

Chair
Cabinet

VULNERABLE CHILDREN BILL: POLICY ISSUES FROM SELECT COMMITTEE

Proposal

- 1 In this paper I seek agreement to policy decisions for proposed amendments to the Vulnerable Children Bill (the Bill), which is currently being considered by the Social Services Committee (the Committee). The amendments relate to Part 2, Child harm prevention orders (CHPOs) and Part 1, subpart 3 of the Bill, Children's worker safety checking.



Executive summary

- 3 The Vulnerable Children Bill is currently being considered by the Committee. A cross-agency team is advising the Committee and presented the departmental report to the Committee on 29 January 2014. In line with the previously agreed policy decisions, the departmental report made a number of recommended changes to the Bill following agency analysis of the submissions to the Committee and further interagency consideration.
- 4 The changes I propose in this paper cover matters that require further consideration by Cabinet. Subject to Cabinet approval, these changes will be recommended to the Committee.

Child harm prevention orders

- 5 As agreed by Cabinet in April last year, Part 2 of the Bill provides for the creation of CHPOs, which would allow for the imposition of terms that restrict individuals subject to the orders, whether or not they have been convicted of a crime, from being in contact with children [SOC Min (13) 7/9 and CAB Min (13) 13/4 refer]. This is one of a range of measures this Government has been working on, or has recently put in place, to protect vulnerable adults and children from people who present a high risk of harming them.
- 6 While I do not believe that the CHPOs proposal is fundamentally flawed, I do propose that, given the extent of the other measures we are working on and have put in place to protect vulnerable children, we not proceed with CHPOs at this time.
- 7 A significant proportion of submissions on the Bill commented on CHPOs. While many of these expressed support for the intent of CHPOs, a notable minority raised serious concerns (including the Legislation Advisory Committee, the New Zealand Law Society and the Auckland District Law Society). Submitters' concerns included:
 - the human rights implications of CHPOs, including applying an order to an individual who had not been convicted
 - using civil process for punitive effect
 - concerns about the risk assessment tool
 - uncertainty about the costs and benefits of the regime.

8 New initiatives currently being worked on that will help to protect vulnerable children from high-risk adults include:

- Children’s Action Plan initiatives that will increase data sharing between agencies about high-risk adults
- the strengthening of the disciplinary framework for teachers
- removing the time limit on Extended Supervision Orders for child sex offenders, which can currently only be applied for ten years for serious sex offenders
- Public protection orders, which will enable the detention of offenders at very high risk of imminent serious sexual or violent offending who are approaching the end of a prison sentence or who are subject to the most intensive extended supervision order.

9 These initiatives will sit alongside the significant progress the justice sector has made in recent years with measures aimed at protecting people from violent or high-risk individuals. Recent reforms include:

- Police safety orders, which are on-the-spot orders issued by a qualified constable where they believe that family violence has occurred or may occur
- GPS tracking for high-risk child sex offenders
- removal of parole eligibility for the worst repeat violent offenders
- making it an offence for an adult not to take reasonable steps to protect a child or vulnerable adult, knowing they were at risk.

10 Another factor I have considered, in light of these initiatives and the need to responsibly manage Government’s finances, is whether it would be prudent, at this time, to commit what would be a significant proportion of Government spending on the Children’s Action Plan to the implementation of CHPOs.

11 On balance, given the above factors, I am now of the view that we should remove CHPOs from the Bill

Standard safety checking

12 Part 1, subpart 3 of the Bill establishes requirements for standard safety checking for children’s workers employed or engaged by the State services, or organisations funded by the State services. It also puts in place a limitation on the employment of persons with certain criminal convictions from working closely with children, subject to an exemptions process.

13 The proposed amendments to the Children’s worker safety part of the Bill are:

- the substitution of the current Schedule 1, Regulated Activities, for a new schedule that provides more detail of the roles and professions that are required to undertake children’s worker safety checking. This will help to provide greater clarity about which professions and roles will require safety checking
- amendment to Schedule 2, Specified Offences (to which the workforce restriction applies), to add additional offences relating to serious violent and sexual offending, sexual offending against animals, historic sexual offending against children, and offences relating to objectionable publications. This will improve the list of specified offences by increasing its internal consistency and including additional serious offences.

Background

- 15 The Vulnerable Children Bill is currently before the Committee. The Bill forms part of a series of measures to protect, and improve the wellbeing of, vulnerable children. These reforms were set out in the White Paper for Vulnerable Children (the White Paper) and the Children's Action Plan released in October 2012 [CAB Min (12) 34/9 refers]. The changes also support the key result area of reducing the number of assaults on children as part of the Government's Better Public Services programme.
- 16 In addition to the provisions for a new standard safety checking regime and child harm prevention orders, the Bill includes:
- Part 1, Cross-agency measures:
 - requires prescribed chief executives to work together to produce and report progress on implementing a vulnerable children's plan, which sets out how agencies will collectively achieve the Government's priorities for vulnerable children
 - requires prescribed State services, District Health Boards, and school boards to have policies in place containing provisions on the identification and reporting of child abuse and neglect, and to ensure that their funded and contracted services also have such policies in place
 - introduces the new standard safety checking regime
 - Part 2, Child harm prevention orders
 - Part 3, Amendments to Acts:
 - makes a number of amendments to the CYPF Act, including introducing a new type of guardianship for children leaving State care, increasing options for obtaining assistance for young people leaving care, and other changes to support the safety of children
 - changes to the CYPF and KiwiSaver Acts so a guardian can enrol a child in KiwiSaver without needing to obtain consent of other guardians.
- 17 The Bill was introduced into the House on 2 September 2013 and received its first reading on 17 September 2013, where it was referred to the Committee. The Ministries of Education, Justice and Social Development are leading the policy work on the proposals in the Bill. These Ministries, along with the Ministry of Health and the New Zealand Police, are advisers to the Committee on the Bill.
- 18 The Committee received 115 submissions on the Bill and heard from over 50 submitters during the week of 25 November 2013. Officials presented the departmental report to the Committee on 29 January 2014. The Committee is currently due to report back to the House by 17 March 2014.

