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Minister of Justice

Proactive release – Ram Raid Offending and Related Measures Amendment Bill

Date of issue: 6 October 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (23) 4, subject to some redactions consistent with the grounds under the Official Information Act 1982.

No.	Document	Comments
1	**Strengthening the response to serious offending behaviour in children and young people** *Cabinet paper* Office of the Minister for Children and Office of the Minister of Justice 3 July 2023	Some information has been withheld in accordance with sections: • 9(2)(f)(iv), to maintain the constitutional conventions that protect the confidentiality of advice; • 9(2)(g)(i), to maintain the free and frank expression of advice; and • 9(2)(h), to maintain legal professional privilege.
2	**Strengthening the response to serious offending behaviour in children and young people** *Cabinet Minute* Cabinet Office Meeting date: 3 July 2023	Some information has been withheld in accordance with section 9(2)(h) to maintain legal professional privilege.
3	**Strengthening the legislative response to serious offending behaviour in children and young people** *Cabinet paper* Office of the Minister of Justice 17 July 2023	Some information has been withheld in accordance with sections: • 9(2)(f)(iv), to maintain the constitutional conventions that protect the confidentiality of advice; • 9(2)(g)(i), to maintain the free and frank expression of advice; and • 9(2)(h), to maintain legal professional privilege.
4	**Serious Offending Behaviour in Children and Young People: Strengthening the Legislative Response** *Cabinet Minute* Cabinet Office Meeting date: 17 July 2023	Released in full.
5	**Proposals to address ram-raid offending** *Cabinet paper* Office of the Minister of Justice 19 July 2023	Some information has been withheld in accordance with sections: • 9(2)(f)(iv), to maintain the constitutional conventions that protect the confidentiality of advice; • 9(2)(g)(i), to maintain the free and frank expression of advice; and • 9(2)(h), to maintain legal professional privilege.

No.	Document	Comments
6	**Proposals to Address Ram-Raid Offending** *Cabinet Social Wellbeing Committee Minute* Cabinet Office Meeting date: 19 July 2023	Some information has been withheld in accordance with section 9(2)(f)(iv), to maintain the constitutional conventions that protect the confidentiality of advice. This decision was confirmed by Cabinet on 24 July 2023 [CAB-23-MIN-0313 refers].
7	**Ram Raid Offending and Related Measures Amendment Bill: Approval for Introduction** *Cabinet paper* Office of the Minister of Justice 17 August 2023	Released in full. Note that the copy of the Bill provided to Ministers alongside this paper has been withheld in accordance with section 131 of the Legislation Act 2019 and section 9(2)(h) of the Official Information Act 1982, to maintain legal professional privilege. The Bill approved by Cabinet for introduction is publicly available at www.legislation.govt.nz.
8	**Ram Raid Offending and Related Measures Amendment Bill: Approval for Introduction** *Cabinet Legislation Committee Minute* Cabinet Office Meeting date: 17 August	Released in full. This decision was confirmed by Cabinet on 21 August 2023 [CAB-23-MIN-0387 refers].

[In Confidence]

Office of the Minister for Children

Office of the Minister of Justice

Cabinet

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

Proposal

1 This paper seeks Cabinet's direction on a package of options to strengthen the Government's response to children and young people with serious and/or persistent offending behaviour, including possible legislative changes.

Relation to government priorities

2 The options canvassed in this paper support the Government's focus on building a justice system that results in less offending and fewer victims of crime, while ensuring victims are better supported.

3 Some of the proposals also support the Government's key priority of child wellbeing, which includes a focus on providing better support for children and young people who are involved with, or at risk of becoming involved with, youth justice processes.

Executive Summary

4 New Zealand's current youth justice system has seen a 63 percent reduction in offending by children aged 10 to 13, and a 64 percent reduction for young people aged 14 to 17 since 2010. Recent additional measures were introduced in 2022 in response to spikes in ram-raiding and retail offences.

5 While the youth justice and care and protection systems are working for most children and young people with offending behaviour, a stronger focus is required on the small number of children and young people who commit the majority of offences, and who need much more intensive support and greater accountability.

6 Operational and legislative changes are needed to drive more immediate, intense, and long-lasting interventions that address the underlying factors that contribute to offending behaviour in children and young people and prevent escalation.

7 We propose Cabinet approve a package of actions to further strengthen Government's response to children and young people with serious and/or persistent offending behaviour, which include:

7.1 expanding Fast Track and local coordination teams;

7.2 introducing an 'Enhanced Fast Track' model for serious and persistent offending;

7.3 strengthening Family Court responses;

7.4 improving Family Group Conferences; and

7.5 increasing accountability for youth offending through legislative changes.

8 We propose to urgently progress changes to the Crimes and Sentencing Acts and defer consideration of changes to the Oranga Tamariki Act 1989 Section 9(2)(f)(iv) [redacted]

9 A separate Cabinet paper is also being developed by the Minister for Social Development and Employment. This paper will seek Cabinet's agreement to fund the continuation and enhancement of current practice for prevention and early intervention work related to youth crime through a transfer of underspends.

Background

10 The system that responds to children (aged 10 to 13) who offend is governed by the Oranga Tamariki Act 1989. The Act is based on international best practice and reflects the limited ability of children to make informed decisions at these ages.

11 Most children (around 93 percent) with offending behaviour are dealt with outside of the formal youth justice system. This system is based on international best practice and works for most children. Formal criminal justice involvement is often associated with adverse consequences for the child and society as it has been shown to increase rates of reoffending.

12 The most serious offences are considered by the youth or adult justice system. Young people that offend are, depending on the seriousness of the offence, dealt with either via alternative action or the Youth Court.

Overall there has been a reduction in offending by children and young people, but increases in some regions and offence types

13 Since 2010, the youth justice system has contributed to a 63 percent reduction in offending by children (aged 10 to 13), and a 64 percent reduction for young people (aged 14 to 17). Similar reductions were seen for Māori: overall offending rates decreased by 62 percent for tamariki Māori and 61 percent rangatahi Māori.

14 A smaller group of children and young people represent a significant number of the overall offending:

Children

14.1 In 2022 there were 1,850 children aged 10 to 13 with offending behaviour.

14.2 A small group of children with serious and persistent[1] offending commit the majority of offences. In 2022, 10 percent of all children who offend (about 200 children) offended seriously and persistently, accounting for 47 percent of

[1] Serious offending is defined in the Oranga Tamariki Act as having a 10 year or more maximum penalty. Persistent offending is defined as being subject to three or more proceedings in a year.

all offences. The top one percent of children with offending behaviour committed 14 percent of all offences. Almost half (47 percent) of all children who offended seriously and persistently in 2021 reoffended within a year.

14.3 The Bay of Plenty Police District had the highest rate of offending at 111 per 10,000 10 to 13 year olds in 2022 and the highest number of children with offending behaviour (245). Counties-Manukau (largely South Auckland) had the next highest number of children with offending behaviour (228) and an offending rate of 60 per 10,000. Tasman had the second highest rate of child offending at 107 per 10,000, but the second lowest number of offenders (104).

14.4 The largest increase in offending between 2021 and 2022 was in Canterbury with 43 percent. There were 60 more children who offended, leading to a total of 199 children and an offending rate of 62 per 10,000.

Young people

14.5 In 2022, 5,765 young people (14 to 17 years old) were apprehended for offending.

14.6 A quarter (24 percent) had offending behaviour that was serious enough that they appeared in Youth Court. A third of those who appeared in Youth Court reoffended within 12 months.

14.7 Similar to children, the Bay of Plenty Police District had the highest number of young people with offending behaviour (706) and an offending rate of 345 per 10,000. Tasman had the highest offending rate of 355 per 10,000, with 319 young people offending. Rates of offending by young people declined in all Police Districts between 2021 and 2022.

Recent initiatives to address offending by children and young people

15 In response to an increase in ram-raiding incidents, in late 2022, the Government introduced a range of operational measures focused on practical efforts to address the causes underlying ram-raid offending and prevent retail crime.

16 In December 2022, Cabinet agreed to a range of operational measures for Oranga Tamariki to improve the system response to children with serious and persistent offending behaviour [CAB-22-MIN-0559]. This included a pilot of the Fast Track between Police and Oranga Tamariki to provide immediate, collective responses to children who offend.

17 Cabinet has also agreed on a range of responses to address retail crime. In May 2022, Cabinet agreed to establish a programme to provide advice and funding to small retailers, to reduce the risk of retail crimes [CAB-22-MIN-0182]. Cabinet agreed to allocate $6 million in 2022/23 from the Proceeds of Crime Fund to support small retailer crime prevention (managed by Police). On 18 November 2022, Cabinet agreed to allocate a further $6 million from the Fund for crime prevention and youth engagement programmes [CAB-22-MIN-0529, CAB-22-MIN-0548].

18 On 21 April 2023, the Government announced an additional $9 million to top up the retail crime prevention fund, bringing the total investment to $15 million. On 29 May

an additional $11 million was announced to extend the fog cannon subsidy scheme [CAB-23-MIN-0200].

19 These measures have been effective. In the eight months following the announcement of the Government's Better Pathways package in early September 2022, New Zealand has seen consistently a lower monthly average of reported ram-raid incidents of 67.5 per month (72 per month from the previous eight months). However, these levels have fluctuated between 44 and 86 per month, with increases in reported ram-raid incidents in March and April 2023. We have not seen a change in the cohort committing ram-raids over this time, it is still predominately children and young people under age 18 and a high proportion of Māori.

20 The current levels of ram-raids remain unacceptable. Further changes are needed to reduce the number of ram-raids occurring, improve accountability for those committing ram-raids, and improve public safety.

Problem statement: need for more intensive interventions and stronger accountability

21 For both children (10 to 13 year olds) and young people (14 to 17 year olds), there is a gap in the current system response between alternative interventions and statutory care and protection and youth justice responses. A tiered response that 'intensifies' over time is needed. Furthermore, the statutory powers and care and protection responses that are available to agencies are not always used effectively and, in some cases, are not fit-for-purpose.

22 As a result, children and young people do not always receive responses with the right level of immediacy, intensity, or duration to address their needs or to address the underlying factors that contribute to offending behaviour. This is particularly the case for children and young people with serious or persistent offending behaviour, who generally have complex needs.

23 In addition, there is room to improve the response to factors that may encourage youth offending. For example, better holding to account people in organised criminal groups that incentivise offending by young people, and by recognising the harms of glorifying offending through posting videos (in both copycat offending or increased impact on victims). Further denouncing and deterring this conduct could protect vulnerable children and young people from being draw into offending.

A further package of actions is proposed to improve the system response to children and young people with serious or persistent offending behaviour

24 We propose a further package of actions to improve the system response to children and young people with serious and/or persistent offending behaviour. These actions aim to address the critical gaps in responses required for children and young people. The actions aim to provide:

24.1 greater immediacy of response;

24.2 more intensive and long-term responses for children, young people, and their whānau;

24.3 a tiered response that 'intensifies' over time when offending behaviour continues or escalates and steps back, but not away, as stability is maintained;

24.4 strengthened powers and controls, including stronger accountability for both children/young people and their whānau, as well as for conduct that encourages youth offending; and

24.5 more fit-for-purpose and culturally appropriate services that address the underlying drivers of offending behaviour.

25 With Cabinet agreement, we propose to progress the five priority actions outlined in Table One below.

Table One: Proposed actions to improve the system response to children and young people with serious and/or persistent offending behaviour

	Action	Target cohort	Funding	Next steps	Outcome
	Expanding and enhancing Fast Track				
1.	Expand Fast Track and establish local coordination teams in four new regions and support teams to expand to support young people (currently un-funded)	Children and young people who have been referred following apprehension for an alleged serious offence.	Additional funding ($2 million a year) is required to progress this action.	Advice to Ministers to confirm regions, timeframes and funding.	A more urgent, coordinated and prioritised response.
2.	Introduce an 'Enhanced Fast Track' model that intensifies support and utilises existing care responses and powers. more often and with greater urgency	Children and young people who have been referred to Fast Track but whose offending behaviour continues to escalate.	To provide this service for up to 60 children or young people it would cost around $3.2 million per year, for a two-year trial.	Detailed design of the new model begins immediately. Phased roll-out in Auckland, starting August 2023.	A stronger and more intensive response to children and young people who continue to offend after other interventions.
	Introducing system improvements				
3.	Strengthening Family Court responses by better utilising existing conditions and orders available to the court	Children whose offending behaviours continue to escalate in number, nature or magnitude.	No funding required.	Increase the application for Support Orders and conditions in response to repeat or persistent offending.	Increased accountability, support and monitoring for children subject to Family Court Orders.
4.	Improving Family Group Conferences	Children and young people referred to a Family Group	$1 million per annum required for additional FGC	Increase FGC coordinators Increase use of Hui-a-Whānau.	More timely FGCs. Stronger care

		Conference (FGC) in relation to offending behaviour.	coordinators (baselined).	Develop a joint Oranga Tamariki-Police protocol.	response to offending behaviour.
5.	Increasing accountability through legislative change	Children and young people with serious and persistent offending behaviour, and those who encourage such offending.	Corrections expects a small increase cost from additional / longer sentences.	Further work on possible changes to Oranga Tamariki Act. Detailed legislative design on changes to Crimes and Sentencing Acts.	Increased accountability and more fit-for-purpose powers.

26 Funding for these actions will be meet within agency baselines, Section 9(2)(f)(iv) [redacted]

27 Cumulatively, these actions will result in a large increase in the support, services, and monitoring for the small number of children and young people who have serious and persistent offending behaviour and increase accountability for conduct that encourages youth offending. This will have significant workforce implications across agencies, particularly for frontline Police and Oranga Tamariki staff. Working closely with community providers and iwi/Māori partners will be key to easing these impacts and drawing on existing resourcing and expertise.

28 Overall, these proposed actions will create more options in the community to provide intensive support to children and young people to prevent escalation of offending behaviour. If successful, this may in turn reduce demand for spaces in residences.

Social agencies need a strong focus on addressing the underlying drivers of offending behaviour for this cohort of children and young people

29 Successfully delivering the proposed actions and making a meaningful reduction in offending behaviour by children and young people requires all social agencies to work in partnership. The drivers of offending behaviour are complex and often include disengagement from education, unmet physical and mental health needs, housing instability, poverty and a household with high levels of unemployment.

30 It is critical that early prevention responses are strongly aligned with more formal youth justice and care and protection responses. Agencies have committed to the Oranga Tamariki Action Plan, and in order to be successful in addressing offending behaviour, the proposals in this paper will also require a strong contribution from social agencies, particularly those relating to education, health, and housing, to prioritise and meet the needs of these children and young people and their families.

Police and Oranga Tamariki will ensure systems are in place to identify and appropriately respond to this cohort

31 To support the actions proposed above, Police and Oranga Tamariki will introduce operational changes so agencies can quickly identify and monitor children and young people in need of escalated responses, assess their needs, and deliver the appropriate response to prevent escalation and further harm.

32 Collaboration between Oranga Tamariki and Police is critical to delivering an improved 'front door' response. The operational changes will include improved data collection and monitoring and joint assessments and decision-making on the appropriate responses for children and young people in this cohort. This will build on the triaging that already occurs as part of the Fast Track in certain regions.

33 Section 9(2)(f)(iv) [redacted]

Expanding Fast Track and local coordination teams

34 The combination of Fast Track and a 'local coordination team', first piloted in South and West Auckland in December 2022, is proving effective. Nearly 80 percent of children involved to date have not reoffended since they were referred through Fast Track.

35 'Fast Track' is a response protocol for Oranga Tamariki and Police that ensures an immediate and joined up response to children when they are apprehended for a serious offence. Following the Fast Track response, local coordination teams work across government, community organisations, and iwi to provide support for children and families to address immediate needs.

36 This model has driven greater collaboration and ensured children with serious and/or persistent offending behaviour receive immediate support following their apprehension (within 24 and 48 hours), along with their siblings and family. Based on this success, the Ministers of Police and Children agreed to expand this approach to Hamilton, Auckland City and Christchurch.

37 We see merit in further expanding Fast Track and establishing local coordination teams in four new regions where there are high rates of children and/or young people with offending behaviour, but note there is currently no funding available at this point in time Section 9(2)(f)(iv) [redacted]

Upcoming Cabinet paper on funding for local coordination teams and youth crime prevention

38 The Minister for Social Development and Employment intends to seek Cabinet agreement to fund the continuation and enhancement of current practice for prevention and early intervention work related to youth crime in an upcoming paper

through a transfer of underspends. This proposal will request a transfer of underspend to support:

38.1 Cross-agency teams with a focus on providing wrap around support for children and young people who have been apprehended for the first time. Funding would be targeted to four regions that were identified as priority regions for youth engagement (Auckland, Northland, Waikato, Bay of Plenty);

38.2 community resilience initiatives (which have been funded through the Proceeds of Crime Fund) in these regions. Funded initiatives would have a clear focus on preventing youth crime, rather than a more general youth development focus; and

38.3 a discretionary fund of $500,000, to be split between the four regions to enable cross-agency teams or community resilience initiatives to connect young offenders and those at high risk of offending, with supports they would not otherwise be eligible for through the social security system or current Oranga Tamariki funding streams.

39 Officials will explore opportunities to align this work and funding proposal with the possible expansion of Fast Track.

Introduce an 'Enhanced Fast Track' model

40 While the Fast Track and local coordination response are proving successful, a small number of children continue to offend following a referral to Fast Track (approximately 60 people). For this cohort, a more intensive and long-term response is needed, alongside consideration of whether additional conditions on the child or their family are required, including possible care placements.

41 We propose to introduce an 'Enhanced Fast Track' model for children and young people where intensive support is considered necessary to prevent escalation of their offending behaviour. Referral to this response would occur in three scenarios:

41.1 where the local coordination teams consider that a child is in need of a more intensive response, which could be due to continued offending following their referral to Fast Track;

41.2 after a child or young person is apprehended, Police and Oranga Tamariki consider their offending behaviour to be of such frequency or seriousness to warrant an immediate intensive response; and

41.3 a young person exiting a youth justice residence where Oranga Tamariki considers there to be a high risk of future offending.

42 This response will be developed and led by an intensive support social worker with a significantly lower-than-normal case load. The social worker would work with the local coordination team, the child/young person and their whānau to develop an immediate plan. The practice approach would be relational, inclusive, and restorative. The plan would include a range of supports to meet the assessed needs of the child and their whānau, with a strong focus on reducing the severity and intensity of the offending behaviour. Plans could include:

42.1 prioritised access to a care and protection or youth justice Family Group Conference (FGC);

42.2 mentoring for child/young person and/or their parents and whānau;

42.3 treatment of alcohol/substance issues for the child and/or their parents and whānau;

42.4 support for the whānau to navigate the government housing system and/or accommodation for the child/young person whether with family/whānau or through supported accommodation;

42.5 accessing health services such as mental health support, multi-systemic therapy or functional family therapy (which helps whānau address the multiple causes of challenging and high-risk behaviours);

42.6 support for early engagement and whānau searching by Kairaranga ā-whānau (specialist Māori roles);

42.7 support to address family harm issues; and

42.8 access to cultural support and expertise.

43 This would represent a significant step-up in intensity of both the support from a social worker, and services offered to children and their family or whānau than current offerings. The response will also be longer in duration than is currently available.

44 As part of this process, Oranga Tamariki would also consider whether the response would be strengthened through the use of the powers or tools available to the Family Court, including whether custody orders should be considered (as discussed below).

Next steps and costs

45 We propose to trial this approach for two years for up to 60 children or young people. With Cabinet agreement, work will commence immediately to establish this model, including recruitment and/or partnering for additional FGC coordinator, kairaranga ā-whānau (specialist Māori roles) and social work roles. The new Enhanced Fast Track pathway will be operational and start taking referrals in Tamaki Makaurau in August 2023. The service will work closely with the three existing local coordination teams in the region. The model will be expanded to other priority regions as needed over time.

