



**ORANGA TAMARIKI (REPEAL OF  
SECTION 7AA) AMENDMENT BILL**

**Submissions from The Law Association  
Family Law & Parole & Prisoners' Rights  
Committees**

## INTRODUCTION

The Law Association (TLA) is an independent membership organization for the NZ legal profession with around 6,500 members. TLA maintains several expert committees that support legal review and policy advocacy on legal issues. We appreciate the opportunity to submit our views on the Oranga Tamariki Repeal of Section 7AA Bill. This submission has been prepared by TLA's Family Law Committee along with the members of the Parole Law Committee and friends of the Committees.

## EXECUTIVE SUMMARY

This submission addresses the proposed repeal of Section 7AA of the Oranga Tamariki Act 1989 (OT Act). We provide an overview of the historical context and rationale for the enactment of Section 7AA, emphasize its positive impacts, and respectfully present our arguments against the proposed repeal. Notably, there has been a significant reduction in the number of tamariki Māori entering state care since the introduction of Section 7AA. This reduction can be attributed to the increased use of culturally appropriate practices and interventions that focus on keeping children within their whānau and broader Māori communities.

While we recognise the paramount importance of child safety, we firmly believe that this objective can be achieved without repealing Section 7AA. Instead, we advocate for addressing issues related to its implementation through enhanced training and improved processes within Oranga Tamariki, rather than through legislative changes.

The Government has identified several concerns regarding the implementation of Section 7AA.<sup>1</sup> These include cultural factors being prioritized over the safety and stability of children in long-term care arrangements, instances where children have been moved from stable placements to whānau or iwi care resulting in traumatic experiences, and reports of tamariki Māori being compelled to visit whānau against their best interests due to perceived cultural obligations.

We appreciate the gravity of these concerns and propose that they are best addressed through targeted improvements and comprehensive training for Oranga Tamariki staff. By focusing on these areas, we can effectively mitigate the challenges while preserving the critical protections and cultural considerations that Section 7AA provides. We believe that maintaining Section 7AA, with its emphasis on cultural identity and whānau connections, is essential for achieving the best outcomes for tamariki Māori.

### ***Key Considerations for the Submission***

- 1) The historical context and the reasons why Section 7AA was introduced, including addressing systemic biases and ensuring that Māori have a say in the care of their children remain important reasons for its retention
- 2) Cultural Safety vs. Child Safety: While we agree that cultural considerations should be emphasized in the Act through Section 7AA, ultimately child safety must be a priority. We stress the importance of balancing child safety with the preservation of cultural identity. Cultural considerations, as mandated by Section 7AA, do not conflict with ensuring the safety and well-being of children. Case law since the enactment of Section 7AA clearly establishes that the best interest of the child remains the paramount consideration.

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<sup>1</sup> Cabinet paper: Oranga Tamariki Act 1989: Repeal of Section 7AA <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/7AA-repeal/Cabinet-paper-S7AA-Repeal-Cab-paper-release.pdf>

- 3) Positive Outcomes Under Section 7AA: The positive impacts of Section 7AA include increased Māori participation in decision-making and better support for tamariki Māori's cultural identity.
- 4) Engagement with Māori Communities: We stress the importance of genuine partnership and engagement with iwi and Māori organizations in decision-making processes affecting tamariki Māori. (This aligns with the principles of Te Tiriti o Waitangi and helps build trust between Oranga Tamariki and Māori communities.) Having a positive obligation in the Act means that any incoming CEO of OT will need to ensure that it is a consideration otherwise there is a risk that things will revert back to how it was prior to this section's implementation.
- 5) Alternative Solutions: We advocate for enhancing the implementation of Section 7AA through improved training and guidelines for Oranga Tamariki staff, rather than its complete repeal. Additionally, examining international legislative reforms addressing similar issues could provide valuable insights on the best approach.

## SUBMISSIONS

### Overview of Section 7AA

The proposed repeal of section 7AA of the Oranga Tamariki Act 1989 represents a critical juncture in New Zealand's child welfare legislation. Historical reports, notably the 1986 Pūao-te-Ata-Tū report,<sup>2</sup> highlighted severe alienation of Māori from their cultural roots due to state child welfare practices. The report and subsequent findings by the Waitangi Tribunal consistently criticized the government for failing to respect and integrate Māori cultural values, resulting in widespread disparities in care outcomes for Māori children.

Reforms initiated by the Pūao-te-Ata-Tū report led to amendments in 1989, requiring decision-makers to consider tamariki Māori within their broader whānau, hapū, and iwi contexts.<sup>3</sup> Despite these reforms, practical implementation lagged, necessitating further amendments in 2019.<sup>4</sup> These amendments to the OT Act re-emphasised the importance of tikanga Māori and Te Tiriti o Waitangi, aiming to rectify previous shortcomings and reinforce cultural foundations in the care and protection of tamariki Māori.

The disproportionate representation of Māori children in state custody give emphasis to the need for Section 7AA. In June 2019, Māori children made up 69 percent of those in state care, despite being only 25 percent of the child population.<sup>5</sup> In the same year, figures reveal that Māori babies were five times more likely than non-Māori to enter state care, with the rate of urgent entries doubling since 2010. Additionally, 61 Māori babies were ordered into state care before birth compared to 21 non-Māori, prompting the then Children's Commissioner Andrew Becroft to highlight issues of racism and systemic bias in the state care sector

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<sup>2</sup> New Zealand. Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, Rangihau, John Te Rangī-Aniwaniwa, *Pūao-te-ata-tū = Day break : the report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1986* Accessed at: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoteatatu.pdf>

<sup>3</sup> See Pūao-Te-Ata-Tū (Day break): the Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare (1988). The task of the Committee was to advise the Minister on how the Department could meet the needs of Māori in policy, planning and service delivery and its recommendations were based upon feedback gathered in hui around the country. The report recognised that the social issues facing Māori resulted from failing systems of state provision underpinned by a broader context of colonisation, racism and structural inequality. For further background, please see Boulton, A., Levy, M. & Cvitanovic, L. (2020). Beyond Pūao-Te-AtaTū: Realising the Promise of a New Day.

