



# COVERSHEET

<b>Minister</b>	Hon Tracey Martin	<b>Portfolio</b>	Children
<b>Name of package</b>	Proactive release of Oranga Tamariki Legislation Bill - Approval for Introduction	<b>Date of issue</b>	19 June 2019

List of documents that have been proactively released		
Date	Title	Author
18 March 2019	Oranga Tamariki Legislation Bill: Approval for Introduction	Office of the Minister for Children
13 March 2019	SWC-19-MIN-0018 – Cabinet Social Wellbeing Committee Minute	SWC Committee Secretary
18 March 2019	CAB-19-MIN-0085– Cabinet Minute	Secretary of the Cabinet

Information withheld	
<p>Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest in making the information available has been identified that would outweigh the reasons for withholding it.</p>	
Section of the Act	Reason for withholding
Section 9(2)(f)(iv)	Maintain constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

In Confidence

Office of the Minister for Children  
Chair, Cabinet Legislation Committee

## Oranga Tamariki Legislation Bill: Approval for Introduction

### Proposal

1. This paper attaches the Oranga Tamariki Legislation Bill which seeks to give full effect to aspects of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act) by:
  - 1.1. amending relevant legislation so the intent of the expanding the youth justice jurisdiction to include 17-year-olds is applied across all criminal justice processes from 1 July 2019
  - 1.2. addressing drafting errors, including unintentionally broad provisions in the 2017 Act relating to interim court orders.
2. This paper asks Cabinet to:
  - 2.1. agree that the Court should not be able to make urgent interim orders in relation to a child or young person on its own motion in the course of proceedings that are not under the Oranga Tamariki Act 1989 (the 1989 Act)
  - 2.2. agree that a lawyer representing the child or young person should not be able to apply for an urgent interim order relating to a child or young person in the course of proceedings that are not under the 1989 Act unless they have the leave of the court
  - 2.3. agree that these policy decisions should be reflected in the drafting of the proposed Oranga Tamariki Legislation Bill (the Bill)
  - 2.4. approve the introduction of the Bill
  - 2.5. agree that the Government propose that the Bill be enacted by 28 June 2019.

### **Amendments across several items of legislation are required before 1 July 2019**

3. In the lead up to implementing the changes made in 2017 to the 1989 Act, officials have identified that changes are needed to several pieces of legislation. These changes are:
  - 3.1. matters that must be addressed by 1 July 2019 to allow for the full implementation of the policy decision to expand the youth justice jurisdiction to include 17-year olds, or
  - 3.2. matters that must be addressed by 1 July 2019 because they are drafting errors.

4. This paper is divided into four parts to cover these issues:
  - 4.1. **Part One** seeks Cabinet agreement to policy decisions in relation to interim orders
  - 4.2. **Part Two** discusses proposed legislative amendments, which are set out in the Bill, that are consequential to the decision to expand the youth justice jurisdiction to include 17-year olds
  - 4.3. **Part Three** discusses minor drafting errors addressed in the Bill
  - 4.4. **Part Four** discusses a proposed truncated legislative process to enact the Bill before 1 July 2019.
5. For the information sharing legislative issues also being considered today by the Cabinet Social Wellbeing Committee<sup>1</sup>, [REDACTED]

9(2)(f)(iv)

## Part One: Modifying 2017 amendments in relation to interim orders

### Background

*The 2017 amendments to the 1989 Act have created legislative errors related to interim orders*

6. The Children, Young People and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act) made three amendments to the 1989 Act in relation to urgent interim (time-limited) custody, restraining and guardianship orders (interim orders), which are due to come into effect on 1 July 2019.<sup>2</sup>
7. These amendments allow for an interim custody, restraining or guardianship order to be made in relation to a child or young person. These orders can be made if it is in the best interests of the child or young person that an interim order be made as a matter of urgency.<sup>3</sup>
8. In addition, Interim custody orders can be made if it is in the public interest that the order is made and the grounds on which the custody order is sought, relate to offending, or alleged offending, by the child or young person.
9. It is intended that, from 1 July 2019, these interim orders would be sought through an application to the Court by the chief executive of Oranga Tamariki–Ministry for Children (Oranga Tamariki), a constable of the NZ Police or, with the leave of the court, any other person (section 68 of the 1989 Act).
10. These amendments arose from Cabinet’s 2016 decision to reduce the complexity of care and protection proceedings by removing the requirement for the Court to make a declaration that a child or young person is in need of care or protection before making final orders [LEG-16-MIN-0064]. Subsequently, the Minister for Social Development agreed, as a technical amendment authorised by Cabinet, that interim orders could be applied for in the absence of

<sup>1</sup> *Amendments to the Information Sharing Provisions in the Children, Young People and Their Families (Oranga Tamariki) Legislation Act 2017*

<sup>2</sup> These amendments inserted sections 78(1A), 88(2) and 110AA(5) into the 1989 Act. The amendments also made related changes to sections 78(4), 88(4) and 110AA(7) to specify how long the new interim orders would remain in force.

