

Hon Erica Stanford

Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions

Responding to Abuse in Care Legislation Amendment Bill

Date of issue: 21 November 2024

The following documents relating to the Responding to Abuse in Care Legislation Amendment Bill have been proactively released – as a package:

*The Cabinet Social Outcome Committee papers on policy for the Bill:*

- Initial legislative changes in response to the Abuse in Care Royal Commission of Inquiry
- SOU-24-MIN-0119, Cabinet Social Outcomes Committee Minute, 25 September 2024
- Appendix One – Technical detail of proposed changes to the Oranga Tamariki Act
- Appendix Two – Offences listed in Schedule 2 of the Children's Act that apply to the workforce restriction on core workers
- CAB-24-MIN-0380, Cabinet Minute, 27 September 2024

*The Cabinet Legislation Committee papers approving the Bill:*

- LEG-24-SUB-0223, Cabinet Legislation Committee, Summary paper
- Responding to Abuse in Care Legislation Amendment Bill: Approval for Introduction
- LEG-24-MIN-0223, Cabinet Legislation Committee Minute, 7 November 2024
- CAB-24-MIN-0431, Cabinet Minute, 11 November 2024

Other materials:

- You can find the Bill and the Disclosure Statement on the Parliamentary website: [Bills \(proposed laws\) - New Zealand Parliament](#) (Appendix A and B to the Cabinet Legislation Committee papers)
- You can find the Regulatory Impact Statement for the Oranga Tamariki Act 1989 search proposals on the Ministry for Regulation website: [Regulatory impact statements \(RISs\) - Ministry for Regulation](#)

Summary of redactions:

- Section 9(2)(j) – to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations:

- Parts of paragraph 71.1 of Cabinet paper – Initial legislative changes in response to the Abuse in Care Royal Commission of Inquiry
  - Parts of paragraph 71.2 of Cabinet paper – Initial legislative changes in response to the Abuse in Care Royal Commission of Inquiry
  - Parts of paragraph 72 of Cabinet paper – Initial legislative changes in response to the Abuse in Care Royal Commission of Inquiry
- Not relevant to the work of the Crown Response to the Abuse in Care Inquiry:
  - Other papers noted in CAB-24-MIN-0380 and CAB-24-MIN-0431.

Office of the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions

Cabinet Social Outcomes Committee

## **Initial legislative changes in response to the Abuse in Care Royal Commission of Inquiry**

### **Proposal**

- 1 This paper:
  - 1.1 seeks agreement to draft an omnibus bill to make amendments to the Oranga Tamariki Act 1989, Children's Act 2014, Crimes Act 1961, and Public Records Act 2005 with a focus on improving care safety; and
  - 1.2 is a companion to the Cabinet Paper, *Final Report of the Abuse in Care Inquiry (Whanaketia): Initial response* which sets out non-legislative proposals in response to Whanaketia.

### **Relation to government priorities**

- 2 This paper progresses the Government's response to the *Royal Commission into Abuse in State Care and Faith-based Institutions* (the Royal Commission).

### **Executive summary**

- 3 This paper is a companion paper to *Final Report of the Abuse in Care Inquiry (Whanaketia): Initial response*
- 4 On 12 November 2024, the day of the Government's formal apology for abuse in care, I propose the introduction and first reading of an omnibus bill (a bill). Survivors have repeatedly stated that for an apology to be meaningful it needs to be accompanied by commitments to action. The bill will signal the start of legislative change in response to the Royal Commission. The intention is to reflect the Government's commitment to driving change at pace; for survivors and across the care system. It will make changes to the:
  - 4.1 Oranga Tamariki Act 1989 (the Oranga Tamariki Act), with the support of the Minister for Children as the responsible minister for that act;
  - 4.2 Children's Act 2014 (the Children's Act). As the Minister of Education, I have responsibility for that act;
  - 4.3 Crimes Act 1961 (the Crimes Act), with the support of the Minister of Justice as responsible minister for that act; and
  - 4.4 the Public Records Act 2004 (the Public Records Act), with the support of the Minister of Internal Affairs who has responsibility for that act.

### *The Oranga Tamariki Act 1989 search requirements and secure care*

- 5 To improve safety and wellbeing in residential care, the Minister for Children proposes that all people can be searched for harmful items, using body image scanners, on entry to a secure Youth Justice residence. She also proposes some changes to clarify what the definition of harmful items includes.
- 6 The Minister for Children's proposals include requirements to develop search plans with the children and young people in secure residential care who may be subject to searches. These plans will enable their preferences and experiences to be considered when searches are undertaken. The Minister also proposes that the ability to undertake strip searches is removed as it is not needed and rarely used.
- 7 A clarifying change is proposed to the maximum time a child or young person can be placed in secure care. This is to make clear that it can only be used for three consecutive days (continuously or not) before an extension must be granted by the Family Court. This is the shorter of two timeframes currently in the Oranga Tamariki Act.

### *The Children's Act 2014 workforce restrictions*

- 8 The existing workforce restriction on core workers with certain convictions, preventing them from working with children, does not capture people with equivalent overseas convictions. I propose that it should. If agreed, I note that employers will be required to determine whether the restriction applies to prospective employees. I propose to direct officials to provide further advice on several matters associated with an employer's determination and how the process will work. I may seek additional Cabinet decisions on these matters.
- 9 I also propose that the workforce restriction against becoming a core worker includes offences against children and young people under the Prostitution Reform Act 2003 (the Prostitution Reform). This will ensure that it is better aligned with the New Zealand Police (Police) Child Sex Offender Register (CSO Register).

### *The Crimes Act 1961 definition of vulnerable adult*

- 10 The Royal Commission considered the absence of disability as a specific factor in the definition of 'vulnerable adult' was a gap in the Crimes Act. It is proposed that disability is explicitly included in the definition.

### *The Records Act 2004 to improve recordkeeping practice*

- 11 To improve recordkeeping, it is proposed that time limitations for the re-audit of agencies identified as having low information management maturity are removed and there is an ability to require an action plan and time-bound correction of non-compliance.
- 12 I recommend that the bill have its introduction and first reading on the day of the apology. I am advised by officials, who have engaged with the Parliamentary Counsel Office, that timelines are tight, but achievable. The

timeline will require the completed bill to go straight to Cabinet on Monday 11 November 2024 for agreement for introduction.

- 13 I have written to other parties seeking their agreement in principle to the introduction and first reading of an omnibus bill on the day of the apology. The Labour Party and Green Party have both agreed to support in principle, as long as their nominated MPs are briefed in advance on the legislative proposals. Te Pāti Māori have not responded.

**To drive positive change in the care system at pace, this paper proposes legislative changes to be combined into an omnibus bill to go to Select Committee this year**

- 14 Reflecting the Government's commitment to driving change for survivors and across the care system at pace, I propose the introduction and first reading of an omnibus bill (bill) on the day of the public apology. The bill will signal the start of legislative change in response to the Royal Commission.

**The Minister for Children proposes changes to secure residences to improve their safety, and to clarify the timeframe for secure care**

*Background and problem to be addressed*

- 15 There are ten Oranga Tamariki secure residences that have lockable gates and secure perimeters that prevent a child or young person from absconding. These residences are for the children and young people with the most complex care needs.
- 16 One type of secure residence is used to care for young people in the Youth Justice system. Some secure Youth Justice residences are also the facilities being used for our new military-style academies. The other type of secure residence is used to care for children or young people with complex care needs and behavioural challenges who are in State custody for care and protection reasons. At any one time, fewer than 200 children or young people are in a secure residence; most of them are young people in Youth Justice residences.
- 17 Oranga Tamariki advises it has a wide-ranging work programme in place to improve safety and wellbeing in all its residences, to address the recommendations made in the *Secure Residences and Community Homes External Rapid Review (2023)* (Rapid Residence Review). This includes improving the physical spaces and places used for children and young people in care, and to improve staff capacity and capability in those residences.
- 18 The Rapid Residence Review pre-dated *Whanaketia*, but the work is considered well-aligned with the findings and recommendations of the Royal Commission. For example, work to improve:
- 18.1 the use of CCTV within residences, consistent with the Privacy Act 2020 (the Privacy Act), aligns with recommendation 75, as does work to improve standard operating procedures and processes; and

- 18.2 staffing capacity and capability through enhanced employment processes, induction processes and additional training for leaders and youth workers is consistent with recommendation 63.
- 19 As part of the improvement programme, the Minister for Children has identified the need for legislative changes to the Oranga Tamariki Act. The proposals in this paper deal with those changes, with a focus on improving the approach to the search and seizure of harmful items in secure Youth Justice residences. Harmful items are items that might put the safety of young people, their visitors, and staff and contractors at risk.
- 20 The existing definition of harmful item in the Oranga Tamariki Act gives staff discretion to decide what is harmful. This can create uncertainty about what may be brought into a residence. Additionally, only young people can be searched for these items. For a search to be conducted there must be reasonable grounds for believing they have a harmful item in their possession.
- 21 There is no statutory power to search visitors, staff or contractors entering Youth Justice residences for harmful items. In addition, the search powers in the Oranga Tamariki Act constrain the type of searches that can be used and how they can be used. There is no ability to use body imagining scanners for searches in secure Youth Justice residences.
- 22 In secure Care and Protection and Youth Justice residences, there is no requirement to take account of the child or young person's preferences and experiences when undertaking searches. Searches must be undertaken by a person of the same sex, which does not respect children or young people who identify as transgender or non-binary or who have an intersex condition. There is also the ability to undertake strip searches which are known to be traumatising.
- 23 The ability to place a child or young person in "secure care" is a power that enables them to be placed in a more secure area within a residence in certain circumstances. It can be used where, due to their behaviour, a child or young person is at risk of harming themselves or others in a residence. It enables them to be placed in a specialised "secure care" unit.
- 24 Secure care deprives a child or young person of their liberty and is only mandated where their circumstances necessitate it. After a specified amount of time, it requires the authorisation of the Family Court. There are two measures of that time in the Oranga Tamariki Act; 72 hours or three days. Each of these measures can lead to different outcomes depending on whether the hours are counted from the time a child or young person first enters secure care, or the days are counted. This creates an ambiguity that the Minister for Children would like corrected to the shortest amount of time; three days.

