IN THE WAITANGI TRIBUNAL **Wai 2915**

IN THE MATTER OF the **Treaty of Waitangi Act 1975**

REPORT OF THE CHILDREN'S COMMISSIONER

in the matter of the Oranga Tamariki Urgent Inquiry (Wai 2915)

under

(Section 12(1)(g) Children's Commissioner Act 2003)

16 July 2020

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Whakataka te hau ki te uru,
Whakataka te hau ki te tonga.
Kia mākinakina ki uta,
Kia mātaratara ki tai.
E hī ake ana te atākura he tio,
he huka, he hauhunga.
Haumi e! Hui e! Tāiki e!

Get ready for the westerly
and be prepared for the southerly.
It will be icy cold inland,
and icy cold on the shore.
May the dawn rise red-tipped on ice,
on snow, on frost.
Join! Gather! Intertwine!

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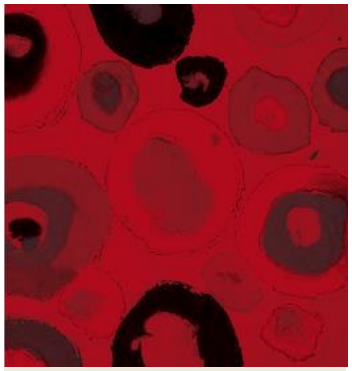

The OCC represents **1.1 million** people in Aotearoa New Zealand under the age of 18, who make up 23 per cent of the total population.

We advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

Context

1. This report is in response to a request from the Waitangi Tribunal for the Children's Commissioner to consider three questions which define the scope of this inquiry, with particular focus on the period 2015 to the present (Wai 2915, #2.5.25 at [12]):

    a. Why has there been such a significant and consistent disparity between the number of tamariki Māori and non-Māori children being taken into state care under the auspices of Oranga Tamariki and its predecessors?

    b. To what extent will the legislative policy and practice changes introduced since 2017, and currently being implemented, change this disparity for the better?

    c. What (if any) additional changes to Crown legislation, policy or practice might be required in order to secure outcomes consistent with Te Tiriti/the Treaty and its principles?

2. In response to the Waitangi Tribunal request, I file this report under Section 12(1)(g)(ii) of the Children's Commissioner Act 2003. Section 12(1)(g) states:

    12 General Functions of Commissioner

    (1) The general functions of the Commissioner are – …

    (g) if there are issues in proceedings before any court or tribunal that relate to the Convention or to the interests, rights, or welfare of children generally, to present reports on such issues to the court or tribunal, at the request of—

    (i) the court or tribunal;
    (ii) counsel representing any party to the proceedings; or
    (iii) counsel representing any child who is the subject of the proceedings; or
    (iv) counsel assisting the court or tribunal

3. As Children's Commissioner, my powers, functions and responsibilities are contained in the Children's Commissioner Act 2003. These are wide ranging, and include: advocacy, research, and increasing public awareness, all in respect of the welfare and rights of children[1]. I also have separate responsibilities with respect to monitoring and assessing the policies and practices of Oranga Tamariki–Ministry for Children (referred to in this report as Oranga Tamariki)[2].

4. Section 13 of the Children's Commissioner Act 2003 states the functions in relation to the Oranga Tamariki Act 1989 as the following:

[1] S 12, Children's Commissioner Act 2003.
[2] S 13, Children's Commissioner Act 2003.

13. Functions in relation to Oranga Tamariki Act 1989

(1) The Commissioner has the following functions in relation to the Oranga Tamariki Act 1989:

(a) to investigate any decision or recommendation made, or any act done or omitted, under that Act in respect of any child or young person in that child's or young person's personal capacity:

(b) to monitor and assess—

(i) the policies and practices of the department; and

(ii) the policies and practices of any other person, body, or organisation that relate to the performance or exercise by the person, body, or organisation of a function, duty, or power under that Act or regulations made under that Act:

(c) to encourage the development, within the department, of policies and services that are designed to promote the welfare of children and young persons:

(d) on the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter that relates to the administration of that Act or regulations made under that Act:

(e) to keep under review, and make recommendations on, the working of that Act.

5. The Office of the Children's Commissioner (OCC) has three areas of monitoring:

   a. A statutory responsibility to 'monitor and assess' the policies and practices provided under the Oranga Tamariki Act 1989[3] (the Act). Oranga Tamariki provides services to approximately 30,000 children and young people on any given day. Around 6,400 of these children and young people are in the care or custody of Oranga Tamariki. The majority of these children and young people are living with whānau, wider family or wider kin caregivers. Others live with non-kin caregivers and a smaller number are living in community group homes. And, at any one time, approximately 200 young people are placed in Oranga Tamariki secure care and protection or youth justice residences.

   b. Since 2008 the OCC has been a designated 'National Preventative Mechanism' under the Crimes of Torture Amendment Act 2003. The OCC has responsibilities for children and young people in detention under the Optional Protocol to the United Nations Convention Against Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The extent of the designation has recently been significantly increased to include: the three youth mental health units and two youth forensic units; sole designation for Care and Protection and Youth Justice residences; and all remand homes for young people detained in custody by the Youth Court - s(14) (1) (d) of the Act.

[3] S 13(1)(b), Children's Commissioner Act 2003.

c. Oversight of the grievance panel system (Whāia te Maramatanga) used within the eight youth justice and care and protection residences. Grievance and advocacy processes are outlined in sections 15 and 16 of the Oranga Tamariki (Residential Care) Regulations 1996[4].

6. As the independent monitor, my office has never been resourced to deliver the full scope of our monitoring functions. This limitation means that over the decades, the seven Children's Commissioners have had to be very selective about what we monitor and how. There has always been a focus on care and protection and youth justice residences given that young people in these residences are particularly vulnerable. The office has also conducted thematic reviews of specific issues, cohorts or parts of the system. Since 2015 these have been published in our *State of Care* series.

7. In April 2019, the Government announced changes to the oversight of the state care system. This included proposals that affect the roles of the OCC and the Office of the Ombudsman. New institutional arrangements and legislation are being designed to strengthen independent oversight of the Oranga Tamariki system and children's issues, including independent oversight of complaints made, investigative functions, systemic advocacy and independent monitoring[5]. The intention is to strengthen the independent oversight of children in the care of Oranga Tamariki with the creation of a properly resourced Independent Children's Monitor.

8. This overhaul of the oversight system represents the biggest opportunity to strengthen the independent monitor since its establishment, with legislation still in development.

