

Regulatory Impact Statement: Repeal of section 7AA

Purpose of Document

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| Decision sought: | Analysis for the purpose of informing Cabinet decisions regarding the repeal of section 7AA of the Oranga Tamariki Act 1989 (the Act) |
| Advising agencies: | Oranga Tamariki – Ministry for Children |
| Proposing Ministers: | Minister for Children |
| Date finalised: | 12 March 2024 |

Problem Definition

The Government is concerned that some practice decisions made by Oranga Tamariki, such as changes to planned long-term care arrangements, may have been harmful to the safety, well-being and stability of children in care. At the heart of these concerns is a belief that section 7AA caused these practice decisions, leading the Government to commit to repealing this section from the Oranga Tamariki Act 1989.

Executive Summary

The proposals discussed in this paper form part of the work undertaken by the Government to reform the Care and Protection system to ensure that all children and young people are in loving families where their safety, well-being, and stability is guaranteed.

As part of this work, the Government has committed to repealing section 7AA of the Oranga Tamariki Act 1989, due to its concerns that this section has undermined the safety and well-being of children in long-term care.

This paper provides analysis regarding the policy problem the Government has identified, and the evidence supporting this view. It notes a lack of robust evidence to support the view that section 7AA causes harmful changes to long-term care arrangements.

This analysis also concludes that the repeal of section 7AA will not have a significant impact on how care decisions are made, because section 7AA is not part of the provisions of the Act that determine how care decisions are made and because considerations similar to those set out in section 7AA(2)(b) appear in other sections of the Act. Oranga Tamariki (referred to throughout as 'the Department') therefore identifies non-regulatory change as an alternative option to further enhance the safety, stability, and well-being of children in care. It is worth noting, however, that although a full repeal should not have a significant impact on care decisions in a legal sense, some social workers may perceive the repeal as a signal to give less regard to cultural considerations when making such decisions.

Based on the Government's intention to prioritise safety and stability over cultural considerations when reviewing long-term care arrangements, the Department identified three policy objectives to be used as criteria against which different policy options were assessed:

- To ensure that there is minimal conflict between safety and stability and cultural considerations in care decisions.

- The unique rights, needs, and voice of each child are cherished, enabling children to become flourishing adults.
- To ensure confidence in Oranga Tamariki's decision-making.

The options analysis assesses the efficacy and impact of retaining the status quo, a full repeal of section 7AA, or a partial repeal.

The Department considers that a full or partial repeal of section 7AA will not address the policy problem. This paper recommends retaining section 7AA while continuing to strengthen practice and operational guidelines to fulfil the policy objectives and best address the Government's concerns.

Implementation and evaluation arrangements are considered for the status quo, a full repeal, and a partial repeal.

Limitations and Constraints on Analysis

Constrained scope of options considered

- This paper addresses policy issues which form part of the coalition agreement between the ACT and National Parties. Therefore, we have been constrained in the nature of the problem, and the options we have considered. The problem definition to which we have been constrained identifies section 7AA as the cause of various instances of poor practice. Said simply, the problem is thought to arise from legislation.
- There is a lack of robust empirical evidence to support this problem definition. Departmental evidence demonstrates that the problem more likely stems from flaws in the practice of individual staff, which we have an ongoing commitment to address. Given this constraint, we have been unable to comprehensively evaluate non-legislative options which we believe better address the problem, such as shifts in operational practice.

Constrained timeframe

- We were limited by tight timeframes in the development of this paper and were unable to undertake public consultation with affected stakeholders. As such, this document does not convey the views of our stakeholders, or the public. It is usually important for the public to be consulted on any proposed changes to legislation before they are considered by Cabinet. This is particularly important if there are groups that are directly affected by proposed changes. Given the Minister's intention to progress the legislative process without public consultation except through the select committee process, there is likely to be a strong response among Māori, with a significant risk for eroded trust and relationships between the Department and whānau, hapū and iwi Māori.
- There was also not enough time to fully analyse further non-regulatory options, beyond the work already being undertaken by the Department, for improving the status quo.

Constrained research and evidence

- There was not enough time to undertake a robust analysis of evidence and data related to this policy decision. Without a comprehensive cost-benefit and

distributional impact analysis, we are unable to draw strong insights regarding the impact of the policy options.

- This RIS has not considered the impact of the repeal of section 7AA on the Youth Justice system. This presents a significant limitation to this analysis, given the implications a repeal may have for short- and long-term justice and well-being outcomes.

Responsible Manager

Phil Grady
 Deputy Chief Executive, System Leadership
 Oranga Tamariki – Ministry for Children

Signed:



Date: 12 March 2024

Quality Assurance

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| Reviewing Agency: | Oranga Tamariki, the Treasury, Ministry of Justice |
| Panel Assessment & Comment: | <p>A Quality Assurance Panel including membership from Oranga Tamariki, the Ministry of Justice and the Treasury has reviewed the Regulatory Impact Statement (RIS) and considers that the information and analysis summarised partially meets the quality assurance criteria.</p> <p>The RIS considers a legislative change proposal resulting from the 2023 Coalition Agreement between the National Party and the ACT Party. The RIS only partially meets the quality assurance criteria because of insufficient consultation with stakeholders to test the accuracy of the analysis and provide additional evidence. This, along with lack of an evidence-driven problem definition, gaps in evidence, and constraints in options are clearly identified. The RIS notes robust analysis of social impacts, further consideration of non-regulatory options, and impacts on the Youth Justice system have not been possible given time constraints. The panel considers that given these constraints, the information in the RIS is balanced and convincing, and is as complete as could reasonably be expected.</p> |

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Key terms and legislation

Overview of Section 7AA of the Act

1 Broadly, section 7AA places the following duties on the Chief Executive of Oranga Tamariki:

- to ensure that the policies and practices of Oranga Tamariki have the objective of reducing disparities by setting measurable outcomes for tamariki and rangatahi Māori who come to the attention of Oranga Tamariki.
- to ensure that the policies, practices, and services of Oranga Tamariki have regard to mana tamaiti (tamariki Māori), whakapapa, and the whanaungatanga responsibilities of their whānau, hapū, and iwi.
- to seek to develop strategic partnerships with iwi and Māori organisations and to consider and respond to any invitation from one or more iwi or Māori organisations to enter a strategic partnership.
- to report to the public annually on the measures taken to carry out the above duties, including the impact of these measures on improving outcomes for Māori.

Overview of other relevant sections of the Act

Overview of Section 4 of the Act

2 Section 4 outlines the purposes of the Act. These purposes broadly include ensuring the provision of services that:

- affirm mana tamaiti and are centred on the child and young person's rights, best interests, needs, and well-being.
- are culturally appropriate.
- prevent them from suffering harm or causing harm to others.
- assist families and whānau, hapū and iwi to meet the needs of the child and provide a safe, stable, and loving home from the earliest opportunity.
- Provide a practical commitment to the principles of the Treaty of Waitangi through recognising mana tamaiti (tamariki), whakapapa, the whanaungatanga responsibilities of whānau, hapū and iwi and the strengthening of relationships between children and their whānau, hapū and iwi.

Overview of Section 4A of the Act

- 3 Section 4A of the Act states that the well-being and best interests of the child or young person is the first and paramount consideration in all matters relating to the administration of the Care and Protection parts of the Act.

Overview of Section 5 of the Act

- 4 Broadly, section 5 of the Act requires anyone exercising power under the Act to be guided by various principles including:
- that children and young people are encouraged and supported to express their views regarding any processes and decisions affecting them, and that their views should be taken into account.
 - that the child or young person's rights are respected and upheld, including addressing their need for a "safe, stable, and loving home". This subsection also underlines the importance of considering a child or young person's wider holistic needs, including whakapapa and cultural identity.
 - That a child or young person's place within their whānau, hapū, iwi and family group should be recognised. Section 5 recognises the importance of a child or young person's family, whānau, hapū, and iwi having primary involvement in their life, including caring, whakapapa, and whanaungatanga responsibilities.

