

Responding to Abuse in Care Legislation Amendment Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Responding to Abuse in Care Legislation Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

About the bill

As explained below, this bill is an initial legislative response to the findings of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions. It would make a start on changes to improve the safety and wellbeing of children, young people, and adults in care while work continues on how to respond to other recommendations by the Royal Commission. The bill would amend the following Acts:

- Children’s Act 2014:
 - extending the existing workforce restriction on core children’s workers to include people with convictions for overseas offences equivalent to specified New Zealand offences
 - including offences against children and young people under the Prostitution Reform Act 2003 in the list of specified offences.
- Crimes Act 1961, to explicitly include disability in the definition of a vulnerable adult.
- Oranga Tamariki Act 1989:
 - allowing universal searches on entry to secure youth justice residences
 - requiring search plans to be made with children and young people in all secure residences

- repealing the ability to undertake strip searches of children and young people
- clarifying the length of time that a child or young person may be in secure care prior to judicial oversight.
- Public Records Act 2005:
 - enabling earlier re-audit of agencies identified as having poor information management
 - creating an ability to require an action plan and time-bound correction of non-compliance
 - clarifying that Archives New Zealand may undertake its own audits.

About the process to date

Given the grave importance of the bill's subject-matter, and the lengthy process that has led to this point, we consider it worth setting out the background to this bill in some detail.

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

In 2018 the Government set up the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions. Its role was to investigate what happened to children, young people, and vulnerable adults in state and faith-based care in New Zealand between 1950 and 1999.

The Commission's final report, "Whanaketia: Through pain and trauma, from darkness to light" was presented to the Governor-General on 25 June 2024, and tabled in Parliament on 24 July 2024.¹ The report describes widespread and extreme abuse across a range of state and faith-based care institutions from 1950 to 1999, and points out that, while some changes were made from the late 1970s onwards, this abuse has continued through to the present day. It contains 138 recommendations. These recommendations are in addition to 95 recommendations from the Commission's interim report published in December 2021.²

The Government has accepted the findings of the Commission in principle but has noted that recommendations have not been tested at an individual level. The Government intends to conduct further work to respond to findings of a legal nature. It is working on a response plan covering all the recommendations.

¹ Whanaketia: Through pain and trauma, from darkness to light | Royal Commission of Inquiry into Abuse in State Care.

² Tāwharautia: Pūrongo o te Wā (interim report) | Royal Commission of Inquiry into Abuse in State Care.

Crown Response Office

In 2018 a Crown response secretariat was established to coordinate multiple agencies to respond to the Commission’s findings and recommendations. This evolved into the Crown Response Unit in 2019, to address recommendations in the Commission’s 2021 redress report, “He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui”.

In 2024, and following a recommendation in Whanaketia, the Crown Response Office was established as a government agency to coordinate, monitor, and report on the Government’s response to the Commission. The Office sits within the Public Service Commission.

The Government has been working on its response to the Commission’s recommendations since the interim and final reports were received. On 12 November 2024, the Prime Minister and seven public sector leaders delivered public apologies, in line with recommendations two and three of Whanaketia and recommendations ten and eleven of He Purapura Ora, He Māra Tipu.³ At that time, the Prime Minister announced that the Government had either begun work on, or completed, at least 28 recommendations.

A response plan is currently being developed to set out how the Government will respond to the Commission’s remaining recommendations. Many of these recommendations are complex, and will require action from multiple agencies, coordinated by the Office.

Responding to Abuse in Care Legislation Amendment Bill

The Commission’s report stated repeatedly that for the public apology to be truly meaningful, it needed to be done alongside commitments to action. This Responding to Abuse in Care Legislation Amendment Bill is a first step in legislative change in response to the Commission’s findings.

As the final report was tabled in July 2024, and the public apology occurred in November 2024, relevant agencies were asked by the Government to put forward legislative changes that could be prepared within that timeframe. The policies proposed through the bill are initiatives that were considered by the responsible agencies as suitable to be introduced in support of the apology. Agencies were asked for policies that were considered straightforward enough to allow for consultation through the select committee process, or had already had initial policy work including consultation undertaken by the relevant agency.

The bill was referred to our committee on 12 November 2024, immediately following the official apology for abuse in care. During our consideration of the bill we heard from many survivors of state and faith-based abuse. We thank everyone who took the time to engage with the select committee process. Sharing personal experiences on a

³ Public apology to survivors of abuse in care | Crown Response to the Abuse in Care Inquiry.

topic like this can be difficult and traumatic. We recognise and appreciate those who chose to share their stories with us.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. Our proposed amendments are discussed in relation to the Act that they would be amending.

Children's Act 2014

Part 1 of the bill would amend the Children's Act 2014. We do not propose any changes to this part of the bill.

Crimes Act 1961

Part 2 of the bill would amend the Crimes Act 1961. Recommendation 26 in the Commission's final report recommended that the Government amend the Crimes Act to specifically include disability within the definition of a vulnerable adult. It considered that the absence of explicit reference to disability is a gap in protections for disabled people.

The current definition of "vulnerable adult" in the Act is "a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person". The bill as introduced would insert "disability" after "sickness" in the above definition.

We heard from several submitters about this amendment to the Crimes Act. Some suggested that a new definition of "adult at risk" replace the definition of "vulnerable adult". Following further consultation, we consider that removing "vulnerable" from the definition could risk altering the underlying legislative framework. We also consider that adding the words "or at-risk" alongside "vulnerable", amending the definition to "vulnerable or at-risk adult", could have unintended consequences by altering how other individuals and groups are covered by the definition. This would add complexity to charging and prosecuting offences, so may also lead to fewer prosecutions.

On balance, we recommend no changes to the Crimes Act beyond those in the bill as introduced. This is line with the Commission's recommendation.

Some of us are concerned about the amendment to the Crimes Act in the bill as introduced, and think it does not address the concerns of the disabled community. Some of us consider that more consultation should have been done before the amendment was introduced.

Oranga Tamariki Act 1989

Part 3 of the bill would amend the Oranga Tamariki Act 1989. We recommend several minor and technical amendments to the bill as introduced, including:

- clarifying in section 370 (via clause 16) that the day of admission would count as one of the three days a child or young person may be in secure care prior to court oversight
- amending clause 18, section 384AA(2)(a), to specify that the child or young person's sex and gender identity, and any preferences the child or young person may have relating to the sex or gender identity of the person conducting a search, must be taken into account when creating a search plan
- amending the term "preferences" in sections 384AA to 384AC to "needs and preferences", in relation to developing search plans for children or young people placed in residences (clause 18)
- amending clause 18, sections 384AB(1) and 384AC(2)(b) by replacing "the chief executive considers that" with "the chief executive considers on reasonable grounds that"
- inserting new section 384AD (via clause 18) to provide that an approved search plan must be reviewed and amended if a child or young person reasonably requests, and that the review must be in accordance with regulations under section 447 of the principal Act
- specifying in clause 28, section 384KB, that no authorised person may use physical force in carrying out a search of a youth justice resident unless reasonably necessary
- inserting section 384KC(6A) via clause 28 to specify that if a person hands over an unauthorised item to an authorised person, that alone is not sufficient grounds to warrant that person being denied entry to the residence
- inserting sections 384KF(3A) and (3B) via clause 28 to provide that a non-resident may request that a pat-down search be conducted by a person of the sex or gender identity they prefer, and that this request must be complied with where reasonably practicable
- inserting (via clause 29(2)) guiding criteria in section 447(1A) that would apply before a new item could be added to the list of harmful items that require the Minister for Children to:
 - consult the Minister of Justice on any proposed amendment to the definition of harmful item
 - be satisfied on reasonable grounds that the nature and extent of the harm that might be caused by any item proposed to be included in the definition warrants its inclusion.

