

Oranga Tamariki Legislation Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That policy is to give full effect to aspects of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the **2017 Act**) by—

- seeking to ensure that the benefits of the policy to include 17-year-olds in the youth justice jurisdiction are fully realised. It does this by amending legislation to ensure that the extended youth justice jurisdiction is applied consistently across the justice system. The inclusion of 17-year-olds in the youth justice jurisdiction will take effect on 1 July 2019;
- addressing drafting errors in the 2017 Act, including unintentionally broad provisions relating to interim court orders. It also makes a consequential amendment to the Children’s Commissioner Act 2003 to correct a cross-referencing error.

All of these matters require enactment before 1 July 2019 to ensure amendments made by the 2017 Act are consistent with policy intent.

This Bill amends the following legislation:

- Oranga Tamariki Act 1989:
- Bail Act 2000:
- Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017:
- Children’s Commissioner Act 2003:
- Criminal Investigations (Bodily Samples) Act 1995:

- Criminal Procedure Act 2011:
- Prisoners' and Victims' Claims Act 2005:
- Returning Offenders (Management and Information) Act 2015:
- Sentencing Act 2002:
- Victims' Orders Against Violent Offenders Act 2014:
- Victims' Rights Act 2002:
- Criminal Investigations (Bodily Samples) Regulations 2004.

Features of this Bill include—

- updates to the definition of young person to align with the definition in the Oranga Tamariki Act 1989 to ensure consistent application of the extension of the youth justice jurisdiction across all relevant legislation:
- clarification of procedures and processes that will be applied to 17-year-olds with the extension of the youth justice jurisdiction, particularly in relation to bail and the taking and retention of bodily samples:
- transitional provisions to clarify which jurisdiction (adult or youth) should be applied to a 17-year-old depending on the date that proceedings are commenced against a 17-year-old:
- modifying amendments in the 2017 Act related to urgent interim orders.

Departmental disclosure statement

Oranga Tamariki—Ministry for Children is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=121>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to commence on **1 July 2019** (the **commencement date**). This is the same date on which the remaining provisions of the 2017 Act come into force, including the new definition of young person in section 7(4) of the 2017 Act.

Part 1

Amendments to Oranga Tamariki Act 1989

Clause 3 provides that this Part amends the Oranga Tamariki Act 1989 (the **1989 Act**).

Clause 4 inserts *new section 214B*. This section applies to a person aged 17 years who is a defendant who has been charged with, or convicted of, any offence in the District Court or the High Court and has been released on bail for the offence or the alleged offence. If the circumstances in section 35(1) or 36(1) of the Bail Act 2000 apply to the person so as to empower the arrest without warrant of the person, *new section 214B* provides that the arrest without warrant is not subject to section 214 or 214A of the 1989 Act.

Clause 5 amends section 376(5), which enables the court to authorise the continued detention of a person in the custody of the chief executive under section 173(2), 174(1), or 175(2) of the Criminal Procedure Act 2011. *Clause 5* adds a cross-reference to section 175(1A) of the Criminal Procedure Act 2011, which provides for the remand of a person aged 17 years. Section 175(1A) was enacted by section 143 of the 2017 Act but is not yet in force.

Clause 6(1) and (2) amends clause 4 of Schedule 1AA, which is a transitional provision that was enacted in 2017 but is not yet in force. This transitional provision provides that any defendant aged 17 years in criminal proceedings that are under way in the District Court or the High Court on the commencement date must be dealt with by the court as if the new definition of young person had not come into force. *Clause 6(1)* replaces clause 4(1) so as to provide a definition of criminal proceedings. For the purpose of this clause, criminal proceedings means a proceeding that is commenced by the filing of a charging document or by the filing of a notice under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957, and includes an appeal against conviction or sentence.

Clause 6(2) amends clause 4 of Schedule 1AA to make it subject to *new clause 22* of Schedule 1AA. The new provision sets out an exception to sections 214 and 214A of the 1989 Act when the circumstances in section 35(1) or 36(1) of the Bail Act 2000 apply to empower the arrest of a person aged 17 years without warrant. *New clause 22* of Schedule 1AA is inserted by *clause 6(4)* and *Schedule 1* of the Bill.

Clause 6(3) amends a transitional provision in clause 5 of Schedule 1AA that was enacted in 2017 but is not yet in force. This provision provides protections for young persons aged 17 years in criminal investigations on or after the commencement date. The Act currently applies sections 215 to 232 to investigations of alleged offending by persons aged 17 years only if the offending occurred or is alleged to have occurred on or after the commencement date. *Clause 6(3)* amends this provision to apply it also to offending that occurred or is alleged to have occurred before the commencement date.

Clause 6(4) inserts *new Part 4* into Schedule 1AA to provide further transitional, savings, and related provisions. (*New Part 4* of Schedule 1AA is set out in *Schedule 1* of the Bill.)

Clause 20 in new Part 4 of Schedule 1AA applies to a proceeding that commences against a person aged 17 years on or after the commencement date for offending, or alleged offending, that occurred before the commencement date when the person was

17 years of age. The proceeding must be commenced and dealt with under the 1989 Act, as amended by the 2017 Act and *Part 1* of this Bill.

Clause 21 in new Part 4 of Schedule 1AA applies to actions taken by a constable during an investigation before the commencement date of a person aged 17 years for offending or alleged offending. This clause provides that no proceedings are invalidated and no evidential material is deemed inadmissible because the actions are inconsistent with the definition of young person in the 1989 Act, as replaced by section 7(4) of the 2017 Act, and inconsistent with the 1989 Act, as amended by the 2017 Act and this Bill.