Overview of Section 13 of the Act

- 5 Section 13 of the Act sets out principles additional to those in section 5, to guide Department staff exercising care and protection powers in determining what the wellbeing and best interests of a child or young person are, including:
- that it is desirable to provide early support and services to improve the safety and well-being of children and young people at risk of harm (13(2)(a)(i)).
 - support and services provided should strengthen and support the child or young person's family, whānau, hapū and iwi (13(2)(b)(i)).
 - support and services provided should recognise and promote mana tamaiti and the whakapapa of tamariki and rangatahi Māori, and the whanaungatanga responsibilities of their family, whānau, hapū, or iwi (13(2)(b)(ii)).

Recent Government proposals

- 6 The Government is concerned that the introduction of section 7AA has led Oranga Tamariki staff to prioritise cultural factors over the safety and stability of children in long-term care arrangements.
- 7 A key concern associated with the perceived prioritisation of cultural factors over safety is that the Department has moved tamariki Māori from stable long-term care arrangements and placed them with whānau, hapū and iwi groups they whakapapa to. Concerned voices in this area have emphasised the traumatic nature of these changes in placement and argued that they should only occur in cases where there is extreme risk to the safety of the child. These concerned voices have been amplified by a small number of high-profile cases which garnered significant public attention and deviated significantly from best practice.

- 8 Anecdotal concerns also have been raised that tamariki and rangatahi Māori living in stable care arrangements have been forced to visit whānau members due to perceived obligations in section 7AA, even in instances where there are views that contact is not in the child's best interests.
- 9 On this basis, the Government has committed to repealing section 7AA and has noted the purpose is to reprioritise the safety and well-being of children and young people in care arrangements.

Section 7AA was intended to help address inequities in care

- 10 Section 7AA came into force in July 2019 to improve outcomes for Māori in care.
- 11 Concerns regarding the disproportionalities and inequities experienced by tamariki and whānau Māori interacting with the care system were made explicit to the Department in the landmark 1988 report, Pūao-te-ata-tū which highlighted the following concerns:¹
- Māori were overrepresented across multiple negative social indicators that increased their likelihood of interacting with the Department.
 - Māori were overrepresented within the Care and Protection System, compared to other ethnic groups.
 - colonisation had contributed to the breakdown of Māori social structures, such as iwi, hapū, and whānau, resulting in Māori relying on greater support from the Department, which failed to meet their needs.
 - the Department was beset with systemic and institutional racism, meaning that Māori who interacted with the Department were not treated in a culturally appropriate way.
- 12 The report recommended that the Department should increase power-sharing with Māori to ensure that the needs of Māori could be addressed better; support tamariki Māori to enter the care of iwi, hapū, and wider whānau; and reform the Department to promote cultural awareness, increase the number of Māori staff, and improve relations with partners in the community.
- 13 Pūao-te-ata-tū also prompted a Crown response, part of which led to the inclusion of whānau, hapū, and iwi provisions in the then Children, Young Persons, and their Families Act 1989 (now the Oranga Tamariki Act 1989). It also set in motion multiple reports and reviews in the decades leading up to the addition of 7AA that identified similar themes.² In 2015, the Expert Panel Final Report into the Department was released, recommending sweeping changes to the Children's system, including a

¹ Department of Social Welfare (1988). *Pūao-te-ata-tū: The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare*. [Pūao-te-ata-tū \(Daybreak\) - PDF Document \(msd.govt.nz\)](#).

² Brown (2000). *Care and Protection is about adult behaviour – The Ministerial Review of the Department of Child, Youth and Family Services*; Child, Youth and Family (2014). *Workload and Casework review*; Ombudsman (2020). *He Take Kōhukihuki – A Matter of Urgency*. [Ra He Take Kōhukihuki A Matter of Urgency-OT Report-102020-DIGITAL.pdf](#). Office of the Children's Commissioner (2020). *Te Kuku O Te Manawa – Review*. [TKTM-JUNE2020-Final.pdf](#); Oranga Tamariki (2020). *Response to the Whānau Ora Commissioning Agency-led Report – Ko Te Wā Whakawhiti: It's Time for Change*. [OT-WOCA-Response.pdf \(orangatamariki.govt.nz\)](#); Ministerial Advisory Board (2021). *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa*. [Te Kahu Aroha' report | Oranga Tamariki — Ministry for Children](#).

stronger focus on prevention, developing strategic partnerships, and giving emphasis to the voice of the child in care decisions.³ These recommendations were instrumental in developing section 7AA.

- 14 Māori overrepresentation in the Care and Protection system is problematic because despite comprising only a quarter of all children, they represent the majority of children in care. Tamariki and rangatahi Māori in the care system also experience poorer life-time outcomes than their non-Māori counterparts. Tamariki and rangatahi Māori in care are less likely to be in education, employment, or training as they transition out of care and are more likely to experience worse mental health outcomes or to use harmful substances and receive treatment for substance use issues in early adulthood.⁴
- 15 These inequities predict poorer lifetime outcomes, which are also associated with greater lifetime costs. Failure to invest in reducing the overrepresentation and inequities experienced by Māori in the care system is likely to significantly worsen outcomes for this group and increase the cost of future Government social investment. Despite decades of reviews, reports, and subsequent departmental changes, the overrepresentation of Māori in care has persisted, only improving slightly since the introduction of section 7AA.⁵
- 16 Previous reviews and reports also found that Oranga Tamariki has failed to comprehensively implement change. A recent report by the Waitangi Tribunal found that the wider impact of colonisation and structural racism within the Department has played a significant role in the ongoing disparities between tamariki Māori and non-Māori taken into care.⁶ The report also noted that the Crown has failed to honour the guarantee to Māori of tino rangatiratanga over their kāinga, alongside breaching the Treaty principles of partnership, active protection, and options, amounting to “significant prejudice”. As this context persists, the requirement for a Māori-centred Department approach to guide practice and strategy has not changed.

How has section 7AA performed in achieving the intended objectives?

- 17 Since section 7AA was introduced, work has progressed to address the disparities and disproportionalities experienced by tamariki and rangatahi Māori. Progress is assessed against several measures, known as the mana tamaiti objectives, which are then reported on by Oranga Tamariki in annual 7AA reports. Across the three 7AA reports published in 2021, 2022, and 2023, incremental improvements were reported across the five mana tamaiti objectives. Progress on these objectives is outlined below.⁷

³ The Modernising Child, Youth and Family Panel (2015). *Expert Panel Final Report – Investing in New Zealand’s Children and their Families*. [investing-in-children-report.pdf \(msd.govt.nz\)](https://www.msd.govt.nz/investing-in-children-report.pdf)

⁴ Oranga Tamariki (2023). Internal data. These data are not official statistics. They have been created for research purposes from the Integrated Data Infrastructure (IDI) which is carefully managed by StatsNZ. For more information about the IDI, please visit <https://www.stats.govt.nz/integrated-data>.

⁵ Oranga Tamariki (2023). *Section 7AA Report 2023*. [Section 7AA report 2023 \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz/section-7aa-report-2023)

⁶ Waitangi Tribunal (2021). *He Pāharakeke, He Rito Whakakīkinga Whāruarua – Oranga Tamariki Urgent Inquiry*. [He Pāharakeke, he Rito Whakakīkinga Whāruarua \(justice.govt.nz\)](https://www.justice.govt.nz/whakakīkinga-whāruarua)

⁷ Oranga Tamariki (2021). *Section 7AA Report 2021*. [Oranga Tamariki Section 7AA Annual Report](https://www.orangatamariki.govt.nz/section-7aa-report-2021); Oranga Tamariki (2022). *Section 7AA Report 2022*. [Section-7AA-2022-accessible-version-20230815.pdf \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz/section-7aa-report-2022-accessible-version-20230815.pdf); Oranga Tamariki (2023). *Section 7AA Report 2023*. [Section 7AA report 2023 \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz/section-7aa-report-2023).

