

# Submission to the Justice Committee Komiti Whiriwhiri Take Ture: Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill

“There shouldn't be situations where a young person needs to drop out of school or turn to illegal options just to provide food for their families.”<sup>1</sup>

As the independent advocate working for and with mokopuna<sup>2</sup> (children and young people), including mokopuna under the age of 25 who are in the care and protection and youth justice system, or who have experienced this system, Mana Mokopuna<sup>3</sup> - Children and Young People's Commission makes the following submission on the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill).

## Introduction

1. Mana Mokopuna has specific responsibilities to promote and advance children's rights. These responsibilities include advocating for, and monitoring, the application of the United Nations Convention on the Rights of the Child (the Children's Convention)<sup>4</sup> by government departments and other instruments of the Crown, including Oranga Tamariki and its administration of child and youth justice.<sup>5</sup>
2. Mana Mokopuna is also a designated National Preventative Mechanism (NPM) under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and in this capacity monitors places where mokopuna are deprived of their liberty, including all Oranga Tamariki care and protection and youth justice residences, community-run remand homes, and iwi-run remand whare.<sup>6</sup>
3. Mana Mokopuna acknowledges those who are affected by the offending that has given rise to the Bill, and those, including mokopuna, who are fearful of offending that occurs in our communities. We all want our communities to be safe places, where no child or young person turns to crime. We also acknowledge that when young people do offend, they need to be both held accountable for the harm caused and supported to stop offending and move onto a positive pathway, consistent with their rights under the Children's Convention.
4. We are deeply concerned that, if passed, this Bill will contravene the special protections afforded by the Children's Convention to children involved in the justice system.

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<sup>1</sup> OCC What-Makes-a-Good-Life-Follow-up-Report-Views of children and young people in care.pdf (pg 17)

<sup>2</sup> At Mana Mokopuna we have adopted the term 'mokopuna' to describe all children and young people we advocate for. 'Mokopuna' brings together 'moko' (imprint or tattoo) and 'puna' (spring of water). Mokopuna describes that we are descendants, and or grandchildren, and how we need to think across generations for a better present and future. We acknowledge the special status held by mokopuna in their families, whānau, hapū and iwi and reflect that in all we do. Referring to children and young people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from, matters for their identity, belonging and well-being at every stage of their lives.

<sup>3</sup> Mana Mokopuna – Children and young people's Commission is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and well-being of all children and young people (mokopuna) under 18 years old in Aotearoa New Zealand, including young persons aged over 18 but under 25 years if they are, or have been, in care or custody.

<sup>4</sup> [Convention on the Rights of the Child | OHCHR](#)

<sup>5</sup> Children and Young People's Commission Act 2022, s 21.

<sup>6</sup> [Monitoring of Places of Detention in Aotearoa | Mana Mokopuna](#)

5. We urge the Committee to reject the myth of the victim/offender dichotomy in relation to youth offending. There is overwhelming evidence that youth offending arises from underlying inter-related societal factors, systemic failings, and other challenges.<sup>7</sup> International and national evidence consistently shows that mokopuna who offend are very likely the starkest example of children who have been victims themselves. Data from across Crown agencies verify this, showing that the majority of mokopuna who end up with involvement in the youth justice system have a care and protection background.<sup>8</sup>
6. The proven correlation between youth offending and deprivation, poor mental health, brain injuries, trauma and other adverse childhood experiences is something we must not ignore, because it is costing Aotearoa New Zealand both socially, economically and from a whole of whānau and mokopuna wellbeing perspective in the short and long-term.
7. Persistent overrepresentation of particular groups of mokopuna in our child protection and youth justice system underscores the reality of systemic failures to address underlying causes of youth offending and perpetuating cycles of disadvantage for mokopuna.<sup>9</sup> This is especially the case for Māori, who face overrepresentation at every stage in our justice system, and for mokopuna Pasifika, mokopuna whaikaha and those with foetal alcohol spectrum disorder (FASD) and neuro-diversities.<sup>10</sup>
8. Long-term, systemic change is needed to reduce youth offending and enable safer communities and better outcomes for whānau and their mokopuna. Reducing youth offending and re-offending rates requires a broad-spectrum approach that is consistent with children's rights – one that addresses the root causes underlying the offending, and acknowledges cultural considerations and the specific vulnerabilities experienced by mokopuna who offend.<sup>11</sup>

## Summary of our position on this Bill

“ There must surely be a limit to how much longer society is prepared to watch very young children offend, tumble into that prison pipeline and end up in adult prison some 15 or so years later.”<sup>12</sup>

9. We do not support the Bill, and advocate for it not to proceed any further. This is for the following reasons:
  - a. The Bill, if it passes, has significant potential to impact detrimentally on the rights, interests, and wellbeing of mokopuna. It will take Aotearoa New Zealand further away from a children's rights approach to resolving youth justice, rather than closer to it. The Bill will bring New Zealand into conflict with its duties and obligations as a States Party to the UN Convention on the Rights of the Child, given its inconsistencies with children's

<sup>7</sup> Reil, J., Lambie, I., Becroft, A., & Allen, R. How we fail children who offend and what to do about it: 'A breakdown across the whole system' (2022). (chapt 6) The Barriers Punitive Responses to Youth Offending Pose to Producing an Effective Youth Justice System — Equal Justice Project

<sup>8</sup> Youth-Justice-Indicators-Summary-Report-December-2024\_v1.0.pdf (Ministry of Justice); Royal Commission of Inquiry (2022) Care to Custody: Incarceration Rates (Abuse in Care Royal Commission of Inquiry).

