

Submission to the Justice Committee on the Antisocial Road Use Legislation Amendment Bill

Introducing Mana Mokopuna – Children's Commissioner

Mana Mokopuna – Children's Commissioner is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and well-being of all mokopuna (children and young people) under 18 years old in Aotearoa New Zealand and, including young persons aged over 18 but under 25 years of age if they are, or have been, in care or custody.

Given the statutory mandate of the Children's Commissioner, this submission is focussed on the potential impact of the Antisocial Road Use Legislation Amendment Bill (the Bill) on the rights, interests, participation, and well-being of mokopuna in Aotearoa New Zealand.

Summary & Recommendations

1. We acknowledge those who are affected by the antisocial driving that has given rise to this Bill. However, we are concerned the Bill has been developed without proper consideration of how it could impact on the rights of mokopuna as drivers, passengers, or bystanders. Specifically, we are concerned the Bill:
 - takes a punitive approach that is inconsistent with children's rights and has the potential to cause harm to mokopuna,
 - proposes a new offence and penalty regime that is likely to disproportionately impact mokopuna and particularly mokopuna Māori, and
 - has been developed without mokopuna being involved or consulted, and without their views being taken into account, limiting its likely effectiveness.

Recommendations

2. Because of these concerns, Mana Mokopuna recommends the Bill does not proceed until further work is done on the children's rights implications of the changes proposed. In particular, we recommend the Government undertakes targeted consultation with mokopuna to seek their views on antisocial road use and potential solutions to address it to help ensure any changes made meet the policy objectives of the Bill in practice.
3. Should the Bill proceed we recommend:
 - the proposed infringement fees and court fine limits relating to failing to leave an antisocial road use area and creating excessive noise within or on a vehicle are significantly reduced,

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- the current law's staggered approach to penalising antisocial road use offenders is retained and vehicle destruction is only possible on a third offence basis,
- the proposed frightening and intimidating convoy offence is abandoned considering the disproportionate impact it is likely to have on Māori, including mokopuna Māori, and
- going forward, the Government strengthens its collection and publication of data, disaggregated by age and ethnicity, on how many children under 18 participate in, or are fined, charged or convicted in relation to, antisocial road use activities and commissions further research to better understand why mokopuna participate in antisocial road use activities.

The Government's obligations to protect the rights of children in contact with the law

4. The UN Convention on the Rights of the Child (the Children's Convention)¹ is an international treaty that outlines the fundamental human rights of every child, including their rights to survival and development, education, healthcare, protection from harm, and to have a say in matters that affect them.
5. In relation to children who have infringed the law, the Children's Convention provides that New Zealand, as a States Party to the Children's Convention, must:²

"...recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."
6. The Committee on the Rights of the Child (CRC Committee), which monitors States Parties' implementation of the Children's Convention, has also emphasised that States Parties are required to promote the establishment of measures for dealing with children without resorting to judicial proceedings, conviction, or deprivation of liberty, whenever appropriate.³
7. In relation to offence and penalty regimes, the CRC Committee has stated:⁴

"...an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances of the child (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Children's Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the

¹ [Convention on the Rights of the Child | OHCHR](#)

² Article 40 of the Children's Convention.

³ [General comment No. 24 \(2019\) on children's rights in the child justice system](#) at para. 72.

⁴ [General comment No. 24 \(2019\) on children's rights in the child justice system](#) at para. 76.

need for public safety and sanctions. However, weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society."

8. When developing new laws and policies, the Government must also ensure they align with the core principles of the Children's Convention relating to non-discrimination, the best interests of the child, the right to life, survival and development, and the child's right to have their views given due weight. To give effect to this duty, the Government should undertake child rights impact assessments to examine how proposed laws and policies could impact on children and, if necessary, revise or refine proposals to mitigate any negative impacts of children and their rights. The Government is also obligated under Te Tiriti o Waitangi to undertake the same assessment in relation to the rights of mokopuna Māori.
9. As we outline in further detail below, we are of the view that the Bill has been developed without proper consideration of how it could impact on the rights of mokopuna who are present at antisocial road use activities, either as drivers, passengers or bystanders, from a Children's Convention or Te Tiriti o Waitangi perspective. Mana Mokopuna recommends the Bill does not proceed until further policy work is done on the children's rights implications of the proposed legislative changes to ensure consistency with Aotearoa New Zealand's international legal obligations.