<sup>3</sup> For interim guardianship orders under section 110AA there is another consideration for the Court, namely, that the immediate needs of the child or young person cannot be met without making the order.

an application for a final order to accommodate urgent cases. The resulting provisions were enacted on this basis.<sup>1</sup>

11. After further consideration, I consider that the wording of the resulting provisions is too broad. The effect is that these existing provisions allow the Court to make interim orders on its own motion when there are no proceedings under the 1989 Act underway and without reference to the chief executive of Oranga Tamariki. The amendments also allow a lawyer representing the child or young person to apply for interim custody, restraining or guardianship orders during the course of non-1989 Act proceedings.
12. Officials consider the amendments as they presently stand are inconsistent with the intent of the original policy decision. The scheme of the 1989 Act is that Oranga Tamariki and the Police receive and investigate reports of concern for a child or young person, and, if necessary, bring care and protection matters before the Court for decisions in response.
13. Had the current drafting of the provisions of these powers for the Court and lawyers representing the child or young person been intended, Cabinet would have been advised of their impact. The amendments due to come into force on 1 July 2019 go beyond the scope of the Cabinet decision to provide a process for this type of interim order as a result of the removal of the declaration process.

### **The 2017 interim order amendments create risks for the Crown if they are not modified**

#### *Powers of the Court and Lawyers representing the child or young person*

14. The legislative errors present risks to the Crown, as well as children and young people, and should be addressed before 1 July 2019. The risks that result from these errors are that:
  - 14.1. existing mechanisms in the 1989 Act that allow the Court and lawyer for the child or young person to raise concerns with Oranga Tamariki about a child or young person, arising in non-1989 Act proceedings, would be undermined
  - 14.2. the Judiciary would be over-reaching its core function by taking on powers of the Executive. The 1989 Act does not envisage that the Court will itself identify and rule upon such matters independently of proceedings under the 1989 Act.
15. Appendix 1 describes a scenario where the powers resulting from the 2017 interim order amendments could be used.

### **The decisions sought in this paper will mitigate risks and reflect policy intent**

16. To address these legislative errors I seek Cabinet agreement to clarify that:
  - 16.1. the Court should not be able to make interim orders in relation to children or young people on its own motion in the course of proceedings that are not under the 1989 Act
  - 16.2. the lawyer representing the child or young person should not be able to apply for an interim order in relation to a child or a young person in the course of proceedings that are not under the 1989 Act without the leave of the Court
  - 16.3. consequential amendments are made to the provisions that specify how long the new interim orders remain in force.

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<sup>1</sup> See footnote 1.

17. The most effective way to address these legislative errors is to enact these policy decisions into law before 1 July 2019, so that practice and procedures remain clear. I seek Cabinet agreement to do this.

## **Part Two: Changes consequential to the decision to raise the upper age of youth justice jurisdiction to include 17-year olds**

### **Background**

18. In October 2016, Cabinet agreed to raise the upper age of the youth justice jurisdiction to include 17-year-olds [CAB-16-MIN-0550].
19. The Children, Young Persons, and their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act) made major reforms across the 1989 Act, including raising the upper age of the youth justice jurisdiction. In relation to the youth justice jurisdiction, the 2017 amendments account for two types of offences that determine which court will hear charges against a young person, being:
  - 19.1. offences committed by a 17-year-old that carry a maximum sentence of no less than 14 years, which places a young person into the adult jurisdiction with proceedings taking place in the District or High Court (serious offence)
  - 19.2. any other offence, which places a young person into the youth jurisdiction with proceedings taking place in the Youth Court.
20. However, the 2017 Act did not fully amend relevant legislation to account for raising the upper age, and several items of legislation require amendment before the raising the upper age changes come into force on 1 July.
21. The proposed Bill addresses technical oversights and removes ambiguities that may cause confusion, inconsistent treatment, or operational difficulties. The Bill will address these matters and ensure the intent of the raising the age policy is applied consistently and smoothly across all criminal justice processes from 1 July 2019.
22. All amendments across legislation to the definition of a young person (namely under 18 years of age) will align with the definition of “young person” in the 1989 Act. This definition no longer excludes young people who are married or in a civil union. Previously any young person who was married or in a civil union was treated as an adult in the relevant legislation.

