

Departmental Disclosure Statement

Oranga Tamariki (Responding to Serious Youth Offending) Amendment 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.

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.

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Part One: General Policy Statement

The Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill) supports the Government's priority to reduce youth offending.

The Government is upholding its promise to restore law and order and to protect the rights of victims of crime by addressing serious and persistent offending. Young people who offend will be held to account, while also receiving support to address the issues contributing to their offending.

The Bill establishes a young serious offender (YSO) declaration and a new military-style academy order in the Oranga Tamariki Act 1989 (the Act).

YSO declaration

The purpose of the YSO declaration is to create a faster, stronger, and more targeted response to serious and persistent offending by young people, where previous interventions have been unsuccessful in reducing reoffending and there is a high risk that offending will continue or escalate without increased and strengthened intervention.

The YSO declaration seeks to achieve-

- increased public safety and accountability for offending and reoffending:
- a reduction in seriousness and frequency of offending through access to a timely and enhanced rehabilitative service response.

The YSO declaration will unlock additional powers for Police and the Youth Court to achieve these outcomes.

The eligibility criteria for a YSO declaration are-

- the young person is aged 14-17 years old at the time of offending:
- the young person has 2 or more eligible offences (punishable by at least 10 years' imprisonment or more) proven in court, where the offences are clearly 2 separate, unrelated incidents:
- the Youth Court is satisfied on reasonable grounds that the young person is likely to reoffend and previous interventions have been unsuccessful.

Police can apply for a YSO declaration after a young person meets the eligibility criteria, and the Youth Court can make a YSO declaration at the same hearing as part of the disposition of an eligible offence.

The following responses are available for a young person who has been declared to be a YSO:

Strengthened Youth Court orders-

- no eligibility for early release from a supervision with residence order or a military-style academy order:
- longer supervision orders and supervision with activity orders, enabling longer and more intensive interventions:
- overnight stays outside of the residence allowed with military-style academy orders and with supervision orders that follow supervision with residence or military-style academy orders, enabling attendance at rehabilitative and reintegration programmes.

Strengthened sentencing considerations-

- the Youth Court must also now consider¹
- the seriousness of the offending; and
- the criminal history of the young person; and
- the interests of the victim; and
- the risk posed by the young person to other people; and
- whether the young person livestreamed, posted online, or shared by digital communication a record of their offending:

Strengthened placement considerations-

- the chief executive of Oranga Tamariki will be required to consider the risk of absconding and the risk of offending when making placement decisions relating to a young person declared to be a YSO who is in their custody under Part 4 of the Act:

Strengthened monitoring-

- judicial monitoring of a young person's compliance with conditions attached to some orders must be considered and can be directed by the Youth Court:
- curfew conditions can be attached to a supervision with activity order, with the option for the Youth Court to order that the curfew condition be electronically monitored:

Faster responses-

- removal of most mandatory Family Group Conferences (FGCs) where the young person declared to be a YSO reoffends. However, judicial discretion to refer to an FGC is retained:
- Police can apply to the Youth Court for a declaration of non-compliance with certain conditions relating to some Group 3 – 6 orders, allowing a quicker response to non-compliance:
- Police can detain and return the young person to their usual residential address, or can arrest a young person without warrant if the young person has failed to comply with some conditions attached to some orders. Police can arrest a young person declared to be a YSO without warrant for a single instance of breach of bail.

Military-style academy order

The military-style academy order is a new sentencing response available to the Youth Court for eligible young persons. The young persons must-

- have been declared a YSO; and
- be of or over the age of 15 years, but under 18 years, at the time of offending.

The military-style academy order lasts between 3 and 12 months. Young people remain in the custody of the chief executive of Oranga Tamariki throughout the order.

¹ In addition to the factors already set out in the Act.

A military-style academy order will consist of a military-style academy programme, which will be delivered in an Oranga Tamariki section 364 youth justice residence, with the possibility of aspects of the programme being delivered by qualifying providers. A qualifying provider is a body or organization approved as a community service for the purpose of providing a programme, or a prescribed department or Crown entity. The programme may also include overnight and multi-night stays outside of the residence. The programme will have-

- structure and routine and may involve participants being required to wear standard issue clothing or a uniform; and
- specific rehabilitative, therapeutic and cultural components required for each young person and may include education and vocational training, preparation for work and finding employment, and specific cultural, therapeutic and rehabilitative components (including those which address criminal behaviours) required for each young person.