<sup>4</sup> Otene, Judge S. Te Hurihanga Tuarua? - Examining Amendments to the Oranga Tamariki Act 1989 that took effect on 1 July 2019. (2019) 9 NZFLJ 139.

<sup>5</sup> <https://www.manamokopuna.org.nz/documents/202/20200116-OCC-StatisticalSnapshot.pdf>

Furthermore, at the practical level, the lack of strategic partnerships between iwi and Oranga Tamariki provided space for a range of trusts and incorporated societies, some only loosely tied to iwi, to contract with Oranga Tamariki's predecessor agencies to care for children and young people.<sup>6</sup> Several become infamous: the Whakapakari Programme,<sup>7</sup> Moerangi Treks; the Eastland Youth Rescue Trust and the Heretaunga Māori Executive.<sup>8</sup> All were shut down after serious and sustained abuse of young people. This is covered in some detail in the interim reports of the Royal Commission of Inquiry into Abuse in Care.<sup>9</sup> The final report of the Royal Commission is due to be tabled in Parliament around 24 July 2024. As well as reporting on abuse in care in the past, the report will make recommendations about the care of children. The proposed repeal of section 7AA prior to the issue and consideration of that report risk undermining the findings of an Inquiry which has conducted wide-ranging research and has reviewed an enormous amount of evidence. The repeal Bill may cut across those recommendations or even be contrary to them.

The enactment of Section 7AA directly responded to systemic neglect and cultural disconnection highlighted in reports such as He Paharakeke, He Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry (Wai 2915, 2021)<sup>10</sup> The 2019 amendments further incorporated te ao Māori and tikanga Māori principles, marking the first explicit inclusion of Te Tiriti o Waitangi in the legislation underscoring the essential role of Māori involvement in child care decisions, aiming for a more culturally responsive system. The repeal of section 7AA risks undoing this progress and perpetuating the disparities and cultural disconnection that have long plagued New Zealand's child welfare system.

Section 7AA mandated the Chief Executive of Oranga Tamariki to develop policies reducing disparities for Māori children, emphasizing mana tamaiti (dignity of Māori children), whakapapa (genealogy), and whanaungatanga (kinship responsibilities). It also required strategic partnerships with iwi and Māori organizations to ensure culturally appropriate care. So, for the first time in the state care and protection system, it provides a directive for the ministry to partner with Māori communities for the betterment of mokopuna. It legislates that the policies, practices, and services of the ministry have regard to the centrality of whakapapa and whanaungatanga for mokopuna, and to delegate some important decision making and supervision of children and young people to Māori and other community organisations. It requires the chief executive to seek out and respond to invitations for "strategic partnerships" with iwi and other Māori organisations, and to share information, power and resources with those partners to reduce the number of Māori kids in care.

Section 7AA took effect on 1 July 2019 after multiple reviews into the failures of the care and protection system, consultation between iwi and community leaders with Oranga Tamariki, and sustained political pressure from Māori committed to preventing harm and neglect both in, and outside of, state care.

## Best Interest of the Child Paramount

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<sup>6</sup> Fishwick, E. (2016). Elizabeth Stanley (2016) *The Road to Hell: State Violence against Children in Postwar New Zealand*. Auckland, NZ: Auckland University Press. *International Journal for Crime, Justice and Social Democracy*, 5(4), 157-159.

<https://doi.org/10.5204/ijcjsd.v5i4.362>

<sup>7</sup> As written about in this article: De Silva, T. (2023, August 8). The torture at Whakapakari. *The Spinoff*. <https://thespinoff.co.nz/the-quarter-million/09-08-2023/the-torture-at-whakapakari>

<sup>8</sup> <https://aucklanduniversitypress.co.nz/the-road-to-hell-state-violence-against-children-in-postwar-new-zealand/>

<sup>9</sup> Abuse in Care Royal Commission of Inquiry *Tāwharautia: Pūrongo o te Wā - Interim Report*, December 2020, accessed at <https://abuseincare.org.nz/our-progress/library/v/194/tawharautia-purongo-o-te-wa-interim-report>

<sup>10</sup> He Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry (Wai 2915,202) Accessed at: <https://ot.govt.nz/about-us/performance-and-monitoring/reviews-and-inquiries/he-paharakeke-he-rito-whakakikinga-wharuarua-waitangi-tribunal-inquiry-wai-2915/>; see also Expert Panel Final Report: Investing in New Zealand's Children and their Families (Ministry of Social Development, Wellington, December 2015). Accessed at: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/expert-panel-cyf/investing-in-children-report.pdf> Also refer to Westlaw commentary, *NTI Introduction to the Care and protection of Children*.

The paramount principle enshrined in section 4 of the OT Act, which prioritizes the welfare and interests of the child as the first and paramount consideration, remains unchanged. Section 4 explicitly states that in all matters relating to the administration or application of the Act, the well-being and best interests of the child or young person are the foremost concern. This principle is consistent with the Care of Children Act 2004, which governs private disputes relating to child care, ensuring that child safety is the primary objective.

