



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 Legislation Committee: Period Ended 10 May 2024

On 13 May 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 10 May 2024:

Out of Scope



Out of Scope



LEG-24-MIN-0074

**Oranga Tamariki (Repeal of Section 7AA)
Amendment Bill: Approval for Introduction**
Portfolio: Children

CONFIRMED

Rachel Hayward
Secretary of the Cabinet



Cabinet Legislation Committee

Minute of Decision

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Oranga Tamariki (Repeal of Section 7AA) Amendment Bill: Approval for Introduction

Portfolio **Children**

On 9 May 2024, the Cabinet Legislation Committee:

- 1 **noted** that the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill) holds a category 3 priority on the 2024 Legislation Programme (a priority to be passed by the end of 2024);
- 2 **noted** that the Bill repeals section 7AA of the Oranga Tamariki Act 1989;
- 3 **noted** that the Bill makes consequential amendments to the Oversight of Oranga Tamariki Systems Act 2022, and the Oversight of Oranga Tamariki System Regulations 2023;
- 4 **approved** the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill [PCO 26234/6.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House;
- 5 **agreed** that the Bill be introduced in May 2024;
- 6 **agreed** that the Government propose that the Bill be:
 - 6.1 referred to the Social Services and Community Select Committee for consideration;
 - 6.2 enacted during 2024.

Vivien Meek
Committee Secretary

Attendance (see over)

Present:

Rt Hon Winston Peters
Hon Dr Shane Reti
Hon Simeon Brown (Chair)
Hon Paul Goldsmith
Hon Judith Collins
Hon Todd McClay
Hon Tama Potaka
Hon Simon Watts
Hon Casey Costello
Hon Andrew Bayly
Hon Karen Chhour
Hon Scott Simpson
Todd Stevenson, MP
Jamie Arbuckle, MP

Officials present from:

Officials Committee for LEG



Cabinet Legislation Committee

Summary

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Oranga Tamariki (Repeal of Section 7AA) Amendment Bill: Approval for Introduction

Portfolio	Children
Purpose	This paper seeks approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill).
Previous Decisions	In March 2024, the Cabinet Social Outcomes Committee agreed to remove section 7AA from the Oranga Tamariki Act 1989 [SOU-24-MIN-0014].
Proposal	The Bill gives effect to the above decision.
Impact Analysis	A Regulatory Impact Statement was provided when substantive policy decisions were taken.
Compliance	A disclosure statement is attached .
Timing Matters	Introduced: May 2024; Referred: to the Social Services and Community Select Committee; Enacted: by the end of 2024.
Communications	None indicated.
Consultation	Paper prepared by OT. Crown Law, the Treasury, MOJ, TPK, MSD (Youth), and Te Arawhiti were consulted. DPMC (Prime Minister) and PSC were informed. The Independent Children's Monitor and Treaty Provisions Oversight Group were also consulted. The Minister indicates that all Ministers and Parliamentary Under-Secretaries were consulted.

The Minister for Children recommends that the Committee:

- 1 note that the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill) holds a category 3 priority on the 2024 Legislation Programme (a priority to be passed by the end of 2024);
- 2 note that the Bill repeals section 7AA of the Oranga Tamariki Act 1989;
- 3 note that the Bill makes consequential amendments to the Oversight of Oranga Tamariki Systems Act 2022, and the Oversight of Oranga Tamariki System Regulations 2023;
- 4 approve the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill [PCO 26234/6.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House;
- 5 agree that the Bill be introduced in May 2024;
- 6 agree that the Government propose that the Bill be:
 - 6.1 referred to the Social Services and Community Select Committee for consideration;
 - 6.2 enacted during 2024.

Sam Moffett
Committee Secretary

Hard-copy distribution:
Cabinet Legislation Committee
Minister for Children

In Confidence

Office of the Minister for Children

Cabinet Legislation Committee

Oranga Tamariki (Repeal of Section 7AA) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks Cabinet approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill).

