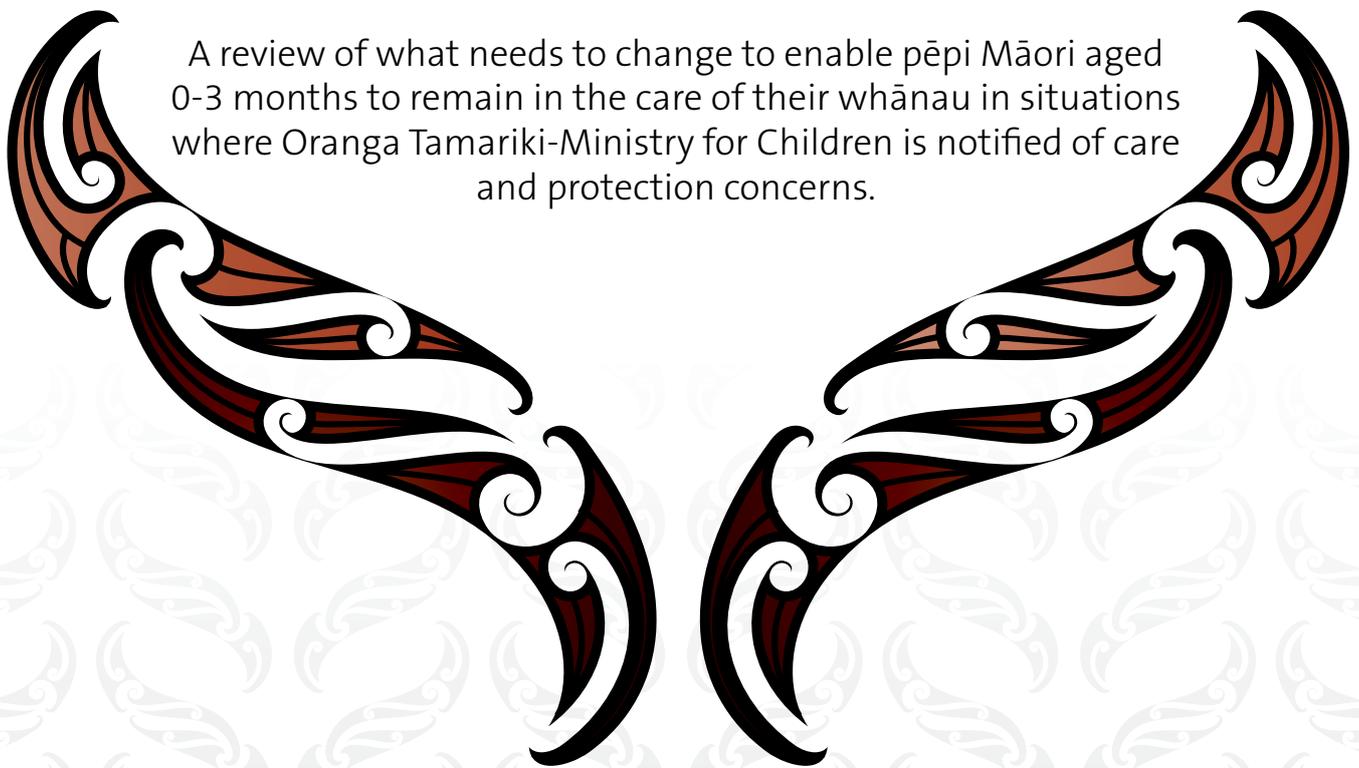


Te Kuku O Te Manawa

***Ka puta te riri, ka momori te ngākau,
ka heke ngā roimata mo tōku pēpi***

A review of 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-Ministry for Children is notified of care and protection concerns.



Report one of two

Office of the Children's Commissioner
June 2020



Content warning

This report includes content that may be distressing to readers. We encourage readers to seek support and talk to trusted friends, whānau or professionals.

For more information, visit <https://www.occ.org.nz/childrens-rights-and-advice/who-to-contact/>

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Referencing this report

Please respect the views of the mums and whānau who have contributed to this report. To reference this report or quotes contained within this report, please include the full title, ISBN and a link to the online version at www.occ.org.nz. Square brackets have been inserted where text has been removed from quotes, with a description of what has been removed, in order to ensure anonymity of those we heard from.

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The name of this report is

Te Kuku O Te Manawa – Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi

The name of this report is inspired by the experiences shared by the whānau of the pēpi we have heard from. We heard about their fear, anger and frustration. They shared their heartbreak, anguish and sadness. A journey they suffered by the hand of the state.

Forming part of the name of this report, Te Kuku O Te Manawa is a whakataukī, or Māori proverb, which has many interpretations. Two of these interpretations are 'the pincers of the heart' and 'an object of great affection'. This name helped focus us on the importance of pēpi and tamariki in this process.

Front cover design

This pattern represents the mother and child. It depicts unconditional love, the nurturing and bond that exists between a mother and child, wellbeing, health and growth. The composition shows stylised hands that reflect manaakitanga, kaitiakitanga and aroha. It symbolises the collective hands of whānau and stakeholders to help parents, whānau and the child in a positive, uplifting way.

It also acknowledges Papatūānuku, the earth mother who gives birth to all things, including people. Trees, birds and people are born from the land, which then nourishes them. Some traditions say that the land first emerged from under water.

Designed by Māui Taewa (Ngāti Tūwharetoa, Ngāti Porou, Ngāpuhi me Ngāi Tūhoe).

Acknowledgements

A number of people and organisations have contributed to making this report possible.

Our Mātanga rūpū has provided invaluable expertise throughout this review. We thank them for their ongoing advice, support and guidance. The members of this rūpū are:

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- > Dr Paula Thérèse King (Te Rarawa, Ngāpuhi, Ngāti Whātua, Waikato-Tainui, Ngāti Maniapoto).

We wish to thank and acknowledge our kaitiaki and cultural supervisor, Kairangahau, Matewawe Pouwhare (Ngāi Tūhoe, Ngāti Awa).

We also acknowledge the local community organisations that supported our team to meet and talk with whānau they support, our ruruku composer Ben Ngaia, (Te Āti Awa), and the whānau of our own staff who have allowed us to give this review the aroha and attention it deserves.

Most of all, we are grateful to the mums and whānau who bravely shared their experiences with us. It was a privilege to meet you.

Ngā mihi nui ki a koutou katoa.

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Statement from the Children's Commissioner



"Listen to the pain in [our] cries; don't turn your back on [us]. Pay attention. This is a cry for help! And hurry. This can't last." (Psalm 102 vv2-3)

This report focuses on the following 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?

It had always been our intention to conduct research during 2019 as to the practice of Oranga Tamariki with Māori children and their whānau. However, given the mounting public concern about the removal of newborn pēpi from their whānau in May 2019, we decided to focus on this specific issue, especially given the statistical trends which appeared to highlight a problem. As it turns out, this review is now one of several reviews prompted by the experiences of a whānau in Hawke's Bay that were made public and which subsequently brought the practice of removals to the attention of the nation.¹

This report is based on my wide-ranging statutory responsibilities under the Children's Commissioner's Act 2003. These include advocacy, research, and raising public awareness, and my separate responsibilities to monitor and assess the policies and practices of Oranga Tamariki.

It is the first of a two-part series. The exploratory approach is designed to identify and pinpoint areas for change. These will be examined in more detail in part two where detailed recommendations will be made.

Forming the heart of this report are the experiences of the mothers and whānau of 13 pēpi across 10 iwi, in whose lives the statutory social work system has been involved.

They told us their stories – unedited and raw. I wholeheartedly thank them for their willingness and courage to entrust us with their experiences. Their accounts are among the most heart wrenching I have heard in my time in this role.

We cannot publish the stories in full because we guaranteed confidentiality. However, after careful analysis of all interviews, we have selected representative quotes. We believe that these quotes accurately reflect recurring themes.

The mothers we interviewed offered profound insights into a system few New Zealanders know much about. They spoke from heartfelt experience. Most had had long term involvement with the statutory care and protection system. While in eight cases the relevant Report of Concern had been made to Oranga Tamariki, in four cases the relevant report had been made to, and acted upon by, Child, Youth and Family before (sometimes well before) this report's anticipated time frame. The majority of the mothers interviewed had had previous experience of children being removed, all by Child, Youth and Family. Sometimes, the removal had been of more than one child at the same time.

For most of the mothers we interviewed – eight in fact – their pēpi were not removed. In five cases they were. Sadly, their stories and their views of the system were all strikingly similar, irrespective of whether there was a removal or not. Each of them was determined that no other mother should go through what they did. They all said that they knew why Child, Youth and Family and/or Oranga Tamariki had originally become involved. They were very honest about this. Equally, they were clear as to what good social work looks like and why it

is sometimes needed. But all were firm that they seldom experienced this through either Child, Youth and Family or its successor, Oranga Tamariki.

Whānau experiences of Child, Youth and Family have necessarily influenced the breadth of this research. This report should be read as an insight into the wider statutory social work system, spanning both the latter years of Child, Youth and Family and the practice of Oranga Tamariki since its establishment on 1 April 2017. The experiences and concerns of those we interviewed appear to have remained the same regardless of the name of the organisation.

This qualitative research provides an in-depth narrative of the lived experiences of a small group of pēpi, mums and their whānau. Those we interviewed do not purport to speak for every mother involved with the state care and protection system. Nor could they. However, the legitimate question that arises from their experience is that if the state care and protection system has to be involved with their pēpi, then there must surely be a better way?

Our report comes at an important time in the development of Oranga Tamariki in providing services for Māori. As from 1 July 2019, the new section 7AA of the Oranga Tamariki Act 1989 took effect. It imposes significant new duties on the Chief Executive to provide a practical commitment to the Treaty of Waitangi. This provision, which in one sense does no more than reflect existing but, until now, little fulfilled common law obligations, will require much to change.

Of course, the concerns expressed are much bigger than Oranga Tamariki or Child, Youth and Family. Their origins go back decades – certainly as far back as 1989 with the original Children, Young Persons and Their Families Act – and further still to

the colonisation of Aotearoa New Zealand. This has been a recurrent theme for over three decades.²

I hope that all New Zealanders can read this report and, in particular, the experiences of these mothers. They reveal a profound loss of faith and trust in the state care and protection system over many years. Paradoxically, they who most needed assistance and support say they received it least. They feel alienated from the system designed to support them, their pēpi and their whānau. We must not underestimate this message. For some, even using the current state-adopted Māori name for the system – 'Oranga Tamariki' – is problematic. That term speaks of holistic wellness for children as cultural taonga. Many of these mothers have not seen this upheld in the statutory care and protection system.

In reading this report, we need to be careful that we don't 'talk past each other'.³ Consciously or otherwise, we will all apply our own cultural lens. It is important, particularly for non-Māori readers, to be vigilant in identifying their own cultural lens which informs and shapes their biases. For instance, a non-Māori understanding of whānau as limited to 'immediate family' is unhelpful. A proper understanding of the concept of whānau leads to the conclusion that, if a child needs to be removed, the best place for pēpi is within what non-Māori would call 'the wider family', including grandparents, uncles, aunts and cousins, thereby preserving whakapapa links and demonstrating whanaungatanga.

These personal stories provide a human face to the statistics set out in this report, which we released in January 2020. They are a silent testimony to the long-term inequities that Māori have suffered under Aotearoa New Zealand's care and protection system.

¹ The four related reviews are: the completed Whānau Ora Māori Inquiry and the Oranga Tamariki Practice Review; and the upcoming Ombudsman's Systemic Improvement Investigation and the Waitangi Tribunal Inquiry.

² See for instance, the seminal enquiry into the then Ministry of Social Welfare in 1988, known as *Puao-Te-Ata-Tu*. (Department of Social Welfare *Puao-Te-Ata-Tu (Daybreak)* (Government Printing Office Wellington, New Zealand, 1988))

³ Presented in the research of Dame Joan Metge and Dr Tricia Kinloch (now Laing) in their work - *Talking Past Each Other: Problems of cross-cultural communication* (1978)

The processes we undertook to produce this report are described in detail in the methodology section. Suffice to say, that we analysed the interviews in the context of the other strands of evidence in this report – the statistics, the rights framework and the historical context. As a result, we have identified six key areas for change that we believe need closer examination. We will investigate these further in part two of this review, to be published later this year. It will be based on further interviews (already completed) with whānau, Oranga Tamariki employees and professionals from health and social services, including iwi services and Māori organisations and will contain constructive recommendations.

I have chosen to share this report without recommendations at this stage so the voices can speak powerfully and stand by themselves. It will allow time to reflect on and absorb them. The voices themselves suggest areas where change could be considered and, indeed, could begin to take place without the need for specific recommendations now.

It would have been inappropriate for me to release this report any earlier during the COVID-19 'lockdown'.⁴ However, as a matter of integrity, I now need to release this report as soon as possible to keep our promise to those we interviewed.

Finally, this report represents our first ever steps to produce a 'Māori-led' project within the Office of the Children's Commissioner. Our Māori staff have taken a leading role in setting the kaupapa and direction of the project. They have also been at the forefront of the interviews, analysis and writing process. We appointed an external Māori Project Manager. We also formed a Mātanga Rōpū, a group of external Māori experts who provided advice and guidance. In short, given the report's importance, especially for Māori in Aotearoa New Zealand, it was appropriate for our Māori staff to play a driving role in its production. I acknowledge their enormous and principled contribution.

⁴ As from March 26th, 2020 the Government placed New Zealand under level 4 lockdown due to the global pandemic related to a coronavirus known as COVID-19. On May 1 2020 the lockdown level was reduced to level 3. On May 15, 2020 the lockdown level was further reduced to level 2 allowing a limited return to work.

⁵ Proverbs 29 v 18.

⁶ S7AA(2)(c) of the Oranga Tamariki Act 1989.

⁷ S13(1)(c) of the Children's Commissioner's Act 2003.

It is often said that, "Where there is no vision, the people perish."⁵ In other words, without a clear direction, communities and organisations can stall. This report reinforces that the vision for the delivery of state care and protection services which Māori have identified for decades must be brought to fruition.

In fact, the new Oranga Tamariki legislation, now in effect, enables Oranga Tamariki to partner with and to delegate and effectively devolve power, resources and functions to "... iwi and Māori organisations, including iwi authorities...".⁶ This legislative mechanism explicitly allows for a true revolution through devolution. Such devolution can no longer be considered optional. Integral to this process will be equitable provision of resources by the state including the offer of well-resourced capacity building. I hope this report will be a positive challenge for Oranga Tamariki. It identifies some of the issues which that organisation inherited. However, it also discusses current Oranga Tamariki practice, which applies to the majority of experiences we heard about. The report is something of a road map, pointing to where we believe improvements can be made. The Office of the Children's Commissioner, consistent with its statutory mandate, will continue to encourage the development of policies and services designed to promote the welfare of tamariki Māori.⁷

Implementing this vision is the challenge for all of us who have a stake in the state care and protection system of Aotearoa New Zealand. We will not get this opportunity again in our lifetime. We simply must work together to bring it about.



Children's Commissioner
Te Kaikōmihana mō ngā Tamariki o Aotearoa
Judge Andrew Becroft



Statement from the Chief Māori Advisor



*He taonga te mokopuna
Mokopuna are treasures*

This is an often quoted whakataukī, proverb, in the Māori world. Referring to grandchildren as treasures in this way is a rich cultural descriptor. In this treasure are

invested the visions, the hopes, the dreams, the aroha or love of the whānau, hapū and iwi to prepare them for the life ahead, when they will later stand tall as leaders of their people. One of the themes of early observations of Māori life by non-Māori, was how indulged the children were by their parents and how they were free of physical discipline.⁸ This view stood in stark contrast to that of the colonial settlers of the 1800s who took a more punitive approach to child discipline akin to ‘spare the rod and spoil the child’.

A range of tikanga Māori, Māori methodologies, before, during and after birth, help to bring the new generation into the world of light through time-honoured traditions. The Māori language itself holds the key to significant mātauranga, cultural knowledge, which describes the intricate cultural weaving between birthing, at a personal level, and Māori society, at a structural level.¹⁰

- > Whānau, means both to birth, and the extended family unit (in an inter-generational sense), that a pēpi is born into and through

which their whakapapa, family lines, connects them with their ancestors.

- > Hapū, means both to be pregnant, conceived in the womb, the kinship clan, clan, and sub-tribe.
- > Iwi, means both strength, bone and the extended kinship group, the tribe.
- > Whenua, means both placenta and afterbirth, and land.

Removing pēpi Māori from this intricately woven social fabric disconnects them from where they come from, who they are and the relationships that they will need to grow into their mana ake – their unique whakapapa inspired pūtake, life purpose.

Tikanga Māori in the birthing context provide insights into how Māori designed ways to connect, locate and help embed new pēpi in the ways of their ancestors.¹¹ Though not a definitive list, the following examples are shared as a way of opening up the kete, basket of knowledge in this space. In doing so, we acknowledge the role of Māori midwives¹² in keeping alive this mātauranga which was undermined by the state through the Midwives Registration Act 1904 and the 1907 Tohunga Suppression Act.¹³ During childbirth, tapuhi, or midwives, worked with karakia- prayer, waiata-chants/songs, storytelling, rongoā-medicine, mirimiri-massage, and warm baths.¹⁴ Karanga, ceremonial call and karakia are practices which clear the spiritual pathway of the child as it transitions from the whare tangata, the house of humanity, to Te Ao Mārama, the world of light. Allowing pēpi time to adjust to Te Ao Mārama after birth, taking time before cutting the umbilical

cord, allowing nutrients to keep flowing, is linked to neurodevelopment in later years.¹⁵ Wahakura, traditional flax bassinets, have been reclaimed by Māori: they are portable; enable bed sharing (providing a separate infant sleeping surface); and enable easier breastfeeding.¹⁶ A tikanga related to birthing is the practice of returning the whenua, or placenta, to the whenua (Papatūānuku, the earth mother), retaining physical links between the pēpi and their ancestral whānau land. Naming pēpi in memory of ancestors, events, helps to keep them alive in the whānau psyche, carrying forward connections across generations and back through the ages. Pēpi Māori have Treaty rights, human rights and rights as citizens of Aotearoa to be treated in ways which honour their ancestry and their whakapapa.

In pre-contact Māori society, whanaungatanga and kinship were critical social features setting out rights and obligations between people (te hunga ora and te hunga mate, those living and those who have passed) as well as between people and the environment.¹⁷ Pregnancy and childbirth were a big deal for the health of the hapū as much as for the whānau. Wāhine Māori were considered tapu, sacred, during pregnancy and childbirth. Their safety, and that of their unborn child, were matters for the whole whānau and hapū. Pregnancy and childbirth were parts of life that young wāhine, women were educated about and well prepared for. Rongoā – medicines, were available for contraception and fertilisation.¹⁸ Wāhine Māori across the generations worked together to ensure that the sacred role of te whare tangata was a treasured part of the life of wāhine Māori throughout pregnancy as much as during childbirth. This account may make for sad reading for some wāhine Māori for whom this description may well be the furthest from their lived experience. It remains a source of

mātauranga about the treasured role our pūrākau or storytelling, remind us feature in our traditions.

Moko/puna: moko - Māori tattoo, logo, trademark; puna - spring, pool¹⁹

Mokopuna is commonly known as the Māori word for grandchild. It also has meanings from the two words which make it up – moko and puna. Moko can refer to a logo, a trademark. Thinking about that meaning, moko is a traditional Māori tattoo on the face or body, a logo or trademark of their ancestors – a sacred vessel containing the wisdom of their ancestors. This sits well with kōrero that whānau have about characteristics and traits of ancestors being visible and observable in the behaviour of mokopuna. Connecting moko with puna links the idea of inter-generational connectivity across whakapapa, with the notion of a residual place that the collective wisdom of one’s forebears can be found in.

How poetic to be referred to as ‘a sacred vessel containing the wisdom of your ancestors’. Of all the things that young Māori are called, I wonder how often this is one of them?

Sir Mason Durie has written about internal differences between Māori, referring to these as ‘diverse Māori realities’.²⁰ The research in this report presents accounts of some of the worst experiences māmā, their pēpi and their whānau have had at the hands of the state. They sit alongside the experiences māmā and their pēpi have when supported by their whānau, hapū and iwi in tikanga-based Māori birthing scenes.

⁸ Kuni Jenkins and Helen Mountain Harte *Traditional Māori Parenting* (Te Kahui Mana Ririki, 2011).

<https://www.occ.org.nz/assets/Uploads/Traditional-Maori-parenting.pdf>

⁹ Ministry for Culture and Heritage Te Manatu Taonga “Ngā mātua – Māori parenting – Te Ara Encyclopedia of New Zealand”

<https://teara.govt.nz/en/nga-matua-Maori-parenting>

¹⁰ All Māori language references and definitions in this section are taken from <https://Maoridictionary.co.nz>

¹¹ Dianne Wepa and Jean Te Huia “Cultural safety and the birth culture of Māori” (2006) 18 Social Work Review 26.

¹² See <https://www.ngamaia.co.nz/>

¹³ Interview with Fay Selby-Law, Hapai Te Hauora SUDI Manager, Māori News, May 23, 2018 (4.10pm) Mātauranga Māori endorsed by the WHO.

¹⁴ Dianne Wepa and Jean Te Huia “Cultural safety and the birth culture of Māori” (2006) 18 Social Work Review 26.

¹⁵ Interview with Fay Selby-Law, Hapai Te Hauora SUDI Manager, Māori News, May 23, 2018 (4.10pm) Mātauranga Māori endorsed by the WHO.

¹⁶ Sally Abel, Ariana Stockdale-Frost, Rangihaua Rolls and David Tipene-Leach “The Wahakura: A qualitative study of the flax bassinet as a sleep location for New Zealand Māori infants” (2015) 128 The New Zealand Medical Journal 12.

¹⁷ Justice Sir Joseph Williams (2017) Keynote Address, Te Ritorito Conference, TPK / SuPERU, Pipitea Marae, April 2017, “The Treaty of Waitangi and Whānau, Hapū and Iwi Well-being”. A video of this lecture, and the PowerPoint presentation used to accompany it, are free to download from: www.tpk.govt.nz/

¹⁸ Makereti *The Old-Time Māori* (New Women’s Press, 1986).

¹⁹ See <https://Maoridictionary.co.nz>

²⁰ Mason Durie *Diverse Māori Realities* (Massey University Department of Māori Studies, Palmerston North, 1995).

Consider these contrasting birthing scenes:

Scene Notes

Real scenario, birth of my mokopuna in a hospital. I am the maternal grandmother in this example.

Karanga (Maternal grandmother)

E te mokopuna o te Moana nui a Kiwa, (O treasured mokopuna from the vast expanse of Oceania),
Te taonga o mātou ngākau,
(the treasure of our hearts)
Haere mai, haere mai, haere mai ki te ao marama e,
(Welcome, welcome, welcome to the world of light),
Haere mai ki te arohanui o tō whānau e ... e e
(Welcome into the everlasting, unconditional love of your whānau).

Scene

Birthing unit, public hospital. Māmā in labour, pāpā, maternal grandmother present. Two generations of whānau gathered, preparing for the arrival of the third, a beloved mokopuna, already travelling down the birthing canal.

Scene Notes

Real scenario, impending uplift of pēpi, shared in an interview with a māmā during this research. There had been no notification of the uplift before this. The māmā was on the birthing table, in labour, the pēpi was being born when this notification was verbally delivered.

Dialogue (Crown official)

[Insert name of mother], my name is [Insert name of social worker]. I am here today to uplift this baby as a Care and Protection Order has been issued by the Family Court.

Scene

Birthing unit, public hospital. Māmā in labour, maternal grandmother, Crown Officials present. Two generations of whānau gathered, preparing for the arrival of the third, a beloved mokopuna, already travelling down the birthing canal. Crown officials in the birthing unit, waiting to uplift the pēpi.

You could be forgiven for thinking that these scenes read as views from parallel universes. They don't. How did we go from the early contact observations of Māori children as loved and relatively free from physical punishment to this scene, in a birthing unit, of officials of the state communicating to pēpi Māori in the birthing canal their fate of state removal?

What do we need to do to return to a time when pēpi Māori are born into their whānau, hapū and iwi, destined to grow as Māori, into the aspirations of their ancestors, standing tall on their papakāinga, the land of their people, supported by a society in which the Treaty of Waitangi²² guides, supports and nurtures new futures?



Dr Kathie Irwin
Ngāti Porou, Rakaipaaka, Ngāti Kahungunu
Chief Māori Advisor

²¹ Adapted description from stage one interviews.

²² In this report OCC has made the decision to reference the Treaty of Waitangi, rather than Te Tiriti o Waitangi. This position recognises the philosophical differences between the secular nature of the Crown and the sacred nature of mātauranga Māori which Te Tiriti speaks to. The position also makes space for iwi to be able to champion Te Tiriti in its negotiations with the Crown rather than the Crown closing this opportunity down by championing Te Tiriti.

At a Glance



At a Glance

Ka moteatea te ngākau Māori, te mahea e roimata maturuturu.

The Māori heart grieves, the pain unable to be washed away by mere tears.

