

Regulatory Impact Statement: Search powers in secure Care and Protection and Youth Justice residences

Purpose of Document

Decision sought:	<i>Introducing new, and updating current, search powers in Youth Justice and Care and Protection residences.</i>
Advising agencies:	<i>Oranga Tamariki — Ministry for Children</i>
Proposing Ministers:	<i>Minister Chhour, Minister for Children</i>
Date finalised:	<i>16 September 2024</i>

Problem Definition

There are four key issues and one minor issue contained in this Regulatory Impact Statement (RIS):

1. Current search powers are not adequate or fit-for-purpose for stopping unauthorised items from entering a *Youth Justice residence*.
 - a) The current list of 'unauthorised items' that can be seized in *Youth Justice* residences does not accurately capture modern technology and current items causing harm.
2. Strip searches can be conducted in both *Care and Protection* and *Youth Justice residences*; however, these are harmful, traumatising, and invasive.
3. Children and young people do not currently have a right to request their search preferences protected in law, regarding who conducts a pat down search of them in both *Care and Protection* and *Youth Justice residences*. This can be harmful and traumatising if they are subject to a search by staff whom they do not feel safe with.
4. Enabling the use of body imaging scanners in all searches in Youth Justice residences to avoid reliance on pat down searches

Executive Summary

Four key issues and attendant proposals are explored in this RIS. The intention of all proposals is to alter current search powers in residences, to enable short-medium term interventions that will improve safety and wellbeing in residences.

1. Search powers on entry to Youth Justice residences

In secure Youth Justice residences there has been a recent increase in incidents of violence and disorder. Intervention is required to make residences safer for all. One area of change identified to improve safety is through introducing new search technology, introducing the power to search on entry to a residence, setting out the grounds on which this power can be used, and towards whom.

Current search powers can be used where there is belief on 'reasonable grounds' that a child or young person has an unauthorised item in their possession. Search powers can also only be used towards residents. These current requirements cause two issues:

- ‘reasonable grounds’ are hardly ever present on entry to a residence, meaning searches cannot be conducted; and
- visitors and staff are known and reported to be bringing in unauthorised items to residences, but cannot be searched.

The current search powers mean that unauthorised items are entering residences and can be used in violent incidents to cause harm. We have explored four options to mitigate the above-mentioned safety risks:

Option 1	Status quo – no changes.
Option 2	Discretionary (staff decide based on to-be-determined operational criteria whether this search modality is needed) walk-through scanner, bag and wand searches on entry for visitors and residents (but not staff), along with a pat-down search only for residents.
Option 3	Mandatory (applies to all entrants at all times) entry searches of all entrants using walk-through body imaging and bag scanners, with opportunity for all to hand over unauthorised items at every stage of search, along with use of follow-up pat-down searches on all entrants as a matter of course (with provision for medical exemptions), if any items are detected by the scanners.
Option 4 (Preferred option)	Searches of all entrants using walk-through body imaging and bag scanners is authorised, with opportunity for all to hand over unauthorised items at every stage of search, along with follow-up pat-down searches if any items are detected, which are mandatory for young people but by consent for staff and visitors.

Summary of key themes from stakeholder feedback:

Many stakeholders were supportive of increasing search powers on entry. Some were also supportive of potentially using full body imaging scanners to maximise interior residence safety and limit the use of more invasive search methods, such as pat down search. Some stakeholders said that search on entry powers shifted residences towards a more punitive feel, while others supported the increase in search powers, including youth that we engaged with, as they knew visitors and staff were bringing in unauthorised items.

Key people who would be affected by the change:

Staff, children and young people, and visitors are all affected by this change. Strengthened search powers would increase the safety of all three groups and decrease the number and frequency of harmful incidents. Conversely, search powers could potentially cause a culture change towards a more correctional feeling environment, inherently changing the relationship between children, young people and staff. Further, searches could cause staff to feel they are distrusted by their employer when coming to work and whānau could experience searches as a barrier to visiting their children and young people.

A. Unauthorised items list

As a sub issue, the current list of unauthorised items does not reflect the current state of technology and the use of everyday items which are being fashioned into harmful objects. The current list is also not fully transparent about what can be searched for. We have proposed a new list of unauthorised items.

2. Strip searches in Care and Protection and Youth Justice residences

Strip searches can currently be conducted in Care and Protection and Youth Justice residences. However, we know that in practice they are rarely, if ever, undertaken, and

staff feel confident that they have other methods to obtain an unauthorised item. Strip searching is evidenced to be traumatising and invasive. We have explored three options:

Option 1	Status quo – no changes.
Option 2	Ability to strip search remains in the legislation, but specific additional safeguards are legislated, such as that a child must never be fully unclothed and must have under garments on.
Option 3 (Preferred option)	Full removal of the power to strip search from the legislation.

Summary of key themes from stakeholder feedback:

The majority of stakeholders were supportive of removing the ability to strip search. A couple of stakeholders mentioned perhaps it would be good to retain the ability in case of unexpected need.

Key people who would be affected by the change:

Children and young people will no longer have the concern and fear of being subject to a strip search. Staff would no longer have to conduct them.

3. Respecting children and young people's gender and search preferences

Currently the law requires that a pat down search is conducted by a staff member of the "same sex" as the child or young person. In the context of the New Zealand legislative regime "sex" is interpreted broadly to also include gender identity, however this is not explicitly set out in the legislation, and the requirement that a staff member is of the "same" sex/gender identity leaves room for some interpretation by staff. This means that children and young people are not always able to have their specific needs and search preferences met. This can be harmful to all but may be acutely traumatic for rainbow children and young people and residents with histories of trauma, including assault. We have explored four options to address this issue:

Option 1	Status quo – no changes.
Option 2	Legislative changes allow a child or young person to request the gender of the staff member to search them, and this is subject to approval by a residence manager or designated level of leadership.
Option 3 (Preferred option)	A child or young person can request a staff member(s) they feel most comfortable searching them, together with any other needs they have around being searched, and these are subject to approval by the residence manager or designated level of leadership.
Option 4	The child or young person can make a request about the preferred gender or staff member they feel most comfortable with, with automatic approval being granted to that request.

Summary of key themes from stakeholder feedback:

Most stakeholders were supportive of young people having a right to request who searched them. The Rainbow community supported children and young people being able to request a staff member who they feel most comfortable with, rather than a searcher's gender, as there are likely issues with gender matching in residence staffing pools, as well as gender not necessarily informing who a person is comfortable with. Where dissonance largely existed was around how a right of request was best implemented, as most stakeholders thought there would need to be some opportunity to decline a request.

Key people who would be affected by the change:

Children and young people will be the most affected by this change by having a positive opportunity to express their preferences regarding searches. Staff will also be impacted as they will have to conduct searches.

4. Enabling the use of body imaging scanners for all searches in Youth Justice residences to avoid reliance on pat down searches

To maintain consistency within the Oranga Tamariki Act 1989, we have considered extending the authority to use body imaging scanners to cover all searches in a secure Youth Justice residence, not just searches on entry. This option depends on the authority to use body imaging scanners being the preferred option for searches on entry in issue 1.

Option 1	Status quo – no changes.
Option 2	Extend authority to use body imaging scanners to cover all searches in a secure Youth Justice residence, not just searches on entry.

Key people who would be affected by the change:

Residents would be most largely affected by the change as they would not have to undergo more invasive and hands-on searches such as pat downs. Staff would also potentially be affected as they would need to learn to operate the technology, if this is not conducted by contractors.

Limitations and Constraints on Analysis

Constraints and limitations

Throughout this analysis there were constraints around timeframes that were driven by the priority to mitigate immediate safety and security risks as soon as possible. This led to the following limitations and risks:

- *Consultation:* We engaged through targeted stakeholder engagement, however engagement with Māori stakeholders was limited. Specifically, we only engaged with Te Hunga Rōia Māori o Aotearoa – Māori Law Society. Due to tight timeframes we were also unable to give stakeholders a long time to engage with the issues and provide feedback.
- *Data and evidence:* Due to the way that data is recorded in residences, obtaining full quantitative data sets was not achievable in the timeframes provided, and with the resource available. For these reasons we have relied on the quantitative evidence available and supplemented this with anecdotal evidence and reporting from monitoring agencies, as well as the voices of young people who have lived in residences themselves.

Note we had easier access to some sources of evidence over others. For example, for privacy reasons among others, we were not privy to staff HR records that would have been useful to back up anecdotal evidence on staff involvement in contraband entry into residences.

- *Costings:* Our costings section has been developed to the best of our ability through procurement quotes for equipment and staffing. However our costings cover a broad range of possible prices due to the variability in equipment that can be sourced, the quantity of equipment required, as well as some unknown costs that exist around changing operational guidance and training. For this reason, a

broad range of potential budgets has been included and further work would need to be completed to understand the most likely costings.

It is also important to note that some costings are based on if a specific operational decision was made i.e., if a specific scanner was used. However, operational decisions about how to best implement legislative changes have not been decided, so these costings are not certain.

- **Implementation:** There is significant reliance on working groups as part of the implementation section, which speaks to the fact that future planning is still subject to Ministerial steer and approval of the proposed changes.

Responsible Manager(s) (completed by relevant manager)

Phil Grady

DCE System Leadership

Oranga Tamariki



Dated: 17/09/2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Oranga Tamariki and Ministry for Primary Industries
Panel Assessment & Comment:	<p>A Quality Assurance Panel including membership from Oranga Tamariki and Ministry for Primary Industries has reviewed the Regulatory Impact Statement (RIS) and considers that the information and analysis partially meets the quality assurance criteria.</p> <p>The RIS was produced under time constraints, which limited the consultation undertaken, particularly with Māori, and there are limitations of the evidence available across all options, which weakens the analysis produced. There is significant uncertainty for the financial costing for implementing new search technology, and further implementation planning is needed. Given the decision for this RIS is only to enable the use of this technology, rather than a decision to invest in this technology, we consider this is sufficient for Ministers to rely on. Given the constraints and the nature of the decisions being made at this stage, the panel considers the RIS is balanced and convincing, and as complete as could be reasonably expected</p>

Diagnosing the overall policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. Secure Care and Protection and Youth Justice residences are established under section 364 of the Oranga Tamariki Act 1989. Section 364 allows residences to be established for the “care and control” of children and young people who are in the custody of the Chief Executive. Currently, these care environments are used for

children and young persons who require additional protective care or who have other special needs that require them to be housed in a residence. Full information about the residences applicable to this RIS can be found in [Appendix 1](#).

2. Care and Protection and Youth Justice residences are environments where the Oranga Tamariki Act has powers that enable residence staff to take steps to prevent harm, for example, by searching a child or young person, using physical force to prevent harm, locating and returning a child who leaves the residence without permission, and the use of secure care (where a child or young person can be placed in a secure area within a residence in certain circumstances¹).
3. A majority of the children and young people aged 7-17 years, in Care and Protection and Youth Justice residences have high and complex multi-layered needs. An unpublished Oranga Tamariki internal review indicates that upwards of 87% of the cohort are disabled, neurodiverse or have mental health and substance misuse needs.
4. The report from the Rapid Review of Oranga Tamariki Youth Justice and Care and Protection residences,² which was released in September 2023 noted a deterioration in the safety of residences and a change in culture, with the admission of older residents into Youth Justice residences being a factor in the proliferation of harmful incidents. It also noted that the focus of residence staff was on containment and ensuring survival of fellow staff and residents, rather than care and rehabilitation. Searches and checks for contraband did not appear to be systematic nor aligned to intelligence, risk, crime types or new forms of contraband. Prevention activities and response interventions were found to need refinement.
5. In Youth Justice residences across the country, occurrences of violence and disorder have been increasing. Oranga Tamariki has heard, from engaging with staff, that they feel they have inadequate tools to prevent and respond to these violent incidents. In response, Oranga Tamariki has been looking at how to mitigate the harm caused during these incidents through both operational and legislative measures, including through increasing search powers, as well as through ensuring any search powers uphold the dignity and safety of children and young people. In effect, the aim is to decrease the chances of harmful objects being available to people to escalate harmful incidents into more violent and damaging occurrences, or to use these objects to incite violence.
6. In both Youth Justice and Care and Protection residences across the country, there is a need to overhaul best practice in abiding with national and international human rights obligations by removing the strip search function and enhancing the rights and dignity of gender diverse and trauma-experienced children and young people. Oranga Tamariki has heard from staff that strengthened legislative safeguards, which are reflected through consistent and updated practice, is required.
7. We note potential inter-dependencies with other Government programmes such as the development of the Young Serious Offender category and the piloting of the Military Style Academy in a Youth Justice residence. Any search regime that is put in place through legislation, in relation to these other government programmes, will impact on situations where a child or young person has been placed in a youth justice residence as a result of an order made by the Youth Court.
8. The Government is also considering the final report of the Royal Commission of Inquiry into Abuse in Care, which has made a wide range of recommendations on the future

¹ Sections 367-368 of the Oranga Tamariki Act.

² Led by former Police Commissioner Mike Bush and undertaken by an independent team.

state of residential care.³ Recommendations that are particularly relevant to the proposals being considered include:

- banning restrictive practices (recommendation 73);
- fit-for-need and individualised care (recommendation 78); and
- giving effect to human rights in the care system (recommendation 118).

What does the legislation currently say about search powers?

9. Staff in both Care and Protection and Youth Justice residences can already conduct some searches under sections 384A-K of the Oranga Tamariki Act 1989:

Scanner searches	Can be used on children and young people where staff have reasonable grounds to believe that they have an unauthorised item on their person. A staff member cannot conduct a search unless the staff member has requested that a resident hand over the unauthorised item and they refuse to. Only metal-detecting scanners can be used. Scanners that can “see through” clothing are not currently enabled (“body imaging scanners”).
Pat down and strip searches	Can be used on children and young people where staff have reasonable grounds to believe that they have an unauthorised item on their person. A staff member cannot conduct a pat down or strip search unless the staff member has first requested that a resident hand over the unauthorised item and they refuse to. A strip search cannot be carried out unless a scanner search or pat down search has first been carried out.
Room searches	Can be conducted when a staff member believes on reasonable grounds that a resident has in their possession an unauthorised item. A staff member cannot conduct a room search unless the staff member has requested that a resident hand over the unauthorised item and they refuse to.
Mail inspection	Can occur when a manager believes on reasonable grounds that the mail contains an unauthorised item; or any harmful item, article, drug, or substance that may not lawfully be possessed by the recipient of the mail; or any material that might facilitate or encourage the commission of an offence for the recipient of the mail; or any material that would likely be offensive or harmful to the recipient.

Rules around the use of dogs in any of the above searches:

A dog, trained for search purposes, can be used in the course of conducting any of the above searches. A dog must be handled by and under the control of a Police employee, a Customs officer, a member of the Armed Forces, or an employee of the Department of Corrections. Where dogs are used for searches, they must be conducted in a way that affords the highest degree of decency and sensitivity for the child and young person and prevents the dog coming into physical contact with the child or young person.

