



Submission to the Committee on the Rights of the Child

# **Day of General Discussion: Children's Rights and Alternative Care, 16-17 September 2021**

# About the Office of the Children's Commissioner

The OCC represents 1.2 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, monitor places where children and young people are detained, amplify their voices and ideas, and help government agencies to listen and act on them.

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## Introduction

1. The OCC has a wide range of statutory responsibilities under the Children's Commissioner's Act 2003. These include advocacy, research, and increasing public awareness in respect of the welfare and rights of children, and monitoring and other responsibilities in respect of Oranga Tamariki | Ministry for Children (the government department responsible for child protection in Aotearoa New Zealand). Additionally, we also have a mandate to monitor and advance the New Zealand Government's implementation of the Children's Convention and welcome providing input to the Committee on the Rights of the Child (the Committee) in this context.
2. We acknowledge the important work of organisations across the world advocating for and amplifying the voices of children and young people in state care ("alternative care"). This includes VOYCE – Whakarongo Mai, an organisation in Aotearoa New Zealand, which we understand has also submitted.
3. This submission will focus on what needs to change to address disparities experienced by mokopuna Māori (Māori children and young people), and/or disabled children and young people, and their whānau (families), as well as highlighting what some children and young people have told us about their experiences of state care.

## Māori and/or disabled children and young people continue to experience disparities in Aotearoa New Zealand's child protection system

4. As experienced by other Indigenous cultures, because of the enduring legacy of colonisation and racism, mokopuna Māori are overrepresented in the state care system and have been for decades. As of December 2020, mokopuna Māori make up 68% of children in state care<sup>1</sup> even though they only constitute 16.7% of New Zealand's population.<sup>2</sup> Furthermore, Māori babies are five times more likely to be taken into state custody than non-Māori babies.<sup>3</sup>

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<sup>1</sup> <https://www.orangatamariki.govt.nz/about-us/reports-and-releases/quarterly-report/care-and-protection-statistics/>. This includes combining the number of children who identify as "Māori" (57%) and "Māori and Pacific" (11%).

<sup>2</sup> <https://www.stats.govt.nz/information-releases/maori-population-estimates-at-30-june-2020>.

<sup>3</sup> <https://www.occ.org.nz/assets/Uploads/20200116-OCC-Infographic2.pdf>.

5. Disabled children and young people are also proportionately overrepresented in Oranga Tamariki involvement; 35% of all disabled children compared to 17% of non-disabled children. They are also overrepresented in “out of home” placements (14% compared to 10% of all children with Oranga Tamariki involvement).<sup>4</sup>

## Children and young people in care have told us the child protection system has a major impact on their lives, which can be negative

6. As part of our role, we gather and amplify children and young people’s views, including those in state care. We also monitor and examine places where children and young people are detained and seek their views of their experiences there.
7. In 2018, we asked over 6,000 children and young people what wellbeing means for them, including 113 in state care.<sup>5</sup> One of the main findings was that Oranga Tamariki has the potential to make things better, but can also make things worse.
8. Children and young people told us they sometimes felt let down by Oranga Tamariki, didn’t feel listened to, and spoke of the disruption of having multiple social workers who were always leaving and frequently being moved around the system. They said moving placements could be traumatising and meant they never got to form lasting relationships. Many children and young people told us they feel like they don’t have choices, or a say in decisions about their lives, such as where they are staying or the caregivers they are with.
9. On the other hand, some children and young people talked about the difference it made to their wellbeing when Oranga Tamariki supported them. They said having relatable youth workers and social workers who get things done made a difference. Children and young people said having a good social worker could lead to a better life.
10. Overall, many of those we spoke with felt they were not properly supported by Oranga Tamariki. Some spoke about not knowing what they were entitled to, and not finding out until they met other children and young people in care who had had different experiences. Some felt “stuck in the system”.

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<sup>4</sup> <https://www.abuseincare.org.nz/assets/Uploads/Research-Report-for-Interim-Report.pdf>, page 6.

