

4 October 2023

Section 9(2)(a)

Section 9(2)(a)

Our ref: OIA 106563

Tēnā koe Section 9(2)(a)

Official Information Act request: Youth and gang crime

Thank you for your email of 18 July 2023 to the office of the Prime Minister, requesting, under the Official Information Act 1982 (the Act), information on youth and gang crime.

On 7 August 2023, your request was transferred under section 14 of the Act to the Ministry of Justice (the Ministry) for response. Specifically, you requested:

... any advice, documents or correspondence relating to the proposals outlined in the press released 'System shake-up to tackle youth and gang crime' published 17 July 2023. Please restrict the request to material created in July this year.

On 4 September 2023, the Ministry contacted you to advise that six papers were in scope of your request but were refused under section 18(d) of the Act on the basis that the information will soon be publicly available. At the same time, we also advised that the timeframe for responding to additional advice, documents, and correspondence in scope of your request would need to be extended under section 15A(1)(b) of the Act due to the need for external consultation.

On 2 October 2023, the Ministry contacted you to advise that it had decided to grant your request but needed further time to complete the compilation of the necessary documents. We advised that a response would be provided by 4 October 2023.

In response to your request, please see the attached appendix for details of the documents within scope. Please note, we have interpreted documents 1 and 2 as in-scope, although they are dated late June. This is on the basis that none of the other documents include the information that relates to the decisions made by Cabinet on the \$26 million in funding mentioned in the last two paragraphs of the press release you referred to, and because Cabinet confirmed the decision of the Social Wellbeing Committee on 3 July 2023. We have also interpreted document 3 as in-scope as it was attached to document 7. Some information is out of scope and has not been included and other information has been withheld under the following provisions of the Act:

- section 9(2)(a) to protect privacy of natural persons
- section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions
- section 9(2)(h) to maintain legal professional privilege

In withholding information under section 9 the Ministry has considered the public interest in releasing the information and does not consider it outweighs the interest in withholding the information at this time.

If you require any further information, please contact Media & Social Media Manager Joe Locke at media@justice.govt.nz.

If you are not satisfied with this response, you have the right to make a complaint to the Ombudsman under section 28(3) of the Act. The Office of the Ombudsman may be contacted by email to info@ombudsman.parliament.nz or by phone on 0800 802 602.

Nāku noa, nā



Lison Harris
Acting General Manager, Criminal Justice Policy

Appendix A – Documents in scope of request

No	Date	Type	Document Title	Notes
1	28/6/2023	Cabinet Paper	Proposals to Improve Court and System Performance	Some information is out of scope.
2	28/6/2023	Cabinet Minute	Proposals to Improve Court and System Performance	
3	30/6/2023	Aide Memoire	Cabinet: Criminal and sentencing proposals on youth offending, for Justice-Oranga Tamariki paper	Some information withheld under sections 9(2)(g)(i) and 9(2)(h)
4	3/7/2023	Cabinet Paper	Strengthening the response to serious offending behaviour in children and young people	Refused under section 18(d) as they will be publicly available at: justice.govt.nz/justice-sector-policy/publications/?Filter_Topic=765
5	3/7/2023	Cabinet Minute	Strengthening the response to serious offending behaviour in children and young people	
6	7/7/2023	Briefing	Advice on Justice proposals for Strengthening the response to youth offending behaviour in children and young people	Some information withheld under sections 9(2)(a) and 9(2)(h)
7	13/7/2023	Aide Memoire	Cabinet: Strengthening the legislative response to serious offending behaviour in children and young people	Some information is out of scope and some information withheld under sections 9(2)(g)(i) and 9(2)(h)
8	17/7/2023	Cabinet Paper	Strengthening the legislative response to serious offending behaviour in children and young people	Refused under section 18(d) as they will be publicly available at: justice.govt.nz/justice-sector-policy/publications/?Filter_Topic=765
9	17/7/2023	Cabinet Minute	Serious Offending Behaviour in Children and Young People: Strengthening the Legislative Response	
10	19/7/2023	Cabinet Paper	Proposals to address ram-raid offending	
11	19/7/2023	Cabinet Minute	Proposals to address ram-raid offending	

In Confidence

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

Proposals to improve court and system performance**Proposal**

1 This paper:

Out of scope

1.2 seeks agreement to additional funding for Police prosecutions to improve court performance and timeliness.

Relation to government priorities

2 One of my key priorities is to reduce court delays. The proposals relating to funding for Police prosecutions support this priority.

Executive Summary

3 This paper notes work in progress to improve court and system performance through providing funding for Police prosecutions.

4 In recent years there has been a significant increase in the number of District Court cases awaiting jury trials and the time taken to resolve them. This presents risks to the integrity of, and public confidence in, the court system. This increase is continuing to grow and that is why it is important to address this issue now and urgently.

Out of scope

Out of scope

- 7 This paper also proposes funding options for Police prosecutions to support a more case management-focused system that requires a higher level of resourcing across the Police resolution functions. This is expected to enable consistently high-quality case files which would contribute to timely disclosure and early resolution.
- 8 These proposals sit alongside other operational work that is being progressed with agencies and the Judiciary to reduce court delays. This includes the Criminal Process Improvement Programme, demand-based scheduling, and Police's ReFrame Programme.

District Court jury trial delays

- 9 Defendants have a right to trial without undue delay. However, in recent years, there has been a significant increase in:
- 9.1 *the number of District Court cases awaiting jury trials* between March 2018 and March 2023, there was an 81 percent increase (around 1,600 cases) in the number of District Court jury trial cases awaiting trial; and
- 9.2 *time taken to resolve them*: as at March 2023, the average time to resolve a case where a jury trial is elected was 494 days, up from the pre-COVID-19 average of 374 days.
- 10 This presents risks to the integrity of, and public confidence in, the court system. This also adversely affects participants including defendants, complainants, and witnesses. Court delays increase resourcing pressures and undermine the overall efficiency and effectiveness of the court system.

Non-legislative initiatives that are helping to address court delays

- 11 I consider that non-legislative operational improvements are a valuable method to reduce court delays and any legislative changes would sit alongside those. Non-legislative improvements include:
- 11.1 The Criminal Process Improvement Programme;
- 11.2 Police's ReFrame Programme; and
- 11.3 demand-based court scheduling.

Criminal Process Improvement Programme

- 12 The Criminal Process Improvement Programme is a medium-term sector improvement programme led by Justice. The Programme will introduce a suite of operational improvements across the sector that, collectively, will improve the progression of cases through the district court.

ReFrame

- 13 ReFrame is a three-year service delivery transformation programme designed to deliver the people change, processes, tools and policies required to enable Police to lift its

performance in core policing. I am advised that the purpose of the programme is to ensure Police have the capability and capacity to make better informed decisions to deliver principled, effective, and efficient resolution decisions and policing services. The programme includes longer term initiatives to improve evidential processes and practices to enable early disclosure.

Demand-based court scheduling

- 14 The Chief District Court Judge implemented “demand-based court scheduling” in May 2023. This system is primarily about scheduling judges into the courts with the largest backlogs and scheduling more events for which there is the most demand, such as judge-alone trials and jury trials.

Out of scope

Funding for Police prosecutions to improve court performance and timeliness

- 40 Officials advise that the current resourcing within Police prosecutions means that the operation model used is a “tactical, just-in-time” operating model. A better operating model that is more focussed on case management requires a higher level of resourcing. This would enable consistently high-quality case files which would contribute to timely disclosure and early resolution.
- 41 There are several Justice Sector programmes that address improving court system performance and timeliness (ReFrame, Criminal Process Improvement Programme, Demand Based Scheduling). I have been advised that Police has not been funded to support all of these programmes. I have been advised that Police are not in a position to absorb the costs from within baseline funding or cope with the increase demands in prosecutions without drawing on frontline operational resources

Criminal Process Improvement Programme

- 42 The Police resourcing and operating model changes are an integral component of the sector-wide changes needed to address court delays, backlogs, and time spent in custody. The extra funding required by Police to implement the Criminal Process Improvement Programme is not being funded. I have been advised that Police require an additional 78.3 FTE across the prosecutions and resolutions functions to make the operating model changes proposed under the Programme which would require extra funding of \$9.2 million year on year, alongside \$2.5 million over 18 months to implement these changes.

