



# Cabinet Legislation Committee

## Minute of Decision

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### Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill: Approval for Introduction

Portfolio                      Children

On 14 November 2024, the Cabinet Legislation Committee:

#### Proposal

- 1        **noted** that the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill) will introduce a package of proposals to strengthen the Government's response to serious and persistent youth offending, including the establishment of a Young Serious Offender (YSO) declaration and a military-style academy order;
- 2        **noted** that officials will ensure safeguards are included in the regulations ahead of the Bill coming into force;

#### Policy items requiring Cabinet approval

- 3        **agreed** that:
  - 3.1      the duration of the military-style academy order must be a minimum of three months and up to 12 months;
  - 3.2      the programme is to 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 accredited providers;
  - 3.3      the programme will be followed by a supervision order that 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);
- 4        **agreed** that where a young person declared a YSO is sentenced to a supervision with residence order or a supervision with activity 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);

#### Parliamentary stages

- 5        **noted** that the Bill holds a category five priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024);

- 6 **noted** that the Bill will require consequential amendments to the Social Security Act 2018, the Criminal Investigations (Bodily Samples) Act 1995, the Children's Act 2014, the Coroner's Act 2006, the Policing Act 2008, the Victims' Rights Act 2002, the Oranga Tamariki (Residential Care) Regulations 1996, the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018, the Oranga Tamariki (Forms) Regulations 1989 and the Oversight of the Oranga Tamariki System Act 2022;
- 7 **approved** the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill [PCO 26233/15.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 8 **noted** that the Parliamentary Counsel Office has indicated that:
- 8.1 it may substitute the Bill between the Legislation Committee meeting and the Cabinet meeting in order to make any necessary drafting changes;
- 8.2 it will continue to make technical changes to the Bill before it is introduced;
- 9 **agreed** that the Bill be introduced in November 2024;
- 10 **agreed** that the Government propose that the Bill be:
- 10.1 referred to the Social Services and Community Select Committee for consideration;
- 10.2 enacted by August 2025.

Tom Kelly  
Committee Secretary

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**Present:**

Hon Dr Shane Reti  
Hon Simeon Brown (Chair)  
Hon Brooke van Velden  
Hon Paul Goldsmith  
Hon Casey Costello  
Hon Nicole McKee  
Hon Karen Chhour  
Hon Scott Simpson, MP  
Todd Stephenson, MP

**Officials present from:**

Officials Committee for LEG  
Leader of the House's Office

Office of the Minister for Children

Chair, Cabinet Legislation Committee

## **Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill: Approval for Introduction**

### **Proposal**

- 1 This paper:
  - 1.1 seeks Cabinet’s approval to policy decisions that arose during drafting of the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill), and which have been incorporated into the Bill;
  - 1.2 seeks Cabinet’s approval to introduce the Bill to the House. The Bill includes a package of proposals to strengthen the Government’s response to serious and persistent youth offending, including the establishment of a young serious offender (YSO) declaration and a military-style academy order.

### **Policy**

- 2 The Government has set a clear target to reduce child and youth offending, which requires a 15 percent reduction in the total number of children and young people with serious and persistent offending behaviour by the end of 2030. To achieve the target, the Government will hold young people who offend to account, while also supporting them to address the issues contributing to their offending.
- 3 On 10 June 2024, Cabinet agreed policy decisions to establish a YSO declaration and a military-style academy order and invited me to issue drafting instructions to Parliamentary Counsel Office (PCO) to give effect to those decisions through a Bill [CAB-24-MIN-0208 refers].
- 4 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 not been successful at reducing re-offending and there is a high risk that offending will continue or escalate without increased and strengthened intervention.
- 5 The YSO declaration will “unlock” additional powers for Police and the Youth Court in order to achieve:
  - 5.1 increased public safety and accountability for offending and re-offending;
  - 5.2 a reduction in seriousness and frequency of offending through access to a timely and enhanced rehabilitative service response.
- 6 The military-style academy order will be a new sentencing response under section 283 of the Oranga Tamariki Act 1989 (the Act). It will be available to the Youth Court for eligible young persons aged 15-17 years old at the time of offending who have been declared a YSO.

**Policy decisions agreed by the Minister for Children**

- 7 Cabinet authorised me in consultation with the Ministers of Justice, Police and Corrections to have the Power to Act on any matters requiring further policy decisions, including on design and technical aspects in line with Cabinet’s earlier decisions without further reference to Cabinet [CAB-24-MIN-0208 paragraph 48 refers].
- 8 Supplementary decisions were made on issues that arose during drafting. These were within the scope of my Power to Act authority in consultation with the Ministers of Justice, Police, and Corrections.
- 9 Ministers decided to:
  - 9.1 enable a further YSO application to be made where a YSO application 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;
  - 9.2 clarify that the unlocked YSO-specific orders and strengthened Police powers only run for the length of the YSO declaration, expiring when the YSO declaration is no longer in place;
  - 9.3 provide additional considerations 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;
  - 9.4 clarify that the detention authority that would apply in relation to section 311 supervision with residence and military-style academy orders will be an authority to detain;
  - 9.5 confirm that providers (including Oranga Tamariki) delivering modules of a military-style academy order outside of a youth justice residence may be given authority to detain, and that these powers should come into force at enactment and without delay, which will require the development of a regulatory framework by that time;
  - 9.6 confirm that these providers (including Oranga Tamariki) will also have a limited authority to use physical force (in the form of restraints or holds) to prevent the young person from absconding and from harming themselves or harming another person and that these powers should also come into force at enactment and without delay;
  - 9.7 make absconding, when on a military-style academy order or a section 311 supervision with residence order, a criminal offence of escaping lawful custody under section 120 of the Crimes Act 1961;
  - 9.8 set out specific details on the modular approach of the military-style academy order in legislation, including that:
    - 9.8.1 the military-style academy programme will be delivered in a youth justice residential setting with the possibility of aspects of the

programme also being delivered by other Government agencies, Crown entities or accredited providers;

9.8.2 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 residential setting, including when they are on overnight stays or other activities outside of the residential setting;

9.8.3 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 military-style academy programme;

9.9 clarify that 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.