The Children's Commissioner is undertaking a review of Oranga Tamariki

Tamariki do best when they are cared for and nurtured by their whānau. For pēpi Māori, their connections to whakapapa and the importance of whanaungatanga affirm the importance of them remaining in the care of their whānau. This review recognises that 'whānau' extends further than immediate family and includes extended family members. Those we interviewed self-defined who was in their whānau.

The Children's Commissioner has statutory responsibilities under the Children's Commissioner's Act 2003. These are wide ranging, and include: advocacy, research, and increasing public awareness, all in respect of the welfare and rights of children. The Children's Commissioner also has separate responsibilities with respect to monitoring and assessing the policies and practices of Oranga Tamariki–Ministry for Children (referred to in this report as Oranga Tamariki). This report is a combination of both sets of responsibilities.

This report, *Te Kuku O Te Manawa – Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi*, shares insights gained so far in this review which aim 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?

This report shares the findings of the first stage of the review and identifies particular areas for change to be explored in more detail in the second stage.

Key te reo Māori words

For a full glossary of all te reo Māori words and technical language see Appendix 5: Glossary and key terms.

Hui – to gather or congregate, to meet.

Karakia – prayer, recite ritual chant.

Karanga – ceremonial call, welcoming call done in ceremonial occasions.

Pēpi – baby or infant.

Te ao Māori – the Māori world.

Te whare tangata – 'the house of humanity', the womb, uterus.

Tikanga/Tikanga Māori – Māori methodology or rules, the first law of Aotearoa.

Tino rangatiratanga – self-determination, sovereignty, autonomy, self-government, domination, rule, control, power

Whakapapa – the family lines of whānau that connect to ancestors.

Whānau – refers to a family group. Whānau in this context has been used as a broad term that extends further than immediate family, including extended family members. It also means to birth a child.

Whanaungatanga – centrality of kinship and careful attention to relationships.

Key assumptions framing the review

This review is underpinned by key assumptions that frame the analysis of the evidence gathered. The review is grounded in:

- > the rights pēpi Māori have as articulated in the Treaty of Waitangi and in human rights laws and conventions;
- > the socio-historical context of Aotearoa – including the ongoing impacts of colonisation;
- > an understanding that the best place for pēpi Māori is with their whānau; and,
- > an understanding that there are protective factors that are critical for the wellbeing of pēpi and tamariki. These include the role of whānau and tikanga Māori, and the physical and emotional health needs of pēpi as established by child development research.

Key technical terms

For a full glossary of all te reo Māori words and technical language see Appendix 5: Glossary and key terms.

Kin – any person who is whānau, hapū, iwi or wider family group.

Non-kin – any person who is not whānau, hapū, iwi or wider family group.

Oranga Tamariki Act 1989 – The law that Oranga Tamariki staff must follow.

Oranga Tamariki–Ministry for Children – the name of the government agency that the Office of the Children's Commissioner is reviewing, referred to in this report as Oranga Tamariki.

Removal – when custody of a child is granted to Oranga Tamariki, the child is taken from the care of their whānau and is placed with approved caregivers (can be kin or non-kin).

Report of Concern – when someone is concerned about the safety or wellbeing of a child, they contact Oranga Tamariki and let them know about these concerns.

State custody – When a child is in state custody, the Chief Executive of Oranga Tamariki is responsible for the child's day to day care.

Statutory care and protection system – a system or organisation that uses law and legislation to ensure the safety and wellbeing of children.

Statutory social worker – a social worker employed by Oranga Tamariki and its predecessor Child, Youth and Family.

Multiple strands of evidence inform this report

This report has deliberately privileged the evidence gathered from interviews with mums and their whānau. At the time of our interviews, all of the whānau we interviewed shared recent or current experiences with Oranga Tamariki in relation to their pēpi, mokopuna or sibling. Most of the whānau also had prior experience with Child, Youth and Family before the establishment of Oranga Tamariki.

The views of mums and whānau are supported by high-level findings from other strands of evidence in this report including: a consideration of the Treaty of Waitangi, a statistical analysis of care and protection data, a summary of legislation and policy settings, key human rights frameworks, and literature.

A consideration of the Treaty of Waitangi provides critical context

In order to understand the rights of pēpi and their whānau as tangata whenua, people of this land, in the context of this review, we considered the distinction between rights as defined by the Crown and tikanga Māori, which exists as an expression of tino rangatiratanga. This report starts with a consideration of the significant role of the Treaty of Waitangi as the foundation and historical context for the way in which laws and systems have been designed and used to govern. The Treaty of Waitangi locates the rights of iwi Māori in a socio-historical context which provides a contemporary mechanism to hold the state to account. It also considers the legal responsibilities in the Oranga Tamariki Act 1989 of having a practical commitment to the Treaty of Waitangi, and the links between this legislation, Oranga Tamariki Practice Standards and Cultural Frameworks, both previous and current.

A statistical snapshot of Pēpi Māori 0-3 months and the care and protection system²³ shows substantial, persistent and increasing inequity in the removal of pēpi Māori into state custody

Key findings from the analysis of data (released in January 2020) show:

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

A summary of rights underpinning the statutory care and protection system and an overview of relevant legislation, policies and practice

We compiled a summary which illustrates how pēpi and their whānau have rights that are directly linked to the research question, including those articulated in the Treaty of Waitangi, the United Nations Convention on the Rights of the Child (the Children's Convention), the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of Persons with Disabilities, and the Oranga Tamariki Act 1989.²⁴ The Convention on the Elimination of all Forms of Discrimination Against Women is also of relevance.

²³ Office of the Children's Commissioner "Statistical Snapshot: Pēpi Māori 0-3 months and the care and protection system" (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-StatisticalSnapshot.pdf>. Also included in Appendix 4.

²⁴ Office of the Children's Commissioner "Rights Framework Underpinning the Care and Protection System" (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-RightsFramework.pdf>. Also included in Appendix 3.

We also developed a process map of key decision-making points,²⁵ which was released in January 2020, and provides a roadmap of the steps in the statutory care and protection legislative process when a Report of Concern is made. We identify throughout the report areas where the experiences of whānau do not reflect these legal responsibilities and best practice requirements.

In-depth interviews with mums and whānau provide the most significant strand of evidence

We interviewed mums and whānau about their experiences in relation to 13 pēpi (aged 0-3 months) who had either been removed, or were at risk of being removed, from their whānau by Oranga Tamariki or its predecessor Child, Youth and Family.

We spoke with eight whānau whose pēpi had a Report of Concern made about them, to Oranga Tamariki, between 1 April 2017 and 30 June 2019.²⁶

We also spoke with four whānau where the Reports of Concern about their pēpi were made to Child, Youth and Family, before our anticipated timeframe. More information about this is included in the methodology section.

All the whānau we interviewed had previous or current involvement with Oranga Tamariki. All but two of the whānau we interviewed also had at least one child who had involvement with Child Youth and Family, prior to its disestablishment in March 2017.

The number of interviews was considered to be sufficient to provide information about lived experiences from a range of circumstances.²⁷ These circumstances included: some situations where pēpi remained with whānau and some where they did not; mums with multiple children; and, different locations across Aotearoa, with some rural and some urban.

Of the 13 pēpi at the centre of these interviews:

- > Eight had remained in the care of their mum or parents.
- > The remaining five pēpi had been removed and either placed with whānau or non-kin²⁸ carers

We heard about occasions when Oranga Tamariki had also removed an older sibling, or siblings at the same time. None of the pēpi who had been removed from their mum or parents by Oranga Tamariki had returned home at the time of interview.

In total, 36 whānau members, support workers and kaimahi Māori participated in the interviews during November 2019. This approach has provided robust qualitative findings. There were 10 different recorded iwi affiliations of the whānau we interviewed spanning from the North Island to the South Island, and from the West Coast to the East Coast of Aotearoa.

²⁵ Office of the Children's Commissioner "Care and Protection Key Decision-making Points" (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-ProcessMap.pdf>. Also included in Appendix 2.

²⁶ Given that many whānau had not been informed of the details of the Report of Concern or when it had been made, these dates are approximate.

²⁷ This first stage of the review was intended to identify areas for further exploration in the second stage. The number of pēpi we heard about was chosen in order to surface common themes across a range of whānau experiences. We are confident this was achieved, and we have also sought external advice from members of the Mātanga rūpū and social science researchers to confirm this number is appropriate for these purposes.

²⁸ This report has used the terms whānau and non-kin when referring to the types of care we heard about. See Glossary for more information.

The mums and whānau shared in-depth accounts of their experiences with Oranga Tamariki and Child, Youth and Family. We have analysed and narrated these experiences with the utmost care and integrity.

Mums and whānau told us things need to change

The mums and whānau of pēpi who spoke with us were courageous in sharing their stories. Their experiences were consistent and heart breaking. Mums and whānau shared what happened during and after their involvement with Oranga Tamariki and in some cases Child, Youth and Family, once a Report of Concern had been made regarding their pēpi. They talked about what worked for their whānau during this time and about what got in the way. They also talked about what they would like to see change so that whānau had better support.

The commonalities of the whānau experiences raise concerns about systemic issues facing the statutory care and protection system and current impacts on pēpi, their mums and whānau.

Some of the key themes from our conversations with whānau are summarised below. An overall insight identified was that the experiences of all mums and whānau were similar, whether the threat of removal occurred prior to April 2017 under Child, Youth and Family, or under Oranga Tamariki.

I am a mum first

We heard mostly from mums who said they felt as though they were not seen by their Oranga Tamariki social workers for who they are and for the changes they have made. They didn't feel respected and recognised as the mum of their pēpi. This feeling also existed for those mums who had prior experiences with Child, Youth and Family, and continued to have involvement with Oranga Tamariki.

*"My whole pregnancy was pretty good, like no issues. Everything was up to date, never missed, did everything possible like parenting courses, the whole shebang. I did everything possible to make sure that I was proving to [CYF] that I'm doing right for my unborn... it wasn't till I was halfway through labour I found out there was already an automatic uplift and then it went to sh** straight up."²⁹*

"Cos I just know that if any other mums are treated like that then there's no hope of any reconnection or no hope of I think, they would lose hope and lose who they are as a person and as a mother."

The system is harmful

Many of the mums and whānau interviewed told us about the harm they had experienced through their involvement with the statutory care and protection system, and the ongoing impact it is having on them, their whānau and their tamariki. For most whānau, harm was caused during their involvement with Child, Youth and Family, and then continued on under Oranga Tamariki. They talked about the brutality of the removals of their pēpi, and how Child, Youth and Family and Oranga Tamariki have used other agencies, including Police and health professionals, to act under their instruction and carry out removals. Whānau continue to feel as though they are living under constant threat of Oranga Tamariki, even when it has been deemed either by Child, Youth and Family or Oranga Tamariki that no further involvement is necessary.

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

Statutory social workers have all the power and control

Many of the mums and whānau shared stories of poor treatment and unprofessional practice by Child, Youth and Family and Oranga Tamariki social workers working with them. They said they were not told what was happening, experienced threats and coercion and were lied to. Mums talked about how their statutory social workers did not have any regard for their whānau dynamics and the impact that decisions might have on their relationships. Many of the mums we heard from have experienced violence; they or people around them have struggled with drug and alcohol addictions; have mental health challenges; and, have lost important people in their lives. They talked about their efforts to make positive change for their tamariki, and how those changes have not been recognised, by Oranga Tamariki or their previous Child, Youth and Family social workers, and decisions were not revisited.

"Once you're involved, you're powerless. This is a department that's got too many powers, and even if they don't have the power, they use the threatening tactics that if you don't do what I say, you'll lose the lot."

The statutory care and protection system and other agencies have hurt my whānau

Mums and whānau talked about the immense harm caused by the practice of removal of their pēpi or the risk of removal of their pēpi, to all involved. The impacts on whānau and pēpi described are long-lasting and include feelings of fear and anger. Mums and whānau talked about how Police and the Family Court were involved, but their reflections focused on Oranga Tamariki and its predecessor Child, Youth and Family. One whānau supporter described her observations of how a mum was treated by Oranga Tamariki.

"One, she was an abused wāhine, two, her mana kind of had been taken away from her, I think at this point she stood there with no mana, no confidence in herself. She didn't want to speak to anybody, she didn't trust anybody, everything that she had kind of known with her mum and her dad and everything had kind of all pretty much dissipated."

We need good support

Mums and whānau said that good support made all the difference and helped through what is often an unpredictable and profoundly challenging process. Good support to them meant people getting stuff done, being honest, advocating for them, getting to know them, including them in decision-making, and sometimes working around the system to find the right solutions. For most people we spoke to, the right support came from whānau, iwi services, Māori organisations, midwives and community social workers.

"... that's always been a thing for me if I'm going through this or if this social worker from OT is doing this to me, how many other mum and dads are out there going through the same thing? And only in the last month or so has OT finally kind of stepped up and that's because of the push from all my support and all my lawyers. If I didn't have the support or didn't reach out like I did I wouldn't have [name of pēpi]."

²⁹ Where text has been removed from quotes square brackets have been inserted, with a description of what has been removed, in order to ensure anonymity of those we heard from, or to provide clarity.

After considering the multiple strands of evidence, we identified six areas for change

We identified six areas for change to explore during stage two of this review. We started with the themes drawn from our analysis of what we heard from mums and whānau and wove these together with the other strands of evidence.

The six areas for change are summarised below. Quotes from those we spoke with have been included throughout this report. These quotes have been chosen because they illustrate the six areas for change.

1 The system needs to recognise the role of mums as te whare tangata and treat them and their pēpi with humanity

All mums and whānau we interviewed identified that the statutory care and protection system and other agencies have not and still don't treat them with humanity.

“Yeah I think there's a lot of hardened hearts... and they forget about they're actually dealing with a mum, they're dealing with children, they're dealing with whānau. It's like they forget about that.”

Mums talked about not being recognised in their sacred role as mothers, understood in te reo Māori as te whare tangata, the house of humanity. One support person shared her observations based on her broader experience.

“That's one of the things that I see, from my perspective that OT just drops the birth mum like a hotcake. So you've done wrong and you're banished... what are we doing about mum? What are we doing to support her?”

Mums told us that their hard life situations are not considered or treated with empathy and compassion, and how the system doesn't recognise the actions they take to change things so they can look after their tamariki. Many mums did not know about their rights or felt that their rights were not being respected.

2 Unprofessional statutory social work practice is harming mums, whānau and pēpi

The stories mums and whānau shared raise significant concerns about both previous statutory social work practice and the current quality of social work practice being carried out by some Oranga Tamariki social workers. They talked about not being told what was happening, experiencing threats and coercion, not having confidentiality respected, and being lied to.

“No I don't think there is anything been good out of my experience. I think OT are only out to ruin peoples lives.”

“She [CYF social worker] told me that if I was ever to have any other children that they'd be taken straight away and I would never be a mum again.”

We heard about how whānau felt as though statutory social workers have had, and still have all the power and control.

“... You know that's frightening what they're capable of and the amount of power they have they shouldn't have that much power. You know because the power that they have they abuse it, you know.”

Many of the mums felt judged by and didn't trust their Oranga Tamariki social workers. They talked about how their Oranga Tamariki social workers did not have any regard for the impact decisions might have. Some whānau also reflected on previous experiences where they felt the same way about Child, Youth and Family social workers. One mum talked about the impact that the uncertainty caused by social workers actions had on her relationship with pēpi.

“After the pregnancy I think it's really affected mine and her relationship to this day like I'm too scared to get attached to her. I have this bond and connection to her but there's part of me that's just scared... even now like it's not over at any moment they could just take her and its hard for her cause it's not her fault.”

3 Whānau need the right support from the right people

Whānau know what good support looks like and want to be listened to about what they need. Many of the whānau said they are not currently getting that kind of support. They said that services from Oranga Tamariki are often absent and not appropriate. These stories were no different for whānau who had involvement with Child, Youth and Family, as is the case in the first quote, below. There were whānau who had been experiencing this type of service for a long time from the statutory care and protection system. Some mums had tried to access support they felt they needed but faced barriers in being able to do so.

“We tried to get it back paid... we fought that and we failed at every point... that was their decision and that was my only choice so I had to leave baby in hospital with support people and go and beg my arse off at Work and Income because that was my only option, I had no money.”

“Lack of support really and I ended up gosh, cos I was in such a bad way. I was asking for help, like I was pretty much going to them to say hey like I need help.”

Whānau said that when they do experience good support, it can make all the difference. The types of support that both whānau and the literature indicate as most beneficial uphold tikanga and Māori values and principles and demonstrate an understanding of the importance of te whare tangata. They take a tikanga Māori approach, which sees pēpi as mokopuna within the context of their whakapapa, and support practices that focus on the long-term wellbeing of pēpi and their whānau, hapū and iwi. One mum talked about her community social worker and why she was able to trust her.

“I was able to trust her because... we just connected, I just knew I could trust her. I knew she had these protocols that she had to uphold because of her job but I just feel like when I walked this journey, I just wanted to be open and honest about everything and she just never judged me. She knew I had a past and I acknowledged that I made some pretty stupid things, so she made me feel comfortable... She’s Māori and half Pākehā... I think that played a part in it because that’s what I mean by that connection...”

4 Pēpi Māori and their whānau are experiencing racism and discrimination

Our analysis of the care and protection system data has shown that inequities for Māori compared with non-Māori are substantial and persistent, and that the urgency of decisions to take babies into custody has increased for pēpi Māori compared to non-Māori.³⁰

Experiences shared by whānau provide clear examples of racism and discrimination.

We heard about how having a certain surname changes the way Oranga Tamariki social workers approach a mum and make decisions. Whānau told us that intergenerational family dynamics were either not considered by statutory social workers or at times were actively used against them.

“Even if the whānau had a hui in there it didn’t matter, because at the end of the day OT had their minds made up regardless of what our whānau said.”

Whānau shared examples of how tikanga Māori was not upheld by previous Child, Youth and Family social workers and current Oranga Tamariki social workers, and about how much more comfortable mums felt receiving services from Māori providers.

“We called a whānau hui because I didn’t want a FGC,³¹ and I say that because an FGC is dangerous, you know and I’ve witnessed a lot of FGCs that don’t respect tikanga Māori eh. Its mainstream eh and that was dangerous because we didn’t really have [a] say in there in the FGC, it was - the decisions were already made.”

For one mum, her midwife was called about the pēpi being removed before she had birthed the placenta. From a te ao Māori perspective, the process of birthing the whenua is a sacred part of the mother’s role.

“... being in the hospital and not even birthing the placenta and having CYFs ring your midwife while the baby... is just being born within minutes is insane.”

³⁰ Office of the Children’s Commissioner “Statistical Snapshot: Pēpi Māori 0-3 months and the care and protection system” (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-StatisticalSnapshot.pdf>. Also included in Appendix 4.

³¹ Family Group Conference.

5 The organisational culture of the statutory care and protection system needs to support parents and whānau to nurture and care for their pēpi

Mums and whānau said they have been excluded from the lives of their pēpi when the statutory care and protection system has become involved and removed their pēpi. They shared that Oranga Tamariki practice isolates pēpi from their whānau. That is in direct contradiction to the principles of the Oranga Tamariki Act 1989, the rights of tamariki and their whānau and the fundamental te ao Māori understanding that pēpi Māori and their whānau are inseparable. Some mums and whānau shared the same types of experiences under Child, Youth and Family.

“... Yeah and they always throw it in my face, ‘oh we always about the family, keeping the families together’. Look at them, no you don’t, you’ve ripped mine apart.”

One mum shared the impact that previous Child, Youth and Family decisions and current Oranga Tamariki practice are having on her.

“I’d been a mum from 16 to 24 and I didn’t know anything else. I’d worked really hard and I was just in a really bad relationship and had severe depression and instead of being given support they took those children... they’re keeping the kids forever and my whole heart broke in that moment and I just gave up.”

We heard about the long-lasting harm the system is causing to whānau through violent interventions. Whānau shared their feelings of fear and distrust of the system.

“We didn’t want to interact with them because of our experience we had with them beforehand, you know and I’ll be honest I freaked the hell out when I seen them again because straight away my head was, ‘they come to take her,’ you know and they don’t even know about our growth.”

Whānau talked about the inherent conflict they see when the same government agency is tasked with supporting the wellbeing of pēpi and whānau on the one hand and placing pēpi with families through adoptions and long-term care arrangements on the other.

One mum, who had experience with both Child, Youth and Family and Oranga Tamariki, reflected on her view of the statutory care and protection system and the decision-making process about placements of pēpi.

“Why is the first thing uplift? Why is that not our last resort anymore? And it’s because CYFs is the adoption agency for New Zealand and that needs to change immediately.”

6 The system needs to work in partnership with whānau, hapū and iwi so they can exercise tino rangatiratanga

A theme that cuts across our findings is that the system needs to recognise whānau, hapū, and iwi. Māori self-determination needs to be central to any changes in order to be effective.

The whānau of pēpi we heard from explained how they had lost trust in the statutory care and protection system which was supposed to be helping them.

“Well, there’s very little trust in the family [for Oranga Tamariki and of the care and protection system]. My mother refuses to deal with them at all anymore because of the incident I told you about... My experiences, the kids experiences when they’re in my care and in their mothers care...”

The whānau we heard from have felt, and currently feel, undermined by previous Child, Youth and Family and current Oranga Tamariki processes and decisions. Many feel frustrated because they have, or know, what the solutions are but there are too many barriers getting in the way of their success. We heard that the best type of support that whānau received was often from Māori or iwi organisations.

“I think whānau should get together. If there’s an issue within the whānau call a whānau hui amongst your whānau, you know, that will be the bestest thing you could ever do. That organisation is too dangerous when they come in and try do things because they’re just all about uplifting and taking and see you later, but with whānau we can all get together and say, ‘Hey, who in the whānau can put their hand up and, you know, tautoko this whānau until she’s ready to get them back?’”

The six areas for change will inform the recommendations in stage two of the review

The six areas for change identified above are described in further detail in the following sections of this report. They draw together themes we identified from the whānau views we gathered with other strands of evidence.

Questions and concerns raised in this report will be addressed in the next stage of this review. The final report will include recommendations for action.

About this report

The Children's Commissioner has wide-ranging statutory functions

The Children's Commissioner has statutory responsibilities under the Children's Commissioner's Act 2003. These are wide ranging, and include: advocacy, research, and increasing public awareness, all in respect of the welfare and rights of children, and monitoring and other responsibilities in respect of Oranga Tamariki.³² The Office of the Children's Commissioner carries out this mandate in a number of ways, including undertaking research, thematic reviews, and advocating for, and raising awareness of, children's interests, rights and welfare. This report is a combination of those responsibilities.

The Children's Commissioner announced in June 2019 that his Office would undertake a thematic review of the policies, processes and practices of Oranga Tamariki relating to care and protection issues for pēpi Māori aged 0-3 months. There is clear evidence that a disproportionate number of pēpi Māori are the subject of Reports of Concern. There are questions in the public arena regarding the treatment and decision making of Oranga Tamariki that is resulting in many pēpi Māori being placed in care outside their whānau.

This report, *Te Kuku O Te Manawa – Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi*, seeks to share insights gained so far in this review which aim 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?

Our approach to this review

The intention of this review is to identify areas for change and recommendations to enable pēpi Māori to remain in the care of their whānau where Reports of Concern have been made to Oranga Tamariki. This report does not share recommendations. A final report making detailed recommendations will be released later in 2020.

A strong body of research and knowledge about this topic exists. Our approach has been to weave strands of information from different sources together, identifying any gaps in the current research, and ensuring the prioritisation of the views of those most impacted – whānau Māori.

The views of the whānau of pēpi were a significant gap in our scan of the evidence so we undertook qualitative research to ensure we heard directly from whānau on how they were experiencing the statutory care and protection system.

This report shares the findings of the first stage of the review and identifies particular areas for change to be explored in more detail in the second stage.

The second stage will take the areas for change and go further to identify what 'good' looks like, what gets in the way of change and what can enable the shifts required. As with all reviews undertaken by the Office of the Children's Commissioner, we will include a range of stakeholders, Oranga Tamariki sites, and other key sources to answer these questions.

³² Children's Commissioner Act 2003

Key assumptions framing the review

This review is underpinned by key assumptions that frame the analysis of the evidence gathered. The review is grounded in:

- > the rights of pēpi Māori, as articulated in the Treaty of Waitangi and in human rights laws and conventions;
- > the socio-historical context of Aotearoa New Zealand – including the ongoing impacts of colonisation;
- > an understanding that the best place for pēpi Māori is with their whānau; and,
- > an understanding that there are protective factors that are critical to the wellbeing of pēpi and tamariki including the role of whānau and tikanga Māori and the physical and emotional health needs of pēpi as established by child development research.

The Treaty of Waitangi provides critical context in regard to the rights of pēpi Māori

In order to understand the rights of pēpi and their whānau as tangata whenua in the context of this review, we have considered the distinction between rights as defined by the Crown and human rights laws and conventions, and tikanga Māori which exists as an expression of tino rangatiratanga. This report starts with a consideration of the significant role of the Treaty of Waitangi as the foundation and historical context for the way in which laws and systems have been designed and used to govern. The Treaty of Waitangi locates the rights of iwi Māori in a socio-historical context, which provides a contemporary mechanism to hold the state to account.