10. The additional search powers we are considering introducing on entry to a residence include all of the above modalities except for strip search and mail inspection.

³ Whanaketia: Through pain and trauma, from darkness to light (July 2024).

What other work has happened, or is happening, in this space?

11. The future state of residences, including their purpose and function, is currently being reviewed by Oranga Tamariki. This includes the development of a new operating model for residences and the testing of a Residences and Homes pilot.

What is the policy problem or opportunity?

12. There are five separate issues covered in this Regulatory Impact Statement (RIS). These are:
 1. Current search powers are not adequate for stopping unauthorised items from entering a Youth Justice residence.
 - a) The current list of 'unauthorised items' that can be seized in secure Youth Justice residences does not accurately capture modern technology and current items causing harm.
 2. Strip searches can be conducted in both Care and Protection and Youth Justice residences; however, these are harmful, traumatising, and invasive for all involved (staff and residents).
 3. Children and young people cannot express their preferences regarding searches which means that they could be subjected to searches with people, or in ways, they feel unsafe with. In particular this can affect the rainbow community and young people with histories of trauma, including assault in both Care and Protection and Youth Justice facilities.
 4. Pat down searches are unnecessarily invasive when scanner technology, such as body imaging, exists that can detect unauthorised items without needing to touch a child or young person. This would be in place in Youth Justice residences.
13. These issues are addressed separately below.

1: Introducing search on entry powers to Youth Justice residences

What is currently happening: the Status Quo?

14. Current legislation requires 'belief on reasonable grounds' that an unauthorised item is in the possession of a child or young person before any search powers can be used. However, these grounds are hardly ever present when a child or young person enters a residence. Current search powers can be used in relation to children and young people and are not able to be used in relation to visitors and staff. The issue is that unauthorised and potentially harmful items are being brought into residences by all three groups, which can then be used in violent incidents to cause harm.
15. This issue is focused purely on Youth Justice residences (does not apply to Care and Protection residences) due to the nature of items being smuggled into Youth Justice residences being more focused towards harming others i.e., weapons or items that can be fashioned into weapons.

Evidence of harm

- In July 2023 Whakatakopokai residence wrote to the Chief Executive of Oranga Tamariki with concerns about the increase of incidents occurring that involved

unauthorised items. From March-May 2023 they reported that 26 of 91 incidents involved unauthorised items, and many of these items were brought in by visitors.⁴

- Whakatakapokai residence also reported that between September 2023 and March 2024, 94 unauthorised items were seized, with 59 being vapes (which can be sharpened into shanks). Because vapes are not supplied inside residences, they can only have come into the residence from outside sources.
- In the Office of the Children's Commissioner (OCC) 2023 review for Whakatakapokai residence, staff said aggression levels had increased since 2022, and contraband, especially vapes, was increasing.⁵
- Six months prior to the OCC review of Korowai Manaaki residence in 2023, the OCC reported that there had been 34 assaults, which included a mass fight between 17 people from different units, with one person taken to hospital after receiving injuries from a shank made from a plastic vape casing.⁶
- In February 2024 Korowai Manaaki seized 19 items. Of these, 11 were brought in by visitors. In October 2023, of 43 items seized, many were non-metal items (rocks, drugs etc).
- In 2023 Mana Mokopuna reporting mentioned that staff at a residence had bribed residents with contraband. This was supported by engagement with VOYCE Whakarongo Mai and the Youth Advisory Group, who mentioned instances where staff have in the past brought in items such as vapes.⁷

16. The following pictures show a selection of seized items from Youth Justice residences. Photograph 'A' shows vapes which were brought in from outside and photograph 'E' shows how vapes can be sharpened into weapons.



⁴ Internal letter to Chief Executive Oranga Tamariki, from Residence Manager at Whakatakapokai residence, sent 4 July 2023.

⁵ Whakatakapokai OPCAT Monitoring follow up report, reporting by Mana Mokopuna, Office of the Children's Commissioner, May 2023, linked through [Whakatakapokai Follow-up Report Mar23 FINAL \(2\).pdf](#).

⁶ Korowai Manaaki OPCAT Monitoring report, reporting by Mana Mokopuna, Office of the Children's Commissioner, June 2023, linked through [Korowai Manaaki OPCAT Monitoring Report | Mana Mokopuna](#).

⁷ The Youth Advisory Group is an Oranga Tamariki run advisory group made up of care-experienced youth.



D



E

What would happen if the Status Quo continued?

17. Current search power settings mean that entry points are one avenue through which harmful items are entering residences. If the status quo continues, the overall quantity of unauthorised and potentially dangerous items present in a residence at any time will not reduce.

What is the opportunity for change?

18. There is an opportunity to make residences safer by limiting one avenue through which unauthorised items can enter a residence, while recognising that unauthorised items would still be present through the fashioning of weapons from objects already inside a residence. The onus for identifying the latter relies on staff vigilance and deployment of existing search powers within a residence, including daily security checks and room searches.
19. Search on entry powers would however reduce the overall volume of unauthorised items present in a residence at any one time, and therefore reduce the opportunity for them to be used in violent incidents.

What did stakeholders say?

20. Please note that some feedback pertains to specific options which are set out in the section below. All feedback has been presented together to provide a fulsome overview of stakeholder opinion.

Support and Suggestions

- Applying search powers to all entrants (including staff and visitors) is positive as this treats everyone equally and ensures, for example if staff were to be excluded from searches, that they are not manipulated into bringing in items.
- The Youth Advisory Group said that everyone should be subject to equal search powers.
- Some stakeholders, including monitoring agencies, were supportive of body imaging scanners as they could be more dignified than pat down searches and would pick up non-metal items such as drugs. If scanners were on a safe setting that provided a genderless and vague image that was not attributable to any person then this would mitigate privacy risks.
- VOYCE Whakarongo Mai was supportive because they thought that searches at entry, and in particular full body imaging technology, helped to establish a sense of greater safety inside a residence.
- The Disability Advisory Group highlighted the need for consent with any search for children and young people, and mentioned the need for safety measures as well as

	<p>consideration of neurodiverse people for whom requirements around giving consent are different to neurotypical people.</p> <ul style="list-style-type: none"> National Union of Public Employees (NUPE) advocated for routine use of scanners, dogs, bag searches, and lockers for visitors in order to make sites safe, with emphasis on searches being extended to staff.
Critique and risks	<ul style="list-style-type: none"> Extending search powers to visitors' risks alienating whānau from visiting. This can hinder rehabilitation and is overly punitive. Te Hunga Rōia Māori o Aotearoa – Māori Law Society said search powers could be overly punitive and we need to ensure that it is necessary to treat everyone the same. Youth Advisory Group and some other stakeholders were concerned about favouritism if staff were to be subject to searches by colleagues. Independent contractors could be useful.

Will anyone be disproportionately affected?

21. There is a risk that introducing search on entry powers for visitors could create a barrier to whānau and family members visiting their children and young people. Through engagement with Oranga Tamariki staff we have heard that some residents are unfortunately already dealing with having very few visitors due to various personal circumstances, and searches on entry could potentially be perceived as creating an additional barrier, thereby further de-incentivising visits which are important from a wellbeing and relationship building perspective. Staff may also feel less trusted by peers and superiors, when searched prior to a shift.

Objectives

1	Prevent, identify, and seize harmful items from entering a residence.
2	Improve the safety of the residence for children, young people, staff, and visitors
3	Reduce the need for children and young people to be subject to more invasive and traumatic search methods such as pat down and strip searches by having the ability to use walk-through and wand scanners as the first options in a scalable set of search powers.

1a. Unauthorised items in residences

What is currently happening: the Status Quo?

22. An “unauthorised item” is either a “harmful item” or an item that cannot be lawfully possessed. Currently, the Act defines a “harmful item” as “any article, drug, or substance that a member of staff has reasonable cause to believe is likely, while a child or young person is in a residence, to harm [anyone].”⁸ There is no prescribed list of unauthorised items.
23. Consequently, the existing definition around what is an ‘unauthorised item’ that can be seized is creating uncertainty in the case of some items such as mobile phones, which present relatively low risk as an object, but which have been used to coordinate assaults on staff, and to contact victims. Staff are also unclear about how to deal with items that are not inherently harmful but that can be fashioned into weapons.

⁸ Section 384A.

What would happen if the status quo continued?

24. Confusion around what items are unauthorised would continue and staff would not have explicit authority to seize items such as mobile phones and other objects which could potentially be fashioned into weapons and thereby used to co-ordinate and cause harm.

What is the opportunity for change?

25. There is an opportunity to amend and update the current list of unauthorised items to ensure that it reflects modern technology and the current scope of harmful items, including weapons fashioned from everyday objects.

What did stakeholders say?

26. Please note that some feedback pertains to specific options which are set out in the section below. All feedback has been presented together to provide a fulsome overview of stakeholder opinion.

Support and suggestions	<ul style="list-style-type: none"> • Need to include cell phones for a range of reasons i.e., used to contact victims, access pornography which can hinder progress, or to arrange drop offs of unauthorised items. Should however exclude assisted communication devices very clearly (meaning devices disabled people need to be able to communicate). • What is considered 'harmful' needs to be more clearly defined as children and young people need clarity on arrival about what is allowed. • One stakeholder mentioned that we could look to put the list of unauthorised items in regulations, instead of legislation, as they are easier to update should there be a new item that needs to be prohibited i.e., vapes weren't foreseen as an item that needed to be banned 5 years ago but now pose harm. • NUPE advocates for extending search provisions to community settings and not just secure facilities as dangerous items such as lighters, drugs and alcohol are brought in, with staff not having ability to seize them or intervene, and instead ending up being assaulted and threatened.
Critique and risks	<ul style="list-style-type: none"> • Need to be careful about any exercise of discretion, but still need to allow for some flexibility in decision making. Jewellery can be used to cause harm, and clothing colours could be seen as intimidating. Difficult balance to strike in allowing for discretion and also not taking away personal items unnecessarily. • The Youth Advisory Group mentioned that sometimes staff give residents vapes to calm them down. A wider change in practice would be required to stop this as a tool.

Objectives

1	Staff and those being searched have certainty about what an unauthorised item is that can be seized.
2	The definition of unauthorised item reflects modern technology and developments and the fashioning of everyday objects into harmful items that are being used in residences currently to cause harm.

Deciding on an option to address the policy problem

What criteria will be used to compare options to the status quo?

27. Across the Searches issues, an understanding of current operational guidance⁹ in Care and Protection and Youth Justice residences helped to inform the design of policy options in this RIS. A summary of what is conveyed in the current SOPs is found in [Appendix 2: Summary of Standard Operating Procedures](#). While developing options, consideration has also been given to regulatory instruments that both bind and/or guide Oranga Tamariki, as listed in [Appendix 3: Key Legislative and Regulatory Instruments](#). A more detailed breakdown of what we have assessed under each criterion and how we have distilled the Acts and Declarations into these criteria is set out in the table below.
28. This set of criteria has been used in all sections for all issues. Note that for Issue 3 the cohorts that the criteria apply to have been adjusted to best fit the tensions in the issue.
29. The proposals in this RIS are intended to be considered as a package, with the preferred option in each issue complementing and not overriding the other. Since the RIS proposes the removal of the strip search power from legislation as applicable in both Youth Justice and Care and Protection residences under Issue 2, it is expressly noted that as a consequence, consideration of strip search as a type of search modality is not discussed in Issues 1 and 3.
30. A sample review of international practice from Ireland¹⁰, the United Kingdom¹¹ and Australia¹², reveals an emphasis on the use of least restrictive search methods which are reasonable, proportionate and do not harm the health or safety of young people. Additionally, some pertinent findings were:
 - All searches, both personal and environmental, must be carried out in a way that fully respects the dignity, well-being, and rights of the young person.
 - Personal searches will normally be carried out on admission; outside of this, personal searches must only be used as a measure of last resort, in approved circumstances, where there is reasonable cause to believe that a young person may have an item that poses a danger to the safety, health or well-being of themselves.
 - Transgender and intersex people have the right to be searched by a person of chosen gender.
 - As possible, before and after care must accompany a strip or body search, such as provision of prior notice, designated private area etc.

⁹ Oranga Tamariki Standard Operating Procedures for Youth Justice residences, updated in February 2023.

¹⁰ Oberstown Campus, Oberstown Children Detention Campus, 22 July 2020, *Children's Rights Policy Framework*, linked through [Childrens-Rights-Policy-Framework-Final-Version-24-August-2020.pdf \(oberstown.com\)](#); [Standards and Criteria for Children Detention Schools 2008.pdf \(hiqa.ie\)](#)

¹¹ Young Offender Institution, Youth Justice Legal Centre, last updated 2021, linked through [Young Offender Institution \(YOI\) | Youth Justice Legal Centre \(yjl.c.uk\)](#)

¹² Youth Justice NSW, NSW Government, 'About Youth Justice NSW Centres,' <https://www.nsw.gov.au/legal-and-justice/youth-justice/centres>, Youth Justice NSW, NSW Government, 'About Youth Justice NSW Centres,' <https://www.nsw.gov.au/legal-and-justice/youth-justice/centres>, last updated 2024.

Criteria	Description	As it relates to the power to Search
Physical safety of everyone in a residence	<p>This criterion centres the physical safety of residents, staff, visitors and anyone else entering a youth justice residence through:</p> <ul style="list-style-type: none"> • Mitigation of risks to the safety of anyone within the premises. • Implementing search powers in a manner that ensures the safety of both those being searched and those conducting searches. 	<p>Test – The extent to which the option prevents unauthorised items from entering a residence:</p> <ul style="list-style-type: none"> • Reduction in physical harm and violence (both self-harm and aggression towards others) through curbing the use of contraband and fashioning of weapons. • Adequate and appropriate tools are available to identify, deter and remove unauthorised items from entering.
Human rights and wellbeing of the person being searched	<p>This criterion centres compliance with national and international human rights obligations that safeguard rights, participation, inclusion, and accessibility for everyone entering a residence, while ensuring that any limitations do not cause undue detriment to wellbeing.</p>	<p>Test – The extent to which a person's right to undergo a reasonable search is protected:</p> <ul style="list-style-type: none"> • The least intrusive and invasive search modalities are prioritised to reduce risk of re-traumatisation and safeguard the bodily integrity, dignity, and privacy of the person. • Search powers are exercised in a manner that is justifiable, reasonable and proportionate to the level of risk and apparent risk to security. • Adequate provision is made for those with health/disability needs while implementing coercive powers. • Search powers do not contribute to further alienation of a child/young person either socially or culturally, as the relationship between Oranga Tamariki and whānau impacts a young person's relationship to their whānau and community.
Transparency and accountability	<p>This criterion considers information provision, reporting, auditing, and complaints processes. It revolves around the idea of 'sunlight' - that by shedding light on something it increases public accountability and knowledge.</p> <p>It also considers standardised protocol and operational guidelines in the exercise of search powers.</p>	<p>Test – The extent to which search powers are shielded from arbitrary and unregulated usage by way of adequate safeguards and scaffolding:</p> <ul style="list-style-type: none"> • There is clear understanding and communication about the nature, function, and consequences of all modalities of search. • There are clear guidelines for decision making. • Any modification of search powers in the legislation includes provision for information sharing, reporting, recording and oversight. • Accessible and child-friendly complaints and grievance mechanisms are in place. • Processes to ensure transparency and accountability in the use of new powers are also embedded in operational policy and practice, thereby helping to build trust and mitigate uncertainties for those being searched and those conducting searches.

