

New Zealand Family Violence Clearinghouse submission on the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

Date: 3 July 2024

ABOUT THE NEW ZEALAND FAMILY VIOLENCE CLEARINGHOUSE

The New Zealand Family Violence Clearinghouse ([NZFVC](#)) is the national centre for family violence and sexual violence research and information. We share information and analysis from policymakers, academics, practitioners and communities related to family violence, sexual violence and toiora whānau. Our vision is of families, whānau and relationships that are healthy, respectful and free from violence. Auckland UniServices at Waipapa Taumata Rau | University of Auckland has been contracted to provide the NZFVC since 2011.

Our submission

The New Zealand Family Violence Clearinghouse **opposes** the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill.

Our opposition to the Bill is supported by the findings of several reports, including Oranga Tamariki's Regulatory Impact Statement (RIS) Repeal of section 7AA, 12 March 2024¹ and Oranga Tamariki's Section 7AA Report 2023².

We support the findings and recommendations of the WAI 3350 The Oranga Tamariki (section 7AA) urgent inquiry report³ and the WAI 2915 He Pāharakeke, he rito whakakīkinga whāruarua inquiry report⁴.

¹ Regulatory Impact Statement: Repeal of Section 7AA (2024). Oranga Tamariki, Ministry for Children, <https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-repeal-section-7aa>.

² [Te whanake i ngā hua mō ngā tamariki Māori, ō rātau whānau, hapū, iwi anō hoki | Improving outcomes for tamariki Māori, their whānau, hapū and iwi Section 7AA report](#) (2023), Oranga Tamariki, Ministry for Children.

³ [The Oranga Tamariki \(Section 7AA\) urgent inquiry report: WAI 3350 Waitangi Tribunal report](#) (2024), Waitangi Tribunal.

⁴ [He Pāharakeke, he Rito Whakakīkinga Whāruarua: WAI 2915 Oranga Tamariki urgent inquiry Waitangi Tribunal Report](#) (2021), Waitangi Tribunal.

We urge the Crown to consider a more comprehensive approach to upholding the obligations of The Treaty of Waitangi within the care and protection system. Along with others, we recognise that Section 7AA is inadequate – it does not uphold the obligations of The Treaty of Waitangi, which affirms “te tino rangatiratanga ... o ō rātou kāinga.” We urge the Crown to consider strengthening section 7AA to further move towards those obligations. We also urge the Crown to consider the establishment of a Māori transition authority for child protection as recommended by The Waitangi Tribunal.⁵

We urge the Select Committee and the Crown to listen to and be guided by Māori organisations on what is needed to ensure better outcomes for Māori children and whānau.

We also urge the Select Committee and the Crown to listen to people and organisations of people with care experience, such as VOYCE – Whakarongo Mai, and the findings from the Abuse in Care Royal Commission of Inquiry.

We oppose the Bill for the following key reasons:

Lack of evidence that the Bill will contribute to oranga tamariki

The purpose of Section 7AA is to reduce inequities and to improve outcomes for tamariki Māori. It was introduced after consultation and is based on evidence. There is no available evidence to support the repeal of Section 7AA. All available evidence suggests Section 7AA contributes to reducing inequities and to better outcomes for Māori children.⁶

- There is no available evidence that Section 7AA is causing harm or unsafe practice, nor that repeal of Section 7AA will reduce harm or unsafe practice.⁷
- There is no available evidence that Section 7AA is reducing the safety, stability and wellbeing of children, nor that repeal of Section 7AA will improve the safety, stability and wellbeing of children.⁸
- There is no available evidence that Section 7AA puts children at greater risk, nor that repeal of Section 7AA will reduce the risk of harm.⁹
- There **is evidence** indicating that Section 7AA is reducing inequities and improving outcomes for tamariki Māori, is increasing wellbeing of children and whānau Māori, and is reducing risk of harm for children.¹⁰
- Based on all available evidence related to the Bill to repeal Section 7AA, it will not benefit children, and risks creating conditions for greater harm to children.¹¹

⁵ WAI 2915 Waitangi Tribunal report 2021

⁶ RIS Repeal of Section 7AA 2024; Section 7AA report 2023

⁷ RIS Repeal of Section 7AA 2024

⁸ RIS Repeal of Section 7AA 2024

⁹ RIS Repeal of Section 7AA 2024

¹⁰ RIS Repeal of Section 7AA 2024; Section 7AA report 2023

¹¹ RIS Repeal of Section 7AA 2024

Evidence that the Bill will create harm

We agree with the findings from the Oranga Tamariki Regulatory Impact Statement and the Waitangi Tribunal Inquiry Report (WAI 3350) that:

- Section 7AA supports positive relationships between Crown and Māori groups, and this has contributed to success for many tamariki Māori and whānau. Removing section 7AA will damage Māori trust and confidence in the Crown and its processes, and that will put more children at risk.
- Section 7AA requires Oranga Tamariki to measure and report on inequities. These inequities harm Māori children and whānau. Removing requirements for measuring and reporting on inequities will risk reducing the priority for that work and slowing progress. This means more children will be at risk of harm.