Child harm prevention orders

- 19 As agreed by Cabinet in April last year, Part 2 of the Bill establishes CHPOs [SOC Min (13) 7/9 and CAB Min (13) 13/4 refer]. CHPOs are civil orders designed to mitigate the risk presented by some adults who pose a high risk of harm to a child or children. Once imposed, an order will contain terms that are targeted at the adult's particular risk. Possible terms of a CHPO may prohibit the person living, working or associating with classes of children as well as specific children or all children.
- 20 A CHPO would be available where a person has been convicted of, or found on the balance of probabilities to have committed, a qualifying offence, and the High Court or District Court is satisfied that the person poses a high risk of causing serious harm to a child or children in the future.

Issues raised in submissions

- 21 There were 49 submissions on CHPOs. Seven submitters clearly supported the regime, 18 submitters predominantly supported the regime, 18 submitters were neutral or unclear, four predominantly opposed the regime, and two clearly opposed. The Legislation Advisory Committee (LAC), the New Zealand Law Society, and the Auckland District Law Society predominantly opposed the regime.
- 22 The following paragraphs outline the more serious concerns raised by submitters.

Human rights implications

- 23 Twelve submitters expressed concerns about the human rights implications of CHPOs. Seven submitters expressed concerns about convictions not being necessary for the imposition of CHPOs. The Auckland District Law Society suggested that a CHPO application should only be made against individuals who have been convicted of a qualifying offence. The Law Society suggested that using civil measures for such matters removes safeguards associated with the criminal law.

Using civil process for punitive effect

- 24 The LAC recommended CHPOs should not be progressed without detailed consideration of the practical implications, such as using civil processes for punitive effect. The LAC also considered that civil procedure is not appropriate for these cases.
- 25 The Law Society expressed significant concern with CHPOs departing from established legal norms. The Law Society suggested that CHPOs are punitive in nature, and that retrospective application of the CHPO regime breaches the prohibition on retrospective punishment.
- 26 The Law Society expressed concern with the intended criteria used for CHPO eligibility. It argued that the proper forum in which to determine whether a person has committed an offence is a criminal trial.
- 27 The Law Society considered that CHPOs allow a person to be tagged with the stigma of having committed a serious criminal offence on the basis of the significantly lower civil law standard of the balance of probabilities, and that this sets a very concerning precedent.

Uncertainty about costs and benefits

- 28 The Child Poverty Action Group (CPAG) recommended CHPOs be set aside until there is a clearer estimate of the costs and benefits of implementing the Bill. CPAG suggested that

unless the benefits are shown to be far in excess of the costs, including the cost to individuals who have had CHPOs imposed, the CHPO regime should be set aside in view of its significant human rights implications.

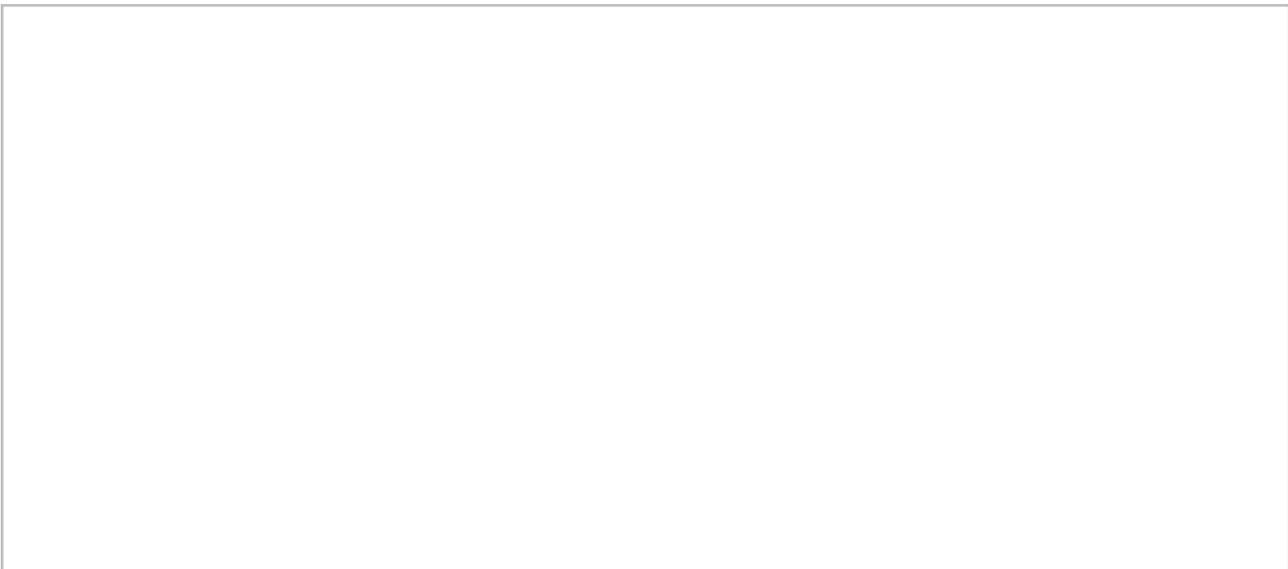
Risk assessment

- 29 The Privacy Commissioner’s submission stated that the proposal for CHPOs may fail the accuracy test found in privacy law, and should be removed from the Bill. The Commissioner suggested that predictions about future offending were difficult, and that the kind of risk assessment the regime intends to rely on lacks accuracy.
- 30 The Human Rights Commission noted that it is imperative that any proposed risk assessment tool undergoes robust analysis to ensure it is compliant with the minimum guarantees contained in the New Zealand Bill of Rights Act 1990.

Government initiatives to protect vulnerable children

- 31 It is important to note that the CHPO regime is only one of a range of comprehensive measures this Government has been working on, or has recently put in place, to protect vulnerable adults and children from people who present a high risk of harming them.
- 32 Relevant Government initiatives that will help to protect vulnerable children from high-risk adults are outlined below.

New initiatives to protect vulnerable children



Children’s Action Plan

- 35 Measures being introduced under the Children’s Action Plan include increased data sharing between relevant agencies about vulnerable children and families, and about high-risk adults.