The military-style academy order is followed by a supervision order, which can be between 6 and 18 months in length (provided that the combined duration of the 2 orders does not exceed 24 months).

The Bill provides detention authority and for the use of reasonable physical force by the chief executive (including a delegate or a subdelegate), an approved worker of a qualifying provider, or by anyone else who is authorised to detain a YSO.

The use of force may be used to prevent the young person from absconding from a residential location or where an activity is delivered outside of a residential setting, and from being harmed, harming themselves or harming another.

The Bill also provides that absconding while on a supervision with residence order or when detained in custody under a military-style academy order will be considered a criminal offence of escaping from lawful custody under section 120 of the Crimes Act 1961.

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
<ul style="list-style-type: none"> Department of Justice and Community Safety (2022). Review of the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017. Youth Justice Reforms Review (desbt.qld.gov.au) Farrington, D., Gaffney, H., & White, H. (2022). Effectiveness of 12 Types of Interventions in Reducing Juvenile Offending and Antisocial Behaviour Canadian Journal of Criminology and Criminal Justice (orangatamariki.govt.nz) Lambie, I., Reil, J., Becroft, A., & Allen, R. (2022). How we fail children who offend and what to do about it: 'A breakdown across the whole system'. ACARA Annual Report 2015-16 (borrinfoundation.nz) Ministry of Social Development. (2013). Evaluation report for the military-style activity camp (MAC) programme. Report-mac-evaluation-26-sept-2013-1.doc (live.com) Ministry of Social Development. (2016). Youth Justice Secure Residences: A report on the international evidence to guide best practice and service delivery. Youth-justice-report-secure-residences-11-fa.pdf (msd.govt.nz) Wai 2915 Waitangi Tribunal Report (2021) He Pāharakeke, He Rito Whakakīkinga Whāruarua- Oranga Tamariki Urgent Inquiry. He Pāharakeke, he Rito Whakakīkinga Whāruarua (justice.govt.nz) Waitangi Tribunal. (2017). Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates (justice.govt.nz) National Party's manifesto document, see New Zealand National Party. (2023). Combatting Youth Offending. CYO.pdf (nationbuilder.com) 	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Statement: Young serious offender declaration and military-style academies</i>, Oranga Tamariki, May 2024. This impact analysis is available on:</p> <ul style="list-style-type: none"> https://www.orangatamariki.govt.nz/youth-justice/military-style-academies/ https://www.treasury.govt.nz/publications/risa/annex-regulatory-impact-statement-young-serious-offender-declaration-and-military-style-academies <p>Some content is being withheld under section 9 (2)(h) (legally privileged) and section 9 (2)(f)(iv) (active consideration) of the Official Information Act 1982.</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 Regulatory Impact Statement was assessed by an independent Quality Assurance Panel that included members from Oranga Tamariki and the Ministry of Justice. The Panel assessed the Regulatory Impact Statement as partially meeting the quality assurance criteria.</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?	YES
Additional Ministerial decisions have been taken after the Regulatory Impact Statement was complete. They resulted in policy changes that are set out in Appendix One .	

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
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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 of the expected benefits and costs for the policy is available in the Regulatory Impact Statement.	

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>The effectiveness of the young serious offender (YSO) regime is likely to be impacted by the level of compliance of young people with the conditions of their orders. Non-compliance will lead to higher engagement with the justice system, which may not reduce recidivism.</p> <p>Non-compliance directly impacts costs associated with the regime. Non-compliance will lead to increased court proceedings, which result in increased costs related to the justice system. Non-compliance will also impact costs for Police to respond to breaches.</p> <p>In addition, non-compliance with applicable obligations and standards by providers using use of force and detention powers could lead to abuse and challenges through the courts.</p> <p>Analysis of the potential costs is available in the Regulatory Impact Statement.</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?
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The Regulatory Impact Statement considered consistency of the proposals in the Bill with key international conventions, in particular the United Nations Convention on the Rights of the Child and United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

Officials also consulted with the Legislation Design and Advisory Committee on the legislative design, including compliance with international obligations.

Where possible and in accordance with Cabinet's decisions, the young serious offender (YSO) regime was designed to ensure the impairment of those rights and freedoms is the least intrusive possible to achieve the public safety objectives of the policy.

Human rights were considered by agencies in departmental feedback and in the preparation of the LEG Cabinet paper.

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?

