

House of Representatives

Supplementary Order Paper

Tuesday, 11 June 2019

Oranga Tamariki Legislation Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper clarifies amendments to the Oranga Tamariki Act 1989 in *Part 1* and *Schedule 1* of the Oranga Tamariki Legislation Bill. The main changes that this Supplementary Order Paper makes are to—

- amend *clause 3A* to insert definitions of non-Schedule 1A offence and Schedule 1A offence in section 2 of the Oranga Tamariki Act 1989;
- amend *clause 4B: new section 247A* and *clause 4G: new section 276AA* to enable the prosecutor to seek a determination from the Youth Court that a charge is a related charge, instead of enabling a proposal to be notified;
- replace *new section 276AB(3)* in *clause 4G* to clarify when section 138(1) to (3) of the Criminal Procedure Act 2011 does not apply to the hearing of a charge together with another charge;
- amend *clause 4H* in relation to a proceeding that is transferred back to the Youth Court following a guilty plea or finding of guilt in the District Court or High Court. *New section 276A(5)* enables the Youth Court, in most circumstances, to treat the proceeding as if the charge had been proved before the Youth Court. This includes the circumstances in section 283 of the Oranga Tamariki Act 1989 and, consequently, *clause 4J* is deleted.

This Supplementary Order Paper also makes other technical amendments.

Departmental disclosure statement

Oranga Tamariki—Ministry for Children considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

The Honourable Tracey Martin, in Committee, to propose the amendments shown in the following document.

Hon Tracey Martin

Oranga Tamariki Legislation Bill

Government Bill

Contents

	Page
1 Title	5
2 Commencement	5
Part 1	
Amendments to Oranga Tamariki Act 1989	
3 Amendments to Oranga Tamariki Act 1989	5
3A Section 2 amended (Interpretation)	5
4 New section 214B inserted (Arrest of person aged 17 years released on bail by District Court or High Court)	6
214B Arrest of person aged 17 years released on bail by District Court or High Court	6
4A Section 247 amended (Youth justice co-ordinator to convene family group conference)	7
4B New section 247A inserted (Family group conference either not required or suspended for mixed charges including Schedule 1A offence not required, suspended, or discontinued when charges include Schedule 1A offence and non-Schedule 1A offence)	7
247A Family group conference either not required or suspended for mixed charges including Schedule 1A offence not required, suspended, or discontinued when charges include Schedule 1A offence and non-Schedule 1A offence	7
4C Section 249 <u>amended</u> (Time limits for convening of family group conferences)	8
4D Section 272 amended (Jurisdiction of Youth Court and children's liability to be prosecuted for criminal offences)	8

**Proposed amendments to
Oranga Tamariki Legislation Bill**

4E	Section 273 amended (Manner of dealing with offences (other than murder or manslaughter))	8
4F	Section 275 amended (Manner of dealing with offence of murder or manslaughter, or Schedule 1A offence, or where jury trial to be held)	8
4G	New sections 276AA to 276AC inserted	9
	276AA Youth Court determination whether charge related to charge for Schedule 1A offence	9
	276AB Transfer of related charge to District Court or High Court	10
	276AC Mixed pleas for Hearing of related charge when guilty plea to charge for Schedule 1A offence and related charge	10
4H	Section 276A amended (Transfer of proceeding back to Youth Court)	11
4I	Section 277 amended (Provisions applicable where child, young person, or adult jointly charged)	11
4J	Section 283 amended (Hierarchy of court's responses if charge against young person proved)	11
5	Section 376 amended (Court may authorise continued detention in secure care)	12
6	Schedule 1AA amended	12

Part 2

Amendments to other enactments

Subpart 1—Amendments to Bail Act 2000

7	Amendments to Bail Act 2000	12
8	Section 9A amended (Restriction on bail if defendant charged with murder)	12
9	Section 10 amended (Restriction on bail if defendant with previous conviction for specified offence charged with further specified offence)	13
10	Section 11 amended (Restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence)	13
11	Section 12 amended (Further restriction on bail in certain cases)	13
12	Section 15 amended (Granting of bail to defendant who is 17 years of age)	14
13	Section 17A amended (Restriction on bail if defendant charged with serious Class A drug offence)	14
14	Section 34A amended (Surrender of defendant on bail with EM condition)	15
15	Section 35 amended (Defendant on bail may be arrested without warrant in certain circumstances)	15
16	Section 36 amended (Arrest of defendant charged with drug dealing offence)	15
17	Schedule 1AA amended	15