#### *Proposals for change*

- 25 The Minister for Children, as the minister responsible for the Oranga Tamariki Act proposes that, for secure Youth Justice residences only:

- Proactively released under commitment to open government
- 25.1 the definition of “harmful item” continues to enable staff to use their judgement about what is harmful but is amended to also include a specific list of items that can be searched for and seized (as set out in Appendix One);
  - 25.2 there is a power to make regulations that identify additional harmful items that may be searched for and seized, to enable a response to new risks where they might be identified;
  - 25.3 there is an obligation to advise all people seeking to enter a residence of what harmful items are, that they may be searched for and the consequences when found;
  - 25.4 any person – being a young person, visitor, staff or contractor – can be searched by body imaging or metal detecting scanner on entry without the need for a belief that they have a harmful item;
  - 25.5 body imaging scanners (which can ‘see through’ clothing) can be used both for searches on entry and for other searches in a secure youth justice residence;
  - 25.6 any possession that a person seeking to enter a residence wishes to bring with them into the residence, including their vehicle, can be searched, by scanner or manually;
  - 25.7 pat-down searches can be used where an initial search (including by scanner) indicates that a harmful item may be present on a person seeking entry to a residence;
  - 25.8 suitably trained dogs can be used to assist searches on entry, with the same safeguards that already apply to the use of dogs for other searches;
  - 25.9 if a person (other than a young person being placed in a residence) refuses to be searched, they can be refused entry to the residence at that time;
  - 25.10 the existing requirements for recording any searches of children and young people be extended to apply to searches of them on entry; and
  - 25.11 the existing authority to use no more than the minimum amount of force that is reasonably necessary in the circumstances to search be extended to include the searches on entry.
- 26 The Minister for Children also proposes, for both secure Care and Protection and Youth Justice residences to:
- 26.1 remove the ability to strip search a child or young person, as the power is not needed, is rarely used, and is traumatising;
  - 26.2 enable the creation, with a child or young person, of a search plan that reflects their needs, preferences and experiences;

- 26.3 repeal the requirements that a search must be carried out by staff of the same sex and cannot be carried out in view of a person who is not the same sex; and
- 26.4 clarify that the maximum time a child or young person can be placed in secure care before needing to seek an extension from the Family Court is three consecutive days (whether continuously or not).

*Benefits and risks of the proposals, and their connection to the recommendations*

- 27 There is a reasonable amount of technical detail associated with the Minister for Children's proposals that is set out in Appendix One. I have included this detail so that you can fully understand the scope of the proposals and some of the specific legislative safeguards that will sit alongside the search powers. Cabinet agreement to the detail will be important to the drafting process for the bill.
- 28 Along with specific legislative safeguards set out in Appendix One, other safeguards include Oranga Tamariki's:
  - 28.1 complaint processes which are continuously being improved (consistent with the Royal Commission's recommendation 65); and
  - 28.2 legal obligation to record the undertaking of inspections and searches, and any use of force when carrying out those searches and why.
- 29 There is also independent oversight of Oranga Tamariki's provision of care in residences. It is currently undertaken by the Office of the Ombudsman, the Independent Children's Monitor (ICM) and the Children and Young People's Commission. The Office of the Ombudsman and the ICM inspect Oranga Tamariki residences. I note that Cabinet has recently agreed to strengthen the governance of the ICM and the Children and Young People's Commission, and that legislative changes to give effect to this are anticipated to be introduced in November 2024.
- 30 The improvement programme Oranga Tamariki is implementing, including the use of the new search powers, will improve safety and wellbeing in secure residences. As a package, it is aligned with the Royal Commission's recommendations. For example, the Royal Commission heard evidence about:
  - 30.1 how searches in residences were undertaken without proper procedures and protections. The proposals associated with personal search plans are well aligned with the Royal Commission's recommendation for fit-for-need and individualised care (recommendation 78). The proposal to remove the ability to undertake strip searches also aligns with the Royal Commission's recommendations.
  - 30.2 the over-use and misuse of solitary confinement. The Royal Commission recommended that models of care do not perpetuate practices including segregation (recommendation 71). Secure care is not solitary confinement or seclusion, as a child or young person can interact with



others during the day. Clarifying the timeframe for use of secure care without judicial oversight is an important clarification.

- 31 Although the Oranga Tamariki improvement programme aligns with the Royal Commission, there may be mixed views on the proposals in this paper. The search powers may be seen as more intrusive than the status quo and some people may hold the view that the search powers may inhibit visitors to secure Youth Justice facilities. This would not align with recommendation 79 which includes that care placements should support connection to whānau and community.
- 32 Others may welcome the changes to search powers on the basis that they are designed to reduce the presence of harmful items in secure Youth Justice residences. This should increase the safety of young people and all others in those residences, including visitors, staff and contractors.
- 33 Finally, there may be some critical commentary associated with these changes given the Royal Commission recommended prioritising and accelerating work to close Oranga Tamariki residences (recommendation 70). It did, however, note that in the immediate and medium term there will still be a need for Youth Justice facilities.

### **Strengthen the workforce restriction on people seeking to work with children and young people to reduce risk and improve their safety in care**

#### *Background and problem to be addressed*

- 34 A workforce restriction in the Children's Act 2014 prevents specified organisations from engaging people convicted of specified offences as core workers unless they have an exemption. Specified organisations are state services and local authorities, and organisations and individuals funded by state services or local authorities, that provide regulated services.
- 35 Core workers are children's workers who, in the course of their work, have primary responsibility for a child or are the only children's worker present. Specified offences are offences under New Zealand law listed in Schedule 2 of the Children's Act. They are associated with serious harm, including harm to children, and are summarised at Appendix Two.
- 36 The workforce restriction in the Children's Act does not apply to people with equivalent overseas convictions for these specified offences who are seeking employment as a core worker in New Zealand. This means that employers:
  - 36.1 do not have an obligation or option to refer a person to the core worker exemption process if they are aware of their overseas conviction and wish to hire them; and
  - 36.2 may choose to hire a person although their convictions are known to them and would restrict their employment if the person received their conviction in New Zealand.

- 37 The workforce restriction for core workers is also not aligned with the Police CSO Register. Adding qualifying offences under the Prostitution Reform Act to Schedule 2 of the Children's Act would enable those offences to also trigger the workforce restriction and exemption process.

*Proposals for change*

- 38 As the Minister of Education, I have responsibility for Part 3 of the Children's Act. I propose:
- 38.1 amending the Children's Act to extend the workforce restriction, and the associated exemption process, to any prospective core worker who has an overseas conviction that is equivalent to one of the specified offences listed in Schedule 2 of the act;
  - 38.2 that my officials undertake further work, and seek further decisions from Ministers as needed, in support of the above proposal on:
    - 38.2.1 an appropriate review process (if necessary) for the prospective core worker to seek a review of a determination; and
    - 38.2.2 how the restriction might apply to existing employees who are convicted of an equivalent offence overseas;
  - 38.3 amending Schedule 2 of the Children's Act to add the following offences in the Prostitution Reform Act to the list of convictions that trigger the workforce restriction:
    - 38.3.1 Section 20 - Causing, assisting, facilitating, or encouraging a person under 18 years of age to provide commercial sexual services to any person;
    - 38.3.2 Section 21 - Receiving a payment if a person knows, or ought reasonably to know, that it is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age;
    - 38.3.3 Section 22(1) - Entering into a contract or arrangement under which a person under 18 years of age provides commercial sexual services; and
    - 38.3.4 Section 22(2) - Receiving commercial sexual services from a person under 18 years of age; and
  - 38.4 that my officials undertake further work on options for improved safety checking requirements, including to enable employers to better identify prospective core workers who have criminal convictions from overseas jurisdictions.

*Benefits and risks of the proposals, and their connection to the recommendations*

- 39 While recommending an extension to the workforce restriction, I note that my officials will need to provide me with further advice and that I may need to seek further Cabinet decisions on some additional matters to finalise and implement the proposal. I anticipate that these matters will need to be addressed during the select committee phase of the bill.
- 40 Under the proposal, an employer will have to determine if an overseas conviction is an equivalent conviction and that the workforce restriction applies. While this is expected to be rare, where they find out about a conviction, there will need to be clear guidance for employers in making this determination, and about whether and when to enter the exemption process. The best approach to this will need to be determined for employers and for Te Kāhui Kāhu which delivers the existing core worker exemption process for New Zealand convictions.
- 41 Cases where a New Zealand resident or citizen has an equivalent conviction in an overseas jurisdiction and the employer wants to seek an exemption to enable the employee to be a children's worker are also expected to be rare. For many types of convictions (for example, sexual or violent offending) I expect that an employer would make their own determination that they do not wish to seek an exemption.
- 42 However, if a decision is made to enter the exemption process, the process will require Te Kāhui Kāhu to take an additional step to review the employer's determination of equivalence. Further thought is also needed about whether and how a prospective employee might seek a review of an employer's decision or an exemption decision; and the legislative and resource implications of this.
- 43 I also note that the Children's Act imposes a suspension and termination process for those currently employed as core workers where, subsequently, they are convicted of a specified offence or such a conviction comes to light. The implications of applying this process to employees with overseas convictions will need to be worked through.
- 44 Regardless of these additional matters to be addressed for the bill, the proposal is well aligned with the Royal Commission's findings and recommendations in relation to the vetting of care givers (recommendations 58-60).
- 45 If agreed, I will also direct my officials to undertake additional work, following on from this amendment, to further improve safety. There is value in considering whether there should be a requirement on employers to obtain information about people seeking to work as core workers who have spent time overseas and may have overseas convictions, along with whether a proactive obligation on prospective employees to disclose such convictions is needed.
- 46 Immigration character requirements and vetting processes provide indirect protection against some foreign citizens with convictions becoming core workers in New Zealand. This is where they must meet character requirements

to travel to and work here. In addition, some core workers are required to produce overseas police vetts as part of their professional registration.

- 47 The indirect protection provided by immigration character requirements does not apply to New Zealand citizens. Immigration character requirements are also not applied to New Zealand permanent residents, and Australian citizens or permanent residents in the same way as other non-citizens. As such, there is a gap where these people reside in New Zealand but have spent time overseas and are not covered by professional registration that includes overseas police vetting. This is the gap my proposal is seeking to close.
- 48 Of note, offences only qualify for the CSO Register if the young person involved is under 16 years old. This means that if the Prostitution Reform Act offences were to be added to Schedule 2, they would catch a wider range of people than the CSO Register. They would include a person convicted of these offences against a person under 18 years old. I consider this well-aligned with the recommendations of the Royal Commission. There are also other offences, that involve minors, that do not result in offenders being placed on the CSO Register as they do not meet the harm threshold. These offences are not proposed for inclusion so will not engage the workforce restriction.

### **Clarifying the definition of a vulnerable adult in the Crimes Act to include disabled people will make clear our obligation to these people**

#### *Background and problem to be addressed*

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

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

- 50 The words “any other cause” in the definition can be read to include disabled people who are unable to withdraw themselves from the care or charge of their carer. However, the Royal Commission considered that the absence of disability as a specific factor in the definition of ‘vulnerable adult’ was a gap in protections for disabled people.

#### *Proposals for change*

- 51 The Minister of Justice, as the Minister responsible for the Crimes Act, proposes to include language to reflect disability as a specific factor in the definition of ‘vulnerable adult’.