Policy

- 2 I am seeking Cabinet agreement to introduce the Bill, which repeals section 7AA of the Oranga Tamariki Act 1989 (the Act). This repeal will make certain that Oranga Tamariki is entirely child-centric and is making decisions that ensure a child's wellbeing and best interest.
- 3 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 interest of the child or young person. I consider that section 7AA creates a system that treats children and young people as an identity group first and a person second and creates a divisive system that has had a negative impact on caregivers.
- 4 The Coalition Agreement between the National Party and the ACT Party includes the agreement to remove section 7AA from the Act, and in April 2024, Cabinet [CAB-24-MIN-0107] agreed to its repeal.
- 5 The relevant policy approvals for the Bill were obtained from the Social Outcomes Committee (SOU) in March 2024 [SOU-24-MIN-0014]. In accordance with these decisions, the Bill contains the repeal of section 7AA of the Oranga Tamariki Act 1989 and any consequential amendments.

The Bill is likely to be contentious but will not stop the consideration of cultural wellbeing of children and young people in the care of Oranga Tamariki

- 6 The Bill does not stop the consideration of cultural wellbeing of children and young people in the care of Oranga Tamariki.
- 7 Additionally, I have indicated to Oranga Tamariki that existing strategic partnerships with iwi and Māori organisations will continue, and the repeal would not prevent Oranga Tamariki from entering into further strategic partnership agreements with iwi or Māori organisations.

Impact analysis

- 8 A Regulatory Impact Statement (RIS) was prepared by Oranga Tamariki on the repeal of section 7AA, in accordance with the necessary requirements. It was submitted at the time that Cabinet approval was sought for the policy decisions relating to the repeal [SOU-24-MIN-0014].

Compliance

- 9 The Bill complies with:
- 9.1 the principles of the Treaty of Waitangi (further detail below);
 - 9.2 Treaty Provisions Oversight Group feedback (further detail below);
 - 9.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (further detail below);
 - 9.4 the department disclosure statement has been prepared and is attached to the paper;
 - 9.5 the principles and guidelines set out in the Privacy Act 2020;
 - 9.6 relevant international standards and obligations; and
 - 9.7 the Legislation Guidelines (2021 edition).

The Treaty of Waitangi

- 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. However, repealing section 7AA does 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.¹
- 11 There are also 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.² 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.
- 12 The Treaty Provisions Oversight Group asked whether there was a risk that removing the reference to a ‘description’ of practical commitment to the Treaty principles will de-emphasise other areas in the Act where it reflects aspects such as whanaungatanga, whakapapa and mana tamaiti. Officials from Oranga Tamariki outlined that other clauses in the Act stand on their own and would be identified as relevant Treaty

¹ Section 4(g).

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

I N C O N F I D E N C E

principles regardless. The Treaty Provisions Oversight Group was comfortable with the wording of the Bill.

The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

- 13 I consider the Bill to be consistent with the rights and freedoms of the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990.

Consultation

- 14 This paper was prepared by Oranga Tamariki. The following agencies have been consulted:
- 14.1 The Ministry of Justice, Crown Law, Ministry of Social Development, Te Puni Kōkiri, Te Arawhiti, and the Treasury. The Department of Prime Minister and Cabinet and the Public Service Commission were also informed.
- 14.2 Te Puni Kōkiri does not support the proposed repeal of section 7AA. While the department 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.
- 14.3 The Independent Children’s Monitor was consulted on the wording of the Bill. This is because a consequential amendment has been made to the Oversight of Oranga Tamariki System Act 2022 and the Oversight of Oranga Tamariki System Regulations 2023 to remove reference to section 7AA of the Act.
- 14.4 Te Arawhiti considers the paper correctly recognises that the proposals will be strongly contested. It reiterates that an amendment of this nature should have been informed by engagement and consultation with iwi and Māori. It believes the paper should acknowledge that no consultation or engagement has occurred; that the proposal to remove s7AA is being considered through an urgent inquiry in the Waitangi Tribunal; and that the lack of good faith engagement on the proposed change is likely to fall short of the Treaty standard.
- 15 I disagree with Te Arawhiti. I have engaged with a range of iwi and Māori groups since becoming Minister and I engaged with many Māori New Zealanders on this issue prior to becoming Minister. Māori will be consulted on this Bill in the same way as other New Zealanders. I also disagree with Te Puni Kōkiri. The Bill will not stop the consideration of cultural wellbeing of children and young people in the care of Oranga Tamariki.