46 Given the intense and long-term nature of the support needed, this will require significant investment. This initiative will cost approximately $3.2 million each year for the two-year trial (a total of $6.4 million). Oranga Tamariki will fund this through baselines. An evaluation will be completed to understand the effectiveness of this approach.

Difference between Fast Track and Enhanced Fast Track

47 The proposed Enhanced Fast Track model differs from ‘Fast Track’ and the support provided by local coordination teams in terms of *duration* (it would be for much

longer), *intensity* (more frequent engagement) and *access to specialised services* (which are not always available or funded). The Enhanced Fast Track Model will also target young people as well as children, and it will be focused on a much smaller cohort - those with serious and persistent offending behaviour. More detail on these differences is provided in Annex Two.

Strengthening Family Court responses

48 Strengthening Family Court responses seeks to hold children with recent serious offending behaviour and their families accountable and ensure they get back on track through better monitoring and oversight.

49 There are existing powers and processes in the care and protection system to respond to offending by children. This includes the ability for the Family Court to grant custody and support orders[2], which can include conditions to manage the risk of reoffending. These powers could and should be used more often and more effectively by agencies. We expect to see as part of an enhanced response to serious offending by children, including ram-raid offending, an increase in applications for these orders. This would include an immediate increase in:

49.1 the number of 14(1)(e) applications[3] for children where the number, nature or magnitude of offending raises serious concerns for their wellbeing (discussed in the next section). This increase will largely be driven by a operational changes in Police and Oranga Tamariki whereby these applications will be pro-actively considered more often, along with the development of an agreed protocol for the use of 14(1)(e) applications (as discussed below);

49.2 applications for urgent interim custody orders where there is an urgent need following apprehension to manage risk and public safety. Once made, these orders empower Oranga Tamariki to place the child where is best for them and the public; and

49.3 once guilt has been proven or admitted (not denied), applications for care or protection and the making of support orders with conditions relating to reducing the risk of reoffending (such as curfews and non-association conditions).

50 Where the interim or final custody order places the child in the community (whether with their parent, whanau, or a provider), there needs to be a process to monitor compliance with the conditions of the order and respond quickly to non-compliance. Oranga Tamariki will work closely with the Police to respond to non-compliant

[2] Custody orders grant the right to place a child and provide day to day care. Support orders do not grant custody. They support the child within the home in which they reside. The Support order requires that there is monitoring of the standard of care, protection and control being exercised over that child and grants a right of entry to that home at all reasonable times for the purpose of performing that monitoring. The Support order also requires that services and resources be provided to the persons caring for the child to ensure that care, protection and control are exercised over that child. The Support order functions can be carried out by the Chief Executive or other person or organisation named in the order, which could include iwi and other Māori providers.

[3] Section 14(1)(e) is the bespoke child offender ground that determines when a child's offending behaviour is sufficient to consider them "in need of care and protection". It applies to children aged 10-13 only. Processes under s.14(1)(e) may only be instigated by Police.

behaviour or further offending. This includes developing joint protocols and decision-making processes.

51 We will direct officials to start engagement with the judiciary on how the court system will manage the increase in care and protection applications involving offending by children, for example through the possible use of dual warranted Judges (Family and Youth Court warrants). Access to appropriate legal advice for children and their whānau needs to be considered and may have cost implications.

Improving Family Group Conferences

52 FGCs are a critical intervention to get children back on track and ensure families are well supported. However, they often take time before they are convened. I propose to improve the timeliness of FGC processes relating to offending behaviour by:

52.1 increasing the number of FGC coordinators;

52.2 urgently removing referral barriers to increase Police access and use of FGCs for children who offend where the number, nature or magnitude grounds are met via a Joint Child Offender FGC Protocol; and

52.3 increasing the use of Hui-a-Whānau as an interim support measure by developing clear guidelines on use, including these being held within seven days after receiving a report of offending.

53 Additional FGC coordinators will enable Oranga Tamariki to improve the timeliness of convening and holding FGCs. Additional coordinators are estimated to cost approximately $1 million per annum, which would need to be re-prioritised from within baseline.

54 To further improve timeframes for FGCs, Oranga Tamariki will specify an operational timeframe for when Care and Protection Family Group Conference[4] will be held, which will be within 30 days of referral. This will be a significant improvement. Since July 2022, the average number of days for a care and protection FGC from referral to convening is 54 days.

Joint Child Offender FGC Protocol

55 Developing a Joint Child Offender FGC Protocol between Oranga Tamariki and Police will establish agreement on interpretation of the required threshold (number, nature or magnitude) for, and remove current barriers to the increased use of this important mechanism for escalated response, support, accountability and restoration. Agencies will develop and agree this protocol by August 2023.

56 The Joint Child Offender FGC Protocol could be used to confirm, for example, that ram-raids and ‘smash and grabs’ would meet the definition of ‘nature’ of offending. The Protocol would also include aggravating and mitigating factors for staff to take

[4] As per section 14(1)(e), a child (aged 10 to 13) who has committed offences of sufficient number, nature, or magnitude to cause serious concern for their wellbeing will be subject to investigation into their offending by the Police. If a Police Officer believes the child has committed offences that do require a formal statutory (Court) response, they can refer the matter to a Youth Justice Co-ordinator who must hold a Family Group Conference (FGC).

into account when determining whether to proceed on section 14(1)(e) grounds to an FGC.

Increasing the use of Hui-a-Whānau

57 Increasing the use of Hui-a-Whānau provides an opportunity to provide more immediate engagement and interim support for whānau prior to a care and protection FGC. Hui-a-Whānau could involve whānau, and key community or agency support networks coming together. The hui considers the immediate support needs of the child and family and puts in place an initial support or safety plan to provide coordinated support until the FGC is held.

58 Oranga Tamariki will develop practice policies and guidance on the use and timeframes for Hui-a-Whānau for children with offending behaviour. This will include that they must occur within seven days of the referral from the Police. The development of policy and guidance for holding of Hui-a-Whānau for all 14(1)(e) FGC referrals can commence immediately and be operational in high priority locations (such as Auckland, Hamilton and Christchurch) by 30 August 2023, and fully implemented nationally by the end of 2023.

Increasing accountability through legislative changes: Proposed changes to the Crimes and Sentencing Acts

59 We recommend changes be made to our core criminal justice legislation to better hold accountable offenders who incentivise offending by children and young people, and offenders who glorify offending behaviour through posting videos of their offending.

A new offence of recruiting young people into offending for an organised criminal group

60 Organised criminal groups (including gangs that commit offences) can exploit vulnerable children or young people to offend on their behalf through inducements or rewards. Research from the United Kingdom indicates that children are being exploited by organised criminal groups to participate in drug offending. In New Zealand, businesses affected by ram raids and other retail crimes have raised anecdotal concerns about organised criminal groups playing a similar role here. Police analysis from 2020 indicates that 2% of youth offenders have gang links.

61 Currently, we rely on sections 66 (parties to offences) and 98A (participation in an organised criminal group) of the Crimes Act 1961 to criminalise this conduct. These sections provide that:

61.1 *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. For example, if an adult pays a young person to ram-raid a shop, both would be equally liable to be punished for the offence.

61.2 *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 the party liability provisions at s 66 (which is limited to a *specific* instance of offending), but only where the offending relates to an organised crime group.

62 While existing offences are working well, a new offence would recognise the particularly harmful nature of exploiting vulnerable children and young people to offend on behalf of an organised criminal group. A new offence will further denunciate this insidious behaviour, which can draw young persons into a criminal network with life-long detrimental effects. The person who encouraged the young person would not need to be a member of a gang but would have to know the offending benefited an organised criminal group. If there was no benefit to such a group, a person could still be liable under section 66.

63 As such, we propose a new offence modelled on section 98A. This offence will specifically target people whose participation in organised crime groups involves the inducement or rewarding of children or young people (under 18 years of age) to offend on behalf of the organised criminal group. This offence will carry a maximum penalty of imprisonment for a term not exceeding 10 years.

64 Justice officials have considered whether the new offence justifies a higher penalty level than the existing 10 years maximum imprisonment penalty under section 98A (such as 14 years, which would be the next tier in the Crimes Act hierarchy). Justice officials consider that a 10 year penalty is appropriate considering the elements of the offence and degree of culpability associated with encouraging a young person to commit offences.[5]

65 Within this maximum 10 year penalty, we propose to create a new aggravating factor within the Crimes Act 1961 that would apply specifically for this new offence.[6] This will recognise at sentencing the varying ages and degrees of vulnerability of the young person induced to offend on behalf of the organised criminal group.

66 As an alternative to a new offence, Cabinet has the option of directing officials to do further work on considering 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 offending under section 66 of the Crimes Act, and would not be linked to organised crime groups.

67 Section 9(2)(g)(i) [redacted]

New aggravating factor of posting offending behaviour

68 Section 9(1) of the Sentencing Act 2002 sets out a number of aggravating factors that the court must take into account when sentencing an offender. These include such

[5] For example, comparable offences (involving a young person) with a 14 year penalty include elements of direct violence or deprivation of liberty, such as section 98AA, *Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour*.

[6] This could be modelled on section 98E of the Crimes Act which sets out aggravating factors for migrant smuggling and people trafficking. Those aggravating factors include whether a person in respect of whom the offence was committed was under 18 years of age.

factors as the use of actual or threatened violence, the offence involved unlawful entry into a dwelling place, or that the offence occurred while the offender was on bail or subject to a sentence.

69 Many of the statutory aggravating factors are reflective of community values, such as where an offender breached a position of trust, or the offence was committed because of hostility toward a particular group based on race or religion. There is also a catch-all provision in section 9(4) that allows the court to consider any other aggravating or mitigating factor that it thinks fit into account in imposing sentence.

70 New aggravating factors can be added as community values evolve. For example, the aggravating factor of the offence occurred in the context of family violence offending (s 9(1)(ca)) was added in 2019.

71 The rise of social networking sites, such as Facebook, Snapchat, and TikTok, provides challenges for the criminal justice system, particularly for young people, who are more likely to be active on these platforms. 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.

72 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.

73 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.

74 In light of the increasing use of social media to post offending behaviour, we propose to amend the list of aggravating factors in the Sentencing Act to include a new factor of the offender posting their offending behaviour.

75 We note that this new aggravating factor will not apply in the Youth Court jurisdiction and would only be applicable as relevant to those being sentenced in the District Court or senior courts. While the Youth Court system operates in a manner that is fundamentally different from the adult justification (for example, the consideration of aggravating (or mitigating) factors is not a part of the Youth Court process), officials will consider whether a similar provision should be incorporated into the Youth Court system. This would require an amendment to the Oranga Tamariki Act.

Increasing accountability through legislative changes: Potential changes to the Oranga Tamariki Act

Section 9(2)(h)

Possible changes to the Oranga Tamariki Act to be further considered

79 Legislative changes to the Oranga Tamariki Act may help strengthen our response to children with serious and/or persistent offending behaviour by bringing in youth justice tools and approaches into the Family Court. Officials have identified a range of possible legislative changes that warrant further consideration, including:

79.1 Introducing a new care or protection order to respond to proven offending behaviours that incorporates elements of Youth Justice Supervision with Activity orders with a focus on reducing the likelihood of further offending and behaviours of concern by enabling the court to require attendance at an activity such as educational, recreational, instructional, cultural or work programme. The legislation currently enables Support Orders to provide for such programmes but only with the consent of the child or young person. If introduced, this order would be subject to mandatory court reviews at three-month periods while the order is in effect.

79.2 Bringing in specific timeframes for convening and holding care and protection FGCs where the care and protection concerns include a component of offending behaviours for children 10 and over and young people: for example, aligning with the child offender FGC timeframes (21 days to convene, a month to hold the FGC), with any modifications that might be necessary or appropriate. In addition, victims would be entitled to attend (which would also align with child offender FGCs). A mandatory timeframe would ensure timely intervention for these children and whānau and would require them to face the consequences of their behaviour by involving the victim.

79.3 Removing restrictions based on age of the child that prevent the court from imposing conditions on parents, guardians and caregivers for the purpose of assisting them to carry out their duties and responsibilities and to encourage co-operation with persons assisting the child and whānau. Section 97 currently

enables such conditions to be imposed in respect of young people aged 14 and under 16 only.

79.4 Clarifying the Family Court jurisdiction to impose certain conditions when necessary or when a custody order relates to alleged offending behaviours by children. The conditions in question include those that protect victims, limit with whom the child can associate, and require the child to be at home at certain times. Courts are already able to make those orders, but they are rarely made. Clarifying the court's jurisdiction would support agencies to apply for the appropriate orders and conditions and could help to resolve any potential concerns the court may have as to its jurisdiction. This would likely increase use of these conditions, particularly in combination with the following changes.

79.5 Where the child or young person is in the custody of the Chief Executive, require consideration to be given to offending behaviours, absconding and breach of conditions when deciding where the child is placed, and clearly authorising the Chief Executive to place, return or move the child to respond to absconding, further offending or breach of conditions. Clarification of Police power to assist the Chief Executive in searching, containing, and transporting the child in such circumstances would also be beneficial.

79.6 Where the Chief Executive has custody of a child on the basis of offending behaviours and/or when the court has imposed conditions, and those conditions are breached by the child, the Chief Executive would be required to promptly consider whether they obtain custody of the child, or if the child is already in custody, the placement of the child, and in particular whether a secure placement would be more appropriate. If a change of placement occured, the Chief Executive must report to the court. In addition, the child might be required to appear before the court where such conditions have been breached.

79.7 Enhancing provisions relating to the court receiving reports on the effectiveness of a new order and creating new breach provisions by granting the Court the ability to recall a matter based on the outcome of the order or the child or young person's response to it and giving the court the ability to require the child to attend where dissatisfied or if a breach application is filed.

80 Section 9(2)(g)(i) [redacted]

[redacted]

Financial Implications

Financial implications for the Ministry of Justice and Corrections

82 Officials expect the proposed changes to criminal justice legislation may cause small increases in the number of cases pursued by prosecutors, and the length of sentences given to any affected convicted offenders. This can be expected to have a resourcing impact for Corrections. In the timeframes that proposals have been developed, officials have not been able to estimate the impact. Further work to determine these impacts will be carried-out before Cabinet's authorisation is sought to introduce a Bill.

Financial implications for Oranga Tamariki

83 The actions proposed in this paper will cost a total of $4.2 million for each of 2023/24 and 2024/25 financial years. From the 2025/26 financial year onwards, the ongoing (baselined) total costs will be $1.0 million, as the 'Enhanced Fast Track' is proposed to be a two-year trial. It is expected that these costs will be meet from within Oranga Tamariki's baseline and contributions from other agencies, where possible and appropriate. Section 9(2)(f)(iv)

84 Funding these actions from within Oranga Tamariki's baseline will impact its ability to deliver other priority areas of work as funding will need to be reprioritised. Further work is needed to confirm which programmes, but it may include the Future Direction Plan, specifically Enabling Communities, the Social Worker Practice Shift, and the delivery of detailed business cases to support the frontline technology systems upgrade.

Financial implications for New Zealand Police

85 Police has not been able to cost the impact on resources in the timeframes that proposals have been developed, but notes that the expansion of Fast Track would require a minimum of one qualified Youth Aid sergeant per location full time. Police will also have unfunded costs for IT infrastructure to enable information sharing through the local multi-agency teams. Initial set up, licensing, and training is around $50-$100K per location. The costs associated with the expansion of Fast Track so far have been absorbed within baselines. Section 9(2)(f)(iv), Section 9(2)(g)(i)

Legislative Implications

86 If Cabinet wishes to proceed with legislative changes, a new Amendment Bill would be required. This would be an omnibus Bill including amendments to:

86.1 the Crimes Act 1961: to include a new offence to explicitly denounce the incentivising of youth offending by an organised criminal group, potentially including an aggravating factor in respect of the age of the offender; and

86.2 the Sentencing Act 2002: to expand the list of factors for consideration at sentencing to include a new aggravating factor of an offender posting their offending behaviour.

87 Section 9(2)(f)(iv) [redacted]

Regulatory Impact Statement

88 Cabinet's impact analysis requirements apply to the proposals to change the Crimes and Sentencing Acts, 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.

89 The Treasury's Regulatory Impact Analysis team and the Ministry of Justice have agreed that if Cabinet agrees to the proposed legislative changes supplementary analysis will be provided before Cabinet Legislation Committee's consideration of the legislation.

Climate Implications of Policy Assessment

90 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.

Population Implications

Disproportionate impact on Māori and Pasifika children and young people

91 Māori and Pasifika children and young people are over-represented in the total number of children and young people involved in fleeing driver and other persistent offending, and in the youth justice systems more generally. Similarly, in cases where there is involvement by a gang (that commits or encourages offending by a young person), we know Māori make up a disproportionate share of gang membership.

92 The majority of the burglary offending (where this relates to so-called ram raids) is happening in the regions of South and West Auckland, Te Tai Tokerau, and the Bay of Plenty. Offending typically occurs within areas of higher socio-economic deprivation.

93 Children and young people involved in fleeing driver and/or persistent offending have often experienced a range of adversities. This includes living in low-income households, with family members with mental health needs, addictions and/or a Corrections history. Many will have received a truancy intervention, had contact with Oranga Tamariki or been the subject of a Report of Concern to Oranga Tamariki, and themselves been a victim of crime.

94 Disabled children are over-represented in populations of children and young people who offend. Many have conditions such as traumatic brain injury, autism, attention deficit hyperactivity disorder, foetal alcohol spectrum disorder, and learning disabilities.

Treaty of Waitangi / Te Tiriti o Waitangi analysis

95 There is an overrepresentation of tamariki and rangatahi Māori involved in serious and persistent offending (including ram-raid type offending), and in the care or

protection and youth justice systems more generally. Under section 7AA (Oranga Tamariki Act 1989), Oranga Tamariki are required to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi.

Expanding Fast Track and introducing an Enhanced Fast Track model

96 An initial assessment is that the proposal to expand Fast Track and local coordination teams; and introduce an 'Enhanced Fast Track' model for persistent offending upholds the principles of kāwanatanga, tino rangatiratanga and active protection. Both Fast Track and Enhanced Fast Track aim to work with whānau to provide support to address immediate needs. This aligns with the commitment to uphold and protect Māori rights and interests by enabling whānau, hapū and iwi to exercise their right to make decisions over their tamariki and rangatahi.

Strengthening Family Court responses

97 The principles of tino rangatiratanga, and active protection are relevant to the proposal to strengthen Family Court responses, including greater use of custody and support orders by the Family Court to manage the risk of reoffending. This proposal risks undermining the right for whānau, hapū, and iwi to make decisions over their tamariki and rangatahi. However, in the case of serious and persistent offending by tamariki and rangatahi, an increase in the use of custody and support orders would seek to uphold the principle of active protection to ensure long term equitable outcomes for Māori.

Improving Family Group Conferences

98 The proposal to improve the timeliness of FGC processes and increasing the use of hui a-whānau engages with the principles of kāwanatanga, tino rangatiratanga and active protection. Hui a-whānau and the FGC process are designed in line with Māori worldview. This supports the guarantee of rangatiratanga which provides for Māori delf-determination and mana motuhake in the design, delivery, and monitoring of supports and services. By speeding up the FGC process, there is a risk that whānau are not given sufficient time to properly engage in the process.

Proposed legislative changes to the Crimes and Sentencing Acts

99 Some of the proposed legislative changes may have a significant impact on the rights and interests of Māori. Due to timing constraints, officials have not had the opportunity to engage with Māori/iwi and other affected partners. To uphold the principles of partnership and tino rangatiratanga, officials will undertake targeted consultation as soon as practicable.

