

# **Oranga Tamariki Legislation Bill**

Government Bill

As reported from the Social Services and Community Committee

## **Commentary**

### **Recommendation**

The Social Services and Community Committee has examined the Oranga Tamariki Legislation Bill and recommends that it be passed with the amendments shown.

### **About the bill as introduced**

Under the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, the youth justice jurisdiction was expanded to include 17-year-olds. The 2017 Act amended the Children, Young Persons, and Their Families Act 1989 and these changes will take effect on 1 July 2019.

The Oranga Tamariki Legislation Bill is an omnibus bill that proposes consequential and minor amendments and transitional provisions to 11 Acts and a related set of Regulations. It seeks to ensure that the benefits of including 17-year-olds in the youth justice jurisdiction are fully achieved. The bill would:

- update the definition of “young person” in several Acts to align with the definition in the Oranga Tamariki Act 1989
- clarify the procedures and processes that would be applied to 17-year-olds, particularly in relation to bail, and taking and retaining bodily samples
- insert transitional provisions into several Acts to clarify whether the adult or youth jurisdiction should apply to a 17-year-old, depending on the date that the proceedings commenced
- modify a provision in the 2017 Act containing legislative errors that gives the Court and lawyers representing children unintended powers in relation to urgent interim orders
- remove or correct minor drafting errors in the 2017 Act.

## **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

## **Amendments to the Oranga Tamariki Act 1989**

### **Managing related charges for 17-year-olds**

The 2017 Act differentiates between two types of offences for 17-year-olds—Schedule 1A (specified serious offences) and non-Schedule 1A (less serious offences). Schedule 1A lists offences that have a maximum penalty of 14 years' imprisonment or more. From 1 July 2019, 17-year-olds charged with a Schedule 1A offence will be transferred from the Youth Court to the District or High Court at their first appearance.

The Oranga Tamariki Act will not consistently allow related charges for a 17-year-old to be heard with the Schedule 1A charge in the adult courts. This means there is a risk that two separate processes will be required to deal with alleged offending that occurred at the same time, as a series of related incidents, or against the same person.

We do not believe that it is in the best interests of the young person, complainants, or witnesses to undergo separate court proceedings for the same incident or series of incidents. Hearing charges separately could also substantially affect court time and resources.

Therefore, we recommend inserting clause 4G, new sections 276AA, 276AB, and 276AC, to include provisions for 17-year-olds who have been charged with Schedule 1A and non-Schedule 1A offences.

Our proposed amendment would require the Youth Court to transfer non-Schedule 1A charges to be heard together with the Schedule 1A charge, if the Youth Court determines they are related. The adult court would retain the ability to sever the charges, which would allow the non-Schedule 1A charges to be transferred back down to the Youth Court in appropriate cases.

Our new section 276AA(6) would define what a related charge is.

### **Suspending family group conferences**

When Police have sufficient evidence to charge, an “intention to charge” family group conference is required under the Oranga Tamariki Act before charges are filed in the Youth Court. The Act also specifies that family group conferences are required when a young person is arrested and brought before the Youth Court and the young person does not deny the charge. The requirements for family group conferences will not apply in respect of Schedule 1A charges.

When a prosecutor proposes, or intends to propose, that non-Schedule 1A charges are related to Schedule 1A charges, we consider that it is not in the best interests of a 17-year-old or complainants to hold the family group conference unless and until the Youth Court determines that the charges are not related. This is because, if they are

determined related, the charges will be addressed together in the adult court, regardless of the outcomes of the conference.

Therefore, we recommend inserting clause 4B, inserting new section 247A, to specify when family group conferences would have to be suspended or would not be required.

When an enforcement officer intended to file a non-Schedule 1A charge and a prosecutor intended to notify the Youth Court that the charge was related to a Schedule 1A charge, a family group conference would not be required before the non-Schedule 1A charge was filed. If the Youth Court determined that the non-Schedule 1A charge was related to the Schedule 1A charge, the non-Schedule 1A charge would be transferred to the adult court. If the non-Schedule 1A charge was not determined to be related, a family group conference could be convened for that charge.

If a family group conference has started and the prosecutor notifies the Youth Court of a proposal under section 276AA, the conference would be suspended until the Youth Court made a determination. The conference would be discontinued if the Youth Court determined that the non-Schedule 1A charge was a related charge.

### **Joint charges with another person**

The Oranga Tamariki Act currently allows children and young people to be tried jointly with adults. The process ensures that children and young people are dealt with in the Youth Court wherever possible. The following circumstances apply:

- Usually, a trial is heard in the District Court or High Court with all other co-defendants when any co-defendant chooses trial by jury. The exception is for a child co-defendant, who is only tried in the District Court or High Court if they also elect trial by jury.
- The proceedings remain in the Youth Court when none of the co-defendants choose trial by jury. This includes adults who have been charged with an offence equivalent to an offence listed in Schedule 1A. If the Youth Court finds the adult guilty of the offence, the judge sentences the adult under the provisions that would have applied in the adult court.

The application of these rules is not clear in the case of a 17-year-old co-defendant charged with a Schedule 1A offence. We were advised that, without amendment, inconsistencies may arise in respect of where the trial should be held. This is because the 17-year-old may be considered a young person for the purposes of the existing rules, and because the Youth Court's jurisdiction does not include Schedule 1A charges against 17-year-olds.

We recommend inserting clause 4F, amending section 275. This would ensure that where a 17-year-old charged with a Schedule 1A offence is jointly charged with a young person or child, the 17-year-old is not transferred until and unless:

- either the 17-year-old or a young person elects a jury trial
- both the 17-year-old and the child elect a jury trial

- the 17-year-old elects a jury trial and the child does not elect, in which case the child would remain in the Youth Court and the 17-year-old would be transferred to the adult court.

We recommend inserting clause 4I, amending section 277. This would enable a joint trial in the Youth Court of a 17-year-old charged with a Schedule 1A offence jointly charged with a young person or child. It would also authorise the Youth Court to sentence a 17-year-old who pleads, or is found, guilty of a Schedule 1A offence in the Youth Court in a joint trial as if they pleaded, or were found, guilty of the offence in the adult jurisdiction. The amendment mirrors the provisions for sentencing adults in joint trials with children and young people.

### **Mixed pleas for non-Schedule 1A and Schedule 1A offences**

We note that there may be occasions when a 17-year-old pleads guilty to the Schedule 1A offence but not guilty to a related non-Schedule 1A offence. We recommend inserting clause 4G, new section 276AC, to provide that there only be one set of proceedings for the same incident or series of incidents.

Our new section 276AC would ensure that, when a 17-year-old pleads guilty to a Schedule 1A charge, any related charge would still be dealt with in the adult court. This would enable sentencing for all admitted or proven offences to occur together. However, this provision would not apply if a court determined that it was in the interests of justice for the 17-year-old to be dealt with separately in the Youth Court for the non-Schedule 1A charges.

### **Transferring proven non-Schedule 1A offences**

The 2017 Act inserted transfer provisions that enabled proceedings to be transferred back to the Youth Court if the reason for the transfer no longer applied. This could apply, for example, where a Schedule 1A charge was downgraded or otherwise amended to a non-Schedule 1A charge. It is not clear whether a transfer is available in the situation where a 17-year-old is found not guilty on a Schedule 1A charge, or that charge otherwise falls over, but related non-Schedule 1A charges are still live or subject to a guilty plea or verdict.

We consider that the transfer provisions should be clearer about the stage in proceedings that they can apply. Therefore, we recommend inserting clause 4H, amending section 276A. This would ensure that where only non-Schedule 1A charges have a guilty plea or verdict, they could be transferred back to the Youth Court for disposition unless it is in the interests of justice for them to remain in the adult court for sentencing.

### **Transitional provisions**

Under Schedules 1, 2, 3, 5, and 7 of the bill as introduced, 17-year-olds would come under the adult or youth jurisdiction, depending on whether the criminal proceedings begin before or after 1 July 2019. We were advised that there could be an estimated

1,000 proceedings involving 17-year-olds in the District Court or High Court on 1 July 2019, ranging from minor to serious offending.