Risk of removing direction to consider whakapapa as part of wellbeing

The wellbeing of Māori children includes their sense of belonging to whakapapa and whānau.¹² Tamariki are members of whānau and hapū, and their wellbeing is interconnected.

Disconnection is very hard to undo. Prioritising a child's wellbeing includes prioritising whakapapa and whānau. Historically, social workers have not done this without clear direction. Section 7AA gives direction to Oranga Tamariki to support this.¹³

- Repeal of Section 7AA risks returning to practice within Oranga Tamariki that will isolate children from their whānau, whakapapa and culture. This is not in the best interests of children and creates enduring harm.
- Repeal of Section 7AA risks removing any consideration of whānau, whakapapa and culture from Oranga Tamariki decisions and practices.

Failure to uphold Treaty of Waitangi obligations

The New Zealand Family Violence Clearinghouse understands the Treaty of Waitangi as affirming the tino rangatiratanga of Māori, and supports implementing the recommendations from Pūao te Ata Tū and Waitangi Tribunal Reports WAI 2915 and WAI 3350:

- The Crown has breached its Treaty obligations to honour Māori exercise of tino rangatiratanga over their kāinga and taonga. It has removed the ability of whānau, hapū

¹² The evidence is well reviewed in: [He Waka Eke Noa: Māori cultural frameworks for violence prevention and intervention](#) (2023), Pihama et al; [Ora: Healing ourselves: Indigenous knowledge, healing and wellbeing](#) (2023), Pihama and Smith; [Tiakina te pā harakeke: Ancestral knowledge and tamariki wellbeing](#) (2022), Lee-Morgan and Pihama.

¹³ RIS Repeal of Section 7AA 2024; WAI 2915 Waitangi Tribunal report 2021; WAI 3350 Waitangi Tribunal report 2024

and Iwi to make decisions over the best interests of Māori children. A downstream effect of this is the inequities and harm Section 7AA seeks to address.

- Treaty obligations must be clear and accountable to both the Crown and Māori; having a section of the Oranga Tamariki Act that speaks specifically to Treaty obligations and public reporting on progress of that section gives transparency and accountability.
- Section 7AA is in effect Oranga Tamariki's Treaty clause, and is a step towards recognising Treaty obligations. The RIS Repeal of Section 7AA report identified that Section 7AA has supported progress towards honouring the principles of the Treaty of Waitangi. It gives clear and straightforward direction to Oranga Tamariki.
- The Crown has not engaged with Māori as Treaty partners on this Bill to repeal Section 7AA, and public responses from Māori organisations universally oppose the Bill.¹⁴
- Repealing Section 7AA without engaging with Māori is inconsistent with a Treaty relationship, and fails to honour obligations from The Treaty of Waitangi.
- Repeal of Section 7AA undermines Oranga Tamariki's own best practice guidelines and evidenced based recommendations to the Ministry of Social Development.¹⁵

Supports a racist, discriminatory and harmful state care system

The racism, discrimination and harm of the state care system is well documented.¹⁶ It has contributed to the over-representation of Māori children, exposed them to abuse in care, and led to poorer outcomes. This monocultural system has isolated children from their culture and whakapapa. In recent years, Oranga Tamariki has attempted to address this, including through Section 7AA, which requires: strategic partnerships with Māori, measures to reduce inequity, and public reporting on progress towards those measures.¹⁷

- Section 7AA has supported relationships between Oranga Tamariki and Māori that have seen more Māori children placed with whānau, and fewer entering the state system.
- The relationships supported by Section 7AA have created opportunities for Māori organisations to develop strategies and programmes to support children and whānau based on their tikanga, needs and aspirations.
- Fewer Māori children in the state system means fewer Māori children exposed to the harms of that system.

¹⁴ For example see WAI 3350 Waitangi Tribunal Report 2024 and Media Release: Pou Tangata opposes repeal of Section 7AA (2024), <https://community.scoop.co.nz/2024/05/pou-tangata-national-iwi-chairs-forum-oppose-repeal-of-section-7aa/>.