Colonisation is harmful and ongoing and integral to the socio-historical context of Aotearoa New Zealand

Acknowledging the harmful impacts of the ongoing colonisation of Aotearoa New Zealand – and whānau, hapū, and iwi resistance to it – helps place the views of whānau in this report in context. Māori, as tangata whenua, have been let down by state systems and practices. This has resulted in clearly documented intergenerational harm. The impact of systemic issues, such as colonisation, have shaped the landscape in which this review takes place. Documentation of inter-personal, institutional and systemic racism towards Māori has spanned decades. Significant reports, such as *Puao-Te-Ata-Tu* in 1988³³ and *Ināia Tonu Nei*³⁴ in 2019, document the impacts of colonisation on tamariki Māori and offer up recommendations for redress that are woven into the whakapapa of this report.

The best place for pēpi is with whānau

Our main review question is based on the understanding that the wellbeing of pēpi is best supported by being with their whānau. Pēpi are born into sacred whakapapa lines, stretching back through time to the origins of te ao Māori. For pēpi Māori, their connection to their whenua, whakapapa and whanaungatanga affirm the importance of them remaining in the care of their whānau. Being loved and nurtured supports the growing sense of identity, belonging and acceptance that pēpi need to thrive.

³³ Department of Social Welfare *Puao-Te-Ata-Tu (Daybreak)* (Government Printing Office Wellington, New Zealand, 1988).

³⁴ Ministry of Justice *Ināia Tonu Nei: Now is the Time: We Lead, You Follow* (2019 www.justice.govt.nz/assets/Documents/Publications/d8s653-Inaia-Tonu-Nei-Hui-Māori-English-version.pdf)

There are key protective factors during the first three months of life that are critical to the development and wellbeing of pēpi

The care provided in the first three months of life, as well as the environment pēpi are born into, are linked to physical, cultural, cognitive, behavioural, emotional and social outcomes later in childhood and adult life. From birth they are reliant on others, with immense potential to learn, grow and develop.

Physical protective factors include living in healthy homes, breastfeeding, sleeping safely and being protected from physical harm. The waiora, or health, of pēpi is also dependent on addressing the holistic needs of pēpi. These elements of wellbeing are recognised and referenced in the government's *Child and Youth Wellbeing Strategy*.³⁵

Multiple strands of evidence inform this report

This report has a focus on the evidence gathered from interviews with mums and whānau of pēpi who have experience of the statutory care and protection system, which includes the current Oranga Tamariki, and predecessor Child, Youth and Family, in relation to their pēpi, sibling or mokopuna. We have deliberately privileged the views of mums and whānau in this report, as they provide valuable insights into what they are experiencing in the statutory care and protection system. A summary of the views of whānau we interviewed is included in Appendix 1.

Alongside the views of mums and whānau, we have undertaken an analysis of other strands of evidence, namely:

- > a consideration of the Treaty of Waitangi;
- > a statistical snapshot of pēpi Māori 0-3 months and the care and protection system;
- > a process map of relevant legislation, policies and practice requirements for Oranga Tamariki; and,
- > an overview of the rights framework underpinning the statutory care and protection system.

Snapshots of the statistical analysis of trends, the legislative process map and a summary of the rights framework are included in Appendices 2-4.

Some key findings of these strands of evidence are summarised below.

A consideration of the Treaty of Waitangi

The colonisation of Aotearoa, Māori resistance to it and the determination of whānau, hapū and iwi to continue to uphold the ancestral legacy of tupuna Māori, is a story of global significance.

Against the odds, Māori have drawn inspiration and hope from mātauranga Māori, creating transformative models for change which have been adopted by Indigenous people across the world. The impact of those models has been a combination of what sociologists would identify as 'structure' and 'agency'.³⁶

³⁵ Department of Prime Minister and Cabinet "Child and Youth Wellbeing Strategy" <https://dpmc.govt.nz>.

³⁶ Kathie Irwin, Phillip Marshall, Titoki Black "Māori Language Nests in NZ: Te Kohanga Reo, 1982 – 2003." (Presented to United Nations Permanent Forum on Indigenous Issues, New York, 20 May 2003).

The Treaty of Waitangi created a platform to develop partnerships between iwi Māori and the Crown; protect the kaitiaki, or guardian role of iwi Māori with respect to mātauranga Māori, knowledge; and, to ensure iwi Māori were able to participate fully as citizens of Aotearoa New Zealand.³⁷

*A framework for recognising tikanga Māori*³⁸

In his keynote to the Te Ritorito Conference in April 2017,³⁹ Justice Sir Joseph ‘Joe’ Williams addressed what he termed ‘the Kupe’s Law / Cook’s Law’ clash – the disruption of the traditional knowledge system of iwi Māori by the imported British versions – and argued that it lies at the heart of the colonisation project in Aotearoa New Zealand. Justice Sir Joe Williams summarised key features of each of the knowledge codes which highlight the fundamental differences between them. A major difference was the focus in Māori society on people, and the related notions of kinship and relationships.

Figure 1: The clash of Kupe’s Law and Cook’s Law⁴⁰

Kupe (1200 – 1840)	Cook (1840 – 1985)
1. Whanaungatanga – centrality of kinship and careful attention to relationships	1. Central authority, unrelated officials dispensing its law
2. Mana – principles of leadership and individual dignity	2. Individual dignity and autonomy of subjects / citizens
3. Tapu – behavioural control and sacred / profane divide	3. Economic and some social relationships among people defined by contract
4. Utu – reciprocity obligation	4. Relationships with land and movables defined through concept of property
5. Kaitiakitanga – obligation to care for one’s own	
Flexible and consensus based within a system that naturally defers to mana and collective will.	

Western knowledge and the English language were built into the foundations of the state in the wake of the signing of the Treaty of Waitangi in 1840. Te reo Māori me ōna tikanga were written out of government departments and relegated to the private domains of Māori Society. The full weight of the machinery of government, through policy, legislation and regulation, was used to embed the Western footprint deeply into the systems of the agencies of the newly forming nation.

In 1996, a group of Māori leaders (and their respective iwi) filed a claim in the Waitangi Tribunal, Wai 262, The Intellectual Property Claim, to challenge this western footprint in the Crown Sector. The claim was about the place of Māori culture, identity and traditional knowledge in New Zealand’s laws, and in government policies and practices. It concerned who controlled Māori traditional knowledge, who

³⁷ Mason Durie *Royal Commission of Social Policy: Final Report - Future Directions: An Introduction* (Government Printer, Wellington 1988).

³⁸ Jacinta Ruru “First Laws: Tikanga Māori in/and the Law” (2018) *Victoria University of Wellington Law Review*, v. 49, n. 2, at 211-228.

³⁹ Justice Sir Joseph Williams (2017) Keynote Address, Te Ritorito Conference, TPK / SuPERU, Pipitea Marae, April 2017, “The Treaty of Waitangi and Whānau, Hapū and Iwi Well-being”. and Justice Sir Joseph Williams “*Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law*” (2013) 4 *Wai L Rev* 1.

⁴⁰ Ibid.

controlled artistic and cultural works such as haka and waiata, and who controlled the environment that created Māori culture. It also concerned the place in contemporary New Zealand life of core Māori cultural values such as the obligation of iwi and hapū to act as kaitiaki, cultural guardians, towards taonga, treasured things, such as traditional knowledge, artistic and cultural works, important places, and flora and fauna that are significant to iwi or hapū identity.⁴¹

The final report on this claim was released in 2011 as *Ko Aotearoa Tēnei*, a comprehensive and extensive exploration of mātauranga Māori. The report recommended the reform of laws, policies and practices related to health, education, science, intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage and the involvement of Māori in the development of New Zealand’s positions on international instruments affecting indigenous rights. These recommendations included law changes and the establishment of new partnership bodies in several of these areas.⁴²

In August 2019, Prime Minister Jacinda Ardern announced that she would be leading a work programme headed by teams of Ministers to chart the Crown’s response to this seminal report.⁴³ Of note is the work underway in rewriting the State Sector Act 1988, including references to the Treaty of Waitangi, mātauranga Māori and key performance indicators for CEO’s of Crown Sector Agencies to deliver improved outcomes for Māori in the Crown Sector.

Claim Wai 262 and other Waitangi Tribunal claims⁴⁴ serve two purposes for our review. First, they document that the issues raised are long standing and represent multiple breaches of the Treaty of Waitangi. Second, they document the existence of a pre-European Māori way of life in relation to supporting pēpi and tamariki. This represents the authentic context within which mātauranga Māori, kawa, tikanga Māori and te reo Māori inform Māori lived realities.

The above considerations are important as they provide a lens through which the Oranga Tamariki Act 1989 can be viewed. Section 7AA of the Oranga Tamariki Act 1989 was enacted in July 2019. This section of the Act is a significant and explicit lever for change. It places duties on the Chief Executive of the department to provide a practical commitment to the principles of the Treaty of Waitangi.

Despite references to tikanga Māori, or some Māori principles in the Oranga Tamariki Act 1989, the origins, and codified nature, of the law means there may be views in te ao Māori which may not be fully recognised by the Crown and its laws. The worldviews of the Treaty of Waitangi partners do not sit equitably among the statutes which govern regulatory intervention in this country, and this must be a key consideration in any review of state care.

Justice Sir Joe Williams speaks about these three phases of law in Aotearoa, 1) Kupe’s law 2) Cook’s law, and then 3) Aotearoa New Zealand’s law, where tikanga Māori is incorporated into some laws, now including the Oranga Tamariki Act 1989. The assertion from Justice Sir Joe Williams of whanaungatanga as a first principle of Aotearoa New Zealand’s law must be responded to by the statutory care and protection system.

⁴¹ Waitangi Tribunal *Ko Aotearoa Tēnei* (Wai 262, 2011) <https://waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

⁴² Ibid

⁴³ See <https://www.tpk.govt.nz/en/a-matou-kaupapa/wai-262-te-pae-tawhiti>. A full account of the work programme being undertaken is set out here.

⁴⁴ Established in 1975 to hear claims of Treaty breaches, amended in 1985 to hear claims from 1840, has amassed a substantial body of Treaty Jurisprudence. See <https://waitangitribunal.govt.nz/>

He has asserted that the fourth law is on its way:

“Where the Treaty has the force of law ... Is it possible to think of a time when education among the judiciary and wider community in the first law of Aotearoa is a matter of course and core activity? My pick is we’re heading in that direction ... we are solidly building towards a fourth law where equilibrium is found.”⁴⁵

Māori Cultural Infrastructure

Māori society is supported by a ‘Māori Cultural Infrastructure’, which has enabled it to function in the private domains of civil society.⁴⁶ While the Crown continued to promote the policy of assimilation, Māori got on with the business of continuing to be Māori, to live as Māori and to function as Māori in ways which their ancestors would recognise as Māori. In time, the Crown gave up on the policy of assimilation in the Māori Affairs portfolio and had to develop another because Māori had not assimilated as planned.⁴⁷

The Treaty of Waitangi, the Māori Cultural Infrastructure which supports Māori society, and Māori leadership in the area of Māori Affairs Policy, which has seen what is commonly referred to as the Māori Renaissance uplift Māori visions and aspirations from about the mid-1970’s, are significant nation building features unique to Aotearoa New Zealand.⁴⁸

Māori have engaged and resisted colonisation in ways which are not routinely shared in other jurisdictions. A number of specific features of the Māori Cultural Infrastructure, taken together, help us understand what framed that resistance. Though not an exhaustive list, the following are examples of the features of the Māori Cultural Infrastructure which have been influential in Aotearoa New Zealand:

- > the whānau, hapū, iwi collective social structure;⁴⁹
- > the network of marae, throughout the country, which numbered 744 in 2009;⁵⁰
- > te reo Māori me ōna tikanga, which, while tribally based share sufficient common features as to be understandable from the top of the North Island to Stewart Island;⁵¹ and,
- > mātauranga Māori, a knowledge code which is oppositional to western knowledge in significant features.⁵²

Whānau, hapū and iwi have maintained an authentic Māori care and protection system as an integral part of te ao Māori. The Crown has the opportunity to partner with Māori in innovative ways moving forward to explore how to access this. They must do this in a way that respects te ao Māori, ensuring services demonstrate respect for tikanga Māori, te whare tangata, pēpi, whānau and whakapapa. As discussed above, section 7AA of the Oranga Tamariki Act 1989 could be seen as a starting point in establishing genuine partnerships between iwi and Oranga Tamariki.

⁴⁵ Justice Sir Joseph Williams “*Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law*” (2013) 4 Wai L Rev 1.

⁴⁶ Kathie Irwin, Lisa Davies, Whetu Werata, Coleen Tuuta, Huhana Rokx-Potae, Sandra Potaka, Punohu McCausland and Dave Bassett *Whānau Yesterday, Today, Tomorrow* (Families Commission 2011).

⁴⁷ Kathie Irwin, Lillian Hetet, Sarah Maclean, Gene Potae *What Works for Māori* (Wellington: Families Commission, 2013).

⁴⁸ Two reports provide research in this area. Te Puni Kōkiri published a report on Marae in New Zealand which reports the existence of over 700 marae throughout the country – a major feature of the Māori Cultural Infrastructure. The report is available at www.tpk.govt.nz. See also Kathie Irwin, Lillian Hetet, Sarah Maclean, Gene Potae *What Works for Māori* (Wellington: Families Commission, 2013) which includes a chapter on the history of Māori Affairs policy.

⁴⁹ Manuka Henare “Ngā tikanga me ngā ritenga o te ao Māori: Standards and foundations of Māori Society”, in *The April Report: Royal Commission of Social Policy* (1988) Volume 111. Wellington: Government Printer.

⁵⁰ Te Puni Kōkiri *The Status of Marae in 2009* (Wellington: Te Puni Kōkiri, 2012).

⁵¹ Waitangi Tribunal (2011) “Chapter Five: Te Reo Māori”, in *Ko Aotearoa Tenei*. Volume 1. Wellington: Waitangi Tribunal.

⁵² Waitangi Tribunal (2011) *Ko Aotearoa Tenei*. Volumes 1, 11 (1 and 2). Wellington: Waitangi Tribunal.

A statistical analysis shows substantial, persistent and increasing inequity

The statistical snapshot of data, released in January 2020, shows substantial, persistent and increasing inequity in the removal of pēpi Māori into state custody.⁵³ It found:

- > The number of concerns reported about the safety of pēpi and tamariki has increased.
- > The number of social work assessments that find substantiated abuse for pēpi has decreased from a peak in 2013.
- > Inequities for Māori compared with non-Māori are substantial and persistent.
- > Assessments and removals of pēpi are happening earlier, with an increase in decisions made before birth.
- > The urgency of decisions to take pēpi into state custody has increased for pēpi Māori who are unborn and 0-3 months.
- > State custody is intergenerational.

A process map of key decision-making points shows how the statutory care and protection system processes are intended to work

An overview of relevant legislation, policies and practice requirements was undertaken and released in January 2020.⁵⁴ This provides a roadmap of the steps in the statutory care and protection legislative process. We identify throughout the report, areas where the experiences of whānau do not reflect the statutory direction.

A summary of the rights framework underpinning the statutory care and protection system highlights the rights of pēpi and whānau

The summary of the rights framework notes specific rights relevant to the review including those articulated in the Treaty of Waitangi, the United Nations Convention on the Rights of the Child (the Children’s Convention), the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of Persons with Disabilities, and the Oranga Tamariki Act 1989.⁵⁵ The Convention on the Elimination of all Forms of Discrimination Against Women is also of relevance.

⁵³ Office of the Children’s Commissioner “Statistical Snapshot: Pēpi Māori 0-3 months and the care and protection system” (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-StatisticalSnapshot.pdf>. Also included in Appendix 4.

⁵⁴ Office of the Children’s Commissioner “Care and Protection Key Decision-making Points” (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-ProcessMap.pdf>. Also included in Appendix 3.

⁵⁵ Office of the Children’s Commissioner “Rights Framework Underpinning the Care and Protection System” (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-RightsFramework.pdf>. Also included in Appendix 2.

Methodology: The experiences of pēpi and their whānau are central to this report

This report centres on in-depth interviews undertaken as qualitative research, as part of a mixed method approach to this review. The research design has been informed by Kaupapa Māori. By that we mean that we have centred Māori knowledge, method and practice in the study, actively ‘decolonising methodology’ in ways Professor Linda Tuhiwai Smith has argued are necessary for authentic Indigenous stories to be told.⁵⁶ Te ao Māori, the Māori world that these māmā and pēpi whakapapa to, provides the natural context for their stories to be explored in. This section discusses significant features of the research design.

*Ko te kai a te rangatira he kōrero.
Oratory is the food of chiefs.*

The most significant strand of evidence presented in this report is our interviews with the mums and whānau of 13 pēpi. These are the stories behind the statistics that show significant inequities between Māori and non-Māori. Public policy is increasingly evidence based and these stories provide rich accounts in a highly sensitive area.⁵⁷ We heard about the experiences of whānau in relation to their pēpi who had either been removed, or been at risk of being removed, from their whānau by Oranga Tamariki or its predecessor Child, Youth and Family. For some whānau, it was clear that their observations of Oranga Tamariki were also shaped by previous experiences with Child, Youth and Family in relation to older children. Where they have shared experiences of social work practice prior to 1 April 2017 (when Oranga Tamariki was established), we have endeavoured to indicate this in the text.

We upheld research ethics and were informed by a te ao Māori worldview

Tikanga Māori,⁵⁸ mātauranga Māori,⁵⁹ Kaupapa Māori research approaches⁶⁰ and social science research methods⁶¹ all informed the development of this review. The interviews were semi-structured and guided by whānau. Questions were open-ended and based on clear areas of enquiry, although interviewers had the flexibility to allow whānau to talk about the experiences that were important to them. Whānau were supported to share in the way that best suited them, including through stories, waiata or pūrākau. Some interviewers were able to speak and understand te reo Māori.

We had a ruru, a prayer that was written for this work by combining different parts of traditional karakia (Māori prayer). It was used to open and close our interviews with whānau, as well as by the research team throughout our analysis process.

Critical to this review has been the guidance and support of external experts who formed our Mātanga rōpū (Māori Advisory Group). The proposed approach for this research was submitted to an ethics committee which included members of both the Office of the Children’s Commissioner and the Mātanga rōpū. It ensured the review process was informed by Kaupapa Māori approaches. This enabled concerns to be raised and suggestions to be made which manifested a stronger ethic of care (manaakitanga) and increased regard for the mana of the whānau and how this was thought of and given effect to within the research. It also ensured that the analysis and findings were informed by a te ao Māori worldview and that rigorous research ethics and processes were applied.

⁵⁶ Linda Tuhiwai Smith *Decolonizing Methodologies* (University of Otago Press, Second Edition, 2012).

⁵⁷ Claudia Scott and Karen Baehler *Adding value to policy analysis and advice*. (Sydney: UNSW, 2010).

⁵⁸ See Waitangi Tribunal (2011) *Ko Aotearoa Tenei*. Wellington: Waitangi Tribunal.

⁵⁹ Ibid; see Charles Royal *Te Ngākau*. (Wellington: Mauri Ora Ki Te Ao, 2008).

⁶⁰ Linda Tuhiwai Smith *Decolonizing Methodologies* (University of Otago Press, Second Edition, 2012).

⁶¹ Earl Babbie *The practice of social research*. (9th Edition. Stamford: Wadsworth / Thomson Learning, 2001).

Whānau were asked to share their experiences through in-depth interviews. This qualitative research method enabled them to share a range of views and perceptions providing the opportunity to deeply explore whānau circumstances and experiences. This approach has provided robust qualitative findings. We analysed and narrated these experiences with the utmost care and integrity.

Interview templates were used during each interview to record demographic information and key quotes. Timelines were used in some interviews to create a chronology of events. Audio recordings were made of every interview and then transcribed in full.

We guaranteed confidentiality to all participants, including the NGOs and iwi services who acted as connectors for us. We were explicit about this. This was a condition of each participant’s consent to be interviewed. The following information is the most that can be provided without breaching our undertaking of confidentiality. We have been careful not to include identifying information of those we interviewed.

We recruited participants with support from NGO and iwi services

The whānau we interviewed were recruited to participate in this research through people they knew and trusted and who were connected to a community organisation. Working through known contacts in this way is referred to as ‘snowball sampling’ in qualitative research.⁶² It was important given the sensitive nature of the interviews, the complexity of whānau situations that we were seeking to understand, and the possible harm that we were asking people to tell us about, that trusted support was in place for pastoral care including after the interviews.

We identified NGO and iwi services that the Office of the Children’s Commissioner had previously worked with and other NGO and iwi services we thought were well placed to support this project. Their role was to work as ‘connectors’ in order to find whānau to interview. This took place over a period of three weeks between October and November 2019. We contacted approximately 30 NGOs and iwi services.⁶³ Of these, eight gave us names of whānau, who we subsequently interviewed. Four provided one whānau each, and four others provided two whānau.

The connectors were asked to approach the whānau of pēpi Māori who:

- > might be interested in being interviewed; and,
- > had a Report of Concern made about their pēpi (aged 0-3 months) between 01 October 2017 and 31 October 2018.

The original 1 October 2017 – 31 October 2018 timeframe was chosen to align with the implementation of the Oranga Tamariki Practice Standards.⁶⁴ However, when it proved challenging to recruit whānau, we extended it by three months (to 31 March 2019). We also retained the flexibility to talk to whānau whose pēpi had Reports of Concern before or after those dates.

⁶² Earl Babbie *The practice of social research*. (9th Edition. Stamford: Wadsworth / Thomson Learning, 2001).

⁶³ We contacted NGOs and iwi services based on the following:

- most already had a relationship with our Office, therefore trust had been established.
- to ensure we had sufficient geographical cover, including rural, urban and provincial living.
- they would be able to provide ongoing pastoral care for staff involved with us, as well as whānau.

⁶⁴ See <https://practice.orangatamariki.govt.nz/practice-standards/>

Based on external advice, we proceeded on the basis that 12 to 14 whānau (aiming for 36-48 people) were sufficient for this qualitative element of the report. This number would allow us to identify key themes for change which we would further explore in stage two of this review.^{65 66}

We gathered demographic and other information from those we interviewed

We gathered demographic information by:⁶⁷

- > Seeking information from the connector prior to the interview. In some cases, connectors were unable to provide accurate information because they hadn't been involved at the time of the Report of Concern and/or hadn't been fully informed by Child, Youth and Family or Oranga Tamariki.
- > Requesting information on consent forms. In some cases, whānau chose to provide only a few details, or did not have or know all of the information that was being requested.
- > Asking questions during the interview to clarify timeframes and statutory processes. In many cases, key information, particularly about Child, Youth and Family or Oranga Tamariki processes, was not known to the interview participants.

We interviewed the whānau of 13 pēpi

We conducted interviews with 12 whānau. A total of 36 people participated in the interviews. These included:

- > eleven mums;
- > six grandmothers;
- > two siblings;
- > one father;
- > one grandfather;
- > eleven whānau support people; and,
- > a small number of young children were also present at the interviews but did not share their views.

We spoke with eight whānau whose pēpi had a Report of Concern made about them to Oranga Tamariki between 1 April 2017 and 30 June 2019.⁶⁸

⁶⁵ This first stage of the review was intended to identify areas for further exploration in the second stage. The number of pēpi we heard about was chosen in order to surface common themes across a range of whānau experiences. We are confident this was achieved. We have also sought external advice to confirm this number is appropriate for these purposes.

⁶⁶ As part of stage 2, 65 further interviews from a range of different perspectives have been completed.

⁶⁷ The type of demographic information requested included: personal details about participants and information about their involvement with Oranga Tamariki. We requested their feedback on how we could support them to engage with us during interviews most effectively, and committed to reporting back to them.

⁶⁸ Given that many whānau had not been informed of the details of the Report of Concern or when it had been made, these dates are approximate.

We included four whānau where the relevant Reports of Concern about their pēpi 0-3 months old was made to Child, Youth and Family before our anticipated timeframe.^{69 70}

All the whānau had previous or current involvement with Oranga Tamariki.

We understand that almost all the mums of the pēpi involved in this research had older children.

All but two of the whānau also had at least one child who had been involved with Child, Youth and Family prior to its disestablishment in March 2017.

We understand that the majority of all the mums had previous experience of children being removed, all by Child, Youth and Family. Sometimes the removal was of more than one child at the same time.

We interviewed whānau living in a mix of urban, provincial and rural locations, based in six regions across New Zealand. Four were in the North Island and two in the South Island.

Those whānau who wanted to share their iwi affiliation came from 10 different iwi.

The participants had received services and support from a range of sources e.g. government agencies, mainstream NGOs, Māori organisations and others not aligned to any organisation, such as whānau and friends.

The whānau had experienced different outcomes in relation to their pēpi. This included whānau whose pēpi had remained in their care, those whose pēpi had been removed and placed with whānau carers, and those who had been removed and placed with non-kin carers.

Of the 13 pēpi at the centre of these interviews:

- > eight had remained in the care of their mum or parents; and,
- > the remaining five pēpi had been removed and either placed with whānau or non-kin carers.

We heard about occasions where Oranga Tamariki had also removed an older sibling, or siblings at the same time. None of the pēpi who had been removed from their mum or parents by Oranga Tamariki had returned home at the time of interview.

