

**Under** the Inquiries Act 2013  
**In the matter** of the Royal Commission into Historical Abuse in State Care and in  
the Care of Faith-based Institutions

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## **Oranga Tamariki: Brief of Evidence of Te Hapimana Te Kani for Institutional Response Hearing**

**9 August 2022**

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# Brief of evidence of Te Hapimana Te Kani

I, **Te Hapimana Te Kani** of Wellington, Te Tumu Whakarae mō te Tamariki | Secretary for Children and Chief Executive of Oranga Tamariki—Ministry for Children, state:

## Introduction

- 1 *He kororia ki te ingoa tapu o Īhowa, he maungarongo ki te whenua, he whakaaro pai ki ngā tāngata katoa.*
- 2 *Ko te mihi tuatahi kia koe nāhau i tuku te arawhata ki te Kaihanga nāna tātau katoa i manaaki, i tiaki, e whakawhāiti nei tātau ki te kaupapa tino whakahirahira o te rā nei. Arā, ko te nohoanga o te Komihana kua whakaritea kia whakarongo me te whiriwhiri i ngā take katoa ka taemai ki tana aroaro mai i ngā hunga katoa i maukinohia i roto i ngā momo whare kāwanatanga, momo hāhi, hoki.*
- 3 *Ko te mihi whakamutunga ki ngā tini aitua kua huri ki tū o te ara. Otira, waihotia rātau o te pito o te mate kia rātau whanga mai ai, ana, ka hoki mai kia tātau o te pito o te ora kia tātau no reira tēnā tātau katoa.*
- 4 *Kia koe te Kaihautū o te Komihana me koutou katoa ngā Kaikomihana ko Chappie Te Kani au, te Tumu Whakarae o Oranga Tamariki.*
- 5 I am known to most people, including in my professional capacity, as Chappie Te Kani. I am the acting Chief Executive Officer at Oranga Tamariki—Ministry for Children (**Oranga Tamariki**). I was appointed to this role on 30 July 2021, and then further extended for 12 months from 8 December 2021.
- 6 I joined Oranga Tamariki in May 2021 as Deputy Chief Executive Governance and Engagement, before being appointed to the role of acting Chief Executive in late July 2021.
- 7 Prior to joining Oranga Tamariki, I held several senior public servant roles including Assistant Commissioner at the Public Service Commission from March 2017 to May 2021, Head of System Assurance and Continuous Improvement and Caring for Communities Lead within the COVID-19 Group at the Department of the Prime Minister and Cabinet from October 2020 to May 2021. I was also Acting Chief Executive at Te Arawhiti from April to October 2020.
- 8 Firstly, I want to recognise all the survivors who have appeared before the Royal Commission (the **Commission**) during this Inquiry into Abuse in Care. I have heard the horror of your experiences and the impact these have had on you, your whānau and your communities. You have displayed extraordinary courage not only in coming before this Commission and sharing deeply personal and distressing information, but also the courage you show every day in your daily lives.
- 9 I have no doubt that by sharing your experiences you will greatly help address the failings of the State in the past and minimise the risk of further harm as we move forward with the benefit of the information and insights you have shared.
- 10 It is a fundamental right of those who have been, or continue to be, in the care of the State to feel safe and protected by those who care for them. For those of

you who have shared your experiences with the Commission, and others, this has not been the case.

- 11 The State has a responsibility and a duty both to you and to tamariki<sup>1</sup> in care today and in the future to do all that we can to eliminate the risk of harm. We will ensure that your experiences of suffering and trauma inform our policies, procedures, and practices and everything we do, so that the circumstances which have previously led to so much hurt will never be repeated.
- 12 As the acting Chief Executive Officer for Oranga Tamariki, I am responsible for providing strategic and operational leadership to Oranga Tamariki. I ensure that appropriate policies and practices for tamariki and rangatahi in need of care and protection or in the youth justice system are in place, that the organisation has a fit-for-purpose culture, and that decision-making and solutions for delivery are developed with regions, communities, whānau and iwi. I am responsible directly to the Minister for Children.
- 13 In this brief of evidence, I will address the topics and questions identified by the Commission as part of the inquiry into historical abuse in State care. I will also provide information about Oranga Tamariki and what we are focused on achieving through the transformation of our organisation.

#### **What we have heard**

- 14 Representatives of Oranga Tamariki have attended each of the hearings held by the Commission. Speaking to these people, I want to say that we have listened the evidence you have given about your childhoods and have carefully reviewed the Commission's findings and recommendations across the various investigation areas.
- 15 Oranga Tamariki has heard the many concerns that have been raised throughout this inquiry.
- 16 As survivors, you have described experiencing multiple types of abuse by staff, caregivers, other children and patients which was often extensive and persistent. You have also talked about how much of the time this abuse was perpetrated by the very people and institutions that were responsible for caring for you and keeping you safe.
- 17 You have spoken of not being believed when you told adults about the harm that was happening to you. Others of you shared that you did not know you could complain about what was happening to you or how to do so. Many of you said that not being believed caused you additional trauma and distress.
- 18 Examples have been shared of practices in the care and protection and youth justice system which meant that tamariki and rangatahi did not always have stable placements or feel safe, loved or cared for while in State care.
- 19 We have heard the impact of abuse in care has in many cases been long-lasting and wide-ranging, even inter-generational, including:

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<sup>1</sup> I refer to tamariki and rangatahi as referring to children and young people of all ethnicities, unless expressly noted otherwise. On occasions in my evidence, I refer to "children" or tamariki and this is a reference to both tamariki and rangatahi, unless noted otherwise.

- (a) The loss of identity and wellbeing where whakapapa and whanaungatanga relationships have not been protected;
  - (b) Difficulty forming trust and relationships; and
  - (c) Feeling of shame and guilt.
- 20 Tāngata whenua, Pacific and tāngata whaikaha shared specific experience in these hearings, including:
- (a) Māori survivors have described racism and discrimination against them in the care and adoption systems and the removal of connection to your culture and whakapapa, resulting in significant impacts on your wellbeing and in trauma and feelings of isolation for both you and your whānau, hapū and iwi.
  - (b) Pacific survivors have shared their experiences of cultural assimilation through being placed with non-Pacific families, being cut-off and denied access to family and culture, and the significant impact on your wellbeing and resulting in trauma and feelings of isolation for both you and your families.
  - (c) Tāngata whaikaha have described being impacted by a care system that was ableist, that considered you as ‘less than’ and that deprived you of your human rights and your dignity.
- 21 In preparing for this hearing, Oranga Tamariki also met with a group of young people who have left care more recently. I wanted to know from them what they felt it was important for this Commission to hear. This group asked that I remind the Commission that there are others who have experienced trauma in care outside of those who have courageously given evidence. They spoke of losses similar to those you have heard including a loss of childhood, the need to grow up more quickly than they were ready and the impact of being disconnected from their culture and identity. Like those you have heard from, they talked about not being believed and not being supported in the way that they needed. They talked in particular about having emotional and mental health needs which were not recognised and responded to. They wanted people to understand that they carried these impacts into adulthood in everyday ways; through their relationships, their careers and their whānau life. Some of these rangatahi are now parents themselves and they spoke of their determination to protect their own tamariki and not pass on the trauma they had experienced. I want to thank these rangatahi for their courage in sharing these experiences.
- 22 We have also listened closely to the many expert witnesses the Commission has heard from. Their deep knowledge and experience within care, social work practice and research amongst Māori, Pacific and tāngata whaikaha communities is critical in informing future change. I note in particular the helpful evidence provided by Dr Hyslop and Dr Keddell<sup>2</sup> which emphasised the need for change that is led by iwi and community, is multi layered, properly planned and resourced and which shifts service responses from risk assessment towards prevention. In particular, I agree with Dr Hyslop’s evidence that “within a

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<sup>2</sup> The oral evidence of Drs Hyslop and Keddell given to the Commission - <https://www.abuseincare.org.nz/our-progress/library/v/433/witness-statement-of-associate-professor-emily-keddell-and-dr-ian-hyslop-for-the-foster-care-public-hearing>.

redesigned system where there is an emphasis on support for whānau, there should be a significantly reduced need for care. Care can be achieved without recourse to the State where power is shifted to iwi and community.” I also agree with their cautions that Oranga Tamariki cannot and must not step away from those situations where tamariki safety requires us to act in order to keep tamariki safe. As Dr Hyslop noted, “encouraging whānau responsibility should not be a way of avoiding responsibility.”

### **What we will do about it**

- 23 Lessons have been learned and findings and recommendations from previous reports, reviews and inquiries into the care system have been accepted. Many of these are relevant to the topics for this hearing and bear out the experiences survivors have shared with the Commission. I have referenced these lessons throughout this brief of evidence and summarised the steps Oranga Tamariki has taken in response to the lessons learned.
- 24 We need to continue to listen to the experiences of survivors, tamariki and whānau, and be held accountable so that we can know if our work now and in the future is making the difference we are seeking.
- 25 While being in care might be very different to what it was 50 or even 20 or five years ago, we still have a long way to go to transform the system so that it is worthy of you. As the Chief Executive of Oranga Tamariki, I am responsible for making this happen, and for ensuring that myself and the organisation as a whole is held to account.
- 26 Throughout the period the Commission is considering, the State has maintained an obligation to provide safe care for tamariki and rangatahi who were unable to be cared for by their parents or whānau in a wide variety of circumstances. Many of the experiences we have heard from survivors are unacceptable and abhorrent by any objective standard in place at the time the events occurred, as well as by present day standards.
- 27 It is also important to note, however, that the way the State provides care for tamariki and rangatahi has changed significantly over time. So too has our understanding of how we should meet the needs of tamariki and rangatahi, including contributing to their development of a healthy and positive sense of identity (in particular cultural identity and connection) and how we can better support families to prevent the need for entry into State care in the first place. Some actions which we would describe as harmful and unacceptable today may have been considered acceptable at the time and in the social context in which they occurred. This in no way diminishes the impact these practices have had on those who experienced them.
- 28 Oranga Tamariki was established on 1 April 2017 and took on the responsibilities of the former Child, Youth and Family department of the Ministry of Social Development and its predecessors. While I firmly believe we are on the right path to transform the statutory care system, I am mindful of the whakapapa of this organisation. Changing the statutory care system is an evolution and while it is important to note the progress that has been and is being made, alongside whānau, partners and the community, we cannot divorce ourselves from the past. We must own these failings and ensure we do not repeat the mistakes and the grave injustices that this Commission has heard about.

- 29 Before I outline the changes that have been made to the statutory care system and our future direction, I would like to make the following formal acknowledgements on behalf of Oranga Tamariki. As Oranga Tamariki is the Ministry responsible for the provision of the statutory care and protection and youth justice system, it is appropriate for me to deliver the following acknowledgements in recognition that we carry the whakapapa and history of our predecessor agencies. It would not be appropriate for me to make formal acknowledgements on behalf of other agencies or in relation to care settings outside the statutory care and protection and youth justice system.
- 30 For clarity, when I refer to ‘the care and protection system’ throughout my evidence, I am meaning the system which provided care for tamariki and rangatahi who had a legal status under the relevant child welfare legislation, including those under the guardianship or custody of the Superintendent of the Department of Education or the Director-General of Social Welfare.
- 31 These acknowledgements are based on what we have heard from survivors to date, the lessons we have learnt from previous reviews and what we already know about the historic practices within the statutory care and protection and youth justice system between 1950 and 1999.
- 32 In making these acknowledgements, it is important to recognise that every person’s experience in State care is unique and it would be wrong to conclude that all who were in care during this period experienced harm or had negative experiences. While it is critical and appropriate to acknowledge those harmful experiences which did occur, it is also important to acknowledge those for whom their experience of State care afforded them the love and support that all children deserve.

## **Acknowledgments**

### ***Waitangi Tribunal concessions on behalf of the Crown***

- 33 I note the concessions that were made on behalf of the Crown at the Waitangi Tribunal urgent inquiry (Wai 2915) in November 2020 and have direct relevance to the experiences of tamariki Māori in State care and their whānau, hapū and iwi during the period 1950 to 1999. These were:

#### *Pūao Te Ata Tū*

- 34 The Crown failed to fully implement Pūao Te Ata Tū in a comprehensive and sustained manner. This failure has impacted outcomes for tamariki Māori, whānau, hapū and iwi. It has undermined Māori trust and confidence in the Crown and undermined confidence in its willingness and ability to address disparities.

#### *Structural racism*

- 35 Structural racism is a feature of the care and protection system which has had adverse effects for tamariki Māori, whānau, hapū and iwi. This has resulted from a series of legislative, policy and systems settings over time and has detrimentally impacted the relationship between Māori and the Crown.

- 36 The structural racism that exists in the care and protection system reflects broader society and has also meant more tamariki Māori being reported to it.
- 37 The impact of structural racism on outcomes for and experiences of tamariki and their whānau, and on culture and trust more generally, means that the Crown should have identified the need to tackle structural racism head on in the establishment of Oranga Tamariki.

*Historic under-investment in the care and protection system*

- 38 That historically Māori perspectives and solutions have been ignored across the care and protection system. To address this, we need to partner and engage with Māori so together we can deliver better outcomes for tamariki Māori.

***Acknowledgements by Oranga Tamariki***

*The care and protection system did not always ensure children were safe*

- 39 I acknowledge that the care and protection system between 1950 and 1999 did not always ensure that children were kept safe from harm. This includes having policies and settings in place which did not always ensure caregivers were properly vetted, trained, supported and monitored.

*Children experienced abuse and other forms of harm in the care and protection system*

- 40 I acknowledge that there were children in the care and protection system between 1950 and 1999 who experienced abuse and other forms of harm. This included physical, emotional and sexual abuse perpetrated by caregivers, staff and others in care and neglect, including cultural neglect, and a failure to fully meet the needs of all children in care. I also acknowledge that the impacts of this abuse and neglect are ongoing for survivors and their families.

*The care and protection system failed to stop abuse and other forms of harm*

- 41 I acknowledge that the care and protection system between 1950 and 1999 did not have adequate policies, processes and practices in place to always detect and facilitate the reporting of abuse and other forms of harm. When abuse and other forms of harm was reported, those reports were not always believed or followed up on. This meant there were incidents that were not appropriately investigated, which contributed to a lack of accountability for those perpetrators and an increased risk of abuse and other forms of harm continuing or recurring. This failure also added to the trauma already suffered.

*The care and protection system did not always support families in order to prevent children coming into care*

- 42 I acknowledge that the care and protection system between 1950 and 1999 did not have the legislative or policy settings to ensure sufficient emphasis was put on considering alternatives before placing children in State care. This included not always providing support to families in need and not always working with extended family, whānau, hapū and iwi to support them to care for their

tamariki safely and choosing to place some tamariki with non-kin caregivers rather than exploring family options.

*Record keeping was inadequate in the care and protection system*

- 43 I acknowledge that the care and protection system between 1950 and 1999 did not adequately protect and preserve the records and case files of all children in State care, and that has meant that some survivors today are unable to fully understand their experiences as children, including in some cases why they were placed in State care in the first place.

*The care and protection system negatively impacted tamariki and rangatahi Māori in care*

- 44 I acknowledge that the care and protection system between 1950 and 1999 failed to consistently and meaningfully ensure the cultural needs of all tamariki Māori were met and did not support mana tamaiti, whakapapa and whanaungatanga. These impacts are ongoing and have impacted whānau, hapū and iwi.

*The care and protection system negatively impacted Pacific tamariki and rangatahi in care*

- 45 I acknowledge that the care and protection system between 1950 and 1999 failed to consistently ensure that all Pacific tamariki in care had adequate access to their culture, identity, language and communities and in doing so contributed to isolation and cultural disconnection for these individuals. These impacts are ongoing and have also impacted not just those individuals, but their wider aiga as well.

*The system negatively impacted disabled children and young people in care*

- 46 I acknowledge that the care and protection system between 1950 and 1999 was ableist, did not always meet the needs of disabled children and children with mental health conditions and that those children often experienced discrimination and unfair treatment as a result of their disability. I also acknowledge that many deaf children, in particular, were denied their language and their place in their community. These impacts are ongoing and have also impacted their families.

**Oranga Tamariki today**

- 47 Below I outline the transformation programme we have underway at Oranga Tamariki. It is informed by many seminal reports and inquiries from *Pūao Te Ātatu*,<sup>3</sup> to the *He Pāharakeke*, *He Rito Whakakikinga Whāruarua Oranga*

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<sup>3</sup> Māori Perspective Advisory Committee *Pūao Te Ata Tū (day break): The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare* (Department of Social Welfare, SW 470, September 1988) [*Pūao Te Ata Tū*] [Bundle ref **MSC0008081**].



*Tamariki Urgent Inquiry report*,<sup>4</sup> to the recent work of the Ministerial Advisory Board and its report *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa (Te Kahu Aroha)*.<sup>5</sup>

- 48 *Te Kahu Aroha* was released in September 2021. *Te Kahu Aroha* pulled together much of the previous work from all previous reviews and reports into one place, and made three overarching recommendations:<sup>6</sup>
- (a) Māori and community collectives must be strengthened, restored, and empowered to lead prevention of harm for tamariki and their whānau.
  - (b) The purpose of Oranga Tamariki must be clarified, and the mana of core social work function rebuilt and properly supported.
  - (c) A National Oranga Tamariki Governance Board should be established to oversee the diversity and depth of changes needed.
- 49 The Minister for Children accepted all the recommendations and asked Oranga Tamariki to progress the work needed to address them. This in turn paved the way for our Future Direction Plan,<sup>7</sup> which has been endorsed by Cabinet.<sup>8</sup>
- 50 As a result, a transformation programme for Oranga Tamariki is now underway to ensure that all tamariki are in loving whānau and communities where oranga (wellbeing) can be realised.
- 51 Oranga Tamariki has a dual role:
- (a) An enabler and co-ordinator for Māori and communities, to empower them to put in place the support, the solutions, and the services they know will work for their people; and
  - (b) A highly-performing, highly trusted statutory care and protection and youth justice agency.
- 52 Over the next 24 months, we are focused on achieving the following shifts:
- (a) Transferring resources to our partners and communities.
  - (b) Building the workforce to meet future need.
  - (c) Transforming to a high-performing and trusted organisation and sector.
  - (d) Supporting the professional role and voice of social work.

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<sup>4</sup> Waitangi Tribunal *He Pāharakeke, He Rito Whakakīkinga Whāruarua – Oranga Tamariki’s Urgent Inquiry* (Legislation Direct, Wai 2915, April 2021) [Waitangi Tribunal Wai 2915 Report] [Bundle ref MSC0008144].

<sup>5</sup> Ministerial Advisory Board *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa Te Kahu Aroha* (July 2021) [Te Kahu Aroha] [Bundle ref MSC0008084].

<sup>6</sup> *Te Kahu Aroha* at [36] – [116] [Bundle ref MSC0008084].

<sup>7</sup> Future Direction Action Plan, September 2021.

<sup>8</sup> Cabinet minute “Direction for Oranga Tamariki” (12 August 2021) [Bundle Ref MSC0008178]

- 53 These shifts are reflected in our Future Direction Plan, which is underpinned by two main pou; namely enabling communities and social work practice.<sup>9</sup> Within these pou, the Future Direction Plan focuses on the following five key themes:
- (a) Organisational blueprint.
  - (b) People and culture.
  - (c) Relationships, partnering and decision-making.
  - (d) Social work practice.
  - (e) Data, insights and evidence.
- 54 Our focus is on enabling families to create their own solutions for ensuring the care and protection of their children, including ensuring they have the support they need.
- 55 Ultimately, we would prefer there is no role for Oranga Tamariki. That tamariki and rangatahi are thriving in communities and there was no role required for the State. However, as the Waitangi Tribunal noted:<sup>10</sup> “there will be, at least in the foreseeable future, an ongoing role for Oranga Tamariki” and “that on occasion coercive intervention may be the only option to secure the safety of the child or children” and that “this power should remain with Oranga Tamariki for the time being”. This is not a statutory power I or our social workers take lightly. As I will outline in my evidence, we have taken significant steps to ensure such actions are only taken when needed and only when all efforts to support whānau to safely care for their tamariki have been fully explored.
- 56 In their evidence Dr Hyslop and Dr Keddell expressed their optimism about our current opportunity to make genuine, lasting and systemic change that will benefit tamariki and whānau if we are committed to learning the lessons of the past. They noted, “We had a vision in 1989. We are at that brink again but we just need to look and think what we didn’t do right last time, what we are going to do right this time, who needs to be involved and how we are going to do it.”<sup>11</sup>
- 57 My team and I share this optimism and are committed to the changes this will require through genuine partnership and collaboration with iwi, community and our partner agencies. We truly believe that the delivery of the Future Direction Plan will ensure collectively we are in the best position to deliver better outcomes for tamariki, rangatahi and whānau, empower our kaimahi to excel, enable local approaches, and lead out across the wider system. The work of the Commission and the stories of survivors will continue to shape how our direction is implemented.

