



Peace Movement Aotearoa

PO Box 9314, Wellington 6141, Aotearoa New Zealand. Tel +64 4 382 8129

Email icanz@xtra.co.nz Web site www.converge.org.nz/pma

Social Services and Community Committee,
Parliament Buildings, Wellington.

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Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill

Thank you for the opportunity to make a submission on the Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (the Bill)¹. The Bill covers issues that have been a focus of Peace Movement Aotearoa's² work over many years, particularly in relation to the Convention on the Rights of the Child (CRC) and the Optional Protocol on Child Soldiers (OPAC)³ which New Zealand is a state party to.

Our comments below are grouped into three main sections:

- A. The context of the Bill
- B. Issues with the Bill
- C. Recommendations

We are opposed to this Bill and we recommend it does not proceed. We wish to speak with the Committee about our concerns and recommendations.

A. The context of the Bill

The Bill was introduced as a consequence of the coalition government's 100-day plan which committed it "*to begin work exploring options to crack down on serious youth offending by establishing a Young Serious Offender category, and Young Offender Military Academies*".⁴

We note that in keeping with much of the legislation introduced since November 2023, official advice was constrained by the limited timeframe and narrow scope permitted, and was "*heavily influenced by Ministerial directions, statements and manifesto commitments*". Oranga Tamariki was not permitted to consider non-legislative options for developing a young serious offender declaration regime or any other option.⁵ This clearly puts the Bill into the category of fulfilling an existing political agenda rather than something that is actually needed.

We further note that the Bill was introduced while the twelve-month military-style academy pilot programme is still running, rather than after it was completed and impartial evaluation had been undertaken as to whether or not it had achieved what it was intended to.

The tragic death of one young person in the pilot programme, at least two absconders from it who were “*allegedly involved in a carjacking with two other teenagers, where a machete was wielded*”⁶ and “reoffending” by at least one other⁷ strongly suggest it should be abandoned now before it results in further harm.

We were deeply disturbed that the Children's Minister Karen Chhour and Acting Prime Minister David Seymour unveiled the pilot military-style boot academy only three days after the Report of the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions⁸ was released in July: a Report that detailed the horrific widespread systemic abuse of at least 200,000 children and young people needing care and protection, who instead were subjected to “*unimaginable physical, emotional, mental and sexual abuse, severe exploitation and neglect*” - including “*state-funded violence and abuse*” in a military-style boot camp.

This Bill was introduced just one week after the Prime Minister delivered an apology to survivors of abuse in care as though none of the issues raised in the Report - including the urgent need for comprehensive changes in thinking and action around state care to prevent such violence against children and young persons happening again - have registered at all.

B. Issues with the Bill

i) Lack of consultation and consideration of alternatives

As noted above, Oranga Tamariki was not permitted to consider or put forward alternatives to a legislative approach to serious young offenders. There does not appear to have been any consultation with whānau, hapū or iwi about other ways forward despite the Regulatory Impact Statement saying that 80-85% of those “eligible to be declared a YSO” are likely to be young Māori. Similarly, it does not appear that Mana Mokopuna - Children and Young People's Commission, or advocacy organisations that have expertise in care and protection of children and young persons, and the impact of the criminal justice system on them, were consulted either.

ii) ‘Young Serious Offender’ designation

We cannot see any need for this designation, and note that Oranga Tamariki's preferred option was to maintain the status quo and develop a non-legislative response. It has been said that the provisions of this Bill are necessary to meet the goal of reducing serious repeat youth offending by 15%, but according to Oranga Tamariki, the number of serious youth offenders had already dropped by 7% by the end of last year under the existing legislation and processes.⁹

iii) Military-Style Academies

According to Oranga Tamariki's Military-Style Academy Pilot Fact Sheet, those sentenced to a military-style academy will follow a curriculum with daily activities to support their health, learning and wellbeing. The residential component will focus on developing structure and routine, addressing criminal behaviours, physical activities, education and vocational training, preparation for work and finding employment, and specific rehabilitative, therapeutic and cultural components required for each young person.