9. As Children's Commissioner I announced in June 2019 that the Office would undertake a thematic review of the policies, processes and practices of Oranga Tamariki relating to care and protection issues for pēpi Māori aged 0-3 months. It had always been the OCC's intention to conduct research during 2019 as to the practice of Oranga Tamariki with tamariki Māori and their whānau. However, given the mounting public concern about the removal of newborn pēpi from their whānau in May 2019, we decided to focus on this specific issue, especially given the statistical trends which appeared to highlight a problem.

[4] ss15, 16 Oranga Tamariki (Residential Care) Regulations 1996.

[5] https://www.beehive.govt.nz/release/oversight-care-our-children-strengthened

10. The first report from this review, *Te Kuku O Te Manawa – Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi*, was published on 8 June 2020 and shared insights gained so far in this review, which aims to answer the question:

    What needs to change to enable pēpi Māori aged 0-3 months to remain in the care of their whānau in situations where Oranga Tamariki is notified of care and protection concerns?

11. This report to the Waitangi Tribunal draws on insights from our role as monitor of the statutory state care system alongside specific insights from this review.

12. The second and final report from the office's *Te Kuku O Te Manawa* review, complete with recommendations, will be published in the coming weeks and I will provide a copy to the Waitangi Tribunal at the time of publication.

A. Why has there been such a significant and consistent disparity between the number of tamariki Māori and non-Māori children being taken into state care under the auspices of Oranga Tamariki and its predecessors?

Inequities for Māori compared with non-Māori remain substantial and persistent for all age children

13. The rate of tamariki Māori in state custody (Section 101 of the Oranga Tamariki Act) has been comparatively higher than non-Māori over a long period of time. At the end of June 2019 there were 6,429 total children in state custody. Of that number, 4,420 of them were Māori (69 percent). Māori make up 71% of the children and young people in care and protection residences and 80% of those in youth justice residences[6].Tamariki Māori make up only 25 percent of all children in Aotearoa, so the proportion of Māori in state custody reveals a considerable and profound inequity.

14. It is concerning that the total number of children and young people in state care has been rising, with a 26% increase in the last 5 years (while the population of children grew only about 5% in that time). Some of this rise can be attributed to the increase in 2017 in the age at which children can remain in state care.

15. The proportion of children and young people in state care who are Māori has increased from 64% to 68% in the last 5 years. In 2018, the rate of state custody for under 18-year-old tamariki Māori was 155 per 10,000 population. This was almost 7 times higher than non-Māori, up from 5 times higher in 2014. These inequities for Māori continue to widen over time.

16. Children and young people have told us about the impact this has on their experiences, and for Māori, their identity.

> "*They are all Māori in here. It's like being in YJ [youth justice] is a Māori thing*" (15-year-old young man in a youth justice residence)

Our recent statistical snapshot of pēpi Māori 0-3 months and the care and protection system revealed six key findings

17. One of the first publications from the current OCC review included a statistical snapshot to identify key trends over the past 16 years[7]. This information did not explain what is causing

[6] Oranga Tamariki data as at 30 June 2018.

[7] Office of the Children's Commissioner (2020) Statistical Snapshot: Pēpi Māori 0-3 months and the care and protection system.

the observed trends, but rather raised questions to be explored in the wider review[8]. More detail can be found in the snapshot report published in January 2020 and included as an appendix in the first report published in June 2020.

18. The 0-3 month age group was selected because, of all babies in 2019 in Aotearoa taken into state custody before their first birthday, the vast majority (69 percent) of decisions by the state were made before birth or within their first three months of life. This is also an area of public interest since the high profile attempted removal of a newborn pēpi Māori from their whānau in Hastings Hospital, Hawke's Bay in 2019. The first few months of a life are critical in forming strong attachments between mother (and any other main caregiver) and baby.

19. Our analysis revealed six key findings about what happens to pēpi Māori in pregnancy and from 0-3 months in situations where Oranga Tamariki is notified of care and protection concerns:

    a. The number of concerns reported about the safety of babies and children has increased
    b. The number of social work assessments that find substantiated abuse for babies has decreased from a peak in 2013
    c. Inequities for Māori compared with non-Māori are substantial and persistent
    d. Assessments and removals of pēpi are happening earlier
    e. The urgency of decisions to take babies into state custody has increased for pēpi Māori
    f. State custody is intergenerational

20. The data in this snapshot shows deep, persistent and increasing inequity in the removal of pēpi Māori into state custody. It raised questions for further exploration, including: Why is the inequity between Māori and non-Māori increasing? Why are assessments and removals of pēpi Māori happening earlier in their lives? How well do social work assessments and interventions increase the safety and wellbeing of pēpi Māori by connecting them with services and supports? What impact do social work practices have on pēpi Māori and their whānau?

a) The number of concerns reported about the safety of babies and children has increased

[8]Over the past 16 years there have been changes in the care and protection system itself, including in 2017 when new practice standards were adopted and a new agency, Oranga Tamariki, was created. There have also been shifts in public attitudes and responsiveness to issues of child abuse and neglect.

21. The total number of concerns reported by members of the public and sector workers, including police, teachers and health workers, regarding the safety of babies and children has increased substantially over the last 16 years.
22. The increase in concerns reported was especially so for pēpi Māori under 3 months old, and particularly so during pregnancy compared to non-Māori. The total number of concerns reported during pregnancy has stabilised in the past couple of years, as have the total number of concerns notified to Oranga Tamariki.
23. In 2019, the number of concerns reported to Oranga Tamariki about an unborn pēpi Māori was 8 times greater than concerns reported to Child, Youth and Family in 2004 (823 reports in 2019 up from 100 in 2004).
24. For unborn non-Māori babies the increase was 4.5 times in 2019 (385 reports) compared to 2004 (85 reports). The disparity means that Māori made up 68 percent of the pregnancy concerns reported in 2019 compared to 54 percent in 2004.

b) The number of social work assessments that find substantiated abuse for babies has decreased from a peak in 2013

25. The number of social work assessments that found substantiated abuse in pregnancy and for 0-3 month old babies peaked at 1142 in 2013 and there has been a general downward trend since then, with 848 assessments finding substantiated abuse in 2019.
26. Thirty-eight percent of social work assessments about unborn pēpi Māori and 53 percent of social work assessments about 0-3 month old pēpi Māori resulted in unsubstantiated findings.
27. Rates of unsubstantiation for non-Māori are 8-9 percent higher[9].

c) Inequities for Māori compared with non-Māori are substantial and persistent

28. Since 2010, the overall rate of babies aged 0-3 months being placed in state custody has remained steady. However, the difference in the likelihood of pēpi Māori being placed in state custody compared to non-Māori babies has almost doubled.
29. In 2019, pēpi Māori aged 0-3 months were 5 times more likely to be placed into state custody than non-Māori (based on 111 pēpi Māori, rate of 0.67 percent, and 55, rate of 0.13 percent non-Māori babies, under 3 months placed in custody). In comparison, in 2010 pēpi Māori

[9] Social work assessments that do not find substantiated abuse can identify particular needs and may still result in referrals to support services. Substantiated abuse does not automatically mean a child is taken into state custody.

aged 0-3 months were more than twice as likely to be placed into state custody than non-Māori (97 pēpi Māori, rate of 0.53 percent, and 109 non-Māori babies, rate of 0.24 percent).

