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TE TIRA WHAKAMĀTAKI
Indigenous solutions for a better world

Submission to Social Services and Community Select Committee

Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill

From:

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Introduction

1. Te Tira Whakamātaki is a Māori environmental not for profit and home to the Māori Biosecurity Network and hono: Māori Emergency Management Network.

2. We are committed to upholding the rights of Māori under Te Tiriti o Waitangi, protecting Aotearoa New Zealand's biodiversity, and advocating for Indigenous knowledge and practices in all environmental and social policy domains.

3. We believe that the state of our environment is a direct reflection of the state of our people, hence we are making this submission as it impacts the wellbeing – mana and mauri of our people.

4. We strongly oppose the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill).

5. These proposed amendments are not backed by evidence and risk perpetuating cycles of disadvantage for marginalised communities.

6. This submission outlines our general and specific concerns with the Bill and provides recommendations for its withdrawal and suggestions for changes should it proceed.

7. We call on opposition parties to guarantee its repeal when they are in power.

8. This submission should not be considered a full and comprehensive account of all our concerns.

9. We **do not** wish to make an oral submission.

General Concerns

10. This Bill is poorly conceived and fundamentally flawed. It lacks any evidence that it will achieve its objective, it is inconsistent with Te Tiriti o Waitangi, and it opens the door for further state abuse of young New Zealanders. Finally, its implementation is left in the hands of an agency that has proven it is unable to care for young people or deliver its primary services effectively.

11. **Lack of Evidence Supporting the Bill's Approach**: The Bill proposes measures such as military-style academies and Young Serious Offender (YSO) declarations. Evidence from similar interventions, including the military-style activity camps (MACs), indicates limited success in reducing youth reoffending. In addition, evidence from other countries, including Australia, suggest the military-style approach could have the opposite effect of what is intended by this Bill.[1] The 2013 evaluation of the MAC programme found negligible impact on reoffending rates, yet this Bill seeks to replicate comparable approaches without addressing known shortcomings.[2]

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[1] www.papa.org.nz/2024/11/30/submission-on-the-boot-camps-bill/

[2] MSD. 2013. Evaluation Report for the Military-style Activity Camp (MAC) Programme. www. view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.msd.govt.nz%2Fdocuments%2Fabout-msd-and-our-work%2Fpublications-resources%2Fevaluation%2Fmilitary-style-activity-camp%2Freport-mac-evaluation-26-sept-2013-1.doc&wdOrigin=BROWSELINK

12. Punitive measures are widely regarded as less effective than restorative justice approaches, which emphasise rehabilitation, community engagement, and victim-offender reconciliation. By prioritising punishment over rehabilitation, the Bill disregards international best practices in youth justice.

13. **Disproportionate Impact on Māori Communities:** Māori youth are disproportionately represented in the criminal justice system. The Bill's punitive focus risks exacerbating this overrepresentation by failing to address systemic inequities and biases within the justice system. The interventions outlined lack cultural responsiveness and fail to consider the importance of tikanga Māori (Māori customs) and whānau-centred (family-centred) approaches.

14. **Inconsistent with Crown Obligations under Te Tiriti:** The Crown has a duty under Te Tiriti o Waitangi to protect and promote the rights and well-being of Māori. This includes ensuring equitable outcomes in the justice system and upholding Māori rights to tino rangatiratanga (self-determination). The Bill's lack of consultation with Māori communities and its failure to incorporate culturally grounded solutions represent a breach of these obligations. The proposed interventions risk further marginalising Māori youth rather than addressing the root causes of their overrepresentation in the justice system.

15. **Perpetuation of Cycles of Disadvantage and Abuse:** Punitive measures may stigmatise youth offenders, limiting their future opportunities and increasing the likelihood of reoffending. By targeting symptoms rather than causes, the Bill risks entrenching cycles of disadvantage. Without addressing root causes such as poverty, lack of education, and systemic inequities, the Bill's measures are unlikely to produce meaningful, long-term outcomes.

16. Historic evidence suggests the approach outlined in this Bill will most likely lead to abuse and the creation of another cohort of abuse victims, traumatised people who may go on to harm others. **The State and those who passed this Bill will be directly responsible** for this, and in breech of their recent promises to stamp out Abuse in State Care.

