VOYCE - Whakarongo Mai Submission on the 'Oranga Tamariki (Repeal of Section 7AA) Amendment Bill'

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About VOYCE - Whakarongo Mai

We are VOYCE - Whakarongo Mai, which stands for Voice of the Young and Care Experienced - Listen to me. Established in 2017, we are an independent non-government organisation that was co-designed by children with care experience for children with care experience. We help to advocate for the approximately 6000 tamariki and rangatahi in care in Aotearoa. We exist to amplify the voices of these tamariki and rangatahi and ensure that they are heard – so as to positively influence their individual care and to collectively affect change across the wider care system.

We are guided by our five pou in all that we do:

- **WHAKAMANA** (empowerment): We advocate alongside of and with care experienced tamariki and rangatahi, in relation to their goals and concerns
- **TŪHONO** (connection): We connect care experienced tamariki and rangatahi with each other through activities and local networks
- **WHAKATAIRANGA** (amplification): We promote the collective voice of care experienced tamariki and rangatahi so that they can influence the wider system
- **WHAIPŪKENGA** (skills development): We equip and enable care experienced tamariki and rangatahi for their future
- **RANGATIRATANGA** (leadership development): We build leadership among care experienced tamariki and rangatahi

Contributors to this submission

Whakarongo Mai – Listen to me

We would like to acknowledge the many contributors to this submission from across the VOYCE community. Our submission highlights concerns raised by those with lived experience of the State Care system.

The important voices of those with lived experience of the State Care system can be seen in the comments and quotes throughout this submission, and in the overall position, key points and recommendations.

We tautoko the leadership of all who contribute to elevating the voices of young people in this mahi.

For more information: Please contact Te Waka Rangatira at YouthParticipation@voyce.org.nz

Hei mihi

Whakatairangatia te tūhono tāngata - Let us unite
E whai pūkenga ai tēnā e tēnā o tātau - To celebrate
Kia rangatiratanga te tū - The intellect within the many entities
Whakamanahia ahakoa ko wai - To enhance one and all
Ahakoa nō whea - Amplifying the voices of our care experienced
Ahakoa kai whea - Ensuring reconnection
Nau mai rā ngā reo - To embrace the indigenous
Tau iho mai ngā tikanga - With acceptance of cultural diversity
Kia puta ai tātau i te whei ao - May we find the way from uncertainty
Ki te ao marama - To the light
Tihei Mauri ora – behold the breath of life.

Tēna koutou,

Kia tāu iho rā ngā tauwhirotanga o te wāhi ngaro ki runga ki te mata o te whenua. Aio ki te aorangi. Blessings upon the face of the earth. Peace be to the universe.

Tangihia ngā mate huhua kua rupeke atu ki tua o pae mahara oki oki e! Kaati rā ki a tātou e ngā mahuetanga iho Tihei Mauriora! Grieve for those who have passed beyond memories. Rest in peace. To we who are left we acknowledge you with the breath of life.

No reira, Nei te reo kōkirikiri ana mai i te kaupapa kua hora nei ki te takapau o te Whare Miere. And so, we submit our voices to this important kaupapa that is being contested within the halls of parliament.

Ko te reo o ngā rangatira atawhai e haruru nei Kaati te tūkinotanga mai, kaati te whakakorenga o 7aa hei patu nei i ngai Māori. Huakina ngā kare a roto kia rongo atu ai i te tangi koekoea, rōreka e! Kauaka!! The voices of the care experienced reverberate with a resounding NO to the repeal of section 7aa. Do not proceed!

Ko te pūmanawatanga o tā mātou tono kia noho tonu mai ko te 7aa hei tuāpapatanga! At the heart or our submission is that 7aa remain as a foundation for accountability to Māori.

No reira me areare mai o koutou taringa. And so, we demand that you pay heed.

Hei whakatepe ake i ngā kōrero "Whakamanahia te Tiriti o Waitangi ka tika. And so in closing we say honour Te Tiriti o Waitangi by ensuring this important aspect of the act remains!