The 2017 Act provides that on 1 July 2019, 17-year-olds will be treated as young people under the Oranga Tamariki Act. However, we note that some 17-year-olds with proceedings under way in the District Court or High Court could have further charges that are related filed against them on or after 1 July 2019. This means that they could have to go through two sets of proceedings for charges related to the same incident or series of incidents—in the adult court for charges filed before 1 July 2019, and in the Youth Court for charges filed after 1 July 2019.

Charges related to the same incident, or series of incidents, should be joined to those already under way in an adult court. Therefore, we recommend inserting clause 20A in Schedule 1 to allow related charges against a 17-year-old filed on or after 1 July 2019 to be joined to proceedings for the 17-year-old already under way in an adult court before 1 July 2019. The new sections 276AA to 276AC dealing with related charges, new section 247A relating to suspending or not requiring family group conferences, and the amended section 276A relating to transfer back to the Youth Court would apply.

#### **Applying the youth justice jurisdiction to certain 18-year-olds**

As introduced, Schedule 1 of the bill would insert new Part 4 into Schedule 1AA of the Oranga Tamariki Act 1989. Proposed new clause 20 contains transitional provisions for proceedings started on or after 1 July 2019 for offences committed before that date.

Clause 20(2) would apply to any 17-year-old in a proceeding that starts on or after the commencement date for an offence committed before the commencement date when that person was aged 17.

However, some people who were 17 years old when they offended (before 1 July 2019) may have turned 18 before being charged (after 1 July 2019). Section 2(2) of the Oranga Tamariki Act states that a person who offends when they are a young person is considered to be the age they were when they offended. This interpretation is used for determining the correct jurisdiction and proceedings taken. Section 2(2) requires that the person was a young person when they offended, which a 17-year-old was not if they offended before 1 July 2019.

Therefore, we recommend amending clause 20 in Schedule 1, new Part 4A. Our amendment would ensure that an 18-year-old who offended as a 17-year-old before 1 July 2019 could have proceedings in the Youth Court on or after 1 July for that offending.

## Appendix

### Committee process

The Oranga Tamariki Legislation Bill was referred to the committee on 2 April 2019. The closing date for submissions was 24 April 2019. We received and considered submissions from 13 interested groups and individuals.

We received advice from Oranga Tamariki—Ministry for Children, the Ministry of Justice, and the New Zealand Police.

### Committee membership

Gareth Hughes (Chairperson)

Darroch Ball

Anahila Kanongata'a-Suisuiki

Agnes Loheni

Hon Alfred Ngaro

Greg O'Connor

Maureen Pugh

Priyanca Radhakrishnan

Hon Louise Upston

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~





*Hon Tracey Martin*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Oranga Tamariki Legislation Act **2019**.

**2 Commencement**

~~This Act comes into force on **1 July 2019**.~~

- (1) Sections **3A**, **4A** to **4J**, and **36A** come into force immediately after the commencement, on 1 July 2019, of sections 113(6), 116, and 144 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.
- (2) The rest of this Act comes into force on 1 July 2019.

**Part 1**

**Amendments to Oranga Tamariki Act 1989**

**3 Amendments to Oranga Tamariki Act 1989**

This Part amends the Oranga Tamariki Act 1989.

**3A Section 2 amended (Interpretation)**

In section 2(1), insert in its appropriate alphabetical order:

**related charge** means a charge for an offence not specified in Schedule 1A that the Youth Court has determined under **section 276AA(4)** to be related to a charge for an offence specified in Schedule 1A

**4 New section 214B inserted (Arrest of person aged 17 years released on bail by District Court or High Court)**

After section 214A, insert:

**214B Arrest of person aged 17 years released on bail by District Court or High Court**

- (1) This section applies to a person aged 17 years if—
- (a) the person is a defendant who—
    - (i) has been charged with, or convicted of, any offence (except a drug dealing offence) in the District Court or the High Court; and 5
    - (ii) has been released on bail for the offence, or the alleged offence, by a court, a Registrar, or a Police employee; and
  - (b) any of the circumstances set out in section 35(1) of the Bail Act 2000 apply to the person so as to empower the arrest without warrant of the person. 10
- (2) This section also applies to a person aged 17 years if—
- (a) the person is a defendant who—
    - (i) has been charged with, or convicted of, a drug dealing offence in the District Court or the High Court; and 15
    - (ii) has been released on bail for the offence, or the alleged offence, by a District Court Judge or a High Court Judge; and
  - (b) any of the circumstances set out in section 36(1) of the Bail Act 2000 apply to the person so as to empower the arrest without warrant of the person. 20
- (3) Nothing in section 214 or 214A applies to the arrest of the person aged 17 years without warrant under section 35(1) or 36(1) of the Bail Act 2000.
- (4) For the purposes of this section, unless the context otherwise requires,—
- court** has the same meaning as in section 3 of the Bail Act 2000
- drug dealing offence** has the same meaning as in section 3 of the Bail Act 2000 25
- Registrar** has the same meaning as in section 3 of the Bail Act 2000.

**4A Section 247 amended (Youth justice co-ordinator to convene family group conference)**

In section 247(c), replace “section 238(1)(d) or (e)” with “section 238(1)(d), (e), or (f)”. 30

**4B New section 247A inserted (Family group conference either not required or suspended for mixed charges including Schedule 1A offence)**

After section 247, insert:

**247A Family group conference either not required or suspended for mixed charges including Schedule 1A offence** 35

- (1) Section 245 does not apply if—

- (a) a young person aged 17 years is charged with an offence specified in Schedule 1A; and
- (b) an enforcement officer intends to commence criminal proceedings against the person for an offence not specified in Schedule 1A; and
- (c) the prosecutor intends to notify the Youth Court of a proposal under **section 276AA**. 5
- (2) If the prosecutor notifies the Youth Court of a proposal under **section 276AA**, section 246(b) does not apply unless and until the Youth Court—
- (a) determines under **section 276AA(4)** that the charge is not a related charge; or 10
- (b) orders that the charge remain in the Youth Court under section **276AC(2)**.
- (3) **Subsection (4)** applies if—
- (a) a family group conference has been convened under section 247(b), (c), or (d) in respect of an offence not specified in Schedule 1A that is alleged to have been committed by a young person aged 17 years; and 15
- (b) either—
- (i) an enforcement officer intends to commence criminal proceedings for the offence; or
- (ii) the young person is charged with the offence; and 20
- (c) the young person is charged with an offence specified in Schedule 1A; and
- (d) the prosecutor notifies, or intends to notify (in the circumstances of paragraph (b)(i)), the Youth Court of a proposal under **section 276AA**.
- (4) If this subsection applies, the family group conference must be— 25
- (a) suspended unless and until the Youth Court—
- (i) determines under **section 276AA(4)** that the charge is not a related charge; or
- (ii) orders that the charge remain in the Youth Court under section **276AC(2)**; and 30
- (b) discontinued if the Youth Court transfers the related charge to the District Court or the High Court under **section 276AB(1)**.

#### **4C Section 249 (Time limits for convening of family group conferences)**

- (1) In section 249(3), replace “section 238(1)(d) or (e)” with “section 238(1)(d), (e), or (f)”. 35
- (2) In section 249(4)(a), replace “section 238(1)(d) or (e)” with “section 238(1)(d), (e), or (f)”.
- (3) After section 249(6), insert:

(7) Subsection (6) is subject to **section 247A(4)**.

**4D Section 272 amended (Jurisdiction of Youth Court and children’s liability to be prosecuted for criminal offences)**

(1) In section 272(4A)(a), replace “sections 275 and 276A” with “sections 275, **276AA to 276AC**, and 276A”.

5

(2) After section 272(5), insert:

(6) Subsection (3)(baa) is subject to section 277.

**4E Section 273 amended (Manner of dealing with offences (other than murder or manslaughter))**

In section 273(2)(c), replace “section 277” with “**section 276AB(1)** or 277”.