Binding on the Crown

- 16 The Bill amends the Oranga Tamariki Act 1989, which is binding on the Crown. It also makes consequential amendments to the Oversight of Oranga Tamariki System Act 2022 and the Oversight of Oranga Tamariki System Regulations 2023.

Creating new agencies or amending law relating to existing agencies

17 Not applicable.

Allocation of decision-making powers

18 Not applicable.

Associated regulations

19 Not applicable.

Other instruments

20 Not applicable.

Definition of Minister/department

21 Not applicable.

Commencement of legislation

22 The Bill will come into force the day after Royal Assent.

Parliamentary stages

23 I intend for the Bill to be introduced in May 2024 and referred to the Social Services and Community Select Committee for consideration following its first reading.

24 I anticipate that the Bill will come into force by the end of 2024.

Proactive Release

25 This Cabinet paper will be released proactively within 30 business days of consideration by Cabinet.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill holds a category 3 priority on the 2024 Legislation Programme;
- 2 **note** that the Bill repeals section 7AA of the Oranga Tamariki Act 1989;
- 3 **note** that the Bill makes consequential amendments to the Oversight of Oranga Tamariki Systems Act 2022 and the Oversight of Oranga Tamariki System Regulations 2023;
- 4 **approve** the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

IN CONFIDENCE

- 5 **agree** that the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill be introduced in May 2024;
- 6 **agree** that the government propose that the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill be:
 - 6.1 referred to the Social Services and Community Select Committee for consideration; and
 - 6.2 enacted during 2024, subject to sufficient support in the House.

Authorised for lodgement

Hon Karen Chhour

Minister for Children

IN CONFIDENCE

Departmental Disclosure Statement

Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Oranga Tamariki.

Oranga Tamariki certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

Date finalised: 1 May 2024

Part One: General Policy Statement

The Oranga Tamariki (Repeal of section 7AA) Amendment Bill repeals section 7AA of the Oranga Tamariki Act 1989. The Bill also makes consequential amendments to that Act, the Oversight of Oranga Tamariki System Act 2022 and the Oversight of Oranga Tamariki System Regulations 2023.

Purpose of Bill

The Bill repeals section 7AA of the Oranga Tamariki Act 1989. The intention of the Bill is to enable Oranga Tamariki—Ministry for Children to renew its focus on the safety and well-being of children in care arrangements.

The Government is concerned that the introduction of section 7AA has led Oranga Tamariki—Ministry for Children staff to prioritise cultural factors over the safety and stability of children in long-term care arrangements. Concerns have been raised that Oranga Tamariki—Ministry for Children has moved tamariki Māori from stable long-term care arrangements and placed them with whānau, hapū, and iwi groups to which they whakapapa.

Concerned voices in this area have described these changes in placement as traumatic and argue that they should only occur in cases where there is risk to the safety of the child. Anecdotal concerns have also been raised that tamariki and rangatahi Māori living in stable care arrangements have been forced to visit whānau members due to perceived obligations under section 7AA, even in instances where contact was not in the best interests of the child.