Public Records Act 2005

Part 4 of the bill would amend the Public Records Act with the aim of improving recordkeeping practices. We note that survivors who contributed to the Royal Commission's inquiry emphasised the importance of having access to their own records, and their difficulties in accessing them.

Clause 35 of the bill would insert new sections 35A and 35B into the Public Records Act. Section 35A would enable the Chief Archivist to require any public office to prepare and carry out an action plan relating to its recordkeeping practices. Section 35B would empower the Chief Archivist to issue a performance notice requiring a public office to carry out a specified action relating to its recordkeeping practices.

Section 32(1) of the Public Records Act sets out that the Chief Archivist must make an annual report to the Minister on the state of recordkeeping within public offices. We recommend inserting clause 33A into the bill to replace section 32(1) of the Act. Our proposed replacement section would include subsections (a) and (b), which would require the annual report to include reporting on any action plan required from, or performance notice issued to, a public office under sections 35A and 35B.

Green Party of Aotearoa New Zealand and New Zealand Labour Party differing view

The Green Party and Labour Party oppose elements of the Responding to Abuse in Care Legislation Amendment Bill. Our opposition stems from the bill's failure to fully implement the recommendations of the Royal Commission of Inquiry into Abuse in Care (RCI), its lack of meaningful consultation with affected communities, and the harm it risks perpetuating against survivors. Additionally, the bill continues to prioritise state control over survivor-led redress mechanisms.

Failure to fully implement RCI recommendations

We acknowledge that the bill makes some progress in responding to historical and current abuse in care. However, it falls far short of what is needed. The Government has selectively adopted recommendations from the RCI while ignoring key provisions that would strengthen survivor rights, including calls for an independent, survivor-led redress system. Cherry-picking recommendations is not enough; a comprehensive approach is required to address the scale of harm suffered by survivors of state and faith-based care.

Concerns over section 384KB (Use of Force)

We strongly oppose the bill's provisions regarding the use of force in care settings. The inclusion of section 384KB, even with limitations, normalises the use of force against children and young people. The departmental report's recommendation to specify that force may only be used when necessary to carry out an authorised search does not address the fundamental issue: force should not be permitted at all. This bill is a missed opportunity to focus on incorporating modern de-escalation practices into legislation, practices that take into account the specific needs and background of

young people who have usually experienced significant trauma, have mental health needs, and do not respond to rewards and consequences in the same way as the average young person. The removal of this provision is necessary to prevent further harm and align with best practices in youth justice and care settings. Additionally, there is concern that, in practice, third-party contractors may be authorised to use force on children in care. This would raise serious accountability issues and contradict the RCI's recommendations, specifically 70 to 75, which called for a fundamental shift away from punitive treatment in care settings.

Institutionalisation of youth justice residences

Despite some support for Section 384KA regarding the increased use of search provisions, we remain concerned that these changes contribute to the further institutionalisation of youth justice residences. This approach contradicts RCI recommendations 70 to 75, which advocate for a shift away from punitive, institutionalised models towards community-based, trauma-informed care. Expanding the state's ability to conduct searches risks reinforcing a custodial model rather than addressing the root causes of harm and providing genuine pathways for rehabilitation and healing.

We are concerned that the bill allows the retention of images generated from the use of imaging technology for up to 24 hours. It is not clear why this is required. Retaining images for any length of time increases the risk that the images are accessed for improper reasons or by unauthorised persons.

Clause 12: A flawed definition of “vulnerable adult”

Clause 12 of the bill introduces an amendment to the Crimes Act 1961, defining “vulnerable adult” in a way that has raised significant concerns within the disabled community. The proposed definition risks framing disabled people primarily through a lens of deficit and dependency, rather than recognising their autonomy, agency, and mana.

This approach fails to align with the principles of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which calls for the recognition of disabled people as equal participants in society. Many disability advocates have pointed out that broad and ill-defined legal terms can lead to unintended consequences, including policies that undermine disabled people's rights rather than protecting them.

Instead of imposing a top-down definition, the Government must co-design legislative protections with the disability community to ensure the language used is appropriate, empowering, and does not reinforce harmful stereotypes.

We have asked the Chair to approach the Minister, requesting that this clause be paused until adequate consultation has been conducted with disabled communities.

Lack of meaningful consultation

The Government's consultation process on this bill has been inadequate. While survivors, disabled communities, the Deaf community, and other affected groups have been vocal about their concerns, their voices have not been meaningfully incorporated

into the final bill. The select committee process alone does not constitute genuine consultation, especially when many of those most affected face barriers to participation, including trauma, accessibility issues, and systemic exclusion from decision-making spaces.

A true survivor- and community-led process would have involved early, sustained, and meaningful engagement with those who have lived experience of abuse in care. This includes ensuring that Māori, Pasifika, Deaf, disabled people, and other marginalised groups are active partners in shaping the bill rather than being treated as passive consultees. Without this level of engagement, the bill risks reinforcing the very power imbalances that enabled abuse in the first place.

Conclusion

This bill represents a missed opportunity to deliver justice for survivors of abuse in care. By failing to fully implement the RCI recommendations and maintaining an institutionalised approach to care, the Government is falling short of its duty to survivors. We urge the Government to reconsider its approach, listen to survivors, and adopt a truly independent and survivor-led redress process that upholds Te Tiriti, centres the voices of affected communities, and ensures meaningful change.

Te Pāti Māori differing view

Te Pāti Māori opposes the Responding to Abuse in Care Legislation Amendment Bill as mōrehu have called for fundamental changes to state care in Aotearoa and this bill fails to address those critical needs. The proposed legislation undermines Whanaketia which called for the state to honour Te Tiriti o Waitangi yet there remains no mention of such within this bill.

Te Pāti Māori tikanga

- **Mana Motuhake:** Survivors want to see transformational change to ensure the end of state-sponsored abuse. This bill is anything but transformational and represents tinkering at the edges of a system that was intentionally designed to harm our people—a system that has abused over 200,000 tamariki in the past 70 years.
- **Mana Ōrite:** Tamariki Māori currently make up 70 percent of those in state custody and 80 percent of those abused by the state. Failure to transform the care system will disproportionately impact tamariki Māori.
- **Mana Mokopuna:** The first change contained in this bill frames tamariki as the primary perpetrators of abuse. No recommendations within Whanaketia request universal searches on entry. This is a perpetuation of the abuse outlined in Whanaketia and the invasive examinations described within it.