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**4F Section 275 amended (Manner of dealing with offence of murder or manslaughter, or Schedule 1A offence, or where jury trial to be held)**

After section 275(2), insert:

(2A) However, if a young person aged 17 years charged with an offence specified in Schedule 1A is jointly charged with a child or young person (other than a young person aged 17 years charged with an offence specified in Schedule 1A), the proceeding must not be transferred to the District Court or the High Court unless—

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(a) one or more defendants elects jury trial and the co-defendants are to be tried together, in which case the proceeding must be transferred only after an adjournment for trial callover in accordance with subsection (2)(a); or

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(b) the defendants are to be tried separately, in which case the proceeding against the young person aged 17 years charged with an offence specified in Schedule 1A must be transferred immediately following the determination that the defendants are to be tried separately, but after that young person’s first appearance, in accordance with subsection (2)(aa) or (ab); or

25

(c) one or more co-defendants are charged with murder or manslaughter, in which case subsection (2)(b) applies.

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**4G New sections 276AA to 276AC inserted**

Before section 276A, insert:

**276AA Youth Court determination whether charge related to charge for Schedule 1A offence**

(1) This section applies to a young person aged 17 years who is charged with—

35

(a) an offence specified in Schedule 1A; and



- (b) an offence not specified in Schedule 1A (other than murder or manslaughter).
- (2) The prosecutor may notify the Youth Court of a proposal that the charge for the offence not specified in Schedule 1A is related to the charge for the offence specified in Schedule 1A. 5
- (3) If the prosecutor intends to notify a proposal, the prosecutor must do so as soon as practicable after the latter charge is filed.
- (4) If the Youth Court receives a proposal under **subsection (2)**, the court must determine the matter.
- (5) In making a determination, the court may take into consideration— 10
- (a) any agreement of the parties:
- (b) written or oral submissions of the parties.
- (6) For the purpose of this section,—
- (a) a charge (B) is related to another charge (A) where the offending for which charge B is filed arises from the same incident or series of incidents as the offending for which charge A is filed; and 15
- (b) a series of incidents is determined by—
- (i) the time at which they occurred:
- (ii) the overall nature of the alleged offending:
- (iii) any other relationship between the alleged offending that the court considers relevant. 20

#### **276AB Transfer of related charge**

- (1) If the Youth Court determines under **section 276AA(4)** that the charge for the offence not specified in Schedule 1A is a related charge, the related charge must be transferred to the District Court or the High Court to be dealt with together with the charge for the offence specified in Schedule 1A. 25
- (2) A reference in the Criminal Procedure Act 2011 to a charge being heard together with another charge under section 138 of that Act includes a related charge that is transferred.
- (3) If a young person aged 17 years is charged with an offence specified in Schedule 1A and an offence not specified in Schedule 1A (other than murder or manslaughter),— 30
- (a) section 138(1) to (3) of the Criminal Procedure Act 2011 does not apply to the hearing of the charges together in the District Court or the High Court; and 35
- (b) section 138 of that Act does not apply to the hearing of the charges together or the severing of the charges in the Youth Court.
- (4) **Subsection (1)** is subject to **sections 276AC** and **277**.

**276AC Mixed pleas for charge for Schedule 1A offence and related charge**

- (1) This section applies to a charge for an offence not specified in Schedule 1A that the Youth Court has determined under **section 276AA(4)** to be a related charge.
- (2) If the young person aged 17 years pleads guilty to the charge for the offence specified in Schedule 1A, the related charge must be dealt with in the District Court or the High Court unless a court orders that it is in the interests of justice that the related charge be dealt with in the Youth Court. 5
- (3) An order under **subsection (2)** may be made—
- (a) by the Youth Court before the related charge is transferred to the District Court or the High Court; or 10
- (b) by the District Court or the High Court if the related charge has been transferred to either court.

**4H Section 276A amended (Transfer of proceeding back to Youth Court)**

- (1) In section 276A(1), replace “section 275” with “section 275 or **276AB(1)**”. 15
- (2) After section 276A(2), insert:
- (3) The transfer of the proceeding may occur at any time before sentencing.
- (4) For the purpose of subsection (1)(a), in relation to a proceeding for a related charge that is joined to a proceeding under **section 276AB(1)**, the reason for the transfer of the proceeding for the related charge may no longer apply if, for example,— 20
- (a) the defendant has been found not guilty of the offence specified in Schedule 1A in the District Court or the High Court; or
- (b) the charge for the offence specified in Schedule 1A is severed under section 138(4) of the Criminal Procedure Act 2011, withdrawn, or discharged; or 25
- (c) the related charge is transferred back to the Youth Court by an order under **section 276AC(2)**.

**4I Section 277 amended (Provisions applicable where child, young person, or adult jointly charged)** 30

After section 277(11), insert:

- (12) For the purpose of this section,—
- adult** includes a person aged 17 years charged with an offence specified in Schedule 1A
- young person** does not include a person aged 17 years charged with an offence specified in Schedule 1A. 35

- 4J Section 283 amended (Hierarchy of court’s responses if charge against young person proved)**
- In section 283, replace “proved” with “proved, or to which a proceeding is transferred under section 276A following a guilty plea or a finding of guilt.”.
- 5 Section 376 amended (Court may authorise continued detention in secure care)** 5
- In section 376(5), replace “section 173(2), 174(1), or 175(2)” with “section 173(2), 174(1), or 175(1A) or (2)”.
- 6 Schedule 1AA amended**
- (1) In Schedule 1AA, replace clause 4(1) with: 10
- (1) For the purpose of this clause,—
- commencement date** means the date on which section 7(4) of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 comes into force
- criminal proceedings**— 15
- (a) means a proceeding that has been commenced by—
- (i) the filing of a charging document; or
- (ii) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957; and
- (b) includes an appeal against conviction or sentence. 20
- (2) In Schedule 1AA, after clause 4(2), insert:
- (3) This clause is subject to **clause 22**.
- (3) In Schedule 1AA, clause 5(2), replace “only if the offending occurred or is alleged to have occurred on or after the commencement date” with “if the offending occurred or is alleged to have occurred before, on, or after the commencement date”. 25
- (4) In Schedule 1AA, after Part 3, insert the **Part 4** set out in **Schedule 1** of this Act.

## Part 2

### Amendments to other enactments 30

#### Subpart 1—Amendments to Bail Act 2000

- 7 Amendments to Bail Act 2000**
- This subpart amends the Bail Act 2000.

**8 Section 9A amended (Restriction on bail if defendant charged with murder)**

Replace section 9A(1) with:

- (1) This section applies to a defendant who is charged with murder under section 167 or 168 of the Crimes Act 1961 and who is— 5
- (a) of or over the age of 18 years; or
  - (b) aged 17 years and charged with the offence in the High Court.

**9 Section 10 amended (Restriction on bail if defendant with previous conviction for specified offence charged with further specified offence)**

- (1) In section 10(1), replace “17” with “18”. 10
- (2) After section 10(1), insert:
- (1A) This section also applies to a defendant aged 17 years who is charged in the District Court or the High Court with a specified offence and who has 1 or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences). 15

**10 Section 11 amended (Restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence)**

- (1) In section 11, replace “17” with “18”.
- (2) In section 11, insert as subsection (2): 20
- (2) No defendant aged 17 years who is found guilty of, or pleads guilty to, a specified offence in the District Court or the High Court and who has 1 or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences) may, while waiting to be sentenced or otherwise dealt with for the first-mentioned specified offence, be granted bail or allowed to go at large. 25

**11 Section 12 amended (Further restriction on bail in certain cases)**

- (1) In section 12(1)(a) and (b), replace “17” with “18”.
- (2) After section 12(1), insert: 30
- (1A) This section also applies to a defendant if—
- (a) the defendant is aged 17 years and—
    - (i) is charged in the District Court or the High Court with an offence under the Crimes Act 1961 that carries a maximum sentence of 3 or more years’ imprisonment; and
    - (ii) at the time of the alleged commission of the offence was remanded at large or on bail awaiting trial in the District Court or the High Court for another offence under the Crimes Act 1961 that 35

