



People Against Prisons Aotearoa

Submission to the Social Services and Community Committee on the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill.

People Against Prisons Aotearoa (PAPA) is a prison abolitionist organisation working for a fairer, safer, more just Aotearoa. This submission was prepared on behalf of PAPA by several members. The contact person for this submission is Tom.

We have included throughout the submission some of the lived experience shared with us by people currently in prison. These provide context and insight into the potential impacts of this Bill.

PAPA does not support the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill (the Bill).

- 1) PAPA does not support the Bill in any capacity. We urge the Committee to reject the Bill entirely.
- 2) PAPA supports an equitable Aotearoa where Te Tiriti o Waitangi is actively upheld; where tamariki, rangatahi and their whānau have their needs met; where social issues are not criminalised and; where prisons are not relied upon to warehouse humanity.
- 3) Section 7AA is not perfect, and it is not rangatiratanga.¹ However, if we do not have a society free from state incarceration, we need section 7AA to go some way towards minimising the abuse at the hands of the state. PAPA urges the Committee to consider a world where tamariki and rangatahi Māori are looked after by their own, not the State.
- 4) Ultimately, our submission affirms the rights of Māori and urges Aotearoa to imagine a world outside of incarceration.

¹ Luke Fitzmaurice-Brown, "Section 7AA is Worth Fighting For, But We Must Remember it is Not Rangatiratanga" (Māori Law Review, 2024)
<https://maorilawreview.co.nz/2024/06/care-of-children-section-7aa-is-worth-fighting-for-but-we-must-remember-it-is-not-rangatiratanga/>

Te Tiriti o Waitangi should be upheld

- 5) Section 7AA outlines the duties of the chief executive of Oranga Tamariki - the Ministry for Children in relation to the Treaty of Waitangi (Te Tiriti o Waitangi).
- 6) The focus of the Bill in combination with the obligations within Te Tiriti o Waitangi and the disproportionate targeting of tamariki and whānau Māori by the State, are why PAPA's submission is grounded within Te Tiriti o Waitangi.
- 7) PAPA accepts that New Zealand is a settler-colonial state² and that colonialism is ongoing. The issues faced by tamariki Māori who have contact with the state, such as abuse and disproportionate over-representation, are not new.³
- 8) The Ministry of Justice's *Youth Justice Indicators Summary Report* paints a grim picture of the disproportionate targeting of tamariki and rangatahi Māori by the state.
 - a) Tamariki and rangatahi Māori are more likely to be proceeded against and to be remanded in custody compared to other ethnicities.⁴

The criminalisation of social issues

- 9) PAPA supports the original intent of section 7AA to reduce disparities for Māori within the child protection system.
- 10) 97% of the children and 87% of the young people referred for a youth justice family group conference had a previous care and protection report of concern.⁵ That is, someone was worried about the welfare of the child or young person.
 - a) As with the adult justice system, Māori children and young people receive disproportionately harsh treatment at every step of the justice system.
 - b) For the same offences, Māori children and young people are more likely than non-Māori to be arrested, proceeded against, face court action, and to be remanded in custody.⁶
- 11) This is of particular concern to PAPA, and of relevance to the Bill, due to the 'prison-pipeline'.
- 12) Involvement in the youth justice system is the single biggest predictor of whether a young person's offending remains limited to their adolescence (as is the case with most young people) or continues into their adulthood.⁷ This may also be called the 'prison-pipeline'.

² Patrick Wolfe, 2006. "Settler Colonialism and the Elimination of the Native." (Journal of Genocide Research 8 (4): 387–409). doi:10.1080/14623520601056240.

³ John Te Rangi-Aniwaniwa Rangihau, "Puao-Te-Ata-Tu = Day Break : The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare" (The Committee, 1986); Moana Jackson, "The Māori and the Criminal Justice System : A New Perspective = He Whaipanga Hou" (Policy and Research Division, Dept. of Justice, 1987).

