

Justice Committee

Ram Raid Offending and Related Measures Amendment Bill

October 2023

# Protect the mental health of future generations

# Royal Australian and New Zealand College of Psychiatrists submission

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### About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care. The RANZCP is the peak body representing psychiatrists in Aotearoa New Zealand and Australia and, as a bi-national college, has strong ties with associations in the Asia-Pacific region.

The RANZCP represents more than 8000 members, including more than 5800 qualified psychiatrists and is guided on policy matters by a range of expert committees including the Tu Te Akaaka Roa, the New Zealand National Committee, and several sub-committees, including the New Zealand Section of Child and Adolescent Forensic Psychiatry. Psychiatrists are clinical leaders in the provision of mental health care in the community and use a range of evidence-based treatments to support a person in their journey of recovery.

### Introduction

The RANZCP welcomes the opportunity to provide a submission to the Select Committee's public consultation on the Ram Raid Offending and Related Measures Amendment Bill (from here on referred to as the Bill). The recommendations contained within this submission are based on consultation with the RANZCP expert committees which is made up of psychiatrists with direct experience working in Child and Adolescent Psychiatry and Child and Adolescent Forensic Psychiatry. As such, the RANZCP is well positioned to provide advice about this issue due to the breadth of academic, clinical, and service delivery expertise it represents.

Our areas of comment are restricted to the proposal to amend the Crimes Act 1961 to specifically criminalise ram-raiding, and the request to amend the Oranga Tamariki Act 1989 to allow 12- and 13-year-olds to be prosecuted for a new ram raid offence in the Youth Court without being a previous offender.

The RANZCP expresses its disappointment at the decision to introduce new legal sanctions aimed at tamariki/children aged 12 and 13, despite the overwhelming evidence that the behaviour of children at such a young age is influenced by neurological and social factors out of their control. While we appreciate the importance of preventing crime, measures as those proposed in the Bill are developmentally inappropriate and have been shown to cause long-term harm for the individuals and our communities.

*The proposed legal sanctions are developmentally inappropriate.*

Aotearoa/New Zealand's current minimum age of criminal responsibility (MACR) of 10 years is incompatible with the rights of children and contradicts the current scientific understanding of the capacities of the developing brain. While the Bill does not change the MACR, the proposal to prosecute first time offenders in the youth justice system directly contradicts the current empirical evidence and the recommendation by the United Nations (UN) Committee on the Rights of the Child (2019) that children under the age of 14 should not be held criminally responsible. [1] Many other countries are increasing their MACR in line with this recommendation; creating new offences for tamariki below the age of 14 makes Aotearoa/New Zealand an outlier and raises questions on how we treat our children.

A plethora of evidence from behavioural and neuroscientific studies has shown that normative neurobiological and psychosocial development makes tamariki aged 12 and 13 particularly vulnerable to peer influence and more likely to engage in risk-taking and sensation-seeking behaviour, such as participation in criminal activity. [2-7] During adolescence, and continuing into early adulthood, the brain's key socio-emotional and cognitive control centres, and their connections, undergo important structural and functional changes necessary for sound decision-making, emotion regulation, and

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executive control. [6, 7] However, the two systems mature at different rates, which brings with it several challenges for tamariki and rangatahi. Early adolescence is marked by remodelling of the brain's reward circuitry and changes in the limbic, paralimbic areas of the brain, which heightens young adolescents' emotional responses, intensifies their rejection-related distress, and increases the perceived reward value of risk-taking, particularly in the presence of peers. [2, 5-9] On the other hand, development of the frontal lobe, which is important for cognitive and executive functioning, takes place at a much slower rate; some areas of the prefrontal cortex, including those responsible for impulse control, continue to mature into the early adulthood. [2, 3, 6, 10-12] Although cognitive reasoning is thought to develop in mid-adolescence, reaching maturity around age 16, underdeveloped neural connections prevent effective integration of cognitive information. [13, 14] This means that tamariki aged 12 and 13, who are most affected by the proposed bill, are not only more emotional and reward-driven, but lack the neurobiological capacity to control their strong impulses and the ability to fully comprehend the true effect of their actions and criminal and proceedings. [15, 16]

The proposed amendment to the Oranga Tamariki Act 1989 specifically targets 12 and 13-year-olds who have never been in contact with the police. Under the Bill, first time offenders, including passengers who are seen to participate in a ram raid, may be charged in juvenile court. This does not adequately consider the psychological vulnerability and neurocognitive abilities of this age group and creates unreasonable risks for their ongoing development.

*Offending behaviour when it occurs from 10-13 years of age should be considered a child protection issue.*

Although tamariki under the age of 14 should never be considered capable of criminal intent, due to their described neurodevelopmental and psychosocial immaturity, the RANZCP agrees with other experts that the doctrine of *doli incapax* is insufficient in capturing the extent of neuroscientific evidence.

