

Hon Karen Chhour, Minister for Children

Oranga Tamariki Act 1989: Repeal of Section 7AA

10 May 2024

**These documents have been proactively released:**

**Cabinet Social Outcomes Committee Minute: SOU-24-MIN-0014**

Date considered: 27 March 2024

Author: Committee Secretary

**Cabinet Paper: Oranga Tamariki Act 1989: Repeal of Section 7AA**

Date considered: 28 March 2024

Author: Office of the Minister for Children

**Cabinet Minute: CAB-24-MIN-0107**

Date considered: 2 April 2024

Secretary of the Cabinet

**Material redacted**

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982 (the Act). Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.



# Cabinet Social Outcomes Committee

## Minute of Decision

---

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### Oranga Tamariki Act 1989: Repeal of Section 7AA

**Portfolio**                      **Children**

On 27 March 2024, the Cabinet Social Outcomes Committee:

- 1        **noted** that the Coalition Agreement between the National Party and the ACT Party includes the agreement to remove section 7AA from the Oranga Tamariki Act 1989 to ensure better public services are delivered;
- 2        **agreed** to the repeal of section 7AA of the Oranga Tamariki Act 1989 and to any consequential amendments;
- 3        **authorised** the Minister for Children to further clarify and develop minor and technical policy matters in a way not inconsistent with Cabinet decisions;
- 4        **invited** the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs.

Rebecca Davies  
Committee Secretary

---

**Present:**

Rt Hon Christopher Luxon  
Rt Hon Winston Peters  
Hon David Seymour  
Hon Nicola Willis (Chair)  
Hon Chris Bishop  
Hon Dr Shane Reti  
Hon Erica Stanford  
Hon Paul Goldsmith  
Hon Louise Upston  
Hon Mark Mitchell  
Hon Tama Potaka  
Hon Melissa Lee  
Hon Nicole McKee  
Hon Casey Costello  
Hon Penny Simmonds  
Hon Chris Penk  
Hon Karen Chhour

**Officials present from:**

Office of the Prime Minister  
Officials Committee for SOU

## **In Confidence**

Office of the Minister for Children

Cabinet Social Outcomes Committee

## **Repeal of section 7AA of the Oranga Tamariki Act 1989**

### **Proposal**

- 1 This paper seeks agreement to draft a Bill to repeal section 7AA of the Oranga Tamariki Act 1989 (the Act). I consider that this will reinforce that the wellbeing and best interests of children and young people are at the forefront of decision making and that this is not undermined by cultural considerations.

### **Relation to government priorities**

- 2 The Coalition Agreement between the National Party and the ACT Party includes the agreement to remove section 7AA from the Act to ensure better public services are delivered.

### **Executive Summary**

- 3 My vision is to ensure that all children and young people are in loving and stable homes. Section 7AA of the Act was designed to strengthen accountability to improve outcomes for Māori children and young people. I believe that this section creates a conflict for Oranga Tamariki when making decisions in the best interests of the child or young person.
- 4 I propose to repeal section 7AA of the Act to make certain that Oranga Tamariki is entirely child-centric and is making decisions that ensure a child's wellbeing and best interests.
- 5 The repeal of section 7AA of the Act will not stop the consideration of cultural wellbeing of children and young people in the care of Oranga Tamariki, nor will it remove the general obligations to meet the Treaty of Waitangi principles applicable to all Crown agencies in regard to the development of policies, practices and services.
- 6 The Regulatory Impact Statement (RIS) that has been prepared by Oranga Tamariki does not support the repeal of section 7AA. The RIS advises that this change is unlikely to achieve the objective I am seeking.

### **Background**

- 7 The Act establishes how the state intervenes to protect children and young people from abuse and neglect, and how it aims to prevent and address child and youth offending.
- 8 The Act has a number of principles, including the paramountcy principle, which states that the wellbeing and best interests of the child or young person are the first and paramount consideration in care or protection decisions. The purposes of the Act also

promote the wellbeing of children, young people and their families, whānau, hapū, iwi and family group.