The introduction of Section 7AA does not undermine this paramount principle. Instead, it complements it by requiring the Chief Executive to establish procedures and mechanisms to implement these principles effectively. This holistic approach promotes the well-being of tamariki Māori by integrating their cultural identity into the care and protection framework. Section 7AA thus creates practical measures to address the disproportionate number of Māori children in state care and formalizes reporting on Oranga Tamariki's progress.

This critical factor has been echoed by the Family Court in cases such as *NZ Police v GB*,<sup>11</sup> and the well-publicised case of *Moana*<sup>12</sup> and affirmed by the High Court in *McHugh*<sup>13</sup> and the case of *Moana* on appeal<sup>14</sup>. An analysis of the *Moana* case is set out below to clarify the impact of the introduction of section 7AA in case law and matters of section 78 orders and matters of guardianship.

### ***The Moana Case***<sup>15</sup>

This was a case in 2018 where Oranga Tamariki placed a Māori girl, referred to as "Moana" in the media, with Pākehā caregivers. In 2019, concerned that her cultural needs were unmet, Oranga Tamariki sought to place her with iwi caregivers also caring for her younger brother. Moana's Pākehā caregivers then applied for guardianship. The Chief Executive of Oranga Tamariki opposed the orders, favouring placement with whakapapa-connected caregivers. Judge Callinicos, however, awarded custody to the Pākehā caregivers, prioritising Moana's social, emotional, and psychological welfare over cultural considerations. He particularly noted that these provisions do not trump other key consideration and ultimately decided not to change Moana's caregiving arrangements. He confirmed her placement with them while granting additional guardianship and access rights to the iwi caregivers so that they could be involved in her care.

In his judgment, Judge Callinicos was highly critical of Oranga Tamariki, particularly for failing to identify a whakapapa placement for Moana from the outset and attempting to rectify this through a "reverse uplift." His decision attracted significant media attention and was appealed to the High Court on several grounds, including allegations that he had "failed to consider and/or misapplied the statutory cultural provisions of the OT Act, making the Family Court decision noncompliant with Māori tikanga and Treaty obligations."<sup>16</sup>

In May 2022, the High Court heard the appeal and Justice Cull released her decision in November 2022, dismissing the appeal.<sup>17</sup> Justice Cull found that Judge Callinicos did not err in applying the statutory principles of the OTA to the case facts; however, she acknowledged that his description of the legislative directives might have created a perception that the child's well-being and best interests must be assessed separately from the whānau or kinship group when views are in conflict. Justice Cull found that Judge Callinicos did not err in his application of the statutory principles of the OTA to the facts of this case; however, she acknowledged his description of the legislative directives in his judgment may have

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<sup>11</sup> *NZ Police v GB* FAM-2021-004-000342 [2022] NZFC 11766

<sup>12</sup> *Chief Executive of Oranga Tamariki v MQ* [2021] NZFC 9089

<sup>13</sup> *McHugh v McHugh* [2022] NZHC 1174

<sup>14</sup> *Moana's Mother v Smith & Chief Executive of Oranga Tamariki Ministry for Children & Taipa* [2022] NZHC 2934

<sup>15</sup> *Chief Executive of Oranga Tamariki v MQ* [2021] NZFC 9089

<sup>16</sup> *Moana's Mother v Smith & Chief Executive of Oranga Tamariki Ministry for Children & Taipa* [2022] NZHC 2934 at 19(1).

<sup>17</sup> *Moana's Mother v Smith & Chief Executive of Oranga Tamariki Ministry for Children & Taipa* [2022] NZHC 2934.

given rise to the potential perception that the well-being and best interests of the child must be assessed separately from the whānau or kinship group, where the views are in conflict.<sup>18</sup>

Justice Cull clarified that the best interests of the child are the paramount consideration and must be assessed holistically by applying the principles of sections 5 and 13 of the Oranga Tamariki Act. She confirmed that the Act provides a strong directive to maintain and strengthen the relationship between a Māori child and their kinship group whenever possible.<sup>19</sup>

However, Justice Cull emphasized that giving effect to this preference was not feasible in Moana's case due to specific circumstances: Moana was not placed with her kinship group initially, had lived with her current caregivers for over four years, and had formed strong attachments. Justice Cull concluded that it was not in Moana's best interests to be removed from her current caregivers and placed in whakapapa care,<sup>20</sup> and section 7AA is intended to and does ensure that this is not repeated. Additionally, the proposed whakapapa caregivers, the Taipas, recognised the importance of maintaining safe and nurturing attachments and did not seek a "reverse uplift."<sup>21</sup> All parties were open to developing a cooperative partnership agreement to maintain Moana's links with her whānau and culture. Justice Cull also noted the justified criticism of Oranga Tamariki's inadequate inquiries into Moana's kinship group,<sup>22</sup> and that Moana's situation has come about due to Oranga Tamariki's failure to identify a safe whakapapa placement for Moana at the earliest opportunity.<sup>23</sup>

So, while there are incidents of reverse uplifts such as the case in *Moana* that have raised concerns about the application of Section 7AA. These cases often reflect failures in the implementation of policies and practices rather than an inherent flaw in the OT Act.

### **Impact of 7AA in caselaw**

Although social workers can take actions and make recommendations regarding the care of children, the ultimate decision-makers for a child's care arrangements are often the courts. The courts listen to all parties directly, including the child if they are capable of expressing their wishes, typically through the Lawyer for Child. To accurately assess the impact of Section 7AA, it is essential to review court decisions.