Clause 22 in new Part 4 of Schedule 1AA applies to a person aged 17 years who is a defendant in proceedings for any offence, or any alleged offence, that is under way in the District Court or the High Court on the commencement date and is released on bail for the offence or the alleged offence. If the circumstances in section 35(1) or 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, *new section 214B* (inserted by *clause 4*) applies. This means that the arrest without warrant of the person aged 17 years is not subject to section 214 or 214A of the 1989 Act.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Bail Act 2000

Clause 7 provides that this subpart amends the Bail Act 2000.

Clause 8 amends section 9A so that it applies to a defendant aged 18 years or over who is charged with murder under section 167 or 168 of the Crimes Act 1961 and to a defendant aged 17 years who is charged with the offence in the High Court.

Clause 9(1) amends section 10(1) so that it applies to a defendant aged 18 years or over who is charged with a specified offence (as defined in section 10(2)) and who has 1 or more previous convictions for a specified offence. *Clause 9(2)* inserts *new section 10(1A)* to apply the same restriction on granting bail 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.

Clause 10(1) amends section 11 so that it applies to a defendant aged 18 years or over who is found guilty of, or pleads guilty to, a specified offence and who is waiting to be sentenced or dealt with for that offence. Section 11 provides a restriction on granting bail if the defendant has 1 or more previous convictions for a specified offence. *Clause 10(2)* inserts *new section 11(2)* to apply the same restriction on granting bail to a defendant aged 17 years who has 1 or more previous convictions for a specified offence, and is found guilty of, or pleads guilty to, a specified offence in the District Court or the High Court, and is waiting to be sentenced or dealt with for that offence.

Clause 11 amends section 12, which sets out further restrictions on granting bail. *Clause 11(1)* amends section 12(1)(a) and (b) so that it applies to a defendant aged 18

years or over. *Clause 11(2)* inserts *new section 12(1A)* to apply the same restrictions on granting bail to a defendant aged 17 years who is charged in the District Court or the High Court and to whom the circumstances in that section apply. *Clause 11(3)* consequentially amends section 12(2) further to the insertion of *new section 12(1A)*.

Clause 12 amends section 15(1), which provides for the granting of bail to a defendant who appears to be 17 years of age and who has not previously been sentenced to imprisonment. *Clause 12(1)* amends the heading to section 15 to refer to a defendant aged 18 years or younger. *Clause 12(2)* amends section 15(1) so that it applies to a defendant who appears to be 18 years of age. *Clause 12(3)* inserts *new section 15(2A) and (2B)* to set out the circumstances when a defendant aged 17 years who is charged with, or convicted of, any offence in the District Court or the High Court must be granted bail under section 15.

Clause 13 amends section 17A so that it applies to a defendant aged 18 years or over who is charged with a serious Class A drug offence and to a defendant aged 17 years who is charged with the offence in the District Court or the High Court.

Clause 14 amends section 34A, which refers to the application of certain sections of the 1989 Act to a defendant on bail with an electronic monitoring condition who chooses to surrender to Police custody. *Clause 14* extends the application of section 34A(3) to a defendant aged 17 years unless the defendant is charged with, or convicted of, any offence in the District Court or the High Court and is on bail with an electronic monitoring condition for the offence or the alleged offence.

Clause 15 inserts *new section 35(7)*, which provides that sections 215 to 232 of the 1989 Act apply to a defendant aged 17 years who has been charged with, or convicted of, any offence (except a drug dealing offence), or any alleged offence, in the District Court or the High Court, released on bail, and subsequently arrested without warrant under section 35(1). This means that the rights, entitlements, notifications, and provisions relating to admissibility of statements in sections 215 to 232 of the 1989 Act apply to the defendant.

Clause 16 inserts *new section 36(8)*, which provides that sections 215 to 232 of the 1989 Act apply to a defendant aged 17 years who has been charged with, or convicted of, a drug dealing offence, or an alleged drug dealing offence, in the District Court or the High Court, released on bail, and subsequently arrested without warrant under section 36(1). This means that the rights, entitlements, notifications, and provisions relating to admissibility of statements in sections 215 to 232 of the 1989 Act apply to the defendant.

Clause 17 inserts a *new Part 2* into Schedule 1AA (transitional, savings, and related provisions). (*New Part 2* of Schedule 1AA is set out in *Schedule 2* of the Bill.)

Clause 3 in *new Part 2* of Schedule 1AA is an interpretation clause for that Part. For the purpose of that Part, a proceeding means a proceeding that is commenced by the filing of a charging document or by the filing of a notice under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957, and includes an appeal against conviction or sentence.

Clause 4 in new Part 2 of Schedule 1AA provides that any defendant aged 17 years in a proceeding that is under way in the District Court or the High Court on the commencement date must be dealt with by the court as if *subpart 1 of Part 2* of this Bill had not come into force. This clause is subject to *clauses 6 and 7 in new Part 2* of Schedule 1AA.

Clause 5 in new Part 2 of Schedule 1AA applies to a defendant aged 17 years in a proceeding that commences on or after the commencement date for offending, or alleged offending, that occurred before the commencement date when the defendant was 17 years of age. The proceeding must be dealt with under the Bail Act 2000 as amended by *subpart 1 of Part 2* of this Bill.

Clause 6 in new Part 2 of Schedule 1AA applies to a person aged 17 years who is a defendant in proceedings 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 is released on bail for the offence or the alleged offence. *New section 35(7)* (inserted by *clause 15*) applies to the person if any of the circumstances in section 35(1) apply so as to empower the arrest without warrant of the person on or after the commencement date.

Clause 7 in new Part 2 of Schedule 1AA applies to a person aged 17 years who is a defendant in proceedings 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 is released on bail for the offence or the alleged offence. *New section 36(8)* (inserted by *clause 16*) applies to the person if any of the circumstances in section 36(1) apply so as to empower the arrest without warrant of the person on or after the commencement date.