**Proposed amendments to
Oranga Tamariki Legislation Bill**

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	16
19	Section 41 amended (Section 66 replaced (Government departments may be required to supply information))	16
20	Section 50 amended (Section 78 amended (Custody of child or young person pending determination of proceedings))	16
21	Section 56 replaced (Section 87 amended (Restraining orders))	16
21	56 Section 87 amended (Restraining orders)	16
22	Section 57 amended (Section 88 amended (Interim restraining orders))	16
23	Section 65 amended (New section 110AA inserted (Interim guardianship orders))	17
24	Section 79 amended (Section 145 amended (Agreement not to be made without approval of family group conference))	17
25	Section 143 amended (Section 175 amended (Remand of defendants aged 17 to 20 years))	17
Subpart 3—Amendment to Children’s Commissioner Act 2003		
26	Amendment to Children’s Commissioner Act 2003	17
27	Section 11 amended (Matters to which Commissioner must have regard in exercising functions or powers)	17
Subpart 4—Amendments to Criminal Investigations (Bodily Samples) Act 1995		
28	Amendments to Criminal Investigations (Bodily Samples) Act 1995	17
29	Section 2 amended (Interpretation)	17
30	New section 2B inserted (Transitional, savings, and related provisions)	18
30	2B Transitional, savings, and related provisions	18
31	New Schedule 1AA inserted	18
32	Schedule heading amended	18
33	Further amendments to Criminal Investigations (Bodily Samples) Act 1995	18
Subpart 5—Amendments to Criminal Procedure Act 2011		
34	Amendments to Criminal Procedure Act 2011	18
35	New section 7A inserted (Transitional, savings, and related provisions)	18
35	7A Transitional, savings, and related provisions	18
36	Section 174 amended (Remand of defendant under 17 years for assessment report)	18

**Proposed amendments to
Oranga Tamariki Legislation Bill**

36A	Section 380A amended (Transfer of proceedings commenced in Youth Court back to Youth Court in certain circumstances)	19
37	New Schedule 1AA inserted	19
	Subpart 6—Amendments to Prisoners’ and Victims’ Claims Act 2005	
38	Amendments to Prisoners’ and Victims’ Claims Act 2005	19
39	Section 4 amended (Interpretation)	19
	Subpart 7—Amendment to Returning Offenders (Management and Information) Act 2015	
40	Amendment to Returning Offenders (Management and Information) Act 2015	19
41	Schedule 1 amended	19
	Subpart 8—Amendments to Sentencing Act 2002	
42	Amendments to Sentencing Act 2002	19
43	Section 15B amended (Limitation on sentence of home detention for person under 17 years)	19
44	Section 18 amended (Limitation on imprisonment of person under 17 years)	19
45	Schedule 1AA amended	20
	Subpart 9—Amendments to Victims’ Orders Against Violent Offenders Act 2014	
46	Amendments to Victims’ Orders Against Violent Offenders Act 2014	20
47	Section 4 amended (Interpretation)	20
	Subpart 10—Amendments to Victims’ Rights Act 2002	
48	Amendments to Victims’ Rights Act 2002	20
49	Section 4 amended (Interpretation)	20
	Subpart 11—Amendments to Criminal Investigations (Bodily Samples) Regulations 2004	
50	Amendments to Criminal Investigations (Bodily Samples) Regulations 2004	20
51	Various references to “17” replaced	20
52	Various references to “declaration” replaced	20
53	Various references to “Schedule” replaced	20
	Schedule 1	22
	New Part 4 inserted into Schedule 1AA of Oranga Tamariki Act 1989	
	Schedule 2	25
	New Part 2 inserted into Schedule 1AA of Bail Act 2000	

Schedule 3	27
New Schedule 1AA inserted into Criminal Investigations (Bodily Samples) Act 1995	
Schedule 4	34
Amendments to Criminal Investigations (Bodily Samples) Act 1995	
Schedule 5	37
New Schedule 1AA inserted into Criminal Procedure Act 2011	
Schedule 6	39
New Part 3 inserted into Schedule 1 of Returning Offenders (Management and Information) Act 2015	
Schedule 7	40
New Part 3 inserted into Schedule 1AA of Sentencing Act 2002	
Schedule 8	41
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

- (1) Sections **3A**, **4A** to **4J** **4I**, and **36A** come into force immediately after the commencement, on 1 July 2019, of sections 113(6), 115, 116, and 144 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.
- (2) The rest of this Act comes into force on 1 July 2019.

