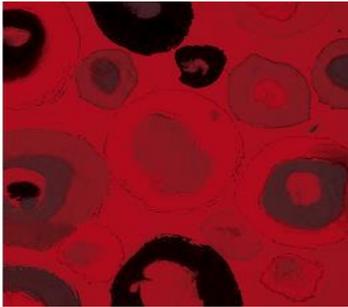


Royal Commission of Inquiry into Abuse in Care

INTRODUCTION

- a) Generations of children and young people have been failed by a State care system that should have kept them safe from abuse and neglect, upheld their rights and ensured their well-being and best interests. Instead, many of them have been exposed to even greater trauma and pain. The brunt of this failure has been experienced by Māori. Disabled people have also been subject to a range of failures by the State care system.
- b) I acknowledge the suffering, hurt and violence experienced by the many who have been victims of State care abuse and the strength and courage of those who are sharing their experiences in this forum. As the current Children's Commissioner, and as a father, brother and son, I want to acknowledge it is harrowing hearing about the extent of abuse children and young people have experienced historically. It is particularly hard knowing that abuse in State care continues today. I recognise my own position of privilege, that of a Judge and as a Pākehā man who has been free from abuse, and who enjoyed a loving, stable family. My current role comes with significant responsibilities and obligations to give voice to children and young people today, particularly those in State care.
- c) I also need to acknowledge, that as the independent monitor of the State care system since 1989, my office is implicated in this failure. The Children's Commissioner's Act 2003 legislated broad functions and scope to monitor and assess the policies and practices of the State care system.¹ However, in practice, the Office of the Children's Commissioner has never been properly resourced to fully discharge these functions. This has significantly limited its effectiveness. Successive governments have well known that the OCC has been insufficiently funded to fully discharge its crucially important monitoring role. In particular, the Office has never had the resources to ensure that every child in State care was and is regularly visited, independently interviewed and supported.

The importance of having an effective and well-resourced independent monitor, and child-centred complaints mechanism, for children and young people in State care and religious institutions has been highlighted in testimonies already made to this Royal Commission.
- d) In alignment with our statutory mandate, the focus of the OCC submission is based on State care institutions. However, all children have the right to live free from abuse. In pursuing this goal, the Commission will face many difficult issues. For instance, currently, communications with ministers of religion are legally protected under the Evidence Act 2006.² This means that if someone discloses that they have perpetrated or are perpetrating abuse against a child such admissions are legally privileged. The issue as



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

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

¹ The original functions of the Commissioner for Children (as was the then title) were to similar effect, set out in s411 of the Children, Young Persons and their Families Act 1989.

² s58 Evidence Act 2006

to whether this privilege should be abolished is but one example of the issues that will face the Commission. A similar issue faced the Australian Royal Commission. These sorts of issues cannot be avoided and will require a child-centred approach.

- e) A particularly profound and deep issue is the disproportionate number of Māori in State care and the disproportionate numbers of Māori who have been abused while in State care.

In 1988, Pūao-te-ata-tū set out a foundation for transformative change in the operations of New Zealand's policies and practices regarding the care of Māori children and their whānau. The Children, Young Persons and their Families Act 1989 went a long way towards embedding this opportunity. However, in practice, the Act did not live up to the vision of Pūao-te-ata-tū. We now have not just a second chance for the revolution prescribed in the 1989 Act, but an obligation to get things right.

- f) Urgent and immediate change is needed to improve the experiences and outcomes for children and young people, and their whānau, who are subject to State care intervention today. We should start by honouring those hurt in the past by listening and apologising. Other recommendations in this submission include the creation of a new specialised role – a Commissioner for Children and Young People in Care, and the creation of a truly independent complaints system.
- g) The care and protection and youth justice systems should protect and assist children and young people, so they can lead full and thriving lives. However, the sad reality is that some children and young people continue to experience abuse in State care today, along with poor long-term health, education and employment outcomes. The scope of the Royal Commission, and its discretion to consider issues and experiences after 1999, should be broadly interpreted to extend through to the present day. This will support children and young people to be protected from abuse now and into the future. There is no justification to restrict the Royal Commission Inquiry to adults and children in care only up to 31 December 1999.