- 9 I believe that the wellbeing and best interests of children and young people is best served by focusing on their safety and stability. I want to see Oranga Tamariki acting as a child-centric care and protection agency, where the safety of children is the key focus of social work practice and decision making. I am concerned that section 7AA of the Act is influencing Oranga Tamariki practice to the detriment of the safety of children.
- 10 Section 7AA of the Act provides a practical commitment to the principles of the Treaty of Waitangi and highlights Crown obligations to Māori under the Treaty by explicitly outlining duties on the Chief Executive of Oranga Tamariki. These duties broadly include:
- To ensure that the policies and practices of Oranga Tamariki that impact on the wellbeing of children and young persons have the objective of reducing disparities by setting measurable outcomes for tamariki and rangatahi Māori who come to the attention of Oranga Tamariki.
  - To ensure that the policies, practices, and services of Oranga Tamariki have regard to mana tamaiti<sup>1</sup> and the whakapapa of Māori children and young persons, and the whanaungatanga responsibilities of their whānau, hapū, and iwi.
  - To ensure that Oranga Tamariki seeks to develop strategic partnerships with iwi and Māori organisations, and to consider and respond to any invitation from one or more iwi or Māori organisations to enter a strategic partnership.
  - To report to the public at least annually on the measures taken to carry out the above duties, including the impact of those measures on improving outcomes for Māori children and young persons.
- 11 While section 7AA was designed to strengthen accountability to improve outcomes for Māori children and young people, I believe this has created a conflict between the requirement to make decisions in the best interests of the child and places duties on the Chief Executive of Oranga Tamariki to organise the department around a relationship between the Crown and signatories of the Treaty of Waitangi.

## Analysis

*Section 7AA creates a system that treats children and young people as an identity group first and a person second.*

- 12 Section 7AA was designed to recognise and respond to the over-representation of Māori children in state care. The intent of section 7AA was to strengthen accountability to improve outcomes for Māori children and young people in addition to reinforcing other key principles such as having regard to whakapapa, whanaungatanga, and mana tamaiti. While well-intentioned, I consider that there is

---

<sup>1</sup> **Mana tamaiti (tamariki)** means the intrinsic value and inherent dignity derived from a child's or young person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group, in accordance with tikanga Māori or its equivalent in the culture of the child or young person.

sufficient concern that section 7AA is influencing Oranga Tamariki practice to the detriment of the safety of Māori children.

- 13 I am concerned that section 7AA may have been used to justify decision making in relation to care arrangements for Māori children which has not been safe or in the child's best interests. In my view, when a child is primarily considered as an identity group, their individual needs are not prioritised.
- 14 There have been prominent individuals who criticised the role section 7AA may have had in several high-profile cases involving these changes to planned long-term care placements. They noted that this practice was traumatic and stressful for children and young people.
- 15 It is important the Act ensures Oranga Tamariki is entirely child-centric, and open to whatever solution will best ensure a child's wellbeing and best interests. For this to happen, I consider that section 7AA must be repealed.

*The approach outlined in section 7AA creates a divisive system that has had a negative impact on caregivers.*

- 16 Section 7AA has likely led to unintended consequences that have negatively impacted caregivers. Some caregivers have suggested that section 7AA has resulted in a requirement for culturally appropriate environments, which is valued more than children's welfare. In my view, some of the changes to planned permanent care arrangements that have occurred are examples of Māori children who were removed from safe and loving homes because the caregivers were deemed the wrong ethnicity.
- 17 I intend to improve the rights and responsibilities of caregivers, giving them more autonomy and making it easier for caregivers to offer safe and loving homes for children. Repealing section 7AA is the first step required to achieve this goal.