Part 1

Amendments to Oranga Tamariki Act 1989

3 Amendments to Oranga Tamariki Act 1989

This Part amends the Oranga Tamariki Act 1989.

3A Section 2 amended (Interpretation)

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

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

non-Schedule 1A offence means an offence that is not specified in Schedule 1A and that is within the jurisdiction of the Youth Court

related charge means a charge for a non-Schedule 1A offence that the Youth Court has determined under **section 276AA(4)** to be related to a charge for a Schedule 1A offence

Schedule 1A offence means an offence specified in Schedule 1A

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

After section 214A, insert:

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

- (1) This section applies to a person aged 17 years if—
 - (a) the person is a defendant who—
 - (i) has been charged with, or convicted of, any offence (except a drug dealing offence) in the District Court or the High Court; and
 - (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.
- (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
 - (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.
- (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

Registrar has the same meaning as in section 3 of the Bail Act 2000.

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

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

4B New section 247A inserted (Family group conference ~~either not required or suspended for mixed charges including Schedule 1A offence~~ not required, suspended, or discontinued when charges include Schedule 1A offence and non-Schedule 1A offence)

After section 247, insert:

247A Family group conference ~~either not required or suspended for mixed charges including Schedule 1A offence~~ not required, suspended, or discontinued when charges include Schedule 1A offence and non-Schedule 1A offence

- (1) Section 245 does not apply if—
 - (a) a young person aged 17 years is charged with ~~an offence specified in Schedule 1A~~ a Schedule 1A offence; and
 - (b) an enforcement officer intends to commence criminal proceedings against the young person for ~~an offence not specified in Schedule 1A~~ a non-Schedule 1A offence; and
 - (c) the prosecutor intends to ~~notify~~ seek a determination from the Youth Court of a proposal under **section 276AA(2)**.
- (2) If the prosecutor ~~notifies~~ seeks a determination from the Youth Court of a proposal under **section 276AA(2)**, section 246(b) does not apply unless and until the Youth Court—
 - (a) determines under **section 276AA(4)** that the charge is not a related charge; or
 - (b) orders that the charge remain and be dealt with in the Youth Court under section **276AC(2)**.
- (3) **Subsection (4)** applies if—
 - (aa) a young person aged 17 years is charged with a Schedule 1A offence; and
 - (a) a family group conference has been convened under section 247(b), (c), or (d) in respect of ~~an offence not specified in Schedule 1A~~ a non-Schedule 1A offence that is alleged to have been committed by a the young person aged 17 years; and
 - (b) either—
 - (i) an enforcement officer intends to commence criminal proceedings for the non-Schedule 1A offence; or

- (ii) the young person is charged with the non-Schedule 1A offence; and
 - (e) ~~the young person is charged with an offence specified in Schedule 1A; and~~
 - (d) the prosecutor ~~notifies~~ seeks, or intends to ~~notify~~ seek (in the circumstances of **paragraph (b)(i)**), a determination from the Youth Court ~~of a proposal under **section 276AA(2)**.~~
- (4) If this subsection applies, the family group conference must be—
- (a) suspended unless and until the Youth Court—
 - (i) determines under **section 276AA(4)** that the charge is not a related charge; or
 - (ii) orders that the charge remain and be dealt with in the Youth Court under **section 276AC(2)**; and
 - (b) discontinued if the Youth Court transfers the related charge to the District Court or the High Court under **section 276AB(1)**.

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

- (1) In section 249(3), replace “section 238(1)(d) or (e)” with “section 238(1)(d), (e), or (f)”.
- (2) In section 249(4)(a), replace “section 238(1)(d) or (e)” with “section 238(1)(d), (e), or (f)”.
- (3) After section 249(6), insert:
- (7) Subsection (6) is subject to **section 247A(4)**.

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

- (1) In section 272(4A)(a), replace “sections 275 and 276A” with “sections 275, **276AA** to **276AC**, and 276A”.
- (2) After section 272(5), insert:
- (6) Subsection (3)(baa) is subject to section 277.