Demand Based Court Scheduling

- 43 The Chief District Court Judge implemented “demand-based court scheduling” in May 2023. This system is primarily about scheduling judges into the courts with the largest backlogs and scheduling more events for which there is the most demand, such as judge-alone trials and jury trials. Police is running Operation Surge to respond to this additional demand, but I have been advised that there is cost pressure for Police to service the additional sitting hours. I understand that Police is utilising frontline district staff as prosecutors in court or costly Crown Solicitor spending for the difference between available baseline Prosecution resources and extra hours.
- 44 Operation Surge was initially planned for three months until July 2023 and was dependent on the redeployment of existing (predominantly frontline) Police staff. Demand-based court scheduling is to be extended for at least 18 months to reduce the District Court backlog. I am advised that this will have a significant impact on Police’s frontline staff (many of whom are at a supervisory level), as well as on the overall cost pressures.
- 45 Operation Surge is currently running at \$0.5 million per month, equating to \$6 million of additional resourcing required to meet the increase in court sitting time in the 2023/24 financial year. Early modelling indicated a further \$4 million will still be required in the 2024/25 financial year.

Police funding required to deliver Criminal Process Improvement Programme benefits and respond to demand-based court scheduling

- 46 Police officials have identified options to implement the Police aspects of the Criminal Process Improvement Programme while also responding to the extra resource required for demand-based scheduling.
- 47 I am advised that to have enough resources in court to address the case backlog, demand-based scheduling, and additional pressure from defendants on remand, as well as to implement the Criminal Process Improvement Programme, Police need funding of \$12.57 million in the 2023/24 financial year and \$13.45 million in the 2024/25 financial year (see table over the page).

Table One: Funding required by Police for prosecutions to improve court performance and timeliness

(\$m)	FY 2023/24	FY 2024/25	Two-Year Total
Criminal Process Improvement Programme	1.262	1.268	2.530
Initial appearance and bail	2.319	2.582	4.900
Case progression and resolution management	3.716	6.899	10.616
Meaningful court appearance	5.266	2.703	7.969
Total Funding Required by Police	12.564	13.452	26.016

Out of scope

Out of scope

- 49 The funding proposed will allow for short-term initiatives and sustained support for the improvements to court system performance. This will relieve the pressure on Police to find resources to deliver the increase in scheduled hours to address the backlog. The focus would be on the following three things:

- 49.1 Initial appearance and bail – improvements to file preparation and increasing the use of digital files. This will improve file quality, support improved disclosure and a reduction in adjournments. These improvements will also enable greater flexibility to share workloads across geographically dispersed teams due to a reduced reliance on locally held paper files
- 49.2 Case progression and resolution management – increased focus on earlier resolution to reduce the number of appearances in court, and
- 49.3 Meaningful court appearances – supporting Police Prosecution to move away from a tactical, just-in-time operating model. Testing new ways of working to be prepared for securing increases to existing baseline.

- 50 I am advised that, if required, the proposed improvements to initial appearance and bail described in paragraph 47.1 could be removed from this proposal which would reduce the two-year funding requirement to \$21.11 million (\$10.244 million in the 2023/24 financial year and \$10.870 million in the 2024/25 financial year).
- 51 I am advised that if the initial appearance and bail improvements described in paragraph 47.1 are not funded Police will still deliver the resources and operating model changes needed to meet the requirements of the Criminal Process Improvement Programme and the demand-driven scheduling. I am further advised that Police do not support the removal of those improvements from the proposal.
- 52 I propose that funding for the first two financial years (between \$10 244 and \$12.564 million in the 2023/24 financial year and between \$10.870 and \$13.452 million in the 2024/25 financial year) is allocated from the Justice Cluster Tagged Contingency [GOV-22-MIN-0033 and CAB-22-MIN-0423 refers], with authorisation provided to Justice Cluster Ministers to allocate a proportion of department operating underspends before audited financial statements are available, to enable early funding decisions.

Out of scope

Financial Implications

Out of scope

- 57 The cost implications for the Police prosecutions proposal are outlined in the previous section.
- 58 The Police Prosecutions proposal, described in table one, will be funded from the Justice Cluster Tagged Contingency [GOV-22-MIN-0033 and CAB-22-MIN-0423 refers]. The Tagged Contingency facilitates the use of retained departmental operating underspends, and fiscally neutral reprioritisation decisions for the Justice Cluster.
- 59 Actual underspends are not confirmed until agency audits are completed on 30 September 2023. This paper seeks authorisation for Cluster Ministers to make conservative financial decisions around Police prosecutors before actual underspends are confirmed.

Out of scope

Regulatory Impact Statement

- 62 Cabinet's impact analysis requirements apply to the proposals to improve court and system performance, but there is no accompanying Regulatory Impact Statement and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
- 63 The Treasury's Regulatory Impact Analysis team and the Ministry of Justice have agreed that supplementary analysis will be provided at the report back to Cabinet Social Wellbeing Committee.

Climate Implications of Policy Assessment

- 64 The Ministry for the Environment was not consulted, as CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Out of scope

- 67 The changes proposed for funding for Police prosecutions will improve the ability for bail matters to be proactively discussed before the defendant's first appearance. This will support defendants who are eligible for bail to be released without undue delay and with the appropriate bail terms.

Consultation

Out of scope

Out of scope

70 Police support seeking additional funding for Police prosecutions.

71 Public consultation may be required on broader changes to improve court performance and timeliness, and I intend to report back to this committee regarding that in August 2023.

Communications

72 I will consider announcements following Cabinet decisions.

Proactive Release

73 I intend to proactively release the paper, subject to redactions as appropriate and consistent with the Official Information Act 1982.

Recommendations

The Minister of Justice recommends that the Cabinet Social Wellbeing Committee:

Out of scope

Police prosecutions

3 note that additional funding is sought immediately for Police prosecutions to improve court performance and timeliness

- 4 note that the cost of improving Police prosecutions is \$26.016 million for two financial years with \$12.564 million in 2023/24 financial year and \$13.452 million in 2024/25 financial year
- 5 note that if the proposed improvements to initial appearance and bail are removed from this proposal the two-year funding requirement would reduce to \$21.11 million (\$10.244 million in the 2023/24 financial year and \$10.870 million in the 2024/25 financial year)
- 6 agree that the Minister of Justice and the Minister of Police will decide whether the proposed improvements to initial appearance and bail will be funded under the proposal or removed from scope
- 7 note that on 29 September 2022 Cabinet [CAB-22-MIN-0423 refers]:
- 7.1 agreed to establish the “Justice Cluster Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Justice Cluster
 - 7.2 authorised Justice Cluster Ministers jointly to add funds to, and draw down from, the above tagged contingency
 - 7.3 agreed that the financial decisions to be made by Cluster Ministers must either be consistent with Cluster/Cluster agency priorities or address cost pressures, must not create an implicit or explicit precommitment for net additional expenditure and are subject to approval from the Minister of Finance
- 8 note the balance of the Justice Cluster tagged contingency will not be confirmed until Cluster Agencies final audited actuals have been confirmed on 30 September 2023
- 9 authorise Justice Cluster Ministers to fund the proposal described in recommendations 4 and 5 above using the Justice Cluster Tagged Operating contingency based on a conservative portion of departmental operating underspends before audited financial statements are available provided the decision is fiscally neutral to the Crown
- 10 note that if the balance in the Justice Cluster Tagged Contingency is not sufficient to fully fund the up to \$26.016 million for Police prosecutions over the two-year period described in recommendation 4 above, the Cluster will need to meet the balance through reprioritisation or seek a cluster exception
- 11 agree that if the conservative unaudited amount exceeds actual/audited underspends, the Justice Cluster will at the next available baseline update be expected to reduce their appropriations or fund the increase through reprioritisation agreed by Cabinet [GOV-22-MIN-0033 refers] to ensure all appropriation decisions are fiscally neutral

Out of scope

Out of scope

Authorised for lodgement

Hon Kiri Allan
Minister of Justice

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



Cabinet Social Wellbeing 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.

