

Regulatory Impact Statement

Management of offenders returning to New Zealand

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice. It provides an analysis of the establishment of a supervision regime for offenders who are returning to New Zealand after serving a prison sentence overseas.

The proposals in this paper focus on managing the risks to public safety of an increasing number of New Zealand citizens returning back to New Zealand following criminal offending in another jurisdiction. The proposals also aim to ensure that returning offenders receive better support for reintegration into the New Zealand community.

A number of assumptions are required to enable the impact of the options to be analysed. This means the nature and rigour of analysis of options will be affected. In particular, there is a lack of detailed data about the effectiveness of standard release conditions, which limits the extent to which the impact of some supervision options can be assessed. We have attempted to offer realistic assumptions about the effectiveness of supervision and note the caveats around these assumptions where they arise.

We are also heavily reliant on other jurisdictions for reliable information about returning offenders. New Zealand often does not receive timely notification or comprehensive information about citizens returning back to New Zealand.

The data used to provide the basis for the assumptions in this RIS includes reoffending data from offenders deported between 2000 and 2002, INTERPOL data on deported offenders between 2013 and 2015, and statistics on upcoming deportations provided by the Australian Department of Immigration and Border Protection.

The designs of some options in this RIS are the result of previous policy decisions. Due to previous policy decisions, the RIS also does not consider alternatives to post-deportation supervision, such as allowing for New Zealanders imprisoned overseas to serve their sentence here if they still have at least six months of their sentence to serve (international prisoner transfer agreements).

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Executive summary

1. The purpose of this Regulatory Impact Statement is to provide analysis about the management of offenders who return to New Zealand after serving a prison sentence overseas. The overarching goals are to protect the public from reoffending, and provide greater support for the reintegration of returning offenders. The options analysed are:
 - 1.1. Option One - enhanced support services
 - 1.2. Option Two - registration and monitoring of returning offenders
 - 1.3. Option Three - a mandatory system imposing release conditions on specified groups of offenders
 - 1.4. Option Four - a discretionary system where the District Court imposes release conditions on individual offenders.
2. The Ministry of Justice considers that Options Three or Four are viable models to manage offenders returning to New Zealand following a prison sentence overseas. Option Three would likely have the greater public safety benefit, while Option Four would limit the scope and cost of the regime and reduce the severity of human rights impacts.
3. Option One could also be paired with whichever option is ultimately preferred. While it does not play a role in the supervision of offenders, the additional support for reintegration would support the objectives of the policy.
4. This RIS also provides analysis of proposals to assist implementation of any management regime. These include additional powers for New Zealand Police (Police) to require offenders returning from other jurisdictions to be photographed and fingerprinted, to provide specified information, and collect DNA.

Status quo and problem definition

More New Zealanders are returning to New Zealand after committing criminal offences overseas

5. In recent years, approximately 60 – 100 offenders per year were deported to New Zealand after committing a criminal offence in another jurisdiction. The vast majority (more than 80 percent) of these returning offenders were removed from Australia.
6. This number is increasing following changes to the Australian Migration Act 1958 which came into force on 12 December 2014.¹ The amendments lowered the threshold for visa cancellation. All non-citizens are now liable for mandatory visa cancellation in Australia if they have been sentenced to 12 months imprisonment or more. The average number of offenders deported from Australia per month has increased from about five per month in previous years to 25 deportations per month since June 2015.
7. As at 6 August 2015 visa cancellation decisions were pending for 568 New Zealanders and 293 New Zealanders whose visas have been cancelled were still in Australia awaiting removal. Between 5 January 2015 and 29 September 2015 – a period of just under 9 months – 157 offenders had been deported to New Zealand.

¹ The Migration Amendment (Character and General Visa Cancellation) Act 2014.

8. These numbers appear to represent an initial surge in deportations following the changes to Australia's Migration Act. While volumes will likely remain higher than before the legislative changes, they are expected to decrease from this current peak over time.

Returning offenders pose a risk to public safety in New Zealand

9. Returning offenders pose a risk to public safety, particularly as many have been convicted of serious offences overseas. For example, since 2013 approximately 70 percent of returning offenders have been convicted overseas of serious offences, including:²
 - 9.1. assault (including aggravated assault) - 30 percent
 - 9.2. armed robbery/burglary - 20 percent
 - 9.3. rape or sexual assault (including child sex offences) - 15 percent, and
 - 9.4. murder and manslaughter - 5 percent.
10. Data analysis from offenders deported between 2000 and 2002 indicates that returning offenders pose a similar risk of reoffending to offenders released in New Zealand. Approximately 35 percent of returning offenders were reconvicted of an offence within 12 months of their deportation, and approximately 48 percent were reconvicted of an offence within 24 months.³ A significant proportion of returning offenders in the sample who were reconvicted were sentenced to imprisonment.
11. There are a number of potential contributing factors to this rate of reoffending. Offenders who have been removed from the community for longer periods generally face greater difficulties reentering into the community. Conversely, some of these offenders have been removed from the environment that fostered their criminal offending and may take the opportunity for a fresh start.