### **Supporting witnesses**

- 58 I have supporting witnesses from within Oranga Tamariki who have a detailed knowledge of particular areas to be addressed by the Commission. However,

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<sup>9</sup> Future Direction Action Plan, September 2021.

<sup>10</sup> Waitangi Tribunal Wai 2915 Report at 6.4.2 [Bundle ref **MSC0008144**].

<sup>11</sup> The oral evidence of Drs Hyslop and Keddell given to the Commission - <https://www.abuseincare.org.nz/our-progress/library/v/433/witness-statement-of-associate-professor-emily-keddell-and-dr-ian-hyslop-for-the-foster-care-public-hearing>.

witnesses for Oranga Tamariki, including myself, may have limitations as to the extent of our knowledge about historical matters dating back to the 1950s. The following representatives from Oranga Tamariki will also be available to give evidence to supplement the evidence I can give, to the extent possible (bearing in mind the limitations mentioned above):

- (a) **Peter Whitcombe**, Chief Social Worker;
- (b) **Nicolette Dickson**, Deputy Chief Executive Quality Practice and Experiences;
- (c) **Aiolupotea Sina Aiolupotea-Aiono**, Chief Advisor Pacific;
- (d) **Claudia Boyles**, Chief Advisor Disability;
- (e) **Paula Attrill**, General Manager International Casework and Adoption; and
- (f) **Frana Chase**, Director Transformation, Te Oranga o te Whānau.

#### **Scope of evidence**

59 The scope of my evidence will cover a response by Oranga Tamariki to each of the topics identified by the Commission in its Table entitled “Topics for each agency for the Institutional Response Hearing (**Topics Table**)” circulated on 22 June 2022, as follows:

- (a) Te Tiriti o Waitangi and the guarantee of tino rangatiratanga over kāinga (te Tiriti);
- (b) Priority groups: tāngata whenua, Pacific peoples, disabled people (Priority Groups);
- (c) System and organisational monitoring, oversight and safeguarding (Monitoring, Oversight, Safeguarding);
- (d) The relationship between the State and faith in the care system (State and Faith);
- (e) Entry into care;
- (f) Staff and caregivers;
- (g) Provision of care;
- (h) Complaints, Referrals and Criminal Justice;
- (i) Funding and resources; and
- (j) Lessons learned.

60 Each of these topics is the subject of substantial comment as part of Oranga Tamariki’s response to the Commission’s s 20 notice to produce No. 418 dated

10 June 2022,<sup>12</sup> a copy of which is attached as **Tab A (NTP 418 Response)**. I confirm the accuracy of the NTP 418 Response. I will refer extensively to this response in the course of my evidence.

61 I also confirm the accuracy of the following responses to other notices to produce issued by the Commission, some which I refer to as part of my evidence. I **attach** a summary table listing the notices to produce that Oranga Tamariki has received from the Commission, as **Tab B**.

62 I now propose to address each of the questions and issues raised for consideration at the Institutional Response hearing in the Topics Table.

### **Te Tiriti**

63 The Commission has identified that in relation to this topic it wants to know the extent to which the care system, including legislative and policy settings and State and faith organisations, ensures that te Tiriti o Waitangi is upheld including the guarantee of tino rangatiratanga over kāinga as recently explained by the Waitangi Tribunal.

64 As the Crown agency responsible for the care and protection system, Oranga Tamariki accepts that it has an obligation to give effect to Te Tiriti o Waitangi | the Treaty of Waitangi in respect of children, young persons, disabled persons, persons in the rainbow community, and people with mental health conditions.

65 The core finding of the Waitangi Tribunal's 2021 Wai 2915 report was that through the operation of the care and protection system over many years there has been a direct and sustained breach of the article II guarantee in Te Tiriti o Waitangi of "tino rangatiratanga over kāinga".<sup>13</sup>

66 *He Pāharakeke, He Rito Whakakīkinga Whāruarua* can be seen as part of the continuing examination of the meaning and scope of kāwanatanga and rangatiratanga (and the balance between the two) in a contemporary setting. The Waitangi Tribunal accepted that the Crown has legitimate interests in balancing its obligations under the Treaty towards Māori with its obligations to all citizens.

67 After the release of *He Pāharakeke, He Rito Whakakīkinga Whāruarua*, Oranga Tamariki committed to ensuring the findings and recommendations would inform the development of its future direction.

68 There have been a number of ways in which Oranga Tamariki is demonstrating practical commitment to Te Tiriti o Waitangi | the Treaty of Waitangi and reducing disparities for tamariki and rangatahi Māori.

69 Oranga Tamariki will not achieve improved outcomes for tamariki Māori on its own. It currently funds over 100 iwi and Māori organisations to deliver services, the majority of whom provide prevention, early or intensive intervention services. Oranga Tamariki also has a range of relationships with iwi and Māori organisations from formal partnership agreements through to site level agreements.

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<sup>12</sup> Oranga Tamariki's response to the Commission's s 20 notice to produce No.418 dated 10 June 2022 [Bundle Ref **ORT0112364**].

<sup>13</sup> Waitangi Tribunal Wai 2915 Report at 4.6.3 [Bundle ref **MSC0008144**].

*Section 7AA of the Oranga Tamariki Act 1989*

- 70 The commitment by Oranga Tamariki to give effect to Te Tiriti o Waitangi | the Treaty of Waitangi is also demonstrated by its compliance with legislative requirements relating to Te Tiriti o Waitangi | the Treaty of Waitangi (as required by section 7AA of the Oranga Tamariki Act 1989, explained at paragraphs 3.3 to 3.5 of the NTP 418 Response, and by Oranga Tamariki making changes to its policy and practice as detailed at paragraphs 3.6 to 3.18 of the NTP 418 Response. In July 2019, the introduction of section 7AA of the Oranga Tamariki Act placed specific new duties on myself as the Chief Executive of Oranga Tamariki designed to demonstrate practical commitment to the Te Tiriti o Waitangi | the Treaty of Waitangi. These duties require that I ensure the policies and practices of Oranga Tamariki have the objective of reducing disparities for tamariki and rangatahi Māori and require that the policies, practices, and services of Oranga Tamariki 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. Section 7AA also requires the development of strategic partnerships with iwi and Māori organisations including iwi authorities.
- 71 As the Chief Executive, I must publicly report at least once a year on the measures taken to carry out their duties under section 7AA, including the impact of those measures in improving outcomes for tamariki and rangatahi Māori.
- 72 Five quality assurance standards have been developed to ensure that new policy and practice meets Te Tiriti principles and section 7AA requirements. These are:
- (a) Oranga Tamariki upholds and protects Māori rights and interests including the right of tamariki Māori to be connected to their culture and whakapapa, and actively protecting the use of te reo Māori and tikanga and kawa.
  - (b) Oranga Tamariki hears and acts on the voices of Māori, ensuring views and experiences are used to inform policies, practices and services.
  - (c) Oranga Tamariki ensures equity by reducing disparities for tamariki Māori and whānau.
  - (d) Oranga Tamariki has regard to mana tamaiti, whakapapa and whanaungatanga and the five mana tamaiti objectives (discussed further below).
  - (e) Oranga Tamariki values the Māori evidence base.
- 73 Having regard to mana tamaiti, whakapapa and whanaungatanga means that in the development of policies, practices and services Oranga Tamariki will adhere to five mana tamaiti objectives: <sup>14</sup>
- (a) Ensure the participation of tamariki, whānau, hapū and iwi in decisions affecting them at the earliest opportunity to enhance their wellbeing and safety.

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<sup>14</sup> Oranga Tamariki - **Practice for working effectively with Māori** (22 November 2019) <https://practice.orangatamariki.govt.nz/core-practice/working-with-maori/how-to-work-effectively-with-maori/practice-for-working-effectively-with-maori/>.

- (b) Support, strengthen and assist whānau Māori to care for their tamaiti or tamariki to prevent the need for their removal from home into care or a Youth Justice response.
- (c) If removal from home is necessary, Oranga Tamariki will preference placements for tamariki Māori (including their siblings) with members of their wider whānau, hapū, iwi or family group who are able to meet their needs, including for a safe, stable, and loving home.
- (d) Support tamariki Māori in the custody of the chief executive to establish, maintain or strengthen their sense of belonging through cultural identity and connections to whānau, hapū and iwi.
- (e) Support, strengthen and assist tamariki Māori (and their whānau) to prepare for their return home or transition into the community.

74 These five mana tamaiti objectives were developed in collaboration with iwi/Māori, through the Māori Design Group, whose members represent a diverse range of iwi and Māori communities from national bodies, iwi collectives and hard to reach communities.

#### *Practice Shift*

75 Since 2019 Oranga Tamariki has undertaken a practice shift, a paradigmatic shift centred in Te Ao Māori, which is being applied for all tamariki and whānau who engage with Oranga Tamariki. The practice shift recognises the significance of Te Tiriti o Waitangi | the Treaty of Waitangi for framing a practice relationship between the Crown and Māori. Central to the shift is understanding the oranga of tamariki in the context of their whakapapa and whanaungatanga relationships. This is explained at paragraphs 1.86 to 1.97 of the NTP 418 Response.

#### *Other significant actions taken to honour Te Tiriti*

76 Other significant actions in the recent past, designed to support Oranga Tamariki to honour Te Tiriti and reduce disparities for tamariki, rangatahi and whānau Māori include:

- (a) The development, in 2016, of Te Toka Tūmoana<sup>15</sup> – the indigenous and bicultural principled practice framework used by Oranga Tamariki to guide all work with tamariki and whānau Māori, centred in Māori value and principles. This is now embedded within the Oranga Tamariki Practice Framework.
- (b) The appointment of a Chief Māori Adviser, in 2017, to be a critical Māori voice at the leadership table. In 2022 I established the Tumu Tikanga role who is a member of our Leadership Team Te Riu.
- (c) The establishment of the Māori Cultural Framework, in 2018, which guides kaimahi to deepen their understanding of key Māori values,

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<sup>15</sup> Oranga Tamariki—Ministry for Children Practice Centre Working with Māori: **Te Toka Tūmoana** (1 April 2019) <https://practice.orangatamariki.govt.nz/practice-approach/working-with-maori-te-toka-tumoana/>.

practices, concepts and events that impacted Māori, in order to inform better engagement with and responses to whānau and tamariki Māori, iwi and Māori partners.<sup>16</sup>

- (d) The use of hui-ā-whānau – whānau gatherings facilitated using Māori methods of engagement and protocols (te reo me ōna tikanga) to promote the engagement and participation of whānau Māori in decisions regarding their tamariki.
- (e) The introduction of kairaranga ā-whānau roles (weavers of family connections), to ensure tamariki and rangatahi Māori have their right to whānau, hapū and iwi Māori connection met, along with the use of whānau searching and whakapapa research.
- (f) Te Kete Ararau – a web-based application which supports Oranga Tamariki staff to increase their confidence, knowledge and capability to work effectively with tamariki Māori and their whānau.
- (g) The development of the Te Hāpai Ō programme to build the cultural capability of all Oranga Tamariki kaimahi;
- (h) The inclusion of actions within the Future Direction Plan, notably actions directed at developing an operating model that drives locally led and centrally enabled ways of working, developing for all staff a suite of culturally appropriate competency programmes, and prototyping new approaches to partnering to enable decision-making and resourcing to be made in closer proximity to whānau.<sup>17</sup>

77 In addition, the following actions taken by Oranga Tamariki are also designed to honour Te Tiriti:

- (a) There is ongoing work underway to strengthen Family Group Conference (FGC) practice to ensure they are consistent with Te Tiriti o Waitangi | the Treaty of Waitangi, as described at paragraphs 3.13 to 3.18 of the NTP 418 Response. This includes stronger leadership through the establishment of a National Practice Advisor FGC practice and FGC team leaders.
- (b) As explained at paragraphs 2.33 to 2.38 of the NTP 418 Response, Oranga Tamariki has adopted and continues to implement measures to mitigate ableism grounded in Te Tiriti o Waitangi | the Treaty of Waitangi. By way of example, as noted at paragraph 2.33 of the NTP 418 Response, Oranga Tamariki is currently in the selection process for establishing an advisory group of tāngata whaikaha Māori, disabled people (including young persons), whānau and caregivers of disabled people, to support sustainable input and leadership from outside of government. This way of working is essential to uphold the Treaty principles of tino rangatiratanga and partnership.

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<sup>16</sup> Oranga Tamariki – Our Māori Cultural Framework <https://orangatamariki.govt.nz/about-us/news/our-maori-cultural-framework/>.

<sup>17</sup> Future Direction Action Plan, September 2021.

### *New leadership and functions*

- 78 Oranga Tamariki recently made changes to its leadership team and functions. As part of this change, a new group – Māori, Partnerships and Communities – was established in April 2022.
- 79 This new rōpū brings together the Partnering for Outcomes group and teams from the Tamariki Advocate Group and Care Services. The focus of this group is to engage with iwi, Māori organisations, NGOs and other partners to work better together to support tamariki and whānau. Part of the role of this group is to ensure that the voices of tamariki and whānau influence strategy, policy, practice, and operations across the organisation so that their needs and aspirations are met. Through these functions we are mindful of and are seeking to address the points made by Dr Keddell that particular attention needs to be paid to ensure that the voices of parents are included meaningfully in service design and that the voices of tamariki and whānau need to be heard and drive service delivery at the local (site) level as well as informing national practice and policy development. This group will also be responsible for enabling and supporting Māori and communities to innovate and collaborate on designing new approaches to partnering that enable decisions to be made closer to whānau.

### *Partnering with iwi and Māori*

- 80 The Māori, Partnerships and Communities group is responsible for our strategic relationships with iwi and Māori.
- 81 This includes nine strategic partnership agreements with Te Rūnanga o Ngāi Tahu, Te Rūnanga-Ā-Iwi-Ō-Ngāpuhi, Waikato-Tainui, Ngāi Tūhoe, Te Rōpū Wāhine Māori Toko i te Ora (The Māori Women's Welfare League), the Eastern Bay of Plenty Iwi Provider Alliance, Te Rūnanganui o Te Āti Awa ki te Upoko o te Ika a Māui and Ngāti Toa Rangatira, Ngāti Kahungunu Iwi Incorporated, and Te Kahu Oranga Whānau. Each agreement is unique to suit the aspirations and focus of each partner. More generally the focus is on preventing entry into State care through joint decision making and a focus on whānau care. More information on these partnerships can be found in the Oranga Tamariki Section 7AA Annual Report (2020 and 2021).<sup>18</sup>
- 82 In October 2021 Oranga Tamariki signed an agreement with Te Rūnanga o Ngāi Tahu which will see the iwi receive \$25.9 million in funding over three years to reduce the number of tamariki and rangatahi in the South Island who come into care and improve the outcomes of tamariki and their whānau. In July 2022 we refreshed our Strategic Partnership Agreement with Waikato-Tainui and also committed to further funding of the successful iwi-led programme Mokopuna Ora, which will see Waikato-Tainui receive \$32.1 million in funding over the next five years, which will empower the iwi to care for their tamariki and whānau in ways that they know will work.
- 83 We are also working with the National Iwi Chairs Forum, Pou Tangata group to develop a work programme for delivery over the next 12 months.

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<sup>18</sup> Oranga Tamariki *Improving outcomes for tamariki Māori, their whānau, hapū and iwi: section 7AA report (2020)* ; Oranga Tamariki *Improving outcomes for tamariki Māori, their whānau, hapū and iwi: section 7AA report (2021)*.



- 84 We have also initiated a new programme of work – Enabling Communities, the cornerstone for change within Oranga Tamariki. The approach to Enabling Communities is twofold:
- (a) It sets the direction for all sites and regions to move toward sharing decisions with Māori and communities and to enable them to lead where Oranga Tamariki does not need to. Sharing decisions with and enabling Māori and communities to lead is already in place and working well in some sites and regions across the country. The expectation is that all sites and regions will work in this way with a particular focus on responding to reports of concern, Family Group Conferences, and support for rangatahi transitioning from care.
  - (b) Direct support to five communities to create a new future system to prevent harm and respond to tamariki and rangatahi and whānau in need. In these five locations, it will be the communities themselves who guide the priority areas of focus and new ways of working alongside Oranga Tamariki. It is the start of a fundamental shift anticipated through Te Kahu Aroha and other reviews.

#### **Priority groups**

- 85 The priority groups identified in the Commission’s topics table are tāngata whenua, Pacific peoples, and disabled people. The Commission has indicated that it would like the following topics to be addressed:
- (a) The extent to which the care system supports or undermines cultural continuity of Māori and Pacific peoples and the autonomy and needs of disabled people and people with mental health conditions.
  - (b) How racism, ableism and bias impacts resourcing and delivery of care services, and has influenced decision-makers to place children and vulnerable adults in care. The extent to which organisations have implemented strategies, policies, processes and practices to detect and address these factors since 1999, and the extent to which outcomes have changed as a result, and why.
  - (c) The extent to which Māori, Pacific and disabled communities were/are adequately represented among staff and decision makers of State and faith organisations who provide care services to children, young people and vulnerable adults, for example, in order to adequately engage with Māori, Pacific and the disabled communities, and to make decisions with and on behalf of those communities.

#### ***Extent of support offered by care system***

- 86 Oranga Tamariki is making improvements to the care system’s ability to support cultural connection and identity of Māori and Pacific peoples and the autonomy and needs of disabled people and people with mental health conditions. In relation to Māori, this involves supporting links to mana tamaiti, whakapapa and whanaungatanga.

- 87 Oranga Tamariki has sought to understand Māori and Pacific approaches to disability, mental health, and other matters as set out at paragraphs 4.6 to 4.29 of the NTP 418 Response.
- 88 It has taken steps to ensure that Māori and Pacific children and young people, disabled people and persons with mental health conditions can maintain access to culture, language, and their extended family as set out at paragraphs 4.30 to 4.37 of the NTP 418 Response. Oranga Tamariki has taken the steps identified in paragraphs 1.58 to 1.79 and 1.80 to 1.128 of the NTP 418 Response to address the shortcomings identified in the various reviews and inquiries that have occurred, including preparing the following:
- (a) The Future Direction Plan;<sup>19</sup>
  - (b) The Strategic Intentions Report 2021-2025;<sup>20</sup>
  - (c) Strategic partnership agreements;<sup>21</sup>
  - (d) Oranga Tamariki Action Plan;<sup>22</sup>
  - (e) Oranga Tamariki’s practice standards;<sup>23</sup> and
  - (f) Oranga Tamariki’s practice framework.<sup>24</sup>
- 89 The extent of Oranga Tamariki’s understanding of Māori and Pacific cultural approaches and the steps it has taken to maintain access to culture, language and extended family for those people, including disabled people and those with mental health conditions is reflected in the following, as summarised at paragraphs 4.6 to 4.29 of the NTP 418 Response:
- (a) Oranga Tamariki’s guidance within its Practice Centre:
    - (i) Working with Māori: Te Toka Tūmoana<sup>25</sup> (this content will be strengthened by Oranga Tamariki as part of the practice shift);
    - (ii) Working with Pacific peoples: Va'aifetū;<sup>26</sup>

<sup>19</sup> Future Direction Action Plan, September 2021.

