

Initial advice on the repeal of section 7AA of the Oranga Tamariki Act 1989

To Hon Karen Chhour, Minister for Children			
Date	15 December 2023	Deadline	15 December 2023
Briefing number	B-0008	Priority	Medium
Key contact	Phil Grady, Deputy Chief Executive System Leadership	Contact number	s9(2)(a)
Security	In-confidence		

Purpose

This briefing provides initial advice and information on the options and implications of repealing section 7AA of the Oranga Tamariki Act. We also discuss options for strengthening the accountability of Oranga Tamariki and provide some information on our current practices.

Executive Summary

Within the Oranga Tamariki Act ensuring the safety, well-being, and best interests of children and young people is the paramount consideration. We do not consider that the repeal of section 7AA will change this. Oranga Tamariki will continue to work with our strategic partners to meet the needs of tamariki, whānau, and hapū.

We anticipate strong reactions to the repeal of section 7AA from Māori and our partners involved in the care and protection system, including Pacific providers, and oversight bodies such as Mana Mokopuna – Children and Young People’s Commission.


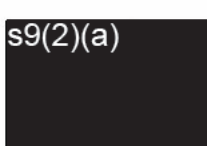
The process for repealing legislation is relatively straightforward. The timing will differ depending on whether you choose to publicly consult on this prior to taking a proposal to Cabinet.

This briefing provides you with initial information and advice at this stage. We can provide you with more detailed advice and steps, depending on how you wish to proceed, in the new year.

Recommendations

It is recommended that you:

Note the contents of this briefing.	<input checked="" type="radio"/> YES <input type="radio"/> NO
Agree to meet with officials early next year to discuss options.	<input type="radio"/> YES <input type="radio"/> NO

Sign-off Minister	Sign-off Department
 Hon Karen Chhour Minister for Children Date signed: 19/12/23	s9(2)(a)  Phil Grady Deputy Chief Executive, System Leadership Date signed: 13 December 2023

Minister comments

As ~~discussed~~ Discussed with Chappie Te Kani
I would like Drafting to begin.

Satisfaction

Please select your level of satisfaction with this briefing

- Outstanding Good Acceptable Poor Unacceptable

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Initial advice on the repeal of section 7AA of the Oranga Tamariki Act 1989

Background

- 1 You asked for initial advice on the Oranga Tamariki Act 1989 (the Act) including:
 - options for the full or partial repeal of section 7AA.
 - advice on the extent to which aspects of section 7AA are reflected elsewhere in the Act, and
 - the process and timing that would be required for this repeal.
- 2 The Coalition Agreement between the National Party and the ACT Party includes a reference to removing section 7AA from the Oranga Tamariki Act 1989.
- 3 You have stated your intention to repeal section 7AA and to continue with the ten strategic partnerships and with whānau, hapū, and iwi for the benefit of children.
- 4 We have also provided some advice on how care arrangements are determined, which encompasses safety considerations. We understand that your concern is around ensuring the safety, well-being, and best interests of children and young people is the paramount consideration and that section 7AA influences social workers' decision-making and impacts the safety of children.
- 5 This briefing is intended to provide you with some initial information and advice at this stage, rather than making any recommendations or seeking any decisions.

Background to section 7AA

- 6 Section 7AA 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. A similar commitment is reflected in one of the Purposes of the Act, which is to '*promote the well-being of children, young persons, and their families, whānau, hapū, iwi and family groups by providing a practical commitment to the principles of the Treaty of Waitangi*'.
- 7 Importantly for Māori, section 7AA was designed and seen to strengthen accountability to improve outcomes for Māori in addition to reinforcing other key principles such as having regard to whakapapa, whanaungatanga, and mana tamaiti.
- 8 Broadly, section 7AA places the following duties on the Chief Executive of Oranga Tamariki:
 - To ensure that the policies and practices of Oranga Tamariki 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 (tamariki Māori), whakapapa, and the whanaungatanga responsibilities of their whānau, hapū, and iwi.

- Seek 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.
- Report to the public annually on the measures taken to carry out the above duties, including the impact of those measures on improving outcomes for Māori.