There is no formal system for supervising or monitoring returning offenders

12. For most returning offenders who have been released following a sentence of imprisonment overseas there is no formal system of monitoring or supervision. This is inconsistent with the management of offenders released in New Zealand.
13. By comparison, all offenders imprisoned in New Zealand for more than one year are subject to release conditions (See Appendix A – Release conditions for prisoners in New Zealand).
14. Release conditions are in place to reduce the risk of reoffending and to support offenders' reintegration into society. The lack of release conditions for returning offenders therefore creates unnecessary inconsistency and risk, and may contribute to reoffending.
15. Very high risk returning offenders may be eligible for an Extended Supervision Order (ESO) or Public Protection Order (PPO), which provide for prolonged periods of

² These proportions are estimates, as in some cases the data has more than one offence listed and there is not a fully consistent recording of offence type. The remaining 30 percent have been convicted of a range of violent and non-violent offences, including drug offences and fraud.

³ By comparison, the reconviction rate for New Zealand prisoners released in a similar period (2002/03) was 42.3 percent within 12 months of release, and 55.4 percent within 24 months of release.

supervision or detention, once they have returned to New Zealand. These orders have high thresholds and apply to a very limited number of returning offenders.

16. The Child Protection (Child Sex Offender Register) Bill, which passed its first reading in September, includes provision for the registration of offenders who were sentenced to imprisonment for specified child sex offences in overseas jurisdictions. The Bill will not require registration or monitoring for the majority of returning offenders as most will not have been convicted of specified child sex offences.
17. Without the establishment of additional risk management frameworks the vast majority of returning offenders will continue to go unsupervised upon their return to New Zealand.

Objectives

18. The Government's overarching goal is to have similar management for offenders whether a sentence was served in New Zealand or elsewhere. More specifically, this goal is intended to achieve the following key objectives:
 - 18.1. protecting the public from reoffending, and
 - 18.2. providing greater support for the reintegration of returning offenders.
19. There is a strong link between these two objectives. The Government has a responsibility to ensure the safety of the public, as reflected in the Government's Better Public Services targets. It is vital to recognise that returning offenders are a potentially vulnerable cohort, whether as a result of age, socioeconomic background or the lack of social connections upon return to New Zealand, which may increase their risk of reoffending if they do not receive support.
20. It is also important the regime impairs the human rights of returning offenders no more than reasonably necessary. There is a need to balance the right of the public to be safe and the human rights of returning offenders. In designing the options we have been careful to develop proposals where the limitations on rights and freedoms are demonstrably justifiable in a free and democratic society.
21. Supervision of returning offenders also needs to be done in a cost efficient way which minimises the impact on justice sector baselines.
22. In accordance with these objectives, each option is assessed against four criteria:
 - 22.1. public safety - will the proposals help to manage the risks posed by returning offenders by reducing their likelihood of reoffending?
 - 22.2. support for reintegration – will the proposals help to support returning offenders overcome potentially significant barriers to reintegrating with the community?
 - 22.3. human rights of returning offenders – are the proposals consistent with the rights of returning offenders affirmed in the Bill of Rights Act 1990?
 - 22.4. cost effectiveness – what are the costs of the proposals in relation to their effectiveness?
23. As public safety and support for reintegration are the key objectives of the policy they are afforded greater weight in the analysis of options.

24. The results of this analysis are summarised in Table One. The unit costs for aspects of the four options are outlined in Appendix B.

Options and impact analysis

25. The status quo has not been assessed as a standalone option. The status quo is considered untenable as it will provide no mechanism for formal management of, or support for, returning offenders.

26. Four options have been assessed:

26.1. Option One: Enhanced support services - a voluntary system based on refugee resettlement offered to all returning offenders on arrival in New Zealand

26.2. Option Two: Registration and monitoring of returning offenders - a reporting system based on the Child Sex Offender Register (CSOR) supported by a risk management framework

26.3. Option Three: Mandatory supervision regime – a system that seeks to replicate the provisions for released prisoners in New Zealand for all returning offenders meeting the eligibility criteria, and

26.4. Option Four: Discretionary supervision regime - a special court order imposing release conditions on a returning offender where the court is satisfied that the order is necessary to facilitate their rehabilitation and reintegration and reduce the risk of reoffending.

27. The options are not necessarily mutually exclusive. For example, enhanced support services could be paired with registration of returning offenders. For the purposes of regulatory assessment, however, we have analysed the options individually.

Table One - Options for a supervision regime for returning offenders

Option	Public safety	Support for reintegration	Human rights of returning offenders	Cost effectiveness
Enhanced support services	✓	✓ ✓ ✓	✓ ✓ ✓ ✓	✓ ✓ ✓
Registration and Monitoring of returning offenders	✓ ✓	✓	✓ ✓ ✓	✓ ✓ ✓
Mandatory supervision regime	✓ ✓ ✓ ✓	✓ ✓ ✓	✓ ✓	✓ ✓
Discretionary supervision regime	✓ ✓ ✓	✓ ✓ ✓	✓ ✓	✓ ✓ ✓

✓ = poor ✓ ✓ = reasonable ✓ ✓ ✓ = good ✓ ✓ ✓ ✓ = very good

Additional policy proposals

28. This paper also assesses additional policy proposals required to implement the options for managing returning offenders. These include limited powers to detain returning offenders and require certain information, and the compulsory collection of DNA.
29. These additional proposals are also assessed by the criteria outlined above, with particular weight given to protecting the public and consistency with treatment of New Zealand offenders.