<sup>20</sup> Oranga Tamariki—Ministry for Children “Strategic Intentions 2021-2015” <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Corporate-reports/Strategic-intentions/Strategic-intentions-2021-2025.pdf>.

<sup>21</sup> Oranga Tamariki—Ministry for Children “Strategic Partnerships with Māori” <https://www.orangatamariki.govt.nz/about-us/how-we-work/strategic-partnerships-with-maori/>.

<sup>22</sup> Oranga Tamariki —Ministry for Children “Oranga Tamariki Action Plan” <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/New-ways-of-working/OTAP/Oranga-Tamariki-Action-Plan.pdf>.

<sup>23</sup> Oranga Tamariki—Ministry for Children Practice Centre “Practice standards” <https://practice.orangatamariki.govt.nz/practice-approach/practice-standards/>.

<sup>24</sup> Oranga Tamariki —Ministry for Children Practice Centre “Practice Framework” <https://practice.orangatamariki.govt.nz/assets/practice/practice-framework-overview.pdf>.

<sup>25</sup> Oranga Tamariki—Ministry for Children Practice Centre Working with Māori: **Te Toka Tūmoana** (1 April 2019).

<sup>26</sup> Oranga Tamariki—Ministry for Children Practice Centre “Working with Pacific peoples: **Va'aifetū**” (1 July 2019) <https://practice.orangatamariki.govt.nz/practice-approach/working-with-pacific-peoples-vaifetu/>.

- (b) the ongoing work on foundational strategic documentation to reflect its understanding of Pacific peoples and the appointment in June 2021 of a Chief Pacific Advisor; and
- (c) to address the needs of disabled people, Oranga Tamariki is strengthening existing disability guidance to ensure it is based on a social and rights based model.

90 I intend to address these steps for improvement in more detail in the next sections on this topic.

***Impact of racism, ableism and bias on care services/response since 1999 and changes***

91 The respects in which racism, ableism and bias have impacted resourcing and delivery of care services and influenced decision-makers to place tamariki and rangatahi in care are addressed in the extensive findings of racism and bias in the care and protection system through reports such as the 1988 Pūao-te-Ata-tū Report,<sup>27</sup> the 2021 Waitangi Tribunal Report,<sup>28</sup> and the 2020 Ombudsman Report<sup>29</sup> into Oranga Tamariki’s removal of newborn pēpi. Information about these reports is set out in section one of the NTP 418 Response, including at paragraphs 1.5 to 1.57.

*Steps taken to address racism*

92 Oranga Tamariki has taken steps to address these concerns through several work programmes, which are noted at paragraphs 2.3 to 2.38 of the NTP 418 Response. As explained at paragraph 2.3 of the NTP 418 Response, Oranga Tamariki has established strategies, policies, processes, and practices to address racism, ableism and bias, and is also working towards taking further steps in this regard. Changes include:

- (a) The ongoing delivery of the Future Direction Plan and response to Te Kahu Aroha<sup>30</sup> seeking to address racism and bias in the system.
- (b) Other examples of work to address racism, bias and cultural competency include the cultural competency programme Te Hāpai Ō and the Practice Shift as described at paragraphs 2.6 to 2.8 of the NTP 418 Response.
- (c) Oranga Tamariki has added prompts to policies to guide social workers to consider Te Ao Māori principles when applying its policies.

*Future Direction Plan*

93 The Future Direction Plan contains specific actions that seek to address racism and bias in the system, including the introduction of the new Practice Framework and associated practice models and tools for social work

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<sup>27</sup> Pūao Te Ata Tū [Bundle ref **MSC0008081**].

<sup>28</sup> Waitangi Tribunal Wai 2915 Report [Bundle ref **MSC0008144**].

<sup>29</sup> Peter Boshier, Chief Ombudsman “*He Take Kōhukihuki* | A Matter of Urgency: Investigation Report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki—Ministry for Children” (6 August 2020) [Bundle ref **MSC0008145**].

<sup>30</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

practitioners.<sup>31</sup> Actions in this area relate to professional development and cultural capability, alongside aligned kaimahi ora and workforce strategies. These actions are aimed at enabling and supporting Oranga Tamariki practitioners to shift their practice and engage with tamariki, rangatahi, whānau and wider communities in culturally responsive ways which values the inherent mana of those Oranga Tamariki works with.

- 94 The Future Direction Plan includes specific action to clarify the circumstances under which applications for without notice orders under section 78 to bring children into care are sought.<sup>32</sup> Social workers are expected to provide clear evidence of engagement or attempts at engagement with whānau before an application can be made, and applications must be signed off at a senior level. These changes have been made and their impact is being seen in a reduction in section 78 applications, both with and without notice. While Māori pēpi continue to be disproportionately represented in these applications, the gap is decreasing. The percentage of section 78 orders, both with and without notice for pēpi Māori reduced from 70 percent in 2017 to 48 percent in 2021.
- 95 This action has been supported by legislative change, currently before Parliament. Section 18B of the Oranga Tamariki Act is being narrowed to reduce the circumstances in which the subsequent child provisions apply. Together these changes will promote practice that recognises mana tamaiti and the whakapapa of tamariki and rangatahi Māori, and the whanaungatanga responsibilities of their whānau, hapū and iwi. It will help ensure family and whānau-centred decisions regarding the appropriate course of action.
- 96 Other actions in the Future Direction Plan will shift how we fund and partner with whānau, hapū, iwi and communities, through developing an operating model for Oranga Tamariki that is locally-led, regionally-supported, and centrally-enabled.<sup>33</sup> As the care and protection system becomes more locally-responsive and tailored to the communities it serves, the less likely it is to exhibit structural racism and more likely to empower whānau, hapū and iwi.
- 97 Within the Future Direction Plan, and in particular through the Practice Framework, there is work in place to enhance the Va'aifetu model to guide practice for integrating Pacific cultures into practice in pursuit of best outcomes for children of Pacific descent. We also consider that the shifts above to relationship-based approaches will also embed practice improvements for Pacific communities. Further work may be required to identify if there are further gaps in working with Pacific cultures to prevent systemic racism.
- 98 As the actions are implemented and embedded we expect to see a reducing number of Māori and Pacific children, both absolutely and with respect to their current overrepresentation in the number of children in care. In circumstances where Māori and Pacific children do come into care, with support, the majority will be cared for within their whānau and their experiences will be supportive of a positive cultural identity rather than damaging.
- 99 Specific relevant Future Direction Plan actions are:

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<sup>31</sup> Future Direction Action Plan, September 2021.

<sup>32</sup> Future Direction Action Plan, September 2021 at 4.2.

<sup>33</sup> Future Direction Action Plan, September 2021 at 2.6.

- (a) 1.4: Strengthen the feedback and complaints system so it is 'fit-for-whānau' and ensures that tamariki, rangatahi, and their whānau have their voices heard and have confidence in the process.
- (b) 1.5: Develop an operating model that drives locally led, centrally enabled ways of working.
- (c) 1.6: Ensure the operating model allows the agency to invest more resources and staff into early support.
- (d) 2.4: Develop for all staff, in conjunction with the three where wānanga, a suite of appropriate cultural competence programmes, to ensure staff can engage with whānau and wider communities in culturally responsive ways.
- (e) 3.1: Work with iwi and community leaders and Regional Public Service Commissioners in each region to identify opportunities to co-design services and co-locate with partners.
- (f) 3.2: Greater investment in Partners with a particular focus on early support.
- (g) 3.5: Prototype new approaches to partnering to enable decision-making and resourcing to be made in closer proximity to whānau.
- (h) 3.6: Invite and resource communities to work alongside them in the care and protection system (e.g. reclaim the intention of the Family Group Conference to enable whānau-led decision making).
- (i) 4.1: Build a framework that incorporates the current practice standards and the Social Workers Registration Board competency into one place, scope and plan development of further aspects of the practice framework, and finalise the Va'aifetu model.
- (j) 4.2: Set a clear direction to only use s78 "without notice" orders for tamariki where there is clear evidence of solid engagement or attempts at engagement with whānau, which leads to no workable safety plan being put in place.

100 The further steps taken by Oranga Tamariki to address racism, ableism and bias are noted at paragraphs 2.5 to 2.23 of the NTP 418 Response.

#### *Whānau Care*

101 Significant growth in Whānau Care partnerships is expected to contribute to improved outcomes for tamariki and rangatahi Māori in care. While not directly referred to in the Future Direction Plan, Whānau Care partnerships are an example of the authentic and genuine partnerships the plan seeks to foster. Whānau Care partners are iwi (or iwi mandated) or Māori organisations who connect tamariki and rangatahi Māori in care to caregivers from their whānau, hapū or iwi. While the co-designed models of care differ from partner to partner, the end goal is always the same – to connect tamariki and rangatahi Māori in care to their whakapapa through well-supported whānau caregivers.

### *Steps taken to address ableism*

- 102 Oranga Tamariki is aware that disabled tamariki and rangatahi are over-represented in the care and protection and youth justice systems. Many disabled children have a combination of health, education and social needs. We know disabled children have a heightened vulnerability to abuse, neglect and exposure to family violence. We also know that this vulnerability continues for disabled children and that particular attention needs to be paid to their safety.
- 103 Oranga Tamariki is working to improve its practices and policies to implement the Ombudsman’s recommendations in respect of disabled parents. This was recognised in the Ombudsman’s 2020 report, which was critical of the lack of guidance by Oranga Tamariki regarding the needs of disabled parents.<sup>34</sup> However, funding and provision of services and support to enable parents with disabilities to retain care of their children relies heavily on the Ministries of Health and Education, Whaikaha – Ministry of Disabled People, Work and Income, the Disability Rights Commissioner and disability support and advocacy services, as well as with Oranga Tamariki.
- 104 Oranga Tamariki is exploring programmes that will support young people in the youth justice setting with disabilities.
- 105 In July 2021, the Oranga Tamariki leadership team agreed to establish a work programme to implement a social and rights-based model of disability grounded in Te Tiriti o Waitangi | the Treaty of Waitangi. As part of this work Oranga Tamariki is looking to develop a Disability Strategy and Vision which aligns with the Future Direction Plan, Te Tiriti o Waitangi | the Treaty of Waitangi, the Convention on the Rights of the Child,<sup>35</sup> and the Convention on the Rights of Persons with Disability.<sup>36</sup>
- 106 In relation to disability needs, Oranga Tamariki is developing a disability strategy,<sup>37</sup> and has a disability work programme of a few projects that can be done now before the strategy is complete. We are establishing a Disability Advisory Group which will have membership including tāngata whaikaha Māori, Pacific disabled people, disabled people who are care experienced and caregivers or parents of disabled children, as well as having a new Chief Advisor Disability appointed in October 2021 and practice centre guidance relevant to disability. This is explained at paragraphs 2.24 to 2.38 and 17.13 to 17.16 of the NTP 418 Response.
- 107 While Oranga Tamariki is in the early stages of developing relationships, it is proposing to adopt a co-design approach to develop the Disability Strategy and vision. Engagement with disabled people and their whānau, disabled people’s

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<sup>34</sup> Peter Boshier, Chief Ombudsman “*He Take Kōhukihuki* | A Matter of Urgency: Investigation Report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki—Ministry for Children” (6 August 2020).at 18 [Bundle ref **MSC0008145**].

<sup>35</sup> Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).

<sup>36</sup> Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008).

<sup>37</sup> Oranga Tamariki—Ministry for Children Practice Centre “Assessment of needs relating to any disability” (7 December 2020) <https://practice.orangatamariki.govt.nz/our-work/assessment-and-planning/assessments/conducting-an-assessment/assessment-of-needs-relating-to-any-disability/>.

organisations, including tāngata whaikaha, is essential to determine how to implement a social, rights-based and Te Ao Māori model of disability. Oranga Tamariki is currently establishing the Disability Advisory Group of tāngata whaikaha Māori, disabled people (including young people), whānau and caregivers of disabled people, to support sustainable input and leadership from outside of government.

- 108 The Oranga Tamariki Action Plan<sup>38</sup> requires children’s agencies to develop actions to improve wellbeing outcomes for children in the care of Oranga Tamariki (and those at risk of coming into care or who have left care). The Action Plan has specific actions in relation to children with the highest needs. Relevant agencies will work in conjunction with Oranga Tamariki to identify options to improve access to services to meet the needs of children these children, based on in-depth assessments of need in health (including mental health), education and housing. These assessments will speak directly to and seek to address over time how social disparities and structural disadvantages impact tamariki and whānau with whom Oranga Tamariki become involved.
- 109 Key actions where the Future Direction Plan may help to support children and young people with disabilities are:<sup>39</sup>
- (a) 1.7: Through a fit-for-purpose transition plan, close our current care and protection residences and replace them with a model that enables tailored care tamariki with high and complex needs.
  - (b) 2.7: Establish training specialist caregiving roles for our high and complex-needs tamariki that recognise the skills required to work with our most vulnerable tamariki and enable appropriate remuneration and ongoing development and support is provided.
- 110 These two actions together will help to support children and young people with the highest needs to be well and safe in a home-like setting, which will mitigate the harm from institution setting and risk of exposure to abuse from other children and staff.
- 111 Another key area in in the Future Direction Plan is improving reporting tools for operational staff to inform better decisions. Currently we do not hold disability data in a consistent, readily formatted way which has resulted in significantly undercounting the prevalence of disability among children in care. Plans are in place to improve these measures; this will further be supported by the roll-out of the new performance tool “Whiti”, which will help to improve reporting practices and provide decision-makers with accurate information and the eventual replacement of our case recording system, CYRAS.
- 112 I do not propose to address issues relating to the diversity of decision makers of State and faith organisations, as these are not within the scope of evidence that Oranga Tamariki can provide to this Commission.

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<sup>38</sup> Oranga Tamariki —Ministry for Children “Oranga Tamariki Action Plan”  
<https://www.orangatamariki.govt.nz/assets/Uploads/About-us/New-ways-of-working/OTAP/Oranga-Tamariki-Action-Plan.pdf>.

<sup>39</sup> Future Direction Action Plan, September 2021.

- 113 Inadequacies in relation to diversity for the recruitment practices of Oranga Tamariki are raised in the following reports and inquires which are addressed at section one of the NTP 418 Response:
- (a) Pūao-te-Ata-tū Report, September 1988;<sup>40</sup>
  - (b) The Waitangi Tribunal’s urgent inquiry (Wai 2915) *He Pāharakeke, He Rito Whakakīkinga Whāruarua*, April 2021;<sup>41</sup>
  - (c) Oranga Tamariki Ministerial Advisory Board report, *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa Te Kahu Aroha*, 2021;<sup>42</sup> and
  - (d) The Waitangi Tribunal, the Royal Commission into Abuse in Care and the Oranga Tamariki Ministerial Advisory Board have all found and reported that Oranga Tamariki has been negligent, institutionally racist and implemented policies and practices that have contributed to racial discrimination.
- 114 Oranga Tamariki has taken steps to address this by recruiting staff to adequately engage with Māori and Pacific communities and to make decisions with and on behalf of those communities at a leadership level and this has developed over time, as explained at paragraph 2.19 of the NTP 418 Response.
- 115 The extent of the progress made by Oranga Tamariki is reflected in the current diversity of staff which is reported as part of the s 7AA reporting. In 2021, the report identified that:<sup>43</sup>
- (a) As of 30 June 2021, the Oranga Tamariki workforce was made up of 4,977 kaimahi. At that time, 27.1 per cent of kaimahi identified as Māori, significantly higher than the reported public service average of 15.9 percent.
  - (b) In the previous year, Oranga Tamariki had seen a 7.7 percent increase in Tier 3 managers who identify as Māori, bringing the proportion up to 28.8 percent.
  - (c) As of June 2021, Oranga Tamariki employed kaimahi in 86.4 FTE Māori specialist roles across the country. The majority of these roles are based in the regions, and include National Office positions such as Pou Tikanga, Whānau Care Manager and the Director, Treaty Response Unit. Some of these roles are Kairaranga-ā-whānau and/or Māori practice coaches and are based at site offices.
- 116 Oranga Tamariki has the second highest number of Māori staff when compared to other public sector agencies. It continues to seek more Māori expertise at all levels across the Ministry.

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<sup>40</sup> Oranga Tamariki—Ministry for Children Practice Centre Working with Māori: **Te Toka Tūmoana** (1 April 2019).

<sup>41</sup> Waitangi Tribunal Wai 2915 Report [Bundle ref **MSC0008144**].

<sup>42</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

<sup>43</sup> Te whanake i ngā hua mō ngā tamariki Māori, ō rātou whānau, hapū, iwi anō hoki | Improving outcomes for tamariki Māori, their whānau, hapū and iwi: Section 7AA Report 2021 (16 May 2022).



- 117 Oranga Tamariki has a new approach to recruitment and initiatives to improve the diversity of staff, including introducing a range of new specialist Māori roles. There is a focus on expanding the capability and awareness of its existing staff through initiatives to enhance staff understanding of diversity and increase cultural competency through staff training and self-assessment programmes. These are matters which are described at paragraphs 4.43 to 4.47 and 9.6 of the NTP 418 Response.

### **Monitoring, Oversight, Safeguarding**

- 118 The Commission has identified that in relation to this topic it would like the following topics to be addressed:
- (a) How the care system was/is monitored to ensure that it was/is fit for purpose, that pathways into care were appropriate, and that those in care were/are protected from physical, psychological, sexual abuse, and neglect. This includes an explanation of all monitoring processes that existed during the relevant period and an assessment of their effectiveness at protecting those in care.
  - (b) How organisations developed, monitored and updated care standards and ensured compliance with those standards.
  - (c) The extent to which care settings were/are supervised and inspected (including premises, staff and caregivers).
  - (d) The extent to which third party care providers were established and monitored to ensure that they were and are fit for purpose.
  - (e) The adequacy of data collection and record keeping across the care settings.

### ***Monitoring of care system***

- 119 The present-day monitoring of Oranga Tamariki occurs through a range of mechanisms as described at paragraphs 6.1 to 6.39 of the NTP 418 Response, including:
- (a) three external agencies provide external monitoring and oversight: The Office of the Children’s Commissioner, the Independent Children’s Monitor, the Office of the Ombudsman, as well as annual reviews presented to parliament,<sup>44</sup> as discussed at paragraphs 6.2 to 6.20 of the NTP 418 Response;

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<sup>44</sup> For example; Oranga Tamariki—Ministry for Children “Annual Review 2019/20” <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Annual-reviews/Annual-review-slides.pdf>; and <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Annual-reviews/Annual-review-notes.pdf>; New Zealand Parliament “2020/21 Annual review of Oranga Tamariki – Ministry for Children” (31 March 2022) [https://www.parliament.nz/en/pb/sc/business-before-committees/document/FINS\\_116598/202021-annual-review-of-oranga-tamariki-ministry-for](https://www.parliament.nz/en/pb/sc/business-before-committees/document/FINS_116598/202021-annual-review-of-oranga-tamariki-ministry-for)) and is available on our website at <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Corporate-reports/Annual-Report/OT-Annual-report-2020-21.pdf>.

- (b) the Oranga Tamariki Ministerial Advisory Board, which continues to monitor implementation of the Future Direction Plan through to January 2023 by reporting to the Minister for Children, as discussed at paragraph 6.21 of the NTP 418 Response;
- (c) internal monitoring functions: quality assurance and continuous practice improvement, safety of children in care annual reporting 2018-2021<sup>45</sup> and the work of the measurement team, as discussed at paragraphs 6.22 to 6.34 of the NTP 418 Response; and
- (d) the regular s 7AA reporting function<sup>46</sup> I perform as acting Chief Executive to report publicly and annual of the progress of Oranga Tamariki, as discussed at paragraphs 6.35 to 6.39 of the NTP 418 Response.