100 Tamariki and rangatahi Māori are six and four times more likely to offend than non-Māori. This is also the case for offending such as ram raids. For instance, a Police analysis in Auckland that occurred during April and May 2022 showed that 77 percent of ram-raids offenders were of Māori ethnicity. This cohort of children and young people are likely to benefit most from the specialised procedures, processes, and personnel of the youth justice system, rather than the comparatively punitive nature of the adult jurisdiction. Additionally, introduction to the formal justice system

increases the likelihood of affiliation with anti-social peers and adult offenders, which is a known risk factor for youth offending.[7]

Human Rights

101 The proposals in this paper seek to balance the need to address serious and persistent offending behaviour in children and young people and provide better support for children, young people who are involved with, or at risk of becoming involved with the youth justice system.

102 The proposed legislative amendments to the Crimes Act 1961 and Sentencing Act 2002 may engage with the New Zealand Bill of Rights Act 1990 (NZBORA) and international human rights obligations. During drafting, the aim will be to minimise any inconsistencies with domestic human rights law and international human rights obligations. Any draft legislation will be vetted for compliance with NZBORA before it is introduced.

103 New Zealand has ratified the United Nations Convention on the Rights of the Child (UNCRC), which applies to all children under 18 years of age. UNCRC recognises the vulnerability of children who offend and requires States to ensure that arrest, detention, or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time. There is a need to also consider our many other international obligations such as the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples.

104 The amendments to the Crimes Act 1961 are likely to be justifiable under NZBORA. The new offence of a person incentivising of youth offending relate to the public interest in denouncing and deterring offending, which must be proven beyond a reasonable doubt, and include clear criteria that limit rights no more than is necessary.

105 Section 9(2)(h) [redacted]

Consultation

106 Consultation with other departments and agencies has been limited due to time constraints. This paper was developed with input from Police, Oranga Tamariki, Ministry of Social Development, the New Zealand Treasury, the Crown Law Office, and the Department of Corrections. The Department of the Prime Minister and Cabinet was informed.

[7] Monahan K. C., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and antisocial behaviour during the transition to adulthood. *Developmental Psychology, 45*(6), 1520 – 1530.

107 There has been no consultation with Māori, despite the significant implications that these policies are likely to have on these groups. Should the proposals proceed, officials would promptly engage with Māori.

New Zealand Police

108 Police supports the operational proposals to respond to serious and persistent offending by children and young people through more immediate and intensive interventions. There are significant challenges with implementing the package of proposals, including managing the likely impact on NGOs, community and iwi/Māori partners, and ensuring the availability of the necessary workforces. Police support the development of a cross-agency implementation plan for this work. Police also support further consideration of possible changes to the Oranga Tamariki Act.

Section 9(2)(g)(i), Section 9(2)(h) *the criminal justice proposals*

109 Section 9(2)(g)(i), Section 9(2)(h) Section 9(2)(g)(i)

110 Section 9(2)(g)(i) Section 9(2)(g)(i), Section 9(2)(h) Section 9(2)(g)(i)

Section 9(2)(g)(i), Section 9(2)(h)

111 Section 9(2)(g)(i)

Section 9(2)(g)(i), Section 9(2)(h)

Communications

112 We will consider announcements following Cabinet decisions.

Proactive Release

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

Recommendations

The Minister for Children and Minister of Justice recommends that Cabinet:

Actions to strengthen the system response to children and young people with serious and persistent offending behaviour

1 **note** improvements are needed in how the care and protection and youth justice systems work with children and young people with serious or persistent offending behaviour and their families;

2 **agree** for relevant agencies to urgently progress the following actions:

2.1 introducing an 'Enhanced Fast Track' model for persistent offending (Police and Oranga Tamariki);

2.2 strengthening Family Court responses (Police, Oranga Tamariki and the Ministry of Justice); and

2.3 improving Family Group Conferences (Police and Oranga Tamariki).

3 **note** officials estimate that the total cost of the above package of actions is approximately $4.2 million in the 2023/24 and 2024/25 financial years, and $1 million in outyears, which Oranga Tamariki will meet within baselines;

4 **note** funding these actions from within baselines will require Oranga Tamariki to reprioritise funding which will impact the delivery of other programmes, such as the Future Direction Plan specifically Enabling Communities, the Social Worker Practice Shift, and the delivery of detailed business cases to support the frontline technology systems upgrade;

5 **note** officials will implement the following priority actions by the end of August 2023:

5.1 the Enhanced Fast Track Model will be operational in Auckland;

5.2 policy and guidance on the use of Hui-a-Whānau; and

5.3 the Joint Child Offender Family Group Conference Protocol.

6 **note** officials will provide regular updates on the implementation of the actions proposed in this paper to the Youth Crime Ministerial Group, this will include the development of a cross-agency implementation plan to be completed in July for ministers' consideration;

Expansion of Fast Track and funding for local coordination teams

7 **note** there is merit in expanding Fast Track to other regions given the success of the model so far and officials will look to identify funding for the possible expansion of Fast Track and revert to relevant Ministers;

8 **note** that the Minister for Social Development and Employment intends to seek agreement in a separate cabinet paper to fund the continuation and enhancement of current practice for prevention and early intervention work related to youth crime through a transfer of underspends;

Section 9(2)(h) [redacted]

Potential changes to Oranga Tamariki Act

12 **agree** to defer any changes to the Oranga Tamariki Act 1989 Section 9(2)(f)(iv) [redacted]

Changes to the Crimes and Sentencing Acts

EITHER

13 **agree** to amend the Crimes Act 1961 and Sentencing Act 2002 by introducing the following changes

13.1 **agree** to 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;

13.2 **agree** to create a new aggravating factor within the Crimes Act 1961 that would apply specifically for this new offence, to recognise at sentencing the varying ages and degrees of vulnerability of the young person induced to offend;

13.3 **agree** to create a new aggravating factor, available at sentencing, of an offender posting their offending behaviour online;

OR

14 **agree** to the following changes

14.1 **agree** to amend the Sentencing Act 2002 to create a new aggravating factor, available at sentencing, of an offender posting their offending behaviour online; and

14.2 **agree** that officials to do further work to consider 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.

15 **invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to implement the matters set out in recommendation 13, including any necessary consequential amendments;

16 **agree** the Amendment Bill be assigned a Category 2 status (to be passed before the election 2023);

17 **authorise** the Minister of Justice, in consultation with the Minister of Police and Minister for Children, to make any further related policy decisions that are not inconsistent with the legislative proposals in recommendations 13, and resolve any minor, technical, or non-controversial amendments that arise during drafting without further reference to Cabinet.

Authorised for Lodgement

Hon Kelvin Davis

Minister for Children

Hon Kiri Allan

Minister of Justice

Annex One: Case study

A case study highlighting and the effect of the proposed changes on an 11 year old child with serious and persistent offending behaviour is set out below.

Case study:

An 11-year-old fleeing driver in Auckland is located in a stolen car with others and has been previously involved in multiple ram raids.

The child is apprehended by Police and taken home that evening. The subsequent day, he is referred to Fast Track, and Police and Oranga Tamariki visit the home to assess any immediate needs. An initial plan is established to address immediate needs and mitigate offending behaviour and the child is referred to the local coordination team to develop further support options for the child.

Police take no further action while the child and the whānau are being supported by the local coordination team.

Two weeks later, he re-offends with his older brother and is apprehended by Police at the scene. He is returned to his home later that day. The local coordination team meets to re-assess the plan and they immediately re-engage with the family.

Under the current system, the local coordination team continues to support the child but their ability to support the child intensively is limited due to resourcing and lack of immediately accessible or fit for purpose services.

Proposed changes would mean both more intensive services and more accountability as follows:

When he re-offends, he would be referred immediately to the new Enhanced Fast Track. A social worker would engage swiftly with him and his family to look at what the key next steps are, including what the appropriate services are that should be delivered quickly to address the behaviour and to see what the family's needs are (including in relation to siblings). A hui-a-whānau is held three days later facilitated at the request of whanau by the local coordination team youth worker. They review his placement at home, and Police decide to make a section 14(1)(e) application to seek the custody of the child, including making an application to the court for an interim custody order. Agencies ask the court to also impose specific conditions for non-association and a curfew, and also to attend specific therapeutic programmes. The interim order is granted.

At the same time, Oranga Tamariki starts to prepare for an FGC, including contacting relevant family members and members of the community, including the child's teacher. The FGC coordinator requests specialists' health and psychological assessments of the child. A Kairaranga ā-whānau also works alongside the social worker and FGC Coordinator to support whānau searching and support whānau engagement.

The FGC takes place three weeks later once wider whanau are engaged and a range of information is sought including comprehensive assessment of whanau strengths and needs, health and education. The FGC plan determines that the well-being of the child is best served in an alternative home where greater support and supervision is available. The plan is more actively monitored by the social worker.

The family is supported with prioritised access to education support and resolution of critical housing issues. Immediate and culturally led community services are also provided to address alcohol dependency and family harm.

The child breaches the non-association order, and is promptly brought before the court. The court directs an updated report from the Social Worker and seeks explanation from both the child and the adults for the breach. The Chief Executive of Oranga Tamariki decides the current placement is not stopping the reoffending behaviour, and advises the court of the intention to move him to an iwi provider that is familiar to the whānau. This placement is to be reviewed by the social worker every week.

The court determines that the child is in need of care and protection. The court obtains a social work plan and report, which recommends the interim orders be replaced with final orders. The court directs that the plan and orders be reviewed every 3 months.

The additional, targeted support provided to child and the family through the Enhanced Fast Track, and the new placement, mean that the child engages in programmes, including education, and the family's situation improves, including stability of housing, an individual plan for education and the active support of extended whanau. Their risk of reoffending is reduced and at subsequent review, the child returns home to whānau who are now in a better position to support him to avoid future offending behaviour.

Annex Two: Difference between Fast Track, local coordination teams, and the proposed Enhanced Fast Track Model

	Fast Track response	*Local coordination teams*	*Enhanced Fast Track*
Target cohort	Children (10 to 13) apprehended for a serious offence in regions where Fast Track is in place.	Children and, depending on the team, young people apprehended for an offence (could be serious or more minor).	A very small cohort of children or young people where previous interventions (including Fast Track) have been unsuccessful and offending persists.
Typical timeframe	This is an 'immediate response' protocol that dictates what Police and Oranga Tamariki must do within 24 and 48 hours of a child being apprehended for a serious offence.	Local coordination teams aim to provide support to children or young people and their families over a 6 to 8 week period, and then refer them to sustained community support within ongoing long term support plans.	Enhanced Fast Track will be an enduring, long-term intervention, where a social worker and a dedicated team around whanau work with the child / young person and family.
Services	Police and Oranga Tamariki engage the family, establish an initial plan, and ensure urgent needs are met then refer to a local coordination team for multiagency and community coordinated support.	The team provide priority access to cross-government services and where possible community services, such as whanau support, budgeting and mentoring.	Access to intensive and specialist services to address drivers of offending behaviours.
Proposed changes	We propose that Fast Track and local coordination teams are expanded to four additional regions nce funding can be identified to support this.		To establish this model for a small number (up to 60) of children and young people for an initial two year trial period.

CAB-23-MIN-0292

Cabinet

Minute of Decision

Strengthening the Response to Serious Offending Behaviour in Children and Young People

Portfolios **Children / Justice**

On 3 July 2023, following reference from the Cabinet Social Wellbeing Committee, Cabinet:

Actions to strengthen the system response to children and young people with serious and persistent offending behaviour

1 **noted** that improvements are needed in how the care and protection and youth justice systems work with children and young people with serious or persistent offending behaviour and their families;

2 **agreed** that relevant agencies urgently progress the following actions:

2.1 introducing an 'Enhanced Fast Track' model for persistent offending (Police and Oranga Tamariki);

2.2 strengthening Family Court responses (Police, Oranga Tamariki and the Ministry of Justice); and

2.3 improving Family Group Conferences (Police and Oranga Tamariki);

3 **noted** that officials estimate that the total cost of the above package of actions is approximately $4.2 million in the 2023/24 and 2024/25 financial years, and $1.0 million in outyears, which Oranga Tamariki will meet from within baselines;

4 **noted** that funding the above actions from within baselines will require Oranga Tamariki to reprioritise funding which will impact the delivery of other programmes, such as the Future Direction Plan, specifically Enabling Communities, the Social Worker Practice Shift, and the delivery of detailed business cases to support the frontline technology systems upgrade;

5 **noted** that officials will implement the following priority actions by 31 August 2023:

5.1 the Enhanced Fast Track Model, to be operational in Auckland;

5.2 policy and guidance on the use of Hui-a-Whānau;

5.3 the Joint Child Offender Family Group Conference Protocol;

6 **noted** that officials will provide regular updates on the implementation of the above actions to the Youth Crime Ministerial Group, which will include the development of a cross-agency implementation plan to be completed in July for Ministers' consideration;

Expansion of Fast Track and funding for local coordination teams

7 **noted** that there is merit in expanding Fast Track to other regions given the success of the model so far, and that officials will look to identify funding for the possible expansion of Fast Track and revert to relevant Ministers;

8 **noted** that the Minister for Social Development and Employment intends to seek agreement in a separate Cabinet paper to fund the continuation and enhancement of current practice for prevention and early intervention work related to youth crime through a transfer of underspends;

Section 9(2)(h) [redacted]

12 **authorised** the Deputy Prime Minister, the Minister for Children, the Minister of Justice, the Attorney-General and the Minister of Police to:

12.1 further develop proposed changes to the Crimes Act 1961and Sentencing Act 2002,

12.2 develop changes to relevant legislation to address disorder events in youth justice residences;

12.3 issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposed changes;

13 **invited** the Ministers in paragraph 12 to report back to Cabinet in July 2023 with a draft Bill.

Diana Hawker
Acting Secretary of the Cabinet

Secretary's Note: *This minute supersedes SWC-23-MIN-0292.*

[In Confidence]

Office of the Minister of Justice

Cabinet

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

Proposal

1. This paper seeks Cabinet's direction on a series of legislative options to strengthen the Government's response to offending by children and young people.

Relation to government priorities

2. The options canvassed in this paper support the Government's focus on building a justice system that ensures less offending and fewer victims of crime by further denouncing and deterring youth offending.

3. These criminal justice proposals complement the Oranga Tamariki proposals considered by Cabinet on 3 July 2023 [CAB-23-SUB-0292 refers]. That Cabinet Paper, *Strengthening the response to serious offending behaviour in children and young people*, proposed operational and legislative proposals to support the Government's key priority of child wellbeing by providing better support for children and young people who are involved with, or at risk of becoming involved with, youth justice processes.

Executive Summary

4. New Zealand's youth justice system has seen a 63 percent reduction in offending by children (aged 10 to 13), and a 64 percent reduction for young people (aged 14 to 17) since 2010.[1] However, there has been a spike in ram-raiding and retail offences.

5. Recent additional measures were introduced in 2022 in response to ram-raiding, which has helped lower the monthly average reported from 72 to per month, to 67.5 per month. These levels have fluctuated but remain unacceptably high.

6. While the youth justice settings are working for most children and young people who offend, a stronger focus is required for the small number of children and young people who commit the majority of offences, and who should therefore attract greater accountability.

7. Having considered these issues, I propose Cabinet approve a package of actions to further strengthen the Government's criminal justice response to youth offending, which includes changes to:

    7.1. the Crimes Act 1961,

    7.2. Sentencing Act 2002, and/or

[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/

7.3. Oranga Tamariki Act 1989.

8. Additionally, I propose Cabinet approve a series of legislative changes to the youth care and protection system of the Oranga Tamariki Act, to:

8.1. provide a new order to enable a more intensive response to child offending;

8.2. improve timeframes for holding a Family Group conferences (FGCs) to address care and protection concerns, including involving victims;

8.3. enhance the ability for the court to impose conditions on parents, guardians, and caregivers in response to child offending;

8.4. clarify the Family Court jurisdiction to impose conditions where a custody order relates to alleged offending behaviours by children; and

8.5. strengthen consideration of placements to manage absconding and reoffending risks and when court ordered conditions have been breached.

Background

9. The system that responds to children (aged 10 to 13) who offend is governed by the Oranga Tamariki Act. This Act is based on international best practice and reflects the limited ability of children to make informed decisions at these ages.

10. Most children (around 93 percent) with offending behaviour are dealt with outside of the formal youth justice system. This system is based on international best practice and works for most children. Formal criminal justice involvement is often associated with adverse consequences for the child and society as it has been shown to increase rates of reoffending.

11. The most serious offences are considered by the youth or adult justice system. Young people that offend are, depending on the seriousness of the offence, dealt with either via alternative action or the Youth Court.

Overall, there has been a reduction in offending by children and young people, but increases in some regions and offence types

12. Since 2010, the youth justice system has contributed to a 63 percent reduction in offending by children (aged 10 to 13), and a 64 percent reduction for young people (aged 14 to 17). Similar reductions were seen for Māori: overall offending rates decreased by 62 percent for tamariki Māori and 61 percent rangatahi Māori.

13. A smaller group of children and young people represent a significant number of the overall offending:

<u>Children (aged 10 to 13)</u>

13.1. In 2022 there were 1,850 children aged 10 to 13 with offending behaviour.

13.2. A small group of children with a pattern of serious and persistent[2] offending commit the majority of offences. In 2022, 10 percent of all children who offend (about 200 children) offended seriously and persistently, accounting for 47 percent of all offences. The top one percent of children with offending behaviour committed 14 percent of all offences. Almost half (47 percent) of all children who offended seriously and persistently in 2021 reoffended within a year.

13.3. The Bay of Plenty Police District had the highest rate of offending at 111 per 10,000 10- to 13-year-olds in 2022 and the highest number of children with offending behaviour (245). Counties-Manukau (largely South Auckland) had the next highest number of children with offending behaviour (228) and an offending rate of 60 per 10,000. Tasman had the second highest rate of child offending at 107 per 10,000, but the second lowest number of offenders (104).

13.4. The largest increase in offending between 2021 and 2022 was in Canterbury with 43 percent. There were 60 more children who offended, leading to a total of 199 children and an offending rate of 62 per 10,000.

Young people (aged 14 to 17)

13.5. In 2022, 5,765 young people (14 to 17 years old) were apprehended for offending.

13.6. A quarter (24 percent) had offending behaviour that was serious enough that they appeared in Youth Court. A third of those who appeared in Youth Court reoffended within a year.

13.7. Similar to children, the Bay of Plenty Police District had the highest number of young people with offending behaviour (706) and an offending rate of 345 per 10,000. Tasman had the highest offending rate of 355 per 10,000, with 319 young people offending. Rates of offending by young people declined in all Police Districts between 2021 and 2022.

