

## SCNZ Submission to the Justice Select Committee on the *Ram Raid Offending and Related Measures Amendment Bill*

Organisation Name:	Save the Children New Zealand (SCNZ)
Geographical location	National and international
Target group/focus	Children
Contact Person Name:	Heidi Coetzee, Chief Executive Officer Jacqui Southey, Director of Child Rights Advocacy and Research
Phone number:	04-381 7576
Email address:	<a href="mailto:heidi.coetzee@scnz.org.nz">heidi.coetzee@scnz.org.nz</a> <a href="mailto:Jacqui.southey@scnz.org.nz">Jacqui.southey@scnz.org.nz</a>
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**Our Organisation:** Save the Children was founded in 1919 and is the world's leading independent organisation for children. We work in 120 countries to save and improve the lives of children around the world.

**Vision:** Save the Children's vision is a world in which every child attains the right to survival, protection, development and participation.

**Mission:** We work to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives.

Save the Children New Zealand was established in 1947 in Christchurch. We work to uphold the rights of children both in New Zealand and overseas.

**Our Ambition:** We commit to doing whatever it takes to ensure by 2030 ALL children, especially the most marginalised and deprived, survive, learn, and are protected.

Save the Children New Zealand (SCNZ) has a vested interest in ensuring the rights and wellbeing of children in Aotearoa are understood, respected, and protected. This includes ensuring children's rights are protected and upheld in New Zealand legislation, including when children are in conflict with the law.

**Oral Submission: We request the opportunity to make an oral submission on the Bill.**

Save the Children New Zealand (SCNZ) welcomes the opportunity to provide a written submission to the Justice Select Committee on the Ram Raid Offending and Related Measures Amendment Bill (the Bill).

SCNZ does not support the Bill due to serious concerns we hold about the potential impact of the Bill on young vulnerable children.

We are deeply concerned the Bill does not meet international standards or recommendations related to child and youth justice, and that according to the Attorney General it is in breach of the Bill of Rights particularly in terms of children. We do not agree the penalties set out in the

Bill will give effect to the goals stated in the Bill to reduce Ram Raid Offending, and in particular by children just 12 and 13 years old.

We are further concerned that given the timing of this Bill, that it is reactive and a product of hype and inflammatory media and political rhetoric in the lead up to the General Election where slogans like 'tough' or 'soft' on crime have been bandied about in a bid to gain votes. Given the significant reduction in the numbers of ram raids, and that current laws cover this type of offence, we would question whether this Bill is needed.

We acknowledge that Ram Raiding is a serious offence and harms those on the receiving end of the crime. We too would like to see an end to this type of crime, for those both on the receiving end, and also for any children caught up in this offending. Essentially, children who are well cared for, have a protective home, the essentials they need in life, are engaged in education and their community, are highly unlikely to be driving cars into buildings or passengers in those cars.

It is our very strong view that services and resources must be focused on strengthening families to ensure every child is protected, included, and provided for, that their rights are fully met, and their wellbeing is assured.

We recommended that government resources are focused on responses that appear to be working in reducing this form of crime such as the Kotahi te Whakaaro<sup>1</sup> programme and restorative justice approaches that hold children and youth involved in crime to account and also seek to include the interests of victims.<sup>2</sup>

Save the Children opposes the Bill on the following grounds:

1. The Bill is inconsistent with the Bill of Rights Act, particularly in terms of children and fails to meet international standards or recommendations related to child and youth justice.
2. The Bill is reactive and fails to address or recognise the drivers of offending by children and youth.
3. The Bill serves to criminalise children.
  - 3.1.12-and-13-year-olds are included in the Bill that imposes harsh criminal penalties. This serves to effectively establishing a new criminal pathway that includes young children, with the possibility of detaining children in secure juvenile detention justice centres pre or post-trial. These facilities are not designed for children under 14 years of age.
  - 3.2.The Bill also permits the taking of bodily samples from children as young as 12 or 13 and the harsh criminal penalties apply to a person in any way involved in the crime; whether a driver, passenger, or filming and sharing the event online - including first offences.
4. The harsh and criminalising penalties including of young children is out of step with a restorative justice model that New Zealand is better known for.

