

Departmental Disclosure Statement

Responding to Abuse in Care Legislation Amendment Bill
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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 the Crown Response Unit for the Abuse in Care Inquiry, Oranga Tamariki, the Ministries of Education and Justice, and the Department of Internal Affairs.

All agencies involved in the drafting process certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Date finalised: 31 October 2024.

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Part One: General Policy Statement

This Bill is introduced under Standing Order 267(1)(c), which permits a bill to be introduced as an omnibus bill if, as is the case, the Business Committee has agreed to the Bill's introduction as an omnibus bill.

This Bill makes a suite of initial legislative changes to improve safety and wellbeing for children and young people, and adults in care in response to the Royal Commission into Abuse in State Care and Faith-based Institutions (the Royal Commission). The Government is committed to driving change; for survivors and for all those engaged in the current care system.

The Bill amends the following legislation:

- Oranga Tamariki Act 1989 to authorise universal searches on entry to secure Youth Justice residences, for search plans to be made with children and young people in all secure residences, to repeal the ability to undertake strip searches and to clarify the length of time for secure care prior to judicial oversight; and
- Children's Act 2014 to extend the existing workforce restriction on core children's workers to include convictions for overseas offences equivalent to specified New Zealand offences, and to include offences against children and young people under the Prostitution Reform Act 2003 in the list of specified offences; and
- Crimes Act 1961 to explicitly include disability in the definition of a vulnerable adult; and
- Public Records Act 2005 to enable earlier re-audit of agencies identified as having low information management maturity, create an ability to require an action plan and time-bound correction of non-compliance and make clear that Archives New Zealand may undertake its own audits.

The amendments to the Oranga Tamariki Act 1989

The amendments to the Oranga Tamariki Act 1989 are to improve the safety and wellbeing of all people within secure Care and Protection residences and secure Youth Justice residences. These are the Oranga Tamariki residences with lockable gates and secure perimeters. They are used to care for the children and young people in state care who have the most complex care needs, or who are engaged in the Youth Justice system.

Amendments that apply solely to secure Youth Justice residences

New provisions are being introduced that will allow all young people, visitors, staff and contractors to be searched before entry to a secure Youth Justice residence. This is to ensure that harmful and unauthorised items are not brought inside these residences. The provisions will allow searches to be undertaken using body imaging scanners.

Currently, visitors, staff and contractors cannot be searched. But they can be a source of harmful items entering secure Youth Justice residences. As result of the amendments, any visitors, staff and contractors who refuse to be searched may be denied entry to the residence.

The new search on entry power will not require the person conducting the search to believe on reasonable grounds that a person has a harmful or unlawful item in their possession. The requirement for belief on reasonable grounds will remain in place for

all other (not on entry) searches of children and young persons in Youth Justice residences and to all pat down searches conducted at any time (including on entry).

The Bill supplements the definition of 'harmful item' in section 384A of the Oranga Tamariki Act 1989, for secure Youth Justice residences, with a list of items that will always be considered harmful; for example, alcohol and drugs, vapes and smokeless tobacco products, and any item that could be used to facilitate an escape from custody. This will remove current ambiguity around certain items and the current case-by-case assessment to determine if these items are harmful.

Before conducting any search on entry to a secure Youth Justice residence, every entrant must be advised that they and their personal possessions and vehicle may be searched, the purpose of that search, and the consequences if any unauthorised item is found. Visitors, staff and contractors will be able to choose whether to consent to each search before it is conducted and can withdraw their consent at any time (but may be denied entry to the secure residence if they do so). They must be invited to hand over any harmful or unlawful items that they might have in their possession at the time.

Amendments that apply to all secure residences

The Bill repeals the power in section 384E of the Oranga Tamariki Act 1989, to strip search children and young persons, as it is rarely used, and strip searches are traumatising. It also repeals the requirements in section 384G(2) and (3) that searches be carried out by a staff member of the same sex, and that a staff member who is not of the same sex must not be present during a search, because they do not take account of the child or young person's gender preferences.

The Bill replaces the above requirements with new requirements on the Chief Executive of Oranga Tamariki to ensure that a search plan is developed for each child or young person to meet their needs and preferences for how they are searched and by whom. This will enable search plans and the undertaking of search to take into consideration a child or young person's preferred gender identity, any trauma they have previously experienced, and any other matter that may negatively affect how they experience a search. In the case of disabled children and young people, the plans will need to take account of their specific disability needs.

The Bill amends section 370(1) of the Oranga Tamariki Act 1989, which prescribes the time limit for 'secure care', to ensure that there is no ambiguity. 'Secure care' is where a child or young person can be confined in a locked room for their and others' safety when prescribed criteria are met. Currently, court approval is required to keep a child in secure care for longer than a continuous period of more than 72 hours, or on more than 3 consecutive days (whether continuous or not). The existence of two timeframes has caused confusion. The Bill removes references to "a continuous period of more than 72 hours". This is the potentially longer measure of the two, and less aligned to wellbeing.