### *Benefits and risks of the proposals, and their connection to the recommendations*

- 52 The proposal to amend the Crimes Act would remove any potential perception that disabled people in care arrangements do not explicitly have protection under the act. It will address recommendation 26 of the Royal Commission to, "...to specifically include disability within the definition...".
- 53 The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) creates an obligation for states to consult with and actively involve persons with disabilities in decision-making processes about issues relating to them. This has not occurred as part of preparing this package of proposals for your consideration.
- 54 In proposing to implement the Royal Commission's recommendation, I am relying on the Royal Commission's processes for hearing from survivors. The Royal Commission heard from the disability community as part of its inquiry, including concerns about describing disabled people as "vulnerable" as this is a deficit-based framing. I expect we will hear more from the community during the select committee process where they will have the opportunity to make submissions.

### **Clarifying and enhancing the role of Archives NZ to respond to non-compliance with the Public Records Act will improve the creation of and access to records**

#### *Background and problem to be addressed*

- 55 Survivors have consistently highlighted the high value they place on accessing their records. They fill important gaps in what they know about why they were in care and what happened to them while in care. The Royal Commission heard evidence of their challenges in accessing records and identified many failures in recordkeeping, including where it appears that individual records were deliberately destroyed to prevent future access to them. It made findings and recommendations on this matter in both the redress report and *Whanaketia*.
- 56 A purpose of the Public Records Act is to support good recordkeeping practice with an aim of ensuring the protection and preservation of citizen's rights and entitlements over time. Compliance with the act should address many of the findings and recommendations of the Royal Commission. However, I am advised that some of the recordkeeping issues it raised persist. This is evidenced by the low levels of compliance with the Public Records Act identified in the audits it mandates.
- 57 Audits of individual agencies are currently required to be completed no later than ten years and no sooner than five years. An agency which is identified as having low information management maturity through an audit may not be re-audited sooner than five years. This length of time between audits could lead to further degradation of recordkeeping practice, increasing the risk of rights and entitlements being breached.
- 58 In addition, there is no formal mechanism to compel an agency to undertake corrective actions that are timebound and monitored. The action plans currently

put in place to respond to audit findings and address recordkeeping failures are a matter of goodwill. Enabling Archives NZ to deliver responsive audit scheduling, alongside enhancements to the current monitoring powers of the Chief Archivist in the form of action plans with the potential to issue performance notices would enhance its ability improve recordkeeping practice.

- 59 In addition to commissioning audits, the Chief Archivist can view the system used for recordkeeping and the conditions for the storage of records and archives. Their powers of inspection could be interpreted as relating to systems where records are *held*. This may also be where they are *created*, but that is not always the case. This interpretation may limit the scope of an inspection and should be clarified.
- 60 Officials have also drawn to our attention that varying interpretations of the Public Records Act have created uncertainty over whether the Chief Archivist *must* or *may* contract out the performance of audits. They are currently contracted out. They have also noted some issues associated with the Act's offences and penalties regime that may need to be addressed to support the enhanced powers proposed in this paper. This will be progressed separately.

#### *Proposal for change*

- 61 The Minister of Internal Affairs, as the Minister responsible for the Public Records Act, proposes to:
- 61.1 remove the limitation on Archives NZ conducting audits no sooner than five years after a previous audit;
  - 61.2 enable the Chief Archivist to:
    - 61.2.1 require the preparation and carrying out of an action plan in response to problems with recordkeeping practices identified in audits;
    - 61.2.2 issue a performance notice to a recordkeeping agency to remedy an issue by a particular point in time, in response to an issue identified through an audit;
  - 61.3 enable inspections into the systems and processes involved in the *creation* of records, in addition to systems where they are *stored* and / or *maintained*;
  - 61.4 clarify the meaning of independent so that it is clear Archives NZ can conduct independent audits along with external auditors.

#### *Benefits and risks of the proposals, and their connection to the recommendations*

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

- 63 The proposals will demonstrate a commitment to responding to the Royal Commission's recordkeeping findings and recommendations in its redress report and *Whanaketia*. Improved adherence to recordkeeping legislation and standards will also support the work of government.
- 64 While these proposals make good sense for the bill in response to the Royal Commission, there has been limited consultation with recordkeeping agencies. I am advised, however, that they should not be seen as substantive matters, but rather as clarifications and enhancements to support agencies in achieving recordkeeping compliance. I have agreed with the Minister for Internal Affairs that any work she might wish to commission on the issues associated with the current penalties regime should progress separately to this paper. There may be an opportunity to engage with the select committee on this matter.

### **Treatment of proposals as an Omnibus Bill**

- 65 The Office of the Clerk has given preliminary advice that it does not see the suite of proposals for the bill as a "single broad policy". If the preliminary advice from the Office of the Clerk is confirmed, approval will be sought from the Business Committee to classify the bill as an omnibus bill. This will be on the basis that the single broad policy is to make improvements to current care settings in response to the Royal Commission.
- 66 I have written to all opposition parties in Parliament seeking their agreement in principle to supporting an omnibus bill to be introduced and have first reading on the day of the apology, Tuesday 12 November. To date the Labour Party and Green Party have confirmed their support in principle for this approach. Te Pāti Māori have not yet responded.

### **Prioritisation of the bill on the legislative agenda**

- 67 If the Business Committee confirms their support for the proposals to be treated as an omnibus bill, then I recommend it have its introduction and first reading on the day of the apology. This will demonstrate meaningful action to survivors and their supporters that the Government is prioritising the response to the final report and progressing change at pace as we are able. The bill will need an overall category 5 priority in the Government's 2024 Legislative Programme: to proceed to select committee by the end of 2024.
- 68 I am advised by officials, who have engaged with the Parliamentary Counsel Office that while timelines are tight they are achievable as changes proposed are reasonably straightforward from a drafting perspective. This timeline will require the completed bill to go straight to Cabinet on Monday 11 November for agreement for introduction.

### **Legislative implications**

- 69 The decisions from this paper will result in an omnibus bill which will amend existing legislation. The proposed bill will bind the Crown.



## **Cost-of-living implications**

70 The proposals in this paper do not have cost-of-living implications.

## **Financial implications**

### *Proposals for the Oranga Tamariki Act*

71 The Minister for Children has advised me that implementing the improvements to the safety of secure Youth Justice residences would be limited without additional funding (to purchase and operate new body imaging scanners in particular). Her officials are currently working through operational decisions on how to give effect to the new search powers, and the equipment that will best support their use. At this stage, they advise that the material costs for operationalising the proposals range from:

71.1 no capital funding (CAPEX) requirements s9(2)(j) and

71.2 s9(2)(j)

72 The low estimate advised by officials is based on a “do the minimum” scenario in which only limited new searches are introduced using largely existing equipment. The high estimate is based on a “do the maximum” scenario, which would see introduction of comprehensive new searches using the most effective equipment, including significant infrastructure upgrades. The estimated total funding needs, based on the preferred option, s9(2)(j)

### *Proposals for the Children's Act*

73 The proposal to extend the workforce restriction and core worker exemption process to include equivalent overseas convictions will have resourcing implications for Te Kāhui Kāhu, which delivers the exemption process. It will also have implications for Oranga Tamariki, which funds it. The extent of these implications is challenging to determine, as it is not clear how many employers will be made aware of a prospective employee's convictions, nor how many exemptions will be sought.

74 Oranga Tamariki has been the sole funder of the exemption process, that is used by five agencies. Te Kāhui Kāhu advises that the current funding amounts are insufficient to meet existing work volumes and complexity. They will not extend to cover an additional, and more complex exemption process. This is a matter which will need to be addressed by agencies if the workforce restriction proposal is agreed.

### *Proposals for the Crimes Act and Public Records Act*

75 The proposals in this paper in relation to the Crimes Act and Public Records Act will be delivered within relevant existing agency baselines.



## Impact analysis

### *Regulatory Impact Statement*

- 76 A Quality Assurance Panel including membership from Oranga Tamariki and the Ministry for Primary Industries reviewed Oranga Tamariki's Regulatory Impact Statement (RIS) associated with the proposals for searches. It considered that the information and analysis partially meets the quality assurance criteria.
- 77 I am advised that the Oranga Tamariki RIS was produced under time constraints, which limited the consultation undertaken, particularly with Māori. The RIS panel considered that there are limitations in the evidence available across all options, which weakens the analysis produced. They noted that there is significant uncertainty in the costings for implementing new search technology, and further implementation planning is needed.
- 78 The RIS panel advised that, given the decision is only to enable the use of search technology, rather than a decision to invest in this technology, they consider the RIS is sufficient for Ministers to rely on. Given the constraints and the nature of the decisions being made at this stage, they considered the RIS is balanced and convincing, and as complete as could be reasonably expected.
- 79 The Ministry for Regulation's Regulatory Impact Analysis team has determined that the proposed amendments to the:
- 79.1 Oranga Tamariki Act for the change to the timeframe secure care are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities;
- 79.2 Children's Act, Crimes Act and Public Records Act are all exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

### *Climate Implications of Policy Assessment*

- 80 The Climate Implications of Policy Assessment requirements do not apply.

### **Population implications**

- 81 The proposals in this paper should increase the safeguards against abuse in care. In the case of children and young people, they will begin to close the gaps in the workforce restriction against core workers who may have been convicted of offences against children overseas. They will also enable Oranga Tamariki to increase safety in secure Youth Justice residences through universal searches.
- 82 For disabled adults who are unable to withdraw themselves from the care or charge of their carer, they will make clear the duties on their carers and the ability to prosecute them where those duties are not fulfilled. Disabled people

- may have a view on the use of the word “vulnerable” to describe them in this position. We expect to hear about this in select committee.
- 83 Almost all children and young people in Oranga Tamariki residences have some form of disability. The proposals for personalised care plans may be of particular benefit to them. They will need trained staff, who understand them and their needs to assist them to put these plans in place.
- 84 Tamariki and rangatahi Māori, and Pacific young people are disproportionately represented in the care system. Any improvements in safety in the care system should have a positive impact for these children and young people. However, there is a risk that the ability to search all visitors to secure Youth Justice residences may inhibit some whānau from visiting. This could impact on rangatahi whanaungatanga – their relationships with whānau and their ability to connect with whānau, hāpori – community and te ao Māori – the Māori world.
- 85 Any impact on whanaungatanga could be seen to undermine the Crown’s obligation to actively protect te ao Māori and tangata whenua when designing legislation. However, improving safety through searches may also mean that some whānau will be more inclined to visit their rangatahi as they will feel safer. We will need to hear the voice of Māori through the select committee. The lack of engagement to date is a risk to our obligations under te Tiriti o Waitangi – the Treaty of Waitangi.
- 86 Recordkeeping failures affected many people in care including children, young people and adults. There were specific impacts for Māori and Pacific people, and for Deaf and disabled people. The impacts contributed to disconnection from whānau and hāpori, and from their unique languages, culture and means of connection with others. For Māori and Pacific people, this was acutely felt in an inability to connect to whakapapa.
- 87 Records of care are considered taonga – important artifacts to enabling tangata whenua to build knowledge of their whakapapa and connect into te ao Māori. The proposals in this paper are intended to help improve recordkeeping, which should have a positive impact for everyone in New Zealand, including these groups.