Key assumptions

30. For options requiring legislation (Options Two, Three, and Four) there is an assumption that any legislation would come into force in mid-2016. To comply with the principle that legislation is not retroactive,⁴ it is assumed that all options would only apply to people returning to New Zealand after legislation came into force.
31. The key baseline assumptions for the analysis are as follows:
 - 31.1. 280 offenders will return to New Zealand per year in 2016/17 and 2017/18⁵
 - 31.2. 220 offenders will return in 2018/19, 220 in 2019/20 and 100 offenders every year subsequently, and
 - 31.3. 56 percent of returning offenders will return to New Zealand directly from a sentence of imprisonment overseas.⁶

Option One: Enhanced support services

32. All returning offenders would be offered greater support upon arrival in New Zealand to help them reintegrate. There are some voluntary support services for returning offenders which would be enhanced in order to provide more consistent reintegrative support. Support would continue to be voluntary for the returning offender. Implementation of this option would not require legislation.
33. This option is partially based on a refugee resettlement model. Refugees spend their first six weeks completing an orientation programme focusing on information needed to help people live in New Zealand, including law and customs. They also complete physical and mental health checks to assess their settlement needs. Many returning offenders face similar challenges to those of refugees upon returning to New Zealand, namely the lack of support structure and access to state services.
34. Corrections already fund initiatives based on this logic for New Zealand prisoners. For example, the Out of Gate programme uses justice sector funding to provide support to short-serving prisoners prior to and post release.

Public safety

35. This option does not involve ongoing formal supervision and would only have an indirect impact on public safety. Returning offenders' challenges on arriving in New

⁴ Refer Interpretation Act 1999, s 7.

⁵ This figure is based on the average rate of deportations per month in 2015, and makes provision for a further 20 returning offenders per year from jurisdictions other than Australia.

⁶ According to data from DIBP, 328 of the 585 cases (56 percent) whose visa cancellation cases are pending are currently serving a sentence of imprisonment.

Zealand are likely to be greater than those released from a New Zealand prison (given the length of time they may have been out of the country). Helping them settle into the community could therefore be expected to reduce adverse outcomes, including re-offending.

36. Support services, however, would remain voluntary and not all returning offenders would seek assistance. This means that any benefits to public safety will only be realised for a limited number of returning offenders. The voluntary nature of the programme is also likely to mean that public safety benefits occur within a self-selecting sample that may already be less likely to reoffend.

Support for reintegration

37. This option is specifically designed to provide support for reintegration, as opposed to the arguably more punitive options which balance supervision and support.
38. Returning offenders may have had minimal ability to engage in rehabilitative programmes in prison and can face additional challenges in returning to a country where they have citizenship, but few personal connections.
39. A model based on refugee resettlement and the Corrections-funded Out of Gate programme aimed at helping with accommodation, employment and general living skills is likely to be the most effective option in promoting the successful reintegration of those who choose to make use of it.

Human rights of returning offenders

40. This option has no adverse human rights implications for people returning to New Zealand.

Cost effectiveness

41. Enhancing support services for returning offenders is a cost effective option to achieve reintegration. Based on the costs of Out of Gate, it is estimated enhanced support services would cost approximately \$2,000 per person.
42. We assume that 70 percent of offenders would voluntarily take up enhanced support services. This assumption is based on the fact that the majority of offenders offered Out of Gate services choose to participate, and also that around 70 percent of returning offenders between 2013 and 2015 had been out of New Zealand for more than five years and would be more likely to need reintegrative support.
43. We therefore estimate that this option would cost approximately \$1,456,000 by 2020/21. Appendix C contains more detail on the financial implications per year.

Option Two: Registration and monitoring of returning offenders

44. Legislation to establish registration of returning offenders would allow for a level of monitoring by requiring returning offenders to report to Police on their arrival in New Zealand and provide a range of personal information. Returning offenders would be required to report annually, as well as following any changes to the registered information, or prior to travel. This would enhance and potentially replace the current register of deported offenders, announced by the Minister of Justice on 15 July 2015.

45. Eligible offenders would be those where a sentence of more than one year's imprisonment in another jurisdiction formed the ground for their deportation or removal – approximately 70 percent of returning offenders.
46. Legislation would be needed to establish a Returning Offenders Supervision Register (ROSR), which would be based on the proposals in the Child Protection (Child Sex Offender Register) Bill. The ROSR would not be publically accessible.
47. The period of registration would be adjusted based on the length of the sentence imposed overseas. For example, the periods of registration could be one year (for an overseas sentence of more than one year to two years), two years (for a sentence of between two years and five years) and five years (for a sentence of more than five years, including life imprisonment).
48. A risk management framework for monitoring and managing offender risk would sit behind the ROSR. Individual risk management plans would be developed for the highest risk returning offenders on the ROSR. Medium and lower risk offenders would be subject to the reporting requirements and would be passively monitored, based on information/intelligence received by the registry. They would have regular risk assessments completed, and be transferred to the high-risk group for additional monitoring if their assessed level of risk increased.

Public safety

49. A ROSR would have some public safety benefits. These benefits stem from the collection of regular and reliable information about the offenders, which would allow Police and Corrections to make use of legislative and non-legislative tools to assist them to protect public safety.⁷ The use of these tools is essential, as evidence from overseas jurisdictions indicates that registers have no or very little impact on re-offending rates or public safety unless they are supported by an active, offender risk management framework.
50. Assessing the benefits of a ROSR to public safety must account for the fact that most experience with offender registers has been for sex offenders. Returning offenders who have not been convicted of sex offences are likely to pose a different risk of reoffending. Due to a lack of clear evidence from overseas to suggest a ROSR would reduce reoffending⁸ the public safety benefits a ROSR are assessed as relatively minor.