In the *Moana* Family Court case, Judge Callinicos acknowledged that the 2019 amendments have "reframed and strengthened many cultural considerations", he was of the view that no particular principle has been "legislatively mandated to trump another" and, as a consequence, whakapapa and te ao Māori considerations should not be given priority over other principles.<sup>24</sup>

Justice Cull, in the *Moana* High Court decision, affirmed that the OT Act strongly directs that, whenever possible, the relationship between a Māori child and their kinship group should be maintained and strengthened.<sup>25</sup> Despite this, she found that the OTA does not mandate placing Moana with whakapapa caregivers as a matter of preference, given Moana's specific circumstances, including the significant time that had passed and her strong attachments to her current caregivers. Thus, the safety and well-being of a Māori child must be assessed through a te ao Māori lens, giving preference to kinship and

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<sup>18</sup> Ibid at 73.

<sup>19</sup> Ibid at 36.

<sup>20</sup> Ibid at 73 and 74

<sup>21</sup> Ibid at 131 and 135.

<sup>22</sup> Ibid at 65.

<sup>23</sup> Ibid at 75.

<sup>24</sup> *Chief Executive of Oranga Tamariki v MQ* [2021] NZFC 9089 at 57.

<sup>25</sup> *Moana's Mother v Smith & Chief Executive of Oranga Tamariki Ministry for Children & Taipa* [2022] NZHC 2934 at 68.

whānau connections. The ideal placement is within whānau, hapū, or iwi, provided that a safe, stable, and loving family environment can be ensured from the earliest opportunity.<sup>26</sup>

Justice Doogue in the *McHugh* case confirmed that the OT Act imposes a duty on Oranga Tamariki and the courts to diligently explore a child's whakapapa and strive to find a suitable whakapapa placement. Justice Doogue highlighted that Oranga Tamariki must "cast the net wide" to identify potential caregivers within the child's broader collective, ensuring efforts are made to support the child's long-term sense of identity and connection to their whakapapa.<sup>27</sup>

In the *Moana* High Court decision, the court emphasized the importance of maintaining and strengthening the relationship between a Māori child and their kinship group. Justice Cull affirmed that the OTA strongly directs that such relationships be prioritized whenever possible. However, she found that the act does not mandate a preference for whakapapa caregivers when specific circumstances, such as the child's strong attachments to current caregivers, are considered. This case illustrated that assessing a Māori child's safety and well-being through a te ao Māori lens is crucial, with preference given to kinship and whānau connections, provided a safe, stable, and loving environment can be ensured from the outset.<sup>28</sup>

The decisions in *Moana* and *McHugh* demonstrate that there is no inherent conflict between the paramountcy principle and te ao Māori principles. The OTA mandates a holistic approach to a child's well-being, which includes their cultural identity and connections, without compromising the child's best interests and safety. The courts are tasked with ensuring that all relevant cultural information is thoroughly considered, promoting a balanced and comprehensive approach to decision-making in the care and protection of tamariki Māori.

As can be seen from the High Court decisions, the introduction of s7AA has encouraged the courts to give deeper thought to the place of children within their whanau, hapu and iwi. In our view, this has resulted in a more nuanced decision making relating to the care of children, which has been overshadowed by one or two high profile cases.

In another case proposing a "reverse uplift" the Court was clear that a blood link was insufficient to override the wellbeing of the child who was well settled with non-Māori parents,<sup>29</sup> noting:

*Apart from the paramountcy of the welfare and interests of the child, all other objects and principles as set out in the Act must be weighed in the balance, one against the other.*

The change in the values and the role of tikanga is reflected in the High Court decision relating to whether a child in Oranga Tamariki's care was a "Māori child" pursuant to s7AA, when her parents had not identified her as such but where she had whakapapa to Ngātiwai. OT determined that she was a Māori child, which had triggered the placement policy created by OT as a result of the introduction of s7AA.<sup>30</sup> The policy provided that preference would be given for Māori children, to a placement with whanau, hapu or iwi. That policy would, of course, be subject to the paramountcy principle.

The value shift is not just evident in the judiciary. Family lawyers have also adopted a different way of working as a result of s7AA.<sup>31</sup> A paper presented to the Family Law Conference identified "honouring

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<sup>26</sup> Ibid at 55.

<sup>27</sup> *McHugh v McHugh* [2022] NZHC 1174 at 113 and 137.

<sup>28</sup> Chief Executive of Oranga Tamariki v MQ [2021] NZFC 9089 at 242.

<sup>29</sup> *B v Chief Executive of Oranga Tamariki* [2008] NZFLR 1012, although this decision predates s7AA. See also Chief Executive of Oranga Tamariki v ZM [2020] NZFC 2 (2020) which arrived at the same conclusion after the introduction of s7AA.

<sup>30</sup> *C's Father v Chief Executive of Oranga Tamariki* [2023] NZHC 184. The Court noted that the placement policy referred to had replaced an earlier policy which had been criticised in *He Paharakeke* at [5.6.7] and [5.7].

<sup>31</sup> The implications of s7AA: Making Partnerships Work: A Pakeha Perspective, Atwool, N. Paper delivered to the Family Law Conference 2021.

s7AA will involve considering a wider range of options... Intensive work to facilitate whanau healing and recovery has the potential...to create safe environments for children and a viable alternative to child removal...Iwi and Kaupapa Māori organisation are already mobilising to create these opportunities.”