### **The proposed amendments are consequential**

23. No new policy decisions are required to underpin the proposed amendments. These amendments are consequential to the previously approved policy to raise the upper age of the youth justice jurisdiction.

### **The Bill will ensure consistent treatment of 17-year-olds across the youth justice system**

24. Work that has been undertaken to implement the 2017 Act has identified issues related to expanding the youth justice jurisdiction. Urgent amendments across several pieces of legislation are required to address these issues. The proposed amendments will mean 17-year-olds receive appropriate and consistent treatment, benefits and protections across the youth justice system.
25. The amendments relate to:

- 25.1. ensuring the definition of a young person across the relevant legislation includes 17-year-olds
  - 25.2. clarifying circumstances consequential to including 17-year-olds in the youth justice jurisdiction related to criminal proceedings and processes, such as remand, bail conditions, DNA sampling, and sentencing across relevant legislation.
26. The Bill amends the:
- 26.1. Criminal Investigations (Bodily Samples) Act 1995 and the Criminal Investigations (Bodily Samples) Regulations 2004
  - 26.2. Criminal Procedure Act 2011
  - 26.3. Sentencing Act 2002
  - 26.4. Bail Act 2000
  - 26.5. Children, Young Persons, and their Families (Oranga Tamariki) Legislation Act 2017
  - 26.6. Oranga Tamariki Act 1989
  - 26.7. Returning Offenders (Management and Information) Act 2015
  - 26.8. Victims' Rights Act 2002
  - 26.9. Prisoners' and Victims' Claims Act 2005
  - 26.10. Victims' Orders Against Violent Offenders Act 2014.
27. A summary of the amendments is attached at Appendix 2. The Bill is attached at Appendix 4, setting out the amendments in full.

**Transitional clauses are required in the relevant legislation to effectively implement the intention of raising the upper age**

28. The underlying principle for extending the youth justice jurisdiction is to give 17-year-olds protections and benefits by bringing them into the youth justice system. There will be 17-year-olds who offend prior to 1 July 2019 and the action in response to that offending will be at different stages when the youth justice age changes on 1 July 2019. There may be instances where a 17-year-old becomes a "young person" under relevant legislation after they have allegedly offended, but before criminal proceedings have started. The law needs to be clear about how to deal with these cases.
29. For this reason, transitional clauses will be inserted into relevant legislation to clarify how 17-year-olds will be treated in specific instances, either as adults or a young person. Transitional provisions allow for further opportunities to confer benefits on 17-year-olds in line with the intention of raising the upper age. Appendix 3 outlines the proposed transitional provisions in more detail, addressing situations where the application of legislation may be difficult to determine.
30. The clearest way of expressing the approach to the amendments is that, generally, a 17-year-old will be considered as a young person or an adult based on the date their criminal proceedings start. This will determine what jurisdiction the proceeding is heard in.

31. In most cases, from 1 July 2019, 17-year-olds will be treated in law as young persons rather than adults under the processes and procedures set out in the relevant legislation. This includes where an action is taken against a 17 year old before 1 July but proceedings have not yet commenced.
32. Where proceedings have started against a 17-year-old before 1 July 2019, the proceedings and all related matters will continue under the old law (as an adult). For example, if a 17-year old is on active charges before the District Court before 1 July 2019, those proceedings will continue, and any re-consideration of bail and sentencing on and after 1 July 2019 will be under the old law.
33. A 17-year-old who has committed a serious offence will continue to be dealt with in the adult jurisdiction and be subject to adult processes, such as for considering remand and bail. The judiciary will also retain its discretion to transfer young people to the adult jurisdiction for sentencing.