Criteria	Description	As it relates to the power to Search
Ease of implementation	This criterion centres the feasibility and practicability of an option, as well as its adaptability over time, in the face of changing infrastructure, staffing capability, or other conditions.	<p>Test – The extent to which the roll-out of changes to the use of search powers is easy to implement, operate and manage:</p> <ul style="list-style-type: none"> • Infrastructure changes in relation to access points, designated search areas, equipment and tools to facilitate searches are straightforward and practicable to implement in order to achieve the desired search objectives. • Staffing capacity and capability to implement the changes are easily met through recruitment, training and upskilling. • Operational, HR and contract management guidelines are updated in a timely manner to keep pace with legislative and regulatory changes and reflect new practice.

What scope will options be considered within?

31. For searches on entry, all options are restricted to secure youth justice residences only. No options apply to secure care and protection residences. We also considered the following minimum requirements and variables:

Human Rights

32. Conducting a search of a young person is a significant impingement on personal liberties. The right of children and young people to be secure against unreasonable search or seizure is a right protected by the New Zealand Bill of Rights Act 1990 (NZBORA).¹³ As such, any power to search that is prescribed in legislation needs to be demonstrably reasonable.
33. Searching visitors or other persons willingly entering a residence also has NZBORA implications. It is acknowledged that there is a risk that searching families may increase the barriers to them visiting their child or young person, and lead to further disconnection from their families and whānau, which is inconsistent with the principles of the Act and the rights of children and young people (including in the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018) and is likely to impact on the young person's wellbeing and best interests. The mitigation of these risks and ensuring that universal best-practice principles were embedded in the options, contributed to tightening the scope of potential considerations. Given that our overall objective is to improve everyone's safety in Care and Protection and Youth Justice residences, providing a framework that clearly states when these rights are able to be restricted is necessary from both a rights and accountability perspective.

¹³ Section 21.

34. Under the NZBORA, the test for whether the limitation on fundamental human rights is reasonable depends on whether it:
- serves a purpose sufficiently important to justify curtailment of the right or freedom;
 - is rationally connected with the purpose;
 - impairs the right or freedom no more than is reasonably necessary for sufficient achievement of its purpose and
 - is in due proportion to the importance of the objective.
35. [Appendix 3](#) establishes complementary human rights principles embedded in relevant national and international legislation.

Te Tiriti o Waitangi commitments

36. Tamariki and rangatahi Māori both historically and currently make up approximately 70% of the population in Care and Protection and Youth Justice residences. While developing the proposals in this RIS, effort has been taken to explore options that can:
- best help to protect tamariki and rangatahi as taonga under Te Tiriti; and
 - enhance Māori wellbeing by providing a space for these tamariki and rangatahi Māori to live in which is reflective of their rights; and
 - align with manaakitanga by showing respect to tamariki and rangatahi and their wishes; and
 - upholding the mana of tamariki and rangatahi Māori by ensuring they have a sense of belonging; and
 - acceptance and safety while in a residence, and safeguarding ōritetanga by ensuring that they have equitable opportunity to have their requests voiced and be affirmed.
37. Given the high proportion of Tamariki and rangatahi Māori children and young people across Care and Protection and Youth Justice residences, we have been cognisant of the treaty principles of acting reasonably, with fairness, in good faith and honour while progressing active protection throughout the process of drafting search proposals.
38. However, we acknowledge that Issue 1 (search on entry) highlights particular contradictions between proposed changes and Crown commitments to Māori and Te Tiriti. Increasing search powers for a residence population where tamariki and rangatahi Māori are the majority undermines Article 2 of Te Tiriti which guarantees Māori rangatiratanga over their taonga which includes tamariki and rangatahi Māori. However, our analysis will speak to how the limitation imposed is sought to be a justifiable trade-off to increase the safety of these tamariki and rangatahi as well as the whānau who visit them and the staff who look after them.

Types of scanners

39. In considering whether to include advanced imaging technology to future proof the new search provisions, we have looked into equipment being used by the Department of Corrections, Aviation Security and in international jurisdictions.¹⁴ The issue with image technology scanners is their ability to “see through” clothing to produce a detailed image of a person’s naked body. Our research revealed that the body imaging function in this type of scanner equipment is used primarily to highlight the general location of contraband on the body, rather than an image of the body itself. Image generation will only be at the time of search, with the person being searched able to view the generated image in real time. The device can be set to a ‘SafeView’ setting which only shows a vague genderless outline of a body and this data will not be collected. Given the ‘SafeView’ protection, technology scanners have been included in the scope of potential options, alongside continuing to use metal-detecting scanners.
40. The future-proofing of the search on entry function by allowing for the use of more advanced scanning technology can also be the catalyst to bring existing search functions up to date to detect the concealment and use of items present within a residence as weapons, in a more timely, fool-proof and less intrusive manner. It would be fiscally and practically prudent, as well as in alignment with international best practice, to make optimal use of new technology that does a more effective job of searching a person while being less invasive than a pat down search. Hence, extending the potential use of any new equipment beyond the point of entry could be a way to maximise the investment and resources allocated to facilitate the implementation of search on entry powers.

Non-legislative options were not considered

41. A non-legislative option has not been considered because staff cannot lawfully expand and apply enhanced search powers on entry without a legislative mandate. Any change in secondary regulations and operational practice on the ground can only follow on from a legislative amendment. Trying to tackle the problem of everyday items already present within a residence being used as weapons in harmful incidences is a separate issue that is out of scope and is mutually exclusive to addressing the entry of contraband at inception.

The following are the variables that were considered while designing the set of options for search on entry:

Types of permissible searches

- Based on current internal and external best practice

Manner in which a search is undertaken and the safeguards for the person being searched

¹⁴ Kibble (Specialist Services and Support for Young People facing Adversity) in Paisley, Scotland; Department of Children, Youth Justice and Multicultural Affairs, NSW Australia.

- Based on proportionality, reasonableness and justifiability

Consequence of failure to consent to or comply with a search

- Based on deterrence, minimisation of punitiveness and relational dynamics

Types of entrants who get searched and circumstances in which a search is conducted

- Based on nature of risk, frequency of visits and security posture of the residence

Types of prohibited items

- Based on found and confiscated items being weaponised on an ongoing basis

What options are being considered?

42. Across all options we are intending on strengthening transparency and accountability mechanisms to ensure compliance. We will do this through adequate and accessible information provision, reporting, record keeping, monitoring and grievance mechanisms that are spelt out in legislation, regulation, and operational guidance. The same goes for the ability to request an alternative search modality for those with age, health, and disability-related needs.
43. Across all options, any proposed change in practice from the status quo will need to be reflected in updated SOPs and HR guidelines, as well as staff training modules, information that is provided to children and young people on arrival to a residence, information provided to whānau, and the Oranga Tamariki website.
44. In addition to the status quo (option one), we have considered three other options described below.

Option Two – Low intervention model for search on entry

45. This option is a minor step-up from the status quo. It allows for a discretionary walk-through of a metal-detecting scanner, bag and wand searches on entry for visitors and residents, along with a pat-down search only for residents. Reasonable grounds for suspecting the person has an unauthorised item is not required. Use of a dog in the course of conducting the search is not enabled and the consequence of detection of contraband is seizure as a matter of course. The distinctive factor in this option is that staff are not subject to searches and only residents would be subject to the most thorough search. This was proposed to make the change in working environment and relational dynamics between residents and staff less disruptive; however, it means that some safety risks remain, as evidence has indicated that small items can be easily concealed and brought into a residence by all three entrant groups.

Search type	Staff	Visitors	Children and Young People
Walk through scanner	No	Discretionary use on entry	Discretionary use on entry
Bag search	No	Discretionary use of manual search on entry	Discretionary use of manual search on entry
Wand search	No	Discretionary use as follow up to walk through scanner	Discretionary use as follow up to walk through scanner
Pat down	No	No	As part of a scaled response, pat-down searches can be conducted by residence staff if needed
Dog use	<i>Existing usage as part of reasonable ground searches of children and young people while in the residence continues.</i>		
Consequence if unauthorised item found	N/A	Item seized	Item seized

Option Three – High intervention model for search on entry

46. This option requires mandatory entry searches of all entrants using walk-through body imaging and bag scanners, along with use of follow-up pat-down searches on all entrants as a matter of course, if any items are detected. Refusal to be searched would mean that staff and visitors would be denied entry to the residence, along with the bringing in of contraband into a residence being classed as an offence.
47. This model includes search of staff. Stakeholder engagements, anecdotal evidence from residence staff and OPCAT monitoring reports have all indicated that staff are a key channel through which contraband is brought in, especially when other avenues have been closed off. Incidences of bribing have been conveyed to be quite commonplace. Staff have also been apprehended for sharing vapes with young people in a residence, on occasion using this as a way to placate a resident who is emotional dysregulation, distress or acting out. Progressing this option however would endorse a move towards an overtly correctional model. Certain elements are quite punitive and may bear the risk of alienating whānau and significantly transforming the relational dynamics in a residence.

Search type	Staff	Visitors	Children and Young People
Body imaging scanner	Mandatory use of body imaging scanner on entry.		
Bag scanner search	Mandatory bag scanner search on entry.		
Wand search	N/A if body imaging scanner is used.		
Pat down	As part of a scaled response, pat-down and strip searches can be conducted by residence staff/Police if needed.		
Dog use	<i>Existing dog search provisions are replicated on entry</i>		
Consequence if unauthorised items found	<p>Items seized.</p> <p>Disciplinary proceedings for staff.</p> <p>Bringing contraband into a YJ residence is classed as an offence under the Summary Offences Act 1981.</p>	<p>Visitors denied entry.</p> <p>Bringing contraband into a YJ residence is classed as an offence under the Summary Offences Act 1981.</p>	<p>Item seized.</p> <p>Bringing contraband into a YJ residence is classed as an offence under the Summary Offences Act 1981.</p>

Option Four – Hybrid intervention model for search on entry **PREFERRED OPTION**

48. This hybrid option for search on entry was designed by pulling together the most effective elements from the low and high intervention models. It centres the safety of everyone within a residence, while aiming not to cause more harm than what it is intending to prevent. The search modalities are applicable to all entrants, implemented in layers, with opportunity for staff, visitors and children and young people to declare and hand over unauthorised items at every stage of search. A distinctive feature of this option is that it enables rather than requires searches, thereby leaving some discretion (e.g. visitors could still be allowed to visit even if they do not consent to a scanner search, or pat down search on detection of items during a walk-through scanner search, provided there is close supervision of the visit).
49. This option includes the ability to use walk-through body imaging scanners instead of metal-detecting scanners where desired. This technology has been found to be effective in increasing safety in youth justice facilities overseas and has significantly decreased the reliance on pat down searches. Oranga Tamariki does not currently possess this equipment in residences, and procurement would come at significant cost and logistical consideration. The requirement for reasonable cause for scanner and bag searches has been dispensed with, since reasonable cause as it is currently determined can be difficult to prove on entry, thereby inhibiting the very purpose for which search on entry is being proposed.

Search type	Staff	Visitors	Young People
Scanners	Enable use of metal detecting and body imaging walk-through scanner, without requiring prior reasonable cause.		
Bags	Enable use of manual bag search, without requiring prior reasonable cause.		
Wand	Enable use of wand search as a follow up to walk-through scanner.		
Pat down	If reasonable cause, pat-down search can be conducted.		
Dogs	<i>Yes, existing dog search provisions are replicated on entry</i>		
Consequence	Usual HR processes Item seized	Can be declined entry, item seized, or visit supervised	Item seized

Overarching picture of key functionalities across all options:

Option	Children/young people can be searched	Search on entry without reasonable grounds	Visitors can be searched	Staff can be searched	Imaging technology can be used	Pat down search on reasonable grounds	Search on entry is mandatory
Status quo	Yes	No	No	No	No	Yes (children/young people) No (staff and visitors)	No
Low intervention	Yes	Yes	Yes	No	No	No (others)	No

Hybrid	Yes	Yes	Yes	Yes	Yes	Yes	No
High intervention	Yes	Yes	Yes	Yes	Yes	Yes	Yes

A) Unauthorised and Harmful Items

50. Across all discussed options and search modalities, it is proposed that a definitive list of unauthorised items which can be searched for and seized from secure youth justice residences be included, making provision for electronic devices. Based on current operational guidance (see [Appendix 2](#)) as well as reports from residence staff on types of items of a harmful nature being brought in, it is proposed that the following list of items be clearly prohibited under the Act:
- a) anything that could, while in the possession of any child or young person, be harmful to them or to anyone else;
 - b) any drug, alcohol, or other intoxicating substance;
 - c) tobacco and any equipment used for smoking tobacco or any other substance;
 - d) any vaping product or smokeless tobacco product;
 - e) any electronic communication device such as mobile phones (except for any such device that a child or young person may need to be able to appropriately communicate with others in the residence (including for their disability));
 - f) anything that could be used for the purpose of absconding or facilitating the escape from lawful custody of any child or young person;
 - g) anything that may not lawfully be retained in the child or young person's possession;
 - h) any substance or item used to distract, disorient or divert, such as pepper spray or a noise flash device;
 - i) any offensive weapon or disabling substance within the meaning of section 202A of the Crimes Act 1961;
 - j) anything declared to be an unauthorised item by regulations made under the Act
51. This list reflects the definition of “unauthorised item” in section 3 of the Corrections Act, albeit with some variation to accommodate the kinds and types of items that are often found and confiscated in youth justice residences, as reported by Oranga Tamariki staff and in records. The list of items stated in [Appendix 2](#) is indicative of this.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Criteria	Status quo	Low intervention model	High intervention model	Hybrid model
Physical safety of everyone	0	+	++	++
Human rights of person being searched	0	-	--	-
Transparency and accountability	0	+	++	++
Ease of implementation	0	-	--	-
Overall	0	0	0	++

Option One – Status quo

Physical safety of everyone 0	Safety of everyone within a residence is compromised as point of entry searches can only be made on reasonable grounds, thereby leaving holes in the security infrastructure. This has led to contraband entering through the three channels, and the increase in the use of these items as weapons in harmful incidences.
Human rights of person being searched 0	The right to be secure against unreasonable search is protected by the requirement for staff to believe on reasonable grounds that the young person has an unauthorised item in their possession before staff can search the young person. Visitors and staff are protected from being searched at all.
Transparency and accountability 0	The primary safeguard is the requirement for staff to believe on reasonable grounds that a young person has an unauthorised item in their possession. Other safeguards apply to the process for searching the young person, including the opportunity to hand over an item at any stage. However, it has been noted that there are inconsistencies and inadequacies in the reporting and recording of searches across all residences, thereby decreasing transparency in regular detection, search and seizure functions.
Ease of implementation	n/a

0

Overall rating

0

Option Two – Low intervention model

52. This option allows for a discretionary walk-through of a metal-detecting scanner, bag and wand searches on entry for visitors and residents, along with a pat-down search only for residents. Dog search is not enabled and the consequence of detection of contraband is seizure as a matter of course. The distinctive factor in this option is that staff are not covered and only residents would be subject to the most thorough search.