***Development, monitoring and update of care standards and ensuring compliance***

120 There are a number of internally developed and externally required standards against which Oranga Tamariki and the independent monitors of the statutory care system ensure compliance. Of these the Oranga Tamariki—Ministry for Children (Residential Care) Regulations 1996 (**Residential Care Regulations**)<sup>47</sup> and the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (**National Care Standards**) are most significant.<sup>48</sup>

*Residential Care Regulations (1996) and the National Care Standards (2018) and*

121 The Residential Care Regulations<sup>49</sup> and National Care Standards<sup>50</sup> speak directly to the themes and sub-themes raised by survivors in their testimony and set solid legal foundations and accountability intended to assist to ensure their experiences are not repeated. In addition to clearly laying out the duties of the Chief Executive to tamariki and rangatahi in care and custody, these regulations are monitored and reported on through various channels.

122 By setting out in legislation the standard of care and level of support every tamariki and rangatahi is entitled to, Oranga Tamariki and other organisations who have legal custody can be held responsible for ensuring they have the level of care required to be well and do well. For the first time in New Zealand’s history, the National Care Standards include a child-friendly Statement of Rights that help make sure every child and young person in care understands what they are entitled to.<sup>51</sup>

<sup>45</sup> For example: Oranga Tamariki—Ministry for Children “Safety of Children in Care Annual Report: July 2020 to June 2021” (4 February 2022)

<https://www.orangatamariki.govt.nz/children-in-our-care/safety-of-children-in-care/>.

<sup>46</sup> For example; Improving outcomes for tamariki Māori, their whānau, hapū and iwi | Te whanake i ngā hua mō ngā tamariki Māori, ō rātau whānau, hapū, iwi anō hoki: Section 7AA Report 2020 (30 July 2020) ; Te whanake i ngā hua mō ngā tamariki Māori, ō rātau whānau, hapū, iwi anō hoki | Improving outcomes for tamariki Māori, their whānau, hapū and iwi: Section 7AA Report 2021 (16 May 2022).

<sup>47</sup> Oranga Tamariki (Residential Care) Regulations 1996.

<sup>48</sup> Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018.

<sup>49</sup> Oranga Tamariki (Residential Care) Regulations 1996.

<sup>50</sup> Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018.

<sup>51</sup> Schedule 2 of the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018.

## Residential Care Regulations (1996)

- 123 Residential Care Regulations, amongst other things:
- (a) outline the rights of tamariki and rangatahi in residences including the right to professional standards of care,<sup>52</sup> the right to educational and vocational training,<sup>53</sup> the right to access to grievance processes and the right to advocacy;<sup>54</sup>
  - (b) strictly prohibit the use of corporal punishment and any degrading or humiliating treatment likely to induce fear or anxiety,<sup>55</sup> and apply strict processes and limits on any punishment or sanction of a child or young person in a residence;<sup>56</sup>
  - (c) prohibit the use of force by staff in a residence, except in strictly specified circumstances, allowing only the minimum force necessary in the circumstances and requiring every incidence of the use of force to be documented;<sup>57</sup>
  - (d) strictly limit the use of secure care and require daily reviews of every placement in secure care to ensure the use of secure care is warranted and justified;<sup>58</sup>
  - (e) require annual monitoring of and reporting on all residences by the Quality Systems team in Oranga Tamariki, in addition to independent monitoring of residences by the Children’s Commission under the United Nations Optional Protocol for the Convention Against Torture<sup>59</sup> (aka OPCAT monitoring).<sup>60</sup>

## National Care Standards

- 124 The National Care Standards set out the standard of care every child and young person needs to do well and be well, and the support all caregivers can expect to receive when caring for tamariki. Importantly, the National Care Standards impose specific obligations on the Chief Executive of Oranga Tamariki. They came into effect on 1 July 2019. These were developed in consultation with stakeholders, including with tamariki and rangatahi in care, caregivers, caregiver social workers, approved care providers, iwi providers non-government organisations and government agencies. These are matters described at paragraphs 1.80 to 1.84 of the NTP 418 Response. As I will discuss below, compliance with these standards is monitored by the Independent Children’s Monitor.

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<sup>52</sup> Oranga Tamariki (Residential Care) Regulations 1996 at reg 3.

<sup>53</sup> At reg 13.

<sup>54</sup> At regs 15 and 16.

<sup>55</sup> At regs 20 and 21.

<sup>56</sup> At Part 2.

<sup>57</sup> At reg 22.

<sup>58</sup> At Part 5.

<sup>59</sup> *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* UN Doc A/RES/57/199.

<sup>60</sup> Oranga Tamariki (Residential Care) Regulations 1996 at reg 37.

- 125 National Care Standards codify a series of obligations on the Chief Executive of Oranga Tamariki to provide the high standard of care rightly expected for every child and young person in care or custody, and which the survivors we have heard from through the Royal Commission describe as missing in their care experience.
- 126 National Care Standards regulations include:
- (a) Requirements to undertake needs assessments and develop plans for and with tamariki and rangatahi and to deliver support to address those needs, including to meet their identity, and cultural, health, disability, education, and recreation needs such as requirements to ensure enrolment at school.<sup>61</sup>
  - (b) Requirements to support to establish, maintain, and strengthen whānau connections, plans for arrangements with family, whānau, hapū and iwi, and support to meet cultural needs.<sup>62</sup>
  - (c) Requirements for the assessment and vetting caregivers and reviews of caregiver approvals.<sup>63</sup>
  - (d) Requirements to develop caregiver support plans and provide support to caregivers to assist them to meet the needs of the child or young person in their care including to promote the child's or young person's mana tamaiti (tamariki) and their knowledge of their whakapapa, and to support the practice of whanaungatanga.<sup>64</sup>
  - (e) A specific duty to ensure recording of important life events, achievements, relationships, and other matters including, for example, photos, artwork, and school reports.<sup>65</sup>
  - (f) Requirements to plan for and provide support during transitions in a child or young person's life, including but not limited to transitions from care to adulthood.<sup>66</sup>
  - (g) Requirements to ensure a child or young person in care or custody who wishes to make a complaint or raise issues of concern is provided with sufficient support to enable them to do so, and to ensure any actions taken as a result are explained to the child or young person.<sup>67</sup>
  - (h) Specific duties when there are allegations of abuse or neglect in care, including requirements to respond to all allegations, to record all information and to inform children and young people of the outcome of investigations.<sup>68</sup>

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<sup>61</sup> Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 at reg 7 to 15.

<sup>62</sup> At reg 31.

<sup>63</sup> At part 3.

<sup>64</sup> At reg 31.

<sup>65</sup> At reg 70.

<sup>66</sup> At part 5.

<sup>67</sup> At regs 43 and 66.

<sup>68</sup> At regs 66 and 69.

- (i) The requirement for adherence to the National Care Standards to be independently monitored and publicly reported on – a role undertaken by the Independent Children’s Monitor.<sup>69</sup>

*Giving effect to the National Care Standards*

- 127 Oranga Tamariki has developed three key practice requirements set out in the Practice Centre to give effect to the Care Standards (Needs Assessment,<sup>70</sup> All About Me Plan<sup>71</sup> and the Caregiver Support Plan<sup>72</sup>), as described at paragraph 1.84 of the NTP 418 Response.
- 128 Oranga Tamariki has also developed a set of Practice Standards<sup>73</sup> describing the benchmark when working with tamariki and whānau. This work is in conjunction with the practice shift recognised through a new Practice Framework introduced in 2021. These are matters described at paragraphs 1.85 to 1.118 of the NTP 418 Response.
- 129 In addition, Oranga Tamariki has a case management system to assist social workers to manage and coordinate their work with families and whānau, and an evidence centre to build the evidence base to better understand wellbeing and what works to improve outcomes for children, young people and their families. These are matters described at paragraphs 1.119 to 1.128 of the NTP 418 Response.

*Internal monitoring of the National Care Standards*

- 130 Oranga Tamariki has several internal mechanisms for monitoring compliance against aspects of the National Care Standards:
- (a) Monthly reporting at a regional level;
  - (b) Quarterly thematic reporting;
  - (c) Quality assurance reviews;
  - (d) Routine monitoring of the quality of practice for caregivers;
  - (e) Case file reviews;
  - (f) Review of all findings of harm for tamariki and rangatahi in care and annual public reporting.

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<sup>69</sup> At part 6.

<sup>70</sup> Oranga Tamariki—Ministry for Children Practice Centre “Assessing the needs of tamariki in care” (1 July 2019) <https://practice.orangatamariki.govt.nz/our-work/assessment-and-planning/assessments/conducting-an-assessment/assessing-the-needs-of-tamariki-in-care/>.

<sup>71</sup> Oranga Tamariki—Ministry for Children Practice Centre “All About Me Plan” (14 March 2022) <https://practice.orangatamariki.govt.nz/policy/all-about-me-plan/>.

<sup>72</sup> Oranga Tamariki—Ministry for Children Practice Centre “Caregiver support plan” (10 March 2020) <https://practice.orangatamariki.govt.nz/our-work/care/caregivers/support-for-caregivers/caregiver-support-plan/>.

<sup>73</sup> Oranga Tamariki—Ministry for Children Practice Centre “Practice standards”.

- 131 Internal monitoring by Oranga Tamariki of its practice against the National Care Standards also occurs through quality assurance and continuous practice improvement. This is explained at paragraph 6.22 of the NTP 418 Response.
- 132 As discussed at paragraphs 6.23 to 6.30 of the NTP 418 Response, the Safety of Children in Care (**SoCiC**) unit was established in 2018 to better understand and prevent harm to children in care. Every finding of harm against a child or young person in care is reviewed to understand what has occurred for them, how we have responded to their needs, how we have managed their safety and wellbeing, and how the prevention of future harm is being considered for children into the future. Reviewers engage with sites and provide direct practice feedback to improve adherence to standards.
- 133 The SoCiC Unit reports publicly on an annual basis, which is one aspect of a demonstrated commitment to openness and continuous improvement to ensure the safety of all children and young people in care. The insights from these reports are used across the organisation to provide understanding of patterns and trends and to focus practice development.
- 134 At a national level, there is a team who undertakes regular case file analysis to provide assurance around Oranga Tamariki's adherence to aspects of the National Care Standards. These are matters explained at paragraphs 6.31 to 6.34 of the NTP 418 Response.
- 135 Oranga Tamariki works with approximately 60 care partners to design changes for partnered care that meet the National Care Standards and the wider commitments of Oranga Tamariki. This is explained at paragraph 15.5 of the NTP 418 Response.

*External monitoring of the National Care Standards*

- 136 The Independent Children's Monitor monitors agency compliance with the National Care Standards. This is explained at paragraphs 6.9 to 6.14 of the NTP 418 Response. There are future plans to extend this monitoring beyond the National Care Standards to the entire Oranga Tamariki system following the enactment of the Oversight Bill.<sup>74</sup> This is explained at paragraphs 6.15 to 6.16 of the NTP 418 Response.
- 137 Later in my evidence, I discuss what future developments are occurring in relation to a redress system.

***The extent to which care settings were/are supervised and inspected (including premises, staff and caregivers)***

- 138 Historically, the progress and placement of tamariki and rangatahi in care appears to have been monitored through regular visits by Child Welfare Officers (social workers). This included visiting children in their foster homes, or the institutions they were placed in. The frequency of visits would be dependent on the situation for the child or young person. By the 1980s, there was guidance about planning visits with a social worker's supervisor. In this guidance, direction on the minimum visits linked to a situation, for example, for a registered

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<sup>74</sup> Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021 (94-2).

children’s home once every four months, and for adoption placements once every two months. There were identified limitations with these processes which are reflected in the reports and inquiries addressed in section one of the NTP 418 Response. In particular the “Report of the Expert Panel on Modernising Child Youth and Family”, identified the need for improved monitoring, including external monitoring mechanisms.<sup>75</sup>

139 In response, Oranga Tamariki now has extensive systems in place to supervise and inspect care settings (including premises, staff and caregivers), including in the following respects:

- (a) Paragraphs 7.22 to 7.34 of the NTP 418 Response address the current approach to supervision and inspection of foster homes and family home carers.
- (b) Paragraphs 7.35 to 7.36 (and 5.8(b), 6.33(a)) of the NTP 418 Response address the rules and regulations requiring annual inspection of residences to ensure compliance with legal requirements.

***The extent to which third party care providers were established and monitored to ensure that they were and are fit for purpose***

140 The ability to fund other organisations to provide care services was established formally in the Children Young Persons and Their Families Act 1989, following the Pūao-te-Ata-tū report.<sup>76</sup> Those are the section 396 and section 403 provisions for iwi, cultural and community social service providers being able to provide care and other services for tamariki and their whānau. Both that report and the more recent Te Kahu Aroha<sup>77</sup> report completed by the Oranga Tamariki Ministerial Advisory Board promote community-based organisations (suitably accredited) leading care arrangements for tamariki.

141 Third party care providers are established in a way to ensure that they are fit for purpose, noting:

- (a) The types of third party care providers and how they are established is explained at paragraphs 15.1 to 15.5 of the NTP 418 Response.
- (b) In relation to s 396 care providers, Oranga Tamariki approves organisations as section 396 providers and conducts regular reviews of these organisations. This explained at paragraphs 15.3 to 15.4 of the NTP 418 Response.
- (c) The process for becoming a partnered care provider is addressed by paragraphs 15.5 to 15.7 of the NTP 418 Response.

142 There are extensive monitoring requirements for third party care providers to ensure that are fit for purpose, as follows:

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<sup>75</sup> Modernising Child, Youth and Family Expert Panel “Expert Panel Final Report: Investing in New Zealand’s Children and their Families” (Wellington, December 2015).

<sup>76</sup> Oranga Tamariki—Ministry for Children Practice Centre Working with Māori: **Te Toka Tūmoana** (1 April 2019).

<sup>77</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

- (a) Paragraphs 15.10 to 15.13 of the NTP 418 Response address the measures taken by Oranga Tamariki since 1 July 2021 to assess the suitability of third party providers in order to approve them (including in relation to section 396 providers and care partners). Prior to 1 July 2021, MSD was responsible for the accreditation and approval of third party providers and Oranga Tamariki was responsible for contracting and monitoring. Oranga Tamariki's response to NTP 298 addresses how it assesses the suitability of third party providers, as explained by paragraph 15.10 of the NTP 418 Response.
- (b) Oranga Tamariki understands that MSD will address the accreditation process run by Te Kāhui Kāhu for assessing the suitability of third party service providers.
- (c) Paragraphs 15.14 to 15.17 of the NTP 418 Response address the reporting requirements for third party providers, and the complaints policies and procedures in place so that tamariki know how to make complaints.
- (d) Paragraphs 15.18 to 15.21 of the NTP 418 Response address the processes in place for Oranga Tamariki to monitor and review third party providers.
- (e) Paragraphs 15.25 to 15.27 of the NTP 418 response address how Oranga Tamariki ensures that third party providers are able to meet the needs of individuals in line with the National Care Standards.
- (f) Paragraphs 15.28 to 15.32 of the NTP 418 Response address visiting requirements for tamariki and rangatahi in State care, including those in the care of third party providers, in order to meet the obligations of the National Care Standards.
- (g) Paragraph 15.33 of the NTP 418 Response addresses incident reporting requirements on third party providers.
- (h) Paragraph 15.34 of the NTP 418 Response addresses the process for support and engagement by Oranga Tamariki in the event that a person dies in the care of Oranga Tamariki (including when in the care of a third party provider).
- (i) Paragraphs 15.35 to 15.41 of the NTP 418 Response address that Oranga Tamariki is aware of the trauma of placing tamariki into State care (including in the care of third party providers), and the measures that Oranga Tamariki takes to address that.
- (j) Paragraphs 16.1 to 16.11 of the NTP 418 Response address the specific issues relating to Māori as third party providers, and the efforts being made by Oranga Tamariki to remove the barriers that currently exist to iwi and Kaupapa providers becoming accredited third party providers. This is to ensure that there is consistency with Te Tiriti o Waitangi | the Treaty of Waitangi.

143 Oranga Tamariki does not have a separate obligation to regulate faith-based organisations. Oranga Tamariki does contract with service arms of some faith-based organisations, such as The Salvation Army. However, they are considered



section 396 providers and are subject to the same approvals and monitoring as all other section 396 providers.

### ***The adequacy of data collection and record keeping across the care settings***

- 144 Oranga Tamariki understands the importance of data, and its essential role in ensuring a fit-for-purpose care system, as recognised by the Oranga Tamariki Ministerial Advisory Board’s report *Te Kahu Aroha*.<sup>78</sup>
- 145 Oranga Tamariki recognises that gaps in data are a barrier to understanding the current and long term impacts of the care and protection system. Incomplete records can have a significant impact on survivors of abuse and their understanding of what happened to them and why.
- 146 Over time, limitations in data practices in the care system have been identified by a number of reviews and reports, including the Report of the Oranga Tamariki Ministerial Advisory Board - *Te Kahu Aroha*<sup>79</sup> the Waitangi Tribunal Urgent Inquiry 2915,<sup>80</sup> *Hāhā-uri, Hāhā-tea: Māori Involvement in State Care 1950 – 1999* (Ihi Research),<sup>81</sup> *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui*.<sup>82</sup>
- 147 The need for improved data and evidence is especially relevant to disability. In the care and protection population generally, estimates indicate that disabled children are overrepresented. In youth justice settings, there is an estimated overrepresentation of disabled young people, especially those who are neurodiverse. As part of the Future Direction Plan, Oranga Tamariki is committed to deliver improvements in relation to data within the next two to five years as set out at paragraph 18.65 of the NTP 418 Response.<sup>83</sup>
- 148 The Future Direction Plan also focuses on the development of tools to support social workers to deliver best practice, including meeting care standards. The performance reporting tool (Whiti) will, for example, alert social workers, supervisors and managers to the timeliness of priority activities such as visits to children and caregivers and reviews of children’s plans. It will also contribute to active management of these activities by senior leaders. The development of options to replace the case management system, CYRAS, is focused on ensuring improvements to the information being captured, for example, the needs of tamariki and whānau, progress in meeting those needs and the experiences and life events of tamariki and rangatahi in care.

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<sup>78</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

<sup>79</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

<sup>80</sup> Waitangi Tribunal *He Pāharakeke, He Rito Whakaīkinga Whāruarua*, (Wai 2915, 2021).

<sup>81</sup> Ihi Research “**Hāhā-uri, Hāhā-tea: Māori Involvement in State Care 1950 – 1999**” (July 2021) <https://www.abuseinquiryresponse.govt.nz/assets/Uploads/Māori-research-report/Haha-uri-haha-tea-Māori-Involvement-in-State-Care-1950-1999.pdf>;

Summaries and alternative versions can be found at

<https://www.abuseinquiryresponse.govt.nz/documents/>.

<sup>82</sup> Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions “*He Purapura Ora, he Māra Tipu.: From Redress to Puretumu Torowhānui | Kia Torowhānui te Puretumu*” (2021) [www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/](http://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/) and <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu-2/>.

<sup>83</sup> Future Direction Action Plan, September 2021.