The amendments to the Children's Act 2014

Part 3 of the Children's Act 2014 (the **principal Act**) relates to the safety checking of children's workers. It provides for a workforce restriction that makes it unlawful for a specified organisation to engage a person convicted of a specified offence as a core worker unless the person has an exemption.

Specified organisations are State services and local authorities, and organisations and individuals funded by State services or local authorities, that provide regulated services. Core workers are children's workers who, in the course of their work, have primary responsibility for a child or are the only children's worker present. Specified

offences are offences under New Zealand law listed in Schedule 2 of the Children's Act 2014.

The workforce restriction currently does not apply to people with convictions from overseas jurisdictions for offences equivalent to specified offences. In addition, it currently does not apply to people who have been convicted for offences involving minors under the Prostitution Reform Act 2003. These are gaps in the protections afforded to children and young people under the Children's Act 2014 that the Bill will close. It will amend the principal Act to:

- extend the workforce restriction to people with convictions from overseas jurisdictions for offences equivalent to specified offences. It also provides affected people with the opportunity to seek review and appeal of decisions made about whether offences for which they have overseas convictions are equivalent to specified offences.
- add the following offences under the Prostitution Reform Act 2003 to the list of specified offences in Schedule 2 of the act:
 - Section 20 - Causing, assisting, facilitating, or encouraging a person under 18 years of age to provide commercial sexual services to any person;
 - Section 21 - Receiving a payment if a person knows, or ought reasonably to know, that it is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age; and
 - Section 22 - Entering into a contract or arrangement under which a person under 18 years of age provides commercial sexual services

The amendments to the Crimes Act 1961

The Crimes Act 1961 sets out the duty to provide children and vulnerable adults with the necessities of life and protect them from injury. It also provides for offences relating to the failure to protect a child or vulnerable adult and against their ill-treatment. For the purposes of these obligations and offences, it defines a vulnerable adult as:

“a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person”.

The words “any other cause” in the definition can be read to include disabled people who are unable to withdraw themselves from the care or charge of their carer. The Bill will amend the Crimes Act 1961 to include disability and avoid doubt.

The amendments to the Public Records Act 2005

The Bill will amend the Public Records Act 2005 (the **principal Act**) to clarify and enhance the role of Archives New Zealand to respond to non-compliance with the act and to improve the creation of and access to records. The amendments will:

- remove the limitation on Archives New Zealand conducting audits no sooner than five years after a previous audit;
- enable the Chief Archivist to:

- require the preparation and carrying out of an action plan in response to problems with recordkeeping practices identified in audits or inspections;
- issue a performance notice to a recordkeeping agency to remedy an issue by a particular point in time, in response to an issue identified through an audit or inspection;
- enable inspections into the systems and processes involved in the creation of records, in addition to systems where they are stored and / or maintained; and
- clarify the meaning of independent so that it is clear that either Archives NZ or external auditors can conduct independent audits.

The amendments aim to strengthen and clarify the principal Act to support recordkeeping agencies in reaching compliance. They will enable the current practice associated with action plans to have a clear legislative foundation. This should provide enhanced incentives for compliance and improvements to recordkeeping practice.

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>The final report of the <i>Royal Commission of Inquiry into Abuse in State and Faith-based Care</i> made 138 recommendations to provide redress for past abuse and prevent future abuse. These included recommendations to improve the safety of children, young people and adults in care and to strengthen safety with the care system.</p> <p>See: https://www.abuseincare.org.nz/reports/whanaketia/</p> <p>The Oranga Tamariki Act 1989</p> <p>The amendments to the Oranga Tamariki Act 1989 have been informed by the <i>Oranga Tamariki Secure Residences & a Sample of Community Homes – Independent, External Rapid Review</i> (2023).</p> <p>See: https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Reviews-and-Inquiries/Rapid-residence-review/Secure-residence-review.pdf</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?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Oranga Tamariki Act 1989</p> <p>The amendments to the Oranga Tamariki Act 1989 were accompanied by the <i>Regulatory Impact Statement: Search powers in secure Care and Protection and Youth Justice residences</i>, Oranga Tamariki, September 2024.</p> <p>This analysis will be made available on the:</p> <ul style="list-style-type: none"> • Oranga Tamariki website • Ministry for Regulation website 	
2.3.1. If so, did a QA panel provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Oranga Tamariki Act 1989</p> <p>A Quality Assurance Panel considering the amendments to the Oranga Tamariki Act 1989 included membership from Oranga Tamariki and Ministry for Primary Industries. The panel</p>	

