

# Departmental Disclosure Statement

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Ram Raid Offending and Related Measures Amendment Bill

This disclosure statement was prepared by the Ministry of Justice.

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

10 August 2023.

## Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information .....	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features .....	10

## Part One: General Policy Statement

This Bill is introduced under Standing Order 267(1)(a). That Standing Order permits an omnibus Bill to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The interrelated topic is youth-dominated offending. The single broad policy is to reduce youth-dominated offending by increasing accountability for those who engage in the criminal behaviour covered by the Bill.

The Ram Raid Offending and Related Measures Amendment Bill provides measures aimed to reduce criminal behaviour that is predominantly carried out by children and young people.

The Bill amends the following Acts:

- the Crimes Act 1961 by adding new section 231B to specifically criminalise ram-raiding:
- the Criminal Investigations (Bodily Samples) Act 1995 to allow the taking of bodily samples from 12 and 13 year olds who are proceeded against in the Youth Court for the new ram-raiding offence:
- the Oranga Tamariki Act 1989 to—
  - allow 12 and 13 year olds to be proceeded against for the new ram raid offence in the Youth Court without being a previous offender:
  - include a corresponding factor to that added to the Sentencing Act 2002 by the Bill to be considered where a young person is being sentenced for offending, if they livestreamed the offending, posted a copy of the livestreaming online, or distributed a copy of the livestreaming by means of a digital communication:
- the Sentencing Act 2002 by adding 2 new aggravating factors for sentencing—
  - for an adult who aids, abets, incites, counsels, or procures any child or young person to commit any offence:
  - for a person who livestreamed the offending, posted a copy of the livestreaming online, or distributed a copy by means of a digital communication.

This Bill responds in a practical and meaningful way to offending that is predominantly undertaken by young people. It will disincentivise that behaviour by better holding to account those young people and ensuring that there are greater interventions and consequences for their criminal behaviour.

This Bill will ensure that young offenders, as well as those who encourage or enable them to offend, face greater accountability for offending.

The measures in this Bill must be considered alongside other Government initiatives focused on breaking the cycle of offending, including the enhanced fast-track programmes to respond to the most prolific young offenders by intervening early and intensively to prevent further offending and harm.

A new offence will specifically address ram-raiding. Ram raids cause significant property damage and cause considerable harm to the victims and their livelihoods. It is important that offenders know that their offending has consequences, not only for the victims but for the offenders themselves. They will be held to account for their actions in damaging with a vehicle and entering others' property, including retail property.

This new offence will differentiate ram-raiding from intentional property damage and burglary. It will properly recognise the specific form of conduct associated with this offending and ensure that it is recognised and charged as a discrete form of criminal harm.

The new offence will carry a maximum penalty of 10 years' imprisonment.

The amendments allowing the taking of bodily samples is consistent with existing law for 12 and 13 year olds who are proceeded against under section 272 of the Oranga Tamariki Act 1989. Further, the grounds for taking a bodily sample under the Criminal Investigations (Bodily Samples) Act 1995 for the new ram raid offence will be aligned with those circumstances in which a bodily sample may be taken for burglary, as they are closely related offending.

The Bill will also allow 12 and 13 year olds to be charged in the Youth Court for this offence without being a previous offender. This will give Police and Oranga Tamariki a wider range of options to deal with child offenders, for example, giving Police the ability to apply for bail conditions or for the offenders to be held in the custody of Oranga Tamariki. It will ensure that a better range of immediate responses are available for these children. It will allow a greater range of interventions that could make a more significant difference to stop repeat offending, provide the necessary support, and hold them to account for their actions.

In addition to a new offence, the Bill introduces 3 new factors to be considered at sentencing.

Two of these factors will be placed in the Sentencing Act 2002 and another in the Oranga Tamariki Act 1989. Each factor will serve to aggravate the offending.

The first aggravating factor, to be included in the Sentencing Act 2002, will require the sentencing Judge to take into account that an adult has aided or abetted a young person to offend. This aggravating factor will apply to all offending, including ramraiding or, for example, drug offending. If adults take advantage of the vulnerability of young people by encouraging them to offend, including on behalf of the adult, it is appropriate that this be considered as an aggravating factor at sentencing. The aim is to deter adults from exploiting children and young people and leading them into a life of crime.