17. **Poor Track record of Oranga Tamariki/CYFS:** Tasking Oranga Tamariki with delivering the proposed military-style academies raises significant concerns, given the agency's poor track record in managing sensitive and complex youth-related interventions. Numerous reports, including reviews by the Ombudsman and the Waitangi Tribunal, have highlighted systemic failings within Oranga Tamariki, including the disproportionate removal of Māori children from their families, lack of cultural competence, and failure to deliver outcomes that improve the well-being of tamariki (children).

18. Recent controversies, such as the widespread criticism of "uplifting" practices and the mishandling of cases involving Māori families, demonstrate the agency's inability to implement culturally responsive and effective programmes. Assigning Oranga Tamariki to oversee military-style academies, even through third-parties, and placing young people in the custody of an agency CEO, risks replicating these harmful practices in a punitive context, further damaging vulnerable youth and their communities.

19. **Lack of Consultation:** As other submissions have noted, there has been insufficient consultation on this Bill, particularly regarding its likely impact on communities. For Māori

who are overrepresented in both incarceration rates and as victims of crime, the lack of thorough engagement raises concerns about the Bill's alignments with equitable justice principles. This oversight may exacerbate existing disparities within the criminal justice system.[3]

20. **Impact on Judicial Discretion:** as the NZCCS points out the proposed amendments could restrict judicial discretion, preventing judges from tailoring sentences to the specific circumstances of each case. This rigidity may lead to disproportionately severe penalties, particularly affecting young offenders and Māori, without effectively addressing the root causes of offending behaviour. They also note a lack of evidence supporting the efficacy of longer sentences as a deterrent, suggesting that the Bill's approach may not achieve its intended outcomes. We support this claim.[4]

21. **Inadequate Safeguards**: The Bill does not include robust safeguards to prevent the misuse of YSO declarations, potentially leading to overuse or inconsistent application. This could disproportionately affect Māori youth. The lack of explicit provision for cultural or whānau-based interventions undermines the potential for holistic rehabilitation and reintegration.

22. **Looks Like Privatisation**: This Bill looks like an attempt to create youth prisons, in the forms of privately owned military-style academies, not rehabilitation centres. The Bill ignores existing laws and policies that already allow for youth prisons and excludes mechanisms for holding the third-party providers to account.

Specific Concerns

23. **Issues with the Bill's Wording and Assumptions:** The Bill presumes that punitive measures will act as a deterrent for serious youth offenders yet doesn't apply this thinking to third-party providers or the State. However, research consistently shows that deterrence-based approaches are ineffective, particularly for young people, who often lack the developmental maturity to assess long-term consequences. The proposed YSO declarations and military-style academies place undue emphasis on punishment rather than rehabilitation. The language used in the Bill implies that youth offending is primarily an individual failing, rather than a product of broader systemic and social issues.

24. Additionally, there are numerous specific sections and clauses that are problematic. Some are noted below:

Section 320B 1(b): Evidence Admitted at Family Group Conferences

25. This section allows evidence presented during Family Group Conferences (FGCs) to be admissible in certain proceedings. FGCs are designed as confidential and safe spaces for open discussion and resolution. Admitting evidence undermines the restorative nature of these conferences, deterring participants from speaking openly and shifting the focus from restoration to legal prosecution.

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[3] www.nzccss.org.nz/submission/sentencing-reform-amendment-bill/; www.papa.org.nz/2024/11/30/submission-on-the-boot-camps-bill/

[4] www.nzccss.org.nz/wp-content/uploads/2024/11/20241029-NZCCSS-Sentencing-Reform-Amendment_Katie-Schraders.pdf

26. The provision risks creating an adversarial environment in FGCs, contradicting their purpose of collaboration and harm repair. This could further marginalise communities already overrepresented in the justice system, especially Māori youth, for whom FGCs often play a culturally responsive role.

27. The Bill does not provide clear safeguards or limitations on how this evidence can be used, leaving room for potential misuse or overreach.

Section 320W: Authority to Use Reasonable Force

28. This section grants authority to use physical force on young offenders under certain conditions. However, it lacks clear guidelines defining "reasonable force," increasing the risk of inconsistent application and abuse. The absence of explicit safeguards raises concerns about the protection of young people's rights and well-being.

29. Evidence suggests this provision could exacerbate systemic biases, disproportionately subjecting Māori youth to physical interventions compared to their non-Māori peers. Past reviews of Oranga Tamariki practices, such as those conducted by the Waitangi Tribunal and the Ombudsman, have highlighted instances where Māori children and young people were subjected to excessive or inappropriate measures in state care or youth justice settings. The introduction of this section risks replicating or worsen such patterns if safeguards and culturally appropriate practices are not prioritised.