Support for reintegration

51. This option does not include any measures to support the reintegration or rehabilitation of returning offenders and cannot be expected to have any positive impact in this area.

⁷ Tools used to manage risk currently include: risk assessment instruments, surveillance powers, and civil orders (e.g. non-association orders).

⁸ See, for example: Amanda Agan 'Sex Offender Registries: Fear without Function?' *Journal of Law and Economics* (2011); J.J. Prescott and Jonah E. Rockoff, 'Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?' *Journal of Law and Economics* (2011)

Human rights of returning offenders

52. A register would raise issues with a number of the rights and freedoms affirmed in the Bill of Rights Act 1990. These include section 14 (freedom of expression),⁹ section 18 (freedom of movement)¹⁰ and section 26(2) (double jeopardy).¹¹
53. The Child Protection (Child Sex Offender Register) Bill raised similar issues and was found to be inconsistent with the Bill of Rights Act. However, there is an argument that a ROSR would be justifiable under s 5 of the Bill of Rights Act because:
 - 53.1. the policy serves an important objective – it seeks to reduce reoffending amongst a cohort of offenders who lack formal supervision
 - 53.2. there is a rational connection to the objective – registration and compulsion of certain information would enable enforcement agencies to monitor and supervise returning offenders, and
 - 53.3. the right is minimally limited - the information required is factual in nature, is limited to people imprisoned to more than one year's imprisonment, involves shorter periods of registration than the CSOR, and would include the possibility of review.
54. The requirement for offenders to report regularly would more minimally impair rights than standard conditions for released prisoners in New Zealand (see Appendix A). Unlike standard conditions, the reporting obligations would not involve the ability for probation officers to make specific directions. For example, a registered offender would need to inform Police of a change in address, but no direction could be made to prevent them from living at an unsuitable residence.¹² On balance we therefore consider that the ROSR option is compliant with human rights.

Cost effectiveness

55. The ROSR has good cost effectiveness due to its relatively low costs - approximately \$2.8 million by 2020/21 (see Appendix D) – and ability to provide a level of monitoring for the majority of returning offenders.
56. The majority of costs for a ROSR would fall to Police, including staffing, capital investment and IT costs. It would cost approximately \$500 to monitor each returning offender per year. For Corrections it is expected that one-two staff members would be required to assist Police in their monitoring activities. There may also be some additional infrastructure and IT costs for Corrections. Because the ROSR could take advantage of much of the IT infrastructure required for the CSOR we have not included this in cost analysis.

Option Three: Mandatory supervision regime

57. All returning offenders who return to New Zealand following a sentence in another jurisdiction of more than one year's imprisonment for criminal behaviour under New Zealand law would automatically be subject to supervision. This threshold is aligned to prisoners released in New Zealand. To further ensure alignment with the system

⁹ Freedom of expression includes the right to say nothing or the right not to say certain things; refer *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

¹⁰ Enabling the state to monitor or trace the movements of individuals engages section 18.

¹¹ Registration would likely fall within the definition of additional "punishment" as expressed in *Belcher v Chief Executive of the Department of Corrections* (2006) CA184/05 (CA).

¹² Refer Parole Act 2002, section 14.

for release conditions for New Zealand prisoners, the mandatory supervision would only apply to those returning to this country within six months of the offender's release from custody.

58. The mandatory supervision regime would comprise standard release conditions mirroring those in section 14 of the Parole Act 2002, which require the offender to report to a probation officer and give the probation officer the authority to give directions to the offender in relation to residence, employment and associates. The standard conditions would apply automatically for qualifying offenders without requiring any special hearing or order of the court.
59. In addition, a probation officer would have the authority to apply to the District Court for the imposition of one or more special conditions in relation to an individual offender. Special conditions are designed to reduce the offender's risk of re-offending, help their rehabilitation and/or reintegration and provide for reasonable concerns of the offender's victim. For example, a special condition may restrict an offender to a specific residential address, or require them to attend an assessment and complete specified rehabilitation programmes.
60. All eligible offenders will be subject to a period of supervision based on their sentence length overseas. Given the possibility of a lack of other information sentence length is a reasonable proxy for seriousness of offending and need for supervision. The different categories of supervision, and the estimated percentage of eligible offenders who would be subject to those periods, would be as follows:
 - 60.1. a sentence of more than one year to two years – six months of supervision (22 percent of eligible offenders)
 - 60.2. a sentence of between two years and five years – one year of supervision (48 percent of eligible offenders)
 - 60.3. a sentence of more than five years – two years of supervision (28 percent of eligible offenders), and
 - 60.4. a sentence of life imprisonment (or equivalent) – five years of supervision (two percent of eligible offenders).

