

## Submission to the Justice Committee on the Crimes Amendment Bill

### Introducing Mana Mokopuna – Children’s Commissioner

Mana Mokopuna – Children’s Commissioner (Mana Mokopuna) is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and wellbeing of mokopuna<sup>1</sup> (all children and young people) under 18 years old in Aotearoa New Zealand, and young people under 25 years of age if they are, or have been, in care or custody. The Children’s Commissioner is Dr Claire Achmad.

We independently advocate for and with mokopuna within the context of their families, whānau, hapū, iwi and communities, based on evidence, data and research, including the perspectives of mokopuna.

Our work is grounded in the United Nations Convention on the Rights of the Child (the Children’s Convention), domestic law, Te Tiriti o Waitangi and other international human rights instruments. We are a National Preventative Mechanism under the Optional Protocol to the Convention Against Torture, meaning we monitor places where mokopuna are deprived of their liberty.

We have a statutory mandate to promote the Children’s Convention and monitor the Government’s implementation of its duties under the Convention, and to work in ways that uphold the rights of mokopuna Māori including under Te Tiriti o Waitangi. We place a focus on advocating for and with mokopuna who are experiencing disadvantage, and we recognise and celebrate the diversity of mokopuna in all its forms.

Our moemoeā (vision) is *Kia kuru pounamu te rongo – All mokopuna live their best lives*, which we see as a collective vision and challenge for Aotearoa New Zealand.

When it comes to the rights of mokopuna, we have set four strategic advocacy areas.

Informed by mokopuna themselves:

- A strong start in life (first 2000 days)
- Growing up safe and well (free of all forms of child maltreatment in all circumstances; thriving mental health and wellbeing)
- Thriving families and whānau (living free of poverty, with resources needed to support mokopuna to thrive), and
- Participating in what matters to me (mokopuna have told us, for example, about the importance of participating in their education, culture and identity, sport and recreation, and caring for the natural environment).



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<sup>1</sup> At Mana Mokopuna we have adopted the term ‘mokopuna’ to describe all children and young people in Aotearoa New Zealand. ‘Mokopuna’ brings together ‘moko’ (imprint or tattoo) and ‘puna’ (spring of water). Mokopuna describes that we are descendants, and or grandchildren, and how we need to think across generations for a better present and future. We acknowledge the special status held by mokopuna in their families, whānau, hapū and iwi and reflect that in all we do. Referring to children and young people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from, matters for their identity, belonging and well-being at every stage of their lives.

## Summary of position

1. Mana Mokopuna acknowledges the Government's commitment and intention to reduce serious offending and improve public safety. We note the Crimes Amendment Bill seeks to do a range of things. From an independent, children's rights advocacy perspective, there are aspects of this Bill that Mana Mokopuna strongly supports, and aspects that we strongly oppose. This submission covers both aspects.
2. Given the likely negative impact on children's rights and wellbeing, Mana Mokopuna **strongly opposes** the proposed:
  - a. amendments to citizen's arrest and defence of property provisions (subpart 1), and
  - b. new theft offence and changes to monetary thresholds (subpart 6).
3. We have **significant concerns** about the proposed:
  - a. "coward punch" offences (subpart 4), and
  - b. offences against first responders and corrections officers (subpart 5), particularly regarding their application to mokopuna and their addition to the Three Strikes regime.
4. We **strongly support** the amendments to the:
  - a. slave dealing and human trafficking offences, and
  - b. removal of the coercion or deception requirement for child trafficking (subpart 2).
5. Evidence and research consistently demonstrates that addressing the underlying drivers of youth offending – including exposure to family violence, child maltreatment, and the long-term effects of poverty – is significantly more effective than introducing measures such as those in subparts 1 and 6 of this Bill.
6. We are particularly concerned that several proposals in this Bill would have a disproportionate and adverse impact on mokopuna, particularly mokopuna Māori and Pacific mokopuna, who are already overrepresented in the criminal justice system. Our view is that in this regard, the Bill is inconsistent with the Oranga Tamariki Act 1989<sup>2</sup> and that Act's requirement of a practical commitment to the principles of te Tiriti o Waitangi,<sup>3</sup> and The New Zealand Bill of Rights Act 1990 which guarantees minimum standards of criminal procedure and protections for children in the justice system.<sup>4</sup>

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<sup>2</sup> Oranga Tamariki Act 1989, s 4(1)(a), (g), (h); United Nations Convention on the Rights of the Child, Articles 3(1), 8,30.