## Human rights

- 88 The implementation of the proposal to extend the workforce restriction on core workers will engage an individual’s right to privacy, as will the proposals for universal searches in Youth Justice residences. I consider that the right to privacy is appropriately balanced against the need to ensure the safety of children and young people.
- 89 In the case of the workforce restriction, the Privacy Act 2020 provides for the use and disclosure of information with the consent of the individual concerned. It also enables disclosure to lessen a serious risk or threat to the life or health of the individual or another individual. This is a high bar, but the impact of abuse and neglect is serious for the victim.

- 90 The Minister for Children's proposal for the use of scanners comes with the same privacy safeguards as those applied by the Department of Corrections, together with, the additional protection of her proposal to apply tailored search plans. This will be important to ensure the use of the search powers on children and young people takes account of their age and their needs.
- 91 The search proposals also engage rights in the Bill of Rights Act 1990 (BORA) to be free from unreasonable search and seizure. These rights are balanced against the need to ensure safety within these facilities and by the safeguards that will be in place against their misuse. The Ministry of Justice will provide advice to the Attorney-General on the bill's consistency with the BORA.
- 92 The United Nations Convention on the Rights of the Child (UNCRoC) requires decisions to be in the best interest of the child. The Minister for Children considers the proposals are consistent with that, noting the UNCROc obligation to preserve family relations and contact with family. Importantly, Oranga Tamariki advises:
- 92.1 the proposals have been supported by VOYCE Whakarongo Mai which represents care experienced children and young people;
  - 92.2 the Oranga Tamariki Youth Advisory Group were in favour of standardised searches that were not overly punitive; and
  - 92.3 are supported by evidence from overseas that showed they made young people in care in those jurisdictions feel safer.
- 93 The United Nations Declaration on the Rights of Indigenous People (UNDRIP) sets minimum standards for the survival, dignity, wellbeing and rights of indigenous people. Māori rights are engaged by these proposals due to the over-representation of tangata whenua in the care system. The proposals should support New Zealand to further comply with the UNDRIP by improving safety in the care system for tamariki, rangatahi, pakeke and whaikaha Māori.
- 94 The UNRDP provides the rights for disabled people to access the support the need, and to enjoy all human rights and freedoms. The proposals in this paper should support New Zealand to further comply with the UNDRP.
- 95 UNRDP also creates an obligation for states to consult with and actively involve persons with disabilities in decision-making processes about issues relating to them. UNCROc has a similar provision to give voice to children and young people and UNDRIP for tangata whenua. In giving effect to the recommendations of the Royal Commission I am relying on the work they did to engage with these groups. The select committee process for the bill will also be important to giving the disabled community an opportunity to have their say.

### **Use of external resources**

- 96 No external resources have been used in preparing the advice in this paper.

## Consultation

- 97 The proposals for the Oranga Tamariki Act were consulted with Ministry of Justice, Department of Corrections, Police, Ministry for Pacific Peoples, the Office of the Privacy Commissioner and Te Puni Kōkiri. The Treasury and the Department of Prime Minister and Cabinet were informed.
- 98 All the agencies involved in the Crown response were consulted on the proposals for the Children's Act and Crimes Act. There was a truncated consultation process on the proposals for the Public Records Act.
- 99 The Department of Prime Minister and Cabinet and the Treasury were informed.

## Communications

- 100 If agreed, the proposals in this paper will form part of a bill that will be introduced and have its first reading on the day of the Prime Minister's public apology. My office will work with the Prime Minister's office on how the proposals can be communicated as evidence of a commitment to meaningful action.

## Proactive release

- 101 This paper will be proactively released, with any appropriate redactions, after the Prime Minister has made the Government's apology.

## Recommendations

I recommend that the Committee:

- 1 **note** that this paper is a companion to, *Final Report of the Abuse in Care Inquiry (Whanaketia) Initial response* which sets out non-legislative proposals in response to Whanaketia;

### *The Oranga Tamariki Act 1989*

- 2 **agree** to the Minister for Children's proposals, as the minister responsible for the Oranga Tamariki Act 1989, that for Youth Justice residences only:
- 2.1 the definition of "harmful item" continues to enable staff to use their judgement about what is harmful but is amended to also include a specific list of items that can be searched for and seized;
  - 2.2 there is a power to make regulations that identify additional harmful items that may be searched for and seized, to enable a response to new risks where they might be identified;
  - 2.3 there is an obligation to advise all people seeking to enter a residence of what harmful items are, that they may be searched for and the consequences when found;

- 2.4 any person – being a young person, visitor, staff or contractor – can be searched by body imaging or metal detecting scanner on entry without the need for a belief that they have a harmful item;
- 2.5 body imaging scanners (which can ‘see through’ clothing) can be used both for searches on entry and for other searches in a secure youth justice residence;
- 2.6 any possession that a person seeking to enter a residence wishes to bring with them into the residence, including their vehicle, can be searched, by scanner or manually;
- 2.7 pat-down searches can be used where an initial search (including by scanner) indicates that a harmful item may be present on a person seeking entry to a residence;
- 2.8 suitably trained dogs can be used to assist searches on entry, with the same safeguards that already apply to the use of dogs for other searches;
- 2.9 if a person (other than a young person being placed in a residence) refuses to be searched, they can be refused entry to the residence at that time;
- 2.10 the existing requirements for recording any searches of children and young people be extended to apply to searches of them on entry; and
- 2.11 the existing authority to use no more than the minimum amount of force that is reasonably necessary in the circumstances to search be extended to include the searches on entry.
- 3 **agree** to the Minister for Children’s proposals, as the minister responsible for the Oranga Tamariki Act 1989, for both secure Care and Protection and Youth Justice residences.
- 3.1 to remove the ability to strip search a child or young person, as the power is not needed, is rarely used, and is traumatising;
- 3.2 to enable the creation, with a child or young person, of a search plan that reflects their needs, preferences and experiences;
- 3.3 to repeal the requirements that a search must be carried out by staff of the same sex and cannot be carried out in view of a person who is not the same sex; and
- 3.4 to clarify that the maximum time a child or young person can be placed in secure care before needing to seek an extension from the Family Court is three consecutive days (whether continuously or not);
- 4 **agree** the technical detail of the proposals for searches set out in Appendix One of this paper.

### *The Children's Act 2014*

- 5 **agree** to amend the Children's Act 2014 to extend the workforce restriction, and the associated exemption process, to any core worker who has an overseas conviction which is equivalent to one of the specified offences listed in Schedule 2 of that act;
- 6 **note** that my officials will undertake further work, and seek further decisions as needed, in support of the above proposal on:
  - 6.1 an appropriate review process (if necessary) for the prospective core worker to seek a review of a determination; and
  - 6.2 how the restriction might apply to existing employees who are convicted of an equivalent offence overseas;
- 7 **agree** to add the following offences in the Prostitution Reform Act 2003 to the list of convictions that trigger the workforce restriction:
  - 7.1 Section 20 - Causing, assisting, facilitating, or encouraging a person under 18 years of age to provide commercial sexual services to any person;
  - 7.2 Section 21 - Receiving a payment if a person knows, or ought reasonably to know, that it is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age;
  - 7.3 Section 22(1) - Entering into a contract or arrangement under which a person under 18 years of age provides commercial sexual services; and
  - 7.4 Section 22(2) - Receiving commercial sexual services from a person under 18 years of age;
- 8 **direct** officials undertake further work on options for improved safety checking requirements, including to enable employers to better identify prospective core workers who have criminal convictions from overseas jurisdictions;

### *The Crimes Act 1961*

- 9 **agree** to the Minister of Justice's proposal, as the Minister responsible for the Crimes Act 1961, to amend the definition of "vulnerable adult" in that Act to include language reflecting disability as a specific factor;

### *The Public Records Act 2005*

- 10 **agree** to the Minister of Internal Affairs' proposal, as the Minister responsible for the Public Records Act 2005, to:
  - 10.1 further define the meaning of independent in Section 33 so that it is clear that Archives New Zealand can conduct independent audits;

- 10.2 remove the limitation on Archives New Zealand conducting audits no sooner than five years after a previous audit in Section 33;
- 10.3 in Section 33, enable the Chief Archivist to:
- 10.3.1 require the preparation and carrying out of an action plan in response to problems with recordkeeping practices identified in audits
  - 10.3.2 issue a performance notice to a recordkeeping agency to remedy an issue by a particular point in time, in response to an issue identified through an audit; and
- 10.4 amend Section 29(2)(1) of the Act to include the systems and processes involved in the creation of records, in addition to systems where they are stored or maintained;

*Decisions to support the drafting and introduction of an omnibus bill*

- 11 **invite** the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions and as the Minister of Education, in consultation with the Ministers of Justice and Internal Affairs, and Minister for Children, to issue drafting instructions to Parliamentary Counsel Office giving effect to the policy decisions in this paper;
- 12 **authorise** the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions, in consultation with the Ministers of Justice and Internal Affairs, and the Minister of Children, to make decisions consistent with the policy in this paper, on any issues that arise during the drafting process, including commencement and transitional provisions;
- 13 **note** that the Office of the Clerk has given preliminary advice that it does not see the suite of proposals for the bill as a single broad policy;
- 14 **note** that I intend to seek approval from the Business Committee to classify the bill as an omnibus bill on the basis that the single broad policy is to make improvements to current systems in response to the Royal Commission;
- 15 **note** that I have written to all opposition parties in Parliament seeking their agreement in principle to supporting an omnibus bill to be introduced and have first reading on the day of the apology, Tuesday 12 November;
- 16 **note** that to date the Labour Party and Green Party have confirmed their support in principle for this approach;
- 17 **note** that in order for the omnibus bill to be ready for introduction and first reading on 12 November 2024, the Parliamentary Counsel Office will need to prioritise drafting these proposals;

- 18 **note** that based on timeframes set out by officials and the Parliamentary Counsel Office that the drafted Bill will need to be lodged to go straight to Cabinet for 11 November; and
- 19 **agree** to assign the omnibus bill an overall category 5 priority in the Government's 2024 Legislative Programme: to proceed to select committee by the end of 2024.