Public safety

61. A mandatory period of supervision for eligible offenders could support a reduction in reoffending and consequently promote public safety.
62. All persons sentenced to more than one year's imprisonment in New Zealand are subject to release conditions to manage their risk of reoffending. There is no conclusive evidence about the effectiveness of release conditions in terms of their impact on reoffending.¹³ There are no authoritative New Zealand studies in this area but a recent study based in New South Wales found a significant difference between supervised and unsupervised groups, with supervised offenders approximately 11 percent less likely to reoffend within 12 months and 7 percent after 36 months.¹⁴ The study also found supervised offenders were less likely to commit a new serious

¹³ Wai-Yin Wan, Suzanne Poynton, Gerard van Doorn and Don Weatherburn, 'Parole supervision and reoffending' *Trends and Issues in Crime and Criminal Justice*, 2014, Issue 485, pg. 4

¹⁴ Twelve months after release the model estimated that 48.6 percent of unsupervised offenders will reoffend while only 43.6 percent of supervised offenders will reoffend. At 36 months after release, the estimated reoffending rate for the unsupervised group (70.3%) was still significantly higher than the reoffending rate for the supervised group (65.7%).

offence and committed fewer offences than offenders who were released unconditionally into the community.¹⁵

63. The study is corroborated by evaluations of Extended Supervision Orders in New Zealand, which demonstrates that regular contact with offenders helps to lower re-offending rates.¹⁶

Support for reintegration

64. This option would provide good support for reintegration, as a probation officer would manage the offender to ensure they comply with their release conditions, as with offenders released from prison in New Zealand. The ability for probation officers to apply to the court for special conditions provides a mechanism to facilitate and promote the rehabilitation and reintegration of the offender into the community.
65. There is a risk that a mandatory system will treat all returning offenders as a homogenous group with similar reintegration needs. Offenders will be returning for a broad range of offences, particularly given Australia's relatively low threshold for visa cancellation. However, a formal system of supervision for a significant proportion of returning offenders does mean that there would be a significantly higher level of support to reintegrate than the status quo.

Human rights of returning offenders

66. Mandatory supervision raises a number of human rights concerns. While requiring an offender to undergo a period of supervision to effectively complete a sentence imposed in another jurisdiction may not engage section 26(2)¹⁷ (double jeopardy) of the Bill of Rights Act, the mandatory nature of the system creates the risk that this could go beyond the term of their original sentence. This option therefore effectively punishes people again for their original offence, engaging section 26(2).¹⁸ Section 18 (freedom of movement), section 22 (liberty of the person) and section 27 (natural justice)¹⁹ are also likely to be engaged.
67. Limitations on rights and freedoms may still be consistent with the Bill of Rights Act if they can be considered reasonable limits that are demonstrably justified under s 5 of that Act. The key objectives of the policy – protecting the public and reintegrating returning offenders – are a sufficiently important objective. Release conditions are a rational mechanism to achieve that end.
68. There is a risk that conditions will extend more than six months beyond the expiry date of a sentence imposed in another jurisdiction. This is not only inconsistent with the position for released prisoners in New Zealand, but may be more than a minimal interference with the offender's rights. Basing eligibility and the term of supervision on sentences imposed in jurisdictions where penalties may be substantially higher also risks a disproportionate period of supervision to what offenders would have received had they been sentenced in New Zealand.

¹⁵ Wan et al. (2014) pg. 4 - 5

¹⁶ Riley, D. (2011) *Review of extended supervision: implementing and evaluating the 2004 legislation*, Department of Corrections.

¹⁷ Recall to prison, for example, has been held not to engage s 26(2) as it requires offenders to finish a previously imposed punishment; refer *Hart v Parole Board* [1999] 3 NZLR 97; *Swain v Parole Board* (High Court, Auckland, A7/99, 9 February 1999, Randerson J); *Miers v Waikeria Prison District Parole Board* (High Court, Hamilton, AP 143/95, 14 February 1996, Penlington J).

¹⁸ Refer *Belcher v Chief Executive of the Department of Corrections* [2007] 1 NZLR 507 (CA).

¹⁹ Mandatory supervision offers less scope for effective review of a decision impacting on returning offenders' rights.

69. However, restricting the supervision regime to prisoners who return to New Zealand within six months of being subject to a sentence of more than one year's imprisonment is consistent with New Zealand law and is not "...capricious, unreasoned, without reasonable cause [or] made without reference to an adequate determining principle..."²⁰ Despite raising significant human rights concerns the option may therefore still be rights consistent.

Cost effectiveness

70. Option Three is reasonably cost effective. The positive public safety and reintegrative impacts would be realised for the approximately 40 percent of returning offenders estimated to fall within the eligibility criteria. However, the option has the highest cost implications – approximately \$7.2 million by 2020/21 (see Appendix E) – and would not necessarily target those resources to returning offenders who need it the most.
71. The majority of the costs would fall to Corrections, who would be responsible for supervising the returning offenders throughout the period of their conditions. The estimated cost for mandatory supervision is approximately \$12,160 per offender per year.²¹ There would be minimal additional court costs – other than the possibility of judicial review of administrative decisions or special conditions – as there would be no need to apply for the order.

Option Four: Discretionary supervision regime

72. The court would be empowered to impose a supervision order on an offender returning to New Zealand after being sentenced to a term of one year's imprisonment or more in another jurisdiction where it is satisfied that the order is necessary to facilitate the rehabilitation and reintegration of the offender and reduce the risk of reoffending. This is a relatively low threshold, which would not require the preparation of specialist reports, but it would ensure that conditions were not imposed on low risk offenders with a reasonable level of support in the community.
73. This option would give the court discretion in setting the term of conditions, which could be related to the length of the sentence imposed on the offender in another jurisdiction. Under this scenario, there is not the same requirement to equate the term of conditions to release conditions for prisoners released in New Zealand. We assume the periods of supervision would align with those detailed under Option Three.

Public safety

74. A discretionary regime will have similar public safety benefits to a mandatory regime. The conditions imposed are likely to be substantively similar and the implementation of those conditions would likewise be comparable.
75. There is a risk that returning offenders who have not committed serious offences will not be made subject to an order. However, while the order will apply to fewer offenders it would be targeted toward those who pose a clear risk to public safety. Its effectiveness would depend on the availability of information to inform accurate identification of higher risk offenders.