Proposals to Improve Court and System Performance

Portfolio

Justice

On 28 June 2023, the Cabinet Social Wellbeing Committee:

Out of scope

Police prosecutions

- 3 **noted** that additional funding is sought immediately for Police prosecutions to improve court performance and timeliness;
- 4 **noted** that the cost of improving Police prosecutions is \$26.016 million for two financial years with \$12.564 million in 2023/24 financial year and \$13.452 million in 2024/25 financial year;
- 5 **noted** that if the proposed improvements to initial appearance and bail are removed from the proposal in the paper under SWC-23-SUB-0080, the two-year funding requirement would reduce to \$21.11 million (\$10.244 million in the 2023/24 financial year and \$10.870 million in the 2024/25 financial year);
- 6 **agreed** that the Minister of Justice and Minister of Police will decide whether the proposed improvements to initial appearance and bail will be funded under the proposal or removed from scope;
- 7 **noted** that in September 2022, the Cabinet Government Administration and Expenditure Review Committee:
 - 7.1 agreed to establish the “Justice Cluster Tagged Operating Contingency” to facilitate the use of retained underspends, and fiscally-neutral reprioritisation decisions for the Justice Cluster;
 - 7.2 authorised Justice Cluster Ministers jointly to add funds to, and draw down from, the above tagged contingency;

7.3 agreed that the financial decisions to be made by Cluster Ministers must either be consistent with Cluster/Cluster agency priorities or address cost pressures, must not create an implicit or explicit pre-commitment for net additional expenditure and are subject to approval from the Minister of Finance;
[GOV-22-MIN-0033]

- 8 **noted** that the balance of the Justice Cluster tagged contingency will not be confirmed until Cluster Agencies final audited actuals have been confirmed on 30 September 2023;
- 9 **authorised** Justice Cluster Ministers to fund the proposal described in paragraphs 4 and 5 above using the Justice Cluster Tagged Operating contingency based on a conservative portion of departmental operating underspends before audited financial statements are available provided the decision is fiscally neutral to the Crown;
- 10 **noted** that if the balance in the Justice Cluster Tagged Contingency is not sufficient to fully fund the up to \$26.016 million for Police prosecutions over the two-year period described in paragraph 4 above, the Cluster will need to meet the balance through reprioritisation or seek a cluster exception;
- 11 **agreed** that if the conservative unaudited amount exceeds actual/audited underspends, the Justice Cluster will, at the next available baseline update, be expected to reduce their appropriations or fund the increase through reprioritisation agreed by Cabinet to ensure all appropriation decisions are fiscally neutral;

Out of scope

Rachel Clarke
Committee Secretary

Present:

Hon Carmel Sepuloni (Chair)
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Jan Tinetti
Hon Kiri Allan
Hon David Parker
Hon Priyanca Radhakrishnan
Hon Barbara Edmonds
Hon Willow-Jean Prime
Hon Rino Tirkatene

Officials present from:

Office of the Prime Minister
Officials Committee for SWC



Cabinet: Criminal and sentencing proposals on youth offending, for Justice-Oranga Tamariki paper

Hon Kiri Allan, Minister of Justice
30 June 2023

Purpose

1. This aide memoire supports your discussion at Cabinet on your joint paper with Hon Kelvin Davis, *Strengthening the response to serious offending behaviour in children and young people*.
2. Talking points are appended below. They outline the additional criminal justice proposals and explain their intended effect in denouncing the offending.

The paper proposes improvements to operational responses to youth offending, along with legislative changes to the youth justice and care and protection systems

3. The paper focuses on operational and legislative changes to the care and protection of children systems, and youth justice processes. This includes proposed amendments to the Oranga Tamariki Act 1989 to increase the accountability for offending.
4. Justice supports these proposals as they represent operational agencies' best advice as to what will work to reduce youth offending.

We have added criminal justice proposals to recognise and more expressly denounce the harm of encouraging youth offending

5. As requested, we have included new criminal justice amendments into the paper.
6. Firstly, the paper provides two alternative options for how the law can further denunciate the harms caused to vulnerable children or young people who are commissioned by adults to offend on their behalf. These are:

EITHER

- 6.1. introducing a new offence for those who participate in an organised criminal group by recruiting young people into offending. This would have a maximum 10 year penalty, and would have a bespoke aggravating factor that provided for recognition at sentencing of the varying ages and degrees of vulnerability of the young person induced to offend;

OR

- 6.2. officials doing further work to explore a new aggravating factor that would apply whenever an adult aids, abets, incites, counsels, or procures any person under the age of 18 to carry-out an offence. This would apply to all instances of party liability under section 66 of the Crimes Act, and would not be linked to organised crime groups.
7. Secondly, the paper proposes a new aggravating factor in the Sentencing Act 2002 for offenders who promote their offending through posting videos. This would respond to the negative peer influence of glorifying offending, which risks encouraging copycats and can increase the harm experienced by victims.

However, the proposals largely replicate existing provisions of the law that are working well

8. We note that there are already existing provisions in law that criminalise the conduct targeted by the new offence, and the aggravating factors in the Sentencing Act 2002 already broadly captures the additional harms targeted. These provisions are largely working well.
9. Overall, we consider that, while the new proposals could have a signalling effect, they are unlikely to have significant practical benefits.
10. At the moment, a person who induces or rewards children or young people to offend is currently dealt with through section 66 (party liability) and 98A (participation in an organised criminal

Approved by: Jason Frick, Acting Criminal Law Policy Manager

group) of the Crimes Act 1961. In many respects, these existing offences capture a broader range of conduct and are easier for law enforcement to prove than the new proposed offences.

11. For example, if any person commissions a child or young person to deal drugs, they are liable as a party to that offence under section 66 of the Crimes Act, and subject to the same penalty. In contrast, a new offence would require law enforcement to prove an additional element – that the person who commissioned the child to deal drugs was participating in an organised criminal group.

s9(2)(h)

13. Similarly, a person posting videos of their offending can already be captured by existing aggravating factors. In particular, section 9(1)(d) of the Sentencing Act, provides an aggravating factor of the extent of harm resulting from the offence (for example, to society from encouraging copycats or the impact on the victim).

Police s9(2)(h) have raised significant concerns with the proposals

14. Given the adequacy of existing provisions, Police, s9(2)(h) and Oranga Tamariki have questioned the value of the new proposals. Agencies have made the practical points that:
 - 14.1. there is little evidence to indicate that ramraid and other retail crime offending is linked to gangs, so these measures are unlikely to address that problem (Police analysis from 2020 indicates that only 2% of youth offenders have gang links);
 - 14.2. prosecutors are unlikely to charge under the proposed new offence as it will require proof of additional elements compared to existing provisions. This will limit any practical signalling effect other than the creation of the offence itself;
 - 14.3. in practice, the new aggravating factor of posting offending behaviour will almost never apply to children or young people (who are the cohort most likely to do it). This is because these cases are typically resolved through alternative actions and Family Group Conferences. Further, the Sentencing Act will only apply when children or young people are brought before the District Court for sentencing; and
 - 14.4. attempting to define a new aggravating factor for posting offending behaviour could unintentionally limit the circumstances where this behaviour can be considered at sentencing.