1. THE OCC MONITORS ORANGA TAMARIKI

The OCC has three areas of monitoring:

- a) The OCC has a statutory responsibility to 'monitor and assess' the policies and practices provided under the Oranga Tamariki Act 1989.³

Oranga Tamariki provides services to approximately 30,000 children and young people on any given day. Around 6,400 of these children and young people are in the care or custody of Oranga Tamariki. It is concerning that this number has been rising, with a 26% increase in the last 5 years (while the population of children grew only about 5% in that time). Some of this increase can be attributed to the increase in the age at which children can remain in care.

The majority of these children and young people are living with whānau, wider family or wider kin caregivers. Others live with non-kin caregivers and a smaller number are living in community group homes. And, at any one time, approximately 200 young people are placed in Oranga Tamariki secure care and protection or youth justice residences.

- b) Since 2008 the OCC has been a designated 'National Preventative Mechanism' under the Crimes of Torture Amendment Act 2003 and has responsibilities for children and young people in detention under the Optional Protocol to the United Nations Convention Against Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- c) We also have oversight of the grievance panel system (Whaia te Maramatanga) used within the nine youth justice and care and protection residences. Grievance and advocacy processes are outlined in sections 15 and 16 of the Oranga Tamariki (Residential Care) Regulations 1996.⁴

Given the Office's statutory mandate, we recognise that we, too, could be subject to review within the scope of this Inquiry for inadequately discharging our monitoring function. We welcome any inquiry that looks to ensure the rights, well-being and best interests of children and young people are better protected now and into the future.

As the independent monitor, the OCC has never been resourced to deliver the full scope of our monitoring functions. This limitation means that over the decades, the seven Children's Commissioners have had to be very selective about what we monitor and how. There has always been a focus on care and protection and youth justice residences given that young people in these residences are particularly vulnerable. We choose our priorities based on staffing, capacity of the Office, meeting our legislative obligations and where we can influence the most change within a wider context. The priorities also sometimes vary according to the priorities, areas of expertise and experience of the Children's Commissioner appointed at the time. These limitations have been frequently drawn to the attention of the Government of the day by successive Children's Commissioners.

³ S 13(1)(b), Children's Commissioner Act 2013.

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

2. AN EFFECTIVE, INDEPENDENT AND SEPARATE MONITOR FOR CHILDREN IN CARE IS VITAL – A NEW ROLE: A COMMISSIONER FOR CHILDREN IN CARE

It is vital that there is an effective independent monitor to help prevent, address and eliminate abuse of children and young people in State care. The effectiveness of the monitor should not be limited by its level of resource, or subject to who is appointed the Children's Commissioner for any given period. A clear statutory framework should be established based on the newly promulgated National Care Standards, which took effect 1 July 2019.

Accessing data about children's experiences is also core to the effectiveness of the monitoring framework. Yet there remains little reliable or easily accessible data available about the outcomes of children in the State care system. Better collection and analysis of data is essential for Oranga Tamariki to improve its services, and for the Government and the public to have confidence that Oranga Tamariki, and other government agencies, are improving outcomes for children in care.⁵

Child-focused monitoring alone cannot guarantee abuse will never occur. However, such monitoring is one of the key ways that children and young people's disclosures about incidences of violence, abuse, and substandard practice come to light. Last year, with the agreement of the relevant Minister, we visited each residence twice. This year, we conducted a visit to each of the nine residences. This involves visiting with the children and young people first, carrying out separate interviews with them all, and comprehensively record their findings. We do not believe this is sufficient to provide assurance of children and young people's safety and wellbeing and ensure their rights are being consistently upheld.⁶

In April 2019, the Government announced changes to the oversight of the State care system. This included a review of the relevant roles and functions of the OCC and the Office of the Ombudsman. The scope of this review included independent oversight of complaints made, investigative functions, systemic advocacy and independent monitoring.⁷ The intention of the review is to strengthen the independent oversight of children in the care of Oranga Tamariki, with the primary focus on the welfare, rights, interests and wellbeing of children in care.