The Bill also introduces a second aggravating factor in the Sentencing Act 2002, requiring the sentencing Judge to take into account whether an offender livestreamed or posted their offending online. This behaviour increases the reach of offending, both exacerbating the harm to victims and glamorising offending, which may encourage copy-cat offences. This kind of conduct, which is common with offending such as ram raids, will now be considered by a Judge in assessing the appropriate sentence to be imposed on an offender.

A corresponding factor is to be included in the Oranga Tamariki Act 1989, to require the Youth Court, in determining the appropriate response where a charge against a young person is proved, to consider whether that young person livestreamed or posted their offending online.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
The Treasury's Impact Analysis team has agreed that agencies will develop and provide supplementary impact analysis post-introduction.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>Children who commit ram raids are particularly likely to have cognitive impairments and wellbeing vulnerabilities that impact their likelihood of (re)offending, as well as their understanding of the law. For example, half of children in care or the youth justice system have cognitive impairments and/or mental health issues.</p> <p>The level of resourcing behind the new tools is likely to effect to the extent to which child and youth (re)offending is prevented, as well as any subsequent involvement in the justice system. This includes Police and Oranga Tamariki's enforcement of bail conditions or custody arrangements, as well as the extent to which the new ram raid offence or factors to be considered at sentencing deter relevant criminal conduct.</p> <p>The costs and benefits will also be affected by the complementary operational measures introduced to address the causes of this offending, including: the 'Better Pathways' package to improve the education and employment opportunities of young people, the 'Fast Track' pilot programme and local coordination teams that respond to serious youth offending, and the recent 'enhanced Fast Track' model to increase the immediacy, intensity, and duration of support for the small number of persistent child and young offenders. To the extent these reduce the numbers of children with serious and persistent offending behaviour, it will reduce those who will be affected by the powers in this Bill.</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?**

New Zealand has ratified the United Nations Convention on the Rights of the Child (UNCROC), which applies to all children under 18 years of age. UNCROC recognises the vulnerability of children who offend and requires States to ensure that arrest, detention, or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time. The changes in this Bill for child are counter to the United Nations Committee on the Rights of the Children position that the minimum age of criminal responsibility should be at least 14 years old.

There are also other applicable international obligations such as the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples. These proposals may raise issues about our alignment with these conventions, particularly as they are likely to disproportionately affect Māori and disabled children and young people.

The amendments to the Oranga Tamariki Act 1989 will still be governed by the purposes and principles of that Act, which provide strong direction on taking the least restrictive action and seeking alternatives to prosecution for children and young people. Police and Oranga Tamariki have a demonstrable history of following this direction and approaching child and youth offending with a strongly preventive and diversionary approach. Police would also need to rebut the *doli incapax* presumption before any action is taken against a child.

The amendments to in Part 2 of the Bill to the Criminal Investigations (Bodily Samples) Act 1995 also have privacy implications that impact the rights of children under New Zealand's international obligations. These are discussed further at parts 3.5 and 3.5.1 below.

### 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?**

Under the active protection and partnership principles, there is a strong te Tiriti o Waitangi based argument that Māori should be consulted. Although there was no consultation with Māori on the proposals in the Bill due to time constraints, officials analysed the proposals in this Bill against the principles of the Treaty of Waitangi and the Crown's Treaty obligations.

Officials have identified strong Māori interests in some of the proposals, particularly those which target youth offending, and the broadening of provisions allowing for DNA sampling of children (discussed at parts 3.5 and 3.5.1 below) as this whakapapa information has significance in te ao Māori. Māori are likely to be disproportionately affected by the proposals.

Under section 7AA of the Oranga Tamariki Act 1989, Oranga Tamariki is required to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi. The availability of the new options provided by the Bill for responding to children will still be governed by the purposes and principles of the Oranga Tamariki Act 1989, which provide strong direction on taking the least restrictive action and seeking alternatives to prosecution. The Bill will not prevent the Youth Court from dealing with the child before it in the way that is most appropriate, including diverting the child to the Family Court where it considers a care and protection response is more appropriate, or discharging the offence upon the child's completion of a family group conference plan. Preventing child and youth (re)offending can divert from further involvement in the justice system.

## Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>NO</b>
<p>Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-humanrights/section-7-reports/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-humanrights/section-7-reports/</a></p>	

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>A new "ram-raid" offence is included in the Crimes Act 1961 carrying a maximum penalty of 10 years' imprisonment.</p> <p>The Bill amends the jurisdiction of the Youth Court (section 272 of the Oranga Tamariki Act 1989), by adding the new offence to those for which a 12- or 13-year-old may be charged and proceeded against.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was consulted on the amendments to the Oranga Tamariki Act 1989.	