<sup>9</sup> Systemic failures in New Zealand's child-welfare and Family Court proceedings underlie and perpetuate child offending - Jerome Reil, Ian Lambie, Ruth Allen, 2024

<sup>10</sup> Youth-Justice-Indicators-Summary-Report-December-2024\_v1.0.pdf (Ministry of Justice).

<sup>11</sup> "Rangatahi Courts & Pasifika Courts" Youth Court of New Zealand.; New Zealand Police: Responding to youth offending and related issues.

<sup>12</sup> How we fail children who offend and what to do about it: 'A breakdown across the whole system' - Reil, J., Lambie, I., Becroft, A., & Allen, R. (2022) p168

rights,<sup>13</sup> and with the Crown's duties to mokopuna Māori which are also protected under Te Tiriti o Waitangi (Te Tiriti).

- b. The Bill will have a disproportionately detrimental impact on mokopuna Māori, mokopuna Pasifika, mokopuna whaikaha, mokopuna with FASD and other neuro-diversities, who are all over-represented in the youth justice system.<sup>14</sup>
- c. The existing legislative framework already provides adequate accountability for offending by mokopuna. Furthermore, youth offending continues to trend downwards in our country, as shown by official government data. The Oranga Tamariki Act 1989 incorporates a focus on both child protection and youth justice, acknowledging the cross-over that exists for some of the mokopuna in these systems.
- d. Data shows that the vast majority of mokopuna who offend have been involved in the State care and protection system.<sup>15</sup> Mokopuna who offend have often experienced realities such as trauma, family violence, neglect, poverty, mental health challenges and addiction. Within this context, reducing youth offending requires approaches which uphold children's rights, disrupt cycles of harm through holistic and early prevention and intervention efforts, accountability and rehabilitation. not punishment-based and oriented approaches. Any changes should focus on bringing the existing youth justice legislative framework and its operational implementation in line with a children's rights approach to prevent and respond to youth offending, not creating unnecessary new legislative regime that is not grounded in children's rights.
- e. International and domestic evidence is clear that military-style approaches to youth justice do not work in the long-term and frequently causes further harm for mokopuna who have already experienced lives of trauma.<sup>16</sup> Nothing that is 'military-style' in character should be written into New Zealand law as a sentencing option or be used in the rehabilitation of mokopuna – interventions need to be informed by the evidence base of what works to prevent cycles of offending and give effect to our obligations under the UN Convention on the Rights of the Child and Te Tiriti.
- f. A Young Serious Offender (YSO) declaration could lead to increased harm for young people who will face discriminatory stigmatisation by being labelled a 'YSO', or could have the perverse effect of meaning such mokopuna gain notoriety if the YSO categorisation ends up being seen by other mokopuna as a badge of honour to strive for and emulate.<sup>17</sup>

10. Instead of progressing with this Bill, Mana Mokopuna advocates for:

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<sup>13</sup> For the definitive guidance on the implementation of the Children's Convention in the child justice context, see the UN Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, CRC/C/GC/24, available at: [General comment No. 24 \(2019\) on children's rights in the child justice system | OHCHR](#). Also note that in February 2023, the UN Committee on the Rights of the Child made a number of recommendations to New Zealand about improving the administration of child justice to respect and uphold children's rights, available at: [tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FNZL%2FCO%2F6&Lang=en](#) (see paras 42-43 and note that child justice was one of the seven areas the Committee recommended New Zealand to take urgent measures to fulfil its duties and obligations under the Children's Convention).

<sup>14</sup> [How we fail children who offend and what to do about it: 'A breakdown across the whole system' - Reil, J., Lambie, I., Becroft, A., & Allen, R. \(2022\); REPORT: What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand - January 2020 - Office of the Prime Minister's Chief Science Advisor](#)

<sup>15</sup> [Youth-Justice-Indicators-Summary-Report-December-2024\\_v1.0.pdf](#) (Ministry of Justice)

<sup>16</sup> [B-0029-Briefing-Advice-on-the-Introduction-of-Military-Academies.pdf](#) (pg 7-8)

<sup>17</sup> [Cabinet-paper-Young-Serious-Offender-Declaration-and-Military-Style-Academies-June-2024.pdf](#) (para 120)

- a. greater focus and investment on addressing the underlying causes of offending, such as poverty, insecure housing, unmet mental health needs and addiction.
- b. Government investment in effective, evidence-based solutions to addressing reoffending and keeping our communities safe, building on examples of youth justice interventions and prevention approaches that are already proven to work in Aotearoa New Zealand
- c. the Government to progress implementation of the urgent recommendations of the UN Committee on the Rights of the Child to New Zealand (made in February 2023)<sup>18</sup> to bring Aotearoa New Zealand's administration of child justice into greater alignment with its duties and obligations under the Children's Convention and to mokopuna Māori under Te Tiriti.