There are a range of options for repealing section 7AA, each with benefits and considerations

- 9 The following section lays out the options for full or partial repeal of section 7AA and highlights other relevant parts of the Act.
- 10 Whilst 7AA demonstrates a practical commitment to the Crown's obligations under the Treaty of Waitangi, the principles of the Oranga Tamariki Act apply to all decisions made under the Act. Further, any repeal of section 7AA does not remove the Crown's obligations to Māori under the Treaty of Waitangi.
- 11 If your concern is about some of the duties imposed on the Chief Executive, an alternative option would be to repeal only those duties. We have provided more information on this below as we discuss each of the obligations in turn.

Set measurable outcomes for Māori that focus attention on how to reduce disparities and increase the likelihood of action

- 12 This duty is not reflected outside of this section of the Act,
- 13 There is an opportunity to consider Better Public Service targets for the Chief Executive, specifically focusing on reducing disparity.
- 14 Oranga Tamariki's annual report covers objectives for tamariki Māori and tracks 25 data measures to monitor our progress. These measures are reviewed annually and added to as we find other measures that can more accurately monitor our progress. In addition, a key performance indicator could be developed for the Chief Executive that could assist to retain the same focus.
- 15 Since the Oversight of the Oranga Tamariki System Act 2022 was introduced in 2022, the Independent Children's Monitor (ICM) also has a responsibility to monitor how well Oranga Tamariki (and the wider system) supports improved outcomes for tamariki Māori.
- 16 There is strong evidence that underlying disparities experienced by children in care relate to poverty and include welfare, housing and health. This needs to be a key focus for the departments responsible for these areas. The Oranga Tamariki Action Plan is the only legislative mechanism to require chief executives to work together to make a plan to address disparities. We consider that strengthening the requirements on these individual departments could be beneficial.

Ensure that policies, practices and services have regard to mana tamaiti, whakapapa, and whanaungatanga

- 17 We acknowledge that there have been times where social workers may have used section 7AA to justify decision making in relation to care arrangements for Māori children which may not have been safe or in their best interests. This is not consistent with the practice approach of Oranga Tamariki.
- 18 We will continue to work with all children and families inclusively, relationally, and restoratively, valuing their whakapapa whilst ensuring that decision making focuses on safety within the wider context of wellbeing. This way of working will continue to support us to meet the needs of tamariki Māori whilst offering a best practice approach for all children and families, based on strong social work evidence specific to our context in New Zealand. Removing section 7AA would not change the approach that Oranga Tamariki is taking to strengthening our professional practice.
- 19 Oranga Tamariki would also continue to give effect to the principles of mana tamaiti, whakapapa, and whanaungatanga through our practice approach, practice policies, guidance, and tools. The practice approach is for all children and their families or whānau. It includes a strong focus on the rights of all those we work with, in particular the right of tamariki to be safe, to have a say in decisions about them, and to be connected to their family, whakapapa, culture and other important parts of their identity. It also includes the right of families to be involved in decisions about their children, and the right of caregivers to receive the support they need to provide quality care.
- 20 In 2021, we introduced a new Practice Framework and are progressively implementing the full range of tools, models, and training needed for our practitioners to apply this framework in their daily practice. We are using the Practice Framework to support our social workers to focus on what is most important, particularly the safety and wider wellbeing of children, understood within the context of their unique experiences, identity and family context.
- 21 In making decisions about and with children and families, we are providing greater support in how social workers must balance the range of important considerations which are protected within the principles of the Act. However, social workers also have a clear focus on the prevention of harm, stability of care and meeting the full range of the needs of children. In balancing these considerations, the wellbeing and best interests of the child must be the primary consideration.

Develop strategic partnerships with iwi and Māori organisations

- 22 This duty sets out six purposes for entering strategic partnerships.¹ We currently have 10 strategic partnerships with iwi and Māori organisations (and nine invitations to enter a strategic partnership, some of which are the result of the Treaty settlement process). Each strategic partnership is unique and reflects the partner's priorities to meet the needs of their tamariki, whānau, and hapū. Some partnerships support the Enabling Communities prototypes that are working towards the delegation of functions to relevant community organisations.

¹ Section 7AA(2)(c)(i) to (vi).

- 23 In terms of performance of our strategic partners, each is at a different stage of implementation. We know from our long-standing partnerships, such as Ngāi Tahu Whānau as First Navigators, and from Waikato Tanui Mokopuna Ora, is that these partnerships have significantly reduced tamariki coming into care. We are in the process of evaluating Mokopuna Ora in terms of effectiveness and impact.
- 24 Repealing this statutory duty would not prevent Oranga Tamariki from continuing to work with existing strategic partners in the future, or to enter new strategic partnerships. However, the duty on the Chief Executive to seek to enter strategic partnership with iwi and Māori organisations, and to consider and respond to all invitations to do so, is not reflected elsewhere in the Act.

