

Departmental Disclosure Statement

Oranga Tamariki Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Oranga Tamariki–Ministry for Children (Oranga Tamariki).

Oranga Tamariki certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 March 2019.

Contents

Contents..... 2

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 8

Part Four: Significant Legislative Features 11

Appendix One: Further Information Relating to Part Two..... 14

Appendix Two: Further Information Relating to Part Four 16

Part One: General Policy Statement

This Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than one Act may be introduced if amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

That policy is to give full effect to aspects of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act) by:

- (a) seeking to ensure that the benefits of the policy to include 17-year-olds in the youth justice jurisdiction is fully realised. It does this by amending legislation to ensure the expanded youth justice jurisdiction is applied consistently across the justice system. The inclusion of 17-year-olds in the youth justice jurisdiction will take effect from 1 July 2019.
- (b) addressing drafting errors in the 2017 Act, including unintentionally broad provisions relating to interim court orders. It also makes a consequential amendment to the Children's Commissioner Act 2003 to correct a cross-referencing error.

All of these matters require enactment before 1 July 2019 to ensure amendments made by the 2017 Act are consistent with policy intent.

The Bill amends the following legislation:

- Criminal Investigations (Bodily Samples) Act 1995:
- Criminal Investigations (Bodily Samples) Regulations 2004:
- Returning Offenders (Management and Information) Act 2015:
- Criminal Procedure Act 2011:
- Sentencing Act 2002:
- Bail Act 2000:
- Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017:
- Oranga Tamariki Act 1989:
- Victims' Rights Act 2002:
- Prisoners' and Victims' Claims Act 2005:
- Victims' Orders Against Violent Offenders Act 2014:
- Children's Commissioner Act 2003.

Features of the Bill include:

- updates to the definition of "young person" to align with the definition in the Oranga Tamariki Act 1989 to ensure consistent application of the expansion of the youth justice jurisdiction across all relevant legislation:
- clarification of procedures and processes that will be applied to 17-year-olds with the expansion of the youth justice jurisdiction, particularly in relation to bail and the taking and retention of bodily samples:
- transitional provisions to clarify which jurisdiction (adult or youth) should be applied to a 17-year-old depending on the date that proceedings are commenced against a 17-year-old:

