



# Submission on the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill

## Hohou Te Rongo Kahukura – Outing Violence

Date: 3 July 2024

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### About us: Hohou Te Rongo Kahukura

[Hohou Te Rongo Kahukura](#) is a charitable trust focused on preventing and addressing violence experienced by Takatāpui and Rainbow people, including structural, institutional and interpersonal violence including sexual and partner violence. Our work is underpinned by an acknowledgment of Te Tiriti o Waitangi and the impact of colonisation on understandings of sex, sexuality and gender diversity in Aotearoa New Zealand.

We operate with a Te Tiriti structure, are survivor-led and include people with many different sexualities, genders, ethnicities, class and disability belongings, including allies. We take a community development and research-based approach to prevent violence, improve responses after people have experienced violence and promote wellbeing for people in Takatāpui and Rainbow communities across the lifespan. We also offer training, advice and support for violence response agencies and policy makers.

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*In the Waikato, we hold the only social work role in Aotearoa with a focus on violence in Takatāpui and Rainbow communities, via the Integrated Safety Response, taking referrals of children, young people and adults from New Zealand Police.*

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**Our language:** Takatāpui is an ancient Māori term to embrace culture, spirituality, and connection to whakapapa. It has many meanings for iwi and hapū, traditionally meaning “intimate partner of the same sex.” In contemporary times Takatāpui has been reclaimed to denote all those with diverse sex characteristics, gender identities and expressions and sexualities as well as Tangata Whenua identity. In this submission, Takatāpui refers to children and young people who whakapapa Māori and understand themselves to be sex, sexuality or gender diverse, or who are recognised by adults around them as sex, sexuality or gender diverse. We note children and young people may not have the language to describe themselves, but still recognised by adults around them as being Takatāpui or Rainbow.

## Summary

As an organisation with knowledge and experience of what is needed for the safety of Takatāpui and Rainbow children and young people, we **oppose** the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill. Instead, our hope is that state policy and practice supports Takatāpui tamariki and rangatahi to grow up connected to their whakapapa and able to be their authentic selves.

We agree with Kaupapa Māori experts working with whānau that the existing Section 7AA is inadequate because it does not uphold the obligations of Te Tiriti o Waitangi. Instead of the proposed legislation, we would like to see moves **to strengthen section 7AA to further move towards those obligations**. We urge the Social Services and Community Select Committee to recommend the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill **does not proceed**.

## Impacts of colonisation

It is impossible to understand the context for Takatāpui today without recognising the impacts of colonisation on whānau, hapū and iwi and Takatāpuitanga. For the first time in Aotearoa, men who were intimate with other men were criminalised in 1858, via the English Laws Act. The penalty for Takatāpui and other sexuality diverse men was death.<sup>1</sup> This and subsequent laws restricted the rights of Takatāpui and Rainbow people in a multitude of ways, and the disruption of tikanga has been described as trying to render Takatāpuitanga invisible.<sup>2</sup> We believe this Bill will further deepen the disruption of Takatāpuitanga, whakapapa and sense of belonging in whānau, hapū and iwi for Takatāpui tamariki and rangatahi.

In addition to laws specifically criminalising Takatāpui and Rainbow people, we also acknowledge the Minister of Social Welfare in 1985, seeking expert advice to understand the needs of tamariki and rangatahi Māori inside care and protection systems. The resulting report, Pūao-te-ata-tū (1988) named institutional and interpersonal racism inside the delivery of social services, and strongly advocated that social welfare systems needed to move from being solely based on the values, systems and viewpoints of only Pākehā culture.

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*The most insidious and destructive form of racism, though, is institutional racism. It is the outcome of monocultural institutions which simply ignore and freeze out the cultures of those who do not belong to the majority. National structures evolved which are rooted in the values, systems and viewpoints of one culture only.*<sup>3</sup>

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<sup>1</sup> <https://natlib.govt.nz/records/36179290>

<sup>2</sup> Dickson, S., Bennett, T., Bramwell, N., Brown, O., Cook, C., Divakalala, C., Fraser, B., Hickey, H., Matheson, L., Miller, K., Monise, M., Munroe, H., and Rodriguez, M., (2023). Uplifting Takatāpui and Rainbow Elder Voices: Tukua kia tū takitahi ngā whetū o te rangi.

