

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

To Hon Karen Chhour, Minister for Children			
Date	18 April 2024	Deadline	23 April 2024
Briefing number	B-0140	Priority	High
Key contact	Phil Grady, Deputy Chief Executive, System Leadership	Contact number	9(2)(g)(ii)
Security	Sensitive		

Purpose

This briefing provides key information regarding the draft Cabinet paper that seeks to introduce a Bill to the House: Oranga Tamariki (Repeal of Section 7AA) Amendment Bill.

Executive Summary

As agreed by Cabinet on 2 April 2024, we have prepared a draft Cabinet paper seeking approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill to the House.

The Ministry of Justice is currently vetting the Bill to assess compliance with the New Zealand Bill of Rights Act 1990 (NZBORA). We are also awaiting feedback from the Treaty Provisions Oversight Group. Once the feedback has been received, we will update the Cabinet paper accordingly.

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

Following your review of the paper and consultation with your colleagues, the Cabinet paper should be lodged with the Cabinet Office by 10am on 2 May 2024 in order to be considered by the Legislation Cabinet Committee on 9 May 2024.

Recommendations

It is recommended that you:

Note the attached draft Cabinet paper seeking approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill has been provided for your consideration.

Note we consider there is likely to be strong reaction from Māori, care and protection partners, and social workers to the repeal of section 7AA.

Agree to circulate the attached Cabinet paper seeking approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill for Ministerial consultation.

YES / NO

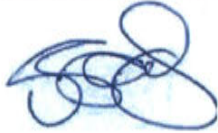
Note that the final Cabinet Paper will need to be lodged with the Cabinet Office by 10am on 2 May 2024 in order to be considered at the Cabinet Legislation Committee on 9 May 2024.

Sign-off

Oranga Tamariki

Sign-off

Minister for Children



Phil Grady
Deputy Chief Executive, System Leadership
Date signed: 18 April 2024



Hon Karen Chhour
Minister for Children
Date signed: 23/4/24

Minister comments

Satisfaction

Please select your level of satisfaction with this briefing

Outstanding

Good

Acceptable

Poor

Unacceptable

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

Purpose

- 1 This briefing provides key information regarding the draft Cabinet paper [Appendix One] that seeks Cabinet approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill). The draft Bill has been provided as Appendix Two.
- 2 Cabinet agreed on 2 April 2024 [CAB-24-MIN-0107], to repeal section 7AA from the Oranga Tamariki Act 1989 (the Act), reflecting the Coalition Agreement between the National Party and the ACT Party. Following Cabinet's decision, we have worked with the Parliamentary Counsel Office to draft the proposed Bill, and to draft the attached Cabinet paper for your consideration.
- 3 Once you have reviewed the Cabinet paper, and following any changes you may request, your office should undertake consultation with your ministerial colleagues. Following ministerial consultation, the paper will be finalised and lodged for consideration by the Cabinet Legislation Committee. Further guidance on this process has been provided below.

The process for Ministerial consultation, lodgement of the Cabinet paper and introducing the Bill

- 4 Once you have considered the Cabinet paper, your office should undertake consultation with your ministerial colleagues. The standard timeframe for ministerial consultation is two weeks. However, if you wish for the Bill to be considered by the Cabinet Legislation Committee on 9 May 2024, this consultation will need to be shortened to one week. You may wish to undertake Ministerial consultation from the 24 to 29 April 2024 to ensure the paper can be lodged on time.
- 5 The Cabinet Legislation Committee will examine the Bill to ensure that its content is consistent with Cabinet's policy decisions, that the relevant requirements of the Cabinet Manual have been satisfied and approve the Bill for introduction to the House. Cabinet will then be asked to confirm this decision.
- 6 Once the Bill has been approved for introduction, it will be set down for its First Reading. If the Bill passes its First Reading, it will then be referred to a select committee¹ for consideration. Officials will prepare material to support you through the Introduction of the Bill, its First Reading, and an initial briefing for the Select Committee.