### **Further amendments may be required to address Court process for mixed charges**

34. There is an additional consequential matter which may need to be addressed in the Bill, relating to mixed charges for 17-year-olds.
35. The 2017 Act requires charges for serious offences listed in new Schedule 1A, inserted into the 1989 Act, to be dealt with in the District or High Court, if the offender is 17. Other less serious charges would ordinarily be heard for a 17 year old in the Youth Court. However, it is common for offenders to be charged with more than one offence in relation to the same incident.
36. Under the current law, there is uncertainty about whether the Youth Court can transfer charges for non-Schedule 1A offences relating to a 17- year-old to a different court, even where it would be appropriate for the charges to be heard together with Schedule 1A charges in the District or High Court.
37. This situation could have undesirable consequences for vulnerable complainants, and procedural complications for the judiciary and defendants in specific cases. For example, where there is a charge of sexual violation (Schedule 1A) and indecent assault (non-Schedule 1A), the law on 1 July 2019 may require the complainant to give evidence twice in separate proceedings in the High Court and Youth Court. This could have a negative effect on the complainant.
38. I seek Cabinet agreement that the Attorney-General, Ministers of Justice and Police, and Minister for Children are given delegated authority to agree any amendments required to address this matter following Cabinet approval to introduce the Bill. Any agreed amendments would need to be consistent with 2017 policy settings. If the most desirable outcomes to address mixed charges fall outside the policy settings, this matter would be brought back to Cabinet for consideration.
39. Should Ministers agree to support any amendments to address mixed charges, they would be included in the Bill at select committee or through a supplementary order paper.

### **There are consequences for 17-year-olds and the integrity of the Justice system if the Bill is not passed**

40. If the proposed Bill is not passed, the raising the age changes will apply to the 1989 Act but not all of the relevant legislation applying to young people. The criminal justice processes contained within the relevant legislation will continue to treat 17-year-olds as adults. This has implications for young people in contact with the justice system and for the judiciary.

41. Without the consistent application of raising the age across the youth justice system, it is possible that 17-year-olds will be treated incorrectly under the law. This could expose a young person to the risk of unlawful detention and potential issues related to segregation from other criminal offenders.
42. It is almost certain in the absence of clarifying amendments that confusion will occur in both the application of the law and process. New Zealand Police (NZ Police), Oranga Tamariki social workers, the judiciary and other stakeholders who need to deal with transitional issues for young offenders will be particularly affected by confusion in this area. Additionally, without sufficient clarity, the judiciary may not interpret the law in line with the policy intent of expanding the youth justice jurisdiction. These amendments will remove the ambiguity related to these issues.
43. There are wider risks if the Bill is not passed including:
  - 43.1. cases and proceedings being negatively impacted as a result of complicated and inconsistent processes, which could result in challenges in court
  - 43.2. damage to New Zealand's international reputation from improperly implementing the Government's intended alignment with the United Nations Convention on the Rights of the Child (UNCROC)
  - 43.3. a risk to public trust and confidence from the inconsistent application of law in the youth justice system, and of not treating our young people as intended. This includes public criticism from bodies such as the Office of the Children's Commissioner.
44. Other minor implications include complications for staff training, particularly for agencies such as NZ Police who have specialised staff for dealing with young people and adults in separate groups.

### **Part Three: Addressing minor drafting errors in the 2017 Act and the Children's Commissioner Act 2003**

45. There are other consequential amendments to legislation (the 2017 Act and the Children's Commissioner Act 2003) that I consider should be included in the Bill. These amendments will ensure that the provisions in the 2017 Act are consistent with the policy intent from 1 July 2019 by addressing drafting errors related to:
  - 45.1. care and protection orders, in relation to references to the declaration process (which will be repealed)
  - 45.2. the extension of care agreements arising from family group conferences
  - 45.3. information sharing, in relation to consultation of children and young people.
46. Appendix 2 sets out these amendments in more detail.

### **Part Four: A truncated legislative process is required to progress the Bill before 1 July 2019**

47. I consider the Bill is required to address these outstanding issues and to mitigate risks ahead of 1 July 2019. [REDACTED] 9(2)(f)(iv)

9(2)(f)(iv) [REDACTED] I seek to pass the Bill by 28 June 2019 at the latest to ensure the reforms are in place before commencement of the 2017 Act.

48. Given my proposed process and timeframe, with its associated time pressures, the Bill is limited to issues that must be addressed before 1 July 2019. The amendments proposed in this Bill are only the amendments required ahead of 1 July 2019.
49. NZ Police has indicated a strong preference for the Bill to be passed, or be near conclusion, by May 2019 to ensure changes to IT systems are based on the final amendments to the law and to ensure staff are properly prepared for raising the upper age.<sup>1</sup> However, I anticipate these can be addressed once members of the public and select committee have reviewed the Bill and it is progressing through Parliament.

## Impact analysis

50. The Treasury Regulatory Quality Team has determined that the proposals in Parts One, Two and Three of this paper are exempt from the Regulatory Impact Analysis requirements on the basis that they are consequential amendments that have no or only minor impacts on businesses, individuals or not-for-profits.