10 Additional minor and non-controversial decisions were agreed in consultation with the Ministers of Justice, Police and Corrections.

### **Further policy changes requiring Cabinet approval**

11 I seek Cabinet's approval of the following policy changes that have arisen during the drafting of the Bill that are beyond the scope of my Power to Act:

11.1 the duration of the military-style academy order must be a minimum of three months and up to 12 months, and the programme is to 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 accredited providers, followed by a supervision order that 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);

11.2 where a young person declared a YSO is sentenced to a supervision with residence order or a supervision with activity 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).

12 Further information regarding these decisions is set out at **Appendix One**.

### **Risks and opportunities**

13 Cabinet agreed to give Oranga Tamariki and third-party providers powers to use force and detain in order to deliver elements of the military-style academy order. These proposed powers will be held by individuals and non-government organisations. In 9(2)(h)

9(2)(h)

- 14 These powers are likely to attract public interest particularly in light of the Royal Commission of Inquiry into Abuse in State Care and Faith-based Institutions report, where it was reported that such powers were misused.<sup>1</sup> Third-party providers who are authorised to use force will also need to be assessed and approved. This and other safeguards and controls will be outlined within regulations to ensure these powers are used safely and reasonably within the circumstances. Officials will undertake targeted consultation to ensure that any regulations are fit for purpose.
- 15 Cabinet previously agreed that a young person declared to be a YSO should receive intensive case management, rehabilitative support, whānau engagement and an enhanced transition response [CAB-24-MIN-0208 refers]. Due to the pace that the Bill has been developed, the primary legislation does not set out these duties. These supports would require the provision of tailored services by the children’s agencies. Oranga Tamariki has not engaged with other children’s agencies on duties that could be placed on children’s agencies under this Bill or under the Children’s Act 2014, but the need for such services was a common theme of departmental feedback.
- 16 These proposals may also attract public interest as a result of the Royal Commission of Inquiry report, where neglect was experienced. Further regulatory guidance to children’s agencies will be considered as part of the development of secondary legislation. Officials will undertake targeted consultation to ensure that any regulations are fit for purpose and aligned with the higher duty of care to meet the needs of all children in the custody of the State.

### Impact analysis

- 17 A Regulatory Impact Statement (RIS) was submitted to Cabinet in June 2024 [CAB-24-MIN-0208 refers].

### Compliance

- 18 The Bill complies with the disclosure statement requirements (a disclosure statement has been prepared and is attached to this paper in **Appendix Two**).

#### *The principles of the Treaty of Waitangi*

- 19 The purpose of the Act is to promote the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups by, amongst other things, “providing a practical commitment to the principles of the Treaty of Waitangi in the way described in this Act”. 65 percent of young people with serious and persistent offending behaviour are Māori and nearly all young people in the military-style academy pilot are Māori. There has not been time for consultation with rangatahi Māori or other groups to date on the Bill. However, there will be the opportunity for all iwi to submit on the Bill during the Select Committee. The overall YSO regime is

<sup>1</sup> Abuse in Care – Royal Commission of Inquiry (2024). *Whanaketia – Through pain and trauma, from darkness to light*.

aimed at reducing reoffending, and this – along with connecting the young person with their culture and whakapapa – will ultimately benefit rangatahi Māori.

*Comment provided by the Privacy Commissioner*

- 20 “Proposed new powers in relation to Military-Style Academies will involve the collection and use of personal information about the young people involved, as well as intrusions on their bodily privacy. To support the intended outcomes, it will be important that both the legislative settings and the implementation of the programme are developed in such a manner that they properly respect the privacy rights and appropriately protect the personal information of these young people. As the Privacy Commissioner it is my view that ensuring staff and contractors are trained in privacy requirements, and that systems support robust information governance, are important to uphold privacy in the implementation of this program.”

*Legislative Design and Advisory Committee comment*

- 21 Initial advice was provided by the Legislative Design and Advisory Committee (LDAC) on aspects of legislative design relating to the Bill. LDAC has identified issues related to the Legislation Guidelines (2021) which may not be met by the Bill that largely focus on the lack of public consultation, the design process for regulations, and compliance with the New Zealand Bill of Rights Act 1990 (NZBORA), the Treaty of Waitangi, and New Zealand’s international obligations. However, the LDAC sub-committee has not reviewed the Bill yet. There will be further opportunities to engage with LDAC on aspects of legislative design as the Bill continues to develop, including for LDAC to provide a submission on the Bill at the Select Committee.

*New Zealand Bill of Rights Act 1990*

- 22 The Attorney-General has completed an assessment for consistency with NZBORA. The YSO regime has been designed to ensure that any limitation on rights are the least intrusive possible to support the safety of the young person and to achieve the public safety objectives of the policy. I am satisfied that this Bill is necessary to reduce youth offending.