⁴ Ministry of Justice, "Youth Justice Indicators," Research and Data, June 2024, <https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/youth-justice-indicators/>

⁵ Ibid

⁶ Ibid; Department of Corrections, "Over-representation of Māori in the criminal justice system: An exploratory report," 2007. https://www.corrections.govt.nz/_data/assets/pdf_file/0014/10715/Over-representation-of-Maori-in-the-criminal-justice-system.pdf.

⁷ Rhoades, Kimberly A, Leslie D Leve, J. Mark Eddy, and Patricia Chamberlain. 2016. "Predicting the Transition from Juvenile Delinquency to Adult Criminality: Gender-Specific Influences in Two High-Risk Samples." *Criminal Behaviour and Mental Health* 26 (5): 336–51. <https://doi.org/10.1002/cbm.1957>.

- 13) The pipeline metaphor is because current youth justice interventions reinforce people's trajectory towards prison, rather than helping people to change course.⁸
- 14) One reason for this is that youth justice system harms young people in a variety of ways:
- a) There is a lack of rehabilitative options, and a lack of mental health and disability services coupled with a high proportion of young people with unaddressed mental health needs.⁹
 - b) Youth justice residences make frequent use of harmful isolation practices and have a high frequency of assaults.¹⁰
 - c) Experience in the youth justice system impedes educational and workforce opportunities for young people, and harms their broader integration into the community.¹¹

I was 14 years old I had dropped out of school and came to the attention of the police where I was referred to Youth Aid Services. I had just turned 16 years old when I first went to prison. I am now 39 years old and I have been in prison more than I have been out.

Did sending a 16 year old to prison fix the problem or just create a new problem, especially given I was 17 years old when I got put in the "big boys" unit where I was mixing with prisoners who had a lifetime of stories only too willing to share with me. I would say not, but you be the judge of that.

Being referred to Youth Aid also meant being referred to CYFS - Child, Youth, Family Services now known as. Everyone has heard the stories about this department, lucky for me I was never abused physically or sexually, but I was still failed by those who were paid to take care of me.¹²

- 15) The Abuse in Care - Royal Commission of Inquiry published the *Care to Custody Incarceration Rates Research Report* analysing the records of more than 30,000 children and young people over five decades.¹³
- 16) The research shows that people who spent time in State residential care were more likely to end up in prison. Between 1950-1999 (the Commission's time-frame) one out of

⁸ Peter Gluckman. "It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand." Office of the Prime Minister's Chief Science Advisor. (June 2018).
<https://www.dpmc.govt.nz/sites/default/files/2021-10/pmcsa-Its-never-too-early-Discussion-paper-on-preventing-youth-offending-in-NZ.pdf>

⁹ McVilly, Keith, Molly McCarthy, Andrew Day, Astrid Birgden, and Catia Malvaso. 2022. "Identifying and Responding to Young People with Cognitive Disability and Neurodiversity in Australian and Aotearoa New Zealand Youth Justice Systems." *Psychiatry, Psychology and Law*. (November 1, 2022).
https://www.tandfonline.com/doi/abs/10.1080/13218719.2022.2124548?casa_token=kvbhoMFuJTIAAAA%3A882C2c9y1-j0Eu8CKpUvPc73gNle8HBJHRsdsABSpkQOyRh7HxgPb5KVO-1PzK-AxZjaoZ9jEeSmuA.

¹⁰ Mana Mokopuna: Children & Young People's Commission. 2023. "UN Calls out New Zealand's Youth Justice Record." Mana Mokopuna. August 1, 2023.
<https://www.manamokopuna.org.nz/publications/media-releases/un-calls-out-new-zealands-youth-justice-record/>.

¹¹ Ian Lambie, Jerome Reil, Andrew Becroft and Ruth Allen, "How we fail children who offend and what to do about it: A breakdown across the whole system," (The Michael and Suzanne Borrin Foundation, the New Zealand Law Foundation & the University of Auckland, 2022)
<https://bpb-ap-se2.wpmucdn.com/blogs.auckland.ac.nz/dist/f/688/files/2023/03/2018-45-28.Children-Who-Offend.Final-research-report-March2022.pdf>.

¹² Personal correspondence with PAPA.