The impact of the Bill on mokopuna

10. Mana Mokopuna acknowledges the communities, including mokopuna, who are fearful of antisocial road use.
11. We reiterate, as we have in our past submissions relating to youth offending, that we do not condone nor excuse intimidating or lawbreaking behaviour, including antisocial road use. We are aware that all too often this behaviour endangers young people themselves, including those partaking in antisocial road use gatherings.⁵
12. However, for those people affected by this behaviour, and for the mokopuna themselves involved in antisocial road use, it is imperative there is investment in prevention and effective solutions to all offending by children and young people, including addressing the underlying causes of that offending. We remind the Justice Committee that Mana Mokopuna has a mandate to draw attention to the rights, interests, well-being and participation of mokopuna, hence this is the focus of our submission.

Mokopuna who receive infringement fees

13. Mana Mokopuna is concerned about the disproportionate impact the Bill's proposed infringement fees could have on mokopuna.
14. The Bill is proposing to impose the following infringement fees:
 - a new \$1,000 infringement fee if a person fails to leave an area which has been temporarily closed by Police due to antisocial road use activity, including street racing, siren battles, and frightening and intimidating convoys, and

⁵ [Levin boy racers: Seven injured, 10 arrested as woman's legs run over - NZ Herald](#); [Auckland boy racer jailed for hitting pregnant teen, causing baby's death - NZ Herald](#); [Teen seriously injured as boy racers converge at notorious trouble spot | Waikato Times](#).

- an increased \$300 infringement fee if a person makes excessive noise within or on a vehicle (the current fee is \$50).
15. We are of the view that the proposed infringement fees, especially for failing to leave an antisocial road use area, are too high, and are disproportionate to the offence when age and level of culpability are considered. We note the Ministry of Transport's Regulatory Impact Statement (RIS) for the Bill also states that the proposed \$1,000 infringement fee for failure to leave an antisocial road use area is "inconsistent with offences of a similar nature" and may be deemed disproportionate to the nature of offending when it was compared to an alternative fee of \$300.⁶
 16. The disproportionality of the infringement fees may make it harder for mokopuna to pay, considering they are more likely to be earning low or no income, and so it is more likely they will not pay the fee. This risk is heightened for already disadvantaged and vulnerable mokopuna who do not have the means to pay their fee or are unable to secure financial support from their families.
 17. The high infringement fees proposed by the Bill also risk drawing more mokopuna into the court and criminal justice system, which should be avoided wherever possible, especially if their cases would not be determined by the Youth Court.⁷ If mokopuna fail to pay their infringement fee, it will be transferred to the courts and become a fine. The courts can then decide to take a range of actions including deducting the fine from the person's income or bank account, clamping or seizing their property, stopping overseas travel, and suspending their driver's licence. Once mokopuna turn 18, any unpaid fines would also appear on their credit record.⁸ As proposed under the Bill, if the matter got to court, the fine could increase up to \$1,000 for excessive noise and \$3,000 for failure to leave an antisocial road use area. If mokopuna cannot be found or fail to appear in court when summonsed they could be arrested and if they do not have the means to pay their fines they could be sentenced to community work or home detention.⁹ Our view is this is excessive.
 18. These proposals potentially infringe the rights of mokopuna, who are not directly engaging in antisocial road use, to freedom of association and to freedom of peaceful assembly under Article 15 of the Children's Convention. As noted in the New Zealand Bill of Rights (NZBORA) vet of the Bill, if an individual is assembling peacefully the right protects them even if others are not assembling peacefully and for the Police to limit this right it must be justified.¹⁰ The NZBORA vet concluded that if dispersal of a gathering is necessary to stop antisocial road use, arrest offenders and deter its repetition, this would amount to a justified limit on the right.¹¹ The NZBORA vet did not consider whether imposing an infringement fee on people who were assembling peacefully but failed to leave an antisocial road use area when directed is appropriate. We would argue it is inappropriate to fine mokopuna for failing to leave an area if they were otherwise

⁶ [Proactive-release-Montreal-Convesion-Order-2024.pdf](#) at p.11. In relation to the proposed fee of \$300 for excessive noise, the RIS states this is "proportionate to the nature of offending" (see p.12).

⁷ We assume antisocial road use-related infringement fines would not go to the Youth Court for determination since it does not deal with traffic infringement offences. See [Traffic offences in Youth Court jurisdiction | Practice Centre | Oranga Tamariki](#)

⁸ [Fines enforcement | New Zealand Ministry of Justice](#)

⁹ [How unpaid fines are enforced - Community Law](#)

¹⁰ [29072025-Antisocial-Road-Use-Legislation-Amendment-Bill.pdf](#) at para. 13.

¹¹ Ibid.

assembling peacefully and provides another justification for why the Bill's proposed infringement fees should be significantly reduced.