*Human rights - population implications*

- 23 New Zealand has other domestic and international obligations in relation to the human rights of children and young people, some of which are embedded in the Act, including the Convention on the Rights of the Child (UNCROC) (defined as anyone under 18 years old). The Act also refers to the Convention on the Rights of Persons with Disabilities (CRPD). New Zealand is a state party to all of the core human rights treaties. The Act and these Conventions generally require consultation with impacted groups on matters that affect them. Due to the timeframe, this has not been possible.
- 24 The Bill may not be consistent with our obligations under UNCROC, including the lack of consultation with young people, the removal of young people from their families, and the use of force on, and detention of, young people without obligations imposed on those holding these powers, which may give rise to abuse. New Zealand does not meet all international standards for the special protections of young people in

the youth justice system, and this may lead to an increase in age-mixing in police cells contrary to UNCROC.<sup>2</sup> The Optional Protocol to UNCROC on the Communications Procedure came into effect for New Zealand in December 2022. Claimants can now complain directly to the United Nations if they feel their rights under UNCROC are not being upheld.

- 25 The Bill may not be consistent with obligations under CRPD. Up to 80 percent of young people of this cohort may have unmet multilayered disability and communication needs, including mental health conditions, which require accommodations to prevent breaches of their rights.<sup>3</sup> Many disabilities are not identified. Unmet disability needs may lead to higher engagement with the youth justice system. The Royal Commission of Inquiry into Abuse in State Care and Faith-based Institutions report identified that there are barriers to access to justice for young disabled people. Disability is a prohibited ground for discrimination under section 21(1)(h) of the Human Rights Act 1993.
- 26 International and New Zealand-based research indicates that military-style training may not be an effective intervention for disabled young people. Neurodivergent young people may experience mental distress and not succeed if the design is not universal, consistent with our obligations under the CRPD. Appropriate initial and ongoing health and wellbeing support will be critical in the design of the military-style academy to identify supports needed.<sup>4,5,6</sup> Equally, if young disabled people are not admitted to the military-style academy, disabled young people could also experience less access to certain supports and services that may be beneficial for them and only available to those on this order.
- 27 Similarly, it is a human rights norm that female young offenders are accorded specific protection. Up to 20 percent of serious and persistent young offenders are female in certain regions. The military-style academy pilot only accepted males due to perceived risk to female offenders arising from gender mixing. However, lower numbers of female offenders means that, in practice, the programme may disproportionately impact young men and any beneficial additional supports and services may only be available to young men. Gender is also a prohibited ground for discrimination under section 21(1)(a) of the Human Rights Act 1993.<sup>7</sup> UN rules specify that females who offend should receive equal and fair treatment, assistance and training.<sup>8</sup>

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<sup>2</sup> United Nations Committee on the Rights of the Child (2023) Concluding observations on the sixth periodic report of New Zealand CRC/C/NZL/CO/6

<sup>3</sup> 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'*.

<sup>4</sup> Riley, E., Clarren, S., Weinberg, J., & Jonsson, E. (2011). *Fetal Alcohol Spectrum Disorder management and policy perspectives of FASD*.


<sup>5</sup> Lynch, N. (2016). *Neurodisability in the youth justice system in New Zealand: how vulnerability intersects with justice*. Victoria University of Wellington & Dyslexia Foundation of New Zealand (DFNZ). *Neurodisabilities Forum: Wellington, New Zealand*.

<sup>6</sup> Miller, A. A., Therrien, W. J., & Romig, J. E. (2019). *Reducing recidivism: transition and re-entry practices for detained and adjudicated youth with disabilities*.

<sup>7</sup> Section 21(1)(a), the Human Rights Act 1993: For the purposes of this Act, the prohibited grounds of discrimination are (a) sex, which includes pregnancy and childbirth.

<sup>8</sup> Rule 26.4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice



- 28 Officials will conduct targeted consultation to ensure the detailed design of the secondary legislation reflects suitable accommodations to meet the needs of young persons including those with disabilities, young women and other groups. 9(2)(f)(iv)  
9(2)(f)(iv)
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### Consultation

- 29 This paper was prepared by Oranga Tamariki. The following agencies have been consulted:
- 29.1 Crown Law Office, Crown Response Unit for the Abuse in Care Inquiry, Department of Corrections, Department of Internal Affairs, Health New Zealand – Te Whatu Ora, Ministry of Business, Innovation and Employment, Ministry of Defence, Ministry of Disabled People – Whaikaha, Ministry of Education, Ministry for Ethnic Communities, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Regulation, Ministry of Social Development, Ministry of Women, New Zealand Police, Office of the Privacy Commissioner, Public Service Commission, Social Investment Agency, Te Arawhiti, Te Puna Aonui, Te Puni Kōkiri, and the Treasury New Zealand. The Department of the Prime Minister and Cabinet was also informed.
- 30 Officials have and will continue to formally engage with the Principal Youth Court Judge on the operational aspects of this legislation to ensure the Bill is workable and able to be used as intended.

### Binding on the Crown

- 31 The Bill amends the Oranga Tamariki Act 1989, which is binding on the Crown. It also makes consequential amendments to other legislation.
- 32 These amendments are to the Social Security Act 2018, the Criminal Investigations (Bodily Samples) Act 1995, the Children’s Act 2014, the Coroner’s Act 2006, the Policing Act 2008, and the Victims’ Rights Act 2002.
- 33 The Bill enables regulations to be made in respect of operating military-style academy programmes and the use of force.
- 34 Consequential amendments will also be needed under existing provisions in the Oranga Tamariki Act 1989 and amendments to the Oranga Tamariki (Residential Care) Regulations 1996, the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018, and the Oranga Tamariki (Forms) Regulations 1989, and the Oversight of the Oranga Tamariki System Act 2022.