<sup>3</sup> Oranga Tamariki Act 1989 (Children's and Young People's Well-being Act 1989), section 4(1)(f). Section 4(1)(f) provides for a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi).

<sup>4</sup> New Zealand Bill of Rights Act 1990, ss 21–27.

7. We further note the Regulatory Impact Statement (RIS) only "partially meets" the quality assurance rating, and the Ministry of Justice was unable to consult outside of government including with Māori, the judiciary, or defence lawyers, due to time constraints.<sup>5</sup> The Ministry's own preferred option for one-punch attacks and retail crime was to retain the status quo.
8. The failure to consult with Māori on legislative changes that will disproportionately affect mokopuna Māori is inconsistent with the Crown's duty to act in good faith and the principle of partnership under Te Tiriti o Waitangi. We urge the Government to fulfil its obligation to engage in meaningful consultation with Māori before proceeding with these proposals.<sup>6</sup>

## Recommendations

Mana Mokopuna recommends the Justice Committee:

- A. Remove the proposed amendments to citizen's arrest and defence of property provisions (subpart 1), or at minimum amend them to explicitly exclude their application to, or by, any person under the age of 18 years.
- B. Retain and pass the amendments to the slave dealing and human trafficking offences (subpart 2).
- C. Ensure any new "coward punch" offences (subpart 4) and first responder assault offences (subpart 5) are applied to children and young people consistently with the principles of the Children's Convention, and with Articles 37 and 40, and the youth justice principles of the Oranga Tamariki Act 1989.<sup>7</sup>
- D. Remove the proposed new offence of theft in an offensive, threatening, insulting, or disorderly manner (section 219A).
- E. Reject the proposed amendments to monetary thresholds for theft that would increase maximum penalties for low-value theft.
- F. Undertake meaningful consultation with mokopuna and with Māori on any legislative changes that affect their rights and interests, in accordance with Article 12 of the Children's Convention and the Crown's obligations under Te Tiriti o Waitangi.<sup>8</sup>

<sup>5</sup> Regulatory Impact Statement: Crimes Act Amendment Bill, Ministry of Justice, 28 May 2025, pp 5–6.

<sup>6</sup> Oranga Tamariki Act 1989, s 4(1)(f); *New Zealand Police v FG* [2020] NZYC 328.

<sup>7</sup> United Nations Convention on the Rights of the Child, Articles 37, 40; Oranga Tamariki Act 1989, ss 4, 4A.

<sup>8</sup> United Nations Convention on the Rights of the Child, Article 12; Oranga Tamariki Act 1989, s 4(1)(f).

## Aspects of the Bill strongly opposed on children's rights grounds

### Subpart 1: Citizen's arrest and defence of property



You need to get in early, as soon as you see people struggling."

- Mokopuna.<sup>9</sup>

9. Given the likely negative impact on children's rights and wellbeing, Mana Mokopuna strongly opposes the proposed amendments outlined in subpart 1 of the Bill.
10. While Mana Mokopuna supports efforts to reduce offending, including youth offending, such efforts must be consistent with New Zealand's children's rights obligations as a State Party to the UN Convention on the Rights of the Child (the Children's Convention). Rather than advancing New Zealand law in this regard, this Bill takes it further away from New Zealand's children's rights obligations.<sup>10</sup>
11. We further emphasise the proposals in this subpart may not be effective in achieving increased public safety as they could instead lead to an escalation in violence.<sup>11</sup> Rather, increased investment into addressing the underlying drivers of that offending, including reducing poverty and addressing and preventing child maltreatment and trauma, is what is shown to be effective.<sup>12</sup>

### ***Citizen's arrest is never an appropriate mechanism for children***

12. Because of the significantly increased risk of harm to mokopuna the proposed amendments to sections 35-40, and sections 52, 53 and 56 of the Crimes Act 1961 present, Mana Mokopuna strongly opposes these.
13. As a State Party to the Children's Convention, the Government is duty-bound to protect the rights of all mokopuna under 18 (including those who have or are suspected of offending) to:
  - a. be free from all forms of violence (Article 19)
  - b. be free from cruel, inhuman or degrading treatment (Article 37(a))
  - c. not be deprived of their liberty arbitrarily (Article 37(b))

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<sup>9</sup> Mana Mokopuna 2024 "[You need to get in early, as soon as you see people struggling](#)" [Understanding the life-course journey](#).