This overhaul of the oversight system represents the biggest opportunity to strengthen the independent monitor since its establishment. We believe a new statutory position should be created: A Commissioner for Children and Young People in Care. This new role would be in addition to the continuing role of Children's Commissioner. The new role would require a specialised skill set with detailed knowledge of Oranga Tamariki legislation, policy and practice. The two roles would be covered by a hybrid governance structure and would work together.

The most effective way to ensure the independence of the Commissioner for Children and Commissioner for Children and Young People in Care is to make them both an Officer of Parliament. Currently, this status is held by the Ombudsman, the Controller, the Auditor-General and the Parliamentary Commissioner for the Environment. Like the environment,

⁵ OCC (2015) State of Care report.

⁶ OCC (2017) State of Care report.

⁷ <https://www.beehive.govt.nz/release/oversight-care-our-children-strengthened>

children and young people are taonga. Also, their voice is not directly represented in Parliament. Surely children and young people are no less deserving than mountains, lakes and rivers. We should ensure that organisations tasked with upholding children and young people's wellbeing, rights and interests are empowered with the strongest tools available. The creation of both a Parliamentary Commissioner for Children and a Parliamentary Commissioner for Children and Young People in Care, should be seen as a non-negotiable gold standard. At the very least a separate Commissioner for Children and Young People in Care should be created with the possibility that Co-Commissioners be appointed where at least one Commissioner is Māori.

Urgent and immediate change is needed to prevent abuse of children in State care today and in the future. Any independent monitor, and the State care system as a whole, needs to be child-centred and informed by the lived experiences of children and young people who are, and have been, in State care. The Australian Royal Commission into Institutional Responses to Child Sexual Abuse found that many victims do not disclose their abuse until they are well into adulthood.⁸

With Māori children and their whānau most affected by the State care system, the Government has emphasised the importance of ensuring that the independent monitor recognises and responds to Māori. Design and implementation must do more than involve Māori; it must also be Māori-led, as called for by Māori over many decades.

⁸ Australian Royal Commission into Institutional Responses to Child Sexual Abuse (2017) Final Report

3. THERE IS AN OBLIGATION TO “GET IT RIGHT” THIS TIME TO SAFEGUARD CHILDREN NOW AND INTO THE FUTURE

(a) We do not know if children are any better off as a result of State intervention, but the available indicators are not good

Under the United Nations Convention on the Rights of the Child 1989 children have the right to privacy (Article 16), protection from abuse (Article 19), all forms of exploitation (Article 32, 36), exposure to illicit drugs (Article 33), and torture and unlawful deprivation of liberty and free from inhumane custody (Article 37). The right for children with disabilities to enjoy a full and decent life is accorded in Article 23.

Article 20 makes specific reference to special protection and assistance provided by the State when a child is temporarily or permanently deprived of family. When considering alternative care arrangements due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

As highlighted in The Office of the Children’s Commissioner’s 2015 State of Care report, the limited evidence we do have from Gateway Assessments, NCEA results, and rates of offending by children in State care is concerning.⁹ It shows a pattern of high health and education needs, very poor educational attainment, and a much higher likelihood of criminal offending for children in State care compared to the general population. There is not enough information to conclusively say whether children are better off overall because of State intervention. This needs to change. We need to do better to track and measure their outcomes so that we can ensure the services children and young people receive from Oranga Tamariki and other agencies are working effectively to mitigate the harm they have experienced and improve their outcomes in the long term.

When we spoke to children and young people as part of our routine monitoring in 2017-18 we heard that secure care and protection residences are a “hard place to be happy”.¹⁰ We also heard from some children and young people who were very sad and upset. Some talked about harming or trying to kill themselves.