Te Tiriti o Waitangi

In 2021, the Waitangi Tribunal concluded that the “reform of Oranga Tamariki, no matter how well designed, will ultimately fail another generation of children”. This

bill is barely a reform, and it remains poorly designed. This is deeply concerning given that a failure to uphold Te Tiriti o Waitangi was identified by Whanaketia as one of the most prolific drivers of abuse in state and faith-based care.

This bill consistently fails in giving effect to Te Tiriti o Waitangi and affording Māori the opportunity to exercise tino rangatiratanga. The omission of Te Tiriti o Waitangi from the bill is a prime example of Government failure to mōrehu and disregard in recognising recommendations made within Whanaketia. This omission is representative of minimal engagement with affected communities and will likely weaken safety measures for Māori, who make up a majority of those in state care. The bill therefore ignores meaningful engagement with marginalised communities.

This marginalisation extends to whānau haua who are to be defined within clause 12 of the Crimes Act 1961 as a “vulnerable adult”. Greater collaboration between Government and whānau haua would produce suitable identification terminology within the context of the law. The proposition as it stands degrades the capabilities of whānau haua and threatens partnership and protection that is promised within Te Tiriti o Waitangi.

Historical understandings reinforce the dangers for Māori should Te Tiriti o Waitangi remain excluded from within this bill. Affording Government and the Crown greater powers will only exacerbate the inequities that Māori experience within state systems.

Key concerns:

- (1) Use of Force: Of great concern to Te Pāti Māori is the legislated use of force in care settings. We are acutely aware that tamariki Māori make up 80 percent of those who experience abuse within state care systems. We therefore absolutely reject any provision that would allow staff to use force against our tamariki provided they are at greater risk of experiencing “force”. Mōrehu deserve an assurance that no more tamariki will have to endure the harm that they had to endure; and to find comfort in the knowledge that the abuse stopped with them.
- (2) Te Tiriti o Waitangi: Government recognition of Te Tiriti o Waitangi is evident in their refusal of acknowledgement and limited engagement with communities including Māori and whānau haua. This illustrates an offensive disregard to key components of Whanaketia and public voice.
- (3) Universal Searches: This bill is supposed to reduce harm in our care system, yet it may sustain the kinds of abuse that were laid out in Whanaketia. While we support the repeal of strip searches, this cannot be used to justify universal searches on entry. No recommendations within Whanaketia request these searches.

Recommendations

Te Pāti Māori calls for:

- policies informed by robust data cited within Whanaketia and meaningful consultation with Māori, ensuring they align with tikanga Māori and Te Tiriti o Waitangi principles

-
- the rejection of legislative proposals that prioritise Government agenda above the safety of tamariki Māori and mōrehu voices
 - all recommendations within Whanaketia to be recognised in their entirety.

Closing statement

This bill offers only minor improvements to an ineffective care system for tamariki and mokopuna Māori. For any meaningful amendments to occur more robust discussion with Māori and survivors of state care abuse is needed. Te Pāti Māori urges Parliament to pause the bill's progress until these discussions occur and Whanaketia's recommendations are acknowledged in their entirety. Considering all members are aware that a failure to uphold Te Tiriti o Waitangi, as identified by Whanaketia, is one of the most prolific drivers of abuse in state and faith-based care no further action on the bill should be taken until Te Tiriti o Waitangi is included.

Appendix

Committee process

The Responding to Abuse in Care Legislation Amendment Bill was referred to the committee on 12 November 2024. The House instructed us to report the bill back no later than 14 March 2025. We invited the Lead Coordination Minister for the Government’s Response to the Royal Commission’s Report into Historical Abuse in State Care and in the Care of Faith-based Institutions to provide an initial briefing on the bill. She did so on 11 December 2024, alongside the Minister for Children.

We called for submissions on the bill with a closing date of 11 December 2024. We received and considered submissions from 69 interested groups and individuals. We heard oral evidence from 20 submitters at hearings in Wellington and via videoconference.

Advice on the bill was provided by the Crown Response Unit. The Office of the Clerk provided advice on the bill’s legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Joseph Mooney (Chairperson)

Paulo Garcia

Takutai Tarsh Kemp

Ricardo Menéndez March

Laura McClure

Hon Willow-Jean Prime

Maureen Pugh

Hon Carmel Sepuloni

Tanya Unkovich

Kahurangi Carter and Mariameno Kapa-Kingi participated in our consideration of this item of business.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Responding to Abuse in Care Legislation Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Erica Stanford

Responding to Abuse in Care Legislation Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**

This Act is the Responding to Abuse in Care Legislation Amendment Act **2024**.
- 2 Commencement**
 - (1) **Part 1** and **Part 3** (except **sections 16, 21, and 31**) come into force on a date or dates set by Order in Council.
 - (2) Any part of **Part 1** or **Part 3** (except **sections 16, 21, and 31**) that has not come into force 12 months after Royal assent comes into force then.
 - (3) The rest of this Act comes into force on the day after Royal assent.

- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1

Amendments to Children’s Act 2014

3	Principal Act	5
	This Part amends the Children’s Act 2014.	
4	Section 28 amended (Core worker convicted of specified offence not to be employed or engaged)	
(1)	Replace section 28(1) to (3) with:	
(1)	This section applies to a person who—	10
(a)	has been convicted of—	
(i)	a specified offence; or	
(ii)	an offence under the law of another jurisdiction that, if committed in New Zealand, would be a specified offence; and	
(b)	does not hold an exemption granted under section 35 in respect of the offence.	15
(2)	A specified organisation must not employ or engage a person to whom this section applies as a core worker.	
(3)	A specified organisation must not continue to employ or engage a person to whom this section applies as a core worker, regardless of when that worker commenced employment or was engaged, except as provided in this section.	20
(2)	In section 28(4), replace “On and after the date referred to in subsection (3), if” with “If”.	
(3)	In section 28(7), replace “subsection (1)” with “this section”.	
5	New sections 28A to 28D inserted	25
	After section 28, insert:	
28A	Review of determination that section 28(1)(a)(ii) applies to person	
(1)	This section applies to a person—	
(a)	whom a specified organisation has, for the purposes of section 28(2) or (3) , determined is a person to whom section 28(1)(a)(ii) applies; and	30
(b)	who does not hold an exemption granted under section 35 in respect of the offence.	

- (2) The person may apply to the chief executive of any key agency for a review of the specified organisation's determination that **section 28(1)(a)(ii)** applies to the person (a **determination**).