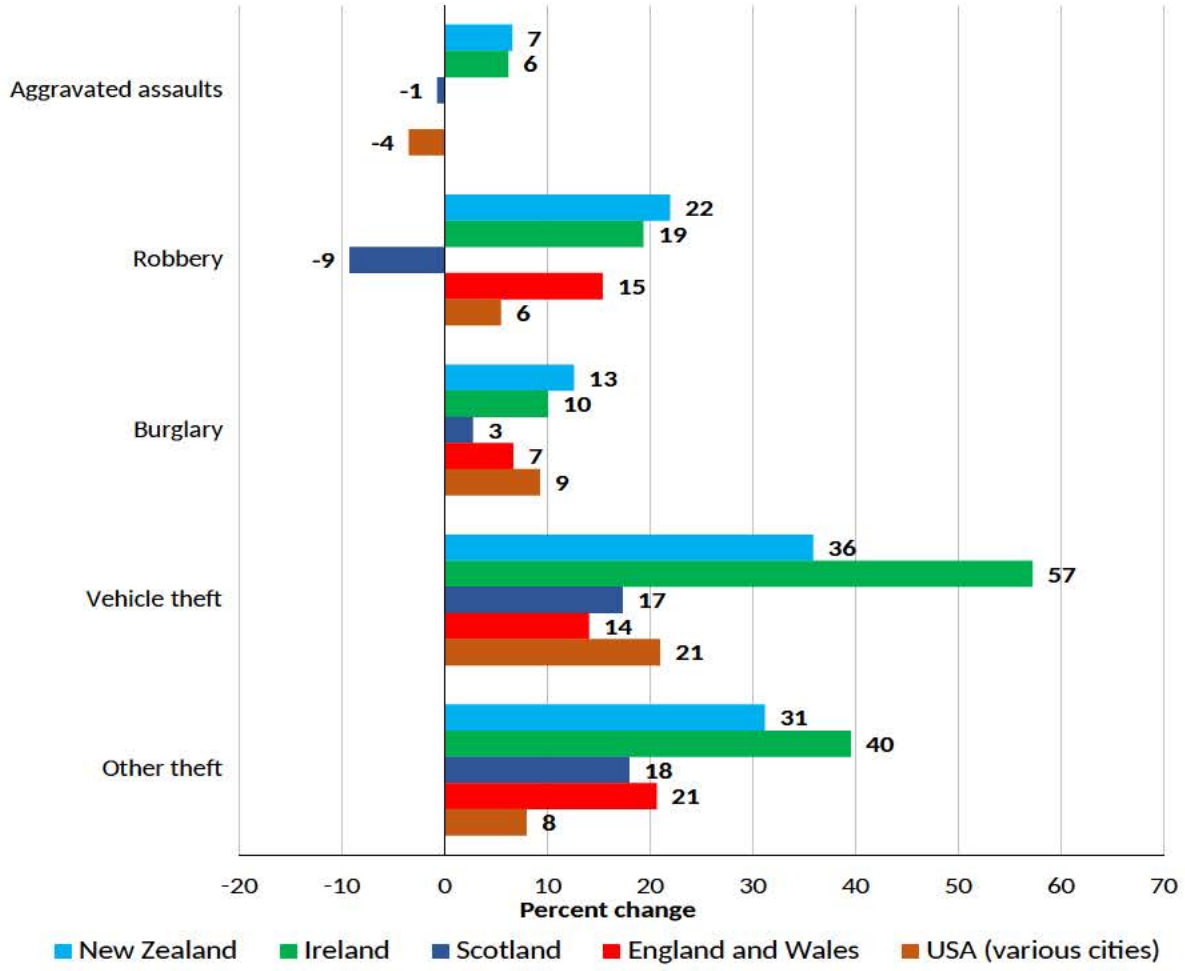
International experience shows that fluctuations in crime may have causes outside of the justice system

14. 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 for the five countries are compared across five offence types – aggravated assaults, robbery, burglary, vehicle theft, and other theft.

15. 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.

[2] Serious offending is defined in the Oranga Tamariki Act 1989 as having a 10 year or more maximum penalty. Persistent offending is defined as being subject to three or more proceedings in a year.

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



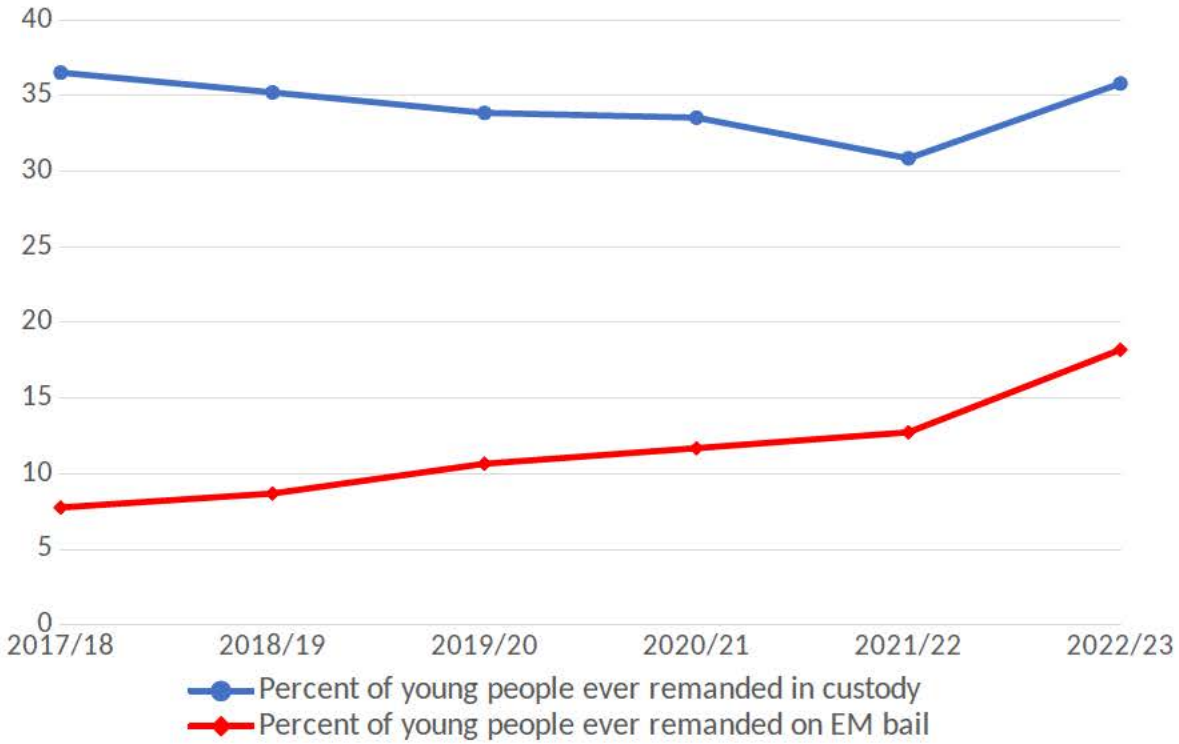
16. Crime patterns are influenced by many factors. Relevant influences in the youth offending space include, for example, disengagement from schooling, decreased community engagement, peer influence, and rates of foot traffic in urban areas.

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

17. 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.

18. 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



19. 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.

20. 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.

The Government has undertaken further initiatives to address youth offending

21. In response to the increase in ram-raiding incidents in late 2022, the Government introduced a range of operational measures focused on practical efforts to address the causes underlying ram-raid offending and prevent retail crime:

    21.1. In May 2022, Cabinet agreed to establish a programme to provide advice and funding to small retailers, to reduce the risk of retail crimes [CAB-22-MIN-0182 refers]. Cabinet agreed to allocate $6 million in 2022/23 from the Proceeds of Crime Fund to support small retailer crime prevention (managed by Police). On 18 November 2022, Cabinet agreed to allocate a further $6 million from the Fund for crime prevention and youth engagement programmes [CAB-22-MIN-0529, CAB-22-MIN-0548 refer].

21.2. In December 2022, Cabinet agreed to a range of operational measures for Oranga Tamariki to improve the system response to children with serious and persistent offending behaviour [CAB-22-MIN-0559 refers]. This included a pilot of the Fast Track between Police and Oranga Tamariki to provide immediate, collective responses to children who offend.

21.3. Oranga Tamariki is now progressing an enhanced Fast Track that intensifies support and utilises more often and with greater urgency existing care responses and powers. It is strengthening Family Court responses by better using existing conditions and orders. Work to improve Family Group Conferences and whānau hui to support earlier and more effective responses is underway. The Fast Track approach now operates in five areas.

21.4. On 21 April 2023, the Government announced an additional $9 million to top up the retail crime prevention fund, bringing the total investment to $15 million. On 29 May an additional $11 million was announced to extend the fog cannon subsidy scheme [CAB-23-MIN-0200 refers].

22. These measures have been effective. In the eight months following the announcement of the Government's Better Pathways package in early September 2022, New Zealand has seen consistently a lower monthly average of reported ram-raid incidents of 67.5 per month (72 per month from the previous eight months). However, these levels have fluctuated between 44 and 86 per month, with increases in reported ram-raid incidents in March and April 2023.

23. The ramraid figures from Police for May and June show a recent further decline (31 ramraids by children and young people in May and 15 in June respectively). We have not seen a change in the cohort committing ram-raids over this time; it is still predominately children and young people under age 18 and a high proportion of Māori.

Problem statement: need for stronger accountability and more intensive interventions

24. The current level of ram-raids remains unacceptable. I recommend several changes to our core criminal justice legislation to denounce the harm of ram-raids and improve accountability for those committing ram-raids.

25. There is also room to improve the setting in relation to factors that may encourage youth offending. For example, better holding to account people in organised criminal groups that incentivise offending by young people, and by recognising the harms of glorifying offending through posting videos (for example, by encouraging copycat offending or increasing impacts on victims). Further denouncing and deterring this conduct could protect vulnerable children and young people from being draw into offending.

Issue 1 - Adults encouraging or rewarding children and young people to commit crimes

26. 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.

27. 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.

Issue 2 - Ram-raid offending

28. I acknowledge that the fluctuating numbers still indicate a problem that requires further change to reduce ram-raid offending. The majority of ram-raid offenders are children and young people aged under 18. They have experienced a range of adverse circumstances and experiences. Many have disability and/or neurodiversity needs. Offenders are often already known to Police, Oranga Tamariki (for example, if there has been reported care and protection concerns) or other agencies by the time they are identified as involved in a ram-raid. A Police analysis of ram-raids that occurred in Auckland during April and May 2022 showed that 77 percent of offenders were identified as Māori.

29. Ram-raid offending is covered by existing offences under the Crimes Act 1961. Currently, ram-raid offenders are generally charged with burglary under s 231 of the Crimes Act, which carries a maximum sentence of 10-years' imprisonment. This is because the offenders enter (or enter and remain in) the building with "intent to commit an imprisonable offence". In the case of ram-raids, the offence is usually theft of goods. In addition to burglary, offenders are sometimes also charged with other offences, such as driving dangerously, depending on the facts and circumstances of the offending.

30. Ram-raid offenders may sometimes be charged with the more serious offence of aggravated burglary under s 232 of the Crimes Act, if the offender had a weapon with him or her or used anything as a weapon while committing the burglary. This offence carries a higher maximum penalty than burglary (14-years' imprisonment, compared to 10-years' imprisonment).

31. There are concerns that the offences currently applicable to ram-raid offending do not adequately recognise the seriousness of the offending and denounce this conduct. While aspects could be seen as more consistent with other offences currently attracting a 10-year penalty (such as burglary or intentional damage with risk to life), the nature of ram-raid offending – in particular, the physical damage it causes and the heightened risk from using a vehicle to enter – is such that it could be seen as more severe than burglary.

32. Under the current system, ram-raid offending by children and young people is governed by the Oranga Tamariki Act. Most children with offending behaviour are dealt with outside of the formal youth justice system through police-led alternative action or intention to charge family group conferences.

33. However, the most serious offences are considered by the youth or adult justice system. Children from the age of 10 can be charged for the most serious offences (murder and manslaughter). In addition, children aged 12 or 13 may be charged in Youth Court with an offence carrying a maximum term of imprisonment of at least 14 years or where they are a "previous offender". However, very few children are charged with these offences. Over the five years to the end of 2021 an average of 29 children aged 12 or 13 had matters resolved in Youth Court. The offence of burglary

(with a 10-year maximum penalty) does not enable children to be charged in the Youth Court, unlike an offence with a 14-year penalty.

34. There are concerns there is a gap in the system response for children who offend more than once and whose offence is of a more serious nature but does not meet either the threshold for the Youth Court, or a care and protection intervention.

Issue 3 - Offenders are posting their offending behaviour online, risking increases in copycat offending

35. 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.

36. 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.

37. 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.

Issue 4 – Addressing system gaps in the response to children and young people with offending behaviour

38. For both children (10- to 13-year-olds) and young people (14- to17-year-olds) there is a gap in the current system response between alternative interventions (e.g., Alternative Action) and statutory care and protection and youth justice responses. A tiered response that 'intensifies' over time is needed. Further, the statutory powers and care and protection responses that are available to agencies are not always used effectively and, in some cases, not fit-for-purpose. As a result, children and young people do not always receive responses with the right level of immediacy, intensity, or duration to address their needs address the underlying factors that contribute to offending. This is particularly the case for children and young people with serious or persistent offending behaviour who have complex needs. Proposals also address a gap in the response to parents or carers of children with offending behaviour.

Proposal 1 - a new offence or aggravating factor for adults encouraging young people into offending

39. Organised criminal groups (including gangs that commit offences) can exploit vulnerable children or young people to offend on their behalf through inducements or rewards. New Zealand businesses affected by ram raids and other retail crimes have raised anecdotal concerns about organised criminal groups playing a similar role here.

However, Police analysis from 2020 indicates that only 2% of youth offenders have gang links.

40. Currently, sections 66 (parties to offences) and 98A (participation in an organised criminal group) of the Crimes Act criminalise this conduct. These sections provide that:

    40.1. *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.

    40.2. *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 either 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.

41. To account for the harmful nature of exploiting a vulnerable child or young person by the adult offender under the existing law, we rely on general sentencing provisions:

    41.1. The court is required to take account of the gravity of the offending in the particular case.[3] 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.

    41.2. 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.[4]

42. While existing provisions are working well, a bespoke offence or aggravating factor would recognise the particularly harmful nature of exploiting vulnerable children and young people to offend on behalf of an organised criminal group. This would further denunciate this insidious behaviour, which can draw young persons into a criminal network with life-long detrimental effects.

43. We have two options that we can progress to respond to this issue.

Option 1: A new offence targeting organised crime groups that incentivise or reward offending

44. The first option is a new offence modelled on section 98A. This offence will specifically target people whose participation in organised crime groups involves the inducement or rewarding of children or young people (under 18 years of age) to

[3] Sentencing Act 2002, s 8(a).

[4] Sentencing Act, ss 9(d), (g), and (hb).

offend to benefit the organised criminal group. The person who encouraged the young person would not need to be a member of a gang but would have to know the offending benefited an organised criminal group. If there was no benefit to such a group, a person could still be liable under section 66 (as a party to the offending that they induced or rewarded).

45. This offence will carry a maximum penalty of imprisonment for a term not exceeding 10 years. Justice officials have considered whether the new offence justifies a higher penalty level than the existing 10 years maximum imprisonment penalty under section 98A (such as 14 years, which would be the next tier in the Crimes Act hierarchy). Justice officials consider that a 10-year penalty is appropriate considering the elements of the offence and degree of culpability associated with encouraging a young person to commit offences.[5]

46. Within this maximum 10-year penalty, I propose to create a new aggravating factor within the Crimes Act that would apply specifically for this new offence.[6] This will recognise at sentencing the varying ages and degrees of vulnerability of the young person induced to offend on behalf of the organised criminal group.

Option 2: A new aggravating factor for party liability

47. We also have the option of 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 offending under section 66 of the Crimes Act.

48. The main difference between the two 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 encouraging or aiding offending by young people.

There are risks with these options that have been identified by agencies

49. Both of the above options have the benefit of signalling and denouncing the unacceptability of this insidious behaviour. Creation of a new offence or aggravating factor will highlight the Government's disapproval of this harmful behaviour and the consequences of engaging in it.

50. Section 9(2)(g)(i), Section 9(2)(h) Section 9(2)(g)(i) [redacted]

[5] For example, comparable offences (involving a young person) with a 14 year penalty include elements of direct physical and inter-personal violence or deprivation of liberty, such as section 98AA, *Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour*.

[6] This could be modelled on section 98E of the Crimes Act 1961, which sets out aggravating factors for migrant smuggling and people trafficking. Those aggravating factors include whether a person in respect of whom the offence was committed was under 18 years of age.

Section 9(2)(g)(i) [redacted]

51. Section 9(2)(g)(i) [redacted]

[redacted]

51.2. The aggravating factor for party liability:

51.2.1. would not require a connection to organised crime, and so may inadvertently capture other young people who influence peers. 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.

51.2.2. could unintentionally limit judicial discretion to account for this more harmful conduct at sentencing (compared to relying on the broad general sentencing factors that can apply to any offences), which may complicate the coherence of the law.

Proposal 2 - a new offence to address ram-raid offending

52. Ram-raids contain an aspect of significant property damage, effected by particularly destructive and risky means. This harm is arguably not adequately recognised in the general burglary offence (although the extent of damage may currently be an aggravating factor at sentencing). A new offence specific to ram-raids could better capture the distinct features, harm and risks associated with this offending.

53. Although existing general offences such as burglary do cover ram-raid offending, introducing an offence specifically aimed at ram-raid offending would signal the seriousness of this offending and indicate that it is unacceptable.

Features of the new offence to address ram-raid offending

54. While there are a number of ways to construct the new offence to ensure it captures ram-raids appropriately, some of the key elements of the new offence would include:

54.1. use of a motor vehicle to enable entry;

54.2. damage to property; and

54.3. by reason of that damage, entering without authority and with intent to commit an imprisonable offence (or theft only).

55. There are several issues about the scope and design of the new offence that require further consideration during the drafting process. This includes—

55.1. whether the offence would be aimed only at the driver of the motor vehicle, all those travelling in the vehicle, or anyone entering as a result of the use of the motor vehicle; and

55.2. ensuring the elements of the new offence would be suitably distinct from general burglary and other offences.

56. These design details will have a significant impact on how children and young people are affected, for example, whether a 12-year-old child with limited cognitive abilities in the backseat of a car that is involved in a ram-raid offending is subjected to this new serious offence.

57. If we were to proceed with a new ram-raid offence, I propose that I am empowered to make further decisions about the design of the offence in consultation with the Prime Minister, Minister of Police, Minister for Children, and the Attorney General. I expect Justice officials to consult with relevant agencies including Police and Crown Law.

Section 9(2)(g)(i)

[redacted]

Justices prefers a stand-alone offence

59. The Ministry of Justice considers that a stand-alone offence is the preferable if Cabinet decides to proceed with a new offence.

60. This is primarily because ramraiding and aggravating burglary are distinct concepts. Incorporating ramraiding into aggravated burglary distorts the criminal law. Aggravated burglary requires the offender to have a weapon capable of causing bodily harm while committing burglary. The aggravating harm targeted is interpersonal violence and threats of interpersonal violence. In contrast, ramraid offending involves the using a motor vehicle to enter premises. The aggravating harm targeted is the extensive property damage will usually occur while gaining access to commit burglary.

61. Section 9(2)(g)(i)

Section 9(2)(g)(i) [redacted]

62. Justice also considers that any signalling effect to denounce ramraiding is likely be enhanced by singling out ram-raiding as a bespoke offence.