“90% of kids in here are suicidal for being in residence and the experiences they have in life. And no one does anything about it.” (Girl living in secure residence)

“I’ve tried to kill myself ... and I hurt myself, many times ... when I go on walks, I pick things up, just to hurt myself.” (Girl living in secure residence)

Some said they coped by not talking to other people. Others told us they wanted to run away.

What we do know is that abuse and neglect is continuing today: see the quarterly figures now being released by Oranga Tamariki. We acknowledge Oranga Tamariki’s commitment to release these figures (discussed in more detail in section five).

⁹ OCC (2015) State of Care report.

¹⁰ Office of the Children’s Commissioner (2019) A Hard Place to be Happy: Voices of children and young people in care and protection residences. Insights Report.

There have been at least seven substantial and five other official reviews into the care and protection system over the last 30 years.¹¹ There are findings and recommendations in every one of these reviews, many of them informed by whānau experiences.

Currently there are four separate, and quite different reviews¹² into Oranga Tamariki legislation, policy and practice relating to Māori pēpē, tamariki and their whānau. This includes the OCC's thematic review asking what needs to change to support pēpē Māori (aged 0-3 months) to remain in the care of their whānau in situations where Oranga Tamariki has been notified of care and protection concerns.

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

(b) Māori have been placed into State care and experienced abuse at higher rates

Māori make up 71% of the children and young people in care and protection residences and 80% of those in youth justice residences, despite representing only 25% of the population.¹³ The proportion of children and young people in State care who are Māori has increased from 64% to 68% in the last 5 years. Children and young people have told us about the impact this has on their experiences, and for Māori, their identity.

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

The enduring legacy of colonisation combined with systemic racism has long affected decisions made by State departments and institutions, including child welfare systems. The impacts of colonisation, associated dislocation of Māori from their whenua, land, community, economic base, culture and language has contributed to the disproportionate number of Māori entering State care. Institutional racism also contributes to Māori children and young people in State care experiencing poorer outcomes. The Crown has consistently failed in its obligations under Te Tiriti o Waitangi.

Transformative changes to the system are needed for Māori children to reduce these inequities, to challenge systemic racism, and to benefit all children and young people who come into contact with the care system. We advocate strongly for services and policies that reduce inequities and improve outcomes for Māori, and are led by Māori.

The abuse of Māori children and young people in State care has been well documented. In 1988, Pūao-te-ata-tū laid the foundation for transformative change, including how the Crown honours its Te Tiriti o Waitangi obligations when it comes to the welfare and care of children. The report made specific recommendations about how the Crown should exercise its obligations under Article 3 of Te Tiriti o Waitangi in relation to the removal of Māori children from their whakapapa.

¹¹ Substantial reviews of care and protection system: 1. Pūao te ata tū (1988) 2. Mason review (1992) 3. Brown report (2000) 4. Baseline report (2003) 5. White paper (2012) 6. Workload and caseload review (2014) 7. Expert panel review (2015) Other official reviews: 1. 1994 review with a financial focus 2. 2001 Smith report following the serious abuse of a 9-year-old girl 3. 2003 broad report on the complaints system 4. Two 2006 Treasury reports.

¹² OCC thematic review, Whānau Ora review, Ombudsman review and Oranga Tamariki case review.

¹³ Oranga Tamariki data as at 30 June 2018.

Pūao-te-ata-tū called for significant change to how Government agencies work and partner with Māori. In its opening summary the Report noted as follows:

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

Thirty years later Māori are leading national conversations that echo these conclusions and recommendations from Pūao-te-ata-tū, including:

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

(c) There is also a need to learn from the experiences of disabled people in State care

Disabled people, including children, have been subject to systemic abuse and neglect in State care over many years. The system itself has, and continues to, perpetuate harm against disabled children. They have, and continue to be, failed by state-funded services meant to protect and care for them.

Their experiences – both historical and contemporary - also need to inform the Royal Commission’s inquiry and this must be done in a way that recognises adequately responds to the fact that disabled people may face further physical and social barriers which make it more difficult for them to be heard.”