30. The inequities for Māori are stark and widening. The rate of being taken into state custody between 0-3 months does not include decisions to take a baby into state custody that are made before birth. If they were included, the Māori rate would be even higher.

d) Assessments and removals of pēpi are happening earlier

31. There is an increasing trend towards making decisions before birth to take babies into custody after they have been born, and this trend has been greater for Māori than non-Māori. Ten years ago fewer decisions were made to place a baby into state custody before birth.

e) The urgency of decisions to take babies into state custody has increased for pēpi Māori

32. Since 2013, there has been a change in the way that decisions are made by the state to take babies into custody. The use of 'planned' removal of babies has reduced and the use of 'urgent' removal has increased. The rate of urgent entries approximately doubled from 2010 to 2019 for pēpi Māori aged 0-3 months but stayed the same for non-Māori babies aged 0-3 months.

f) State custody is intergenerational

33. Forty-eight percent of the pregnant women in 2019 for whom the state decided during pregnancy to remove their pēpi Māori after birth, had been in state custody themselves, compared with 33 percent of non-Māori. After birth, the proportions are similar between Māori and non-Māori.

Other evidence about outcomes for mokopuna Māori in state care is concerning

34. As highlighted in the Office of the Children's Commissioner's 2015 *State of Care* report, the limited evidence we do have from Gateway Assessments, NCEA results, and rates of offending by children in state care is concerning[10]. It shows a pattern of high health and education needs, very poor educational attainment, and a much higher likelihood of criminal offending for children in state care compared to the general population. There is not enough information to say whether children are better off overall because of state intervention.

35. When we spoke to tamariki and rangatahi Māori in care and protection and youth justice residences, as part of our routine monitoring work in 2017-18, we found that residences

[10] Office of the Children's Commissioner (2015) State of Care report.

were not providing sufficient opportunities for children and young people to connect with their culture[11]. It is desirable for mokopuna Māori, and all children and young people to be connected to their culture. However, this was not the experience for many children and young people in residences, nor were most residences engaging sufficiently with whānau or hapū[12].

> *"They don't do nothing for my culture"* (Young person in residence)
>
> *"I speak Māori and play the guitar. They should do more cultural programmes like hangi, music, diving and hunting"* (Young person in residence).

36. In November 2015, a written report to the United Nations on the Children's Convention, was filed by the then Children's Commissioner, Dr Russell Wills, on "the most significant issues for children in New Zealand"[13]. Reflecting on his five-year tenure in the role, Dr Wills highlighted "significant over-representation of Māori children among those experiencing poor outcomes".

37. He identified three issues which he thought warranted 'urgent focus and attention' and which the NZ Government should be specifically examined on:

    a. The unacceptably high rates of child poverty and deprivation
    b. The quality of care and outcomes being achieved for children in the care of the state
    c. Systemic inequities and poor outcomes for Māori children".

38. The report was then presented to the United Nations by the incoming Children's Commissioner at the time, Judge Andrew Becroft.

39. A summary of the selected measures of well-being is reproduced in this report as an appendix.

40. It doesn't have to be this way. New Zealand could lead the world in the re-conceptualising of what Tamariki Waiora, children's well-being, can look like, including Statutory Care and Protection systems.

[11] Human Rights Commission Report 2017/18 Monitoring Places of Detention. Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT).

[12] Human Rights Commission Report 2017/18 Monitoring Places of Detention. Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT).

[13] Wills, R. (2015). "Report of the NZ Children's Commissioner to the Committee on the Rights of the Child". Wellington: Children's Commission.

41. There have been at least seven substantial and five other official reviews into the care and protection system over the last 30 years[14]. There are findings and recommendations in every one of these reviews, many of them informed by whānau experiences.

42. Currently there are four separate, and quite different reviews[15] into Oranga Tamariki legislation, policy and practice relating to pēpi Māori, tamariki and their whānau as addition to the Waitangi Tribunal case under urgency. This includes the OCC's review asking what needs to change to support pēpi Māori (aged 0-3 months) to remain in the care of their whānau in situations where Oranga Tamariki has been notified of care and protection concerns.

43. Concurrently, the Royal Commission of Inquiry into Abuse in Care is looking into what happened historically to children, young people and vulnerable adults in care.

44. Each year, a number of children who have been removed from their families and whānau because of substantiated findings of abuse and neglect are re-abused while in state care[16]. Recent figures released by Oranga Tamariki show a continuing picture of state abuse of children and young people in care:[17]

    a. 103 individual children were abused from January to March 2019 (up from 97 in the previous quarter)

    b. 76% of children abused in state care were Māori (increased from 72% and 65% in the previous two quarterly reports)

    c. approximately 7-10% of all children in state care are abused annually.

45. We commend Oranga Tamariki in its commitment to the quarterly release of these figures. However, the released figures are likely to be significantly lower than the true rate of abuse, given that it often takes many decades for victims of abuse to disclose what has happened to them. The information gathered for the Australian Royal Commission into Institutional Responses showed that many victims do not disclose child sexual abuse until many years after the abuse occurred, often when they are well into adulthood. Survivors who spoke with the Australia Royal Commission during private sessions took, on average, 23.9 years to tell

[14] Substantial reviews of care and protection system: 1. Pūao te ata tū (1988) 2. Mason review (1992) 3. Brown report (2000) 4. Baseline report (2003) 5. White paper (2012) 6. Workload and caseload review (2014) 7. Expert panel review (2015) Other official reviews: 1. 1994 review with a financial focus 2. 2001 Smith report following the serious abuse of a 9-year-old girl 3. 2003 broad report on the complaints system 4. Two 2006 Treasury reports.

[15] Office of the Children's Commissioner thematic review, Whānau Ora review, Ombudsman review and Oranga Tamariki case review.

[16] Office of the Children's Commissioner (2015) State of Care report

[17] https://orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/safety-of-children-in-care/2018-19/Safety-of-children-in-care-Q2-2018.PDF

someone about the abuse and men often took longer to disclose than women (the average for females was 20.6 years and for males was 25.6 years). Some victims never disclose[18].