63. Section 9(2)(g)(i) [redacted]

Section 9(2)(g)(i), Section 9(2)(h) [redacted]

[redacted]

Section 9(2)(g)(i) [redacted]

[redacted]

[redacted]

[redacted]

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[redacted] Section 9(2)(g)(i) [redacted]

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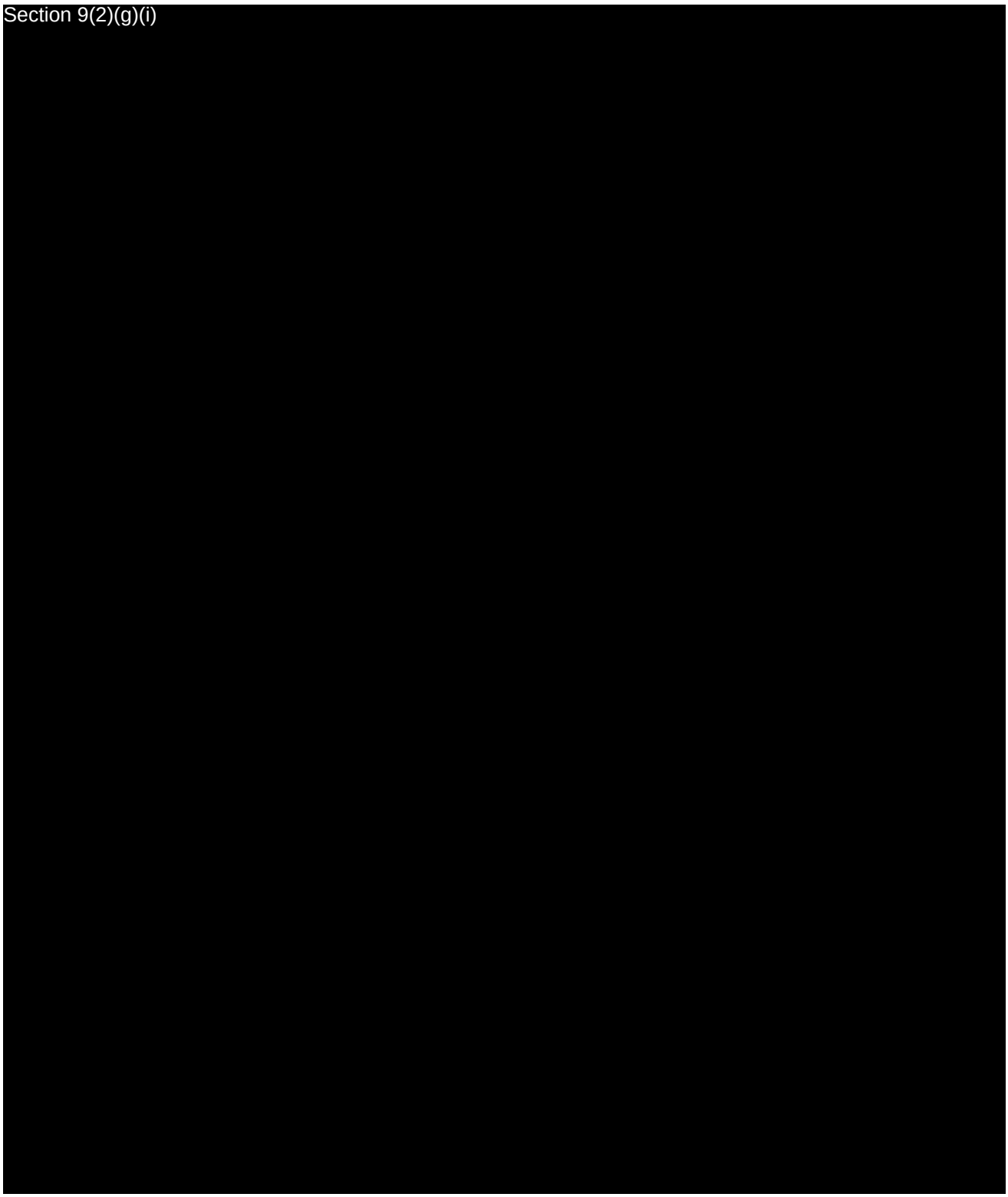
Section 9(2)(g)(i) [redacted]

Section 9(2)(g)(i)



Proposal 3 - a new aggravating factor in the Sentencing Act of posting offending behaviour online

83. The Sentencing Act sets out a number of aggravating factors that the court must take into account when sentencing an offender.[13] Many of the statutory aggravating factors are reflective of community values, such as where an offender breached a position of

[12] A South and West Auckland pilot programme of wrap-around support for children involved in ram raid and fleeing driver events. This was introduced as part of Police's Better Pathways package.

trust, or the offence was committed because of hostility toward a particular group based on race or religion.

84. New factors can be added as community values evolve. For example, the aggravating factor of the offence occurred in the context of family violence offending (s 9(1)(ca)) was added in 2019.

85. The rise of social networking sites, such as Facebook, Snapchat, and TikTok, provides challenges for the criminal justice system, particularly for young people, who are more likely to be active on these platforms. 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.

86. In light of the increasing use of social media to post offending behaviour, I propose to amend the list of aggravating factors in the Sentencing Act to include a new factor of the offender posting their offending behaviour.

87. I note that this new aggravating factor will not apply in the Youth Court and would only be applicable to those being sentenced in the District Court or High Court. However, the new factor will apply as relevant and will have a signalling effect for those being sentenced in other contexts.

Introducing an analogous consideration in the youth jurisdiction

88. The approach to factors for consideration at sentencing is not the same in the Youth Court. Instead, these factors focus more on the circumstances of the young person, including, for example, their personal history and characteristics, their attitude towards the offending, and any plans made by a family group conference.[14]

89. I propose adding a specific factor of posting offending behaviour online to the list of factors for consideration in the youth jurisdiction. This would constitute a factor analogous to the new aggravating factor in the adult jurisdiction outlined above and will require an amendment to the Oranga Tamariki Act.

Oranga Tamariki does not support sharing offending on social media being an aggravating factor in the youth jurisdiction

90. Adding an aggravating factor where a young person broadcasts or publicises their offending online through social media is likely to have implications for the young person. It could result in harsher and longer sentences for young people, which would not be in their best interests. Imposing harsher penalties do not necessarily act as a deterrent for young people - the brain development of young people means they have less reasoning ability - and incarceration itself can be criminogenic, especially for young people.

91. Further, several of the factors the Youth Court is already able to take into account when sentencing could respond to this behaviour; for example, the nature and

[13] Sentencing Act, s 9. There is also a catch-all provision (in s 9(4)) that allows the court to consider any other aggravating or mitigating factor that it thinks fit into account in imposing sentence.

[14] Oranga Tamariki Act, s 284.

circumstances of the offence; the attitude of the young person towards the offending; and the effect of the offending on the victim.

92. For these reasons Oranga Tamariki proposes deferring consideration of sharing offending on social media as an aggravating applying to young people so its impacts can be considered further.

Proposal 4 – Strengthening the response to offending by amending the Oranga Tamariki Act

93. While improvements can be made by better utilising existing powers and provisions in the Oranga Tamariki Act, they could be strengthened through legislative change that seeks to bring youth justice tools and approaches into the Family Court to enable the Courts to respond to offending behaviour in children and achieve greater accountability for offenders and their whānau. The wellbeing and best interests of children will remain the paramount consideration of the Court.

94. We recommend the Oranga Tamariki Act 1989 be amended as follows:

    94.1. Introduce a new care or protection order to respond to offending behaviours that incorporates elements of Youth Justice Supervision with Activity orders with a focus on reducing the likelihood of further offending and behaviours of concern by enabling the court to require attendance at an activity such as educational, recreational, instructional, cultural or work programme. The legislation currently enables Support Orders to provide for such programmes but only with the consent of the child or young person. This order to be subject to mandatory court reviews at three-month periods while the order is in effect.

    94.2. Bring in youth justice FGC requirements into care and protection FGCs where the care and protection concerns include a component of offending behaviours: this means the Youth Justice FGC timeframe will apply (21 days to convene, 28 days to hold the FGC) and victims will be entitled to attend. A mandatory timeframe will ensure timely intervention for these children and require them to face the consequences of their behaviour by involving the victim.

    94.3. Remove restrictions based on age of the child that prevent the court from imposing conditions on parents, guardians and caregivers for the purpose of assisting them to carry out their duties and responsibilities and to encourage co-operation with persons assisting the child and whānau. Section 97 currently enables such conditions to be imposed in respect of young people aged 14 to 16 only.

    94.4. Clarify the Family Court jurisdiction to impose conditions where a custody order relates to alleged offending behaviours by children. Courts are already able to make those orders, but they are rarely made. We expect clarifying the Court's jurisdiction will support agencies to apply for the appropriate orders and conditions and can help to resolve any potential concerns the Court may have as to its jurisdiction. This will likely increase use of these conditions, particularly in combination with the following.

94.5. Where the child or young person is in the custody of the Chief Executive, require consideration to be given to offending behaviours such as likelihood to abscond, commit further offences or interfere with witnesses etc when deciding where the child is placed, and clearly authorising the Chief Executive or Police to place, return or move the child so as to respond to absconding or further offending.

94.6. Where the Chief Executive has custody of a child on the basis of offending behaviours and the court has imposed bail-like conditions, which are breached by the child, the chief executive will be required to promptly consider the placement of the child, and in particular whether a secure placement would be more appropriate, and report to the court. In addition, the child may be required to appear before the court where bail-like conditions have been breached.

94.7. Enhance provisions relating to the court receiving reports on the effectiveness of a new order by granting the Court the ability to recall a matter based on the outcome of the order or the child or young person's response to it and giving the Court the ability to require both the child and the parents to attend where dissatisfied or if a breach application is filed.

95. Section 9(2)(g)(i) [redacted]

96. It is critical that children and their families receive appropriate support to help them comply with any bail-like conditions. To achieve this, we would like to see officials progress inclusion of the youth-focused actions in the cross-government Remand Action Plan, particularly improvements to the supported bail programme and the scoping of a national bail support service for children and young people.

97. These proposals may require more children to be placed in secure residences and lead to greater number of children in state care. Oranga Tamariki has limited ability to respond to additional demand on residences.

98. Removing the consent of the child to the activity order is a significant change and may also be controversial and would likely receive comment from NGOs.

Oranga Tamariki supports deferring these proposals so they can be considered as part of wider transformation

99. Oranga Tamariki recommends that these proposals are best considered as part of wider transformational work including a review of legislation.

Section 9(2)(g)(i) [redacted]

[redacted]

Section 9(2)(g)(i)

[redacted]

Cost-of-living Implications

108. The proposals are likely to have negligible impacts on the cost of living. There may be a minor indirect impact on businesses affected by crime, such as dairy owners at risk of ram raids. The costs of (any security measures responding to) ram raids may be passed on to consumers. However, this will already likely result from the existing (responses to) offending, and will be mitigated by the measures the Government announced on 21 April and 29 May 2023, topping up the retail crime prevention fund and extending the fog cannon subsidy scheme [CAB-23-MIN-0200 refers].

Financial Implications

A new offence of recruiting young people into offending for an organised criminal group

109. Officials expect the proposed offence or aggravating factor options to amend the Crimes Act will not have a significant impact on number or length of sentences for the relevant conduct. However, in the timeframes that proposals have been developed, officials have not been able to estimate the impact for Crown Law, Police, or Corrections. Further work to determine these impacts will be carried-out as part of any regulatory impact analysis.

New offence to address ram-raid offending

Section 9(2)(f)(iv)

112. Oranga Tamariki are currently able to meet the demand for placements in Youth Justice residences and community homes. Any increase in demand would require additional resource, capacity building and appropriate programming in order to meet that demand and to provide the right kinds of interventions for these rangatahi and reduce reoffending. These expenses may not all be accounted for in the Ministry of Justice modelling.

113. There may be cost/funding implications for Crown Law of a new offence, which Crown Law have not considered or quantified.

114. I recommend that relevant officials, from the Ministry of Justice, Oranga Tamariki, Police, Corrections and Crown Law, report back to the Minister of Finance, Justice Cluster Ministers and the Minister for Children, on implementation costs of the ram raid offence, after the Bill has completed Select Committee stage, including updated fiscal modelling, and funding options either from agency baselines, further Cluster reprioritisation, using the Cluster underspend contingency, and/or the Proceeds of Crime Fund

A new aggravating factor of posting offending behaviour

115. Officials expect the proposed new aggravating factor will not have a significant impact on the length of sentences given to any affected convicted offenders. However, any effect can be expected to have a resourcing impact for Corrections. In the timeframes that proposals have been developed, officials have not been able to estimate the impact. Further work to determine these impacts will be carried out as part of any regulatory impact analysis.

Amendments to the Oranga Tamariki Act

116. Parts of the proposed legislative amendments to the Oranga Tamariki Act would result in additional costs to Oranga Tamariki. These are estimated to be on average $100,000 per child, with a mixture of residential support and community-based activity programmes. It is estimated around 15 children will need this level of support.

Legislative Implications

117. If Cabinet wishes to proceed with legislative changes, a new Amendment Bill(s) would be required to introduce amendments to:

    117.1. the Crimes Act 1961: to include a new offence to denounce the incentivising of youth offending by an organised criminal group, or an aggravating factor for party liability where offending involves a child or young person;

    117.2. the Crimes Act 1961: to include a new offence to address ram-raid offending;

    117.3. the Sentencing Act 2002: to expand the list of factors for consideration at sentencing to include a new aggravating factor of an offender posting their offending behaviour; and

    117.4. the Oranga Tamariki Act 1989: to create a new factor, for consideration at sentencing, of an offender posting their offending behaviour online; and

    117.5. the Oranga Tamariki Act 1989 to:

        117.5.1. provide a new order to enable a more intensive response to child offending;

        117.5.2. improve timeframes for holding a Family Group conferences (FGCs) to address care and protection concerns, including involving victims;

        117.5.3. enhance the ability for the court to impose conditions on parents, guardians, and caregivers in response to child offending;

        117.5.4. clarify the Family Court jurisdiction to impose conditions where a custody order relates to alleged offending behaviours by children; and

117.5.5. strengthen consideration of placements to manage absconding and reoffending risks and when court ordered conditions have been breached.

118. The Acts proposed for amendment already bind the Crown.

119. Officials will work with the Office of the Clerk to determine whether any legislative amendments agreed to can be included in an Omnibus Bill. Instructions can be issued to Parliamentary Counsel Office to draft the relevant provisions Cabinet agrees to progress for one or more bills.

120. I propose that a new Amendment Bill(s) be introduced as soon as possible and assigned a Category 4 status (to be referred to a select committee before the 2023 general election).

Impact Analysis

Regulatory Impact Statement

121. Cabinet's impact analysis requirements apply to the proposals in this paper, but there is no accompanying Regulatory Impact Statement(s) and the Treasury has not exempted the proposals from the impact analysis requirements. Therefore, the paper does not meet Cabinet's requirements for regulatory proposals.

122. The Treasury's Regulatory Impact Analysis team and the Ministry of Justice and Oranga Tamariki have agreed that supplementary analysis will be provided before the subsequent Cabinet meeting or a post-implementation assessment will be developed and provided to Cabinet.

Climate Implications of Policy Assessment

123. 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.

Population Implications

Disproportionate impact on Māori and Pasifika children and young people

124. Māori and Pasifika tamariki and rangatahi are overrepresented in both the care and protection and youth justice systems. Tamariki and rangatahi Māori are six and four times more likely to offend than non-Māori. Rangatahi Māori are over seven times more likely to appear in the Youth Court than non-Māori.

125. The majority of the burglary offending (where this relates to ram raids) is happening in the regions of South and West Auckland, Te Tai Tokerau, and the Bay of Plenty. A Police analysis of ram-raids in Auckland that occurred during April and May 2022 showed that 77 percent of offenders were of Māori ethnicity. Offending typically occurs within areas of higher socio-economic deprivation.

126. Similarly, in cases where there is involvement by a gang (that commits or encourages offending by a young person), we know Māori make up a disproportionate share of gang membership.

127. The proposed new ram-raiding offence in particular will very likely have a disproportionate impact on rangatahi Māori, who already represent 67% of children and young people in the Youth and District Court as well as in youth justice custody.[15]

The cohort of youth offenders has a higher-than-average level of need

128. Children and young people involved in fleeing driver incidents, ram-raiding, and/or persistent offending have often experienced a range of adversities. This includes living in low-income households, with family members with mental health needs, addictions, and/or a Corrections history. Many will have received a truancy intervention, had contact with Oranga Tamariki or been the subject of a Report of Concern to Oranga Tamariki, and themselves been a victim of crime.

129. Disabled children are over-represented in populations of children and young people who offend. Many have conditions such as traumatic brain injury, autism, attention deficit hyperactivity disorder, foetal alcohol spectrum disorder, and learning disabilities.

130. This cohort of children and young people are likely to benefit most from the specialised procedures, processes, and personnel of the youth justice system, rather than the comparatively punitive nature of the adult jurisdiction. Additionally, introduction to the formal justice system increases the likelihood of affiliation with anti-social peers and adult offenders, which is a known risk factor for youth offending.[16]

131. Introduction to the formal justice system increases the likelihood of affiliation with anti-social peers and adult offenders, which is a known risk factor for youth offending.[17] There is now increasing awareness of the benefits of early interventions for at-risk children to prevent them from engaging with the formal justice system altogether, addressing the underlying issues and providing the necessary support to the child or young person and their whanau. This is affirmed in the report *It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand*, which discusses the importance of early intervention to stop the cycle of offending and the goal of getting children off the "prison pipeline".[18]

Treaty of Waitangi / Te Tiriti o Waitangi analysis

132. Under section 7AA (Oranga Tamariki Act), Oranga Tamariki are required to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi. On behalf of the Crown, the Chief Executive of Oranga Tamariki conceded on 25 November 2020 at the Royal Commission on abuse in state care that "Structural

[15] Te Uepu Hapai I Te Ora – Safe and Effective Justice Advisory Group. *Turuki! Turuki! Move Together!* (2019) p.47.

[16] Monahan K. C., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and antisocial behaviour during the transition to adulthood. *Developmental Psychology, 45*(6), 1520 – 1530.

[17] Monahan K. C., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and antisocial behaviour during the transition to adulthood. *Developmental Psychology, 45*(6), 1520 – 1530.

[18] Lambie, I. (2018). It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand. Auckland, NZ: Office of the Prime Minister's Chief Science Advisor. Available from www.pmcsa.ac.nz

racism is a feature of the care and protection system which has had adverse affects for tamariki Māori, whānau, hapū and iwi, and has detrimentally impacted the relationship between Māori and the Crown." This will likely be a feature of the Youth Justice system.

133. As the proposed legislative changes may have a disproportionate impact on the rights and interests of Māori, under the active protection and partnership principles, there is a strong Te Tiriti o Waitangi based argument that Māori should be consulted.

134. Due to timing constraints, officials have not had the opportunity to engage with Māori/iwi and other affected partners. To uphold the principles of partnership and tino rangatiratanga, Oranga Tamariki plans to lead targeted consultation as soon as practicable.

Human Rights

135. The proposals in this paper seek to balance the need to address serious and persistent offending behaviour in children and young people with providing better support for children or young people who are involved with, or at risk of becoming involved with the youth justice system.

136. Crown Law will vet any draft Bill for consistency with the New Zealand Bill of Rights Act 1990 (BORA) before it is introduced. A full analysis of the BORA implications has not been possible in the time available.

137. New Zealand has ratified the United Nations Convention on the Rights of the Child (UNCRC), which applies to all children under 18 years of age. UNCRC recognises the vulnerability of children who offend and requires States to ensure that arrest, detention, or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time. There is a need to also consider our many other international obligations such as the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples. These proposals may raise concerns about our alignment with these conventions, particularly as they are likely to disproportionately affect Māori and disabled children and young people.

138. The proposed legislative amendments to the Crimes Act 1961, Sentencing Act 2002, and Oranga Tamariki Act 1989 may engage various BORA rights, including the right of children charged with an offence to be dealt with in a manner that takes account of their age. It would be important to provide for sufficient separation of 12- and 13-year-olds in youth justice facilities from older residents. Imposing bail conditions on children would limit their freedom of movement and association. The limited evidence and rationale available to support these proposals is likely to affect the extent to which any limits on BORA rights can be justified.

139. Section 9(2)(h) [redacted]

Section 9(2)(h)

Use of External Resources

140. There has been no use of external resources, nor any planned. If Cabinet agrees with the proposals, implementation will be undertaken by relevant public departments.

Consultation

141. Consultation with other departments and agencies has been limited due to time constraints. This paper was developed with input from Oranga Tamariki, New Zealand Police, the Crown Law Office, Ministry of Social Development, Ministry of Transport, New Zealand Treasury, and the Department of Corrections. The Department of the Prime Minister and Cabinet was informed. In the time available, officials have not engaged with the judiciary. If Cabinet agrees with the proposals, officials plan to promptly consult on the proposals to which Cabinet agrees.

142. There has been no consultation with Māori, despite the significant implications that these policies are likely to have on these groups. As noted above, if Cabinet agrees with the proposals, officials plan to promptly engage with Māori/iwi.