²⁰ *Neilsen v Attorney-General* [2001] 3 NZLR 433; (2001) 5 HRNZ 334 (CA).

²¹ This estimate is based on the average costs for managing offenders released from New Zealand prisons on release on conditions, including special conditions.

Support for reintegration

76. This option would also provide good support for reintegration, as a probation officer would manage the offender to ensure they comply with their release conditions, as with offenders released from prison in New Zealand. Special conditions provide a mechanism to facilitate and promote the rehabilitation and reintegration of the offender into the community by addressing the needs of an individual offender.
77. A discretionary order means that many returning offenders would not be subject to it and would therefore not receive the benefits the order may provide in terms of support for reintegration. However, these offenders would have been assessed as not requiring this type of intervention. Where the order was made, it would be on the basis that it was necessary to address particular needs and special conditions would be formulated to address these needs. This option therefore provides targeted support for reintegration.

Human rights of returning offenders

78. There are likely to be concerns about a discretionary order's compliance with human rights. These concerns are similar to the concerns for mandatory supervision, though the main concern will likely centre on section 26(2) (double jeopardy) of the Bill of Rights Act. The inclusion of judicial discretion in making the order would likely make it easier to justify limitations on human rights than for a mandatory system.
79. Judicial discretion, however, is part of the ESO regime and that legislation has been found to be inconsistent with the Bill of Rights Act on a number of occasions. Unlike ESOs, however, there is an argument that the orders are intended to complete a sentence imposed on a returning offender and reintegrate them into the community, rather than impose a punishment over and above the original sentence. While raising some concerns this option is therefore assessed as human rights compliant.

Cost effectiveness

80. A discretionary supervision regime is cost effective because the resources required - approximately \$4.2 million by 2020/21 (see Appendix F) – are targeted to returning offenders who are assessed as needing a period of supervision to reduce the likelihood of reoffending and assist their rehabilitation and reintegration.
81. The cost per offender for supervision is essentially identical to Option Three. However, a discretionary order would mean additional court time and costs due to the need for Corrections to apply for the order, the court to hear submissions, and legal aid for eligible returning offenders. The costs of applying for the order are assumed to be comparable to applying for an ESO. The focus on medium – high risk returning offenders may also enhance the public safety benefits compared to the implementation costs.
82. These additional costs would be offset by fewer offenders being subject to the supervision regime. For forecasting purposes, we assume that an application for a discretionary order would be made for 25 percent of returning offenders, compared to the 40 percent of returning offenders who would be eligible under Option Three. We assume that the court would be satisfied that the order is necessary to facilitate the rehabilitation and reintegration of the offender and reduce the risk of reoffending in 90 percent of applications. The remaining assumptions for mandatory supervision (for example, on legal aid eligibility and breaches of conditions) also apply to discretionary supervision.

Additional policy proposals

83. Additional policies are required in support of the options for managing returning offenders. These include a limited power to detain returning offenders upon arrival in order to compel certain information from them, and compulsory collection of DNA.

Police powers to detain and require information from deported offenders and prisoners returning from other jurisdictions

84. Police have authority to require identifying particulars from persons detained for committing an offence in New Zealand.²² Currently Police has no equivalent authority for returning offenders upon their arrival. Any information collected relies on the offender's co-operation.
85. The status quo is not sufficient to support the options for managing returning offenders. Regardless of which option for supervising returning offenders is ultimately preferred, it is essential that basic information about deported offenders can be obtained so that their identity can be confirmed and their intended location established. This is particularly important as information from other jurisdictions is not always comprehensive.
86. Alternatively, New Zealand agencies could work to improve the level of identifying information being obtained from overseas. While this might be achieved for some countries – through, for example, the information sharing arrangement on trans-Tasman deportations described below – it is unlikely that the necessary consistency across all countries could be achieved.
87. The most viable solution is that, where Police know a returning offender is arriving, they are empowered to detain the returning offender for an interview at the border²³ and require the offender to provide identifying particulars. This would include, for example, name and aliases, their intended address, fingerprints, and a photograph.²⁴
88. This information would assist justice sector agencies in implementing a monitoring or supervision regime. Fingerprint information would allow Police to verify the identity of the offender, meaning they could seek a more extensive overseas criminal history to determine risks and needs of returning offenders, and for use in future court proceedings. Photographs and measurements would also assist Police intelligence by building a profile of identifying characteristics. Fingerprints, photographs and measurements would be stored in NIA but not necessarily input into a register of returning offenders.
89. Compelling offenders to provide such information would require legislative changes and could raise issues with section 14 (freedom of expression), section 21 (unreasonable search and seizure) and section 22 (liberty of the person) of the Bill of Rights Act. However, we consider it is unlikely such a power would be inconsistent with the Bill of Rights Act provided that offenders were detained no longer than reasonably necessary to provide the information, that they are informed of all their legal rights and that the information sought is no more than what is needed for the purposes outlined above.

²² Refer Policing Act 2008, s 32.

²³ This is highly dependent on timely and reliable notification of the arrival of a returning prisoner.

²⁴ See, for comparison, the Policing Act 2008, section 32.