The Crown has lost its own institutional memory of gains made in the Māori Affairs portfolio in the 1970s

46. Some years before Pūao-Te-Ata-Tū the State Services Commission led a review and restructuring of the Department of Māori Affairs. Kara Puketapu was the Māori leader appointed to lead this work. His work showed what was possible in the Crown Sector. No department has since replicated the radical Māori led, te reo me ōna tikanga based approach, nor the wide range of programmes established under it, some of which continue to this day[19]

47. What is important about a case study of the Department of Māori Affairs transformation is that it is not well known in the Crown Sector. Indeed, the Māori Development initiatives that have been successfully championed in the Public Service are not remembered by it.

48. The Crown has lost its own institutional memory of gains made in the Māori Affairs portfolio. Rather than learning from how to implement the vision of the Treaty of Waitangi, and its own public service history of Māori Development, too many officials are ignorant of their own public service history. Rather than engaging in learning from its own past, they relegate Treaty-based change and initiatives of Māori Development to the too hard basket.

49. The context in which this inquiry is being held is a classic example of this. Excellent research and scholarship, which is readily available, and which has mapped out pathways forward for radical improvement in the area being addressed has been systematically ignored for decades.

In 1988 Pūao-Te-Ata-Tū laid the foundation for transformative change which was not implemented

50. The enduring legacy of colonisation combined with modern day systemic racism is a lethal cocktail and has long affected decisions made by all state departments and institutions, including child welfare systems.

51. The impacts of colonisation, associated dislocation of Māori from their whenua, community, economic base, culture and language has contributed to the disproportionate number of

[18] Royal Commission into Institutional Responses to Child Sexual Abuse (2017) Final Report: Identifying and disclosing child sexual abuse. Australia.

[19] For example the Seaview Kōkiri Centre, the Te Kōhanga Reo movement.

Māori entering state care. Institutional racism also contributes to mokopuna Māori in state care experiencing poorer outcomes.

52. Intergenerational poverty can have a compounding effect on these inequities. The Crown has consistently failed in its obligations under the Treaty of Waitangi.

53. The Pūao-Te-Ata-Tū report made specific recommendations about how the Crown should exercise its obligations under Article 3 of the Treaty of Waitangi in relation to the removal of mokopuna Māori from their whakapapa.

54. Pūao-Te-Ata-Tū called for significant change to how Government agencies work and partner with Māori. In its opening summary the Report noted as follows:

> *"…We comment on the institutional racism reflected in this Department and indeed in society itself. We have identified a number of problem areas - policy formation, service delivery, communication, racial imbalances in the staffing, appointment, promotion and the training practises. We are in no doubt that changes are essential and must be made urgently… At the heart of the issue is a profound misunderstanding or ignorance of the place of the child in Māori society and its relationships with whānau, hapū, iwi structure."*

55. Pūao-Te-Ata-Tū provided the public service with a way to talk about racism and to code the different levels that it manifests. It identified three levels of racism: structural; institutional; and personal / interpersonal. Updating that view we would now add a fourth level of racism: epistemological racism. The view that Western knowledge is superior to mātauranga Māori and the basis on which other forms of racism are based. This may yet be the most insidious form of racism, as it provides the English language and cultural coding upon which the machinery of government has been developed.

56. From the outset, Māori language and culture were positioned as "other". Early examples of this are found in the way in which assimilation policy was used to drive legislative measures that privileged the English language and culture and locked out their Māori equivalents. This was no accidental racism: it was by determined intent and design. In education, examples include: 1847 Education Ordinance (introduced English as the language of instruction) and the 1880 Native Schools Code (the curriculum focussed on basic literacy and numeracy, manual labour for boys and domestic labour for girls).

57. Thirty years later Māori are leading national conversations that echo these conclusions and recommendations from Pūao-Te-Ata-Tū, including:

a. the Whānau Ora Inquiry into Oranga Tamariki
b. the Hands Off Our Tamariki movement
c. the Ināia Tonu Nei, Māori justice hui report
d. Waitangi Tribunal Wai 2575 report on Health Services and Outcomes Kaupapa Inquiry.

58. In 1988, Pūao-Te-Ata-Tū set out a foundation for transformative change in the operations of New Zealand's policies and practices regarding the care of mokopuna Māori and their whānau. The Children, Young Persons and their Families Act 1989 went some way towards embedding the vision of Pūao-Te-Ata-Tū.

59. When it was introduced in 1989, the Children, Young Persons and their Families Act (now alternatively known as the Oranga Tamariki Act 1989) was considered transformational. There was a strong emphasis on seeing the child and young person in the context of their family and community, and extensive involvement was anticipated for family, whānau, hapū and iwi and wider family groups in decision-making. In practice, the promise of the Act has never been realised.

60. There was an opportunity with the new 1989 legislation for a revolution in the delivery of care and protection and youth justice services. This never materialised and practice retreated to a state model of delivery.

B. To what extent will the legislative policy and practice changes introduced since 2017, and currently being implemented, change this disparity for the better?

The changes introduced in 2017 held the potential to reduce inequity of outcomes for Māori

61. Oranga Tamariki was established by Act of Parliament and launched on April 1st 2017. The vision for the new agency was informed by the 2015 Expert Advisory Panel Report. As the Oranga Tamariki website advises, the new organisation was established in the wake of Child, Youth and Family (CYF).

> *We inherited a system recognised as fundamentally failing the children of New Zealand, with a long way to go to put it right. Indeed, while five years was set aside to transform the organisation, for whānau and wider society this shift is generational – but we could start making a difference immediately*[20].

[20] Source: https://www.orangatamariki.govt.nz/about-us/our-journey/

62. The Expert Advisory Panel proposed the establishment of a partnership foundation between Māori and non-Māori academics, social service providers, iwi and the future department to build a common agenda around improving life outcomes for mokopuna Māori and their whānau through better programmes and services[21].

> *"Successive reviews of CYF have failed to empower or deliver change for Māori children and young people. Sharing governance input to include Māori is a progressive forward step. Fundamentally, governance is about power, relationships and accountability – who has influence, who decides, and how operational decision-makers are held accountable. The Panel believe it unlikely the future department and wider system will achieve the required change without strategic Māori leadership, direction and influence"[22].*

63. One of the measures of success suggested by the Panel was "addressing the over representation of Māori children and young people in the care and the youth justice systems"[23]. However, the Expert Advisory Panel's recommendations were not fully implemented in legislation.

Both a 'child rescue' model and the role of whānau, hapū and iwi co-exist in unresolved tension in the updated Oranga Tamariki legislation

64. Following the call within Pūao-Te-Ata-Tū to recognise the interests of Māori, and the ground-breaking Children, Young Persons and Their Families Act 1989, the child welfare system has had the task of striking a balance between protecting the physical safety of children while keeping children within their whānau.
65. The "principles" section of any Act is extremely important in assisting and guiding those exercising power under that legislation. In the case of the Oranga Tamariki Act 1989 (the Act) these principles underpin statutory social work practice. They are critical in determining the approach taken and decisions made by individual social workers.
66. It is remarkable there are at least 50 statements of principle across the Act.
    a. Section 5 has nineteen "general principles" to be applied in the exercise of all powers under the Act (s 5).