28B Application for review

- (1) An application for a review under **section 28A** must be in writing and set out the following information: 5
- (a) the person's full name and contact details;
 - (b) in respect of each offence of which the person has been convicted in another jurisdiction,—
 - (i) a description of the offence; and 10
 - (ii) the jurisdiction in which the conviction was entered; and
 - (iii) the date on which the person was convicted of the offence (if known); and
 - (iv) an official record of the conviction from the other jurisdiction (if available); and 15
 - (v) any other information prescribed by regulations made under section 33; and
 - (vi) any other relevant information the applicant wishes to place before the chief executive to whom the application is made.
- (2) A chief executive who receives an application may, with the agreement of the chief executive of a different key agency, refer the application to that other chief executive for decision. 20
- (3) Before making a decision on an application, the chief executive must confirm whether the applicant has previously applied for a review under this section of any other determination made by a specified organisation and, if so, the outcome of that application. 25

28C Decision on review

- (1) After reviewing an application received under **section 28B**, the chief executive must—
- (a) confirm the determination; or 30
 - (b) reverse the determination.
- (2) As soon as is reasonably practicable after making a decision on the application, the chief executive must give the applicant written notice of their decision.
- (3) Subject to the outcome of any appeal made under **section 28D**, the chief executive's decision is binding on all specified organisations in relation to the applicant. 35

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Part 1 cl 6	
28D Appeal against decision to confirm determination	
(1) This section applies if the chief executive confirms a determination under section 28C(1)(a) .	
(2) The applicant may appeal to the High Court against the decision to confirm the determination.	5
6 Section 33 amended (Other regulations)	
After regulation 33(1)(d), insert:	
(da) prescribing the process, not inconsistent with this Part, for applying for a review of a determination referred to in section 28A(2) :	
7 Section 35 amended (Exemption for certain individuals)	10
Replace section 35(1) with:	
(1) The chief executive of a key agency may grant an exemption under this section to a person who has been convicted of—	
(a) a specified offence; or	
(b) an offence under the law of another jurisdiction that, if committed in New Zealand, would be a specified offence.	15
8 Section 36 amended (Application for exemption)	
In section 36(1)(b), replace “specified offence” with “offence referred to in section 35(1) ”.	
9 Schedule 1AA amended	20
In Schedule 1AA,—	
(a) insert the Part set out in Schedule 1 of this Act as the last Part; and	
(b) make all necessary consequential amendments.	
10 Schedule 2 amended	
(1) In Schedule 2, after clause 1, insert:	25
1A An offence against any of the following sections of the Prostitution Reform Act 2003 is a specified offence for the purpose of Part 3:	
(a) section 20 (assisting person under 18 years in providing commercial sexual services):	
(b) section 21 (receiving earnings from commercial sexual services provided by person under 18 years):	30
(c) section 22 (contracting for commercial sexual services from, or being client of, person under 18 years).	
(2) In Schedule 2, replace clause 2 with:	

2 An offence that is equivalent to an offence against any section referred to in clause 1 or **1A**, but that was committed against a provision of the Crimes Act 1961 or the Prostitution Reform Act 2003 (as the case may be) that has been repealed, is a specified offence.

(3) In Schedule 2, clauses 3, 4, and 4A, replace “clause 1 or 2” with “clause 1, **1A**, or 2”. 5

Part 2 Amendment to Crimes Act 1961

11 Principal Act

This Part amends the Crimes Act 1961. 10

12 Section 2 amended (Interpretation)

In section 2(1), definition of **vulnerable adult**, after “sickness,”, insert “disability,”.

Part 3 Amendments to Oranga Tamariki Act 1989 15

13 Principal Act

This Part amends the Oranga Tamariki Act 1989.

14 Section 2 amended (Interpretation)

In section 2(1), replace the definition of **youth justice residence** with:

youth justice residence means a residence established and maintained under section 364 for the purposes of, or that includes the purposes of, any 1 or more of the following: 20

- (a) remand of a person under this Act or any other legislation:
- (b) provision of custody under section 235 and orders made under section 283: 25
- (c) the detention of children or young persons in a residence under section 34A of the Corrections Act 2004.

15 Section 365 amended (Chief executive may place children and young persons in residences)

(1) In section 365(3), delete “(as defined in subsection (4))”. 30

(2) Repeal section 365(4).

16 Section 370 amended (Time limits on detention in secure care)

~~In section 370(1), delete “for a continuous period of more than 72 hours, or”.~~

In section 370(1),—

- (a) delete “for a continuous period of more than 72 hours, or”; and
- (b) after “(whether continuously or not)”, insert “commencing on the day on which the child or young person is first placed in secure care”.

- 17 Section 384A amended (Interpretation) 5**
- (1) In section 384A, replace “sections 384B to 384K” with “this section and **sections 384AA to 384KN**”.
 - (2) In section 384A, replace the definition of **harmful item** with:

harmful item,—

 - (a) in relation to a search carried out at a residence other than a youth justice residence, means any article, drug, or substance that a member of staff has reasonable cause to believe is likely, while a child or young person is in the residence, to harm or to be used to harm that child or young person or any other person: 10
 - (b) in relation to a search carried out at a youth justice residence, means any of the following: 15
 - (i) anything that could, while in the possession of a youth justice resident, be harmful to the youth justice resident or any other person:
 - (ii) any drug, alcohol, or other intoxicating substance:
 - (iii) tobacco: 20
 - (iv) any equipment used for smoking tobacco or any other substance:
 - (v) any vaping product or smokeless tobacco product within the meaning of section 2 of the Smokefree Environments and Regulated Products Act 1990:
 - (vi) any electronic communication device: 25
 - (vii) any thing that could be used for the purpose of facilitating a youth justice resident absconding from the youth justice residence:
 - (viii) any thing that may not lawfully be retained in the youth justice resident’s possession:
 - (ix) any offensive weapon within the meaning of section 202A of the Crimes Act 1961: 30
 - (x) any disabling substance within the meaning of section 202A of the Crimes Act 1961:
 - (xi) any article or thing declared to be a harmful item by regulations made under section 447 35
 - (3) In section 384A, replace the definition of **scanner search** with:

scanner search,—

- (a) in the case of a search of a child or young person placed in a residence other than a youth justice residence, means a search of the person—
 - (i) using an electronic device passed over the clothed body of the person being searched; and
 - (ii) that does not include any touching (except any accidental touching) of the person being searched:
- (b) in the case of a search of a youth justice resident or any other person carried out at a youth justice residence, means the search of the person and the person's clothing or possessions using an electronic device (whether or not the device uses imaging technology) designed to identify the presence of unauthorised items that are concealed—
 - (i) in the person's body:
 - (ii) beneath or within the person's clothing or possessions

- (4) In section 384A, insert in their appropriate alphabetical order:

approved search plan, in relation to a child or young person in a residence, ~~means a search plan approved for the child or young person under section 384AA—~~

- (a) means a search plan approved for the child or young person under **section 384AA**; and
- (b) includes any amendments made in accordance with **section 384AD**

authorised person, in relation to a search carried out on entry to a youth justice residence, means—