Tēna koutou katoa.

Committee Secretariat
Social Services and Community Committee
Parliament Buildings
Wellington
ssc@parliament.govt.nz

Tēnā koutou Members of the Social Services and Community Committee,

RE: Submission regarding Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

VOYCE - Whakarongo Mai presents this Submission to the Social Services and Community Committee regarding the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill, on behalf of young people with lived experience of the State Care system.

Our general position

VOYCE - Whakarongo Mai strongly opposes this Bill and wishes to appear before the Committee in person to make an oral submission.

Our key concerns and recommendations

The submission of VOYCE - Whakarongo Mai centres around the impact on children and young people and the following key concerns:

1. **The solution does not match the problem.**
2. **Section 7AA is making a difference.**
3. **A repeal won't solve the problem and will result in more harm.**
4. **There is no evidence to back up the claims made.**
5. **Those impacted have not been consulted.**
6. **Poor practice, rather than good policy, must be fixed.**

Our key recommendations

VOYCE – Whakarongo Mai recommends that the Committee rejects this Bill entirely and advocates:

Keep Section 7AA. Focus instead on improving practice. Strengthen training (including understanding of the Oranga Tamariki Act), practice policies and guidance to ensure that the safety and stability of children in care is paramount in all policies and practices.

Amend Section 7AA. One amendment that would answer the Minister's concerns would be to add a subsection to s7AA clarifying that section 4A of the Act still applies, which says that the wellbeing and best interests of children are the paramount consideration in all decisions.

Improve Section 7AA. Not only could s7AA work, but it could also be made better. Rather than repealing or amending s7AA, the legislation could be improved to give iwi legal authority over their own children, rather than the government having all the authority.

Our Key Points in Opposition to the Repeal of Section 7AA

VOYCE - Whakarongo Mai strongly opposes the repeal of Section 7AA of the Oranga Tamariki Act 1998.

Quotes throughout this submission represent the voices of care experienced tamariki and rangatahi. We ask you to hear the voices of those with lived experience. We oppose the repeal of Section 7AA and ask that the legislation is not repealed, but instead is amended, and improved, along with a focus on fixing practice issues, to ensure tamariki Māori have their best interests protected through state care processes.

We oppose the repeal of Section 7AA because:

1. The solution does not match the problem.

> *"We must learn from past mistakes and take steps to prevent repeating them. We should prioritize both safety and culture instead of choosing one over the other."*

1.1. There is no relation between the problem described by Minister Chhour, and the solution being proposed. The problem being presented is anecdotal feedback on children being uplifted from stable loving caregivers based on ethnicity. The solution proposed is a repeal of section 7AA, removing legislation focused on improving outcomes for tamariki Māori.

1.2. The rights of tamariki, their well-being and cultural identity must be protected. Our tamariki and rangatahi deserve a focus on safety AND culture, not one or the other. Safety of our tamariki Māori and connection to culture are not mutually exclusive.

1.3. If the Minister for Children is concerned about the best interests of children, section 4A of the Oranga Tamariki Act already says that the wellbeing and best interests of the child or young person must be the first and paramount consideration for any decision-makers under the Act. Section 7AA does not have anything to do with those individual decisions, as the Minister's own staff have pointed out to her.

1.4. The Children's Minister is presenting a false dichotomy that a focus on culture somehow precludes a focus on children's safety. Whilst social workers are expected to have regard to the cultural considerations set out in section 7AA(2)(b); sections 4A, 5, and 13 of the Act collectively signal that wellbeing and best interests is the paramount consideration, and as such that safety and stability should also be considerations in

any care decision. Wider factors such as whakapapa and whanaungatanga responsibilities are also considered in care decisions, however, not to the exclusion of safety, stability, and wellbeing. These concepts are not mutually exclusive, and social workers largely succeed in placing children in loving and stable whānau homes.