¹³ Abuse in Care: Royal Commission of Inquiry, "Care to Custody: Incarceration Rates Research Report," (Abuse in Care: Royal Commission of Inquiry, 2022).
<https://www.abuseincare.org.nz/our-progress/library/v/500/care-to-custody-incarceration-rates-research-report>

every three children and young people placed in residential care by the State went on to serve a prison sentence later in life.¹⁴

17) For tamariki and rangatahi Māori, this figure grows to up to 42 percent of those in care going on to receive a prison sentence later in life.¹⁵

18) As mentioned, those in state care, and youth justice, are likely to have reports of concerns about their welfare. These concerns are around welfare, which include housing, kai, poverty, exposure to violent behaviour and other potential harms.

19) Oranga Tamariki involvement in whānau lives may be intergenerational. This is a concern when you look at the link between Oranga Tamariki and its position as an arm of the settler-colonial State.

20) Section 7AA is therefore a key safeguard of positive early life experiences for Māori, which are crucial for avoiding the issues discussed here.

I was six years old when I was taken from my loving home and placed in state care because I had learning and mental problems they couldn't figure out – so the best plan they had was to place me in a place where I was beaten and sexually abused by the people that were supposed to be looking after me for years on end. I was subject to abuse and was put around situations that I had no control over. For years and years I was asking for help, trying to tell people of the wrong-doing that was happening to me every day and night.

I've been in the system since I was six years old; I'm now 35 years old. Every year I've been in one way, shape, or form locked behind a door I can't open, made to conform to rules that I have no control over. My life from an early age was written out. I'm a product of the system.

Abuse in Care

21) When tamariki and rangatahi are taken away from their whānau, hapū and iwi and placed into state 'care', they are at risk of harm and abuse.¹⁶

a) The removal of the child from their whānau can be frightening, confusing, shaming and can bring feelings of sorrow and long-term damage.¹⁷

I used to run away, get caught by the police, tell them "please don't take me back there, they are doing bad things to me", but they just took me back anyway. So I had the state abusing me, police that kept taking me back to my abusers, both departments sworn to protect me, and the most vulnerable, "Me" and others like me.

By the time I was released from these places nothing but a shell with no trust in the system and changed forever by the time I was 15 I was using intravenous drugs, heroin and morphine, to try and forget the abuse the state put me through. I was angry, didn't trust the state, was putting class A drugs in my arm. That kind loving child that loved sport was now stuck in a cycle of hate, rage, and anger, and started

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Elizabeth Stanley, "Witness Statement of Professor Elizabeth Stanley," (Abuse in Care: Royal Commission of Inquiry, 2019).

<https://www.abuseincare.org.nz/assets/Uploads/Documents/Public-Hearings/Contextual/16-Elizabeth-Stanley.pdf>

¹⁷ Elizabeth Stanley, *The road to hell. State violence against children in post-war New Zealand*, Auckland University Press, 2016.

[cont'd] lashing out at society, self-destructing because I felt I had no worth and couldn't understand why the people who make laws, protect us, did all this to me and why, all my trust gone.

...

I ended up meeting like minded people, who like me were angry and in the same mindset, so we all found common ground in our experiences, and became family of sorts, and organised our rage, anger, self-destructive behaviours in family, in the form of becoming gangsters to push back at the same society that hurt us. So we did and obviously the same state that made us pushed back even harder, and the cycle perpetuated for years.¹⁸

22) The abuse which has happened in state care is now well known.¹⁹ The Abuse in Care - Royal Commission of Inquiry has heard of almost 3,000 experiences of abuse.²⁰ This will be an undercount.

a) Secure care and protection residences are “hard places to be happy”.²¹

23) The abuse affects māmā and whānau as well as tamariki and rangatahi.

a) For many of those in ‘care’, they just want to go home. They want to be with their whānau, hapū and iwi.

“How much trauma and how much damage do you want to keep doing to my kids? They’re not running away, [Oranga Tamariki social worker], you need to rephrase the word ‘running away’ they’re ‘running to:’” - a māmā describing how their older tamariki was described as constantly running away, but were actually running home.²²

Prisons are not the answer to social issues and they cause harm

24) Along with the abuse in state care, the abuse in prisons is well documented.

