

Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Introduction

The bill seeks to repeal section 7AA of the Oranga Tamariki Act 1989 (Duties of chief executive in relation to Treaty of Waitangi (Tiriti o Waitangi)).¹ It would also make consequential amendments to the Oranga Tamariki Act 1989 and to the Oversight of Oranga Tamariki System Act 2022 and associated regulations.

Section 7AA(1) states that the duties of the chief executive of Oranga Tamariki set out in subsection (2) are imposed to recognise and provide a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi). The bill's stated intention in repealing section 7AA is to enable Oranga Tamariki—Ministry for Children to renew its focus on the safety and well-being of children in care arrangements.

This is a Government bill in the name of the Minister for Children, Hon Karen Chhour. A bill of the same name was introduced in the 53rd Parliament as a Member's bill in the name of Karen Chhour MP, but did not progress beyond its first reading.

¹ Section 7AA was inserted into the Act on 1 July 2019 by section 14 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.

Submissions on the bill

We received 3,748 written submissions and heard from 117 submitters in person. We thank everyone who submitted for the time and care they put into their written and oral submissions. We acknowledge the many submitters who spoke to us from their own personal experiences within the care system, and thank them for sharing their stories with us. A summary of submissions can be found in the departmental report prepared for us by advisers.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

Our consideration of this bill related to two main aspects of the obligations imposed on the chief executive of Oranga Tamariki by section 7AA: strategic partnerships, and reporting requirements. This commentary discusses these two aspects and explains the amendments we recommend to the bill as introduced.

Strategic partnerships

The bill as introduced would repeal all of section 7AA. On balance, we consider it important to retain aspects of section 7AA that relate to the obligations on the chief executive of Oranga Tamariki to develop strategic partnerships with iwi and Māori organisations, including iwi authorities. These are in sections 7AA(2)(c) to (4).

In the principal Act, section 7(2) sets out a number of duties that the chief executive of Oranga Tamariki must fulfil to achieve the Act's purposes. We propose that aspects of sections 7AA(2)(c), 7AA(3), and 7AA(4) be retained and inserted into section 7(2) alongside the other general obligations for the chief executive. To this end, we recommend inserting clause 4A in the bill, which would insert new paragraphs (h) and (i) in section 7(2) of the principal Act, and new subsection (7) in section 7. These new provisions, sections 7(2)(h), 7(2)(i), and 7(7), would be similar to the duties currently set out in sections 7AA(2)(c), 7AA(3), and 7AA(4) of the principal Act. These duties would otherwise be repealed under the bill as introduced.

Section 7AA(2)(c) requires the chief executive to ensure that Oranga Tamariki seeks to develop strategic partnerships with iwi and Māori organisations. It sets out the intention of these partnerships.

Section 7AA(3) states that iwi or Māori organisations may invite the chief executive to enter into a strategic partnership. Section 7AA(4) provides that the chief executive must consider and respond to any invitation.

Proposed new clause 4A would incorporate aspects of these provisions, currently set out in section 7AA of the principal Act, into new sections 7(2)(h), 7(2)(i), and 7(7).

Consequential change to Oversight of Oranga Tamariki System Act

Clause 8 of the bill as introduced would amend the Oversight of Oranga Tamariki System Act 2022 to repeal section 57(1)(e)(i). Section 57(1)(e)(i) states that the Governor-General may make regulations that require that the State of the Oranga Tamariki System report prepared by the Independent Children’s Monitor | Aroturuki Tamariki to address the application of section 7AA of the Oranga Tamariki Act.

Given that aspects of section 7AA would be retained through our proposed insertion of clause 4A, we consider that clause 8 should amend, rather than repeal, section 57(1)(e)(i) of the Oversight of Oranga Tamariki System Act. We therefore recommend amending clause 8 of the bill to state that the Governor-General may make regulations that require the Monitor’s State of the Oranga Tamariki System report to address the performance of the duties of the chief executive relating to strategic partnerships as set out in new section 7(2)(h) and (i) of the Oranga Tamariki Act.

Reporting duties of the chief executive

In the bill as introduced, clauses 10 and 11 would amend regulations 6(1)(d), 8(1)(a), and 8(1)(b) of the Oversight of Oranga Tamariki System Regulations 2023. These amendments would remove the requirements that reporting must include matters related to the chief executive’s performance of duties referred to in section 7AA.

During our consideration, we were particularly interested in the bill’s proposed changes to reporting requirements regarding the report on the State of the Oranga Tamariki system.² This report must be produced by the Independent Children’s Monitor at least once every 3 years. Regulation 6(1)(d) provides that the Monitor must include information on the performance of the chief executive of Oranga Tamariki in relation to the duties set out under section 7AA of the Oranga Tamariki Act. Clause 10 in the bill as introduced would remove the obligation to report on the performance of the duties of the chief executive set out in section 7AA, and only establish obligations to report on the outcomes being achieved for Māori children and young people and their whānau.