Strengthening of the disciplinary framework for teachers

- 36 In the education context, changes are being made to the disciplinary regime for the teaching profession through the Education Amendment Bill (No 2). These will provide the new Education Council and its disciplinary bodies with a greater range of options for responding to

reports and complaints of possible serious misconduct by teachers. Serious misconduct includes the physical, sexual or psychological abuse of a child or young person.

- 37 The Education Amendment Bill (No 2) maintains the existing mandatory reporting requirements placed upon an employer in situations where there is reason to believe that a teacher has engaged in serious misconduct. To emphasise the seriousness with which compliance with these requirements is regarded, the maximum fine for non-compliance is being increased from \$5,000 to \$25,000. In addition to such reports, the Bill also maintains the ability for complaints to be made to the Education Council by parents or other persons.
- 38 Under the Education Amendment Bill (No 2), the process for managing reports or complaints of possible serious misconduct is being streamlined and strengthened. This includes the mandatory referral of possible serious misconduct cases from the Complaints Assessment Committee to the Disciplinary Tribunal, and the introduction of a new test to be applied by the Disciplinary Tribunal when considering the need for an interim suspension of a teacher's practising certificate or limited authority to teach. The Disciplinary Tribunal must take into account the safety of children and the reputation of the teaching profession. To ensure that there is public disclosure of a teacher's interim suspension, the Bill also provides for the annotation of the teachers' register and the list of persons who have limited authority to teach, as appropriate.

Enhancing Extended Supervision Orders (ESOs)

- 39 Corrections can apply for, and the court impose, an ESO on a person who has been convicted of certain sexual offences and sentenced to a finite term of imprisonment, and is assessed as having a real and ongoing risk of further sexual offences against persons under 16 years of age. A person subject to an ESO is actively monitored and supervised by Corrections, and is subject to requirements similar to parole. An ESO may last for up to 10 years; however, it is intended that ESOs will be extended beyond their current 10 year time period, and include the management of high-risk sex offenders and very high-risk violent offenders.

Public Protection Orders

- 40 The Public Safety (Public Protection Orders) Bill is currently being considered by the Justice and Electoral Committee. This Bill proposes amendment to empower the High Court to issue a civil detention order to detain a person in a secure facility if, at the end of a finite prison sentence or when subject to the most intensive form of an extended supervision order, they pose a very high risk of imminent and serious sexual or violent reoffending.

Recent reforms

Police Safety Orders

- 41 Police Safety Orders (PSOs) were introduced through the Domestic Violence Amendment Act 2009, which came into force in 2010.
- 42 A PSO is an on-the-spot order issued by a qualified constable where there are reasonable grounds to believe that family violence has occurred or may occur. The order can last up to five days. The objective of a PSO is to protect the person at risk from violence, harassment or intimidation.

GPS tracking for child sex offenders

- 43 In 2012 the Government introduced 24-hour GPS monitoring to track the movements of high-risk offenders. The system allows the tracking of child sex offenders on extended supervision orders or on parole with special conditions.

Removal of parole eligibility

- 44 The Sentencing and Parole Reform Bill was passed in 2010, removing eligibility for parole for repeat serious violent offenders, and offenders who commit the worst murders.
- 45 The amendments aim to address the concern that serious and violent offenders go on to commit further serious and violent crimes. Implementing life without parole for the worst murders addresses the very small number of cases where community revulsion and the need to protect the public means the offender should never be eligible for parole.

Making it an offence for an adult not to take reasonable steps to protect a child

- 46 The Crimes Amendment Act (No 3) was passed in 2011, making it an offence for a person to stay silent when they know that a child or vulnerable adult in their household (or with whom they have frequent contact) is at risk of death, grievous bodily harm or sexual assault. Failure to speak out and take reasonable steps to protect a child or vulnerable adult carries a maximum penalty of 10 years' imprisonment.

Cost of CHPO regime

- 47 The additional funding needed to implement CHPOs over four years has been estimated as:
- for Police, \$20 million operating expenditure and \$5 million capital expenditure
 - for the Ministry of Justice, \$4.255 million operating expenditure and \$4.11 million capital expenditure.
- 48 This would represent a significant proportion of the Government's expenditure on the implementation of the Children's Action Plan. This raises the question of whether it would be prudent to proceed with CHPOs at this time, given the range of other Government initiatives to protect vulnerable children that are underway or being developed, and the need to responsibly manage Government's finances.

Proposal to defer consideration of CHPO regime

- 49 While I do not believe that the issues raised by submitters mean that the CHPOs proposal is fundamentally flawed, given the extent of the other measures we are working on and have put in place to protect vulnerable children, and the costs of the proposed regime, I am now of the view that we not proceed with CHPOs at this time.

I therefore recommend that Part 2 of the Bill, which provides for the CHPO regime, be removed.

Standard safety checking: proposed amendments

- 50 As noted above, Part 1, subpart 3 of the Bill establishes requirements for standard safety checking for children's workers employed or engaged by the State services, or organisations funded by the State services. These requirements have two elements:
- mandatory standard safety checking of all persons engaged in paid work that involves contact with children while providing certain "regulated activities". The regulated activities are listed in Schedule 1 of the Bill
 - the "workforce restriction" – a limitation on the employment of persons with certain criminal convictions from working closely with children, subject to an exemptions process. The convictions subject to the restriction are listed in Schedule 2 of the Bill.

Submissions

51 Seventy-eight submitters addressed standard safety checks in their written submission. One submitter, who had not addressed the proposals in their written submission, addressed the proposals in their oral submission. A majority of the submissions were either fully or predominantly in support of the proposals. Of those with concerns, a number raised issues with the clarity of the scope of the requirements, or were uncertain as to whether their specific sector or profession would be required to undertake safety checking. In addition, several submissions suggested that the list of convictions subject to the workforce restriction could be improved, either to increase its internal consistency, or to include additional serious offences.