There are key aspects of the Cabinet paper that you need to be aware of

- 7 The Independent Children's Monitor was consulted on the wording of the Bill. This is because consequential amendments have been made to the Oversight of Oranga Tamariki System Act 2022 and the Oversight of Oranga Tamariki System Regulations 2023 to reflect the repeal of section 7AA of the Act. We want to draw your attention to this, as the Independent Children's Monitor was not previously consulted on the Bill.

¹ The recommendation will be to refer this Bill to the Social Services and Community Committee

- 8 As per Cabinet requirements, the Treaty Provisions Oversight Group (TPOG) was asked for feedback on the repeal of the Treaty of Waitangi provisions included in section 7AA. We are awaiting the feedback from TPOG, and once received, we will incorporate it into the Cabinet paper.
- 9 We are also awaiting the outcome from vetting of the Bill for compliance with the New Zealand Bill of Rights Act 1990. The Cabinet paper will be amended following any advice from the Ministry of Justice regarding this.

We anticipate the repeal of section 7AA will be strongly contested

- 10 We expect strong reactions to the repeal of section 7AA 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.
- 11 You will be aware that the Waitangi Tribunal agreed to hear a claim on the repeal of section 7AA under urgency. A hearing took place on 12 April 2024 and the process is ongoing. Officials will provide you with updates as the claim progresses. The repeal of section 7AA and the ongoing Waitangi Tribunal claim has already been reflected in the media and it is likely that the repeal of section 7AA will continue to be heavily scrutinised.

Next steps

- 12 Further information on the Cabinet paper, lodgement process and the process to introduce a Bill into the House can be provided, if required.
- 13 Once the Bill is introduced, officials will provide materials to support you through the subsequent House stages. Officials will also draft talking points to assist you with your discussion with the Cabinet Legislation Committee.

Appendices

- 14 All appendices referenced in this paper are outlined below:
 - Appendix One – draft LEG Cabinet paper on the repeal of section 7AA
 - Appendix Two – draft Oranga Tamariki (Repeal of Section 7AA) Amendment Bill



Cabinet paper: Oranga Tamariki (Repeal of section 7AA) Amendment Bill: following Ministerial consultation

To Hon Karen Chhour, Minister for Children			
Date	29 April 2024	Deadline	1 May 2024
Briefing number	B-0153	Priority	High
Key contact	Phil Grady, Deputy Chief Executive System Leadership	Contact number	9(2)(g)(ii)
Security	In-confidence		

Purpose

This briefing provides key information regarding the changes made to the Cabinet paper that seeks agreement to introduce the Oranga Tamariki (Repeal of section 7AA) Amendment Bill to the House, following Ministerial consultation.

Executive Summary

As agreed by Cabinet on 2 April 2024, we have prepared a draft Cabinet paper seeking approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill to the House.

The Cabinet paper has been updated following Ministerial consultation, including feedback from the Treaty Provisions Oversight Group, and the completion of the Bill's assessment of its compliance with the Bill of Rights Act 1990.

We are seeking your agreement to lodge the final Cabinet paper with the Cabinet Office by 10am on 2 May 2024 to be considered by the Legislation Cabinet Committee on 9 May 2024.

Recommendations

It is recommended that you:

Note the attached draft Cabinet paper seeking approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill. YES / NO

Note we consider there is likely to be a strong reaction from Māori, care and protection partners, and social workers to the repeal of section 7AA. YES / NO

Agree to lodge the attached Cabinet paper with the Cabinet Office by 10am on Thursday, 2 May 2024. YES / NO

Sign-off

Oranga Tamariki

Sign-off

Minister for Children

Phil Grady
Deputy Chief Executive, System Leadership
Date signed: 30 April 2024

Hon Karen Chhour
Minister for Children
Date signed: 2/5/2024

IN-CONFIDENCE

Minister comments

Satisfaction

Please select your level of satisfaction with this briefing

- Outstanding Good Acceptable Poor Unacceptable

Cabinet paper: Repeal of section 7AA of the Oranga Tamariki Act 1989, following Ministerial consultation

Purpose

- 1 This briefing provides key information regarding the changes made to the draft Cabinet paper [Appendix One] that seeks agreement to introduce the Bill to repeal section 7AA of the Oranga Tamariki Act 1989 (the Act), following Ministerial consultation. The draft Bill has been provided as Appendix Two.
- 2 The Cabinet paper also reflects decisions made by Cabinet on 2 April 2024 [CAB-24-MIN-0107] regarding progressing the repeal of section 7AA of the Act as a Government priority **9(2)(f)(iv)**¹.
- 3 Once you have reviewed the Cabinet paper, and following any changes you require, your office will lodge the paper for the Cabinet Legislation Committee (LEG) meeting on 9 May 2024.