Officials consulted relevant agencies including Te Arawhiti and Te Puni Kōkiri and analysed the proposals against the principles of the Treaty and the Crown's Treaty obligations.

The urgent need for the legislative change has not allowed time for consultation with Māori. However, iwi and Māori are involved in the design of the military-style academy pilot and therefore the final form of the military-style academy programme.

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
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Advice provided to the Attorney General, or a section 7 report of the Attorney-General, is expected to be available on:

- Oranga Tamariki's website; or
- [Section 7 reports](#) | New Zealand Ministry of Justice

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Section 320B enables the Youth Court to make the new YSO declaration. Section 320S creates a new penalty, the military-style academy order. It will be a new Group 6 order under section 283 of the Oranga Tamariki Act 1989. Section 385(3) is being amended (clause 60) to extend the existing criminal offence of escape from lawful custody (under section 120 of the Crimes Act 1961) to absconding while on a section 311 supervision with residence order or on a new military-style academy order.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>Officials from Oranga Tamariki have worked closely alongside the Ministry of Justice during all stages of policy development and drafting instructions related to the Bill.</p> <p>The Ministry of Justice considers that absconding from a residence or military-style academy should not be an offence under section 120 of the Crimes Act 1961. This view was provided in advice to Ministers. In summary, this is because:</p> <ul style="list-style-type: none"> the detention authority for the supervision with residence and military-style academy orders are at the “authority to detain” standard, which is lower than the “requirement to detain” standard. As criminal offences under section 120 of the Crimes Act 1961 currently only attach to absconding in a youth justice setting where there is a ‘requirement to detain’, the proposed offence is inconsistent with existing offences and penalties; the Ministry considers it would be more appropriate for any penalty for absconding to be rehabilitative rather than punitive (which appears consistent with the principles of the Oranga Tamariki Act 1989); if the young person commits an offence while they are in the public, then the penalties of that offence would apply. The Ministry considers this to be a more proportionate approach to addressing the harm caused by the young person. 	

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>Provisions on electronic monitoring (section 296K, section 308AA and section 308AB) involve the collection, storage, access, and disposal of personal information related to the young person.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner was consulted on the policy Cabinet Paper [CAB-24-MIN-0208], on the Cabinet Paper on the high-level design of the military-style academy pilot [CAB-24-MIN-0209], on the draft Bill and subsequent LEG Cabinet paper.</p> <p>The Privacy Commissioner had raised concerns about the privacy impacts of this Bill. Particularly, that intrusions on privacy enabled by the Bill should be justified and kept to the minimum necessary, and appropriate safeguards be in place to mitigate potential privacy risks both in the design of the Bill and in the operational approach (e.g. ensuring staff and contractors are trained in privacy requirements and systems support robust information governance).</p> <p>Where possible and consistent with Cabinet’s decisions, the YSO regime was designed to ensure that any limitation on their rights is the least intrusive possible to support the safety of the young person and to achieve the public safety objectives of the policy. Safeguards and controls will be outlined within regulations to mitigate potential risks.</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>Officials have worked alongside the Ministry of Justice and New Zealand Police during all stages of policy development and drafting instructions related to the Bill.</p> <p>Several government departments and Crown entities were consulted on the policy Cabinet paper, the Bill and over 20 were consulted on the subsequent LEG Cabinet paper. This engagement occurred in the form of meetings, emails and sharing of information with the purpose of identifying potential errors, omissions, policy gaps, and any proposals to support improved workability and regulatory coherence.</p> <p>Feedback focussed the process (the timeframe and impact on due diligence and need for a standard Select Committee process and policy gaps) as well as:</p> <ul style="list-style-type: none"> • the lack of an obligation to be imposed on children's agencies to meet the needs of the cohort in line with the Cabinet decision and other care and custody cohorts • the impact on children's rights including the risk of separating young people from their families • implications for population groups, including young disabled people and young women • the need for safeguards in relation to additional powers and obligations on providers in primary legislation to prevent abuse • risks related to Crown obligations under the Treaty of Waitangi, and • the Royal Commission of Inquiry into State Abuse and Faith-Based Institution findings. <p>Where possible and consistent with the Cabinet's decisions, amendments were made to incorporate feedback received.</p> <p>Officials have also consulted with the Principal Youth Court Judge and with the Youth Court bench in Auckland and in Wellington on the operational aspects of the proposed legislation, and with the Legislation Design and Advisory Committee on the legislative design.</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?	YES
<p>Oranga Tamariki is currently leading a military-style academy pilot that started operating in July 2024. Although the pilot has been delivered within existing legislative settings, it helped to inform some operational design elements of the legislative military-style academy order.</p> <p>Officials have also consulted with service delivery to test operational aspects of the regime and with the Legislation Design and Advisory Committee on the legislative design.</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