18a. *Ensuring participation in decision-making*

- We established a range of Māori roles to provide specialist functions within many of our regions and sites. Central among these and critical in our engagements with tamariki and whānau Māori, is the Kairaranga-a-whānau role. This role aims to enhance whānau participation, build local cultural competency and help with the establishment of relationships and connections with iwi and Māori NGOs. These specialist roles and services have increased attendance rates for family group conferences (FGCs), increased completion rates for whānau plans, reduced truancy, increased the use of culturally appropriate engagement methods, and decreased the number of tamariki and rangatahi Māori entering care. This has also increased trust between whānau Māori and the Department.
- The core focus of strategic partnerships is to improve outcomes for tamariki, rangatahi and whānau Māori who have come to the attention of Oranga Tamariki. Strategic partnerships allow Oranga Tamariki to pursue a shared vision of reducing the number of tamariki and rangatahi in care. Our partners' commitment and collective support has helped Oranga Tamariki staff to improve their cultural capability and confidence, as well as providing community-led innovation.

18b. *Preventing entry into care or custody*

- Changes in the operating model in response to section 7AA resulted in the strengthening and delegation of FGCs and other interventions to iwi and Māori organisations. Evaluation showed that when processes were led by Māori, whānau had improved experiences, showed greater participation, and were empowered to change through early interventions and support. These changes have been associated with a reduction in the number of tamariki and rangatahi Māori that have entered state care.

18c. *Placement with whānau, hapū and iwi*

- When tamariki Māori have required entry to state care, earlier and broader engagement means they are more likely to live with their whānau, hapū, and iwi. Over 75% of tamariki and rangatahi Māori living with caregivers have been placed with whānau consistently over the last few years, with a further seven percent placed with non-whānau Māori caregivers in 2023.

18d. *Supporting identity and belonging*

- Under the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018, tamariki and rangatahi Māori in care are supported to meet their cultural and identity needs through the use of tailored plans; resourcing of Māori organisations to support identity-building and culturally appropriate whānau therapeutic interventions which have driven improvements in whānau dynamics, relationships, and connections to culture.
- Despite evidence showing that children in care are more likely to lack a sense of belonging and identity to people and place, tamariki and rangatahi Māori in care have expressed greater pride in their cultural identity and sense of belonging than other groups in care. This shift resulted from the introduction of practices that reinforced the importance of identity. Evidence shows that tamariki and rangatahi Māori view a strong cultural identity and sense of belonging as

protective factors against life adversity, noting reconnection with whānau as “essential for healing”.⁸

18e. *Leaving care or custody*

- There has been an increase in the use of Kaupapa Māori homes which have successfully supported tamariki and rangatahi Māori to prepare for, and transition out of care within a culturally enriched and supportive environment.
- Resourcing of transition support services has increased, including provision of support, life-skills and cultural resources to support young people to transition out of care. There has been an increase in the number of iwi, hapū, and Māori organisations facilitating these services.

19 While the mana tamaiti objectives assess progress on measures related to cultural considerations, such as whakapapa and whanaungatanga, it is important to note that they do not demonstrate the extent to which section 7AA was instrumental in resourcing strategic partnerships to carry out Care, Protection and support duties. Some of our strategic partners have emphasised that without section 7AA they would not have been taken seriously by the Department in terms of their experience of the system and their decades-long expertise in working with tamariki and whānau.

20 Changes introduced in Oranga Tamariki that resulted from the introduction of 7AA have 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.

21 In our view, it is more likely that non-regulatory changes, such as further strengthening of practice guidelines, would better address the problem. However, due to Ministerial commissioning, the identification and assessment of these options falls outside the scope of this analysis.

Changes to practice

22 In recent years, Oranga Tamariki has implemented several major changes to centre safety and well-being in practice decisions. In 2021, Oranga Tamariki introduced a new Practice Framework and provided extensive new guidance to social work practitioners around ensuring children experience continuity of care in their placements unless there are significant risks involved. The Practice Framework was introduced to organise and guide our practice in consistent and cohesive ways, which would support safe, stable placement decisions.

23 In December 2022, Oranga Tamariki introduced a new practice policy relating to care arrangements for children in the custody of the Chief Executive. It includes a focus on safe, stable and appropriate care arrangements that address their safety and well-being needs, preserve connections, recognises the importance of whakapapa and supports them to achieve their aspirations and potential.

⁸ Oranga Tamariki (2021). *Making sense of being in care, adopted, or whāngai: Perspectives of rangatahi, young people, and those who are raising them.* [Making-sense-Qualitative-study.pdf \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz/~/media/Oranga-Tamariki/2021-08-10-Making-sense-qualitative-study.pdf).

- 24 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.

What is the policy problem or opportunity?

- 25 The Government is concerned that the requirement for the policies, practices, and services of the Department to have regard to mana tamaiti, the whakapapa of Māori children and young people, and the whanaungatanga responsibilities of their whānau, hapū and iwi outlined in section 7AA (referred to from here as 7AA(2)(b) of the section), has influenced practice decisions that were not in the best interest of tamariki and rangatahi Māori, such as changes to long-term care placements.
- 26 A range of stakeholders have voiced concern about the application of section 7AA in these care decisions, arguing that it has failed to centre the needs and best interests of children in care. These have primarily included caregivers and concerned whānau members. Fielding the concerns of these individuals regarding what has been characterised as the unintended consequences of section 7AA, the Government, in its coalition agreement committed to repealing the section.

Limitations of evidence

- 27 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. Some concerned stakeholders and advocates have expressed the view that section 7AA was responsible for previous, high-profile changes to care arrangements. Again, we do not have evidence as to whether section 7AA explicitly influenced these care decisions, but internal evaluation suggests that it did not.
- 28 A 2022 review into permanency practice identified 16 cases between 2021 and 2022 where a change was considered for children placed with non-whānau to be returned to whānau care.⁹ In around half of these cases, the children were moved to a new whānau caregiver. The review noted that changes to permanency plans are only considered when there is a “significant change in the circumstances of te tamaiti or their caregiver”, such as a significant lifestyle change within the whānau, or previously unknown whānau coming forward and being available for care. There is no evidence to suggest that these changes were made in accordance with section 7AA. Duties to honour whakapapa and increase the capacity of whānau to care for their own in care decisions are outlined in various other sections of the Act.
- 29 While some practice decisions have been made that, in hindsight, have not resulted in the best outcome for the child, it is important to reiterate that there is no evidence to suggest these resulted from the duties outlined in section 7AA. While 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 well-being and

⁹ Oranga Tamariki (2022). Internal Data.

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 well-being. These concepts are not mutually exclusive, and social workers largely succeed in placing children in loving and stable whānau homes.

What are the different sections of the Oranga Tamariki Act intended to do?

- 30 Section 7AA places a legal duty on the Chief Executive of Oranga Tamariki to ensure that all policies, practices and services 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 (as well as other duties imposed in order to recognise and provide a practical commitment to the principles of the Treaty of Waitangi).
- 31 Sections 4, 4A, 5, and 13 set out the purposes of the Act and the principles that must be considered or taken into account when exercising care and protection powers under the Act. These require Oranga Tamariki staff to take into account a range of purposes and principles when determining the most appropriate care arrangement for the children and young people with whom they work.
- 32 Factors such as safety and the need for a stable, loving home must be considered alongside cultural considerations such as whakapapa, whanaungatanga, and access to cultural resources. While section 4A requires social workers to prioritise the well-being and best interests of children and young people as the first and paramount consideration in these decisions, the factors that contribute to well-being and best interests may differ from child to child, requiring social workers to weigh these differently.
- 33 Because the duty in section 7AA(2)(b), which is perceived to be the cause of unsafe or high-risk care decisions, is not one of the sections that must be considered or taken into account when exercising care and protection powers under the Act, a full repeal of section 7AA will not remove mana tamaiti, whakapapa and whanaungatanga from being considered in placement decisions.

What objectives are sought in relation to the policy problem?

