June 2024

To the Social Services and Community Committee,

Please find attached DPA’s submission on the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

## Disabled Persons Assembly NZ

Noho ora mai,

For any further inquiries, please contact:

Patti Poa

Policy Advisor – Auckland/Northland

Disabled Persons Assembly New Zealand

Email: policy@dpa.org.nz

# Introducing Disabled Persons Assembly

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

We recognise:

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/%24file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports

For this specific submission, we also recognise:

* our Tamariki Whaikaha and Tamariki Whaikaha Māori as children under the [1989 United Nations Convention on the Rights of the Child](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child) (UNCRC)
* our Tamariki Whaikaha Māori as indigenous children under the [2007 UN Declaration on the Rights of Indigenous Peoples](https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration_indigenous_en.pdf) (UNDRIP)

**We drive systemic change through:**

**Rangatiratanga / Leadership:** reflecting the collective voice of disabled people, locally, nationally and internationally.

**Pārongo me te tohutohu / Information and advice:** informing and advising on policies impacting on the lives of disabled people.

**Kōkiri / Advocacy:** supporting disabled people to have a voice, including a collective voice, in society.

**Aroturuki / Monitoring:** monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

**United Nations Convention on the Rights of Persons with Disabilities**

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),1 a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else. All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention.

The following UNCRPD articles are particularly relevant to this submission:

* **Article 3 – General Principles**
* **Article 5 – Equality and non-discrimination**
* **Article 9 – Accessibility**
* **Article 19 – Living independently and being included in the community**

**New Zealand Disability Strategy 2016-2026**

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy2 to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision.

The following outcomes are particularly relevant to this submission:

* **Outcome 5 – Accessibility**
* **Outcome 7 – Choice and Control**

# The Submission

**Introduction**

|  |
| --- |
| **Recommendation 1:** that the Bill be withdrawn. |

**Tāngata Whaikaha**

DPA acknowledges the bravery and courage of all Tāngata Whaikaha who went through the Royal Commission of Inquiry on Abuse in Care, providing their evidence of the mistreatment and abuse they faced while in state care.[[1]](#footnote-2) Kei a koutou te mana, te ihi, te wehi. To you all, we acknowledge your prestige, your power, and your authority. We respectfully uphold your mana as people who do well and create opportunities for yourselves.

We also remember Sir Robert Martin who advocated staunchly for the rights of all disabled people.

**Tamariki Whaikaha Māori**

DPA supports a vision of an Aotearoa that actively respects and fulfils the rights of all our children. With this in mind, we actively advocate for the safety of all disabled children and seeing them cared for, living a healthy life, having access to all aspects of their community and growing within their whānau, hapū and iwi.

For our Tamariki Whaikaha Māori, this vision is still not within our grasp. Section 7AA is a vital part of legislation that acknowledges what has happened in the past, what is happening now and moves us closer to upholding their rights. DPA strongly supports retaining and upholding the principles of Section 7AA to progress toward positive outcomes for our Tamariki Whaikaha Māori by supporting their unique needs and rights.

As evidenced in recent Waitangi Tribunal cases, it has been shown by prominent disability researchers that the state has not and does not always get it right for disabled Māori children or Māori children who become disabled while in state care.[[2]](#footnote-3)

In acknowledging Whanau Hauā[[3]](#footnote-4) with mixed heritage and their connections with other cultures, we see that there is ample proof that government legislation has negatively impacted on the children of indigenous communities in New Zealand, Australia, Canada and the United States with some children losing their lives in care.

In Waitangi Tribunal case WAI 2575, Māori disabled adults shared their stories of mistreatment in state care as former Disabled Māori children and testified that they faced another layer of discrimination when compared to non-disabled children. DPA also supports the Waitangi Tribunal’s cases WAI 3350[[4]](#footnote-5) and WAI 2915[[5]](#footnote-6) as legal safeguards for cultural connections and partnerships with whānau, hapū, and iwi to deal with historical injustices and exacerbating disparities in the well-being of Tamariki Māori.

Having Section 7AA in the Oranga Tamariki Act benefits Tamariki Whaikaha Māori [[6]](#footnote-7) as it reduces the disproportionate number of Māori children and young people taken into the care and protection system and improves outcomes for children and young people already in care. Repealing Section 7AA will disproportionately impact Tamariki Whaikaha Māori and Whānau Hauā risking further intergenerational harm.