Redrafting the list of regulated activities (Schedule 1)

52 The scope of the mandatory safety checking requirement is limited to organisations within the State sector that provide certain child and family-focused services, as well as organisations funded by the State to provide such services. Because of this limitation, the requirements do not apply to all roles where there is the possibility for close contact with children, but instead only apply to roles involving “children’s work” considered suitable for regulation.

53 The services considered to be “child and family focused” are defined in Schedule 1 of the Bill. This list excludes roles where, despite the opportunity for child contact, the nature of that contact (frequency, presence of supervision, nature of role) made inclusion in the requirements unreasonable.

54 For example, Department of Conservation Rangers, while they may have contact with children as part of their duties, are not in consistent contact with children, and including them in the requirement would be a disproportionate response to the risk they pose.

55 The schedule of regulated activities in the Bill as introduced defined the activities within the scope of the requirement at a high level, in a brief and non-specific way. This broad and flexible approach was intended to capture (and exclude) a wide range of diverse activities, without requiring explicit detail.

56 However, a number of organisations have, in their submissions on the Bill, requested that greater clarity and certainty be provided in this area. Further, implementation planning has revealed confusion within sectors about the exact scope of the requirements.

57 I therefore recommend that the schedule be redrafted to provide:

- significantly more detail with an explicit and detailed list of the professions, roles and services that are considered “regulated activities” for the purpose of the Bill
- greater certainty to organisations about whether the service they provide is a regulated one
- a Bill that is more accessible and intelligible to members of the public.

58 The proposed content of the redrafted schedule, subject to consultation with Parliamentary Counsel, is provided in Annex A.

59 Given the greater detail in the redrafted schedule, I also recommend that the Bill allow for the amendment of the schedule by way of regulations. This will ensure that the list of activities subject to the safety checking requirements is kept up to date, with activities able to be added to, or deleted from, the schedule (or otherwise clarified), as the children’s workforce changes over time. It is intended that the Bill will limit the exercise of the power to amend the schedule by regulation to circumstances where it is necessary to correct, clarify, or otherwise ensure the continuing effectiveness of the schedule.

Potential risks

- 60 Increased detail in the schedule of regulated activities (Schedule 1) may alert some groups, that do not currently consider themselves to be part of the “children’s workforce”, to the fact that the new requirements will apply to them. This could cause concern that the scope of the requirement is changing; however, this can be mitigated through clear communication of the rationale for the change in the departmental report, and later through communications material and stakeholder engagement. Further, alerting groups currently unaware of the requirements sooner, rather than later, is likely to reduce problems with implementation.
- 61 Providing greater detail also increases the risk that some activities that ought to be included are excluded by omission, particularly as the services offered may change over time. However, if the Bill allows for the list to be amended by regulations then it can be updated as needed to reflect changing roles and funding arrangements in the workforce.

Amending the list of specified offences (Schedule 2)

- 62 In addition to the safety checking requirements, the Bill places a restriction on employing or engaging persons with certain specified offences to work alone with, or in control of, children. The specified offences are intended to represent a bottom line, not a definitive list of offences that may be relevant to those making employment decisions.
- 63 On the basis of their severity and impact on the suitability of candidates to work closely with children, twenty-six serious offences were included in Schedule 2 of the Bill as introduced.
- 64 However, it is critically important that the list adequately balances the rights of affected individuals, who will be generally prevented from working closely with children, with the rights of children to be protected. I therefore expressly invited the Committee to consider the list of convictions.
- 65 Based on submissions to the Committee and further advice from officials, I recommend that an additional 18 offences be added to this list. I believe that including these additional offences will increase the consistency of the Schedule. It will also ensure that persons whose behaviour raises serious concerns about their suitability to work with children are adequately evaluated through the exemptions process.
- 66 The offences, broken down by category, are:
- 66.1 *Serious offences not currently included.* This category includes seven offences relating to serious violent or sexual misconduct that are of similar gravity to offences in Schedule 2, but which have not been included. After additional inter-agency consultation and consideration of submissions received on the Bill, officials now consider that these offences should be included. This will increase the consistency of Schedule 2, and further ensure the integrity of the workforce.
- 66.2 *Offences relating to sexual contact with animals.* This category includes two serious offences relating to unlawful sexual contact with animals. The antisocial nature of this offending demonstrates unsuitability for close work with children, and such offenders do not meet the Bill’s aspirations for the integrity of the workforce.
- 66.3 *Historical offending.* This category includes five historical child sex offences that have been repealed. Including these offences explicitly will ensure that persons who were convicted for historical offending, or received their conviction prior to 2005, will be clearly identified by the restriction.