<sup>10</sup> [CCPR/C/NZL/CO/6: Concluding observations on the sixth periodic report of New Zealand | OHCHR](#) at paragraphs 39(b), 42-43.

<sup>11</sup> [The many, many problems with the plan to expand citizen's arrest powers | The Spinoff](#).

<sup>12</sup> [Submission on the Oranga Tamariki \(Responding to Serious Youth Offending\) Amendment Bill | Mana Mokopuna](#); Kotahi Te Whakaaro is an example of a successful programme that undertakes interventions to address underlying drivers and causes of offending such as poverty, housing insecurity, mental health and addiction. See [Outcomes for tamariki and rangatahi Māori and their whānau in the oranga tamariki system](#) at page 127.

- d. only be arrested or detained or imprisoned in conformity with the law, as a measure of last resort, and for the shortest appropriate amount of time (Article 37(b)), and
- e. when deprived of their liberty, to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age (Article 37(c)).

14. Any power to arrest mokopuna must be exercised with considerable checks and balances, and in ways that protect mokopuna rights. We do not believe the Bill provides enough safeguards for mokopuna rights should they be subject to a citizen's arrest. This means the rights of mokopuna risk being breached in the ways outlined above. Opening up the possibility of this in New Zealand law must be avoided.

15. The UN Committee on the Rights of the Child (the UN Committee) in its most recent concluding observations on the State of New Zealand (2023) included, as one of seven urgent areas of recommendations, the need for New Zealand to bring its youth justice system into alignment with children's rights standards.<sup>13</sup> In our view the proposal regarding citizens arrests and its application to children would be a backwards step in this regard.

16. We emphasise our significant concern about the disproportionate impact these proposals would very likely have on the rights of mokopuna Māori, and on Pacific mokopuna. Both groups are more likely to be discriminated against, subjected to increased use of force including physical and mechanical restraint, and detention, and they are already overrepresented in the criminal justice system.<sup>14</sup> In our engagements with mokopuna, including mokopuna Māori and Pacific mokopuna, they have told us they experience racism in lots of different ways and that racism is everywhere.<sup>15</sup> What we have heard from mokopuna, including those in the youth justice system, emphasises the need for approaches that are preventative and rehabilitative, to break cycles of harm, as reflected in the words of a tamaiti Māori in a youth justice residence, who in 2024 told us that "People think all Māori are thieves."<sup>16</sup>

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<sup>13</sup> [CCPR/C/NZL/CO/6: Concluding observations on the sixth periodic report of New Zealand | OHCHR](https://ccpr.cie.ohchr.org/CCPR/C/NZL/CO/6/Concluding%20observations%20on%20the%20sixth%20periodic%20report%20of%20New%20Zealand%20%7C%20OHCHR) at paragraphs 39(b), 42-43.

<sup>14</sup> [Police.govt.nz/sites/default/files/publications/upd-independent-panel-report-one.pdf](https://Police.govt.nz/sites/default/files/publications/upd-independent-panel-report-one.pdf).

<sup>15</sup> [Manamokopuna.org.nz/documents/728/Mana\\_Mokopuna\\_-\\_Without\\_racism\\_Aotearoa\\_would\\_be\\_better\\_Digital.pdf](https://Manamokopuna.org.nz/documents/728/Mana_Mokopuna_-_Without_racism_Aotearoa_would_be_better_Digital.pdf)

<sup>16</sup> Mana Mokopuna 2024 "You need to get in early, as soon as you see people struggling" Understanding the life-course journey.

***Proposed amendments permitting the use of force, including mechanical restraints, are contrary to children's rights and will cause harm to mokopuna***



Understanding kids in the system and not judging [sic] when done bad things."