19. Mana Mokopuna recommends the infringement fees and court fine limits for excessive noise and failure to leave an antisocial road use area are significantly reduced to strike a better balance between imposing penalties that provide sufficient deterrence and upholding the child justice principles in Article 40 of the Children's Convention. Considering the potential impact on the rights of mokopuna to freedom of association and peaceful assembly, we also recommend the Police develop internal guidance in relation to their new antisocial road use powers that emphasises mokopuna should only be issued an infringement fee if they clearly disobey Police directions to leave an antisocial road use area and do not have a reasonable excuse for not leaving (which is a defence provided under the Bill).

Mokopuna who commit antisocial road use offences

“ The law says any groups that look intimidating, they can confiscate your vehicle and crush it. That's not us.”

(Pasifika youth)¹²

20. Mana Mokopuna is concerned about the Bill's proposal that the courts will now be required to automatically forfeit or destroy a person's vehicle on their first conviction of an antisocial road use offence. Antisocial road use offences include street racing, sustained loss of traction, frightening or intimidating convoys, failure to stop while exceeding the speed limit or driving dangerously, and failure to provide information about the identity of the driver.
21. In relation to current antisocial road use offences, the law takes a staggered approach. For example, while the courts can decide to confiscate a person's car on their first or second antisocial road use offence, they do not have the discretion to order its destruction until a person offends a third time within four years of their first offence. Additionally, under the current law, if a vehicle is confiscated it must be sold and the proceeds used to pay the offender's fees, fines and costs with any residual proceeds returned to the offender.
22. Under the Bill's proposed amendments, the court must order the forfeiture or destruction of a vehicle on a person's first antisocial road use conviction, unless it would be "manifestly unjust" or create "extreme hardship" for the offender or "undue hardship" for any other person. If a vehicle is forfeited and sold rather than destroyed, the offender will not have a residual interest in any sale proceeds, as is the case with confiscation, and will be liable for all fees, fines and costs, including those relating to destruction. The Bill also proposes that an offender cannot purchase a new interest in a motor vehicle for 12 months.
23. In addition to vehicle forfeiture or destruction, under both the current law or the Bill, a person may face a range of other penalties depending on what offence they have committed, including imprisonment, fines and driving disqualification.
24. In relation to automatic vehicle forfeiture or destruction, we are concerned the law change proposed by the Bill is a disproportionate penalty for a first offence, especially for

¹² [Car audio crews say they're not boy racers as crackdown looms | Stuff](#)

mokopuna. Mokopuna would suffer a total loss of their vehicle's value and be liable for other fees and costs, including destruction and impoundment fees. The loss of their vehicle, and subsequent ban on purchasing another one for 12 months, could also adversely impact their employment or access to education.

25. We assume antisocial road use cases that involve mokopuna will fall under the jurisdiction of the Youth Court,¹³ which is required to carefully consider and balance public interest considerations with the best interests of mokopuna when determining appropriate penalties for youth offending.¹⁴ To ensure the Youth Court, and other courts who deal with young adult offenders, strike the right balance, we recommend the staggered approach in the current law is retained to ensure mokopuna who commit antisocial road use offences are held accountable but also given the opportunity to learn from their mistakes and change their driving behaviour before harsher penalties, such as vehicle forfeiture and destruction, are applied.

Mokopuna Māori

“ They arrest us for nothing. They pull up with millions of cop cars and there's only one of us they have a warrant for but they come up, straight up and smashed me. Kneeing me, telling me to put my hands towards my back but I couldn't because he had my hand. They are racist as.”

(Rangatahi Māori in contact with the youth justice system)¹⁵

26. Mana Mokopuna is concerned the Bill's proposals, particularly in relation to failing to stop and the new frightening and intimidating convoy offence, is likely to disproportionately impact mokopuna Māori, and in particular, young Māori males.
27. We note that the RIS acknowledges that the Bill is likely to disproportionately impact Māori, citing figures that around 50% of people charged with fleeing Police in 2023 were Māori.¹⁶ It is important to consider this within the context of research which confirms that Māori are subject to bias and institutional racism in their interactions with Police. For example, Māori are, proportionally, at least three times more likely to be apprehended for a criminal offence than non-Māori¹⁷ and being Māori increases the likelihood of prosecution by 11% compared to Pākehā when all other variables remain consistent.¹⁸
28. The new offence proposed by the Bill relating to frightening and intimidating convoys is also has the potential to disproportionately criminalise Māori. This is because this new offence would cover convoys linked to cultural practices such as tangihanga or other legitimate kaupapa such as the recent Hikoī Mō Te Tiriti. Additionally, what constitutes frightening or intimidating behaviour is subjective and there is a significant risk, considering evidence of bias and institutional racism within the Police, that Māori will be disproportionately charged with this offence.
29. Mokopuna Māori have the right to non-discrimination under Article 2 of the Children's Convention and the right to equal treatment before the law under Te Tiriti o Waitangi.