- (a) a member of staff whose work involves searching persons or vehicles entering the youth justice residence; or
- (b) a person—
 - (i) whose work involves searching persons or vehicles entering the youth justice residence; and
 - (ii) who carries out that work under a contract for services with the chief executive

drug means—

- (a) a controlled drug within the meaning of the Misuse of Drugs Act 1975:
- (b) a prescription medicine or restricted medicine within the meaning of the Medicines Act 1981:
- (c) a psychoactive substance within the meaning of section 9 of the Psychoactive Substances Act 2013

electronic communication device—

- (a) means an electronic communication device (other than a device used to assist with a disability) that is capable of any or all of the following actions:
 - (i) transmitting sound: 5
 - (ii) computing information:
 - (iii) functioning as a telephone:
 - (iv) communicating in any other way using any technology (including telecommunication, radiocommunication, Internet, and broadcasting technology); and 10
- (b) includes any part of an electronic communication device (for example, a SIM card), regardless of whether the part—
 - (i) is capable of any of the actions specified in **paragraph (a)**; and
 - (ii) is detachable and may be used in other electronic communication devices; and 15
- (c) includes any device that enables or facilitates the functioning of an electronic communication device (for example, a recharger or charging device); but
- (d) does not include—
 - (i) any telephone facility provided for the use of a youth justice resident; and 20
 - (ii) any telephone facility or telephone system (whether inside or outside a residence) that a youth justice resident is permitted to use by a person while under the person's control or supervision

imaging technology search—

- (a) means a scanner search that produces an image of the body or part of the body (whether external or internal) of the person being searched; and
- (b) includes (without limitation) a search using a body scanner

youth justice resident means a child or young person who has been placed in a youth justice residence under this Act or any other legislation

18 New sections 384AA to ~~384AC~~ 384AD inserted

After section 384A, insert:

384AA Approved search plan for child or young person placed in residence

- (1) The chief executive must approve a search plan developed for each child or young person placed in a residence that reflects the child's or young person's particular needs and preferences relating to how any search of the child or young person should be conducted and by whom. 35
- (2) Without limiting **subsection (1)**, the search plan must take into account—

- (a) the child's or young person's ~~preferred gender identity~~ sex and gender identity and the needs and preferences (if any) that the child or young person has relating to the sex or gender identity of the person conducting a search; and
- (b) any disability that the child or young person has; and 5
- (c) any trauma that the child or young person has previously experienced; and
- (d) any other matter that may negatively affect the way in which the child or young person experiences a search; and
- (e) the need to uphold the mana and dignity of the child or young person to the greatest extent possible; and 10
- (f) the interests of members of staff or authorised persons conducting the search.
- (3) When developing a search plan for a child or young person, the person developing the plan must— 15
 - (a) consult the child or young person and encourage the child or young person to express their needs and preferences as to how any search should be conducted; and
 - (b) record the child's or young person's needs and preferences (if any) in the search plan unless the chief executive considers on reasonable grounds that there is good reason not to do so. 20
- (4) If any needs and preferences that the child or young person has expressed under **subsection (3)(a)** are not recorded in the search plan, the person developing the search plan must record in the search plan the reasons for not including those needs and preferences. 25
- (5) The chief executive must approve the search plan developed for a child or young person in a residence under this section,—
 - (a) before the child or young person is placed in the residence; or
 - (b) if it is not possible to comply with **paragraph (a)**, as soon as is reasonably practicable after the child or young person has been placed in the residence. 30

384AB Duty to comply with search plan when carrying out search

- (1) A person carrying out a search of a child or young person placed in a residence must conduct the search in accordance with the approved search plan, unless in the circumstances the chief executive considers on reasonable grounds that— 35
 - (a) it is not reasonably practicable to do so; or
 - (b) there is another good reason not to do so.
- (2) If any search carried out on the child or young person does not comply with the approved search plan, the manager must record the circumstances and the rea-

son for non-compliance in the daily log kept in accordance with regulations made under section 447.

- (3) **Subsection (1)** applies subject to **section 384AC**.

384AC Duties if child or young person required to be searched before search plan approved

- (1) This section applies if a child or young person is—
- (a) placed in a residence; and
 - (b) required to be searched before a search plan has been approved for the child or young person.
- (2) The chief executive must ensure that—
- (a) before any search of the child or young person is conducted, the child or young person is consulted about their particular needs and preferences (if any) as to how the search should be conducted and by whom; and
 - (b) the search of the child or young person is conducted in accordance with the child's or young person's needs and preferences, unless in the circumstances the chief executive considers on reasonable grounds that—
 - (i) it is not reasonably practicable to do so; or
 - (ii) there is another good reason not to do so; and
 - (c) the search of the child or young person upholds the mana and dignity of the child or young person to the greatest extent possible.
- (3) If any search carried out on the child or young person does not comply with their needs and preferences as to how a search should be conducted and by whom, the manager must record the circumstances and the reason for non-compliance in the daily log kept in accordance with regulations made under section 447.

384AD Review and amendment of approved search plan

- (1) The chief executive must review and, as appropriate, amend an approved search plan on the reasonable request of the child or young person to whom the plan relates or as otherwise required by regulations made under section 447.
- (2) The review must be carried out in accordance with regulations made under section 447.

19 Section 384C amended (Child or young person may be searched to detect unauthorised items)

- (1) After section 384C(1), insert:
- (1A) A scanner search conducted in a youth justice residence under **subsection (1)(a)** may include an imaging technology search.
 - (1B) Authority conferred by **subsection (1)(a)** to conduct a scanner search includes the authority to search—

(a) any item carried by, or in the possession of, the person: (b) any outer clothing removed for the purposes of the search: (c) any head covering, gloves, footwear (including socks or stockings), belts, jewellery, or other accessories removed for the purposes of the search.	5
(1C) For the purpose of facilitating a scanner search of a child or young person under subsection (1)(a), a member of staff may require the child or young person being searched to— (a) remove any item of outer clothing (including, without limitation, any jacket, jumper, or sweatshirt) that needs to be removed in order to carry out the search, except where the person being searched has no other clothing, or only underclothing, under that outer clothing: (b) remove any head covering, gloves, footwear (including socks or stockings), belts, jewellery, or other accessories: (c) comply with any other procedure that needs to be undertaken to carry out the search.	10 15
(2) After section 384C(4), insert:	
(5) This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KA provides).	
20 Section 384D amended (Use of dogs for searching) After section 384D(3), insert:	20
(4) This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KI provides).	
21 Section 384E repealed (Child or young person may be strip searched) Repeal section 384E.	25
22 Section 384F amended (Explanation of purpose and consequences of inspections and searches) After section 384F(2), insert: (3) This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KE provides).	30
23 Section 384G amended (Restrictions on searches) (1) In section 384G(2), replace “must be carried out by a member of staff who is of the same sex as the child or young person being searched” with “must not be carried out in view of another child or young person in the residence”. (2) Repeal section 384G(3). (3) After section 384G(5), insert:	35