- carries a maximum sentence of 3 or more years' imprisonment; and
- (iii) has at any time previously received a sentence of imprisonment (within the meaning of that term in section 4(1) of the Sentencing Act 2002); or 5
- (b) the defendant is aged 17 years and—
- (i) is charged in the District Court or the High Court with an offence that carries a maximum sentence of 3 or more years' imprisonment; and
- (ii) has previously received 14 or more sentences of imprisonment (within the meaning of that term in section 4(1) of the Sentencing Act 2002); and 10
- (iii) has previously been convicted of an offence that was committed while the defendant was remanded at large or on bail and that carries a maximum sentence of 3 or more years' imprisonment (whether or not the conviction resulted in any of the sentences of imprisonment referred to in subparagraph (ii)). 15
- (3) In section 12(2), replace “subsection (1)” with “subsections (1) and **(1A)**”.
- 12 Section 15 amended (Granting of bail to defendant who is 17 years of age)**
- (1) In the heading to section 15, replace “**17 years of age**” with “**18 years of age or younger**”. 20
- (2) In section 15(1)(a), replace “17” with “18”.
- (3) After section 15(2), insert:
- (2A) A court that remands a defendant at any stage of the proceedings for the offence with which the defendant is charged, including for sentence, must release the defendant on bail or otherwise subject to such conditions as it thinks fit if— 25
- (a) the defendant is 17 years old; and
- (b) the defendant is charged with, or convicted of, any offence in the District Court or the High Court; and 30
- (c) the defendant has not previously been sentenced to imprisonment.
- (2B) **Subsection (2A)** is subject to—
- (a) sections 7 (except subsection (5)), 9 to 12, and 16 to 17A; and
- (b) section 175 of the Criminal Procedure Act 2011.
- 13 Section 17A amended (Restriction on bail if defendant charged with serious Class A drug offence)** 35
- Replace section 17A(1) with:

- (1) This section applies to a defendant who is charged with a serious Class A drug offence and who is—
- (a) of or over the age of 18 years; or
  - (b) aged 17 years and is charged with the offence in the District Court or the High Court. 5
- 14 Section 34A amended (Surrender of defendant on bail with EM condition)**
- (1) In section 34A(3), replace “17” with “18”.
- (2) After section 34A(3), insert:
- (4) However, subsection (3) does not apply to a defendant aged 17 years who—
- (a) is charged with, or convicted of, any offence in the District Court or the High Court; and 10
  - (b) is on bail with an EM condition for the offence or the alleged offence.
- 15 Section 35 amended (Defendant on bail may be arrested without warrant in certain circumstances)**
- After section 35(6), insert: 15
- (7) Sections 215 to 232 of the Oranga Tamariki Act 1989 apply to a defendant aged 17 years who—
- (a) has been charged with, or convicted of, any offence (except a drug dealing offence) in the District Court or the High Court; and
  - (b) has been released on bail for the offence, or the alleged offence, by a court, a Registrar, or a Police employee; and 20
  - (c) is arrested without warrant under subsection (1).
- 16 Section 36 amended (Arrest of defendant charged with drug dealing offence)**
- After section 36(7), insert: 25
- (8) Sections 215 to 232 of the Oranga Tamariki Act 1989 apply to a defendant aged 17 years who—
- (a) has been charged with, or convicted of, a drug dealing offence in the District Court or the High Court; and
  - (b) has been released on bail for the offence, or the alleged offence, by a District Court Judge or a High Court Judge; and 30
  - (c) is arrested without warrant under subsection (1).
- 17 Schedule 1AA amended**
- (1) In Schedule 1AA, clause 1, replace “this schedule” with “this Part”.
- (2) In Schedule 1AA, after Part 1, insert the **Part 2** set out in **Schedule 2** of this Act. 35

Subpart 2—Amendments to Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017

- 18 Amendments to Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017**
- This subpart amends the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017. 5
- 19 Section 41 amended (Section 66 replaced (Government departments may be required to supply information))**
- In section 41, new section 66K, replace “If an authorised child welfare and protection agency or an authorised independent person proposes to disclose information under section 66C or 66H,” with “If a child welfare and protection agency or an independent person proposes to disclose information under section 66C, or an authorised child welfare and protection agency or an authorised independent person proposes to disclose information under section 66H,”. 10
- 20 Section 50 amended (Section 78 amended (Custody of child or young person pending determination of proceedings))** 15
- (1) In section 50(3), new section 78(1A), delete “or a lawyer representing the child or young person, or on its own motion”.
- (2) In section 50(6), new section 78(4)(a), replace “cancelled by the court on application by the applicant or a lawyer representing the child or young person or on its own motion under subsection (1A)” with “discharged by the court on application under section 125”. 20
- 21 Section 56 replaced (Section 87 amended (Restraining orders))**
- Replace section 56 with:
- 56 Section 87 amended (Restraining orders)** 25
- In section 87(1), replace “Where the court makes a declaration under section 67 in relation to a child or young person, it may, on or at any time after making that declaration,” with “If, on an application under section 68, the court is satisfied that a child or young person is in need of care or protection, it may”.
- 22 Section 57 amended (Section 88 amended (Interim restraining orders))** 30
- (1) In section 57(2), new section 88(2), delete “or a lawyer representing the child or young person, or on its own motion”.
- (2) In section 57(2), new section 88(4)(a), replace “cancelled by the court, on application by the applicant or a lawyer representing the child or young person or on its own motion under subsection (2)” with “discharged by the court on application under section 125”. 35

<b>23</b>	<b>Section 65 amended (New section 110AA inserted (Interim guardianship orders))</b>	
(1)	In section 65, new section 110AA(5), delete “or a lawyer representing the child or young person, or on its own motion”.	
(2)	In section 65, new section 110AA(7)(a), replace “cancelled by the court, on application by the applicant or a lawyer representing the child or young person or on its own motion under subsection (5)” with “discharged by the court on application under section 125”.	5
<b>24</b>	<b>Section 79 amended (Section 145 amended (Agreement not to be made without approval of family group conference))</b>	10
(1)	Replace section 79(6) with:	
(6)	In section 145(2)(a), (b), and (c), delete “, 141(2), or 142(2)”.	
(2)	Repeal section 79(7).	
<b>25</b>	<b>Section 143 amended (Section 175 amended (Remand of defendants aged 17 to 20 years))</b>	15
(1)	In section 143, new section 175(1A), replace “if the person is aged 17 years” with “if the person is aged 17 years and is charged with, or convicted of, any offence in the District Court or the High Court”.	
(2)	Replace section 143(2) with:	
(2)	In section 175(2), replace “Despite section 15 of the Bail Act 2000,” with “Despite section 15 of the Bail Act 2000, if the person appears to the court to be aged 18 or 19 years,”.	20
	<b>Subpart 3—Amendment to Children’s Commissioner Act 2003</b>	
<b>26</b>	<b>Amendment to Children’s Commissioner Act 2003</b>	
	This subpart amends the Children’s Commissioner Act 2003.	25
<b>27</b>	<b>Section 11 amended (Matters to which Commissioner must have regard in exercising functions or powers)</b>	
	In section 11(d), replace “sections 5 and 6” with “sections 4A and 5”.	
	<b>Subpart 4—Amendments to Criminal Investigations (Bodily Samples) Act 1995</b>	30
<b>28</b>	<b>Amendments to Criminal Investigations (Bodily Samples) Act 1995</b>	
	This subpart amends the Criminal Investigations (Bodily Samples) Act 1995 (the 1995 Act).	
<b>29</b>	<b>Section 2 amended (Interpretation)</b>	
	In section 2(1), definition of <b>young person</b> , replace “17” with “18”.	35



- 30 New section 2B inserted (Transitional, savings, and related provisions)**  
After section 2A, insert:
- 2B Transitional, savings, and related provisions**  
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms. 5
- 31 New Schedule 1AA inserted**  
Insert the **Schedule 1AA** set out in **Schedule 3** of this Act as the first schedule to appear after the last section of the 1995 Act.
- 32 Schedule heading amended**  
Replace the Schedule heading with: 10
- Schedule 1**  
**Relevant offences**

**s 2**
- 33 Further amendments to Criminal Investigations (Bodily Samples) Act 1995** 15
- (1) In the provisions of the 1995 Act set out in **Part 1** of **Schedule 4** of this Act, replace “17” with “18”.
- (2) In the provisions of the 1995 Act set out in **Part 2** of **Schedule 4** of this Act, replace “Schedule” with “Schedule 1”.
- (3) In the provisions of the 1995 Act set out in **Part 3** of **Schedule 4** of this Act, replace “the Schedule” with “Schedule 1”. 20
- (4) Amend the 1995 Act as set out in **Part 4** of **Schedule 4** of this Act.
- Subpart 5—Amendments to Criminal Procedure Act 2011
- 34 Amendments to Criminal Procedure Act 2011**  
This subpart amends the Criminal Procedure Act 2011. 25
- 35 New section 7A inserted (Transitional, savings, and related provisions)**  
After section 7, insert:
- 7A Transitional, savings, and related provisions**  
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms. 30
- 36 Section 174 amended (Remand of defendant under 17 years for assessment report)**  
In section 174(1)(b), after “172”, insert “or 175”.