- Mokopuna, aged 11-15, Oranga Tamariki care and protection residence.<sup>17</sup>

17. The Bill removes the current safeguards that exist against the use of force,<sup>18</sup> presenting a significant policy departure from the restrictions on use of force in New Zealand society. The Bill effectively extends what has been preserved as a power of the State to be used by non-statutory persons. This raises particular risks to mokopuna and their rights, given their age and stage of life, together with the lack of safeguards for their rights. This is unjustifiable, and again, inconsistent with bringing New Zealand's justice system in line with our children's rights duties.
18. Mana Mokopuna is particularly concerned that retailers and other members of the public will not be able to determine what an appropriate degree of force is, in respect of mokopuna. We note that even trained Police officers have been found to use excessive force against children and young people during arrests,<sup>19</sup> which highlights the need for ongoing professional training in the exercise of the use of force – even for those already statutorily mandated with exercising such a power on mokopuna.
19. We note the most common offence committed by mokopuna (i.e., children aged under 18 years old) is theft.<sup>20</sup> Therefore, a consequence of these proposed amendments is likely to be children experiencing increased rights breaches in response to this offending, or suspected offending, given the likelihood of the use of force and restraints. When a child makes a mistake of this nature, it in no way warrants breaching their safety or their rights by adults in return.
20. As acknowledged in the RIS,<sup>21</sup> there are existing, specific protections for mokopuna regarding the exercise of arrest powers and the use of restraints.<sup>22</sup> The proposed amendments – which do not include age considerations – are inconsistent with these existing protections and must not proceed. Special legal protections for mokopuna already exist in the law,<sup>23</sup> for good reason,<sup>24</sup> and this is another key instance where

<sup>17</sup> Mana Mokopuna 2024

[manamokopuna.org.nz/documents/728/Mana\\_Mokopuna\\_Without\\_racism\\_Aotearoa\\_would\\_be\\_better\\_Digital.pdf](http://manamokopuna.org.nz/documents/728/Mana_Mokopuna_Without_racism_Aotearoa_would_be_better_Digital.pdf).

<sup>18</sup> Sections 8-12 of the Bill.

<sup>19</sup> As examples: [Excessive use of force during arrest of youth in Tauranga; 3 December 2024 - IPCA Public Report - Officer's use of force on child in Napier unjustified.pdf](http://Excessive_use_of_force_during_arrest_of_youth_in_Tauranga_3_December_2024_IPCA_Public_Report-Officer's_use_of_force_on_child_in_Napier_unjustified.pdf); [4 FEBRUARY 2025 - IPCA SUMMARY REPORT - Police use of force against youths unjustified.pdf](http://4_FEBRUARY_2025_IPCA_SUMMARY_REPORT_Police_use_of_force_against_youths_unjustified.pdf); [IPCA finds police used excessive force in East Auckland arrest of boys who fled in stolen car - NZ Herald](http://IPCA_finds_police_used_excessive_force_in_East_Auckland_arrest_of_boys_who_fled_in_stolen_car_NZ_Herald); [Officer's use of force on child in Napier unjustified](http://Officer's_use_of_force_on_child_in_Napier_unjustified).

<sup>20</sup> Theft is the most common offence for which children (34%) and young people (29%) are proceeded against by Police. See [justice.govt.nz/assets/Documents/Publications/Youth-Justice-Indicators-Summary-Report-December-2024\\_v1.0.pdf](http://justice.govt.nz/assets/Documents/Publications/Youth-Justice-Indicators-Summary-Report-December-2024_v1.0.pdf), p 6.

<sup>21</sup> [Regulatory-Impact-Statement\\_Arrest-and-defence-of-property-amendments.pdf](http://Regulatory-Impact-Statement_Arrest-and-defence-of-property-amendments.pdf), para 27.

<sup>22</sup> These are contained in the Oranga Tamariki Act 1989 and Policing guidance: [Regulatory-Impact-Statement\\_Arrest-and-defence-of-property-amendments.pdf](http://Regulatory-Impact-Statement_Arrest-and-defence-of-property-amendments.pdf), p 9.

<sup>23</sup> See Oranga Tamariki Act 1989.

<sup>24</sup> *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446.

special protections for mokopuna are required to uphold their rights and ensure their safety.