Physical safety of everyone

+

This option makes some strides in strengthening safety but falls short in comprehensiveness. Not covering staff as part of the entrants being searched ignores the prevalent concerns of contraband being brought in through this channel. Not following through with more than a scanner search for visitors allows for smaller non-metal items to still pass through undetected as well.

Human rights of person being searched

-

The requirement for reasonable grounds is removed for searches of young people, and visitors can be searched without needing to show any just cause, in both cases encroaching on the right to be secure against unreasonable search. This option also singles out certain groups of entrants for differential treatment. This can risk alienating visitors and would treat different groups unequally.

Transparency and accountability

+

This is affected to some extent as visitors and children and young people are subject to the same initial search modalities, although a major loophole exists in differential treatment thereafter, irrespective of the fact that all entrants could bring in contraband. The lack of sufficient rationale to justify the non-search of staff weakens the transparency and accountability element of this option.

Ease of implementation

-

Implementation is relatively easy in terms of procuring equipment, given most residences already have metal-detecting scanners. However, cost considerations and infrastructure changes are still involved. Also, with no additional tools to ensure compliance, thorough search of visitors with adequate means of detecting items is inhibited.

Overall rating

0

Option Three – High intervention model

53. This option allows for mandatory entry searches of all entrants using walk-through body imaging and bag scanners, along with use of follow-up pat-down searches on all entrants as a matter of course, if any items are detected. Refusal to be searched would warrant summary denial of entry for staff and visitors, along with the bringing in of contraband into a residence being classed as an offence.

Physical safety of everyone ++	As all channels of entrants are consistently and equally covered by all modalities of search, safety within the premises of a residence is increased significantly. There is also an element of deterrence as entrants may comply with the stringent rules in an effort to avoid the more punitive consequences.
Human rights of person being searched --	The requirement for reasonable grounds is removed for searches of children, young people, and both visitors and staff can be searched without needing to show any just cause, in all cases encroaching on the right to be secure against unreasonable search. Mandatory search on entry of all entrants inhibits the ability of staff to put their expertise into practice and exercise discretion based on varying risk levels and apparent risks to security in residences. Blanket search powers can also serve to traumatise those being searched while taking its toll on those conducting searches. Low-trust measures such as summary denial of entry and being charged with an offence, weaken the relational dynamics in a residence and alienate staff, visitors and children alike.
Transparency and accountability ++	This option exhibits a high degree of accountability due to the blanket search on entry being mandatory. It mitigates certain risks of misdirected or arbitrary application due to the lack of discretion needed in decision-making, thereby decreasing variability.
Ease of implementation --	Conduct of searches is simplified due to mandatory instruction. However, there are practical difficulties associated with the procurement of equipment, use of newly introduced advanced technology, training of staff, and changes to infrastructure. All the mentioned come at significant cost and time consideration. Additionally, the continuous conduct of such extensive search for all entrants can be impracticable and unsustainable.

Overall rating

0

Option Four – Hybrid intervention model: **PREFERRED OPTION**

54. The following functions are enabled under this proposal:

- everyone can be searched by scanner on entry to a secure youth justice residence, including all staff, contractors and visitors;
- scanner searches can be undertaken by either a metal-detecting scanner or by a body imaging scanner;
- any possessions, such as clothing or food being carried in by visitors, can be searched, manually or by scanner;
- suitably trained dogs can be used to assist that search;
- these searches can be conducted without needing to hold a reasonable belief that the person wanting to enter has an unauthorised item in their possession; and
- a pat down search may be used if the first searches indicate that an unauthorised item may be present.

Physical safety of everyone ++	<p>The preferred option of searches for all entrants improves safety within a residence for all people by curbing the three channels through which dangerous items can enter a residence, and therefore the opportunity they have to be used to cause harm. Searches on entry will not remove all harmful items from a residence as items already within a residence can still be fashioned into weapons. However, the number of unauthorised items present in a residence will likely reduce. The absence of a mandatory requirement to search everyone means this option is likely to be slightly less effective than the high intervention model.</p>
Human rights of person being searched -	<p>The requirement for reasonable grounds is removed for searches of children, young people, and both visitors and staff can be searched without needing to show any just cause, in all cases encroaching on the right to be secure against unreasonable search. The search methods of walk-through scanner and bag search are less invasive than pat down and strip search and their use helps to avoid the need for these more invasive searches which are a larger impingement on human rights. Depending on the type of equipment used, the corresponding privacy concerns will have to be mitigated. Regarding the potential use of body imaging technology, in-built safeguards for the capture, storage and retention of images will have to be developed. By empowering search on entry for all entrants (staff, visitors and children and young people), the risk of whānau alienation is reduced as everyone is treated equally. Moreover, the discretion over whether to use the search powers allows some flexibility, enabling certain safeguarding measures to be in place as alternatives to denying visitors entry.</p> <p>There is a possibility that the presence of some search powers may inhibit members of a young person's family from visiting. However, these limitations can be balanced by providing good information for all entrants being searched, asking them to hand over or store in their vehicle or elsewhere any unauthorised items prior to a search being conducted, still requiring reasonable grounds for pat down searches, and for staff and visitors to be able to refuse the search (subject to being denied entry or having a supervised visitation). The improved safety that a blanket search on entry can be expected to deliver will also mean that young people, staff and visitors will feel safer and have improved wellbeing, which may encourage members of a young person's family to visit who previously felt too unsafe to come.</p> <p>Depending on the type of equipment used, the corresponding privacy concerns will need to be mitigated. With regard to the use of body imaging technology, safeguards for the capture, storage and retention of images are proposed.</p>
Transparency and accountability	<p>The preferred option holds all entrants accountable to the same standards and a no tolerance policy for bringing in unauthorised items. Transparency over the search on entry process is improved because staff are subject to the same powers as visitors and children.</p>

++	<p>Adequate and accessible information provision, reporting, record keeping, monitoring and grievance mechanisms that are spelt out in legislation, regulation and operational guidance are key to ensuring compliance.</p> <p>Depending on how the ability to search is introduced operationally (whether searches are routine on entry or randomised i.e., via spot check) there is potential that these search powers can be used at a staff member's discretion. There is some risk therefore of bias creeping in which could lead to unnecessary searches. However, operational guidance for the provision will clearly stipulate when this can occur under non-targeted circumstances i.e., routine searches or randomised spot checks.</p>
Ease of implementation -	<p>Searches on entry require the introduction of new technology, guidance and training, as well as potential costs for additional contractors and staff. There is a cost and time attached to the introduction of these searches, as well as requisite infrastructure changes. However, the standardisable and scalable nature of the proposed function will enable a straight-forward implementation; and the fact searches will not be mandatory means this option provides more flexibility around implementation than the high intervention model.</p>
<p style="text-align: center;">Overall rating</p> <p style="text-align: center;">++</p>	

A) Unauthorised and Harmful Items:

55. The balance between mitigating definitional vagueness while also not being too prescriptive in primary legislation has been key while developing the list. The only other alternative would be to maintain the status quo and the discretion it provides in determining what is contraband, while noting that this discretion is largely what is causing a lack of transparency and confusion. Iterations of the list were drawn up and refined based on stakeholder feedback:

Option one – Status quo





Physical safety of everyone 0	<p>The lack of definitional scope contributes to decreased safety in a residence, as this leads to reduced clarity around what can be seized, leading to items entering that can be used to cause harm (and the potential for staff to seize items that don't meet the definition). Available evidence indicates that electronic communication devices, and weapons which have been creatively fashioned from everyday items being brought into a residence, have contributed significantly in the co-ordination of disorderly events and commission of harmful incidences. These items are not expressly included in the current provision.</p>
------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Human rights of person being searched 0	Uncertainty in knowing what rules are being broken and what is restricted or prohibited has an adverse impact on the wellbeing of those being searched. Residences/Oranga Tamariki? not complying with the duty to inform staff, visitors and young people of rights and processes is a legal risk.
Transparency and accountability 0	The existing definitions of unauthorised and harmful items under Section 384A of the Act do not capture electronic communication devices and are also in some places vague. The Act does not list specific items or descriptions of categories or types of items that are harmful. Consequently, the Act does not provide an exhaustive or transparent description of what unauthorised items can be searched for and so can be difficult to apply in practice. ¹⁵ A high level of discretion needs to be applied by staff in decision-making to determine what can and cannot enter, making it difficult to measure accountability.
Ease of implementation 0	Currently, a high level of discretion needs to be applied by staff in decision-making to determine what can and cannot enter, making it difficult to maintain consistency in implementation. Existing issues will remain if the status quo continues.
Overall rating 0	

Option 2 – Introduction of a list of unauthorised items: *PREFERRED OPTION*

Physical safety of everyone +	Having a more prescriptive and up to date list of items and clearer instructions on what is prohibited from entering a residence allows for less contraband to escape detection. This will reduce the use of a range of items in a harmful manner, either as weapons or for self-harm, thereby increasing the safety of everyone within the premises. This will also capture electronic communication devices such as mobile phones which may not always be harmful by themselves but can be used to co-ordinate and incite disorderly incidents or harass victims.
------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁵ Note that 'harmful items' fall under the broader umbrella of 'unauthorised items', which is what staff are empowered to search for (e.g. under section 384C: the power to conduct a scanner and pat down search).

<i>Human rights of person being searched</i> 	<p>Clearer descriptions of items that cannot be brought into a residence may impinge on the right (in the residential care regulations, and the right to freedom of expression in the NZBORA) to possess personal property. However, this limitation is offset by the overarching benefits in ensuring the safety and wellbeing of children and young people entering a residence. A well-defined list of items mitigates the uncertainty of not knowing what is allowed and the apprehension around grounds for detection and seizure. Providing this clarity should reduce the number of searches being conducted as people know what they can and cannot bring in.</p>
<i>Transparency and accountability</i> 	<p>A more prescriptive list of unauthorised items (with some space for discretion as needed) improves transparency and accountability for all people entering a residence as it is clear to all entrants what is allowed to be brought into a residence and everyone is subject to the same rules. Key measures include adequate and accessible information provision, as well as consistent reporting and record keeping of items that are detected and seized.</p>
<i>Ease of implementation</i> 	<p>The amendments proposed will standardise when and what items are being searched for, thereby decreasing the need for ad-hoc decision making that leads to practice variations across sites. This will make implementation of search and seizure easier for staff</p>
<p style="text-align: center;"><i>Overall rating</i> </p>	

2: Strip searches in Care and Protection and Youth Justice residences

What is currently happening: the Status Quo?

56. A strip search is a search where the person conducting the search may require the child or young person to undress, or to remove any specified items of clothing and underclothing, and be visually examined. It also includes searching their clothing.¹⁶ Strip searches can currently be conducted on a child or young person in a Care and Protection or Youth Justice residence when there are reasonable grounds to believe that a resident has an unauthorised item in their possession, but only after a scanner or pat down search has been conducted first and the suspected item has not been found.¹⁷
57. In practice, however, strip searches are rarely, if ever, occurring as they are traumatising and invasive. Through engagement with residence managers, we heard that strip searches are not used as a primary tool for finding unauthorised items as staff can, and do, use other methods such as secure care¹⁸ and relational practice to ensure residents hand over unauthorised items.¹⁹ Staff told us one strip search had occurred in Youth Justice residences in the last three years, and no strip searches had occurred in Care and Protection residences in the last seven years.
58. This issue is focused on both Youth Justice and Care and Protection residences due to the potential for strip searches to be used in both types of residences, and the equal harm they cause to children and young people across both residence types. While the risk these searches are intended to manage can vary between residence types (i.e., Care and Protection sees more items intended for self-harm than Youth Justice, where items are more often focused towards harming others), in both cases strip searches are highly distressing and harmful for all involved.

Evidence of harm

59. The harmfulness and inherently degrading nature of strip searches is well documented both in New Zealand and abroad, and in the law. Most recently, The Abuse in Care Royal Commission of Inquiry has highlighted in its interim reports the harm of improper strip searches on survivors, who told them about these as part of a suite of abusive behaviour.²⁰ As well as the Royal Commission, Macquarie University researchers in Australia have also identified that strip searches have social and emotional consequences, including trauma, traumatisation and the triggering of feelings of powerlessness and humiliation.²¹
60. Further, research has also identified that strip searches may be “uniquely damaging” for youth, as with the onset of puberty they tend to view their bodies critically and

¹⁶ Section 384A of the Oranga Tamariki Act.

¹⁷ Section 384E Oranga Tamariki Act 1989

¹⁸ Secure care is authorised under section 367 of the Oranga Tamariki Act 1989. Under the Act, secure care is defined as being “containment in that residence within a locked room or enclosure with visible physical barriers.” Secure care can be used where one or both grounds under section 368(1) have been met. In practice this can cause a child to hand over an unauthorised item.

¹⁹ Note that young people who are in the custody of the Chief Executive of Corrections but placed in a Youth Justice residence under section 34A of the Corrections Act 2004, will still be subject to strip searching under section 98 of the Corrections Act.

²⁰ Tāwharautia: Pūrongo o te Wā: Interim report. Volume One, *Abuse in Care: Royal Commission of Inquiry*, page 15, linked through [Abuse-in-Care-Volume-One.pdf](#)

²¹ Meath, L., & Birchall, E. (2020). Strip search law and practice. *Precedent*, 159(20), 10-13.

compare themselves, which results in a heightened need for privacy due to embarrassment. If a young person's need for privacy is taken away, their self-esteem can reduce. Children and young people with histories of sexual abuse may also "experience a strip search as a form of state-ordered sexual abuse. Children, even at very early ages, understand the concept that certain parts of their bodies are private."²²

61. International evidence also shows that strip searches often do not discover an item. For example, data obtained from New South Wales shows that between 2014-2018, nothing related to criminal offences was found in 64% of the 18,756 strip searches conducted by the New South Wales Police.²³ For the harm and trauma that they cause therefore strip searches are not always effective in identifying unauthorised items.

What would happen if the Status Quo continued?

62. If the status quo continued strip searches would likely continue to not be used in practice in Care and Protection residences and very rarely in Youth Justice residences. However, due to the legal ability to conduct a strip search there is a risk that the practice could be used in future, which would be traumatic and invasive for a child or young person.

What is the opportunity for change?

63. There is an opportunity to review the legislation around strip searches for children and young people, to ensure that their wellbeing is protected and upheld.

What did stakeholders say?