Between the two options Justice's prefers a new offence linked to organised crime groups

15. Between the alternative option in the Cabinet paper (described at paragraph 6 above), Justice advises against proceeding with an aggravating factor linked to section 66 of the Crimes Act.
16. This is because:
 - 16.1. the benefit of both options are the same; they are primarily tools for signalling. This is achieved better through the option of a new offence which is directly linked to organised criminal groups;
 - 16.2. the new offence is less likely than the a new aggravated factor linked to party liability to have system-wide unintended implications. Party liability is relied on heavily by law enforcement on a day-to-day basis. It is important that any changes we make do not unintentionally undermine well-established and understood law; and

- 16.3. progressing further working on legislative change will delay other priority work. This is likely to particularly affect Police who will need to work with Oranga Tamariki at pace to implement the new supports/interventions referred in the Cabinet paper.
17. If Cabinet decides to proceed with a new aggravating factor linked to party liability, further work will focus on:
- 17.1. engaging with Crown Law and Police on how to best reduce the risks of confusing courts and law enforcement with a new aggravating factor where there is cross-over with existing provisions that have the same effect;
 - 17.2. reviewing the number/circumstances of cases in which adults are charged as party to an offence committed by a young person to understand the scale of the likely impacts; and
 - 17.3. modelling the impacts of the proposal on the prison population/sentencing outcomes.

Next Steps

18. Subject to Cabinet confirmation, Justice can instruct Parliamentary Council with the aim of incorporating the criminal justice proposals into the bill being prepared by Oranga Tamariki. We understand Oranga Tamariki is working to have a bill prepared for introduction in early August. This would need to be progressed under urgency to have the Bill be passed before the House rises for the election.
19. Subject to Cabinet confirmation, Justice can also begin work on regulatory impact assessment for the additional criminal justice proposals. We can have this prepared in time for Cabinet Legislative Committee consideration of the draft Bill. This will include modelling of the impact of the new offence.
20. We note that the regulatory impact assessment is likely to confirm the concerns agencies have raised with the proposals: that they are unlikely to impact the behaviours of concern or be used by law enforcement agencies.



Rt Hon Chris Hipkins, Prime Minister
 Hon Carmel Sepuloni, Deputy Prime Minister
 Hon Kelvin Davis, Minister for Children
 Hon Kiri Allan, Minister of Justice
 Hon David Parker, Attorney General
 Hon Ginny Andersen, Minister of Police

Advice on Justice proposals for *Strengthening the response to serious offending behaviour in children and young people*

Date	7 July 2023	File reference	CJ-CL-2023OTCAB
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Action Sought	Timeframe/Deadline
Note the contents of this briefing.	As soon as possible
Indicate whether to progress any of the options set out in this briefing.	

Contacts for telephone discussion (if required)

Name	Position	Telephone (work) (a/h)		1st contact
Rajesh Chhana	Deputy Secretary, Policy Group	s9(2)(a)	s9(2)(a)	✓
Jason Frick	Acting Policy Manager, Criminal Law	04 466 0312	s9(2)(a)	✓
Oliver Sanders	Policy Manager, Sentencing and Rehabilitation	04 439 4012	s9(2)(a)	

Minister's office to complete

<input type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events
<input type="checkbox"/> Referred to: _____		
<input type="checkbox"/> Seen	<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister
Minister's office comments		

Purpose

1. This briefing provides further advice on proposals responding to:
 - 1.1. adults encouraging children to offend on their behalf, and
 - 1.2. children and young people posting their offending online.

Executive Summary

2. The reasons children and young people offend are complex and varied. Despite youth offending declining overall, we have seen recent increases in serious, persistent offending.
3. Work is progressing across the youth justice system to improve operational responses to reduce serious and persistent youth offending
4. Ministers have requested that officials consider further whether there is a need for amendments to criminal justice legislation to better respond to youth offending. On 3 July 2023, Cabinet considered proposals to amend the Crimes Act 1961 and Sentencing Act 2002.
5. Officials from Justice, Police, and Crown Law have since met to further examine the nature and scope of the problems of concern, and to consider how the criminal justice system is responding to the increase in youth offending.
6. Inducing a young person to commit a crime, or posting offending online that encourages copycats, can cause serious harm. However, there is no strong evidence of a gap in the law. Within the limited time available, officials have not identified additional further legislative options that could be progressed immediately to address these issues more effectively than current law and initiatives.

Background

7. On 21 June 2023, the Cabinet Social Wellbeing Committee considered the paper, *Strengthening the response to serious offending behaviour in children and young people*. The paper focused on operational and legislative changes to reduce youth offending through strengthening the care and protection and youth justice systems.
8. Following Cabinet's consideration of the paper on 26 June 2023, the paper was updated to include Justice proposals. These included options to amend the Crimes Act and Sentencing Act.
9. On 3 July 2023, Cabinet considered the updated paper. Ministers since requested further advice from agencies on workable solutions to the problems of:
 - 9.1. adults (either gang members or otherwise) incentivising or rewarding children and young people to commit crimes; and
 - 9.2. children and young people posting offending online, leading to copycat offending.

Evidence of the problem

10. Officials from the Ministry of Justice, New Zealand Police, and Crown Law Office have met to consolidate any evidence of the problems of concern and the barriers to responding effectively to these challenges.

Adults encouraging or rewarding children and young people to commit crimes

11. Commissioning or rewarding children and young people to offend, particularly as part of recruitment to an organised criminal group, is serious offending that can have life-long detrimental effects.
12. Anecdotally, the most common instance of young people being drawn into offending by adults occurs within peer groups, without any connection to organised crime. This includes where a peer group is comprised of older teenagers, some of whom are just-over or just-under the age of 18. This also includes instances where a younger sibling is drawn into a ramraid or joyride by an older sibling.
13. Police evidence suggests that only a small proportion of youth offending is organised through gangs or organised criminal groups. Analysis from 2020 indicates that about 2% of youth offenders have gang links. Justice does not hold data on the number of cases in which adults are charged as party to an offence committed by a young person.

Young people posting their offending behaviour online, risking increases in copycat offending