A 2017 research report commissioned by the Human Rights Commission collated and detailed experiences of 18 disabled children and adults in State care between 1950 and 1992 and found that they were subject to a range of system failures.¹⁴ These included:

- Failure to meet people’s material, physical, and emotional needs
- The use of control and environmental, chemical, and physical restraint practices for the purposes of punishment
- Repeated physical, psychological, and sexual violence.

The experiences of disabled people in State care have not been well reported, and while significant research gaps remain, accounts in this report highlight that the impacts of this abuse are ongoing:

I don’t remember being touched and cuddled like other kids are. I was never loved as a child. Me and all those other kids... Even today I find it hard to show affection to other people. I don’t trust easily. (Robert Martin: The People’s Advocate, 2014)

Furthermore, while the very large-scale institutions where historic abuses have occurred have been progressively closed, disabled people continue to receive care from the State today through, for example, Oranga Tamariki and Disability Support Services. It is therefore

¹⁴ See: “Institutions are places of abuse”: the experiences of disabled children and adults in State care.

vital that the experiences of disabled people in State care, both historic and current, also inform the Royal Commission's inquiry.

(d) Sadly, legislative change is not enough

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

The recent changes to the Oranga Tamariki Act that came into effect on 1 July 2019 go some way to addressing this by focusing on key principles and concepts reflective of a Te Ao Māori worldview and by placing specific obligations relating to Māori on the Chief Executive.¹⁵ It could be argued that these “new” obligations do little more than make explicit that which was implicit since at least 1989. It could also be argued that these “new” provisions are a damning indictment on thirty years of failure experienced by Māori under the previous CYF regime. The new duties are imposed on the Chief Executive in order to recognise and provide a practical commitment to the principles of Te Tiriti o Waitangi. The Chief Executive is, among other things, to:¹⁶

- develop policies and practices to reduce Māori disparity by setting measurable outcomes for Māori children and young people
- ensure that policies, practices and services have regard to mana tamaiti (tamariki), whakapapa and whānaungatanga responsibilities
- develop strategic partnerships with Iwi and Māori organisations to encourage innovation and improve outcomes for Māori children, providing opportunities to delegate functions to Iwi.

Success can only be measured when outcomes and experiences change for Māori. This requires Māori, including Iwi, to have the opportunity, the resources and the authority to exercise care, protection and restoration of their own tamariki.

However, as past experience has shown, we cannot rely on regulation, practice guidelines or response to ‘signals’ in the legislation to bring about the changes we need. Legislation needs to be clear and directive, but must be accompanied by a clear strategy for organisational change to improve the day-to-day experiences of children and young people.

When we spoke to Māori children and young people in care and protection and youth justice residences, as part of our routine monitoring work in 2017-18, we found that residences were not providing sufficient opportunities for children and young people to connect with their culture.¹⁷ It is desirable for mokopuna Māori, and all children and young people to be connected to their culture. However, this was not the experience for many children and

¹⁵ See section 7AA.

¹⁶ See section 7AA.

¹⁷ Human Rights Commission Report 2017/18 Monitoring Places of Detention. Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT)

young people in residences, nor were most residences engaging sufficiently with whānau or hapū.¹⁸

“They don’t do nothing for my culture” (Young person in residence)

“I speak Māori and play the guitar. They should do more cultural programmes like hangi, music, diving and hunting” (Young person in residence).

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

(e) Secure care and protection residences must close, with an emphasis on community-based care

There must be a wider suite of placement options for children and young people who cannot live with their family or whānau, and for young people on remand. Young people on remand must not be mixed with young people who have been sentenced by the Youth Court.¹⁹ Sentenced young people must experience a safe, secure, therapeutic environment.

Aggregating children and young people who have experienced trauma together heightens the risk of bullying and violence. The Royal Commission has heard the impact of this from witnesses such as Dr Rawiri Waretini-Karena, Fa’afete Taito and Aaron Smale to name a few. I wish to acknowledge their courage in sharing their painful experiences in order that children and young people should never have to go through the same ordeal ever again.