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?	YES
<p>The Bill provides:</p> <ul style="list-style-type: none">the Youth Court with the ability to make a young serious offender (YSO) declaration (section 320B), which will 'unlock' additional responses for the Youth Court and Police. The criteria for making this decision are set out in the Bill. Review and appeal mechanisms are includedPolice with powers to detain or arrest a young person declared to be a YSO without warrant for breach of bail or if they fail to comply with some conditions relating to some orders (section 214AA and section 296FA to section 296FG)the Chief Executive of Oranga Tamariki and providers delivering modules of the military-style academy order outside of a youth justice residence with authority to detain (section 320V)Oranga Tamariki staff and providers delivering modules of the military-style academy order outside of a youth justice residence with limited authority to use physical force (in the form of restraints or holds) to prevent the young person from absconding or from being harmed or harming another (section 320W). <p>Safeguards related to these additional powers will be set out both in the primary and secondary legislation to ensure they are used appropriately.</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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
Clause 58 includes a provision that allows the Governor-General, by Order in Council, to make regulations upon recommendation by the Minister for Children that relate to assessing the suitability of potential military-style academy programme providers; the implementation, operation, and monitoring of military-style academy programmes; and the authority for, and safeguards around, the use of force. These regulations will be required to support the introduction of the YSO declaration and operation of military-style academy programmes.	

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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Appendix One: Further Information Relating to Part Two

Regulatory Impact Analysis – question 2.3.2

Additional Ministerial decisions were not addressed by the Regulatory Impact Statement. They resulted in the following policy changes:

- electronic monitoring can be used for up to 12 months (instead of six months)
- supervision orders length will be of up to 18 months (instead of 12 months followed by six months)
- supervision with activity order length will be of up to 12 months (instead of up to six months)
- previous breaches of bail should be considered when making a YSO declaration
- a further YSO application can be made where it has previously been declined by the Youth Court if the young person is re-sentenced for that offending or commits a further offence with a maximum penalty of at least 10 years imprisonment
- the unlocked YSO-specific orders and strengthened Police powers only run for the length of the YSO declaration, expiring when it is no longer in place
- additional considerations are provided to support the Youth Court in deciding whether a Family Group Conference is necessary or desirable to be held for the young person declared to be a YSO
- the detention authority that will apply in relation to section 311 supervision with residence and military-style academy orders will be an authority to detain
- providers delivering modules of a military-style academy order outside of residential settings may be given authority to detain, and that these powers should come into force at enactment, which will require the development of a regulatory framework by that time
- providers will have a limited authority to use physical force (in the form of restraints or holds) outside of residential settings to prevent the young person from absconding and from harming themselves or harming another person, and these powers should come into force at enactment, which will require the development of a regulatory framework by that time
- absconding when on a military academy order or a section 311 supervision with residence order will be a criminal offence of escaping lawful custody under section 120 of the Crimes Act 1961
- specific details on the modular approach of the military-style academy order will be set out in legislation, including that:
 - the military-style academy programme will be delivered primarily in a youth justice residential setting, with the possibility of aspects of the programme also being delivered by other Government agencies, Crown entities or qualifying providers
 - providers will only have authority to detain and to use physical force during the time that a young person is based in a youth justice residence, including when they are on overnight stays or other activities outside of the residential setting
 - those on a military-style academy order can be required to wear a uniform or standard-issue clothing for all or part of the time they are completing the programme
- a young person on a military-style academy order should not be released on remand without conditions where a breach application is made in relation to that order due to the young person absconding or their non-compliance with that order, and where the court temporarily suspends that order pending the hearing of the breach application, unless satisfied that exceptional circumstances apply
- the duration of the military-style academy order must be a minimum of three months and up to 12 months, and the programme will be delivered primarily in a youth justice residential setting with the possibility of aspects of the programme also being delivered by other Government agencies, Crown entities or qualifying providers
- where a young person declared to be a YSO is sentenced to a supervision with residence order, a supervision with activity order, or a military-style academy order, the supervision order that follows these orders must be for a minimum of six months and may be up to 18 months in length (as long as the duration of the total orders does not exceed 24 months).