- 34 The Government's objectives for addressing this policy problem are:
- *To ensure that there is minimal conflict between safety and stability and cultural considerations in care decisions.*

This objective relates to all legislation, practice policies and guidelines involving children in care who are in long-term care arrangements with caregivers. It emphasises that, in the context of long-term placements, safety and stability must not be undermined by cultural considerations in policies and practices related to the administration of the Act. The relevance of this objective to the principles of the Treaty of Waitangi will also be addressed in the options analysis. This objective has been weighted as the most important to acknowledge that the safety and stability of children in care is of the utmost importance to the Department.

- *The unique rights, needs, and voice of each child are cherished, enabling children to become flourishing adults.*

This objective requires the Department to prioritise the unique needs and well-being of children, alongside their right to a stable and loving home. This policy objective acknowledges the wider whānau and environmental context within which care decisions occur, and that needs may differ depending on the situation. However, a child's needs and voice should always influence practice decisions. Placement of children with the best caregivers for their needs means that the unique needs, rights, and voice of a particular child should be at the centre of care decisions. This includes the right to belong to their family, whānau, hapū, and iwi, as set out in the Convention on the Rights of the Child and other legislation. This objective also identifies that honouring the rights, needs and voice of each child is critical for supporting long-term well-being as adults. This objective has been weighted as the second most important because it acknowledges that each child is unique, and has individual needs that cannot be addressed through a one-size-fits-all approach.

- *To ensure confidence in Oranga Tamariki's decision-making.*

This objective ensures that the public have confidence in, and trust Oranga Tamariki's decision-making. It is vital that communities across Aotearoa New Zealand develop trust and a willingness to work alongside Oranga Tamariki to improve the safety and well-being of children. This will involve making decisions that earn the trust and confidence of community members and forming sound relationships with our stakeholders. This objective has been assessed as the third most important because high levels of public confidence are crucial for Oranga Tamariki to carry out its role effectively.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

35 The criteria used to assess the potential options are:

- *Likely effectiveness* – the extent to which the proposals meet the objectives stated above.
- *Consistency with the principles of the Treaty of Waitangi* – the extent to which proposals honour the principles of the Treaty of Waitangi.
- *Durability* – the extent to which proposals are likely to achieve sustained change in the direction sought.
- *Consistency with the United Nations Convention on the Rights of the Child and other relevant international obligations* – the extent to which proposals meet Aotearoa New Zealand's constitutional and international obligations.

36 We have used an internal assessment tool to assess whether the proposals are consistent with the United Nations Convention on the Rights of the Child (UNCROC) and a Treaty of Waitangi assessment to examine whether the proposals are consistent with the Treaty of Waitangi.

What scope will options be considered within?

- 37 The scope of options for this proposal has been limited by the Government's commissioning. The Minister has directed us to prepare for the repeal of section 7AA, and as such, we are unable to provide detailed analysis regarding non-regulatory options which we believe would better address the perceived problem. Nor do we consider alternative potential legislative options. We provide a brief analysis for the impact of a partial repeal.
- 38 The timeframes for preparing the repeal have also prevented us from undertaking consultation with affected stakeholder groups. Lack of consultation may have limited the scope of options that could be considered to address the policy problem and has prevented us from gauging the full impact of a repeal on our stakeholders and the services they receive or provide. Engaging and including the voice of our communities is considered crucial for the success of this organisation and has played a vital role in previous legislative reforms. The Iwi Leaders Forum and their representatives were instrumental in working with officials to develop proposals that led to the introduction of section 7AA. This involved wide consultation with iwi and Māori partners prior to the operationalisation of the section to design and implement a long-term set of measurable outcomes.
- 39 While the commissioning of options has precluded a detailed analysis of non-regulatory options, a brief initial analysis will be provided in the options analysis section to highlight the benefits and disadvantages of these options.
- 40 The limited timeframe in which this analysis has been undertaken has also prevented us from considering a wide range of robust evidence regarding the impact of a repeal of section 7AA.

What options are being considered?

- 41 In this section, each policy option will be analysed against each policy objective using the policy criteria of likely effectiveness, consistency with the Treaty of Waitangi, durability, and consistency with the United Nations Convention on the Rights of the Child (UNCROC), and other relevant international obligations. Each policy objective and criterion has been given a weighting that reflects its level of importance in the context of legislative change, and these are listed clearly within the options analysis table. The options canvassed in this section include retaining the status quo, a full repeal of section 7AA, and a partial repeal of section 7AA that focuses on solely repealing subsection 2(b).

How will each option address the policy objectives?

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|---|---|---|
| Option 1 would retain all parts of section 7AA in the Act. | Option 2 would repeal section 7AA in its entirety. Strategic partnerships with iwi and Māori organisations can continue regardless of a repeal. | This option would repeal section 7AA(2)(b), but retain all other duties included in section 7AA. |
| Objective: Likely effectiveness | | |
| <p>It is considered that section 7AA, alongside other provisions in the Act already ensure that cultural considerations do not undermine safety and stability in care decisions. While section 4A requires staff to assess safety as “the first and paramount consideration” in care decisions, sections 5 and 13 obligate staff to attribute greater weight to a child’s safety, and need for a stable, loving home, over broader well-being considerations.</p> <p>The notion that cultural factors may interfere with well-being considerations in care decisions has been raised by concerned stakeholders who view the application of the principles of the Treaty of Waitangi to legislation as a detraction from the core purpose of the care system.</p> <p>Our evidence suggests that including the Treaty principles into legislation has contributed to improvements in safety and stability for children both inside, and outside of statutory care. These principles, as enshrined within section 7AA have supported the delegation of care duties to strategic partners</p> | <p>A repeal of section 7AA removes the framework for how Oranga Tamariki provides a practical commitment to the principles of the Treaty of Waitangi.</p> <p>Repealing section 7AA will not remove provisions to consider cultural factors contained elsewhere in the Act. A full repeal may also appear redundant in practice, given that the Act already requires staff to consider the “well-being and best interests of the child” (which encompasses safety and stability) as the paramount consideration.</p> <p>The repeal may give the perception that practice decisions no longer require an assessment of cultural factors, such as whakapapa and whanaungatanga. As noted earlier, care arrangements that strengthen connections with family members are typically associated with more positive outcomes, so a shift toward placing children with non-kin caregivers may worsen safety</p> | <p>Repealing the duties outlined in section 7AA(2)(b) may narrow social workers’ focus on the physical safety and placement stability of children in care, without removing other duties in section 7AA that have delivered positive outcomes.</p> <p>However, because the cultural considerations outlined in section 7AA(2)(b) are also contained in other parts of the Act, a partial repeal should not have the effect of staff giving less weight to these matters in placement decisions.</p> <p>The partial repeal would mean that the duties regarding strategic partnerships and reporting on progress against the duties in section 7AA would remain. These requirements play a strong role in improving outcomes for tamariki and rangatahi Māori, and therefore this option is preferred over a full repeal of section 7AA.</p> <p>While a partial repeal may not affect a Department-wide commitment to addressing this policy objective, our evidence</p> |