64. Some feedback pertains to specific options which are set out in the section below. All feedback has been presented together to provide a fulsome overview of stakeholder opinion. Nearly all stakeholders supported the removal of strip searches. Further detail is below:

Support and suggestions	<ul style="list-style-type: none"> • VOYCE Whakarongo Mai were supportive of removing the power to strip search, especially as bringing in greater search powers on entry would create a safer internal environment and therefore remove any reliance on strip search. • The Disabled Person's Coalition also supported the removal of strip search powers. • Residence staff felt confident that they did not need the ability to conduct strip searches, as they were already not doing them and supported the removal of the power. The practice also does not align with the rights based, trauma informed and therapeutic model of care that Oranga Tamariki is moving towards.
Critique and risks	<ul style="list-style-type: none"> • A couple of stakeholders, including the New Zealand Police, stated that it could be good to have the ability to conduct a strip search, if need be, instead of needing to conduct a strip search and not having the power to do so. • NUPE said that good training and monitoring could be used as safeguards.

Will anyone be disproportionately affected?

65. Children and young people will be positively affected by not being subject to strip searches or having to be concerned about the potential for a strip search, even if on the

²² Shah, Riya Saha, and Jessica Feerman. "Strip-Searching Children Is State-Imposed Trauma." *GP Solo eReport*, vol. 11, no. 5, Dec. 2021, p. NA. *Gale OneFile: Health and Medicine*, link.gale.com/apps/doc/A688536774/HRCA?u=anon~9be037eb&sid=googleScholar&xid=7df13b91. Accessed 26 May 2024.

²³ Grewcock, M and Sentas, V. Rethinking Strip Searches by NSW Police (Report, August 2019) linked through [Rethinking strip searches by NSW Police](#).

rare occasion. Further, staff will not have to conduct searches they report are uncomfortable to perform.

Objectives

- 1 Limit the exposure to strip searches that children and young people are subject to.
- 2 Improve the safety and wellbeing of children and young people.

Deciding on an option to address the policy problem

What scope will options be considered within?

66. We have determined that non-legislative change is not sufficient to achieve the desired outcome so are only analysing legislative options. The following are the variables that were considered while designing the set of options for removal of strip search:

Efficacy of strip search

- Negligible contraband detected on rare occasions

Pattern and frequency of usage

- Unused in Care and Protection residences; hardly used in Youth Justice residences (over a 7-year period)

Limited benefits

- Few substantive benefits apart from being an available tool in the search regimen; the pros of repealing the ability to strip search outweigh the cons

Detrimental impacts

- Traumatizing for all parties involved

What options are being considered?

67. In addition to the Status Quo (option one), we are considering three options for change.

Option Two – Privacy Safeguards

68. The power to strip search remains in the legislation, but specific additional safeguards are written into the legislation to protect the rights of children and young people. Alongside this, staff guidance and operations are strengthened and clarified to ensure that should a strip search be conducted, there are clear protections and limitations in place.

Option 2	Legal change	Operational change
	<p>The power to strip search remains in legislation, to be used as a deterrent, with specific safeguards and standards included in legislation. Safeguards include:</p> <ul style="list-style-type: none"> Ensuring a young person is never fully unclothed No undergarments are to be removed 	<p>Ensure guidance and training matches operational guidance to ensure safeguarding protections are adhered to and followed:</p> <ul style="list-style-type: none"> authority to conduct searches grievance and reporting mechanisms safeguards to protect privacy

Option Three – Removal *PREFERRED OPTION*

69. The legislative ability to conduct a strip search is removed from the legislation. Staff are provided with guidance to ensure that they are comfortable and competent using other methods to obtain a harmful item they suspect a child or young person has, such as relational practice and secure care.

Option 3	Legal change	Operational change
	<p>Strip searches are removed from the legislation and are not allowed under any circumstance.</p>	<p>Strengthen operational guidance on removing reliance on strip search methods in all scenarios.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

For the criteria options have been informed by, please click this link [here](#).

Criteria	Option 1: Status quo	Option 2: Privacy safeguards	Option 3: Removal of power
Physical safety of everyone	0	0	0
Human rights and wellbeing of person being searched	0	+	++
Transparency and accountability	0	+ +	+ +
Ease of implementation	0	- -	-
Overall	0	+	+++

Option Two – Privacy safeguards

Physical safety of everyone 0	<p>While in rare cases a strip search may uncover an unauthorised and potentially harmful item, and thereby result in this item being removed from a residence, it is known that unauthorised items are comfortably being found through means other than strip searches. Hence, placing further limitations on the power to strip search is not expected to materially reduce the overall safety of a residence, for either staff or young people. Any benefit of full strip searches toward residence safety is concluded to be minimal, while recognising that any search does to some degree, even small, have the ability to help identify harmful items and therefore improve safety.</p> <p>Further, if search on entry powers are to be introduced (issue 1) then this more stringent searching at entry will reduce the overall volume of items present in a residence, further reducing the need to rely on more invasive search methods such as strip searching.</p>
Human rights and wellbeing of person being searched	<p>Additional legislative safeguards do go some way in comparison to the status quo in helping uphold the safety and dignity of children and young people while having a strip search conducted. They set clear practice expectations in the dos and don'ts of strip search with the overarching aim of decreasing risks related to privacy and re-traumatisation. This will help to improve the overall wellbeing of children and young people, in comparison to the status quo, as legal protections provide safeguards against particularly adverse search methods.</p>

	<p>However, still having the legislative ability to conduct a strip search, albeit with additional safeguards, means that there is potential for this damaging practice to be conducted, even if rarely, leaving children and young people feeling inherently vulnerable with lasting psychological impacts. Further, the ability to still be strip searched can cause fear, anticipation, and anxiety. These worries would persist even with legal safeguards in place as strip searching in and of itself can be harmful and humiliating, despite the protections in place.</p> <p>The overall practice of strip searching is invasive and sits contrary to our international obligations to minimise restrictive practices, and the direction of Oranga Tamariki in working with a trauma-informed practice approach.</p> <p>Staff have also reported that they do not like conducting strip searches and conducting them is not good for their wellbeing. This option does not remove the impact of conducting a strip search on a staff member, despite the legal safeguards, so is likely to not improve staff wellbeing either.</p>
<p>Transparency and accountability</p> 	<p>Having additional legislative responsibilities, safeguards and practice expectations holds staff to a higher level of accountability regarding when and how strip searches are conducted. Clearer legislative intent with regard to the protection of privacy and dignity makes it easier for front line staff to implement in practice.</p>
<p>Ease of implementation</p> 	<p>Operational guidance, and associated training will need to be rolled out to ensure staff are aware of best practice and how to conduct a strip search in a manner that is most safe and meets the specified legislative standards. This will require additional work to standardise practice, understanding of the law's requirements, and training across residences.</p>
<p>Overall rating</p> 	

Option Three – Removal of power: *PREFERRED OPTION*

<p>Physical safety of everyone</p>	<p>Given the sparse use of strip search in the last few years, removal of this power is unlikely to materially alter the safety of a residence for young people and staff. Staff are already employing other search methods effectively.</p>
-------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

0	<p>Removing strip searches does result in a small risk of increase in ‘unauthorised items’ that could be stopped via strip search, due to the knowledge that strip searches will not occur, or items not being identified. However, as discussed, because we know that they are already not being used, this risk is very small. In comparison to Option Two, there could be a marginal reduction in the physical safety of staff and residents. But given these searches aren’t being used, in neither case is the result expected to be materially different to the status quo.</p>
<p>Human rights and emotional wellbeing of everyone</p> <p>++</p>	<p>Removing the ability to conduct a strip search would help to uphold the human rights of children and young people by removing any chance they would be subject to this type of traumatising and invasive search, that is violative of their privacy, dignity, and bodily integrity. This is important for the wellbeing of children and young people as they are not subject to being touched and seen by people they do not want to be. It also lessens the potential of inappropriate and excessive inspection by staff. In comparison to Option Two this option better protects children and young people’s wellbeing and human rights. Further, knowing that staff cannot conduct strip searches, and not having this fear or anticipation, will improve wellbeing.</p> <p>Staff wellbeing is also improved as they do not have to conduct searches which they do not want to and feel uncomfortable doing. Additionally, their wellbeing is protected by not being at risk of being subject to allegations of inappropriate behaviour by young people in the residence. This is an improvement on Option Two, as staff will never have to conduct these searches.</p>
<p>Transparency and accountability</p> <p>++</p>	<p>Removing strip searches improves accountability for staff as they are held accountable to a clear rule, which is that no strip searches can occur.</p>
<p>Ease of implementation</p> <p>-</p>	<p>Staff report they can deal with needing to remove harmful items from children and young people without using strip search so don’t need to use this power. There may be some scope for ensuring practice is uniform across all residences regarding the use of relational practice and pat down search.</p>
<p>Overall rating</p> <p>+++</p>	

3: Respecting young people's gender and search preferences in Care and Protection and Youth Justice residences

What is currently happening: the Status Quo?

70. Currently section 384G of the Oranga Tamariki Act 1989 places a restriction on pat down and strip searches, stating that they must be conducted by someone of the same "sex" as the child or young person. We currently interpret the reference to "sex" in the context of our legislation as including "gender identity." This legislation applies to both Youth Justice and Care and Protection residences.
71. The current provision operates on the assumption that both staff member and residents have had their gender determined. This does not respect the needs of SOGIESC²⁴ people by requiring them to select a binary gender (or have it determined for them). It also does not serve the best interests of those who have histories of assault and could be retraumatised by being subject to a search by a particular gender, or to a search conducted in a particular way.
72. Current search requirements set out in section 384G of the Oranga Tamariki Act 1989 also specify that a search must not be conducted in front of a person who is not of the same sex as the child or young person (this applies to residence staff or a Police constable but not to a parent or guardian), or in front of another child or young person in the residence. The search must be conducted "with decency and sensitivity" and with "the greatest degree of privacy and dignity consistent with the purpose of the search."
73. Operationally, the current scenario is marked by uncertainty in practice, with wide discretion left to staff to determine the best plan of action on a case-by-case basis when a pat down search of a SOGIESC child or young person is warranted on reasonable grounds. Staff are directed in their Standard Operating Procedures that staff are to be of the same gender identity as the person being searched (where gender is assumed to be binary), and children and young people can request a staff member they feel comfortable with to be present for support. However, staff approach these searches with trepidation and hesitation, often not wanting to conduct them at all, and the guidance does not mitigate existing issues around staff determining a young person's gender identity. The Standard Operating Procedures can be found at [Appendix 2: Summary of Standard Operating Procedures](#).
74. This issue sits across both Youth Justice and Care and Protection residences as searches occur in both residences and it is of the utmost importance that children and young people are respected and safe in both environments.

Evidence of Harm

75. Searches present a risk to all children and young people as they can be harmful and invasive. All people subject to pat down search can have previous trauma that could be triggered or could be traumatised by the strip search in and of itself, due to the invasiveness and power imbalances at play in such a search, or due to being touched in places associated with past trauma (irrespective of who is conducting the search).
76. Searches also pose a particular risk to SOGIESC young people, as they are vulnerable to gendered abuse, humiliation, harm, and assault.²⁵ This is heightened if they are

²⁴ SOGIESC is an acronym used to refer to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics, for people for whom these may sit outside binary genders.

²⁵ Winter, C. (2024). Correctional policies for the management of trans people in Australian prisons. *International Journal of Transgender Health*, 25(2), 130–148. <https://doi.org/10.1080/26895269.2023.2246953>

subject to a search by someone they feel unsafe and uncomfortable with. This aligns with feedback we heard from Gender Minorities Aotearoa who mentioned that transgender people are often subject to greater inspection and questioning over their bodies by professionals, and assault by those in power. Searches by staff that a child or young person feels unsafe with perpetuate these harms.

77. Australian research identifies that in the carceral system, “policies implemented without consideration of the unique needs of trans people, especially those housed in gender-incongruent prison facilities, increases trans people’s vulnerability to sexual and physical assault.” While this research is focused on the adult prison system, the understanding of trans people’s vulnerability in justice facilities is translatable to young people, who are identified as “critically vulnerable” by the same authors.²⁶
78. And, for those with histories of trauma, including assault, strip searching can be re-triggering. The Redfern Legal Centre in New South Wales has conducted comprehensive research into children and young people and strip searches. In their 2024 report they state that “the experience of being strip searched can be humiliating and distressing and has the potential to re-traumatise children and young people who have been sexually abused. Children and young people subjected to these searches may suffer trauma, anxiety, fear, shame, guilt, powerlessness, and stress.”²⁷ Most children and young people in secure residences have histories of trauma, either disclosed or undisclosed, making this a particularly acute risk in Care and Protection and Youth Justice residences.
79. Research from the NSW Police also states that “strip searches carry foreseeable harm to those searched. Risks of harm are particularly heightened in relation to children, women and vulnerable people including First Nations peoples and people with mental and cognitive disability. Strip searching has been found to trigger prior experiences of trauma and abuse and can generate harmful psychological conditions including PTSD. For young people and those who have suffered trauma, the long-term impacts of strip searching on identity formation and wellbeing can be significant.”²⁸ The specific harm to indigenous peoples, those with cognitive disabilities, and for young people with histories of trauma, again poses an acute risk to the secure residence population in New Zealand.

What would happen if the Status Quo continued?

80. The current legislative provision risks causing SOGIESC children and young people with no legislative protection for their right to request the gender of the staff member they would prefer to be searched by. Leaving this right of request, and determination of one’s gender identity to the discretion of staff, leaves potential for children and young people to be traumatised.
81. Some residences do allow children and young people who are transgender or who identify as SOGIESC to discuss their preferences for search, however some staff said that they opted to instead refuse to do searches at all, or based who would conduct a search on the biological sex of the child or young person. There are inconsistencies in practice and understanding of gender identity across residences.
82. Separately, despite helpful requirements to conduct the search with decency and sensitivity, the Act makes no specific reference to respecting a child or young person’s history of trauma in the way a search is conducted.

²⁶ Winter (2024).

²⁷ Redfern Legal Centre, *The Need for Reform: Strip searches of Children by NSW Police*, 18 March 2014, p.6.

²⁸ Dr Michael Grewcock and Dr Vicki Sentas, 2019, *‘Rethinking Strip Searches by NSW Police’ University of New South Wales – Law*, p. 5,

What is the opportunity for change?

83. There is an opportunity to review the current legislative framework surrounding searches to ensure that children and young people are safe and are having their specific needs met, whether in respect of gender identity, any history of trauma, or any other particular needs (e.g. that may arise because of neurodiversity). Further, any search powers should be exercised in alignment with international principles, such as the Yogyakarta principles,²⁹ which recognise the right to privacy of one's body (principle 6) and to be treated with respect and dignity while in detention (principle 9).

What did stakeholders say?