- 36A Section 380A amended (Transfer of proceedings commenced in Youth Court back to Youth Court in certain circumstances)**  
 In section 380A, replace “section 275” with “section 275 or **276AB(1)**”.
- 37 New Schedule 1AA inserted**  
 Insert the **Schedule 1AA** set out in **Schedule 5** of this Act as the first schedule to appear after the last section of the Criminal Procedure Act 2011. 5
- Subpart 6—Amendments to Prisoners’ and Victims’ Claims Act 2005
- 38 Amendments to Prisoners’ and Victims’ Claims Act 2005**  
 This subpart amends the Prisoners’ and Victims’ Claims Act 2005.
- 39 Section 4 amended (Interpretation)** 10
- (1) In section 4, definition of **child**, replace “boy or girl” with “person”.
- (2) In section 4, replace the definition of **young person** with:  
**young person** means a person of or over the age of 14 years but under 18 years
- Subpart 7—Amendment to Returning Offenders (Management and Information) Act 2015 15
- 40 Amendment to Returning Offenders (Management and Information) Act 2015**  
 This subpart amends the Returning Offenders (Management and Information) Act 2015.
- 41 Schedule 1 amended** 20  
 In Schedule 1, after Part 2, insert the **Part 3** set out in **Schedule 6** of this Act.
- Subpart 8—Amendments to Sentencing Act 2002
- 42 Amendments to Sentencing Act 2002**  
 This subpart amends the Sentencing Act 2002.
- 43 Section 15B amended (Limitation on sentence of home detention for person under 17 years)** 25
- (1) In the heading to section 15B, replace “**17**” with “**18**”.
- (2) In section 15B(1), replace “17” with “18”.
- 44 Section 18 amended (Limitation on imprisonment of person under 17 years)** 30
- (1) In the heading to section 18, replace “**17**” with “**18**”.
- (2) In section 18(1), replace “17” with “18”.

- 45 Schedule 1AA amended**  
In Schedule 1AA, after Part 2, insert the **Part 3** set out in **Schedule 7** of this Act.
- Subpart 9—Amendments to Victims’ Orders Against Violent Offenders Act 2014 5
- 46 Amendments to Victims’ Orders Against Violent Offenders Act 2014**  
This subpart amends the Victims’ Orders Against Violent Offenders Act 2014.
- 47 Section 4 amended (Interpretation)**
- (1) In section 4, definition of **child**, replace “boy or girl” with “person”.
- (2) In section 4, replace the definition of **young person** with: 10  
**young person** means a person of or over the age of 14 years but under 18 years
- Subpart 10—Amendments to Victims’ Rights Act 2002
- 48 Amendments to Victims’ Rights Act 2002**  
This subpart amends the Victims’ Rights Act 2002.
- 49 Section 4 amended (Interpretation)** 15
- (1) In section 4, definition of **child**, replace “boy or girl” with “person”.
- (2) In section 4, replace the definition of **young person** with:  
**young person** means a person of or over the age of 14 years but under 18 years
- Subpart 11—Amendments to Criminal Investigations (Bodily Samples) Regulations 2004 20
- 50 Amendments to Criminal Investigations (Bodily Samples) Regulations 2004**  
This subpart amends the Criminal Investigations (Bodily Samples) Regulations 2004 (the **2004 regulations**).
- 51 Various references to “17” replaced** 25  
In the provisions of the 2004 regulations set out in **Part 1** of **Schedule 8** of this Act, replace “17” with “18”.
- 52 Various references to “declaration” replaced**  
Amend the 2004 regulations as set out in **Part 2** of **Schedule 8** of this Act.
- 53 Various references to “Schedule” replaced** 30
- (1) In the provisions of the 2004 regulations set out in **Part 3** of **Schedule 8** of this Act, replace “the Schedule” with “Schedule 1”.

- (2) In the heading to form 5B set out in the Schedule of the 2004 regulations, replace “Schedule” with “Schedule 1”.

**Schedule 1**  
**New Part 4 inserted into Schedule 1AA of Oranga Tamariki Act**  
**1989**

s 6(4)

<b>Part 4</b>	5
<b>Provisions relating to Oranga Tamariki Legislation Act 2019</b>	
<b>20 Proceeding commenced on or after commencement date for offence committed before commencement date</b>	
(1) For the purpose of this clause, <b>commencement date</b> means the date on which section 7(4) of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the <b>2017 Act</b> ) comes into force.	10
(2) This clause applies to any person <del>aged 17 years</del> in a proceeding that—	
(a) is commenced on or after the commencement date against that person; and	
(b) is for an offence, or an alleged offence, that was committed before the commencement date when that person was 17 years of age.	15
(3) The proceeding against the person <del>aged 17 years</del> must be commenced and dealt with under this Act—	
(a) as amended by the 2017 Act; and	
(b) as further amended by <b>Part 1</b> of the Oranga Tamariki Legislation Act <b>2019</b> .	20
(4) <u>Section 2(2), as amended by the 2017 Act, applies to this clause, except for the requirement that the person be a young person at the date of the alleged offence.</u>	
<b>20A <u>Proceeding for charge related to criminal proceeding underway in District Court or High Court on commencement date</u></b>	25
(1) <u>For the purpose of this clause, <b>commencement date</b> means the date on which <b>section 4G</b> of the Oranga Tamariki Legislation Act <b>2019</b> comes into force.</u>	
(2) <u>This clause applies to a person to whom clause 4 applies and either—</u>	
(a) <b>clause 20</b> applies, if the date of the alleged offending that is the subject of the new proceeding occurred before the commencement date; or	30
(b) <b>clause 20</b> does not apply, if the date of the alleged offending that is the subject of the new proceeding occurred on or after the commencement date.	
(3) <u>If a new proceeding is commenced against the person on or after the commencement date by the filing of a charge for an offence not specified in Schedule 1A, the provisions referred to in <b>subclause (4)</b> are modified as set out in</u>	35

	<u><b>subclause (5)</b> to enable the Youth Court to determine whether the charge for the offence not specified in Schedule 1A is related to and may be joined with the criminal proceedings that are underway in the District Court or the High Court.</u>	
(4)	<u>The provisions are as follows:</u>	5
	(a) <u><b>section 247A</b>; and</u>	
	(b) <u><b>sections 276AA to 276AC</b>; and</u>	
	(c) <u><b>section 276A</b>.</u>	
(5)	<u>A reference to a charge for an offence specified in Schedule 1A includes a reference to a charge for any offence (whether specified in Schedule 1A or not) for which the person is in criminal proceedings that are underway in the District Court or the High Court on the commencement date.</u>	10
(6)	<u>A reference to a charge for an offence not specified in Schedule 1A continues to exclude a reference to a charge of murder or manslaughter.</u>	
<b>21</b>	<b>Subsequent proceedings not invalidated</b>	15
(1)	For the purpose of this clause, <b>commencement date</b> means the date on which section 7(4) of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the <b>2017 Act</b> ) comes into force.	
(2)	This clause applies to actions taken by a constable <u>before the commencement date</u> during an investigation <del>before the commencement date</del> of a person aged 17 years <del>for an offence or an alleged offence who has committed an offence or is alleged to have committed an offence.</del>	20
(3)	No proceedings are invalidated and no evidential material is deemed inadmissible because the actions are inconsistent with—	
	(a) the definition of young person in section 2(1), as replaced by section 7(4) of the 2017 Act; and	25
	(b) this Act as amended by the 2017 Act and the Oranga Tamariki Legislation Act <b>2019</b> .	
<b>22</b>	<b>Arrest of person aged 17 years without warrant under section 35(1) or 36(1) of Bail Act 2000</b>	30
(1)	For the purpose of this clause, unless the context otherwise requires,— <b>commencement date</b> means the date on which <b>section 4</b> of the Oranga Tamariki Legislation Act <b>2019</b> comes into force <b>court</b> has the same meaning as in section 3 of the Bail Act 2000 <b>criminal proceedings</b> —	35
	(a) means a proceeding that has been commenced by—	
	(i) the filing of a charging document; or	

