11 July 2012
Forward the attached copies of this briefing to the Attorney General and Minister of Corrections for their consideration.	11 July 2012

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	Telephone (a/h)	1st contact
Lauren Perry	Acting General Manager, Public Law	04 494 9855		
Fiona Illingsworth	Manager, Human Rights Team (Acting)	04 494 9717		√

Minister's office to complete

- Noted Approved Overtaken by events
 Referred to: _____
 Seen Withdrawn Not seen by Minister

Minister's office comments

Public Protection Orders: Further issues for Ad Hoc Ministerial Group consideration

Purpose

1. This briefing seeks decisions on five issues to support the drafting of the Public Safety (Public Protection Orders) Bill (the Bill).

Executive summary

2. Five issues have arisen during drafting-related discussions. We recommend the Bill provide for:

Background

- 3.
4. Public Protection Orders are part of a civil detention regime that aims to protect the community from a very small number of high-risk offenders who are assessed as being at imminent risk of serious sexual or violent re-offending when released from jail at the end of their sentence. It is anticipated that the number of people who will be subject to a civil detention order is low, perhaps five to 12 over a 10 year period.
5. The ad hoc Ministerial Group has previously considered four issues recommendations to:

Discussion

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Consultation

26. The Ministry of Justice and the Department of Corrections prepared this briefing. Crown Law was consulted.

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Next Steps

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Recommendations

4. It is recommended that you:

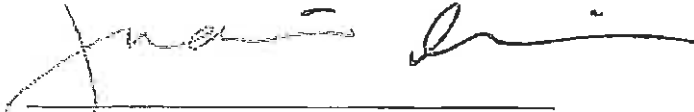
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Lauren Perry
Acting General Manager
Public Law

APPROVED / SEEN / NOT AGREED



Hon. Judith Collins
Minister of Justice

Date: 17/7/12

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