

**Submission to  
Social Services and  
Community Committee**

**Oranga Tamariki (Repeal of  
Section 7AA) Amendment Bill**

**YouthLaw Aotearoa**

Level 1, Westfield Shopping Centre  
5 Leyton Way  
Manukau City Centre  
Auckland

0800 UTHLAW  
(0800 884 529)

[www.youthlaw.co.nz](http://www.youthlaw.co.nz)



Contents

WHO WE ARE ..... 3

YOUTHLAW AOTEAROA’S SUBMISSION..... 4

    Te Tiriti o Waitangi – Political Context..... 4

    Bad Law ..... 4

    Alternatives to Repeal ..... 7

OUR RECOMMENDATION..... 7

## WHO WE ARE

---

YouthLaw Aotearoa is a Community Law Centre vested under the Legal Services Act 2000. We are a charity and part of the nationwide network of twenty-four community law centres throughout Aotearoa. We are a specialist law centre focussing on the legal needs and interests of children and young people under 25 years of age.

This submission is informed by YouthLaw Aotearoa's insights from working with children and young people across New Zealand for over thirty years.

**Contact:**

Darryn Aitchison

General Manager

YouthLaw Aotearoa

[darryn@youthlaw.co.nz](mailto:darryn@youthlaw.co.nz)

# YOUTHLAW AOTEAROA'S SUBMISSION

---

YouthLaw Aotearoa opposes the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill ("the Bill") and the repeal of section 7AA.

## Te Tiriti o Waitangi – Political Context

We acknowledge the political and constitutional backdrop to this proposed amendment.

ACT New Zealand campaigned on reform of public policy and legislation with regards to Te Tiriti o Waitangi. In particular, ACT New Zealand campaigned on a promise to repeal legislation that purports to give different rights based on identity, and to introduce a Treaty Principles Bill.

We consider the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill to be part of the ACT New Zealand programme.

YouthLaw Aotearoa opposes this legislative and policy agenda. We support the retention of 7AA because its retention would honour the Crown's legal commitment to Māori and Te Tiriti o Waitangi.

We raise our position here because we want to be transparent about it. But we also want to differentiate our position on Te Tiriti o Waitangi more broadly from our discussion below. The discussion below is not dependent on any view of Te Tiriti o Waitangi within our democracy.

**We think there are excellent public policy reasons to keep section 7AA – regardless of one's views on the constitution and legal status of Te Tiriti o Waitangi.**

## Youth Voice

Routinely, children and young people are disenfranchised from the process of law making. While laws are made about children, their voices are often absent or diminished by decision makers.

YouthLaw is committed to ensuring the voice of children and young people is heard by legislators and policy makers. We do this by working with children and young people on our law reform work. The following perspective on this Bill comes directly from the one of the young people we work with:

*"I withstand the void of section 7AA for numerous reasons. With the new government policies happening it has non access for young youth to understand their own Hauora and Culture. who are in the system of Oranga Tamariki.*

*As a young born disabled Māori woman I feel intimidated and feel not included in discussions because of the information that was provided, I was unable to comprehend what was discussed amongst these discussions. The information that was shared with the group was not met with my needs, They rather assumed that I knew what was talked about. If they just stopped and listened, learned, took the time to understand to Create simple information and provide visual images or videos. To allow asking questions this will make it more efficient for myself.*

*I believe that this section will make better and improved outcomes for Māori and Pacific Youth. The highest rate is Māori and Pacific youth who are deeply affected by this situation and organisation.*

*In the late 1970s my mum and nan were a part of Waitangirua Māori women's welfare league in Porirua (not too far from Wellington.) They discussed housing, wellbeing, child abuse. These topics are very much talked about in parliament today and the media. However there hasn't been new improvement outcomes and Culture protection for Māori and Pacific young youth.*

*In conclusion I believe this section 7AA needs to include Māori and Pacific young youth in these discussions and to meet their needs to stop and listen, take the time to understand, rather assuming that they understand the procedure that is happening in the system. Providing simple information (by highlighting the key factors) and more visual images or videos. This will make it efficient to comprehend for young Māori and Pacific youth and to ask questions."*

- Matakorama Waipouri

### **Bad Law**

The regulatory impact statement ("RIS") makes it very clear that this Bill is an example of bad policy and bad law:

1. it did not follow best-practice development pathways
2. it will not achieve the outcomes it is intended to achieve
3. it is not based on carefully considered evidence

We are disappointed this bill has been introduced, especially given the Minister's party campaigned on a promise to "lift the standard of lawmaking, and improve accountability in our democracy".<sup>1</sup>

### **Poor Process**

There are accepted democratic norms in Aotearoa for the development of good policy and good law. This Bill has been introduced without adequate time, adequate scope, and adequate opportunity to access evidence.