Collection of DNA without consent

90. Police may serve a person convicted of an imprisonable offence in New Zealand with a databank compulsion notice allowing the taking of a DNA sample without consent. DNA can currently only be collected from returning offenders with their consent, or if they have convictions in New Zealand which fall within the Criminal Investigations (Bodily Samples) Act 1995 (CIBSA) regime.
91. Three possible options for the compulsory collection of DNA from returning offenders are identified:
 - 91.1. DNA information is collected from returning offenders by consent only
 - 91.2. DNA information can be compelled by a databank compulsion notice for any returning offender convicted of an imprisonable offence overseas, or
 - 91.3. DNA information can be compelled by a databank compulsion notice for any returning offender who were sentenced to more than one year's imprisonment overseas.
92. DNA collection does not directly contribute to managing the reoffending risks of returning prisoners, but will help to investigate offending and help resolve cases where unidentified samples are held, which have public safety benefits. Voluntary collection alone is unlikely to support achievement of this objective. None of the options will have a positive impact on supporting the reintegration of returning offenders.
93. Collection of DNA for any returning offender convicted of an imprisonable offence overseas is consistent with the threshold for DNA collection under the CIBSA regime. The Attorney-General found the Criminal Investigations (Bodily Samples) Amendment Act 2009, which expanded the power to take DNA without consent to people convicted of an imprisonable offence, was inconsistent with the Bill of Rights Act. It is highly likely that legislation extending the CIBSA regime to all deported offenders convicted of a corresponding imprisonable offence would also be inconsistent.
94. Restricting the collection of DNA to returning offenders sentenced to more than one year's imprisonment overseas would set a different threshold for returning offenders than those who are convicted in New Zealand. However, it would align compulsory DNA collection with the thresholds for registration or supervision in Options Two – Four and would be more consistent with human rights. Compulsory acquisition only from offenders eligible for supervision also introduces a procedural safeguard which is broadly comparable to those in Canada and the United States. In those countries, which also have a substantially similar right against unreasonable search and seizure, DNA databank samples can only be legitimately taken from convicted serious offenders. Requiring that returning offenders not only be convicted, but sentenced to a significant term of imprisonment, could be seen as broadly analogous to these protections.
95. None of the options require any new expenditure, meaning that any additional public safety benefits will be achieved in a cost effective way.

Consultation

96. The options in this RIS have been considered through targeted consultation from agencies with appropriate law enforcement expertise, namely the New Zealand Police and the Department of Corrections.

97. This RIS has been circulated for comment, in draft, to the New Zealand Police, the Department of Corrections, Crown Law Office, the Parliamentary Counsel Office, the Ministry of Health, the Department of Internal Affairs, the Ministry of Business, Innovation and Employment, the New Zealand Customs Service, the Ministry of Foreign Affairs and Trade, and the New Zealand Treasury.
98. The timeframe for developing the proposals did not allow consultation with the public. The Parliamentary process for options requiring legislation will give an opportunity for public consultation.

Conclusions and recommendations

99. The Ministry considers that Options Three or Four are viable models to manage offenders returning to New Zealand following a prison sentence overseas. These options are the most consistent with the management framework for released prisoners in New Zealand, and are assessed as having the greatest positive impact on public safety and reintegrative support. Option Three would likely have the greater public safety benefit, while Option Four would limit the scope and cost of the regime and allow for the limitations on human rights to be more easily justified.
100. Option One could also be paired with whichever option is ultimately preferred. While it does not play a role in the supervision of offenders, the additional support for reintegration will support the objectives of the policy.

Implementation plan

101. All the options, except Option One, require legislation to implement them. We consider they would likely require a standalone Bill. Alternatively, amendments could be made to the Parole Act 2002, Sentencing Act 2002 and the Policing Act 2008.
102. If the recommended option receives policy approvals we expect a Bill could be introduced to Parliament by early 2016.
103. The changes would also create new operational requirements for the Department of Corrections and New Zealand Police. The Ministry of Justice will continue to coordinate engagement with the operational groups of all relevant agencies to ensure the options are implemented.
104. The effectiveness of any supervision regime is highly dependent on obtaining timely and reliable information about offenders from the country they are returning from. Because the vast majority of returning offenders come from Australia, New Zealand officials have been working to improve information sharing with Australian counterparts.
105. New Zealand has signed an information sharing arrangement with the Australian Department of Immigration and Border Protection (DIBP) to ensure we receive adequate notice of trans-Tasman deportations and sufficient information about the individuals to assess what level of intervention is needed. New Zealand Police led these negotiations which have resulted in an arrangement being signed on an interim basis, with processes to be trialled for three months.
106. Not all returning offenders will be subject to formal supervision or monitoring. Police would continue, where needed, to notify the Police District where a returning offender is to reside. Some returning offenders may proactively contact the Community Probation Service or local police in New Zealand. The distribution of this intelligence or voluntary contact with returning offenders supports community policing and a level

of informal supervision and monitoring. The additional information collected upon the returning offender's arrival will assist this process.

Monitoring, evaluation and review

107. No formal review of the proposals is currently planned. Our expectation is the effectiveness of any support and supervision would be tracked and reviewed through usual departmental reviews and reports.
108. Ongoing evaluation of the policies is particularly desirable given the significant uncertainty around the expected volumes of returning offenders, and the number which will become subject to any supervision and support.
109. Corrections has performance measures to assess the performance of probation services against mandatory standards. Community probation has a target to consistently achieve 98% of mandatory standards for all sentences and orders. It is expected that Corrections would monitor and report against these, or substantially similar, mandatory standards for returning offenders.
110. On 15 July 2015 the Minister of Justice announced that a register of deported offenders was in operation. Provided it is not replaced by a ROSR (Option Two), the register will provide a centralised record of returning offenders, and, support monitoring and evaluation efforts, specifically through tracking the volumes of returning offenders and rates of reoffending.