## Compliance

51. The Bill complies with each of the following:
- 51.1. the principles of the Treaty of Waitangi/Te Tiriti o Waitangi
  - 51.2. the disclosure statement requirements
  - 51.3. the principles and guidelines set out in the Privacy Act 1993
  - 51.4. relevant international standards and obligations
  - 51.5. the Legislation Guidelines (2018 Edition) which are maintained by the Legislation Design and Advisory Committee.
52. I consider the Bill to be consistent with the rights and freedoms in the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990 (NZBORA). The Bill has been referred to the Crown Law Office for considering advice to the Attorney General on its consistency with the NZBORA. That advice is still in progress. While the decision on the Bill's consistency with NZBORA ultimately lies with the Attorney General, the Crown Law Office advises that no new inconsistencies are anticipated (see below).
53. Amendments in 2010 to the Criminal Investigations (Bodily Samples) Act 1995 to enable NZ Police to require a DNA sample from a person NZ Police intends to charge received a section 7 report from the Attorney-General. This Bill includes consequential amendments to that Act to align with changes to the youth justice age, which officials do not consider creates any new inconsistencies with the NZBORA.

## Consultation

54. The following agencies have been consulted on this paper and the draft Bill: the Ministry of Justice, the Ministry of Social Development, the Department of Prime Minister and Cabinet, the Department of Corrections, the Crown Law Office, New Zealand Police, the Office of the Privacy Commissioner and the Parliamentary Counsel Office.

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<sup>1</sup> This will give NZ Police time to train and communicate to staff about their obligations under the amended legislation (approximately 9000 police staff will require some level of training) and make the necessary changes to IT systems.

## **Binding on the Crown**

55. The Bill is binding on the Crown.

## **Allocation of decision making powers**

56. The parts of the Bill dealing with interim orders adjusts the decision-making powers of the judiciary when there are no relevant proceedings occurring under the 1989 Act, to better reflect the original intended policy for interim orders. The remainder of the Bill does not affect the allocation of decision-making powers between the executive, the courts and tribunals.

## **Associated regulations**

57. This Bill does not enable new regulations to be made but makes minor consequential amendments to the Criminal Investigations (Bodily Samples) Regulations 2004 that are required to ensure consistency with the raising the age changes.

## **Other instruments**

58. The Bill does not include any provision to create other legislative instruments.

## **Definition of Minister/department**

59. The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

## **Commencement of legislation**

60. I propose the Bill comes into force on 1 July 2019. This is the same date on which the remaining provisions of the 2017 Act come into force.

## **Parliamentary stages**

61. I seek Cabinet agreement to introduce the Bill to Parliament the day it is considered by Cabinet. To assist with expediting the Parliamentary processes, I am also seeking agreement that the Oranga Tamariki Legislation Bill be read a first time and referred to select committee the same week as introduction.
62. Given the need to pass the Bill before 1 July 2019, I propose that the Bill is subject to a truncated Parliamentary process. This will mean a shorter than normal select committee process to enable a report back by late May 2019. This will allow time for the Bill to be passed into law in June 2019.

## **Proactive Release**

63. I propose to release this paper after Cabinet's final decision. This proactive release is subject to redaction as appropriate under the Official Information Act 1982.

## Recommendations

The Minister for Children recommends that the Committee:

### *Interim orders*

1. **note** there are legislative errors in the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act) that have created unintended powers for the Court and the lawyer representing the child or young person in relation to urgent interim orders
2. **agree** that the Court should not be able to make urgent interim orders in relation to a child or young person on its own motion in the course of proceedings that are not under the Oranga Tamariki Act 1989 (the 1989 Act)
3. **agree** that the lawyer representing a child or young person should not be able to apply for an urgent interim order relating to a child or young person in the course of proceedings that are not under the 1989 Act unless they have the leave of the court
4. **note**, that pending Cabinet agreement, drafting is currently included in the Oranga Tamariki Legislation Bill (the Bill) to reflect the decisions sought in recommendations 2 and 3

### *Youth justice jurisdiction*

5. **note** that in 2016 Cabinet agreed to include 17-year-olds within the youth justice jurisdiction [CAB-16-MIN-0050]
6. **note** that, except in specific circumstances relating to serious offences or procedural matters, a 17-year-old will be considered as a young person or an adult based on the date criminal proceedings against them commence
7. **note** that the Bill includes amendments that clarify or align provisions with the original policy intent of raising the upper age of the youth justice jurisdiction in the:
  - 7.1. Criminal Investigations (Bodily Samples) Act 1995 and the Criminal Investigations (Bodily Samples) Regulations 2004
  - 7.2. Criminal Procedure Act 2011
  - 7.3. Sentencing Act 2002
  - 7.4. Bail Act 2000
  - 7.5. Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017
  - 7.6. Oranga Tamariki Act 1989
  - 7.7. Returning Offenders (Management and Information) Act 2015
  - 7.8. Victims' Rights Act 2002
  - 7.9. Prisoners' and Victims' Claims Act 2005
  - 7.10. Victims' Orders Against Violent Offenders Act 2014