- modifying amendments in the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 related to urgent interim orders.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><u>Youth justice jurisdiction</u></p> <p>The policy to include 17-year-olds in the youth justice jurisdiction was subject to public and select committee consideration. The proposed amendments in this Bill in relation to the youth justice and adult jurisdiction are intended to give full effect to this policy and the amendments in the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act).</p> <p>Appendix One provides key public documents discussing the inclusion of 17-year-olds in the New Zealand youth justice jurisdiction.</p> <p><u>Urgent interim orders</u></p> <p>The policies relating to urgent interim (time-limited) orders in relation to custody, restraining or guardianship orders (urgent interim orders) were subject to public and select committee consideration. Three amendments in this Bill modify the 2017 Act amendments about urgent interim orders to address drafting errors. The amendments in this Bill will better reflect the original policy intent of the amended urgent interim orders provisions (see 4.6).</p> <p><u>Other matters in the Bill</u></p> <p>Three amendments in the Bill address other minor drafting errors in the 2017 Act in relation to care and protection orders, family group conferences and information sharing. An additional amendment addresses a drafting error in the Children's Commissioner Act 2003, which corrects references to other acts.</p> <p>The initial briefing presented by the Ministry of Social Development to the Social Services Committee on 15 February 2017 provides the best overview of the policies underlying the 2017 Act amendments to the Oranga Tamariki Act 1989. The 2017 departmental report presented to the select committee by Oranga Tamariki—Ministry for Children summarises submissions on the 2017 Act. The departmental report made recommendations to amend the Oranga Tamariki Act 1989 in response to these submissions.</p> <p><i>Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill: Initial briefing</i>, Ministry of Social Development, 15 February 2017 (report to the Social Services Committee).</p> <p><i>Children, Young Persons, and their Families (Oranga Tamariki) Legislation Bill</i>, Oranga Tamariki—Ministry for Children, 19 April 2017 (report to the Social Services Committee).</p> <p>Accessible at https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL72055_1/tab/submissionsandadvice</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>A regulatory impact statement (RIS) is not required for the Oranga Tamariki Legislation Bill. However a RIS was prepared for the policy settings underpinning the proposed amendments.</p> <p><u>Youth justice jurisdiction</u></p> <p><i>Investing in Children: Including 17-year-olds and convictable traffic offences not punishable by imprisonment in the youth justice system</i></p> <p><i>Investing in Children: Including 17-year-olds and convictable traffic offences not punishable by imprisonment in the youth justice system (Addendum RIS)</i>, Ministry of Justice, 28 November 2016.</p> <p><u>Urgent interim orders and other drafting errors</u></p> <p><i>Investing in Children: Care Support</i>, Ministry of Justice, 26 August 2016.</p> <p><i>Investing in Children: Information Sharing</i>, Ministry of Justice, 7 September 2016.</p> <p>All accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements. Redactions were made in these RISs under sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act 1982, due to some of the content containing confidential and free and frank advice.</p>	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The RIS provided to support the policy to expand the youth justice jurisdiction met the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. The RISs provided to support policy changes to care and information sharing practices, which are addressed through urgent interim orders amendments and as drafting errors in the Bill, partially met the threshold. Text provided by the RIA Team in response to the youth justice RIS is provided at Appendix One.</p>	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Analysis on the size of the potential costs and benefits of expanding the youth justice jurisdiction is available in the RIS (pages 15- 26 and 37-60; and pages 3-7 of Addendum RIS). Accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements .	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p><u>Youth justice jurisdiction</u></p> <p>a)</p> <p>The size of the costs and benefits of these provisions will depend on effective compliance by responsible staff.</p> <p>b)</p> <p>Some of the costs and benefits of amended obligations will be affected by the nature and level of regulatory effort put into encouraging compliance. Provisions that require staff compliance will require more regulatory effort than those that require Ministerial or organisational compliance, if the benefits of those provisions are to be fully realised. In these cases, it is expected the development and provision of information, training, guidance and the establishment of new processes will be required. This will ensure responsible persons have the information and skills they need to comply with new duties and standards.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Youth justice jurisdiction

The policy to include 17-year-olds within the youth justice jurisdiction was assessed on a different criteria to the majority of the 2017 amendments:

Effectiveness

- Does the option punish the young person appropriately?
- Does the option rehabilitate offenders and reduce reoffending?
- Does the option deter future offending?
- Does the option protect citizens from victimisation?
- Does the option enable offenders to reintegrate into society?

Practicality

- How easy is the option to implement and work with?

Value

- How cost-effective is the option?

Equity for Māori

- How well does the option reduce disparities between Māori and non-Māori?

Integrity

- How will the option impact public perceptions of the justice system?

The treatment of 17-year-olds within the new design of the youth justice system significantly increases the alignment of New Zealand's justice system to the United Nations Committee on the Rights of the Child (UNCROC). It also responds to a recommendation from UNCROC to raise the age of criminal majority to 18 years (recommendation 45 (b) in the 2016 UNCROC concluding recommendations on NZ's Fifth Periodic Report).

The Cabinet paper that supported the expansion of the youth justice jurisdiction policy addressed consistency with UNCROC (the Cabinet papers are accessible on MSD's website at: <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/new-childrens-agency-established.html>).

Urgent interim orders and drafting errors

The policies underpinning care and protection (including urgent interim orders), information sharing and family group conferences were assessed by their consistency with the UNCROC and other international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The amendments in this Bill relate to the youth justice jurisdiction, building on the initial wider 2017 Act amendments made in response to the Expert Panel's recommendations which were developed with input from a Māori Reference Group.