## Privacy issues

<b>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?</b>	<b>YES</b>
<p>The amendments in Part 2 of the Bill to the Criminal Investigations (Bodily Samples) Act 1995 will allow bodily samples to be collected for the new ram-raid offence committed by 12- and 13-year-olds as for all other offending committed by such people under section 272 of the Oranga Tamariki Act 1989.</p> <p>Further, the ram-raid offence is added to the Schedule to the Criminal Investigations (Bodily Samples) Act 1995 to allow a bodily sample to be taken and stored consistently with burglary under the existing law for young people. This Act already allows sampling of adults for any imprisonable offence.</p> <p>The collection of information from children is subject to the existing offence against section 438 of the Oranga Tamariki Act 1989 to disclose information to a third party that identifies, or would be likely to identify, the child to a person who does not have a genuine interest in receiving it, such as a Youth Justice Co-ordinator/Oranga Tamariki. Also, section 5(1)(b)(i) of the Oranga Tamariki Act 1989 incorporates the Article 40(2)(b) UNCROC obligation for every child to have his or her privacy fully respected.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
<p>The Office of the Privacy Commissioner was informed of these amendments and provided comment. In particular, the Office of the Privacy Commissioner highlighted what it considered to be the significant privacy implications from extending the application of the Criminal Investigations (Bodily Samples) Act 1995. These amendments were identified during drafting of the Bill.</p> <p>In its 2020 report, the Law Commission identified that the current practices around the collection of bodily samples, informed consent, and retention of DNA information regarding children and young people may be inconsistent with the New Zealand Bill of Rights Act 1990, and the protective regime established under UNCROC and the Oranga Tamariki Act. In 2021, the Government accepted the Law Commission’s finding that the Act is no longer fit for purpose, and the recommendation to repeal and replace the Act. The work to reform the DNA regime is currently not prioritised.</p>	

### External consultation

<b>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?</b>	<b>NO</b>
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### Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>Officials have worked closely with relevant agencies to ensure the provisions in the Bill are workable and can prosecuted in appropriate circumstances or otherwise operationalised.</p>	

## 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
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### 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
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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## Strict liability or reversal of the usual burden of proof for offences

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

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<b>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?</b>	<b>YES</b>
<p>Section 272 of the Oranga Tamariki Act 1989 sets out the jurisdiction of the Youth Court and children's liability to be prosecuted for criminal offences under the Criminal Procedure Act 2011. This section provides (amongst other matters) that proceedings may be commenced against a child aged 12 or 13 years where:</p> <ul style="list-style-type: none"> <li>the offence has a maximum penalty of life imprisonment or at least 14 years' imprisonment (subsection (1)(b)); or</li> <li>where the child is a "previous offender" (under a statutory test) and the offence has a maximum of at least 10 years' imprisonment (subsection (1)(c)).</li> </ul> <p>Currently, if a child aged 12 or 13 is charged with an offence under (1)(b) or (c) and proceedings are commenced against them, they must be brought before the Youth Court (section 272(2A)(a)). They are then dealt with under the Oranga Tamariki Act as though they were a young person, but subject to certain modifications and procedures applying only to children aged 12 and 13 (set out in 272A).</p> <p>This proposal amends section 272 to provide that proceedings may also be commenced against a 12- or 13-year old where the alleged offence is the new offence aimed at ram-raid offending. This would enable those children aged 12 and 13 to be brought before the Youth Court. The same procedural modifications for 12- and 13-year olds will apply to proceedings involving the new ram-raid offence.</p> <p>This change would enable the following options to respond to alleged offending by 12 and 13 year olds:</p> <ul style="list-style-type: none"> <li>Bail conditions, including non-association, curfew, residing at a specific address, and not to take drugs or alcohol</li> <li>Detention in Oranga Tamariki custody where there was a risk of the child absconding, reoffending or preventing loss or destruction of evidence or interference with witnesses</li> <li>Warnings and alternative actions with escalation available to an Oranga Tamariki-led intention to charge FGC</li> <li>Intention to charge Family Group Conference and plan with escalation available to Youth Court if the plan is not agreed or completed</li> <li>Youth Court orders for a minority, including residential orders of up to 6 months being available if the charge is proven and supervision up to 12 months following the order. However, it is likely that most children would receive a section 282 discharge if an FGC plan was completed.</li> </ul>	

### **Powers to make delegated legislation**

<b>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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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### **Any other unusual provisions or features**

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