⁶⁹ Upon commencing the interviews, it became apparent that in four cases the relevant Report of Concern was outside our anticipated time frame (between 1 October 2017 and 31 March 2019). We also retained the flexibility to talk to whānau whose pēpi had Reports of Concern before or after those dates). In one case, the report was made well over two years before the establishment of Oranga Tamariki. In the other three, less than two years before its establishment. In two of the cases, the pēpi was removed at birth. In two, the pēpi stayed with the mum. These were all decisions where Child, Youth and Family were involved. However, all whānau reflected on their involvement with Oranga Tamariki, as well as Child, Youth and Family during the interviews.

⁷⁰ In these four situations we continued the interview. This was in keeping with our ethical guidance. It was also in line with our commitment to the values of the Office of the Children's Commissioner - aroha, tika, pono, mātauranga. The inclusion of these four whānau provides the perspective of both previous experiences with Child Youth and Family and issues currently faced in their ongoing involvement with Oranga Tamariki. It was also consistent with the matāpono described in the "Māori Ethical Framework" (Cram F 2004, and Smith L, 1999, cited in Pōwhiri Poutama Framework – presentation by Dr Rawiri Waretini Karena 2014)

- Aroha ki te tāngata – respect for peoples.
- Kanohi kitea – the known face; face to face presentation.
- Titiro, whakarongo, kōrero – look, listen, speak.
- Manaaki tāngata – share and host people be generous.
- Kia tūpato – be cautious.
- Kaua e takahia te mana o te tāngata – don't trample on the mana of people.
- Kaua e māhaki – don't flaunt your knowledge.

Analysis process

The data from the interviews was gathered and recorded in written and audio recordings. Analysis hui were held after the interviews to identify key themes and the relationships between these themes. Once the themes had been identified, coding software was used by a small team to code the transcripts in accordance with the themes already identified. Coders then presented their findings which were distilled and used to build the themes of this report.

All data was stored on computers (including laptops) that are the property of the Office of the Children's Commissioner. Hard copies of documents were locked in secure storage.

After the key themes from the whānau interviews were compiled, the other strands of evidence were interwoven to arrive at the areas for change identified in this report. We did this independently without discussion with or input from state agencies.

This report relates to the statutory care and protection system and statutory social work practice – both Oranga Tamariki and Child Youth and Family

We heard from four whānau who had Reports of Concern which were made to Child, Youth and Family before our anticipated timeframe. Most of the whānau we spoke to had long term experiences with the statutory care and protection system – both Child, Youth and Family and Oranga Tamariki. This has necessarily influenced the breadth of this research and how it has been reported.

This report therefore relates to the statutory care and protection system and statutory social workers generally. It also includes discussion of current Oranga Tamariki practice, as these were the majority of the experiences we heard about.

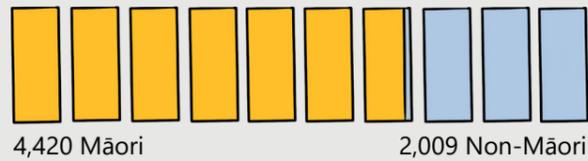


Overview of statistics, whānau themes and areas for change

STATISTICS

THERE ARE SUBSTANTIAL AND PERSISTENT INEQUITIES FOR MĀORI IN THE CARE AND PROTECTION SYSTEM

There were 6,429 children in state custody in June 2019, 4,420 of them tamariki Māori. That's 69%.



5x Pēpi Māori aged 0-3 months were taken into state custody at 5 times the rate of non-Māori babies in 2019.

ASSESSMENTS AND REMOVALS OF PĒPI MĀORI ARE HAPPENING EARLIER

Between 2 and 3 times as many decisions have been made to remove unborn pēpi Māori than non-Māori over the past 6 years, while findings of abuse have been decreasing overall.

2-3x

THE URGENCY OF DECISIONS TO TAKE BABIES INTO STATE CUSTODY HAS INCREASED FOR PĒPI MĀORI

2x The rate of urgent entries into state custody approximately doubled from 2010 to 2019 for pēpi Māori aged 0-3 months, but stayed the same for non-Māori babies aged 0-3 months.

STATE CUSTODY IS INTERGENERATIONAL



Forty-eight percent of pregnant women whose pēpi Māori were taken into state custody before birth had been in state custody themselves.

WHĀNAU THEMES

MUMS AND THEIR WHĀNAU TOLD US THINGS NEED TO CHANGE

I am a mum first

"I did everything possible to make sure that I was proving to [CYF] that I'm doing right for my unborn... it wasn't till I was halfway through labour I found out there was already an automatic uplift and then it went to sh** straight up"



The system is harmful



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

Statutory social workers have all the power and control

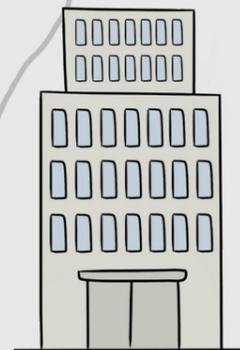
"Once you're involved, you're powerless. This is a department that's got too many powers, and even if they don't have the power, they use the threatening tactics that if you don't do what I say, you'll lose the lot."



We need good support

"... that's always been a thing for me if I'm going through this or if this social worker from OT is doing this to me, how many other mum and dads are out there going through the same thing? And only in the last month or so has OT finally kind of stepped up and that's because of the push from all my support and all my lawyers. If I didn't have the support or didn't reach out like I did I wouldn't have [name of pēpi]."

The statutory care and protection system and other agencies have hurt my whānau



"One, she was an abused wāhine, two, her mana kind of had been taken away from her, I think at this point she stood there with no mana, no confidence in herself. She didn't want to speak to anybody, she didn't trust anybody, everything that she had kind of known with her Mum and her Dad and everything had kind of all pretty much dissipated."



AREAS FOR CHANGE

1 The system needs to recognise the role of mums as te whare tangata and treat them and their pēpi with humanity

Unprofessional statutory social work practice is harming mums, whānau and pēpi

2

3 Whānau need the right support from the right people

Pēpi Māori and their whānau are experiencing racism and discrimination

4

5 The organisational culture of the statutory care and protection system needs to support parents and whānau to nurture and care for their pēpi

The system needs to work in partnership with whānau, hapū and iwi so they can exercise tino rangatiratanga

6

Areas for change

Areas for change

Using our strands of evidence (whānau views, a consideration of the Treaty of Waitangi, a statistical analysis of data, a summary of legislation and policy settings, key human rights frameworks and literature), we have identified six areas for change:

1. The system needs to recognise the role of mums as te whare tangata and treat them and their pēpi with humanity.
2. Unprofessional statutory social work practice is harming mums, whānau and pēpi.
3. Whānau need the right support from the right people.
4. Pēpi Māori and their whānau are experiencing racism and discrimination.
5. The organisational culture of the statutory care and protection system needs to support parents and whānau to nurture and care for their pēpi.
6. The system needs to work in partnership with whānau, hapū and iwi so they can exercise tino rangatiratanga.

Each of the six areas for change starts with an overview of what we heard from mums and whānau followed by selected quotes from interviews.

The consistency of negative experiences shared with us from both Child, Youth and Family and Oranga Tamariki was striking, especially given that eight of the pēpi remained with their mums and they were located in different parts of the country.

Each area for change ends with a summary of evidence from other strands of research. Questions to be explored in stage two of the review are also captured at the end of each section.

1 The system needs to recognise the role of mums as te whare tangata and treat them and their pēpi with humanity

All mums and whānau we interviewed identified that the statutory care and protection system and other agencies are not treating them with humanity and that they are not being seen in their sacred role as a mother. Mums talked about not being recognised as mothers, about how their hard life situations are not considered or treated with empathy and compassion, and how the system doesn't recognise the actions they take to change things so that they can look after their tamariki.

Many mums did not know about their rights or feel that their rights were being respected. All mums asked to be treated with humanity and to be seen and supported to care for their pēpi.

"Yeah I think there's a lot of hardened hearts... and they forget about they're actually dealing with a mum, they're dealing with children, they're dealing with whānau. It's like they forget about that."



Evidence from the views shared with us

See mums as mums

Where a pēpi had been removed, for some of these mums they felt their rights to being identified and acknowledged as the mother were taken from them. We heard about how all mums still wanted to be heard and to have a voice in decision-making for their pēpi post-removal.

Many of the mums we spoke with described situations where they were completely excluded from the life of their pēpi if they were removed. The removal of pēpi often came with no support or follow up for mum, which made it hard for them. One support person shared her broader view about the lack of support for mums when pēpi are removed by Oranga Tamariki.

"That's one of the things that I see, from my perspective that OT just drops the birth mum like a hotcake. So you've done wrong and you're banished... what are we doing about mum? What are we doing to support her?"

This experience was shared by mums who had experience of removals by Child, Youth and Family.

"... there was no support at all. Besides my midwife, there was no support for me whatsoever."

"Cos I just know that if any other mums are treated like that then there's no hope of any reconnection or no hope of I think, they would lose hope and lose who they are as a person and as a mother."

Despite the challenges that mums told us they already had in their lives, they felt they needed to do everything they could to keep going to continue parenting their pēpi.

Mums spoke about being committed to doing whatever they could for their pēpi and wanting to know that they were still able to give something to their pēpi when Oranga Tamariki removed them from their care.

"Yeah I had asked them, cos I was still breastfeeding my son and I had asked so what do I do? they were like 'oh well you can express it, do whatever we're taking him' and I was like OK."

This experience had also occurred for mums under Child, Youth and Family and Oranga Tamariki. As one mum told us:

"I used to fill those hospital bottles up with breast milk, freeze them and they would be labelled with [baby] name and the dates, how many mls and drop them off to [site office]... and that's how we'd do it... I was determined."

One mum talked about the moment during her pregnancy in which she found out that her pēpi would be removed by Child, Youth and Family from her care and the fear she had of this happening before having a chance to appear in court. She said she felt if she appeared in court, she would have a chance to be heard.

"... in that moment it was just close your legs you know, cos you can't have your baby, you need to be in the courts..."

Many of the mums talked about how hard it was to see someone else providing care to their pēpi. Even for mums who had kept their pēpi in their care, the threat of losing them and of their pēpi being placed in someone else's care was a threat to them in their role as a mother.

"I had nightmares about it... Yeah I'm still freaked about it cause I don't want him to get taken off me cause I couldn't imagine him in someone else's care and I'd think well they wouldn't do a good job of protecting him more than me."

Make decisions with empathy

All mums interviewed were having to deal with hard, long-standing situations. For many mums, there had been intergenerational involvement with the state in their whānau. Mums told us about their experiences of people being violent towards them. They talked about the impact that drugs and alcohol were having on them and their whānau, health challenges, both physical and mental, and the devastating impact that bereavements had on them and their ability to cope. We heard about the lack of good support by the state at these tough times.

Some mums felt like they were sometimes punished because of the actions of others. We heard about times when mums had their pēpi removed from them and still not returned to their care because they had been victims of domestic violence. These mums had not been offered any follow up support, and had been left isolated, with no hope of their tamariki returning. One mum shared how she felt as though Child, Youth and Family had not recognised her as a victim of family violence and how she felt punished for it.

"My kids got taken for domestic violence and I was made to be the perpetrator when I was the victim."

We heard about how another mum, whose pēpi was removed by Oranga Tamariki, had left an abusive relationship but is unable to maintain a friendship between her and the dad of pēpi. She still did not have her pēpi in her care at the time of the interview.

“Even being able to keep a friendship between her [mum of pēpi] and [dad of pēpi] as parents of children together is not possible because of Oranga Tamariki and the things that they claim, the history that they’ve had together, they can’t even be friends for their children because if they are perceived to be together...”

Some of the parents we spoke to recognised they had made mistakes in the past and had worked really hard to be there for their tamariki, and to prove to the state they were fit to look after their tamariki. These parents wanted the state to recognise its past mistakes too, and to change the way it acted in the lives of whānau.

Some mums told us about how they recognised they needed help to get well themselves and supported their pēpi being placed temporarily with other carers. However, we heard from whānau that even when they supported the decision of removal, they felt there was no need for the removal to be carried out in the way that it was. The whānau we spoke with could all give examples of interactions with both Oranga Tamariki and Child Youth and Family that had not worked well for them and had caused harm to them and their pēpi.

“I was just devastated... I was just feeling like it was unfair and why didn’t they give me any warning and they knew I was in rehab and they’ve known I’ve been trying to make a change... why couldn’t they tell me before this and there were 100 things going on and I just felt broken and didn’t understand.”

We heard about some mums being told their pēpi was going to be removed while in labour and having statutory social workers stationed in the room while they gave birth. Mums told us they had been denied skin-to-skin contact after the birth of their pēpi, the opportunity to feed their pēpi colostrum and being discouraged from hugging their tamariki. One mum had been told not to tell her tamariki she loved them.

Mums spoke about not being able to breastfeed, and the impact that has on a pēpi.

“I think part of that advice we could give for Oranga Tamariki, so all whānau can talk about the trauma of kids being uplifted but nobody back tracks to say hey, what is Oranga Tamariki going to do for our baby that was breastfed now on a bottle.”

One whānau support person talked about observing a mum not being allowed to hug her children during a visit between mum and her children under Oranga Tamariki supervision.

“Cos I remember I went with [mum] to one of the visits, she wasn’t allowed to hug her children.”

One mum reflected on her experience of having Child, Youth and Family immediately remove her pēpi at birth, even though she had previously agreed to a whānau placement. Despite her agreement, she did not get the time she wanted with her pēpi, before pēpi went to whānau.

“I gave birth to baby they took him out of the room and into somewhere else. I didn’t even get to see him... she [midwife] was asking for baby to stay with me and she told them he needs the first drop of milk and all that but they just gave him a bottle and when they all left that was it, the only person I had there was my dad.”

We heard about the brutality of removals for all involved. Mums said statutory social workers did not consider the impact on mums of seeing their tamariki, including their pēpi, distressed, as this quote about the removal of children by Oranga Tamariki illustrates.

“No they didn’t give no reason [why they came in the middle of the night] just, yeah came turned up... just came and took them all and placed them in the van. They were just screaming, yeah they just you know were like crying and didn’t know what was happening. One boy was frightened and trying to hide and was like I’m not going with them, I’m not going with them.”

Many parents were not given any information at the time their pēpi was removed. We heard about situations both under Child, Youth and Family and Oranga Tamariki, where police officers arrived at homes unannounced to remove pēpi and tamariki and splitting siblings up among non-kin placements. This included stories of having multiple police cars arrive to support statutory social workers to undertake removals. We heard about examples of this from mums and whānau who had experienced their pēpi and other children being removed both under Child, Youth and Family and Oranga Tamariki.

“Well yeah, they just pretty much turned up in the middle of the night while it was dark, kids were getting ready to go to bed and yeah I walked out the front door to [5-10]⁷¹ Police officers and [1-5] Oranga Tamariki workers, well I didn’t really know who they were, like they didn’t say anything... the Police officer just handed me a safety paper and said we’re here to take these [5-10] children...”

“Yeah. And when they [Child, Youth and Family] showed up to my house to uplift my children, we’re talking about not just the normal Police, we’re talking about an armed squad defence that showed up at my house. So, when you have about [13-18] police cars full packed with Police officers, you know with these suits on, the stab proof vest, you know what does that portray to my neighbours...”

One mum told us, in respect of a Child, Youth and Family removal, about how she had tried to make sure they had everything they needed even under emotional and hard circumstances.

“She said she would give me some time to do that and say goodbye to the kids. I think I had about 20 minutes and I ended up making her take, oh the blankets and she said no, no we don’t need the blankets... The car seats that she had in the car to take my daughter in wasn’t in properly, so I had to fix that... yeah. I just started nit-picking at things and I know that the man got emotional, he was crying, there was tears in his eyes, he was trying to keep composed.”

Recognise that people change

Some of the parents we heard from reflected on their past and their mistakes. They shared how they had worked really hard to be there for their tamariki, and to prove to Child, Youth and Family and Oranga Tamariki they were fit to look after them.

All mums and whānau wanted statutory social workers to recognise that people change.

“Me getting hapū was the trigger for me to stop cause I had a problem with drinking... after [person] died. But after my children were uplifted drinking wasn’t enough so I kind of lent towards drugs and I started doing meth but as soon as I found out I was pregnant I did everything I could to stop depending on it.”

⁷¹ Where square brackets with numbers are used, the exact number has been removed, and replaced with an appropriate number range in order to ensure anonymity.

For mums that had acknowledged their previous actions and made changes, not being recognised for how much they had changed was especially difficult. One mum, whose baby remained in her care, described how Oranga Tamariki has taken a deficit approach and not recognised the work she has done to create a safe home for her pēpi.

“Y’know a baby is best and going to thrive better with their own family and not wonder ‘did they want me?’ but Oranga Tamariki see it as a deficit, they don’t want to see what is important to them or how much work has been done.”

Some mums reflected on previous actions which led to past Child, Youth and Family decision-making now currently impacting the practice of Oranga Tamariki social workers and their decisions, without any regard for the changes they had made. One mum described her experience of this:

“... so right up to today I still don’t have care of him and I’m two years clean off of methamphetamine and I’m no longer with their father anymore and I’m not in that domestic violence situation. I’ve had no visitation rights, nothing. There’s been no checks to see if he’s in a safe environment or anything.”

Many mums talked about how they kept going for their tamariki, to get well, and to prove to Oranga Tamariki that they were able to care for their tamariki.

“But yeah, when the cops had come to uplift him they just said, ‘don’t cry about it, like most parents go and get a lawyer’, that’s what I done. He got uplifted Friday, I went in on Monday and got me a lawyer and was fighting for him [date] until we won him back in [date]. Yeah, it took us two years, but it was worth it.”

Many whānau talked about feeling helpless as the ‘goal posts’ continued to move, even when they did exactly what Child, Youth and Family and Oranga Tamariki social workers had told them to do. This included completion of courses, the required paperwork that was needed for placements or access, and the terms of which parents and whānau could see their pēpi.

“... I’m so blessed I haven’t picked up the pipe again. But I’ve been through a hell of a lot and it really frustrates me and makes me angry that everything’s falling on deaf ears. And I’m doing all of this good stuff, passing all of these drug tests and it’s just not helping.”

Respect people’s rights

Many whānau were not aware of their rights and had not been informed of them. Some whānau knew they had rights, but those rights were not being respected. For example, one mum talked about knowing that there is a requirement for a six-monthly review after an agreed plan is made for the placement of a pēpi in whānau care. In her case, the review didn’t happen and she felt she could not raise this for fear of disturbing the peace with whānau and jeopardising contact with her pēpi.

Whānau expressed frustration about not knowing what they could and could not question when it came to decisions made by Oranga Tamariki. They talked about being told different information by different Oranga Tamariki social workers. Some whānau also talked about rights in relation to Police involvement.

“Her last experience was when this one [referring to pēpi] had the bruises and look, the Police, even the Police violated the girl’s rights by questioning her without a lawyer present... Now she had a right to have a support person with her whilst she was being interviewed.”

Some whānau knew their rights and exercised them when statutory social workers showed up unannounced. Child, Youth and Family and Oranga Tamariki sometimes used this against whānau and saw it as non-compliance.

“Ok, when they found out I was pregnant again that’s when they started jumping back on table and we started seeing them again randomly... they showed up out of nowhere and randomly knocked on our door, my front door and said, ‘we heard you’re hapū, we just want to know’, and I’ll be honest I just told them to get off my property because I didn’t want them showing up unexpected, they weren’t invited, they’ve done this throughout since my children have been in their care, showing up random without being invited.”



Supporting evidence from other strands of research

The standards expected from a statutory care and protection system include respecting people’s rights and acting with empathy. All people in New Zealand have human rights. Relevant to this review are the unique rights of pēpi, tamariki, māāmā and Māori as tāngata whenua. These rights are articulated in the Treaty of Waitangi, the New Zealand Bill of Rights Act and a number of human rights conventions that New Zealand is a state party to, including, but not limited to, the Children’s Convention, the Convention on the Elimination of All Forms of Discrimination Against Women, and the United Nations Declaration on the Rights of Indigenous Peoples. A summary of the rights framework that underpins this review is in Appendix 3.

The purposes and principles of the Oranga Tamariki Act 1989 include commitments to the Treaty of Waitangi and the Children’s Convention. Oranga Tamariki organisational values, *The Oranga Tamariki Way*, released in 2017, include a statement that, “We respect the mana of people”.⁷² Oranga Tamariki has committed to honouring that statement.

For Māori, a wahine is considered tapu during pregnancy and childbirth.⁷³ The practice of removing a newborn pēpi from their whānau does not respect mātauranga Māori concepts such as whakapapa and whanaungatanga. Removing a pēpi immediately at birth does not meet their health needs, including having colostrum, breastfeeding and skin-to-skin contact with their mother, which evidence shows is important. It also contradicts a te ao Māori view of mana wahine as te whare tangata, a role that is sacred.

Stories that mums shared with us about government responses to family violence, poverty, and drug and alcohol addiction suggest government commitments to treating people with humanity are not being honoured. This is echoed in many other reports. For example, in 2019, the Welfare Expert Advisory Group heard from New Zealanders that, “... dignity and respect are missing. People want to see more compassion and empathy. They want those making decisions to understand their backgrounds, experiences and culture, current situation and constraints.”⁷⁴

In stage two of this review, we will explore how the system, practice and settings can ensure Māori are treated with humanity and respect in the statutory care and protection system.

⁷² See <https://www.orangatamariki.govt.nz/about-us/overview/>

⁷³ Dianne Wepa and Jean Te Huia “Cultural safety and the birth culture of Māori” (2006) 18 Social Work Review 26.

⁷⁴ Cindy Kiro, Innes Asher, Kay Brereton, Huhanna Hickey, Trevor McGlinchy, Ganesh Nana, Phil O’Reilly, Robert Reid, Latayvia Tualasea Tautai and Charles Waldegrave *Whakamana Tangata: Restoring Dignity to Social Security in New Zealand* (Welfare Expert Advisory Group, 2019) .p57

2 Unprofessional statutory social work practice is harming mums, whānau and pēpi

Mums and whānau shared stories of poor treatment and unprofessional practice by Oranga Tamariki social workers and previous Child, Youth and Family social workers. They talked about not being told what was happening, experiencing threats and coercion, not having confidentiality respected, and being lied to. They talked about how their Oranga Tamariki and previous Child, Youth and Family social workers did not have any regard for the impact decisions might have. We heard about how whānau feel as though Oranga Tamariki social workers have all the power and control.



Evidence from the views shared with us

Statutory social workers have all the power and control

Many mums and whānau talked about how much power both previous Child, Youth and Family social workers have had and Oranga Tamariki social workers have. They told us about how they make all the decisions, often without statutory social workers knowing the mums, and without finding out about the actual situation. Many of the mums felt judged by their statutory social worker. One mum described what we heard from many when she spoke about how much power her Oranga Tamariki social worker has:

“... because the system already had my kids and I knew I had to wrap a strong support network around me in case they tried, and trust me, they will try any way man. Any way, shape or form to try and get at your kids and they’re really good at it and that’s what scares me the most. You know that’s frightening what they’re capable of and the amount of power they have they shouldn’t have that much power. You know because the power that they have they abuse it, you know.”

Most of the mums and whānau talked about how their previous Child, Youth and Family social worker, or Oranga Tamariki social worker often had made up their mind about a situation without talking with them or communicating their decisions to the whānau.

One whānau member gave us an example of the lack of communication that she had seen and experienced.

“That day I rang them and said I can go for the children now and they said oh no they’ve already been and transitioned and moved to the next family. They hadn’t even told her the kids were going into the care of another family.”

Mums said their Oranga Tamariki social worker often expressed power and control through deciding how, when and where parents were able to see the siblings of the pēpi. We heard of many instances where mums were given excuses and brushed off by Oranga Tamariki social workers. This experience was shared by whānau who also had involvement with Child, Youth and Family.

“I was ringing them asking them when my access days were. I was getting excuses saying that the social worker wasn’t there, she was on annual leave or she was sick.”

One mum, who had kept pēpi in her care and had avoided removal, broke down as she told us about the months she spent leading up to the birth of her daughter, and then the days she spent in hospital not knowing if she was going to be able to keep her pēpi in her care. She talked about the impact that the uncertainty had on her relationship with pēpi.

“After the pregnancy I think it’s really affected mine and her relationship to this day like I’m too scared to get attached to her. I have this bond and connection to her but there’s part of me that’s just scared...even now like it’s not over at any moment they could just take her and it’s hard for her cause it’s not her fault.”

The threat of Child, Youth and Family and Oranga Tamariki intervening in the lives of whānau did not go away when a decision was made that the pēpi would stay with their mum. We heard from many of the mums about the impact of threats from Child, Youth and Family and Oranga Tamariki and the extremes that they go to, to keep their pēpi. We also heard about the ongoing impact of the experiences had by the mums and whānau of Child, Youth and Family and Oranga Tamariki and how they still fear Oranga Tamariki now.

“Once they take your first child, every child after that... if you’ve had one child taken off you by Oranga Tamariki, then they’ll be involved automatically... That’s why I was scared when I had baby girl. Yeah, that’s the thing it makes for whānau it makes them think, ‘oh I’ve got to get out of here’. It’ll force us in to the bush to live off the bush, you know.”