### *Other drafting errors*

8. **note** the Bill includes amendments to address minor drafting errors in the Children, Young Persons, and their Families (Oranga Tamariki) Legislation Act 2017 and the Children's Commissioner Act 2003 additional to those covered in recommendation 1

*Delegated authority*

9. **authorise** the Minister for Children to make minor and technical changes to the Bill required to finalise the draft legislation, in keeping with the overall policy aims of the 2017 Act, including the expansion of the youth justice jurisdiction, the policy agreement set out in recommendations 2 and 3 and minor drafting errors, in consultation with other Ministers as appropriate
10. **note** matters related to Court process for mixed charges need to be addressed through the Bill by 1 July 2019
11. **authorise** the Attorney-General, Ministers of Justice and Police, and Minister for Children to agree any amendments required to address mixed charges matters consistent with policy settings underpinning the 2017 amendment
12. **authorise** the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office for any amendments required to the Bill after Introduction
13. **note** any additional amendments to address mixed charges would be proposed for inclusion the Bill at select committee or through a supplementary order paper

*Parliamentary process for the Oranga Tamariki Legislation Bill*

14. **approve** the Oranga Tamariki Legislation Bill for introduction into Parliament
15. **agree** the Oranga Tamariki Legislation Bill be introduced the day it receives Cabinet approval
16. **agree** that the Government propose that:
- 16.1. the Bill be referred to the Social Services and Community Select Committee for consideration
  - 16.2. the Select Committee reports back by 27 May 2019
  - 16.3. the Bill be enacted by 28 June 2019.

Authorised for lodgement

Hon Tracey Martin

Minister for Children

## **Appendix 1 – Scenario where powers from 2017 interim order amendments could be used**

A couple with a young child have separated. They are trying to have a dispute about the care of their child resolved by the Court in proceedings under the Care of Children Act 2004. During the course of this proceeding the Court decides that the child should be in the custody of the chief executive of Oranga Tamariki instead of in the care of the parents. Despite other mechanism under the 1989 Act to bring care and protection concerns to the attention of Oranga Tamariki, the Court orders that the child be placed in the chief executive's custody for an interim period, even though the purpose of the proceeding was to determine the child's care arrangements with the parents. No-one has brought an application for the child to be placed in the chief executive's custody, and Oranga Tamariki has not had an opportunity to investigate the child's circumstances.

The 2017 amendments would allow for this to happen.

PROACTIVELY RELEASED

## Appendix 2 – Summary of amendments to legislation through the proposed Oranga Tamariki Legislation Bill

Legislation	Proposed amendments
<b>Part One: Addressing drafting error in relation to interim orders</b>	
Children, Young Persons, and their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act)	<ul style="list-style-type: none"> <li>• Amendments to address drafting error in relation to court orders: removing references that allow the Court “on its own motion” to make interim (time-limited) custody, restraining and guardianship orders in the absence of any other applications or proceedings under the Oranga Tamariki Act 1989 and to make consequential amendments to provisions that specify how long the new interim orders would remain in force.</li> <li>• Amendments to address drafting errors in relation to interim orders: removing references that allow the lawyer for the child or young person to apply for interim (time-limited) custody, restraining and guardianship orders in the absence of any other applications or proceedings under the Oranga Tamariki Act 1989 and to make consequential amendments to provisions that specify how long the new interim orders would remain in force.</li> </ul>
<b>Part Two: Consequential changes to the decision to raise the age of youth justice to include 17-year olds</b>	
Criminal Investigations (Bodily Samples) Act 1995; Criminal Investigations (Bodily Samples) Regulations 2004	<ul style="list-style-type: none"> <li>• Amending the definition of young person to include 17-year-olds and amending all sections referring to under 17-year-olds to include 17-year-olds</li> <li>• Transitional provisions (see Appendix 3)</li> </ul>
Criminal Procedure Act 2011	<ul style="list-style-type: none"> <li>• Amendments related to the circumstance where a 17-year-old would be held on remand in the custody of the Chief Executive of Oranga Tamariki–Ministry for Children</li> <li>• Transitional provisions (see Appendix 3)</li> </ul>
Sentencing Act 2002	<ul style="list-style-type: none"> <li>• Amending the sections that place restrictions on young people being sentenced to imprisonment or home detention to ensure consistency with the increase in the youth justice age</li> <li>• Transitional provisions (see Appendix 3)</li> </ul>
Bail Act 2000	<ul style="list-style-type: none"> <li>• Amending the sections of the Act that place restrictions on bail to ensure consistency with the increase to the youth justice age</li> <li>• Amendments to clarify the arrest provisions that apply for young people who breach bail that has been granted by the District or High Court</li> <li>• Amending Section 15, which currently specifically applies to the granting of bail to 17-year-olds, to apply to 18 year-olds, to account for raising the age</li> <li>• Transitional provisions (see Appendix 3)</li> </ul>
Children, Young Persons, and their Families (Oranga	<ul style="list-style-type: none"> <li>• Amendment to clarify when criminal proceedings are underway against a young person. The 2017 Act will</li> </ul>