Appendix A – Release conditions for prisoners in New Zealand

Sentence	Conditions imposed by	Term of conditions
Short term sentence (12 months or less)	Sentencing court (optional)	Specified period that may extend up to 6 months beyond the sentence expiry date
Short term sentence (12 months to 2 years)	Sentencing court (mandatory)	
Long term sentence (more than 2 years)	NZ Parole Board	<p>Where the offender is released before the sentence expiry date, for a specified period of not less than 6 months, which may extend up to 6 months beyond the sentence expiry date.</p> <p>Where the offender is released at the sentence expiry date, for a period of 6 months.</p>
Indeterminate sentence (life imprisonment or preventive detention)	NZ Parole Board	Standard conditions for the rest of the offender's life and special conditions for a specified period.

Appendix B – Unit costs

Unit	Estimated cost	Notes
Enhanced support services	\$2,000 per offender	
Supervision conditions	\$12,160 per offender per year	
Registration and monitoring	\$500 per offender per year	
Additional staffing costs	\$100,000 per FTE	
Imprisonment for breach of conditions	\$11,011	The estimated cost of imprisonment is \$121 per day imprisonment. Average sentence length for breach of conditions is 91 days.
Marginal cost per adult court case	\$130	2011/12 figure adjusted according to the CPI.
Legal aid for breach of conditions	\$3,098 per case	2012/13 per case figure for a category two offence, adjusted according to the CPI.
Judicial review expenses for agencies	\$7,500 - 15,000 per review	This is based on Crown Law fees for a simple review, as would be most likely for the proposed procedure on deciding eligibility. Complex reviews are unlikely but may extend beyond \$50,000 - \$100,000.

Appendix C – Financial implications of Option One (enhanced support services)

	Volumes per year					
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/17 – 2020/21 (Average)
Total eligible offenders	196	196	154	112	70	146

	Cost						Notes and comments
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/17 – 2020/21	
Enhanced support services	\$392,000	\$392,000	\$308,000	\$224,000	\$140,000	\$1,456,000	Based on a 70 percent uptake at \$2,000 per returning offender.

Appendix D - Financial implications of Option Two (registration of returning offenders)

	Volumes per year					
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/17 – 2020/21 (Average)
Total eligible offenders	199	199	156	114	71	148
Average registration muster	100	277	292	270	258	239

	Cost					
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/17 – 2020/21
Monitoring of registered offenders	\$50,000	\$138,500	\$146,000	\$135,000	\$129,000	\$598,500
Additional staffing costs	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$1,000,000
Prosecution for breach of conditions	\$3,380	\$9,360	\$9,880	\$9,100	\$8,710	\$40,430
Legal aid for breach of conditions	\$40,274.	\$111,528	\$117,724	\$108,430	\$105,332	\$483,288
Imprisonment for breach of conditions	\$55,055	\$165,165	\$176,176	\$165,165	\$154,154	\$715,715
Total	\$348,709	\$624,553	\$649,780	\$617,695	\$597,196	\$2,837,933

Appendix E – Financial implications of Option Three (mandatory supervision)

	Volumes per year					
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/17 – 2020/21 (Average)
Total eligible offenders	111	111	87	64	40	83
Average supervision muster	52	115	122	100	74	93

	Cost					
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/21 – 2020/21
Supervision conditions	\$632,320	\$1,398,400	\$1,483,520	\$1,216,000	\$899,840	\$5,630,080
Additional staffing costs	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$1,000,000
Prosecutions for breach of conditions	\$1,820	\$3,510	\$3,250	\$2,600	\$1,820	\$13,000
Legal aid for breach of conditions	\$34,078	\$80,548	\$83,646	\$68,156	\$49,568	\$315,996
Imprisonment for breach of conditions	\$33,033	\$66,066	\$77,077	\$55,055	\$44,044	\$275,275
Total	\$901,251	\$1,748,524	\$1,847,493	\$1,541,811	\$1,195,272	\$7,234,351

Appendix F – Financial implications of Option Four (discretionary supervision)

	Volumes per year					
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/17 – 2020/21 (Average)
Successful applications for supervision	32	63	50	36	23	41
Average supervision muster	32	59	77	61	44	55

	Cost					
	2016/17	2017/18	2018/19	2019/20	2020/21	2016/21 – 2020/21
Applications for supervision	\$175,000	\$350,000	\$275,000	\$200,000	\$125,000	\$1,125,000
Legal aid for applications	\$92,940	\$185,880	\$145,606	\$105,332	\$65,058	\$594,816
Supervision conditions	\$389,120	\$717,440	\$936,320	\$741,760	\$535,040	\$3,319,680
Additional staffing costs	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$500,000
Prosecution for breach of conditions	\$1,040	\$1,950	\$2,600	\$2,080	\$1,430	\$9,100
Legal aid for breach of conditions	\$21,686	\$40,274	\$52,666	\$40,274	\$30,980	\$185,880
Imprisonment for breach of conditions	\$22,022	\$33,033	\$44,044	\$33,033	\$33,033	\$154,154
Total	\$533,868	\$892,697	\$1,135,630	\$917,147	\$689,472	\$4,168,814