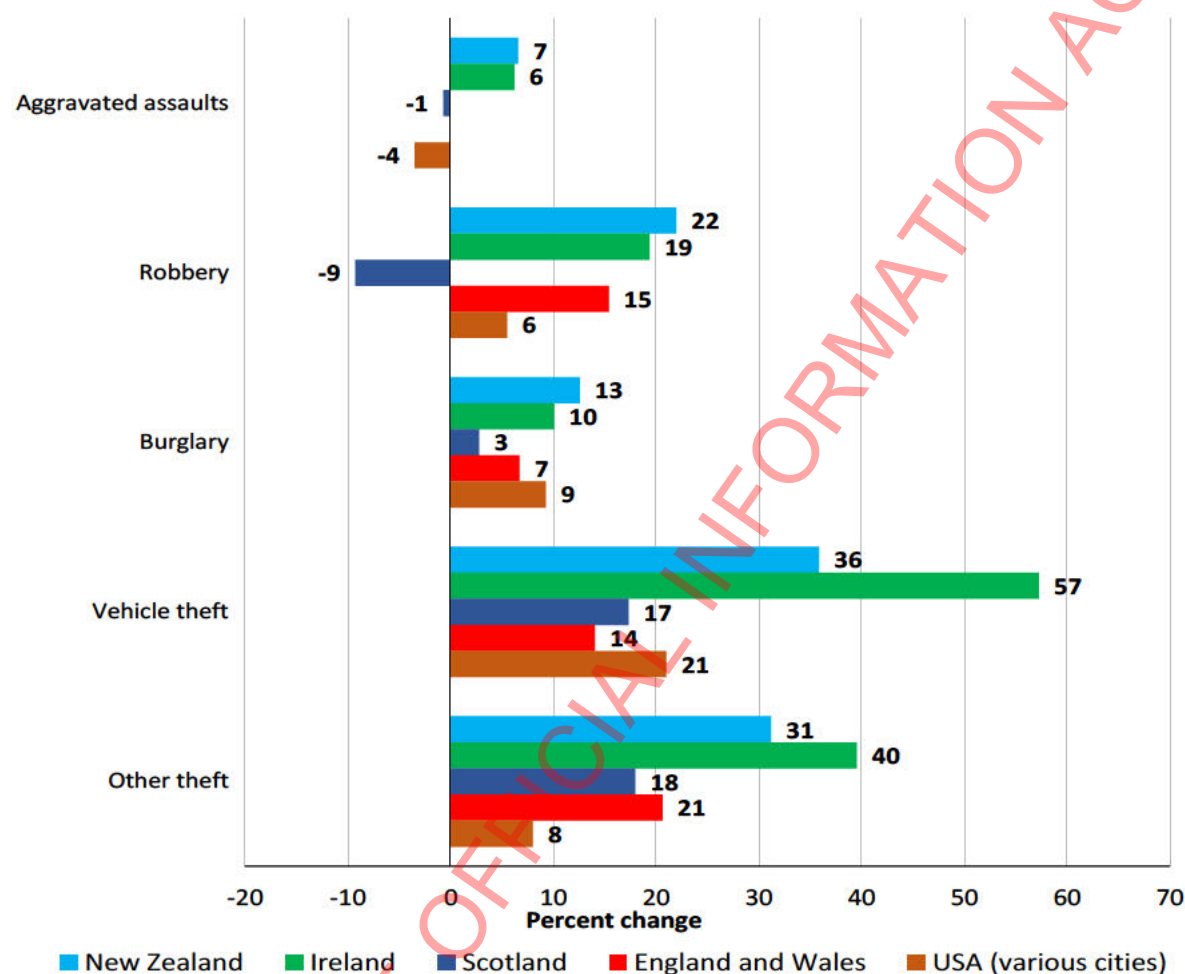
14. Young people are more likely to be active on social networking sites, such as Facebook, Snapchat, and TikTok. These can present new challenges for the criminal justice system. Peer influence is a strong factor in anti-social and offending behaviour, and so-called 'performance crime' – where offenders post their criminal behaviour to their friends and followers online – is becoming increasingly common.
15. Performance crimes may be livestreamed (such as on Facebook Live) or filmed and later uploaded to streaming or social media sites (or both) and can involve both willing and unwilling performers. Firstly, where those portrayed in the recording are aware of the production (sometimes recording or filming it themselves) and at least tacitly support its creation and subsequent distribution. Alternatively, these recordings may show involved or uninvolved parties (such as victims or bystanders) without their knowledge or consent.
16. In either circumstance, the negative impacts of offending behaviour are magnified when the behaviour is posted or otherwise shared online. This includes the glorification of such behaviour, encouraging copycat offending, and increased impacts on victims.

International experience shows that increases in crime may have causes outside of the justice system

17. Analysis of changes in recorded crime numbers for New Zealand and four other comparable jurisdictions – Ireland, Scotland, England and Wales, and the USA – considered the impact on recorded crime as countries came out of the pandemic. Changes in numbers of recorded crimes for the five countries are compared across five offence types – aggravated assaults, robbery, burglary, vehicle theft, and other theft.
18. Table 1 shows that the number of recorded crimes increased for all five countries across almost all offence types measured. While trends for youth offending are increasing in a

manner similar to that seen in adult offending rates, youth can tend to be overrepresented in burglary and vehicle theft.

Table 1. Percentage changes in recorded crime numbers for selected countries, by offence type: 2021 to 2022



19. Crime patterns are influenced by many factors. Relevant influences in the youth offending space include, for example, disengagement from schooling, decreased community engagement, peer influence, and footfall rates in urban areas.
20. Rates of offending will also fluctuate based on general conditions, regardless of the adequacy of the responses available in the criminal justice system. For example, over the last decade, youth offending in New Zealand has dropped by 63%.¹ However, the increase in ram raiding has coincided with the increase in costs of living. There are studies that suggest inflation can be a driver of some types of offending such as property crime, by decreasing vulnerable peoples' spending power and increasing demand for stolen goods.²

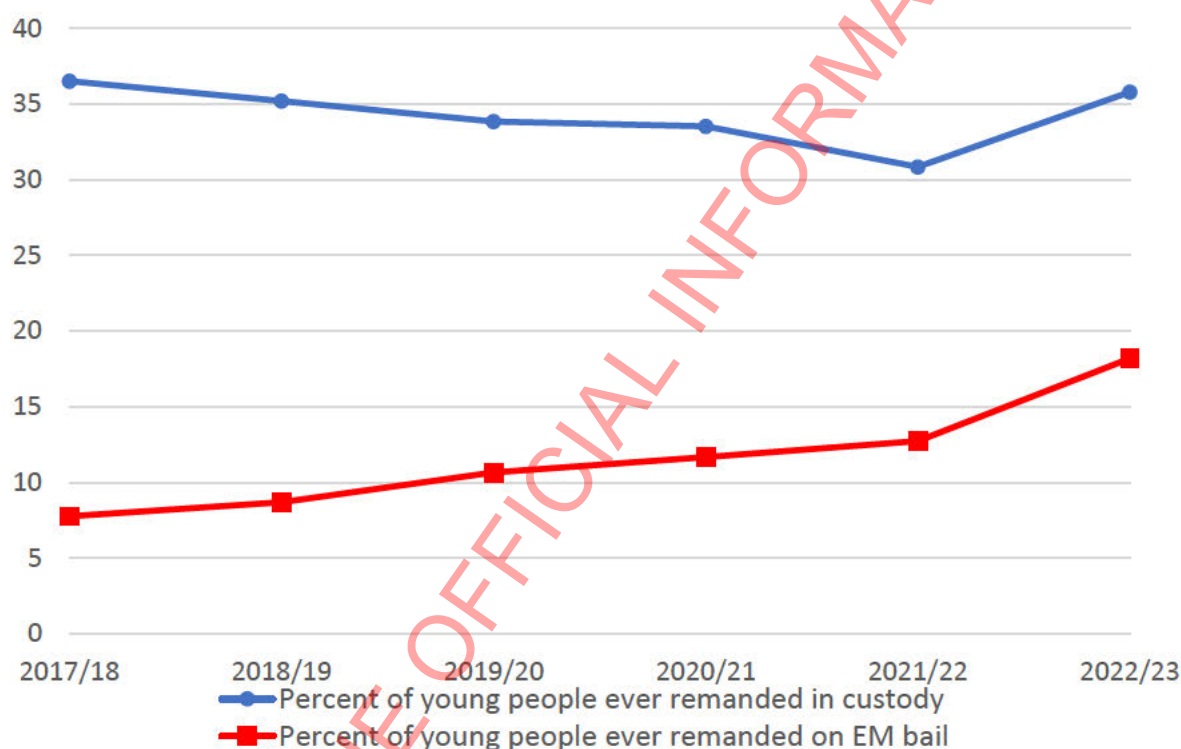
¹ Youth Justice Indicators Summary Report – April 2023, Ministry of Justice www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/youth-justice-indicators/

² Chor Foon Tang, Hooi Hooi Lean, November 2007, *Will Inflation Increase Crime Rate?: New Evidence From Bounds and Modified Wald Tests*, Journal Global Crime Volume: 8, Issue: 4 www.ojp.gov/ncjrs/virtual-library/abstracts/will-inflation-increase-crime-rate-new-evidence-bounds-and-modified

New Zealand's justice system is responding to increases in youth crime

21. A higher proportion of children and young people who offend are appearing in court. The increases in the proportions of children and young people who offend being charged suggests that Police have responded to the increases in the number of serious offences committed by children and young people over this time period.
22. Table 2 below indicates that the numbers of young people being remanded in custody after being charged, and subsequently placed on EM bail are increasing, demonstrating the seriousness with which courts are treating offending behaviour by young people.