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|---|--|--|
| <p>who best understand the needs and challenges facing their communities, increasing engagement in services that are instrumental for increasing safety, stability, and well-being within their homes.</p> <p>Additionally, Oranga Tamariki evidence shows that connection to whānau and knowledge of whakapapa are also important facets of safety and well-being for children in care.¹⁰ This position is supported by international evidence that shows children experience greater stability when placed in the care of biological family members, than with non-kin caregivers¹¹. Care-experienced children also experience improved stability and positive outcomes when placed in care with their siblings¹². Research in this space suggests that this is because caregivers are more likely to provide safe and loving home environments for children with whom they share common ancestry and obligations.</p> | <p>and stability outcomes for young people in our care (especially tamariki Māori).</p> <p>It is likely that by removing the duties in section 7AA that require setting and reporting on measures to improve outcomes for Māori, the resourcing for accountability mechanisms that capture the voice, rights, and needs of tamariki Māori in care will decline. This change could be offset by introducing new mechanisms to hold Oranga Tamariki to account for improving outcomes for tamariki Māori but without this requirement being legislatively required it may not carry the same weight and reporting could decline over time.</p> <p>In addition to strengthening accountability, Section 7AA was instrumental in setting up strategic partnerships which have led to many of our partner-run transition services that support rangatahi in care to enter work,</p> | <p>demonstrates that the perceived needs and voices of children in care frequently reference knowledge of whakapapa and culture, and a sense of cultural identity¹⁵. Repealing the duty to ensure that the policies, practices and services of the Department have regard to mana tamaiti, whakapapa and whanaungatanga from section 7AA may have an adverse impact on the rights and needs of tamariki and rangatahi Māori.</p> <p>A partial repeal of section 7AA would not negatively affect caregivers' ability to provide loving stable homes within which children can heal and grow into flourishing adults. Given that a partial repeal would not remove the obligation for the Department to seek to develop strategic partnerships with iwi and Māori organisations, many tamariki and rangatahi Māori would also receive services that strengthen connection to their culture,</p> |

¹⁰ Oranga Tamariki (2021). *Making sense of being in care, adopted, or whāngai: Perspectives of rangatahi, young people, and those who are raising them*. [Making-sense Qualitative-study.pdf \(oranqatamariki.govt.nz\)](#); Oranga Tamariki (2023). *Making sense of being in care, adopted or whāngai: Updated Literature Review*. [Making-sense Literature-review.pdf \(oranqatamariki.govt.nz\)](#).

¹¹ Wulleman et al., (2023). *(Re)defining family: A systematic review and meta-synthesis of foster children's views of family in non-kinship foster care*. [\(Re\)defining family: A systematic review and meta-synthesis of foster children's views of family in non-kinship foster care - ScienceDirect](#); Sattler et al., (2018). *Age-specific Risk Factors Associated with Placement Instability Among Foster Children*. [Age-specific Risk Factors Associated With Placement Instability Among Foster Children - PMC \(nih.gov\)](#); Engler et al., (2020). *A Systematic Review of Mental Health Disorders of Children in Foster Care*. [A Systematic Review of Mental Health Disorders of Children in Foster Care - PubMed \(nih.gov\)](#)

¹² Font & Kim (2022). *Sibling Separation and Placement Instability for Children in Foster Care*. [Sibling Separation and Placement Instability for Children in Foster Care - PubMed \(nih.gov\)](#)

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|---|---|--|
| <p>Familial and cultural factors, such as whakapapa, and whanaungatanga needs are outlined as rights within section 7AA. When surveyed, children in care have also voiced connection to whānau, whakapapa and cultural identity as important for their well-being and this has been supported by advocacy groups, such as VOYCE – Whakarongo Mai and the Oranga Tamariki Youth Advisory Group.¹³</p> <p>In combination with a safe, stable home, the cultural factors given legislative weight in section 7AA empower children to become flourishing adults, and this has been demonstrated by the positive impact iwi and Māori partner-led transitional support programmes have exerted on the long-term well-being of Māori who age out of care. Placement with family members (and also likely iwi and hapū) tends to promote greater stability, which is associated with a host of positive lifetime outcomes, including improved</p> | <p>new accommodation and the adult world after they leave care. Changes to these services following a repeal could affect the ability of young people to flourish as adults. However, given the commitment to retain strategic partnerships following a repeal, it is likely that these services will continue to be provided.¹⁴</p> <p>Repealing section 7AA may increase public trust and confidence among some areas of the community who perceive that section 7AA has influenced flawed practice but decrease confidence among those communities with whom Oranga Tamariki and its partners have the greatest contact. Because perceptions of trust and confidence from these communities are vital to engagement in services that improve the safety and well-being of children, it is considered that the overall impact of a full repeal will be detrimental to the reputation of Oranga Tamariki and further alienate the communities with which we work.</p> | <p>whakapapa, and identity. This will likely support positive long-term development.</p> <p>As with a full repeal, it is possible that a partial repeal may both increase and decrease trust and confidence with different areas of the community. With the repeal of 7AA(2)(b), there is likely to be a decrease in trust and confidence among the whānau and communities we work directly with, however, this may be offset by retaining the other duties of 7AA in legislation, such as the commitment to sustaining and developing strategic partnerships.</p> <p>As such, this option is considered approximately as effective as the status quo.</p> |

¹³ Oranga Tamariki (2023). *Ngā Haerenga – Transition Journeys Phase Three Report*. [Ngā Haerenga | Transition Journeys Phase Three \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz); Youth19 Research Group (2021). *What should be changed to support young people? The voices of young people involved with Oranga Tamariki*. [Youth19 young-people-involved-with-Oranga-Tamaki Youth-Voices.pdf \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz); Oranga Tamariki (2023). *Section 7AA Report 2023*. [Section 7AA report 2023 \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz).

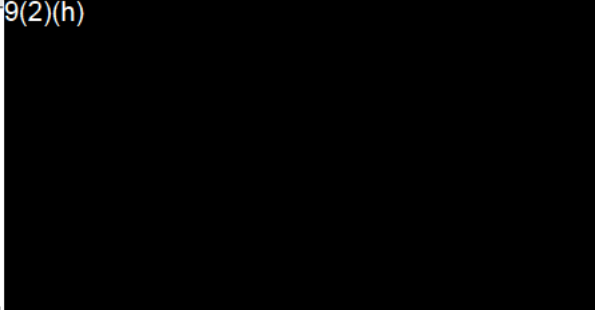
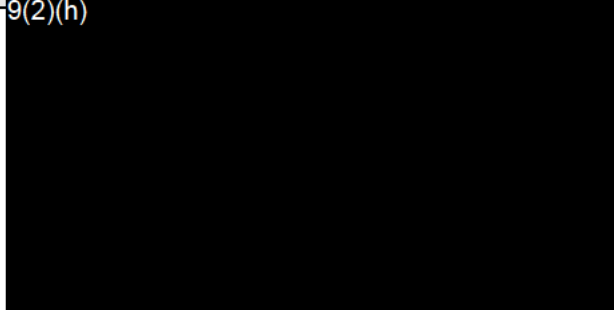
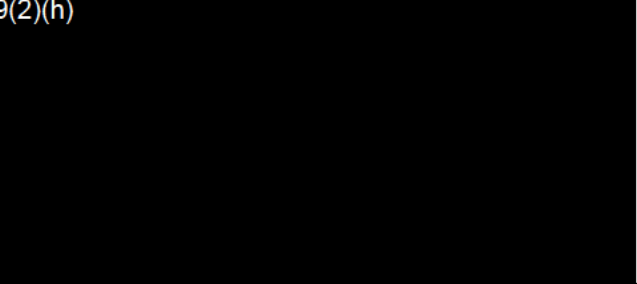
¹⁴ While we have not had sufficient time for consultation, we have heard from our strategic partners that although these relationships will continue, the effectiveness of the services they provide may be undermined by a repeal.