During policy development, officials worked with Te Puni Kōkiri and senior officials from Ministry of Social Development with expertise in culturally responsible practices for tamariki Māori. Officials also engaged with Crown Law throughout the development of the policy proposals about their compliance with the principles of the Treaty of Waitangi.

All of the provisions covered in the RISs were assessed to determine their consistency with the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by Crown Law is accessible on the Ministry of Justice website. Such advice, or reports, are accessible at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

The inclusion of 17-year-olds in the youth justice jurisdiction affects the jurisdiction of the Youth Court.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on, and supported the development of, drafting instructions to the Parliamentary Counsel Office for the Oranga Tamariki Legislation Bill. The Ministry of Justice led the original policy work on including 17-year-olds in the youth justice jurisdiction. The Ministry of Justice was consulted about amendments relating to urgent interim orders.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Generally, the changes to the Criminal Investigation (Bodily Samples) Act 1995 amend the scope of the provisions relating to storage, access, or use of DNA. The changes in this Bill widen who is considered a young person and applies the existing young person provisions to that group.</p> <p>Schedule 3 of the Bill inserts a new Schedule 1AA of the Criminal Investigations (Bodily Samples) Act 1995. Section 9 of Part 1 of Schedule 1AA contains transitional provisions in relation to collection, storage, access to, correction of, use of any DNA samples given by a young person from 1 July 2019.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner (the Privacy Commissioner) was consulted on the amendments proposed in the Oranga Tamariki Legislation Bill. The Privacy Commissioner did not raise any issues or concerns with this Bill.</p> <p>The Privacy Commissioner was also consulted on the original policy proposal related to expanding the youth justice jurisdiction as part of a wider review of the 2017 amendments to the Oranga Tamariki Act 1989.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>External consultation was undertaken as part of the Expert Panel's development of recommendations to modernise Child, Youth and Family, including youth justice considerations that informed the policy decision to expand the youth justice jurisdiction to include 17-year-olds. The consequential nature of the amendments proposed in this Bill did not require further external consultation.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p><u>Youth justice jurisdiction</u></p> <p>This Bill is intended to give full effect to the inclusion of 17-year-olds in the youth justice jurisdiction. The expansion of the youth justice jurisdiction extends decision-making powers for the judiciary, New Zealand Police and government officials in the youth justice system. The amendments in this Bill are consistent with the 2017 Act change to the youth justice jurisdiction. The majority of these amendments, and their impacts on rights or interests, are beneficial to 17-year-olds.</p> <p>This Bill amends procedures and processes across legislation that are affected by the expansion of the youth justice jurisdiction to include 17-year-olds. These amendments affect the age (that is, 17-year-olds) to which decision-making powers apply, rather than the powers themselves. Safeguards to ensure the amendments the Bill makes are constrained appropriately are discussed at Appendix Two.</p> <p><u>Urgent interim orders</u></p> <p>This Bill amends the 2017 amendments that inserted three new sections in relation to interim orders. These sections would, from 1 July 2019, allow the Court to make interim orders on its own motion, when there may be no relevant Oranga Tamariki Act 1989 proceedings underway. The amendments also allow a lawyer representing the child to apply for interim custody, restraining or guardianship orders within the context of non-Oranga Tamariki Act 1989 proceedings.</p> <p>This Bill will amend the powers of the Court and lawyers representing the child or young person <i>before</i> those powers take effect from 1 July 2019. These amendments remove:</p> <ul style="list-style-type: none"> the Court's ability to make interim orders in relation to children or young people on its own motion when there are no relevant care and protection proceedings under the Oranga Tamariki Act 1989 underway; and the lawyer representing the child or young person's ability to apply for an interim order outside of care and protection proceedings under the Oranga Tamariki Act 1989 in relation to a child or a young person (unless they first seek the leave of the Court). <p>Cabinet has agreed these amendments are consistent with the intended policy change in relation to interim orders.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Two

Published reviews or evaluations – 2.1

Youth justice jurisdiction

The policy to include 17-year-olds in the youth justice jurisdiction was developed in response to the recommendations made by the Modernising Child, Youth and Family Expert Panel (the Expert Panel). Aspects of the report were informed by:

- data on outcomes from those who come into contact with the youth justice systems and the voices of children, young people, parents, caregivers, social workers and other key stakeholders
- detailed analysis of challenges facing the then child, youth and family system and advice by the Expert Panel.

