

3 July 2024

Submission on Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

To the Social Services and Community Committee,

Te Hiringa Mahara, the Mental Health and Wellbeing Commission (the Commission), welcomes the opportunity to make a submission on the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill.

The Commission was established as an independent Crown entity following the *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*. Our role is to:

- Assess and report on the mental health and wellbeing of people in New Zealand, and the factors and approaches that affect them.
- Monitor mental health and addiction services and to advocate improvements to those services.
- Advocate for the collective interests of people who experience mental distress or addiction (or both), and the persons (including family and whānau) who support them.

We have specific obligations in our Act to have particular regard to the experience of, and outcomes for, Māori, young people, and for children in State care. These roles and responsibilities underpin our submission on this Bill.

The Commission would appreciate the opportunity to share these views with the committee in person.

Our position

The Commission supports approaches that prioritise the safety and wellbeing of tamariki and rangatahi Māori – this includes the wellbeing-supporting and protective factors such as having connection to culture, whānau, and whakapapa.

Alienation and discrimination are a recognised cause of harm for many Māori, and upholding obligations under te Tiriti o Waitangi, particularly through protecting Tino Rangatiratanga, will help address those harms.

Engaging with language, culture and whakapapa are integral to wellbeing for many Māori and help support resilience. By limiting the ability for iwi and Māori organisations to engage with tamariki and rangatahi in state care, the Bill can be expected to limit those young peoples' access to key contributors to their wellbeing and factors that support their mental health. In this way, repealing 7AA can be expected to have impact on the mental health and wellbeing of some of the most vulnerable young people in Aotearoa, and their whānau.

The Commission strongly supports approaches that prioritise safety and wellbeing of tamariki Māori and advises that the Committee should not recommend this Bill proceeds further through the House. Instead, the Committee should recommend the House awaits further information and advice which is due to be presented to the House later in this parliamentary term and seek to include any changes that will support safety and wellbeing.

Discussion

Connection to culture, whānau and whakapapa is critical to tamariki Māori wellbeing

We agree with the Bill's premise that the safety and wellbeing of children in care arrangements should be paramount. However, the wellbeing part of that is, in part, supported by connection to culture, whānau, and whakapapa. Removing those elements from decision-making will impact the wellbeing of tamariki and rangatahi Māori, who are overrepresented in the state care system.

The work of the Commission is guided by our He Ara Oranga wellbeing outcomes framework. This framework describes what is important for mental health and wellbeing for people in Aotearoa, through both a te Ao Māori and shared perspective. What people told us, in developing the framework, is that key parts of wellbeing for many Māori include being able to express self-determination; being able to engage with Māori language and culture; being part of flourishing families and whakapapa; and seeing that connection to whakapapa and whānau is protected and strengthened.

Similarly, our recent work on barriers to wellbeing for rangatahi and young people highlighted that, amongst other factors, connection to whānau and culture develops cultural resilience, which is integral to wellbeing and needs to be supported and fostered.

In seeking to “focus on the safety and well-being” of Māori children – who are disproportionately represented in the Oranga Tamariki System – the Bill needs to have regard for the protective factor of connection to culture, whānau, and whakapapa. The Bill, and through it Oranga Tamariki, should seek constructive ways to uphold the mana and whakapapa of Māori children and young persons, and the whanaungatanga responsibilities of their whānau, hapū, and iwi.

The Bill may not achieve the aims sought

The stated purpose 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”, in the context of “concerns [that Oranga Tamariki] has moved tamariki Māori from stable long-term care arrangements and placed them with whānau, hapū, and iwi groups to which they whakapapa”, and “anecdotal concerns [...] 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.”

However, repealing section 7AA of the Oranga Tamariki Act 1989 will not address these anecdotal concerns. As the Minister for Children notes in her Cabinet paper for this Bill, and as she has been advised through both the Regulatory Impact Statement (RIS) prepared by Oranga Tamariki, and the departmental disclosure statement on the Bill, “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.”

Based on the available evidence, repealing 7AA of the Act may not achieve the purpose of the Bill. However, part 7AA of the Act includes 15 clauses and subclauses, covering a range of duties related to working with iwi and Māori organisations and reporting on that work. Only one subclause – 7AA(2)(b) – relates to the matter outlined in the purpose of the Bill. Repealing 7AA will further undermine other work not related to the stated purpose of the Bill.

Critical relationships with Māori may be undermined in repealing 7AA

Repealing the rest of 7AA is likely to undermine the ability of iwi and Māori organisations to work with Oranga Tamariki and identify innovative ways to support some of the most vulnerable children in Aotearoa.

As outlined by the Waitangi Tribunal, in its WAI3350 Urgent Inquiry Report, “The evidence now before us indicates that the relationships established under section 7AA have played an important role in strengthening trust and relationships between Oranga Tamariki and Māori. Officials go so far as to say the relationships established under section 7AA have been pivotal.” This trust is necessary if Oranga Tamariki, and other parts of government such as in Health and Education, are to be able to reach and support vulnerable young people and their whānau. Without trust and relationships, more young people will go without support, and will bear the mental health and wellbeing impacts of those decisions.

We share the Waitangi Tribunal’s concern about “officials’ assessment that, without replacing the section 7AA accountability and reporting mechanisms, work to reduce inequities may slow, which could have material impact on the safety, stability, rights, needs, and long-term wellbeing of the children with whom the department interacts.”

The Crown’s ability to uphold its obligations may also be undermined in repealing 7AA

In our 2022 submission on the Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill, put forward by a Minister in the previous Government, we called for greater partnership to uphold the Crown’s obligations and improve outcomes for tamariki, rangatahi, and whānau. This current Bill moves in the wrong direction. As described by the Waitangi Tribunal, “a key problem we see with the government’s decision to repeal section 7AA is that it has come about without proper regard to its obligations to Māori under the Treaty of Waitangi.”

The repeal is also not consistent with the United Nations Convention on the Rights of the Child (UNCROC). The Bill’s departmental disclosure statement and RIS show that “a full repeal would contravene UNCROC Articles 30 (Indigenous and minority rights) and 5 (Respect to parent’s rights, extended family, community or caregivers).”

As such, the Bill should not progress until Te Tiriti o Waitangi and UNCROC implications have been duly considered and the impacts mitigated.

Monitoring impacts of the proposed repeal will ensure tracking of wellbeing outcomes for tamariki Māori

Under section 448B of the Act, the Minister must report to Parliament every three years on the fitness of, and whether amendments are needed to, existing legislation, government policy, and other arrangements for those carrying out functions under this Act. The next iteration of that report is due by July 2025, just seven months after this Committee is due to provide its report on the Bill.

That periodic review provides an opportunity to appropriately consider both the impacts of the proposed repeal, and the policy options available to ensure that it achieves the aims of the Government, without the unintended negative consequences for mental health, wellbeing, and Te Tiriti o Waitangi and international obligations of the Crown.

In the meantime, the Minister responsible can use her existing levers to set her expectation of the departments and agencies for which she is Minister.

Recommendation

The Commission recommends that the Committee make it clear that this Bill should not be progressed further through the House. Instead, the House should await the advice of the Minister for Children under section 448B of the Act.

Based on the available evidence, the Commission does not see a justification for repealing 7AA of the Act. However, if that course of action is still to go ahead, any repeal of 7AA should not proceed without also replacing the relevant sections of the Act, recognising and addressing Te Tiriti o Waitangi and UNCROC implications, and ensuring that the amended Act supports wellbeing by recognising and upholding the mana and whakapapa of Māori children and young persons, and the views and responsibilities of whānau, hapū, and iwi.