

# **Oranga Tamariki Amendment Bill**

Government Bill

As reported from the committee of the whole House



**Oranga Tamariki Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from the committee of the whole House**

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*Hon Kelvin Davis*

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Government Bill

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## Part 2

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## Schedule

### Schedule 1AA amended

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## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Oranga Tamariki Amendment Act **2021**.

### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

### 3 Principal Act

This Act amends the Oranga Tamariki Act 1989.

## Part 1

### Amendments to principal Act

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### 4 Section 11 amended (Child’s or young person’s participation and views)

In section 11(2)(f), replace “young person” with “young person, in a manner and in language appropriate for their age and level of understanding”.

### 5 Section 17 amended (Investigation of report of ill-treatment or neglect of child or young person)

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In the heading to section 17, replace “ill-treatment or neglect” with “concerns about safety or well-being”.

### 6 Section 18B replaced (Person described in this section)

Replace section 18B with:

<b>18B</b>	<b>Person described in this section</b> A person described in this section is a person who has been convicted under the Crimes Act 1961 of the murder, manslaughter, or infanticide of a child or young person who was in the person’s care or custody at the time of the child’s or young person’s death.	5
<b>6A</b>	<b>Section 22 amended (Persons entitled to attend family group conference)</b> In section 22(2), replace “(d),” with “(d), (da),”.	
<b>6B</b>	<b>Section 28 amended (Functions of family group conference)</b> In section 28(b),— (a) delete “where the conference considers that the child or young person in respect of whom it was convened is in need of care or protection, or is in need of assistance ”; and (b) delete “needs,”.	10
<b>7</b>	<b>Section 66D repealed (Public notification of information about combined datasets)</b> Repeal section 66D.	15
<b>8</b>	<b>Section 83 amended (Care or protection orders)</b> Repeal section 83(2A) and (2B).	
<b>9</b>	<b>Section 87 amended (Restraining orders)</b> (1) In section 87(1), after “protection,” insert “or at any time after becoming satisfied that the child or young person is in need of care or protection,”. (2) After section 87(1), insert: (1A) However, if the court is already satisfied that the child or young person is in need of care or protection, a restraining order may, despite anything in section 70 or 72, be made under subsection (1) without a family group conference having been held under this Part.	20    25
<b>10</b>	<b>Section 95 amended (Conditions of support order or interim support order)</b> In section 95(1)(d), replace “who is the subject of a declaration made” with “who the court is satisfied is in need of care or protection”.	30
<b>11</b>	<b>Section 104 amended (Effect of custody order)</b> Replace section 104(3)(c) with: (c) for the purpose of exercising that authority,—	



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|--|----|
| <ul style="list-style-type: none"> <li>(i) may enter and search any dwelling house, building, aircraft, ship, carriage, vehicle, premises, or place, with or without assistance and by force if necessary; and</li> <li>(ii) must, on first entering any dwelling house, building, aircraft, ship, carriage, vehicle, premises, or place and, if requested, at any subsequent time,— <ul style="list-style-type: none"> <li>(A) produce evidence of their identity; and</li> <li>(B) disclose that they are exercising that authority under this Act.</li> </ul> </li> </ul> | 5  |
| <p><b>12 Section 110 amended (Guardianship orders)</b></p> <p>Repeal section 110(4).</p>   | 10 |
| <p><b>13 Section 113A amended (Special guardianship orders)</b></p> <p>(1) Before section 113A(1), insert:</p> <p>(1AA) If a person who is appointed as a sole or additional guardian of a child or young person under section 110 is a natural person, the court may make an order appointing the person as a special guardian of the child or young person (including when the order under section 110 is made at a hearing under section 127).</p> <p>(2) In section 113A(1), delete “referred to in section 110(4)”.</p>   | 15 |
| <p><b>13A Section 116 amended (Review of guardian’s decision or refusal to give consent)</b></p> <p>In section 116(2), after “110”, insert “or 113A”.</p>  | 20 |
| <p><b>14 Section 121 amended (Court may make orders for access and exercise of other rights by parents and other persons)</b></p> <p>Replace section 121(2)(c) and (ca) with:</p> <p>(c) makes an order under section 110 or 110AA appointing the chief executive or any other person the sole guardian of a child or young person,—</p>   | 25 |
| <p><b>15 Section 126 amended (Persons who may apply for variation or discharge of order)</b></p> <p>Replace section 126(f) with:</p> <p>(f) any person on whom the application for a care or protection order has been served in accordance with section 152:</p>  | 30 |
| <p><b>16 Section 137 amended (Court to consider report and make directions)</b></p> <p>In section 137(1)(f), replace “declaration under section 67” with “care or protection order”.</p>   | 35 |