Legislation	Proposed amendments
Tamariki) Legislation Act 2017	<p>define that “criminal proceedings are underway” at the time a charging document is filed against that person or a notice of hearing has been filed for an infringement offence</p> <ul style="list-style-type: none"> <li>• Transitional provisions (see Appendix 3)</li> </ul>
Oranga Tamariki Act 1989	<ul style="list-style-type: none"> <li>• Clarification of application of sections of the Oranga Tamariki Act 1989 in relation to the other relevant legislation amended by the Bill, such as situations where a young person is arrested under the Bail Act 2000</li> <li>• Amendments to maintain consistency across the Act in relation to existing regulatory powers, for example amending the Act which enables the court to authorise the continued detention of a young persons in in the custody of the chief executive under the Criminal Procedure Act 2011 – this amendment adds a reference to the Criminal Procedure Act 2011 which provides for the remand of a 17-year-old.</li> </ul>
Returning Offenders (Management and Information) Act 2015	<ul style="list-style-type: none"> <li>• Transitional provisions (see Appendix 3)</li> </ul>
Victims’ Rights Act 2002; Prisoners’ and Victims’ Claims Act 2005; Victims’ Orders Against Violent Offenders Act 2014	<ul style="list-style-type: none"> <li>• Amending the definition of young person to include 17-year-olds</li> </ul>
<b>Part Three: Fixing other drafting errors in the 2017 Act and the Children’s Commissioner Act 2003</b>	
Children, Young Persons, and their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act)	<ul style="list-style-type: none"> <li>• Amendment to address drafting error: removing a reference to the declaration process for care and protection orders in section 87 of the Oranga Tamariki Act 1989 because the declaration process no longer exists.</li> <li>• Amendment to address a cross-referencing error regarding care agreements agreed to by family group conferences in relation to care of a child or young person by Oranga Tamariki, iwi social services etc. The wrong version of the relevant section was amended when deleting references to other sections that were repealed by the 2017 Act. If the error is not addressed the effect will be that care agreements cannot be extended, which was not intended.</li> <li>• Amendment to address a typographical drafting error in relation to information sharing – wording was left out in the drafting on the relevant provision. This provision clarifies a child should be consulted in relation to disclosure of their information by all child welfare and protection agencies or independent persons, whether or not they is authorised. This amendment to included unauthorised entities will align with the original policy of information sharing.</li> </ul>
Children’s Commissioner Act 2003	<ul style="list-style-type: none"> <li>• Addressing drafting error in section 11 of the Children’s Commissioner Act 2003 (matters to which the Commissioner must have regard) by correcting references to provisions in the Oranga Tamariki Act 1989. The current references will be incorrect on 1 July 2019 due to changes made by the 2017 Act</li> </ul>

### Appendix 3 – Impact of proposed transitional provisions from 1 July 2019 under relevant legislation amended by the Oranga Tamariki Legislation Bill (Part Two)