Table 2: Percentage of young people remanded in custody and on electronically monitored bail by year



23. The percentage of young people remanded on EM bail at some time during their case(s) increased from 7.8% in 2017/18 to 12.7% in 2021/22, and to 18.2% in 2022/23. These changes have occurred because young people are receiving higher rates of custodial remand in 2022/23 than in 2021/22.
24. Overall, between 2021/22 and 2022/23, there were increases in both the proportions of children and young people who offend being charged, resulting in 22% more young people and 51% more children appearing in court. Similarly, statistics show 50% more children and young people being remanded in custody and 84% more being subject to EM bail.

Responding to people encouraging children and young people to commit crimes

25. Officials have been asked to reconsider criminal law options for holding adults to account for encouraging children and young people to commit offences for them.

Two options have been developed to recognise and further denounce this insidious behaviour

26. Ministers requested that two options be put into the Cabinet paper *Strengthening the response to serious offending behaviour in children and young people* to respond to this harmful conduct:
 - 26.1. **Introducing a new offence with an aggravating factor** that targets people whose participation in organised crime groups involves the inducing or rewarding of any person under 18 years of age to offend. This would have a maximum 10-year penalty.³ A new aggravating factor would apply to this offence, recognising at sentencing the varying ages and degrees of vulnerability of the young person induced to offend.
 - 26.2. **A new aggravating factor for party liability** that would apply whenever an adult aids, abets, incites, counsels, or procures any person under the age of 18 to carry-out an offence. This would apply to all *instances* of where an adult is a party to youth offending, and would not be linked to organised crime groups.
27. The main difference between these proposals is that the new offence specifically targets participation in an organised criminal group, while the new aggravating factor for party liability will apply to any instance of adults inducing or aiding offending by young people.

These options build on existing law that is used to criminalise and punish this conduct

28. Where any adult induces a child or young person to offend (whether or not connected to an organised criminal group), there are existing provisions that capture this conduct.
29. Currently, we rely on sections 66 (parties to offences) and 98A (participation in an organised criminal group) of the Crimes Act to hold this conduct criminally liable. These sections provide that:
 - 29.1. **Section 66, Parties to offences:** A person who incites, counsels, or procures any person to commit an offence is liable to the same penalty as the person who commits an offence. This requires commission of a specific offence. For example, if an adult paid a young person to ram-raid a shop or deal drugs, the adult would be a party to that offending and liable to the same penalty for that offence.
 - 29.2. **Section 98A, Participation in an organised criminal group:** a person is liable for participating in an organised criminal group if they know of the objectives of the group, know or are reckless that their actions contribute to any criminal activity, and know or are reckless to the fact that the criminal activity contributes to the group's objectives. This offence criminalises a wider range of conduct than party liability, but only where the offending relates to an organised crime group.
30. Under the existing law, the harmful nature of exploiting a vulnerable child or young person by the adult offender can already be recognised at sentencing:
 - 30.1. The court is required to take account of the gravity of the offending in the particular case.⁴ An adult inducing or aiding a vulnerable child or young person to offend on their behalf is likely to make that instance of offending more serious, resulting in a higher penalty.

³ This is the same penalty as for section 98A (*Participation in an organised criminal group*).

⁴ Sentencing Act, s 8(a).

- 30.2. There are also several existing aggravating factors that could apply (depending on specific circumstances), such as: the extent of any harm resulting from the offence; that the victim was particularly vulnerable because of their age; the extent of any connection between the offending and an offender's participation in an organised criminal group.⁵

This type of offending is serious, but there is no strong evidence of a legislative gap

31. Justice, s9(2)(h), and Police consider that the existing criminal law settings are workable and enable adults to be held criminally responsible when they induce or reward young people to offend on their behalf. Where an adult is convicted of this offending, existing settings provides for higher sentences to be imposed than would otherwise be the case.
32. s9(2)(h) Police advise that evidential sufficiency is the biggest barrier to prosecuting instances of adults inducing or rewarding offending by children or young people. Even where offending by a child or young person can be proved, it is difficult to obtain evidence that this was induced or aided by an adult.
33. Police have identified the proliferation of encrypted communication platforms as a significant barrier to collecting this type of evidence, particularly where sophisticated organised crime groups are involved. Justice officials note that encrypted communications and other emerging technology (e.g., evidence located offshore in the cloud) increasingly feature as significant challenges for our aging search and surveillance settings.
34. Another barrier to collecting this type of evidence is the lack of willingness of children and young people to implicate adults. This will particularly be the case where the child or young person is seeking to be recruited into the organised criminal group, or where the adult is an important person in the child or young person's life, such as a family member.
35. Adults are being prosecuted where the evidential links between them and offending by children or young people can be established. s9(2)(h)
36. In the time available, officials have not identified any other legislative options that can be progressed immediately which would enhance the effectiveness of the law in responding to this offending.
37. Over the medium/longer-term, improving the criminal justice response to this offending could involve:
- 37.1. prioritising a review of search and surveillance settings to ensure its continued effectiveness in light of emerging technological challenges (to address the evidential sufficiency challenges), and
- 37.2. continuing Police operational activities targeting organised crime groups, along with their leaders and facilitators.

⁵ Sentencing Act, ss 9(d), (g), and (hb).

38. As it relates to the two options identified in the Cabinet paper, they both have the same benefit: they are tools for signalling and denouncing the unacceptability of this harmful behaviour.
39. The key drawback of the new offence is that it is unlikely to be used in practice, which will limit any ongoing signalling/denouncement effect. This is because it imposes additional evidential requirements to section 98A relating to proving that offending by children or young people is linked to benefiting an organised criminal group. These evidential requirements will disincentive investigators and prosecutors from using the bespoke offence, compared to currently existing offences.
40. The key drawbacks of the new aggravating factor linked to section 66 party liability are:
 - 40.1. It is likely to have a wider application than intended. As discussed above (at paragraph 12), the most common instances where children and young people are drawn into offending is through peer and family relationships involving other teenagers who are young adults. These instances will most frequently not have any connection to organised crime.
 - 40.2. Creating a bespoke aggravating factor could unintentionally limit judicial discretion to accurately reflect this more harmful conduct at sentencing (compared to the broad discretion currently given to the judiciary). Further, the coherence of the law may be complicated by creating aggravating factors for party liability, rather than relying on general sentencing factors that can apply to any offences.
41. If Ministers wish to proceed with either option, the new offence linking to the activities of organised criminal groups will pose less of a risk of unintended system-wide consequences. Any amendments attached to section 66 (party liability) could undermine well-established and understood law this is relied on heavily by law enforcement on a day-to-day basis.

Sentencing proposals for people posting offending online

42. Officials were requested to present options for changes to sentencing practices that could respond to the concern of offenders posting their offending behaviour and associated risks, such as copycat offending and increased victimisation.

Officials presented an option to amend the list of aggravating factors in the Sentencing Act 2002

43. The 3 July Cabinet paper contained an option of amending the list of aggravating factors contained in section 9 of the Sentencing Act to include a new aggravating factor of the offender posting their offending behaviour online.
44. The paper noted that, in practice, the new aggravating factor of posting offending behaviour will almost never apply to children or young people (who are the cohort most likely to do it). This is because children and young people are sentenced in the Youth Court, where the Sentencing Act does not apply.
45. Further, attempting to define a new aggravating factor of posting offending behaviour may unintentionally limit the circumstances where this could currently be considered, as such behaviour is likely already covered by existing aggravating factors. For example, section 9(1)(d) of the Sentencing Act provides an aggravating factor of harm resulting from the offence, which could include harm to both society and victims from encouraging copycats or promoting offending.