We refer the Justice Committee to our policy position paper on *Youth Justice: Fair and Supportive Systems*, which outlines our vision for a youth justice system that aligns with a children's rights approach.<sup>19</sup> It explains how Aotearoa New Zealand can create a youth justice system that treats all mokopuna with respect, provides holistic support, and helps them build a positive future while ensuring community safety.

## Recommendations

### 11. Mana Mokopuna – Children and Young People's Commission recommends:

- a. that the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill does not progress any further, as it moves us further away from a children's rights approach, and is misaligned with New Zealand's duties and obligations to mokopuna under the Children's Convention and Te Tiriti
- b. a paradigm shift away from approaches to youth justice that focus on punishment, and which are offence-based, towards a focus on addressing systemic inequities and prioritising multi-layered prevention and early intervention approaches and responses that are therapeutic, trauma-informed, culturally responsive, and community and iwi-led
- c. investment in effective, evidence-based solutions to addressing reoffending that address the underlying causes of offending, such as poverty, housing insecurity, unaddressed trauma, unmet mental health needs and addiction
- d. The establishment of a cross-party Parliamentary Group on Youth Justice, so that youth justice is kept on the agenda in a way that helps to build ongoing commitment and consensus around youth justice issues and to children's rights. in the administration of youth justice, in the interests of mokopuna and communities.

## The Bill moves us further away from a youth justice system that upholds and protects children's rights

12. Every mokopuna in Aotearoa has the right to experience all of their rights, in all circumstances, at all times. These rights are primarily protected under New Zealand's duties and obligations under the UN Convention on the Rights of the Child (Children's Convention),

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<sup>18</sup> [https://www.manamokopuna.org.nz/documents/798/Concluding\\_Observations\\_Cobs\\_CRC-C-NZL-CO6.pdf](https://www.manamokopuna.org.nz/documents/798/Concluding_Observations_Cobs_CRC-C-NZL-CO6.pdf) (para 40 and 43)

<sup>19</sup> [Mana Mokopuna Policy Position Paper: Youth Justice: Fair and Supportive Systems for Mokopuna](#)

Te Tiriti, the UN Convention on the Rights of Persons with Disabilities, and a range of provisions in New Zealand domestic law, including the Oranga Tamariki Act 1989.

13. There is a duty on the State to ensure that the rights of mokopuna involved in the justice system are protected, and their best interests and well-being kept central. We draw the Justice Committee's attention to the Government's obligations as duty-bearer under the Children's Convention<sup>20</sup>, and its responsibilities to protect and uphold the rights, interests, wellbeing, and participation of mokopuna when considering this Bill. Article 40 of the Children's Convention has a specific focus on child and youth justice. It provides:

*"State parties recognize the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."*

14. Article 40(4) of the Children's Convention states that a variety of options must be available to ensure mokopuna are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. Moreover, section 25(i) of the New Zealand Bill of Rights Act 1990 protects the right of children and young people charged with an offence to be treated in a manner that takes account of their age during criminal proceedings.
15. In 2023, the United Nations Committee on the Rights of the Child (the UN Committee) identified child justice as an area requiring urgent attention by the New Zealand Government, to better uphold its duties and obligations to mokopuna under the Children's Convention, including a specific recommendation that the Government develop:

*"... an effective action plan aimed at eliminating the disparity in the rates of sentencing, incarceration and survival in detention of Māori children by addressing the connections between offending and neuro-disability, alienation from whānau (family), school and community, substance abuse, family violence, removal into State care and intergenerational issues."<sup>21</sup>*

16. Further recommendations made by the UN Committee include: repealing the practice of remanding mokopuna in police custody; reducing the proportion of children in secure youth justice residences; and raising the minimum age of criminal responsibility to 14 years for all children regardless of the offence type.<sup>22</sup>
17. A children's right's approach in Aotearoa New Zealand includes the simultaneous realisation of tangata whenua rights – including those of mokopuna Māori – as affirmed in Te Tiriti and the Treaty of Waitangi. This is essential to improving the rights, interests, and wellbeing of mokopuna Māori within the context of their whānau, hapū, iwi and communities. Giving effect to Te Tiriti and the Treaty is also consistent with the commitments Aotearoa New

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<sup>20</sup> [UN Convention on the Rights of the Child](#)

<sup>21</sup> [UN's Concluding Observations \(2023\) CRC-C-NZL-CO6.pdf](#) (para 43(e))

<sup>22</sup> [UN's Concluding Observations \(2023\) CRC-C-NZL-CO6.pdf](#) (para 43a)

Zealand has made as a supporter of the United Nations Declaration on the Rights of Indigenous People.<sup>23</sup>

18. Furthermore, mokopuna whaikaha, including those with FASD and/or other neuro-diversities, have specific rights that are established and protected under the United Nations Convention on the Rights of Persons with Disabilities, to which New Zealand is a States Party.<sup>24</sup>
19. Along with mokopuna who have been in the care and protection system, mokopuna Māori, mokopuna whaikaha and mokopuna Pacific are overrepresented in the youth justice system.<sup>25</sup> We are very concerned that they will be particularly affected by this Bill.<sup>26</sup>
20. Should the bill proceed, it will move us further away from a children's rights approach towards youth justice. This is inconsistent with the Government's duties and obligations to mokopuna and their rights.
21. We note that the Justice Committee itself stated in its final report relating to the Petition of Josiah Tualamali'i: Inquire into solutions for youth justice, that:

*"We understand that early intervention is needed to prevent children and young people from entering the youth justice system. Several government agencies work with community stakeholders and iwi to respond to youth offending. We note that the United Nations Committee on the Rights of the Child identified child justice as an area of children's rights that requires urgent attention. We encourage government agencies to consider the rights of children when they enter the justice system."<sup>27</sup>*

## Youth offending continues to trend downward, reinforcing that this Bill is not required

22. The intent of the Bill is to reduce offending by children and young people by providing a more targeted response to serious and persistent offending. However, with the exception of a spike in the seriousness and frequency of offending by young people in 2022, the 2024 data illustrates that the rate of youth offending has been steadily declining over the last decade.<sup>28</sup> Furthermore, this decline is both over the long-term and short-term, as outlined below.
23. The report also notes that, in the year ending June 2024, there were 187 children with serious and persistent offending behaviour (down from 204 in 2022/23) and 886 young people (compared to 877 in 2022/23). When looking at rates of offending relative to population, serious and persistent offending behaviour rates dropped by 10% and 3% for children and young people respectively, compared to the previous year.<sup>29</sup>

<sup>23</sup> [United Nations Declaration on the Rights of Indigenous Peoples, Articles 3-5](https://www.beehive.govt.nz/release/national-govt-support-un-rights-declaration); <https://www.beehive.govt.nz/release/national-govt-support-un-rights-declaration>

<sup>24</sup> [Article 7 - Children with disabilities | Division for Inclusive Social Development \(DISD\)](#)

<sup>25</sup> [Youth-Justice-Indicators-Summary-Report-December-2024 v1.0.pdf](#) (Ministry of Justice).

<sup>26</sup> [Oranga Tamariki Regulatory Impact Statement - Serious Youth Offenders and military style academies June 2024](#) (paras 43-49)

<sup>27</sup> Justice Committee Komiti Whiriwhiri Take Ture, Final Report: Petition of Josiah Tualamali'i: Inquire into solutions for youth justice, December 2024, at p.6. Available at: [Petition of Josiah Tualamali'i: Inquire into solutions for youth justice](#)

<sup>28</sup> [Youth-Justice-Indicators-Summary-Report-December-2024 v1.0.pdf](#) (Ministry of Justice); [Oranga Tamariki Regulatory Impact Statement - Serious Youth Offenders and military style academies June 2024](#) (paras 21-22).

<sup>29</sup> [Youth-Justice-Indicators-Summary-Report-December-2024 v1.0.pdf](#) (pgs 13 and 14)



24. This downwards trend of serious offending by mokopuna suggests that the introduction of a YSO declaration and MSA order are superfluous. Taken into consideration together with the decline in the seriousness and frequency of offending over the longer-term, the case against this Bill, grounded in this recent Aotearoa New Zealand-specific data provides even stronger evidence against this Bill.
25. It is Mana Mokopuna's view that there are already mechanisms in place within the existing legislative framework that provide for accountability for offending by mokopuna. This includes the provision for community-based measures that are iwi-led, rehabilitative and trauma-informed.<sup>30</sup> Reducing offending by mokopuna can be achieved by taking a children's rights aligned approach to prevention and early intervention, including addressing underlying drivers of offending, within the existing youth justice legislative framework.

## Young people who offend are caught in cycles of harm and disadvantage – they are typically victims themselves

“ I believe that parents that struggle with stress, relationship and money problems should get more support financially and more guidance. Reason being parents struggle with financial emotional and relationship problems eventually generate an unhealthy environment for any child.”<sup>31</sup>

26. Youth offending does not occur in a vacuum. Entry into the youth justice system is almost always preceded by underlying drivers of offending, including poverty, food and housing insecurity, discrimination, intergenerational impacts of colonisation and systemic racism, exposure to family violence and child abuse, exclusion from schools and multiple enrolments (school transience), unmet mental health needs, and disability (including FASD and neurodiversity). More information about these underlying drivers is provided in our June 2023 submission to the Petitions Committee: Petition of Josiah Tualamali'i: Inquiry into solutions for youth justice,<sup>32</sup> and we further discussed this with the Justice Committee during our oral submission relating to that petition.<sup>33</sup>
27. While the cohort of mokopuna who have undertaken serious or persistent offending is, in comparison to the wider mokopuna population relatively very small (1,073 mokopuna<sup>34</sup>), they have the highest needs and poorest outcomes<sup>35</sup>. Rangatahi Māori are also significantly overrepresented in this population (modelling suggests that they will make up 80-85 percent of the young people eligible to be declared YSOs).<sup>36</sup>
28. Young people in this cohort are likely to have:
- either a confirmed or suspected mental health or disability related diagnosis (eight in ten)
  - attempted to end their life (two in ten)

<sup>30</sup> Ngāpuhi Iwi Social Services Annual Report "Mahuru Youth Remand Service" at 62-63; Kotahi te Whakaaro.

