

13 October 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

1. We have considered whether the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill), a Member's Bill in the name of Karen Chhour, MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. The Bill repeals s 7AA of the Oranga Tamariki Act 1989. Section 7AA imposes duties on the chief executive of Oranga Tamariki in order to recognise and provide a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi). Specifically, these duties require the chief executive to:
 - a. Ensure that policies and practices aim to reduce disparities by setting measurable outcomes for Māori children and young people;
 - b. Ensure that regard is given to mana tamaiti, the whakapapa of Māori children and young people, and the whanaungatanga responsibilities of their whānau, hapū and iwi;
 - c. Seek to develop strategic partnerships with iwi and Māori organisations; and
 - d. Consider and respond to invitations from Māori organisations to form partnerships.
3. In 2016 we advised the then Attorney-General on the clause that became s 7AA, prior to its insertion into the Oranga Tamariki Act.¹ We considered that although the proposed amendments arguably drew a distinction on the basis of race, the distinction did not amount to discrimination for the purposes of s 19(1) of the Bill of Rights Act because it did not involve a material disadvantage for any other group.
4. Conversely, we have now considered whether the Bill's repeal of s 7AA engages the right to freedom from discrimination affirmed in s 19(1) of the Bill of Rights Act. The proposed repeal, by removing a measure that was intended to promote equitable outcomes for a group defined by reference to a prohibited ground, could be seen as withdrawing a relevant advantage for the purposes of the s 19(1) inquiry. Ultimately, however, we consider that the measure does not give rise to discrimination on the basis that it removes, rather than creates, a relevant distinction.
5. We have therefore concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

¹ Advice to Hon Christopher Finlayson QC, *Consistency with the New Zealand Bill of Rights Act 1990: Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill*, 5 December 2016.

A handwritten signature in blue ink, appearing to read "Jeff Orr". The signature is stylized with a large "J" and "O".

Jeff Orr
Chief Legal Counsel
Office of Legal Counsel