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

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

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

After section 275(2), insert:

- (2A) However, if a young person aged 17 years charged with ~~an offence specified in Schedule 1A~~ a Schedule 1A offence is jointly charged with a child or young

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

- (a) ~~one~~ 1 or more defendants ~~elects~~ elect jury trial and the co-defendants are to be tried together, in which case the proceeding must be transferred only after an adjournment for trial callover in accordance with subsection (2)(a); or
- (b) the defendants are to be tried separately, in which case the proceeding against the young person aged 17 years charged with ~~an offence specified in Schedule 1A~~ a Schedule 1A offence must be transferred immediately following the determination that the defendants are to be tried separately, but after that young person's first appearance, in accordance with subsection (2)(aa) or (ab); or
- (c) ~~one~~ 1 or more co-defendants are charged with murder or manslaughter, in which case subsection (2)(b) applies.

4G New sections 276AA to 276AC inserted

Before section 276A, insert:

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

- (1) This section applies to a young person aged 17 years who is charged with— a Schedule 1A offence and a non-Schedule 1A offence.
 - (a) ~~an offence specified in Schedule 1A;~~ and
 - (b) ~~an offence not specified in Schedule 1A (other than murder or manslaughter).~~
- (2) The prosecutor may ~~notify~~ seek a determination from the Youth Court ~~of a proposal~~ that the charge for the ~~offence not specified in Schedule 1A~~ non-Schedule 1A offence is related to the charge for the ~~offence specified in Schedule 1A offence.~~
- (3) If the prosecutor intends to ~~notify a proposal~~ seek a determination, the prosecutor must do so as soon as practicable after the ~~latter charge~~ later of the charges is filed.
- (4) If the ~~Youth Court receives a proposal~~ prosecutor seeks a determination under **subsection (2)**, the ~~court~~ Youth Court must determine the matter.
- (5) In making a determination, the court may take into consideration—
 - (a) any agreement of the parties;
 - (b) written or oral submissions of the parties.
- (6) For the purpose of this section,—

- (a) a charge (**B**) is related to another charge (**A**) where the offending for which charge B is filed arises from the same incident or series of incidents as the offending for which charge A is filed; and
- (b) a series of incidents is determined by—
 - (i) the time at which they occurred;
 - (ii) the overall nature of the alleged offending;
 - (iii) any other relationship between the alleged offending that the court considers relevant.

276AB Transfer of related charge to District Court or High Court

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

276AC ~~Mixed pleas for~~ Hearing of related charge when guilty plea to charge for Schedule 1A offence ~~and related charge~~

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

- (a) by the Youth Court before the related charge is transferred to the District Court or the High Court; or
- (b) by the District Court or the High Court if the related charge has been transferred to either court.

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

- (1) In section 276A(1), replace “section 275” with “section 275 or **276AB(1)**”.
- (2) After section 276A(2), insert:
- (3) The transfer of the proceeding may occur at any time before sentencing.
- (4) For the purpose of subsection (1)(a), in relation to a proceeding for a related charge that is joined to a proceeding under **section 276AB(1)**, the reason for the transfer of the proceeding for the related charge may no longer apply if, for example,—
 - (a) ~~the defendant young person~~ has been found not guilty of the ~~offence specified in Schedule 1A offence~~ in the District Court or the High Court; or
 - (b) ~~the charge for the offence specified in Schedule 1A offence is severed~~ is to be heard separately under section 138(4) of the Criminal Procedure Act 2011, is withdrawn under section 146 of that Act, or discharged is dismissed under section 147 of that Act; or
 - (c) ~~the related charge is transferred back to the Youth Court by District Court or High Court~~ has made an order under **section 276AC(2)**.
- (5) For the purposes of sections 283, 293A, 294, 297, 298, 307, 308A, 311, and 334, a proceeding that is transferred back following a guilty plea or finding of guilt is to be treated as if the charge were proved before the Youth Court.
- (6) Although **subsection (5)** does not apply to section 281, the Youth Court may direct that a family group conference be convened under section 281B.

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

After section 277(11), insert:

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

4J Section 283 amended (Hierarchy of court’s responses if charge against young person proved)

In section 283, replace “proved” with “proved, or to which a proceeding is transferred under section 276A following a guilty plea or a finding of guilt.”

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

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

6 Schedule 1AA amended

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

(1) For the purpose of this clause,—

commencement date means the date on which section 7(4) of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 comes into force

criminal proceedings—

(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):
 - (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.