25) Prisons are places which warehouse humanity.

26) People in prison face stigma on release that harms their relationships, work prospects and integration into the community;

27) Prisons are violent places where people learn to use violence to solve interpersonal problems;

28) Children of people in prison face higher rates of poverty, and worse outcomes in health and education;

a) In some cases, children of people in prison enter state care, damaging relationships of care that are essential to the well-being of children;

29) The earliest functions of prisons in Aotearoa were the as tools in the dispossession of Māori land, crushing resistance to colonial rule, preventing Māori from seeking redress for breaches of Te Tiriti;²³

¹⁸ Personal correspondence with PAPA.

¹⁹ Ibid.

²⁰ Abuse in Care: Royal Commission of Inquiry, “Our Progress,” 2024. <https://www.abuseincare.org.nz/>

²¹ Mana Mokopuna, “A Hard Place To Be Happy - Insights Report,” (Mana Mokopuna, 2019).

<https://www.manamokopuna.org.nz/publications/reports/hard-place-to-be-happy/>

²² Mana Mokopuna, “Te Kuku O Te Manawa: Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi,” (Mana Mokopuna, 2020). <https://www.manamokopuna.org.nz/publications/reports/te-kuku-o-te-manawa/>.

²³ Catherine Comyn. *The Financial Colonisation of Aotearoa*. (New Zealand: Economic and Social Research, 2024). Vincent O’Malley. *The New Zealand Wars | Ngā Pakanga O Aotearoa*. (New Zealand: BWB, 2019).

- 30) The prison system in the present draws people primarily from marginalised and disadvantaged backgrounds;²⁴
- 31) The Pākehā justice system continues to exist as a tool of colonial control, used to address social issues arising from breaches of Te Tiriti with mass incarceration instead of restoration, redress and constitutional reform;²⁵
- 32) We urge the Committee to imagine better futures for tamariki and rangatahi instead of proliferating harmful colonial views.

Imagining a better future

- 33) PAPA echo the concerns of many advocates and the Waitangi Tribunal, that the repeal of section 7AA will cause harm.
- 34) Instead of taking tamariki and rangatahi Māori away from their kainga, whānau and hapū and institutionalising or criminalising them, we urge the Committee to seek better solutions.
- 35) These solutions are well understood. They mean ensuring all children grow up in stable, healthy accommodation, with economic and social security and strong connections to their community; schools with the resourcing to appropriately support their social, emotional and academic needs so they can experience success; and health services with the funding to address mental and physical health needs of young people from disrupted or traumatic backgrounds.²⁶
- 36) Section 7AA is a key safeguard against the injustices of alienation, disconnection, dispossession and discrimination faced by tamariki and rangatahi Māori.
- 37) Section 7AA also provides a starting point for broader reform needed to ensure tino rangatiratanga and mana motuhake, that would involve the abolition of prisons and Oranga Tamariki.
- 38) We recommend the committee reject this Bill in its entirety.

²⁴ Emma Hatton. "Figured reveal prisoners' huge mental health needs". Newsroom. 2023.

<https://newsroom.co.nz/2023/04/13/figures-reveal-prisoners-huge-mental-health-need/>

²⁵ Moana Jackson. *Maori and the Criminal Justice System: A New Perspective, He Whaipaanga Hou*. (New Zealand: Ministry of Justice, 1987).

²⁶ Sampson, R, and J H Laub. 1994. "Urban poverty and the family context of delinquency: a new look at structure and process in a classic study". *Child Development* 65 (2): 523-540. <https://pubmed.ncbi.nlm.nih.gov/8013238/>

OECD. 2021. "Education at a Glance 2021." OECD Indicators. September 16, 2021.

<https://www.oecd-ilibrary.org/content/publication/b35a14e5-en>.

Office of the Prime Minister's Chief Science Advisor, *It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand*. June 2018.

<https://www.dpmc.govt.nz/sites/default/files/2021-10/pmcsa-Its-never-too-early-Discussion-paper-on-preventing-youth-offending-in-NZ.pdf>