84. Some feedback pertains to specific options which are set out in the section below. All feedback has been presented together to provide a fulsome overview of stakeholder opinion. Most stakeholders we engaged with were supportive of making this right of request explicit in the law. Specific feedback included:

Support and suggestions	<ul style="list-style-type: none"> • Most stakeholders we engaged with were also supportive of there being the ability by a residence leader to be able to approve or decline the request. • It was suggested that residents may feel more comfortable requesting a specific staff member instead of a broader gender due to who one feels most comfortable with not specifically being related to gender, but by who they trust and histories of trauma. Gender Minorities Aoteroa were also supportive of this as they said due to small staffing pools gender matching would be difficult. • VOYCE Whakarongo Mai was supportive of children having a right of request and said that there needed to be the ability for a request to be declined when "there are clear and reasonable grounds to believe that the young person's motivation to have a particular kaimahi conduct the search is based on the seeking of physical closeness to that kaimahi for sexual gratification or to assault the kaimahi." • A few Government agencies mentioned the need for flexibility, and a young person to be able to update their preference requests to allow for gender fluidity and changes in preference over time.
Critique and risks	<ul style="list-style-type: none"> • There is a risk that requests would be declined simply due to staff unavailability or staff not being adequately educated about gender identity and trauma and that this is unfair. • A few stakeholders said that requesting a specific staff member may cause staff to be targeted for reasons such as them having a reputation for conducting lenient searches or because a young person has a 'crush'. These stakeholders said biological sex could be a good marker for searches. • Gender Minorities Aoteroa said that if a staff member was known for conducting lenient searches this would be an employment issue, and that it is also important

²⁹ The Yogyakarta principles set out human rights regarding sexual orientation and gender identity for prisoners. The Yogyakarta Principles were developed at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts from around the world at Gadjah Mada University on Java from 6 to 9 November 2006. While not themselves legally binding, the principles affirm existing legal standards that States have agreed to be bound by. Every statement and recommendation in the document is grounded in human rights law and binding human rights treaties. The Yogyakarta Principles have not been formally accepted by the United Nations but have been referred to numerous times by the Courts, such as by the Council of Europe in its paper "Human rights and gender identity." Linked through [Human Rights and Gender Identity: \(coe.int\)](https://www.coe.int/en/turkey/Document/2017/04/HRI-NGO-2017-02-EN)

to recognise the power dynamics between staff and residents. Searches are a frightening environment where staff are in a position of power, and staff are never alone conducting a search. If a young person does make an inappropriate comment or move, then this is a learning situation. For children exhibiting risky sexual behaviours it is almost more important for them to have processes of consent and decision making over who gets to touch their body modelled to them. Staff can also decline a request.

Will anyone be disproportionately affected?

85. All children and young people will be affected by this change, and there is a positive opportunity to ensure that all children and young people, and particularly those with histories of trauma, and those who identify as SOGIESC, have their rights and dignity upheld. Staff will also be affected as they may need to adopt new practices.

Objectives

- 1 Uphold the wellbeing, dignity and rights of transgender, non-binary and intersex children and young people to have their gender identity respected and affirmed.
- 2 Provide all children and young people with the ability to be searched by a staff member of the gender they feel most safe with.
- 3 Conduct searches of children and young people in a manner that respects any history of trauma or other particular needs they may have.

Deciding on an option to address the policy problem

What scope will options be considered within?

86. We have determined that non-legislative change is not adequate to solve this problem, therefore have only focused on legislative change as a solution. The following are the variables that were considered while designing the set of options for respecting the preferences and needs of the young person being searched:

Gender norms and representation	Staff and resident wellbeing
Trauma-informed lived experience	Bonafide needs
Staff-resident dynamics	Protection of human rights

What options are being considered?

87. In addition to the Status Quo (option one) we have identified three options:

Option Two - Request for staff of preferred gender to conduct search allowed, subject to approval at managerial level

88. Legislative changes allow a child or young person to request the gender of the staff member to search them, and this is subject to approval by a residence manager or designated level of leadership.

Options	Legal changes	Operational changes
Legislative change	Legislation is changed to allow children and young people to request the gender of the staff member who searches them, but this request can be approved or declined by the Residence Manager or their delegate (at a to-be determined level of leadership), if there are reasonable grounds to decline their request.	<ul style="list-style-type: none"> • Staff training i.e., right to request communication • Reporting mechanisms • Factors of consideration in granting a request • Level of leadership that makes decision • Staffing issues i.e., representative staff available • Clear safeguards around grounds to decline a request

Option Three – Requirement for search plan, including request for preferred staff or gender of staff to conduct a search, subject to approval at managerial level **PREFERRED OPTION**

89. Individual plans must be prepared for how any search can be undertaken that reflect the particular needs of each child or young person, upholds their mana and dignity, and is informed by their preferences. Those preferences could include requesting for a staff member(s) they feel most comfortable being searched by. The preferences are subject to approval by the residence manager or designated level of leadership.

Options	Legal Change	Operational Change
Option Three	<p>On entry to a residence a young person's preferences around search are discussed and placed in a plan. This is re-visited at any point a search is to occur to allow the young person to update their preferences. Searches must be conducted in accordance with the plan unless there is a good reason not to.</p> <p>Children and young people can request a search is conducted by the member of staff they feel most comfortable with, who is on</p>	<ul style="list-style-type: none"> • Staff training i.e., right to request communication • Reporting mechanisms • Factors of consideration in granting a request • Level of leadership that makes decision • Clear safeguards around grounds to decline a request

shift and available. This request can be declined by the Residence Manager or their delegate (at a to-be-determined level of leadership), if there are reasonable grounds to decline their request.

Option Four – Request for staff of preferred gender or preferred staff on shift to conduct search allowed, with automatic approval by authorities

90. The child or young person can make a request about the preferred gender or staff member they feel most comfortable with, which staff must comply with.

Options	Legal change	Operational change
Option Four	<ul style="list-style-type: none"> Legislation is changed to allow children and young people to request the gender of, or the staff member who searches them, and their request must automatically be approved and complied with for any searches. 	<ul style="list-style-type: none"> Staff training i.e., right to request communication Staffing issues i.e., representative staff available Reporting mechanisms

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

91. *For the criteria options have been informed by please click the link [here](#).* To accurately evaluate the different options, the criteria have been altered slightly for this issue to ensure the appropriate tensions between staff and children's safety/wellbeing, are analysed. The criterion of human rights and wellbeing has been evaluated in the same criterion as physical safety, but instead of these criteria applying to everyone, they have been separated to evaluate the impacts on staff and young people separately.

Criteria	Option 1: Status quo	Option 2: Preferred gender with managerial approval	Option 3: Approved plan including preferences for staff	Option 4: Preferred gender or staff on shift with automatic approval
Physical safety and emotional wellbeing	0	+	+++	++

+ human rights of <u>young people</u>				
Physical safety and emotional wellbeing + human rights of <u>staff</u>	0	++	+	-
Transparency and accountability	0	+	+	+
Ease of implementation	0	--	--	-
<i>Overall</i>	0	++	+++	+

Option Two – Request for staff of preferred gender to conduct search allowed, subject to approval at managerial level

Physical safety and emotional wellbeing + human rights of children and young people

+

Ensuring that children and young people can request the staff member with a gender they prefer to be searched by ensures that they have their gender identity respected and affirmed and are able to feel the most comfortable possible, while being subject to a search. This helps to uphold and protect a young person's wellbeing in comparison to the status quo.


This option also increases the feeling of physical safety vis-à-vis bodily integrity and protection from abuse in comparison to the status quo. However, gender is not the only determinant of risk of bodily harm. Not being able to request a preferred staff member whom a child or young person feels safe, and not providing for any history of trauma or other factors to be taken into account, can be risky. Normal operational procedures that enable the young person to have a staff member present with whom they feel safe can alleviate some of this risk, but in comparison to Option Three there is still some risk that the limited scope of requests means that the young person's needs are not met as the scope of what can be requested is not fit for purpose.

There are also some risks to the safety of children and young people through this option, in comparison to Option Three which alleviates some of these issues. Gender matching is not easily achieved with a staffing pool that lacks diversity and full gender identity representation in the current state. This means requests may be unable to be filled until wider staffing changes and recruitment occurs. Further, who a child feels comfortable with is not necessarily dependant on gender. While of a preferred gender, a child may have had a negative experience with a specific staff member, or a staff member of the preferred gender may hold trans-exclusionary beliefs, making the search an unsafe environment.


<p><i>Physical safety and emotional wellbeing + human rights of <u>staff</u></i></p> <p>++</p>	<p>Despite some concerns in feedback around staff being required to conduct searches if they are of the preferred gender requested, the approval and decline function that sits with the residence manager will allow a staff member to express their own needs and abide by clear practice parameters, therefore not needing to conduct searches that would compromise their wellbeing and safety. This function improves staff safety and protection in comparison to Option Four, which has no safeguards for staff.</p> <p>This function improves upon staff wellbeing in comparison to the status quo, as the ability for staff to express their needs has some protection in the form of the requirement for management approval of the young person's request. Further, in comparison to Option Three, children and young people being able to request a gender, and not a specific staff member, does not place any particular staff member under pressure to meet a request.</p>
<p><i>Transparency and accountability</i></p> <p>+</p>	<p>Legislative changes help to improve accountability around practice as there are clear processes and responsibilities set out in the law for staff to follow. Legislative requirements also increase transparency for children, young people and their families and whānau as there is a clear standard that needs to be met. This also increases transparency for staff as they can clearly know what their legal requirements are.</p> <p>Reporting mechanisms will be established to enable monitoring agencies and Oranga Tamariki to ensure that decisions and requests are being declined for appropriate reasons which are gender, trauma and culturally informed.</p>
<p><i>Ease of implementation</i></p> <p>- -</p>	<p>Updating operating procedures and guidance, and training around expected process and standards, to match the legislative requirements, will take additional work. Staff will also have another piece of reporting to complete, however this does not need to be large, simply an update to the current one-page search report being used in residences.</p> <p>Key to implementation would be the establishment of clear grounds of approving/declining the gender preferential request and the correlating instructions that would guide these decisions.</p> <p>As children and young people can make a request every time they are subject to a search this means that their request can be different each time to allow for gender fluidity and changes in who a person trusts. There is an implementation risk inherent in this option that a person of the requested gender is not on roll, and therefore the request cannot be implemented.</p>
<p><i>Overall rating</i></p> <p>++</p>	

Option Three – Requirement for search plan, including request for preferred staff or gender of staff to conduct a search, subject to approval at managerial level: *PREFERRED OPTION*

<p><i>Physical safety and emotional wellbeing + human rights of <u>children and young people</u></i></p> <p>+++</p>	<p>Ensuring that children and young people can have their preferences recorded and respected in a search plan that reflects their particular needs, including any request for a staff member they prefer to be searched by, ensures that their gender and trauma informed needs are respected and affirmed and that the young person is able to feel the most comfortable possible, while being subject to a search. This option takes a more wholistic approach to searches as compared to Options Two and Four; and mitigates issues with gender matching present in Option Two, by respecting that gender does not exclusively define who a young person will be comfortable with.</p> <p>The ability to make a request to be searched by a staff member who also is of a preferred gender affirms and upholds the human rights of all children and young people in a residence, particularly those belonging to the rainbow community. This right of request aligns with international principles such as the Yogyakarta principles around the rights of rainbow prisoners to have their gender identity respected. UNCRDP Article 1 also sets out the need to respect inherent dignity, autonomy, choice, and independence. UNCROC Article 8 focuses on the preservation of identity, including gender, sexuality, cultural and intersectional identities. Providing all children and young people with a choice over who touches their body helps to achieve these outcomes.</p> <p>Who a child feels most comfortable with is not necessarily informed by the gender of the staff member, but also factors such as who (if anyone) they have built a relationship with and to whom they have expressed their gender identity, history of trauma, or other needs around searches (therefore feeling they will be respected by this individual during a search). Allowing a child to choose a staff member they feel most comfortable with, irrespective of gender, allows them the ability to request who they feel most comfortable being searched by without also having to be matched with a person of a gender, who may hold trans exclusionary beliefs or be someone that the young person has had a negative prior experience with. This is a positive change from Option Two.</p>
<p><i>Physical safety and emotional wellbeing + human rights of <u>staff</u></i></p> <p>+</p>	<p>The ability for a request to be approved or declined by a manager (or suitable delegate) considers a staff member's own preferences around conducting a search. This ensures that the safety of staff members is maintained as there is a clear ability to decline a search on reasonable grounds. This function improves staff safety and protection in comparison to Option Four.</p> <p>Some safety risks do exist in comparison to Option Two, around the targeting or manipulation of staff through this mechanism and stakeholders have raised concerns that this option could be used to target staff, whereas Option Two does not allow for this by requiring a request to be broadened to a gender not an individual. Staff may not know a child or young person is going to act in a certain way until they are conducting a search. However, a staff member never conducts a search alone, and this oversight, as well as the power dynamic at play between staff and young person should mitigate this risk to some degree.</p>
<p><i>Transparency and accountability</i></p> <p>+</p>	<p>Legislative changes help to improve accountability around practice as there are clear processes and responsibilities set out in the law for staff to follow. Legislative requirements also increase transparency for children, young people and their families and whānau as there is a clear standard that needs to be met. This also increases transparency for staff as they can clearly know what their legal requirements are.</p>

	Reporting and recording mechanisms will be established to enable monitoring agencies and Oranga Tamariki to ensure that decisions and requests are being made with transparency and are declined for appropriate reasons which are gender, trauma and culturally informed.
Ease of implementation --	<p>Updating operating procedures and guidance, and training around expected process and standards, to match the legislative requirements, will take some additional work. Staff will also have another piece of reporting to complete, however this does not need to be large, simply an update to the current one-page search report being used in residences.</p> <p>Key to implementation would be the establishment of clear grounds of approving/declining the search plan, including any preferences for who conducts searches, and the correlating instructions that would guide these decisions.</p> <p>As children and young people can update their search preferences every time they are subject to a search, this means that their request can be different each time to allow for gender fluidity and changes in who a person trusts. Young people are only able to request staff on shift, therefore any request should be able to be implemented. Issues may exist if the staff pool is not diverse and a young person does not feel comfortable with anyone. These are issues that can be worked through as a part of a child or young person search preference plan on entry, to establish alternative options where required.</p>
Overall rating 	

Option Four – Request for staff of preferred gender or preferred staff on shift to conduct search allowed, with automatic approval by authorities

Physical safety and emotional wellbeing + human rights of <u>children and young people</u> 	Children and young people have their right of request automatically approved, so this means that for rainbow children and young people their gender identity is automatically affirmed, and they do not have to prove themselves or their gender identity to staff. This is incredibly important for wellbeing. This is also important for children and young people with histories of trauma as they do not have to discuss or prove themselves and their needs, which could cause them to have to re-live these moments. UNCRDP Article 1 sets out the need to respect inherent dignity, autonomy, choice, and independence. UNCROC Article 8 focuses on the preservation of identity, including gender, sexuality, cultural and intersectional identities. Providing children with a choice over who touches their body helps to achieve these outcomes.
Physical safety and emotional wellbeing + human rights of <u>staff</u>	In comparison to Options Two and Three, staff safety could be compromised, as a staff member would have reduced ability to decline conducting a search. Some staff expressed throughout consultation that they were concerned that some young people, especially older residents, and those held in the custody of the CE Corrections, could try to use the request function to target staff members, through which they could make allegations against them or manipulate them. Mitigations exist insofar as a staff member never conducts a search

<p>-</p>	<p>alone (there is always a second staff member observing), and the young person has the right to select a staff member whom they feel safe with, who can be present during a search.</p> <p>We also heard from stakeholders that if a young person does try to take advantage or makes a sexual advance towards a staff member, then this dangerous behaviour is best met with lessons around consent and who gets to touch one's body. Young people with risky sexual behaviours have been modelled or taught this behaviour in most instances, so it is important that they are modelled behaviour around consent and the right to choose who is able to touch one's body. If a comment or advance is made then this becomes a learning opportunity, however the power dynamic at play between staff and the child or young person, and the additional witnesses present (including the chosen staff member whom the child or young person feels safe with) help to mitigate this risk for staff.</p> <p>There is a risk that by being unable to refuse to conduct a search, staff could have their wellbeing hindered as they may have to interact with children or young people that they do not feel comfortable with, for example, due to a past negative experience with the child or young person. Despite safeguards being in place to ensure their safety (such as never being alone with the child or young person), this could still impact on their wellbeing.</p>
<p>Transparency and accountability</p> <p>+</p>	<p>This option improves transparency for children and young people about their rights, as there is no decision process where confusion over grounds for declining could sit. Staff can also easily be held accountable as there is clear legislative instruction.</p>
<p>Ease of implementation</p> <p>-</p>	<p>This option could have large implications for staff, and the potential for unions to become involved is likely, in comparison to Options Two and Three. There may be circumstances where it is not reasonable for a staff member to conduct a particular search. This would see Oranga Tamariki unable to fulfil its legal obligation to the child or young person to implement the request.</p>
<p>Overall rating</p> <p>+</p>	

4: Enabling the use of body scanners for all searches

What is currently happening: the Status Quo?