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|--|---|--|
| <p>health, education, and employment outcomes.</p> <p>This analysis considers that retaining section 7AA will improve overall public confidence in Oranga Tamariki’s decision making, and in particular, will increase trust in communities with which Oranga Tamariki has the greatest contact. It is possible that retaining section 7AA will decrease levels of trust among some parts of the community who have perceived section 7AA as a possible cause of poor practice.</p> <p>Overall, we consider that the services that section 7AA continues to resource and prioritise are most effective at meeting the policy objectives of this RIS.</p> | | |
| Objective: Durability | | |
| <p>Section 7AA places a statutory obligation on the Chief Executive to hold Oranga Tamariki more firmly and transparently to account for the improvement of Māori outcomes. The clearly signalled intention to improve accountability and outcomes for Māori was critical for improving relationships and trust between Oranga Tamariki and Māori. These improved relationships have positioned</p> | <p>While certain processes related to section 7AA that are delivering positive outcomes for children, such as strategic partnerships, will likely continue in its absence, a full repeal may remove oversight and potentially affect the level of resourcing that these processes receive. This may, for example, diminish the capacity of our strategic partnerships to connect with communities that have low trust</p> | <p>This partial repeal would keep most of section 7AA in the Act, which would maintain continuity for a variety of important policies and practices. For example, retaining the commitments to maintain and develop new strategic partnerships and develop and report on progress for measures designed to improve outcomes for Māori will support long-term</p> |

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|---|--|---|
| <p>Oranga Tamariki and its partners to intervene and support whānau early, enabling them to provide safe and loving homes. Section 7AA has also strengthened the resourcing and monitoring of services that capture the voice, unique needs, and rights of children, and set children up with the support and tools that enable long-term well-being within the context of their whānau and communities.</p> <p>Retaining section 7AA also sends a signal to the communities with which Oranga Tamariki and its partners interact that whānau are valued and trusted for their engagement. This is likely to continue to facilitate improvements in the safety, stability, and well-being of children within, and outside of statutory care.</p> <p>Retaining section 7AA may promote the durability of public confidence and trust in Oranga Tamariki. Building trust and confidence in our decision making from our partners and communities with whom we work is a long-term process but one that has been invaluable at supporting long-term relationships with communities and whānau.</p> <p>We expect that retaining section 7AA will sustain the durability of the desired policy objectives.</p> | <p>in Oranga Tamariki. A consequence of this may be that at-risk whānau and communities show lower engagement in services that have been shown to improve the safety and stability of children.</p> <p>While a full repeal of section 7AA would not prevent the Department from considering factors related to the unique rights, needs, and voice of each individual child, certain factors (for example, mana tamaiti, whakapapa and whanaungatanga) may receive less priority and resourcing in policies and practices over time.</p> <p>It is unclear whether a full repeal would affect the Department’s capacity to empower children to become flourishing adults and members of their communities. The possible decrease in trust among Māori whānau and communities following a full repeal could affect their levels of engagement with the Department and strategic partners which may affect the long-term well-being of children.</p> <p>While a repeal may increase confidence in the Department’s decision making among some groups, this increased confidence is unlikely to be sustained long-term given the high degree of scrutiny Oranga Tamariki</p> | <p>resourcing and accountability for services that facilitate these outcomes.</p> <p>By removing section 7AA(2)(b) there is a risk that policies will not highlight these needs of individual children as strongly as they do now. In this regard, a partial repeal is considered less effective than the status quo at meeting this policy objective. However, the retention of the remainder of section 7AA will help centre the rights, needs and voices of tamariki Māori.</p> <p>The duties outlined in section 7AA most relevant to this policy objective are those related to strategic partnerships, but also the duty to ensure policies, practices and services have regard to mana tamaiti (tamariki), whakapapa, and whanaungatanga responsibilities. A partial repeal may send a signal that cultural considerations, such as whakapapa and whanaungatanga, should not be considered alongside safety and stability in future care decisions. However, because these considerations are outlined in other sections of the Act, repealing this duty from section 7AA may not lead to safety and stability being further prioritised ahead of cultural considerations in practice. Retaining the duty to seek to develop strategic partnerships is not, however, outlined in any other section of the Act, and a partial repeal would retain a</p> |

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|---|---|---|
| | <p>experiences in the public arena. Further, those who may experience increased trust in the Department’s decision making are unlikely to be directly impacted by the consequences of a repeal. On the other hand, a full repeal is likely to diminish confidence and trust in the Department in the communities for whom sustaining trust is most critical. Because these communities are among our most marginalised and express low levels of trust in public services already, a full repeal risks increasing long-term mistrust and disengagement in our services.</p> <p>As such, we consider that repealing section 7AA in its entirety may worsen long-term public confidence in Oranga Tamariki overall.</p> | <p>legislative imperative for these partnerships to continue. Keeping strategic partnerships will help ensure that children are best supported to become flourishing adults and members of their communities.</p> <p>A partial repeal of section 7AA is likely to have a similar impact on public confidence and trust as a full repeal, but with the added benefit that it will retain some of the partnerships and accountability mechanisms that are instrumental for building trust and engagement in our communities with the greatest need.</p> <p>While this option is less likely to address the policy problem than the status quo, a partial repeal is favoured over a full repeal.</p> |
| <p>Objective: Consistency with the Principles of the Treaty of Waitangi</p> | | |
| <p>Section 7AA was introduced as a practical application of the Treaty of Waitangi to Oranga Tamariki policies and practices. Retaining section 7AA allows Oranga Tamariki to continue to set minimum expectations for the Department’s policies,</p> | <p>Repealing section 7AA removes the duties imposed on Oranga Tamariki to recognise and provide a practical commitment to the principles of the Treaty. The repeal goes against evidence that highlights:</p> | <p>Sections 4A, 5, and 13 of the Act already ensure that practice decisions consider cultural needs alongside the need for a safe, stable, and loving home, so a partial repeal is unlikely to significantly change practice. Removing the duty to ensure policies, practices and services</p> |

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|--|---|---|
| <p>practices and services and how it works with iwi and Māori organisations. The Crown has an obligation to protect Māori interests including the need to address disparities. Article One of the Treaty of Waitangi is reinforced by Treaty jurisprudence under the principles of kawanatanga, partnership and mutual benefit and reflected in the strategic partnership provision in section 7AA. The Crown also has an obligation to act fairly between Māori and non-Māori and to protect Māori interests including the need to address disparities. This perspective is supported in Article three of the Treaty, reinforced in Treaty jurisprudence under the principles of equity and active protection and supported under the Section 7AA obligations to reduce disparities.</p> <p>The application of these principles within section 7AA has improved fairness and equity within the Care and Protection system by reducing the number of tamariki Māori entering care and has also helped reduce other disparities between Māori and non-Māori. Given that most children in care are Māori, it is only equitable and fair that significant weight is given in care decisions to factors that will strengthen connection with whānau and contribute to a positive sense of identity and belonging. As noted previously, these factors not merely improve safety and</p> | <ul style="list-style-type: none"> • Section 7AA has led to strategic partnerships with iwi and Māori organisations to provide early support, which has prevented Māori from entering the Care and Protection system, improving long-term outcomes. This also reduces disparities between Māori and non-Māori in care and reduces disparities down the line. • The duty in section 7AA(2)(b) has supported tamariki and rangatahi Māori to connect with their culture and develop a positive sense of identity which protects against adversity and supports long-term well-being. • The introduction of section 7AA has also played a pivotal role in strengthening trust and relationships between Oranga Tamariki and Māori. Repealing section 7AA is not consistent with the Treaty of Waitangi. <p>The principles outlined in section 7AA play an important role in reducing levels of inequity between Māori and non-Māori in care. While strategic partnerships would continue to drive down disparities in the absence of section 7AA, other statutory requirements, such as</p> | <p>have regard to mana tamaiti, whakapapa, and whanaungatanga from section 7AA, may send a signal to frontline staff that cultural considerations should play a less significant role in practice decisions. Given that most of the Care and Protection population is Māori, this partial repeal will likely have an adverse impact on this population, making this option less fair and equitable than the status quo.</p> <p>Removing the duty to give regard to mana tamaiti (tamariki), whakapapa, and whanaungatanga in all policies, practices and services from section 7AA may diminish the unique rights, needs, and voice of tamariki and rangatahi Māori.</p> <p>It is considered that a broad range of factors play a role in ensuring long-term well-being, and this partial repeal may impact negatively on those factors relevant to the well-being of tamariki and rangatahi Māori. It is possible that a partial repeal will in time lead to changes in our practice approach that fail to centre mana tamaiti, whakapapa, whanaungatanga, and the development of a positive cultural identity: factors that would otherwise buffer tamariki and rangatahi Māori against adversity throughout their lives. This suggests that a partial repeal would be less fair and equitable for Māori than the status quo.</p> |