1.5. S7AA is an accountability clause, placing additional accountabilities on the CEO to Te Tiriti o Waitangi and on improving outcomes for tamariki Māori. The sections of the act which are purposed to drive practice are sections 4a and section 5. The Minister has indicated that her repeal of s7AA is in response to practice, i.e. placement decisions. The Minister is implying that there are unintended practice consequences due to the implementation of s7AA. We would argue that, if this is the case, there are likely to be further negative practice implications in terms of outcomes for tamariki Māori if it is removed. The removal of this as an accountability clause, reduces the imperative on Oranga Tamariki to be accountable to Te Tiriti and outcomes for tamariki Māori. Its repeal returns us to the previous state where everyone agreed that Māori were getting an abhorrent deal in their dealings with the ministry. 7AA is not the answer, but it signalled a willingness for change and a step in the right direction. A repeal would be a significant step backwards.

"Complete removal of section 7AA does not address the underlying issues and risks undermining critical protections for Tamariki Māori."

"This would be a huge step backwards for our tamariki."

"It's a real thing when you know you're not in the right place. You know there's a piece missing of the puzzle, and you need to know what it is. OT needs to allow you to put that last piece of the puzzle together. It's important to know where you come from."

2. Section 7AA is making a difference.

"The principles behind 7AA and good practice around its implementation are of benefit to all tamariki."

2.1. 7AA is an attempt to support Oranga Tamariki to address generations of systemic racism in the Child Care and Protection System and it is making a difference. Section 7AA is the only section of the Oranga Tamariki Act that ensures tamariki Māori have their best interests protected through state care processes. It allows an ongoing partnership between the Crown and Māori to remedy shortfalls experienced by tamariki and their familial ties through state care processes. The repeal of this section

will impact the way Oranga Tamariki interact with tamariki, straining their whakapapa ties with little to no regard as to the implications.

2.2. Changes in the operating model in response to section 7AA have been associated with a reduction in the number of tamariki and rangatahi Māori that have entered state care (OT Regulatory Impact Statement). Changes introduced in Oranga Tamariki that resulted from the introduction of s7AA have also been effective at reducing some of the disparities and inequities experienced by tamariki, rangatahi, and whānau Māori. There has also been considerable progress as a Department toward honouring the principles of the Treaty of Waitangi through the current practice approach and operating model (OT Regulatory Impact Statement).

2.3. Section 7AA requires Oranga Tamariki to reduce disparities by setting measurable outcomes for Māori children, upholding the tikanga of mana tamaiti, whakapapa and whanaungatanga, and developing strategic partnerships with iwi, hapū and Māori organisations. It also requires Oranga Tamariki to publicly report on the steps it has taken to achieve these things. Section 7AA helps ensure tamariki Māori have their best interests protected through state care processes, by recognising the importance of cultural connection and the rights of indigenous children to their identity. Care experienced tamariki and rangatahi have reported that they are too often disconnected from their culture and have shared numerous personal stories highlighting why s7AA is important to them.

"Using Te Tiriti as law for Tamariki is a good thing. It protects indigenous Māori. If you take it out, there's just more European law. Having indigenous law protecting us is important."

3. A repeal won't solve the problem and will result in more harm.

"Section 7AA is crucial to protect Tamariki Māori. Removing it would harm already vulnerable children."

3.1. Removing s7AA will likely cause further harm to tamariki Māori. Without adequate safeguards and holistic considerations, changes to the Oranga Tamariki Act could inadvertently harm vulnerable children and families, particularly those already disproportionately affected by systemic inequities and socio-economic challenges.

3.2. Repealing s7AA would be a breach of Aotearoa's commitment to Tiriti o Waitangi, and international rights frameworks including the United Nations Convention on the Rights of the Child and UN Declaration on the Rights of Indigenous Peoples.