- 149 Relevant Future Direction Plan actions on data, evidence and insights include:<sup>84</sup>
- (a) 5.1: Continue to rollout new performance management tools which make data and information available to operational staff from social workers and site managers all the way to the leadership team to inform their decision-making.
  - (b) 5.2: Develop options for replacing the Oranga Tamariki case management system in a cost conscious and timely way. The replacement will capture more detailed information on, for example, the needs of tamariki and whānau, progress in meeting those needs and the experiences of tamariki and whānau that interact with us.
- 150 I refer to further information about data collection process and practices which is explained in the NTP 418 Response, as follows.
- (a) Paragraphs 18.1 to 18.18 of NTP 418 Response address the key reviews and reports into the care system data collection processes, from which lessons have been learned.
  - (b) Paragraphs 18.19 to 18.23 of the NTP 418 Response explains the legislative provisions that govern Oranga Tamariki data collection practices.
  - (c) Paragraphs 18.24 to 18.29 address Oranga Tamariki data collection practices in relation to people in State care.
  - (d) Paragraphs 18.30 to 18.31 of NTP 418 address Oranga Tamariki collection and reporting of ethnicity data.
  - (e) Paragraphs 18.34 to 18.37 of NTP 418 address the types and format of records held by Oranga Tamariki.
  - (f) Paragraphs 18.38 to 18.47 of NTP 418 address how Oranga Tamariki uses data and information it holds.
  - (g) Paragraph 18.48 of NTP 418 addresses the processes that Oranga Tamariki has in place for viewing and amendment of the data it holds.
  - (h) Paragraphs 18.50 to 18.64 addresses information collected by Oranga Tamariki in relation to disability, mental health / medical issues, support and care needs.
  - (i) Paragraphs 18.66 of the NTP 418 Response address data collection/record keeping and access to records.
  - (j) Paragraphs 15.22 to 15.24 of the NTP 418 Response addresses the requirements that Oranga Tamariki has in place in relation to the recording of information about ethnicity, support needs and level of funding needed by third party providers.
- 151 There are ongoing limitations in respect of the reliability of information that Oranga Tamariki holds which needs to be addressed. There are difficulties

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<sup>84</sup> Future Direction Action Plan, September 2021.

finding accurate ethnicity information for those with experiences in the care system. This is explained at paragraphs 18.27 to 18.29 of the NTP 418 Response, as follows:

- (a) Prior to 2000, the ethnic breakdown of tamariki and rangatahi was not available in a structured data format, and there is no available information on the breakdown in ethnicity of tamariki and rangatahi in care prior to 2001. This information may have been held in individual case files. However, it cannot be provided without a manual review of the files. Until 2004, there were known issues with recording and data for this period.
- (b) Prior to 1 April 2017, Child, Youth and Family reported a “primary” ethnicity for each child, which influenced staff to record a primary ethnicity, as opposed to recording multiple ethnicities. Reporting only the “primary” ethnicity is more likely to result in undercounting the number of pacific ethnicities.
- (c) However, since its establishment in 2017, Oranga Tamariki records ethnicity in line with Statistics New Zealand standards on the use of ethnicity data and how individuals identify themselves. This enables the recording of as many ethnicities for each child and young person as required.

### ***State and Faith***

- 152 The Commission has identified that in relation to this topic it would like to understand the delegation of care by the State to faith-based institutions and the extent of State oversight and responsibility, including Te Tiriti and human rights obligations to those in care.
- 153 Substantial information was shared with the Commission about the relationship between State Care and Faith Based Institutions through Oranga Tamariki’s responses to the Maryland’s Case study Investigation. Specifically, this was addressed by notices 202, 298 and 310 and Mr Peter Galvin’s Witness Statement and testimony at the Maryland’s hearing.
- 154 The witness statement of Mr Galvin dated 4 February 2021 outlines; ‘The nature of the regulatory framework for those in State care and placed in faith-based institutions at the time’ (pre-1989 (at paragraphs 9-12)), and the framework for monitoring and reporting (at paragraphs 14 -23).
- 155 Historically, the Department of Social Welfare were responsible for inspecting, monitoring and regulating institutions providing care to children and young persons as per Section 2 of the Child Welfare Amendment Act 1927, and section 84 of the Children and Young Persons Act 1974. This included any faith-based institutions. However, a distinction was not made between those deemed to be faith-based, or any other third-party provider.
- 156 Oranga Tamariki has provided the Royal Commission with policies and guidelines from Social Work Manuals for the admission of State wards in private boarding schools and faith-based institutions. These include the policy that, in the case of a faith-based institution, parental consent was required “where a Protestant ward is to be admitted to a Catholic institution, or vice versa” (at paragraph 13

of Mr Galvin’s witness statement). Historically, it was policy to place tamariki and rangatahi who needed institutional care within the Department of Social Welfare’s own facilities. However, they could be placed in private institutions if the private institution met needs that a Department of Social Welfare facility could not. Information regarding circumstances in which children and young people came to be in the care of a faith-based institution will be held on the individual case files.

157 Changes over time regarding safeguarding and oversight of third-party providers, including present day practice is covered at paragraphs 38 to 53 of Mr Galvin’s witness statement.

158 Mr Galvin, as part of concluding comments in his statement confirmed:

“I acknowledge again the very difficult evidence given by survivors. Oranga Tamariki is committed to ensuring that the totally unacceptable circumstances of the abuse at Marylands School is not able to happen in today’s environment. That is why significant changes have been made to the formal expectations of organisations who provide care for children and there is increased oversight of not only the care provided by Oranga Tamariki but also that provided by third parties.”

#### **Entry into care**

159 The Commission has identified that it would like the following topics to be addressed:

- (a) The principles, policies, practices and procedures the State used when removing or uplifting tamariki and rangatahi from their whānau or family and placed them into care.
- (b) How and to what extent the State considered policies, resourcing and initiatives to avoid pathways into care, both on a population-wide level, and on an individual family level.
- (c) The circumstances in which children and young persons came to be in the care of faith-based institutions.

#### ***Principles, policies, practices and procedures the State used when removing children and young persons***

160 The principles, policies, practices and procedures the State has used when removing tamariki and rangatahi from their whānau or family and placed them into care are explained by paragraphs 10.1 to 10.5 of the NTP 418 response, as follows.

- (a) Oranga Tamariki has learned lessons about whether and how a child or young person should be placed into State care from several previous reports and reviews. In respect of “without notice” orders for interim custody of tamaiti or rangatahi under section 78 of the Oranga Tamariki Act (**section 78 “without notice” orders**), Oranga Tamariki has learned from:

- (i) the Chief Ombudsman’s 2020 Report on the removal of newborn pēpi;<sup>85</sup>
  - (ii) the Hawke’s Bay Practice Review in 2019.<sup>86</sup>
- (b) Oranga Tamariki focuses on preventing entry to care to the greatest extent possible in the circumstances. Where care is required, every effort is made to promote whānau care for all children, including tamariki Māori. This is explained by paragraph 10.2 of the NTP 418 Response.
- (c) Notably, there is a new “without notice policy”,<sup>87</sup> in relation to the use of applications for section 78 orders made “without notice”. This new policy requires a standard set of questions to investigate:
- (i) compliance with policy and guidance; and
  - (ii) the broader practice around applications for section 78 orders made “without notice”, to provide a more comprehensive understanding of practice and early intervention with pēpi, and support identification of strengths and improvements needed.
- (d) Oranga Tamariki has made significant changes to how applications for section 78 “without notice” orders are used, including the introduction of additional checks and balances (as well as the requirement that the relevant site manager, practice leader and regional legal manager endorse the course of action before a without notice application can be made by social worker). The intention is that such applications are only made if they are necessary (i.e. there is an immediate risk and all appropriate steps have been taken to engage parents and wider whānau about the concerns and to consider alternative action).

161 Underlying these procedural and policy changes are four fundamental aspects which are critical in social work practice and decision making, all of which have been referenced by expert witnesses you have heard from. These are:

- (a) balancing our understanding of historical concerns with a deep understanding of the current circumstances of whānau;
- (b) working closely with and trusting the professional opinion of those within community agencies who hold the relationship with whānau;
- (c) engaging whānau early in decision making processes such as hui a whānau and Family Group Conferences and wherever possible having community lead these processes; and

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<sup>85</sup> Peter Boshier, Chief Ombudsman “*He Take Kōhukihuki* | A Matter of Urgency: Investigation Report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki—Ministry for Children” (6 August 2020) [Bundle ref **MSC0008145**].

<sup>86</sup> Hawke’s Bay Practice Review [Bundle ref **MSC0008179**].

<sup>87</sup> Oranga Tamariki—Ministry for Children Practice Centre “Without notice application for interim custody of a tamaiti or rangatahi” (13 December 2021) <https://practice.orangatamariki.govt.nz/policy/without-notice-application-for-interim-custody-of-a-tamaiti-or-rangatahi/>.

- (d) mobilising whānau support to address the broad range of needs that have the potential to impact tamariki safety and whānau wellbeing.

162 As well as an overall reduction in the number of applications for section 78 orders, both with and without notice, we are seeing an increase in these practices through regular case file analysis.

163 In relation to pēpi, Oranga Tamariki has also:

- (a) published two relevant reports in relation to the use of applications for section 78 “without notice” orders: the first was released in August 2021,<sup>88</sup> covering the period 1 September to 31 December 2020. The second,<sup>89</sup> and latest, report covers the period 1 January to 31 August 2021.
- (b) accepted all of the Ombudsman’s recommendations made in the Chief Ombudsman’s 2020 Report on the removal of newborn pēpi.<sup>90</sup>
- (c) completed four quarterly reports to the Chief Ombudsman, which detail the progress Oranga Tamariki has made in implementing actions in response to recommendations.<sup>91</sup>

164 Paragraphs 10.7 to 10.18 of the NTP 418 Response address the application of Te Tiriti O Waitangi | the Treaty of Waitangi and recognition of Māori customary practice in relation to decisions to place tamariki into care.

165 Paragraphs 10.19 to 10.35 of the NTP 418 Response address the policies, practices and procedures used in relation to decisions to care options for disabled people and people with mental health conditions.

### ***Consideration of avoiding pathways into care, on population and individual levels***

166 The extent to which Oranga Tamariki has considered policies, resourcing and initiatives to prevent pathways into care, both on a population-wide level, and on an individual family level is reflected by the significant changes to how section 78 orders are used, as I have addressed above. The success of these changes is reflected in the significant decline in section 78, with and without notice orders as noted previously.

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<sup>88</sup> Oranga Tamariki—Ministry for Children “Report on s78 custody orders for unborn and newborn pēpi” (July 2021) <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Ombudsman-reports/210726-Final-report-on-the-use-of-s78-for-newborn-pepi-003.pdf>.

<sup>89</sup> Oranga Tamariki—Ministry for Children “Second report on section 78 custody orders for unborn and new-born pēpi” (March 2022) <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Ombudsman-reports/Report-s78-pepi-review-FINAL-March-22.pdf>.

<sup>90</sup> Peter Boshier, Chief Ombudsman “*He Take Kōhukihuki* | A Matter of Urgency: Investigation Report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki—Ministry for Children” (6 August 2020) [Bundle ref **MSC0008145**].

<sup>91</sup> Oranga Tamariki—Ministry for Children “**Ombudsman reports**” (7 September 2021).

### *Responding differently to reports of concern*

- 167 Fundamental to avoiding pathways to care is responding differently to concerns when they are first reported to Oranga Tamariki. Dr Keddell and Dr Hyslop explained the risks associated with what they describe as the current ‘notify and investigate’ model, noting the potential for bias, a disproportionate emphasis on incident based risk assessment and a lack of acknowledgement of social and contextual factors that can impact on the care whānau are able to provide.
- 168 The Future Direction Plan includes actions to fundamentally change the way we respond to reports of concern. This includes working with iwi, Māori and community to determine together the best response when a report of concern is received. It also includes developing new practice tools and supports which drive responses that strengthen whānau wellbeing and emphasis the provision of early support.

### *Relationship, Partnering and Decision Making*

- 169 The Future Direction Plan acknowledges the importance of preventing abuse from occurring by investing in prevention and early support of families.<sup>92</sup> The Plan aims to prevent harm in general and prevent children from coming into the care of Oranga Tamariki. These actions related to prevention are combined with greater partnership and decentralisation to allow local communities and iwi to co-design early support solutions that work for them (See Future Direction Plan Actions 3.1, 3.2, 3.5, and 3.6).<sup>93</sup>
- 170 Oranga Tamariki is progressing partnership and investment in the community for early support initiatives to better support tamariki and rangatahi to be cared for in safe and loving homes. The intensive response programmes are currently considering new ways of working that enables whānau, hapū, iwi and communities to lead and design their own solutions for tamariki and their whānau. Intensive response programmes place an emphasis on the time spent with whānau and the quality of relationships built with them. These programmes provide significant support to address immediate stressors such as housing, health and financial stability. It is understood these factors need to be addressed before whānau are in a position to “take on new ideas about parenting or overcome their own trauma” as noted by Dr Keddell in her evidence.<sup>94</sup>
- 171 Options to expand to more locations throughout New Zealand are currently being considered.
- 172 Oranga Tamariki considers further work is required to bring together the Royal Commission’s themes relating to abuse and the themes from Safety of Children in Care reports.<sup>95</sup> From these reports we know that tamariki and rangatahi are most at risk from harm when they are within a residence or in a return home

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<sup>92</sup> Future Direction Action Plan, September 2021.

<sup>93</sup> Future Direction Action Plan, September 2021.

<sup>94</sup> Dr Keddell’s oral evidence given to the Commission - <https://www.abuseincare.org.nz/our-progress/library/v/433/witness-statement-of-associate-professor-emily-keddell-and-dr-ian-hyslop-for-the-foster-care-public-hearing>.

<sup>95</sup> For example: Oranga Tamariki—Ministry for Children “Safety of Children in Care Annual Report: July 2020 to June 2021” (4 February 2022) <https://www.orangatamariki.govt.nz/children-in-our-care/safety-of-children-in-care/>.

placement.<sup>96</sup> Between 2011 to 2015 themes identified from analysis of practice when responding to harm of tamariki and rangatahi in care included the need for robust and meaningful supports around families when children return home. However, it is not clear whether these supports are currently being provided to the extent necessary to prevent tamariki and rangatahi coming to further harm.

***The circumstances in which tamariki and rangatahi came to be in the care of Faith-based institutions***

- 173 As I have mentioned earlier, Oranga Tamariki has provided the Commission with policies and guidelines from social work manuals for the admission of State wards in private boarding schools and faith-based institutions. These include the policy that, in the case of a faith-based institution, parental consent was required “where a Protestant ward is to be admitted to a Catholic institution, or vice versa” (at paragraph 13 of Mr Galvin’s witness statement). Historically, it was policy to place tamariki and rangatahi who needed institutional care within Department of Social Welfare’s own facilities. However, they could be placed in private institutions if the private institution met needs that a Department of Social Welfare facility could not. Information regarding circumstances in which tamariki and rangatahi came to be in the care of a faith-based institution will be held on individual case files.

**Staff and caregivers**

- 174 The Commission has identified that it would like the following topics to be addressed:
- (a) How staff and caregivers were/are educated, trained, resourced and supported, and the extent to which this was/is adequate and appropriate.
  - (b) Vetting of caregivers and staff: how effective those measures were/are, and how approaches to vetting changed over time.

***Education, training, resource and support of staff and caregivers***

- 175 The survivors’ accounts demonstrate the additional vulnerability of tamariki and rangatahi who are in the care or custody of the State and the need for highly trained staff who are trauma informed and work in a mana enhancing way that places the tamariki and rangatahi and whānau at the centre of decision-making.
- 176 Safeguarding and care needs are essential to Oranga Tamariki’s operation, and accordingly Oranga Tamariki consistently seeks to improve staff training.
- 177 Learning and development as a discipline has shifted significantly over the last 50 years; a key development has been the greater emphasis in the last decade on meeting learning needs through better understanding, and application of, adult learning principles and approaches. This also includes improving staff cultural competency.

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<sup>96</sup> For example: Oranga Tamariki—Ministry for Children “Safety of Children in Care Annual Report: July 2020 to June 2021” (4 February 2022) at 12, 13, 19.



- 178 Reports and inquiries detailed in section one of the NTP 418 Response have focused on the need for improvements to staff training, including providing a Māori perspective for training courses more directly related to the needs of the Māori.
- 179 Oranga Tamariki is committed to improving the quality of social work supervision and ensuring workload issues are monitored and addressed. Considerable progress has been made with employing more social workers and generally decreasing average caseloads.
- 180 The important ways in which staff and caregivers are educated, trained, resourced and supported, and the extent to which this is now adequate and appropriate is addressed by the following paragraphs of the NTP 418 Response, as follows:
- (a) Paragraphs 9.1 to 9.10, 9.29 to 9.32, 9.33 to 9.42. of the NTP 418 Response address steps taken in relation to staff education, training, resource and support (including in relation to social workers and residential facility staff) in response to lessons learned from the various reports outlined in section one of the NTP 418 Response.
  - (b) Paragraphs 9.11 to 9.28 of the NTP 418 Response address steps taken in relation to caregiver education, training, resource and support offered by Oranga Tamariki in response to lessons learned from the various reports outlined in section one of the NTP 418 Response.

#### *Future Direction Plan*

- 181 The Future Direction Plan actions are designed to ensure the provision of high-quality social work practice through shifts in practice and culture, training and development, and kaimahi ora.<sup>97</sup> This work is critical to preventing the abuse and other forms of harm that have occurred in the past, especially to understanding how to prevent racism and bias and best place the voices of children and young persons in their practice.
- 182 Further work is planned which will improve supporting the needs of children and young persons. Specifically related Future Direction Plan actions are as follows:<sup>98</sup>
- (a) 2.5: Develop a workforce strategy that will support high-quality social work, which will include:
    - (i) clarifying the role of Oranga Tamariki social workers, and other professionals;
    - (ii) working alongside the Social Worker Registration Board and the Aotearoa New Zealand Association of Social Workers to continue to build the social work workforce;
    - (iii) identifying the workforce needs of the community, regions and sites; and

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<sup>97</sup> Future Direction Action Plan, September 2021.

<sup>98</sup> Future Direction Action Plan, September 2021.

- (iv) training, career progression pathways, leadership and professional development and workforce planning.
- (b) 2.6: Invest in the capability of leaders (especially frontline leaders) to ensure shifts to practice and culture take place that support a locally-led, centrally-enabled way of working and that support tamariki and whānau to participate and be central in decision-making.
- (c) 2.7: Establish trained specialist caregiving roles for our high and complex needs tamariki that recognise the skills required to work with our most vulnerable tamariki and enable appropriate remuneration and ongoing development and support to be provided.

*Social work practice*

- 183 Many survivors noted that social workers were either largely absent or too busy to visit and build a relationship of trust with the child or young person.
- 184 Historically, the home district officers were required to visit State wards once every four months. However, there was no requirement to meet with the child or young person away from caregivers. Guidance from 1965 and 1981 states that confirmation of visits having been undertaken was monitored through “visiting returns”.
- 185 As noted above, Oranga Tamariki has taken steps to increase the frequency at which tamariki are visited by social workers. Furthermore, practice guidance encourages social workers to engage with children or young persons in private when possible, to enable them to express their views more freely.
- 186 The Future Direction Plan has placed social worker practice at the centre of the organisational reset. Fundamental to this is the Practice Shift and new Practice Framework referenced earlier in this brief of evidence. Other actions relating to this area will further review and enhance practice and tools to ensure they are fit for purpose and align with the practice framework. Specifically, action 1.1 of the Future Direction Plan means that the roles of Chief Social Worker and the Deputy Chief Executive Quality Practice and Experiences must be filled by registered social workers. This means that the views and voices of social workers are part of the leadership team and its decision-making.
- 187 The Future Direction Plan will institute a revised restraint practice to ensure the appropriate application of restraints, including more frequent training and recertification. A core focus of the training is de-escalation techniques aimed at giving staff confidence to intervene early using engagement with the young person in preference to the need for restraint.
- 188 Specific Future Direction Plan actions for improved social work practice include:
- (a) 4.1: Build a framework that incorporates the current practice standards<sup>99</sup> and the Social Workers Registration Board competency into one place. There is a trial of applied practice models and tools in two to three sites, scope and plan development of further aspects of practice framework.

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<sup>99</sup> Oranga Tamariki—Ministry for Children Practice Centre “Practice standards”.

- (b) 4.2: Set a clear direction to only use section 78 “without notice” orders for tamariki when there is clear evidence of solid engagement or attempts at engagement with whānau.
- (c) 4.3: Working with the Social Workers Registration Board, introduce micro-credentialing for supervision and other specialist areas, which recognises the skills and knowledge required by supervisors and other specialist roles.
- (d) 4.4: Ensure appropriate application of programmes for safely managing escalating behaviour, including Management of Actual or Potential Aggression (MAPA) and Safe Training and Responsible Restraints (STAR). These programmes include a revised restraint practice, including more frequent training and recertification. STAR training 2.0 is currently in residences.
- (e) 4.5: Develop standard operating procedures that give staff clarity on areas of practice that require national consistency.
- (f) 4.6: Fundamentally shift how staff assess and action reports of concern to ensure safety and security of tamariki and whānau based on best practice.