- (ii) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957; and
- (b) includes an appeal against conviction or sentence
- drug dealing offence** has the same meaning as in section 3 of the Bail Act 2000 5
- Registrar** has the same meaning as in section 3 of the Bail Act 2000.
- (2) **Section 214B** applies to a person aged 17 years if—
- (a) the person—
- (i) is a defendant in criminal proceedings for any offence (except a drug dealing offence), or any alleged offence, that are underway in the District Court or the High Court on the commencement date; and 10
- (ii) is released on bail (before, on, or after the commencement date) for the offence, or the alleged offence, by a court, a Registrar, or a Police employee; and 15
- (b) any of the circumstances set out in section 35(1) of the Bail Act 2000 apply to the person so as to empower the arrest without warrant of the person on or after the commencement date.
- (3) **Section 214B** applies to a person aged 17 years if—
- (a) the person— 20
- (i) is a defendant in criminal proceedings for a drug dealing offence, or an alleged drug dealing offence, that are underway in the District Court or the High Court on the commencement date; and
- (ii) is released on bail (before, on, or after the commencement date) for the offence, or the alleged offence, by a District Court Judge or a High Court Judge; and 25
- (b) any of the circumstances set out in section 36(1) of the Bail Act 2000 apply to the person so as to empower the arrest without warrant of the person on or after the commencement date.

**Schedule 2**  
**New Part 2 inserted into Schedule 1AA of Bail Act 2000**

s 17(2)

<b>Part 2</b>		
<b>Provisions relating to Oranga Tamariki Legislation Act 2019</b>		<b>5</b>
<b>3</b>	<b>Interpretation</b>	
	In this Part,—	
	<b>2019 Act</b> means the Oranga Tamariki Legislation Act <b>2019</b>	
	<b>commencement date</b> means the date on which <b>subpart 1 of Part 2 of the 2019 Act</b> comes into force	<b>10</b>
	<b>proceeding</b> —	
	(a) means a proceeding that has been commenced by—	
	(i) the filing of a charging document; or	
	(ii) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957; and	<b>15</b>
	(b) includes an appeal against conviction or sentence.	
<b>4</b>	<b>Proceeding under way on commencement date against defendant aged 17 years</b>	
	(1) This clause applies to any defendant aged 17 years in a proceeding that is under way in the District Court or the High Court on the commencement date.	<b>20</b>
	(2) The defendant must be dealt with by the court under this Act as if <b>subpart 1 of Part 2 of the 2019 Act</b> had not come into force.	
	(3) This clause is subject to <b>clauses 6 and 7</b> .	
<b>5</b>	<b>Proceeding commenced on or after commencement date for offence committed before commencement date</b>	<b>25</b>
	(1) This clause applies to any defendant aged 17 years in a proceeding that—	
	(a) is commenced on or after the commencement date; and	
	(b) is for an offence, or an alleged offence, that was committed before the commencement date when the defendant was 17 years of age.	
	(2) The defendant must be dealt with by the court under this Act as amended by <b>subpart 1 of Part 2 of the 2019 Act</b> .	<b>30</b>
<b>6</b>	<b>Arrest of person aged 17 years without warrant under section 35(1)</b>	
	<b>Section 35(7)</b> applies to a person aged 17 years if—	
	(a) the person—	



	(i)	is a defendant in a proceeding for any offence (except a drug dealing offence), or any alleged offence, that is under way in the District Court or the High Court on the commencement date; and	
	(ii)	is released on bail (before, on, or after the commencement date) for the offence, or the alleged offence, by a court, a Registrar, or a Police employee; and	5
	(b)	any of the circumstances set out in section 35(1) apply to the person so as to empower the arrest without warrant of the person on or after the commencement date.	
7		<b>Arrest of person aged 17 years without warrant under section 36(1)</b>	10
		<b>Section 36(8)</b> applies to a person aged 17 years if—	
	(a)	the person—	
	(i)	is a defendant in a proceeding for a drug dealing offence, or an alleged drug dealing offence, that is under way in the District Court or the High Court on the commencement date; and	15
	(ii)	is released on bail (before, on, or after the commencement date) for the offence, or the alleged offence, by a District Court Judge or a High Court Judge; and	
	(b)	any of the circumstances set out in section 36(1) apply to the person so as to empower the arrest without warrant of the person on or after the commencement date.	20

**Schedule 3**  
**New Schedule 1AA inserted into Criminal Investigations (Bodily Samples) Act 1995**

s 31

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

s 2B

**Part 1**  
**Provisions relating to Oranga Tamariki Legislation Act 2019**

**1 Interpretation**

10

In this Part, unless the context otherwise requires,—

**2019 Act** means the Oranga Tamariki Legislation Act **2019**

**commencement date** means the date on which **section 29 of the 2019 Act** comes into force

**offence** includes—

15

- (a) a related offence, as described in section 2(2):
- (b) a triggering offence

**process or procedure**—

- (a) means a process or procedure under this Act, including (without limitation) the request for a bodily sample or the taking of a bodily sample; but
- (b) does not include the storage or removal under section 24P, 26, or 26A of a DNA profile derived from a bodily sample.

20

*Processes or procedures (for example, requesting or taking bodily sample)*

**2 Initial process or procedure commenced on or after commencement date: amended definition of young person applies**

25

- (1) This clause applies to any offence that was committed, or is believed to have been committed, before, on, or after the commencement date by a person aged 17 years.
- (2) If the initial process or procedure in relation to the offence, or the alleged offence, is commenced on or after the commencement date against that person aged 17 years,—
  - (a) that person comes within the definition of young person in section 2, as amended by **section 29 of the 2019 Act**; and

30

- (b) the provisions of this Act that apply to a young person, as amended by **subpart 4 of Part 2 of the 2019 Act**, apply to that person aged 17 years for the purpose of the initial process or procedure.
- 3 Process or procedure against person aged 17 years not completed on commencement date: amended definition of young person applies** 5
- (1) This clause applies if any process or procedure against a person aged 17 years has commenced but is not completed on the commencement date in relation to any offence or any alleged offence.
- (2) For the purpose of any subsequent process or procedure on or after the commencement date in relation to the offence, or the alleged offence,— 10
- (a) that person comes within the definition of young person in section 2, as amended by **section 29 of the 2019 Act**; and
- (b) the provisions of this Act that apply to a young person, as amended by **subpart 4 of Part 2 of the 2019 Act**, apply to that person.
- (3) This clause is subject to **clause 4**. 15
- 4 Process or procedure against person aged 17 years not completed on commencement date: amended definition of young person does not apply**
- (1) This clause applies to a process or procedure that has commenced against a person aged 17 years in any of the following circumstances (the **circumstances**): 20
- (a) if a constable has filed an application before the commencement date for a suspect compulsion order on the grounds that the suspect has refused consent to the taking of a bodily sample, and the application has not been determined before the commencement date:
- (b) if a Judge has made a suspect compulsion order that requires the person to give a bodily sample, and the sample has not been taken before the commencement date: 25
- (c) if a constable has filed a notice of hearing before the commencement date for a databank compulsion notice hearing following a request in writing from the person, and the hearing has not concluded before the commencement date: 30
- (d) if a Judge has made a Part 3 order that requires the person to give a bodily sample (whether by confirming the databank compulsion notice or varying the notice), and the sample has not been taken before the commencement date: 35
- (e) during any process or procedure that is subsequent to a process or procedure under **paragraphs (a) to (d)**.
- (2) Despite **clause (3)(2)** and the amendments in **subpart 4 of Part 2 of the 2019 Act**,—