We are particularly concerned that this Bill appears to have given little to zero thought about the impacts on the youth justice sector. The focus of the proposed reform appears to be limited to care and protecting matters only. We note that the New Zealand Law Society and the RIS have reached the same conclusion.

Given youth justice is a significant part of the Act's purpose, this omission is a serious error and simply not appropriate in a mature democracy.

**We urge the committee to accept and acknowledge the criticisms and qualifications in what is a damning regulatory impact statement.**

**We urge the committee to accept the recommendations of the RIS – namely, to retain s7AA.**

### **Poor Law**

Good law involves drafting legislation in a manner which achieves a defined policy outcome. Generally, this involves advancing a public good or eliminating a public harm.

The explanatory note explains the Bill is designed to address the following harm:

*"7AA has led Oranga Tamariki—Ministry for Children staff to prioritise cultural factors over the*

---

<sup>1</sup> <https://www.act.org.nz/democracy>

*safety and stability of children in long-term care arrangements.”*

This is considered problematic because it leads to Oranga Tamariki staff “moving tamariki Māori from stable long-term care arrangements and placing them with whānau, hapū, and iwi groups to which they whakapapa”.

#### Lack of Evidence

The RIS makes it clear there is no empirical evidence support the alleged harm outlined in the explanatory note.

*“There is no empirical evidence to support the notion that section 7AA has driven practice decisions that have led to changing care arrangements. We have heard anecdotal concerns from a small number of caregivers that care decisions are more strongly influenced by cultural factors, than by the immediate safety of children. There is, however, no evidence to suggest that these concerns are related to the duties outlined in section 7AA.”*

The RIS essentially draws the following conclusions:

1. The public harm the legislation bill seeks to address may be minimal or non-existent, and there is no empirical evidence to support it.
2. Repealing the section will not bring about the change, even if empirical evidence did show the alleged harm was occurring.

To the extent poor decisions are being made, these are considered the result of poor operational practice, not poor law. We understand from the RIS these are issues

Oranga Tamariki is addressing through a work programme.

#### Contradictory Evidence

In preparing this submission we have spoken to other agencies working in this space.

One of those agencies we have spoken to is Barandos, New Zealand’s largest children’s charity. Barnardos routinely sees the impact of Oranga Tamariki practices at an operational level. We understand their view is that current law is very clear, is working well on the ground, and aligns with the best interests of the children.

**We urge you to read the Barnardos submission carefully and give it considerable weight in your deliberations.**

We are also aware of recent research by the Salvation Army into education outcomes for Māori. The evidence shows Māori students who learn within a Kaupapa Māori system:

- Achieve as well or better than non-Māori students learning within the mainstream education system
- Achieve 400% better than Māori students who learn within the mainstream system

This is important evidence. Any public policy that aspires to improve outcomes for Māori should take heed of this evidence. There are practical, not ideological reasons for exploring frameworks with incorporate Māori perspectives.

In our view, it would be reckless to repeal section 7AA without examining it in this context.

**We urge the committee to accept and acknowledge the criticisms and qualifications in what is a damning regulatory impact statement.**

**We urge the committee to accept the recommendations of the RIS – namely, to retain s7AA.**

### **Alternatives to Repeal**

We support the retention of 7AA in its current form.

If the committee rejects the advice of the RIS and want to make amendments, we recommend any amendments are limited to the narrow policy concern stated in the explanatory note. We consider the objects of the Bill would be achieved by clearly stating that the duties imposed on the Secretary are subject to section 4A, and do not trump the well-being and best interest principles.

We think could be achieved by inserting a new paragraph 7:

*(7) In all matters relating to the administration of this section, the well-being and best interests of the child or young person remains the first and paramount consideration, as set out in section 4A.*

While we consider this amendment unnecessary, we would consider it a proportional and balanced response to the policy concern outlined in the explanatory note. Minor amendments such as this can have significant impact on operational decisions. For example, in the employment context, changes to the test of justification for personal grievances (which inserted “could for should”) had a significant impact on the operational decisions of employers in relation to employment problems.

Once made, the amendment should be given time to have an impact and the impact of the amendment should be assessed before further amendments are proposed.

### **OUR RECOMMENDATION**

**We urge parliament to withdraw this Bill.**

## **YouthLaw Aotearoa**

Level 1, Westfield Shopping Centre  
5 Leyton Way  
Manukau City Centre  
Auckland

0800 UTHLAW  
(0800 884 529)

[www.youthlaw.co.nz](http://www.youthlaw.co.nz)