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

Clause 18 provides that this subpart amends the 2017 Act.

Clause 19 amends section 41, which replaces section 66 of the 1989 Act with new information sharing provisions (*new sections 65A, 66, and 66A to 66Q*). *New section 66C* regulates the use and disclosure of personal information by a child welfare and protection agency or an independent person. It applies to all child and welfare protection agencies and independent persons, whether or not they are authorised. *New section 66H* creates a duty for an authorised child welfare and protection agency or an authorised independent person on receiving an information request from another such agency or body to evaluate the request. *New section 66K* refers to information disclosure proposed under section 66C or 66H, but refers only to an authorised agency or person. *Clause 19* amends *new section 66K* to refer also to an agency or person that is not authorised.

Clause 20 amends section 50, which amends section 78 of the 1989 Act. *New section 78(1A)* provides for the making of an interim custody order in certain circumstances, such as in a matter of urgency, even if there are no proceedings in court under Part 2 of the 1989 Act. *Clause 20* amends *new section 78(1A)* to remove the ability of the

court to make this order on its own motion. *Clause 20* also amends *new section 78(4)(a)* to enable the interim custody order to be discharged under section 125 rather than cancelled by the court on its own motion. In addition, *clause 20* removes from *new section 78(1A) and (4)(a)* the reference to an application by the lawyer representing the child or young person.

Clause 21 replaces section 56, which amends section 87 of the 1989 Act. The effect of the change is to remove a reference to a declaration.

Clause 22 amends section 57, which amends section 88 of the 1989 Act. *New section 88(2)* provides for the making of an interim restraining order as a matter of urgency, even if there are no proceedings in court under Part 2 of the 1989 Act. *Clause 22* amends *new section 88(2)* to remove the ability of the court to make this order on its own motion. *Clause 22* also amends *new section 88(4)(a)* to enable the interim restraining order to be discharged under section 125 rather than cancelled by the court on its own motion. In addition, *clause 22* removes from *new section 88(2) and (4)(a)* the reference to an application by the lawyer representing the child or young person.

Clause 23 amends section 65, which inserts *new section 110AA* into the 1989 Act. *New section 110AA(5)* provides for the making of an interim guardianship order as a matter of urgency, even if there are no proceedings in court under Part 2 of the 1989 Act. *Clause 23* amends *new section 110AA(5)* to remove the ability of the court to make this order on its own motion. *Clause 23* also amends *new section 110AA(7)(a)* to enable the interim guardianship order to be discharged under section 125 rather than cancelled by the court on its own motion. In addition, *clause 23* removes from *new section 110AA(5) and (7)(a)* the reference to an application by the lawyer representing the child or young person.

Clause 24 amends section 79, which amends section 145 of the 1989 Act. Section 145 requires the approval of a family group conference for the making of an agreement. The amendments to section 79 fix cross-references in section 145 consistent with changes made by section 76 of the 2017 Act.

Clause 25 amends section 143, which amends section 175 of the Criminal Procedure Act 2011. *Clause 25(1)* amends *new section 175(1A)* to refer to a person aged 17 years who is charged with, or convicted of, any offence in the District Court or the High Court. The amendment in *clause 25(2)* is necessary as a result of the amendment in *clause 12* to expand section 15 of the Bail Act 2000 to include persons aged 18 years. It is appropriate to retain the wording, “Despite section 15 of the Bail Act 2000,” in section 175(2) of the Criminal Procedure Act 2011, which provides for the remand pending hearing or sentence of a defendant aged 18 or 19 years.

Subpart 3—Amendment to Children’s Commissioner Act 2003

Clause 26 provides that this subpart amends the Children’s Commissioner Act 2003.

Clause 27 updates cross-references in section 11 as a result of amendments made by the 2017 Act.

Subpart 4—Amendments to Criminal Investigations (Bodily Samples) Act 1995

Clause 28 provides that this subpart amends the Criminal Investigations (Bodily Samples) Act 1995 (the **1995 Act**).

Clause 29 amends the definition of young person in section 2 to increase the age of a young person from “under 17 years” to “under 18 years”.

Clause 30 inserts *new section 2B*, which gives effect to the transitional, savings, and related provisions set out in *new Schedule 1AA*.

Clause 31 inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions. (*New Schedule 1AA* is set out in *Schedule 3* of the Bill.) The transitional, savings, and related provisions are necessary because of the amendment, by *clause 29*, to the definition of young person to increase the age from “under 17 years” to “under 18 years”. *Clauses 2 to 6* of the new schedule address processes or procedures, such as requesting or taking a bodily sample. *Clauses 7 to 11* of the new schedule address disposal of a bodily sample as well as storage and removal of a DNA profile derived from a bodily sample. These clauses are discussed below.

Clause 1 of new Schedule 1AA is an interpretation provision for *Part 1* of that schedule. Included is a definition of process or procedure, which is necessary for interpreting *clauses 2 to 6*. A process or procedure means a process or procedure under the 1995 Act including, without limitation, the request for a bodily sample or the taking of a bodily sample. However, a process or procedure does not include the storage or removal under section 24P, 26, or 26A of a DNA profile derived from a bodily sample.

Clause 2 of new Schedule 1AA 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. 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, that person comes within the definition of young person as amended by *clause 29*. The provisions of the 1995 Act that apply to a young person, as amended by *subpart 4 of Part 2* of this Bill, apply to that person aged 17 years for the purpose of the initial process or procedure.