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<sup>1</sup> Retrieved from <https://www.beehive.govt.nz/release/government-action-youth-crime-making-difference>

<sup>2</sup> N Lynch, Youth Justice in New Zealand, 2 ed (Thomson Reuters) 72-73; L Haysom, 'Raising the Minimum Age of Criminal Responsibility to 14 Years' (2022) 58 Journal of Paediatrics and Child Health 1504, 1506.

5. The Bill may not be necessary given the significant drop in this kind of offending indicating that current measures in place are working.

**1. The Bill is inconsistent with the Bill of Rights Act, particularly in terms of children and fails to meet international standards or recommendations related to child and youth justice.**

1.1. The advice of the Attorney General<sup>3</sup> is clear that the Bill is inconsistent with the rights of the child in terms of the Bill of Rights Act<sup>4</sup>, the Convention on the Rights of the Child<sup>5</sup> (CRC) and the International Covenant on Civil and Political Rights<sup>6</sup> (ICCPR).

1.2. The Bill enables the application of criminal proceedings against children aged 12-13 years via the Youth Court under the Criminal Procedure Act 2011. Currently children under 14 years of age do not proceed through the Youth Court except for the most serious criminal offences of manslaughter or murder.<sup>7</sup>

1.3. Despite the public interest in addressing the rise in ram raid offending, this is not enough to justify the limitation of children's rights under the Bill of Rights as the Bill does not account for the age of the child or that they are dealt with in a manner appropriate to their age (Section 25 (i) Bill of Rights Act).<sup>8</sup>

1.4. According to Article 14(4) of the International Covenant on Civil and Political Rights, "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."<sup>9</sup> The Bill ignores this requirement and instead seeks to apply serious criminal consequences such as formal proceedings through the Youth Court and the secure detention of children in Youth Justice Residences.

1.5. Recommendations by the Committee on the Rights of the Child<sup>10</sup> to the New Zealand Government are very clear, that New Zealand should adhere to international standards and raise the minimum age of criminal responsibility to 14 years of age. And that this is consistent applied regardless of offence. The Bill would effectively lower the threshold for formal criminal proceeding against children and is in opposition of advice from leading international child justice experts.<sup>11</sup>

1.6. That the Bill seeks to criminalise children engaged in a ram raid offence regardless of whether it is their first offence, or their role in the crime, fails to uphold Article 37 of the Convention on the Rights of the Child, where, "... children in breach of the law should be treated fairly and with dignity in a manner that takes into account the needs of persons of his or her age (Article 37 (b), The Convention on the Rights of the Child).

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<sup>3</sup> Attorney General. 2023. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/s-7-Report-Ram-Raid-Offending-and-Related-Measures-Bill.pdf>

<sup>4</sup> Retrieved from <https://www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html>

<sup>5</sup> Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>6</sup> Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>7</sup> Cited in <https://www.justice.govt.nz/assets/Documents/Publications/s-7-Report-Ram-Raid-Offending-and-Related-Measures-Bill.pdf>

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Concluding Observations on the sixth periodic report of New Zealand. Retrieved from <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrXsJ3pRx9xOCak0Ed1mLEloXL0waqCpbMqLXDM8ANSIqFi10Ib7MdJ28qk2vNDsJAWfgit7YYQjTaqPwMDO7eDNPPNO9IB3Y%2BWH3ImGGMIe>

<sup>11</sup> Ibid.