- 17 Section 144 amended (Agreement not to be made without consent of child or young person)**  
 Replace section 144(1) with:
- (1) No agreement may be made under section 140 with respect to a child of or over the age of 12 years or a young person unless— 5
- (a) the child or young person consents to the making of the agreement; and
- (b) the consent is recorded.
- 18 Section 158 amended (Applications may be heard together)**  
 Repeal section 158(2) and (3).
- 19 Section 165 amended (Payment of lay advocate)** 10  
 Replace section 165(1) with:
- (1) The fees and expenses of a lay advocate appointed under section 163 must—
- (a) be determined in accordance with regulations made under this Act or, if no such regulations are made, by the Registrar of the court; and
- (b) be paid out of a Crown Bank Account from money appropriated by Parliament for the purpose. 15
- 20 Section 186 amended (Report by social worker)**
- (1) In section 186(1), replace “If the court makes a care or protection order, the” with “The”.
- (2) In section 186(1)(a)(ii), delete “to whom the declaration relates”. 20
- 21 Section 187 amended (Cultural and community reports)**
- (1) In section 187(1), replace “Where the court makes a care or protection order” with “If a court is satisfied”.
- (2) In section 187(1)(c), replace “where the declaration was made on the ground specified in section 14(1)(a) or (b)” with “if section 14(1)(a) or (b) applies”. 25
- 22 Section 196 replaced (Special provisions applying to disclosure of communications to medical practitioner or clinical psychologist)**  
 Replace section 196 with:
- 196 Opportunity to be heard if court to exercise certain discretion** 30  
 If a court is, in relation to a child or young person, asked to exercise its discretion under section 69 of the Evidence Act 2006, the court must give the lawyer appointed under section 159 of this Act to represent the child or young person an opportunity to be heard on the matter.

- 23 Section 198 amended (Special provisions applying to applications for care or protection order on ground of child’s offending)**
- (1) In section 198(1), replace “care or protection order” with “care or protection order (other than an interim order)”.
- (2) Replace section 198(2) with: 5
- (2) Nothing in section 197 applies to any application for a ~~care or protection order~~ care or protection order (other than an interim order) on the ground specified in section 14(1)(e).
- 24 Section 207B amended (Interpretation)**
- In section 207B, definition of **protection proceedings**, paragraph (b), replace “declaration under section 67 that a child or young person is in need of care or protection” with “care or protection order”. 10
- 25 Section 207O amended (Appeal against order for transfer)**
- (1) In section 207O(a), delete “despite section 346(b),”.
- (2) Replace section 207O(b) with: 15
- (b) the appeal must be brought within 10 working days after the day on which the order was made:
- 26 Section 207U amended (Appeal against order for transfer)**
- (1) In section 207U(a), delete “despite section 346(b),”.
- (2) Replace section 207U(b) with: 20
- (b) the appeal must be brought within 3 working days after the day on which the order was made:
- 27 Section 207ZC amended (Aboriginal or Torres Strait Islander children or young persons)**
- In section 207ZC(2), replace “section 5(b)” with “section 5(1)(c)(iv)”. 25
- 28 Section 214 amended (Arrest of child or young person without warrant)**
- (1) In section 214(1), delete “section 214A and”.
- (2) After section 214(2), insert:
- (2A) Nothing in subsection (1) prevents a constable from arresting a child or young person without warrant under section 214A if the criteria in that section are met. 30
- 29 Section 214A amended (Arrest of child or young person in breach of bail condition)**
- (1) Replace section 214A(b)(i) with:

- (i) the child or young person is in breach of, or has recently breached, a condition of that bail; and
- (2) In section 214A, insert as subsections (2) and (3):
- (2) If a child or young person appears before a court and the court considers the child's or young person's bail, no breach of a bail condition that occurred before the appearance may be used to support a subsequent arrest under this section. 5
- (3) This section does not apply if a child or young person is arrested without warrant under section 35 of the Bail Act 2000 in accordance with section 214 of this Act. 10
- 30 Section 239A repealed (Expiry of sections 238(1A) to (1C), and 239(3))**  
Repeal section 239A.
- 31 Section 242 amended (Order under section 238 sufficient authority for detention of child or young person)**  
In section 242(3), replace "this section" with "subsection (1)(b)". 15
- 32 Section 248A amended (Chief executive to appoint youth advocate to represent child or young person if offence punishable by imprisonment of 10 years or more)**
- (1) Replace section 248A(1) with:
- (1) This section applies if— 20
- (a) an offence referred to in section 245(1) is an offence punishable by imprisonment of 10 years or more; and
- (b) a youth justice co-ordinator is required to convene a family group conference because they have received a notification under section 247(b) relating to that offence. 25
- (2) Replace section 248A(2) with:
- (2) Before the family group conference is convened, the chief executive must appoint a youth advocate to represent the child or young person at the family group conference unless the chief executive is satisfied that legal representation has been arranged (or is to be arranged) for the child or young person in relation to the family group conference. 30
- (2A) If an arrangement described in subsection (2) ceases (or fails to come into being), the chief executive must appoint a youth advocate to represent the child or young person at the family group conference.
- 33 Section 258 amended (Functions of family group conference)** 35
- (1) In section 258(1)(a)(i), after "protection", insert "or well-being".
- (2) In section 258(1)(a)(ii), delete "where the conference considers that the child is in need of care or protection,".