Section 320V: Authority to Detain[5]

30. Section 320V authorises the detention of young serious offenders by various parties, including 'approved workers of qualifying providers.' The broad delegation of detention authority to non-state actors without stringent oversight mechanisms may increase the risk of mistreatment and raises questions about accountability and the safeguarding of detainees' rights.

31. The term "qualifying providers" is vaguely defined, it lacks clear definition in the Bill. This vagueness could allow for the approval of providers who lack the expertise, resources, or ethical standards to care for detained youth safely. Inadequate vetting or inconsistent application of standards could open the door to exploitation, harm, or neglect, especially if left in the hands of Oranga Tamariki.

32. Past cases, such as those involving private care homes, show a troubling pattern of abuse and neglect when supervision is inadequate, and staff are poorly trained or monitored.

33. Without clear criteria, cultural competency requirements and oversight mechanisms for providers, this provision risks and undoubtedly will lead to misuse, abuse and significant harm to vulnerable youth.

Section 320C: Constable's Duty to Inform Youth Justice Coordinator

34. This section requires a Constable who believes a young person meets the criteria for a Young Serious Offender (YSO) declaration to inform the Youth Justice Coordinator promptly. The lack of clear, objective criteria for YSO declarations introduces risks of

[5] www.legislation.govt.nz/bill/government/2024/0099/latest/LMS1007486.html

inconsistent and subjective decision-making, potentially leading to systemic bias against Māori youth and inconsistent application of the YSO designation and unintended biases.

35. The Bill does not clearly define or provide detailed guidance on the criteria for YSO declarations. This ambiguity could lead to inconsistent and subjective interpretations by Constables. Without objective benchmarks, Constables might rely on personal judgment, leading to potential biases, especially against marginalised groups like Māori youth, who are already overrepresented in the justice system.

36. Constables may lack sufficient training to assess whether a young person meets the YSO criteria, increasing the likelihood of misjudgements or overreach in their decision-making. Poor training could lead to unnecessary or inappropriate escalation of cases to the Youth Justice Coordinator, burdening the system with cases that may not warrant such classification. It could also stigmatise young people prematurely, limiting their opportunities for rehabilitation and increasing their likelihood of reoffending.

37. The requirement for constables to "promptly" notify the Youth Justice Coordinator may place undue pressure on coordinators to process cases quickly. This could compromise the thoroughness of their assessments and the fairness of their decisions. Its also unclear how the Police will be compensated for these additional duties that should be the responsibility of Oranga Tamariki or the third-party provider.

Section 320D: Young Serious Offender (YSO) Declaration Criteria

38. The criteria for designating a young person as a YSO are not clearly defined, allowing for subjective interpretation. This lack of specificity can lead to inconsistent application, potentially resulting in the overrepresentation of Māori youth being labelled as serious offenders.

39. Without clear guidelines, there is a risk that implicit biases may influence decisions, exacerbating existing disparities in the justice system.

Section 320E: Consequences of YSO Declaration

40. YSO declarations may lead to more severe sentencing options, including longer detention periods. Given the existing overrepresentation of Māori youth in the justice system, this could disproportionately subject them to harsher penalties.

41. Additionally, the emphasis on punitive measures may reduce opportunities for rehabilitative interventions that are culturally appropriate and effective for Māori youth.

Section 320F: Review and Appeal Processes

42. The procedures for reviewing or appealing a YSO declaration are complex and may be inaccessible, particularly for Māori whānau who face systemic barriers in navigating the legal system. Limited access to legal resources and support can hinder the ability of Māori youth and their whānau to challenge YSO declarations, leading to prolonged involvement in the justice system.

Removal of Mandatory Family Group Conferences (FGCs) for Reoffending YSOs

43. The Bill removes the requirement for mandatory FGCs when a young person with a YSO reoffends. FGCs are a cornerstone of New Zealand's restorative justice approach, providing a platform for collaborative decision-making involving the offender, their family, and the community. Eliminating this step undermines restorative practices and reduce opportunities for meaningful rehabilitation, instead pushing youth further into a more punitive system that fails to address the underlying causes of offending behaviour.