**Creating new agencies or amending law relating to existing agencies**

35 Not applicable.

**Allocation of decision-making powers**

36 There is no new allocation of decision-making powers between the executive, the courts and tribunals.

**Associated regulations**

37 The Bill 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:

37.1 assessing the safety and suitability of and approving potential military-style academy programme providers, their employees and contractors;

37.2 the implementation, operation, and monitoring of military-style academy programmes and providers;

37.3 the safeguards around the use of force;

37.4 actions that must be taken to ensure a young person declared to be a YSO who is under a supervision order that is made in conjunction with a military-style academy order, a supervision with residence order or a supervision with activity order receives the appropriate standard of care.

38 The Bill will require the making of these new regulations and potential amendments to existing regulations to support the enactment of the Bill, including to ensure certainty about any specific variations to the Oranga Tamariki (Residential Care) Regulations 1996 and Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 that may apply in the case of military-style academy programmes.

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39 As these regulations will be required to bring the Bill into operation, it is intended they will be completed ahead of enacting the Bill. Significant work will be required to draft the regulations as they rely on detailed design work to be completed on operational requirements for the military-style academy programmes.

**Other instruments**

40 The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

**Definition of Minister/department**

41 The Bill defines the responsibility for management of electronic monitoring. The Minister for Children may nominate the Commissioner of Police, and/or one or more Chief Executives of a public service agency to manage electronic monitoring conditions.

- 42 The Bill provides a power to prescribe that a government department or Crown entity is a qualifying provider of the military-style academy programme.

### **Commencement of legislation**

- 43 The expectation is that the Bill, or parts of it, will come into force on the day after the date of Royal Assent.

### **Parliamentary stages**

- 44 I intend for the Bill to be introduced by December 2024 and referred to the Social Services and Community Select Committee for consideration following its first reading.

### **Proactive Release**

- 45 I intend to proactively release this paper, and any other briefings and papers provided to progress policy decisions that have not been released, subject to any necessary redactions under the Official Information Act 1982, when the Bill is introduced.

### **Recommendations**

- 1 I recommend that the Cabinet Legislation Committee:

#### *Proposal*

- 2 **note** that the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill) will introduce a package of proposals to strengthen the Government's response to serious and persistent youth offending, including the establishment of a Young Serious Offender (YSO) declaration and a military-style academy order;
- 3 **note** that officials will ensure safeguards are included in the regulations ahead of the Bill coming into force;

#### *Policy items requiring Cabinet approval*

- 4 **agree** that the duration of the military-style academy order must be a minimum of three months and up to 12 months, and the programme is to 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 accredited providers, followed by a supervision order that 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);
- 5 **agree** that where a young person declared a YSO is sentenced to a supervision with residence order or a supervision with activity 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);

# IN - C O N F I D E N C E

## *Parliamentary stages*

- 6 **note** that the Bill holds a category five priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024)<sup>9</sup>;
- 7 **note** that the Bill will require consequential amendments to the Social Security Act 2018, the Criminal Investigations (Bodily Samples) Act 1995, the Children's Act 2014, the Coroner's Act 2006, the Policing Act 2008, the Victims' Rights Act 2002, the Oranga Tamariki (Residential Care) Regulations 1996, the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018, the Oranga Tamariki (Forms) Regulations 1989 and the Oversight of the Oranga Tamariki System Act 2022;
- 8 **approve** the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 9 **note** that the Parliamentary Counsel Office has indicated that:
  - 9.1 it may substitute the Bill between the Legislation Committee meeting and the Cabinet meeting in order to make any necessary drafting changes; and
  - 9.2 it will continue to make technical changes to the Bill before it is introduced.
- 10 **agree** that the Bill be introduced by December 2024;
- 11 **agree** that the Government propose that the Bill be:
  - 11.1 referred to the Social Services and Community Select Committee for consideration; and
  - 11.2 enacted by August 2025.

Authorised for lodgement

Hon Karen Chhour

Minister for Children

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<sup>9</sup> To be confirmed

# Departmental Disclosure Statement

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## 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.

Date finalised: 15/11/2024

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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.

## IN-CONFIDENCE

### Strengthened sentencing considerations-

- the Youth Court must also now consider<sup>1</sup>
- 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.

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<sup>1</sup> In addition to the factors already set out in the Act.



## IN-CONFIDENCE

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

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

### 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>YES</b>
<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"> <li>• <a href="https://www.orangatamariki.govt.nz/youth-justice/military-style-academies/">https://www.orangatamariki.govt.nz/youth-justice/military-style-academies/</a></li> <li>• <a href="https://www.treasury.govt.nz/publications/risa/annex-regulatory-impact-statement-young-serious-offender-declaration-and-military-style-academies">https://www.treasury.govt.nz/publications/risa/annex-regulatory-impact-statement-young-serious-offender-declaration-and-military-style-academies</a></li> </ul> <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>	

<b>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?</b>	<b>YES</b>
<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>	

<b>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?</b>	<b>YES</b>
Additional Ministerial decisions have been taken after the Regulatory Impact Statement was complete. They resulted in policy changes that are set out in <b>Appendix One</b> .	