Clause 3 of new Schedule 1AA applies if a 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. For the purpose of any subsequent process or procedure that is undertaken in relation to the offence, or the alleged offence, against that person on or after the commencement date, the person comes within the definition of young person as amended by *clause 29*. The provisions of the 1995 Act that apply to a young person, as amended by *subpart 4 of Part 2* of this Bill, apply to that person for the purpose of the subsequent process or procedure. There are exceptions to this clause, which are outlined in *clause 4 of new Schedule 1AA*.

Clause 4 of new Schedule 1AA regulates how a person aged 17 years is to be dealt with in a process or procedure, in any of the following circumstances, that has started but has not been completed on the commencement date:

- an application for a suspect compulsion order (on the grounds that the suspect has refused to consent to the taking of a bodily sample) has not been determined;
- a suspect compulsion order requiring the giving of a bodily sample has been made but the sample has not been taken;
- a databank compulsion notice hearing has not concluded;
- a Part 3 order requiring the giving of a bodily sample has been made but the sample has not been taken.

Clause 4(2) to (4) of new Schedule 1AA provides that the provisions of the 1995 Act as it read before the commencement date that apply to a person aged 17 years or over apply to the person aged 17 years in those circumstances, including during any processes or procedures that are subsequent to them. This means that the person aged 17 years must be treated as an adult. However, a constable or a Judge may permit another person to be present with the person aged 17 years during those processes or procedures. That enables the person aged 17 years to receive benefits that would be applicable to young persons, but the clause does not create any right or requirement that another person be present with the person aged 17 years in the circumstances.

Clause 4(5) of new Schedule 1AA provides that any decision lawfully made by a 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 described in *clause 4(1)* remains valid on and after the commencement date. The decision may not be challenged only by reason of the changes in the definition of young person in the 1995 Act as amended by *clause 29* and in other provisions of the 1995 Act as amended by *subpart 4 of Part 2* of this Bill.

Clause 5 of new Schedule 1AA preserves the validity of forms that were used lawfully before the commencement date in a process or procedure to which *clause 3 or 4* applies. *Clause 5 of new Schedule 1AA* provides that the validity of the form and anything done or undertaken in reliance on the form may not be challenged on or after the commencement date only by reason of the changes in the definition of young person in the 1995 Act as amended by *clause 29* and in other provisions of the 1995 Act as amended by *subpart 4 of Part 2* of this Bill.

Clause 6 of new Schedule 1AA provides that a constable must take all reasonable steps to inform a person to whom *Part 1 of new Schedule 1AA* 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.

Clause 7 of new Schedule 1AA prohibits the Commissioner from using or holding a sample that was taken from a person aged 17 years before the commencement date under section 24J for an imprisonable offence that is not a relevant offence. This

clause applies if that person is 17 years old on the commencement date and has not been charged before the commencement date with the triggering imprisonable offence for which the sample was taken or a related imprisonable offence. *Clause 7* also requires the Commissioner to ensure that both the sample and every record that contains information about the sample are destroyed.

Clause 8 of new Schedule 1AA enables a DNA profile derived from a bodily sample that was taken from a person aged 17 years before the commencement date under section 24J for a relevant offence to be stored on a Part 2B temporary databank. This clause applies if the person is aged 17 years on the commencement date and has not been charged before the commencement date with the triggering relevant offence for which the sample was taken or a related relevant offence. This provision is similar to section 24P in allowing the DNA to be stored on a Part 2B temporary databank if the person is charged with the triggering or related offence (on or after the commencement date) and circumstances have not yet arisen in which records must be destroyed under section 60A or the DNA profile may be stored on a DNA profile databank under section 26(ab) or (ac).

Clause 9 of new Schedule 1AA provides for the storage and removal of a DNA profile derived from a bodily sample taken from a person aged 17 years in respect of an offence that occurred before the commencement date if the person is charged with the offence or a related offence on or after the commencement date. The 1995 Act, as amended by *subpart 4 of Part 2* of this Bill, applies to the storage under section 26(a), (ab), or (ac) and the removal under section 26A of the DNA profile if, on or after the commencement date, the person aged 17 years is subject to an outcome under section 26A(2)(b) or (3)(b) for the offending. This transitional provision applies despite any requirement in the 1995 Act that a person be a young person when a sample is taken or a requirement in section 26 or 26A that a person be a young person on the date of the offence.

Clause 10 of new Schedule 1AA is a transitional provision that expands the definition of related offence in section 60A to include a related relevant offence if the bodily sample was taken from a person aged 17 years before the commencement date under section 24J for a relevant offence. This clause applies if the person is aged 17 years on the commencement date and has not been charged with the triggering or a related relevant offence before the commencement date.

Clause 11 of new Schedule 1AA is a transitional provision that expands the definition of related offence in section 61 to include a related relevant offence if the bodily sample was taken from a person aged 17 years before the commencement date under section 24J for a relevant offence. This clause applies if the person is aged 17 years on the commencement date and has not been charged with the triggering or a related relevant offence before the commencement date.

Clause 32 replaces the heading of the Schedule and renumbers it as Schedule 1.

Clause 33 is the operative provision for the amendments to the 1995 Act set out in *Schedule 4, Part 1 of Schedule 4* amends various provisions of the Act following the increase in the age of a young person from “under 17 years” to “under 18 years”.

Parts 2 and 3 of Schedule 4 replace references to the Schedule with references to Schedule 1 to recognise the change in the heading to that schedule. *Part 4 of Schedule 4* replaces references to “declaration” with references to “care or protection order”, which is consistent with changes made in the 2017 Act.

Subpart 5—Amendments to Criminal Procedure Act 2011

Clause 34 provides that this subpart amends the Criminal Procedure Act 2011.