- (a) this Act continues to apply in the circumstances as if those amendments were not made; and
- (b) the provisions of this Act as it read before the commencement date that apply to a person aged 17 years or over apply to that person aged 17 years in the circumstances. 5
- (3) A constable or Judge may permit a person to be present with the person aged 17 years in the circumstances—
- (a) if, except for the application of **subclause (2)**, the person would have been required or permitted by **clause 3** to be present; and
- (b) if the constable or Judge considers the presence of the person, and any consequence of the person being present (such as the giving of evidence), to be appropriate; and 10
- (c) despite the fact that in all other respects the person aged 17 years is not treated as a young person under **subclause (2)**.
- (4) This clause does not create any right or requirement that a person be present with a person aged 17 years on or after the commencement date in the circumstances. 15
- (5) Any decision lawfully made by the person aged 17 years, a constable, or a Judge before, on, or after the commencement date in relation to a process or procedure in the circumstances remains valid on and after the commencement date and may not be challenged only by reason of the changes in— 20
- (a) the definition of young person in this Act as amended by **section 29 of the 2019 Act**; and
- (b) the other provisions of this Act as amended by **subpart 4 of Part 2 of the 2019 Act**. 25
- 5 Validation of forms**
- (1) This clause applies to a form that, before the commencement date,—
- (a) was prescribed under this Act; and
- (b) was provided lawfully to a person aged 17 years; and
- (c) was relied upon in accordance with the law as it was before the commencement date; and 30
- (d) either—
- (i) was used in a process or procedure to which **clause 3** applies; or
- (ii) was used and continues to be used in a process or procedure to which **clause 4** applies. 35
- (2) The validity of the form and anything done or undertaken in reliance on it may not be challenged on or after the commencement date only by reason of the change in—

	(a) the definition of young person in this Act as amended by <b>section 29 of the 2019 Act</b> ; and	
	(b) the other provisions of this Act as amended by <b>subpart 4 of Part 2 of the 2019 Act</b> .	
<b>6</b>	<b>Information to be given</b>	<b>5</b>
	A constable must take all reasonable steps to inform a person to whom this Part applies, in a manner and in language that the person is likely to understand, of the processes and procedures to which the person is subject on or after the commencement date and why they are being applied.	
	<i>Bodily sample taken under section 24J</i>	<b>10</b>
<b>7</b>	<b>Bodily sample taken under section 24J before commencement date</b>	
(1)	The Commissioner may not use or hold a bodily sample on or after the commencement date if—	
	(a) the sample was taken from a person aged 17 years—	
	(i) before the commencement date; and	<b>15</b>
	(ii) under section 24J for an imprisonable offence that is not a relevant offence; and	
	(b) that person is aged 17 years on the commencement date; and	
	(c) that person has not been charged with the triggering imprisonable offence or related imprisonable offence before the commencement date.	<b>20</b>
(2)	The Commissioner must ensure that the following are destroyed as soon as practicable after the commencement date:	
	(a) the bodily sample referred to in <b>subclause (1)</b> ; and	
	(b) every record, to the extent that it contains—	
	(i) information about the bodily sample; and	<b>25</b>
	(ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken.	
	<i>Storage of DNA profile on Part 2B temporary databank</i>	
<b>8</b>	<b>Storage on Part 2B temporary databank of DNA profile derived from sample taken before commencement date</b>	<b>30</b>
(1)	This clause applies if—	
	(a) a bodily sample was taken from a person aged 17 years—	
	(i) before the commencement date; and	
	(ii) under section 24J for a relevant offence; and	<b>35</b>

	(b) that person is aged 17 years on the commencement date; and	
	(c) that person has not been charged with the triggering relevant offence or related relevant offence before the commencement date.	
(2)	A DNA profile derived from that bodily sample may be stored on a Part 2B temporary databank only if—	5
	(a) the person from whom the bodily sample was taken is charged with the triggering relevant offence or related relevant offence on or after the commencement date; and	
	(b) circumstances have not yet arisen in which—	
	(i) records of the DNA profile must be destroyed under section 60A;	10
	or	
	(ii) the DNA profile <del>must</del> <u>may</u> be stored on a DNA profile databank under section 26(ab) or (ac).	
<b>8A</b>	<b><u>Removal of DNA profiles from Part 2B temporary databank</u></b>	
	<u>When either of the circumstances in <b>clause 8(2)(b)(i) or (ii)</b> has arisen in relation to a DNA profile to which <b>clause 8</b> applies, the DNA profile must be removed from the Part 2B temporary databank.</u>	15
	<i>Storage of DNA profile under section 26(a), (ab), and (ac) and removal under section 26A</i>	
<b>9</b>	<b>Storage and removal of DNA profile under certain sections: amended definition of young person applies</b>	20
(1)	This Act, as amended by <b>subpart 4 of Part 2 of the 2019 Act</b> , applies to the storage of a DNA profile under section 26(a) and the removal of the DNA profile under section 26A on and after the commencement date if—	
	(a) the bodily sample for the DNA profile is taken from a person aged 17 years before, on, or after the commencement date; and	25
	(b) the offence by the person to which section 26(a) applies and for which the bodily sample is taken, or a related offence, occurred before the commencement date; and	
	(c) the person is charged with the offence on or after the commencement date; and	30
	(d) section 26A(2)(b) applies to that person on or after the commencement date.	
(2)	This Act, as amended by <b>subpart 4 of Part 2 of the 2019 Act</b> , applies to the storage of a DNA profile under section 26(ab) and the removal of the DNA profile under section 26A on and after the commencement date if—	35
	(a) the bodily sample for the DNA profile is taken from a person aged 17 years before, on, or after the commencement date; and	

(b)	the triggering offence by the person to which section 26(ab) applies and for which the bodily sample is taken, or a related offence, occurred before the commencement date; and	
(c)	the person is charged with the offence on or after the commencement date; and	5
(d)	section 26A(2)(b) applies to that person on or after the commencement date.	
(3)	This Act, as amended by <b>subpart 4 of Part 2 of the 2019 Act</b> , applies to the storage of a DNA profile under section 26(ac) and the removal of the DNA profile under section 26A on and after the commencement date if—	10
(a)	the bodily sample for the DNA profile is taken from a person aged 17 years before, on, or after the commencement date; and	
(b)	the offence by the person to which section 26(ac) applies and for which the bodily sample is taken, or a related offence, occurred before the commencement date; and	15
(c)	the person is charged with the offence on or after the commencement date; and	
(d)	section 26A(3)(b) applies to that person on or after the commencement date.	
(4)	<b>Subclauses (1), (2), and (3)</b> apply despite—	20
(a)	any requirement in this Act that a person be a young person when a bodily sample is taken; or	
(b)	a requirement under section 26 or 26A that a person be a young person on the date of the offence.	
	<i>Disposal of bodily sample</i>	25
<b>10</b>	<b>Disposal of bodily sample and identifying information obtained under Part 2B before commencement date</b>	
	For the purpose of this clause, a <b>related offence</b> in section 60A includes a related relevant offence if—	
(a)	the bodily sample was taken from a person aged 17 years—	30
(i)	before the commencement date; and	
(ii)	under section 24J for a relevant offence; and	
(b)	that person is aged 17 years on the commencement date; and	
(c)	that person has not been charged with the triggering relevant offence or related relevant offence before the commencement date.	35

**11 Extension of period for which sample taken before commencement date may be retained**

For the purpose of this clause, a **related offence** in section 61 includes a related relevant offence if—

- (a) the bodily sample was taken from a person aged 17 years—  
  - (i) before the commencement date; and
  - (ii) under section 24J for a relevant offence; and
- (b) that person is aged 17 years on the commencement date; and
- (c) that person has not been charged with the triggering relevant offence or related relevant offence before the commencement date.