Having Tangata Whaikaha Māori caring for Tamariki Māori and Tamariki Whaikaha Māori and their ability to advocate is necessary to care effectively for all children.

**Te Tiriti o Waitangi**

*Hutia te rito o te harakeke, Kei hea te Kōmako e kō?*

*If you pluck the shoot from the heart of the flax bush, from where will the bellbird sing?*

DPA recognises the support of Tāngata Whaikaha who stand in solidarity for the wellbeing of Māori disabled and Māori non-disabled. Seeing Tāngata Whaikaha in support of Te Tiriti o Waitangi and Māori peoples’ rights is beneficial to Māori disabled who are impacted by regressive changes to their rights.

This legislation will be in breach of article 2 of te Tiriti which guarantees Māori tino rangatiratanga over their kainga and of the Treaty principles of partnership and active protection. The long-term, historical effects of colonisation have also privileged monocultural approaches. Monocultural approaches perpetuate disparities and undermine Tamariki Whaikaha Māori rights to non-discrimination[[7]](#footnote-8), development[[8]](#footnote-9) and identity[[9]](#footnote-10), as well as being inconsistent with obligations under Te Tiriti o Waitangi.

Section 7AA reinforces Crown accountability to Te Tiriti o Waitangi, actively addressing institutional racism and promoting the best interests and wellbeing of Tamariki Whaikaha Māori. The arguments for its repeal, centred around potential conflicts with a child's best interests, overlooks the existing prioritisation of these interests in Sections 4A and 5 and requirements under children’s rights frameworks, including the United Nations Convention on the Rights of the Child.

Removing 7AA will not improve the focus of the Ministry for Children as it will represent a step backwards for Tamariki Whaikaha Māori.

In the General Policy Statement of the Bill[[10]](#footnote-11), it was written that Oranga Tamariki—Ministry for Children has moved Tamariki Māori from stable long-term care arrangements and placed them with whānau, hapū, and iwi groups to which they whakapapa. The way this generalised statement is made implies that that placements with whānau, hapū, and iwi groups to which they whakapapa are unstable. In DPA's view, Section 7AA supports the child's best interests by recognising the crucial role of whakapapa, culture, connection and identity in nurturing development. The repeal risks the harm of our Tamariki Whaikaha Māori.

**Repeal of 7AA Oranga Tamariki Act**

Evidence[[11]](#footnote-12) shows that tikanga Māori and matauranga Māori solutions are a necessity for addressing the root causes of long-term over-representation of Tamariki Whaikaha Māori in the care system. The lives of Tamariki Whaikaha Māori should always be considered within the wider whānau, hapū and iwi. Concurrently, iwi, hapū and Māori communities need to remain at the decision-making table in order to address the resulting ongoing harm to tamariki Māori. There is also a reference to existing strategic partnerships with iwi and Māori organisations in the Bill without the acknowledgement that Te Tiriti o Waitangi is a founding document for many of these organisations.

In the New Zealand Family Violence Clearinghouse (NZFVC) paper, it states that the Oranga Tamariki Regulatory Impact Statement[[12]](#footnote-13) for the repeal of section 7AA highlights several areas –

* a lack of robust evidence to support the view that section 7AA causes harmful changes to long-term care arrangements
* no empirical evidence to support the notion that section 7AA has driven practice decisions that have led to changing care arrangements
* no evidence to suggest that concerns are related to the duties outlined in section 7AA
* no evidence from some concerned stakeholders and advocates expressing the view that section 7AA was responsible for previous, high-profile changes to care arrangements
* That the Department [Oranga Tamariki] considers that a full or partial repeal of section 7AA will not address the policy problem.

We are aware that many Oranga Tamariki staff do their utmost to protect the wellbeing of children. We are also aware that there are many staff with large workloads and multiple expectations. Our concern is not with the individuals but with the system they work within and the legislation that sits behind it.

DPA agrees with the NZFVC’s recommendation that retaining section 7AA while continuing to strengthen practice and operational guidelines to fulfil the policy objectives and best address the Government's concerns is the best way forward.