We do not recommend introducing an analogous factor for consideration in the Youth Court

46. Experience shows that once a young person receives a criminal record, they are more likely to develop a pattern of offending and their offences may get more serious.
47. Most children (around 93 percent) with offending behaviour are dealt with through family group conferences or other alternative actions. This system is based on international best practice and works for most children. Where charges are intended or are filed in the Youth Court, proceedings are typically resolved through a Family Group Conference (FGC).
48. If a case involving a child or young person does proceed in the Youth Court, there are a significant and broad number of factors the Court can have regard to in determining the appropriate outcome.⁶ Several of these factors could include consideration of the young person have posted their offending online, such as the nature and circumstance of the offending and the attitude of the young person towards the offence.
49. Further, when a young person is released on bail the court can impose conditions that limit their freedom or require them to follow certain requirements. These can include electronic monitoring, curfews, and requirements to report to Police.
50. Where the Youth Court makes an order against a child or young person, this decision will be supported by recommendations from the FGC, and the addition of an aggravating factor (or analogous consideration) is unlikely to change the nature or length of an order. Additionally, such a change to Youth Court processes is not likely to address the concern Ministers are raising.
51. Any order that, for example, attempted to restrict a child or young person's access to (or use of) social media would likely raise issues with the Bill of Rights Act, as well as significant issues of enforceability.
52. We do not recommend progressing amendments to Youth Court processes without further work, including consultation with Youth Court judges.

Other work underway can better respond to the issue of offenders posting their behaviour online

53. The measures to improve and strengthen FGC processes, as well as to expand the Fast Track process and introduce an Enhanced Fast Track process (described at paragraph 58 below), are more likely to effectively respond to offending behaviour by children and young people in a way consistent with youth justice principles in Aotearoa.
54. Additionally, the Department of Internal Affairs is currently undertaking a review of the way content is regulated online, including social media platform regulation. There may be opportunities to consider options to respond to offenders posting their offending online throughout this review.
55. In the time available officials from relevant agencies have not identified any other criminal law legislative options that could address the issue of posting offending behaviour online more effectively than existing law.

⁶ Oranga Tamariki Act 1989, s 284.

We consider the most effective solutions sit outside the criminal justice system

56. Justice, Police, s9(2)(h) consider that Oranga Tamariki's proposed improvements to the youth justice and care and protection systems represents the best and most immediate response to reduce serious and persistent youth offending.
57. Research on youth offending shows that the vast majority of youth offending cases are preceded by significant child welfare concerns.⁷ This limits the success of interventions focused primarily on a criminal justice response to youth offending behaviour that are not linked into systemic responses that address the welfare of children and their whānau.
58. Many of Oranga Tamariki's proposals seek to address the current gaps in responding to children who offend, by improving the immediacy, intensity, or duration of interventions to improve child welfare. These address the underlying factors that contribute to offending behaviour. For example:
 - 58.1. Expanding the pilot of 'Fast Track' and local coordination teams to ensure an immediate and joined up response to children when they are apprehended for a serious offence. Nearly 80% of children involved to date have not reoffended since they were referred through Fast Track;
 - 58.2. Introducing an 'Enhanced Fast Track' model, to address the small number of children continue to offend following a referral to Fast Track. This would involve a more intensive and long-term response, with a dedicated support social worker and access to specialised services; and
 - 58.3. Improving Family Group Conferences, with an increased number of coordinators and removing referral barriers to ensure more timely interventions.
59. Policies to address issues in these spaces, such as Police's Better Pathways program, are more likely to impact youth offending than additional criminal justice responses.

Consultation

60. Consultation with other departments and agencies has been limited due to time constraints. New Zealand Police and Crown Law have been consulted and contributed to the content of this paper.

Next steps

61. Subject to your direction, officials can proceed with any of the proposals for Cabinet's consideration. We note that any regulatory impact assessment is likely to reiterate the concerns agencies have raised: that the proposals are unlikely to impact the behaviours of concern, nor be used by law enforcement agencies.
62. Subject to decisions, Justice officials can discuss with the Office of the Clerk whether any legislative amendments agreed to can be included in an Omnibus Bill. Once that is ascertained, instructions can be issued to Parliamentary Counsel Office to draft the relevant provisions Ministers wish to progress for one or more bills.

⁷ Professor Ian Lambie, Dr Jerome Reil, Judge Andrew Becroft, Dr Ruth Allen, (April 2022), "*How we fail children who offend and what to do about it: 'A breakdown across the whole system'. Research and recommendations.*" The Michael and Suzanne Borrin Foundation, the New Zealand Law Foundation, the University of Auckland. <https://www.lawfoundation.org.nz/?p=41331>

63. The legislation programme in the lead up to the election is very busy. Passing a bill before the House rises will require Parliamentary Counsel Office prioritise these amendments above other legislative projects.

Recommendations

64. It's recommended that you:

1. **note** that despite youth offending declining overall, we have seen recent increases in serious, persistent offending;
2. **note** that work is progressing across the youth justice system to improve operational responses to reduce serious and persistent youth offending;
3. **note** that officials from the Ministry of Justice, Police, ~~s9(2)(h)~~ consider there is no strong evidence of a gap in the criminal justice legislation;
4. **indicate** whether you would like officials to progress either of the following options on adults inducing young people to offend:

EITHER

- 4.1. a new offence to target people whose participation in organised crime group involves inducing or rewarding children or young people (under 18 years of age) to offend on behalf of the organised criminal group;

YES / NO

OR

- 4.2. a new aggravating factor that would apply whenever an adult (whether or not connected to an organised crime group) aids, abets, incites, counsels, or procures a person under the age of 18 to carry out an offence.

YES / NO

5. **indicate** whether you would like officials to progress either or both of the following options on posting of offending online:

- 5.1. a new aggravating factor within the Sentencing Act 2002 of an offender posting their offending behaviour online.

YES / NO

- 5.2. amendments to the Oranga Tamariki Act 1989 to incorporate an aggravating factor (or analogous consideration) of an offender posting their offending behaviour online in youth court processes.

YES / NO



Rajesh Chhana

Deputy Secretary, Policy Group

APPROVED SEEN NOT AGREED

Rt Hon Chris Hipkins
Prime Minister

Date / /

Hon Carmel Sepuloni
Deputy Prime Minister

Date / /

Hon Kelvin Davis
Minister for Children

Date / /

Hon Kiri Allan
Minister of Justice

Date / /

Hon David Parker
Attorney General

Date / /

Hon Ginny Andersen
Minister of Police

Date / /



Cabinet: Strengthening the legislative response to serious offending behaviour in children and young people

Hon Kiri Allan, Minister of Justice
13 July 2023

Purpose

1. This aide memoire provides Justice advice on the paper *Strengthening the legislative response to serious offending behaviour in children and young people*, due to be considered at Cabinet on 17 July. The Cabinet paper was prepared in very short timeframes as requested.
2. In preparing this Cabinet paper, we consulted with Oranga Tamariki, Police, Crown Law, Department of Corrections, Ministry of Social Development, Ministry of Transport, and Treasury. DPMC was informed. s9(2)(h)
3. We recommend you share this advice with the group of ministers who received our briefing of 7 July titled "Advice on Justice proposals for strengthening the response to serious offending behaviour in children and young people", namely:
 - Rt Hon Chris Hipkins, Prime Minister
 - Hon Carmel Sepuloni, Deputy Prime Minister
 - Hon Ginny Andersen, Minister of Police
 - Hon Kelvin Davis, Minister for Children
 - Hon David Parker, Attorney General

The paper proposes new criminal offences and legislative changes to the youth justice and care and protection systems

4. The paper includes three sets of criminal justice proposals. Together, they propose a range of new offences and aggravating factors in both the adult and youth jurisdictions. The proposals signal that the Government takes seriously the harms associated with youth offending and ramraiding. However, agencies do not consider the criminal justice proposals will reduce youth offending or address gaps in the criminal law. The proposals also pose the risk of unintended or undesirable consequences, and will disproportionately impact Māori.
5. The operational proposals developed by Police and Oranga Tamariki and agreed by Cabinet on 3 July, such as enhanced fast-track, represents agencies best advice on what will work to reducing youth offending.
6. The paper also includes a set of legislative proposals to the care and protection of children systems, and youth justice processes. These changes to the Oranga Tamariki Act 1989 are intended to increase the accountability for offending by bringing in youth justice tools and approaches to the Family Court. The use of these approaches in care and protection proceedings, especially for children, would be controversial and contrary to children's interests and rights. These proposals have also not been consulted on with the Judiciary.
7. The full range of proposals can be progressed individually, collectively, or not at all.