Secure care and protection residences are an example of failed practices. They have become a symbol of an outmoded and ineffective approach. Oranga Tamariki have agreed to phased closure of these residences. They cannot close soon enough. We look forward to Oranga Tamariki confirming how and when all residences will be closed.

For the future, the focus should be on smaller, more family-like community homes with specialised staff and a shift to kaupapa Māori providers. All residential settings must be designed to support children and young people to heal, learn new skills and develop their identity as confident children and young people, proud of their identity and heritage.²⁰

¹⁸ As above

¹⁹ OCC (2017) State of Care report.

²⁰ As above

4. WE NEED TO CREATE A CHILD-CENTRED COMPLAINTS MECHANISM TO SUPPORT CHILDREN AND YOUNG PEOPLE WHO ARE CURRENTLY IN STATE CARE

An independent, child-centred complaints mechanism, which children and young people in State care trust and can readily access, needs to be developed as soon as possible.

a) Existing Grievance Processes for children and young people in residences are flawed

While children and young people in residences generally understand how to use the grievance system to make a complaint, many we have spoken to told us they do not have confidence in the complaints system²¹

“Whaia te Maramatanga, it’s alright. Because you have to go through these people first and a complaint, it has to go higher. Shouldn’t have to go through people here because of course they will side with the people here. It should go to national office or somewhere where people will listen to us.” (Young person in a care and protection residence)

“I don’t wanna go through that whole process, cause nothing really happens at the end of it anyway. Can’t really be bothered with it. I just keep to myself.” (Young person in a care and protection residence)

“The grievance process takes too long to go through. I will just talk to someone if I need to.” (Young person in a care and protection residence).

Not only do children and young people have to complete a written grievance form, this form is given to a staff member who may be the subject of the grievance or a colleague of the staff member. This is fundamentally flawed.

*“When [staff] found out I put a grievance, they gave me sh*t about it.” (Māori young woman)*

Some residences struggle to attract and maintain sufficient grievance advocates who can visit young people regularly. There is variable practice in how the grievance process is implemented across residences. Children and young people rarely request the support of a grievance advocate to help them to make a complaint and many do not understand their role.

“Young people’s questions ‘get shut down’ a little bit; we don’t have a forum for raising genuine issues” (Focus group participant in a care and protection residence).

Historically, grievance processes have not been the forum where significant abuse issues have been raised. Relying on such processes (currently without independence) to uncover significant abuse is flawed.

b) Most children and young people in care do not live in a residence and have little opportunity to make a complaint

The vast majority of children and young people who are in care are not detained in a secure residence. The opportunities available to them to raise complaints or grievances are limited.

²¹ OCC (2016) State of Care report.

Many rely on the relationship with their social worker as the only formal connect to the system. We have heard from some children and young people that they have been let down by their social worker, and do not believe that anything will change if they talk to them.²²

c) VOYCE Whakarongo Mai

We welcome the establishment of VOYCE Whakarongo Mai. This NGO created and funded by the government has created an opportunity to ensure children and young people can access and build trusted relationships with an independent advocate. Advocates can take many different forms. It is essential that any independent advocacy group for children and young people is well resourced and supported. Young people have told us about the impact that trusted adults who stay in their lives can have.

“What helps? People who will stay in your life.” (Young person in state care).

d) The challenge to create an Independent Complaints System

Oranga Tamariki have made a commitment to develop an accessible and child-centred complaints process for children and young people in State care to be launched in 2020. In the interim, they have developed resources for children in State care so that they are aware of their right to raise issues and understand what will happen after they exercise these rights. While this is commendable, we are concerned that any complaints mechanism set up internally within Oranga Tamariki will not be truly accessible for children and young people, nor sufficient independent. Although the Ombudsman’s Office will provide future complaints system oversight, and is the existing escalation pathway, it does not replace Oranga Tamariki’s internal complaints process.