Feedback has been received from Ministerial consultation and the Cabinet paper has been revised to reflect this

- 4 This Cabinet paper was finalised following Ministerial feedback.

Additional revisions have been made to the Cabinet paper

- 5 As per Cabinet requirements, the Treaty Provisions Oversight Group (TPOG) was asked for feedback on the repeal of the Treaty of Waitangi provisions included in section 7AA.

9(2)(f)(iv)

- 7 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.

We anticipate the repeal of section 7AA will continue to be strongly contested

- 8 As previously indicated, we expect there to be strong reactions to the repeal of section 7AA 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.

9(2)(f)(iv)

- 9 You will be aware that the Waitangi Tribunal agreed to hear a claim on the repeal of section 7AA under urgency. A hearing took place on 12 April 2024 and the progress is ongoing. The repeal of section 7AA, the ongoing Waitangi Tribunal claim, and the related High Court judicial review has already been reflected in the media and it is likely that the repeal of section 7AA will continue to be heavily scrutinised.

Next steps

- 10 The Cabinet paper will be uploaded by Oranga Tamariki by 9am on 2 May 2024. Your office will need to lodge the paper with the Cabinet Office by 10am on 2 May 2024 in order to make the meeting of the Cabinet Legislation Committee (LEG) on 9 May 2024. Officials will draft talking points to assist you with your discussion with the Cabinet Legislation Committee.
- 11 Further information on the Cabinet paper, lodgement process and the process to introduce a Bill into the House can be provided, if required.
- 12 Once the Bill is introduced, officials will provide materials to support you through the subsequent House stages.

Appendices

- 13 All appendices referenced in this paper are outlined below:
- Appendix One – Repealing section 7AA of the Oranga Tamariki Act 1989 draft Cabinet paper, following Ministerial consultation
 - Appendix Two – draft Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

Repeal of section 7AA: LEG Cabinet paper summary and talking points

To Hon Karen Chhour, Minister for Children			
Date	6 May 2024	Deadline	7 May 2024
Reference number	B-0154	Priority	High
Key contact	Phil Grady, Deputy Chief Executive, System Leadership	Contact number	9(2)(c)(ii) [REDACTED]
Security	Confidential		

Purpose

- 1 This Aide Memoire provides a summary of the draft Cabinet paper that seeks Cabinet approval to introduce the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill) and talking points for the Legislation Cabinet Committee (LEG) meeting on 9 May 2024. Phil Grady, Deputy Chief Executive of System Leadership, will attend to support you at the LEG meeting.

Cabinet Paper Summary

- 2 The Cabinet paper seeks agreement to introduce the Bill to repeal section 7AA of the Oranga Tamariki Act 1989. It reflects the vision that all children and young people are in loving and stable homes. It also expresses concerns that section 7AA has created a conflict when making decisions in the best interests of the child or young person.
- 3 The paper proposes repealing section 7AA of the Act to ensure that Oranga Tamariki becomes more child-centric and focused on promoting the well-being and best interests of children in need of care.
- 4 The repeal of section 7AA will not stop the consideration of cultural well-being of children and young people in the care of Oranga Tamariki. Strategic partnerships with iwi and Māori organisations will continue, and the Bill will not prevent Oranga Tamariki from entering into further strategic partnership agreements with iwi or Māori organisations.
- 5 Talking points are attached to this Aide Memoire as Appendix One.