Authorised for lodgement

Hon Erica Stanford

Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions

Proactively released under commitment to open government





# Cabinet Social Outcomes Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Initial Legislative Changes in Response to the Abuse in Care Royal Commission of Inquiry

**Portfolio** Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions

On 25 September 2024, the Cabinet Social Outcomes Committee:

#### Background

- 1 **noted** that the paper under SOU-24-SUB-0119 is a companion to *Final Report of the Abuse in Care Inquiry (Whanaketia): Initial Response* [SOU-24-SUB-0118], which sets out non-legislative proposals in response to *Whanaketia: Through pain and trauma, from darkness to light* (Whanaketia), the final report of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Royal Commission);

#### The Oranga Tamariki Act 1989

- 2 **agreed** to the Minister for Children's proposals, as the Minister responsible for the Oranga Tamariki Act 1989, that for Youth Justice residences only:
  - 2.1 the definition of "harmful item" continues to enable staff to use their judgement about what is harmful, but is amended to also include a specific list of items that can be searched for and seized;
  - 2.2 there is a power to make regulations that identify additional harmful items that may be searched for and seized, to enable a response to new risks where they might be identified;
  - 2.3 there is an obligation to advise all people seeking to enter a residence of what harmful items are, that they may be searched, and the consequences when found;
  - 2.4 any person – being a young person, visitor, staff, or contractor – can be searched by body imaging or metal detecting scanner on entry without the need for a belief that they have a harmful item;
  - 2.5 body imaging scanners (which can 'see through' clothing) can be used both for searches on entry and for other searches in a secure youth justice residence;
  - 2.6 any possession that a person seeking to enter a residence wishes to bring with them into the residence, including their vehicle, can be searched, by scanner or manually;

- 2.7 pat-down searches can be used where an initial search (including by scanner) indicates that a harmful item may be present on a person seeking entry to a residence;
  - 2.8 suitably trained dogs can be used to assist searches on entry, with the same safeguards that already apply to the use of dogs for other searches;
  - 2.9 if a person (other than a young person being placed in a residence) refuses to be searched, they can be refused entry to the residence at that time;
  - 2.10 the existing requirements for recording any searches of children and young people be extended to apply to searches of them on entry; and
  - 2.11 the existing authority to use no more than the minimum amount of force that is reasonably necessary in the circumstances to search be extended to include the searches on entry;
- 3 **agreed** to the Minister for Children's proposals, as the Minister responsible for the Oranga Tamariki Act 1989, for both secure Care and Protection and Youth Justice residences:
- 3.1 to remove the ability to strip search a child or young person, as the power is not needed, is rarely used, and is traumatising;
  - 3.2 to enable the creation, with a child or young person, of a search plan that reflects their needs, preferences, and experiences;
  - 3.3 to repeal the requirements that a search must be carried out by staff of the same sex and cannot be carried out in view of a person who is not the same sex; and
  - 3.4 to clarify that the maximum time a child or young person can be placed in secure care before needing to seek an extension from the Family Court is three consecutive days (whether continuously or not);
- 4 **agreed** to the technical detail of the policy for searches set out in Appendix One to the submission under SOU-24-SUB-0119;

### The Children's Act 2014

- 5 **agreed** to amend the Children's Act 2014 to extend the workforce restriction, and the associated exemption process, to any core worker who has an overseas conviction which is equivalent to one of the specified offences listed in Schedule 2 of that Act;
- 6 **noted** that officials will undertake further work, and seek further decisions as needed, in support of the above policy on:
- 6.1 an appropriate review process (if necessary) for the prospective core worker to seek a review of a determination; and
  - 6.2 how the restriction might apply to existing employees who are convicted of an equivalent offence overseas;

- 7 **agreed** to add the following offences in the Prostitution Reform Act 2003 to the list of convictions that trigger the workforce restriction:
- 7.1 section 20 - causing, assisting, facilitating, or encouraging a person under 18 years of age to provide commercial sexual services to any person;
  - 7.2 section 21 - receiving a payment if a person knows, or ought reasonably to know, that it is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age;
  - 7.3 section 22(1) - entering into a contract or arrangement under which a person under 18 years of age provides commercial sexual services; and
  - 7.4 section 22(2) - receiving commercial sexual services from a person under 18 years of age;
- 8 **directed** officials undertake further work on options for improved safety checking requirements, including to enable employers to better identify prospective core workers who have criminal convictions from overseas jurisdictions;

### The Crimes Act 1961

- 9 **agreed** to the Minister of Justice's proposal, as the Minister responsible for the Crimes Act 1961, to amend the definition of "vulnerable adult" in that Act to include language reflecting disability as a specific factor;

### The Public Records Act 2005

- 10 **agreed** to the Minister of Internal Affairs' proposal, as the Minister responsible for the Public Records Act 2005, to:
- 10.1 further define the meaning of 'independent' in section 33 so that it is clear that Archives New Zealand can conduct independent audits;
  - 10.2 remove the limitation on Archives New Zealand conducting audits no sooner than five years after a previous audit in section 33;
  - 10.3 in section 33, enable the Chief Archivist to:
    - 10.3.1 require the preparation and carrying out of an action plan in response to problems with recordkeeping practices identified in audits;
    - 10.3.2 issue a performance notice to a recordkeeping agency to remedy an issue by a particular point in time, in response to an issue identified through an audit; and
  - 10.4 amend section 29(2)(1) of the Act to include the systems and processes involved in the creation of records, in addition to systems where they are stored or maintained;

### Decisions to support the drafting and introduction of an omnibus bill

- 11 **invited** the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions (the Minister) and as the Minister of Education, in consultation with the Ministers of Justice, Internal Affairs, and Children, to issue drafting instructions to the Parliamentary Counsel Office giving effect to the decisions under SOU-24-MIN-0119;

- 12 **authorised** the Minister, in consultation with the Ministers of Justice, Internal Affairs, and Children, to make decisions consistent with the policy in the paper under SOU-24-SUB-0119, on any issues that arise during the drafting process, including commencement and transitional provisions;
- 13 **noted** that the Office of the Clerk has given preliminary advice that it does not see the suite of proposals for the bill as a single broad policy;
- 14 **noted** that the Minister intends to seek approval from the Business Committee to classify the bill as an omnibus bill on the basis that the single broad policy is to make improvements to current systems in response to the Royal Commission;
- 15 **noted** that the Minister has written to all opposition parties in Parliament seeking their agreement in principle to supporting an omnibus bill to be introduced and have its first reading on the day of the apology, 12 November 2024;
- 16 **noted** that to date the Labour Party and Green Party have confirmed their support in principle for this approach;
- 17 **noted** that in order for the omnibus bill to be ready for introduction and first reading on 12 November 2024, the Parliamentary Counsel Office will need to prioritise drafting the decisions under SOU-24-MIN-0119;
- 18 **noted** that, based on timeframes set out by officials and the Parliamentary Counsel Office, the drafted Bill will need to go straight to Cabinet for consideration on 11 November 2024;
- 19 **agreed** to assign the omnibus bill a category 5 priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024).

Jenny Vickers  
Committee Secretary

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**Present:**

Rt Hon Christopher Luxon  
Hon David Seymour  
Hon Nicola Willis (Chair)  
Hon Chris Bishop  
Hon Erica Stanford  
Hon Louise Upston  
Hon Tama Potaka  
Hon Matt Doocey  
Hon Nicole McKee  
Hon Casey Costello  
Hon Melissa Lee  
Hon Nicola Grigg  
Hon Karen Chhour

**Officials present from:**

Office of the Prime Minister  
Officials Committee for SOU  
Office of the Minister for Infrastructure  
Office of the Lead Coordination Minister for the  
Government's Response to the Royal Commission's  
Report into Historical Abuse in State Care and in the Care  
of Faith-based Institutions  
Crown Response Unit  
Crown Law

## Appendix One: Technical detail of proposed changes to the Oranga Tamariki Act

- 1 Set out below are the detailed proposals for change to the Oranga Tamariki Act recommended by the Minister for Children.

### *Harmful / unauthorised items*

- 2 The Minister for Children proposes that for secure Youth Justice residences only:

- 2.1 the definition of “harmful item” continues to enable staff to use their judgement about what is harmful but is amended to also include a specific list of items that can be searched for and seized;
- 2.2 the following items be specified in the list of harmful items that staff may search for and seize in a secure Youth Justice residence (whether before or after entry) (based on the Corrections Act 2004) and that they be unauthorised items:
  - 2.2.1 anything that could, while in the possession of any child or young person, be harmful to them or to anyone else;
  - 2.2.2 any drug, alcohol, or other intoxicating substance;
  - 2.2.3 tobacco and any equipment used for smoking tobacco or any other substance;
  - 2.2.4 any vaping product or smokeless tobacco product;
  - 2.2.5 any electronic communication device such as mobile phones (except for any such device that a disabled child or young person needs to be able to communicate with others because of their disability);
  - 2.2.6 anything that could be used for the purpose of facilitating the escape from lawful custody of any person;
  - 2.2.7 anything that may not lawfully be retained in the child or young person’s possession;
  - 2.2.8 any offensive weapon or disabling substance within the meaning of section 202A of the Crimes Act 1961; and
  - 2.2.9 anything declared to be an unauthorised item by regulations made under the Act.
- 2.3 there is a power for the Governor General to make regulations that identify additional harmful items / unauthorised items that may be searched for and seized, to enable a response to new risks where they might be identified; and

- 2.4 there is a (delegable) obligation on the Chief Executive to advise all people seeking to enter a secure youth justice residence of what harmful items are, that they may be searched for and the consequences when found.

### *Searches on entry*

- 3 Before conducting any search on entry to a secure Youth Justice residence, the Minister for Children proposes the chief executive (or their delegate) must:
- 3.1 advise each person that they and their personal possessions and vehicle (if relevant) can be the subject of searches, the purpose of that search, and the consequences if any unauthorised item is found;
  - 3.2 advise each person (other than a child or young person placed in the residence) that they can choose whether to consent to each search before it is conducted and can withdraw their consent at any time (but may be denied entry if they do so); and
  - 3.3 invite the person to hand over any harmful items / unauthorised items that they might have in their possession at the time.
- 4 The Minister for Children proposes, that for secure Youth Justice residences only, and for the purpose of detecting unauthorised items, the chief executive may:
- 4.1 search any person and their possessions – being a young person, visitor, staff or contractor – by body imaging or metal detecting scanner on entry without needing to believe on reasonable grounds that the person has an unauthorised item in their possession;
  - 4.2 use “imaging technology” as defined in section 92B, and as subject to the associated restrictions in section 92C, of the Corrections Act 2004 to carry out scanner searches both:
    - 4.2.1 of any person on entry to a secure youth justice residence (as per the above); and
    - 4.2.2 of any child or young person in a secure youth justice residence when a staff member believes on reasonable grounds that a young person has in their possession any unauthorised item;
  - 4.3 search any possession that a person seeking to enter a residence wishes to bring with them into the residence, including their vehicle, by scanner or manually;
  - 4.4 if there are reasonable grounds for suspecting that a person entering a secure Youth Justice residence may have an unauthorised item and:
    - 4.4.1 they are a child or young person who has been placed in that residence, then the existing power to conduct a pat down search applies, including the use of force;