**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>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Analysis of the expected benefits and costs for the policy is available in the Regulatory Impact Statement.	

<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>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?**

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**

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:**

**(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)?**

**NO**

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.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<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"> <li>• 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;</li> <li>• 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);</li> <li>• 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.</li> </ul>	

### 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>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>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<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**

<p><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></p>	<p><b>YES</b></p>
<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"> <li>• 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</li> <li>• the impact on children’s rights including the risk of separating young people from their families</li> <li>• implications for population groups, including young disabled people and young women</li> <li>• the need for safeguards in relation to additional powers and obligations on providers in primary legislation to prevent abuse</li> <li>• risks related to Crown obligations under the Treaty of Waitangi, and</li> <li>• the Royal Commission of Inquiry into State Abuse and Faith-Based Institution findings.</li> </ul> <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**

<p><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></p>	<p><b>YES</b></p>
<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"> <li>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 included</li> <li>Police 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)</li> <li>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)</li> <li>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).</li> </ul> <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**

<p><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></p>	<p><b>NO</b></p>
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<p><b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b></p>	<p><b>YES</b></p>
<p>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.</p>	

**Any other unusual provisions or features**

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



**Legislative Statement**  
**Oranga Tamariki (Responding to Serious Youth Offending) Amendment**  
**Bill**

**First Reading**  
**November 2024**

**Presented to the House of Representatives in accordance with Standing**  
**Order 272**

**Legislative Statement for the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill**

- 1 This legislative statement supports the first reading of the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill).

**Overview of the Bill**

- 2 The Bill introduces proposals to strengthen the Government’s response to serious and persistent youth offending, including the establishment of a young serious offender (YSO) declaration and a military-style academy order. The Bill amends the Oranga Tamariki Act 1989 (the Act) and makes consequential amendments to a number of other Acts.
- 3 The Bill supports the Government’s overarching priority to restore law and order and supports meeting the Government target of reducing the number of children and young people with serious and persistent offending behaviour by 15 per cent by July 2029 (note that children aged 10 to 13 years old are outside the scope of the Bill).
- 4 The Bill focuses on the small number of young people (aged 14 to 17 years old) who commit the majority of offences, and who need more intensive support and greater accountability. The Bill will strengthen system settings to hold young people who offend to account, while also supporting them to address the issues contributing to their offending.
- 5 The purpose of the Bill is to create a faster, stronger and targeted response to serious and persistent offending by young people, where previous interventions have been unsuccessful in reducing re-offending and there is a high risk that offending will continue or escalate without increased and strengthened intervention.

**Main policy proposals**

***YSO declaration***

- 6 The Bill amends the Act by introducing the YSO declaration to the youth justice system. The YSO declaration can be imposed by the Youth Court following an application made by Police.
- 7 The YSO declaration “unlocks” new powers for the Youth Court, including the ability to make a military-style academy order at sentencing in relation to young people aged 15 to 17 years old at the time of offending. Further, Police will have additional powers to intervene more swiftly, including where the young person with a YSO declaration breaches the conditions of an order or if they have breached a bail condition. There will be the option for more intensive monitoring of the young person with a YSO declaration who are completing their orders.
- 8 Stronger and swifter powers available to the Youth Court include requiring that where a military-style academy order is suspended due to absconding or non-compliance, the young person should not be released without conditions, unless satisfied that exceptional circumstances apply.

***Military-style academy order***

- 9 The Bill creates the military-style academy order, a new sentencing response available to the Youth Court for eligible young people who are declared to be a young serious offender. The military-style academy order will now be the most restrictive Youth Court sentence available (the alternative being the existing supervision with residence order).
- 10 An eligible young person with a YSO declaration who is subject to a military-style academy order will be placed in the custody of the chief executive of Oranga Tamariki for three to twelve months. Over that period the young person must live in an Oranga Tamariki residence and undertake a military-style academy programme. They may also be required to wear a uniform or standard-issue clothing.
- 11 The military-style academy programme will include rehabilitative, therapeutic and cultural components required for each young person. It may also include overnight and multi-night stays outside the residence, such as at noho marae or camps.
- 12 Where any part of the military-style academy programme is delivered by qualifying providers outside of a youth justice residence, then approved workers of those providers will have powers of detention and restricted use of force powers to prevent absconding and harm.

***Use of electronic monitoring***

- 13 The Bill creates an ability to require a young person with a YSO declaration who has been sentenced to a supervision with activity order, to submit to electronic monitoring for up to twelve months, to monitor their compliance with any curfew condition.
- 14 The Bill provides that the Minister for Children may nominate the Commissioner of Police, and/or one or more chief executives of a public service agency to be responsible for implementing and managing electronic monitoring conditions.

***Chief executive's authority to detain***

- 15 The Bill also provides an express power for the chief executive of Oranga Tamariki to detain a young person where the Court places a young person in the custody of the chief executive on a supervision with residence order while they are subject to the residence component of the order. This will apply to all young people who receive a supervision with residence order, including some who will be declared a YSO.

***Creation of a new offence of escaping lawful custody***

- 16 The Bill provides that absconding while detained in custody under a supervision with residence order, or under a military-style academy order, can result in a criminal charge of escaping from lawful custody under section 120 of the Crimes Act 1961.

***Regulation making powers to provide for implementation, operation and monitoring***

- 17 The Bill amends the Act to provide for the making of regulations that will be needed to support the implementation, operation and monitoring of the YSO declaration, and

the military-style academy order. In particular, the regulations will provide detail as to the approval process for any providers that may deliver military-style academy programme modules, including those outside of a youth justice residential setting. Regulations will contain safeguards around detention and use of force powers.