*Other sections of the Act recognise the importance of whānau, hapū and iwi.*

- 18 There are several provisions in the Act that recognise the importance of concepts such as cultural identity, mana tamaiti, whakapapa, and whanaungatanga of Māori children and their whānau, hapū, and iwi<sup>2</sup>. The repeal of section 7AA will not alter the principles listed under section 5 of the Act, which require anyone who exercises power under the Act to be guided by the concepts of mana tamaiti, whakapapa and whanaungatanga. It will also not alter the purposes outlined in section 4 of the Act, which include a practical commitment to the principles of the Treaty of Waitangi, recognising mana tamaiti, whakapapa, and the practice of whanaungatanga for children and young persons who come to the attention of the department<sup>3</sup>.
- 19 One duty outlined in section 7AA requires Oranga Tamariki to set measurable outcomes for Māori. The intention is that this focuses attention on how to reduce disparities and increases the likelihood of action. This duty is not reflected outside this section of the Act. The repeal of this duty may be seen as a reduction in responsibility, however, there are other approaches already in use that assist with this, including the Oranga Tamariki annual report which covers two impacts specific to tamariki Māori.

---

<sup>2</sup> For instance, see sections 5(b)(iv), 5(b)(vi), 5(c), 5(d), 7(2)(a), 13(b), 13(i)(iii)(C).

<sup>3</sup> Section 4(g).

To help ensure that disparities and disproportionality for tamariki Māori are still monitored, additional measures could be added to the Oranga Tamariki annual report. This could be done operationally and would provide assurance that disparities are continuing to be addressed.

- 20 Additionally, strategic partnerships with iwi and Māori organisations will continue. The repeal of section 7AA would not discontinue the existing Oranga Tamariki strategic partnerships with Māori, and it would not prevent Oranga Tamariki from entering into further strategic partnership agreements with iwi or Māori organisations.

### Implementation

- 21 Following Cabinet's agreement to the repeal of section 7AA, Oranga Tamariki will work with existing strategic partners to ensure they are aware of the intended changes, while emphasising that the strategic partnerships will continue.
- 22 Oranga Tamariki will also undertake operational work to implement the change. This will likely include making variations to existing strategic partnerships and other agreements that reference section 7AA and updating practice, policies, guidance and training to reflect the changes.

### Cost-of-living Implications

- 23 There are no direct cost of living implications from this paper.

### Financial Implications

- 24 No significant financial implications have been identified for repealing section 7AA. Any financial implications that do arise will be met through baseline funding.

### Legislative Implications

- 25 The decisions from this paper will result in legislative change to repeal section 7AA of the Oranga Tamariki Act. The bill for the repeal should be included on the legislative reform programme <sup>9(2)(f)(iv)</sup> [REDACTED], with the aim of introducing the Bill to the House in approximately mid-May 2024.
- 26 The proposed Bill will bind the Crown.

### Impact Analysis

#### Regulatory Impact Statement

A Regulatory Impact Statement (RIS) has been prepared and is attached as Appendix 1.

- 27 The preferred option in the RIS does not align with the views expressed in this paper. The department's RIS analysed three options relating to the repeal of section 7AA. These included retaining the status quo, a full repeal, and a partial repeal of section 7AA.
- 28 The RIS acknowledges that some practice decisions that were ultimately not in the best interests of the child have occurred in some instances and that provisions to

ensure the wellbeing and best interests of children and young people are included in other sections of the Act. The RIS states that the repeal of section 7AA is unlikely to achieve the objective I am seeking.

- 29 A Quality Assurance Panel including membership from Oranga Tamariki, the Ministry of Justice and the Treasury has reviewed the RIS and considers it “...partially meets the quality assurance criteria because of insufficient consultation with stakeholders to test the accuracy of the analysis and provide additional evidence” and that “The panel considers that given these constraints, the information in the RIS is balanced and convincing, and is as complete as could reasonably be expected.”