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|--|---|---|
| <p>stability, but also honour the voice and rights of children and support them to flourish as adults. We consider that section 7AA empowers Oranga Tamariki to deliver these outcomes.</p> | <p>setting measures to reduce inequities and report publicly on progress in achieving these would be removed. Without replacing these accountability and reporting mechanisms after a repeal, work to reduce inequities may slow. This could have a material impact on the safety, stability, rights, needs and long-term well-being of children with whom we interact.</p> | |
| <p>Objective: Consistency with UNCROC and other international obligations</p> | | |
| <p>The United Nations Convention on the Rights of the Child (UNCROC) canvasses the rights of tamariki and whānau Māori, and the Act requires that these rights are respected and upheld. This supports them to be able to participate in their culture, practices, and language, to develop and maintain responsive services which meet their needs.</p> | <p>9(2)(h)</p>  | <p>9(2)(h)</p>  |
| <p>9(2)(h)</p>  | <p>Strategic partnerships are one of the ways in which decision-making and resources are transferred from Oranga Tamariki to Māori. These partnerships enable Oranga Tamariki to share resources and decision making, which enables accountability for outcomes.</p> | |

| Option 1 – Status Quo | Option 2 – Full Repeal | Option 3 – Partial Repeal |
|-----------------------|---|---------------------------|
| 9(2)(h) | 9(2)(h) | |
| | <p>Currently, Section 7AA requires the Chief Executive of Oranga Tamariki to report to the public at least annually on the progress being made to improve outcomes for tamariki Māori and their whānau, hapu and iwi. This provides transparency and builds trust and confidence with Ministers and the public.</p> | |

How do the options compare to the status quo?

42 Each of the options for the repeal of section 7AA in the Oranga Tamariki Act were considered across the four themes/issues being addressed in this RIS. Impact analysis ratings are listed below.

| | Option One – status quo | Option Two – full repeal of section 7AA | Option Three – partial repeal of section 7AA |
|--|-------------------------|---|--|
| Likely effectiveness | 0 | - | 0 |
| Durability | 0 | - | 0 |
| Consistency with the Treaty of Waitangi | 0 | - | - |
| Consistency with UNCROC | | - | - |
| Overall assessment | 0 | - | - |

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 43 Of the options contained within the scope of this RIS, the status quo (option 1) is preferred. This option ensures that the safety and stability of children continues to be considered in care decisions, alongside cultural considerations. The presence of section 7AA in legislation signals the importance placed on improving outcomes for tamariki Māori who remain substantially overrepresented in both care and related negative social outcomes. It also gives a directive to the Department to bolster existing practice, policy, and services to enhance the experience of children that interact with Oranga Tamariki.
- 44 Repealing section 7AA is unlikely to contribute to improvements to safety and stability. However, a repeal of section 7AA may undo some of the progress that Oranga Tamariki has made in building trust, relationships, and accountability in the communities we work with. This may worsen the safety, stability, and well-being of our children with the greatest needs. As noted in the constraints section, there may be other legislative options or non-regulatory options which could better achieve the policy objectives. However, due to the constraints on scoping and timeframes for this RIS, we have not assessed these here.
- 45 The following section summarises the likely impact of each policy option based on the analysis undertaken earlier in this report.

To ensure that there is minimal conflict between safety and stability and cultural considerations in care decisions

- 46 The importance of the child's well-being and best interests as the first and paramount consideration in all matters relating to the care and protection parts of the Act is already set out in section 4A of the Act. In a practice setting, this requires social work practitioners to ensure that the child's well-being and best interests is the primary consideration in all decisions regarding the child's care arrangements – and safety is a key component of wellbeing and best interests. When making care or protection decisions, the obligations placed on the Department by section 7AA, and the principles set out in sections 5 and 13 of the Act, also ensure that other important facets of well-being are taken into account.
- 47 This RIS has highlighted the absence of empirical evidence linking section 7AA with practice decisions in which safety and stability have been poorly weighted against the cultural needs of the child. Further, a significant body of international evidence suggests that placement of children with whānau members and siblings tends to promote greater stability and safety, rather than less.
- 48 There have been examples of decisions where the safety and stability of children was compromised. While these cases appear to have resulted from poor practice decisions, rather than as a result of the introduction of section 7AA, it is important that the Department continues to highlight the importance of safety, stability and well-being in care decisions. These concepts could be strengthened at a practice, policy, and strategic level through operational changes, such as strengthening practice policies and guidelines to ensure that the safety and well-being of children is prioritised appropriately in situations where children are in long-term placements and the disruption of moving them could cause harm.

The unique rights, needs, and voice of each child are cherished, enabling children to become flourishing adults

- 49 This second policy objective aligns with the Minister’s desire for children to have their individual needs considered in care decisions, particularly with the intent that they can thrive in loving and stable families. Our analysis considers that the presence of section 7AA best enables families, whānau, hapū, and iwi to raise their tamariki in loving, stable arrangements. The enactment of section 7AA in practice has resourced and supported iwi, hapū, and whānau to meet the individual needs of their tamariki and rangatahi and provide safe and stable environments within which they can grow and thrive. Given that most children in the care system are Māori, placement with culturally appropriate caregivers who prioritise their safety and well-being best meets their individual needs. Measures taken by these iwi and Māori organisations have also reduced the number of tamariki and rangatahi Māori entering care, which will reap considerable long-term benefits with regard to life outcomes, and future government investment.
- 50 The current provisions in the Act direct practice that is oriented first and foremost around the well-being and best interests of the child, while also ensuring that a strong sense of identity and belonging to one’s culture is cultivated and nourished throughout their life. Both safety and a strong positive sense of identity play important roles in ensuring long-term well-being. It is possible, though not inevitable, that a full repeal of section 7AA will in time weaken the Department’s focus and commitment to ensuring the development of cultural identity and connectedness, alongside other considerations, which may have long-term implications and impact on the safety and stability of children.

To ensure confidence in Oranga Tamariki’s decision-making

- 51 The final policy objective reflects the goal that our key stakeholders, including the public experience increased confidence and trust in the Department’s decision-making. Public confidence and trust in Oranga Tamariki are instrumental for supporting our clients to engage in services that protect and enhance the safety, stability, and well-being of children.
- 52 While a full or partial repeal may increase public confidence in the Department among some parts of the community, it is likely to diminish confidence and trust in those areas of the community we engage with the most. This may have a material negative impact on the safety, stability, and well-being of children inside and outside of statutory care.

A partial repeal is favoured over a full repeal, but the status quo is preferred

- 53 The option for a partial repeal of section 7AA was considered during the development of this paper. This partial repeal would remove the obligation for all policies, practices, and services of the Department to have regard to mana tamaiti (tamariki), the whakapapa of Māori children and the whanaungatanga responsibilities of their whānau, hapū, and iwi. All other duties outlined in section 7AA would be retained.
- 54 However, similar to a full repeal, it is unlikely that a partial repeal will have a significant impact on care decisions, given that mana tamaiti, whakapapa, and whanaungatanga represent important protective factors for tamariki and rangatahi Māori that other sections of the Act would continue to require be considered.

What are the costs and benefits of the options?

Costs and benefits for the status quo

- 55 There are few additional costs associated with maintaining the status quo.
- 56 While funding for the services, partnerships, and processes that section 7AA supports would largely be supplied from our baseline budget, it is possible that as the number of strategic partnerships are projected to increase, so too will the level of funding to support the services they provide.
- 57 Benefits are difficult to quantify because they are largely non-financial. It is likely that the declining number of tamariki and rangatahi Māori entering care due to the services provided by strategic partnerships may save considerable costs further down the line. It is not feasible to accurately quantify these benefits, however they would likely arise from decreased lifetime interaction and burden on social services.
- 58 Recent forecast modelling projected outcomes to the age of 24 for young people aged 14- to 17-years at 30 March 2020.¹⁶ Comparing young people who had a Family Group Conference (FGC) in the past year with those who were in care in the past year, the in-care group had poorer projected outcomes in areas such as health, justice, and benefit use. The drivers for some of these differences will be the factors that have necessitated an entry to care. If we assume that those young people who have not come into care - but who would have previously - are now more likely to have characteristics like the FGC group, then this indicates avoided costs especially around the Justice sector.¹⁷
- 59 In addition, recent work has looked at projected childhood spend for children and young people.¹⁸ This work compared those who have had statutory care and protection contact (FGC or in care) with those who have had sub-statutory only (up to an investigation/assessment), split by under 1 year and 1 year and over. Projected costs over childhood were over twice as high for the statutory compared with the non-statutory group. While this modelling does not confirm a causal relationship between the outcomes associated with section 7AA and projected future costs, it does suggest that a reduction in the number of children entering care and increase in the use of diversionary services may reduce lifetime spend on children who would otherwise have entered care.
- 60 More detailed analyses are needed to better understand the actual impacts, which is not possible in the current time frame.