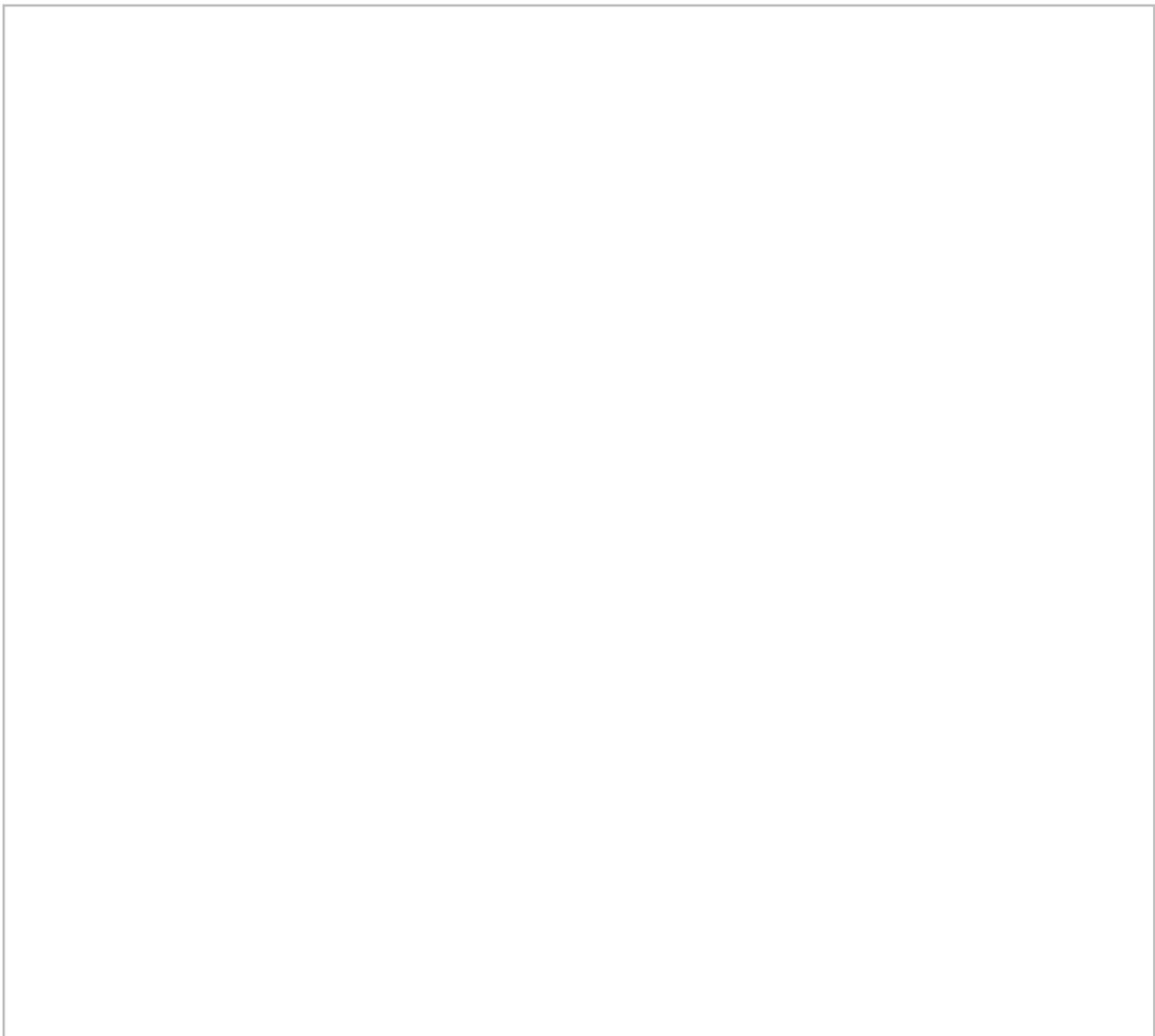
66.4 *Offences relating to objectionable publications.* This category includes the four most severe offences relating to “objectionable publications”. These offences include convictions for possession of child sex abuse imagery.

67 Additional detail about the proposed additional offences, including conviction frequency, and the rationale for including these offences, is provided in Annex B.

Potential risks

68 The amendments to the schedule of specified offences (Schedule 2) will increase the number of people subject to the workforce restriction, and so may increase demand for the exemptions process. To guarantee that persons who have demonstrated genuine rehabilitation are able to apply for an exemption promptly, agencies will need to ensure that the exemptions process, when implemented, is able to handle all demand. However, as the additional offences are relatively uncommon, this increased demand is unlikely to materially affect implementation.

69 The inclusion of the “objectionable publications” offences will include persons convicted for material that was not child sex abuse imagery. However, given that this material is still considered actively harmful to social wellbeing, and these people will be eligible for the exemptions process, a precautionary approach that prioritises the safety of children is appropriate.





Consultation

Child harm prevention orders

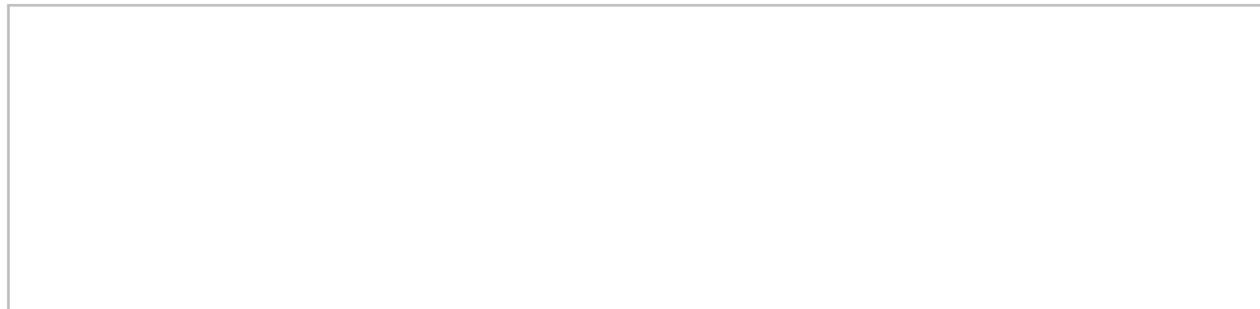
- 80 The Ministry of Justice, the Ministry of Social Development, the Ministry of Education, the New Zealand Police, the Ministry of Health, Te Puni Kōkiri, the Treasury, and the Ministry of Business, Innovation and Employment have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Standard safety checking: proposed amendments

- 81 The Ministry of Education provided advice on the Standard safety checking part of this paper. The New Zealand Police, Ministry of Social Development (including Child, Youth and Family), Ministry of Education, Ministry of Health, and the Ministry of Justice have been involved in developing the proposals in this paper, through a cross-agency process.
- 82 Te Puni Kōkiri, the Department of Corrections, the State Services Commission, the Treasury, the Ministry for Pacific Island Affairs, the Department of Internal Affairs, the Ministry of



Women's Affairs and the Ministry of Business, Innovation and Employment have also been consulted on these proposals. The Department of the Prime Minister and Cabinet has been informed.



Financial implications

Child harm prevention orders

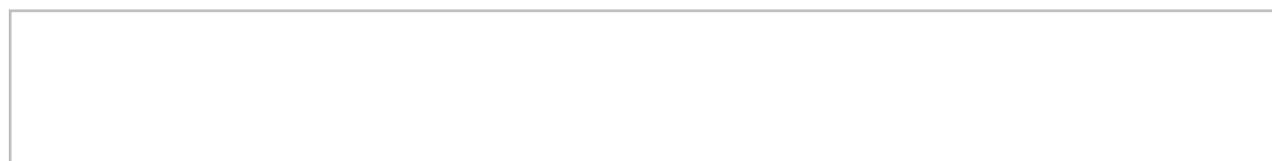
84 As noted at paragraph 47, the costs of implementing CHPOs over four years has been estimated as:

- for Police, \$20 million operating expenditure and \$5 million capital expenditure
- for the Ministry of Justice, \$4.255 million operating expenditure and \$4.11 million capital expenditure.