#### Climate Implications of Policy Assessment

- 30 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

#### Population Implications

- 31 **Māori children and young people and whānau:** 67 percent of children and young people in the care and protection of Oranga Tamariki identify as Māori. I believe that this means that there is a higher number of children in care who could be negatively impacted by the influence of section 7AA on Oranga Tamariki practice and decision making. I consider that repealing section 7AA would help ensure that practice decisions appropriately consider the safety and stability of the child or young person.

#### Human Rights

- 32 The following human rights instruments may be relevant to this proposal:
- The New Zealand Bill of Rights Act 1990 (NZBORA), which in this case covers the right to freedom from discrimination (section 19). The Ministry of Justice has previously concluded that the repeal of section 7AA appears to be consistent with the rights and freedoms affirmed in NZBORA.<sup>4</sup>
  - The United Nations Declaration of the Rights of Indigenous Peoples, which in this case covers a broad range of rights and freedoms aimed at improving outcomes for Māori. Removing section 7AA makes progress towards ending racial discrimination by enabling a system that is focused on child-centric approaches.
  - The United Nations Convention on the Rights of the Child, which in this case covers the right of a child to be with their family, whānau, hapū, and iwi. The Act contains various provisions and principles separate to section 7AA which protect the rights of tamariki Māori and their whānau, hapū, and iwi.<sup>5</sup>

---

<sup>4</sup> [www.justice.govt.nz/assets/20221027-Oranga-Tamariki-7AA-Repeal-Bill-Final.pdf](http://www.justice.govt.nz/assets/20221027-Oranga-Tamariki-7AA-Repeal-Bill-Final.pdf). A NZBORA vet will be undertaken as part of the legislative process for this proposal.

<sup>5</sup> See for example, sections 5(b)(iv), 5(b)(vi), 5(c), 5(d), 7(2)(a), 13(b), 13(i)(iii)(c).

- 33 In my view, repealing section 7AA complies with the above human rights instruments. This proposal simply removes positive duties on the Chief Executive which create a practical commitment to the Treaty of Waitangi.

### **Use of external Resources**

- 34 No contractors or consultants were engaged and remunerated or provided a material contribution to the preparation of the policy advice in this paper.

### **Consultation**

- 35 This Cabinet paper was consulted with the Ministry of Justice, Ministry of Social Development, Te Puni Kōkiri, Te Arawhiti, and the Treasury. The Department of Prime Minister and Cabinet was also informed.
- 36 Te Puni Kōkiri does not support the proposals in the paper to repeal section 7AA, noting that the repeal is highly likely to undo the significant progress that has been made to reduce the disproportionate number of tamariki and rangatahi Māori in the care of the state since the implementation of section 7AA. Te Puni Kōkiri maintains that in relation to the care and placement of children, considerations such as the ability to be able to speak their own language, practise cultural norms and maintain their identity as Māori, are essential ingredients, alongside other factors, to the success and wellbeing of all children.
- 37 Te Puni Kōkiri argue strongly that any policy change of such a significant piece of legislation must rely on evidence and that a repeal should be informed by community engagement and consultation. While the agency was pleased to note the intention to retain the strategic partnerships enabled by section 7AA, they also highlight that any repeal of section 7AA would undermine the small, but important gains Oranga Tamariki has achieved so far.

### **Communications**

- 38 I intend to issue a press release to inform stakeholders of Cabinet's decision to repeal section 7AA. Oranga Tamariki will work with existing strategic partners to reassure them these partnerships will continue.

### **Proactive Release**

- 39 I intend to proactively release this Cabinet paper, with appropriate redactions, on the Oranga Tamariki website within 30 business days of decisions being confirmed by Cabinet.



## Recommendations

The Minister for Children recommends that the Committee:

- 1 note the Coalition Agreement between the National Party and the ACT Party includes the agreement to remove section 7AA from the Oranga Tamariki Act 1989 to ensure better public services are delivered;
- 2 agree to the repeal of section 7AA of the Oranga Tamariki Act 1989 and any consequential amendments;
- 3 authorise the Minister for Children to further clarify and develop minor and technical policy matters in a way not inconsistent with these Cabinet decisions;
- 4 invite the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendation 2.