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—
 - (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
 - (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
 - (b) the defendant is aged 17 years and—

- (i) is charged in the District Court or the High Court with an offence that carries a maximum sentence of 3 or more years' imprisonment; and
- (ii) has previously received 14 or more sentences of imprisonment (within the meaning of that term in section 4(1) of the Sentencing Act 2002); and
- (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)).

(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”.

(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—

- (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—

- (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:

(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.

14 Section 34A amended (Surrender of defendant on bail with EM condition)

- (1) In section 34A(3), replace “17” with “18”.
- (2) After section 34A(3), insert:
- (4) However, subsection (3) does not apply to a defendant aged 17 years who—
 - (a) is charged with, or convicted of, any offence in the District Court or the High Court; and
 - (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:

- (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”.

21 Section 56 replaced (Section 87 amended (Restraining orders))

Replace section 56 with:

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”.

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”.

- 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”.
 - (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”.
- 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)”.
 - (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”.
 - (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

- 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”.

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).
- 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

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.

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

- (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”.
- (4) Amend the 1995 Act as set out in **Part 4** of **Schedule 4** of this Act.

Subpart 5—Amendments to Criminal Procedure Act 2011

34 Amendments to Criminal Procedure Act 2011

This subpart amends the Criminal Procedure Act 2011.

35 New section 7A inserted (Transitional, savings, and related provisions)

After section 7, insert:

7A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

36 Section 174 amended (Remand of defendant under 17 years for assessment report)

In section 174(1)(b), after “172”, insert “or 175”.

36A Section 380A amended (Transfer of proceedings commenced in Youth Court back to Youth Court in certain circumstances)

In section 380A, replace “section 275” with “section 275 or **276AB(1)**”.

37 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 5** of this Act as the first schedule to appear after the last section of the Criminal Procedure Act 2011.

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)

(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

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

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**”.

(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”.

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

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:

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”.

(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

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”.

52 Various references to “declaration” replaced

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

53 Various references to “Schedule” replaced

(1) In the provisions of the 2004 regulations set out in **Part 3** of **Schedule 8** of this Act, replace “the Schedule” with “Schedule 1”.

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

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

s 6(4)

Part 4

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.
- (2) This clause applies to any person 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.
- (3) The proceeding against the person 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**.
- (4) Section 2(2), as amended by the 2017 Act, applies to this clause, except for the requirement that the person be a young person at the date of the alleged offence.

20A Proceeding for charge related to criminal proceeding underway in District Court or High Court on commencement date

- (1) For the purpose of this clause, **commencement date** means the date on which **section 4G** of the Oranga Tamariki Legislation Act **2019** comes into force.
- (2) This clause applies to a person to whom clause 4 applies and either—
 - (a) **clause 20** applies, if the date of the alleged offending that is the subject of the new proceeding occurred before the commencement date; or
 - (b) **clause 20** does not apply, if the date of the alleged offending that is the subject of the new proceeding occurred on or after the commencement date.
- (3) If a new proceeding is commenced against the person on or after the commencement date by the filing of a charge for ~~an offence not specified in Schedule 1A~~ a non-Schedule 1A offence, the provisions referred to in **subclause**

(4) are modified as set out in **subclause (5)** to enable the Youth Court to determine whether the charge for the ~~offence not specified in Schedule 1A~~ Schedule 1A offence is related to and may be joined with the criminal proceedings that are underway in the District Court or the High Court.

- (4) The provisions are as follows:
- (a) **section 247A**; and
 - (b) **sections 276AA to 276AC**; and
 - (c) **section 276A**.
- (5) A reference to a charge for ~~an offence specified in Schedule 1A~~ a Schedule 1A offence includes a reference to a charge for any offence (whether specified in Schedule 1A or not) for which the person is in criminal proceedings that are underway in the District Court or the High Court on the commencement date.
- (6) A reference to a charge for ~~an offence not specified in Schedule 1A~~ a non-Schedule 1A offence continues to exclude a reference to a charge of murder or manslaughter or another offence over which the Youth Court does not have jurisdiction.

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.
- (2) This clause applies to actions taken by a constable before the commencement date during an investigation of a person aged 17 years for an offence or an alleged offence.
- (3) No proceedings are invalidated and no evidential material is deemed inadmissible because the actions are inconsistent with—
- (a) the definition of young person in section 2(1), as replaced by section 7(4) of the 2017 Act; and
 - (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
- 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
 - (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.
- (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
 - (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.
- (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
 - (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) 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

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

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
- (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.
- (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

- (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**.