### ***Mokopuna may be affected in the course of their employment***

21. In addition, the proposals in subpart 1 regarding the use of force present risks to the health and safety of young retail workers. As noted in the Cabinet paper, more than a quarter of retail staff are aged between 15-24 years of age.<sup>25</sup> These law changes may place undue pressure or expectations on retail workers to effect citizen arrests, and/or use increased force to detain people, putting child and youth retail workers at significant physical risk.
22. There has been insufficient consideration of whether a different approach to the proposals would be required for children and young people.<sup>26</sup> Given the significant implications of the proposals on mokopuna, this is unacceptable and is particularly concerning considering the lack of evidence that the proposals will effectively reduce retail crime by children and young people. Rather, the evidence suggests the proposals will increase the risk of escalating violence during a citizen's arrest, especially for those children who are subject to a citizen's arrest and for children and young people working in retail settings if they undertake a citizen's arrest.<sup>27</sup>
23. Mana Mokopuna is firmly of the view citizen's arrests and the use of force against children must be avoided. The proposals in subpart 1 must be removed or at the very least, exclude their application on and exercise by, anyone under 18 years old.

## **Aspects of the Bill opposed on children's rights grounds**

### **Subpart 4: Harm by strike to neck or head**

24. Mana Mokopuna acknowledges "coward punch" attacks can result in devastating injuries and death, and that there is a legitimate public interest in recognising the particular seriousness of such violence. We do not oppose the creation of the three new offences under clauses 19 and 20 of the Bill:
  - a. manslaughter by strike to the head or neck (new section 171A, maximum penalty of life imprisonment)
  - b. wounding with intent to cause grievous bodily harm by strike (new section 188A(1), maximum penalty of 15 years), and
  - c. wounding with intent to injure by strike (new section 188A(3), maximum penalty of 8 years).

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<sup>25</sup> As outlined at paragraphs 45-46: [Crimes-Act-2025\\_Redacted.pdf](#).

<sup>26</sup> The RIS states this was due to time constraints, at p 9.

<sup>27</sup> Ibid, p 16.

25. However, given the inconsistency with the Three Strikes regime with New Zealand's children's rights duties, Mana Mokopuna is opposed to the inclusion of these new offences within the Three Strikes regime under Schedule 1AB of the Sentencing Act 2002 (clause 31 and the Schedule to the Bill), and we have broader concerns about the impact of these provisions on mokopuna.

### ***The Three Strikes regime is inconsistent with children's rights***

26. Mandatory minimum sentencing regimes remove the ability of the judiciary to tailor a response to the individual circumstances of a child or young person who commits an offence under the law – including their age, developmental maturity, cognitive capacity, experience of trauma, and the factors contributing to their offending.

27. The UN Committee on the Rights of the Child, in *General Comment No. 24* (2019), provides guidance to States Parties to the Children's Convention (including New Zealand), which emphasises that:

- a. child justice systems must prioritise rehabilitation and reintegration
- b. deprivation of liberty must be a measure of last resort for the shortest appropriate period, and
- c. a variety of options must be available to ensure responses are proportionate to both the child's circumstances and the offence.<sup>28</sup>

The Three Strikes regime is inconsistent with these requirements.

28. The Children's Convention provides that:

- a. the arrest, detention, or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37(b))
- b. every child alleged as or accused of having infringed the penal law has the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and the desirability of promoting the child's reintegration (Article 40(1)), and
- c. a variety of dispositions shall be available to ensure children are dealt with in a manner proportionate to their circumstances and the offence (Article 40(4)).

29. Evidence and research consistently demonstrates that addressing the underlying drivers of youth violence – including exposure to family violence, substance

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<sup>28</sup> UN Committee on the Rights of the Child, *General Comment No. 24* (2019) on children's rights in the child justice system, CRC/C/GC/24. See in particular paras 2–13 (prevention and early intervention), paras 73–78 (dispositions), and paras 85–88 (deprivation of liberty as last resort).



misuse, unaddressed trauma, and the long-term effects of poverty – is significantly more effective than the use of approaches that focus on punishment.<sup>29</sup>

30. Mana Mokopuna calls on the Committee to:

- a. ensure the new coward punch offences, where they apply to mokopuna, are excluded from the Three Strikes regime;
- b. include an explicit requirement for courts to have regard to the age, developmental maturity, and individual circumstances of a young offender when sentencing under these provisions, and
- c. consider whether the existing offence framework under sections 171 and 188 of the Crimes Act already adequately captures this conduct, rendering specific additional offences unnecessary for the purposes of administering youth justice.