Sign-off Oranga Tamariki	Sign-off Minister for Children
	
Phil Grady Deputy Chief Executive, System Leadership Date signed: 6 May 2024	Hon Karen Chhour Minister for Children Date signed:

Minister comments

Satisfaction

Please select your level of satisfaction with this Aide Memoire

- Outstanding Good Acceptable Poor Unacceptable

Appendix One: Talking Points for Hon Karen Chhour, Minister for Children

- 1 In April 2024, Cabinet agreed to the repeal of section 7AA of the Oranga Tamariki Act 1989 and to make any consequential amendments required.
- 2 Following earlier Cabinet decisions, I am now seeking Cabinet approval to introduce a Bill that amends the Act to repeal section 7AA.
- 3 Section 7AA was introduced to improve outcomes for Māori children and young people. I believe that it has led to practice decisions that were harmful to children. That is why this Government has committed to repealing section 7AA as a first step toward returning the focus of the care system to the safety, well-being and stability of children.
- 4 The Bill repeals section 7AA of the Oranga Tamariki Act 1989. It also makes consequential amendments to the Oversight of Oranga Tamariki System Act 2022 and the Oversight of Oranga Tamariki System Regulations 2023.
- 5 The Bill does not remove other existing provisions in the Act that require decision-makers to consider cultural factors in care decisions.
- 6 The Bill will not alter the principles in section 5 of the Act, which require anyone who exercises powers under the Act to be guided by the concepts of mana tamaiti, whakapapa, and the practice of whanaungatanga.
- 7 The Bill does not prevent Oranga Tamariki from retaining its current strategic partnerships, or from entering into new partnerships with iwi, hapū and Māori organisations. I have made it clear to Oranga Tamariki that I expect these partnerships to continue.
- 8 The Bill removes the duty placed on the Chief Executive of Oranga Tamariki to annually report on measures taken to improve outcomes for Māori children. But the Bill does not alter other reporting mechanisms, including the Oranga Tamariki annual report which covers two impacts specific to Māori children.
- 9 I acknowledge that public scrutiny of this process and the Bill will be ongoing.
- 10 I intend to refer the Bill to the Social Services and Community Select Committee for a 6-month period.
- 11 I am proposing that the Bill be introduced to Parliament on 14 May 2024.

Repeal of Section 7AA bill introduced to Parliament

Legislation to repeal Section 7AA of the Oranga Tamariki Act has been introduced into Parliament by the Minister for Children, Hon Karen Chhour.

“As someone who grew up in state care, I have a deep appreciation of what children need.

“This bill comes from a place of my own lived experience of being boxed into a system that treated me as an identity group first and as a person second.

“As a child, all I wanted was a home where I felt safe and loved. I did not care what ethnicity the people caring for me were. Children and young people need to know first and foremost that they are safe, they have a roof over their head, and they are loved.”

Minister Chhour said she understands the introduction of Section 7AA was well intentioned, but the unintended consequences have been dire for many children and caregivers around the country.

“Section 7AA creates a conflict between protecting the best interests of the child and race-based factors enshrined in 7AA. This conflict has the potential to cause real harm to our children.

“I am not saying whānau, hapū or iwi should be disregarded, and there are other provisions within the Oranga Tamariki Act that accounts for that, but I believe Section 7AA has placed duties on the chief executive that are at odds with the agency’s primary purpose, which is to support the wellbeing of our most vulnerable and at-risk children.

“Every child should be seen as an individual and their wellbeing must come first.

“If we truly see our children as taonga, let's start treating them like they're precious.”

The bill is expected to have its first reading anytime from May 21 when the House resumes sitting.

ENDS

Weekly Report – Week ending 5 April 2024

Repeal of section 7AA

With regard to the repeal of section 7AA from the Oranga Tamariki Act 1989, decisions have now been made at Cabinet. This enables us to issue drafting instructions to the Parliamentary Counsel Office (PCO), which we have done. The PCO has begun drafting the Bill, which we will provide to your Office with a Cabinet paper by 15 April. We are working towards this paper being lodged with the Legislation Committee (LEG) on 2 May for consideration on 9 May. This will enable the Bill to be introduced to the House in mid-May. After its first reading, the Bill will be referred to the Select Committee for six months .

Officials are available to discuss work relating to each of these s9(2) Bills as required.