85 My proposal to remove this part of the Bill would mean that this amount of additional funding will not be required.

Standard safety checking: proposed amendments

86 As the proposal to amend the list of specified offences will increase the number of people eligible for an exemption under the Bill, the costs of this process could increase. However, as noted above, given that these offences are relatively uncommon, the cost increases are expected to be relatively modest.



Human rights implications

88 Crown Law examined the Bill for consistency with the New Zealand Bill of Rights Act 1990 and have concluded that, while the Bill raises questions under sections 24 to 26 of the Bill of Rights Act (rights relating to criminal procedure, and the right to not be subject to double-jeopardy and retroactive punishment), it appears to be consistent with that Act in terms of section 7 (Attorney-General's report on the consistency of the Bill with the Bill of Rights Act).

Child harm prevention orders

89 These proposals do not raise any additional human rights concerns.

Standard safety checking: proposed amendments

90 As Crown Law's advice was primarily based on the finding that the workforce restriction does not have the nature of a criminal penalty, rather than on the contents of the list of convictions, amending the convictions list is not expected to alter its advice.

Legislative implications

92 If agreed, the proposals in this paper will be recommended to the Social Services Committee.

Regulatory impact and compliance cost statement

Child harm prevention orders

94 A Regulatory Impact Statement was previously prepared by the Ministry of Justice on the CHPO proposals.²

Standard safety checking: proposed amendments

95 The additional policy matters considered in this paper do not materially alter the assessments contained in the Regulatory Impact Statement prepared by the Ministry of Education.³

96 Consequently, no further Regulatory Impact Analysis is required.

Consistency with Government Statement on Regulation

98 I have considered the analysis and advice of officials and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest
- will deliver the highest net benefits of the practical options available, and
- are consistent with our commitments in the Government statement "Better Regulation, Less Regulation".

² This can be found at <http://www.justice.govt.nz/publications/global-publications/r/regulatory-impact-statement-child-harm-prevention-orders>

³ This can be found at http://www.minedu.govt.nz/~media/MinEdu/Files/TheMinistry/PublicationsAndResources/RIS_SafeguardingChildrensWorkforce.pdf

Gender implications

Child harm prevention orders

99 The CHPO regime would almost exclusively impact on male offenders as they make up the significant majority of people who pose a high risk of committing further offences. Female children would more likely be protected by the orders as they make up a higher percentage of victims who experience sexual assault. The proposal in this paper to remove this part of the Bill will have no impact on these groups.

Standard safety checking: proposed amendments

100 As sexual abuse is more often perpetrated against girls and vulnerable children, the inclusion of additional sexual offences in Schedule 2 is likely to reduce the risk of harm to girls and children with disabilities who are particularly vulnerable.

101 Expanding the scope of the workforce restriction may have a disproportionate effect on men in the core children's workforce, as the majority of the specified offences are committed by men.

Disability perspective

Standard safety checking: proposed amendments

103 See comment above under Gender implications.

Child harm prevention orders

104 The CHPO regime aims to protect children, including disabled children, from the abuse of adults. The proposal in this paper to remove this part of the Bill will have no impact for these groups.

Publicity

106 Public announcements about the Vulnerable Children Bill will be co-ordinated by the Office of the Minister for Social Development.

Recommendations

107 It is recommended that the Committee:

- 1 **note** that the Vulnerable Children Bill was introduced into the House on 2 September 2013 and is currently being considered by the Social Services Committee
- 2 **note** that the Social Services Committee is currently due to report back to the House on the Vulnerable Children Bill by 17 March 2014
- 3 **note** that the departmental report on the Vulnerable Children Bill, which was presented to the Social Services Committee on 29 January 2014, recommended a number of changes to the Bill in line with previously agreed policy decisions

- 4 **note** that the amendments proposed in this paper cover those matters that officials have identified as requiring additional policy decisions by Cabinet

Child harm prevention orders

- 5 **note** that in April 2013, Cabinet agreed to policy proposals enabling the creation of child harm prevention orders (CHPOs) for inclusion in the Vulnerable Children Bill (the Bill) [SOC Min (13) 7/9 and CAB Min (13) 13/4 refer]
- 6 **note** that a number of submitters to the Social Services Committee on the Bill raised concerns about CHPOs, including concerns about the human rights implications, and the use of civil process for punitive effect
- 7 **note** that new Government initiatives are currently being worked on that will help protect vulnerable children from high-risk adults, including:

- 7.2 Children's Action Plan initiatives that will increase data sharing between agencies about high-risk adults
- 7.3 the strengthening of the disciplinary framework for teachers
- 7.4 introducing legislation so there is no time limit on Extended Supervision Orders (which can currently only be applied for ten years for serious sex offenders)
- 7.5 Public protection orders, currently before select committee

- 8 **note** that Government has introduced a comprehensive range of reforms in recent years, which will also help protect children from high-risk adults, including:

- 8.1 Police safety orders
- 8.2 GPS tracking for child sex offenders
- 8.3 removal of parole eligibility for the worst repeat violent offenders
- 8.4 making it an offence for an adult not to take reasonable steps to protect a child or vulnerable adult knowing they were at risk

- 9 **note** that implementing CHPOs would require a significant proportion of Government spending on the Children's Action Plan

- 10 **agree**, in view of the above factors, that Part 2 of the Bill, which provides for the CHPO regime, be removed