Section 7AA does not facilitate "reverse uplifts." This provision is governed by the overarching principles and purpose of the Oranga Tamariki Act, particularly the paramount importance of the child's wellbeing. Rather, Section 7AA establishes a foundation for strategic and balanced partnerships between Iwi and the Crown, marking a significant departure from the pre-Section 7AA era. Prior to its enactment, tikanga-based approaches were considered optional and were often reflected in imbalanced and imperfect contractual relationships. There was no legislative mandate to practically empower iwi with a substantial and equal role in the care of tamariki Māori.

### **Integration of Section 7AA and Its Positive Impacts on Oranga Tamariki**

It also appears that Section 7AA was pivotal in shaping the roles within Oranga Tamariki, notably leading to the creation of positions such as Kairaranga ā-whānau, which translates to “a person who is a weaver of connection.” This role underscores the commitment to embedding te ao Māori principles within the organization. However, the continuation of such roles remains uncertain if Section 7AA were to be repealed.<sup>32</sup>

Section 7AA has significantly enhanced Māori participation in decision-making processes concerning child welfare. This legislative mandate has facilitated culturally appropriate practices and interventions, ensuring that the cultural needs of tamariki Māori are both respected and prioritised. An example of this can be seen with OT’s approach to quality assurance to meet its obligation under section 7AA (2)(a) and (b) of the OT Act and standard Treaty of Waitangi principles (applicable to all Crown agencies) in the development of their policies, practices and services to improve the effectiveness of policies, practices and services for the majority of those impacted by the Ministry, which are tamariki Māori, their whānau, hapū and iwi.<sup>33</sup> The framework established by Section 7AA has also enabled the development of strategic partnerships with iwi and Māori organizations, promoting culturally appropriate support and interventions, thereby enhancing the overall effectiveness of Oranga Tamariki's efforts. This collaboration has been instrumental in building trust and cooperation between Oranga Tamariki and Māori communities, essential for achieving sustainable, long-term improvements in child welfare outcomes.<sup>34</sup>

Moreover, Section 7AA's emphasis on reducing disparities has led to more targeted and effective policies aimed at addressing the unique challenges faced by tamariki Māori. Data-driven approaches have identified areas where Māori children are disproportionately affected, allowing for precise interventions. This focus on measurable outcomes has provided a framework for accountability and progress, ensuring continuous assessment and improvement of efforts to reduce disparities.<sup>35</sup> Strategic partnerships have enabled high-level engagement with Māori, fostering trust and cooperation and allowing for the identification of whānau placements who might not trust Oranga Tamariki but would engage with iwi services.<sup>36</sup>

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<sup>32</sup> <https://practice.orangatamariki.govt.nz/core-practice/working-with-maori/how-to-work-effectively-with-maori/kairaranga-a-whanau/>

<sup>33</sup> Oranga Tamariki Section 7AA Quality Assurance Standards, accessed at: <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Section-7AA/Section-7AA-Quality-Assurance-Standards.pdf>

<sup>34</sup> Chittock, N. (2024b, February 1). Oranga Tamariki insists it has improved since damning data was collected. RNZ. <https://www.rnz.co.nz/news/political/508174/oranga-tamariki-insists-it-has-improved-since-damning-data-was-collected>

<sup>35</sup> Oranga Tamariki Section 7AA Report 2023, accessed at: [https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Section-7AA/7AA-Web\\_V5.pdf](https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Section-7AA/7AA-Web_V5.pdf)

<sup>36</sup> Oranga Tamariki section 7AA report: Improving outcomes for tamariki Māori, their whānau, hapū and iwi. Accessed at: <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Section-7AA/S7AA-Improving-outcomes-for-tamariki-Maori.pdf>

Section 7AA has had positive impacts on the involvement of Māori in decision-making processes related to child welfare. The mandate for greater Māori participation has led to more culturally appropriate practices and interventions, ensuring that the cultural needs of tamariki Māori are respected and prioritized. For example the Oranga Tamariki and Ngāti Kahungunu Iwi Incorporated programme known as Te Ara Mātua, a bespoke iwi-led partnership between Oranga Tamariki and the iwi, which will see iwi and local organisations more involved in decision-making from the outset when whānau require intervention and support. This was following Oranga Tamariki’s controversial uplift of a Māori baby from Hawke’s Bay Hospital in 2019 which led to two commission of inquiries, and had evolved into a formal agreement that will see the iwi involved from the outset when intervention and support for children and whānau is required.<sup>37</sup> This has fostered a sense of ownership and responsibility within Māori communities, contributing to better outcomes for Māori children in care.

Strategic partnerships with iwi and Māori organizations have improved under the framework provided by Section 7AA.<sup>38</sup> These partnerships have enabled Oranga Tamariki to draw on the expertise and resources of Māori organizations, leading to more culturally appropriate and effective interventions. The collaborative approach has also built trust and cooperation between Oranga Tamariki and Māori communities, which helps in achieving sustainable, long-term improvements in child welfare outcomes.<sup>39</sup> Waitomo Papakāinga, the first non-iwi Māori organization to sign an agreement with Oranga Tamariki, after the first year of partnership had successfully prevented 47 children from entering state care by placing them with relatives. The success of Waitomo Papakāinga is attributed to strong community relationships and extensive local knowledge, fostering wider whānau involvement and accreditation as caregivers.<sup>40</sup>

At a practical level, these changes can have real and positive benefits. For example, the strategic partnership agreements place some iwi in equitable partnerships with Oranga Tamariki, rather than as contractors providing services as has been the case in the past. Iwi services are able to access caregivers and whānau placements who may not have sufficient trust in Oranga Tamariki but who will engage with iwi services. Similarly, some people will feel more comfortable reporting concerns or instances of abuse to iwi services, rather than Oranga Tamariki, as a result of historic distrust or their own negative experiences of the care and protection / youth justice system.