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	<i>Imaging technology searches</i>	
(6)	An image produced as a result of an imaging technology search must,—	
	(a) so far as practicable, avoid showing a clear image of the body beneath clothing; and	
	(b) obscure the genitals or make them not easily distinguishable if they are included in the image.	5
(7)	An image produced as a result of an imaging technology search must be disposed of within 24 hours.	
(8)	Despite anything to the contrary in any other legislation, a person who conducts an imaging technology search must not, without reasonable excuse, photograph or copy the image or provide the image to another person.	10
	<i>Disapplication</i>	
(9)	This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KF provides).	
24	Section 384H amended (Use of force in carrying out search)	15
	After section 384H(2), insert:	
(3)	This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KB provides).	
25	Section 384I amended (Recording of inspections and searches)	
	In section 384I, insert as subsection (2) :	20
(2)	This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KK provides).	
26	Section 384J amended (Child or young person may make complaint)	
	In section 384J, insert as subsection (2) :	
(2)	This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KM provides).	25
27	Section 384K amended (Power to seize articles, etc, found on inspection or search)	
	After section 384K(4), insert:	
(5)	This section does not apply to a search carried out on entry to a youth justice residence (for which section 384KN provides).	30
28	New sections 384KA to 384KN and cross-heading inserted	
	After section 384K, insert:	

Specific provisions for searches on entry to youth justice residence

384KA Searches of youth justice resident

- (1) An authorised person may, for the purpose of detecting any unauthorised item, conduct a scanner search of a youth justice resident each time the resident enters the youth justice residence. 5
- (2) A scanner search conducted under **subsection (1)** may include an imaging technology search.
- (3) If, after conducting a scanner search, the authorised person has reasonable grounds to believe that the youth justice resident has any unauthorised item in their possession, the authorised person may conduct a pat down search of the youth justice resident. 10

384KB Use of force in carrying out search of youth justice resident

- (1) ~~An~~ No authorised person may use physical force in carrying out a search authorised by **section 384KA** unless the person has reasonable grounds for believing that the use of force is necessary. 15
- (2) A person who uses force for the purpose referred to in **subsection (1)** must use no more than the minimum amount of force that is reasonably necessary in the circumstances.

384KC Search of other persons entering youth justice residence

- (1) This section applies to a person other than a youth justice resident who wishes to enter a youth justice residence, including (without limitation)— 20
 - (a) an authorised person;
 - (b) a visitor.
- (2) A person to whom this section applies may, before being admitted to the youth justice residence, be required to undergo a scanner search conducted by an authorised person for the purpose of detecting any unauthorised item each time the person wishes to enter the residence. 25
- (3) A scanner search conducted under **subsection (2)** may include an imaging technology search.
- (4) ~~Subsections (4) and (5) apply~~ **Subsection (5) applies** if an authorised person has reasonable grounds to suspect that a person to whom this section applies has any unauthorised item in their possession. 30
- (5) The authorised person may, with the person's consent, conduct a pat down search of the person.
- (6) However, before conducting a pat down search under ~~subsection (4) (5)~~, the authorised person must give the person the opportunity to hand over any unauthorised item. 35

(6A) A person who hands over an unauthorised item under this section must not be denied entry to the youth justice residence merely because the person has handed over the item.

(7) To avoid doubt, the search of an authorised person under this section must be conducted by another authorised person.

Compare: 2004 No 50 s 99(1)–(3)

384KD Consequences of refusing search under section 384KC

(1) A person who refuses to submit to a scanner search or a pat down search under **section 384KC** before being admitted to a youth justice residence may be refused admission to the residence.

(2) A person may be refused admission to a youth justice residence if the person refuses to remove an item of outer clothing for the purpose of a scanner search or a pat down search.

Compare: 2004 No 50 s 99

384KE Duty to advise before conducting search on entry to youth justice residence

Before conducting a search of a youth justice resident under **section 384KA** or any other person under **section 384KC**, an authorised person must—

(a) advise the person to be searched—

- that the person and the person’s property (if any) may be searched to detect unauthorised items; and
- what items are unauthorised items; and
- about the consequences of finding an unauthorised item; and
- in the case of a person other than a youth justice resident, that the person may refuse or withdraw consent to a search at any time, but that the refusal or withdrawal of consent may result in the person being refused entry into the residence; and

(b) invite the person to be searched to hand over any unauthorised items before the search is conducted.

384KF Restrictions on searches on entry to youth justice residence

Scanner and pat down searches

(1) For the purpose of facilitating a scanner search of a youth justice resident under **section 384KA(1)** or any other person under **section 384KC(2)**, an authorised person may require the youth justice resident or other person being searched to—

- remove any item of outer clothing (including, without limitation, any jacket, jumper, or sweatshirt) that needs to be removed in order to carry

	out the search, except where the person being searched has no other clothing, or only underclothing, under that outer clothing:	
	(b) remove any head covering, gloves, footwear (including socks or stockings), belts, jewellery, or other accessories:	
	(c) comply with any other procedure that needs to be undertaken to carry out the search.	5
(2)	A pat down search of a youth justice resident must not be carried out in view of any other youth justice resident.	
(3)	A pat down search must not be conducted unless one of the following persons is also present:	10
	(a) in the case of a search of a youth justice resident,—	
	(i) a parent or guardian (other than the chief executive) of the child or young person or a person who would otherwise have the care of the child or young person:	
	(ii) another authorised person:	15
	(iii) a constable:	
	(b) in the case of a search of any other person, a person prescribed in regulations made under section 447.	
(3A)	<u>A person (other than a youth justice resident) may request that a pat down search be carried out only by an authorised person of the sex or gender identity chosen by the person.</u>	20
(3B)	<u>A request under subsection (3A) must be complied with so far as is reasonably practicable.</u>	
(4)	An authorised person who carries out a scanner search or a pat down search must conduct the search with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.	25
	<i>Imaging technology searches</i>	
(5)	An image produced as a result of an imaging technology search must,—	
	(a) so far as practicable, avoid showing a clear image of the body beneath clothing; and	30
	(b) obscure the genitals or make them not easily distinguishable if they are included in the image.	
(6)	An image produced as a result of an imaging technology search must be disposed of within 24 hours.	35
(7)	Despite anything to the contrary in any other legislation, a person who conducts an imaging technology search must not, without reasonable excuse, photograph or copy the image or provide the image to another person.	

Internal examinations

- (8) Nothing in **section 384KA** or **384KC** authorises or permits the internal examination of any body orifice of any person by an authorised person.

Compare: 2004 No 50 ss 92C(1), (2), (3), 93

384KG Search of vehicles entering youth justice residence

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- (1) Before a vehicle is brought within the secure perimeter of a youth justice residence, the vehicle may be searched by an authorised person for the purposes of detecting any unauthorised item.