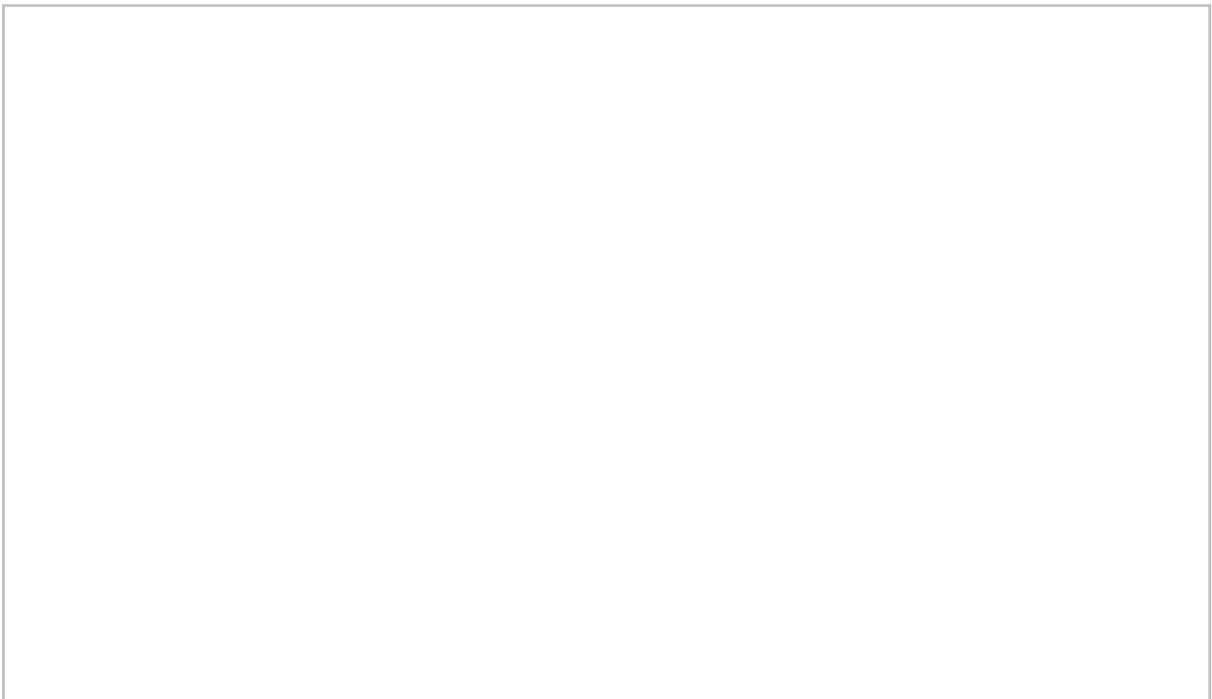
- 12 **authorise** the Minister for Social Development to either:

12.1 instruct officials to recommend that the Social Services Committee delete all provisions relating to CHPOs from the Bill in a supplementary departmental report,
OR

12.2 write to the Chair of the Social Services Committee to delete all provisions relating to CHPOs from the Vulnerable Children Bill

Standard safety checking

- 13 **agree** to a redrafting of Schedule 1, Regulated Activities to specify in detail the roles and professions that are considered to be regulated activities for the purpose of Part 1, subpart 3 of the Vulnerable Children Bill
- 14 **agree** to the proposed list of regulated activities included in Annex A of this paper, subject to amendments agreed in consultation with the Parliamentary Counsel Office to improve the accuracy of the proposed list
- 15 **agree** that the Vulnerable Children Bill allow for the amendment of Schedule 1, Regulated Activities by regulations to add to, delete from, or otherwise clarify, the list of regulated activities, in circumstances where the exercise of this power is necessary to correct, clarify, or otherwise ensure the continuing effectiveness of the Schedule
- 16 **agree** to the inclusion of the additional offences in Annex B in the list of specified offences in Schedule 2 of the Vulnerable Children Bill
- 17 **note** that subject to Cabinet approval, recommendations 13 to 16 above will be recommended by officials to the Social Services Committee in a supplementary departmental report



Hon Paula Bennett
Chair, Ministerial Oversight Group

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Annex A: Proposed content of new schedule of Regulated Activities

Below is the proposed content for the new schedule of Regulated Activities.

The list is subject to consultation with Parliamentary Counsel on the best drafting method to give effect to the proposal.

Child Welfare and Protection Services

- i. Care and protection services for children and young persons provided under Part 1, 1A, or 2 of the Children, Young Persons, and Their Families Act 1989.
- ii. Services provided at, or in relation to the operation of, any residence within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989.
- iii. Services and support provided to children as part of a Family Group Conference Plan, Mentoring order, Activity or other order including court-supervised camps, and other court based programmes.

Child social or support services

- i. Services and facilities of the kind referred to in section 4(a) and 7(b)(i) of the Children, Young Persons, and Their Families Act 1989.
- ii. Family violence services where the clients to whom the services are provided ordinarily include children.
- iii. Other child social or support services, including integrated family welfare services where the clients to whom the services are provided ordinarily include children.
- iv. Mentoring and counselling services for children provided as part of a formal mentoring or counselling programme.
- v. Youth services and youth work provided to children.
- vi. Participating in a telephone communication service which is likely to be used wholly or mainly by children.
- vii. Moderating an electronic interactive communication service which is likely to be used wholly or mainly by children
 - a. For the purposes of the above a person does not moderate a public electronic interactive communication service unless he or she has access to the content of the matter, or contact with users of the service.

Health services

- i. Health services and disability support services (as defined in the New Zealand Public Health and Disability Act 2000) provided to children.
- ii. Work (other than the provision of health services and disability services) undertaken by a person that takes place where health services and disability support services are provided to children.

In this clause:

Health services and disability support services means services provided by:

- A. A health practitioner as defined in the Health Practitioners Competence Assurance Act 2003 and determined by the employer or other appropriate health organisation (eg Public Health Organisation (PHO)) as providing services to children
- B. Any other individual who provides a health service or a disability support service, including:
 - i. Trainees, paid interns and students undertaking paid work as part of an educational or vocational training course
 - ii. Medical Receptionists
 - iii. Health Care Assistants
 - iv. Social workers
 - v. Youth workers
 - vi. Child or Youth residential care assistants
 - vii. Dental assistants

- viii. Sexual health Counsellors
- ix. Drug and Alcohol Counsellors
- x. Child and adolescent mental health workers
- xi. Counsellors
- xii. Speech language therapist
- xiii. Music Therapist
- xiv. Family Planning Workers
- xv. Teenage pregnancy workers
- xvi. Parenting, whānau and family senior advisors
- xvii. Ambulance Officers
- xviii. Kaiawhina Hauora (Māori Health Assistant).