### **Development of the Bill**

- 18 The Legislation and Design Advisory Committee were consulted during initial drafting stages of the Bill, and officials met with members of the Youth Court, including the Principal Youth Court Judge, to discuss workability and implementation of the Bill.

### **Procedural matters**

- 19 I intend to nominate the Social Services and Community Select Committee to consider the Bill. I expect there to be wide engagement through the Select Committee process, which will run for the standard six month period.

### **Further information**

- 20 Key documents:

Bill on the Legislation website:

[Oranga Tamariki \(Responding to Serious Youth Offending\) Amendment Bill 99-1 \(2024\), Government Bill – New Zealand Legislation](#)

Regulatory Impact Statement:

[Annex to Regulatory Impact Statement: Young serious offender declaration and military-style academies | The Treasury New Zealand](#)

Disclosure Statement:

[NZ Legislation Disclosures](#)

Proactively released Cabinet papers:

[Cabinet-paper-Young-Serious-Offender-Declaration-and-Military-Style-Academies-June-2024.pdf](#)

## Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill: First draft LEG Cabinet paper for Ministerial Consultation

<b>To</b> Hon Karen Chhour, Minister for Children			
<b>Date</b>	8 October 2024	<b>Deadline</b>	14 October 2024
<b>Briefing number</b>	B-0318	<b>Priority</b>	High
<b>Key contact</b>	Philip Grady, Deputy Chief Executive, System Leadership	<b>Contact number</b>	9(2)(a) [REDACTED]
<b>Security</b>	In-confidence		

### Purpose

This briefing provides key information on the draft Legislation Cabinet Committee (LEG) paper that seeks to introduce a Bill to the House: Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill.

### Executive Summary

As agreed by Cabinet on 10 June 2024 [CAB-24-MIN-0208 refers], we have prepared a draft Cabinet Legislation paper seeking your approval to introduce the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill) to the House.

Departmental consultation on the LEG Cabinet paper and Bill took place between 25 September 2024 and 1 October 2024. Key points raised are the need for stronger safeguards in relation to proposed additional powers, implications for population groups, including young disabled people, risks related to Crown obligations under the Treaty of Waitangi, impact on Human Rights, and the findings and recommendations of the Royal Commission of Inquiry into historic abuse in care in State and Faith-based Institutions.

The Legislative Design Committee (LDAC) has provided initial advice where they have identified issues related to the Legislation Guidelines (2021) that may not be met by the Bill. However, the LDAC has not reviewed the Bill yet.

Crown Law will start vetting the Bill to assess compliance with New Zealand Bill of Rights Act 1990 on 14 October 2024. Once Crown Law advice is received, the LEG Cabinet paper will be updated accordingly.

Following your review of the draft LEG Cabinet paper and the Bill, and consideration by Ministers, the LEG Cabinet paper should be lodged with the Cabinet Office by 7 November 2024 at 10am in order to be considered by the Legislation Cabinet Committee on 14 November 2024.

### Recommendations

It is recommended that you:

**Note** the attached draft LEG Cabinet paper seeking Cabinet approval to introduce the Bill, and the latest version of the Bill.

**Agree** to forward the attached draft LEG Cabinet paper and Bill to the Ministers of Justice, Police and Corrections.

YES  NO

IN-CONFIDENCE

Agree to provide feedback by <b>10 October 2024</b> on the LEG Cabinet paper in order to meet Ministers' expectations of considering the LEG Cabinet paper and the Bill at Cabinet Legislation Committee on <b>14 November 2024</b> and Cabinet on <b>18 November 2024</b>	<input checked="" type="radio"/> YES / <input type="radio"/> NO
Note that officials will provide your office with a final version of the LEG Cabinet paper and Bill on <b>11 October 2024</b> so that Ministerial consultation can take place from <b>14 October 2024</b>	<input checked="" type="checkbox"/>
Agree that your office will conduct Ministerial consultation from <b>14 October 2024</b> to <b>22 October 2024</b>	<input checked="" type="radio"/> YES / <input type="radio"/> NO
Agree to provide all Ministerial feedback for incorporation into the LEG paper to officials by <b>23 October 2024</b>	<input checked="" type="radio"/> YES / <input type="radio"/> NO
Note that the final LEG Cabinet paper and Bill will need to be lodged with the Cabinet Office by <b>7 November at 10am</b> .	<input checked="" type="checkbox"/>
Note that officials will provide you with an a de-memoire to support you at the Legislation Committee on <b>14 November 2024</b>	<input checked="" type="checkbox"/>
Note that the Departmental Disclosure Statement will be submitted close to introduction and published at the same time as the Bill on the Parliamentary legislation website	<input checked="" type="checkbox"/>
Agree that when the Bill is introduced (in the week ending 22 November) that the LEG Cabinet Paper and related Cabinet papers are proactively released at that time (with necessary redactions)	<input checked="" type="radio"/> YES / <input type="radio"/> NO
Agree to allow the <b>standard six months</b> for Select Committee consideration, given the complexity of the Bill and the anticipated high public interest:	<input checked="" type="radio"/> YES / <input type="radio"/> NO

<b>Sign-off</b> Oranga Tamaki	<b>Sign-off</b> Minister for Children
	
Philip Grady Deputy Chief Executive, System Leadership Date signed: 4/10/2024	Hon. Karen Chhour Minister for Children Date signed: 19/10/2024