- (2) For the purposes of **subsection (1)**, an authorised person who is wearing any badge or article that identifies them as a person who may conduct a search of the vehicle may, by direction given to the driver or other person in the vehicle, do 1 or more of the following:

10

(a) direct, if necessary, that the vehicle be stopped:

(b) direct that the vehicle be kept stopped until the search is completed:

(c) require that the authorised person be given access to any part of the vehicle:

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(d) require any or all of the passengers (including the driver) to get out of the vehicle.

- (3) If a person to whom a direction is given under **subsection (2)** refuses consent for the vehicle to be searched, the vehicle may be denied entry inside the secure perimeter of the youth justice residence.

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Compare: 2004 No 50 s 101

384KH Duty to advise before conducting search of vehicle

Before conducting a search of a vehicle under **section 384KG**, the authorised person must—

25

- (a) advise the driver or other person in the vehicle—

(i) that the driver or other person and the vehicle may be searched to detect unauthorised items; and

(ii) what items are unauthorised items; and

(iii) about the consequences of finding an unauthorised item; and

30

(iv) that the driver or other person may refuse or withdraw consent to a search at any time, but that the refusal or withdrawal of consent may result in the vehicle being denied entry inside the secure perimeter of the youth justice residence; and

- (b) invite the driver or other person to hand over any unauthorised items before a search of the vehicle is conducted.

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384KI Use of dogs for searching on entry to youth justice residence

- (1) In exercising a power of search conferred by **section 384KA, 384KC, or 384KG**, an authorised person may have with them, and use for the purposes of searching, any dog trained for that purpose.
- (2) A dog must not be used unless it is under the control of another person (being a Police employee, a Customs officer, a member of the Armed Forces, an employee of the Department of Corrections, or another suitably qualified person engaged by the chief executive) who may accompany the authorised person for the purposes of the search. 5
- (3) An authorised person who uses a dog for the purposes of a search under **section 384KA, 384KC, or 384KG** must conduct the search with decency and sensitivity and in a manner that— 10
 - (a) affords to the person being searched the greatest degree of dignity consistent with the purpose of the search; and
 - (b) prevents the dog coming into physical contact with the person during the search. 15

384KJ Search of property

- (1) Authority conferred by **section 384KA or 384KC** to conduct a scanner search includes the authority to search—
 - (a) any item carried by, or in the possession of, the person: 20
 - (b) any outer clothing removed for the purposes of the search:
 - (c) any head covering, gloves, footwear (including socks or stockings), belts, jewellery, or other accessories removed for the purposes of the search.
- (2) Authority conferred by **section 384KA or 384KC** to conduct a pat down search of a person includes the authority to search— 25
 - (a) any item carried by, or in the possession of, the person:
 - (b) any outer clothing removed, raised, lowered, or opened for the purposes of the search:
 - (c) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search. 30
- (3) Authority conferred by **section 384KG** to conduct a search of a vehicle includes the authority to search any item in that vehicle.
- (4) Authority conferred by this section to search any item includes the authority to use any force that is reasonable in the circumstances for the purpose of breaking open that item. 35
- (5) Authority conferred by this section to search any item or vehicle includes the authority to use an aid or aids such as a chemical substance or imaging equip-

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	ment or some other mechanical, electrical, or electronic device, or other similar aid. Compare: 2004 No 50 s 96	
	384KK Recording searches of youth justice residents	
	The manager must ensure that a record is made in the daily log kept in accordance with regulations made under section 447 of—	5
	(a) details of any pat down search carried out on a youth justice resident under section 384KA(3), including the grounds on which the pat down search was conducted; and	
	(b) the details of any physical force used for the purpose of carrying out a search on a youth justice resident and of the circumstances giving rise to the use of force.	10
	384KL Recording pat down searches of other persons entering youth justice residence	
	The manager must ensure that a record is made in accordance with the regulations made under section 447 of every pat down search carried out under section 384KC(4) on any other person entering a youth justice residence, including the grounds for conducting the pat down search.	15
	384KM Person may make complaint about search on entry to youth justice residence	20
	A youth justice resident who has been searched under section 384KA or a person who has been searched under section 384KC or whose vehicle has been searched under section 384KG may make a complaint about that search in accordance with regulations made under section 447.	
	384KN Power to seize articles, etc, found on search	25
	(1) Any unauthorised item found during a search conducted under section 384KA, 384KC, or 384KG may be seized in accordance with regulations made under section 447 by the authorised person conducting the search.	
	(2) Any unauthorised item seized must be dealt with in accordance with regulations made under section 447.	30
	(3) If an unauthorised item is seized from a youth justice resident, the manager must ensure that a record is made in the daily log of—	
	(a) the details of the seizure of the item; and	
	(b) the action taken in respect of the item seized.	
	29 Section 447 amended (Regulations)	35
	(1) After section 447(1)(c), insert:	

(caaa)	declaring any article or thing to be a harmful item for the purposes of this Act:	
(caab)	regulating the development and implementation of search plans for the purposes of sections 384AA to 384AC , including (without limitation) prescribing—	5
(i)	the information that must be contained in a search plan approved for a child or young person in a residence:	
(ii)	processes or procedures for carrying out a search of a child or young person in a residence:	
(iii)	the circumstances that constitute or do not constitute a good reason to depart from a search plan approved for a child or young person in a residence:	10
(iv)	<u>processes or procedures relating to the review or amendment of a search plan approved for a child or young person in a residence:</u>	
(caac)	regulating searches conducted on entry to a youth justice residence under sections 384KA to 384KN , including (without limitation),—	15
(i)	prescribing conditions for being appointed as an authorised person:	
(ii)	prescribing persons who can or cannot be present during a pat down search of a person:	20
(iii)	regulating imaging technology searches:	
(iv)	providing for the seizure, disposal, safe keeping, or return of any unauthorised items found during a search:	
(v)	prescribing requirements for the disposal of any seized unauthorised item found during a search:	25
(vi)	prescribing conditions on the disposal of any seized article, drug, or substance:	
(vii)	prescribing procedures by which a person may make a complaint in relation to a search, and how the complaint is to be dealt with:	
(viii)	prescribing recordkeeping requirements relating to searches conducted on entry to a youth justice residence:	30
(2)	<u>After section 447(1), insert:</u>	
(1A)	<u>Regulations under subsection (1)(caaa) may only be made on the recommendation of the Minister.</u>	
(1B)	<u>Before making a recommendation under subsection (1A), the Minister must—</u>	35
(a)	<u>consult the Minister of Justice; and</u>	

- (b) be satisfied on reasonable grounds that the nature or extent of the harm that may be caused by the article or thing justify the article or thing being declared as a harmful item for the purposes of this Act.

30 Schedule 1AA amended

In Schedule 1AA,—

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- (a) insert the Part set out in **Schedule 2** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Consequential amendments

31 Consequential amendments relating to repeal of strip searches

- (1) Amend the principal Act as set out in **Part 1 of Schedule 3**. 10
- (2) Amend the Oranga Tamariki (Residential Care) Regulations 1996 as set out in **Part 2 of Schedule 3**.