<sup>31</sup> [Mana Mokopuna You need to get in early voices report.pdf](#) (pg 12)

<sup>32</sup> [Mana Mokopuna Submission - Petition of Josiah Tualamali'i: Inquire into solutions for youth justice](#) (pgs 9-14)

<sup>33</sup> [2024/09/26 - JU on Vimeo](#) (from 32.20 min)

<sup>34</sup> [Youth-Justice-Indicators-Summary-Report-December-2024\\_v1.0.pdf](#) (pg 6)

<sup>35</sup> [Briefing-Advice-on-the-Introduction-of-Military-Academies.pdf](#); [Wellbeing-of-children-and-young-people-who-offend.pdf](#) – Social Wellbeing Agency (p3)

<sup>36</sup> [Regulatory Impact Statement - Serious Youth Offenders and military style academies June 2024](#) (para 44)

- significant learning difficulties (nine in ten)
  - been physically harmed more than three times in the past year (over half the boys and a quarter of the girls).<sup>37</sup>
29. Furthermore, the latest official youth justice data shows the majority of mokopuna who have undertaken serious or persistent offending have been involved with our State care and protection system: 93% of the children and 88% of the young people referred for a youth justice Family Group Conference had a previous care and protection report of concern.<sup>38</sup> Almost all (97%) of young people in Youth Justice residences had a care and protection history.<sup>39</sup>
30. This significant crossover for this cohort of mokopuna between the care and protection system and youth justice system cannot be ignored in the context of this Bill. We cannot afford to ignore this fact, given that ultimately, it will continue costing Aotearoa New Zealand both socially and economically in both the short and long-term.
31. Our existing child welfare system and broader associated systems often fail to address underlying issues that lead to State care and protection and youth justice becoming involved in the lives of mokopuna, focusing instead of problematic behaviour. Limited resources across the system restrict the ability to examine and understand the myriad drivers of offending for individual mokopuna. This in turn hinders collaboration, resulting in poor oversight of cases and missed opportunities to meet the varied and intersecting needs of mokopuna and whānau.<sup>40</sup>
32. We strongly advocate for the Justice Committee to consider effective responses to youth offending that disrupt cycles of harm, including the provision of comprehensive prevention and early intervention policies, investments, service delivery – including by Māori for Māori approaches, and strategic partnerships, rather than further punishing and institutionalising mokopuna. These are the interventions needed by mokopuna who this Bill will directly harm.<sup>41</sup>

## Interventions need to address the underlying drivers of offending and draw from robust evidence of what works

33. The Royal Commission of Inquiry into Abuse in Care (RCOI) has highlighted the extent to which responses to offending behaviour in the past have contributed to drivers of offending today. The Bill, therefore, appears inconsistent with the recently published final findings of the RCOI, and its call for urgent action to ensure that the factors that allowed harm to occur in the lives of mokopuna do not persist.<sup>42</sup> This is further strengthened by the fact that mokopuna are continuing to be harmed in the care of the State – in both care and

<sup>37</sup> [B-0029-Briefing-Advice-on-the-Introduction-of-Military-Academies.pdf](#)

<sup>38</sup> [Youth-Justice-Indicators-Summary-Report-December-2024\\_v1.0.pdf](#) at 8.

<sup>39</sup> [B-0029-Briefing-Advice-on-the-Introduction-of-Military-Academies.pdf](#)

<sup>40</sup> [J Reil, I Lambie, A Becroft & R Allen \(2022\) How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#)

<sup>41</sup> [J Reil, I Lambie, A Becroft & R Allen \(2022\) How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#)

<sup>42</sup> [Summary of key findings | Abuse in Care - Royal Commission of Inquiry](#)



protection and youth justice – in today's system, as evidenced by official Oranga Tamariki Safety in Care data.<sup>43</sup>

34. Youth justice interventions must be grounded in robust, evidence, research, and children's rights-based and mātauranga Māori approaches, shaped by the lived experience of mokopuna and whānau. This means asking mokopuna and whānau what has worked in helping to break cycles of offending and of disadvantage. We are not aware of any consultation with mokopuna and whānau having been undertaken to inform this Bill, which is inconsistent with the Government's duty and obligation under Article 12 of the Children's Convention (the right to child participation in matters affecting them).
35. A significant body of robust, sound evidence of what works to address serious offending by children and young people exists – both in Aotearoa New Zealand (including from a rangahau Māori perspective) and internationally. This includes focusing on parental support, helping children and young people manage and change their behaviour and supporting families and whānau with evidence-based and culturally responsive services, including those aimed at addressing the underlying causes of offending.<sup>44</sup>
36. As signalled above, many young people who offend have experienced trauma, family violence, poverty, mental health challenges and addiction, and often have unmet needs because of these experiences. As also discussed above, official data shows that the majority of these mokopuna have been involved with our State care and protection system. We need to take these realities into account when shaping solutions and responses, and ensure we invest in prevention of these root cause factors.
37. The wider evidence shows that investing in prevention and early intervention approaches that are community-based and trauma informed, that promote children's rights and iwi-led solutions, enable mokopuna to rehabilitate in ways that encourage healthy behaviour change and discourage re-offending. This approach – grounded in work led by iwi and community organisations – is what works and is already working in this context.
38. Some examples of this reality include judicially led approaches, such Te Kooti Rangatahi and the Pasifika Courts, and partnership models, such as the relationship between Oranga Tamariki and Ngāpuhi<sup>45</sup> which led to the implementation of Māhuru as an iwi-based and delivered youth remand service. Māhuru wraps whānau around Ngāpuhi mokopuna within their rōhe to channel mokopuna towards safer and more secure futures.<sup>46</sup> Another successful programme, which is continuing to deliver impressive results in preventing reoffending by mokopuna is Kotahi Te Whakaaro in South Auckland. This is a place-specific initiative involving government, community, iwi and NGOs, and crucially, engages the whole whānau, undertaking interventions to address underlying drivers and causes of offending such as poverty, housing insecurity, mental health distress and addiction.<sup>47</sup>
39. We strongly advocate for the Government to not proceed with this Bill, and instead implement comprehensive assessment and bespoke plans, and mentoring and transition support for all mokopuna in the youth justice system.