#### ***Vetting of caregivers and staff***

- 189 Historically, the care system required all employees whose roles involved the care and protection of tamariki and rangatahi and/or who worked with or had exposure to families, tamariki and rangatahi and/or their records to undergo background checks, including full Police checks.
- 190 However, in relation to foster parents, full police checks only appear to have become a requirement between 1970 and 1981. In about 1988, Police agreed to undertake the same checks of voluntary agency foster parent applicants as for prospective Department of Social Work foster parents.
- 191 Oranga Tamariki is focused on ensuring that staff and caregivers are appropriately assessed to ensure that they are suitable people to care for children, young persons, disabled persons or persons with mental health conditions. Improvements have been made in this area and Oranga Tamariki will continue to implement changes to address this issue.
- 192 In deciding whether staff and caregivers are appropriate for their roles, Oranga Tamariki considers the standard of care that every child and young person needs to do well and be well, as reflected in the National Care Standards.
- 193 In 2014, the Children’s Act introduced the requirement for people employed or engaged in work that involves regular or overnight contact with children to be safety checked.<sup>100</sup> This applies to state agencies and those who receive funding from state agencies, including, for example, services provided and approved under the Oranga Tamariki Act or services provided as part of a Family Group Conference plan, escort and transport of children and young people under the Oranga Tamariki Act, and health and education services. The Children’s Act

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<sup>100</sup> Children’s Act 2014, at Part 3.

required all existing employees to be safety checked, as well as all people wishing to join Oranga Tamariki's workforce.

194 The extensive procedures that Oranga Tamariki has in place for the vetting of caregivers and staff are addressed by NTP 418, as follows:

- (a) Paragraphs 7.3 to 7.10 of the NTP 418 Response address the processes in place for assessment of suitability of caregivers.
- (b) Paragraphs 7.11 to 7.20 of the NTP 418 address the processes in place in relation to the vetting of staff (including the historical position).

#### **Provision of care**

195 The Commission has identified that it would like the following topics to be addressed:

- (a) Acknowledgments of the nature and extent of abuse and neglect.
- (b) The actions that the State and faiths have taken (or failed to take) to ensure the needs of people in care are met.
- (c) The provision of adequate and appropriate education ensuring all people in care attended school and were not denied access to effective education due to understaffing, education exemptions, or multiple placements in care.
- (d) The provision of adequate and appropriate health care to children, young people and vulnerable adults in care including mental health care and specific health support to meet the needs of disabled people.

#### ***The nature and extent of abuse and neglect***

196 I refer to the acknowledgements I made on behalf of Oranga Tamariki at the outset of my evidence in relation to abuse and other forms of harm.

197 Survivors have described experiencing abuse and other forms of harm caused by staff, caregivers, other tamariki and rangatahi, and patients which was often extensive and persistent, including physical abuse, sexual abuse, emotional abuse, cultural abuse and instances of neglect in multiple respects including a failure to meet their basic needs of affection, warmth and love while in care.

198 Survivors have also described how the care and protection system did not always provide safe and loving placements or meet the needs of tamariki and rangatahi, for example in relation to:

- (a) not receiving affection, cuddles, and receiving little encouragement from caregivers in State care settings;
- (b) a system that did not promote child participation;
- (c) poor quality of placements;
- (d) the use of secure rooms akin to prison cells were used to punish tamariki and rangatahi;

- (e) poor record keeping; and
  - (f) survivors spoke of a workforce that was historically primarily Pākehā and lacked the cultural capability to assess and meet the needs of whānau Māori.
- 199 Survivors have talked about how the impact on them and their whānau has been considerable, long-lasting and intergenerational.
- (a) Survivors talked about the wide range of impacts that abuse in care has had on them, including feelings of shame, on-going trauma, self-harm or attempted suicide, stigmatisation, and bullying. In some cases, this contributed to drug abuse, addiction or criminal offending. Some spoke of the intergenerational impacts of abuse in care as they had had children removed from their own care later in life.
  - (b) Survivors have explained that the long-term impacts include anti-social behaviours, post-traumatic stress disorder, violence, difficulty forming trust and relationships, loss of identity, cultural loss and disconnection, and intergeneration trauma.
  - (c) The lack of education had an enormous impact on future quality of life, employment opportunities, and the ability to be self-sufficient.
- 200 The way abuse and neglect is described and understood by Oranga Tamariki and its predecessors has changed over time and now extends more broadly than it did historically, as explained at paragraphs 4.1 to 4.5 of the NTP 418 Response. These definitions are guided by section 14 of the Oranga Tamariki act and are also defined in the joint Police and Oranga Tamariki child protection protocol.
- 201 Oranga Tamariki has considered the impacts of abuse on survivors as well as their families and has made changes to address this, as explained at paragraphs 13.12 to 13.16 of the NTP 418 Response.

***The actions that the State and faiths have taken (or failed to take) to ensure the needs of people in care are met***

- 202 I refer to the acknowledgements I made on behalf of Oranga Tamariki at the outset of my evidence in relation to the failure of the care and protection system to ensure children were in safe, loving homes and to stop abuse and other forms of harm when it occurred.
- 203 In response to the various previous findings, reviews and inquiries, Oranga Tamariki has taken fundamental steps to inform all aspects of its practice and policies to ensure the needs of children and young persons in care are met. These actions are explained in the NTP 418 Response, as follows.
- (a) Paragraphs 1.58 to 1.128 of the NTP 418 Response refer to the actions taken by Oranga Tamariki in response the various reports, enquires and reviews, including the Future Direction Plan, Oranga Tamariki Practice, Practice Shift and Practice Standards<sup>101</sup>/Practice Frameworks,<sup>102</sup> case management system and Evidence Centre.

<sup>101</sup> Oranga Tamariki—Ministry for Children Practice Centre “Practice standards”.

<sup>102</sup> Oranga Tamariki —Ministry for Children Practice Centre “Practice Framework”.

(b) Paragraphs 13.6 to 13.46 of the NTP 418 Response address other actions taken by Oranga Tamariki to improve the provision of care in relation to the relocation of foster parents, a response plan when allegations of harm are raised for those in care, section 10 reports under s 11 of the Adoption Act 1955, adoption placements and a reduction of the number of functioning care and protection residences.

204 In regard to care and protection residences, there have been significant shifts over time in the extent of their use and the social work practice and standards of residential care. At times there have been more than 20 residences, with a number of them being large buildings with dormitory-style accommodation. These sorts of institutions no longer exist, with Oranga Tamariki now managing only nine care and protection and youth justice residences, with a small number of tamariki in each one.

205 The Future Direction Plan makes it clear that the current care and protection residences are not a part of Oranga Tamariki's future. To progress this, the legislation governing both care and protection and youth justice residential care requires amendment. As part of this, the government is looking at how to support a shift towards smaller more family-like homes for residential care and a corresponding focus on more culturally responsive, therapeutic and trauma-informed care, and Oranga Tamariki is taking action to achieve this. This work is also likely to involve reviewing the powers currently available to staff under the Residential Care Regulations, such as the power to restrain or search children and young persons in a residence and the use of seclusion and secure care.

206 A shift away from secure residences will enable children and young persons to be cared for in home like settings tailored to their specific needs and cultural identity within their own communities. In designing these homes, it will be important to take account of the themes from the Royal Commission including access for whānau, significant oversight of operations and practice to ensure the children and young people are not isolated and can speak to trusted adults if concerns or issues arise with their care.

207 While Oranga Tamariki has taken steps to ensure that the needs of tamariki and rangatahi in care are met, there is still more to do. The Oranga Tamariki Action Plan recognises that fully meeting the needs of tamariki in care will require a shared commitment across all government agencies. This is an area where Oranga Tamariki will need to continue to evaluate its progress to improve and achieve better outcomes for those in its care.

***Provision of adequate and appropriate education to people in care***

208 We have heard from survivors that there was little to no formal education while in State-run institutions, some describing that education was a privilege and they were made to work or do chores instead.

209 Oranga Tamariki has heard and understands the importance of access to education from the various reviews and reports referred to at paragraphs 5.1 and 5.2 of the NTP 418 Response to the effect that:

(a) There is a significant need for better education tamariki and rangatahi who come into contact with the care and protection system, who also experience difficulty remaining in the education system.

- (b) The quality of education offered for those in residential care needs improvement.
  - (c) A lack of education has hindered future employment opportunities for those who are living in State care or faith-based institutions.
- 210 The steps that Oranga Tamariki has taken, and will continue to take to provide adequate and appropriate education ensuring all tamariki and rangatahi in care attend school and are not denied access to effective education due to understaffing, education exemptions, or multiple placements in care are explained in the NTP 418 Response, as follows.
- (a) Paragraph 5.3 of the NTP 418 Response addresses the work that Oranga Tamariki continues on policies to support better access to education of children and young persons in the care system.
  - (b) Paragraphs 5.4 to 5.7 of the NTP 418 Response address the legislation governing Oranga Tamariki's approach to compulsory attendance at school.
  - (c) Paragraphs 5.8 to 5.9 of the NTP 418 Response address how Oranga Tamariki monitors adherence to the legal requirements in relation to education across the care system, including in youth justice residences.
  - (d) Paragraphs 5.10 to 5.12 of the NTP 418 Response address how Oranga Tamariki meets the breadth of educational needs for those in the care system.
  - (e) Paragraphs 5.13 to 5.15 of the NTP 418 Response address the steps that Oranga Tamariki takes to minimise disruption to education for those in the care system.

***Provision of adequate and appropriate healthcare to people in care***

- 211 Oranga Tamariki has heard and understands the importance of access to healthcare for children and young persons in care including mental health care and specific health support to meet the needs of disabled people. The approach by Oranga Tamariki to care options for children and young people with disabilities and mental health conditions has been informed by the various reviews and reports discussed in section 1 of the NTP 418 Response.
- 212 In response, Oranga Tamariki has taken the following steps to improve the provision of healthcare to those in its care (and will continue to take steps as further needs are identified):
- (a) There is work being done by Oranga Tamariki on staff training programmes to help staff to respond pro-actively when working with tamariki and whānau with disability and mental health needs, as explained at paragraph 9.7 of the NTP 418 Response.
  - (b) Caregivers have a support plan, developed with them, to determine the supports they need to care for tamariki who may have needs, including mental health or disability, as explained at paragraph 9.15 of the NTP 418 Response.

- (c) As part of the Family Group Conference process, Oranga Tamariki will work with other agencies to appropriately support tamariki, rangatahi and their whānau including for health and disability needs, as explained at paragraph 9.28 of the NTP 418 Response.
- (d) Residential staff must have relevant qualifications and experience for working with disabled people or people with mental health conditions, as explained at paragraph 9.41 of the NTP 418 Response.
- (e) The Practice Centre contains guidance about how to complete an assessment following a report of concern, including specific guidance on working with disabled tamariki and their whānau who may need specialised out of home care, safe parenting factors, assessment of needs relating to disability, as explained at paragraph 10.27.
- (f) In identifying safe and appropriate placements for disabled people and people with mental health needs, Oranga Tamariki has regard to the particular needs of each child and young person, as explained at paragraph 10.28 of the NTP 418 Response.
- (g) Oranga Tamariki has a variety of other supports and measures which are addressed at paragraphs 10.30 to 10.35 of the NTP 418 Response.
- (h) There are oversight measures in place for admission into youth mental health inpatient units and secure forensic units, as described at paragraphs 10.36 to 10.39.
- (i) Oranga Tamariki has a range of practice support, review and improvement functions as explained at paragraphs 10.40 to 10.46.

213 Denise Tapper's witness statement prepared for the investigation into Abuse in State Psychiatric Care dated 9 April 2021 sets out the way in which children and young persons in Oranga Tamariki's residences receive mental health care.

#### **Complaints, Referrals and Criminal Justice**

214 The Commission has identified that it would like the following topics to be addressed:

- (a) Handling of complaints, recording of complaints and failure to investigate and inappropriate responses.
- (b) The referral of complaints of abuse to the Police and to professional bodies: the circumstances in which referrals were or were not made and for what reasons.
- (c) The criminal justice response - how the State investigated and prosecuted complaints of abuse and neglect in care.

#### ***Handling of complaints, recording of complaints and failure to investigate and inappropriate responses***

215 Survivors have described that no one listened to their complaints, no one believed their story, no one asked them how they were. Many said they did not



know or were not told how they could raise concerns about what was happening to them. The following features have been raised by their evidence:

- (a) There was a lack of monitoring and processes for dealing with allegations:
  - (i) Survivors described having limited or no visits from their social worker which further isolated them and made it difficult to establish to build trust and disclose the abuse.
  - (ii) Survivors who told social workers and Police that they were experiencing physical and / or sexual abuse said that some complaints were acknowledged, but no changes were ever actioned. Other survivors were ignored or were overtly told by social workers and Police that they did not believe the complaint. Many survivors would keep further abuse to themselves, as their experience had taught them that they would not be believed, and at worse, would result in them receiving further physical abuse.
  - (iii) If survivors ran away, they were disbelieved and taken back to the institution or home where they were being abused.
- (b) Complaints and claims processes in the care system were not tamariki or rangatahi focused or mana enhancing:
  - (i) Complaints and claims processes were not accessible to tamariki or rangatahi or their families, lacked independence and accountability and were not mana enhancing or trauma informed. For example, tamariki or rangatahi were required to lodge a complaint with the same staff member who was abusing them.
  - (ii) There were many barriers to reporting abuse including unclear reporting processes in care settings, no trusted adults to talk to, and survivors not understanding what they experienced was abuse until much later in life.
  - (iii) Survivors talked about the deep embarrassment/shame they felt if people knew about the abuse they endured.
  - (iv) Survivors' experiences were minimised, disbelieved, or dismissed by institutions.
  - (v) Survivors were traumatised through recounting the abuse to different institutions, and inconsistencies in processes and outcomes.
  - (vi) Existing claim processes focus on monetary redress, survivors want more they want accountability and lifelong wrap around support services to help them get back to a normal life.
  - (vii) For Māori and Pacific survivors, cultural redress and help to build cultural capacity and connection (or reconnection) with culture

(including language) and learning were important aspects of redress.

- 216 Survivors' experiences identify a lack of appropriate mechanisms in place to support tamariki or rangatahi to speak out, have their views and complaints heard and acted on. Oranga Tamariki recognises the importance of having child-centred complaints mechanisms, and of amplifying the voices of tamariki or rangatahi in the design, development and delivery of policies, services and practice.
- 217 Differences in reporting, response and recording is, to a significant degree, a direct result of the very different cultural, legislative and policy parameters in place between 1950 and 2010. This does not discount the many accounts of abuse given by survivors which are, by any objective standard, unacceptable irrespective of the context of the day.
- 218 Oranga Tamariki notes that it was not until the mid-1970s that most jurisdictions around the world formally acknowledged child abuse in legislation and policy. Oranga Tamariki recognises that, historically, conversations about child abuse and children's and young person's rights, were limited or in some areas non-existent. This reflects that social work practice operates within a cultural and historical context. Context includes changing moral attitudes and persuasion, which in turn determines the expected role of the State through regulatory and legislative functions, that in turn establish practice standards.
- 219 Oranga Tamariki recognises the ways in which abuse was enabled due to a lack of oversight and opportunities for children and young persons to speak out and be heard.
- 220 Oranga Tamariki has learnt lessons about the importance of an effective system for complaints and disclosures of allegations of abuse in the care and protection system, as explained at paragraph 8.1 of the NTP 418 Response:
- (a) That an effective complaints system can resolve issues, lead to improvements in service delivery and improve the reputation of an organisation.
- 221 Some tamariki or rangatahi face barriers to giving feedback, or in relation to the handling of reports of concern, investigations into complaints, as well as the oversight role of the SOCIC unit which I have discussed earlier in my evidence. I wish to note the following improvements which have been and are continuing to be made to the current systems in place:
- (a) a general strengthening of requirements for rangatahi to fully participate in all decisions about them;
  - (b) the development of more responsive child friendly channels to raise concerns and robust processes to respond to these concerns; and
  - (c) comprehensive and robust processes in response to disclosures or allegations of abuse in care including Child Protection Protocol investigation, caregiver review, and HR processes.
- 222 These improvements together with the steps taken by Oranga Tamariki that I have explained, provide a much more robust system than the systems in place in

the past to detect and respond to care concerns. However there is still more work to do to strengthen our processes.

#### *Requirements to Support Participation*

- 223 Alongside the need for responsive complaints procedures, requirements to support the involvement of children and young people in all decisions about them has been significantly strengthened. In the recent past, the legislation was amended to:
- (a) include, as the first principle of the Act, that children and young persons “must be encouraged and assisted, wherever practicable, to participate in and express their views about any proceeding, process, or decision affecting them, and their views should be taken into account” (July 2019);<sup>103</sup>
  - (b) place a duty on the Chief Executive to ensure that children and young persons in contact with Oranga Tamariki, particularly those in care, are provided with services which support them to express their views (introduced July 2017);<sup>104</sup>
  - (c) place a duty on the Chief Executive to establish mechanisms to enable children and young persons, their parents, whānau, families, and caregivers to make complaints and to receive responses to those complaints that are timely, fair and centred on the child or young person (July 2019).<sup>105</sup>
- 224 I now intend to explain in more detail how complaints and allegations of abuse are facilitated, addressed and investigated by Oranga Tamariki (including with assistance from the Police where necessary).
- 225 It is important to distinguish processes that enable tamariki and rangatahi to make complaints, the manner in which allegations of abuse or neglect are identified and investigated, and the process for managing past abuse or neglect. These are:
- (a) *Making a complaint* - A child or young person in care is entitled to make a complaint about any aspect of their care at any time. This entitlement is included within the National Care Standards and Residence Regulations. Processes to respond include the Oranga Tamariki Feedback and Complaints system and Grievance Panels. Advocacy and support can be provided by VOYCE Whakarongo Mai. If a child raised a complaint that suggested they were being abused or otherwise harmed, this would be treated as a report of concern.
  - (b) *Identification and investigation of allegations of abuse or neglect* – it is not necessary for a child to make a formal complaint in order to identify and act on an allegation of abuse or neglect. Such an allegation could arise from a direct disclosure made by a child, accounts provided by other parties or from other indicators such as physical evidence of an injury. Any such allegation is treated as a report of concern and must be

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<sup>103</sup> Oranga Tamariki Act 1989, s 5.

<sup>104</sup> At S 7(2)(bb).

<sup>105</sup> At S 7(2)(bad)(ii)(A)-(B).

assessed or investigated in line with appropriate processes and protocols, including the joint Child Protection Protocol between Police and Oranga Tamariki.

- (c) *Management of past abuse* – a claim of historical abuse or neglect can be raised at any time. Oranga Tamariki currently has the responsibility to address claims made for abuse that occurred from 2017 onwards. If the claimant is 17 years old or under, a report of concern will also be made and the process described in (b) above will be followed. Matters regarding the decision to criminally investigate complaints made by adult survivors is the responsibility of Police.

226 Further detail of these processes is set out below:

#### *Grievance Panels*

227 Prior to 1996 each residence had its own processes for handling grievances (also called complaints), which were recorded in a logbook.<sup>106</sup> From 1996 Grievance Panels came into effect<sup>107</sup> and continue today within Oranga Tamariki residences. Oranga Tamariki's substantial response to Notice 488 provides details on the grievance panels and how they function.

#### *VOYCE Whakarongo Mai and the Voices of Children and Young People*

228 The independent charitable organisation VOYCE Whakarongo Mai was established, in 2017, to provide independent advocacy for tamariki and rangatahi in State care. Amongst other work, VOYCE Whakarongo Mai connects tamariki and rangatahi in care with advocates and trusted adults to help them have their say, supports tamariki and rangatahi to share their experiences when key decisions are made which affect them, and undertakes systemic advocacy on behalf of tamariki and rangatahi who are or have been in State care.