Clause 35 inserts *new section 7A*, which gives effect to the transitional, savings, and related provisions set out in *new Schedule 1AA* (inserted by *clause 37* of the Bill).

Clause 36 amends section 174(1)(b) to refer to section 175. Section 174 provides for the remand of a defendant into the custody of the chief executive of Oranga Tamariki—Ministry for Children for the purpose of an assessment report under the Criminal Procedure (Mentally Impaired Persons) Act 2003. Section 174 has been amended by the 2017 Act to include a defendant aged 17 years. *Clause 36* amends section 174 to reflect that the court would, in the absence of section 175, have remanded the defendant aged 17 years to prison for the purpose of the assessment report.

Clause 37 inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions. (*New Schedule 1AA* is set out in *Schedule 5* of the Bill.)

Clause 1 of new Schedule 1AA is an interpretation clause for *new Part 1* of that schedule. For the purpose of that Part, a proceeding means a proceeding that is commenced by the filing of a charging document or by the filing of a notice under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957, and includes an appeal against conviction or sentence.

Clause 2 of new Schedule 1AA provides that any defendant aged 17 years in a proceeding that is under way in the District Court or the High Court on the commencement date must be dealt with by the court as if section 7(4) of the 2017 Act had not come into force.

Clause 3 of new Schedule 1AA applies to any defendant aged 17 years in a proceeding that commences on or after the commencement date for an offence, or an alleged offence, that was committed before the commencement date when the defendant was 17 years of age. The defendant must be dealt with under the Criminal Procedure Act 2011 as amended by subpart 1 of Part 2 of the 2017 Act and as further amended by *clauses 25 and 36*.

Subpart 6—Amendments to Prisoners’ and Victims’ Claims Act 2005

Clause 38 provides that this subpart amends the Prisoners’ and Victims’ Claims Act 2005.

Clause 39 amends specified definitions in section 4 (interpretation) to make them consistent with the definitions of child and young person in the 2017 Act.

Subpart 7—Amendment to Returning Offenders (Management and Information) Act 2015

Clause 40 provides that this subpart amends the Returning Offenders (Management and Information) Act 2015.

Clause 41 inserts *new Part 3* into Schedule 1. (*New Part 3* is set out in *Schedule 6* of the Bill.) *New Part 3* provides how transitional, savings, and related provisions in *Part 1 of new Schedule 1AA* of the Criminal Investigations (Bodily Samples) Act 1995 are to apply for the purpose of obtaining a bodily sample from a returning offender aged 17 years by a databank compulsion notice.

Clause 4 in new Part 3 of Schedule 1 provides that that Part comes into force on the date that *clause 29* comes into force.

Clause 5 in new Part 3 of Schedule 1 provides that, for the purpose of obtaining a bodily sample from a returning offender aged 17 years by a databank compulsion notice, the transitional, savings, and related provisions in *Part 1 of new Schedule 1AA* of the 1995 Act apply, with exceptions. *Clauses 4(1)(a) and (b), 7, 8, 9, 10, and 11 of new Schedule 1AA* of the 1995 Act do not apply to returning offenders.

Subpart 8—Amendments to Sentencing Act 2002

Clause 42 provides that this subpart amends the Sentencing Act 2002.

Clause 43 amends section 15B to be consistent with the change in the definition of young person in the 2017 Act from “under the age of 17 years” to “under the age of 18 years”.

Clause 44 amends section 18 to be consistent with the change in the definition of young person in the 2017 Act from “under the age of 17 years” to “under the age of 18 years”.

Clause 45 inserts *new Part 3* into Schedule 1AA of the Sentencing Act 2002. (*New Part 3* is set out in *Schedule 7* of the Bill.)

Clause 10 in new Part 3 of Schedule 1AA is an interpretation clause for that Part. For the purpose of that Part, a proceeding means a proceeding that is commenced by the filing of a charging document or by the filing of a notice under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957, and includes an appeal against conviction or sentence.

Clause 11 in new Part 3 of Schedule 1AA provides that any defendant aged 17 years in a proceeding that is under way in the District Court or the High Court on the commencement date must be dealt with by the court as if *clauses 43 and 44* had not come into force.

Clause 12 in new Part 3 of Schedule 1AA applies to any defendant aged 17 years in a proceeding that commences on or after the commencement date for an offence, or an alleged offence, that was committed before the commencement date when the defendant was 17 years of age. The defendant must be dealt with by the court under the Sentencing Act 2002 as amended by *clauses 43 and 44*.

Subpart 9—Amendments to Victims’ Orders Against Violent Offenders Act 2014

Clause 46 provides that this subpart amends the Victims’ Orders Against Violent Offenders Act 2014.

Clause 47 amends specified definitions in section 4 (interpretation) to make them consistent with the definitions of child and young person in the 2017 Act.

Subpart 10—Amendments to Victims’ Rights Act 2002

Clause 48 provides that this subpart amends the Victims’ Rights Act 2002.

Clause 49 amends specified definitions in section 4 (interpretation) to make them consistent with the definitions of child and young person in the 2017 Act.

Subpart 11—Amendments to Criminal Investigations (Bodily Samples) Regulations 2004

Clause 50 provides that this subpart amends the Criminal Investigations (Bodily Samples) Regulations 2004 (the **2004 regulations**).

Clause 51 is the operative provision for amendments to the 2004 regulations set out in *Part 1* of *Schedule 8*. *Part 1* replaces references to “17” with references to “18” to reflect the change in the definition of young person in the Criminal Investigations (Bodily Samples) Act 1995 from “under the age of 17 years” to “under the age of 18 years”.

Clause 52 is the operative provision for amendments to the 2004 regulations set out in *Part 2* of *Schedule 8*. *Part 2* replaces references to “declaration” with references to “care or protection order”. This is consistent with changes made in the 2017 Act.