Section 9(2)(g)(i), Section 9(2)(h) *the criminal justice proposals*

143. Section 9(2)(g)(i), Section 9(2)(h) Section 9(2)(g)(i)

Section 9(2)(g)(i), Section 9(2)(h)

144. For the proposed new offence (proposal 1, option 1), Section 9(2)(g)(i), Section 9(2)(h) a person who induces or rewards offending could already be captured by existing offences (sections 66 and 98A), and where this involved the conscription of children/young people this would already be an aggravating factor as part of sentencing (as the involvement of children/young people would make it a more serious example of its kind). Section 9(2)(g)(i), Section 9(2)(h) Sec Section 9(2)(g)(i)

145. For the proposed aggravating factor for party liability (proposal 1, option 2), Section 9(2)(g)(i). Section 9(2)(g)(i)

Section 9(2)(g)(i), Section 9(2)(h)

Section 9(2)(g)(i)

Section 9(2)(g)(i)

146. Section 9(2)(g)(i), Section 9(2)(h)

Section 9(2)(g)(i)

147. Section 9(2)(g)(i)

Section 9(2)(g)(i), Section 9(2)(h) Section 9(2)(g)(i)

Legislative amendments to the Oranga Tamariki Act 1989

148. Police supports the possible changes to the Oranga Tamariki Act (proposal 4) to respond to serious and persistent offending by children and young people through more immediate and intensive interventions. There are significant challenges with implementing the package of proposals, including managing the likely impact on NGOs, community, and iwi/Māori partners, and ensuring the availability of the necessary workforces. Police support the development of a cross-agency implementation plan for this work.

149. Section 9(2)(g)(i)

Treasury comment

150. Section 9(2)(g)(i)

Section 9(2)(g)(i) [redacted]

Communications

151. I will consider announcements following Cabinet decisions.

Proactive Release

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

Recommendations

I recommend that Cabinet:

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;

Legislative amendments to the Crimes Act 1961

3. **agree** to create:

   EITHER

   3.1. 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 to benefit the organised criminal group, with a 10-year penalty and a new aggravating factor in the Crimes Act 1961 that would apply specifically to this offence;

   OR

   3.2. 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.

4. **agree** to develop an offence to specifically address ram-raid offending, with a maximum penalty of Section 9(2)(g)(i)

5. Section 9(2)(g)(i)

6. **note** that there are several issues about the scope and design of these new offences that require further work;

7. **authorise** the Minister of Justice to make further decisions about the design and technical aspects of any new offence (if any new offence is agreed to), in consultation with the Prime Minister, Minister of Police, Minister for Children, and the Attorney General.

Legislative amendments related to sentencing

8. **agree** to create a new aggravating factor within the Sentencing Act 2002 of an offender posting their offending behaviour online;

9. **agree** to create a new factor within the Oranga Tamariki Act 1989, for consideration at sentencing, of an offender posting their offending behaviour online;

10. **note** that there are several issues about the scope and design of these new factors

that require further work;

11. **authorise** the Minister of Justice to make further decisions about the design of the new factors (if either new factor is sought), in consultation with the Minister of Police, the Minister for Children, and the Attorney General.

Legislative amendments to the Oranga Tamariki Act 1989 (related to youth justice tools and the Family Court)

12. **agree** to amend the Oranga Tamariki Act 1989 to

    12.1. provide a new order to enable a more intensive response to child offending;

    12.2. improve timeframes for holding a Family Group conferences (FGCs) to address care and protection concerns, including involving victims;

    12.3. enhance the ability for the court to impose conditions on parents, guardians, and caregivers in response to child offending;

    12.4. clarify the Family Court jurisdiction to impose conditions where a custody order relates to alleged offending behaviours by children; and

    12.5. strengthen consideration of placements to manage absconding and reoffending risks and when court ordered conditions have been breached.

Section 9(2)(g)(i) [redacted]

- [redacted]
- [redacted]

Financial implications and regulatory impact

15. **note** that a financial implications analysis or regulatory impact statement for the above proposals has not yet been prepared, and officials will provide either a supplementary analysis report or a post-implementation assessment.

16. **invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to implement the matters set out in recommendation 3, 4, 8, 9, and 12 including any necessary consequential amendments;

17. **agree** the Amendment Bill be assigned a Category 4 status (to be referred to a select committee before the 2023 general election);

18. **authorise** the Minister of Justice, in consultation with the Minister of Police and

Minister for Children, to make any further related policy decisions that are not inconsistent with the legislative proposals in recommendations 3, 4, 8, 9, and 12, and resolve any minor, technical, or non-controversial amendments that arise during drafting without further reference to Cabinet.

19. Section 9(2)(f)(iv) [redacted]

Authorised for Lodgement

Hon Kiri Allan
Minister of Justice

CAB-23-MIN-0306

Cabinet

Minute of Decision

Serious Offending Behaviour in Children and Young People: Strengthening the Legislative Response

Portfolio **Justice**

On 17 July 2023, Cabinet:

Background

1 **noted** that despite youth offending declining overall, recent increases have been seen in serious, persistent offending;

2 **noted** that work is progressing across the youth justice system to improve operational responses to reduce serious and persistent youth offending;

Legislative amendments to the Crimes Act 1961

3 **agreed** to create 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;

4 **agreed in principle** to develop an offence to specifically address ram-raid offending, subject to further decisions arising from the authorisation in paragraph 6 below;

5 **invited** the Minister of Justice to submit a paper to the Cabinet Social Wellbeing Committee on 19 July 2023 with proposed options for accessing Youth Court interventions for ram-raid offending without increasing the associated penalty;

6 **authorised** the Cabinet Social Wellbeing Committee to have Power to Act to take decisions on the paper referred to in paragraph 5 above;

7 **noted** that there are several issues about the scope and design of the proposed new offence that require further work;

Legislative amendments related to sentencing

8 **agreed** to create a new aggravating factor within the Sentencing Act 2002 of an offender posting their offending behaviour online;

9 **agreed** to create a new factor within the Oranga Tamariki Act 1989, for consideration at sentencing, of an offender posting their offending behaviour online;

10 **noted** that there are several issues about the scope and design of these new factors that require further work;

11 **authorised** the Minister of Justice to make further decisions about the design of the new factors agreed in paragraphs 8 and 9 above, in consultation with the Minister of Police, Minister for Children, and the Attorney General;

Legislative amendments to the Oranga Tamariki Act 1989 (related to youth justice tools and the Family Court)

12 **agreed** to amend the Oranga Tamariki Act 1989 to:

12.1 provide a new order to enable a more intensive response to child offending;

12.2 improve timeframes for holding a Family Group Conference (FGC) to address care and protection concerns, including involving victims;

12.3 enhance the ability for the court to impose conditions on parents, guardians, and caregivers in response to child offending;

12.4 clarify the Family Court jurisdiction to impose conditions where a custody order relates to alleged offending behaviours by children;

12.5 strengthen consideration of placements to manage absconding and reoffending risks and when court ordered conditions have been breached;

Financial implications and regulatory impact

13 **noted** that a financial implications analysis or regulatory impact statement for the above proposals has not yet been prepared, and that officials will provide either a supplementary analysis report or a post-implementation assessment;

14 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to implement the matters set out in paragraphs 3, 8, 9, and 12 above, including any necessary consequential amendments;

15 **agreed** that the Amendment Bill be assigned a Category 4 status (to be referred to a select committee before the 2023 general election);

16 **authorised** the Minister of Justice, in consultation with the Minister of Police and Minister for Children, to make any further related policy decisions that are not inconsistent with the legislative proposals above, and to resolve any minor, technical, or non-controversial amendments that arise during drafting without further reference to Cabinet.

Rachel Hayward
Secretary of the Cabinet

In Confidence

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

Proposals to address ram-raid offending

Proposal

1 This paper seeks Cabinet's direction on legislative options to strengthen the Government's response to ram-raid offending. The paper sets out a proposal of a new offence to address ram-raid offending. Cabinet is asked to agree to an offence with a maximum penalty of 10 years' imprisonment.

2 The paper also sets out proposals to enable 12- and 13-year olds alleged to have committed the new offence to be charged in the Youth Court without meeting the "previous offender" test.

Relation to government priorities

3 The options canvassed in this paper support the Government's focus on building a justice system that ensures less offending and fewer victims of crime by further denouncing and deterring youth offending.

Executive Summary

4 The government has introduced a number of measures to respond to ram-raids and youth crime, including new interventions designed to break the cycle of offending by children and young people. These interventions, such as a combination of 'Fast Track' and local multi-agency teams introduced last December, have proven effective for approximately three quarters of those referred to the programme.

5 However, the number of ram-raids remain unacceptably high. This paper builds on the package of proposals agreed by Cabinet on 17 July that approved additional wrap-around interventions and improved Family Court processes to break the cycle of offending. This paper specifically targets a gap in our response to the most serious and persistent ram-raid offending carried out by 12- and 13-year-olds. This responds to concerns from retail owners, the community, and Police about limited justice system responses to ram-raid offending by this age-cohort.

6 On 17 July, Cabinet agreed in principle to a new ram-raid offence in the Crimes Act 1961. I now propose key elements of that offence, which include:

6.1 damage to a building by use of a motor vehicle; and

6.2 by reason of that damage, entering without authority and with intent to commit an imprisonable offence (in most cases this will be theft, but could also be, for example, intentional damage).

7 The offence would carry a maximum penalty of 10 years' imprisonment, which is comparable to burglary.

8 I am also proposing amendments to the Oranga Tamariki Act so that 12- and 13-year-olds can be brought before the Youth Court for the new ram-raid offence. Currently, most ram-raid offending carried out by 12- and 13-year-olds is dealt with through Family Court care and protection proceedings or alternatives to court.

9 This proposal will ensure that the additional accountability and tools for managing risk within the Youth Court jurisdiction, such as electronically monitored bail, are available in respect of 12- and 13-year-olds who engage in ram-raid offending.

10 However, I expect these new tools will only be used in response to the most serious and persistent offending by children, where there are no other alternative means of appropriately dealing with the offending. These proposals will not prevent the Youth Court from dealing with the child before it in the way that is most appropriate, including diverting the child to the Family Court where it considers a care and protection response is more appropriate, or discharging the offence upon the child's completion of a family group conference plan.

11 Subject to Cabinet agreement, officials will progress these proposals within an omnibus Bill along with the proposals agreed by Cabinet on 17 July, with the aim of preparing a Bill for introduction before the House rises.

Background

12 In response to the increase in ram-raiding incidents in late 2022, the Government introduced a range of operational measures focused on practical efforts to address the causes underlying ram-raid offending and prevent retail crime. These measures are set out in **Appendix 1**.

13 The measures the Government has introduced to address ram-raiding offending have been effective in part, however while New Zealand has seen consistently a lower monthly average of reported ram-raid incidents of 67.5 per month (72 per month from the previous eight months), the number of incidences remains too high.

14 The cohort of people committing ram-raiding offences are predominantly children and young people, under the age of 18, often with a range of vulnerabilities and coming from adverse circumstances.

15 Currently there are limits to the responses to children aged 12 or 13 to manage the risk of reoffending, particularly in the immediate period following apprehension for an alleged ram-raid offence. Without jurisdiction to file a

charge in Youth Court, there cannot be bail conditions put in place and custody is not an option if the offending behaviour continues.

16 I am concerned that there is a gap in the system response for children under 14 who offend more than once and whose offence is of a more serious nature but does not meet either the threshold for the Youth Court, or a care and protection intervention. The recommendations in this paper seek to address those concerns.

17 On 17 July, Cabinet agreed to additional measures to strengthen legislative responses to serious offending behaviour in children and young people. This included legislative changes to the care and protection system of the Oranga Tamariki Act 1989, a new aggravating factor in the Sentencing Act of posting offending behaviour online, and a new aggravating factor for party liability when adults encourage young people into offending. Cabinet also considered advice on a new offence to address ram-raid offending and agreed in-principle to the new offence.

New offence to address ram-raid offending

18 As set out in the 17 July Cabinet paper, the fluctuating numbers of ram-raid offences indicates a significant problem that requires further change to reduce ram-raid offending.

19 In 2022, 896 ram-raid incidents occurred. This represents 0.25% of all recorded victimisations over the year and 1.3% of all recorded burglaries.

20 From January to May 2023, there were 311 ram-raid incidents. This represents 0.19% of all recorded victimisations over the 5-month period and 1.0% of all recorded burglaries.

21 Ram-raid offending is currently prosecuted under existing offences under the Crimes Act 1961. Currently, ram-raid offenders are generally charged with burglary under section 231 of the Crimes Act, which carries a maximum sentence of 10 years' imprisonment. Ram-raid offenders may sometimes be charged with the more serious offence of aggravated burglary under section 232 of the Crimes Act (14 year maximum), if they carried or used anything as a weapon while committing the burglary. The extent of the damage may be an aggravating factor at sentencing.

22 Under the current system, ram-raid offending by children (under 14 years old) and young people (between 14 – 17 years old) is governed by the Oranga Tamariki Act. That Act provides that young people aged 14-17 are able to be charged with most offences in the Youth Court. Existing tools are available to respond to the offending by young people aged 14 – 17- years old.

23 However, most children under 14 with offending behaviour cannot be charged and are dealt with outside of the formal youth justice system through police-led alternative action or through care and protection processes when those threshold are met.

24 Provisions in the Act do ensure that the most serious offences are considered by the youth or adult justice system. Children from the age of 10 can be charged for the most serious offences (murder and manslaughter). In addition, children aged 12 or 13 may be charged in the Youth Court with an offence carrying a maximum term of imprisonment of at least 14 years or where they are a "previous offender". However, very few children are charged with these offences. Over the five years to the end of 2022 an average of 30 children aged 12 or 13 per annum had matters resolved in Youth Court. The offence of burglary (with a 10-year maximum penalty) does not enable children to be charged in the Youth Court, unlike an offence with a 14-year penalty.

Proposal for a new offence to address ram-raid offending

25 Ram-raids inflict significant property damage using particularly destructive and risky means. This harm is not adequately recognised in the general burglary offence. A new offence specific to ram-raids could better capture the distinct features, harm and risks associated with this offending.

26 Although existing general offences such as burglary do cover the elements of ram-raid offending, introducing an offence specifically aimed at ram-raid offending would signal the seriousness of this offending and indicate that it is unacceptable.

Features of the new offence to address ram-raid offending

27 I recommend the key elements of the new offence would include:

27.1 damage to a building by use of a motor vehicle; and

27.2 by reason of that damage, entering without authority and with intent to commit an imprisonable offence (in most cases this will be theft, but could also be, for example, intentional damage).

28 This construction would mean that the offence would apply to passengers in the vehicle, not just the driver, *so long as those passengers also enter the building with intent to commit an imprisonable offence.* A passenger who actively participates in the raid will be captured. However, a younger sibling who happened to be in the car when a ram-raid occurs but who did not know it would happen and did not intend to offend would not. The requirement to prove intent to commit an offence once inside the building is consistent with burglary, and provides an important safeguard for children who may get caught up in a ram-raid without any criminal intent of their own.

29 I propose that I be empowered to make further decisions about the design of the offence in consultation with the Prime Minister, Minister of Police, Minister for Children, and the Attorney General.

Overlap with Burglary

30 The proposed elements of the offence are similar to burglary, but include the additional element of use of a vehicle to gain entry. Section 9(2)(f)(iv) [redacted]

Section 9(2)(g)(i)

Section 9(2)(g)(i), Section 9(2)(h)

Section 9(2)(g)(i)

31 The key motivation for using the specific ram-raids offence would be if, as is proposed below, it would enable 12- and 13-year-olds to be charged in the Youth Court.

Penalty for the new offence to address ram-raid offending

32 Justice officials consider that a penalty of 10 years' imprisonment for the new offence would be consistent with comparable offences. A maximum penalty of 10 years would be the same as the existing burglary offence, already a very serious penalty. This would recognise that although a ram-raid may be a distinct form of offending, it is similar in nature and seriousness to burglary.

33 While a 10 year penalty would not be an increase compared with burglary, in the context of a new offence, it would nonetheless send a signal that this offending is distinct and specifically denounces the behaviour and the harm it causes. Justice considers it is possible this signalling effect may result in higher sentences than are currently imposed for burglary.

34 I therefore recommend a maximum penalty of 10 years' imprisonment.

Impact on wider justice system, including youth and adult system volumes and resourcing

35 Ministry of Justice has undertaken some indicative analysis for the 10 year penalty, Section 9(2)(f)(iv) . The figures below assume a proportion of the impact of that change would apply for a new 10 year offence, if done with the proposed change (discussed below) to bring 12- and 13-year olds before the Youth Court. It assumes between 50% and 80% of the impact for 12- and 13- year olds, since they can now be brought in to the Youth Court under this new offence.

36 Based on indicative analysis, if the penalty is 10 years *and* the below proposed change is made to bring 12- and 13-year-olds before the Youth Court, there would be 20 to 50 more children and young people appearing in court per year.[1]

37 Based on the numbers of new children and young people being charged if the maximum penalty for ram-raids was set at 10 years, the Ministry of Justice estimates that additional youth justice residence beds would be required for children for supervision with residence orders and custodial remand. For

[1] Estimates based on assumptions around the likelihood of children and young people being charged, remanded in custody and receiving supervision with residence orders for this offence – assumed to be between 50% and 80% of the impact of moving to a 14-year penalty for children, and between 0% and 10% of the impact of moving to a 14-year penalty for young people.

young people (aged 14 to 17), 2 to 5 additional youth justice residence beds would be needed.

38 Corrections notes that they do not anticipate any direct prison population implications with a 10 year maximum penalty (although there could be indirect effects from Youth Court involvement).

Ensuring that children and young people can be brought before the Youth Court for the new offence

39 Section 272 of the Oranga Tamariki Act 1989 sets out the jurisdiction of the Youth Court and children's liability to be prosecuted for criminal offences under the Criminal Procedure Act 2011. This section provides (amongst other matters) that proceedings may be commenced against a child aged 12 or 13 years where:

39.1 the offence has a maximum penalty of life imprisonment or at least 14 years' imprisonment (subsection (1)(b)); or

39.2 where the child is a "previous offender" (under a statutory test) and the offence has a maximum of at least 10 years' imprisonment (subsection (1)(c)).

40 If a child aged 12 or 13 is charged with an offence under (1)(b) or (c) and proceedings are commenced against them, they must be brought before the Youth Court.[2] They are then dealt with under the Oranga Tamariki Act as though they were a young person, but subject to certain modifications and procedures applying only to children aged 12 and 13.[3]

41 I propose to amend section 272 to provide that proceedings may also be commenced against a 12- or 13-year-old where the alleged offence is the new offence aimed at ram-raid offending. This would enable those in this age group to be brought before the Youth Court. I propose to apply the same procedural modifications for 12- and 13-year-olds to proceedings involving the new ram-raid offence.

Effects of change to allow 12- and 13-year-olds to be proceeded against in the Youth Court

42 This change would enable the following options to respond to alleged offending by 12- and 13-year-olds:

42.1 Bail conditions, including non-association, curfew, residing at a specific address, and not to take drugs or alcohol

[2] Oranga Tamariki Act 1989, section 272(2A)((a).
[3] Section 272(2A); modifications are set out in section 272A. These include the the ability for the Youth Court to discharge under section 282 including for category 4 offences, and the '*doli incapax*' requirement that the Youth Court be satisfied the child knew the act or commission was wrong or contrary to law.

42.2 Detention in Oranga Tamariki custody where there was a risk of the child absconding, reoffending or preventing loss or destruction of evidence or interference with witnesses

42.3 Warnings and alternative actions with escalation available to an Oranga Tamariki-led intention to charge FGC

42.4 An intention to charge FGC plan with escalation available to Youth Court if the plan is not agreed or completed

42.5 Youth Court orders for a minority, including residential orders of up to 6 months being available if the charge is proven and supervision up to 12 months following the order. However, it is likely that most children would receive a section 282 discharge if an FGC plan was completed.