¹⁵ Te Ao Kohatu: A literature review of Indigenous theoretical and practice frameworks for mokopuna and whānau well-being (2021), Dobbs; Te Toka Tūmoana: tangata whenua and bicultural principled wellbeing framework for working effectively with Māori (2021), Eruera, Ruwhiu, and Wi-Kaitaia.

¹⁶ *Pūao te Ata Tū* (1987); *He Whaipanga Hou* (1988), Jackson; *Abuse in Care Royal Commission of Inquiry, Tāwharautia: Pūrongo o te Wā Interim Report Volume One* (2020); *Understanding Overrepresentation of Indigenous Children in Child Welfare Data: An Application of the Drake Risk and Bias Models* (2015), Cram, Gulliver, Ota and Wilson.

¹⁷ RIS Repeal of Section 7AA 2024; Section 7AA report 2023

- Section 7AA has reduced disparities and inequities experienced by tamariki and whānau Māori.
- Repeal of Section 7AA will likely undo progress to reduce the disproportionate number of Māori children in state care.
- Repeal of Section 7AA risks supporting the continuation of a racist, discriminatory system that harms children.

Undermining of trust increases risk of harm

Oranga Tamariki have acknowledged their racist and discriminatory practices have led to Māori distrust and fear,¹⁸ which has been documented for decades.¹⁹ That distrust puts children and their whānau at greater risk and stops them seeking help when needed.²⁰ Section 7AA gives clear direction to support Māori strategies for the wellbeing of children and whānau.

- Relationships supported by Section 7AA are growing trust between Oranga Tamariki and Māori. If these relationships continue to be supported and positive stories continue to flow from Māori initiatives, the state could be seen as a positive contributor to whānau wellbeing, rather than feared and avoided. This will increase support for children's wellbeing and reduce risk of harm.
- Māori designed and implemented programmes supported by Section 7AA relationships give whānau more options for finding trusted support. This makes it more likely that whānau will get early support, and this reduces harm and grows wellbeing.
- Māori, especially Māori with experience of the state system, have long advocated for changes to the state care and protection system including the provisions included in Section 7AA. Proposing to repeal those provisions fails to honour their experiences and their calls for change.²¹
- Repeal of Section 7AA creates uncertainty, and risks undermining progress made towards building trust with Māori.
- Repeal of Section 7AA risks harming relationships between Oranga Tamariki and people with lived experience of care.

¹⁸ WAI 2915 Waitangi Tribunal report 2021

¹⁹ Pūao te Ata Tū 1987; He Whaipanga Hou 1988; Abuse in Care Royal Commission of Inquiry, Tāwharautia: Pūrongo o te Wā Interim Report Volume One 2020

²⁰ He Waka Eke Noa 2023; [Violence within whānau and mahi Tūkino – a litany of sound revisited](#) (2023), Wilson et al; [Seventh report | Pūrongo tuawhitu : a duty to care | Me manaaki te tangata](#) (2022), Family Violence Death Review Committee.

²¹ For example, see VOYCE | Whakarongo Mai May 2024 Press statement <https://voyce.org.nz/repeal-of-7aa/>

Failure to uphold international obligations

New Zealand is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which includes two statements that are relevant to the Bill to repeal Section 7AA. UNDRIP recognises “the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.” UNDRIP also recognises “the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.” New Zealand’s state care and protection system has not been consistent with these statements.

New Zealand is a signatory to the United Nations Convention on the Rights of the Child (UNCROC). Article 30 states that Indigenous children have the right to enjoy their own culture, religion and language. The rights in Article 30 are to be exercised collectively with other members of the child’s community.

Responding to New Zealand’s sixth periodic report on the Convention on the Rights of the Child in February 2023²², the UN Committee raised concerns about inequities for Māori children, specifically highlighting the overrepresentation of Māori children in State care. The UN Committee outlined seven areas where they recommended that urgent measures must be taken. This included recommendations to: address policies and procedures related to removing children from their family and children’s rights in out-of-home care; address the root causes of vulnerability experienced by Māori children and their families, and the right to identity for Māori children; and finalise the national action plan against racism and the action plan on the UN Declaration on the Rights of Indigenous Peoples.

- Section 7AA is a step towards upholding New Zealand’s obligations under these international instruments.
- Repeal of Section 7AA removes the clear direction to support Māori decision making for the wellbeing of Māori children.

Conclusion

We urge the Social Services and Community Select Committee to recommend the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill **does not proceed**.

²² UN Committee on the Rights of the Child (2023). Concluding observations on the sixth periodic report of New Zealand. CRC/C/NZL/CO/6.