**Minister comments**

**Satisfaction**  
Please select your level of satisfaction with this briefing

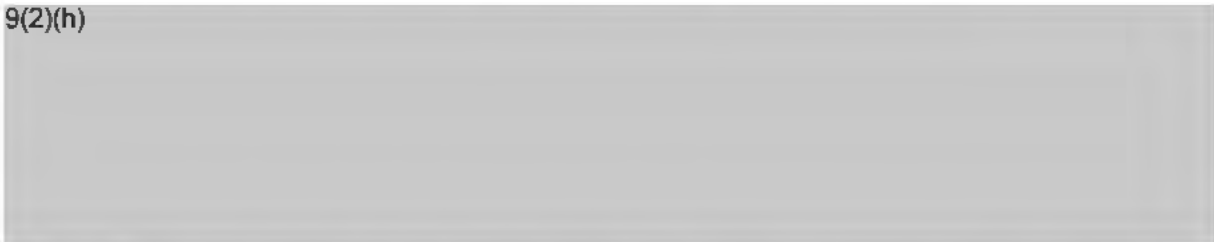
Outstanding
  Good
  Acceptable
  Poor
  Unacceptable

## **Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill: First draft LEG Paper for Ministerial Consultation**

### **Background**

- 1 On 10 June 2024, Cabinet agreed [CAB-24-MIN-0208 refers] to amend the Oranga Tamariki Act 1989 to establish a Young Serious Offender (YSO) declaration and a military-style academy order. Cabinet invited the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft a Bill.
- 2 The next step is for Cabinet to consider the Bill and agree that it is introduced into the House. The Responding to Serious Youth Offending) Amendment Bill (the Bill) is attached (**Appendix One**). The draft LEG Cabinet paper (**Appendix Two**) is attached for your approval.
- 3 To consider the LEG Cabinet paper and Bill at Cabinet Legislation Committee on 14 November 2024, your feedback is required by 10 October 2024.

### **Compliance of Bill with the New Zealand Bill of Rights Act 1990**

- 4 The Bill will be subject to the New Zealand Bill of Rights Act 1990 (NZBORA) vetting at the same time as Ministerial consultation ahead of Legislation Committee.
- 5 9(2)(h)  

- 6 The LEG Cabinet paper will be updated to include the final assessment from Crown Law on the consistency of the Bill with NZBORA prior to submission to Legislation Committee.

### **Departmental consultation**

- 7 We received feedback on the LEG Cabinet paper and Bill from the Crown Law Office, Crown Response Unit for the Abuse in Care Inquiry, Department of Corrections, Department of Internal Affairs, Health New Zealand – Te Whatu Ora, Ministry of Disabled People – Whaikaha, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Regulation, Ministry of Social Development, New Zealand Police, Office of the Privacy Commissioner, Te Arawhiti, Te Puna Aonui, and Te Puni Kōkiri.
- 8 Agencies raised **the timing of the Government's apology to survivors of abuse in care with the introduction of the Bill** and commented that the YSO declaration was inconsistent with the judicial initiatives recommended by the Royal Commission of Inquiry into Abuse in State Care and Faith-based Institutions report (the Royal Commission). The military-academy order would be associated with the historical



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misjustice that occurred at Te Whakapakari and the new use of force and detention powers for providers.

- 9 There were associated concerns about the need for **safeguards for the use of force and detention powers** including the lack of obligations imposed on providers and staff in primary legislation. This included the need to ensure regulations are in place to train staff and for accountability, control, and transparency that will be outlined in the regulations.
- 10 Given the complexity of this Bill and the anticipated high public interest, agencies suggested the Selection Committee has the standard six months for its consideration.
- 11 We made the following specific changes to the LEG Cabinet paper:
  - Reference to the findings of **the Royal Commission**.
  - A change from “humanitarian grounds” for the review of a YSO declaration, to a **two-tier test on compassionate grounds**. The proposed changes still meet the policy intent of ensuring cancellation of the YSO declaration is the last consideration of Judges.
  - Further strengthening of references to children’s rights and consultation with impacted groups. Departments noted that young people on a military-style academy order could be removed from parents or caregivers for up to a year which is unlikely to be consistent with United Nations Convention on the Rights of the Child.
  - Further strengthening of references to supporting disabled young people to participate on an equal basis with others in the military-style academy programme.
  - The process for developing the Bill was raised, including the lack of consultation with those impacted and perceived due diligence.

**A gap in cross-agency wrap-around response was identified**

- 12 Agencies have asked for the Bill to specify **support for young people declared to be a YSO in the Bill**. Cabinet previously agreed [CAB-24-MIN-0208 refers]:
  - *Rec 25 – that where a young person is declared to be a YSO, they will receive intensive case management, rehabilitative support and whānau engagement*
  - *Rec 26 – that where a young person declared to be a YSO, they will receive an enhanced transition response.*

13 9(2)(f)(iv)

14 9(2)(f)(iv)

9(2)(f)(iv)

**Other consultation**

- 15 We have consulted with the Principal Judge of the Youth Court and the Youth Court bench in Wellington and Auckland, as previously reported in the Ministerial Weekly Report.
- 16 We have received initial advice from the Legislative Design and Advisory Committee (LDAC) on aspects of legislative design related to the Bill, as noted in the LEG Cabinet paper. There will be further opportunities to engage with LDAC on aspects of the Bill, including for LDAC to provide a submission on the Bill at the Select Committee, if they decide to do so.