Hon Tracey Martin

Oranga Tamariki Legislation Bill

Government Bill

Contents

	Page
1 Title	4
2 Commencement	4
Part 1	
Amendments to Oranga Tamariki Act 1989	
3 Amendments to Oranga Tamariki Act 1989	4
4 New section 214B inserted (Arrest of person aged 17 years released on bail by District Court or High Court)	4
214B Arrest of person aged 17 years released on bail by District Court or High Court	5
5 Section 376 amended (Court may authorise continued detention in secure care)	5
6 Schedule 1AA amended	5
Part 2	
Amendments to other enactments	
Subpart 1—Amendments to Bail Act 2000	
7 Amendments to Bail Act 2000	6
8 Section 9A amended (Restriction on bail if defendant charged with murder)	6
9 Section 10 amended (Restriction on bail if defendant with previous conviction for specified offence charged with further specified offence)	6
10 Section 11 amended (Restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence)	7
11 Section 12 amended (Further restriction on bail in certain cases)	7

Oranga Tamariki Legislation Bill

12	Section 15 amended (Granting of bail to defendant who is 17 years of age)	8
13	Section 17A amended (Restriction on bail if defendant charged with serious Class A drug offence)	8
14	Section 34A amended (Surrender of defendant on bail with EM condition)	8
15	Section 35 amended (Defendant on bail may be arrested without warrant in certain circumstances)	8
16	Section 36 amended (Arrest of defendant charged with drug dealing offence)	9
17	Schedule 1AA amended	9
	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	9
19	Section 41 amended (Section 66 replaced (Government departments may be required to supply information))	9
20	Section 50 amended (Section 78 amended (Custody of child or young person pending determination of proceedings))	10
21	Section 56 replaced (Section 87 amended (Restraining orders))	10
56	Section 87 amended (Restraining orders)	10
22	Section 57 amended (Section 88 amended (Interim restraining orders))	10
23	Section 65 amended (New section 110AA inserted (Interim guardianship orders))	10
24	Section 79 amended (Section 145 amended (Agreement not to be made without approval of family group conference))	10
25	Section 143 amended (Section 175 amended (Remand of defendants aged 17 to 20 years))	11
	Subpart 3—Amendment to Children’s Commissioner Act 2003	
26	Amendment to Children’s Commissioner Act 2003	11
27	Section 11 amended (Matters to which Commissioner must have regard in exercising functions or powers)	11
	Subpart 4—Amendments to Criminal Investigations (Bodily Samples) Act 1995	
28	Amendments to Criminal Investigations (Bodily Samples) Act 1995	11
29	Section 2 amended (Interpretation)	11
30	New section 2B inserted (Transitional, savings, and related provisions)	11
2B	Transitional, savings, and related provisions	11
31	New Schedule 1AA inserted	11
32	Schedule heading amended	11

Oranga Tamariki Legislation Bill

33	Further amendments to Criminal Investigations (Bodily Samples) Act 1995	12
	Subpart 5—Amendments to Criminal Procedure Act 2011	
34	Amendments to Criminal Procedure Act 2011	12
35	New section 7A inserted (Transitional, savings, and related provisions)	12
	7A Transitional, savings, and related provisions	12
36	Section 174 amended (Remand of defendant under 17 years for assessment report)	12
37	New Schedule 1AA inserted	12
	Subpart 6—Amendments to Prisoners’ and Victims’ Claims Act 2005	
38	Amendments to Prisoners’ and Victims’ Claims Act 2005	12
39	Section 4 amended (Interpretation)	12
	Subpart 7—Amendment to Returning Offenders (Management and Information) Act 2015	
40	Amendment to Returning Offenders (Management and Information) Act 2015	13
41	Schedule 1 amended	13
	Subpart 8—Amendments to Sentencing Act 2002	
42	Amendments to Sentencing Act 2002	13
43	Section 15B amended (Limitation on sentence of home detention for person under 17 years)	13
44	Section 18 amended (Limitation on imprisonment of person under 17 years)	13
45	Schedule 1AA amended	13
	Subpart 9—Amendments to Victims’ Orders Against Violent Offenders Act 2014	
46	Amendments to Victims’ Orders Against Violent Offenders Act 2014	13
47	Section 4 amended (Interpretation)	13
	Subpart 10—Amendments to Victims’ Rights Act 2002	
48	Amendments to Victims’ Rights Act 2002	14
49	Section 4 amended (Interpretation)	14
	Subpart 11—Amendments to Criminal Investigations (Bodily Samples) Regulations 2004	
50	Amendments to Criminal Investigations (Bodily Samples) Regulations 2004	14
51	Various references to “17” replaced	14
52	Various references to “declaration” replaced	14

Schedule 1	15
New Part 4 inserted into Schedule 1AA of Oranga Tamariki Act 1989	
Schedule 2	17
New Part 2 inserted into Schedule 1AA of Bail Act 2000	
Schedule 3	19
New Schedule 1AA inserted into Criminal Investigations (Bodily Samples) Act 1995	
Schedule 4	26
Amendments to Criminal Investigations (Bodily Samples) Act 1995	
Schedule 5	29
New Schedule 1AA inserted into Criminal Procedure Act 2011	
Schedule 6	31
New Part 3 inserted into Schedule 1 of Returning Offenders (Management and Information) Act 2015	
Schedule 7	32
New Part 3 inserted into Schedule 1AA of Sentencing Act 2002	
Schedule 8	33
Amendments to Criminal Investigations (Bodily Samples) Regulations 2004	

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**.