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<sup>43</sup> [Safety of children in care report 2023](#)

<sup>44</sup> [Oranga Tamariki Regulatory Impact Statement - Serious Youth Offenders and military style academies June 2024](#)

<sup>45</sup> [Ngāpuhi partnership | Oranga Tamariki — Ministry for Children](#)

<sup>46</sup> [CBRG Evaluation -Community-based remand homes \(pg 33-46\); TRAION-Annual-Report-2024 Web 3.pdf \(pgs 62-63\)](#)

<sup>47</sup> [Tougher sentencing not expected to work for youth offenders; Independent evaluation of Kotahi te Whakaaro; Government Action on Youth Crime making a difference | Beehive.govt.nz; Programme takes a 'prevention first' approach to youth crime](#)

## Evidence shows that military style approaches do not work in the long-term and can cause harm

40. As outlined by Oranga Tamariki in its Regulatory Impact Statement (RIS) on the Bill, this Bill was developed within a constrained timeframe, has a narrow scope and limited consultation, with no engagement with rangatahi and whānau Māori, or with strategic iwi Māori partners.<sup>48</sup> Mana Mokopuna was also not consulted in the development of the Bill. It has also been developed ahead of the evaluation of the current Military Style Academy (MSA) pilot, which means that pilot evaluation findings have not informed the drafting of this Bill.
41. The RIS outlines substantial, robust international and domestic evidence that military-style approaches to youth justice do not work in the long-term to prevent offending/reoffending and can often cause harm. This is because of the realities of life experience for those mokopuna who will be subjected to the Bill's intent – the evidence clearly shows that, they will not lead to better outcomes for those who have experienced trauma and/or who have a disability.<sup>49</sup>
42. An evaluation of the previous military-style programme, (introduced in 2010) found that it was expensive and produced no better results (i.e. in terms of reducing re-offending) than the reoffending rates amongst young people on Supervision with Residence orders who had not participated in the programme.<sup>50</sup>
43. The RIS clearly states that while introducing components of best practice into a military-style academy programme would give it the greatest chance of success (that is, aspects such as bespoke plans, mentoring, rehabilitation support, whānau support and transition support etc), best practice would be better delivered outside of a military context.<sup>51</sup> We strongly agree, and advocate for this.
44. We remain deeply concerned, about having anything written into New Zealand youth justice law that provides a military-style academy programme as a sentencing option. The removal of this military-style component would mitigate the well-documented negative impacts of 'boot camps' and further institutionalisation of mokopuna, and enable resourcing to be redirected to the provision of therapeutic, trauma informed supports that address the underlying causes of offending and which are proven to prevent offending.
45. From a children's rights perspective, nothing that is 'military style' in character should be written into our law as a sentencing option or be used in the rehabilitation of our young people. Even if the MSA is not military or bootcamp-based in practice,<sup>52</sup> it's important to consider the (yet to be published) findings of the independent evaluation of the MSA Pilot (including the youth justice residence-based component, and overall programme). These findings are key to understanding the impact of this Bill. Additionally, writing Military-Style Academies into law creates the option for them to be implemented this way.

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<sup>48</sup> [Oranga Tamariki Regulatory Impact Statement: Young serious offender declaration and military-style academies](#)

<sup>49</sup> [Oranga Tamariki Regulatory Impact Statement: Young serious offender declaration and military-style academies](#)

<sup>50</sup> [Ministry of Social Development. \(2013\). Evaluation report for the military-style activity camp \(MAC\) programme; B-0029-Briefing-Advice-on-the-Introduction-of-Military-Academies.pdf](#)

<sup>51</sup> [Oranga Tamariki Regulatory Impact Statement: Young serious offender declaration and military-style academies](#)

<sup>52</sup> As publicly discussed, the Chief Children's Commissioner, when she visited the MSA pilot with senior representatives of Aroturuki Tamariki – Independent Children's Monitor, and the Office of the Ombudsman, did not see anything that she would characterise as 'military-style' in nature, and she noted that it was positive that the Pilot involved a multi-disciplinary team working on a one-to-one basis with mokopuna, focusing on their trauma and wrapping therapeutic and rehabilitative approaches around them, and outreach with whānau.