**Next Steps**

- 17 You are scheduled to commence Ministerial consultation on 14 October 2024. We will provide your office with a final draft LEG Cabinet paper for Ministerial consultation on 11 October 2024.
- 18 The minimum timeframe for Ministerial consultation is five working days. We propose seven days of Ministerial consultation, between 14 October 2024 to 22 October 2024, to ensure the LEG Cabinet paper can be lodged in time.
- 19 Next steps are set out below:

Date	Step
10 October 2024	Your feedback is required on the Bill and draft LEG Cabinet paper
14-22 October 2024	Ministerial consultation on the Bill and draft LEG Cabinet paper
14 November 2024	Bill considered by Cabinet Legislation Committee
18 November 2024	Cabinet decision on Bill
18 November 2024	Bill introduced into the House
21 November 2024	Bill available for first reading

<sup>1</sup> Children’s Agencies are defined as Oranga Tamariki – the Ministry for Children, the Ministry for Social Development, the Ministry of Health, the Ministry of Education, New Zealand Police and the Ministry of Justice.

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- 20 Once the Bill has passed its first reading, it will be referred to a Select Committee for consideration.
- 21 Further information on the Cabinet paper, lodgement process and the process to introduce the Bill into the House can be provided, if required.
- 22 Once the Bill is introduced, officials will provide materials to support you through the subsequent House stages. Officials can also draft talking points to assist you with your discussion with the Cabinet Legislation Committee.

### **Appendices**

- 23 All appendices referenced in this paper are outlined below:
  - Appendix One – Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill.
  - Appendix Two – Draft LEG Cabinet Paper.

## Approval to lodge Cabinet paper for Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill

To Hon Karen Chhour, Minister for Children			
Date	4 November 2024	Deadline	6 November 2024
Briefing number	B-0358	Priority	High
Key contact	Philip Grady, Deputy Chief Executive, System Leadership	Contact number	9(2)(a) [REDACTED]
Security	In-confidence		

### Purpose

This briefing seeks your agreement to lodge with Cabinet Office the attached paper entitled *Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill: Approval for Introduction* for consideration by the Cabinet Legislation Committee on 14 November 2024.

### Executive Summary

The attached paper seeks Cabinet approval to introduce the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill) to the House of Representatives (House). Parliamentary Counsel Office will submit the Bill for LEG consideration.

A draft of the Cabinet paper went through Ministerial consultation from 15 – 25 October 2024. Amendments have been made in response to feedback from your Office and the Department of the Prime Minister and Cabinet (DPMC) to remove repetition in both the sections on the Treaty of Waitangi and the New Zealand Bill of Rights Act 1990. The paper contains track changes so you can see the changes made.

Your Office must lodge the Cabinet paper with the Cabinet Office before 10am on 7 November 2024 to enable its consideration by the Cabinet Legislation Committee (LEG) on 14 November 2024 and Cabinet on 18 November 2024. Once approved by Cabinet the Bill can be introduced into the House of Representatives.

### Recommendations

It is recommended that you:

**Approve** the *Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill: Approval for Introduction* (Cabinet paper) which has been amended in response to feedback from your office and DPMC.

**Agree** to lodge the attached Cabinet paper with the Cabinet Office before 10am on 7 November 2024 to enable consideration by the Cabinet Legislation Committee on 14 November and Cabinet on 18 November.

**Note** that on 11 November we will provide you with an Aide Memoire, talking points for the LEG meeting, and an indicative timetable of next steps.

YES / NO

YES / NO

Sign-off

Sign-off

Oranga Tamariki

Minister for Children



Philip Grady  
**Deputy Chief Executive, System Leadership**  
Date signed: 1/11/2024

Hon Karen Chhour  
**Minister for Children**  
Date signed:

**Minister comments**

**Satisfaction**

Please select your level of satisfaction with this briefing

Outstanding

Good

Acceptable

Poor

Unacceptable

## **Approval to lodge Cabinet paper for Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill**

- 1 The attached updated Cabinet paper (Appendix One) incorporates feedback received from your Office and DPMC during Ministerial consultation that occurred between 15 and 25 October 2024.

### **Changes made to the Cabinet paper**

- 2 Only DPMC provided feedback during Ministerial consultation. DPMC suggested removing repeating information in the Treaty of Waitangi section and in the New Zealand Bill of Rights Act 1990 section. They also requested clarification on the commencement of legislation.
- 3 The Ministry of Justice (MOJ) provided feedback on the Departmental Disclosure Statement as part of the Offence and Penalty vetting process, and we have added MOJ's views on making absconding from a youth justice residence a criminal offence.
- 4 The Cabinet paper and Bill were shared with the Principal Youth Court Judge, who has not commented.

### **Other matters**

- 5 The Crown Response Unit suggested that the introduction of the Bill and accompanying announcement by the Government be considered in light of the date of the Prime Minister's apology to abuse in care survivors on 12 November 2024. It suggested that the introduction of the Bill not be too close to the day of the apology. The attached Cabinet paper recommends that the Bill be introduced by December 2024.

### **Next steps**

- 6 On 11 November 2024, we will provide you with an aide memoire and talking points to support your attendance at Cabinet Legislation Committee on 14 November 2024. We will provide you with an indicative timeline and steps for introduction, first reading, and referral to Select Committee.
- 7 PCO will submit the Bill to Cabinet Office for the LEG meeting.

### **Appendix**

- 8 Appendix One – *Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill: Approval for Introduction.*