Risks and benefits of this proposed change

43 The above actions would provide a tiered approach to better manage the risk posed by 12- and 13-year-olds committing ram-raids. Having the options available will not mean that children are escalated through the system, as the Oranga Tamariki Act provides strong direction on taking the least restrictive action and seeking alternatives to prosecution. Police and Oranga Tamariki have a demonstrable history of following this direction and approaching child and youth offending with a strongly preventive and diversionary approach. Police would also need to rebut the *doli incapax* presumption before any action is taken against a child.

44 It should be noted that having one offence added to the Youth Court jurisdiction will create disparities with other offences (such as a serious sexual offence carrying less than a 14 year penalty). There may be workability issues with carving out a change for this offence alone although I consider these are manageable.

45 There could be a risk of increased 'pushback' through section 280A which allows judges to refer the case back to Police to consider an application to the Family Court to address as a care and protection issue or deal with the matter another way – particularly since a child of 12- or 13-years committing a similar offence such as burglary without a vehicle would be dealt with through that pathway. However, I consider the creation of a specific offence and a specific pathway for prosecution of 12- and 13-year-olds in the Youth Court provides a strong signal.

Other system changes

46 There may also be other legislative changes that would be desirable to enable a wider range of system responses for 12- and 13-year-olds in relation to this offence, i.e. to enable the same system responses as if it were an offence

involving a 14 year maximum penalty.[4] However, further work is required to assess the implications of other possible changes.

47 Therefore I propose that I am authorised, in consultation with the Prime Minister, Minister of Police, Minister for Children, and the Attorney General, to make further decisions about the design and technical aspects of any new offence and changes to the justice system (if any new offence is agreed to), and any further related policy decisions.

Cost-of-living Implications

48 The proposals are likely to have negligible impacts on the cost of living.

Financial Implications

49 The financial implications of these proposals have not been fully modelled due to time constraints.

50 However, it is expected that a new offence with a 10 year maximum penalty, with a mechanism to allow 12- and 13-year-olds to be brought before the Youth Court, would have the following costs:

50.1 For adults and young people (14-17): $0 to $0.84 million:[5]

50.2 For 12- and 13-year-olds: $0.85 to $1.88 million:

51 There may be cost/funding implications for Crown Law of a new offence, which Crown Law have not considered or quantified.

52 The change to bring 12- and 13-year-olds within the Youth Court jurisdiction would also likely create additional costs for the court system (e.g. court and judicial resources; additional specialist/medical reports for children; costs relating to capacity issues). These costs have not yet been modelled.

53 Increased numbers of children in Youth Justice Residences would have a significant impact for Oranga Tamariki. At present, youth justice facilities are unlikely to allow for sufficient separation of 12- and 13-year-olds from older residents, and their needs are very different from older residents, requiring different staff capabilities and specific care interventions, for example. If this proposal proceeded new operational and capital funding would be needed. However, I note that amendments agreed by Cabinet on 17 July provide more Youth Court powers to Family Court care and protection proceedings for children with serious offending behaviours may support Oranga Tamariki.

[4] This may include, for example consideration of arrest powers in section 214 Oranga Tamariki Act; section 365 regarding placing children in residences; section 276(1)(a) regarding trial selection; and the Criminal Investigations (Bodily Samples) Act regarding DNA samples.

[5] Estimates for children and young people based on assumptions around the likelihood of children and young people being charged, remanded in custody and receiving supervision with residence orders for this offence as noted previously. For adults assumed to be between 0% and 10% of the impact of moving to a 14-year penalty in terms of changes to sentences imposed and remands in custody.

Legislative Implications

54 If Cabinet wishes to proceed with legislative changes, a new Amendment Bill(s) would be required. Amendments would be required to:

54.1 the Crimes Act 1961: to include a new offence to address ram-raid offending; and

54.2 the Oranga Tamariki Act 1989: to enable 12- and 13-year old children charged with the new offence to be brought before the Youth Court.

55 Officials are working with Parliamentary Counsel Office to progress the changes Cabinet agreed on 17 July 2023, in order to introduce the Bill containing these changes before the 2023 election, subject to PCO capacity and available House time. I propose that these amendments are provided with a Category 4 priority and that these amendments be combined with those approved by Cabinet on 17 July into one Bill.

56 While the proposal in this paper will require further policy work before drafting instructions can be issued, officials will work with PCO and relevant agencies to resolve outstanding issues and prepare drafting instructions so that these additional changes can also be included in the Bill addressing wider youth offending changes.

Impact Analysis

Regulatory Impact Statement

57 Cabinet's impact analysis requirements apply to the proposals in this paper, but there is no accompanying Regulatory Impact Statement(s) and the Treasury has not exempted the proposals from the impact analysis requirements. Therefore, the paper does not meet Cabinet's requirements for regulatory proposals.

58 The Treasury's Regulatory Impact Analysis team and the Ministry of Justice and Oranga Tamariki agreed in respect of the proposals in the Cabinet paper of 17 July (which this paper provides additional advice on), that supplementary analysis will be provided before the subsequent Cabinet meeting or a post-implementation assessment will be developed and provided to Cabinet.

Climate Implications of Policy Assessment

59 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.

Population Implications

60 Police data shows that victims of ram-raids are concentrated amongst ethnic communities, with approximately 61% Indian, 17% European, 13% Chinese, and 9% other ethnicities. Retail crime frequently causes high levels of distress

and fear by children and families as, in cases of dairy-style ram-raids, the retailer often lives in accommodation that is attached to the shop.

61 Ram-raids are disproportionately carried out by young people and children. They are more likely to be neuro-diverse or disabled and to have experienced a range of adversities. This includes living in low-income households, with family members with mental health needs, addictions, and/or a Corrections history. Many will have received a truancy intervention, had contact with Oranga Tamariki or been the subject of a Report of Concern to Oranga Tamariki, and themselves been a victim of crime.

62 Māori and Pasifika children are more likely to be impacted by this proposal. Police analysis of ram-raids in Auckland that occurred during April and May 2022 shows that 77 percent of offenders were of Māori ethnicity.

63 Māori and Pasifika tamariki and rangatahi are already overrepresented in both the care and protection and youth justice systems. Rangatahi Māori are over seven times more likely to appear in the Youth Court than non-Māori. Bringing 12- and 13-year-old ram-raiders automatically before the Youth Court will exacerbate this disparity.

64 Ethnic communities are disproportionately represented as the victims of ram-raid-style offending, as owners of the affected small businesses.

Treaty of Waitangi / Te Tiriti o Waitangi analysis

65 Under section 7AA (Oranga Tamariki Act), Oranga Tamariki are required to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi. On behalf of the Crown, the Chief Executive of Oranga Tamariki conceded on 25 November 2020 at the Royal Commission on abuse in state care that “Structural racism is a feature of the care and protection system which has had adverse effects for tamariki Māori, whānau, hapū and iwi, and has detrimentally impacted the relationship between Māori and the Crown.” This will likely be a feature of the Youth Justice system.

66 As the proposed legislative changes may have a disproportionate impact on the rights and interests of Māori, under the active protection and partnership principles, there is a strong Te Tiriti o Waitangi based argument that Māori should be consulted.

67 Due to timing constraints, officials have not had the opportunity to engage with Māori/iwi and other affected partners. Oranga Tamariki intends to consult on the changes to their Act proposed by this paper.

Human Rights

68 Crown Law will vet any draft Bill for consistency with the New Zealand Bill of Rights Act 1990 (BORA) before it is introduced. A full analysis of the BORA implications has not been possible in the time available.

69 New Zealand has ratified the United Nations Convention on the Rights of the Child (UNCRC), which applies to all children under 18 years of age. UNCRC

recognises the vulnerability of children who offend and requires States to ensure that arrest, detention, or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time. There is a need to also consider our many other international obligations such as the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples. These proposals may raise concerns about our alignment with these conventions, particularly as they are likely to disproportionately affect Māori and disabled children and young people.

70 The proposed legislative amendments to the Crimes Act 1961 and Oranga Tamariki Act 1989 may engage various BORA rights, including the right of children charged with an offence to be dealt with in a manner that takes account of their age. It will be important to retain appropriate safeguards for 12- and 13-year-olds alleged to have committed the new offence, and to ensure that the approach to managing children and young people charged with the offence is proportionate to the maximum penalty (e.g. 10 years) and not a longer sentence. Depending on the detail of the proposed offence and other changes, there may be issues to consider relating to imposition of bail conditions on children (which would limit their freedom of movement and association) and ensuring that any 12- and 13-year-olds charged with the offence who are in a youth justice residence can be kept sufficiently separate from older residents. Section 9(2)(g)(i) [redacted]

Use of external Resources

71 There has been no use of external resources, nor any planned. If Cabinet agrees with the proposals, implementation will be undertaken by relevant public departments.

Consultation

72 Consultation with other departments and agencies has been limited due to time constraints. This paper was developed with input from Oranga Tamariki, New Zealand Police, the Crown Law Office, Ministry of Social Development, Ministry of Transport, and the Department of Corrections.

73 Note that officials have not been able to consult the judiciary, which has limited the ability to identify implementation risks and issues.

74 There has been no consultation with Māori, despite the significant implications that these policies are likely to have on these groups.

Section 9(2)(g)(i) [redacted]

Section 9(2)(g)(i) [redacted]

Communications

76 I will consider announcements following Cabinet decisions.

Proactive Release

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

Recommendations

I recommend that the Committee:

1 **note** that on 17 July, Cabinet agreed in principle to develop an offence to specifically address ram-raid offending;

2 **agree in principle** that the key elements of the offence would include:

2.1 damage to a building by use of a motor vehicle; and

2.2 by reason of that damage, entering without authority and with intent to commit an imprisonable offence;

3 **agree** that the maximum penalty for this new offence should be set at 10 years' imprisonment

4 **agree** to amend section 272 of the Oranga Tamariki Act 1989 to enable 12- and 13-year olds to be proceeded against in the Youth Court when the alleged offence is the new ram-raid offence;

5 **authorise** the Minister of Justice, in consultation with the Prime Minister, Minister of Police, Minister for Children, and the Attorney General, to make further decisions about the design and technical aspects of any new offence and changes to the justice system (if any new offence is agreed to), and any further related policy decisions not inconsistent with the legislative proposals in recommendations 2, 3 and 4, resolve any minor, technical, or non-controversial amendments that arise during drafting without further reference to Cabinet;

6 **note** that a financial implications analysis or regulatory impact statement for the above proposals has not yet been prepared, and officials will provide either a supplementary analysis report or a post-implementation assessment;

7 **invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to implement the matters set out in recommendations 2, 3 and 4 including any necessary consequential amendments;

8 **agree** the Amendment Bill be assigned a Category 4 status (to be referred to a select committee before the 2023 general election); and that officials will progress these proposals within an omnibus Bill along with the proposals agreed by Cabinet on 17 July;

9 Section 9(2)(f)(iv) [redacted]

10 **agree** the Minister of Justice will review the operation of legislation arising from these amendments and report back to Cabinet on this 18 months after that legislation takes effect.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice

Appendix 1

1 In response to the increase in ram-raiding incidents in late 2022, the Government introduced a range of operational measures focused on practical efforts to address the causes underlying ram-raid offending and prevent retail crime.

1.1 In May 2022, Cabinet agreed to establish a programme to provide advice and funding to small retailers, to reduce the risk of retail crimes [CAB-22-MIN-0182 refers]. Cabinet agreed to allocate $6 million in 2022/23 from the Proceeds of Crime Fund to support small retailer crime prevention (managed by Police). On 18 November 2022, Cabinet agreed to allocate a further $6 million from the Fund for crime prevention and youth engagement programmes [CAB-22-MIN-0529, CAB-22-MIN-0548 refer].

1.2 In December 2022, Cabinet agreed to a range of operational measures for Oranga Tamariki to improve the system response to children with serious and persistent offending behaviour [CAB-22-MIN-0559 refers]. This included a pilot of the Fast Track between Police and Oranga Tamariki to work with multi-agency teams to provide immediate, collective responses to children who offend.

1.3 Oranga Tamariki is now progressing an enhanced Fast Track that intensifies support and utilises more often and with greater urgency existing care responses and powers. It is strengthening Family Court responses by better using existing conditions and orders. Work to improve Family Group Conferences and whānau hui to support earlier and more effective responses is underway. The Fast Track and local multi-agency teams approach now operates in five areas.

1.4 On 21 April 2023, the Government announced an additional $9 million to top up the retail crime prevention fund, bringing the total investment to $15 million. On 29 May an additional $11 million was announced to extend the fog cannon subsidy scheme [CAB-23-MIN-0200 refers].

SWC-23-MIN-0093

Cabinet Social Wellbeing Committee

Minute of Decision

Proposals to Address Ram-Raid Offending

Portfolio **Justice**

On 19 July 2023, the Cabinet Social Wellbeing Committee, having been authorised by Cabinet to have Power to Act [CAB-23-MIN-0306]:

1 **noted** that on 17 July 2023, Cabinet agreed in principle to develop an offence to specifically address ram-raid offending [CAB-23-MIN-0306];

2 **agreed in principle**, subject to paragraph 5 below, that the key elements of the offence will include:

2.1 damage to a building by use of a motor vehicle; and

2.2 by reason of that damage, entering without authority and with intent to commit an imprisonable offence;

3 **agreed** that the maximum penalty for this new offence should be set at 10 years' imprisonment;

4 **agreed** to amend section 272 of the Oranga Tamariki Act 1989 to enable 12- and 13-year olds to be proceeded against in the Youth Court when the alleged offence is the new ram-raid offence;

5 **authorised** the Minister of Justice, in consultation with the Prime Minister, Minister for Children, Attorney General, and the Minister of Police to make further decisions about the design and technical aspects of the new offence and changes to the justice system, and any further related policy decisions not inconsistent with the legislative proposals in paragraphs 2, 3 and 4 above, resolve any minor, technical, or non-controversial amendments that arise during drafting without further reference to Cabinet;

6 **noted** that a financial implications analysis or regulatory impact statement for the above proposals has not yet been prepared, and officials will provide either a supplementary analysis report or a post-implementation assessment;

7 **invited** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to implement the above decisions including any necessary consequential amendments;

8 **agreed** that:

8.1 the Amendment Bill be assigned a Category 4 status (to be referred to a select committee before the 2023 general election);

8.2 officials will progress these proposals within an omnibus Bill along with the proposals agreed by Cabinet on 17 July 2023;

9 Section 9(2)(f)(iv) [redacted]

10 **invited** the Minister of Justice to review the operation of legislation arising from the above amendments and to report back to Cabinet 18 months after that legislation takes effect;

11 **authorised** the Minister of Justice, in consultation with the Prime Minister and Minister of Police, to amend the paper *Proposals to Address Ram-Raiding* to address matters raised at the meeting.

Rachel Clarke
Committee Secretary

Present:
Rt Hon Chris Hipkins
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Jan Tinetti (Chair)
Hon Willie Jackson
Hon Kiri Allan
Hon David Parker
Hon Peeni Henare
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Barbara Edmonds
Hon Jo Luxton

Officials present from:
Office of the Prime Minister
Officials Committee for SWC

[In Confidence]

Office of the Minister of Justice

Cabinet Legislation Committee

Ram Raid Offending and Related Measures Amendment Bill: Approval for Introduction

Proposal

1 This paper seeks approval to introduce the Ram Raid Offending and Related Measures Amendment Bill (**the Bill**) into the House as soon as possible, for first reading and referral to the Justice Select Committee before the House rises.

Policy

2 The Bill responds to offending that is predominantly undertaken by children (under the age of 14) and young people (aged 14 to 17) by:

2.1 introducing a new ram-raiding offence, along with several new factors at sentencing, to ensure that child and young offenders, and those encouraging or enabling them to offend, face greater accountability for their offending; and

2.2 enabling 12- and 13-year-olds who commit ram raids to be charged in the Youth Court, thus making further tools available (such as bail conditions or custody) to more immediately respond to their criminal behaviour.

3 This supports the Government's focus on building a justice system that results in less offending and fewer victims of crime. The Bill complements operational responses that intervene to break the cycling of offending, with better support for the wellbeing of children and young people with serious or persistent offending behaviour.[1]

4 On 17 July 2023, Cabinet agreed to create [CAB-23-MIN-0306]:

4.1 in the Sentencing Act 2002, two new aggravating factors at sentencing:

4.1.1 for an adult who aids, abets, incites, counsels, or procures any child or young person to commit any offence;

4.1.2 for a person who livestreams or posts their offending online; and

4.2 in the Oranga Tamariki Act 1989, a factor (of livestreaming or posting offending online) to be taken into account where a child or young person is being sentenced for offending in the Youth Court.

[1] Including: CAB-22-MIN-0182; CAB-22-MIN-0529; CAB-22-MIN-0548; CAB-22-MIN-0559; CAB-23-MIN-0200; CAB-23-MIN-0306.

5 On 24 July, Cabinet agreed to [CAB-23-MIN-0313]:

5.1 in the Crimes Act 1961, create a new offence to specifically address ram-raid offending; and

5.2 amend the Oranga Tamariki Act 1989 to allow a 12- or 13-year-old to be proceeded against in the Youth Court for the new ram-raid offence.

6 Legislative amendments are necessary as the provisions create a new offence, expand the range of factors to be considered at sentencing, and amend the Youth Court's jurisdiction, which are required to be set out in primary legislation.

The Bill responds to the unacceptably high level of ram-raid offending

7 While the youth justice settings are working well for most children and young people who offend, a stronger focus is required for the small number of children and young people who commit the majority of offences. New Zealand's youth justice system has seen a 63% reduction in offending by children since 2010. However, there has been a recent spike in ram-raiding and retail offending. In 2022, 896 ram-raid incidents occurred, which represents 0.25% of all recorded victimisations and 1.3% of all recorded burglaries.

8 The Government responded by introducing a range of operational measures to address the causes of this offending, including:[2] the 'Better Pathways' package to improve the education and employment opportunities of young people, the 'Fast Track' pilot programme and local coordination teams that respond to serious youth offending, and the recent 'enhanced Fast Track' model to increase the immediacy, intensity, and duration of support for the small number of persistent child and young offenders.

9 These actions have been effective in reducing the rate of ram raids, with nearly 80% of children referred to 'Fast Track' not reoffending. However, the number of ram-raids remain unacceptably high, and there are limits to responses particularly for children who ram raid. For comparison to 2022, the data for this year (from January to May 2023) shows 311 ram-raid incidents. This represents 0.19% of all recorded victimisations over the 5-month period and 1.0% of all recorded burglaries.

The new offence provides more tools to respond to children who ram raid

10 The new offence recognises the specific conduct associated with ram raids, and differentiates it from intentional property damage or burglary. The use of a motor vehicle to damage a building and enter it with intent to commit an offence (such as theft) causes significant property damage and considerable harm to victims and their livelihoods. It carries a maximum penalty of 10 years' imprisonment.

11 The Bill enables 12- and 13-year-olds to be charged in the Youth Court for this new offence. This provides a wider range of options to deal with child offenders, such as giving Police the ability to apply for bail conditions or for child offenders to be held in the custody of Oranga Tamariki. This ensures a better range of immediate

[2] Including: CAB-22-MIN-0182; CAB-22-MIN-0529; CAB-22-MIN-0548; CAB-22-MIN-0559; CAB-23-MIN-0200; CAB-23-MIN-0306.

responses are available to hold them to account for their actions, and help prevent the risk of reoffending.

Consequential amendments to legislation relating to the collection of DNA

12 I am seeking Cabinet agreement to consequential amendments to the Bill dealing with the collection of DNA evidence.

13 Currently, young people who ram raid are charged with burglary, which is an offence that enables DNA samples to be taken from them for the purpose of criminal investigations under Schedule 1 of the Criminal Investigations (Bodily Samples) Act 1995. I propose the new ram raid offence also be added to this schedule to ensure consistent treatment of the offending for young people.