¹³ [Traffic offences in Youth Court jurisdiction | Practice Centre | Oranga Tamariki](#)

¹⁴ See sections 4A, 5 and 208 of the Oranga Tamariki Act 1989.

¹⁵ [What Makes a Good Life? | Mana Mokopuna](#)

¹⁶ [Proactive-release-Montreal-Convesion-Order-2024.pdf](#) at p.17.

¹⁷ [Fixing police bias | E-Tangata](#)

¹⁸ <https://www.police.govt.nz/sites/default/files/publications/upd-independent-panel-report-one.pdf> at 44.

We strongly caution the Government against policy and legislative measures, such as those within the Bill, that are likely to disproportionately affect Māori. We are of the view that the current law provides the Police with adequate powers for managing criminal behaviour that may arise during vehicle convoys and we recommend this new offence is not created.

Children's right to participate and share their views on the Bill

“ They don't come to us or email us asking for our opinion. They only ask those who are over eighteen.”

(Mokopuna Māori)¹⁹

30. In addition to the issues we have shared above in relation to the substance of the Bill, we emphasise our concerns, from a child rights perspective, about the process followed to develop the Bill.
31. The right of mokopuna to be consulted and have their views given weight during Government decision-making processes is guaranteed under Article 12 of the Children's Convention. Article 12 requires the Government to listen to the voices of mokopuna when considering any legislation and legislative changes that affect mokopuna, such as those proposed in the Bill. This duty to listen requires the Government to actively facilitate the participation of mokopuna in its own processes, to listen to mokopuna, and to take their views and submissions seriously.²⁰
32. The Government is also obliged under Te Tiriti o Waitangi to engage in transparent policy making in consultation and partnership with Māori, including mokopuna Māori.
33. We are not aware of any consultation with any mokopuna or young people during the development of the Bill, which is inconsistent with their right to participate in matters affecting them under Article 12 of the Children's Convention, and the rights of mokopuna Māori under Te Tiriti o Waitangi.
34. It is likely mokopuna who engage in antisocial road use activities may be able to offer the Government key insights into why they undertake these activities, potential alternatives, and potential solutions to address their negative impacts. For example, Pasifika youth have expressed that siren battles are about “community, creativity and respite from struggle”, that it keeps them “away from selling drugs, from getting into gangs, following the wrong path,”²¹ and that they should be provided with designated spaces “like skate parks, but for us.”²²
35. Another example is the report *Te Ikarere: A youth perspective of Police pursuits*, which shares the voices and experiences of children and young people who have been involved in Police pursuits as drivers and/or passengers in fleeing vehicles.²³ The mokopuna interviewed explain their motivations behind fleeing from Police, and offer solutions that they see as important for preventing young people from engaging in Police pursuits. It is

¹⁹ Mokopuna Voices Summary report 2021 | Mana Mokopuna

²⁰ For further information on children's participation rights and Government see [Getting It Right: Are We Listening? | Mana Mokopuna](#)

²¹ “A way to be heard”: the New Zealand Pasifika youth subculture devoted to emergency sirens | Culture | The Guardian

²² Car audio crews say they're not boy racers as crackdown looms | Stuff

²³ [fleeing-drivers-research-te-ikarere.pdf](#)

essential that mokopuna themselves are involved in shaping responses to antisocial road use offending, both to ensure responses are fit for purpose and to uphold the rights of children under Article 12 of the Children's Convention.

36. We note there is limited data on the participation of mokopuna in antisocial road use activities and call on the Government to strengthen its collection and publication of data, disaggregated by age and ethnicity, on how many children under 18 participate or are fined, charged or convicted in relation to antisocial road use activities. Similarly, in addition to meaningfully consulting with mokopuna on this issue, we would also encourage the Government to commission more in-depth research to better understand why mokopuna participate in antisocial road use activities.

Conclusion

37. Mana Mokopuna opposes the Bill's proposed amendments relating to new antisocial road use offences and fines as we are of the view they will have a disproportionate impact on mokopuna, particularly mokopuna Māori, and do not align with the Children's Convention or Te Tiriti o Waitangi.
38. Should the proposed changes proceed, Mana Mokopuna advocates for the Bill to be amended to significantly reduce the proposed infringement fees, retain the current law's staggered approach to penalising antisocial road use offenders, including its provision that vehicle destruction is only possible on a third offence basis, and remove the proposed offence relating to frightening and intimidating convoys considering the disproportionate impact it is likely to have on Māori, including mokopuna Māori.
39. Before proceeding with the Bill any further, the Government should consult with mokopuna and young people on the proposed changes, and make further amendments to the Bill to give effect to their views.