Recommendations

44. Te Tira Whakamātaki urges this Committee to recommend that the Bill does not proceed any further.

45. If this Bill proceeds, then we urge this Committee to amended sections that are problematic, and add to the Bill:

    45.1. ***Clear definitions and guidelines:*** The Bill must clearly defined terms like "reasonable force" and establish detailed guidelines to ensure consistent and appropriate application, in order to safeguard young people's rights.

    45.2. ***Objective YSO criteria:*** The Bill should include objective, transparent criteria for YSO declarations to minimise subjective judgments and potential biases in the decision-making process.

    45.3. ***Restorative justice practices***: The Committee should reconsider the removal of mandatory FGCs for reoffending YSOs to maintain the integrity of restorative justice approaches and support effective rehabilitation.

    45.4. ***Provisions for cultural competency training***: The Bill should include mandatory comprehensive training for all actors given powers and roles in this Bill including but not limited to all personnel involved in the YSO declaration to address biases and ensure cultural sensitivity towards Māori youth, and those involved in detaining or using force against youth to ensure their safety and mana is maintained and ensure the State is not perpetuating further harm to the next generation.

    45.5. ***An articulation that rehabilitation is the priority***: The Bill should include a statement that the intention of this Bill, these amendments and additions, is to rehabilitate youth, not punish them.

    45.6. ***A statement against privatisation of care***: The Bill should also include a statement that the intention of the Bill is not to turn youth care into a profit-driven industry for third-party providers, and that cost-cutting measures should never compromise the quality of care afforded to our youth, and should never lead to inadequate staffing, poorly trained personnel, and unsafe facilities.

    45.7. ***Oversight mechanisms:*** The Bill should include robust oversight and accountability measures, particularly concerning the delegation of detention authority to non-state actors, to prevent potential misuse and ensure detainees' well-being.

45.8. ***Punitive measures for third-party providers***: The Bill should include punitive measures that hold third-party providers accountable to agreed standards of care and professionalism. Those who fail to deliver, cut costs unnecessarily or dangerously, or cause serious harm to youth entrusted into their care should be punished with a mixture of financial penalties, legal and criminal charges and an immediate suspension of their contract. This will give the public greater trust in the system.

45.9. ***Backup plan***: This Bill should include a 'back-up' plan for when one of the third-party providers fails. This might include powers for the Police or Military to intervene and take control of private property and resources.

46. Further we recommend that Oranga Tamariki should be instructed to:

46.1. ***Engage directly with Māori leaders, whānau, and community organisations*** to co-design interventions that are culturally appropriate, effective and grounded in evidence. This approach would align with Te Tiriti obligations and support equitable outcomes for Māori youth.

46.2. ***Shift focus from punitive measures to restorative justice approaches***: these practices have demonstrated success in reducing reoffending by fostering accountability and repairing harm within a supportive community framework.

46.3. ***Implement comprehensive strategies*** that tackle underlying factors contributing to youth offending, such as poverty, educational disengagement, and family dynamics. Investing in preventative measures is more likely to yield sustainable outcomes.

46.4. ***Prioritise interventions with a proven track record of success:*** ensure new initiatives are rigorously piloted and evaluated before widespread implementation.

47. Te Tira Whakamātaki recommends that Parliament adopt the principle of non-regression and ditch the military-style academy approach for young offenders permanently.

Conclusion

48. While the intention to address serious youth offending is commendable, this Bill's punitive measures lack the evidence base required to justify their implementation. Moreover, they risk deepening inequities for Māori and other marginalised communities. A shift towards restorative, culturally responsive, and evidence-based practices is essential to achieve meaningful and equitable outcomes.

49. We urge lawmakers to reconsider the current approach and adopt measures that truly address the root causes of youth offending while upholding the principles of equity and justice for all New Zealanders.

50. The Principles of the Treaty of Waitangi Bill represents a fundamental misunderstanding of Te Tiriti o Waitangi and its role in Aotearoa's legal and social framework. This Bill threatens to support that misunderstanding, perpetuating the systemic inequities faced by tangata whenua.

51. Te Tira Whakamātaki strongly opposes this, Bill. It is badly written, conflicts with other policies and laws, and importantly lacks evidence.

52. We urge the Social Services and Community Select Committee to recommend its withdrawal.

53. Please contact Melanie Mark-Shadbolt, mel@ttw.nz, if you wish to discuss this submission.

Ngā mihi,

Melanie Mark-Shadbolt

Tumu Whakarae, Chief Executive Officer

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