## **Subpart 5: Offences against first responders and corrections officers**

31. Mana Mokopuna acknowledges the dangerous work that first responders and Corrections officers undertake and recognises that assaults against them are serious. While there must be accountability for such actions, Mana Mokopuna is opposed to proposed amendments under subpart 5 of the Bill to the extent they apply to mokopuna without adequate safeguards. In particular, we are opposed to the inclusion of the new offence of injuring a first responder or corrections officer with intent (proposed new section 189(3), clause 22) within the Three Strikes regime, and we are concerned these proposals fail to recognise the care and protection background of the majority of mokopuna in conflict with the law.

### ***Impacts on mokopuna in state care and youth justice settings***

32. The majority of mokopuna in State care and youth justice system have experienced profound trauma, including family violence, neglect, abuse, and the cumulative effects of poverty and systemic disadvantage.<sup>30</sup> Their behaviour in custodial settings and during interactions with emergency services often reflects this trauma. While that behaviour should not happen without accountability, responding to trauma-driven behaviour with enhanced criminal penalties has been shown to be both ineffective as a deterrent in the youth justice context and contrary to the

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<sup>29</sup> Lambie, I. (2018). It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand. Office of the Prime Minister's Chief Science Advisor; Lambie, I. (2020). What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand. Office of the Prime Minister's Chief Science Advisor.

<sup>30</sup> [Report: How we fail children who offend and what to do about it: 'A breakdown across the whole system' | Borin Foundation](#).

rights-based, therapeutic and rehabilitative approach to youth justice that is evidence-backed.<sup>31</sup>

33. We are particularly concerned about the following.

- a. Mokopuna in youth justice residences: The breadth of the definition of "Corrections officer" (clause 21) and the scope of the proposed offences could result in mokopuna in Oranga Tamariki youth justice residences facing enhanced criminal charges for behaviour that occurs in a custodial care environment. A therapeutic, trauma-informed response is more effective and more consistent with children's rights obligations than a punitive one.
- b. Mokopuna in crisis: The definition of "first responder" in clause 21 encompasses constables, ambulance crew, and fire crew, including volunteers and students on educational placements. Mokopuna experiencing mental health crises or acute distress may come into contact with first responders in circumstances where their crisis-driven behaviour could technically constitute an assault. Enhanced penalties for such conduct fail to recognise its context and are inconsistent with both the Children's Convention and best practice in crisis response.
- c. Three Strikes inclusion: The inclusion of new section 189(3) in Schedule 1AB of the Sentencing Act 2002 (clause 31) raises the same fundamental concerns outlined in relation to subpart 4. Mandatory sentencing removes the judicial discretion essential for responding to the individual circumstances of mokopuna who are in conflict with the law.

34. We also note the expansion of aggravated assault under new section 192(2) (clause 23) removes the requirement that the assault be for the purpose of obstructing an officer in their duty, broadening the offence considerably and increasing the risk that children may be detained or imprisoned. For mokopuna, this means a wider range of conduct may attract aggravated assault charges, including conduct arising from distress, confusion, or developmental immaturity. This is inconsistent with the right of mokopuna to only be deprived of their liberty as a measure of last resort and for the shortest appropriate period.

35. The new offence of assaulting a first responder or Corrections officer with intent to injure (clause 24, amending section 193) carries a maximum penalty of 5 years' imprisonment, a 2-year increase on the existing maximum for assault with intent to injure. Similarly, the new offence of injuring a first responder or corrections officer with intent (clause 22, new section 189(3)) carries a maximum of 7 years, 2 years

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<sup>31</sup> [Boot camps for young offenders are back—the evidence they don't work never went away | News | Te Herenga Waka—Victoria University of Wellington](#).



more than the equivalent general offence. While we accept the rationale for enhanced penalties in the adult context, Mana Mokopuna is concerned that these enhanced penalties will apply to mokopuna without any age-specific safeguard.