What jurisdiction will apply to a 17-year-old from 1 July 2019 under relevant legislation?	
Legislation	Jurisdiction that would apply to 17-year-old
<b>Criminal Investigations (Bodily Samples) Act 1995</b>	
For any process or procedure that is not specified below, for example where NZ Police requests a sample from a 17-year-old but no Court proceedings have commenced to compel the sample, then the youth processes will apply on and from 1 July 2019 (1 July).	<b>Youth jurisdiction</b>
A 17-year-old suspect refuses consent for providing a sample prior to 1 July and a compulsion order is required to obtain the sample. If an application for a compulsion order hearing is made before 1 July, or the compulsion order itself is made before 1 July, a 17-year-old will be processed under the adult processes.	<b>Adult jurisdiction</b>
A 17-year-old is required to attend a hearing or give a sample after 1 July as an adult under a compulsion order but wants a parent or caregiver present as right afforded to a young person. In this instance a support person for the young person may be present at the hearing or when the sample is taken. That is, the process would be granted under benefits afforded through the standard youth processes.	<b>Adult jurisdiction (but provides protections young people are normally entitled to)</b>
A 17-year-old convicted of an imprisonable offence challenges a databank compulsion notice. If notice of a hearing has been filed before 1 July, or a hearing held and a sample ordered before 1 July, a 17-year-old will continue to be processed under the adult processes.	<b>Adult jurisdiction</b>
A 17-year-old has a sample taken before 1 July but proceedings in the Youth Court begin after 1 July. <sup>1</sup> Storage and retention of the sample and DNA profile is processed under the youth processes.	<b>Youth jurisdiction</b>
<b>Criminal Procedure Act 2011</b>	
If criminal proceedings against a 17-year-old are underway in the District or High court before 1 July then under the Criminal Procedure Act 2011 they will be treated as adults for remand purposes and any other procedures under the Act.	<b>Adult jurisdiction</b>
<b>Sentencing Act 2000</b>	
Under the Sentencing Act 2002, if proceedings at the Youth Court against 17-year-olds are underway on or after 1 July, the 17-year-old will be sentenced as a young person.	<b>Adult jurisdiction (but the 17-year-old is being treated as young person for the purposes of sentencing)</b>

<sup>1</sup> The sample taken will be stored and retained under the youth jurisdiction for provisions/procedures regardless of when the sample was taken.

Legislation	Jurisdiction that would apply to 17-year-old
Bail Act 2000	
If a 17-year-old has been bailed by the District or High Court before or after 1 July and they breach their bail conditions after 1 July, they can be arrested under the Bail Act 2000 as an adult. However, if a 17-year-old has been bailed by the District or High Court on or after 1 July and then breaches their bail, while the adult arrest provisions in the Bail Act 2000 apply to the 17-year-old, the protections for young people under the Oranga Tamariki Act 1989 will also apply. Sections 214/214A of the Oranga Tamariki Act 1989 will not apply if the 17-year-old is bailed by the District or High Court.	<b>Adult Jurisdiction</b>
Children, Young Persons, and their Families (Oranga Tamariki) Legislation Act 2017	
A 17-year-old commits an offence prior to 1 July but their court proceedings do not begin until on or after 1 July. They will face proceedings in the Youth Court under the youth jurisdiction (unless they are transferred up to the adult jurisdiction).	<b>Youth jurisdiction</b>
A 17-year-old has committed offences before and after 1 July, but investigations into the offending are not carried out until after 1 July. Where investigations begin after 1 July the 17-year-old will be investigated as a young person regardless of when the offending occurred.	<b>Youth jurisdiction</b>
A 17-year-old who has committed a serious offence <sup>2</sup> under the Oranga Tamariki Act 1989 after 1 July will face proceedings in the District or High Court under the adult jurisdiction after first hearing. Investigations into serious crimes committed by a 17-year-old will provide the rights and protections for a young person, regardless of what court the proceedings are heard in.	<b>Adult jurisdiction</b>

There are other situations where the transitional clauses will address issues related to actions commenced against a 17-year-old before 1 July, being:

- under the Children, Young Persons, and their Families (Oranga Tamariki) Legislation Act 2017, any investigation or evidential material gathered before 1 July in relation to a criminal offence committed by a 17-year-old will not be invalidated or inadmissible because of a 17-year-old's change in status from an adult to young person
- under the Criminal Investigations (Bodily Samples) Act 1995, a 17-year-old is asked or required to provide a sample but no sample is taken before 1 July and no proceedings steps have commenced to compel a sample. A sample provided after 1 July is processed under the youth processes
- under the Criminal Investigations (Bodily Samples) Act 1995, adult forms lawfully presented to a 17-year-old and any decisions lawfully made by a 17-year-old before 1 July will not be invalidated by a 17-year-old's change in status from an adult to young person
- under the Returning Offenders (Management and Information) Act 2015, where a Databank Compulsion Notice has been issued to a 17 year old returning offender and a notice of hearing is filed before 1 July, or a hearing is held and a sample ordered before 1 July, a 17 year old will continue to be processed under the adult jurisdiction..

<sup>2</sup> Serious offences are murder or manslaughter, or other criminal offences that have a maximum sentence of 14 years' imprisonment and over.

**Appendix 4 – Oranga Tamariki Legislation Bill**

PROACTIVELY RELEASED