

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.

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, Oranga Tamariki, March 2024. This impact analysis will be made available on:</i></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?
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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
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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:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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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
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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

4.8. Does this Bill create or amend any other powers to make delegated legislation?

NO

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