<p>reviewed the Regulatory Impact Statement (RIS) and considered that the information and analysis partially met the quality assurance criteria.</p> <p>The RIS was produced under time constraints, which limited the consultation undertaken, particularly with Māori, and there were limitations in the evidence available across all options, which weakened the analysis produced.</p> <p>The RIS identified significant uncertainty for the financial costing for implementing new search technology, and that further implementation planning was needed. Given the decision for the RIS was only to enable the use of this technology, rather than a decision to invest in this technology, the panel considered the RIS sufficient for Ministers to rely on. Given the constraints and the nature of the decisions being made at this stage, the panel considered the RIS is balanced and convincing, and as complete as could be reasonably expected.</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
<p>The Ministry for Regulation's Regulatory Impact Analysis team determined that the proposed amendments to the:</p> <ul style="list-style-type: none"> Oranga Tamariki Act for the change to the timeframe for secure care is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities; Children's Act, Crimes Act and Public Records Act are all exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities. 	

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
<p>The Oranga Tamariki Act 1989</p> <p>Oranga Tamariki has produced a single stage business case that assesses the costs and benefits of a range of operational methods for implementing the new search powers in the Bill: <i>Improving safety in secure youth justice residences</i>.</p>	
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

The Children's Act 2014

The effectiveness of these amendments in reducing the risk of harm to children and young people by core workers will be affected by compliance of specified organisations with the amendments and with other provisions in Part 3 of the Act. In particular, effectiveness will be impacted by specified organisations':

- compliance with the requirement to safety check children's workers, including the requirement to obtain a New Zealand Police vet;
- understanding of the distinction between core workers and non-core workers, and compliance with requirements related to this distinction in regard to safety checking and hiring; and
- understanding of the amendments, including, in respect of convictions from other jurisdictions, the requirement to determine whether they are for offences equivalent to any specified New Zealand offences.

Detailed guidance will need to be developed to support specified organisations to understand and comply with the new requirements created by the amendments. In addition, the amendments will require the implementation of a process to enable applications for a review and appeal of a determination about whether convictions from other jurisdictions are for offences equivalent to any specified New Zealand offences.

The Public Records Act 2005

Qualitative analysis of government recordkeeping has identified issues with low levels of information management maturity when recordkeeping is not properly monitored. The mandatory recordkeeping standards apply to both current and future states, meaning that there are no changes to information management requirements. However, performance notices will add an obligation on agencies to remedy issues which, combined with the ability to conduct audits more often than every five years, is likely to lead to increased information management maturity.

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?

The Oranga Tamariki Act 1989

The Regulatory Impact Statement discusses these obligations, particularly Appendix 3.

The Children's Act 2014

The amendments are consistent with the United Nations Convention on the Rights of the Child; in particular, Article 19 (protection from all forms of harm while in the care of a person) and Article 34 (protection from all forms of sexual exploitation and sexual abuse).

The Crimes Act 1961

The amendment aligns with Articles 5 and 10 of the United Nations Convention on the Rights of Persons with Disabilities, relating to equal protection of the law and the right to life.

Public Records Act 2005

The policy aligns with several clauses within the United Nations Convention on the Rights of the Child, including Article 4, Article 9.4, and Article 19.1.

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 Oranga Tamariki Act 1989

The impact of the amendments to the Oranga Tamariki Act, in particular those for universal searches on entry to secure Youth Justice residences engage the rights of tangata whenua under the Treaty of Waitangi – Te Tiriti o Waitangi. Under the Treaty – te Tiriti, the Crown should to:

- respect the right of tangata whenua to make decisions over matters of significance to them; and
- make decisions to protect the interests of tangata whenua and to ensure that they are treated equitably with all New Zealanders.

There has been limited consultation with Māori on the Oranga Tamariki Act amendments. While tangata whenua will have an opportunity to participate in the select committee process, they may raise concerns about the lack of consultation and the swift process followed to deliver the Amendment Bill.

The search powers in the Amendment Bill will be more frequently used on Māori, as tamariki and rangatahi Māori are disproportionately represented in the youth justice system. Concern may be raised that the proposals do not address the wider issues of inequitable outcomes in the Youth Justice system

Improvements in safety and wellbeing that should arise from the changes to the Oranga Tamariki Act should have a positive impact for tamariki and rangatahi Māori. However, there is also a risk that the ability to search all visitors to secure Youth Justice residences may inhibit some whānau from visiting.

Inhibiting visitors could impact on rangatahi whanaungatanga – Māori young people's relationships with whānau and their ability to connect with whānau, hāpori – community and

te ao Māori – the Māori world. However, improving safety through searches may also mean that some whānau will be more inclined to visit their rangatahi as they will feel safer.