<sup>3</sup> Pūao-Te-Ata-Tu, (1988), Wellington, available <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoateatatu.pdf>

As the report authors noted in the preface to the report:

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***“At the heart of the issue is a profound misunderstanding or ignorance of the place of the child in Māori society and its relationship with whanau, hapu, iwi structures.”***

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This government report found that Māori succeed when rangatiratanga is recognised and supported, and recommended Māori should be resourced to work on their own social issues.

Despite such clear guidance for government in 1988, Oranga Tamariki continues to be feared by Māori, and this fear and distrust stops many seeking help when needed. For Takatāpui caregivers, the institutional racism described in Pūao-te-ata-tū (1988) is also overlaid with fears that the state will respond with homophobia, biphobia or transphobia to caregivers.<sup>4</sup>

We note that another report commissioned by government in 2023 identified that Rainbow children and young people make up about 20% of the children and youth in the care of Oranga Tamariki.<sup>5</sup> About 10% of young people in Aotearoa are Rainbow. The same report suggested:

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***These proportions are often higher again for indigenous peoples and ethnic minorities. In the US, Canada, and Australia, rainbow indigenous youth are in care at disproportionate levels, the same way Māori are overrepresented in Oranga Tamariki. This can be attributed to colonisation in these countries and the way that Western and Eurocentric governments and economics have disenfranchised indigenous peoples. To further that, Western religions have undone indigenous rainbow cultures that were once celebrated and revered.***

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We also recognise many negative experiences inside care and other state institutions for Takatāpui and Rainbow people, including people we have supported.<sup>6</sup> The Survivor Experiences Service, set up by the state in response to the Abuse in Care Royal Commission of Inquiry, provides a service for survivors of abuse in care. For Māori, this means beginning the journey to restore the mana and mauri that was disconnected during their time in care.

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<sup>4</sup> See Clark, E., (2006), "The Construction of Homosexuality in New Zealand Judicial Writing" [2006] VUW LawRw 10; (2006) 37(2) Victoria University of Wellington Law Review 199; Dickson, S. (2016), Building Rainbow communities free of partner and sexual violence, Hohou Te Rongo Kahukura and The Backbone Collective & Hohou Te Rongo Kahukura, (2024). Make it about us: Victim-survivors' recommendations for building a safer police response to intimate partner violence, family violence and sexual violence in Aotearoa New Zealand..

<sup>5</sup> Oranga Tamariki Evidence Centre (2023). Rainbow children in care. Understanding how Oranga Tamariki can better support rainbow children and youth. Wellington, New Zealand: Oranga Tamariki—Ministry for Children.

<sup>6</sup> See for example Dickson, S. et al, (2023). Uplifting Takatāpui and Rainbow Elder Voices: Tukua kia tū takitahi ngā whetū o te rangi.

They also recognise Takatāpui and Rainbow children, young people and adults as uniquely vulnerable in care. In addition to physical and sexual abuse, they identify the following:<sup>7</sup>

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*We support people who have experienced different types of abuse, including behaviours that may not been seen as “traditional abuse”. This includes transphobic, biphobic, homophobic or interphobic microaggressions, neglect and alienation, loss of family and ongoing relationships, restraint and seclusion, lack of education, lack of privacy, loss of culture and cultural abuse.*

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We believe that for Takatāpui tamariki and rangatahi to be safe and able to live as their authentic selves, the solutions lie in the re-remembering of Takatāpuitanga to ensure their sense of belonging to whakapapa and whānau. The wellbeing of Takatāpui is interconnected with this belonging, and prioritising the wellbeing of Takatāpui tamariki and rangatahi means prioritising whakapapa and whānau and working with whānau to support Takatāpuitanga. Section 7AA gave direction to Oranga Tamariki to support this.