Health services and disability support services does not mean services provided by:

- A. Medical laboratory workers
- B. Theatre staff
- C. Staff in aged care facilities
- D. Dispensing opticians
- E. Employees of Individualised Funding Clients employed directly by the parent, guardian or other family member of the child or children for whom the service is provided
- F. Practice Managers not providing health services or disability support services.

Education, early childhood education services

- i. Education services provided at a registered school as defined in section 2 of the Education Act 1989.
- ii. Early childhood services as defined in section 309 of the Education Act 1989.
- iii. Education services provided by a trades academy, a service academy, or an alternative education provider for or on behalf of a school.
- iv. Education services provided at any off site locations for or on behalf of a registered school or early childhood service, including teen parent units, school camps, and learning centres.
- v. Out of school care and recreational services.
- vi. Services provided by the Attendance Service to ensure enrolment and attendance at school in accordance with sections 20 and 25 of the Education Act 1989.
- vii. Services provided at a playgroup as defined in section 309 of the Education Act 1989.
- viii. Services provided at any location on behalf of a Limited child care centre as defined in sections 2 of the Health and Safety in Employment Act 1992.

Transport services for children

- i. Work driving a vehicle which is being used only for the purpose of conveying children and any person supervising or caring for the children including school bus services.
- ii. Work assisting children to cross roads on their way to or from school (eg supervision of school road crossings).

Youth justice services

- i. Services provided at youth justice residences and youth units within prisons and secured facilities.
- ii. Other youth justice services including work as a supervisor or case manager of children on community justice placements.
- iii. Residential parent and child programmes involving inmates or detainees at correction centres, juvenile correction centres or detention centres or other places.
- iv. Justice services and support provided by Victims Advisors, Family Court Counsellors, Youth Advocates Alcohol and Drug Court Coordinator, and Counsel for Child where that support is provided to children or to families with children.

Policing services

- i. Specialist child and family policing services.

Annex B: List of additional offences to be included in Schedule 2

Below is the list of recommended offences for inclusion in Schedule 2, along with data about the number of convictions entered for that conviction, and the reason for its inclusion.

SPECIFIED OFFENCE	No of convictions 2003-2012	REASON FOR INCLUSION
Serious offences otherwise excluded (Crimes Act 1961)		
s98 Dealing in Slaves <i>(not exceeding 14 years)</i>	0	These offences are all serious violent or sexual offences, involving a high degree of culpability and large maximum penalties.
s98AA Dealing in people under 18 for sexual exploitation <i>(not exceeding 14 years)</i>	3	
s168 Murder further defined <i>(imprisonment for life)</i>	(see footnote) ⁴	As the conduct covered by these offences is of similar gravity to offending already included in Schedule 2, it is consistent with the intent of the Bill to include these offences.
s182 Killing of an unborn child <i>(not exceeding 14 years)</i>	0	
s204A Female genital mutilation <i>(not exceeding 7 years)</i>	0	Sections 168, 182 and 209 cover unlawful acts very similar to those under sections already included in Schedule 2. Their current omission is inconsistent, and creates perverse incentives on prosecutors to choose charges based on whether they wish the workforce restriction to apply.
s204B Further offences relating to female genital mutilation <i>(not exceeding 7 years)</i>	0	
s209 Kidnapping <i>(not exceeding 14 years)</i>	817	
Offences relating to sexual contact with animals (Crimes Act 1961)		
s142A Compelling indecent act with animal <i>(not exceeding 14 years)</i>	1	Sexual offending against animals is of a character such that it brings into serious question the suitability of a person to work closely with children, particularly where offending was sufficiently serious that a conviction was entered.
s143 Bestiality <i>(not exceeding 7 years)</i>	9	

⁴ As section 168 is a definition, rather than an offence, the Ministry of Justice has not been able to provide data for murder convictions under this section rather than section 167 (which covers other circumstances where culpable homicide is considered murder).

Historic offences (Crimes Act 1961)⁵		
s133 Indecency with girl under 12		Schedule 2 already includes a catch-all for conduct equivalent to a specified offence that resulted in a conviction for an offence now repealed. However, this provision lacks clarity compared to expressly including specified historic offences. However, including historic offences expressly risks including behaviour that is no longer criminalised. To achieve a balance it is recommended that these four offences relating specifically to child sexual abuse are included explicitly in the schedule.
s139 Indecent act between woman and girl		
s140 Indecency with boy under 12		
s140A Indecency with boy between 12 and 16		
s141 Indecent assault on man or boy		
Offensive material offences (Films, Videos and Publications Classification Act 1993, Customs and Excise Act 1996)		
s124 Offences involving knowledge in relation to objectionable publications	98	New Zealand has no specific offences relating to child sex abuse imagery. However, these offences cover the most severe offending relating to objectionable publications. Objectionable publications include violent, sexual and other material (eg bomb-making manuals) that is considered to cause social harm. In the rare circumstances where a conviction has been entered for material that is not child sex abuse imagery, an exemption is more likely to be granted, which will minimise the harm to affected individuals. However, where convictions have entered it is likely that the material, while not specifically child sex abuse imagery, is still of a seriously questionable nature. However, if at a later date a specific offence relating to possession or distribution of child sex abuse imagery is introduced, the Act could be amended to include this offence.
s127(4) Exhibition to persons under 18 (involving knowledge)	0	
s131A Offences relating to possession of objectionable publications and involving knowledge	358	
s209(1A) Offences in relation to importation or exportation of prohibited goods (Objectionable publications)	111	

⁵ The number of convictions during 2003-2012 has not been included for the historic offences, as the repeal of these offences in 2005 makes the number an inaccurate representation of future trends.