92. When staff believe on reasonable grounds that a young person has an unauthorised item in their possession, the Act enables them to carry out either a scanner search or a pat down search.³⁰ In the case of pat down searches, operational guidelines encourage staff to consider all other reasonable alternatives before progressing with the search. This means that a scanner search would usually be preferred in the first instance and a pat down search only considered if the scanner search is unable to detect the suspected item.
93. Currently, the only type of scanner the Act enables is a metal-detecting scanner. Consequently, if the metal-detecting scanner is unable to detect anything, a pat down search is the only effective search available to staff when they still have reasonable grounds for believing a young person has an unauthorised item and the young person is refusing to hand the item over.
94. A staff member conducting a pat down search can run or pat their hand over the young person's body, and conduct a visual examination of the young person's mouth, nose, and ears.³¹ The staff member can also require the young person to:
- display the soles of their feet
 - remove any outer clothing
 - remove any head covering, gloves, or footwear, including socks or stockings and
 - lift or rub their hair.

What would happen if the Status Quo continued?

95. If the changes proposed for searches on entry are adopted (discussed above), the Act will be amended to enable the use of body imaging scanners to conduct searches on entry. However, the proposed amendment would not enable the use of body imaging scanners for any searches *after* entry. Unless further amendments are made, a young person would be searched using a body imaging scanner each time they enter the residence, but not thereafter. In that scenario, the scanners might be physically available on site, but could not be lawfully used.

What is the opportunity for change?

96. Pat down searches are invasive. There is an opportunity to reduce the use of pat down searches by extending the authority to use body imaging scanners to include any search that may be warranted after a young person has entered a secure Youth Justice residence. This would give staff the option of using the body imaging scanner to conduct a search, rather than having to resort to a pat down search.

Objectives

- 1 Reduce the need for pat down searches.

³⁰ Section 384C(1)(a) & (b) respectively.

³¹ Section 384A, definition of "pat down search".

- 2** Ensure a consistent approach to the use of scanner searches in secure Youth Justice residences.

Deciding on an option to address the policy problem

What options are being considered?

97. To maintain consistency within the Act, the only option we have considered is extending the authority to use body imaging scanners to cover all searches in a secure Youth Justice residence, not just searches on entry. This option depends on the authority to use body imaging scanners being the preferred option for searches on entry (as discussed in section [1: Introducing search on entry powers to Youth Justice residences](#), above).
98. In these cases, there would be no change to the requirement for staff members to believe on reasonable grounds that the young person has in their possession an unauthorised item. The Act would continue to authorise pat down searches, but body imaging scanners would be enabled as an alternative option (as metal-detecting scanners are now). Otherwise, this option would retain all existing safeguards in the Act and include the same safeguards as for searches on entry, which would prevent detailed images of the young person's naked body being viewed or stored.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

	Counterfactual (assumes searches on entry are enabled as proposed)	Enabling use of body imaging scanners for all searches
<i>Physical safety of everyone</i>	0	As pat down searches will still be available, this option is not expected to have any material effect on safety in secure Youth Justice residences. 0
<i>Human rights and wellbeing of person being searched</i>	0	Enabling a less invasive method will reduce the trauma of a search for young people, thereby encroaching less on their right to be secure against unreasonable search and improving their wellbeing as compared to a pat down search under the status quo. +
<i>Transparency and accountability</i>	0	This option is no less transparent and accountable than the counterfactual (assuming the same safeguards for privacy apply as for searches on entry). 0
<i>Ease of implementation</i>	0	No greater implementation issues will be incurred than under the proposal for searches on entry. 0
<i>Overall rating</i>	0	+

What are the marginal costs and benefits of the preferred options?

99. To recap, the package of preferred options across all five issues, will incur overarching costs to accommodate the following:

- Equipment, infrastructure, staff/contractor recruitment and training to carry out entry level searches of anyone entering a Youth Justice residence, supported by the development of operational guidance on the same.
- Training to embed practice changes related to the removal of strip search powers in Care and Protection and Youth Justice residences, supported by the requisite changes in operational guidance.
- Gender and trauma informed training for new and existing staff to embed the practice changes related to the rights of children and young people in Care and Protection and Youth Justice residences to make preferential requests in relation to the staff member searching them.

100. Please note that the range of costings for scanner equipment (inclusive of more advanced technology) is only indicative at this stage, based on a potential outcome where operational decisions may see body image scanners introduced into residences. Only once policy proposals have been approved can thorough investment and procurement planning, followed by business case development begin. Therefore, this section is mainly focussed on providing a high-level cost-benefit analysis of expenditure involved in the enablement of the proposed legislative changes.

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>	
Additional costs of the preferred option compared to taking no action: Search on entry				
Children and young people, staff, visitors and contractors	Everyone can be searched on entry without reasonable grounds.	Medium: subjected to blanket search through low invasive method.	Medium	
Staff, visitors, children, and young people	One-off cost for introduction of new scanner infrastructure and equipment to residences or scaling up of existent technology (CAPEX) Also includes potential new builds for access points/hubs to search three groups of entrants, as well as	Can range from [REDACTED] depending on whether use walk-through metal detecting scanners or body image scanners, and amount of wand scanners. There would also potentially be negligible/minimal costs associated	Medium to High [REDACTED]	9(2)(j) 9(2)(j)

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>	
	demarcated private areas to conduct pat down searches.	with procuring tables for bag searches and contracting use of dogs. Non-monetised impact: High		
Staff, visitors, children and young people	On-going cost for resourcing scanner searches during hours of coverage, depreciation and maintenance (OPEX)	Can range from [REDACTED] [REDACTED] The key variables are resourcing in-house/outourcing and hours of coverage. Non-monetised impact: High	Medium to High [REDACTED]	9(2)(j) 9(2)(j)
		Monetised impact: Not yet been accounted for. Could potentially fall under current training budget. As above, [REDACTED] could be the overall cost to run one SOP update/training project, for all procedural changes effected through the programme. The cost would need to be apportioned for particular changes. Non – monetised impact: Low	Medium Supplier would potentially provide initial training and during the SOP update project, design a new training module for ongoing use.	9(2)(j)
Total monetised costs	The cost ranges for operationalising the Searches on Entry proposals have been estimated to be (as at end of June 2024). [REDACTED]			9(2)(j)

Affected groups (identify)	Comment nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
	Note: This wide ballpark range reflects initial estimates and variation in potential scenarios for operationalising search on entry proposals, taking into account the type and model of technology used, numbers of equipment and hours of usage per day. <div></div>		
Non-monetised costs	Medium to High		
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Unions for staff, disabled groups, rainbow groups, Iwi and Māori groups	Non-monetised impact: Medium	High Evidence of increased safety for all within a residence, with some proposals increasing wellbeing and safeguarding of privacy and dignity
Regulators	Oranga Tamariki	Monetised impact: Medium Non-monetised impact: High	High Evidence of safety and legal risks being significantly mitigated in secure Oranga Tamariki residences
Others (eg, wider govt, consumers, etc.)	External monitoring agencies such as Independent Children’s Monitor, Office of the Children’s Commissioner, Privacy Commission, Human Rights Commission Justice sector agencies such as Police and Corrections	Non-monetised impact: Low to Medium	Low – Medium Evidence of rights and safety compliance and decrease in violence and aggression, thereby minimising grievance and complaint, and reducing need for intervention by others.

9(2)(f)(iv)

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Total monetised benefits	Medium		
Non-monetised benefits	Medium - High		

Monetised

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action: Gender and search preferences			
Additional costs of the preferred option compared to taking no action: Search on entry	Staff training about gender identity and trauma responses: On-going cost. One-off roll out training when changes initiated and then continuous training/training for any new staff being on-boarded.	<p>Monetised impact: not yet been fully accounted for. One-off low investment could potentially fall under current training budget.</p> <p>██████████ could be the overall cost to run an SOP update/training project, for all procedural changes effected through the programme. The cost would need to be apportioned for particular changes.</p> <p>Non-monetised impact: Medium</p>	<p>Low to Medium</p> <p>Monetised costs refer largely to project costs, training design and delivery, process analysis. Not yet budgeted.</p>
Total monetised costs	Additional to these costs would be ██████████ for a SOP updating project required for both introducing scanner technology and changes to guidance around gender identity and searches.		

9(2)(j)

9(2)(j)

Delivering an option

How will the new arrangements be implemented?

101. Implementation planning is ongoing and therefore there are gaps in our knowledge.

- Implementation planning is ongoing and while some implementation matters have been considered, there are significant areas that Oranga Tamariki is still working through. This section will indicate what we know about implementing the proposed changes as well as identifying the known gaps in our knowledge.
- Oranga Tamariki will convene a working group (the working group) to consider and plan how the proposed changes will be implemented. The findings from that group will fill the gaps in our current knowledge. It is noted that an implementation workstream to oversee the tentative execution of these proposed legislative amendments across sites has been established as part of this project, and scoping groundwork has begun.
- Implementation plans will have to be put in place to consider procedural adaptation, operational changes and infrastructure procurement/builds. Accordingly, amendments to the Oranga Tamariki Act may come into effect in stages, to allow sufficient time for implementation measures to be rolled out.

Implementation considerations for search on entry to Youth Justice residences:

Implementation matters to consider	Implementing entry searches for residents and non-residents at Youth Justice residences
<i>How will the proposed changes be given effect?</i>	<ul style="list-style-type: none"> • The option will require amendments to the Oranga Tamariki Act 1989 and the Oranga Tamariki (Residential Care) Regulations 1996.
<i>Who will be responsible for the ongoing operation and enforcement of these proposed changes?</i>	<ul style="list-style-type: none"> • Oranga Tamariki will be responsible for the ongoing operation and enforcement of these proposed changes.
<i>When will these proposed changes come into effect?</i>	<ul style="list-style-type: none"> • The working group will provide more thorough advice on what implementation changes are required, to equip Youth Justice residences for entry searches of residents and non-residents. This will inform when entry searches can commence in the short-term.

Implementation matters to consider	Implementing entry searches for residents and non-residents at Youth Justice residences
<i>Infrastructure and equipment</i>	<ul style="list-style-type: none"> Currently, Youth Justice residences do not have the infrastructure or equipment to fully enable entry searches. The working group will finalise what additional infrastructure and equipment is necessary for all entrants to be searched. Consideration will be given to what is already available in facilities, what needs scaling up and what new procurement and builds are required. Initial indicative costings based on preliminary assumptions of policy options and related legislative changes have identified needed investment for procurement and maintenance of walk-through and hand-held scanners as well as modifications of property to accommodate scanners and designated private areas to conduct pat down searches.
<i>Operational guidance and processes</i>	<ul style="list-style-type: none"> Policies and procedures around how entry searches will be conducted, and by whom, will need to be developed. These will need to be clear, transparent, and easily understood. The working group will identify what specific guidance and processes need to be developed so as to standardise practice that is reflective of legislative intent. Updating of SOPs and HR guidelines would be required, as well as other informative documents and website content.
<i>Staffing</i>	<ul style="list-style-type: none"> Additional search powers will require more resourcing, either through rostered in-house or outsourced security officers. This will introduce further costs to ensure round-the-clock searches of all persons can be carried out. The working group's findings will determine what level of further staffing is required to resource these searches for each group of entrants.
<i>Staff training</i>	<ul style="list-style-type: none"> Staff and authorised persons performing searches must be provided with training to ensure all appropriate safeguards are in place when conducting searches. Appropriate training is critical to protecting rights of residents and non-residents under NZBORA.
<i>How will these changes be communicated?</i>	<ul style="list-style-type: none"> It is crucial that those affected by searches on entry, including children and young people, staff and regular visitors receive clear communications about what to expect from the changes when they come into effect. A communications plan will need to be developed to address this.
<i>Financial implications</i>	<ul style="list-style-type: none"> Budgetary implications and source of funding will be determined by the working group.

Implementation matters to consider	Implementing entry searches for residents and non-residents at Youth Justice residences
<i>What engagement is required during the implementation process?</i>	<ul style="list-style-type: none"> Some elements of the proposal will have operational impacts on other agencies. These agencies will be consulted throughout the implementation process. New Zealand Police will be impacted by the proposal for unlawful items to be seized and handed over to a constable and will be consulted on implementation. Unions and staff will be consulted on the operational changes required. Conducting searches and being searched constitute a significant change to the duties and requirements of employees at Youth Justice and Care and Protection residences. The working group will identify other stakeholders who will be consulted during the implementation process.
<i>Other unknown considerations</i>	<ul style="list-style-type: none"> The working group may identify further matters that need to be considered to implement these proposed changes, including budget availability, type of scanning technology etc.

Implementation considerations for the removal of the power to strip search in Youth Justice and Care and Protection residences:

Implementation matters to consider	Implementing the removal of strip search in residences
<i>How will the proposed changes be given effect?</i>	The option will require amendments to the Oranga Tamariki Act 1989 and the Oranga Tamariki (Residential Care) Regulations 1996 which will make clear to staff that no strip searches can be conducted.
<i>Who will be responsible for the ongoing operation and enforcement of these proposed changes?</i>	Oranga Tamariki will be responsible for the ongoing operation and enforcement of these proposed changes.
<i>When will these proposed changes come into effect?</i>	This change will come into force when the amendment takes effect.