3.3. Article 2 of Te Tiriti o Waitangi guarantees Māori tino rangatiratanga over kainga. That includes the right to raise and look after children in accordance with tikanga Māori. S7AA is designed to give effect to the treaty principles of partnership and protection. Given the historic and ongoing failure of the state child protection system to actually protect Māori children (Pūao te ata tū, Children in Care Ombudsman Report), 7AA remains a crucial piece of legislation.

3.4. Official statistics show that while 48% of children notified to Oranga Tamariki are Māori, that grows at each stage (notification, referral, FGC), with Māori children making up 66% of children in care. These statistics highlighting just how much s7AA is still needed, are reported in the s7AA annual report, which will no longer exist if s7AA is repealed.

3.5. Oranga Tamariki's Regulatory Impact Report emphasises the serious negative implications a repeal may have for tamariki with regards to their "short- and long-term justice and wellbeing outcomes".

3.6. The Waitangi Tribunal (WAI 3350) reported this policy would likely cause "real harm" to children in state care. While Oranga Tamariki's own advice to the minister said repealing this section was a bad idea, rating it the worst possible option that would breach Te Tiriti and international law protecting children.

"I'm worried that the harm against Māori, which was highlighted in the abuse in Care Royal Commission of Inquiry, will be repeated"

"We know time and time again that children are placed with strangers who go on to physically, sexually and mentally abuse them. How about we focus the minister on legislation to prevent the state from removing kids from people who they know?"

"My early years with whanau were the best of my childhood. It was when I was ripped away from them that things took a turn, and I was abused by my caregiver who was a complete stranger."

"My extended Māori whānau spent eleven years searching for me. I faced extreme hardship and disconnection and Oranga Tamariki never revealed my existence to my whānau."

4. There is no evidence to back up any of the claims made.

"We urge our policy makers to tread very carefully and consider the evidence, as repealing 7AA takes out the only protection in the Oranga Tamariki Act."

4.1. Anecdotal "reverse uplift" stories do not justify the repeal of s7AA. There is no evidence to suggest that this legislation has negatively impacted the wellbeing of tamariki. This repeal goes against the advice from the Minister's own staff, which said that there is no evidence that section 7AA is causing harm to children as the minister says. The Waitangi Tribunal said that the evidence for this change is entirely anecdotal. The Oranga Tamariki Act, section 4A, already says that the wellbeing and best interest of the child are the first and paramount consideration.

4.2. There is no empirical evidence to support the notion that s7AA has driven practice decisions that have led to changing care arrangements. The Children's Minister has suggested that s7AA might have been responsible for previous, high-profile changes to care arrangements. OT "do not have evidence as to whether section 7AA explicitly influenced these care decisions, but internal evaluation suggests that it did not" (Regulatory Impact Report).

4.3. In its regulatory impact statement about the bill, Oranga Tamariki said there was "no evidence" supporting Chhour's view that s7AA risked the safety of children. To the contrary, it warned repealing the section would be riskier than keeping it in place. It said s7AA had been wrongly blamed for issues relating to "reverse uplifts", which Chhour had cited as the reason she wanted to change the law.

4.4. Removing Treaty obligations "may have a material negative impact on the safety, stability, and well-being of children inside and outside of statutory care," the ministry said, as it would likely "diminish confidence and trust". The Tribunal agreed there was "no evidence" to support removing s7AA (WAI 3350). "To the extent there is any evidence to support the idea that section 7AA is causing unsafe practice, it is entirely anecdotal. We have seen none," it said.

"The Minister not following the advice is a big worry. It's just brushing evidence aside."

"Using stories of kids harmed in care before 7AA was introduced is wrong. More kids are going to be added to this list if 7AA is repealed."

5. Those impacted have not been consulted.

"There's no obligation to connect with culture if 7AA is repealed. More abuse will happen."

5.1. There has been no consultation with those with lived experience of the care system. Indigenous voices and perspectives and input from those with lived experience of the care system must be central to any changes made to legislation affecting their well-being. The absence of meaningful consultation with Māori about the repealing of these sections is deeply concerning and represents a failure to uphold the principles of partnership and participation enshrined in Te Tiriti o Waitangi.