In addition to this recommendation, we also recommend addressing poor practice and inadequate training; recognising the importance of culture; not perpetuating harm; upholding Te Tiriti as a rangatira document; implementing evidence-based policy and improving 7AA.

DPA repeats its request that the Bill be withdrawn.

Below are supporting statements from a range of people:

* "The empirical evidence that's been gathered over years, you know, since Pūao-te-ata-tū, essentially indicates that Māori children need to know where they come from, who they are, who they can rely on. And without 7AA, there's no assurance that Oranga Tamariki will take that into account." - Rahera Ohia (Ngāti Pukenga)[[13]](#footnote-14)
* “What the new government is proposing is highly regressive and very likely to cause harm to Māori children and families” - Luke Fitzmaurice-Brown (Te Aupōuri, Pākehā)[[14]](#footnote-15)

We finish on a statement from a long-time advocate and state care survivor, Paora Moyle of Ngāti Porou:

 *"*...the number one recommendation that the Abuse in Care Royal Commission report says that harms our babies is the lack of reporting, the lack of truth coming to the fore. And you've got thousands and thousands of people that have come forward with their testimony, and now there's irrefutable proof that child protection in this country has been very, very lax. In fact, it's targeted our babies and taken them away from their whakapapa. That has caused intergenerational harms. This government is responsible for addressing that. It is not. It is actually making it worse. It's taking away the protections. It's taken away the voices."[[15]](#footnote-16)

1. <https://www.donaldbeasley.org.nz/assets/publications/abuse/Institutions-are-places-of-abuse-The-experiences-of-disabled-children-and-adults-in-State-care.pdf> [↑](#footnote-ref-2)
2. <https://www.stuff.co.nz/pou-tiaki/129325029/abuse-in-care-institutions-operated-as-they-were-intended-mori-panel-says> [↑](#footnote-ref-3)
3. <https://www.journal.mai.ac.nz/content/wh%C4%81nau-hau%C4%81-reframing-disability-indigenous-perspective> [↑](#footnote-ref-4)
4. [forms.justice.govt.nz/search/Documents/WT/wt\_DOC\_213376913/Oranga Tamariki Urgent 10 May W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_213376913/Oranga%20Tamariki%20Urgent%2010%20May%20W.pdf) [↑](#footnote-ref-5)
5. [forms.justice.govt.nz/search/Documents/WT/wt\_DOC\_171027305/He Paharakeke W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_171027305/He%20Paharakeke%20W.pdf) [↑](#footnote-ref-6)
6. <https://www.legislation.govt.nz/act/public/1989/0024/latest/LMS216331.html> [↑](#footnote-ref-7)
7. UNCRC, Article 2 [↑](#footnote-ref-8)
8. UNCRC Article 6 [↑](#footnote-ref-9)
9. UNCRC, Article 8 [↑](#footnote-ref-10)
10. <https://legislation.govt.nz/bill/government/2024/0043/latest/whole.html?search=ts_act%40bill%40regulation%40deemedreg_oranga_resel_25_a&p=1#LMS960294> [↑](#footnote-ref-11)
11. [Care of children – section 7AA is worth fighting for, but we must remember it is not rangatiratanga – Māori Law Review (maorilawreview.co.nz)](https://maorilawreview.co.nz/2024/06/care-of-children-section-7aa-is-worth-fighting-for-but-we-must-remember-it-is-not-rangatiratanga/) [↑](#footnote-ref-12)
12. <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Information-releases/Cabinet-papers/7AA-repeal/Regulatory-Impact-Statement-Repeal-of-section-7AA.pdf> [↑](#footnote-ref-13)
13. <https://www.rnz.co.nz/programmes/mata-with-mihingarangi-forbes/story/2018928772/mata-season-2-episode-7-tauranga-moana-marks-160-years-of-struggle-the-repeal-of-7aa-and-the-iwi-chairs-forum> [↑](#footnote-ref-14)
14. <https://thespinoff.co.nz/politics/28-11-2023/stripping-our-child-protection-law-of-its-tiriti-provisions-would-be-a-huge-step-backwards> [↑](#footnote-ref-15)
15. [Pāora Crawford Moyle | Social Work Practitioner of 30 years - Waatea News: Māori Radio Station](https://waateanews.com/2024/05/08/paora-crawford-moyle-social-work-practitioner-of-30-years/) [↑](#footnote-ref-16)