5

Part 1

Amendments to Oranga Tamariki Act 1989

3 Amendments to Oranga Tamariki Act 1989

This Part amends the Oranga Tamariki Act 1989.

4 New section 214B inserted (Arrest of person aged 17 years released on bail by District Court or High Court) 10

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.

5 Section 376 amended (Court may authorise continued detention in secure care)

In section 376(5), replace “section 173(2), 174(1), or 175(2)” with “section 173(2), 174(1), or 175(1A) or (2)”. 30

6 Schedule 1AA amended

(1) In Schedule 1AA, replace clause 4(1) with:

- (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 35

- criminal proceedings—**
- (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.
- (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”.
- (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

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—
 - (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”.
 - (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).

- 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): 5
- (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. 10
- 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:
- (1A) This section also applies to a defendant if— 15
- (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 carries a maximum sentence of 3 or more years’ imprisonment; and 20
- (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 25
- (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 30
- (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
- (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)). 35

- (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**”.
- (2) In section 15(1)(a), replace “17” with “18”. 5
- (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— 10
- (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
- (c) the defendant has not previously been sentenced to imprisonment.
- (2B) **Subsection (2A)** is subject to— 15
- (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)**
- Replace section 17A(1) with: 20
- (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. 25
- 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— 30
- (a) is charged with, or convicted of, any offence in the District Court or the High Court; and
- (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: 35

- (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
 - (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:
- (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
 - (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.
- 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.
- 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,”.

- 20 Section 50 amended (Section 78 amended (Custody of child or young person pending determination of proceedings))**
- (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”. 5
- 21 Section 56 replaced (Section 87 amended (Restraining orders))**
- Replace section 56 with: 10
- 56 Section 87 amended (Restraining orders)**
- 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”. 15
- 22 Section 57 amended (Section 88 amended (Interim restraining orders))**
- (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”. 20
- 23 Section 65 amended (New section 110AA inserted (Interim guardianship orders))**
- (1) In section 65, new section 110AA(5), delete “or a lawyer representing the child or young person, or on its own motion”. 25
- (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”. 30
- 24 Section 79 amended (Section 145 amended (Agreement not to be made without approval of family group conference))**
- (1) Replace section 79(6) with:
- (6) In section 145(2)(a), (b), and (c), delete “, 141(2), or 142(2)”. 35
- (2) Repeal section 79(7).

- 25 Section 143 amended (Section 175 amended (Remand of defendants aged 17 to 20 years))**
- (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”. 5
- (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,”.
- Subpart 3—Amendment to Children’s Commissioner Act 2003 10
- 26 Amendment to Children’s Commissioner Act 2003**
- This subpart amends the Children’s Commissioner Act 2003.
- 27 Section 11 amended (Matters to which Commissioner must have regard in exercising functions or powers)**
- In section 11(d), replace “sections 5 and 6” with “sections 4A and 5”. 15
- Subpart 4—Amendments to Criminal Investigations (Bodily Samples) Act 1995
- 28 Amendments to Criminal Investigations (Bodily Samples) Act 1995**
- This subpart amends the Criminal Investigations (Bodily Samples) Act 1995 (the **1995 Act**). 20
- 29 Section 2 amended (Interpretation)**
- In section 2(1), definition of **young person**, replace “17” with “18”.
- 30 New section 2B inserted (Transitional, savings, and related provisions)**
- After section 2A, insert:
- 2B Transitional, savings, and related provisions** 25
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 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. 30
- 32 Schedule heading amended**
- Replace the Schedule heading with:

Schedule 1 Relevant offences

s 2

- 33 Further amendments to Criminal Investigations (Bodily Samples) Act 1995** 5
- (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”. 10
- (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** 15
- This subpart amends the Criminal Procedure Act 2011.
- 35 New section 7A inserted (Transitional, savings, and related provisions)**
- After section 7, insert:
- 7A Transitional, savings, and related provisions** 20
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 36 Section 174 amended (Remand of defendant under 17 years for assessment report)**
- In section 174(1)(b), after “172”, insert “or 175”.
- 37 New Schedule 1AA inserted** 25
- 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.
- 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)** 30
- (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

- 40 Amendment to Returning Offenders (Management and Information) Act 2015** 5
- This subpart amends the Returning Offenders (Management and Information) Act 2015.
- 41 Schedule 1 amended**
- 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** 10
- This subpart amends the Sentencing Act 2002.
- 43 Section 15B amended (Limitation on sentence of home detention for person under 17 years)**
- (1) In the heading to section 15B, replace “17” with “18”. 15
- (2) In section 15B(1), replace “17” with “18”.
- 44 Section 18 amended (Limitation on imprisonment of person under 17 years)**
- (1) In the heading to section 18, replace “17” with “18”.
- (2) In section 18(1), replace “17” with “18”. 20
- 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
- 46 Amendments to Victims’ Orders Against Violent Offenders Act 2014** 25
- 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: 30
- 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)

(1) In section 4, definition of **child**, replace “boy or girl” with “person”. 5

(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

50 Amendments to Criminal Investigations (Bodily Samples) Regulations 2004 10

This subpart amends the Criminal Investigations (Bodily Samples) Regulations 2004 (the **2004 regulations**).

51 Various references to “17” replaced

In the provisions of the 2004 regulations set out in **Part 1** of **Schedule 8** of this Act, replace “17” with “18”. 15

52 Various references to “declaration” replaced

Amend the 2004 regulations as set out in **Part 2** of **Schedule 8** of this Act.