Implementation matters to consider	Implementing the removal of strip search in residences
<i>Infrastructure and equipment</i>	There is no additional infrastructure required to implement this change.
<i>Operational guidance and processes</i>	Existing guidance may need to be updated to remove references to strip search, however it is unlikely new policies will need to be developed about relying on other methods in lieu of strip searches as strip searches have already not been relied on for years.
<i>Staffing</i>	No additional staffing is required to implement this change.
<i>Staff training</i>	It is unlikely that staff training will be required as staff have already been using other methods in lieu of strip searches, but staff will need to be told that they cannot ever conduct a strip search under any circumstance.
<i>How will these changes be communicated?</i>	A communication plan will need to be developed to ensure that staff, children, young people and their whānau are aware of the changes.
<i>Financial implications</i>	There are no financial implications for implementing this change.
<i>What engagement is required during the implementation process?</i>	The working group will identify other groups and stakeholders who will be consulted during the implementation process.
<i>Other unknown considerations</i>	The working group may identify further matters that need to be considered to implement these proposed changes.

Implementation considerations for introducing individual search plans:

Implementation matters to consider	Implementing individual search plans
<i>How will the proposed changes be given effect?</i>	The option will require amendments to the Oranga Tamariki Act 1989. Operational guidance and training will be needed to update staff practice, as well as the updating of current reporting documents.

Implementation matters to consider	Implementing individual search plans
<i>Who will be responsible for the ongoing operation and enforcement of these proposed changes?</i>	Oranga Tamariki will be responsible for the ongoing operation and enforcement of these proposed changes.
<i>When will these proposed changes come into effect?</i>	This change will come into force when the amendment takes effect.
<i>Infrastructure and equipment</i>	There is no additional infrastructure required to implement this change.
<i>Operational guidance and processes</i>	Guidance and processes will need to be updated to ensure that a resident's search preferences are considered in a tailored plan when the person enters a residence, and the person is given the opportunity to update their preferences prior to any search. Guidance will also be needed around the approval/decline function and when it is reasonable to decline a request.
<i>Staffing</i>	No additional staff will be needed in the first instance, however as a part of broader change to make residences rainbow inclusive, staff recruitment practices should consider gender diversity to enable better gender-matching processes.
<i>Staff training</i>	Training for staff around gender diversity and affirming practices to ensure children and young people are subject to safe searches is recommended.
<i>How will these changes be communicated?</i>	Develop communication plan to ensure that staff, children, young people and their whānau are aware of the changes.
<i>Financial implications</i>	There may be some financial implications through the updating of reporting documents and the introduction of training.
<i>What engagement is required during the implementation process?</i>	The working group will identify other groups and stakeholders who will be consulted during the implementation process.
<i>Other unknown considerations</i>	The working group may identify further matters that need to be considered to implement these proposed changes.

How will the new arrangements be monitored, evaluated, and reviewed?

102. Specific arrangements to report on the proposed legislative changes are to be decided.
103. Key sources of data that will be relied on for monitoring and evaluation are the youth justice indicators data sets managed by the Ministry of Justice. Oranga Tamariki will also draw on its existing capabilities in the Evidence Centre to assist with review and evaluation of the changes. Any budget bid would include funding for an external evaluation if needed. Evaluation mechanisms would be built into the service design and implementation phase.
104. Built-in complaints process and reporting provisions in the existing and amended sections of the Act, will be relied on to assess implementation success. Under section 448B of the Oranga Tamariki Act, the Minister for Children periodically reports to Parliament on whether existing legislation, government policy and other accountability documents are meeting the needs of children and young people, particularly tamariki and rangatahi Māori. And as set out in the Oranga Tamariki (Residential Care) Regulations 1996, grievance panels are set up in each secure residence for children and young people to lodge their complaints in order to ensure that residences provide them with a safe environment.
105. Issues related to the safety and wellbeing of children and young people in Oranga Tamariki residences will also come to the attention of and be publicly surfaced by external monitors such as the Ombudsman, the Independent Children's Monitor, the Office of the Children's Commissioner, the Office of the Privacy Commissioner, and the Human Rights Commission, as well as organisations like VOYCE Whakarongo Mai, as part of the normal course of their work.

Appendix 1: Residence details: Youth Justice and Care and Protection

Please note these figures could be subject to some change and may not be entirely accurate on publication.

#	Name	Location	Operator	Max Beds	Operational Capacity	Type of residence
1	Korowai Manaaki	South Tāmaki Makaurau	Oranga Tamariki	46	28	Youth Justice
2	Whakatakāpokai	South Tāmaki Makaurau	Oranga Tamariki	15	15	Youth Justice
3	Te Maioha o Parekarangi	Rotorua	Oranga Tamariki	30	30	Youth Justice
4	Te Au rere a te Tonga	Te Papaioea (Palmerston North)	Oranga Tamariki	40	34	Youth Justice
5	Te Puna Wai o Tūhinapō	Ōtautahi (Christchurch)	Oranga Tamariki	40	25	Youth Justice
6	Epuni	Hutt Valley	Oranga Tamariki	20	15	Care and Protection
7	Kaahui Whetuu	Tāmaki Makaurau	Oranga Tamariki	5	5	Care and Protection
8	Puketai	Otepoti (Dunedin)	Oranga Tamariki	8	8	Care and Protection
9	Te Poutama Ārahai Rangathi	Ōtautahi (Christchurch)	Barnados	8	8	Care and Protection (Harmful sexualised behaviour in boys)
10	Te Oranga (currently not operating)	Ōtautahi (Christchurch)	Oranga Tamariki	10	0	Care and Protection

Appendix 2: Summary of Standard Operating Procedures

Reasonable Ground guidelines:

When applying reasonable grounds to believe a young person may have an unauthorised or harmful item in his or her possession, the staff's belief must meet a threshold of standard of proof based on the balance of probabilities, or shown as more probable than not. This means that there must be evidence supporting the belief. Examples that may support the belief are:

- CCTV footage showing the young person uplifting an item
- a young person disclosing that another has an item and evidence that the identified item is missing
- an item goes missing and can be traced back to a particular young person who last had that item in his or her possession
- a staff member who witnessed a young person concealing an item
- unexplained smell of cigarette smoke on a young person

The standard of proof must not be a guess, based on intuition or an assumption. Rather, the belief must be based on the existence of factual evidence.

Scanner search:

- Only used in a lawful manner for the sole purpose of detecting unauthorised/harmful items, thereby upholding mana.
- Overarching aim to establish clear and consistent search procedures which are carried out with utmost respect, sensitivity and decency.
- Scanner search broadly refers to use of an electronic device that does not pass over the body of a child or young person. Mention is made of walk-through and hand-held models.
- Roles and responsibilities of the staff conducting the search and Team Leader Operations (TLO), with appropriate consultation as required.
- Staff requirement to inform the young person of the reason for search, the expected procedure involved, what is done to the seized item during search (including notice that anything handed over to Police may be used in criminal proceedings against the young person), and lastly giving the young person opportunity to ask questions. This obligation can however be excluded if there is a serious or immediate risk present.
- Guidance on how to operate the technology currently in existence and the conduct of the search in designated areas to safeguard privacy and dignity.
- Guidance on best management strategies for situations that have escalated.

- Rules that the young person needs to follow before the search including removal of clothing and personal items, emptying of pockets etc. If the young person does not comply, staff will defer to the TLO for guidance. If the search progresses, the staff conducting the search will have assistance from another staff member.
- Post the search, there is opportunity to make a complaint with provision of a grievance form and recording in the daily log (with details as to grounds and circumstances of search, use of force etc.)

Unauthorised/harmful item:

- The definitions reflect what is currently in legislation, with further elaboration on what staff are required to look for, namely:

Examples of unauthorised items

- other rangatahi's clothing or personal belongings
- cigarette filters, papers
- matches and lighters
- cash, money
- chewing gum and bubble gum
- video cameras or devices capable of recording images
- radio scanners
- other rangatahi's court documents
- gang related paraphernalia
- items that belong to the residence and where permission was not given for the rangatahi to retain that item(s) such as a kaimahi's notebook
- rocks or stones
- pencils or pens that were given but not returned
- cell phone or a device that can access the internet
- tattooing materials – including items modified for this use
- any glass object that can be broken and misused

Examples of harmful items

- any item deliberately altered that enables that item to inflict harm or injury such as a sharpened stone, tree branch
- kitchen utensils
- broken shard of glass or shelving
- razor blade
- scissors

- knives
- illicit drugs
- martial arts equipment and material
- matches and lighters

Note: Residents are allowed to keep personal items of adornment such as clothes and jewellery with the caveat that these items can be confiscated by the manager of a residence if they posed a risk to safety or are used inappropriately to cause harm. Examples, when pounamu is used as a weapon or clothes bearing gang colours or insignia are worn to incite tensions. Also, visitors are asked not to carry mobile phones inside, and instead leave them in lockers on entry. If family members want to show residents photos etc. on a mobile phone, permission to do the same can be sought from residence staff.

Pat down search:

- Much of the same guidelines for a scanner search are replicated for a pat down search. The young person's whānau are also informed of the search.
- Instruction is provided for staff to consider all other reasonable alternatives before progressing with the search, with sufficient evidence required to support this kind of search.
- Run down over the body, inserting hand into pockets or pouches in clothing as well as visual inspection of body parts as allowed in legislation, are included in a pat down search. These functions can only be conducted over existing clothes and the young person's body cannot be touched unless there are compelling reasons of items present in the hair or mouth. Staff are not allowed to touch or search the genital area.
- Staff are instructed to repeatedly encourage the young person to hand over any unauthorised item.
- If a pat down search needs to be progressed, staff are to provide advance notice of what body part is to be searched while the process is underway in order to remove the element of surprise. Minimal touching at all times is recommended with instruction not to pat down any body part that is exposed or visible.
- The staff member conducting the search has to be of the same gender that the young person identifies with. The young person is also allowed to request the presence of any particular staff member they are comfortable with, to support them through the search process.
- A pat down search can only be conducted in the presence of residence staff, a Police constable or the guardian of the child/young person.

Strip search:

- Reliance on strip search is attributed to need to retrieve concealed items from a young person who is at risk of engaging in self-injurious behaviour or attempting suicide in a secure custodial environment such as a youth justice residence i.e. prevention of harm.
- Details of higher-level authorisation by General Manager/Director/Deputy Chief Executive are laid out, along with designation, rules and responsibilities of staff in a residence who can conduct the strip search with appropriate authorisation, namely Youth Workers, Shift Leaders, Team Leaders, Residence Managers. All involved are required to understand the legalities relating to a strip search.

- Much of the same guidelines for a pat down search also apply here.

Dog Search:

- Used in assistance of scanner, pat down and mail inspection searches and carried out in a manner that is lawful and reasonable.
- There needs to be compelling evidence supporting a dog search indicating that conventional search procedures are insufficient.
- Indicators to determine whether this kind of search is needed, may include:
 - a smell has been detected around a young person that is consistent with illicit drugs.
 - multiple incidents have occurred over time where a young person appears under the influence of drugs or may appear to be recovering from using illicit drugs. These signs may include enlarged pupils, bloodshot or glassy eyes, loss of coordination, trembling, hallucinations, complaints of stomach cramps, blurred vision, headaches or dizziness and exhaustion and fatigue or insomnia.
 - a young person informs a staff member that illicit drugs are present within the residence.
 - unusual group behaviour that is consistent with a person being under the influence of illicit drugs (see above description).
 - unusual individual behaviour of a young person following a visit with whānau members or others who are known to distribute drugs or have previously been detected concealing contraband into the residence.
 - when a mobile phone can be detected, but its location is unknown.
- Dogs for this purpose can only be procured from Police, Corrections, Customs or the Armed Forces.
- Residence Manager establishes reasonable ground but delegates the oversight of the search to the Team Leader.
- Information provision requirements for other search modalities are replicated.

Appendix 3: Key Legislative and Regulatory Instruments

- a) The purposes, principles and duties in Part 1 and Part 7 of the Oranga Tamariki Act 1989
- b) Te Toka Tūmoana and mana tamaiti objectives under Section 7AA of the Oranga Tamariki Act
- c) The Statement of Rights in the Oranga Tamariki (National Care Standards and Other Matters) Regulations 2018
- d) Parts 1, 2 & 6 of the Oranga Tamariki (Residential Care) Regulations 1996
- e) The New Zealand Bill of Rights Act 1990 (Sections 7, 9, 14, 18-19, 21-22, 27)
- f) The Privacy Act 2020 (Part 5 Subpart 1, Part 6 Subpart 1, Part 7 Subparts 1 and 2)
- g) The Human Rights Act 1993 (Part 2)
- h) Worksafe New Zealand Act 2013
- i) Health and Safety at Work Act 2015
- j) Principles and Recommendations under the United Nations Conventions on the Rights of the Child (UNCROC) 1989, Against Torture (UNCAT) 1984 and on the Rights of Persons with Disabilities (UNCRPD) 2006
- k) Yogyakarta Principles (Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity)
- l) UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)
- m) UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- n) UN Standard Minimum Rules for the Administration of Juvenile Justice

Guiding principles from the above mentioned legislative and regulatory frameworks

SAFETY OF EVERYONE IN A RESIDENCE

- Justifiable and reasonable limitations to right to liberty, freedom of movement, freedom from cruel treatment and right to justice, are imposed in the interest of public safety and security.
- A safe working environment is a key contributor to wellbeing.
- Ensuring workplace health and safety.
-

HUMAN RIGHTS AND WELLBEING OF PERSON BEING SEARCHED

- Guarantee that health and wellbeing of a person is not compromised.
- Prioritise best interests of child.
- Child is at centre of decision-making and is protected from harm in a safe and stable environment.
- Consideration to age, development and voice, when making procedural and substantive decisions.

Guiding principles from the above mentioned legislative and regulatory frameworks

- Safeguard rights of a child to exercise choice, personal privacy, be informed, advocate for grievance, communicate with family/whānau, wear own clothing/items of adornment.
- Maintain and nurture connection of child to family and community. Stability is a key contributor to child welfare.
- Deal with public safety issues in a non-custodial manner, if possible.
- No discrimination against a person based on disability, background, behaviour.
- Respect for all aspects of a person's identity, including gender and culture.
- Prohibition of torture, cruelty, inhumane, humiliating, or degrading treatment.

TRANSPARENCY AND ACCOUNTABILITY

- Right to be given instructions verbally and to be informed of certain matters.
- Child has a voice while in care, including an enforceable right to express grievance and complaint.
- Whānau, family and community can know what is happening to their children and how they are being cared for.
- Compliance with due process.
- Checks and balances to mitigate adverse impacts of rights restrictions.
- Empowering children/young people to be knowledgeable about rights and processes, while also building trust with families and communities.

EASE OF IMPLEMENTATION

- Alignment of professional standards of care with service delivery and operational practice.
- Alignment with security and emergency management plans.
- Alignment with Oranga Tamariki future model of residential care.
- Provision of adequate facilities and training.
- Alignment with practice of other agencies and associated developments on use of search powers in other sectors and jurisdictions.