## The evidence

There is substantial evidence of institutional racism and discrimination towards Takatāpui inside state systems of care and protection. Section 7AA was introduced after consultation to reduce inequities and improve outcomes for tamariki Māori and was supported by Māori with experience of the state system. Section 7AA has required that Oranga Tamariki measure and report on inequities for Māori tamariki and whānau. Removing these requirements risks increasing the well-established risks of harm inside care and protection systems.

Based on all available evidence related to the proposed repeal of section 7AA, it will not benefit children, and risks creating conditions for greater harm to children. There is no available evidence that section 7AA is causing harm or unsafe practice, nor that repealing section 7AA will reduce harm or unsafe practice. There is no available evidence that Section 7AA is reducing the wellbeing of children, nor that repealing section 7AA will improve the wellbeing of children. There is no available evidence that Section 7AA puts children at greater risk, nor that repealing section 7AA will reduce the risk of harm.

However, there is evidence suggesting that Section 7AA is reducing inequities and improving outcomes for tamariki Māori, is increasing wellbeing of children and whānau Māori, and is reducing risk of harm for children. We note Oranga Tamariki’s own Regulatory Impact Statement Repeal of section 7AA and Oranga Tamariki’s own Section 7AA Report 2023 agree there is no evidence for the proposed repeal in terms of benefits in outcomes for Māori.<sup>8</sup>

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<sup>7</sup> <https://survivorexperiences.govt.nz/for-survivors/lgbttiq-survivors/>

<sup>8</sup> Regulatory Impact Statement: Repeal of section 7AA (2024). Oranga Tamariki, Ministry for Children and Te whanake i ngā hua mō ngā tamariki Māori, ō rātau whānau, hapū, iwi anō hoki | Improving outcomes for tamariki Māori, their whānau, hapū and iwi Section 7AA report (2023). Oranga Tamariki, Ministry for Children.

## International best practice

The United Nations Declaration on the Rights of Indigenous People (UNDRIP) includes two statements that are relevant to the Bill to repeal Section 7AA. UNDRIP recognises “the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child.” UNDRIP also recognises “the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.”

In addition, Article 2 of UNDRIP safeguards the rights of Takatāpui in terms of sex, sexuality and gender identity:

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*Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.*

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These statements are relevant to New Zealand as a signatory and reflect or respond to concerns identified in our state care and protection system.

## The future

The WAI 3350 Waitangi Tribunal report (2024) suggests Section 7AA has supported positive relationships between the state and Māori, contributing to success for many tamariki Māori.<sup>9</sup> What is good for tamariki Māori is good for Takatāpui tamariki and rangatahi. We would like to see the measurement and reporting of inequities include outcomes for Takatāpui, and supports and resourcing to enhance Takatāpuitanga for whānau, hapū and iwi.

We also believe that the best outcomes for all tamariki Māori, including Takatāpui, mean reducing the numbers of those in care. Resourcing whānau, hapū and iwi to safely care for their own and resourcing whānau, hapū and iwi to re-remember Takatāpuitanga after the disruptions of colonisation are not only the right things to do: they make more sense for an already over-stretched state.

The Regulatory Impact Statement: Repeal of section 7AA (2024) identified that Section 7AA has supported progress towards honouring the principles of Te Tiriti o Waitangi, acting as a step towards recognising the obligations of the state towards whānau Māori.<sup>10</sup> Not only does the repeal of Section 7AA risk more Takatāpui tamariki and rangatahi in care, it is inconsistent with honouring Te Tiriti o Waitangi, which we believe is critical to ending violence in Takatāpui and Rainbow – and indeed all our communities – in Aotearoa.

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<sup>9</sup> The Oranga Tamariki (Section 7AA) urgent inquiry report: WAI 3350 Waitangi Tribunal report (2024). Waitangi Tribunal.

<sup>10</sup> Regulatory Impact Statement: Repeal of section 7AA (2024). Oranga Tamariki, Ministry for Children.