## **2. The Bill is reactive and fails to address recognise or address the drivers of offending by children and youth.**

- 2.1. SCNZ is concerned that the Bill is reactive and focused on harsh criminal punishments that are more appropriate for adult offenders in response to offending that is primarily committed by youth. We are further concerned that the Bill includes children aged 12 and 13 years, developing a new pathway that would see them brought into the youth justice system that is primarily designed for children and youth aged 14 to 17 years, and possibly some 18-year-olds.
- 2.2. Based on international evidence, the harsh reactive penalties outlined in the Bill will not act as the deterrent the Bill intends to achieve, due to the age and development stage of the offenders.<sup>12</sup> The evidence states that children aged 12 and 13 do not have the brain development to adequately assess the risk of the potential to receive the harsh penalties if they engage in the activity. Children and young teens are more likely to act on the spur of the moment with little consideration of the consequences.<sup>13 14</sup>
- 2.3. The CRC's view that the minimum age of criminal responsibility should be 14 years old is based on evidence in the fields of child development and neuroscience which indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing.<sup>15</sup> Therefore, they are unlikely to fully understand the impact of their actions or to comprehend criminal proceedings. Nor are they likely to make a decision not to get involved in offending due to fear of the subsequent criminal justice process.
- 2.4. Evidence shows that children engaging in this type of offending is symptomatic of problems in the home environment. For this group, evidence suggests that measures should principally be designed to promote the welfare of the child, their family and address difficulties underlying the offending.<sup>16</sup> The advice of the Attorney General is clear, a welfare approach to young offenders is considered to be more effective than a criminal law approach.<sup>17</sup>
- 2.5. Research shows that child offending does not occur in a vacuum but, in the vast majority of cases, has been preceded by significant child welfare concerns. Data from the IDI used to inform research by Reil, et al. showed very high levels of abuse, reports of concern to Oranga Tamariki, out-of-home placements, stand-downs and suspensions from school, and indicators of social deprivation among children who offended. These were significantly worse relative to their non-offending peers.<sup>18</sup>
- 2.6. It is deeply concerning that high rates of child offending are directly related to children who are in State Care. Data from the IDI shows that 87% of child offenders that had a

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<sup>12</sup> N Lynch, Youth Justice in New Zealand, 2 ed (Thomson Reuters) 72-73; L Haysom, 'Raising the Minimum Age of Criminal Responsibility to 14 Years' (2022) 58 Journal of Paediatrics and Child Health 1504, 1506.

<sup>13</sup> Ibid.

<sup>14</sup> Reil, J., Lambie, I., Becroft, A., & Allen, R. (2022). How we fail children who offend and what to do about it: 'A breakdown across the whole system'. Research and recommendations. Auckland, NZ: The Michael and Suzanne Borrin Foundation, the New Zealand Law Foundation & the University of Auckland.

<sup>15</sup> Attorney General. 2023. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/s-7-Report-Ram-Raid-Offending-and-Related-Measures-Bill.pdf>

<sup>16</sup> N Lynch, Youth Justice in New Zealand, 2 ed (Thomson Reuters) 72-73; L Haysom, 'Raising the Minimum Age of Criminal Responsibility to 14 Years' (2022) 58 Journal of Paediatrics and Child Health 1504, 1506.

<sup>17</sup> Attorney General. 2023. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/s-7-Report-Ram-Raid-Offending-and-Related-Measures-Bill.pdf>

<sup>18</sup> Reil, J., Lambie, I., Becroft, A., & Allen, R. (2022). How we fail children who offend and what to do about it: 'A breakdown across the whole system'. Research and recommendations. Auckland, NZ: The Michael and Suzanne Borrin Foundation, the New Zealand Law Foundation & the University of Auckland.

high level of offending both as a child and youth, had been in State Care between the ages of 5 and 10 years old.

2.7. The data clearly shows that if we are to prevent children and youth from engaging in criminal activity, we need to prevent them being victims of serious harm in the first place. We need to resource support and services to whānau who need it, and ensure all children, young people and whānau can access income, health, education, or justice support when they need it. Currently the threshold for help is so high, that only the most critical cases receive help and by then the problems are deeply entrenched.<sup>19</sup>

**3. Criminalising children; 12 and 13 year olds are included in the Bill that imposes harsh criminal penalties effectively establishing a new criminal pathway that includes young children, including the possibility of detaining these children in secure juvenile detention justice centres pre or post-trial that are designed for children under 14 years of age.**

3.1 The Bill effectively increases the criminal responsibility of children as it introduces harsh penalties for 12- and 13-year-olds and that they can be applied for first time offending. It is a departure away from an age-appropriate process for determination of a charge against a child under 14 years old that is dominant in the current youth justice system.