Modernising Child, Youth and Family Expert Panel, Expert Panel Final Report: Investing in New Zealand's Children and their Families, Modernising Child, Youth and Family Expert Panel, April 2016. Accessible at: <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/index.html>

Other reports that informed the policy to expand the youth justice jurisdiction:

- Youth Crime Action Plan 2013-2023 Report (published October 2013). Accessible at: <http://www.justice.govt.nz/assets/Documents/Publications/YCAP-full-report.pdf>
- Diverted from Counsel: Filling the Rights Gaps in New Zealand's Youth justice Model. Accessible at: <http://fulbright.org.nz/publications/diverted-from-counsel-filling-the-rights-gap-in-new-zealands-youth-justice-model>

Regulatory Impact Analysis – 2.3.1

Youth justice jurisdiction

Including 17-year-olds, and convictable traffic offences not punishable by imprisonment in the youth justice system

"The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement "Including 17-year-olds and convictable traffic offences not punishable by imprisonment in the youth justice system" produced by the Ministry of Justice. The reviewers consider that the information and analysis summarised in the RIS does not meet the quality assurance criteria for regulatory impact analysis.

The RIS does not analyse the impacts of recommendations 8, 10 to 12 and 14 in the Cabinet Paper. Officials have attempted to incorporate these late changes into the analysis, but there are evidence gaps in the consideration of overall impacts and the policy objectives appear to have been applied inconsistently. Based on the stated objectives of the reforms, the proposals have potentially significant implications for vulnerable people and for longer-term justice outcomes."

Including 17-year-olds, and convictable traffic offences not punishable by imprisonment in the youth justice system (Addendum RIS)

"The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement "Including 17-year-olds and convictable traffic offences not punishable by imprisonment in the youth justice system" produced by the Ministry of Justice. The reviewers consider that the information and analysis summarised in the RIS meets the quality assurance criteria for regulatory impact analysis.

The initial RIS draws on a wide range of evidence, from both New Zealand and overseas, of the probable benefits of including more young people within the Youth justice system. It also includes a formal cost benefit analysis showing that under reasonable assumptions, quantifiable

effects will take some time to show a positive return, but that these are likely to increase over the long term. The addendum analyses additional proposals that generate a greater distinction between 17-year old and younger serious and recidivist offenders. It shows that it is difficult to assess in advance, whether the different impacts of these proposals on the original cost-benefit analysis will cancel each other out. If the proposals are implemented RIAT would recommend provision for a full evaluation of outcomes in practice."

Appendix Two: Further Information Relating to Part Four

Significant decision-making powers - question 4.6

Youth Justice jurisdiction

Safeguards

The youth justice system (including the Youth Court) was established so that young people would be effectively heard, sanctioned and diverted from crime. It delivers accountability and rehabilitation, and includes strong mechanisms for responding to serious and recidivist offending.

The youth justice system is a specialised jurisdiction that uses lay advocates, nominated persons and Youth Advocates as safeguards if a child or young person appears before the Youth Court. In addition, the Office of the Children's Commissioner has powers to review the incarceration of children and young people in residential placements. There are also complaints processes that can be used if there are concerns about the treatment and care of a child or young person placed in the care of the chief executive of Oranga Tamariki.

The youth justice system applies principles of natural justice for young offenders and victims. This includes the use of restorative justice principles that actively seek the involvement of victims (where practicable and appropriate) when considering the appropriate response to address the underlying causes of offending.