There has also been a notable reduction in the number of tamariki Māori entering state care since the introduction of Section 7AA.<sup>41</sup> This reduction can be attributed to the increased use of culturally appropriate practices and interventions that focus on keeping children within their whānau and broader

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<sup>37</sup> Stuff. (n.d.). Stuff. <https://www.stuff.co.nz/national/hawkes-bay/131862342/new-iwiled-plan-sparked-by-oranga-tamariki-baby-uplift-should-see-fewer-children-in-care>

<sup>38</sup>Oranga Tamariki partnerships grew and expanded in the wake of section 7AA, agreements and partnerships entered into include *Eastern Bay of Plenty Iwi Provider Alliance partnership*. (2023, August 1); *Māori Women’s Welfare League partnership*. (2023, August 1); *Ngāti Kahungunu partnership*. (2023, October 11); *Ngāpuhi partnership*. (2023, November 14); *Ngāti Toa Rangatira & Te Āti Awa partnership*. (2023b, October 26); *Te Kahu Oranga Whānau partnership*. (2023, October 11); *Tūhoe partnership*. (2023, August 1); and *Waikato-Tainui partnership*. (2023, August 1).

<sup>39</sup> *Strategic partnerships with Māori*. (2023, August 1). <https://www.orangatamariki.govt.nz/about-us/our-work/strategic-partnerships-with-maori/> and see also: Oranga Tamariki Regulatory Impact Statement, accessed at:

<https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/7AA-repeal/Regulatory-Impact-Statement-Repeal-of-section-7AA.pdf> also see press release: *First community-led Oranga Tamariki partnership announced*. (2022, August 17). The Beehive. <https://www.beehive.govt.nz/release/first-community-led-oranga-tamariki-partnership-announced>

<sup>40</sup> Johnsen, M. (2019, July 2). Social service finds whānau to take children at risk of state care. RNZ. <https://www.rnz.co.nz/news/te-manu-korihi/393514/social-service-finds-whanau-to-take-children-at-risk-of-state-care>

<sup>41</sup> *Less children taken into care under partnership*. (2024, February 21). Oranga Tamariki — Ministry for Children. <https://www.orangatamariki.govt.nz/about-us/news/less-children-taken-into-oranga-tamariki-under-te-whanau-o-waipareira-partnership/>

Māori communities. This approach not only benefits the children by keeping them connected to their cultural roots but also strengthens the communities by preserving their social and familial structures.<sup>42</sup>

In addition to these practical improvements, Section 7AA has had a symbolic impact by affirming the importance of Te Tiriti o Waitangi in New Zealand's child protection and care system. By embedding Treaty principles into the legislative framework, Section 7AA has reinforced the commitment to upholding the rights and interests of Māori children. This legislative affirmation has been crucial in addressing the historical injustices and systemic biases that have long affected Māori children in state care.

Moreover, the requirement for the Chief Executive to report annually on the measures taken to carry out the duties under Section 7AA has ensured transparency and accountability. This reporting obligation has provided insights into the progress made and the challenges encountered in implementing Section 7AA. It has also offered an opportunity for improvement by highlighting areas where further efforts are needed to reduce disparities and enhance the well-being of tamariki Māori.<sup>43</sup>

Section 7AA has positively impacted the broader Māori community by strengthening cultural connections and supporting tamariki Māori, enhancing overall community resilience. This provision has transformed New Zealand's child protection system to be more inclusive and responsive to Māori needs, focusing on cultural identity, strategic partnerships, reducing disparities, and upholding Treaty principles. Continued implementation and reinforcement of Section 7AA are crucial for sustaining and expanding these positive effects.

## Safety of Children in Care

Safety is undeniably the paramount concern when it comes to child welfare. Ensuring that children are placed in secure, stable, and nurturing environments must always take precedence in ensuring that every decision made serves the best interests and well-being of the child above all else. Therefore, the concerns noted in Aroturuki Tamariki - Independent Children's Monitor's latest Experiences in Care report, released in February 2024, where it found that 40 percent of children in Oranga Tamariki's care were not seeing a social worker as often as required<sup>44</sup> is an issue of safety. Aroturuki Tamariki had noted in its report that it expected more substantial improvements by this third year of reporting. In response, the Oranga Tamariki's chief social worker, Peter Whitcombe, acknowledged the need for more consistent visits and better-quality engagement, indicating systemic challenges that Oranga Tamariki must address in regard to safety and child care.<sup>45</sup> Additionally, the report highlighted a high turnover rate among social workers, with some children experiencing up to 10 different social workers during their time in care. This inconsistency undermines the stability and trust necessary for effective child care, emphasising the need for systemic improvements within Oranga Tamariki's staffing and management practices. The report also highlighted the *lack* of cultural competency from some social workers, and some whānau not feeling heard. In our view, this reflects the ongoing need for section 7AA and similar provisions, not the repeal of them.