14 The Bill also provides for the collection of DNA from children aged 12 and 13 where they are charged with the new ram raid offence in the Youth Court. This is consistent with how this age cohort are treated when charged in the Youth Court. This can occur either as a result of the 12- or 13-year-old being a 'previous offender,' or where they are reasonably suspected of an offence punishable by at least 14 years' imprisonment.

15 DNA collection in any instance will ultimately rely on application by Police and judicial authorisation.[3] This power is rarely used, and only in cases where the Judge has considered the nature and seriousness of the offence, the age of the child, and the Judge is satisfied that the bodily sample is demonstrably important to the investigation of the offence.

The new factors to be taken into account at sentencing provide greater accountability

16 The first new factor is for an adult who has aided or abetted a child or young person to offend. The adult (aged 18 years or over) must be convicted as a party to the offence by a child or young person. [4] This can be any kind of offending, including ram-raiding or, for example, drug offending. If adults take advantage of the vulnerability of young people by encouraging them to offend, it is appropriate that the judge must consider this as an aggravating factor at sentencing. The aim is to deter adults from exploiting children and young people and leading them into a life of crime.

17 The other factor is for an offender who livestreamed or posted their offending online. An offender who glamourises their offending by sharing it online may encourage "copy-cat" offences to be committed, and is common with offending such as ram raids. This factor must be considered by the judge when determining the appropriate sentence in:

17.1 the adult court system (with the amendment to the Sentencing Act 2002); or

17.2 the Youth Court (with the amendment to the Oranga Tamariki Act 1989).

[3] Sections 18(1)(b)(iii)(B) and 23(1)(b)(iii)(B), respectively.
[4] Within the meaning of section 66 of the Crimes Act 1961, *Parties to offences*, which makes a person liable to an offence if they aid, abet, incite, or procure any person to commit that offence.

Impact analysis

18 Cabinet's impact analysis requirements apply, but there is no accompanying Regulatory Impact Statement. The Treasury has not exempted the proposals from the impact analysis requirements [CAB-23-MIN-0306; CAB-23-MIN-0313].

19 The Treasury's Regulatory Impact Analysis team have agreed that agencies will develop supplementary impact analysis regarding the proposals this year. This is unlikely to be completed before the House rises.

Compliance

20 The Bill complies with each of the following:

20.1 advice from the Treaty Provisions Officials Group (none applicable);

20.2 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper; and

20.3 the Legislation Guidelines (2021 edition).

21 Cabinet previously considered the implications of the policy's consistency with the Treaty of Waitangi, international obligations, and New Zealand Bill of Rights Act when policy decisions were made in July 2023.

The Bill engages the principles of the Treaty of Waitangi

22 The Crown has an obligation to consult where Māori rights and interests are affected. Due to time constraints, there has been no consultation with Māori on the proposals. Under the active protection and partnership principles, there is a strong te Tiriti o Waitangi based argument that Māori should be consulted. Further, under section 7AA of the Oranga Tamariki Act 1998, Oranga Tamariki is required to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi.

23 Officials have analysed the proposals in this Bill against the principles of the Treaty of Waitangi and the Crown's Treaty obligations. The amendments disproportionately affect Māori, as the Bill targets youth offending in which Māori are overrepresented,[5] Any children proceeded against in the Youth Court may therefore contribute to inequitable disproportionate outcomes experienced by Māori tamariki, which may impact Māori communities' perceptions of how youth are impacted by the State.

24 I expect these new tools will only be used in response to the most serious and persistent offending by children, where there are no other alternative means of appropriately dealing with the offending. Section 9(2)(g)(i) [redacted] Additionally, these proposals will not prevent the Youth Court from dealing with the child before it in the way that is most appropriate,

[5] Police analysis of ram-raids in Auckland between April and May 2022 shows that 77% of offenders were of Māori ethnicity. Māori and Pasifika tamariki and rangatahi are overrepresented in the youth justice system.

including diverting the child to the Family Court where it considers a care and protection response is more appropriate, or discharging the offence upon the child's completion of a family group conference plan. Preventing child and youth (re)offending can divert from further involvement in the justice system.

Compliance with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990;

25 The proposed legislative amendments to the Crimes Act 1961 and Oranga Tamariki Act 1989 engage various rights under the New Zealand Bill of Rights Act 1990 (NZBORA). The referral of 12- and 13-year-olds to the Youth Court for the new offence engages sections 25(i) (the right of children charged with an offence to be dealt with in a manner that takes account of their age); and sections 17-18 (their freedom of movement and association) as impacted by bail conditions or custody arrangements.

26 I consider the potential for limitations on these rights to be reasonable and justified in the circumstances considering the significant harms caused by ram raid offending. I also consider the new powers limit rights no more than is necessary to achieve the important public objective of reducing ram raid offending by the small number of persistent child offenders, as outlined at paragraphs 8-9 and 11. The provisions are subject to adequate safeguards to ensure children charged are managed in an appropriate and proportionate way. The availability of the new options for responding to children will still be governed by the purposes and principles of the Oranga Tamariki Act 1989, which provide strong direction on taking the least restrictive action and seeking alternatives to prosecution. Police and Oranga Tamariki have a demonstrable history of following this direction and approaching child and youth offending with a strongly preventive and diversionary approach. Police would also need to rebut the *doli incapax* presumption[6] before any action is taken against a child.

27 The factor of posting offending online to be taken into account at sentencing also engages the rights under section 14 (freedom of expression) that arises from the offender choosing to broadcast their conduct. I consider the limitation on freedom of expression to be reasonable and justified in the circumstances considering the risks of copycat offending, or increased impact on victims, that can occur when an offender posts their offending online. I also consider the potential limitation on rights is no more than is necessary to achieve the important public objective of deterring further offending or revictimization, as it is subject to judicial discretion at sentencing. Judges will be able to account for the relative harm of the underlying offending, as well as relative intent behind and effect of the posting of offending, in determining the seriousness of the sentence.

28 These conclusions are subject to Crown Law's advice to the Attorney-General's view on the Bill's compliance with the NZBORA.

Compliance with relevant international standards and obligations

29 The Bill may raise concerns about New Zealand's alignment with international conventions, particularly as it is likely to disproportionately affect Māori and disabled

[6] Codified at section 22 of the Crimes Act 1961 and section 272A of the Oranga Tamariki Act 1989, which require that the Court be satisfied the child knew the act or commission was wrong or contrary to law. Sections 282 and 283(a) of the Oranga Tamariki Act 1989 give the Youth Court the power to discharge a charge.

children and young people. For example, half of children in care or the youth justice system have cognitive impairments and/or mental health issues. This can often impact their ability to fully understand legal proceedings, exercise their rights, and communicate their needs when they are in the justice system. New Zealand has ratified the United Nations Convention on the Rights of the Child (**UNCROC**), which applies to all children under 18 years of age. UNCROC recognises the vulnerability of children who offend and requires States to ensure that arrest, detention, or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time. There are also other applicable international obligations such as the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples.

30 The Bill is designed to provide a tiered approach to better manage the risk posed by 12- and 13-year-olds committing ram-raids. This is a serious form of offending that frequently causes high levels of distress and fear to victims. In cases of ram-raids perpetrated against dairies, retailers often live in accommodation that is attached to the shop. And as noted at paragraph 26, the availability of the new options for responding to children will still be governed by the purposes and principles of the Oranga Tamariki Act 1989. These include upholding the rights set out in UNCROC, and provide strong direction on taking the least restrictive action and seeking alternatives to prosecution.

Impact of expanded DNA collection on the rights and freedoms of children and young people

31 The changes in the Bill mean that a Judge may authorise a DNA sample be taken from 12- and 13-year-olds reasonably suspected of committing the new ram raid offence. This arises from the interaction of the amendment to the Oranga Tamariki Act 1989 (adding the new offence to the offences for which 12- or 13-year-olds may be charged in the Youth Court); combined with the consequential amendment to include the new offence in the Criminal Investigations (Bodily Samples) Act 1995 (**the CIBS Act**). Any samples collected in relation to the new offence will be dealt with in the same manner as other samples authorised to be collected from children under the CIBS Act.

32 This proposal will engage NZBORA section 21 (the right to be free from unreasonable seizure) arising from the potential collection of DNA from children; and may engage sections 22-23 (the right not to be arbitrarily detained and rights to procedural safeguards) to the extent that a child may be detained while a sample is collected. Previous amendments to the Act that expanded the power to take DNA samples were found to be inconsistent with section 21. While these issues relate to the pre-existing law, the changes in the Bill extend the Act's application to children aged 12-13 without adding any additional protections to ensure their rights are protected. I note that the new offence can also apply to young people or adults, but their DNA can already be collected under the status quo.

33 In its 2020 report, the Law Commission has identified that the approach under the Act to taking samples from young people may be "inconsistent with the protective regime established under UNCROC and the Oranga Tamariki Act, in particular, the right to special protection during criminal investigations."[7] The report devoted a chapter to the

[7] R144 *The Use of DNA in Criminal Investigations | Te Whakamahi i te Ira Tangata i ngā Mātai Taihara*, 24 November 2020, Paragraph 21.44 https://www.lawcom.govt nz/our-projects/use-dna-criminal-investigations

treatment of children and young people under the regime and identified that the current practices for collection, informed consent, and retention of DNA information could be inconsistent with the NZBORA and special protections under the UNCROC. In 2021, the Government accepted the Law Commission's finding that the Act is no longer fit for purpose, and the recommendation to repeal and replace the Act. The work to reform the DNA regime is currently not prioritised.

34 It would be possible to proceed with the Bill without extending the Act to 12- and 13-year-olds suspected of committing the new ram-raid offence. However, this would make this the type offending an outlier when compared to similar types of offending. It would also hinder the policy objective of better holding ram raid offenders to account. Police advise that it may be difficult to prove the new ram raid offence without the ability to take DNA from 12- or 13-year-olds by judicial order, noting the group nature of such offending. Police also note that the obtaining of DNA could disprove the 12- or 13-year-olds involvement given that it usually committed by groups of people.

Implications for the privacy interests of children and young people

35 Police advise they would not expect more information to be gathered about child offenders, as a result of the ram raid offence, than is currently the case in respect of other offences. It is an offence against section 438 of the Oranga Tamariki Act 1989 to disclose information to a third party that identifies, or would be likely to identify, the child to a person who does not have a genuine interest in receiving it, such as a Youth Justice Co-ordinator/Oranga Tamariki. Section 5(1)(b)(i) of the Oranga Tamariki Act 1989 incorporates the Article 40(2)(b) UNCROC obligation for every child to have his or her privacy fully respected.

36 The Office of the Privacy Commissioner (OPC) considers the proposal relating to DNA collection from young people would override the Privacy Act 2020 by expanding the existing override in the CBIS Act. OPC have not yet seen the evidence that would allow OPC to weigh up the policy case and whether this imposition into privacy rights will be effective to address the identified problem and proportionate to the privacy intrusion.

37 The Government has accepted the recommendations of a Law Commission report into the Criminal Investigations (Bodily Samples) Act 1995 titled "The Use of DNA in Criminal Investigations." This report highlights significant issues with the current framework for the collection of DNA. These fundamental issues have not yet been addressed. OPC is concerned that these proposals will expand on a framework with such significant existing issues in an ad hoc manner.

38 Section 9(2)(g)(i) [redacted]

Consultation

39 In developing the Bill, officials consulted Oranga Tamariki, New Zealand Police, the Crown Law Office, Ministry of Social Development, Ministry of Transport, New Zealand Treasury, Te Puni Kōkiri, and the Department of Corrections. The Department of the Prime Minister and Cabinet was informed.

40 Section 9(2)(g)(i) [redacted]

[redacted]

42 Oranga Tamariki considers that if Cabinet agrees with recommendation 4 that the work to reform the DNA regime noted at paragraph 33 should be prioritised.

43 Police consider that it would be inconsistent with other offences for which children may be charged to not cover the new ram raid offence in the CBIS Act. Police note this may risk the ability to gather sufficient evidence in some cases, and that these powers are rarely used and subject to strict conditions, as outlined in paragraphs 15, and 33-35.

44 The Office of the Privacy Commissioner (OPC) provided comments at paragraphs 35-38. OPC recommends that the provisions relating to DNA and livestreaming or distributing via digital communication be removed from the Bill, and later made the subject of a further policy process to fully assess the privacy implications.

45 Due to time constraints, consultation has been limited to government officials. There has been no external consultation, including with Māori/Iwi or Pasifika (who are likely to be disproportionately impacted as they are overrepresented among child and young offenders), nor community groups (such as retail business representatives and/or ethnic communities, who are disproportionately impacted by ram raids[8]). The public will have an opportunity to make submissions to Select Committee.

[8] Police data shows that victims of ram-raids are concentrated amongst ethnic communities. Approximately 61% Indian, 17% New Zealand European, 13% Chinese, and 9% other ethnicities.

Binding on the Crown

46 The Acts to be amended are already binding on the Crown [CAB-23-MIN-0306].

Allocation of decision-making powers

47 Section 272 of the Oranga Tamariki Act 1989 sets out the jurisdiction of the Youth Court and children's liability to be prosecuted for criminal offences under the Criminal Procedure Act 2011. This section provides (amongst other matters) that proceedings may be commenced against a child aged 12 or 13 years where:

47.1 the offence has a maximum penalty of life imprisonment or at least 14 years' imprisonment (subsection (1)(b)); or

47.2 where the child is a "previous offender" (under a statutory test) and the offence has a maximum of at least 10 years' imprisonment (subsection (1)(c)).

48 Currently, if a child aged 12 or 13 is charged with an offence under (1)(b) or (c) and proceedings are commenced against them, they must be brought before the Youth Court (section 272(2A)(a)). They are then dealt with under the Oranga Tamariki Act as though they were a young person, but subject to certain modifications and procedures applying only to children aged 12 and 13 (set out in 272A).

49 This proposal amends section 272 to provide that proceedings may also be commenced against a 12- or 13-year-old where the alleged offence is the new offence aimed at ram-raid offending. This would enable those children aged 12 and 13 to be brought before the Youth Court. The same procedural modifications for 12- and 13-year-olds will apply to proceedings involving the new ram-raid offence.

50 This change would enable the following options to respond to alleged offending by 12- and 13-year-olds:

50.1 Bail conditions, including non-association, curfew, residing at a specific address, and not to take drugs or alcohol;

50.2 Detention in Oranga Tamariki custody where there was a risk of the child absconding, reoffending or preventing loss or destruction of evidence or interference with witnesses;

50.3 Warnings and alternative actions with escalation available to an Oranga Tamariki-led intention to charge Family Group Conference (FGC);

50.4 Intention to charge FGC and plan with escalation available to Youth Court if the plan is not agreed or completed;

50.5 Youth Court orders for a minority, including residential orders of up to 6 months being available if the charge is proven and supervision up to 12 months following the order. However, it is likely that most children would receive a section 282 or 283(a) discharge if a FGC plan was completed.

Other instruments

51 The Bill does not contain any provisions empowering the making of other instruments.

Commencement of legislation

52 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

53 The Bill should be introduced as soon as possible following Cabinet approval. I propose the Bill be referred to the Justice Select Committee. I propose the Bill be enacted by May 2024.

Proactive Release

54 I propose to proactively release this paper within 30 business days.

Recommendations

I recommend that the Cabinet Legislation Committee:

1 **note** that the Ram Raid Offending and Related Measures Amendment Bill holds a category 4 priority on the 2023 Legislation Programme (to be referred to a select committee before the 2023 general election);

2 **note** that the Bill amends:

2.1 the Crimes Act 1961, by creating a new offence to specifically address ram-raid offending (using motor vehicle to damage building and enter it with intent to commit imprisonable offence), with a maximum term of imprisonment of 10 years;

2.2 the Sentencing Act 2002, by adding two new aggravating factors at sentencing:

2.2.1 for an offender (being aged 18 years or over) convicted as a party to an offence committed by a child or young person;

2.2.2 for an offender who livestreamed, posted, or digitally communicated their offending online;

2.3 the Oranga Tamariki Act 1989 to:

2.3.1 allow a 12- or 13-year-old to be proceeded against in the Youth Court jurisdiction for the new offence referred to in paragraph 2.1 above;

2.3.2 include a factor to be taken into account at sentencing where a young person livestreamed, posted, or digitally communicated their offending online;

3 **note** a consequential amendment to the Criminal Investigations (Bodily Samples) Act 1995 to add the new offence referred to in recommendation 2.1 to the relevant offences in the Schedule for consistency with other offending by young people;

4 **note** a consequential amendment to the Criminal Investigations (Bodily Samples) Act 1995 to include the new offence in the relevant provisions of that Act allowing bodily samples to be taken from 12- and 13-year-olds subject to the section 272 regime in the Oranga Tamariki Act;

5 **note** that agencies will continue working to complete supplementary impact analysis regarding the proposals, though this is unlikely to be completed before the House rises;

6 **approve** the Ram Raid Offending and Related Measures Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

7 **agree** that the Bill be introduced as soon as possible after Cabinet approval;

8 **agree** that the government propose that the Bill be:

8.1 referred to the Justice Committee for consideration;

8.2 enacted by May 2024.

Authorised for lodgement

Hon Ginny Andersen

Minister of Justice

LEG-23-MIN-0145

Cabinet Legislation Committee

Minute of Decision

Ram Raid Offending and Related Measures Amendment Bill: Approval for Introduction

Portfolio **Justice**

On 17 August 2023, the Cabinet Legislation Committee:

1 **noted** that the Ram Raid Offending and Related Measures Amendment Bill (the Bill) holds a category 4 priority on the 2023 Legislation Programme (to be referred to a select committee before the 2023 general election);

2 **agreed** that the Bill amends:

2.1 the Crimes Act 1961, by creating a new offence to specifically address ram-raid offending (using motor vehicle to damage building and enter it with intent to commit imprisonable offence), with a maximum term of imprisonment of 10 years;

2.2 the Sentencing Act 2002, by adding two new aggravating factors at sentencing:

2.2.1 for an offender (being aged 18 years or over) convicted as a party to an offence committed by a child or young person;

2.2.2 for an offender who livestreamed, posted, or digitally communicated their offending online;

2.3 the Oranga Tamariki Act 1989 to:

2.3.1 allow a 12- or 13-year-old to be proceeded against in the Youth Court jurisdiction for the new offence referred to in paragraph 2.1 above;

2.3.2 include a factor to be taken into account at sentencing where a young person livestreamed, posted, or digitally communicated their offending online;

2.4 through consequential amendments, the Criminal Investigations (Bodily Samples) Act 1995 to:

2.4.1 add the new offence referred to in paragraph 2.1 to the relevant offences in the Schedule for consistency with other offending by young people;

2.4.2 include the new offence in the relevant provisions of that Act allowing bodily samples to be taken from 12- and 13-year-olds subject to the section 272 regime in the Oranga Tamariki Act;

3 **noted** that agencies will continue working to complete supplementary impact analysis regarding the proposals, though this is unlikely to be completed before the House rises;

4 **approved** the Ram Raid Offending and Related Measures Amendment Bill [PCO 25734/1.13] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

5 **agreed** that the Bill be introduced as soon as possible after Cabinet approval;

6 **agreed** that the government propose that the Bill be:

6.1 referred to the Justice Committee for consideration;

6.2 enacted by May 2024.

Rebecca Davies
Committee Secretary

Present:
Hon Grant Robertson (Chair)
Hon Dr Ayesha Verrall
Hon Damien O'Connor
Hon Andrew Little
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Willow-Jean Prime
Hon Dr Duncan Webb
Hon Rachel Brooking
Hon Jo Luxton
Tangi Utikere, MP (Chief Government Whip)

Officials present from:
Office of the Prime Minister
Officials Committee for LEG