Statutory social workers are not trusted

Mums told us they don’t trust their Oranga Tamariki social worker. Mums shared examples of their Oranga Tamariki social workers lying to them and breaking confidentiality. Mums who had experiences with Oranga Tamariki gave examples where their social worker had either told them they would do one thing and then did something else or had misled them. Whānau talked about knowing that their Oranga Tamariki social worker had given them different information to the information they had given to the caregivers of pēpi. They also spoke about how Oranga Tamariki social workers often changed plans and did not communicate these changes to them. Mums felt blamed for not answering phone calls from their Oranga Tamariki social worker when they hadn’t received any missed calls or emails. Mums who talked about their experiences with Child, Youth and Family shared similar experiences.

“They [Oranga Tamariki social worker] were saying I wasn’t communicating with them which is true that I wasn’t but my [community] social worker was. Because I didn’t trust them.”

One Mum talked about an experience where she was asked to sign documents, thinking she was signing one thing, only to learn that she was signing a temporary care agreement, giving custody of her pēpi to Oranga Tamariki. Other mums with similar experiences talked about how decisions were described to them as temporary but since then have never been reviewed.

“... I had nowhere else to go so I rung OT asked them if me and the kids could stay with the kid’s dad. The social worker said yes just for one night, just to be told the next day me and the dad had to go down to the office and had to sign the kids over. I thought 72 hours it was to get a house for the kids not realising it was actually to be taken, yeah.”

Mums and whānau talked about how Oranga Tamariki social workers said they had exhausted all the options for whānau placements when they hadn’t talked to the whānau at all. Whānau also said that Oranga Tamariki and previous Child, Youth and Family social workers deceived or misled others to achieve the outcome they wanted.

“Being put with a Pākehā family... I asked if they can be put with my family, with the kid’s dad’s family. They’ve lied and said that they’ve asked both of our families which have been untrue. They said they got a hold of my Māori side with the whānau. They didn’t even know my kids were with OT. I’ve had a couple of my aunts offer to take both my kids, OT said no.”

Some mums told us about how they received hard news in open spaces and felt as though their statutory social workers breached their privacy. One mum reflected on how her Oranga Tamariki social worker had shared information about her with another agency.

“And she had also spoken to some stranger at Work and Income about my situation and I was like ‘that’s breaking my confidentiality.’”

Some whānau shared with us their experiences of trying to act on their privacy being breached, but with no follow up from Child, Youth and Family about the outcome.

“The social worker was breaking a lot of confidentiality, privacy and stuff like that and we had made a complaint... I filled out a Child, Youth and Family complaint procedure... some guy from the [site] office ringing me saying that they would get back in touch with me about the complaint but never heard anything more of it other than they changed the social workers.”

Statutory social workers act unprofessionally

Mums and whānau gave examples where previous Child, Youth and Family social workers and Oranga Tamariki social workers used threats, manipulation, judged whānau, didn’t tell them what was happening and mucked them around.

Mums told us about being laughed at by Oranga Tamariki social workers. Mums shared the worries and feelings they had about Oranga Tamariki taking words they had used and manipulating these to use against them. For one mum, the fact that her Oranga Tamariki social worker hadn’t lied was something positive. When asked about what her Oranga Tamariki social worker had done to help her, she replied:

“I say yes because at some point, they would’ve had to realise that there was no reason for them to take my baby away. But because of all of that distrust that I had with them like I thought when [Oranga Tamariki social worker] came over for a house check, I honestly thought that she’d make up lies. But thank goodness she didn’t, so I guess that’s something good.”

Some whānau felt completely left in the dark and not informed about what was happening with their pēpi. For one mum, whose pēpi remained in her care, lack of communication from her Oranga Tamariki social worker meant that she was held in hospital after giving birth to her pēpi with no communication from her Oranga Tamariki social worker and not knowing what was going to happen.

“No, nobody from OT showed up. I rang my [community] social worker and she was trying to get in touch with OT to know what their plans were. We had met all of their requirements, but we couldn’t get in touch with them and no one came in.”

Whānau didn’t feel cared for by their previous Child, Youth and Family or current Oranga Tamariki social workers. Whānau and their support people talked about the hard things they had been through and that their Child, Youth and Family or Oranga Tamariki social worker had not shown any support or empathy for them. In one case, we heard about a situation where an Oranga Tamariki social worker had told a mum to ‘just get over it’.

“I went through depression, went suicidal a few times, we even raised a concern to OT, they told me to suck it up and deal with it.”

Statutory social workers use threats, coercion and surveillance

Mums and whānau talked about previous Child, Youth and Family and Oranga Tamariki social workers using the information they gathered against them through threats or coercion. One mum who had experience with Child, Youth and Family and Oranga Tamariki, shared a threat that she had received from her Child, Youth and Family social worker that continues to influence how she mothers today.

“She [CYF social worker] told me that if I was ever to have any other children that they’d be taken straight away and I would never be a mum again.”

A whānau member shared an experience that the mum of a pēpi had with her Oranga Tamariki social worker.

“So from first trimester she was under stress cos [Oranga Tamariki social worker] kept telling her ‘oh well if you don’t prove to me you’ve changed, I’m taking your baby.’ We asked her ‘what does she have to prove?’, ‘oh she just has to prove it.’ Didn’t give any point of reference of saying this is what changes I need to see, she just said you just have to prove it to me.”

Mums felt watched by their statutory social workers. They talked about how their Oranga Tamariki social worker always had eyes on them, but not in a positive or supportive way. The extent of the surveillance included the use of social media. One whānau felt that this is how Child, Youth and Family found out that the mum was in labour. The Child, Youth and Family social workers then turned up to the hospital within minutes of pēpi being born.

Another mum, whose pēpi remained in her care, talked about how she had been asked by her Oranga Tamariki social worker not to post about Oranga Tamariki on social media. This was described as a threatening bully tactic.

“[Oranga Tamariki social worker] showed me it and she said, [mums name], can you stop writing about OT on your [social media].... Or they can use it against me in the courtrooms in the Family Court. That’s a threatening bully tactic.”

Some mums felt as though their Oranga Tamariki and previous Child, Youth and Family social workers always had the upper hand and had used court as a threat.

“Cos when I say ‘no’ they just throw it in my face like, ‘well you can say no, we’ll just go to court and take them from you.’”

Some mums talked about the decisions they felt forced to make. One mum told us about her past experience with a previous Child, Youth and Family social worker that happened before the establishment of Oranga Tamariki. She told us about being in her first trimester of pregnancy and being told that in order to keep her other tamariki, she would need to have an abortion. She also said she was made to go on contraceptives after the abortion. This is an example of the previous experiences that whānau have had with the statutory care and protection system. These experiences influence how some mums feel now about current Oranga Tamariki social workers.

One mum told us about how she had felt like her previous Child, Youth and Family social worker was using emotional manipulation. Although, for this mum, she was dealing with Child, Youth and Family at the time, her experiences of Child, Youth and Family and continued involvement with Oranga Tamariki has negatively impacted her perception of the care and protection system in general. Her reflections below highlight this.

“The lies made it the hardest, the emotional war play they used against me and then having it told at the end, ‘well we were trying to get you back on drugs’. Who does that? I was pregnant with a baby, there was a baby in me and you were pushing me to go and inject heroin into my body. That is not okay and you are CYFs, you are meant to protect babies but you would have rather me being [weeks pregnant] and sticking a needle in my vein. And hurting a baby who hadn’t had it, it could have been devastating, we could have broken. How dare any organisation put that on any addict whether they are in recovery or not. That is not okay.”



Supporting evidence from other strands of research

Much of the statutory social work practice that whānau said they have experienced, and are currently experiencing, raises questions about the quality of social work practice. Minimum acceptable standards of social work practice are set out in the Code of Conduct, Core Competence Standards and Oranga Tamariki Practice Standards.^{75 76} Low standards of social work practice, and the need for significant improvements, have been identified elsewhere and regularly reported.⁷⁷

These experiences are particularly concerning when they are seen alongside the national trends in data towards earlier removal. The rate of urgent entries into care approximately doubled from 2010 to 2019 for pēpi Māori aged 0-3 months but stayed the same for non-Māori babies aged 0-3 months. For some of the whānau we heard from, involvement during pregnancy meant the use of without notice removals of pēpi at birth without access to adequate supports before or after birth.

Whānau experiences show the minimum standards of social work practice are not being met and raise concerns that critical factors for wellbeing – such as the connection between pēpi and their whānau, hapū, iwi and whakapapa – are not being considered in current social work practice. Whānau-oriented approaches that demonstrate a wider understanding of safety and wellbeing have been shown to be effective in supporting whānau to care for their pēpi.⁷⁸

In stage two of this review, we will explore the questions raised about social work practice and drivers of social work decisions.

⁷⁵ Social Workers Registration Board Kahui Whakamana Tauwhiro. Code of Conduct. (2020 <https://swrb.govt.nz/public-and-employers/code-of-conduct/>) and *Core Competence Standards*. (2020 <https://swrb.govt.nz/social-workers/competence/core-competence-standards/>)

⁷⁶ Oranga Tamariki – Oranga Tamariki for Children, *Practice Standards* <https://practice.orangatamariki.govt.nz/practice-standards/>

⁷⁷ Office of the Children’s Commissioner State of Care 2015 (2015). <https://www.occ.org.nz/assets/Publications/OCC-State-of-Care-2015-2.pdf>

⁷⁸ Whānau Ora Review Panel Tipu Matoro ki te Ao – Final Report to the Minister for Whānau Ora (2018) <https://www.tpk.govt.nz/docs/tpk-wo-review-2019.pdf>

3

Whānau need the right support from the right people

Support is critical and whānau told us they did not get the support they needed. Whānau said that services from the previous Child, Youth and Family and current Oranga Tamariki are often absent and are not supportive. Whānau said that when they do experience good support, it can make all the difference.

The types of supports or programmes that mums accessed were often driven by what professionals (like social workers and health care providers) referred them to, rather than what they knew they needed. Whānau know what good support looks like and want to be listened to about what they need. Some mums tried to access support they felt they needed but faced barriers in being able to do so. When mums and their supporters tried to contact Oranga Tamariki to seek their help, the services they provided were not always helpful.



Evidence from the views shared with us

Good support makes all the difference

Mums told us about wanting support. Support for them made the biggest difference when it was what they needed, was given by a trusted person and came at the right time. Often, the types of support that mums were given by Oranga Tamariki was driven by what the professionals thought they needed, rather than what the mums themselves knew they needed.

Good support for mums and whānau came from whānau and trusted professionals. They said when people advocated for them and were able to deal with other professionals on their behalf that this was helpful.

Some mums talked about having someone available so they could learn tangible skills to help with parenting and creating a safe environment for their pēpi. For this to happen, it was critical that the professional was trusted by the mum and whānau.

“They made me more confident as a parent... there was a staff member there and they just kind of helped us with being consistent with time out and being consistent with them sitting up at the table to eat and being consistent with bedtimes... they gave us strategies on cleaning.”

Whānau shared that good support often came from community social workers and midwives. The relationship between mum and these professionals had often existed prior to pēpi. Some mums said that it was these professionals that really made the difference between keeping pēpi or not.

“They would’ve removed [baby] straight away and it was just lucky that I had [name] as my [community] social worker. Because if I didn’t have her as my social worker I would’ve ended up losing [baby].”

While whānau we spoke with accessed supports from a range of providers, for most mums they were more trusting of, and felt better supported and understood by Māori providers.

“Go to your whānau and seek Māori services in your iwi. Trust in that because you’ll get more of a result than you’re looking for in that than you will with the mainstream services.”

Being able to get to know the professionals was an important connection for mums and whānau. This went a long way in developing trust between the mum and the professional and mums being able to feel like they can be open and honest. One mum talked about her community social worker, and why she was able to trust her.

“I was able to trust her because... we just connected, I just knew I could trust her. I knew she had these protocols that she had to uphold because of her job but I just feel like when I walked this journey I just wanted to be open and honest about everything and she just never judged me. She knew I had a past and I acknowledged that I made some pretty stupid things so she made me feel comfortable... She’s Māori and half Pākehā... I think that played a part in it because that’s what I mean by that connection....”

Whānau know what good support looks like

When mums and people supporting them tried to contact Oranga Tamariki for help, the services that were provided were not always helpful and, at times, made mums feel like they were being unfairly questioned about their knowledge of their own pēpi. When asked to provide examples of good statutory social work practice, few whānau were able to do so.

Some mums said when they tried to get help for themselves, and when they felt ready and willing to accept help, that it was hard to get support from Oranga Tamariki even when their baby remained in their care.

“They had told me that Oranga Tamariki weren’t going to fund this programme and at that time I thought this was the only way to get help... I was like why can’t you help and they just kept referring me to another person and it just kept going in a circle.”

It was important for all mums and whānau that the people they were working with were honest and transparent with them. This helped the mums to engage better and know whether or not they could trust the person that they were working with.

“... when [CYF social worker] came onto the case she didn’t give me false hope or nothing. She was just straight to the point, you know... She was more straight up with me, not giving me false hope, she was about the girls.”

Mums told us about some examples where other agencies were providing support by doing all they could. One mum talked about how hospital staff supporting her in labour avoided responding to questions from statutory social workers over the phone about whether she was present in the birthing unit. They did this to buy time so that the mum could give birth without statutory social workers present.

Mums felt most involved in decisions that were made for their pēpi when the person they were working with was responsive, mum’s voice was being heard, and she was kept informed about what was happening. Having a transparent decision-making process was also critical for mums.

Lack of support has negative impacts

For all mums, being able to come to terms with the fact that their pēpi had been removed or could be removed was difficult and impacted negatively on them and their whānau. The threat of having their pēpi removed was the cause of other hard things that took place in their lives.

“I still hadn’t processed everything and I went a bit wayward... I didn’t have anywhere to go and I didn’t want to leave the kids, like as such lose sight of them. I was just in a real bad state of mind, like I had no real true support.”

We heard from whānau who had stepped in to support mums due to the absence of support from the previous Child, Youth and Family and now currently Oranga Tamariki and other agencies. They themselves had fears that they would be affected by trying to help.

“They haven’t been supportive of [mum’s name] and I’m scared now that because I’m her only support, it may stop me from having my two mokopuna, that were promised they would come back to me at the review hearing.”

We heard about mums not getting any type of support after having their pēpi removed to help with the impacts that the process of removals had on them. Mums told us about the lengths they went to, to access support. One mum told us about how she had shoplifted so that she could access help in prison. This felt to her like the only way of getting the support she needed.

Many of the mums we spoke with felt that the previous Child, Youth and Family and now current Oranga Tamariki are not concerned about what the impacts would be of removing their pēpi from them. Even when a pēpi was placed into whānau care, we heard there was still harm caused to the mum.

We heard from mums and whānau about the services that Child, Youth and Family and Oranga Tamariki had provided and how these had not been helpful.



Supporting evidence from other strands of research

For Māori, when a child is born they are born into an extended whānau concept rather than an immediate family concept.⁷⁹ This means the supports that biological parents may need to raise their pēpi are often already there. When these whānau structures are damaged or disjointed, additional support for whānau is needed. Today, many whānau have been disconnected from their traditional support networks, causing disruption to traditional and collective child-rearing values and practices, often having devastating effects on them and their tamariki.⁸⁰

Services and supports need to uphold tikanga and Māori values and principles, including whakapapa and an understanding of the importance of te whare tangata. A tikanga Māori approach sees the pēpi as mokopuna within the context of their whakapapa and supports practices that focus on the long-term wellbeing of the pēpi and their whānau, hapū and iwi.

Examples of strength-based models that are grounded in tikanga Māori and are designed for and by Māori demonstrate how supports and services can be carried out in a way that enhances pēpi and whānau wellbeing. Models such as Whānau Ora,⁸¹ Te Kohanga Reo,⁸² and Mātua Whāngai,⁸³ are examples of successful approaches that can help inform a statutory care and protection system that respects te whare tangata and the role of whānau and whakapapa in te ao Māori.

⁷⁹ Leonie Pihama, Naomi Simmonds and Waikaremoana Waitoki Te Taonga O Taku Ngākau (Te Kotahi Research Institute, The University of Waikato, 2019).

⁸⁰ Ibid.

⁸¹ Whānau Ora became government policy November 2002 and launched in 2010.

⁸² Te Kohanga Reo Movement established in April 1982.

⁸³ Mātua Whāngai, established in March 1983 by the Department of Māori Affairs and Social Welfare.

Whānau views on what good support is can be described in te ao Māori as mātāpono (principles). In fact, the values in the Māori Ethical Framework which informed this report⁸⁴ were common features of those practitioners and services that were providing good support to whānau. These values include aroha ki te tāngata (respect for peoples), kanohi kitea (the known face; face to face presentation), titiro, whakarongo, kōrero (look, listen, speak), manaaki tāngata (share and host people be generous), kia tūpato (be cautious), kaua e takahia te mana o te tāngata (don't trample on the mana of people), and kaua e māhaki (don't flaunt your knowledge).

As well as having common principles and values that align with te ao Māori, good support for Māori mums and their whānau aligns with the rights of pēpi and whānau as articulated in the Treaty of Waitangi, the United Nations Declaration on the Rights of Indigenous People and the Children's Convention. For example, Article 20 of the Children's Convention places an obligation on the state to take a child's ethnic, religious, cultural and linguistic background into account when considering alternative care arrangements. See Appendix 3 for more information.

In stage two of this review, we will explore what changes need to happen to ensure that parents and whānau receive and can access the right support and services.

⁸⁴ Kataraina Pipi, Fiona Cram, Rene Hawke, Sharon Hawke, Te Miringa Huriwai, Tania Matakī, Moe Milne, Karen Morgan, Huhana Tuhaka and Colleen Tuuta, "A research ethic for studying Māori and iwi provider success" (2004) Journal of Social Policy of New Zealand - He Puna Whakaaro, 23, 141-153 and Linda Tuhiwai Smith *Decolonizing Methodologies* (University of Otago Press, 1999) cited in Rawiri Waretini-Karena "Pōwhiri Poutama Framework 2014: Applying Culturally safe practice in in Māori/Counselling, Social work, Mental Health & Social Services" (2014).

4 Pēpi Māori and their whānau are experiencing racism and discrimination

The experiences shared by whānau of racism have been previously described as 'personal racism, cultural racism and institutional racism'⁸⁵ and more recently described as interpersonal, institutional and structural racism. Whānau described experiences of discrimination, a disregard for tikanga Māori and a lack of understanding of what it means to be Māori by the statutory care and protection system, its social workers and the wider system of government services. We have heard about racism when whānau shared how having a certain surname changes the way Oranga Tamariki social workers approach a mum and make decisions.



Evidence from the views shared with us

Tikanga Māori is not understood or upheld

Whānau shared with us examples of how tikanga Māori was not upheld by previous Child, Youth and Family and current Oranga Tamariki social workers. We heard how much more comfortable mums felt receiving services from Māori providers. For some whānau, their experiences demonstrated a lack of respect for tikanga Māori and te ao Māori values.

"They just came over and just yeah and just kept telling us how messy the house was and kept asking why is there a mattress on the floor. Mum said haven't you been to a marae before?"

For one mum, her midwife was called about the baby being removed before she had birthed the placenta. From a te ao Māori perspective, the process of birthing the whenua is a sacred part of the mum's role.

"... being in the hospital and not even birthing the placenta and having CYFs ring your midwife while the baby... is just being born within minutes is insane."

One mum talked about her experience while she was pregnant and trying to exercise the tikanga Māori practice of not cutting her hair while pregnant. This practice was not respected by her Child, Youth and Family social worker when she was forced to take a drug test via a hair sample. This mum offered other means of providing the sample but this was not facilitated.

We heard about how process and paperwork were prioritised over whakapapa. We heard about how one pēpi had to be placed in non-kin care for six weeks directly after birth, even though the whānau had found an appropriate whānau option, because the approval paperwork had to go through before the pēpi was allowed to be with their whānau carers.

"So baby got taken from hospital... So six weeks of her life with non-kin... they were going through paperwork stuff at the time."

⁸⁵ Department of Social Welfare *Puao-Te-Ata-Tu (Daybreak)* (Government Printing Office Wellington, New Zealand, 1988).

Mums highlighted a disconnect that they felt between them and their statutory social workers where cultural understandings and practices were ignored, not known about and disregarded. Some mums took action to avoid being in situations where they felt tikanga Māori was disrespected by the care and protection system and its social workers.

“We called a whānau hui because I didn’t want a FGC, and I say that because an FGC is dangerous, you know and I’ve witnessed a lot of FGCs that don’t respect tikanga Māori eh. Its mainstream eh and that was dangerous because we didn’t really have say in there in the FGC, it was - the decisions were already made.”

Many of the mums we spoke to talked about the difference between non-Māori services and Māori services, and about how the Māori services just ‘got it’.

“Yeah, Māori services all the way... I felt the difference. You’re not going to get what you’re seeking in the mainstream services because they’re too loyal to the colonised you know colonised way of how they do things, you go back to your backyard if you’re Māori and they understand you, they will tautoko you because they know the right services to give you.”

Statutory care and protection is intergenerational

We heard from whānau about how Oranga Tamariki social workers judged them by their surname and had often already made up their minds about how well they could care for their tamariki based on their knowledge of their whānau history with the statutory care and protection system. Some whānau, who had previous experience with Child, Youth and Family, felt that decisions were based on their previous interactions with the care and protection system rather than an assessment of their current situation. They felt as though they were being pre-judged by their Oranga Tamariki social worker.

“Sometimes I feel it’s because of my last name, [surname] you know yeah they pull it up in the system, ‘yeah there goes that family again’, you know and I feel that’s got something to do with it, a stigma. Where my partners family they get to have my children, his parents get to have my children but they punish me and my family.”

The intergenerational nature of past statutory care and protection involvement by Child, Youth and Family not only impacts on decisions Oranga Tamariki social workers are making in the present, but also on how mums and whānau view and mistrust Oranga Tamariki.

Although we interviewed whānau to hear about their recent experiences with Oranga Tamariki, we also heard about other experiences that their whānau had been through with Child, Youth and Family. Sometimes it was a grandmother or grandfather talking about their experiences as parents, or their experiences with their own children. Other times it was a mum talking about her experiences as a child, or a cousin or sibling talking about their own experiences.

Whānau told us that intergenerational family dynamics were not considered by Child, Youth and Family and Oranga Tamariki social workers, and at times, were actively used as a factor against them.

“Even if the whānau had a hui in there it didn’t matter, because at the end of the day OT had their minds made up regardless of what our whānau said.”

We heard how Child, Youth and Family and Oranga Tamariki social workers did not consider the impact their decisions had on whānau relationships. Whānau said that Child, Youth and Family and Oranga Tamariki involvement often made challenging situations worse, and ruptured whānau relationships.

“We want that taonga [child’s name] to be treated in the same way he was given cause she’s [mum of child] really tight with her aunty but the system has managed to break that tightness because of that inequity of power between that relationship and there was nothing fine-tuned or agreed to besides baby going to her until she could get him back. But yeah there was a Report of Concern, a whānau hui and then nothing.”

“The worst thing they’ve done to my family is cause trauma and relationship break down.”



Supporting evidence from other strands of research

The rights of pēpi and their whānau to live free from discrimination are articulated in an array of laws and conventions including the Human Rights Act 1993, the Bill of Rights Act 1990 (Articles 19 and 20) and the Children’s Convention (Article 2).⁸⁶

We have heard that racism and ongoing colonisation are impacting pēpi and whānau. The stark inequities exposed in the statistical analysis of the care and protection system data and what we heard from whānau warrant further exploration, with a focus on the impact of structural violence created by ongoing colonisation.

The prevalence of racism toward Māori in Aotearoa is not new. Tamariki and rangatahi Māori have shared their experiences of racism and of not being treated equally in other settings.⁸⁷ Numerous reports over the last few decades have articulated the presence of racism within New Zealand society generally and social services specifically.⁸⁸ In 1988, *Puao-Te-Ata-Tu* talked about three types of racism.

“The most insidious and destructive form of racism, though, is institutional racism. It is the outcome of monocultural institutions which simply ignore and freeze out the cultures of those who do not belong to the majority. National structures are evolved which are rooted in the values, systems and viewpoints of one culture only. Participation by minorities is conditional on their subjugating their own values and systems to those of the system of the power culture.”⁸⁹

Oranga Tamariki has stated that, taken together, the *Puao-Te-Ata-Tu* report and the 2015 Expert Panel report⁹⁰ call for a commitment to deliver on the organisation’s obligations under the Treaty of Waitangi.⁹¹ The stories of racism that whānau are still currently experiencing illustrate that this commitment is not yet being fulfilled. In light of this, the recommendations in *Puao-Te-Ata-Tu* about the impact of institutional racism remain acutely relevant.

⁸⁶ New Zealand Bill of Rights Act 1990, Article 19 and 20 and the United Nations Convention on the Rights of the Child 1989, Article 2.