This Bill is a Government Bill introduced under Standing Order 284.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<ul style="list-style-type: none"> • Department of Social Welfare (1988). <i>Pūao-te-ata-tū: The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare</i>. Pūao-te-ata-tū (Daybreak) - PDF Document (msd.govt.nz). • Brown (2000). <i>Care and Protection is about adult behaviour – The Ministerial Review of the Department of Child, Youth and Family Services</i>; Child, Youth and Family (2014). <i>Workload and Casework review</i>; Ombudsman (2020). • <i>He Take Khalkidhiki – A Matter of Urgency</i>. He Take Kōhukihuki A Matter of Urgency-OT_Report-102020-DIGITAL.pdf. Office of the Children’s Commissioner (2020). • <i>Te Kuku O Te Manawa – Review</i>. TKTM-JUNE2020-Final.pdf. Oranga Tamariki (2020). • <i>Response to the Whānau Ora Commissioning Agency-led Report – Ko Te Wā Whakawhiti: It’s Time for Change</i>. OT-WOCA-Response.pdf (orangatamariki.govt.nz); Ministerial Advisory Board (2021). • <i>Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa</i>. ‘Te Kahu Aroha’ report Oranga Tamariki — Ministry for Children. • The Modernising Child, Youth and Family Panel (2015). <i>Expert Panel Final Report – Investing in New Zealand’s Children and their Families</i>. investing-in-children-report.pdf (msd.govt.nz) • Waitangi Tribunal (2021). <i>He Pāharakeke, He Rito Whakakīkinga Whāruarua – Oranga Tamariki Urgent Inquiry</i>. He Pāharakeke, he Rito Whakakīkinga Whāruarua (justice.govt.nz) • National_ACT_Agreement.pdf (nationbuilder.com) • Oranga Tamariki (Repeal of Section 7AA) Amendment Bill — First Reading - New Zealand Parliament (www.parliament.nz) 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Statement: Repeal of section 7AA</i>, Oranga Tamariki, March 2024. This impact analysis will be made available on:</p> <ul style="list-style-type: none"> • Oranga Tamariki’s website: • The Treasury’s website. 	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Impact Statement was assessed by an independent Quality Assurance Panel including membership from Oranga Tamariki, the Ministry of Justice and the Treasury. The Panel assessed the RIS as partially meeting the quality assurance criteria.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Analysis of the expected benefits and costs for the policy is available in the Regulatory Impact Statement. Costs are anticipated to be modest and be met within baseline funding.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Justice has vetted the Bill for consistency with the New Zealand Bill of Rights Act 1990.

The Regulatory Impact Statement found that the Bill is not consistent with the United Nations Convention for the Rights of Children (UNCROC). A full repeal would contravene UNCROC Articles 30 (Indigenous and minority rights) and 5 (Respect to parent's rights, extended family, community or caregivers).

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Officials consulted with relevant government agencies and analysed the proposals in this Bill against the principles of the Treaty of Waitangi and the Crown's Treaty obligations. While the repeal does not remove broad obligations to the principles of the Treaty of Waitangi, it does repeal practical commitments to the Treaty.

Officials have engaged proactively with the Waitangi Tribunal Urgent Inquiry into the repeal of section 7AA (Wai 3350).

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney General notes that the provisions in the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill are not inconsistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990. <https://www.treasury.govt.nz/publications/guide/disclosure-statements-government-legislation-technical-guide-departments-html#child-6>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
No privacy implications were identified in the Bill.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Several Government departments were consulted on the policy Cabinet Paper and the Regulatory Impact Statement for this proposal.</p> <p>The draft Oranga Tamariki (Repeal of Section 7AA) Amendment Bill and subsequent LEG Cabinet paper were also consulted on.</p> <p>Consulted agencies were: the Ministry of Justice, Te Puni Kōkiri, Te Arawhiti – Office for Māori Crown Relations, the Ministry of Social Development, Crown Law and the Treasury. The Independent Children’s Monitor was also consulted on the aspects of the Bill that relate to the Oversight of Oranga Tamariki System Act 2022 and the Oversight of Oranga Tamariki System Regulations 2023.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill’s provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
<p>The Bill does not change the requirement for care decisions to have regard to mana tamaiti (tamariki) and the whakapapa of Māori children and young persons and the whanaungatanga responsibilities of their whānau, hapū, and iwi and broader Māori cultural considerations in care decisions. These requirements are included elsewhere in the Act.</p> <p>The Bill removes subsections in the Act that place an obligation on the Chief Executive to seek to develop Strategic Partnerships in order to provide opportunities to delegate statutory decisions (including care decisions) to suitably qualified people within iwi and Māori organisations. The Chief Executive will still be able to delegate decisions in this way, but the statutory requirement to seek to develop partnerships to enable this will be removed.</p> <p>The Independent Children's Monitor will still report on the strategic partnerships that Oranga Tamariki has with iwi and Māori organisations, as part of their broader reporting on outcomes for Māori children, young people and their whānau.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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