<sup>5</sup> <https://www.occ.org.nz/assets/Uploads/20191104-OCC-OT-What-Makes-a-Good-Life-Follow-up-Report-FINAL2.pdf>

## Since 2019, amendments to legislation have provided for a principles-based, wellbeing-focused legislative framework, but there are issues with it in practice

11. Sections 4, 5 and 13 of the Oranga Tamariki Act 1989 (the Act) place obligations on any court or person who exercises any power under the Act to apply a number of principles to children and young people in state care, with their wellbeing and best interests being the first and paramount consideration. The principles must be read in conjunction with international human rights instruments New Zealand has signed up to, including the Children's Convention together with Te Tiriti o Waitangi (te Tiriti).<sup>6</sup>
12. These are critical in determining Oranga Tamariki practice guidance which informs the approach taken, and decisions made, by individual social workers. However, given there are more than fifty statements of principle across the Act, there are some real issues as to how these principles are interpreted. In particular, a narrow interpretation of the principles is often taken, including an over-emphasis on "child rescue" at the cost of all other considerations. This often results in other harms and other unintended consequences. This includes other principles, such as the responsibility to strengthen the ability of a whānau to look after its children, being insufficiently considered. As outlined in our recent review of Oranga Tamariki – discussed in the section below - we recommend a number of immediate amendments are made to the Act to stop such harm from occurring.<sup>7</sup>

## Aotearoa New Zealand's child protection system has been subject to five reviews recently, which have found it is unable to deliver for Māori

13. Following widespread media coverage of an attempted removal of a Māori newborn baby from his family at a maternity hospital in May 2019, Oranga Tamariki has been subject to five separate but complementary inquiries into its

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<sup>6</sup> Signed in 1840, this treaty establishes the relationship between Māori as Indigenous peoples of Aotearoa New Zealand and the Crown and sets out their rights and responsibilities. These include the right of the Crown to govern over New Zealand land (Article 1); the right as Māori to live as Māori and protect and develop their resources (Article 2); and the right of all New Zealanders to citizenship and equality (Articles 3 and 4).

<sup>7</sup> [Te-Kuku-O-Te-Manawa-Report-2-OCC.pdf](#), page 89-96.

practices, policies and processes over the last two years. The following section will focus on two of these reviews: one by OCC and another by the Waitangi Tribunal (the Tribunal).

14. Before doing so, it is important to note the need for transformational change in how the child protection system delivers for Māori has been laid out multiple times, starting with *Puao-Te-Ata-Tu* in 1986. Over several decades there have been various attempts to achieve organisational change to the statutory child protection system; the most recent leading to the establishment of Oranga Tamariki in 2017. As the agency responsible for monitoring children and young people in state care since 1989, we have consistently called for system change to better meet the needs of Māori, but sadly have seen only small, isolated improvements.
15. The most recent review by OCC spanned two reports published in 2020.<sup>8</sup> Our review asked the question *“What needs to change to enable pēpi Māori (Māori babies) aged 0-3 months to remain in the care of their whānau in situations where Oranga Tamariki is notified of care and protection concerns?”*
16. Report One focused on examining the experiences of the mothers and whānau of 13 babies across 10 iwi (tribes), in whose lives the state care system has been involved, often over many years. As with children and young people in our *What Makes A Good Life?* report, mothers and whānau offered profound insights into the child protection system in Aotearoa New Zealand. These insights, along with other strands of evidence such as an analysis of statistical data, formed the basis of six areas for change. These are:
  1. The statutory child protection system does not recognise or treat mothers with humanity – and needs to.
  2. Unprofessional statutory social work practice is harming families. Examples given included feeling judged by and lied to social workers, experiencing threats and coercion, and having their confidentiality breached.
  3. Families need the right support from the right people: services in the statutory care system are absent and not appropriate. Support whānau found most beneficial take a tikanga Māori (Māori methodology) approach and support practices that focus on the long-term wellbeing of babies and their whānau, hapū (subtribe) and iwi.

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<sup>8</sup> <https://www.occ.org.nz/assets/Uploads/Te-Kuku-O-Te-Manawa-Report-2-OCC.pdf> and <https://www.occ.org.nz/assets/Uploads/TKTM-JUNE2020-Final.pdf>.

4. Families are experiencing racism and discrimination, including social workers treating them differently based on their surname and not considering the impact of colonisation or upholding tikanga Māori. This is backed up by analysis of the data which showed inequities for Māori compared with non-Māori are substantive and persistent.
  5. The organisational culture of the child protection system needs to support families to nurture and care for their babies. Contrary to the principles of the Act, whānau shared that Oranga Tamariki practice too often isolates Māori babies from their whānau when they have been removed. Whānau talked about the long-lasting harm the system causes through removing their babies, and the inherent conflict of the same government agency being tasked with supporting the wellbeing of babies and whānau on one hand and placing babies up for adoption and in long-term care arrangements on the other.
  6. The system needs to work in partnership with whānau, hapū and iwi so they can exercise tino rangatiratanga (self-determination). Māori self-determination needs to be central to any changes to be effective.
17. These areas informed the recommendations in Report Two; in answer to the review question, our conclusion is: *To keep pēpi in the care of their whānau, Māori must be recognised as best placed to care for their own: this involves by Māori, for Māori approaches that are enabled by the transfer of power and resources from government to Māori.*
18. To enable this to happen, we make four recommendations:
1. Our overarching recommendation: Government [Prime Minister and Cabinet] commit to transferring power and resources, from Government, to enable by Māori, for Māori approaches that keep pēpi Māori in the care of their whānau
  2. Oranga Tamariki act immediately to stop harm from occurring and improve the experience for pēpi Māori and whānau in the current child protection system through urgent changes to social work policy and practice
  3. Oranga Tamariki change the contracting process and increase funding and support to iwi and Māori organisations to deliver better services now, and to support and resource a transition pathway to by Māori, for Māori approaches