3.2 Currently children who offend under the age of 14 years are required to be treated with a welfare-based approach that reduces escalation with exception of the most serious crimes such as manslaughter or murder.<sup>20</sup>

3.3 The requiring of bodily samples from young children aged 12 and 13 years that have any involvement in a ram raid offence is further escalation of a formal criminal response is only currently applied in the most serious circumstances such as manslaughter or murder.<sup>21</sup>

3.4 The Bill allows for children as young as 12 and 13 years to be held in secure detention pre or post-trial. This is particularly concerning that children this young could be held in detention, despite evidence both here<sup>22</sup> and internationally<sup>23</sup> that clearly finds a criminal detention response is harmful to children and more likely to entrench future criminal behaviour. This is directly at odds with the purported intention of the Bill being to prevent further offending.<sup>24</sup>

3.5 Further concerns we hold relate to the current failures in the secure youth detention system where children in these secure residences have been victims of serious harm including alleged sexual assault, physical assault and organised fighting. The Rapid Residence Review<sup>25</sup> has led to the referral of 28 complaints to Police for investigation and standing down of 22 kaimahi and three staff charged with criminal offences.<sup>26</sup> The

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<sup>19</sup> Ibid.

<sup>20</sup> Attorney General. 2023. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/s-7-Report-Ram-Raid-Offending-and-Related-Measures-Bill.pdf>

<sup>21</sup> Ibid.

<sup>22</sup> Reil, J., Lambie, I., Becroft, A., & Allen, R. (2022). How we fail children who offend and what to do about it: 'A breakdown across the whole system'. Research and recommendations. Auckland, NZ: The Michael and Suzanne Borrin Foundation, the New Zealand Law Foundation & the University of Auckland.

<sup>23</sup> N Lynch, Youth Justice in New Zealand, 2 ed (Thomson Reuters) 72-73; L Haysom, 'Raising the Minimum Age of Criminal Responsibility to 14 Years' (2022) 58 Journal of Paediatrics and Child Health 1504, 1506.

<sup>24</sup> Attorney General. 2023. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/s-7-Report-Ram-Raid-Offending-and-Related-Measures-Bill.pdf>

<sup>25</sup> Oranga Tamariki Rapid Residence Review Media Statement, retrieved from <https://www.orangatamariki.govt.nz/about-us/news/media-statement-residence-review/>

<sup>26</sup> Ibid.

systemic failures and the inability to guarantee safety of children in the care of these residences does not instil public confidence that this system is fit for purpose in ensuring young children will not go on to commit criminal offences.

#### **4. The harsh and criminalising penalties including of young children is out of step with a restorative justice model that New Zealand is better known for.**

4.1. The Bill sits firmly in a 'just desserts' model of youth justice, rather than the restorative justice model that New Zealand is known for.<sup>27</sup>

4.2. The increased level of criminality is out of step with current legislation such as the Oranga Tamariki Act 1989. The Act stipulates that alternative means to formal justice involvement in response to child and youth offending should be prioritised wherever practicable, as long as doing so does not jeopardise public safety. Diversion practices such as children receiving a warning, receiving an alternative action plan, or having input from care and protection child welfare services are therefore to be prioritised.<sup>28</sup> Whereas the Bill introduces a possible sentence of up to 10 years in prison including for a first offence, and includes a catch-all for all involved whether the driver, passenger, or bystander.

4.3. Based on international evidence, there is a growing consensus that detention should always be a measure of last resort<sup>29</sup>, yet this Bill would see younger children, aged just 12 and 13 years, placed in detention. Evidence also suggests measures should principally be designed to promote the welfare of the child, their family and address difficulties underlying the offending.<sup>30</sup>

#### **5. The Bill may not be necessary given the significant drop in this kind of offending indicating that current measures in place are working.**

5.1. The Police and Justice measures that have been put in place to prevent ram raids and reoffending appear to be working.