## The Young Serious Offender Declaration will likely lead to stigmatisation and increased harm, disproportionately impacting mokopuna Māori

“ There must surely be a limit to how much longer society is prepared to watch very young children offend, tumble into that prison pipeline and end up in adult prison some 15 or so years later.”<sup>53</sup>

46. The making of a YSO declaration serves as a gateway provision for the court to order that a young person (aged 15-17) who has been categorised as a YSO must attend an MSA.
47. A review of the use of serious youth offender categorisation in Australia found that it was a “blunt tool and not well tailored for the policy objectives it is designed to achieve”. It found that the approach “focuses on a young person’s offence category and does not consider their age, developmental stage, maturity and vulnerabilities.”<sup>54</sup>
48. A YSO declaration could well lead to increased harm for young people who, we believe, may face discriminatory stigmatisation by being labelled a “young serious offender”.
49. This stigmatising harm will disproportionately affect mokopuna Māori as an overrepresented cohort in the youth justice system, who are therefore more likely to be labelled a “young serious offender” than non-Māori.<sup>55</sup> The creation of the YSO declaration and the attached outcomes will come at a cost to mokopuna Māori and their whānau, hapū, iwi and communities, resulting in inequitable treatment that is at odds with government obligations under Article 3 of the Treaty of Waitangi.<sup>56</sup>
50. The use of non-stigmatising language is an explicit recommendation by the Committee on the Rights of the Child addressed in General Comment no. 24 (2019) on children’s rights in the child justice system.<sup>57</sup> The detrimental impact of being labelled a “young serious offender” will potentially stigmatise mokopuna beyond the time that they are formally under this categorisation and could negatively affect them for their lifetime.<sup>58</sup>
51. We also believe that categorising and labelling mokopuna as a YSO could have the perverse effect of meaning such mokopuna gain notoriety, if the YSO categorisation ends up being seen by other mokopuna as a badge of honour, and ultimately something that other mokopuna may want to emulate.<sup>59</sup>
52. This Bill effectively punishes mokopuna for the State’s repeated and compounding failures to uphold their rights. Instead of receiving the support, care and protection they need, while being held accountable and guided onto a more positive pathway, they may face punitive sanctions. Such an approach could unfairly label them, creating long-term barriers that are difficult to overcome.<sup>60</sup> In short, creating this YSO category, when provisions already exist in New Zealand law under which mokopuna who seriously and persistently offend can be held

<sup>53</sup> J Reil, I Lambie, A Becroft & R Allen (2022) How we fail children who offend and what to do about it: ‘A breakdown across the whole system’ Research and recommendations

<sup>54</sup> Department of Justice and Community Safety. (2022). Review of the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017. Retrieved from Youth Justice Reform Act Review Report (2022).pdf (pg 112 and 124).

<sup>55</sup> [Cabinet-paper-Young-Serious-Offender-Declaration-and-Military-Style-Academies-June-2024.pdf](#)

<sup>56</sup> [What te Tiriti o Waitangi says in English and te reo Māori](#)

<sup>57</sup> [General comment No. 24 \(2019\) on children’s rights in the child justice system | OHCHR](#) (paragraph 7 and paragraph 15)

<sup>58</sup> [Cabinet-paper-Young-Serious-Offender-Declaration-and-Military-Style-Academies-June-2024.pdf](#) (para 122)

<sup>59</sup> [Cabinet-paper-Young-Serious-Offender-Declaration-and-Military-Style-Academies-June-2024.pdf](#) (para 120-122)

<sup>60</sup> [Oranga Tamariki Act 1989, s 14\(1\)\(e\).](#)

accountable, is not only unnecessary, but it will almost certainly exacerbate existing harm and trauma and is inconsistent with children's rights.

## Widening the use of force powers is unsafe and unnecessary

53. The Bill proposes to grant additional use of force powers to military-style academy providers, including approved workers or qualifying "third-party providers", in scenarios that are outside of a youth justice residence. For example, this may include where mokopuna are participating in overnight camps or rehabilitative programmes.<sup>61</sup> Mana Mokopuna is deeply concerned about the widening of powers to use force against mokopuna and cautions in the strongest terms against doing so. Mana Mokopuna advocates for mokopuna in youth justice to be able to participate in community-based, non-residence-based activities as part of their rehabilitation onto a positive pathway away from offending. However, this can and must be done without any use of force being used on mokopuna.
54. Article 37 of the Children's Convention guarantees the right of all mokopuna to be protected from torture and other cruel, inhuman or degrading treatment or punishment. These are absolute rights, requiring Aotearoa New Zealand as a States Party to protect children wherever they are (detention or otherwise).<sup>62</sup>
55. The proposed extension of use of force provisions is contrary to the absolute rights guaranteed under Article 37 of the Children's Convention. The Bill's intent to widen the circumstances under which the use force can be used against mokopuna directly goes against Aotearoa New Zealand's duties and obligations to mokopuna under the Children's Convention.
56. Rather than creating this provision in law, we advocate for the Government to be focusing on doing the exact opposite: ensuring practice in all places where mokopuna are deprived of their liberty move towards zero use of force and restraint against mokopuna, consistent with mokopuna rights, and enabled by ensuring measures such as comprehensive and ongoing relationship-building and de-escalation training for kaimahi working with mokopuna.
57. Widening the use of force powers on mokopuna within legislation is a major policy question, requiring careful and deep consideration. Currently, outside of Police ability to use force in the enforcement of the law, use of force provisions relating to mokopuna only exist within youth justice residential settings, and the implementation of this provision is already problematic (as described in paragraph 59 below).<sup>63</sup> The Bill's provision to extend these powers to third party providers and beyond residential settings signals a major departure from established policy. In Mana Mokopuna's view, there has been woefully inadequate consideration given to this shift, both from a policy standpoint, and more critically from a children's rights perspective.
58. Although the use of force powers in the Bill are premised on promoting public safety and protection to prevent a mokopuna from absconding, being harmed, harming themselves or another, evidence shows that use of force is already inappropriately used towards detained