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

s 6(4)

Part 4	5
Provisions relating to Oranga Tamariki Legislation Act 2019	
20 Proceeding commenced on or after commencement date for offence committed before commencement date	
(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 (the 2017 Act) comes into force.	10
(2) This clause applies to any person aged 17 years 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 aged 17 years must be commenced and dealt with under this Act—	
(a) as amended by the 2017 Act; and	
(b) as further amended by Part 1 of the Oranga Tamariki Legislation Act 2019 .	20
21 Subsequent proceedings not invalidated	
(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 (the 2017 Act) comes into force.	25
(2) This clause applies to actions taken by a constable during an investigation before the commencement date of a person aged 17 years who has committed an offence or is alleged to have committed an offence.	
(3) No proceedings are invalidated and no evidential material is deemed inadmissible because the actions are inconsistent with—	30
(a) the definition of young person in section 2(1), as replaced by section 7(4) of the 2017 Act; and	
(b) this Act as amended by the 2017 Act and the Oranga Tamariki Legislation Act 2019 .	

- 22 Arrest of person aged 17 years without warrant under section 35(1) or 36(1) of Bail Act 2000**
- (1) For the purpose of this clause, unless the context otherwise requires,—
- commencement date** means the date on which **section 4** of the Oranga Tamariki Legislation Act **2019** comes into force 5
- court** has the same meaning as in section 3 of the Bail Act 2000
- criminal proceedings**—
- (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 10
- (b) includes an appeal against conviction or sentence
- drug dealing offence** has the same meaning as in section 3 of the Bail Act 2000
- Registrar** has the same meaning as in section 3 of the Bail Act 2000. 15
- (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 20
- (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
- (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. 25
- (3) **Section 214B** applies to a person aged 17 years if—
- (a) the person—
- (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 30
- (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 35
- (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)

Part 2		
Provisions relating to Oranga Tamariki Legislation Act 2019		5
3	Interpretation	
	In this Part,—	
	2019 Act means the Oranga Tamariki Legislation Act 2019	
	commencement date means the date on which subpart 1 of Part 2 of the 2019 Act comes into force	10
	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	15
	(b) includes an appeal against conviction or sentence.	
4	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.	20
	(2) The defendant must be dealt with by the court under this Act as if subpart 1 of Part 2 of the 2019 Act had not come into force.	
	(3) This clause is subject to clauses 6 and 7 .	
5	Proceeding commenced on or after commencement date for offence committed before commencement date	25
	(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 subpart 1 of Part 2 of the 2019 Act .	30
6	Arrest of person aged 17 years without warrant under section 35(1)	
	Section 35(7) 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		Arrest of person aged 17 years without warrant under section 36(1)	10
		Section 36(8) 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 20
- (b) does not include the storage or removal under section 24P, 26, or 26A of a DNA profile derived from a bodily sample.
- 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,— 30
- (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 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 change 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 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 .	
6	Information to be given	5
	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>	10
7	Bodily sample taken under section 24J before commencement date	
(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	15
(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.	20
(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 subclause (1) ; and	
(b)	every record, to the extent that it contains—	
(i)	information about the bodily sample; and	25
(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>	
8	Storage on Part 2B temporary databank of DNA profile derived from sample taken before commencement date	30
(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	35

- (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; or 10
- (ii) the DNA profile must be stored on a DNA profile databank under section 26(ab) or (ac).
- Storage of DNA profile under section 26(a), (ab), and (ac) and removal under section 26A* 15
- 9 Storage and removal of DNA profile under certain sections: amended definition of young person applies**
- (1) This Act, as amended by **subpart 4 of Part 2 of the 2019 Act**, 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— 20
- (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(a) applies and for which the bodily sample is taken, or a related offence, occurred before the commencement date; and 25
- (c) the person is charged with the offence on or after the commencement date; and
- (d) section 26A(2)(b) applies to that person on or after the commencement date.
- (2) This Act, as amended by **subpart 4 of Part 2 of the 2019 Act**, 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— 30
- (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 35
- (c) the person is charged with the offence on or after the commencement date; and

	(d) section 26A(2)(b) applies to that person on or after the commencement date.	
(3)	This Act, as amended by subpart 4 of Part 2 of the 2019 Act , 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—	5
	(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	10
	(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)	Subclauses (1), (2), and (3) apply despite—	15
	(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>	20
10	Disposal of bodily sample and identifying information obtained under Part 2B before commencement date	
	For the purpose of this clause, a related offence in section 60A includes a related relevant offence if—	
	(a) the bodily sample was taken from a person aged 17 years—	25
	(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.	30
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—	35
	(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.

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

s 33

Part 1

Various references to “17” replaced with references to “18”	5
Section 2(1), definition of parent	
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)	
Cross-heading above section 18	15
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)	
Heading to section 32	25
Section 32	
Section 39(2)(b)	
Heading to section 39B	
Section 39B, in each place	
Heading to section 39D	30
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 relevant offence , 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)

15

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”.

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,—

10

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

15

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

20

(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—

30

(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 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

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

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

s 45

Part 3		
Provisions relating to Oranga Tamariki Legislation Act 2019		5
10	Interpretation	
	In this Part,—	
	2019 Act means the Oranga Tamariki Legislation Act 2019	
	commencement date means the date on which sections 43 and 44 of the 2019 Act come into force	10
	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	15
	(b) includes an appeal against conviction or sentence.	
11	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.	20
	(2) The defendant must be dealt with by the court under this Act as if sections 43 and 44 of the 2019 Act had not come into force.	
12	Proceeding commenced on or after commencement date for offence committed before the commencement date	
	(1) This clause applies to any defendant aged 17 years in a proceeding that—	25
	(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 sections 43 and 44 of the 2019 Act .	30

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

ss 51, 52

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	20
Heading to form 9	
Heading to form 9A	

Part 2

Various references to “declaration” replaced

Schedule, form 5	25
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)”.	