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[21] Expert Advisory group (2015) Investing in Children Report https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/expert-panel-cyf/investing-in-children-report.pdf p59.

[22] Expert Advisory group (2015) Investing in Children Report https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/expert-panel-cyf/investing-in-children-report.pdf p60.

[23] Expert Advisory group (2015) Investing in Children Report https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/expert-panel-cyf/investing-in-children-report.pdf p40.

b. Section 13 emphasises that persons exercising care and protection powers must adopt, as the first and paramount consideration, the well-being and best interests of the child – as is required by s4A. However, s13(2) lists thirty six further principles and sub-principles to be used in determining the well-being and best interests of the child. These are in addition to those in s 5.

c. Section 4 has eleven general purposes of the Act directed towards the promotion of the well-being of children, young persons, and their families, whānau, hapū, iwi and family groups.

67. All these principles, except for the "paramountcy principle," are of equal importance. Understanding and harmonising these principles requires considerable wisdom and expertise.

68. If a narrow focus on short-term safety is adopted and overemphasised at the expense of a complex web of other principles there will be a failure to recognise the importance of whānau within a Te ao Māori worldview (see s5(1)(b)(iv) and 5(1)(c); that the primary responsibility for caring and nurturing the well-being of a child lies with their family, whānau, hapū, iwi and family group (see s5(1)(c) and 13(2)(b)) and the need to work with whānau at an early stage to reduce the likelihood of future harm (see s13(2)(a) and (b)).

69. In this approach children are individualised, families are pathologized, and early and permanent placement decisions are made. The possibility of long term improvement in the care of children through community, hapū and iwi and other assistance is relegated if not discounted all together. On this approach, it is assumed that children who are removed will never be returned to their whānau/family.

70. Recent legislative changes prioritise the importance of "a safe, stable loving home at the earliest opportunity" (emphasis added). This is the formulation in the purposes section of the Act s 4(e)(i). Curiously, the phrase 'earliest opportunity' is omitted from the parallel formulations in s5(1)(b)(iii) and s 13(2)(i)(iii)(A). The words 'at the earliest opportunity' could be seen as reflecting a return to historical practices of 'child rescue' which, in the words of some academic writers, wreaked havoc on Māori communities in the past and which the 1989 Act sought to rectify[24].

[24] Hyslop, I. (2017). Child Protection in New Zealand: A History of the Future. The British Journal of Social Work, 47(6), 1800–1817. https://doi.org/10.1093/bjsw/bcx088

Section 7AA and Whakamana te tamaiti have been introduced in the last few years with key accountabilities for the Chief Executive and social workers of Oranga Tamariki to shift practice

71. Section 7AA focuses on key principles and concepts reflective of a te ao Māori worldview and places specific obligations relating to Māori on the Chief Executive and attempts to provide practical commitment to the principles of the Treaty of Waitangi:

7AA Duties of chief executive in relation to Treaty of Waitangi (Tiriti o Waitangi)

(1) The duties of the chief executive set out in subsection (2) are imposed in order to recognise and provide a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi).

(2) The chief executive must ensure that—

a. *the policies and practices of the department that impact on the well-being of children and young persons have the objective of reducing disparities by setting measurable outcomes for Māori children and young persons who come to the attention of the department:*

b. *the policies, practices, and services of the department have regard to mana tamaiti (tamariki) and the whakapapa of Māori children and young persons and the whanaungatanga responsibilities of their whānau, hapū, and iwi:*

c. *the department seeks to develop strategic partnerships with iwi and Māori organisations, including iwi authorities, in order to—*

    i. *provide opportunities to, and invite innovative proposals from, those organisations to improve outcomes for Māori children, young persons, and their whānau who come to the attention of the department:*

    ii. *set expectations and targets to improve outcomes for Māori children and young persons who come to the attention of the department:*

    iii. *enable the robust, regular, and genuine exchange of information between the department and those organisations:*

    iv. *provide opportunities for the chief executive to delegate functions under this Act or regulations made under this Act to appropriately qualified people within those organisations:*

v. *provide, and regularly review, guidance to persons discharging functions under this Act to support cultural competency as a best-practice feature of the department's workforce:*

vi. *agree on any action both or all parties consider is appropriate.*

(3) One or more iwi or Māori organisations may invite the chief executive to enter into a strategic partnership.

(4) The chief executive must consider and respond to any invitation.

(5) The chief executive must report to the public at least once a year on the measures taken by the chief executive to carry out the duties in subsections (2) and (4), including the impact of those measures in improving outcomes for Māori children and young persons who come to the attention of the department under this Act and the steps to be taken in the immediate future.

(6) A copy of each report under subsection (5) must be published on an Internet site maintained by the department.

72. The provision should be seen as a basement not a ceiling. In other words, it represents minimum, not maximum, requirements for the Chief Executive.

73. The new s7AA provision in the Oranga Tamariki Act took effect from 1 July 2019 and goes some way in addressing the need for change for Māori by focusing on key principles and concepts reflective of a te ao Māori worldview and by placing specific obligations relating to Māori on the Chief Executive[25]. It could be argued that these 'new' obligations do little more than make explicit that which was implicit since at least 1989. It could also be argued that these 'new' provisions are a damning indictment on thirty years of failure experienced by Māori under the previous Child, Youth and Family regime.

74. The first annual report that Oranga Tamariki is obligated to publish on the steps taken in compliance with s7AA is due out next week.

75. In our view s7AA is problematic and has some real limitations. While it points toward partnership, true partnership it is not. It is a pale imitation of the Treaty obligations imposed on the Crown, in this context, Oranga Tamariki. The obligation is that the department *seeks* to development strategic partnerships. What is mandated is the effort not the outcome.

[25] See section 7AA, Oranga Tamariki Act 1989.

Also, there is no obligation on Oranga Tamariki to equitably provide resources to build capacity in iwi and Māori organisations, including iwi authorities. Neither is there an obligation to resource any strategic partnership. This may be implicit, but it is certainly not set out as an explicit obligation. In reality, all the power to determine the existence and nature of any strategic partnership is in the hands of Oranga Tamariki. It is not a two way street. For instance, functions under the Act maybe delegated to "appropriately qualified people" within those [Māori] organisations. Who is it who determines the appropriate qualifications? Is there any room for qualifications through experience and the implications of a Māori world view, and what Māori might deem as appropriate qualifications?