4. The Minister for Children and Oranga Tamariki act to improve the legislation and mechanisms in the current system to better work with Māori, both in the short and longer-term.
19. The first recommendation must be regarded as the ultimate goal. The other three are steps along the way, but not ends in themselves. Under each, we have detailed steps to enable them to happen. These will lead to the transformational change needed to address the vast inequities for Māori children in Aotearoa New Zealand's child protection system: the realisation of self-determination through te Tiriti, and a future where Māori can achieve their own moemoeā (vision) for their children.
20. The conclusion that Māori must be recognised as best placed to care for their own children, and resourced by government to do so, is also echoed in the recent Waitangi Tribunal Urgent Inquiry into Oranga Tamariki: *He Pāharakeke, He Rito Whakakīkinga Whāruarua (Wai 2915)* published on 29 April 2021.<sup>9</sup>
21. The Inquiry centred around examining why there has been such a significant and consistent disparity between the number of Māori and non-Māori children being taken into state care. It also examined what additional changes to Crown legislation, policy or practice might be required in order to be consistent with te Tiriti.
22. Similar to OCC's review, the Tribunal's primary recommendation is that the Crown steps back from further intrusion into what was reserved to Māori under te Tiriti and allow Māori to reclaim their space. This means enabling Māori to exercise their right to continue to organise and live as Māori, including to care for and raise the next generation independent of Crown control.
23. The Tribunal recommends this is done through the establishment of a Māori Transition Authority (the Authority) independent from the Crown to identify the changes necessary to eliminate the need for state care of Māori children. To enable this, the Tribunal recommends the Authority be given the mandate and resourcing to design and reform the child protection system for Māori children, coupled with the authority to work in genuine partnership with the Crown to ensure a modified system is properly implemented.

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<sup>9</sup> Established in 1975, the Tribunal provides a legal process by which Māori can bring forward claims of breaches to te Tiriti to be investigated. Tribunal Inquiries contribute to the resolution of Treaty claims and to the reconciliation of issues between Māori and the Crown.



## The reviews provide a blueprint to improve the child protection system and the government is taking steps to do so for Māori

24. Together, these reviews establish a blueprint for models and approaches to improve the child protection system, including addressing the over-representation of Indigenous children and young people. The extent to which such a blueprint will be implemented remains to be seen, but encouragingly, the Government has committed to addressing the issues raised about Oranga Tamariki's practice and culture.<sup>10</sup>
25. As part of this, the Government appointed a four-person Ministerial Advisory Board in January 2021. The Board's role is to provide "independent advice and assurance" to the Minister for Children about Oranga Tamariki's practices, policies and processes in relation to its relationships with families, whānau, and Māori; professional social work practices; and organisational culture. An initial report is expected by June 30, 2021.
26. OCC welcomes this as a step toward by Māori, for Māori approaches in the child protection system. Our hope is that it draws on the evidence contained in the recent reviews and recognises the opportunity for transformation, which we will continue to advocate for.

## However, steps need to be taken to address the disparities experienced by disabled children and young people in state care

27. On the other hand, we are not aware of a plan to address the overrepresentation of disabled children and young people in state care. As with Māori, we consider there is an urgent need for Oranga Tamariki to make changes to social work policy and practice, service delivery, and legislative mechanisms to improve the experience of disabled children and young people and their families in the child protection system.

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<sup>10</sup> <https://www.beehive.govt.nz/release/new-expert-group-appointed-advise-government-oranga-tamariki>

## Conclusion

28. In summary, there is a need take a fundamentally different approach to child protection in Aotearoa New Zealand, particularly in relation to disabled and/or Indigenous children and young people – and there are currently opportunities to do so.
29. We trust the Committee finds the insights and recommendations detailed in this submission informative and thank them for the opportunity to input into the Day of General Discussion.