36. Mana Mokopuna recommends that:

- a. mokopuna be explicitly excluded from the Three Strikes regime in relation to these new offences
- b. courts sentencing mokopuna under these provisions be required to have regard to the context in which the offending occurred, including whether the child was in a custodial setting or experiencing a crisis, and
- c. the Government invest in trauma-informed training and de-escalation practices for first responders and corrections staff working with mokopuna, as a more effective, evidence-based and rights-consistent means of preventing harm to both professionals and young people.

## Subpart 6: Theft

### *New offence of theft in an offensive, threatening, insulting, or disorderly manner*

- 37. Mana Mokopuna is opposed to the creation of the new offence under proposed section 219A of the Crimes Act (clause 25), which would criminalise theft of property valued at no more than \$2,000 carried out in an “offensive, threatening, insulting, or disorderly manner” with a maximum penalty of 2 years’ imprisonment.
- 38. As noted in our comments on subpart 1, theft is the most common offence committed by mokopuna in our country.<sup>32</sup> The drivers of this are well understood and overwhelmingly linked to poverty, material deprivation, and unmet need. This new offence will disproportionately capture mokopuna, particularly mokopuna Māori, as well as Pacific mokopuna, who are already significantly overrepresented in youth justice statistics.
- 39. The language of the proposed offence – borrowing the formulation of “offensive, threatening, insulting, or disorderly” from section 3 of the Summary Offences Act 1981 – introduces a subjective element. Whether conduct is perceived as “insulting” or “disorderly” may be influenced by racial bias, whether conscious or unconscious. There is a real risk that this provision will contribute to the disproportionate criminalisation of Māori and Pacific mokopuna for low-level offending.<sup>33</sup>
- 40. Mana Mokopuna provided feedback directly to the Ministry of Justice during the policy development of these proposals, in which we raised these concerns. We

<sup>32</sup> [1736058843\\_Youth-Justice-Indicators-Summary-Report-December-2024\\_v1.0.pdf](https://www.moj.govt.nz/assets/1736058843_Youth-Justice-Indicators-Summary-Report-December-2024_v1.0.pdf) at page 9.

<sup>33</sup> See Ministry of Justice, *He Waka Eke Noa*: Aotearoa New Zealand’s plan for addressing the overrepresentation of Māori in the criminal justice system. See also Lambie, I. (2018), above n 2, on the overrepresentation of rangatahi Māori and Pacific young people in the youth justice system.



reiterate that this new offence is unnecessary given the existing offence framework. Current provisions already address theft, and where conduct involves threats or violence, robbery charges are available. The creation of an additional offence for conduct falling short of robbery but involving "disorderly" behaviour adds complexity without demonstrated benefit and creates significant risk of disproportionate impact on mokopuna.

### ***Amendments to monetary thresholds and penalties***

41. Mana Mokopuna is opposed to the proposed amendments to monetary thresholds and the penalty structure for theft offences under section 223 of the Crimes Act (clause 26), to the extent they increase the severity of consequences for mokopuna.
42. The Bill proposes to simplify the threshold structure to a single \$2,000 level, with a maximum of 7 years' imprisonment for theft above this amount and 1 year for theft at or below it (clause 26). Clauses 27 and 28 make consequential amendments to sections 241 and 247 to align penalties for obtaining by deception and receiving stolen property with the new structure. While we acknowledge the simplification intent, we are concerned the practical effect may be to increase penalties for categories of theft that disproportionately involve mokopuna.
43. The Children's Convention requires detention of a child be a measure of last resort (Article 37(b)) and that States Parties promote alternatives to judicial proceedings (Article 40(3)(b)). *General Comment No. 24* emphasises that children's best interests must be a primary consideration in juvenile justice and that the focus must be on rehabilitation and reintegration.<sup>34</sup>
44. We reiterate our consistent position: the most effective way to reduce and ultimately prevent theft by mokopuna is not through increased penalties, but through addressing the poverty, deprivation and trauma that drive it.

## **Aspects of the Bill supported on children's rights grounds**

### **Subpart 2: Slave dealing and human trafficking offences**



I felt vulnerable, I didn't know what to do. I was scared. I knew what was happening, but I didn't know why."