Public Records Act 2005

Records of care could be considered taonga – important artifacts to care-experienced tamariki, rangatahi and pakeke Māori. They enable tangata whenua to build knowledge of their whakapapa and connect into te ao Māori. The amendments to the Public Records Act are well aligned with the Crown's obligations under the Treaty of Waitangi – te Tiriti o 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 the Ministry of Justice, 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 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)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Children's Act 2014</p> <p>The amendment does not change the offence provisions that specified organisations are subject to, but it will widen the group of people that it is unlawful for specified organisations to employ. The amendment will give affected people the ability to appeal decisions about equivalency of offences to the High Court.</p> <p>The Crimes Act 1961</p> <p>The definition of "vulnerable adult" in section 2 of the Crimes Act 1961 is amended to specifically include disability. This definition is used in offences in sections 195 and 195A and a statutory duty in section 151 of the act.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during the policy development of proposals for the Oranga Tamariki Act 1989 and work with Oranga Tamariki to identify the rights engaged by the proposals to extend search powers on entry to secure Youth Justice residences. This informed decisions on the safeguards to the use of search powers.</p> <p>The ministry was also consulted on all the policy changes that the Bill will give effect to for the Children's Act 2014, Crimes Act 1961 and Public Records Act 2005. It was also consulted on the draft Bill in its entirety.</p>	

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>The Oranga Tamariki Act 1989</p> <p>The amendments to the Oranga Tamariki Act 1989, for universal searches, engage an individual's right to privacy. They will enable the use of imaging technology scanners, which are capable of 'seeing through' clothing.</p> <p>The Children's Act 2014</p> <p>The right to privacy is engaged through the amendments to the Children's Act 2014 to extend the workforce restriction for core children's workers to include convictions for overseas offences equivalent to specified New Zealand offences, and to include offences against children and young people under the Prostitution Reform Act 2003 in the list of specified offences. Prospective employers will be collecting, storing and using, and may be disclosing this information as part of review, appeal or exemptions process.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted during the policy development of proposals for the Oranga Tamariki Act 1989, working with Oranga Tamariki to identify the rights engaged by the proposals to extend search powers on entry to secure Youth Justice residences. This informed decisions on the safeguards to the use of search powers.</p> <p>The office was also consulted on the draft Bill in its entirety.</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?	YES
<p>The Oranga Tamariki Act 1989</p> <p>Limited consultation with external stakeholders was undertaken on the proposals for the Oranga Tamariki Act 1989 during February and March 2024. This included with VOYCE Whakarongo Mai (to provide the voice of children and young people themselves), the New Zealand Law Society, Te Hunga Rōia Māori o Aotearoa (the Māori Law Society), National Union of Public Employees, Gender Minorities Aotearoa, the Human Rights Commission, Independent Children's Monitor and the Offices of the Ombudsman and Privacy Commissioner. The Regulatory Impact Statement summarises the key themes from stakeholder feedback on the proposals for search powers in secure Youth Justice residences.</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
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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

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
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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?	NO
<p>The Oranga Tamariki Act 1989</p> <p>By enabling, but not requiring, every person to be searched before they enter a secure Youth Justice residence, the amendments to the Oranga Tamariki Act 1989 do create a discretion to choose whether or not a particular person will be searched. However, the outcome only determines whether or not a person is subject to a scanner search and visitors can refuse to be searched if they wish (although they can be declined entry if they do).</p> <p>The Children's Act 2014</p> <p>In respect of people who have convictions from other jurisdictions and are seeking employment as core workers:</p> <ul style="list-style-type: none"> • Specified organisations (employers) will make decisions about whether the offence committed overseas is equivalent to a specified offence, and therefore whether they can employ that person. • Chief executives of key agencies will have the authority to review the decisions of specified organisations. • The High Court will have the authority to review the decisions of chief executives, upon appeal. • These decision-making powers will affect the ability of affected core workers to obtain employment or continue employment. 	

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?	YES
<p>The Oranga Tamariki Act 1989</p> <p>The amendments to the Oranga Tamariki Act 1989 include a power to make regulations that specify additional harmful items. This is the same power that already exists in the Corrections Act 2004 and is designed to provide appropriate flexibility to add specific items if it becomes clear they can be harmful.</p> <p>Mobile phones are an example already included in the definition of a harmful item. They are not inherently harmful, but experience has shown they can be used by young people to coordinate assaults. The regulation-making power that will be put in place will enable otherwise harmless items with similar potential to be added in future, without having to amend the act.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Oranga Tamariki Act 1989</p> <p>The Bill amends section 447 (ca) of the Oranga Tamariki Act 1989 to include the power to prescribe the form of a search plan, the nature of the information it is required to contain, how unauthorised items found on entry are to be dealt with, who an appropriate contractor can be, prescribing information that must be provided about searches, and prescribing record keeping requirements for searches on entry.</p>	

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
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