229 The Voices of Children and Young People team within Oranga Tamariki was formed in July 2017, to ensure the lived experiences of children and young persons with experience of the care system influence policy, practice, service and system thinking across the organisation. The team supports and works alongside young persons with care experience through the Oranga Tamariki Youth Advisory Group (internal) and the VOYCE National Youth Council (independent).

230 The Voices of Children and Young People team works to amplify the voices of tamariki and rangatahi through:

- (a) running Te Tohu o te Ora, a survey completed by Oranga Tamariki that seeks to better understand the experiences of children and young persons in care, and providing Te Mātātaki reports which report on

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<sup>106</sup> Copies of the complaints/grievance process documents and logbooks from this time period, that we have been able to find, have been provided to the Royal Commission in response to Notice to Produce No. 14.

<sup>107</sup> Following the implementation of Children, Young Persons and their Families (Residential Care) Regulations 1996 and subsequently the Oranga Tamariki (Residential Care) Regulations 1996 (the **Regulations**).

survey findings and outline priority areas where action is required to improve the experience of those in care;

- (b) gathering, and advocating for, the voices of tamariki and rangatahi in care;
- (c) convening and facilitating the Oranga Tamariki Youth Advisory Group; and
- (d) managing our organisational relationship with VOYCE – Whakarongo Mai, receiving and disseminating their insights.

#### *Oranga Tamariki complaints systems*

231 Work has been undertaken since 2017 to improve our processes and systems for people to give feedback or make complaints about their experiences with Oranga Tamariki. This includes the following steps (with further work to be done):

- (a) integrating different public-facing complaint systems, inherited from predecessor organisations, into one;
- (b) establishing a team specifically tasked with the oversight of the complaints system;
- (c) improved processes to deal with complaints from children with increased urgency and developing a child-focused online space that better enables complaints from children and young people;
- (d) establishing a function focused specifically on supporting sites and frontline staff in effective complaint management. This has resulted in significant improvements in complaint-handling timeframes, and has identified opportunities for improvement;
- (e) changing processes to assess each new complaint, to understand the complaint and resolution sought, and manage serious complaints (for example, those about the removal of tamariki from their whānau) through a process independent of sites to ensure that high-impact social work decisions receive a completely independent review;
- (f) designing and implementing a technology solution to ensure better information about people's concerns, a focus on resolution and improvement actions and improved reporting; and
- (g) using information from complaints data for deep analysis to provide leadership with clear information about complaint themes in the areas for which they are responsible and recommend meaningful practice and policy improvements as a result.

232 Despite significant progress to enhance this area, more work is required to ensure tamariki and whānau feel supported and confident in engaging with the complaints process. Oranga Tamariki will continue to engage with tamariki, whānau, partners and other stakeholders to improve its systems to ensure that people are empowered to share their experiences with Oranga Tamariki.

### *Organisational Blueprint - Future Direction Plan*

- 233 The Future Direction Plan sets out a clear commitment to strengthening the feedback and complaints systems and ensuring that the voices of children, young persons and their family are captured and embedded into changes. The Manaaki Kōrero project, which commenced in August 2021, involves Oranga Tamariki partnering with VOYCE – Whakarongo Mai to enable tamariki, rangatahi and whānau to co-design feedback, complaints, information, advice, and assistance processes that are ‘fit-for-whānau’.
- 234 While the co-design work is underway, Oranga Tamariki is implementing a set of immediate improvements to the residential grievance process based on feedback from tamariki and rangatahi, and those involved internally and externally in the operation and oversight of this process. This work includes:
- (a) improving the language and accessibility of tools/resources;
  - (b) developing multiple mechanisms to support tamariki and rangatahi to make a complaint (including making a complaint digitally);
  - (c) teaching how to make a complaint as a social skill;
  - (d) improving investigation standards and training for kaimahi;
  - (e) increasing the profile of advocacy in residences.
- 235 As the work of manaaki kōrero progresses alongside VOYCE Whakarongo Mai, further early opportunities to strengthen the wider Oranga Tamariki Feedback and Complaints system will be identified and acted on.
- 236 The Future Direction Plan also sets out a commitment to place the voices of tamariki and rangatahi at the centre of decision-making at all levels and support tamariki and whānau to participate in and be central to decision-making as referred to earlier.

### ***The referral of complaints of abuse to the Police and to professional bodies: the circumstances in which referrals were or were not made and for what reasons***

- 237 The question of the referral to the Police of allegations of criminal offending as part of Historic Claims is a matter that was addressed by MSD in its response to NTP 418.<sup>108</sup>
- 238 MSD’s Historic Claims team is responsible for managing claims from people who have experienced abuse or neglect in care prior to 1 April 2017.

### *Responding to allegations of abuse or neglect with respect to children*

- 239 Oranga Tamariki has developed and implemented practice policies, guidance and tools to support understanding risk and safety within the context of oranga. Specific practice policy and guidance has been developed to support understanding risks for particular areas of practice, including:

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<sup>108</sup> Paras 3.4 to 3.6 of the MSD NTP 418 Response.

- (a) appropriate triaging tools when a report of concern is received;
- (b) assessments to establish a picture of the safety, strengths, vulnerability and needs of the child and their family or whānau to ensure immediate action to secure the safety of that child; and
- (c) the role of the Safety of Children in Care monitoring team who actively monitor that all allegations of abuse of tamariki in care are adequately responded to.

240 The current joint child protection protocol between Police and Oranga Tamariki **(the Child Protection Protocol)** governs how allegations regarding abuse which are likely to reach the threshold for a criminal investigation should be jointly investigated. Key elements of the Child Protection Protocol include:

- (a) consultation and joint planning at the earliest point an allegation is made;
- (b) the development of a joint investigation plan detailing the respective actions by Police and Oranga Tamariki;
- (c) agreeing the steps needed to ensure the safety of the child during the investigation;
- (d) joint processes for evidential interviewing of the child; and
- (e) joint monitoring of all active Child protection investigations until the investigation is completed and a decision about whether or not to prosecute has been made.

### *Redress*

241 Survivors have recounted how the traumatic abuse suffered while in care continues to affect them and their families. Long-term impacts include anti-social behaviours, post-traumatic stress disorder, violence, difficulty forming trusting relationships, loss of identity, and cultural loss and disconnection.

242 The government's response to redress is currently a claims process which provides monetary compensation for abuse suffered. However, survivors have been clear that monetary compensation alone is not sufficient and they value meaningful acknowledgments, apologies and wrap around services and supports. They want their experiences to prevent other children from going through the same trauma.

243 This work will be addressed in the broader redress work lead by the Crown Response Unit.

244 Oranga Tamariki is responsible for claims of abuse in State care after 1 April 2017. To date Oranga Tamariki has used an interim claims process inherited from MSD to resolve claims. These claimants are generally still quite young adults whose experience of care may still be current or very recent and age-appropriate support for them through a claims process is an essential consideration. In March 2022, the Oranga Tamariki Leadership Team, agreed to the high-level approach to strengthen its interim claims approach which will:

- (a) be guided by the findings of the Royal Commission.
- (b) take a more proactive approach to matters that could amount to a claim that are not raised by a claimant and commence consideration of those matters as a claim.
- (c) take a relationship-based approach.
- (d) take a more therapeutic nature given the likely age and vulnerability of the rangatahi and young adults who would be accessing it.

245 Since then, further work has been progressed and a strengthened, service-focused interim claims process will be considered by Te Riu in September 2022.

***The criminal justice response - how the State investigated and prosecuted complaints of abuse and neglect in care***

- 246 The question of how the State historically investigated and prosecuted complaints of abuse and neglect in care is not within the remit or knowledge of Oranga Tamariki.
- 247 Currently, there are specific processes in place for Oranga Tamariki and Police to jointly investigate all allegations of abuse (including historic claims) for victims 17 years of age and under. This is governed by the Child Protection Protocol I have referred to earlier in my evidence. Police are primarily responsible for investigating historical cases where the victim is now over 17 years and no other children are thought to be at risk. The Child Protection Protocol also includes specific processes and procedures to be used in circumstances where allegations may relate to multiple children or young people.
- 248 Oranga Tamariki does not have a role in determining whether charges should be laid as an outcome of an investigation. In all circumstances, the relevant Crown Solicitor has the responsibility to determine (in accordance with the Solicitor-General's Prosecution Guidelines) whether to prosecute following an investigation.

**Funding and resources**

- 249 The Commission has identified that it would like the following topics to be addressed:
- (a) The extent to which the care system was sufficiently funded over time.
  - (b) The extent to which agencies and care providers are monitored as to how funding and resources are used to provide a nurturing and safe care environment.

***The extent to which the care system was sufficiently funded over time***

250 Oranga Tamariki has limited information available to it about funding streams to the care system prior to 2017, as the system was funded as part of other agencies. This is set out at paragraphs 14.1 to 14.3 of the NTP 418 Response.



***The extent to which agencies and care providers are monitored as to how funding and resources are used to provide a nurturing and safe care environment***

- 251 Oranga Tamariki’s use of funding and resources is monitored extensively in the respects explained at paragraph 14.1 of the NTP 418 Response:
- (a) Funding information since Oranga Tamariki was established is available in the yearly Estimates of Appropriations and subsequent financial reporting is available in Annual Reports. These are available on our website.<sup>109</sup> This is also further examined each year through government Select Committees.
  - (b) Prior to 1 April 2017 funding was provided as a part of Vote Social Development. Annual reports back to 2005-2006 can be found on the MSD website.<sup>110</sup>
- 252 Furthermore, the relationship between Oranga Tamariki and its third party providers are outlined in paragraphs 15.8 to 15.21 of the NTP 418 Response: current frequency of monitoring of third party providers is based on a risk assessment undertaken by the Contract Manager. Risk factors include the level of funding, experience and past history, types of services funded, accreditation results, and financial viability.

**Lessons learned**

- 253 The Commission has identified that it would like to know the extent to which recommendations from previous inquiries and reports have been implemented.
- 254 As I have addressed throughout my evidence, extensive amendments to policy, practice and legislation have been made since 1950 to the present day in the functions carried out by Oranga Tamariki and its predecessors. These form a response to the recommendations from previous inquiries and reports and part of a broader shift in Oranga Tamariki’s practice. Oranga Tamariki has also made changes that I describe in my evidence which reflect the themes of the survivors’ evidence that that has been given to this Commission.
- 255 Before addressing these amendments, I recognise that these changes have not, and cannot, address all of the lessons learned and there are still areas in which Oranga Tamariki are committed to improving. Oranga Tamariki will continually re-evaluate its processes and policies and will take further steps to improve outcomes for tamariki across all aspects of care.

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<sup>109</sup> Oranga Tamariki—Ministry for Children “Annual Report” (4 May 2022) <https://www.orangatamariki.govt.nz/about-us/corporate-reports/annual-report/>.

<sup>110</sup> Ministry of Social Development| Te Manatū Whakahiato Ora “Annual Reports” <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/corporate/annual-report/index.html>; and Ministry of Social Development| Te Manatū Whakahiato Ora “Previous Annual Reports” <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/corporate/annual-report/previous-annual-reports.html>.

*Amendments to policy, practice and legislation*

- 256 In September 2021, the Minister for Children announced a new direction for Oranga Tamariki, including a Future Direction Plan to shift Oranga Tamariki to two key roles:
- (a) A high-performing, highly-trusted statutory care and protection and youth justice agency that works in an integrated way with other agencies and communities, including supporting the social work workforce; and
  - (b) An enabler and coordinator for Māori and communities, to empower them to put in place the support, the solutions and the services they know will work for their people to prevent tamariki coming to the agency's attention.
- 257 As noted at paragraph 1.70 of the NTP 418 Response, the Future Direction Plan is not representative of all work the Crown has underway to transform the care and protection system. There are also important initiatives underway that, while not directly in scope of the Future Direction Plan, help build the foundations for the wider system change and contribute towards the success of the plan itself. These include:
- (a) work in wider the disability sector;
  - (b) a Pacifica strategy;
  - (c) the Youth Justice and care residences work programme; and
  - (d) the ongoing work programme and assurance from the Oranga Tamariki Ministerial Advisory Board.
- 258 Aside from the Future Direction Plan, Oranga Tamariki has a number of other programmes of work underway reflecting lessons it has learned following recent reports, inquiries, and reviews. This work includes the Enabling Communities, programme entering into Strategic Partnership Agreements with iwi and/or Māori organisations, the Oranga Tamariki Practice Shift, and the Oranga Tamariki Action Plan prepared in accordance with the Children's Act 2014.
- 259 These changes are accompanied by Oranga Tamariki publishing reports<sup>111</sup> in accordance with section 7AA of the Oranga Tamariki Act.
- 260 As explained at paragraphs 1.58 to 1.70 of the NTP 418 Response, the Oranga Tamariki Future Direction Plan details a set out actions that paves the way for the long term-shifts to bring to life the full spirit and intent of Te Kahu Aroha,<sup>112</sup>

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<sup>111</sup> For example; Improving outcomes for tamariki Māori, their whānau, hapū and iwi | Te whanake i ngā hua mō ngā tamariki Māori, ō rātau whānau, hapū, iwi anō hoki: Section 7AA Report 2020 (30 July 2020) <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Performance-and-monitoring/Section-7AA/S7AA-Improving-outcomes-for-tamariki-Maori.pdf>; Te whanake i ngā hua mō ngā tamariki Māori, ō rātau whānau, hapū, iwi anō hoki | Improving outcomes for tamariki Māori, their whānau, hapū and iwi: Section 7AA Report 2021 (16 May 2022).

<sup>112</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

and responds to the intent of the Waitangi Tribunal's report's findings<sup>113</sup> and other reviews since 2019.

- 261 The Future Direction Plan sets out the future direction of Oranga Tamariki for the next two to five years. This plan was designed to address a number of recommendations outlined in a number of previous reviews into the care and protection system. The plan is designed to achieve better outcomes for tamariki and rangatahi and whānau, empower staff to excel, enable local approaches and lead across the system.
- 262 The Future Direction Plan is informed by:
- (a) the findings and recommendation from the Waitangi Tribunal report (Wai 2915) He Pāharakeke, He Rito Whakakīkinga Whāruarua,<sup>114</sup>
  - (b) the findings of the Oranga Tamariki Ministerial Advisory Board report, Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa Te Kahu Aroha, September 2021 [Te Kahu Aroha],<sup>115</sup>
  - (c) the feedback of iwi, hapū, whānau and organisations who the Ministerial Advisory Board engaged with in the development of the above report;
  - (d) a number of additional contemporary and historical reviews and inquiries; and the voices of young people through the Oranga Tamariki Youth Advisory Group who provide care-experienced perspectives and contributions on the design and implementation of Oranga Tamariki policies, practices and services.
- 263 These inquiries and reports include many of the key documents that articulate the lessons learned by Oranga Tamariki and predecessors. These lessons are identified through the findings and recommendations in the following sections of the NTP 418 Response:
- (a) Paragraph 1.21 of the NTP 418 Response in relation to the Hawke's Bay Practice Review, November 2019;<sup>116</sup>
  - (b) Paragraphs 1.25 to 1.27 of the NTP 418 Response in relation to the Ko te Wā Whakawhiti: It's time for change – the Māori-led inquiry (Whānau Ora Commissioning Agency), February 2020;<sup>117</sup>
  - (c) Paragraphs 1.32 and 1.35-1.36 of the NTP 418 Response in relation to Te Kuku o te Manawa: Moe Ararā! Haumanutia ngā moemoeā a ngā tupuna mō te oranga o ngā tamariki – the Office of the Children's Commissioner Report, November 2020;<sup>118</sup>

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<sup>113</sup> Waitangi Tribunal Wai 2915 Report [Bundle ref **MSC0008144**].

<sup>114</sup> Waitangi Tribunal Wai 2915 Report [Bundle ref **MSC0008144**].

<sup>115</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

<sup>116</sup> Hawke's Bay Practice Review [Bundle ref **MSC0008179**].

<sup>117</sup> Whānau Ora Commissioning Agency "Ko te Wā Whakawhiti | It's Time For Change: a Māori inquiry into Oranga Tamariki" (February 2020) [Bundle ref **MSC0008181**].

<sup>118</sup> Office of the Children's Commissioner "Te Kuku O Te Manawa – Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi" (8 June 2020) [Bundle ref **MSC0008152** and **MSC0008151**].

- (d) Paragraphs 1.39 and 1.40 of the NTP 418 Response in relation to He Take Kōhukihuki | A Matter of Urgency – Ombudsman Investigation, August 2020;<sup>119</sup>
- 264 Paragraphs 1.47 to 1.49 of the NTP 418 Response in relation to the Waitangi Tribunal urgent inquiry (Wai 2915) He Pāharakeke, He Rito Whakaīkinga Whāruarua, April 2021;<sup>120</sup> and
- (a) Paragraph 1.54 of the NTP 418 Response in relation to the Oranga Tamariki Ministerial Advisory Board – Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa Te Kahu Aroha Report, September 2021.<sup>121</sup>
- 265 Oranga Tamariki has implemented the particular recommendations from previous inquiries and reports to a significant extent, as noted in the NTP 418 Response. In the following sections, I detail the steps taken by Oranga Tamariki to implement the specific recommendations that were made.

***Lessons learned and steps taken into response to historical reviews into Oranga Tamariki pre-2019***

- 266 Following Pūao-te-Ata-tū (day break): The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare (September 1988),<sup>122</sup> a number of changes to legislation were made including the enactment of the Children, Young Persons, and their Families Act 1989, as described at paragraphs 1.9 to 1.11 of the NTP 418 Response.
- 267 The importance of tamariki Māori to whānau, hapū and iwi was reinforced in this Act. The Children, Young Persons and their Families Act 1989 introduced a number of legislative changes, including:
- (a) framework for the family group conference approach;<sup>123</sup>
- (b) provision for iwi social services to deliver care and protection services;<sup>124</sup> and
- (c) the creation of the Unsupported Child’s Benefit, which allows payments to be made to whānau carers looking after tamariki and rangatahi outside the State care system.<sup>125</sup>
- 268 The Children, Young Persons and their Families Act 1989 also contributed to the closure of a number of institutions (youth residences) in the early 1990s and a refocusing of their purpose and use. In addition to legislative changes, the government released specific strategies for supporting Māori, such as the Department of Social Welfare’s Te Punga: Our Bicultural Strategy for the

<sup>119</sup> Peter Boshier, Chief Ombudsman “*He Take Kōhukihuki* | A Matter of Urgency: Investigation Report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki—Ministry for Children” (6 August 2020) [Bundle ref **MSC0008145**].

<sup>120</sup> Waitangi Tribunal Wai 2915 Report [Bundle ref **MSC0008144**].

<sup>121</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

<sup>122</sup> Pūao Te Ata Tū [Bundle ref **MSC0008081**].

<sup>123</sup> Children, Young Persons and their Families Act 1989, ss 20-38.

<sup>124</sup> At s 79(1)(b).

<sup>125</sup> At ss 362-363.

Nineties in 1994,<sup>126</sup> 15 and the Department of Child, Youth and Family Services' Te Pounamu Māori strategy in 2001.<sup>127</sup>

- 269 For the Waitangi Tribunal hearing, Oranga Tamariki commissioned a report into how the findings of Pūao-te-Ata-tū had been implemented. The conclusion was that it was initially implemented, but its key reforms were wound back over time. The Crown acknowledged its failure to the Waitangi Tribunal to implement the recommendations of Pūao-te-Ata-tū in a comprehensive and sustained manner.

#### ***Lessons learned from reviews between 2000 to 2014***

- 270 Despite the intent of legislative and policy changes following Pūao-te-Ata-tū, issues across the care, protection, and youth justice system continued to be identified, including Māori continuing to face widespread disparities, and a number of reviews of the care and protection system were completed between 2000 and 2014, including those identified at paragraph 1.12 of the NTP 418 Response.