- Mokopuna victim-survivor of slavery and sexual exploitation in Aotearoa New Zealand<sup>35</sup>

<sup>34</sup> UN Committee on the Rights of the Child, *General Comment No. 24* (2019) on children's rights in the child justice system, CRC/C/GC/24. See in particular paras 2–13 (prevention and early intervention), paras 73–78 (dispositions), and paras 85–88 (deprivation of liberty as last resort).

<sup>35</sup> [Jail term increased for Kasmeer Lata - mother who sold teen daughter for sex more than 1000 times - NZ Herald](#).

45. Mana Mokopuna strongly supports the proposed amendments outlined in subpart 2 of the Bill.
46. While these amendments represent critical progress in protecting mokopuna from exploitation, we emphasise that increasing penalties can only have a meaningful effect once cases of exploitation are identified, prosecuted and convictions are successfully obtained. Evidence is clear that to effectively prevent and address trafficking and exploitation of mokopuna, increased investment into addressing the underlying drivers of vulnerability is required, including poverty, family violence and lack of access to education and opportunities.<sup>36</sup>

***The legal framework must recognise children's unique vulnerability to trafficking***

47. Mana Mokopuna strongly supports the proposed amendments to sections 98, 98D and 98AA of the Crimes Act 1961. Collectively, these amendments better align New Zealand's laws with international best practice and our obligations under the Palermo Protocol<sup>37</sup> and the Children's Convention.<sup>38</sup> Passage of these amendments would be positive steps forward in protecting New Zealand children's safety rights.
48. The most significant gap in current law is the requirement in section 98D to prove coercion or deception was used in trafficking offences, even when the victim is a child. This requirement is inconsistent with the Palermo Protocol,<sup>39</sup> which explicitly states that consent is irrelevant for child trafficking victims. In our view, the proposal to remove this requirement for mokopuna is an essential in bringing New Zealand's human trafficking system into alignment with children's rights standards.
49. We note under current law, child trafficking cases are often charged under section 98AA with lower penalties (14 years maximum), rather than the trafficking offence in section 98D (20 years maximum), because prosecutors cannot prove coercion or deception was used against the child victim. A consequence of maintaining this requirement is that mokopuna experiencing trafficking have their harm inadequately recognised under the current law, and offenders receive lesser penalties than they would for trafficking an adult. The fact is mokopuna cannot meaningfully consent to their own exploitation due to their age and developmental stage and the power and control dynamics present in exploitation and child trafficking situations.

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<sup>36</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003), ratified by New Zealand 19 July 2002.

<sup>37</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003), ratified by New Zealand 19 July 2002.

<sup>38</sup>United Nations Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), ratified by New Zealand 6 April 1993.

<sup>39</sup>Palermo Protocol, above n 5, art 3(c).



50. The UN Committee on the Rights of the Child in its 2023 Concluding Observations on New Zealand made specific recommendations regarding New Zealand's implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (the Optional Protocol).<sup>40</sup> The UN Committee recommended New Zealand establish comprehensive data collection, adopt a national action plan to address all crimes as defined in the Optional Protocol, strengthen coordination between stakeholders, and ensure all crimes under the Optional Protocol are investigated and prosecuted.<sup>41</sup>

51. Mana Mokopuna strongly supports all proposed amendments to sections 98, 98D, and 98AA. These changes represent significant progress in protecting mokopuna from exploitation and meeting our international obligations under the Palermo Protocol<sup>42</sup> and the Optional Protocol.<sup>43</sup> The amendments would also provide tangible steps towards implementing aspects of the Concluding Observations. We urge the Committee to ensure these amendments proceed without delay.

## Conclusion

52. While we acknowledge the Government's intent to address serious offending and improve public safety, Mana Mokopuna strongly opposes the proposals in this Bill that go against children's rights. We support the Bill's proposals that will strengthen the protection of children's safety rights.

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<sup>40</sup>United Nations Committee on the Rights of the Child, Concluding observations on the sixth periodic report of New Zealand, UN Doc CRC/C/NZL/CO/6 (26 October 2023) paras 24 and 44.

<sup>41</sup>CRC/C/NZL/CO/6 at para 44(a)-(d).

<sup>42</sup> [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime | OHCHR](#).

<sup>43</sup>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002), ratified by New Zealand 20 September 2011.