Costs and benefits for a full repeal compared to the status quo

- 61 There are administrative costs associated with a full repeal. Oranga Tamariki will need to update practice policies, guidance, training materials and information on the website to reflect the change, as well as work the change through with our partners. There may be costs associated with recruiting additional social workers, should there be a loss to the workforce following the repeal of section 7AA. There may also be costs to Oranga Tamariki making any necessary changes to managing strategic

¹⁶ Based on the Oranga Tamariki Microsimulation Model (formally the Children's Wellbeing Model) in the Stats NZ Integrated Data Infrastructure

¹⁷ Costs based on Treasury's Cost-Benefit Analysis tool (CBAX) and information on corrections costs from the Department of Corrections

¹⁸ Oranga Tamariki (2024). *Investment approach to programme evaluation*. Unpublished report based on the Oranga Tamariki Microsimulation Model

partnerships and reporting under 7AA to ensure that the benefits of these additional functions are not lost.

- 62 The costs outlined above may be partially offset by reduced resource required going forward to complete reporting, monitoring, and evaluation as currently required by section 7AA. Costs may remain neutral if a non-legislative accountability mechanism was used to replace this function.
- 63 We could not undertake a robust analysis of social impacts in the time available. We are aware that a full repeal of section 7AA may pose a risk to the trust stakeholders have in the Department, which may cause reputational damage. There may be significant social and financial costs related to this loss of trust and reputation, particularly given the flow-on impacts this may have on levels of engagement with the Department.
- 64 A full repeal may increase levels of confidence in the Department's decision making for some members of the public who believe section 7AA has contributed to care placement decisions that were not in the best interests of children.

Costs and benefits for a partial repeal compared to the status quo

- 65 A partial repeal would retain all other aspects of section 7AA, excluding the duty to ensure that the policies, practices and services of Oranga Tamariki have regard to mana tamaiti, whakapapa, and whanaungatanga responsibilities. But it is still likely to result in marginal costs comparative to a full repeal. This is because Oranga Tamariki may still need to update practice policies, guidance, training materials and information on the website to reflect the impact of the repealed section. There may also be a negative reaction to the repeal of section 7AA within the social work profession. This reaction may include a loss to the Oranga Tamariki workforce, and costs associated with recruiting additional social workers.¹⁹ Further costs may also be needed to manage strategic partnerships, given that the partial repeal may be perceived as a diminution of their rights and tino rangatiratanga. The costs associated with resourcing section 7AA reporting will likely remain following a partial repeal.
- 66 We have identified some benefits to a partial repeal as compared to the full repeal of section 7AA. While the duty outlined in section 7AA to ensure that the policies, practices and services of Oranga Tamariki have regard to mana tamaiti, whakapapa, and whanaungatanga will be removed, the Department will still need to set and report on measures to remove disparities in care for Māori and continue to resource strategic partnerships with iwi and Māori organisations. Retaining this duty will continue to drive improvements for Māori in care and will enable public reporting on progress made in this area. Relationships with strategic partnerships will continue to grow and flourish and minimise some damage to trust between the Department and Māori, however, these benefits will not match those of the status quo.

Section 3: Delivering an option

How will the new arrangements be implemented?

Status quo

¹⁹ Internal anecdotal evidence suggests that a repeal of section 7AA may contribute to a loss to the Oranga Tamariki workforce, and additional costs associated with recruiting new social workers. This may worsen the existing shortage of social workers employed by Oranga Tamariki, possibly leading to further constraints in frontline workforce capability.

- 67 Retaining section 7AA would not require any changes to legislation or practice policies and guidelines. As such, there would be no new risks or major implementation impacts associated with this option.

Full repeal of section 7AA

- 68 A full repeal of section 7AA would require the Department to review the current process for considering and entering strategic partnerships and consider whether this requires changes following a full repeal. As noted earlier, the Minister has directed Oranga Tamariki to retain strategic partnerships with iwi and Māori organisations where they deliver positive outcomes, and the Department will need to consider any changes to strategic partnerships (including the wording of strategic partnership agreements) required following a repeal.
- 69 Oranga Tamariki will also need to review existing accountability and reporting mechanisms associated with section 7AA, and consider whether these can remain, and in what capacity. It is likely that mechanisms designed in line with section 7AA will require replacement, and it is unclear at this stage what new mechanisms the Department may implement to monitor accountability and report outcomes across the board.
- 70 A key risk associated with a full repeal is the impact this may have on the services that strategic partnerships provide for children with high need. Staff, stakeholders, and whānau will want certainty that strategic partnerships will resume, and that the services they provide will not be changed or paused during this period. There is some concern within the organisation and among our strategic partners that services may be impacted by the repeal, potentially leading to programmes that delivered positive benefits to children and whānau being removed on account of their relationships to duties in section 7AA.

Partial repeal of section 7AA

- 71 A partial repeal of section 7AA would mean the Department would have to update practice policies, guidance and social worker training to ensure that practice reflects the changes made to section 7AA.
- 72 It is possible that a partial repeal would incur the same risks associated with a full repeal, however, this is likely to be partially offset by the commitment to retain most duties within section 7AA.

How will the new arrangements be monitored, evaluated, and reviewed?

Status Quo

- 73 The monitoring, evaluation, and review of section 7AA has been underway for several years in the form of various accountability mechanisms and consistent reporting and evaluation.
- 74 This has taken the form of a range of documents and reports, such as:
- section 7AA reports which annually publish departmental progress on fulfilling the obligations of section 7AA and explore the impacts of these measures on tamariki, rangatahi, and whānau Māori.
 - Oranga Tamariki quarterly and annual reports, which assess the performance of the Department in progressing section 7AA obligations.

- section 7AA quality assurance standards which apply to policies, practices, and services, including strategic and operational policies, the practice framework and standards, and frontline services. These are monitored in publicly published reports.
- Research undertaken both by Oranga Tamariki and partner groups.

75 If section 7AA is retained, these monitoring, evaluation, and review mechanisms would continue, and additional measures could be explored that explicitly assess progress on promoting the safety and well-being of children in care.

Full repeal of section 7AA

76 Given our understanding that the intention of the repeal is to signal the importance of ensuring children remain in safe and stable care placements when they have been placed there over the long-term, monitoring, evaluation and review will likely involve the co-option of accountability mechanisms currently in place at Oranga Tamariki. This might involve:

- The use of specific reports (published either annually or more regularly) which publish departmental progress on improvements in child safety and the stability of long-term care placements.
- Oranga Tamariki quarterly and annual reports, which can include new assessments for achieving safe and stable outcomes for children in long-term care placements.
- Research, evaluation and performance monitoring undertaken by Oranga Tamariki and partner groups. This research could further analyse the long-term impacts of improving safety and stability in care and use this to guide investment for the Department.

Partial repeal of section 7AA

77 A partial repeal of section 7AA would remove one duty under this section: to ensure that the policies, practices and services of the Department have regard to mana tamaiti (tamariki), their whakapapa and the whanaungatanga responsibilities of their whānau, hapū and iwi. The other duties contained in section 7AA would remain. Given that the duties to set and report on measures to improve outcomes for Māori would remain intact, the Department would continue to use the same monitoring and accountability mechanisms that exist under section 7AA.