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
- (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)

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
 - (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.

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

s 31

Schedule 1AA
Transitional, savings, and related provisions

s 2B

Part 1
Provisions relating to Oranga Tamariki Legislation Act 2019

1 Interpretation

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—

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

process or procedure—

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

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**

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

- (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

- (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,—
- (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**.

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**):
- (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:
- (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:
- (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:
- (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.
- (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
 - (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.
- (5) Any decision lawfully made by the person aged 17 years, a constable, or a Judge before, on, or after the commencement date in relation to a process or procedure in the circumstances remains valid on and after the commencement date and may not be challenged only by reason of the changes in—
- (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**.

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
 - (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.
- (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

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.

Bodily sample taken under section 24J

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
 - (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.
- (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
 - (ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken.

Storage of DNA profile on Part 2B temporary databank

8 Storage on Part 2B temporary databank of DNA profile derived from sample taken before commencement date

- (1) This clause applies if—
 - (a) a bodily sample was taken from a person aged 17 years—
 - (i) before the commencement date; and
 - (ii) under section 24J for a relevant offence; and

- (b) 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—
- (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
 - (ii) the DNA profile may be stored on a DNA profile databank under section 26(ab) or (ac).

8A Removal of DNA profiles from Part 2B temporary databank

When either of the circumstances in **clause 8(2)(b)(i) or (ii)** has arisen in relation to a DNA profile to which **clause 8** applies, the DNA profile must be removed from the Part 2B temporary databank.

Storage of DNA profile under section 26(a), (ab), and (ac) and removal under section 26A

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—
- (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
 - (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—
- (a) the bodily sample for the DNA profile is taken from a person aged 17 years before, on, or after the commencement date; and

- (b) the triggering offence by the person to which section 26(ab) applies and for which the bodily sample is taken, or a related offence, occurred before the commencement date; and
 - (c) the person is charged with the offence on or after the commencement date; and
 - (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—
- (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
 - (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—
- (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.

Disposal of bodily sample

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—
 - (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.

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

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

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

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

s 33

Part 1**Various references to “17” replaced with references to “18”**Section 2(1), definition of **parent**

Section 2A, in each place

Section 5(b), in each place

Heading to section 8

Section 8(2)

Section 11, in each place

Cross-heading above section 13

Section 13(1)

Section 16(1)(a)

Cross-heading above section 18

Heading to section 18

Section 18(1)

Heading to section 19

Section 23(1)(a)

Section 24D(b)(i)

Heading to section 24J

Section 24J(1)

Section 26A, in each place

Section 30(1)

Heading to section 32

Section 32

Section 39(2)(b)

Heading to section 39B

Section 39B, in each place

Heading to section 39D

Section 39D, in each place

Section 40(2)(a)

Section 41, in each place

Section 41B(2)(b)

Section 41C, in each place
Section 49A, in each place
Section 50, in each place
Section 52(1)(da)
Heading to section 52A
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
Section 7(b)(i)
Section 13, in each place
Section 18, in each place
Section 24(4)(h)
Section 24J, in each place
Section 24P(2)(a)
Section 26, in each place
Section 26A(6)(c)
Section 26B(1)(b)
Section 36(2)
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

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”.

Section 24F(b)(ix)

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

Section 57(2)

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

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”.

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)”.

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

s 37

Schedule 1AA
Transitional, savings, and related provisions

s 7A

Part 1
Provisions relating to Oranga Tamariki Legislation Act 2019

1 Interpretation

In this Part,—

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

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
- (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.
- (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—
 - (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—

Schedule 5

**Proposed amendments to
Oranga Tamariki Legislation Bill**

- (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
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

- (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)**.
- (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

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

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
- (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.
- (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—
 - (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**.

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

ss 51–53

Part 1

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

Heading to form 4

Form 5, in each place

Heading to form 5A

Form 5A, in each place

Heading to form 5B

Form 5B

Heading to form 6

Form 7, in each place

Heading to form 8

Heading to form 8A

Heading to form 9

Heading to form 9A

Part 2

Various references to “declaration” replaced

Schedule, form 5

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

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

Part 3

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

Form 1, in each place

Form 2, in each place

Form 3, in each place

Form 4, in each place

Form 5A, in each place

Form 5B, in each place

Form 6

Form 8, in each place

Form 9, in each place

Form 11