Proposal 1: more expressly recognise and denounce the harms of adults encouraging youth offending

8. The paper proposes two alternative options for how the law can further denunciate the harms caused to vulnerable children or young people who are commissioned by adults to offend on their behalf. These are:

EITHER

- introducing a new offence for those who participate in an organised criminal group by inducing or rewarding young people to offend. This would have a maximum 10-year penalty and would have a bespoke aggravating factor that provided for recognition at sentencing of the varying ages and degrees of vulnerability of the young person induced to offend.

OR

- a new aggravating factor that would apply whenever an adult aids, abets, incites, counsels, or procures any person under the age of 18 to carry-out an offence. This would apply to all instances of party liability under section 66 of the Crimes Act and would not be linked to organised crime groups.
9. As set out in our aide memoire to you of 30 June 2023 (attached), the existing law (participation in organised criminal group under section 98A, party liability under section 66 of the Crimes Act and aggravating factors under the Sentencing Act) already adequately deals with the conduct in question.
10. Overall, we consider that, while the new proposals could have a signalling effect, they are unlikely to have significant practical benefits.
11. Police s9(2)(h) have significant concerns about these proposals. These concerns are set out in the attached aide memoire and draft Cabinet paper.

Proposal 2: denounce ram-raid offending through a new offence with a 14-year penalty

12. The paper also includes a proposal for a new “ram-raid” offence. This offence will involve the use of a motor vehicle to damage property to secure entry to allow theft from the premises. It is proposed that this offence have a maximum penalty of 14 years’ imprisonment. This is the same maximum penalty that applies for aggravated burglary.
13. Previously, a key perceived benefit of the 14-year maximum penalty was that it provides for children aged 12 and 13 to be elevated to the youth justice system, which is seen as providing greater controls over the child than are available in the care and protection system.
14. However, any practical benefit this would have provided to reducing ram-raid offending is lessened by the latest proposed changes to the Oranga Tamariki Act (proposal 4 below) and the operational responses to serious and persistent youth offending agreed by Cabinet on 3 July. These proposals aim to remedy concerns about how the care and protection system is currently operating for serious and persistent offending by children (aged 10 to 13).
15. Justice considers that a 14-year maximum penalty for ram-raid offending would be disproportionate for this level of offending and out of step with comparable offences within the Crimes Act. A 14-year maximum will align the new offence with the penalty for aggravated burglary. However, a feature of aggravated burglary is that the offender has a weapon while

committing burglary. That, in our view, is a fundamental difference in the nature of the offending that suggests the current aggravated burglary offence is inherently more serious than the proposed offence.

16. There are also difficult scope issues with the proposed new offence. These include who criminal liability should attach to (just the driver or everyone in the vehicle), and how to deal with those who damage property with the necessary intent but who themselves do not enter to steal.
17. The Cabinet paper includes a delegated power for you to decide the elements of a bespoke offence in consultation with relevant ministers. There are some significant design details that require further consideration.
18. s9(2)(h) Police prefer amending the existing aggravated burglary offence (which carries a 14 year maximum penalty), rather than creating a separate standalone offence. Justice officials prefer a standalone offence to avoid distorting the existing aggravated burglary offence. Oranga Tamariki does not support a 14 year penalty as it would treat ram-raid offending as more serious than many violent offences and a more punitive approach would not be effective in reducing offending.
19. Officials also note there are additional justice system costs to a new offence, including costs to Oranga Tamariki and the court and corrections systems.

Proposal 3: Aggravating factor of posting

20. The paper also proposes a new factor for consideration at sentencing, in both the adult and youth jurisdictions, for offenders who promote their offending through posting videos of their offending behaviour online. This would respond to the negative peer influence of glorifying offending, which risks encouraging copycats and can increase the harm experienced by victims.
21. The process of determining the final sentence imposed in a given case differs between the youth and adult jurisdictions. However, both jurisdictions have statutorily required factors that a judge must take into account, as far as they are relevant to the specifics of the offender and the offending, when undertaking the sentencing exercise.
22. In the adult jurisdiction, these factors are set out in section 9 of the Sentencing Act, while in the youth jurisdiction they are contained in section 284 of the Oranga Tamariki Act. The paper proposes legislative amendments to both Acts to incorporate this new factor.
23. Oranga Tamariki does not support adding a specific factor of posting offending behaviour online to the list of factors for consideration in the youth jurisdiction, noting that this behaviour can already be considered under several of the existing factors the court is required to consider. s9(2)(h)

Proposal 4: Changes to the Oranga Tamariki Act

24. The paper proposes changes to the Oranga Tamariki Act to bring in a range of youth justice tools and approaches into the Family Court. The approaches include introducing a new care and protection order to enable a more intensive response to child offending; bringing in specific timeframes for holding Family Group conferences; and clarifying the Family Court's jurisdiction

to impose certain conditions where a custody order relates to alleged offending behaviours by children.

25. These changes to the Oranga Tamariki Act 1989 are intended to increase the accountability for offending while retaining the test that the wellbeing and best interests of the child will remain the paramount consideration of the court. However, the use of these approaches in care and protection proceedings, especially for children, are likely to be inherently contrary to children's interests and rights. The judiciary has not been consulted on the proposals.
26. Oranga Tamariki recommends these proposals are deferred so they can be considered as part of wider transformational work including a review of legislation that OT is undertaking. We support this recommendation as it would also provide time to consult with the judiciary on the proposals, given they directly impact the Family Court process.

Proposal 5: Government agencies contracting with gangs and gang associates

s9(2)(g)(i)

s9(2)(g)(i)

Next Steps

37. Subject to Cabinet confirmation, Justice can instruct Parliamentary Counsel with the aim of developing an omnibus Bill for introduction to the House before it rises. Progressing the full range of proposals as an omnibus Bill will require confirmation with the Office of the Clerk to ensure such a bill would accord with Parliament's standing orders of implementing a single broad policy. This can be a high threshold to meet.
38. On all of the proposals, further work will be required to identify and resolve through second tier policy issues at pace with agencies. This is needed to ensure that the proposals are workable and reduce the risks of unintended consequences. The Cabinet paper includes delegated powers to enable these decisions to be made by relevant Ministers.
39. Subject to Cabinet confirmation, Justice can also begin work on regulatory impact assessment for the additional criminal justice proposals. Depending on which proposals are progressed (and the extent of second tier policy issues that need to be resolved at pace), we are unlikely to have this prepared in time for Cabinet Legislative Committee consideration of the draft Bill. Supplementary analysis or a post-implementation assessment will include modelling of the impact of any new offences created.
40. The financial implications of the proposals have not yet been fully assessed. Further work to determine these impacts will be carried-out as part of any regulatory impact analysis. Officials would have to further test the impacts with relevant agencies (such as Police, Crown Law, Corrections, Oranga Tamariki) and courts operations.
41. We note that the regulatory impact assessment is likely to confirm the concerns agencies have raised with the proposals: that they are unlikely to impact the behaviours of concern or be used by law enforcement agencies.