Part 4

Amendments to Public Records Act 2005

32 Principal Act

15

This Part amends the Public Records Act 2005.

33 Section 29 amended (Inspection powers)

Replace section 29(2)(a) with:

- (a) permits the Chief Archivist to view the systems and processes of a public office or a local authority for maintaining its public records or local authority records and local authority archives (as the case may be), including its systems, processes, and conditions for— 20
- (i) creating and maintaining the records or archives; and
- (ii) storing the records or archives; but

33A Section 32 amended (Annual report on recordkeeping)

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Replace section 32(1) with:

- (1) The Chief Archivist must make an annual report to the Minister on the state of recordkeeping within public offices, including (without limitation) a report on—
- (a) any action plan required to be prepared by a public office under **section 35A**; and 30
- (b) any performance notice issued to a public office under **section 35B**.

34 Section 33 amended (Independent audits of public offices)

- (1) In section 33(3), replace “of not less than 5 years” with “as directed by the Chief Archivist”.
- (2) After section 33(3), insert:
- (4) An audit under this section may be carried out by an employee of the department or another person engaged by the Chief Archivist.

5

35 New sections 35A and 35B inserted

After section 35, insert:

35A Action plans

- (1) The Chief Archivist may, by written notice to a public office, require the public office to prepare and carry out an action plan relating to any of its recordkeeping practices.
- (2) A notice given under **subsection (1)** must specify—
 - (a) the recordkeeping practice (or practices) that the action plan must address; and
 - (b) the outcomes sought; and
 - (c) the time within which a draft action plan must be prepared.
- (3) A public office that receives a notice under **subsection (1)** must comply with it by preparing a draft action plan within the time specified in the notice and submitting it to the Chief Archivist for approval.
- (4) When the Chief Archivist has approved an action plan, the public office must—
 - (a) implement it in accordance with its terms, unless or until the Chief Archivist directs otherwise; and
 - (b) make the plan available on an internet site maintained by or on behalf of the public office.

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Compare: 2020 No 38 s 174

35B Performance notice

- (1) The Chief Archivist may, by written notice to a public office, issue a performance notice requiring the public office to carry out a specified action relating to its recordkeeping practices by a specified date.
- (2) The Chief Archivist may also require, in the notice, that the public office provide the Chief Archivist with a report or reports (for example, a progress report and a final report) on the action taken—
 - (a) at a specified time (or times); or
 - (b) at specified intervals; or
 - (c) both.

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- (3) A public office that receives a notice under **subsection (1)** must—
- (a) take the action by the date specified in the notice; and
 - (b) provide a report (or reports) to the Chief Archivist at the time, or intervals, specified in the notice.

Compare: 2020 No 38 s 177

Schedule 1

New Part 2 inserted into Schedule 1AA of Children’s Act 2014

s 9

Part 2

**Provisions relating to Responding to Abuse in Care Legislation
Amendment Act 2024**

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3 Interpretation

In this Part,—

amendment Act means the Responding to Abuse in Care Legislation Amend-
ment Act **2024**

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commencement means the date on which **Part 1** of the amendment Act comes
into force.

4 Application of section 28(3)

A specified organisation must not continue to employ or engage a person as a
core worker under **section 28(3)** if,—

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- (a) until the date that is 6 months after commencement, section 28(1) as it
read immediately before commencement applies to the person:
- (b) on and after the date that is 6 months after commencement, **section**
28(1) as replaced by the amendment Act applies to the person.

Schedule 2

New Part 6 inserted into Schedule 1AA of Oranga Tamariki Act 1989

	Part 6 Provisions relating to Responding to Abuse in Care Legislation Amendment Act 2024	5
25	Interpretation In this Part, amendment Act means the Responding to Abuse in Care Legislation Amendment Act 2024.	10
26	Child or young person placed in secure care for period ending after commencement date (1) This clause applies in relation to the placement of a child or young person in a residence in secure care under section 367 for a period specified in section 370 that— (a) began before the commencement date; and (b) ends after the commencement date. (2) Despite section 16 of the amendment Act, section 370 (as it read immediately before the commencement date) continues to apply in relation to the child’s or young person’s placement in secure care. (3) In this clause, commencement date means the date on which section 16 of the amendment Act comes into force.	15
27	Existing complaints relating to strip searches (1) This clause applies in relation to a complaint under section 384J made by a child or young person who has been strip searched under section 384E that— (a) was made before the commencement date; but (b) was not resolved before the commencement date. (2) On and after the commencement date, the complaint must continue to be dealt with in accordance with the grievance procedure operative for the residence under regulation 15 of the Oranga Tamariki (Residential Care) Regulations 1996 as if the amendment Act had not been enacted. (3) In this clause, commencement date means the date on which section 21 of the amendment Act come into force.	25
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- 28 Personal effects or other article seized during strip search of child or young person conducted before commencement**
- (1) This clause applies to any personal effect or other article belonging to, or in the possession of, any child or young person in a residence—
- (a) that was seized by a member of staff during the strip search of the child or young person under section 384E that was conducted before the commencement date; and 5
- (b) is located at the residence at which the strip search was conducted on or after the commencement date.
- (2) The personal effect or article must continue to be dealt with in accordance with regulation 45 of the Oranga Tamariki (Residential Care) Regulations 1996 as if the amendment Act had not been enacted. 10
- (3) In this clause, **commencement date** means the date on which **section 21** of the amendment Act comes into force.

Schedule 3
Consequential amendments relating to repeal of section 384E of
Oranga Tamariki Act 1989

s 31

Part 1 5
Amendments to Oranga Tamariki Act 1989

Section 384A

Repeal the definition of **strip search**.

Section 384F

In section 384F(1), delete “or section 384E”. 10
In section 384F(1)(a)(ii), replace “residence; or” with “residence; and”.
Repeal section 384F(1)(a)(iii).

Section 384G

In section 384G(1), delete “or section 384E”.
In section 384G(2), (3), (4), and (5), delete “or a strip search”. 15

Section 384H

In section 384H(1), delete “or section 384E”.

Section 384I

In section 384I(a), replace “any of sections 384B, 384C, and 384E,” with “sections 384B and 384C,”. 20
In section 384I(b), delete “or section 384E”.

Section 384J

In section 384J, delete “or section 384E”.

Section 384K

Repeal section 384K(2)(c). 25

Section 447

In section 447(ca), delete “and 384E”.

Part 2
Amendments to Oranga Tamariki (Residential Care) Regulations
1996

Regulation 7

In regulation 7(1), replace “Subject to section 384E of the Act, no” with “No”. 5

Regulation 22

In regulation 22(1)(e), delete “or section 384E”.

Regulation 45

In regulation 45(1), replace “sections 384C or 384E” with “section 384C”.

Legislative history

12 November 2024

Introduction (Bill 97–1), first reading and referral to Social
Services and Community Committee