Oranga Tamariki regularly prepares and releases a number of reports, including its annual report, quarterly report (an overview of progress towards its strategic directions), and the Safety of Children in Care annual report (reporting on findings of harm for young people in care). Under section 448B of the Oranga Tamariki Act, the Minister for Children is required to report to Parliament every three years on whether legislation and Government policy meet the needs of children and young people.

Along with the report on the State of the Oranga Tamariki System, the Monitor must prepare annual reports on compliance with national care standard regulations and outcomes for Māori children and young people, and their whānau. The chief executive of Oranga Tamariki must prepare a written response to any report produced by the

² As required by section 22 of the Oversight of Oranga Tamariki System Act 2022.

Monitor in relation to Oranga Tamariki. The Monitor can request any information that it deems relevant, which the chief executive must provide.

Some of us consider that clause 10 of the bill should require the Monitor to carry out the reporting that Oranga Tamariki itself would have done under the principal Act. Some of us also note that, following submissions from the public, advisers recommended the committee consider two prospective amendments to the bill to move both strategic partnerships and reporting requirements contained in section 7AA to other sections of the principal Act.

A majority of us are satisfied that there are a number of mechanisms for reporting outcomes for tamariki Māori that remain, produced by both Oranga Tamariki and the Independent Children's Monitor. There are also reporting requirements that the chief executive is held to, such as providing any information requested by the Monitor. We therefore recommend, by majority, no amendments to provisions around reporting duties.

Green Party of Aotearoa New Zealand, Labour Party, and Te Pāti Māori differing view

The Green Party, Labour Party, and Te Pāti Māori oppose this bill in the strongest terms. Our opposition stems from the bill's failure to honour Te Tiriti o Waitangi, its misrepresentation of tikanga Māori, and the harm it risks imposing on tamariki and their whānau. Additionally, the bill would erode accountability within Oranga Tamariki and dismantle one of the few genuine mechanisms for Māori to exercise partnership with the Crown in the child protection space.

Section 7AA is a pivotal measure in recognising and addressing the disparities for Māori and the enduring impacts of colonisation and systemic racism on mokopuna Māori within the child protection system. Repealing this provision risks actual harm, undermining the progress made, setting back the state care and protection system, and perpetuating inequities for Māori in care.

Risk of Harm

We agree with the Waitangi Tribunal's findings that repealing section 7AA poses a serious risk of harm to Māori tamariki. Removing this section could lead to further trauma by weakening the legal framework that emphasises cultural connections and partnership with whānau, hapū, and iwi in decisions impacting Māori tamariki in state care.

The evidence provided by officials indicates that relationships built under section 7AA have been essential in fostering trust between Oranga Tamariki and Māori communities. Officials highlight these relationships as "pivotal" and warned that a full repeal would significantly erode confidence in Oranga Tamariki. Engagement with Māori through iwi and community providers has proven effective and should not be disrupted by an arbitrary repeal of this provision. Additionally, officials caution that without the accountability and reporting mechanisms of section 7AA progress in

reducing inequities may slow, risking the safety, stability, rights, and long-term well-being of the children Oranga Tamariki serves.

Breach of Te Tiriti o Waitangi

The Green Party, Labour Party, and Te Pāti Māori agree with the Waitangi Tribunal, which has found that repealing section 7AA would lead to “clear breaches of the article 2 guarantee to Māori of tino rangatiratanga over kāinga and of the Treaty principles of partnership and active protection.” (page 31).

Lack of evidence

The repeal of section 7AA lacks empirical support and risks reverting to a status quo detrimental to mokopuna Māori. No empirical evidence substantiates claims that section 7AA has negatively impacted child safety or led to harmful care decisions. The concerns cited appear anecdotal, reflecting a few cases where caregivers felt that cultural considerations unduly influenced placements. However, these concerns have no proven link to section 7AA’s duties, nor is there data showing these cultural considerations compromised child safety.

The rationale for repeal, therefore, is unsubstantiated. Existing research, including findings from the Government, suggests that repealing section 7AA would be a regressive step. Section 7AA has set in motion necessary changes in child protection practices, emphasising culturally sensitive, whānau-oriented placements that uphold the rights and wellbeing of mokopuna Māori. The repeal would remove these protections, likely returning Māori children to a care system that has historically disregarded cultural contexts, ultimately harming their rights and connections to their heritage.

This legislative reversal risks not only undermining recent gains for mokopuna Māori but also disregarding the Government’s own evidence, which supports the value of section 7AA in promoting safe and culturally aligned care for Māori children.

Breach of children’s rights

The Green Party, Labour Party, and Te Pāti Māori agree with Mana Mokopuna’s view that the bill is inconsistent with Aotearoa New Zealand’s international obligations under the United Nations Convention on the Rights of the Child (Children’s Convention).

Repealing section 7AA contradicts the practice guidance of Oranga Tamariki, which was in place long before the introduction of section 7AA, yet with little effect until legislated through 7AA. Article 5 of the Children’s Convention underpins this guidance and states: “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.”