5.2. According to Police data, Ram Raid offences have fallen significantly in the past 18 months. From a peak of 899 offences in 2022, current numbers as of end of August were around half at 454 for the year to date. Offences for the month of August 2023 were 35, less than half of the 78 offences that occurred in May 2023.<sup>31</sup>

5.3. The Kotahi te Whakaaro programme expanded by the Government in response to the increase of ram raiding offences has seen notable success. Kotahi te Whakaaro numbers as of 31 March 2023:

- 147 total tamariki supported overall
- 27 (18%) tamariki have reoffended at least once
- 373 siblings or wider whānau members supported

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<sup>27</sup> N Lynch, Youth Justice in New Zealand, 2 ed (Thomson Reuters) 72-73; L Haysom, 'Raising the Minimum Age of Criminal Responsibility to 14 Years' (2022) 58 Journal of Paediatrics and Child Health 1504, 1506.

<sup>28</sup> Reil, J., Lambie, I., Becroft, A., & Allen, R. (2022). How we fail children who offend and what to do about it: 'A breakdown across the whole system'. Research and recommendations. Auckland, NZ: The Michael and Suzanne Borrin Foundation, the New Zealand Law Foundation & the University of Auckland.

<sup>29</sup> N Lynch, Youth Justice in New Zealand, 2 ed (Thomson Reuters) 72-73; L Haysom, 'Raising the Minimum Age of Criminal Responsibility to 14 Years' (2022) 58 Journal of Paediatrics and Child Health 1504, 1506.

<sup>30</sup> Committee on the Rights of the Child, Concluding Observations on the Sixth Period Report of New Zealand, CRC/C/NZL/CO/6 (28 Feb 2023) [42].

<sup>31</sup> Police. 2023. Text Mined Operational Offence Statistics. Retrieved from [https://www.police.govt.nz/sites/default/files/publications/ram\\_raid\\_text\\_mined\\_operational\\_offence\\_statistics\\_as\\_at\\_15\\_september\\_2023.pdf](https://www.police.govt.nz/sites/default/files/publications/ram_raid_text_mined_operational_offence_statistics_as_at_15_september_2023.pdf)

- 64 tamariki and whānau actively worked with
  - 129 (88%) tamariki exposed to family harm.
- 5.4. Consideration should be given to a potential relationship between the impact of the COVID19 related crisis leading to almost three years of a fractured society and the spike in Ram Raid crimes. During this time, children were not in school, not in sport, not able to engage in healthy pursuits or their communities. Many were unable to be supported by their wider whānau. Police were required to focus on enforcing COVID restrictions rather than essential issues like family violence, burglary, or other harmful crimes, or generally being visible out and about in communities. Our societies have rebuilt and returned to normal and young people have reengaged with society. In the same timeframe these highly risky and sensational crimes appear to be reducing. Minister for Police Ginny Anderson has also acknowledged the link between the pandemic and the spike in ram raid offences.<sup>32</sup>
- 5.5. We are further concerned that this Bill is reactive and a product of hype and inflammatory media and political rhetoric in lead up to the General Election where slogans like 'tough' or 'soft' on crime have been bandied about in a bid to gain votes. This means the Bill is reactive and is not informed by evidence and is in opposition to expert advice from both the international or New Zealand child and youth justice sector. More accurate reporting on the decline in these crimes and information on what is being proactively done to prevent and reduce these crimes would be helpful in reducing public fear and inaccurate rhetoric.



# Save the Children

## Conclusion

Save the Children opposes the Ram Raid Offending and Related Measures Amendment Bill. Our opposition is based on evidence on what works best to prevent children in engaging or re-engaging in criminal activities. We have considered advice from child rights and child justice experts and reviewed data that clearly shows the significant reduction in this specific type of offending. It is our view that this Bill is not needed and the response to Ram Raid crimes committed by children or youth should be focused on deploying and expanding resources that appear to be working based on the data such as Kotahi te Whakaaro.

This submission has been prepared on behalf of Save the Children by Jacqui Southey, Child Rights Advocacy and Research Director, Save the Children New Zealand. For any queries related to this submission contact Jacqui Southey, [jacqui.southey@scnz.org.nz](mailto:jacqui.southey@scnz.org.nz)

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<sup>32</sup> Retrieved from <https://www.beehive.govt.nz/release/government-action-youth-crime-making-difference>