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**Schedule 4**  
**Amendments to Criminal Investigations (Bodily Samples) Act 1995**

**s 33**

**Part 1**

<b>Various references to “17” replaced with references to “18”</b>	<b>5</b>
Section 2(1), definition of <b>parent</b>	
Section 2A, in each place	
Section 5(b), in each place	
Heading to section 8	
Section 8(2)	10
Section 11, in each place	
Cross-heading above section 13	
Section 13(1)	
Section 16(1)(a)	
Section 16(1)(a)	15
Cross-heading above section 18	
Heading to section 18	
Section 18(1)	
Heading to section 19	
Section 23(1)(a)	
Section 24D(b)(i)	20
Heading to section 24J	
Section 24J(1)	
Section 26A, in each place	
Section 30(1)	
Section 30(1)	25
Heading to section 32	
Section 32	
Section 39(2)(b)	
Heading to section 39B	
Section 39B, in each place	
Section 39B, in each place	30
Heading to section 39D	
Section 39D, in each place	
Section 40(2)(a)	
Section 41, in each place	
Section 41B(2)(b)	

Section 41C, in each place	
Section 49A, in each place	
Section 50, in each place	
Section 52(1)(da)	
Heading to section 52A	5
Section 52A	
Section 75	

## Part 2

### Various references to “Schedule” replaced with references to “Schedule 1”

Heading to Part 2B	
Heading to section 24J	

## Part 3

### Various references to “the Schedule” replaced with references to “Schedule 1”

Section 2(1), definition of <b>relevant offence</b> , in each place	
Section 4(3), in each place	
Section 4A, in each place	
Section 5(a)	
Section 6, in each place	20
Section 7(b)(i)	
Section 13, in each place	
Section 18, in each place	
Section 24(4)(h)	
Section 24J, in each place	25
Section 24P(2)(a)	
Section 26, in each place	
Section 26A(6)(c)	
Section 26B(1)(b)	
Section 36(2)	30
Section 39, in each place	
Section 41(2)(a)(i)	
Section 60, in each place	

Section 60A(5)(a)

Section 61(6)(a)

Section 62(4)(a)

## Part 4

### Various references to “declaration” replaced 5

#### Section 24D(b)(ii)

In section 24D(b)(ii), replace “declaration for care or protection” with “care or protection order”.

#### Section 24E(c)(ix)

In section 24E(c)(ix), replace “declaration that the suspect is in need of care or protection” with “care or protection order for the suspect”. 10

#### Section 24F(b)(ix)

In section 24F(b)(ix), replace “declaration that the suspect is in need of care or protection” with “care or protection order for the suspect”.

#### Section 57(2)

In section 57(2), replace “declaration that the suspect from whom the buccal sample is taken is in need of care or protection” with “care or protection order for the suspect from whom the buccal sample is taken”. 15

#### Section 61A(1)

In section 61A(1)(b), replace “declaration that the suspect is in need of care or protection” with “care or protection order for the suspect”. 20

In section 61A(1)(c), replace “declaration that the suspect is in need of care or protection” with “care or protection order for the suspect”.

In section 61A(1)(c), replace “(whether or not a declaration is made)” with “(whether or not an order is made)”. 25

**Schedule 5**  
**New Schedule 1AA inserted into Criminal Procedure Act 2011**

s 37

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

s 7A

**Part 1**

**Provisions relating to Oranga Tamariki Legislation Act 2019**

**1 Interpretation**

In this Part,—

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**2017 Act** means the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017

**2019 Act** means the Oranga Tamariki Legislation Act **2019**

**commencement date** means the date on which section 7(4) of the 2017 Act comes into force

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**proceeding**—

(a) means a proceeding that has been commenced by—

(i) the filing of a charging document; or

(ii) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957; and

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(b) includes an appeal against conviction or sentence.

**2 Proceeding under way on commencement date against defendant aged 17 years**

(1) This clause applies to any defendant aged 17 years in a proceeding that is under way in the District Court or the High Court on the commencement date.

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(2) The defendant must be dealt with by the court under this Act as if section 7(4) of the 2017 Act had not come into force.

**3 Proceeding commenced on or after commencement date for offence committed before commencement date**

(1) This clause applies to any defendant aged 17 years in a proceeding that—

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(a) is commenced on or after the commencement date; and

(b) is for an offence, or an alleged offence, that was committed before the commencement date when the defendant was 17 years of age.

(2) The defendant must be dealt with by the court under this Act—

- (a) as amended by subpart 1 of Part 2 of the 2017 Act; and
- (b) as further amended by **sections 25 and 36 of the 2019 Act.**

**Schedule 6**  
**New Part 3 inserted into Schedule 1 of Returning Offenders**  
**(Management and Information) Act 2015**

s 41

<b>Part 3</b>	5
<b>Provisions relating to Oranga Tamariki Legislation Act 2019</b>	
<b>4 Commencement</b>	
This Part comes into force on the date on which <b>section 29</b> of the Oranga Tamariki Legislation Act <b>2019</b> comes into force.	
<b>5 Application of Part 1 of Schedule 1AA of Criminal Investigations (Bodily Samples) Act 1995 to certain returning offenders</b>	10
(1) For the purpose stated in section 14(1) of this Act, <b>Part 1 of Schedule 1AA</b> of the 1995 Act applies to a person aged 17 years—	
(a) with all necessary modifications; and	
(b) subject to the exclusions in <b>subclause (2)</b> .	15
(2) <b>Clauses 4(1)(a) and (b), 7, 8, 9, 10, and 11</b> of <b>Schedule 1AA</b> of the 1995 Act are excluded from the application of <b>subclause (1)</b> .	

**Schedule 7**  
**New Part 3 inserted into Schedule 1AA of Sentencing Act 2002**

s 45

<b>Part 3</b>		
<b>Provisions relating to Oranga Tamariki Legislation Act 2019</b>		<b>5</b>
<b>10</b>	<b>Interpretation</b>	
	In this Part,—	
	<b>2019 Act</b> means the Oranga Tamariki Legislation Act <b>2019</b>	
	<b>commencement date</b> means the date on which <b>sections 43 and 44 of the 2019 Act</b> come into force	<b>10</b>
	<b>proceeding</b> —	
	(a) means a proceeding that has been commenced by—	
	(i) the filing of a charging document; or	
	(ii) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957; and	<b>15</b>
	(b) includes an appeal against conviction or sentence.	
<b>11</b>	<b>Proceeding under way on commencement date against defendant aged 17 years</b>	
(1)	This clause applies to any defendant aged 17 years in a proceeding that is under way in the District Court or the High Court on the commencement date.	<b>20</b>
(2)	The defendant must be dealt with by the court under this Act as if <b>sections 43 and 44 of the 2019 Act</b> had not come into force.	
<b>12</b>	<b>Proceeding commenced on or after commencement date for offence committed before the commencement date</b>	
(1)	This clause applies to any defendant aged 17 years in a proceeding that—	<b>25</b>
	(a) is commenced on or after the commencement date; and	
	(b) is for an offence, or an alleged offence, that was committed before the commencement date when the defendant was 17 years of age.	
(2)	The defendant must be dealt with by the court under this Act as amended by <b>sections 43 and 44 of the 2019 Act</b> .	<b>30</b>

**Schedule 8**  
**Amendments to Criminal Investigations (Bodily Samples)**  
**Regulations 2004**

~~ss 51, 52~~ **ss 51–53**

**Part 1**

5

**Various references to “17” replaced with references to “18”**

Heading to form 1

Heading to form 2

Form 2, in each place

Heading to form 3

10

Heading to form 4

Form 5, in each place

Heading to form 5A

Form 5A, in each place

Heading to form 5B

15

Form 5B

Heading to form 6

Form 7, in each place

Heading to form 8

Heading to form 8A

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Heading to form 9

Heading to form 9A

**Part 2**

**Various references to “declaration” replaced**

**Schedule, form 5**

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In the Schedule, form 5, replace “declaration that you are in need of care or protection” with “care or protection order” in each place.

In the Schedule, form 5, replace “(whether or not a declaration is made)” with “(whether or not an order is made)”.



### **Part 3**

#### **Various references to “the Schedule” replaced with references to “Schedule 1”**

<u>Form 1, in each place</u>	
<u>Form 2, in each place</u>	5
<u>Form 3, in each place</u>	
<u>Form 4, in each place</u>	
<u>Form 5A, in each place</u>	
<u>Form 5B, in each place</u>	
<u>Form 6</u>	10
<u>Form 8, in each place</u>	
<u>Form 9, in each place</u>	
<u>Form 11</u>	

#### **Legislative history**

18 March 2018  
2 April 2019

Introduction (Bill 121–1)  
First reading and referral to Social Services and Community  
Committee