The impacts of environmental factors, such as chronic stress, childhood trauma, and socioeconomic status, on neurological and psychosocial development is well documented. [17-21] The significance of these factors is reflected in youth offending statistics which have repeatedly highlighted childhood trauma as one of the strongest predictors of youth offending. [22-24]

The Ministry of Justice, Oranga Tamariki, Mana Mokopuna, and others, have reported that 95-97% of 10-13 year-olds in contact with the justice system had previously been subject of concern for Oranga Tamariki in relation to their wellbeing and protection. [22-24] An analysis conducted by New Zealand Police in 2022 showed a similar trend for a sample of 63 young people charged with a ram raid-related offence. All but one of the offenders had been involved in at least one family harm incident reported to police, and sixty-five percent had five or more police reports of family harm. [25] Childhood trauma caused by physical, sexual, or emotional abuse, as well as neglect, exposure to alcohol or other drugs in utero, socio-economic deprivation, or intergenerational trauma has been linked to psychological problems as well as structural, functional, and developmental abnormalities of the brain. [14, 18, 20, 21, 26-29] One well-described consequence of trauma is the dysregulation of the hypothalamic-pituitary-adrenal (HPA) axis which mediates the hormonal stress response. [30] Overactivity of the HPA axis can increase impulsive aggression while underactivity can result in reduced responsiveness to punishment and heightened instrumental aggression. [31] Both up- and down-regulation of the HPA have been linked to trauma and the development of further psychological and neurological deficits and criminal behaviour. [30-34]

These changes put underprivileged children at a biological (and social) disadvantage and increase their risk of coming in contact with the justice system. Young Māori and Pasifika, as well as children with intellectual disabilities, neurodiversity, and mental health concerns are more likely to be exposed to adverse childhood experiences and are overrepresented in youth offending statistics. [22, 24, 35]

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Youth offending is a mental health concern resulting from long-term system failure. The RANZCP highlights the need to protect and support tamariki and rangatahi and invest in their wellbeing. Although not all disadvantaged children will commit offences, they are especially vulnerable to poor decision-making and impulsive judgements and more susceptible to learning from antisocial settings. Involvement with the youth justice system carries the risk of tamariki developing further maladaptive behaviour patterns through prolonged exposure to a dysfunctional environment.

### *Early involvement with the youth justice system causes long-term harm.*

Any decision to punish a child must also factor in the impact of their engagement with the justice system. Exposing tamariki as young as 12 years old to the formal youth justice system can lead to physical, mental, and emotional harm, and impair their development with long-term ramifications to their physical and mental wellbeing. [22, 36-38] The increased risk for reoffending amongst young people in the justice system has been well documented. Even low-intensity impact with the justice system can have the unfortunate and unintended consequence of signalling to the child that offending, and being a “young offender”, is part of their identity, increasing the risk of recidivism. [39] The proposed criminalisation of ram raiding and the option to charge first-time offenders will introduce more tamariki to the justice system which comes at a significant economic cost, and may cause serious mental, emotional, physical, and spiritual harm to these vulnerable individuals and our communities.

The RANZCP considers the proposed maximum penalty of ten years in juvenile detention to be unjustified. Longer sentences have been shown to be an ineffective deterrent for crime, particularly for young offenders. [40, 41] Moreover, the Bill will likely increase the number of children in already overcrowded youth justice residences and may cause long-term harm by exacerbating existing disparities. The UN Committee on the Rights of the Child and the UN Committee Against Torture have raised concerns about the substandard living conditions in youth justice residences, as well as the lack of support services, use of seclusion, and ill-treatment of children in these facilities. [35] Young Māori and Pasifika people are more likely to be subject to adverse treatment, seclusion, and restraint, in the justice system. [22, 35] This racial bias is also evident in the disproportionate number of Māori and Pasifika held in police cells for an extended period of time and is a significant concern to the RANZCP. [22] Unmet cultural needs within in the justice system creates further concern for young people, particularly for tamariki and rangatahi Māori, and UN Committees have called for investment into the wellbeing of Māori youth to eliminate the disparities that contribute to the emergence of criminal behaviour. [22, 35]

The RANZCP emphasises the need to ensure that child and youth justice strategies, programs and infrastructure aim to rehabilitate young people and, wherever possible, divert them away from detention and the youth justice system to avoid causing further harm. Instead of harsh and unjustified punishments, evidence-informed alternatives to criminalisation that focus on prevention and early intervention should be developed. Culturally safe and trauma-responsive services including education, health and community services must be prioritised and expanded to provide adequate care for young New Zealanders and protect the wellbeing of future generations.

Thank you for the opportunity to provide feedback on this important matter. We strongly urge the government to reject the Bill and invest into welfare services that target risk factors, eliminate disparities, and show tamariki the care and protection they need to thrive. If you have any further questions regarding this letter, please contact the New Zealand National Office - Tu Te Akaaka Roa

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