Reporting to the public

- 25 Repealing the duty to report to the public each year would remove the bespoke requirement to report to the public at least once a year on the measures taken to carry out the duties under section 7AA. This would not prevent Oranga Tamariki from continuing to proactively and transparently report publicly in its annual report.
- 26 Currently, the Chief Executive is required to report publicly at least annually on our progress to improving outcomes for tamariki Māori and their whānau, hapū and iwi. We also report on the actions that we have taken, using measurable outcomes to assess how we have reduced disparities through all policies, programmes, and services that impact on the well-being of tamariki and rangatahi Māori. The Chief Executive must also include specific next steps for Oranga Tamariki to continue improving outcomes for tamariki and rangatahi Māori and whānau over the next 12 months.
- 27 Every two years we report on the drivers of disparity which cover the factors associated with disparities experienced by tamariki Māori in the care and protection system. This analysis provides insight into the experience of tamariki Māori, but it does not address the extent to which Māori over-representation reflects relative levels of need, wider societal factors or the impact of our practice and decision-making factors, including practitioner bias. The next report on the drivers of disparity is scheduled for 2024.

Implications of repeal

- 28 While many of the elements covered under section 7AA could continue without a statutory requirement, we anticipate that repeal (either partial or full) would be strongly contested and perceived as a diminution of the Crown partnership with Māori in the care and protection system. We expect strong reactions from Māori and our partners involved in care and protection, including Pacific providers, and oversight bodies such as Mana Mokopuna – Children and Young People's Commission. A repeal would also likely be impacted by any broader debates around the Treaty of Waitangi principles.
- 29 Additionally, there could be a strong perception that the repeal of section 7AA would result in Māori losing the ability to hold Oranga Tamariki to account for not improving outcomes for tamariki Māori. s9(2)(h)

s9(2)(h)

Process and timing to repeal section 7AA (in full or in part)

30 Any changes to primary legislation follow a standard process:

- A Cabinet paper to be drafted and go through agency and ministerial consultation before being approved by the Minister and lodged for Cabinet. Depending on the level of complexity this step would normally take approximately nine weeks (four weeks to draft a paper, two weeks for agency consultation and two weeks for ministerial consultation, followed by a week to be signed off by the Minister). A Cabinet paper also needs to be accompanied by a Regulatory Impact Statement (RIS) prepared by the department.² This would be drafted alongside the Cabinet paper.
- Approval of the Cabinet paper by the relevant Cabinet Committee (in this case most likely the Social and Wellbeing Committee), followed by Cabinet approval. Where legislation is being made or amended, this part of the process provides formal approval to issue drafting instructions for the Parliamentary Counsel Office (PCO) to draft a Bill.
- The PCO will then draft the Bill. This can take anywhere from one month to three months, if the Bill is only repealing provisions, we anticipate this would take a shorter period of time (depending on PCO priorities).
- Once the Bill has been prepared, it will be submitted to the Cabinet Legislation Committee with an accompanying Cabinet paper seeking to be introduced into the House. Full Cabinet approval is then required before introduction.

31 The timeframe for these steps depends on Cabinet agendas and House time, but we anticipate it would take approximately six months without public consultation.³ If public consultation is undertaken, this timeframe is more likely to be approximately nine months.

32 Generally, proposed changes to legislation are considered through a public consultation process prior to being considered by Cabinet. Consultation is particularly important if the proposed legislative amendments add to or change existing requirements or obligations, so that the public has an opportunity to provide feedback that may impact the proposals s9(2)(h)

² The RIS is expected to meet Cabinet's Impact Analysis Requirements. The RIS is designed to support and inform the government's decisions on proposals for regulatory change and provides robust analysis of the problem, the options available to address the problem, feedback from any consultation process or stakeholder engagement, and cost and benefits associated with the proposals. A RIS is provided alongside a Cabinet paper for policy decisions.

³ One of the expectations of a RIS is to show evidence of efficient and effective consultation with stakeholders, key affected parties, and relevant experts so the RIS would not be as strong as if consultation were undertaken. This also means that Cabinet will not have the benefit of hearing from these stakeholders when considering the proposal.