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<sup>61</sup> [Cabinet-paper-Young-Serious-Offender-Declaration-and-Military-Style-Academies-June-2024.pdf](#) (appendix five)

<sup>62</sup> [Convention on the Rights of the Child | OHCHR](#)

<sup>63</sup> <https://www.orangatamariki.govt.nz/assets/Uploads/Youth-justice/Military-Style-Academies/Cabinet-paper-Young-Serious-Offender-Declaration-and-Military-Style-Academies-June-2024.pdf>

young people, especially indigenous young people, including mokopuna Māori in Aotearoa New Zealand's youth justice system.<sup>64</sup>

“ Yeah, I only feel like intimidated or threatened when it comes to all that Response Team, you know.... when the Response comes to here I feel like, 'oh shit they're like going to restrain me, is it going to be sore? Should I just like, already go on the floor right now so I don't get my head smacked into the table?' You know what I mean.”<sup>65</sup> *Young person in Korowai Manaaki residence*

59. Misuse of the current use of force provisions occurs in our youth justice system despite safeguarding regulations in place for authorities, and Mana Mokopuna has witnessed this occurring when undertaking monitoring of youth justice residences as an OPCAT National Preventative Mechanism<sup>66</sup> This causes harm to mokopuna who are in the care of the State. If the State is currently failing in its use of force provisions on mokopuna in youth justice residences, what guarantees are there that use of force powers will not be misused by third party providers? The fact is that there are no such guarantees, and widening use of force powers so that they can be used outside of youth justice settings and by unspecified/undefined 'third party providers' risks a misuse of force in non-residential settings, by non-State actors, leading to an increase in harm against mokopuna. As outlined above, Mana Mokopuna is very concerned about the disproportionate harm likely to occur in the misuse of force against mokopuna Māori, and other groups who are overrepresented in the justice system.<sup>67</sup>
60. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – to which Aotearoa New Zealand is also a States Party – requires regular independent monitoring of places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. In Aotearoa New Zealand, this includes places where mokopuna are deprived of their liberty, such as youth justice residences.
61. The United Nations Committee against Torture in 2023 noted its significant concerns about the state of justice in Aotearoa New Zealand for children and young people, including the use of force against children under supervision.<sup>68</sup> Our monitoring of places where mokopuna are detained show that these concerns are ongoing, as documented in our monitoring reports.<sup>69</sup>

## We call for a cross-party approach to youth justice, grounded in children's rights

62. The issue of serious and persistent youth offending, and the mokopuna involved, have been heavily politicised and publicly scrutinised. In all kaupapa relating to mokopuna, including youth justice, we need to keep mokopuna and their rights above party politics. This requires

<sup>64</sup> [7th Periodic Review under CAT Submission.pdf](#) (para 16); [Time for a Paradigm Shift FINAL.pdf](#)

<sup>65</sup> [20210701-KorowaiManaaki-Redacted.pdf](#)

<sup>66</sup> Oranga Tamariki (Residential Care) Regulations 1996: Part 2 s 22: Use of force in dealing with child or young persons; [Mana Mokopuna OPCAT Monitoring Report Korowai Manaaki \(February 2024\)](#) (p 18) [7th Periodic Review under CAT Submission.pdf](#)

<sup>67</sup> [Regulatory Impact Statement - Serious Youth Offenders and military style academies June 2024](#) (para 234)

<sup>68</sup> [CAT/C/NZL/CO/7: Concluding observations on the seventh periodic report of New Zealand | OHCHR](#) (at para 38(c)).

<sup>69</sup> [2022/23 Annual report of activities under the Optional Protocol to the Convention against Torture \(OPCAT\) | Mana Mokopuna](#)

setting aside the victim/offender dichotomy, and truly committing to take a cross-party approach, grounded in children's rights to contribute to both short and long-term change.

63. Mana Mokopuna calls for the establishment of an ongoing cross-party Parliamentary group focussing on youth justice, with representation and participation from all parties. This approach would maintain youth justice as a shared priority across governments, fostering cross-party consensus and enduring commitment to driving sustained change.
64. The group's work should be grounded in robust sound evidence and rangahau, including mātauranga Māori approaches, and be shaped by the lived experience and voices of mokopuna and whānau. Its collective aim needs to be to disrupt cycles of harm, through cross-party commitment to trauma-informed, therapeutic approaches that wrap around mokopuna and their whānau, attend to addressing the underlying drivers of offending, and focus on prevention. This is the way to keep our communities safe while upholding children's rights and driving positive and enduring outcomes for mokopuna.
65. One of the group's first steps could be the development of an action plan to eliminate disparities in youth justice, a core recommendation made by the UN Committee on the Rights of the Child (as discussed earlier at paragraph 15). The Chief Children's Commissioner and Mana Mokopuna remain ready to provide support and specialist children's rights advice for such an approach and initiative.