- 4.4.2 they are not a child or young person placed in the residence, a pat down search of the person may be carried out, provided that:
- 4.4.2.1. the chief executive (or delegate) has first requested that the person hand over the item and the person has refused;
  - 4.4.2.2. the person consents to the pat down search; and
  - 4.4.2.3. similar restrictions to those that apply to pat down searches of young persons apply; and
  - 4.4.2.4. the reasons for carrying out the search must be recorded;
- 4.5 use suitably trained dogs to assist searches on entry, with the same safeguards that already apply to the use of dogs for other searches; and
- 4.6 refuse entry to a residence at that time, if a person (other than a child or young person being placed in a residence) refuses to be searched.
- 5 The Minister for Children proposes that when exercising the search powers above:
- 5.1 the existing requirements for recording any searches of children and young people be extended to apply to searches of them on entry;
  - 5.2 the existing authority to use no more than the minimum amount of force that is reasonably necessary in the circumstances to search be extended to include searches on entry (without needing to believe the use of force is necessary to avoid or mitigate a serious and immediate risk to anyone's safety);
  - 5.3 the chief executive may delegate the search powers to appropriate staff or contractors;
  - 5.4 the chief executive (or delegate) may engage appropriate contractors to conduct searches using a dog (which persons needn't be restricted to those listed in section 384D(2) of the Oranga Tamariki Act);
  - 5.5 the use of a dog be otherwise subject to the same conditions for the use of dogs set out in section 384D(3) of the Oranga Tamariki Act; and
  - 5.6 the chief executive (or delegate) may seize any harmful item / unauthorised item identified during a search and may deal with that item in accordance with the existing regulations, suitably adjusted to also apply to anyone who is not a child or young person who has been placed in that residence.
- 6 The Minister for Children proposes the Governor-General by Order-in-Council may make regulations in respect of searches on entry.

## Search plans

- 7 For all searches in all secure residences, the Minister for Children proposes the chief executive (or delegate) must:
  - 7.1 encourage a child or young person to express their preferences for how any searches they may be subject to are conducted (including scanner searches), before any search is carried out; and
  - 7.2 record and approve a plan for how to search each child or young person that:
    - 7.2.1 complies with the child or young person's preferences to the extent consistent with the purpose of the search, unless the chief executive determines that there is a good reason not to (recording that reason);
    - 7.2.2 reflects that child or young person's particular needs and preferences for how they are searched and by whom, taking into consideration their preferred gender identity, any trauma they have previously experienced, and any other matter that may negatively affect how the young person experiences a search;
    - 7.2.3 upholds their mana and dignity as much as possible; and
    - 7.2.4 considers the interests of staff;
  - 7.3 conduct each search in accordance with the approved plan, unless the chief executive determines that there is a good reason not to (recording that reason);
  - 7.4 review and update the plan as required; and
  - 7.5 to give effect to the proposals for search plans, repeal subsections 384G(2) and 384G(3)(a) of the Oranga Tamariki Act (a search must be carried out by staff of the same sex and a search cannot be carried out in view of a person who is not of the same sex);
- 8 The Minister for Children's proposes to:
  - 8.1 remove the ability to strip search a child or young person, as the power is not needed, is rarely used, and is traumatising;
  - 8.2 clarify that the maximum time a child or young person can be placed in secure care before needing to seek an extension from the Family Court is three consecutive days (whether continuously or not).



## **Appendix Two: Offences listed in Schedule 2 of the Children's Act to apply to the workforce restriction on core workers**

- dealing in slaves
- dealing in people under 18 for sexual exploitation
- indecent communication with young person under 16
- sexual violation
- attempted sexual violation and assault with intent to commit sexual violation
- sexual conduct with consent induced by certain threats
- incest
- sexual conduct with dependent family member
- meeting young person following sexual grooming, etc
- sexual conduct with child under 12
- indecency with girl under 12
- sexual conduct with young person under 16
- indecent assault
- sexual exploitation of person with significant impairment
- indecent act between woman and girl
- indecency with boy under 12
- indecency with boy between 12 and 16
- indecent assault on man or boy
- compelling indecent act with animal
- bestiality
- sexual conduct with children and young people outside New Zealand
- organising or promoting child sex tours
- abandoning child under 6
- punishment of murder
- attempt to murder
- punishment of manslaughter
- infanticide
- killing of unborn child
- wounding with intent
- injuring with intent to cause grievous bodily harm
- aggravated wounding or injury
- assault on child
- ill-treatment or neglect of child or vulnerable adult
- failure to protect child or vulnerable adult
- discharging firearm or doing dangerous act with intent
- female genital mutilation
- further offences relating to female genital mutilation
- abduction for purposes of marriage or sexual connection
- kidnapping
- abduction of young person under 16.



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Report of the Cabinet Social Outcomes Committee: Period Ended 27 September 2024

On 30 September 2024, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 27 September 2024:

Withheld as not part of Crown Response to the Royal Commission of Inquiry into Abuse in Care

SOU-24-MIN-0118	<b>Final Report of the Abuse in Care Inquiry (Whanaketia): Initial Response</b> Portfolio: Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions	CONFIRMED
SOU-24-MIN-0119	<b>Initial Legislative Changes in Response to the Abuse in Care Royal Commission of Inquiry</b> Portfolio: Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions	CONFIRMED

Withheld as not part of Crown Response to the Royal Commission of Inquiry into Abuse in Care

Rachel Hayward  
Secretary of the Cabinet



# Cabinet Legislation Committee

## Summary

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### Responding to Abuse in Care Legislation Amendment Bill: Approval for Introduction

**Portfolio** Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions

**Purpose** This paper seeks approval to introduce the Responding to Abuse in Care Legislation Amendment Bill (the Bill).

**Previous Decisions** In September 2024, SOU agreed, in response to the Royal Commission into Abuse in Care, to amend the Oranga Tamariki Act 1989, Children's Act 2014, Crimes Act 1961, and Public Records Act 2005, and that the introduction of an omnibus bill would coincide with the Prime Minister's public apology [SOU-24-MIN-0119].

**Proposal** The Bill gives effect to the decision above. To support the Children's Act amendment relating to core workers with overseas convictions, the Minister seeks approval of the following decisions made during drafting:

- that a prospective or current core worker can seek a review of the employer's decision that they have an equivalent conviction from a Chief Executive of a key agency under the Children's Act and can subsequently appeal to the High Court;
- a six-month delay, once the amendment has commenced, of the application of the workforce restriction to current core workers, to provide time for employers to identify if any of their core workers have relevant overseas convictions and for core workers to seek an exemption if desirable.

Further details are included on **page 3** of the paper.

Cabinet has given LEG Power to Act for this paper to allow the Bill to be finalised by PCO and distributed to opposition parties in advance of the apology.

**Impact Analysis** A Regulatory Impact Statement on amendments to the Oranga Tamariki Act was provided when policy approval was sought.

<b>Compliance</b>	A departmental disclosure statement is <b>attached</b> .
<b>Timing Matters</b>	<p>Introduced: on 12 November 2024;</p> <p>Referred: to the Social Services and Community Committee;</p> <p>Enacted: by 30 June 2025.</p> <p>The proposed commencement of the amendments to each Act is included on <b>page 8</b> of the paper.</p>
<b>Communications</b>	None specified.
<b>Consultation</b>	<p>Paper prepared by DIA (Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions). MoE, MoH, DIA (Internal Affairs), MoJ, TPK, Police, Pacific Peoples, Oranga Tamariki, PSC, MSD, and Disabled People were consulted. Treasury and DPMC (Prime Minister) were informed.</p> <p>The Minister indicates that all Ministers, including the Minister of Finance, were consulted. The Minister also indicates that discussion has occurred with all Government parties.</p>

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**The Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions recommends that the Committee:**

- 1 note that the Responding to Abuse in Care Legislation Amendment Bill (the Bill) holds a category five priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024);
- 2 note that the Bill will amend the:
  - 2.1 Oranga Tamariki Act 1989 to authorise universal searches on entry to secure Youth Justice facilities, for search plans to be made with children and young people in all residences, to repeal the ability to undertake strip searches and to clarify the length of time of placement in secure care prior to judicial oversight;
  - 2.2 Children's Act 2014 to extend the existing workforce restriction on core workers to include convictions for overseas offences equivalent to specified New Zealand offences and for offences involving children and young people under the Prostitution Reform Act 2003;
  - 2.3 Crimes Act 1961 to explicitly include disability in the definition of a vulnerable adult;
  - 2.4 the Public Records Act 2005 to enable earlier re-audit of agencies identified as having low information management maturity, create an ability to require an action plan and time-bound correction of non-compliance and make clear that Archives New Zealand may undertake its own audits;

- 3 agree to additional Children's Act amendments supporting decisions made during drafting, including:
  - 3.1 that a prospective or current core worker can seek a review of the employer's decision that they have an equivalent conviction from a Chief Executive of a key agency under the Children's Act and a subsequent appeal to the High Court;
  - 3.2 providing a six-month delay, once the amendment has commenced, for the application of the workforce restriction to current core workers to provide time for employers to identify if any of their core workers have relevant overseas convictions and for core workers to seek an exemption if desirable;
- 4 agree to the following commencement times for the amendments to each Act:
  - 4.1 Oranga Tamariki Act: by Order in Council, or no later than 12 months after Royal Assent except for removal of the power to strip search which will come into force the day after royal assent;
  - 4.2 Children's Act: by Order in Council, or no later than 12 months after Royal Assent;
  - 4.3 Crimes Act: the day after Royal Assent;
  - 4.4 Public Records Act: the day after Royal Assent;
- 5 approve the Responding to Abuse in Care Legislation Amendment Bill [PCO 26699/7.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 6 authorise the Parliamentary Counsel Office to make minor and technical corrections to the Bill until such time as it is lodged for introduction and first reading;
- 7 agree that the Bill be introduced and read for the first time on 12 November 2024;
- 8 agree that the government propose that the Bill be:
  - 8.1 referred to the Social Services and Community Select Committee for consideration;
  - 8.2 enacted by 30 June 2025.

Tom Kelly  
Committee Secretary

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**Hard-copy distribution:**  
Cabinet Legislation Committee  
Minister of Finance

Office of the Lead Coordination Minister for the Government's Response to the  
Royal Commission's Report into Historical Abuse in State Care and in the Care of  
Faith-based Institutions

Cabinet Legislation Committee

## **Responding to Abuse in Care Legislation Amendment Bill: Approval for Introduction**

### **Proposal**

- 1 This paper seeks Cabinet approval:
  - 1.1 to introduce the *Responding to Abuse in Care Legislation Amendment Bill* to Parliament on Tuesday 12 November 2024, the day of the Prime Minister's public apology for abuse in state care; and
  - 1.2 of the additional policy decisions I have made in relation to the Children's Act 2014, in my role as Minister of Education, to support the Responding to Abuse in State Care Legislation Amendment Bill.