#### ***Lessons learned and steps taken into response to the final Report of the Expert Advisory Panel on Modernising Child, Youth and Family (Expert Advisory Panel Report) (2015)***

- 271 The Expert Advisory Panel produced a Report (EAP Report) in 2015<sup>128</sup> which provided a detailed and comprehensive analysis of the current issues facing the system for vulnerable children.
- 272 The EAP Report recommended an overhaul of the system and an expansion of the operating model to focus on:<sup>129</sup>
- (a) prevention of harm through early intervention;
  - (b) intensive intervention when concerns escalate;
  - (c) care support when tamariki and rangatahi are unable to live with their birth families;
  - (d) youth justice services for young persons who offend; and
  - (e) transition support for young persons entering adulthood.
- 273 The Government response to the report resulted in substantive changes to the Oranga Tamariki Act, which came into effect between 2016 and 2019. Changes included raising the age for tamariki to remain in care from 17 to 18, new duties on the Chief Executive with respect to Te Tiriti o Waitangi | the Treaty of

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<sup>126</sup> Department of Social Welfare "Te Punga O Matahaura – Our Bicultural Strategy for the Nineties" (Wellington, 1994) <https://www.mcguinnessinstitute.org/wp-content/uploads/2021/04/242.-Te-Punga-Our-Bicultural-Strategy-for-the-Nineties.pdf>.

<sup>127</sup> Child, Youth and Family "Te Pounamu manaaki tamariki, manaaki whānau" (Wellington, 2001) <https://www.mcguinnessinstitute.org/wp-content/uploads/2021/04/242.-Te-Punga-Our-Bicultural-Strategy-for-the-Nineties.pdf>.

<sup>128</sup> Modernising Child, Youth and Family Expert Panel "Expert Panel Final Report: Investing in New Zealand's Children and their Families" (Wellington, December 2015).

<sup>129</sup> At p. 8.

Waitangi (known as section 7AA), an emphasis on wellbeing, prevention and early response, the introduction of transition support for rangatahi leaving care, the development of National Care Standards and strengthened information sharing provisions. These changes resulted in substantial new practice policy, guidance and practice tools most of which took effect from 1 July 2019 onwards.

***Lessons learned and steps taken in response to reviews into the care and protection system from 2019 onwards***

*The Hawke's Bay Practice Review, November 2019*<sup>130</sup>

- 274 In November 2019, Oranga Tamariki released the findings of the Hawke's Bay Practice Review and made immediate changes to ensure greater scrutiny on how tamariki and rangatahi are taken into care and to strengthen how the Ministry works with others, in the respects set out in paragraphs 1.22 to 1.23 of NTP 418 Response.
- 275 Oranga Tamariki accepted all the findings and recommendations and apologised to the whānau at the heart of the case. It also made immediate changes to practice to strengthen how it works with others. These included:
- (a) providing the right planning and support for parents and whānau at the earliest opportunity;
  - (b) making sure whānau are more involved – unless there is a clear need to protect a child or young person from immediate and imminent danger, all custody applications are made 'on notice', so whānau know what's happening and are involved in the court's decision;
  - (c) better training and greater supervision for family group conferences;
  - (d) when staff need to act fast to keep a child or young person safe, every section 78 "without notice" application will go through additional checks to ensure it is the right action.
- 276 Oranga Tamariki has subsequently seen a practice change with a substantial reduction in section 78 orders taken for yet to be born and newborn pēpi. This change is equally attributable to the reviews listed above in paragraph 1.23. The number of situations in which a section 78 custody order was sought to achieve safety has continued to reduce since 2017. While pēpi Māori continue to be overrepresented in section 78 orders this is steadily declining, with the percentage of section 78 orders, with and without notice for pēpi Māori reducing from 70 percent in 2017 to 48 percent in 2021.

*Ko te Wā Whakawhiti: It's time for change – the Māori-led inquiry (Whānau Ora Commissioning Agency), February 2020*<sup>131</sup>

- 277 Ko te Wā Whakawhiti was a significant and comprehensive report focusing on historical and current cases of State removal of tamariki Māori from their whānau.

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<sup>130</sup> Hawke's Bay Practice Review [Bundle ref **MSC0008179**].

<sup>131</sup> Whānau Ora Commissioning Agency "Ko te Wā Whakawhiti | It's Time For Change: a Māori inquiry into Oranga Tamariki" (February 2020) [Bundle ref **MSC0008181**].

- 278 The review recommended several action points acknowledging that while whānau still need to connect with the Oranga Tamariki system as it currently stands, there is an immediate and urgent need to address how whānau can be best supported to navigate the issues they currently face. Many of the actions identified by the Māori-led review align with work Oranga Tamariki already has underway.
- 279 Oranga Tamariki published its response to the review in August 2020.<sup>132</sup> Some of the actions identified by the review are about broader systemic change, and these changes are being considered in a range of fora, and the work underway to develop the Oranga Tamariki strategic direction.

*Te Kuku o te Manawa: Moe Ararā! Haumanutia ngā moemoeā a ngā tupuna mō teoranga o ngā tamariki – the Office of the Children’s Commissioner Report, November 2020*<sup>133</sup>

- 280 Following events in Hastings in May 2019, the Children’s Commissioner announced a review 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?’ There were four recommendations made by the second report.
- 281 The majority of the recommendations are guiding and informing the strategic direction of Oranga Tamariki – including the Future Direction Plan – and/or wider Government approaches. The recommendations are supporting the work that is underway, and planned, in response to the Future Direction Plan and the shift to locally-led, regionally-supported and centrally-enabled ways of working.
- 282 In response to the recommendations, Oranga Tamariki has also reviewed and updated its hui-a-whānau and assessment policy and guidance, with a particular focus on the use of safety planning when balancing historical concerns with current information. Oranga Tamariki continues working with the New Zealand Police on a policy that provides, guidance, steps and key information for when a child or young person is being brought into care.

*He Take Kōhukihuki | A Matter of Urgency – Ombudsman Investigation, August 2020*<sup>134</sup>

- 283 The Chief Ombudsman investigated the following two areas of practice when a new-born baby is removed from their parents, whānau or other caregivers:
- (a) decision making around applying to the Family Court for a without notice interim custody order, including the evidence used by Oranga Tamariki to seek this order; and

<sup>132</sup> Oranga Tamariki—Ministry for Children “Response to Ko Te Wā Whakawhiti: It’s Time for Change” (6 August 2020) [Bundle ref **MSC0008182**].

<sup>133</sup> Office of the Children’s Commissioner “Te Kuku O Te Manawa – Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi” (8 June 2020) [Bundle ref **MSC0008152** and **MSC0008151**].

<sup>134</sup> Peter Boshier, Chief Ombudsman “*He Take Kōhukihuki | A Matter of Urgency: Investigation Report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki—Ministry for Children*” (6 August 2020) [Bundle ref **MSC0008145**].

- (b) practices around the removal of a baby when an order is granted – including looking at how Oranga Tamariki works with other parties involved, such as district health boards, iwi and Police.
- 284 The Chief Ombudsman made a several recommendations in the investigation, all of the recommendations were accepted.
- 285 Oranga Tamariki reported to the Chief Ombudsman quarterly on progress on delivery of the recommendations through until August 2021. The quarterly reports are publicly available.<sup>135</sup>
- 286 Oranga Tamariki has made several changes to the way it works, including:
- (a) Updating and strengthening its Intake and Early Assessment, Breastfeeding, and Family Group Conference policies and guidance.
  - (b) Implementing an internal process to track and maintain visibility over the number of tamariki who enter care under a section 78 “without notice” order.
  - (c) Introducing a site assurance process for Reports of Concern relating to newborn/unborn pēpi to ensure safety and wellbeing concerns are identified and addressed promptly.
  - (d) Developing a framework for monthly auditing and analysing of case files for newborn/unborn pēpi entering care under a section 78 order. The first report detailing the findings from the section 78 case file analysis was published on the Oranga Tamariki website in August 2021.<sup>136</sup> Insights from the case file analysis will be used to continuously inform and strengthen practice in this area.
  - (e) As mentioned in paragraph 1.26 there is a second annual report on section 78 custody orders for newborn and unborn pēpi.<sup>137</sup>
- 287 While formal reporting against the recommendations is no longer a requirement, we continue to keep the Ombudsman’s Office updated on progress against the recommendations.
- 288 A number of the recommendations are also guiding and informing the strategic direction of Oranga Tamariki – including the Future Direction Plan – and/or wider Government approaches. The recommendations are supporting the work that is underway, and planned, in response to the Future Direction Plan and the shift to locally-led, regionally-supported and centrally-enabled ways of working.

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<sup>135</sup> Oranga Tamariki—Ministry for Children “**Ombudsman reports**” (7 September 2021) <https://www.orangatamariki.govt.nz/about-us/performance-and-monitoring/ombudsman-quarterly-reports/>.

<sup>136</sup> Oranga Tamariki—Ministry for Children “**Fourth Quarterly Report to the Ombudsman: He Take Kōhukihuki Recommendations – Oranga Tamariki Work Programme**” (18 August 2021).

<sup>137</sup> Oranga Tamariki—Ministry for Children “**Second report on section 78 custody orders for unborn and new-born pēpi**” (March 2022)



- 289 The findings from the Waitangi Tribunal’s final report are guiding and informing the strategic direction of Oranga Tamariki – including the Future Direction Plan – and/or wider Government approaches. The findings are supporting the work that is underway, and planned, in response to the Future Direction Plan and the shift to locally-led, regionally-supported and centrally-enabled ways of working.
- 290 The previous Chief Executive of Oranga Tamariki outlined to the Waitangi Tribunal some of the changes that were already underway to address structural racism which included:
- (a) Better understanding bias in the system through the work of Oranga Tamariki’s Evidence Centre exploring ‘Factors Associated with disparities experienced by tamariki Māori in the care and protection system’.
  - (b) Improving Oranga Tamariki’s intake and assessment process to balance out any over reporting of tamariki Māori.
  - (c) Since 2019, Oranga Tamariki has stood up new teams and functions which are focused on Oranga Tamariki’s responsibilities under section 7AA and broader Treaty principles.
  - (d) Embedding the Mana Tamaiti objectives across the organisation and monitoring of it through the Section 7AA Quality Assurance standards.
  - (e) Developing and entering into strategic partnerships and Whānau Care partnerships.
  - (f) With support from mana whenua, expanding the Kairaranga-ā-whānau roles from a small number to at least 62 across the country.
  - (g) Introduction of a new practice framework and coaching and mentoring site and regions’ staff in its application of the new practice.
  - (h) Ensuring all staff know and understand Oranga Tamariki’s Māori cultural framework and can apply it in their work alongside the introduction of the new cultural capability programme Te Hāpai O.
  - (i) Beginning to address inequities in funding and supporting Oranga Tamariki’s Treaty partners’ aspirations to design and deliver fit for purpose programmes and services for their communities.
  - (j) Continuing to lead the public sector by lifting the number and levels of Māori staff across the agency.

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<sup>138</sup> Waitangi Tribunal Wai 2915 Report [Bundle ref **MSC0008144**].

### ***Other, more recent reviews into the care and protection system***

*Oranga Tamariki Ministerial Advisory Board – Hipokingia ki te Kahu Aroha  
Hipokingia ki te Katoa Te Kahu Aroha – September 2021<sup>139</sup>*

- 291 The Minister for Children accepted all the recommendations and asked Oranga Tamariki to progress the work needed to address them. The Minister also sought Cabinet endorsement of the Future Direction Plan in response to the report and other reviews and asked the Oranga Tamariki Ministerial Advisory Board to provide assurance on Oranga Tamariki progress against the Future Direction Plan.
- 292 To support the Board in their independent advice and assurance role, Oranga Tamariki provides the Board and the Minister with Quarterly Reporting on progress against the Future Direction Plan. The Oranga Tamariki Ministerial Advisory Board Phase 2 work programme includes a focus on disability issues, care, and youth justice.

### ***Summary of other steps taken by Oranga Tamariki in response to lessons learned***

- 293 I wish to emphasise that Oranga Tamariki has taken extensive steps to implement change and improvements beyond those taken in direct response to the recommendations arising from previous inquiries and reports. I have touched on these other steps throughout this brief of evidence. I do not intend to repeat them again, other than to summarise where in the NTP 418 Response they are explained, as follows.

#### *Racism, ableism and bias*

- 294 The extensive lessons learned by Oranga Tamariki in relation to racism, bias and ableism are referred to at paragraphs 2.1 to 2.2 of the NTP 418 Response.
- 295 The steps taken by Oranga Tamariki in response to reviews and inquiries in relation to racism, bias and ableism are referred to at paragraphs 2.3 to 2.4, to 2.38 of the NTP 418 Response.

#### *Te Tiriti*

- 296 The lessons learned by Oranga Tamariki in relation to its obligation to give effect to Te Tiriti are referred to at paragraphs 3.1 to 3.2 of the NTP 418 Response.
- 297 The steps taken by Oranga Tamariki in response to ensure compliance with its obligations are addressed at paragraphs 3.2 to 3.18 of the NTP 418 Response.

#### *Cultural support and considerations*

- 298 The steps taken by Oranga Tamariki to maintain access to culture, language and extended family are addressed at paragraphs 4.6 to 4.37 of the NTP 418 Response.

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<sup>139</sup> Te Kahu Aroha [Bundle ref **MSC0008084**].

### *Recruitment*

- 299 The lessons learned by Oranga Tamariki in relation to diversity for its recruitment practices are referred to at paragraphs 4.38 to 4.39 of the NTP 418 Response.
- 300 The current status of diversity and steps taken to improve the diversity of staff by Oranga Tamariki are referred to at paragraphs 4.40 to 4.47 of the NTP 418 Response.

### *Access to education*

- 301 The lessons learned by Oranga Tamariki about ensuring access to education are referred to at paragraphs 5.1 to 5.2 of the NTP 418 Response.
- 302 The steps taken by Oranga Tamariki to address those learnings and the current approach to them are addressed at paragraphs 5.3 to 5.15 of the NTP 418.

### *Monitoring and oversight*

- 303 The steps taken for monitoring and oversight to safeguard children within the care setting are addressed at paragraphs 6.1 to 6.62 of the NTP 418 Response.

### *Vetting and safeguarding*

- 304 The lessons learned by Oranga Tamariki about the need for vetting and safeguarding of staff and caregivers are addressed at paragraphs 7.1 to 7.2 of the NTP 418 Response.
- 305 The steps taken by Oranga Tamariki in response for the suitability of staff and caregivers are addressed at paragraphs 7.3 to 7.14 of the NTP response.
- 306 The lessons learned by Oranga Tamariki about the oversight, supervision and inspection of foster homes and foster caregivers is addressed at paragraphs 7.21 and 7.26 of the NTP 418 Response.
- 307 The current approach of Oranga Tamariki to the oversight, supervision and inspection of foster homes and foster caregivers is addressed at paragraphs 7.22 to 7.25 and 7.27 to 7.34 of the NTP 418 Response.

### *Complaints*

- 308 The lessons learned by Oranga Tamariki about the importance of an effective system for complaints and disclosures of abuse in the care and protection system are addressed at paragraph 8.1 of the NTP 418 Response.
- 309 The lessons learned about feedback and complaints processes are explained at paragraphs 8.23 to 8.24 of the NTP 418 Response.
- 310 The current approach by Oranga Tamariki to complaint's mechanisms is addressed at paragraphs 8.2 to 8.9 of the NTP 418 Response. The current practices for investigating allegations of abuse, neglect and harm are addressed at paragraphs 8.16 to 8.20 of the NTP 418 Response. The current practices for

handling complaints are addressed at paragraphs 8.21 to 8.29 of the NTP 418 Response.

#### *Training and support*

- 311 The lessons learned by Oranga Tamariki in relation to staff training about safeguarding and care needs are addressed at paragraphs 9.1 to 9.4 of the NTP 418 Response.
- 312 The current approach of Oranga Tamariki's learning and development programme is set out at paragraph 9.5 to 9.10 of the NTP 418 Response.
- 313 The lessons learned by Oranga Tamariki in relation to support it provides to caregivers, parents and adoptive parents of children in State care are addressed at paragraphs 9.11 to 9.15 of the NTP 418.
- 314 The current approach to the qualifications and training to become a foster caregiver are addressed at paragraphs 9.16 to 9.24 of the NTP 418 Response, and the qualification requirements for social workers are addressed at paragraphs 9.29 to 9.31 of the NTP 418 Response.
- 315 The lessons learned by Oranga Tamariki about maximum social worker caseloads are addressed at paragraphs 9.33 to 9.36 of the NTP 418 Response.
- 316 The steps taken by Oranga Tamariki to ensure that social workers are appropriately supervised and recognised and are not overworked are addressed at paragraphs 9.37 to 9.40 of the NTP 418 Response.

#### *Entry into care*

- 317 The lessons learned by Oranga Tamariki about whether and how a child or young person should be placed in State care are addressed at paragraph 10.1 of the NTP 418 Response.
- 318 The steps taken by Oranga Tamariki in response and its current approach are addressed at paragraphs 10.2 to 10.46 of the NTP 418 Response.

#### *Exit from care*

- 319 The lessons learned by Oranga Tamariki about the discharge of children, young persons, disabled persons and those with mental health conditions in care and the steps taken to address those learnings are addressed at paragraphs 11.1 to 11.19 of the NTP 418 Response.

#### *Future outcomes of abuse in care*

- 320 The lessons learned by Oranga Tamariki about the importance of tracking and monitoring future outcomes for those who have been in care to inform its policy development are addressed at paragraph 12.1 of the NTP 418 Response.
- 321 The steps taken by Oranga Tamariki in response and recent May 2022 developments are addressed at paragraphs 12.2 to 12.20 of the NTP 418 Response.

### *Provision of care*

- 322 The lessons learned by Oranga Tamariki regarding consultation in developing and implementing policies and practices for the provision of care are addressed at paragraphs 13.1 to 13.5 of the NTP 418 Response.
- 323 Some of the steps taken in response by Oranga Tamariki are highlighted in paragraphs 13.12 to 13.42 of the NTP 418 Response.

### *Third party providers*

- 324 The processes that Oranga Tamariki has in place in relation to assessing the suitability and accreditation of third party care providers as well as monitoring and review are addressed by paragraphs 15.10 to 15.15.42 of the NTP 418 Response.
- 325 The particular steps that Oranga Tamariki is taking to break down the barriers to entry for Māori third-party care providers are addressed at paragraphs 16.1 to 16.11 of the NTP 418 Response.

### *Human rights and obligations under International law and instructions*

- 326 The lessons learned by Oranga Tamariki in relation to the importance of cultural connectedness for the wellbeing of children and young people are addressed at paragraph 17.2 of the NTP 418 Response.
- 327 The steps taken by Oranga Tamariki in response are addressed at paragraphs 17.3 to 17.46 of the NTP 418 Response.

### *Data collection, recording keeping and access to records*


- 328 The lessons learned by Oranga Tamariki in relation to data collection practices are addressed at paragraphs 18.1 to 18.18 of the NTP 418 Response.
- 329 The steps taken by Oranga Tamariki in response are addressed at paragraphs 18.19 to 18.66 of the NTP 418 Response.

### **Concluding remarks**

- 330 To summarise, significant foundations have been put in place since the late 1990s which directly address the themes we have heard throughout hearings to date. I have set out in my evidence the steps already taken and the actions underway to address the concerns raised about the care and protection system and improve outcomes. I am committed to the journey in front of us to transform the system and never repeat the past.
- 331 I am confident that the future direction of Oranga Tamariki is the right one, however Oranga Tamariki cannot do this alone and there are opportunities for tamariki, whānau, partners and particularly survivors of abuse in State care to play an active role in directly influencing how we give effect to the change activities that are underway. I welcome their continued insights and those of the Commission as we continue this important work together to transform the care system.

332 Kia koe te Kaihautū o te Komihana me koutou katoa ngā Kaikomihana kei te wātea mai mātau o Oranga Tamariki ki wā koutou pātai.

333 To you Judge Coral Shaw, Kaihautū and to all your Commissioners, we of Oranga Tamariki avail ourselves for any questions you may have of us.

Signed:  .....

Te Hapimana Te Kani

09/08/2022

Date: .....