76. Alongside Section 7AA of the Oranga Tamariki Act 1989 are the Oranga Tamariki Practice Standards introduced in 2017 and implemented in 2018. These standards are seen as the foundation of practice for Oranga Tamariki social workers.

77. Oranga Tamariki front-footed and foreshadowed the implementation of s7AA by developing these standards, which includes the standard of 'Whakamana te tamaiti: Practice empowering tamariki Māori.' This lays out three practice areas – Mana Tamaiti, Whakapapa and Whanaungatanga and gives a clear line of sight between this particular standard and s7AA. Whakamana te tamaiti is also supported by Te Toka Tumoana – the Indigenous & Bicultural Principled Framework and He Kete Ararau, the Māori Cultural Framework for Oranga Tamariki, implemented in November 2018.

78. In the Te Kuku o Te Manawa review, we heard about many experiences of the statutory care and protection system, including both recent and current experiences of statutory social work practice. We heard about the ongoing harm being caused to pēpi Māori and their whānau. We also heard about experiences such as Māori not being treated with humanity or respect, experiencing racism and discrimination and not being able to access or receive the right supports needed from the state.

79. In our preliminary view, all this points to the need for major practice changes to meet the Whakamana te tamaiti practice standard. It also highlights the need for fundamental change in the care and protection system and across all of government, including Health and Police.

80. We know there are pockets of good practice within Oranga Tamariki by individual social workers, staff members and even Oranga Tamariki sites. However, this is not consistent, and practice varies considerably. It is certainly not consistent throughout Aotearoa New Zealand, and in our view, these practice issues need to be addressed urgently by the Oranga Tamariki Chief Social Worker.

Our recent interviews with whānau about their pēpi raise concerns about systemic issues facing the care and protection system for Māori

81. The māmā and whānau of 13 pēpi who spoke with us in the first stage of our inquiry were courageous in sharing their stories. Their experiences were consistent and heart breaking.

82. Māmā and whānau shared what happened during and after their involvement with Oranga Tamariki and in some cases Child, Youth and Family, once a Report of Concern had been made regarding their pēpi. Eight of the whānau had a report of concern made about a pēpi between April 2017 and 30 June 2019, and all of the whānau had previous or current involvement with Oranga Tamariki. The majority of the māmā also had previous experience of children being removed by Child, Youth and Family.

83. The consistency of negative experiences shared with us in diverse parts of Aotearoa, from both Child, Youth and Family and Oranga Tamariki, was striking, especially given that eight of the pēpi to which the relevant report of concern related remained with their māmā.

> *"I felt completely helpless. Helpless…We're just dealing with years of trauma that's just grown on top of trauma and you give up, you start to get weak around that- the whole thing is trauma"*

84. Māmā and whānau told us things need to change. Five key themes from our stage 1 conversations with māmā and whānau are summarised below:

    a. *I am a māmā first* – Māmā did not feel respected and recognised as the māmā of their pēpi and did not think they were seen by their Oranga Tamariki social workers for who they are and the changes they have made.

    b. *The system is harmful* – Many of the māmā and whānau interviewed told us about the harm they experienced throug their involvement in the statutory care and protection system, and its ongoing impact.They talked about the brutality of the removals and the feeling of constant threat, even when no further involvement has been deemed necessary.

    c. *Statutory social workers have all the power and control* – Many shared stories of poor treatment and unprofessional practice by statutory social workers. For some this included lying, threats and coercion. We heard about oranga Tamariki social workers not respecting tikanga Māori and not getting it because they're not Māori.

d. *The statutory care and protection system and other agencies have hurt my whānau* – the impacts on whānau and pēpi described are long-lasting and include feelings of fear and anger and ruptured whānau relationships.

e. *We need good support* – māmā and whānau said that good suppot made all the difference and for most this came from whānau, iwi services, Māori organisations, midwives and community support workers. When asked to provide examples of good statutory social work practice, few were able to do so.

85. A second round of interviews was undertaken with whānau, midwives, NGOs and Oranga Tamariki staff to hear from people on the frontline. These interviews provided us with a broader range of insights, including from those working with and around whānau. A final report containing both these insights and recommendations for change will be published, hopefully next month.

A recent reduction in removals of pēpi Māori follows a decade long trend of increasing use of state custody

86. Recently, the total number of babies the state decided to place into custody, either before birth or 0-3 months old, has reduced. The reduction was from 301 during 2018 to 248 during 2019. This includes reduced numbers for pēpi Māori down to 172 from a peak of 197 pēpi Māori in 2017 (both unborn and 0-3 months).

87. However, for pēpi Māori the total number removed (172) is still higher in 2019 than in any of the past 16 years, prior to the peak in 2017. Sixty nine percent of all babies unborn and 0-3 months taken into custody in 2019 were pēpi Māori. The recent reduction in numbers between 2018 to 2019 has followed a decade long trend of increasing use of state custody for Māori, whereas for non-Māori the trend is relatively flat over the same time period.

88. Updated annual statistics are due to be published by Oranga Tamariki next week for the year ended 30 June 2020.

89. New statistical information was gathered and the availability of statistics was reviewed as part of the second stage of our review.

If different outcomes are sought, that will take a major paradigm shift, including Constitutional Reform

90. As past experience has shown, we cannot rely on regulation, practice guidelines or response to 'signals' in the legislation to bring about the changes we need. Legislation needs to be

clear and directive, and must be accompanied by a clear strategy for organisational change to improve the day-to-day experiences of children and young people.

91. Even then, history has taught us with the 1989 Child, Young Person's and their Families Act that visionary legislation and initial organisational strategies can all too easily atrophy.

92. The current policy paradigm has not, to date, created the outcomes for Māori that successive governments have sought. It was never designed to. Tinkering with little bits of the system will not create this change, however well intentioned. Procuring a better quality of coal for steam engines was pointless once the diesel-electric locomotive arrived.

93. From the signing of the Treaty of Waitangi until at least 1955, the Māori Affairs policy in New Zealand was assimilation - premised on the notion that the best way for Māori to get ahead was to give up Māori language and traditional cultural practices. Policy, legislation and regulation worked hand-in-hand to achieve this outcome. For example, legislation was passed in 1907, through the Tohunga Suppression Act, to make it illegal to be a practitioner using traditional Māori knowledge.

94. Interestingly, the Covid-19 pandemic and its impacts might create more of a lever to advocate for Treaty-based change. The experience over the past few months has created a number of reflections. The old normal is increasingly seen as lacking diversity and inclusion. The authentic platform for diversity and inclusion in New Zealand is Te Tiriti o Waitangi.