### **Policy**

- 2 On 30 September 2024, Cabinet agreed to the introduction and first reading of an omnibus bill (a bill) on the day of the Prime Minister's public apology [CAB-24-MIN-0380]. Cabinet agreed to a bill being progressed on a tight timeline as survivors have repeatedly stated that for an apology to be meaningful it needs to be accompanied by commitments to action.
- 3 Attached at Appendix A, the *Responding to Abuse in Care Legislation Amendment Bill* (the Amendment Bill) will signal the start of legislative change in response to the *Royal Commission into Abuse in State Care and Faith-based Institutions* (the Royal Commission). The intention is to reflect the Government's commitment to driving change at pace across the care system.
- 4 As agreed, the Amendment Bill will make changes to the:
  - 4.1 Oranga Tamariki Act 1989 (the Oranga Tamariki Act), with the support of the Minister for Children as the responsible minister for that act;
  - 4.2 Children's Act 2014 (the Children's Act). As the Minister of Education, I have responsibility for that act;
  - 4.3 Crimes Act 1961 (the Crimes Act), with the support of the Minister of Justice as responsible minister for that act; and
  - 4.4 the Public Records Act 2005 (the Public Records Act), with the support of the Minister of Internal Affairs who has responsibility for that act.

*The Oranga Tamariki Act 1989 search requirements and secure care*

- 5 The amendments to the Oranga Tamariki Act are intended to improve safety and wellbeing in residential care. They will enable all young people, staff, contractors and visitors entering a secure Youth Justice residence to be searched for harmful and unauthorised items. The definition of harmful items will be amended to include reference to specific items, for example, alcohol and drugs, vapes and smokeless tobacco products, and any items that could be used to facilitate an escape from custody. It will allow the use of body image scanners to conduct these searches and any other search of a young person in the residence.
- 6 The extension of the search powers available in secure Youth Justice residences may attract some negative attention. It may be argued that the powers are more intrusive than the status quo and may inhibit some visitors to residences. Importantly, Oranga Tamariki advises the extension of the search powers and the ability to use body scanners was supported by the care-experienced young people that it engaged with during the policy development processes. Consultation highlighted concerns about the safety in residences, and support for modern search techniques (such as using body scanners) that reduce the need for “hands on” searches like pat downs.
- 7 The amendments will also require Oranga Tamariki to develop search plans with the children and young people in both Care and Protection and Youth Justice residences who may be subject to searches. These plans will outline their preferences and needs when searches are undertaken; this includes any needs related to the child or young person’s disability.
- 8 The amendments will create a requirement that searches are conducted in accordance with a person’s search plan, unless the chief executive considers that there is good reason not to. Work will be undertaken to ensure an appropriate approach to a first search, if a plan is not in place in advance of this. With the new provisions for searches, the ability to undertake strip searches will be removed from the Oranga Tamariki Act. This power is not needed and is rarely used.
- 9 There is also an amendment which clarifies the time that a child or young person may be placed in secure care before judicial approval is required that will remove ambiguity in the existing provision. The existing provision could be read in two different ways, resulting in two different lengths of time.
- 10 The changes to search powers and the timeframe for secure care in the Oranga Tamariki Act are aligned with the findings and recommendations of the Royal Commission to improve safety and wellbeing in care, including recommendation 78 which pointed to the need for an approach to care that considers the background, culture, needs and vulnerabilities of people in care. However, they are likely to be viewed in the context of other changes being proposed across the Youth Justice system that are not well aligned with the Commission’s direction, findings and recommendations.

### *The Children's Act 2014 workforce restrictions*

- 11 The safety checking regime in the Children's Act precludes people with convictions for specified New Zealand offences from working as core children's workers without an exemption. The amendments to the Children's Act will mean that a person with an overseas conviction for an offence equivalent to a specified New Zealand offence also cannot work as a core worker unless granted an exemption.
- 12 The list of specified offences will be expanded to include offences against children and young people under the Prostitution Reform Act 2003 (the Prostitution Reform Act). This is well aligned with the findings and recommendations of the Royal Commission in relation to the screening and vetting of care workers (recommendations 58 and 59 in particular).

### Additional policy decisions in relation to the Children's Act

- 13 To support the Children's Act amendment relating to core workers with overseas convictions, I have made decisions during the drafting process about which I am seeking your approval. I propose:
  - 13.1 a prospective or current core worker can seek a review of the employer's decision that they have an equivalent conviction from a Chief Executive of a key agency under the Children's Act and can subsequently appeal to the High Court. The Chief Executives would be those of the Ministries of Health, Education, Justice and Social Development and Oranga Tamariki; and
  - 13.2 a six month delay, once the amendment has commenced, of the application of the workforce restriction to current core workers to provide time for employers to identify if any of their core workers have relevant overseas convictions and for core workers to seek an exemption if desirable. The application of the restriction on prospective workers would come into effect with the commencement of the amendments.
- 14 In my earlier policy paper, I advised you that the extension of the workforce restriction will have implications for Te Kāhui Kāhu which delivers the exemption process. Oranga Tamariki has been the sole funder of the Te Kāhui Kāhu exemption process, that is used by five agencies. Funding to deliver this amendment, including the proposed review process is a matter which will need to be addressed by agencies before the extended workforce restriction comes into force.
- 15 The extended workforce restriction may also generate some interest from employers and unions working in the children's system. I expect they will support the closing of this gap, but they and others may raise operational questions which the Ministry of Education will work to answer before the amendment comes into effect.



### *The Crimes Act 1961 definition of vulnerable adult*

- 16 The Royal Commission considered the absence of disability as a specific factor in the definition of 'vulnerable adult' was a gap in the Crimes Act and recommended this be addressed (recommendation 26). The amendment will include disability in the definition. I am advised that we can expect Deaf and disabled people to express a view on the use of the word vulnerable in this definition during select committee.

### *The Public Records Act 2005 to improve recordkeeping practice*

- 17 The amendments to the Public Records Act are to improve recordkeeping practices. They will enable an earlier re-audit of agencies identified as having low information management maturity and create an ability to require an action plan and time-bound correction of non-compliance. They will also make it clear that Archives New Zealand may undertake its own audits along with contracting a third party to do so.
- 18 I do not expect the changes to the Public Records Act to be controversial as they are largely clarifications and enhancements to the act. They are being progressed because survivors told the Royal Commission about the high value they place on having access to their records and their challenges in accessing records.

### **Impact analysis**

- 19 A regulatory impact statement assessing the impact of the amendments to search powers in the Oranga Tamariki Act was prepared in accordance with the necessary requirements. It was submitted for Cabinet committee and Cabinet approval of the policy relating to the Amendment Bill.

### **Compliance**

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

- 20 The impact of the amendments to the Oranga Tamariki Act, in particular those for universal searches on entry to secure Youth Justice residences engage the rights of tangata whenua under the Treaty of Waitangi – Te Tiriti o Waitangi. Under the Treaty – te Tiriti, the Crown should:
- 20.1 respect the right of tangata whenua to make decisions over matters of significance to them; and
- 20.2 make decisions to protect the interests of tangata whenua and to ensure that they are treated equitably with all New Zealanders.
- 21 There has been limited consultation with Māori on the Oranga Tamariki Act amendments. While tangata whenua will have an opportunity to participate in the select committee process, they may raise concerns about the lack of consultation and the swift process followed to deliver the Amendment Bill.

- 22 The search powers in the Amendment Bill will be more frequently used on Māori, as tamariki and rangatahi Māori are disproportionately represented in the youth justice system. Concern may be raised that the proposals do not address the wider issues of inequitable outcomes in the Youth Justice system
- 23 Improvements in safety and wellbeing that should arise from the changes to the Oranga Tamariki Act should have a positive impact for tamariki and rangatahi Māori. However, there is also a risk that the ability to search all visitors to secure Youth Justice residences may inhibit some whānau from visiting.
- 24 Inhibiting visitors could impact on rangatahi whanaungatanga – Māori young people's relationships with whānau and their ability to connect with whānau, hāpori – community and te ao Māori – the Māori world. However, improving safety through searches may also mean that some whānau will be more inclined to visit their rangatahi as they will feel safer.
- 25 Records of care could be considered taonga – important artifacts to care-experienced tamariki, rangatahi and pakeke Māori. They enable tangata whenua to build knowledge of their whakapapa and connect into te ao Māori. The amendments to the Public Records Act are well aligned with the Crown's obligations under the Treaty – te Tiriti.

#### *The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993*

- 26 The authorisation of universal searches on entry to secure Youth Justice residences is likely to constitute powers of search and seizure for the purposes of the New Zealand Bill of Rights Act 1990 (BORA). I consider that individuals' BORA rights are appropriately balanced against the need to ensure the safety and wellbeing of children and young people in care, and the safety of all people entering secure Youth Justice residences. There will be appropriate safeguards to the exercise of search rights under the Oranga Tamariki Act. The Ministry of Justice Human Rights Policy team will review the Amendment Bill and provide their advice to the Attorney General.

#### *Disclosure statement requirements*

- 27 A disclosure statement has been prepared and is attached to this paper at Appendix B. It reflects the policy and legislative process and decisions that have been made to support this Amendment Bill.

#### *The Privacy Act 2020*

- 28 The amendments to the Oranga Tamariki Act, to authorise universal searches on entry to secure Youth Justice residences, engage an individual's right to privacy. They will enable the use of imaging technology scanners, which are capable of 'seeing through' clothing. The right to privacy is also engaged through the amendment to the Children's Act, extending the workforce restriction. I consider that, in both circumstances, the right to privacy is appropriately balanced against the need to ensure the safety and wellbeing of

children young and people in care, and the safety of all people entering secure Youth Justice residences.

- 29 There are a range of legislated safeguards supporting the extension of search powers in secure Youth Justice residences, including the requirement to be notified that a search will be undertaken and what it will entail. Staff, contractors and visitors will be able to decline a search, noting that where they do so, they may be declined entry to the residence.
- 30 A young person will not be able to decline to undergo a search on entry to a secure Youth Justice residence if they are being placed in the residence. However, there will be a requirement for an agreed search plan to be put in place, either before or as soon as practicable after their arrival.
- 31 The requirement to put in place search plans will apply to both secure Care and Protection and Youth Justice residences. Oranga Tamariki will put in place an appropriate approach for a first search where it may be taken in advance of any search plan being agreed. The proposal to amend the Oranga Tamariki Act to remove the authority to strip search in secure residences is privacy protective.
- 32 In the case of the workforce restriction, the Privacy Act 2020 provides for the use and disclosure of information with the consent of the individual concerned. Information and guidance will support employers to undertake privacy-compliant process where information about an equivalent overseas conviction held by a prospective employee is brought to their attention. They will be collecting, storing and using, and may be disclosing, this information as part of any exemption, review or appeal process.