- 34 Section 261 amended (Family group conference may make decisions, recommendations, and plans relating to care or protection of child or young person)**
- (1) In the heading to section 261, after “**protection**”, insert “ **or well-being**”.
- (2) Replace section 261(1) with: 5
- (1) If a family group conference convened under this Part considers matters relating to the care or protection or well-being of a child or young person for whom the conference is held, the family group conference may, if it has received information and advice on care or protection matters under section 255(1), make or formulate the decisions, recommendations, and plans that it considers necessary or desirable in relation to the care or protection or well-being of the child or young person. 10
- 35 Section 272 amended (Jurisdiction of Youth Court and children’s liability to be prosecuted for criminal offences)**
- Replace section 272(1A)(b)(i) with: 15
- (i) makes a care or protection order on that ground; or
- 36 Section 273 amended (Manner of dealing with offences (other than murder or manslaughter))**
- (1) In the heading to section 273, replace “**murder or manslaughter**” with “**murder, manslaughter, or offence specified in Schedule 1A**”. 20
- (2) Replace section 273(1) with:
- (1) This section applies if a young person is charged with an offence other than—
- (a) murder or manslaughter; or
- (b) in the case of a young person who is aged 17 years,— 25
- (i) murder or manslaughter; or
- (ii) an offence specified in Schedule 1A.
- 37 Section 311 amended (Supervision with residence order)**
- Replace section 311(3) with:
- (3) The order required by subsection (2A)(b) must be made either at the same time as the order made under subsection (1) or after that time but— 30
- (a) before the expiry of the order made under subsection (1); or
- (b) before or on the date on which the young person is released from the custody of the chief executive under section 314, if that is earlier than the expiry of the order made under subsection (1).
- 38 Section 325 amended (Payment of youth advocate)** 35
- Replace section 325(1) with:

- (1) The fees and expenses of a youth advocate must—
- (a) be determined in accordance with regulations made under this Act or, if no such regulations are made, by the Registrar of the court; and
  - (b) be paid out of a Crown Bank Account from money appropriated by Parliament for the purpose. 5
- 39 Section 328A amended (Payment of lay advocate)**  
Replace section 328A(1) with:
- (1) The fees and expenses of a lay advocate appointed under section 326 must—
- (a) be determined in accordance with regulations made under this Act or, if no such regulations are made, by the Registrar of the court; and 10
  - (b) be paid out of a Crown Bank Account from money appropriated by Parliament for the purpose.
- 40 Section 350 amended (Decision of High Court and Family Court to be sent to chief executive)**
- (1) In the heading to section 350,— 15
- (a) delete “**and Family Court**”; and
  - (b) replace “**chief executive**” with “**principal manager**”.
- (2) Replace section 350(1) with:
- (1) The Registrar of the High Court must send a copy of every decision that the High Court gives under section 348 to the relevant principal manager of the department. 20
- 41 Section 365 amended (Chief executive may place children and young persons in residences)**  
In section 365(1), replace “guardianship” with “sole guardianship”.
- 42 Section 386A amended (Advice and assistance for young persons up to age of 25 years)** 25  
Replace section 386A(1)(a) with:
- (a) a residential placement under section 234(c)(ii) or (iii), 235, 238(1)(d), 307(4), or 311:
  - (aa) Police custody under section 236 or 238(1)(e): 30
  - (ab) detention in a youth unit of a prison under section 238(1)(f):
- 43 Section 447 amended (Regulations)**
- (1) Replace section 447(1)(fa)(iii) with:
- (iii) the provision of training and support for — 35
    - (A) caregivers; and

- (B) organisations in which children or young persons may be placed:
- (2) After section 447(1)(fa)(v), insert:
- (vi) the assessment of the safety and suitability of caregivers and their households: 5
- (vii) the assessment of the suitability of organisations in which children or young persons may be placed:

## Part 2

### Amendments to Schedule 1AA of principal Act

- 44 Schedule 1AA amended** 10
- (1) In Schedule 1AA, heading to clause 11, replace “68” with “67”.
- (2) In Schedule 1AA, clause 11(2), replace “68” with “67” in each place.
- (3) In Schedule 1AA,—
- (a) insert the Part set out in the Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments. 15

## Schedule Schedule 1AA amended

s 44(3)

<b>Part 5</b>		
<b>Provisions relating to Oranga Tamariki Amendment Bill 2021</b>		5
<b>24</b>	<b>Certain determinations made before commencement date</b>	
(1)	For the purpose of this clause, <b>commencement date</b> means the date on which this clause comes into force.	
(2)	A determination made under section 18B(2)(c) or 83(2A) before the commencement date ceases to have effect on and after the commencement date.	10
(3)	An agreement reached under section 18B(2)(c) before the commencement date ceases to have effect on and after the commencement date.	
(4)	Any proceedings in respect of making a determination under section 18B(2)(c) or 83(2A) that began before the commencement date cease on the commencement date.	15

### Legislative history

25 November 2021	Introduction (Bill 95–1)
14 December 2021	First reading and referral to Social Services and Community Committee
14 June 2022	Reported from Social Services and Community Committee (Bill 95–2)
25 October 2022	Second reading
8 December 2022	Committee of the whole House (Bill 95–3)
	Third reading