95. Other forces are already at work in this space. In 2019 the State Services Commission reviewed the State Sector Act 1988 and issued a new Public Services Act 2019, which has critical new features designed to reframe the central infrastructure of the state. The Treaty of Waitangi is written into the legislation as is mātauranga Māori. The Prime Minister is leading the government's response to Wai 262, the Māori Intellectual Property Claim, with groups of Ministers and multiple agencies involved in a whole of government collaboration.

96. These developments are likely to have more impact on the public service as a sector, including of course Oranga Tamariki. The sector has already been positioned for significant change and this will create a foundation for the kind of systemic change needed to create better outcomes for Māori.

C. What (if any) additional changes to Crown legislation, policy or practice might be required in order to secure outcomes consistent with Te Tiriti/the Treaty and its principles?

NOTE: We advise that this question is one of the very questions we seek to answer in our second report of Te Kuku o Te Manawa. This is due for release in August 2020. This report will make recommendations in the context of what needs to be done to keep pēpi Māori under 3 months old, in the care of their whānau when Reports Of Concern have been made to Oranga Tamariki. However, the recommendations will necessarily be much wider than just the practice of Oranga Tamariki in respect of pēpi Māori. Some of these recommendations will go to the heart of the structure of Oranga Tamariki. We will provide the full report to the Tribunal as soon as possible. In the meantime, we provide the comments that follow, but they should not be regarded as our full answer.

Our State of Care reports published since 2015 have made recommendations to improve outcomes for mokopuna Māori

97. Since the first *State of Care* report in 2015, which concluded there is not enough evidence that children are better off overall because of state intervention, we have raised issues and made recommendations each subsequent year about tamariki and rangatahi Māori in state care. This has been of profound concern and a consistent theme of our work.

98. In 2016 we highlighted the cultural needs of mokopuna Māori and the importance of cultural literacy within Child, Youth and Family[26]. We made a recommendation that Child, Youth and Family develop a clear statement of 'what child-centred practice means in the New Zealand care and protection and youth justice systems.' This statement should expressly address areas of current ambiguity, such as interpreting the views of the child, balancing immediate safety concerns with the child's long-term best interests, holding young offenders to account in a child-centred system, and considering the cultural needs of mokopuna Māori in a child-centred framework"[27].

99. In 2017 we recommended a national strategy be developed to respond to mokopuna Māori in reference to s7AA of the Oranga Tamariki Act 1989[28]. We highlighted inconsistent cultural capability to enable tailored treatment and activities for mokopuna Māori in residences.

100. In 2018 we recommended expanding community homes in strategic partnership with Māori in accordance with s7AA of the Oranga Tamariki Act 1989 and proactively establishing

[26] Office of the Children's Commissioner (2016) State of Care. p21.

[27] Office of the Children's Commissioner (2016) State of Care. p9.

[28] Office of the Children's Commissioner (2017) State of Care. p35.

strategic partnerships with iwi and Māori organisations to transform opportunities and outcomes for tamariki Māori and whānau[29].

101. In 2019 we made recommendations to improve cultural capacity and capability and increase whānau and community placement options[30].

102. In 2016 we submitted to Select Committee on the proposed changes to the Child, Young Persons and their Families Bill. In our view the Māori concepts introduced in the Bill give the impression of being secondary considerations for mokopuna Māori in addition to the purposes and principles that apply to all children who come into contact with the care and protection and youth justice systems. The additional concepts are often only to be considered "where practicable". We advocated that this is the wrong way around[31]. Some amendments to the Bill resulted.

103. Accessing data about children's experiences is also core to the effectiveness of the monitoring framework. Yet there remains little reliable or easily accessible data available about the outcomes of children in the state care system. Better collection and analysis of data is essential for Oranga Tamariki to improve its services, and for the public to have confidence that Oranga Tamariki, and other government agencies, are improving outcomes for tamariki Māori[32].

104. This includes, but should not be confined to, the annual report on s7AA, which pursuant to s7AA(5), must record steps taken by the Chief Executive of Oranga Tamariki to carry out the duties in 7AA and the impact of these measures on improving outcomes for mokopuna Māori.

The first report from our inquiry Te Kuku O Te Manawa identified six areas for change towards transformative and systemic change

105. We identified six areas for change to explore during stage two of this review. These were areas where change seemed to be required. We started with the themes drawn from our analysis of what we heard from māmā and whānau (paragraph 82 refers) and wove these together with the other strands of evidence. The six areas for change are summarised below.

[29] Office of the Children's Commissioner (2018) State of Care. p44.

[30] Office of the Children's Commissioner (2019) State of Care. p8.

[31] Office of the Children's Commissioner (2017) Submission on CYP&F (Oranga Tamariki) Bill. 3 March.

[32] Office of the Children's Commissioner (2015) State of Care.

a. *The system needs to recognise the role of māmā as te whare tangata and treat them and their pēpi with humanity* - All māmā and whānau we interviewed identified that the statutory care and protection system and other agencies have not and still don't treat them with humanity.

b. *Unprofessional statutory social work practice is harming māmā, whānau and pēpi* - The stories māmā and whānau shared raise significant concerns about both previous statutory social work practice and the current quality of social work practice being carried out by some Oranga Tamariki social workers.

c. *Whānau need the right support from the right people* - Whānau know what good support looks like and want to be listened to about what they need. Many of the whānau said they are not currently getting that kind of support. Good support takes a tikanga Māori approach, which sees pēpi as mokopuna within the context of their whakapapa, and support practices that focus on the long-term wellbeing of pēpi and their whānau, hapū and iwi.

d. *Pēpi Māori and their whānau are experiencing racism and discrimination* - Our analysis of the care and protection system data has shown that inequities for Māori compared with non-Māori are substantial and persistent, and that the urgency of decisions to take babies into custody has increased for pēpi Māori compared to non-Māori. Experiences shared by whānau provide clear examples of racism and discrimination.

e. *The organisational culture of the statutory care and protection system needs to support parents and whānau to nurture and care for their pēpi* - Māmā and whānau shared that Oranga Tamariki practice isolates pēpi from their whānau in direct contradiction to the principles of the Oranga Tamariki Act 1989, the rights of tamariki and their whānau and the fundamental te ao Māori understanding that pēpi Māori and their whānau are inseparable.

f. *The system needs to work in partnership with whānau, hapū and iwi so they can exercise tino rangatiratanga* - A theme that cuts across our findings is that the system needs to recognise whānau, hapū, and iwi. Māori self-determination needs to be central to any changes in order to be effective.