⁸⁷ Office of the Children’s Commissioner and New Zealand School Trustees Association *Education matters to me* (2017) <https://www.occ.org.nz/publications/reports/education-matters-to-me-key-insights/> and Office of the Children’s Commissioner and Oranga Tamariki-Ministry for Children *What Makes a Good Life?* (2019) <https://www.occ.org.nz/publications/reports/what-makes-a-good-life/>

⁸⁸ Ministry of Justice Inaia Tonu Nei: *Now is the Time: We lead, You Follow* (2019) www.justice.govt.nz/assets/Documents/Publications/d8s653-Inaia-Tonu-Nei-Hui-Māori-English-version.pdf and Department of Social Welfare *Puao-Te-Ata-Tu (Daybreak)* (Government Printing Office Wellington, New Zealand, 1988).

⁸⁹ Department of Social Welfare *Puao-Te-Ata-Tu (Daybreak)* (Government Printing Office Wellington, New Zealand, 1988).

⁹⁰ The Modernising Child, Youth and Family Panel Expert Panel Final Report (Ministry of Social Development, Wellington, 2015)

⁹¹ See <https://www.orangatamariki.govt.nz/about-us/our-journey/>



Analysis of care and protection data shows increasing inequity of outcomes for pēpi Māori compared with non-Māori. The number of Reports of Concern about unborn pēpi Māori was 8 times higher in 2019 than it was in 2004. For non-Māori, the increase was much lower at 4.5 times. From those Reports of Concern, the assessments that resulted in unsubstantiated findings were 8 percent higher for non-Māori. Before birth and for babies 0-3 months, a larger share of those selected for further intervention are pēpi Māori, at every stage of social work assessment, interventions and decisions. This culminated in pēpi Māori aged 0-3 months being 5 times more likely to be placed into state custody than non-Māori in 2019.⁹²

The statutory care and protection system and other systems must recognise the presence of racism before it is able to be addressed and eradicated.

In report two, we will report the findings of stage two of our inquiry into the presence and impact of racism through further interviews. We will explore what changes need to happen at different levels of the statutory care and protection system to end racism and discrimination against Māori, and to ensure the long-term wellbeing of whānau is considered in decisions made about pēpi.

5 The organisational culture of the statutory care and protection system needs to support parents and whānau to nurture and care for their pēpi

We have heard about the long-lasting harm the system is causing to whānau through violent interventions. Whānau have shared their feelings of fear and distrust of the system. The experiences shared in this report indicate that the organisational culture of Oranga Tamariki (and Child, Youth and Family before it), does not recognise the fundamental te ao Māori understanding that pēpi Māori and their whānau are inseparable. We have heard from whānau that the actions of Oranga Tamariki social workers are isolating pēpi from their whānau.

Whānau talked about the inherent conflict they see when the same government agency is tasked with supporting the wellbeing of pēpi and whānau on the one hand and placing pēpi with families through adoptions and long-term care arrangements on the other.



Evidence from the views shared with us

Pēpi Māori and their whānau are inseparable

Children do not exist in isolation from their whānau. Whānau reflected on this during the interviews and told us how their tamariki always find their way home.

One mum described how an Oranga Tamariki social worker described her older tamariki as constantly running away, but they were actually running home.

“How much trauma and how much damage do you want to keep doing to my kids? They’re not running away, [Oranga Tamariki social worker], you need to rephrase the word ‘running away’ they’re ‘running to.’”

Mums felt the care and protection system isolated them from their pēpi, regardless of whether they had been placed in whānau care or non-kin care. They talked about how their whānau had fought as a result of Oranga Tamariki actions, and those of Child, Youth and Family before that, despite wanting to do what they felt was best for pēpi.

“I made the decision to call my mum to set a family meeting just us and that happened without OT. When it came to the kids after everything that happened I think we realised we needed each other and how much OT had broken us that we put our issues aside and we agreed to put this plan together.”

We heard about the impacts of decisions made by those working in the care and protection system regarding the placement of pēpi into care and the profound effects this has on the mum.

“I’d been a mum from 16 to 24 and I didn’t know anything else. I’d worked really hard and I was just in a really bad relationship and had severe depression and instead of being given support they took those children... they’re keeping the kids forever and my whole heart broke in that moment and I just gave up...”

The system causes harm to whānau

The devastating impact that the care and protection system has had on the whānau that spoke with us was profound. We heard about the harm that had been caused and how it is long lasting. The harm experienced by the whānau we spoke with is ongoing and took different forms and affected members of the whānau differently.

⁹² Office of the Children’s Commissioner “Statistical Snapshot: Pēpi Māori 0-3 months and the care and protection system” (2020) <https://www.occ.org.nz/assets/Uploads/20200116-OCC-StatisticalSnapshot.pdf>. Also included in Appendix 4.

The harm caused to the mum of pēpi was the most common theme that we heard about during our interviews. Often, the mums we spoke with had a history of involvement with the statutory care and protection system. For many of the whānau we spoke with, they told us about negative experiences with Child, Youth and Family as well as with Oranga Tamariki. These whānau had significant negative experiences with Child, Youth and Family and often did not trust any state involvement at all. They said they had experienced months of uncertainty, unprofessional practice from their statutory social worker and a lack of good support.

The harm caused to pēpi affected their physical and emotional wellbeing. The mums we spoke with talked about their struggles to breastfeed their pēpi, or to at least provide expressed milk as a result of this not being facilitated. For some, the opportunity to breastfeed when pēpi was removed was not an option that was supported, and the pēpi was transferred straight on to formula as a result of Oranga Tamariki decision making.

“No they just, yeah they didn’t even say anything when we saw them the next day yet we were saying to them that my baby is still being breastfed and yeah, nothing. And then yeah they stuck her on formula.”

Many mums felt as though they had been pushed to breaking point, sometimes intentionally, so that their statutory social workers had a rationale as to why they could not have their pēpi in their care.

“CYFs actually told me at one point, ‘we were putting all this on you so you would go back to drugs’ ... For me my addiction started after I lost my children and it was the only thing that numbed the pain I think.”

Mums also spoke about the turbulent nature of the first few months of the lives of their pēpi, and how unstable placements and a number of non-kin or whānau carers meant that their pēpi did not have a settled start to life. One whānau member said:

“Yeah she decided to hand [baby] back after I left because she couldn’t do it anymore... and then [baby] was shipped here, there, everywhere, she probably went through four different carers... that’s why she had a lot of anxiety and trust issues.”

One support person talked about worrying changes in the behaviour of a pēpi they had observed throughout their involvement with Oranga Tamariki. We also heard about these worrying changes in the behaviour of a pēpi that whānau had observed throughout their involvement with Child, Youth and Family.

“They would come and take her away from her mum, she was screaming, place her in the van and then drive away. I think the more times that happened the less it affected [pēpi]... after about a year or maybe eight months or something, [pēpi] started being comfortable with all these different people coming in and out of her life, which showed me that she kind of was losing her, I don’t know, sense of belonging almost.”

Other mums talked about the impact on pēpi when they were separated from their siblings.

“He cries for his brothers all the time and he’s proud to say who his brothers are but Christmas and birthdays I can take all the stuff we’ve got for him and they’ll just take it and close the door on us like we don’t even get to go in and spend time with him.”

Many of the mums we spoke to had more than one child and worried about their older tamariki who had been removed at the same time as their pēpi. We mainly heard about the experiences of siblings from parents. We heard how siblings had been separated from each other and how hard that was on them. One mum talked about the impact on her older children who were removed from her care by Child, Youth and Family and not allowed to return meaning they were not able to connect with their younger sibling who has remained in her care.

“I fought so hard to keep the guardianship because I knew if they took it their intentions was to split them. And this is what they did when they got it, they split them from the South Island to the North Island, my whole [5-10] kids, split apart... when I talk to the social workers about it I get punished again... (my kids say), ‘Mum we want to come home. Mum we’ve had enough. Come on mum what’s going on?’”

We spoke to the sibling of a pēpi who had been removed from their whānau at birth. She too had experienced being placed in statutory care and protection and had returned to her mum once she was a teenager and could decide for herself.

“But my mum was also in a dark place, like they put her into a situation where she felt like she had no control over and I’m just like so proud of mum... she watched her life get taken away if you get me, like us kids and then she still tried... we got f’d over by CYFs but she just kept trying and kept trying... and that is what makes me so proud and so lucky to call you my mum because seriously.”

The grandparents we spoke to described how it felt for them trying to support their children and their grandchildren.

“I’ll tell you what, as a non-smoker then I had about a packet of smokes on the way home. It was that bad... I got home and actually vomited I was that stressed and I’ve never in 62 years done that in my life... I was shaking all the way home and because you knew damn well that they wanted me to lose it and that’s a horrible position that you’re put in, that they’re trying to get your reaction to protect their arses.”

The system creates fear

One of the underlying themes we heard mums and whānau speak about was fear. Fear of the system and of losing children or never having them returned, fear of ongoing surveillance, and fear for the lives of their children while in state care. The psychological harm that these fears and worries have on parents should not be underestimated.

“Don’t you give my daughter back to me in a body bag.”

“It’s only me, it’s only my partner and you know its just my kids, but to show up like that that’s intimidating, that’s frightening, you know to see that type of stuff. You know you don’t show up at a house – and we’re not in the system as gang members or we’ve got any you know violence that relates to that sort of you know to show up at people’s houses, that was scary.”

Whānau talked about how past experiences with Child, Youth and Family made any contact with Oranga Tamariki social workers a daunting thing.

“We didn’t want to interact with them because of our experience we had with them beforehand, you know and I’ll be honest I freaked the hell out when I seen them again because straight away my head was, ‘they come to take her’, you know and they don’t even know about our growth.”

Mums said they were apprehensive about telling anyone they were pregnant due to fear of losing their pēpi. Once their pēpi was born, this fear influenced the decisions they made about the way they cared for their pēpi. For example, one mum told us about her fear of taking her children to the doctors or to hospital when they were sick or injured because she worried that Reports of Concern would be made about them. This mum didn't let the fear stop her from taking her children, but it added another layer of stress when her children were sick. Mums and whānau felt judged by the system and those working in it.

One grandfather explained:

"The fear of going back to the hospital if the child has a bruise is a real thing. There's been that many people who have taken the kid to a hospital for a broken arm and the doctor says, 'well... are you sure Dad didn't bloody...'; you know, the culture is you've got to be bloody careful even to take the child to the hospital for a broken arm these days."

Whānau, and in particular mums, felt as though they were under constant threat by the system as a whole. As well as them feeling watched by their Oranga Tamariki social worker, they felt as though the system was out to get them, rather than there to help them.

The same agency that is supposed to be supporting pēpi to stay with their whānau is also carrying out adoptions

Many whānau we spoke to felt as though the state wanted to adopt out their pēpi and did not want to work with them to ensure they could return to their care. This raises questions about the underpinning culture of the statutory care and protection system. In particular, it raises questions about how appropriate it is for the same state agency to be working to both support whānau to keep, nurture and care for their pēpi as well as finding prospective families, including non-kin placements, for children placed in permanent care by Oranga Tamariki.

"Why is the first thing uplift? Why is that not our last resort anymore? And it's because CYFs is the adoption agency for New Zealand and that needs to change immediately."

One mum talked about Child, Youth and Family trying to place one of her older children into a Home For Life (now called permanent care) situation.

"They are doing, they're trying to do Home For Life, no return home for me and my partner and they're still going on that, even though they've given us my baby they're still going on for Home For Life and no return. That doesn't make sense eh."



Supporting evidence from other strands of research

The interactions with Oranga Tamariki that mums have described to us do not recognise the mana of pēpi, mums and whānau, nor acknowledge that the rightful place of pēpi is with their whānau, and within their whakapapa.

Whakapapa, whanaungatanga, and tikanga Māori practices (such as returning the placenta of pēpi to the whānau after birth) need to be prioritised when decisions are being made about the care and protection of pēpi. Other protective factors for pēpi wellbeing include bonding, attachment and the best possible nutrition, ideally through exclusive breastfeeding.⁹³ These are critical considerations for pēpi health and

⁹³ See <https://www.health.govt.nz/our-work/life-stages/breastfeeding>

wellbeing that must be supported and given due weight as part of the culture of practice of Oranga Tamariki.

Pēpi have the right to all of these protective factors as articulated in the Children's Convention, including the right to life, survival and development (Article 6) the rights to live with family and to see them if they are separated from them (Articles 9 and 10), the rights of children to protect and preserve their identity, including their family ties (Articles 7 and 8) and the collective rights of indigenous children (Article 30).⁹⁴ These critical considerations for pēpi health and wellbeing must be supported and given due weight as part of the culture of practice of Oranga Tamariki.

Data and evidence from other sources, such as the Royal Commission of Inquiry into Abuse in Care,⁹⁵ demonstrate the impact that state intervention can have on the lives of individuals and whānau and how the impacts can be long-lasting and intergenerational.

This harm has flow-on effects into the childhood of the pēpi if they are removed and remain in care. Oranga Tamariki recently published findings that children and young people in care fared worse in every area of wellbeing surveyed.⁹⁶ Recent reports have also demonstrated the clear links between being in state custody as a child and having contact with the justice system as an adult.⁹⁷

Some whānau have a deep and embedded fear of the system. In some instances, fear causes mistrust, which sometimes means that whānau stay away from formal services as a way to protect their pēpi from the system. In some cases, we heard about whānau not seeking medical support as a result of not trusting the system. In order to be effective, the system needs the trust and confidence of the public to ensure legitimacy.⁹⁸

What we have heard from mums and whānau sits in the context of the historical development of the statutory care and protection system, including shifting public expectations about what the government should do in response to child abuse. Risk averse statutory social work practice appears to have had inequitable impacts for Māori compared with non-Māori. One example worth further exploration is the legislative change to the Oranga Tamariki Act 1989, which emphasises, 'a safe, stable and loving home from the *earliest opportunity*'⁹⁹ [emphasis added]. The experiences of whānau raise concerns that there is an under-emphasis on crucial factors for wellbeing, such as the connection between them and their pēpi.¹⁰⁰

Section 7AA¹⁰¹ of the Oranga Tamariki Act 1989 requires policies, practices and services of Oranga Tamariki to have regard to mana tamaiti¹⁰² (tamariki) and the whakapapa of Māori children and young persons, and the whanaungatanga responsibilities of their whānau, hapū and iwi.

⁹⁴ United Nations Convention on the Rights of the Child 1989

⁹⁵ See <https://www.abuseincare.org.nz/>

⁹⁶ Office of the Children's Commissioner and Oranga Tamariki-Ministry for Children What Makes a Good Life? Follow Up Report: Views of children and young people in care on wellbeing (Wellington: 2019 <https://www.occ.org.nz/publications/reports/views-of-children-and-young-people-in-care/>)

⁹⁷ Te Uepū Hāpai I te Ora – Safe and Effective Justice Advisory Group *He Waka Roimata* (Hāpaitia te Oranga Tangata, 2019) at 23

⁹⁸ Ibid

⁹⁹ Oranga Tamariki Act 1989, s4(1)(e)(i).

¹⁰⁰ For more on this see: Harry Ferguson and Jim Norton *Child Protection Practice* (1st ed. 2011 edition ed, Red Globe Press, Houndmills, Basingstoke, Hampshire; New York, 2011).

Emily Keddell and Tony Stanley "Moving from Risk to Safety: Work with Children and Families in Child Welfare Contexts" in Kate van Heugten and Anita Gibbs (eds) *Social Work for Sociologists* (Palgrave Macmillan US, New York, 2015) 67.

Eileen Munro *Effective child protection* (SAGE Publications Limited, 2019).

¹⁰¹ Oranga Tamariki Act 1989 s7AA(2)(b).

¹⁰² Oranga Tamariki Act 1989 s2.

Alongside Section 7AA of the Oranga Tamariki Act 1989 are the Oranga Tamariki Practice Standards, introduced in 2017 and implemented in 2018. Within these Practice Standards is the standard of Whakamana Te Tamaiti: Practice empowering tamariki Māori,¹⁰³ to support those Oranga Tamariki staff to work alongside whānau Māori. Whakamana Te Tamaiti is also supported by Te Toka Tumoana¹⁰⁴ – the Indigenous & Bicultural Principled Framework. In November 2018, He Kete Ararau, the Māori Cultural Framework for Oranga Tamariki was launched.

The views we have heard in this report raise questions about the quality of interactions between whānau Māori and Oranga Tamariki, the monitoring of practice that is occurring and the supports being provided to statutory social workers when working with whānau Māori.

In stage two of this review, we will explore how the organisational culture of the statutory care and protection system needs to change to support parents and whānau to nurture and care for their pēpi.

6 The system needs to work in partnership with whānau, hapū and iwi so they can exercise tino rangatiratanga

The voices we heard make it clear that from their point of view, the statutory care and protection system has lost the trust of those that it is supposed to be helping. The whānau we heard from talked about feeling undermined by the statutory system, (both past and present) processes and decisions. Many feel frustrated because they have or know what the solutions are but there are too many barriers getting in the way of their success. We heard that whānau, hapū, iwi and communities know what the solutions are to improve the lives and outcomes for whānau and tamariki.



Evidence from the views shared with us

The statutory care and protection system is not trusted by whānau

Oranga Tamariki social work practice, and the past practice of Child, Youth and Family, alongside the impacts of colonisation and discrimination over decades has had an impact on the willingness of whānau to trust Oranga Tamariki. Many whānau knew Oranga Tamariki when it was Child, Youth and Family, and the actions of social workers that they describe to us since the establishment of Oranga Tamariki make them feel as though nothing has changed.

“Well, there’s very little trust in the family [for Oranga Tamariki]. My mum refuses to deal with them at all anymore because of the incident I told you about... My experiences, the kids experiences when they’re in my care and in their Mothers care...”

“I think whānau should get together. If there’s an issue within the whānau call a whānau hui amongst your whānau, you know, that will be the bestest thing you could ever do. That organisation is too dangerous when they come in and try do things because they’re just all about uplifting and taking and see you later, but with whānau we can all get together and say, ‘Hey, who in the whānau can put their hand up and, you know, tautoko this whānau until she’s ready to get them back?’”

When asked about how the system could change, one mum’s response focused more on education for parents so that they could manage the system, rather than hope that the system itself would change.

“I think that I could say to OT and to whoever is out there who is going through what I’m going through I just hope that the system changes and that there’s more education is out there for parents around the acts and the sections so that they are aware of the situations they’re getting themselves involved in and OT just do what they say they would do.”

Decision making by the statutory care and protection system is not recognising whānau, hapū and iwi voice

Often, the whānau interviewed were left out of decision-making about pēpi. We were told hapū and iwi were not involved in decision-making for a variety of reasons determined by Oranga Tamariki, that their views were not heard or that they were ignored. It was clear that the mums and whānau we spoke to carry a lot of hurt and often feel isolated when engaging with Oranga Tamariki, even if they have supports.

¹⁰³ See <https://practice.orangatamariki.govt.nz/practice-standards/>

¹⁰⁴ See <https://practice.orangatamariki.govt.nz/practice-standards/working-with-Maori-te-toka-tumoana/>

Whānau talked about how Oranga Tamariki, and Child, Youth and Family before it, are the dominant decision maker, often mobilising the power of other agencies to achieve the outcome that it has determined. However, we also heard that although Oranga Tamariki is the central agency, whānau felt as though no one is seeing the whole story.

“There should be a relationship between Oranga Tamariki and parents... they’re so much in the scene but they’re not anywhere to be seen, you know. Like yeah, they I think they need to leave it up to other people to ensure that everything is going ka pai for the children and if not then step in. If there was to be any uplift made it needs to have extensive reasons why and evidence, proper evidence.”

The solutions can be found within whānau, hapū, iwi and communities

We heard that the best type of support that whānau received was often from Māori or iwi organisations. We heard that whānau, hapū, iwi and communities know what the solutions are to improve the lives and outcomes for whānau and tamariki.

Whānau talked about the importance of support from Māori and iwi organisations.

“Go to your whānau and seek Māori services in your iwi. Trust in that because you’ll get more of a result than you’re looking for in that than you will with the mainstream services. I say that because I went mainstream the first time I lost my kids and it wasn’t working but when I came back and then I started wrapping Māori services around me, I knew I was right, that’s where I needed to be with them with the people that understand me, because there’s services with mainstream and Pākehā you know other cultures they don’t understand us. That’s the truth they really don’t, so why would I want to do counselling with a Pākehā? She don’t understand me but they were trying to refer me to all these, no I’m going Māori. I’m going Māori because they will understand me.”

“I hope it never happens to someone like what I’ve had to go through but you know, having that real whānau or even iwi. You know that support other than professionals you know because me, I had no one other than professionals.”

One mum, whose child was not removed, talked about how she had to find and build support around her through her own advocacy without help from Oranga Tamariki.

“Like I had built a real well-established safety net cos I knew that the experience with my other children I knew what I lacked, I knew what I needed and I knew that I needed to form this for the benefit of my child and myself to have some sort of security and stability.”



Supporting evidence from other strands of research

The importance of recognising and supporting whānau, hapū, and iwi voice and power is a theme that sits across the previous five areas for change. It is also reflected in other evidence and research. There are many reports over the years that point to Māori-driven solutions, some as far back as *Puao-Te-Ata-Tu* in 1988 and some as recent as the justice review, *Ināia Tonu Nei* in 2019.

Māori are a Treaty of Waitangi partner and are tangata whenua. As such they have the right to be involved in decision-making that affects them, and to live as Māori. Partnership is a key principle of the Treaty of Waitangi and places an obligation on the Crown as a Treaty of Waitangi partner to respect the tino rangatiratanga (the right of self-determination) of Māori. The United Nations Declaration on

the Rights of Indigenous People reinforces the Treaty of Waitangi and includes the rights of indigenous peoples to retain shared responsibility for the upbringing of their children.

Since July 2019, section 7AA of the Oranga Tamariki Act 1989 has included provision for the department to develop strategic partnerships with iwi and Māori organisations, including iwi authorities. Section 7AA also has provisions for iwi and Māori organisations to invite the Chief Executive of Oranga Tamariki to enter into strategic partnerships. It also has provision to delegate functions to qualified people within those organisations. It makes explicit the duty of the Chief Executive to recognise and provide a practical commitment to the Treaty of Waitangi.¹⁰⁵

In stage two of this review, we will explore what changes need to happen to ensure whānau, hapū and iwi have the power to make decisions and implement solutions to best support pēpi Māori and their whānau, including contract and funding arrangements.

¹⁰⁵ Oranga Tamariki Act 1989, s 7AA.

Next steps

Next steps to ensure pēpi remain in the care of their whānau

The stories of the pēpi Māori we heard about demonstrate how they, and their whānau, have been let down by the current statutory care and protection system, its predecessor, and the practice of some social workers who have worked and currently work within it. This must change.

The strands of evidence presented in this report, and the six areas for change that have been identified, sit within the socio-cultural context of Aotearoa New Zealand, its history, laws and the impact of systemic issues such as colonisation. The whānau experiences also sit within the context of a changing statutory care and protection system that has not treated them with humanity. During interviews, we heard about Oranga Tamariki, and Child, Youth and Family before it, carrying out unprofessional social work practice and failing to provide adequate support. We also heard about whānau being subjected to racist and discriminative practices that are not prioritising the long-term wellbeing of pēpi. Critical to this report is the importance and consideration given to whakapapa, whanaungatanga, and tikanga Māori practices, including respecting mums as te whare tangata, and pēpi and tamariki as taonga, and as mokopuna.

One kaimahi we heard from called for change in a genuine and meaningful way.

“Suppose taking into account their own policies you know and maybe even learning what those policies mean to them you know, like the 7AA. Well what is the Treaty of Waitangi? What does that mean to put that into practice and having a good understanding about whakawhanaungatanga and whānau and you know. Those things that make us who we are as people and treating them as people rather than criminals.”

Further investigation is required to develop recommendations

This report, the first part of a two-stage review, has shared insights into what needs to change to allow pēpi Māori 0-3 months to remain in the care of their whānau in situations where Oranga Tamariki have been notified of care and protection concerns.

Through the analysis of these lived experiences of mums and whānau and the consideration of multiple strands of evidence, including consideration of the Treaty of Waitangi, an analysis of statistics, and a summary of legislation and policy, rights and literature, we have identified six areas for change where further investigation is required.

The findings of this report have informed the questions for the second stage of the review. The second stage of the review, currently underway, has been informed by what we have heard from further interviews with whānau, Oranga Tamariki social workers and employees within regions and at the national level, community social workers, non-government organisations, iwi social services, and health professionals including midwives and Well Child Tamariki Ora nurses.

Findings from the second stage will be presented in a final report to be released later in 2020.

Change is needed to ensure pēpi and their whānau are well-served

What we heard raises questions about the impact of the underpinning culture of the current statutory care and protection system. This leads us to question if the current system is creating an environment where unprofessional social work practice, racism and discrimination, distrust and fear of supports and services is leading to negative outcomes and harmful experiences for whānau and their pēpi.

This report reflects some of the heartbreak, anguish and sadness of whānau. The name of this report is inspired by these experiences and the feelings we had listening to the stories of whānau. When any of us are gifted a new pēpi in our whānau, they pull on our hearts in a way that is indescribable. The aroha or love that we feel for them is powerful. Forming part of the name of this report is a whakataukī, Māori proverb, *Te Kuku O Te Manawa*, the pincers of the heart. It is hoped that readers' eyes and hearts will be opened to the profound concerns that have been raised in this report. We must recognise that change is required. It is within all of our power to ensure whānau get the support they need to provide the care and aroha for their pēpi, so that they can grow up strong in their identity and whakapapa, as mokopuna of their tupuna.