5.2. A coalition agreement is not a justified reason to do something in the face of so much evidence saying this will cause actual harm. The repeal should have been stopped already after evidence from the Tribunal and officials, as well as significant protest from Māori and those with lived experience, concerned about the increased harm that could be done to Māori children removed from their whānau.

5.3. The repeal of s7AA is coming just before the release of the final report of the Royal Commission of Inquiry on Abuse in State Care. A report that will discuss the severe and widespread abuse of children in care historically (and ongoing), which has disproportionately affected Māori. S7AA is designed to address those issues, and the government wants to get rid of it just as a Royal Commission tells us how important measures like this are.

5.4. The minister speaks of her own experience in care, which is her reality but is not representative. This submission captures the common views of many young people with experiences of care.

"The most important voices are those who have suffered. Hear the evidence of those who have suffered. Why would you go back to the old ways. What are you thinking? Are you crazy? I know how devastating this will be from my own experiences."

"We went through care isolated and vulnerable and with no opportunity to connect to our culture."

"For me, I wanted to learn my language and culture. I lost years of my life when I could have been connecting with my culture."

6. Poor practice, rather than good policy, must be fixed.

"The examples cited as reasons for repealing this legislation are down to poor practice, poor training, guidance and support rather than poor legislation."

6.1. VOYCE - Whakarongo Mai recommends focusing on improving practice. This is a practice issue, not a policy issue. Solutions can address issues of reverse uplifts without repealing the only section in OT legislation that considers Te Tiriti obligations.

6.2. Oranga Tamariki agrees. "A repeal will not address the policy problem. Retain section 7AA while continuing to strengthen practice and operational guidelines to fulfil the policy objectives and best address the government's concerns." (OT Regulatory Impact Statement). "It is more likely that non-regulatory changes, such as further strengthening of practice guidelines, would better address the problem. There is a lack of robust empirical evidence to support the definition of the problem that section 7AA is the cause of various instances of poor practice. OT evidence demonstrates that the problem more likely stems from flaws in the practice of individual staff. Non-legislative options would better address the problem, such as shifts in operational practice… If section 7AA is retained, it is likely that practice policies and guidance will continue to be strengthened to ensure that the safety and stability of children in care is of the utmost importance in all policies and practices. This would likely include further and more robust training for frontline staff aimed at ensuring that care placements are as safe and stable as possible."

"Rather than eliminating section 7AA, we should work on improving the current system. Our pēpi, tamariki and rangatahi deserve a system that respects and upholds their cultural identity while ensuring their safety and well-being."

Recommendations

If the government is genuinely concerned about the wellbeing and best interests of children, section 7AA could be amended, or even better improved, rather than repealed. Imagine a New Zealand Government committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples. What if we took this opportunity for Aotearoa to take a step forward, instead of falling backwards?

VOYCE - Whakarongo Mai recommends:

1. **Keep Section 7AA.** Focus instead on improving practice. Strengthen training (including understanding of the Oranga Tamariki Act), practice policies and guidance to ensure that the safety and stability of children in care is paramount in all policies and practices.

2. **Amend Section 7AA.** One amendment that would answer the Minister's concerns would be to add a subsection to s7AA clarifying that section 4A of the Act still applies, which says that the wellbeing and best interests of children are the paramount consideration in all decisions.

3. **Improve Section 7AA.** Not only could s7AA work, it could be made better. See, for example, Bill C92 in Canada, which was introduced in 2019, recognising Indigenous sovereignty in child protection laws, creating a way for First Nations to reclaim legal authority over their own children. Rather than repealing or amending s7AA, the legislation could be improved to give iwi legal authority over their own children, rather than the government having all the authority.

Ngā mihi,

VOYCE – Whakarongo Mai

On behalf of the Tamariki and Rangatahi represented by VOYCE – Whakarongo Mai