106. The strands of evidence presented in report one, and the six areas for change that have been identified, sit within the socio-cultural context of Aotearoa New Zealand, its history, laws and the impact of systemic issues such as colonisation. The whānau experiences also sit within the context of a changing statutory care and protection system that has not treated them with humanity. During interviews, we heard about Oranga Tamariki, and before it,

Child, Youth and Family, carrying out unprofessional social work practice and failing to provide adequate support. We also heard about whānau being subjected to racist and discriminative practices that are not prioritising the long-term wellbeing of pēpi.

107. Critical to this report is the importance and consideration given to whakapapa, whānaungatanga, and tikanga Māori practices, including respecting māmā as te whare tangata, and pēpi and tamariki as taonga, and as mokopuna.

108. These areas for change informed stage 2 of our review and are informing our recommendations. It has become clear through this review that action must be taken that goes far beyond tinkering around the edges of the system if we want to see real change for pēpi Māori, and particularly the need for a by-Māori-for-Māori approach.

109. We will set out our recommendations, indeed our vision, in report 2 of *Te Kuku O Te Manawa*.

Success can only be measured when outcomes and experiences change for Māori

110. Whānau, hapū and iwi have maintained an authentic Māori care and protection system as an integral part of te ao Māori. The Crown has the opportunity to partner with Māori in innovative ways moving forward to explore how to access this. They must do this in a way that respects te ao Māori, ensuring services demonstrate respect for tikanga Māori, te whare tangata, pēpi, whānau and whakapapa. As discussed above, s7AA of the Oranga Tamariki Act 1989 could be seen as a starting point in establishing strategic partnerships between iwi and Oranga Tamariki. But only as a starting point, a stepping stone to genuine Treaty partnership.

111. However, s7AA(2)(c) of the Oranga Tamariki Act 1989 only requires the Chief Executive to ensure that "the department *seeks* to develop strategic partnerships with iwi and Māori organisations, including iwi authorities" [emphasis added]. The legislation currently falls short of requiring the department to partner, and power to determine partnership remains in the hands of the state.

112. With the development of the new Independent Children's Monitor, iwi and Māori will become subject to monitoring under the National Care Standards if they choose to partner with Oranga Tamariki under s7AA of the Oranga Tamariki Act 1989.

113. Partnership necessitates both sides having the power and resources to negotiate. Māori, including iwi, need to have the opportunity, the resources and the authority to build capacity and exercise care, protection and restoration of their own tamariki. This cannot be achieved through s7AA of the Oranga Tamariki Act 1989 alone.

114. Transformative changes to the system are needed for mokopuna Māori to reduce these inequities, to challenge systemic racism, and to benefit all children and young people who come into contact with the care system.

115. A system that works better for children should not be designed in response to the identified flaws in the system. It should be centred on the rights, needs and well-being of mokopuna and their whānau.

116. In the long run, transfer of resources and decision-making power to iwi and Māori organisations must occur. In other words, fundamental structural change is required.

The case for Treaty based, kaupapa Māori driven, mātauranga Māori informed, Māori led transformation

117. Te Tiriti o Waitangi / the Treaty of Waitangi provided this country with a global template for change in 1840. We are yet to realise its vision. The Crown sector could have taken the approach of working with Te Tiriti o Waitangi / the Treaty of Waitangi to prioritise mātauranga Māori and to create services and products designed to be transformative (the kaupapa Māori driver). It still could.

118. Endless reviews and restructuring of government departments and agencies have ignored the Treaty of Waitangi as a blueprint for change. Departments and agencies continue to be embedded in epistemological racism, championing western models and thinking, from design to implementation.

119. Numerous claims to the Waitangi Tribunal have presented evidence of how this broad approach has led to systematic failure, intergenerational inequities for Māori and wasted public funds as a result.

120. The public service workforce is not immune from the Pākehā privilege that this sustains. The 2016 State Services Commission Human Resources survey reported that whilst 16% of the public service workforce were Māori, only 7% of the Managers were. Māori development is managed by non-Māori in the public service. People who do not live as Māori, whakapapa to Māori, or have lived knowledge of tikanga Māori are making all the decisions about whānau, hapū, iwi and Māori futures. This is fundamentally wrong.

121. If different futures are sought, tinkering with the current system will not create the sought-after change – as it has not for so many years. Radical disruptive change will only be created if systemic change is undertaken using the Te Tiriti o Waitangi / the Treaty of Waitangi as a framework, partnering with whānau, hapū, iwi and Māori organisations, prioritising mātauranga Māori and working with kaupapa Māori drivers in any business modelling aiming

to create Treaty-based, future proofed, sustainable change that does not constitute the next Treaty of Waitangi breach.

122. This country can choose to become the nation the Treaty promised. Or, it can spend the next two hundred years locked in a pointless circular dance of destruction – locked in litigation and Tribunal processes, circling round and round the possibility for change, but never landing on it. We can and must do better.

123. We recommend that the Treaty of Waitangi be explicitly incorporated into the Oranga Tamariki Act 1989.

Judge Andrew Becroft

Children's Commissioner

Te Kaikōmihana mō ngā Tamariki o Aotearoa

16 July 2020

Appendix: Comparison of selected measures of wellbeing [33]

Measure	Māori	NZ European (or: non-Māori; Total NZ population)
EDUCATION		
18 year olds with NCEA L2 or above (2014)	67.1%	85.1%
Children in State care with National Certificate of Education Achievement Level2 or above	15%	25%
Early Childhood Education participation	92.3%	98.2%
HEALTH		
Current smokers (aged 15 above, 2013-2014)	40.6%	15.2%
Life expectancy at birth	Women: 77.1 years Men: 73 years	Women: 83.9 years Men: 80.3 years
Youth suicide (15-24 years)	48.0 per 100,000	17.3 per 100,000 (non-Māori)
Meningococcal infection (per 100,000. 2013)	All ages: 3.4 <1 year: 32.3 1-4 years: 15.7	All ages: 1.5 (total NZ pop.) <1 year: 18.4 1-4 years: 5.2
Rheumatic fever (all ages, per 100,000. 2012-2014)	13.3	4.2 (non-Māori)
Sudden Unexpected Death in Infants (SUDI) (per 1,000 deaths. 2010-2012)	1.8	0.4 (non-Māori)
LIVING STANDARDS		
Child poverty (0-17years, below 60% median household income, after housing costs, 2014)	33%	16%
Child material hardship (0-17years , 2014)	24%	8%
Children in crowded housing (2014)	25%	5%
Unemployment (all ages, 2014)	12.1%	4.4%
Not in Education, Employment or training (NEET) rate (15-24 years, 2015)	20.9%	9.4%
Youth justice: (number and percentage of children aged 10-16 charged in court, 2014/15)	1,152 (59%)	489 (24%)

[33] Reproduced from: Wills, R. (2015). "Report of the NZ Children's Commissioner to the Committee on the Rights of the Child". Wellington: Children's Commission.