Whānau have told us they do not feel heard. We will continue to listen to them. As part of the Children's Commissioner's statutory obligations, we will advocate for the system to change in recognition of the views and leadership of whānau, hapū and iwi in caring for their pēpi.

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Appendices



Appendix 1:
Whānau themes



WHĀNAU THEMES

Mums and whānau told us things need to change

The mums and whānau of pēpi who spoke with us were courageous in sharing their stories. Their experiences were consistent and heart breaking. Mums and whānau shared what happened during and after their involvement with Oranga Tamariki and in some cases Child, Youth and Family, once a Report of Concern had been made regarding their pēpi. They talked about what worked for their whānau during this time and about what got in the way. They also talked about what they would like to see change so that whānau had better support.

The commonalities of the whānau experiences raise concerns about systemic issues facing the statutory care and protection system and current impacts on pēpi, their mums and whānau.

Some of the key themes from our conversations with whānau are summarised below. An overall insight identified was that the experiences of all mums and whānau were similar, whether the threat of removal occurred prior to April 2017 under Child, Youth and Family, or under Oranga Tamariki.

Five key themes from our conversations with whānau are summarised below.

I am a mum first



We heard mostly from mums who said they felt as though they were not seen by their Oranga Tamariki social workers for who they are and for the changes they have made. They didn't feel respected and recognised as the mum of their pēpi. This feeling also existed for those mums who had prior experiences with Child, Youth and Family, and continued to have involvement with Oranga Tamariki.

Often, those who had their pēpi removed had received no follow up care. They were then excluded from the lives of their pēpi and offered no support to both deal with the harm of a removal, but also to make change in order to have their pēpi returned to their care. Despite the lack of support from Child Youth and Family and Oranga Tamariki to make changes and get help, the mums we spoke to had taken action to make changes for their pēpi and tamariki, to get well, and to prove that their child should return to their care. We heard about mums acting despite the hard stuff in their life too. Many of the mums we heard from have experienced violence; they, or people around them, have struggled with drug and alcohol addictions, have mental health challenges and have lost important people in their lives.

*"My whole pregnancy was pretty good, like no issues. Everything was up to date, never missed, did everything possible like parenting courses, the whole shebang. I did everything possible to make sure that I was proving to [CYF] that I'm doing right for my unborn...it wasn't till I was halfway through labour I found out there was already an automatic uplift and then it went to sh** straight up."*

"Cos I just know that if any other mums are treated like that then there's no hope of any reconnection or no hope of I think, they would lose hope and lose who they are as a person and as a mother."

Many of the mums and whānau interviewed told us about the harm they had experienced through their involvement with the statutory care and protection system, and the ongoing impact it is having on them, their whānau and their tamariki. For most whānau, harm was caused during their involvement with Child, Youth and Family, and then continued on under Oranga Tamariki. They talked about the brutality of the removals of their pēpi, and how Child, Youth and Family and Oranga Tamariki have used other agencies, including Police and health professionals, to act under their instruction and carry out removals. Whānau continue to feel as though they are living under constant threat of Oranga Tamariki, even when it has been deemed either by Child, Youth and Family or Oranga Tamariki that no further involvement is necessary.

"When people lose their kids, Oranga Tamariki just goes and takes their new kids straight from the hospital. It's so sad. Like, you go through all that pain in pushing the baby out just to get it taken out of your hands. It's so sad – and the fact, that they take it and they don't even care ay the people and some of them are even Māori and doing that to the people."

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

The system is harmful



Statutory social workers have all the power and control



Many of the mums and whānau shared stories of poor treatment and unprofessional practice by Child, Youth and Family and Oranga Tamariki social workers working with them. They said they were not told what was happening, experienced threats and coercion and were lied to. Mums talked about how their statutory social workers did not have any regard for their whānau dynamics and the impact that decisions might have on their relationships. Many of the mums we heard from have experienced violence; they or people around them have struggled with drug and alcohol addictions; have mental health challenges; and, have lost important people in their lives. They talked about their efforts to make positive change for their tamariki, and how those changes have not been recognised, by Oranga Tamariki or their previous Child, Youth and Family social workers, and decisions were not revisited.

They felt watched by their statutory social workers and could not trust them. They talked about how much power their Oranga Tamariki social worker has, about how they make all decisions, often without knowing them, and without finding out about the actual situation. They felt judged by their current Oranga Tamariki social worker and previous Child, Youth and Family social workers, and talked about how the social workers would find out their last name and make their minds up about the outcome. We heard about Oranga Tamariki social workers and previous Child, Youth and Family social workers not respecting tikanga Māori and not getting it because they're not Māori.

"I was like last time I see my kids go with the Oranga Tamariki person they never came back you know and she was, she knew that she had that over me. That she couldn't get me down any other way apart from doing stuff like that to me."

"Once you're involved, you're powerless. This is a department that's got too many powers, and even if they don't have the power, they use the threatening tactics that if you don't do what I say, you'll lose the lot."

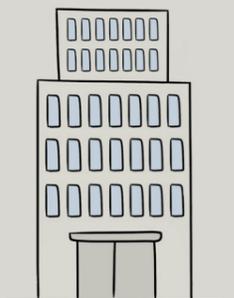
Mums and whānau talked about the immense harm caused by the practice of removal of their pēpi or the risk of removal of their pēpi, to all involved. The impacts on whānau and pēpi described are long-lasting and include feelings of fear and anger. Mums and whānau talked about how Police and the Family Court were involved, but their reflections focused on Oranga Tamariki and its predecessor Child, Youth and Family.

Many whānau members, especially mums and grandmothers talked about the impact on the bond they had with pēpi. As well as the damaging impact on their relationship with the pēpi, they also spoke about the rupturing of whānau relationships because of state processes and practice.

"One, she was an abused wāhine, two, her mana kind of had been taken away from her, I think at this point she stood there with no mana, no confidence in herself. She didn't want to speak to anybody, she didn't trust anybody, everything that she had kind of known with her Mum and her Dad and everything had kind of all pretty much dissipated."

"The Ministry are supporting her to live there for life. I don't think that's fair that I don't get a say. I mean, I've got a little flat and I'm ready to take on my mokopuna, I'm ready to look after them, I'm so ready."

The statutory care and protection system and other agencies have hurt my whānau



We need good support



Mums and whānau said that good support made all the difference and helped them through what is often an unpredictable and profoundly challenging process. Good support to them meant people getting stuff done, being honest, advocating for them, getting to know them, including them in decision-making, and sometimes working around the system to find the right solutions. For most people we spoke to, the right support came from whānau, iwi services, Māori organisations, midwives and community social workers. When asked to provide examples of good statutory social work practice, few whānau were able to do so.

The whānau we spoke with told us about times when Oranga Tamariki and previous Child, Youth and Family services had not helped and had sometimes got in the way of them receiving appropriate support. They spoke about how Oranga Tamariki services and other services didn't get it or understand them, and about how no one was seeing their whole story, which meant services or supports offered were not effective. The whānau we heard from spoke about how hard it was to find or access the right support, and about how sometimes any support was completely lacking. This was especially common for those who had their pēpi removed at birth. They often felt ignored by the system and excluded from the life of their pēpi.

"... that's always been a thing for me if I'm going through this or if this social worker from OT is doing this to me, how many other mum and dads are out there going through the same thing? And only in the last month or so has OT finally kind of stepped up and that's because of the push from all my support and all my lawyers. If I didn't have the support or didn't reach out like I did I wouldn't have [name of pēpi]."

Appendix 2: Care and protection system process map

CARE AND PROTECTION KEY DECISION MAKING POINTS

This brief process map for families, and those who support them, shows the Oranga Tamariki process when it is notified of care and protection worries for children. Every family's journey is unique. However, this map outlines what a family could experience.

It is important to note the Office of the Children's Commissioner has chosen to end this map at the point of the Family Group Conference (FGC) and its outcomes. Oranga Tamariki and the Family Court could continue to be involved in the lives of families after the FGC and arrangements for the care of the children could change.

CONCERNS REPORTED

Someone [contacts](#) Oranga Tamariki concerned about a child or unborn baby. Contact can be made via phone, email or fax. This is called a [report of concern](#). The Oranga Tamariki National Contact Centre (NCC) decides the [next steps](#). See [s.15](#)

A police officer believes a child is in need of protection from injury or death and immediately removes them. See [s.42](#)

NCC COULD DECIDE ONE OF THE FOLLOWING

- No action is needed from Oranga Tamariki because the child is safe. A record of the concern is kept. **End of Oranga Tamariki involvement.**
- [Support](#) for the family is needed and this is best provided by a community group or other organisation. These referrals are made by Oranga Tamariki. **End of Oranga Tamariki involvement.**
- A low urgency response is needed from Oranga Tamariki. Safety of the child is assessed within [20 days](#).
- An urgent response is needed from Oranga Tamariki. Safety of the child is assessed within [7 days](#).
- A very urgent response is needed from Oranga Tamariki. Safety of the child is assessed within [48 hours](#).
- A critical response is needed from Oranga Tamariki. Safety of the child is assessed within [24 hours](#).

ASSESSMENT OR INVESTIGATION

NOTHING MORE IS NEEDED FROM ORANGA TAMARIKI

The child is assessed as safe by Oranga Tamariki. Appropriate supports are in place for the family and/or there is a strong family plan. The Oranga Tamariki social worker may also make referrals to other agencies for support. **End of Oranga Tamariki involvement.** See [s.17\(2A\)\(c\)](#)

CHILD AND FAMILY ASSESSMENT OR INVESTIGATION BEGINS

Oranga Tamariki social workers at the local care and protection office investigate and [assess the situation](#) for the [child or unborn baby](#). They identify what action may be needed to keep the child safe. Social workers engage with the child, their family, whānau, hapū and iwi to assess any risks and consider supports that may be needed. They talk to others who work with and support the family. The family can also ask the social workers to talk with anyone else the family thinks is important. Social workers look at information Oranga Tamariki already has about the child and their family. A Care and Protection Resource Panel ([CPRP](#)) gives advice to the social workers. See [s.5](#), [s.7AA](#), [s.11](#), [s.13](#), [s.17](#)

CUSTODY ORDERS

At any stage during or after assessment, Oranga Tamariki can apply for temporary custody if:

- the child is at immediate risk of serious harm ([place of safety warrant](#) – [s.39](#)). The child can be removed by force if necessary.
- urgent custody is in the best interests of the child (interim custody order – [s.78](#))

These orders can be made without telling the family ([without notice](#)). In both cases, Oranga Tamariki has temporary custody until the Family Court makes a final decision.

FURTHER ASSESSMENT BY ORANGA TAMARIKI IS NEEDED

This may involve other specialists to understand what the child and family need. These assessments can inform the FGC. Referrals are made to services that can help.

A FAMILY GROUP CONFERENCE REFERRAL IS MADE

An Oranga Tamariki social worker refers the family for a Family Group Conference ([FGC](#)). A coordinator organises the FGC and works with the family to prepare them. The coordinator consults with the Care and Protection Resource Panel again. See [s.18](#)

A HUI-A-WHĀNAU IS HELD

Family meet and make a plan. The plan may include:

- the Oranga Tamariki social worker making referrals to agencies to support the family
- the child moving to the care of others within their family, by agreement
- the child being referred for an FGC
- the child being placed in the custody of Oranga Tamariki.

Multiple [hui-a-whānau](#) may be held.

SAFETY PLAN CREATED

FAMILY GROUP CONFERENCE HAPPENS

The aim is for a [legally binding plan](#) that ensures the safety of the child. This is reviewed within six months. The coordinator, the Oranga Tamariki social worker, the child's family, professionals and other people important to the child attend the FGC. If participants do not agree the child is in need of care and protection and/or agree on the plan, Oranga Tamariki make a decision about what happens next. See [s.18-38](#)

FGC OUTCOMES

NO COURT ORDERS

The FGC plan does not include any application for court orders. Part of the plan could include:

- the child remaining in the care of their parent(s)
- the child moving to the care of others within family by agreement
- the child no longer being in the custody of Oranga Tamariki
- the child's family seeking parenting orders through the [Care of Children Act 2004](#).

SUPPORT ORDER

The FGC plan includes an application for a [Support Order](#).

If the Family Court makes the order, this allows Oranga Tamariki to provide support and services for the family. The child remains in the care of their family. See [s.91](#)

CUSTODY AND/OR GUARDIANSHIP ORDERS

The FGC plan includes an application for the child to be placed in the [custody and/or guardianship](#) of Oranga Tamariki.

If the Family Court makes a custody order, Oranga Tamariki must approve who will have the day-to-day care of the child.

This could be the child's:

- wider family
- hapū, iwi or family group, or
- non-family caregivers.

Children in custody have an ['All About Me'](#) plan to help meet their needs. See [s.83](#), [s.101](#), [s.110](#)

At any stage if a family is unwilling or unable to care for their child, the family may enter an [agreement for temporary care](#) ([s.139](#)) with Oranga Tamariki. This is a voluntary arrangement that enables Oranga Tamariki to provide care for the child. This agreement can be terminated at any time, either by the child's family or by Oranga Tamariki.

Appendix 3: Summary of the rights framework

RIGHTS FRAMEWORK UNDERPINNING THE CARE AND PROTECTION SYSTEM

The review being conducted by the Office of the Children's Commissioner into what needs to change to allow pēpi Māori 0-3 months to remain in the care of their whānau when Oranga Tamariki have been notified of care and protection concerns is underpinned by a rights framework that includes (but is not limited to):^{1,2}

- Te Tiriti o Waitangi;
- The United Nations Convention on the Rights of the Child (the Children's Convention);
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- The United Nations Convention on the Rights of Persons with Disabilities (UNCPRD); and
- Oranga Tamariki Act 1989.

Te Tiriti o Waitangi establishes the relationship between Māori and the Crown and sets out their rights and responsibilities. These include the right of the Crown to govern New Zealand (Article 1); the right of Māori to live as Māori and protect and develop their resources (Article 2); and the right of all New Zealanders to citizenship and equality (Articles 3 and 4).

In an international context, the Children's Convention, which New Zealand signed up to in 1993, recognises the right of children to protect and preserve their identity, including their family ties (Articles 7 and 8). Furthermore, Articles 9 and 10 state that children have a right to live with their family and to see them if they are separated from them. If removal from family care is unavoidable, Article 20 puts an obligation on states to take a child's ethnic, religious, cultural, and linguistic background into account when considering alternative care arrangements.

The right of indigenous families and communities to retain shared responsibility for the upbringing of their children is further recognised in the Annex of the UNDRIP, which the New Zealand Government has committed to implementing since 2010. Article 7 states that indigenous children have a right not to be forcibly removed from their families.

For children with disabilities, the UNCPRD sets out additional obligations that New Zealand signed up to in 2008. Article 23 states that children with disabilities have an equal right to family life, including any early and comprehensive information, services and support that they and their family need.

In a child protection context, several sections of the Oranga Tamariki Act 1989 (the Act) set out rights and obligations that must be considered when the state gets involved in relation to child abuse and neglect, or child and youth offending.

Section 4 makes it clear that the purpose of the Act is to promote the wellbeing of children, young people and their families, whānau, hapū, and iwi. This is complemented by section 4A which states that the wellbeing and best interests of the child or young person must be the first and paramount consideration in any decision made under the Act.

Sections 5 and 13 place obligations on any court or person who exercises any power under the Act to be guided by a number of principles. These include:

¹ This is not a complete list. For a list of other human rights treaties see: <https://www.hrc.co.nz/your-rights/what-are-human-rights/>

² If there are custody/guardianship issues, the Care of Children Act 2004 may also be relevant. However, this Act deals with the custody or guardianship of a child outside of the Oranga Tamariki framework and therefore is not included here.

- That children and young people must be encouraged and assisted to participate in and express their views about any proceeding, process or decision affecting them, and have these views taken into account;
- That the wellbeing of a child or young person must be at the centre of decision-making. This means:
 - ◆ upholding their rights in the Children's and Disability Conventions
 - ◆ treating them with respect and dignity and protecting them from harm
 - ◆ addressing their need to be in a safe and stable home
 - ◆ recognising their whakapapa and whanaungatanga responsibilities
 - ◆ making and implementing decisions promptly
 - ◆ taking a holistic approach to their identity
 - ◆ endeavouring to obtain their support in making decisions about them, to the extent consistent with their age and development
 - ◆ when making a decision about a child or young person with a disability, having particular regard to their experience and any difficulties or discrimination they encounter
- That the child or young person should be seen within the context of their whānau, hapū, iwi and community. This includes recognising that services and supports provided should aim to strengthen and maintain the relationship between a child/young person and their whānau while improving their safety and wellbeing and reducing the risk of future harm.

This is complemented by Section 7AA which focuses on key principles and concepts reflective of a te ao Māori worldview and places specific obligations relating to Māori on the Chief Executive. This is to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi. The Chief Executive is, among other things, to:

- develop policies and practices to reduce the disparity of Māori children by setting measurable outcomes for Māori children and young people who come to the attention of Oranga Tamariki
- set policies and practices to have regard to the mana tamaiti (tamariki) and whakapapa of young children and the whānaungatanga responsibilities of their whānau, hapū and iwi
- develop strategic partnerships with iwi authorities and Māori organisations to encourage innovative proposals to improve outcomes for Māori children, providing opportunities to delegate functions to iwi.

In addition to these principles, section 11 of the Act gives children the right to participate and have their views taken into account in relation to any decision made about them under the Act. The law says that children must be:

- encouraged and helped to participate as much as possible, taking into account their age and maturity level;
- given a reasonable chance to say what they want to happen, and if they have trouble saying what they think or being understood, be given support to express themselves;
- helped to understand the reason for the process that is happening, what the different outcomes might be and how this may affect them; and
- have their views considered when people like judges and Oranga Tamariki workers are making decisions about them under child protection laws.

Appendix 4: Statistical snapshot of Oranga Tamariki data

STATISTICAL SNAPSHOT

PĒPI MĀORI 0-3 MONTHS AND THE CARE AND PROTECTION SYSTEM

This statistical snapshot is part of a review being conducted by the Office of the Children’s Commissioner into what needs to change to enable pēpi Māori 0-3 months to remain in the care of their whānau when Oranga Tamariki – Ministry for Children (Oranga Tamariki) is notified of care and protection concerns.

The following statistics identify key trends over the past 16 years and place current statistics in a broader comparative context.¹ This information does not explain what is causing the observed trends, and raises questions to be covered in the review. Over the past 16 years there have been changes in the care and protection system itself, including in 2017 when new practice standards were adopted and a new agency, Oranga Tamariki, was created. There have also been shifts in public attitudes and responsiveness to issues of child abuse and neglect.

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

Background statistics:

- At the end of June 2019² there were 6,429 total children³ in state custody.
- Of that number, 4,420 of them were Māori (69 percent).⁴
- Tamariki Māori make up only 25 percent of all children in Aotearoa, so the proportion of Māori in state custody reveals a considerable inequity.
- An annual average of 265 babies under three months of age have been taken into custody over the past six years⁵ and an annual average of 171 pēpi Māori have been taken into custody in the same period (64 percent, despite making up only 28 percent of births).

Our initial analysis reveals six key findings about what has been happening for pēpi Māori in pregnancy and from 0-3 months when Oranga Tamariki is notified of care and protection concerns.

A baby or child under 18 can be officially ordered by the Court into the care and protection of the Chief Executive of Oranga Tamariki (Child, Youth and Family before April 2017). A baby or child in state custody may be in non-kin care, whānau care or on occasion remain with their parent(s) under supervision. Mothers and babies can also be placed together in residential supported living arrangements or in whānau care.

¹ The data was obtained from Oranga Tamariki. Data back to 2004 has been used to assess trends over time. Most of this data pre-dates the establishment of Oranga Tamariki in 2017 and reports on the practices of Child, Youth and Family. We are grateful to Professor Tahu Kukutai and Shefali Pawar from National Institute of Demographic and Economic Analysis, Waikato University for their statistical and demographical expertise.

² All years referred to in this document are government fiscal years from 1 July the previous year to 30 June in the year stated.

³ Children included in the data are those aged 0-16 years old inclusive up to 2017, and 0-17 years old inclusive from 2018.

⁴ Throughout this publication, Māori includes all pēpi who are Māori, including those who are Māori/Pacific (this is the current reporting method). Prior to the establishment of Oranga Tamariki, Child Youth and Family used the “primary” ethnicity method for reporting so that data prior to 2017 are likely to undercount the number of Māori and Pacific ethnicities compared to the post-2017 reporting method. That is because some people who identify as, for example primarily NZ European but also Māori would have been recorded as NZ European and included in ‘non-Māori’ statistics. Caution should therefore be used in comparing ethnicities over time.

⁵ These are distinct numbers of babies that enter care, where orders were made before birth or in the first 0-3 months of life. Where there is more than one custody order for a baby, the first order is taken and used in the statistics.

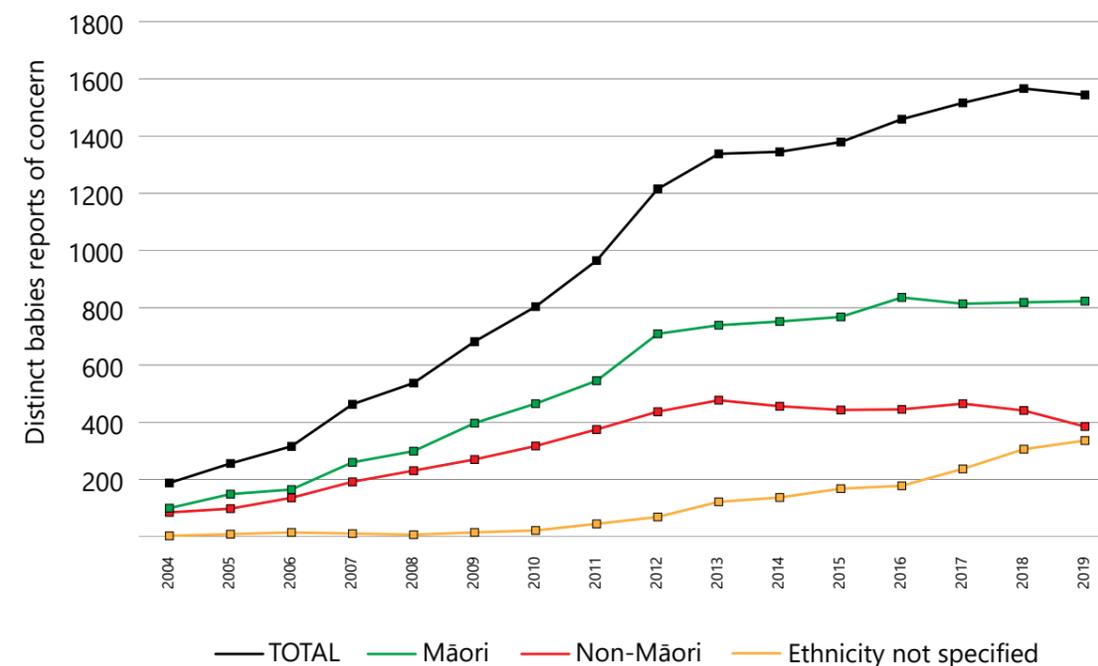
1. The number of concerns reported about the safety of babies and children has increased

The total number of concerns reported by members of the public and sector workers, including police, teachers and health workers, regarding the safety of babies and children has increased substantially over the last 16 years. Over this time several factors have raised public awareness about reporting concerns for the safety of babies and children, including the repeal of section 59 of the Crimes Act (1961) in 2007,⁶ the Never Ever Shake a Baby Campaign 2009-2011 and high-profile child deaths as a result of neglect and abuse. Public attitudes towards physical punishment of children have shifted over this time⁷.

The increase in concerns reported was especially so for pēpi Māori under 3 months old, and particularly so during pregnancy compared to non-Māori.⁸ The total number of concerns reported during pregnancy has stabilised in the past couple of years, as have the total number of concerns notified to Oranga Tamariki.

In 2019, the number of concerns reported to Oranga Tamariki about an unborn pēpi Māori was 8 times greater than concerns reported to Child, Youth and Family in 2004 (823 reports in 2019 up from 100 in 2004).⁹ For unborn non-Māori babies the increase was 4.5 times in 2019 (385 reports) compared to 2004 (85 reports). The disparity means that Māori made up 68 percent of the pregnancy concerns reported in 2019 compared to 54 percent in 2004.

Figure 1: Reports of concern pre-birth



⁶ Also known as the Anti-Smacking Bill.

⁷ ‘Growing up in New Zealand’ data collected in 2013/14 - two thirds of mothers report never using physical punishment. This compares with a 2001 Survey on public attitudes towards the physical discipline of children by Ministry of Justice - “80% of the public agreed that a person parenting a child should be allowed by law to smack the child with an open hand if they are naughty.” Save the Children survey in 2018 - Support for violence free parenting has more than doubled since 2008, with 43% of New Zealanders disagreeing that it is okay to physically punish children, up from just 20% in 2008.

⁸ Māori and non-Māori data are reported, excluding ‘ethnicity not specified’ for concerns reported, progression to social work assessment and Family Group Conferences.

