

**TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI**

Wai 3350

**E PĀ ANA KI**  
CONCERNING

Te ture o te Tiriti o Waitangi 1975

**ME TE**  
ANDte pakirehua oho-tata o  
Oranga Tamariki (Wehenga  
7AA)*The Oranga Tamariki Urgent Inquiry  
(Section 7AA).*

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**HE PĀNUI WHAKAHAU NĀ KAIWHAKAWĀ DOOGAN**

MEMORANDUM-DIRECTIONS OF JUDGE M J DOOGAN

9 Paenga-whāwhā 2024

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## Hei tīmatanga kōrero

### *Introduction*

1. This memorandum-directions addresses Crown evidence.

### **Crown update regarding witnesses and evidence**

#### *He mahi whakahou mō te Karauna e pā ana ngā kaikōrero me te taunakitanga*

2. On 3 April 2024, I directed counsel for the Crown to update the Tribunal and parties on the availability of the responsible Minister (Hon. Karen Chhour) and the Chief Executive of Oranga Tamariki, Chappie Te Kani to provide evidence.
3. On 5 April 2024, counsel for the Crown Simon Barr advised that the Crown does not intend to call the Minister for Children. Counsel says this is because the Tribunal's questions directed to the Minister at paragraphs 8(a) to 8(h) in its memorandum-directions dated 28 March 2024 (Wai 3350, #2.5.3) are 'all canvassed' in Cabinet papers now available (at [6.1]). In addition, counsel said that senior Oranga Tamariki officials are able to speak to some of the matters including the Tribunal's questions at paragraphs 10(a) to 10(g), which are directed to the Chief Executive of Oranga Tamariki. Counsel also advised that the Crown has now made the 'policy decision to repeal section 7AA through Cabinet decision and the Cabinet papers concerned placed before the Executive will be available to the Tribunal'. Counsel submitted, therefore, that the Crown has decided it 'ought not to depart from the orthodox approach of not calling Ministers to give evidence before the courts, commission or tribunals' (at [6.4]). Counsel added that this practice is 'consistent with the dicta of the courts in various proceedings expressing reluctance to require Ministers to give evidence' (at [6.4]).
4. Counsel advise that the Crown will call the following witnesses from Oranga Tamariki (at [4]):
  - a) Chief Executive, Chappie Te Kani;
  - b) Deputy Chief Executive, System Leadership, Phil Grady; and
  - c) Deputy Chief Executive Quality Practice and Experiences, Nicolette Dickson.
5. I thank Crown Counsel for the update and for the early filing of the cabinet paper. There is one matter I wish to raise.
6. I held a teleconference with the panel this morning. We have considered the points raised at paragraph 6 of counsel's memorandum but cannot agree that evidence from the Minister "is not necessary to inform the tribunal of the relevant information."
7. It would greatly assist our inquiry if the Minister was able to provide evidence not only in response to the questions posed at paragraph 8 of my directions of 28th of March 2024, but also to provide more detail as to the basis for the opinions recorded at paragraphs 12

to 17 of the cabinet paper.<sup>1</sup> In particular, it would assist us to understand how many instances the Minister is aware of where it is said that decisions were made concerning care arrangements for Māori children which were not safe or in the child's best interest due to the operation of section 7AA.

8. It would also assist us to understand the identity of the prominent individuals and the several high profile cases referred to at paragraph 14, and also how many caregivers have informed the Minister of concerns about section 7AA (paragraph 16). These matters and the reason that section 7AA is considered the source of the problem are not matters that officials can speak to.
9. Departmental advice annexed to the Cabinet paper notes the limited nature of the options considered because the problem definition is premised on the assumption that section 7AA is the cause of various of instances of poor practice. Officials note the lack of robust empirical evidence to support that problem definition and say that departmental evidence demonstrates the problem more likely stems from flaws in the practice of individual staff. Officials also record concern with the constrained timeframe within which the proposed repeal is taking place which means there has been no public consultation with affected stakeholders, giving rise to significant risk of eroded trust and relationships between the department and whānau and hapū.
10. We see as significant the fact that the Minister has been able to convince cabinet to proceed with the proposed repeal of section 7AA notwithstanding this advice, and within a timeframe that forecloses the possibility of reasonable consultation with effected parties including those iwi and Māori organisations that having existing agreements with the Chief Executive pursuant to section 7AA.
11. As a panel, we gained some understanding of the complexities surrounding Child Protection law in the course of our previous inquiry into the disproportionate number of tamariki Māori taken into state care. In our April 2021 report, we considered a range of evidence and argument concerning section 7AA and related provisions. We noted that complexities around identity, whakapapa, and sources of trauma mean that who should provide intervention and support services to children at risk is not always straight forward. We cautioned that tamariki Māori who have been separated from their whakapapa, and who have been in state care for some time, cannot simply be taken from what they know to whanaunga whom they have never met.<sup>2</sup> We share the Minister's concern that law and practice in this area is not as good as it needs to be.
12. Pursuant to schedule 2 clause 8 of the Treaty of Waitangi Act 1975 the Tribunal has the power to issue a summons requiring the attendance of a witness. Crown Counsel argue that we ought not depart from what is described as the "orthodox approach of not calling Ministers to give evidence before the courts, commissions or tribunals." The cases

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<sup>1</sup> Wai 3350, #A8 – Appendix 1: Cabinet Paper re: Repeal of section 7AA of the Oranga Tamariki Act 1989 (including Regulatory Impact Statement).

<sup>2</sup> He Pāharakeke, He Rito Whakakīkīnga Whāruarua – Oranga Tamariki Urgent Inquiry (2021) at Chapter 6.4.2, page 183.

referred to concern the power of the Courts, particularly the powers of the High Court exercising its judicial review function. I think they are distinguishable from our jurisdiction and the circumstances of this inquiry.

13. We are nonetheless of the view that rather than issue a summons, we should invite the Minister to reconsider her position and provide evidence voluntarily.<sup>3</sup>
14. We take this approach because it is the Minister and her cabinet colleagues that we must persuade if we have recommendations to make at the end of our inquiry. We would prefer constructive engagement voluntarily given as it is more likely to advance our inquiry and its outcomes.
15. We leave the matter on that basis and ask Crown counsel to take instructions and advise as to whether or not the Minister is prepared to provide evidence by close of play Wednesday 10 April 2024.

*The Registrar is to send a copy of this direction to all those on the notification list for Wai 3350, the Oranga Tamariki (Section 7AA) urgent inquiry).*

**WHAKAPŪMAUTIA** ki Te Whanganui-a-Tara i te rā 9 o Paenga-whāwhā i te tau 2024.



Kaiwhakawā Doogan  
Te Mana Whakahaere

**TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI**

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<sup>3</sup> This has been done previously, for example by the Covid Response Minister who provided affidavit evidence to the COVID Inquiry