#### *Relevant international standards and obligations*

- 33 The United Nations Convention on the Rights of the Child (UNCRoC) requires decisions to be in the best interest of the child. The suite of amendments to improve safety in care in the Amendment Bill are aligned with UNCRoC, noting the obligation to preserve family relations and contact with family is engaged in the Oranga Tamariki Act amendments for universal searches.
- 34 The United Nations Declaration on the Rights of Indigenous People (UNDRIP) sets minimum standards for the survival, dignity, wellbeing and rights of Indigenous people. Māori rights are engaged by the Oranga Tamariki Act Youth Justice search amendments due to the over-representation of tangata whenua in the care system. The proposals should support New Zealand to further comply with the UNDRIP by improving safety and wellbeing in the care system for tamariki, rangatahi, pakeke and whaikaha Māori.
- 35 The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) provides the rights for disabled people to access the support they need, and to enjoy all human rights and freedoms. Young disabled peoples' rights are engaged by the Oranga Tamariki Act Youth Justice search amendments due to their over-representation in the care system.

- 36 Our international obligations oblige us to consult with and involve children and young people, tangata whenua, and Deaf and disabled people in decision-making processes about issues relating to them. In acting on the findings and recommendations of the Royal Commission, I am relying on the work they did to engage with these groups. The select committee process for the Amendment Bill will also be important to enabling these groups with a further opportunity to have their say on the amendments.

### *The Legislation Guidelines*

- 37 It is my officials' view that the Amendment Bill does not depart from the Legislation Design and Advisory Committee *Legislation Guidelines*.

### **Consultation**

- 38 The Amendment Bill has been developed with the Ministries of Justice and Education, the Department of Internal Affairs and Oranga Tamariki. Each agency led the policy work associated with their Minister's proposals.
- 39 Key agencies supporting the Crown response to the Royal Commission were consulted on the policy proposal for the Amendment Bill, and this paper and its attachments. They include the Public Service Commission, the Ministries of Health, Pacific Peoples, and Social Development including Te Kāhui Kāhu, Te Puni Kōkiri, Whaikaha and the New Zealand Police. The Department of Prime Minister and Cabinet and Treasury have been informed.
- 40 The Office of the Privacy Commissioner (OPC) was consulted on the draft Cabinet policy paper for the proposed amendments to the Oranga Tamariki Act. The OPC provided Oranga Tamariki with feedback on that paper before it was decided to include these amendments in the omnibus bill. The OPC has also been consulted on this paper and the Amendment Bill.

### **Binding on the Crown**

- 41 On 30 September 2024, Cabinet agreed the amendments to all the acts that comprise the Amendment Bill will be binding on the Crown [CAB-24-MIN-0380].

### **Associated regulations**

- 42 Regulations will be required to support the implementation of the amendments to the Oranga Tamariki Act related to searches. There will also be a need to amend some of the existing regulations including the *Oranga Tamariki (Residential Care) Regulations 1996*. The regulations will be of moderate substance and will be prepared to align with the commencement of the amendment to the Oranga Tamariki Act. They are required to support the:

- 42.1 operational approach to carrying out searches
- 42.2 seizure, and return or disposal of harmful items
- 42.3 development of search plans with children and young people.

## Other instruments

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

## Commencement of legislation

- 44 The Amendment Bill amends four acts. The proposed commencement of the amendments for each act is set out in the table below.

Act	Commencement
Oranga Tamariki Act	By Order in Council, or no later than 12 months after Royal Assent except for removal of the power to strip search which will come into force the day after royal assent.
Children's Act	By Order in Council, or no later than 12 months after Royal Assent.
Crimes Act	The day after Royal Assent.
Public Records Act	The day after Royal Assent.

## Parliamentary stages

- 45 Cabinet agreed that the Amendment Bill would be introduced to Parliament and undergo its first reading on 12 November 2024. This is the day of the Prime Minister's public apology for abuse in state care.
- 46 I recommend that it is referred to the Social Services and Community Select Committee as the most substantive amendments are to the Oranga Tamariki and Children's Acts. I anticipate that the Amendment Bill will be enacted in June 2025.

## Proactive Release

- 47 I intend to proactively release this paper along with the associated policy paper, subject to any necessary redactions under the Official Information Act 1982, following the public apology and referral of the Amendment Bill to Select Committee.

## Recommendations

- 48 I recommend that Cabinet:
- 1 **note** that the Responding to Abuse in Care Legislation Amendment Bill holds a category five priority on the 2024 Legislation Programme; to proceed to select committee by the end of 2024;

- 2 **note** that the Responding to Abuse in Care Legislation Amendment Bill will amend the:
- 2.1 Oranga Tamariki Act 1989 to authorise universal searches on entry to secure Youth Justice facilities, for search plans to be made with children and young people in all residences, to repeal the ability to undertake strip searches and to clarify the length of time of placement in secure care prior to judicial oversight;
  - 2.2 Children's Act 2014 to extend the existing workforce restriction on core workers to include convictions for overseas offences equivalent to specified New Zealand offences and for offences involving children and young people under the Prostitution Reform Act 2003;
  - 2.3 Crimes Act 1961 to explicitly include disability in the definition of a vulnerable adult; and
  - 2.4 the Public Records Act 2005 to enable earlier re-audit of agencies identified as having low information management maturity, create an ability to require an action plan and time-bound correction of non-compliance and make clear that Archives New Zealand may undertake its own audits;
- 3 **agree** the additional proposals for the Children's Act 2014 amendments that supporting the decisions I have made during drafting, including:
- 3.1 that a prospective or current core worker can seek a review of the employer's decision that they have an equivalent conviction from a Chief Executive of a key agency under the Children's Act 2014 and a subsequent appeal to the High Court; and
  - 3.2 providing a six month delay, once the amendment has commenced, for the application of the workforce restriction to current core workers to provide time for employers to identify if any of their core workers have relevant overseas convictions and for core workers to seek an exemption if desirable;
- 4 **agree** the following commencement times for the amendments to each act:
- 4.1 Oranga Tamariki Act 1989: by Order in Council, or no later than 12 months after Royal Assent except for removal of the power to strip search which will come into force the day after royal assent;
  - 4.2 Children's Act 2014: by Order in Council, or no later than 12 months after Royal Assent;
  - 4.3 Crimes Act 1961: the day after Royal Assent; and
  - 4.4 Public Records Act 2005: the day after Royal Assent;

- 5 **approve** the Responding to Abuse in Care Legislation Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 6 **authorise** the Parliamentary Counsel Office to make minor and technical corrections to the Responding to Abuse in Care Legislation Amendment Bill until such time as it is lodged for introduction and first reading;
- 7 **agree** that the Responding to Abuse in Care Legislation Amendment Bill be introduced and read for the first time on 12 November 2024; and
- 8 **agree** that the government propose that the Responding to Abuse in Care Legislation Amendment Bill be:
  - 8.1 referred to the Social Services and Community Select Committee for consideration; and
  - 8.2 enacted by 30 June 2025.

Authorised for lodgement

Hon Erica Stanford

Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions



# Cabinet Legislation Committee

## Minute of Decision

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### Responding to Abuse in Care Legislation Amendment Bill: Approval for Introduction

**Portfolio**                      **Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions**

On 7 November 2024, the Cabinet Legislation Committee, having been authorised by Cabinet to have Power to Act [CAB-24-MIN-0425]:

- 1        **noted** that the Responding to Abuse in Care Legislation Amendment Bill (the Bill) holds a category five priority on the 2024 Legislation Programme (to proceed to select committee by the end of 2024);
- 2        **noted** that the Bill will amend the:
  - 2.1        Oranga Tamariki Act 1989 to authorise universal searches on entry to secure Youth Justice facilities, for search plans to be made with children and young people in all residences, to repeal the ability to undertake strip searches and to clarify the length of time of placement in secure care prior to judicial oversight;
  - 2.2        Children's Act 2014 to extend the existing workforce restriction on core workers to include convictions for overseas offences equivalent to specified New Zealand offences and for offences involving children and young people under the Prostitution Reform Act 2003;
  - 2.3        Crimes Act 1961 to explicitly include disability in the definition of a vulnerable adult;
  - 2.4        the Public Records Act 2005 to enable earlier re-audit of agencies identified as having low information management maturity, create an ability to require an action plan and time-bound correction of non-compliance and make clear that Archives New Zealand may undertake its own audits;
- 3        **agreed** to additional Children's Act amendments supporting decisions made during drafting, including:
  - 3.1        that a prospective or current core worker can seek a review of the employer's decision that they have an equivalent conviction from a Chief Executive of a key agency under the Children's Act and a subsequent appeal to the High Court;
  - 3.2        providing a six-month delay, once the amendment has commenced, for the application of the workforce restriction to current core workers to provide time for employers to identify if any of their core workers have relevant overseas convictions and for core workers to seek an exemption if desirable;



- 4 **agreed** to the following commencement times for the amendments to each Act:
- 4.1 Oranga Tamariki Act: by Order in Council, or no later than 12 months after Royal Assent except for removal of the power to strip search which will come into force the day after royal assent;
  - 4.2 Children's Act: by Order in Council, or no later than 12 months after Royal Assent;
  - 4.3 Crimes Act: the day after Royal Assent;
  - 4.4 Public Records Act: the day after Royal Assent;
- 5 **approved** the Responding to Abuse in Care Legislation Amendment Bill [PCO 26699/7.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 6 **authorised** the Parliamentary Counsel Office to make minor and technical corrections to the Bill until such time as it is lodged for introduction and first reading;
- 7 **agreed** that the Bill be introduced and read for the first time on 12 November 2024;
- 8 **agreed** that the government propose that the Bill be:
- 8.1 referred to the Social Services and Community Select Committee for consideration;
  - 8.2 enacted by 30 June 2025.

Tom Kelly  
Committee Secretary

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**Present:**

Hon Simeon Brown (Chair)  
Hon Erica Stanford  
Hon Brooke van Velden  
Hon Shane Jones  
Hon Paul Goldsmith  
Hon Judith Collins KC  
Hon Tama Potaka  
Hon Casey Costello  
Hon Nicole McKee  
Hon Simon Watts  
Hon Karen Chhour  
Hon Melissa Lee  
Hon Andrew Bayly  
Hon Scott Simpson, MP  
Jamie Arbuckle, MP

**Officials present from:**

Officials Committee for LEG  
Leader of the House's Office  
Minister of Education's Office



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Report of the Cabinet Legislation Committee: Period Ended 8 November 2024

On 11 November 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 8 November 2024:

Withheld as not part of the Crown Response to the Royal Commission of Inquiry into Abuse in Care

LEG-24-MIN-0223

**Responding to Abuse in Care Legislation**

CONFIRMED

**Amendment Bill: Approval for Introduction**

Portfolio: Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions

Withheld as not part of the Crown Response to the Royal Commission of Inquiry into Abuse in Care

Rachel Hayward  
Secretary of the Cabinet