There is absolutely no reason to believe that any of these will be best achieved in a "military-style" academy, a concept which has the unfortunate and inaccurate implication that none of these outcomes are available in a civilian or non-military setting. Indeed, there is plenty of evidence available from multiple sources indicating that military-style programmes do not have the success rates that those who support them believe they might, and there are other better options that do not involve "military-style" concepts.

iv) Authority for the use of reasonable physical force

Legislating to permit the use of physical force against children or young persons would be unacceptable at any time, but it is absolutely incredible that this is being proposed in the light of the findings and recommendations of the Royal Commission of Inquiry.

The Children's Minister has publicly stated she cannot guarantee that abuse will not occur in the military-style academies¹⁰, but this Bill seeks to legitimise the use of force against young persons which makes physical abuse more likely to occur and more likely to be unreported.

We note that Oranga Tamariki's Regulatory Impact Statement was supposed to include an assessment of consistency with key international conventions that New Zealand is a state party, but it does not refer at all to New Zealand's obligations under the Convention Against Torture.

In its most recent Concluding Observations, the Committee Against Torture - which monitors the Convention Against Torture - included a list of changes necessary to bring New Zealand's youth justice system fully into line with the Convention, and specifically stated that the use of force against children (which includes young persons aged between 14 to 17 years) must be explicitly prohibited.¹¹

All of the proposals in this Bill are also clearly inconsistent with New Zealand's obligations under the Convention on the Rights of the Child: in its most recent Concluding Observations, the Committee on the Rights of the Child also included a section on the changes necessary to bring the youth justice system fully into line with this Convention¹².

In relation to New Zealand's obligations under both the Convention and OPAC, the Committee recommended that the operation of service academies in secondary schools be decreased "*with a view to demilitarising schools*"¹³ - so clearly military-style academies within the youth justice system would not be acceptable under the Convention or OPAC.

v) Better ways forward

Mana Mokopuna - Children and Young People Commission's policy position on youth justice points out that:

"... mokopuna who interact with the youth justice system face complex challenges, including poverty, racism and discrimination, trauma, violence exposure, abuse and/or neglect, whānau with insecure employment, whānau with mental health, alcohol and substance addiction challenges, dislocation from education, loneliness and a lack of belonging, being unhoused, and unmet mental health needs ...

*In addition to these socio-economic factors, cultural disconnection, and historical trauma, including the ongoing impact of colonisation, have a large influence on the current state of youth justice in Aotearoa New Zealand, particularly for mokopuna Māori. ... The ongoing impact of colonisation has also led to systemic inequities, cultural disconnection and historical trauma for Realm peoples and Pacific Peoples."*¹⁴

We cannot see how the provisions of this Bill will do anything positive towards addressing those underlying factors and challenges: military-style academies are more likely to exacerbate underlying issues such as trauma and violence.

The Royal Commission of Inquiry found that:

"the people making decisions about care in the State care system included social workers, NZ Police, judges, health professionals and needs assessors. These decision-makers generally had limited involvement in, connection with, or understanding of the most affected communities, including Māori, Pacific Peoples, Deaf, disabled people and people who experience mental distress."

"The State often failed to assess, or inadequately assessed, children, young people and adults in care for trauma and support needs when deciding on care options."

"The State almost always failed to consider or recognise an ao Māori (Māori world) view, tikanga, te reo and mātauranga Māori when removing or placing tamariki, rangatahi and pakeke Māori in all care settings."

*"... the State often used its formal powers in a discriminatory way, such as using formal legal orders more often against Māori, rather than supporting in-home, whānau, hapū, iwi or community care." and so on ...*¹⁵

Furthermore, the Royal Commission of Inquiry reported that:

*"Survivors told the Inquiry that the care systems need to fundamentally change. This would see the State handing over power, funding and control of preventative supports and care services to local communities and communities of interest."*¹⁶

That is clearly where the answer lies: addressing the underlying factors and challenges identified by Mana Mokopuna that are faced by children and young persons who end up in the criminal justice system is the only effective way to turn their lives around and give them the best chance to flourish.

C. Recommendations

As stated from the outset, we do not support the provisions of the Bill and we recommend it does not proceed.

The military-style academy pilot programme has been variously stated as costing between \$5.1 to \$7 million¹⁷ and we suggest this should have been put to better use to design a collaborative way forward with whānau, hapū or iwi, Pasifika communities, Mana Mokopuna - Children and Young People's Commission, non-governmental advocacy organisers and community providers¹⁸ that have expertise in care and protection of children and young persons, and the impact of the criminal justice system on them. This could usefully be one of the recommendations included in your report to the House.