⁹ In 2004 there were thousands of unallocated cases across all ages of children that were not followed up, and this may have affected the number of concerns reported.

Table 1: Numbers of distinct babies subject to reports of concern pre-birth

Pre-birth	2004	2005	2006	2007	2008	2009	2010	2011	2012	...
Māori	100	149	165	260	299	397	465	545	709	
Non-Māori	85	98	136	192	231	270	317	375	437	
Ethnicity not specified	3	9	15	11	7	15	22	45	69	

Pre-birth	2013	2014	2015	2016	2017	2018	2019
Māori	739	752	768	836	814	819	823
Non-Māori	477	456	443	445	465	441	385
Ethnicity not specified	122	137	168	178	237	306	336

The increase in reports of concern places an increased demand on the care and protection system to assess the safety or potential risk of babies both before birth and for babies aged 0-3 months. Concerns for unborn and 0-3 month old babies made up just 4 percent of concerns reported for all age children in 2019.

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

Once concerns are reported, staff in the care and protection system decide whether they need to progress the reported concern to a social work assessment. Due to the increase in concerns reported, whānau are more likely to be subject to social work assessments than 16 years ago. The number of social work assessments that found substantiated abuse in pregnancy and for 0-3 month old babies peaked at 1142 in 2013 and there has been a general downward trend since then, with 848 assessments finding substantiated abuse in 2019.

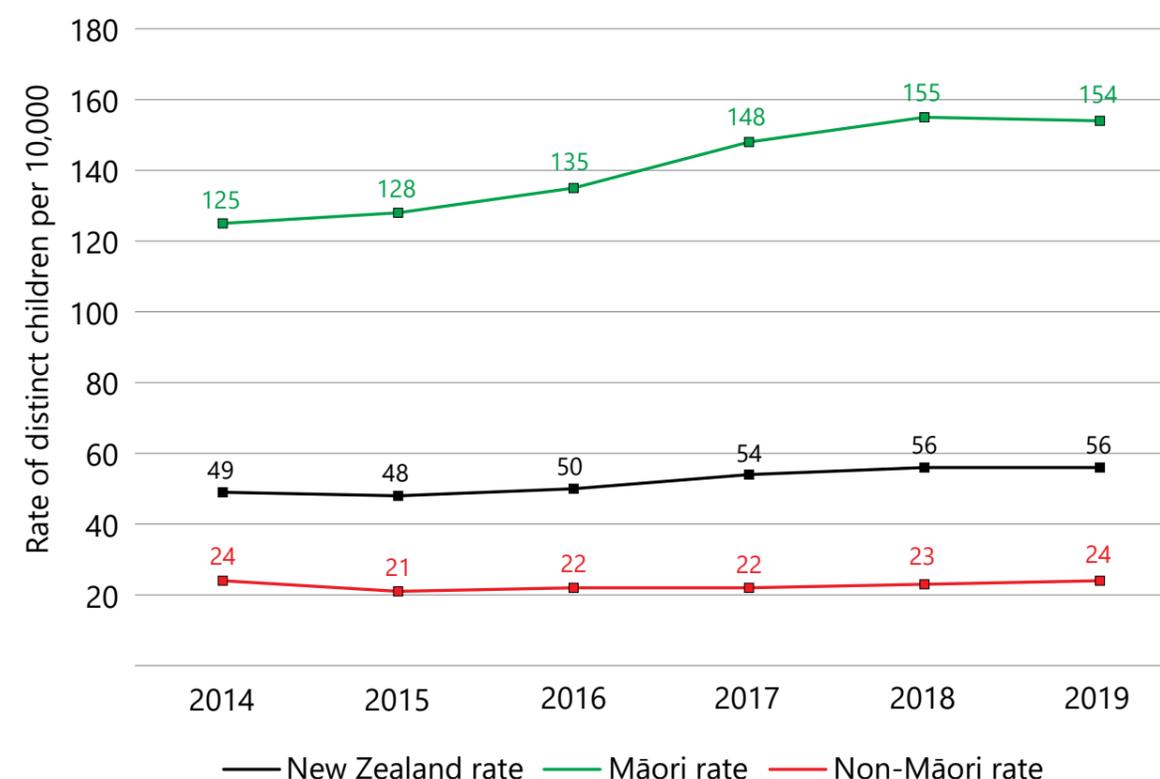
Thirty-eight percent of social work assessments about unborn pēpi Māori and 53 percent of social work assessments about 0-3 month old pēpi Māori resulted in unsubstantiated findings.¹⁰ Rates of unsubstantiation for non-Māori are 8-9 percent higher.¹¹

Social work assessments that do not find substantiated abuse can identify particular needs and may still result in referrals to support services. Substantiated abuse does not automatically mean a child is taken into state custody.¹²

3. Inequities for Māori compared with non-Māori are substantial and persistent

The care and protection system assesses, intervenes and can remove children and babies into state custody.¹³ Pēpi and tamariki Māori are taken into custody at a higher rate than non-Māori. The rate of tamariki Māori in custody has been comparatively higher than non-Māori over a long period of time. In 2018,¹⁴ the rate of state custody for under 18 year old tamariki Māori was 155 per 10,000 population. This was almost 7 times higher than non-Māori, up from 5 times higher in 2014. These inequities for Māori continue to widen over time.

Figure 2: Rates of all children in State custody per 10,000



Before birth and for babies 0-3 months, a larger share of those selected for further intervention are pēpi Māori, at every stage of social work assessment, interventions and decisions. The Family Group Conference is a legally-binding process used for planning the care of babies and children with the parents, social workers and wider whānau present. In 2019, 75 percent of Family Group Conferences for babies 0-3 months were for pēpi Māori.¹⁵

¹⁰ Total sum of 'findings unsubstantiated' out of all findings, over the last 10 years (2010-2019).

¹¹ Over the past 10 years, 47 percent of non-Māori pre-birth findings were unsubstantiated and 61 percent of 0-3 month findings were unsubstantiated.

¹² See Office of the Children's Commissioner (2020) 'Care and Protection: Key Decision Making Points'.

¹³ On occasion this can include remaining or returning to their immediate family under monitoring while in 'custody'.

¹⁴ 2018 is the latest year for which we have official estimates of population: 2019 rates are similar, but the denominator (population) was calculated from previous years, so is considered an unofficial estimate.

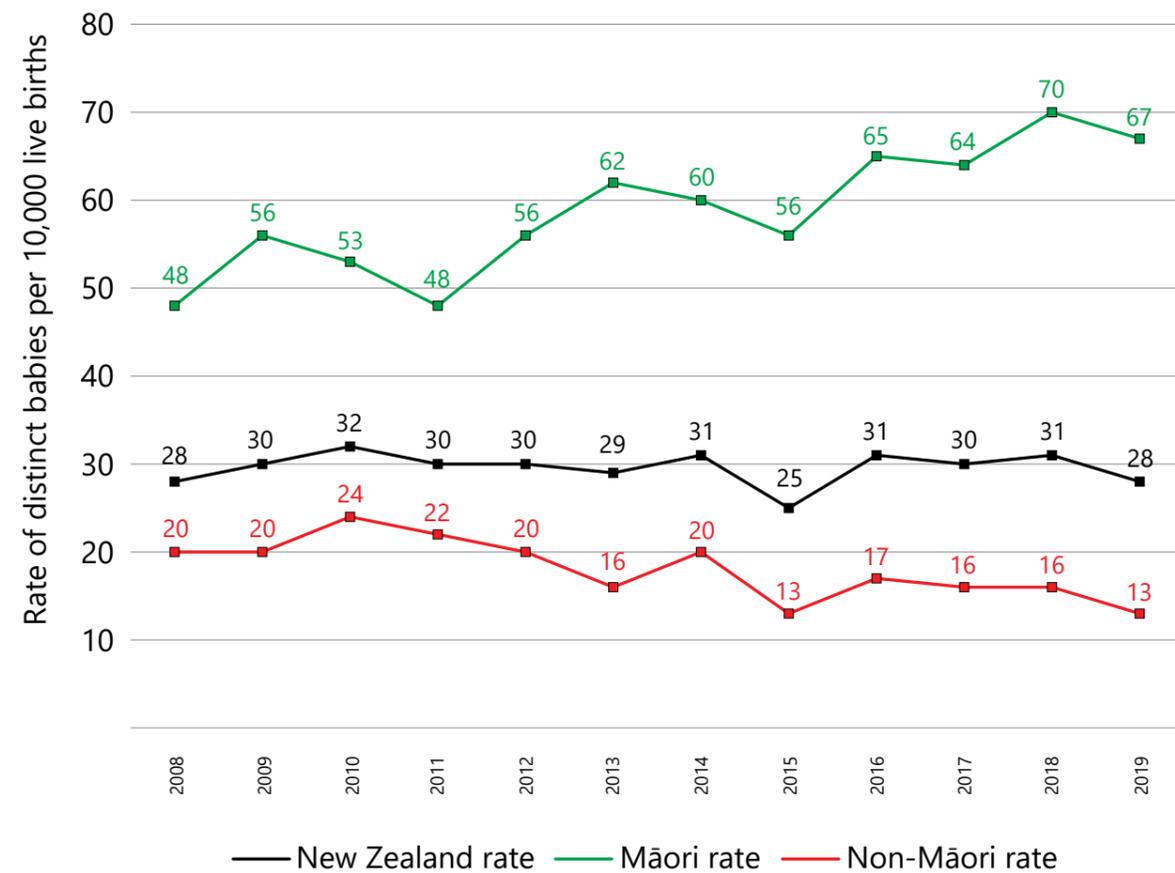
¹⁵ Excluding the 11 babies whose ethnicity was not specified in 2019.

Since 2010, the overall rate of babies aged 0-3 months being placed in state custody has remained steady. However, the difference in the likelihood of pēpi Māori being placed in state custody compared to non-Māori babies has almost doubled.

During 2019, 67 pēpi Māori per 10,000 aged 0-3 months were placed in state custody, compared with 13 non-Māori babies per 10,000 aged 0-3 months (see figure 3). Over half of the 44 total babies 0-3 months in state custody were in non-kin care on 30 June 2019.¹⁶ For some this is short-term and they return to whānau or parental care.

In 2019, pēpi Māori aged 0-3 months were 5 times more likely to be placed into state custody than non-Māori (based on 111 pēpi Māori, rate of 0.67 percent, and 55, rate of 0.13 percent non-Māori babies, under 3 months placed in custody).¹⁷ In comparison, in 2010 pēpi Māori aged 0-3 months were more than twice as likely to be placed into state custody than non-Māori (97 pēpi Māori, rate of 0.53 percent, and 109 non-Māori babies, rate of 0.24 percent). The inequities for Māori are stark and widening.

Figure 3: Entries to State custody of 0-3 month babies per 10,000 live births



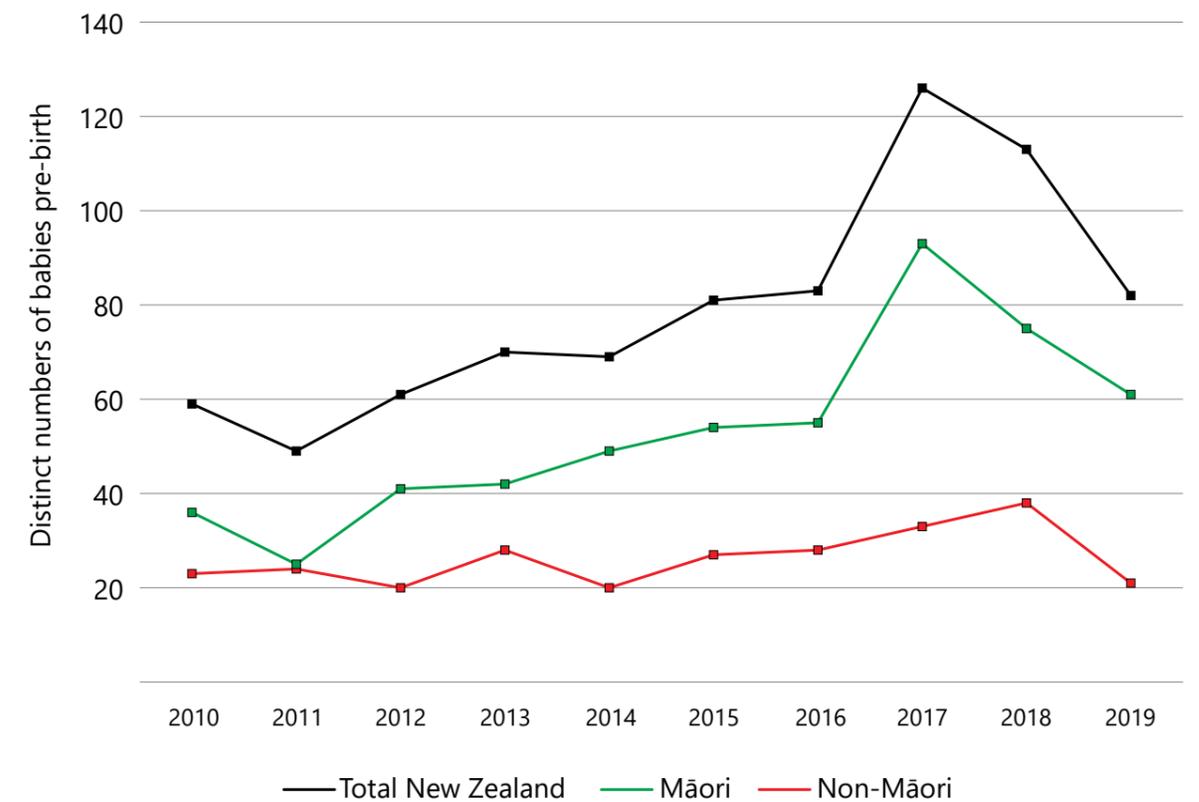
¹⁶ Personal communication, Oranga Tamariki.
¹⁷ Calculated using population rates.

The rate of being taken into state custody between 0-3 months does not include decisions to take a baby into state custody that are made before birth. If they were included, the Māori rate would be even higher.¹⁸

4. Assessments and removals of pēpi are happening earlier

There is an increasing trend towards making decisions before birth to take babies into custody after they have been born, and this trend has been greater for Māori than non-Māori (see figure 4). Ten¹⁹ years ago fewer decisions were made to place a baby into state custody before birth. By 2017 (when pre-birth entries into custody peaked), removal decisions involving unborn pēpi Māori had increased from 36 to 93 pēpi Māori. The number has reduced since the establishment of Oranga Tamariki, to a total of 82 babies taken into custody before birth in 2019, but the inequities for Māori remain, with 74 percent of them (61) pēpi Māori.

Figure 4: Distinct numbers of babies ordered into State custody before birth



¹⁸ As the rate of babies (per 10,000 population) being placed in state custody is calculated using birth rates, the population rate for unborn babies cannot be calculated with accuracy.
¹⁹ This section compares data since 2010 to provide an adequate trend. While we have data back to 2004, this coincided with a period where there were thousands of unallocated cases following reports of concern – so the lower numbers of taking babies into custody back then could have been due to state inability to respond to reported concerns.

Table 2: Distinct numbers of babies ordered into state custody before birth

Pre-birth	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Māori	36	25	41	42	49	54	55	93	75	61
Non-Māori	23	24	20	28	20	27	28	33	38	21
Total	59	49	61	70	69	81	83	126	113	82

Recently, the total number of babies the state decided to remove into custody, either before birth or 0-3 months old, has reduced, from 301 during 2018 to 248 during 2019, including reduced numbers for pēpi Māori down to 172 from a peak of 197 pēpi Māori in 2017 (both unborn and 0-3 months). However, for pēpi Māori the total number (172) is still higher in 2019 than in any of the past 16 years prior to the peak in 2017. Sixty nine percent of all babies unborn and 0-3 months taken into custody in 2019 were pēpi Māori.

The recent reduction in numbers between 2018 to 2019 has followed a decade long trend of increasing use of state custody for Māori, whereas for non-Māori the trend is relatively flat over the same time period.

5. The urgency of decisions to take babies into state custody has increased for pēpi Māori

Since 2013, there has been a change in the way that decisions are made by the state to take babies into custody. The use of 'planned' removal of babies²⁰ has reduced and the use of 'urgent' removal²¹ has increased²². 'Planned' removal is a more formal decision making process and involves a Family Group Conference, which can currently take up to six weeks to arrange,²³ so some babies may have aged out of the 0-3 month group before this order type applies. In contrast, 'urgent' removal requires a social work judgement and the application granted by the Family Court, and this may occur without whānau involvement.

The rate of urgent entries approximately doubled from 2010 to 2019 for pēpi Māori aged 0-3 months, but stayed the same for non-Māori babies aged 0-3 months. Care agreements have declined since 2008, for both Māori and non-Māori babies aged 0-3 months.

6. State custody is intergenerational

Forty-eight percent of the pregnant women in 2019 for whom the state decided during pregnancy to remove their pēpi Māori after birth, had been in state custody themselves, compared with 33 percent of non-Māori. After birth, the proportions are similar between Māori and non-Māori. Twenty-six percent of pēpi Māori and 29 percent of non-Māori babies 0-3 months old entering state custody in 2019 had a mother who has been in state custody.

²⁰ Planned removals are Court orders under section 101, section 102 and section 110(2)(a) of the Oranga Tamariki Act 1989.

²¹ Urgent removals relate to Court orders under section 39, section 40, section 42, section 48 or section 78 (interim) and urgent custody applications.

²² All urgent removals and some planned removals are temporary, and additional processes, including a Family Group Conference, are required for a baby to remain permanently in state custody.

²³ Personal Communication, Oranga Tamariki – the time to set up a family group conference can vary widely from case to case.

Ninety-five percent of Māori mothers aged 20-28 who were in state custody themselves as children do not have a child placed into custody in the first 3 months of the child's life.²⁴ However, having been in state custody increases the likelihood of their own pēpi being taken into state custody.

Conclusion

The data in this snapshot shows deep, persistent and increasing inequity in the removal of pēpi Māori into state custody.

This raises questions for further exploration, including:

- Why is the inequity between Māori and non-Māori increasing?
- Why are assessments and removals of pēpi Māori happening earlier in their lives?
- How well do social work assessments and interventions increase the safety and wellbeing of pēpi Māori by connecting them with services and supports?
- What impact do social work practices have on pēpi Māori and their whānau?

These questions will be explored further during the review.

²⁴ Data provided by Oranga Tamariki, personal communication. Data from Māori mothers aged 20-28, as at 30 June 2018. These results are not official statistics, they have been created for research purposes from the Integrated Data Infrastructure (IDI) managed by Statistics New Zealand. Access to the anonymised data used in this study was provided by Statistics NZ in accordance with security and confidentiality provisions of the Statistics Act 1975. Only people authorised by the Statistics Act 1975 are allowed to see data about a particular person, household, business or organisation and the results in this Excel workbook have been confidentialised to protect these groups from identification. Careful consideration has been given to the privacy, security and confidentiality issues associated with using administrative and survey data in the IDI. Further detail can be found in the Privacy impact assessment for the Integrated Data Infrastructure available from www.stats.govt.nz.

Appendix 5: Glossary and key terms

Glossary and key terms

The explanations below are provided to support readers of this report, they are not intended to be interpreted as definitions.

Te reo Māori kupu

Aroha – the expression of love, care, respect

Haka – to dance, perform the haka, to perform

Hapū – to be pregnant, conceived in the womb, the kinship clan, clan, sub-tribe

Hui – to gather or congregate, to meet

Iwi – strength, bone and the extended kinship group, the tribe

Kaimahi – people who work for Māori organisations or iwi organisations to support whānau

Kaitiaki – refers to the person who was our guardian for this review. Also references the guardianship role of Iwi Māori and cultural guardians

Kaitiakitanga – obligation to care for one's own

Karakia – prayer, recite ritual chant

Karanga – ceremonial call, welcoming call done in ceremonial occasions

Kaupapa – topic, matter for discussion

Kaupapa Māori – Māori approach, Māori ideologies and philosophies, Māori skills, attitudes and values of Māori society

Kawa – Māori methodology or protocols

Kete – basket

Kōrero – oral communication or speaking

Māmā – mother, birth mother

Manaakitanga – support, kindness, generosity, hospitality

Mana Tamaiti – as defined in the Oranga Tamariki Act 1989 as, “the intrinsic value and inherent dignity derived from a child’s or young person’s whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group, in accordance with tikanga Māori or its equivalent in the culture of the child or young person.”

Marae – the open area in front of the whareniui, traditional meeting places for Māori

Mātanga rōpū – a group of external Māori experts who are providing advice and guidance to this review

Mātāpono – principles

Mātauranga Māori – traditional Māori knowledge, Māori epistemology

Mirimiri – to soothe, massage

Oranga Tamariki – the name of the government agency that the Office of the Children’s Commissioner is reviewing, Oranga Tamariki–Ministry for Children

Papakāinga – original home, village, communal Māori land

Pēpi – the baby or infant that we have heard about from the whānau

Pūrākau – story, legendary, ancient legend, myth

Rangatahi – youth, young person

Rongoā – medicine, cure, treatment, to preserve, to treat, or apply medicines

Ruruku – to draw together, to bind – A prayer that was written by combining different parts of traditional karakia (Māori prayer) to create a new one

Tamariki – children

Tāngata whenua – Māori people of this land

Taonga – treasured things

Tapu – behavioural control and sacred/profane divide

Tapuhi – nurse/midwife

Te ao Māori – the Māori world

Te reo Māori/reo – the Māori language

Te whare tangata – ‘the house of humanity’, the womb, uterus

Tikanga/Tikanga Māori – Māori methodology or rules, the first law of Aotearoa

Tino rangatiratanga – self-determination, sovereignty, autonomy, self-government, domination, rule, control, power

Tupuna – ancestors

Waiata – to sing, a chant, a song or psalm

Waiora – health, soundness

Whakapapa – the family lines of whānau that connect to ancestors

Whakatauki – a proverb used where the person who said it first is unknown

Whānau – means both to birth, and the extended family unit (in an inter-generational sense), that a pēpi is born into and through which their whakapapa, family lines, connects them with their ancestors

Whanaungatanga – centrality of kinship and careful attention to relationships. The process of establishing relationships, preserving relationships, strengthening relationships, maintaining relationships and the importance of these relationships to family in being able to keep whakapapa links

Whenua – placenta and afterbirth, and land

Key terms

Child, Youth and Family (CYF) – the name of the predecessor to Oranga Tamariki–Ministry for Children. Within this report some whānau have referred to Oranga Tamariki as Child, Youth and Family, as the name change happened recently (2017). Some whānau refer to Child, Youth and Family when they are reflecting on an experience that happened after 2017. In the rare instances where whānau talk about their experiences prior to the establishment of Oranga Tamariki, this has been made clear in the text.

Community social workers – social workers who work for iwi, Māori and non-government organisations who work with and support whānau.

Family Court – the Court that deals with family matters. It is where decisions about the custody of children and young people are made by a Judge.

Family Group Conference – a legally-binding process used for planning the care of babies and children with the parents, social workers, wider whānau and those supporting whānau are present.

Home for life – when Oranga Tamariki decide that it is unsafe for a child to return to the care of their parents, a permanent placement is found. This has previously been known as a ‘Home for Life’ placement but is now referred to as permanent care.

Kin – any person who is whānau, hapū, iwi or wider family group.

Non-kin – any person who is not whānau, hapū, iwi or wider family group.

Oranga Tamariki–Ministry for Children – Oranga Tamariki is the current organisation responsible for ensuring the safety and wellbeing of children and young people in New Zealand.

Oranga Tamariki Act 1989 – the law that Oranga Tamariki staff must follow.

Oranga Tamariki social workers – social workers who work for Oranga Tamariki.

Placement – when a child is in the custody of the State, Oranga Tamariki are responsible for finding somewhere safe for the child to live. Where the child lives is called a placement.

Removal – when custody of a child is granted to Oranga Tamariki, the child is taken from the care of their whānau and is placed with approved caregivers (can be whānau or non-kin). This can be called a removal.

Report of Concern – when someone is concerned about the safety or wellbeing of a child, they contact Oranga Tamariki–Ministry for Children and let them know about these concerns. This is called a Report of Concern.

State custody – when a child is in state custody, the Chief Executive of Oranga Tamariki is responsible for the child’s day-to-day care.

Statutory care and protection system – a system or organisation that use law and legislation to ensure the safety and wellbeing of children.

Statutory social worker – a social worker employed by Oranga Tamariki and its predecessor Child Youth and Family, have been described as statutory social workers in this report.

The state – used to refer to government agencies including Oranga Tamariki, Police, etc.

The system – used to refer to Oranga Tamariki as a whole.

Uplift – when custody of a child is granted to Oranga Tamariki, the child is taken from the care of their whānau and is placed with approved caregivers. This can be called an uplift.

With notice/non-urgent – a custody order is applied for Oranga Tamariki, this application is served on whānau and whānau are able to respond before the Family Court decides if the custody order is granted to Oranga Tamariki or not.

Without notice/urgent – a custody order is applied for by Oranga Tamariki and granted by the Family Court without informing whānau. If the Family Court grants a without notice application, it is usually granted on the same day.





MANAAKITIA Ā TĀTOU TAMARIKI

Children's
Commissioner