Reducing disparities and reporting obligations

The proposed repeal of section 7AA raises significant concerns, particularly around the removal of statutory duties of the chief executive to ensure the policies and practices of the department have the objective of reducing disparities and the removal of statutory reporting obligations for the chief executive of Oranga Tamariki. This repeal could hinder transparency and make it challenging to assess whether the rights, interests, and wellbeing of mokopuna Māori in state care are being upheld. Under section 7AA, reporting requirements have helped track key improvements, including increased placement of mokopuna Māori with whānau, hapū, and iwi, and enhanced funding for Māori-led services and partnerships. Data from Oranga Tamariki indicates that since the introduction of section 7AA, the number of tamariki Māori entering care has steadily decreased, while over three-quarters of mokopuna in care have been placed with family.

Appendix

Committee process

The Oranga Tamariki (Repeal of Section 7AA) Amendment Bill was referred to the committee on 21 May 2024.

We called for submissions on the bill with a closing date of 3 July 2024. We received and considered submissions from 3,748 interested groups and individuals. We heard oral evidence from 117 submitters at hearings in Wellington and via videoconference.

Advice on the bill was provided by Oranga Tamariki—Ministry for Children. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Joseph Mooney (Chairperson)

Paulo Garcia

Takutai Tarsh Kemp

Laura McClure

Ricardo Menéndez March

Hon Willow-Jean Prime

Maureen Pugh

Hon Carmel Sepuloni

Tanya Unkovich

Kahurangi Carter and Mariameno Kapa-Kingi participated in our consideration of this bill.

Related resources

The documents received as advice and evidence are available on the Parliament website.

**Oranga Tamariki (Repeal of Section 7AA) Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Karen Chhour

Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Oranga Tamariki (Repeal of Section 7AA) Amendment Act **2024**.

2 Commencement

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This Act comes into force on the day after Royal assent.

Part 1

Amendments to Oranga Tamariki Act 1989

3 Principal Act

This Part amends the Oranga Tamariki Act 1989. 10

4 Section 4 amended (Purposes)

In section 4(1)(f), delete “in the way described in this Act”.

4A Section 7 amended (Duties of chief executive)

(1) After section 7(2)(g), insert:

- (h) ensure that the department seeks to develop strategic partnerships with iwi and Māori organisations, including iwi authorities, in order to—** 15
- (i) provide opportunities to, and invite innovative proposals from, those organisations to improve outcomes for Māori children, young persons, and their whānau who come to the attention of the department:** 20
 - (ii) set expectations and targets to improve outcomes for Māori children and young persons who come to the attention of the department:**
 - (iii) enable the robust, regular, and genuine exchange of information between the department and those organisations:** 25
 - (iv) provide opportunities for the chief executive to delegate functions under this Act or regulations made under this Act to appropriately qualified people within those organisations:**
 - (v) provide, and regularly review, guidance to persons discharging functions under this Act to support cultural competency as a best-practice feature of the department’s workforce:** 30
 - (vi) agree on any action both or all parties consider is appropriate:**

- (i) consider and respond to any invitation from 1 or more iwi or Māori organisations to enter into a strategic partnership in accordance with **paragraph (h)** and **subsection (7)**.
- (2) After section 7(6), insert:
- (7) For the purposes of **subsection (2)(h) and (i)**, 1 or more iwi or Māori organisations may invite the chief executive to enter into a strategic partnership. 5
- 5 Section 7AA repealed (Duties of chief executive in relation to Treaty of Waitangi (Tiriti o Waitangi))**
Repeal section 7AA.

Part 2 10

Consequential amendments to other legislation

Subpart 1—Amendments to Oversight of Oranga Tamariki System Act 2022

- 6 Principal Act**
This subpart amends the Oversight of Oranga Tamariki System Act 2022. 15
- 7 Section 24 amended (Annual report on outcomes for Māori children and young people and their whānau)**
Replace section 24(2) with:
- (2) When preparing the report, the Monitor must consider and be informed by any information obtained in accordance with this Act. 20
- 8 Section 57 amended (Regulations)**
~~Repeal section 57(1)(e)(i).~~
Replace section 57(1)(e)(i) with:
- (i) the performance of the duties of the chief executive of Oranga Tamariki set out in **section 7(2)(h) and (i)** of the Oranga Tamariki Act 1989; and 25

Subpart 2—Amendments to Oversight of Oranga Tamariki System Regulations 2023

- 9 Principal regulations**
This subpart amends the Oversight of Oranga Tamariki System Regulations 2023. 30

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10 Regulation 6 amended (Matters that must be contained in State of Oranga Tamariki system report)

Replace regulation 6(1)(d) with:

- (d) an assessment of outcomes being achieved for Māori children and young people and their whānau; and

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11 Regulation 8 amended (Matters that must be contained in annual report for Māori children and young people and their whānau)

Replace regulation 8(1)(a) and (b) with:

- (a) an assessment of the outcomes being achieved by the chief executive of Oranga Tamariki for Māori children and young people and their whānau; and
- (b) the impact of measures taken by the chief executive of Oranga Tamariki in improving outcomes for Māori children and young people who come to the attention of Oranga Tamariki under the Oranga Tamariki Act 1989; and

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Legislative history

13 May 2024

21 May 2024

Introduction (Bill 43–1)

First reading and referral to Social Services and Community
Committee