As you consider this Bill, we urge you to think about the words of the Royal Commission of Inquiry in the summary of their Report:

“It is a national disgrace that hundreds of thousands of children, young people and adults were abused and neglected in the care of the State and faith-based institutions. These gross violations occurred at the same time as Aotearoa New Zealand was promoting itself, internationally and domestically, as a bastion of human rights and as a safe, fair country in which to grow up as a child in a loving family. If this injustice is not addressed, it will remain as a stain on our national character forever.”¹⁹

One of the clear and consistent messages from the Royal Commission of Inquiry and survivors of abuse in care is that such violations must never happen again: this Committee has both the power and the responsibility to ensure that this Bill does not proceed any further as one step towards that.

Thank you for your consideration of our comments, and we welcome the opportunity to speak with you.

References

¹ Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill 2024

² Peace Movement Aotearoa is the national networking peace organisation, established in 1981 and registered as an Incorporated Society in 1982. Our purpose is networking and providing information and resources on peace, humanitarian disarmament, justice and human rights issues. We have extensive national networks which include more than one hundred and fifty contacts for national or local peace, disarmament, human rights, justice, faith-based and community organisations, and more than seven thousand individuals. We regularly provide information to UN human rights treaty monitoring bodies, and to Special Procedures and mechanisms of the Human Rights Council, on a range of issues impacting Aotearoa New Zealand: of particular relevance to this Bill, we have provided information and briefed the Committee on the Rights of the Child on New Zealand's lack of compliance with the Convention on the Rights of the Child and the optional Protocol on Child Soldiers in 2010, 2011, 2016, 2020, 2022 and 2023

³ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, generally referred to as the Optional Protocol on Child Soldiers

⁴ Regulatory Impact Statement: Young serious offender declaration and military-style academies, Oranga Tamariki, 1 May 2024

⁵ As at note above

⁶ See, for example, 'It's not 'locked and loaded', but longer boot camps on the cards', RNZ, 10 December 2024, <https://www.rnz.co.nz/news/political/536219/it-s-not-locked-and-loaded-but-longer-boot-camps-on-the-cards>

⁷ See, for example, 'Youth on boot camp pilot re-offended five weeks after release', RNZ, 21 November 2024, <https://www.rnz.co.nz/news/political/534428/youth-on-boot-camp-pilot-re-offended-five-weeks-after-release>

⁸ *Whanaketia: Through pain and trauma, from darkness to light / Whakairihia ki te tihi o Maungārongo*, Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institution, June 2024

⁹ See, for example, 'Serious youth offenders numbers drop by 7%', RNZ, 17 December 2024, <https://www.rnz.co.nz/news/political/536934/serious-youth-offenders-numbers-drop-by-7-percent>

¹⁰ See, for example, 'Minister can't guarantee abuse won't occur at controversial boot camps', RNZ, 25 July 2024, <https://www.rnz.co.nz/news/political/523148/minister-can-t-guarantee-abuse-won-t-occur-at-controversial-boot-camps>

¹¹ Concluding Observations on the Seventh Periodic Report of New Zealand (CAT/C/NZL/CO/7), Committee against Torture, 24 August 2023, para 38.g

¹² Concluding Observations on the Sixth Periodic Report of New Zealand (CRC/C/NZL/CO/6), Committee on the Rights of the Child, 6 February 2023, paras 42-43

¹³ As at note above, para 45.b

¹⁴ Youth Justice: Fair and Supportive Systems for Mokopuna, Mana Mokopuna - Children and Young People Commission, June 2024

¹⁵ *Whanaketia*, Royal Commission of Inquiry, as above

¹⁶ *Whanaketia*, Royal Commission of Inquiry, as above

¹⁷ Military-Style Academy Pilot: The Approach, Cabinet Minute of Decision (CAB-24-MIN-0209), 10 June 2024

¹⁸ An example of one such provider is outlined in 'Mentor service provider 'gutted' money isn't going to community orgs', RNZ, 18 July 2024, <https://www.rnz.co.nz/news/political/522439/boot-camps-mentor-service-provider-gutted-money-isn-t-going-to-community-orgs>

¹⁹ *Whanaketia*, Royal Commission of Inquiry, as above