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<sup>42</sup> Oranga Tamariki reports that since 2018, there has been a notable reduction in the overall use of section 78 orders, with the most pronounced decrease observed among tamariki. Despite this progress, tamariki remain over-represented, making up 62 percent of section 78 orders in FY2023, down from 70 percent in FY2018, a change attributed to practice shifts, a new practice framework, and partnerships with community and iwi organisations: refer to Oranga Tamariki section 7AA report 2023 p. 7. Accessed at: [https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Section-7AA/7AA-Web\\_V5.pdf](https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Section-7AA/7AA-Web_V5.pdf)

<sup>43</sup> Section 7AA Report. (2023, August 18). Oranga Tamariki — Ministry for Children. <https://www.orangatamariki.govt.nz/about-us/performance-and-monitoring/section-7aa/section-7aa-report/>

<sup>44</sup> Independent Children's Monitor report: *Experiences of Care in Aotearoa 2022/2023*, Published Feb 2024. Accessed at: <https://aroturuki.govt.nz/assets/Reports/EOCR2223/EOCR-2022-23.pdf>

<sup>45</sup> Chittock, N. (2024, February 1). Oranga Tamariki insists it has improved since damning data was collected. *RNZ*. <https://www.rnz.co.nz/news/political/508174/oranga-tamariki-insists-it-has-improved-since-damning-data-was-collected>

In OT's own report Safety of Children in Care report reveals that between July 2022 and June 2023,<sup>46</sup> 519 children in care experienced incidents of harm, with a total of 895 recorded findings. A significant portion of the reported increase in harm relates to older children, predominately in those residing in residential facilities where peer-to-peer harm is more prevalent as well as abuse and neglect by residential staff. This issue was highlighted in the rapid assessment of Residences led by former Police Commissioner Mike Bush which has been a critical component in identifying and addressing systemic issues within Oranga Tamariki's care facilities.<sup>47</sup> The assessment underscored the urgent need for enhanced training, supervision, and support for staff to reduce harm in residential environments. The report also notes that improved reporting practices have contributed to the rise in recorded harm incidents. There is now a greater emphasis on formally documenting every incident of harm, including those caused by peers, which was not consistently reported in the past.

These findings from these reports on safety of children in care indicate that the systemic challenges and incidents of harm within the care system are not directly linked to the cultural obligations mandated by Section 7AA. Instead, the issues appear to stem from broader systemic problems within the care framework and operational practices, necessitating comprehensive and thoughtful solutions beyond the repeal of this specific section. Furthermore, the authors of this submission have not seen any data underpinning the concerns outlined in the Bill. It is submitted that further research should be conducted on the impact of Section 7AA before making a case for its repeal.

Furthermore, in the OT report release recently in April 2024 titled *Analysis Of The Decrease Of Reports Of Concern*, it showed that despite an overall increase in the children's population, Reports of Concern decreased across all age groups, with Pacific tamariki experiencing the largest proportional drop and tamariki Māori showing the largest overall decrease.<sup>48</sup> Such positive impact under the current or existing framework is evident of the OT achievements, it would be a matter of assessment to identify whether this impact is due to section 7AA.

## **Risks Posed by the Removal of Section 7AA**

The removal of Section 7AA poses a significant risk of reverting to the pre-2019 era when the cultural needs and rights of tamariki Māori were frequently overlooked, resulting in adverse outcomes for Māori children and their families. Repealing this section could undermine the trust built between Oranga Tamariki and Māori communities, jeopardizing the progress made in fostering collaborative relationships. Although current commitments to maintain relationships with Māori and iwi are commendable,<sup>49</sup> the absence of a legislative obligation like Section 7AA could lead future CEOs of Oranga Tamariki to deprioritize these commitments, potentially undermining adherence to the principles of Te Tiriti o Waitangi and reversing the gains achieved for tamariki Māori.

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<sup>46</sup> Oranga Tamariki, Safety of Children in Care Annual Report 2022/2023. Accessed at: [https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/safety-of-children-in-care/2022-23/J000093\\_SOCIC-Report-2023\\_v4.pdf](https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/safety-of-children-in-care/2022-23/J000093_SOCIC-Report-2023_v4.pdf)

<sup>47</sup> Oranga Tamariki report, A rapid review of Oranga Tamariki Youth Justice and Care and Protection residences <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Reviews-and-Inquiries/Rapid-residence-review/Secure-residence-review.pdf>

<sup>48</sup> *Analysis of the decrease of Reports of Concern*. (2024, April 29). Oranga Tamariki — Ministry for Children.

<https://www.orangatamariki.govt.nz/about-us/research/our-research/analysis-of-the-decrease-of-reports-of-concern/>

<sup>49</sup> Cheng, D. (2024, May 20). Oranga Tamariki say repeal of section 7AA could cripple trust built up with Māori communities, put vulnerable children at greater risk. *NZ Herald*. [https://www.nzherald.co.nz/nz/politics/lack-of-evidence-the-damning-review-of-a-law-change-that-could-worsen-the-safety-stability-and-well-being-of-our-children/4XNLVU7FZBBLPDEMS2Y2M6RIV4/#google\\_vignette](https://www.nzherald.co.nz/nz/politics/lack-of-evidence-the-damning-review-of-a-law-change-that-could-worsen-the-safety-stability-and-well-being-of-our-children/4XNLVU7FZBBLPDEMS2Y2M6RIV4/#google_vignette); and also see The Platform NZ. (2024, May 15). *Karen Chhour on Removing Section 7AA from the Oranga Tamariki Act* [Video]. YouTube. <https://www.youtube.com/watch?v=J2bNECfTSnk>

Oranga Tamariki officials have expressed concerns in a regulatory impact statement (RIS), more notably at paragraph [44] page 24,<sup>50</sup> it stated that:

*Repealing section 7AA is unlikely to contribute to improvements to safety and stability. However, a repeal of section 7AA may undo some of the progress that Oranga Tamariki has made in building trust, relationships, and accountability in the communities we work with. This may worsen the safety, stability, and well-being of our children with the greatest needs. As noted in the constraints section, there may be other legislative options or non-regulatory options which could better achieve the policy objectives. However, due to the constraints on scoping and timeframes for this RIS, we have not assessed these here.*

Section 7AA represents a critical compromise, reflecting recommendations from numerous reviews since 2016 and longstanding advocacy by Māori for systemic reform: that the childcare and protection system be radically reformed, with power, expertise, and resources invested into both reactive and proactive community (including Māori) approaches to safety and wellbeing of mokopuna and whānau. The section embodies a partnership with a system that has historically harmed generations of mokopuna Māori. Its removal could damage relationships between Oranga Tamariki and Māori, as evidenced by the urgent Waitangi Tribunal inquiry, the launch of the Hands Off Our Babies petition by Te Pāti Māori, and opposition from the National Iwi Chairs Forum and the Iwi Leaders Group<sup>51</sup>. Repealing Section 7AA would not only compromise current efforts but also hinder reform.

The repeal of Section 7AA would remove the legislative foundation for strategic partnerships between Iwi and the Crown. While these agreements might persist on a policy basis, their future would become uncertain, being vulnerable to policy shifts, political changes, and resourcing constraints, rather than being the embedded, future-focused agreements envisaged by Section 7AA. This instability could detrimentally impact the care and wellbeing of tamariki and rangatahi. We align with Oranga Tamariki's perspective, as outlined in the Regulatory Impact Statement at paragraph [44] on page 24. Specifically, repealing Section 7AA is unlikely to enhance safety and stability; rather, it may undermine progress in trust, relationships, and accountability within Māori communities, potentially worsening the well-being of children with the greatest needs, particularly Māori tamariki who are disproportionately represented. Given these concerns, we strongly advocate for maintaining Section 7AA to continue fostering essential reforms in child welfare and protection.

### **Learning from International Approaches: Importance of Section 7AA in New Zealand's Framework**

The repeal of Section 7AA would significantly hinder New Zealand's alignment with international best practices in child welfare systems, as seen in countries like Australia, Canada, and the United States. These nations have enacted robust legislation to address the disproportionate removal of Indigenous children into state care, emphasizing the preservation of cultural heritage and familial connections. For example, the Indian Child Welfare Act (ICWA) in the USA, the First Nations, Inuit and Métis Children, Youth and Families Act (Bill C-92) in Canada, and the Aboriginal and Torres Strait Islander Child Placement Principle in Australia all serve as benchmarks for effective Indigenous child welfare policies. These frameworks recognize the inherent authority of Indigenous communities over child welfare matters, ensuring that children are raised within their cultural context whenever possible. The success and challenges of these international approaches highlight the critical importance of maintaining Section 7AA to support tamariki Māori within their cultural and familial settings.

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<sup>50</sup> Oranga Tamariki: Regulatory Impact Statement Repeal of Section 7AA of the Oranga Tamariki Act 1989 at [44] p.24. Accessed at: <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/7AA-repeal/Regulatory-Impact-Statement-Repeal-of-section-7AA.pdf>

<sup>51</sup> Paewai, P. (2024, May 18). Iwi Leaders Group united against Oranga Tamariki scrapping Treaty obligations. *RNZ*. <https://www.rnz.co.nz/news/political/517191/iwi-leaders-group-united-against-oranga-tamariki-scrapping-treaty-obligations>

Section 7AA has been instrumental in promoting the involvement of Māori in decision-making processes related to child welfare, leading to more culturally appropriate practices and interventions. This aligns with international standards that prioritize the cultural identity and rights of Indigenous children. For instance, the ICWA mandates active efforts to prevent the removal of Indian children from their families and requires that placements prioritize kinship and tribal connections. Similarly, Canada's Bill C-92 emphasizes the importance of preserving the cultural ties of Indigenous children and recognizes Indigenous jurisdiction over child welfare. Maintaining Section 7AA ensures that New Zealand continues to foster strategic partnerships with iwi and Māori organizations, thereby addressing historical injustices faced by Māori children in state care, promoting their well-being, and strengthening their cultural identity. This approach is essential for achieving sustainable, long-term improvements in child welfare outcomes and ensuring New Zealand's framework remains responsive to the needs of tamariki Māori.

New Zealand must remain vigilant in its child welfare policies to avoid creating a lost generation, similar to Australia's experience with the Stolen Generations. The forcible removal of Aboriginal and Torres Strait Islander children from their families and communities during this period resulted in profound and lasting trauma. This historical context underscores the importance of principles like the Aboriginal and Torres Strait Islander Child Placement Principle, which emphasizes the need to keep Indigenous children connected to their family, community, and culture. By maintaining Section 7AA, New Zealand can ensure that tamariki Māori are not similarly displaced from their cultural roots, preventing severe consequences of cultural dislocation and identity loss. Learning from Australia's experience is crucial to safeguarding the well-being of tamariki Māori and upholding their rights to cultural and familial continuity, thereby promoting a more just and inclusive child welfare system.

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- John Hickey
- Moira McFarland

## **CONCLUSION**

Thank you for the opportunity to make submissions in respect of the Oranga Tamariki Repeal of Section 7AA Bill. We are available to discuss the submissions via Teams if required. Should clarification be required with regards to any matters raised, please contact Moira McFarland, the TLA Committee Executive at [moira.mcfarland@thelawassociation.nz](mailto:moira.mcfarland@thelawassociation.nz), if you have any questions.

Ngā mihi



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