Hon Karen Chhour

Minister for Children



# Cabinet

## Minute of Decision

---

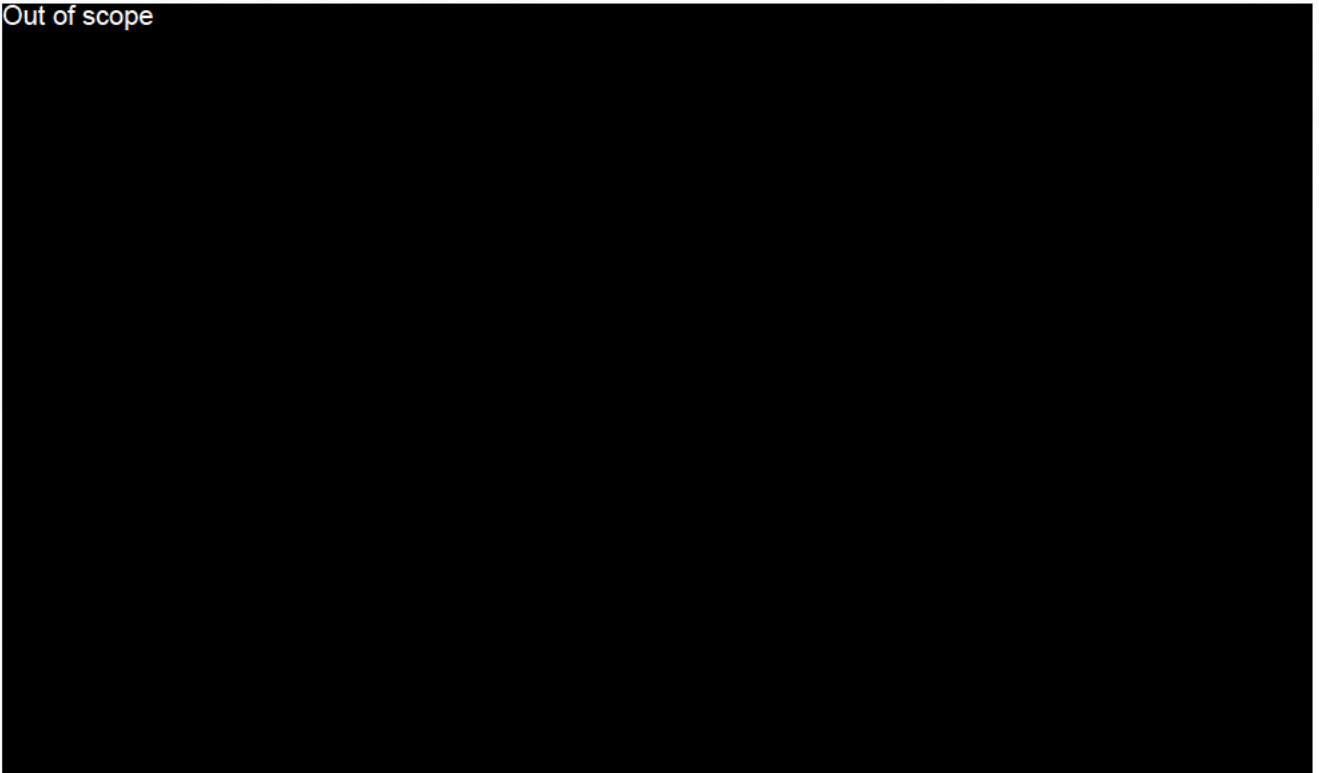
*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### Report of the Cabinet Social Outcomes Committee: Period Ended 29 March 2024


On 2 April 2024, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 29 March 2024:

Out of scope




SOU-24-MIN-0014    **Oranga Tamariki Act 1989: Repeal of Section 7AA**    CONFIRMED  
Portfolio: Children

Out of scope



Out of scope



Secretary of the Cabinet