Any complaints process led by Oranga Tamariki lacks the necessary independence if it is to be effective, trusted and accessed by children and young people. Several barriers exist to participation in mechanisms, such as grievance processes, that should be acknowledged. As well as general barriers to participation that exist for all children, such as filtering by adults and the lack of a participation ecosystem, children and young people in care face additional barriers to participation. These include their perceived vulnerability, adult tensions and professional obligations, and the care system being monolithic and inflexible.²³ Further factors that are exacerbated by being in care are the importance of trusting relationships with adults and gatekeeping by adults.²⁴

Being child-centred requires that children and young people are involved in the decision making about their own care. An independent complaints mechanism must collect and embed children’s feedback about their experiences and ensure that children and young people feel safe to make complaints. Consistent practice needs to be developed to ensure all information needed from all parties involved in a complaint process can be gathered and analysed to ensure best practice.

²² OCC & Oranga Tamariki report (2019): What makes a good life? Children and young people’s views on wellbeing

²³ Fitzmaurice, L. (2016) Towards a participation ecosystem: A literature review on participation in decision-making for children in state care.

²⁴ As above

We need to bear in mind that even the best complaints system will not solve the issue of abuse. However, we must create an environment where children and young people can complain.

e) A new thematic monitoring review in 2020

The OCC plans to undertake a thematic monitoring review in 2020 where we interview a cohort of children and young people six months to a year after they have left a care and protection or youth justice residence. While we already interview many children and young people during their time in residence, this review will provide a group of them with an opportunity to look back on their time in residence. They will have the chance to tell us what worked well, as well as anything they found difficult, any complaint they may wish to make now, and any suggestions they have for improving the experience for others. This review will help us understand the extent to which the fact of being in State care, along with the power imbalance this creates, prevents children from making complaints at the time.

5. THE SCOPE OF THE ROYAL COMMISSION SHOULD BE BROADLY INTERPRETED TO EXTEND TO TODAY

Each year, a number of children who have been removed from their families and whānau because of substantiated findings of abuse and neglect are re-abused while in State care.²⁵ Recent figures released by Oranga Tamariki show a continuing picture of State abuse of children and young people in care:²⁶

- 103 individual children were abused from January to March 2019 (up from 97 in the previous quarter)
- 76% of children abused in State care were Māori (increased from 72% and 65% in the previous two quarterly reports)
- approximately 7-10% of all children in State care are abused annually.

We commend Oranga Tamariki in its commitment to the quarterly release of these figures. However, the released figures are likely to be significantly lower than the true rate of abuse given that it often takes many decades for victims of abuse to disclose what has happened to them. The information gathered for the Australian Royal Commission into Institutional Responses showed that many victims do not disclose child sexual abuse until many years after the abuse occurred, often when they are well into adulthood. Survivors who spoke with the Australia Royal Commission during private sessions took, on average, 23.9 years to tell someone about the abuse and men often took longer to disclose than women (the average for females was 20.6 years and for males was 25.6 years). Some victims never disclose.²⁷ It will be important for the New Zealand Royal Commission to release the equivalent New Zealand figures in due course.

In an OCC study of children in care in 2010, four children interviewed out of almost 50 (8.5%) described being abused or treated badly in some care placements.²⁸ Nine participants commented about being treated unfairly, being stigmatised as ‘CYF kids’ and being reminded that they were an outsider.

In OCC’s newly published report, *A Hard Place to be Happy*, we gathered voices from those interviewed as part of our routine monitoring in care and protection residences from 2017-18. Several children and young people said they had been bullied by others in the residence – physically, sexually or verbally.

“I’ve been bullied ever since I’ve been here. Non-stop bullying. They call me all sorts of nasty names – the young people out there ... no one is doing anything about it, and it has gotten worse.” (Māori young woman in a care and protection residence)

In OCC’s recent engagement, *What Makes a Good Life?*, with almost 6,000 children and young people, to inform the development of the Government’s Child and Youth Wellbeing Strategy, many told us about how ‘the system’ (Oranga Tamariki, Police, their school, health

²⁵ OCC (2015) State of Care report

²⁶ <https://www.orangatamariki.govt.nz/assets/Uploads/safety-of-children-in-care/OT-SOCIC-Q2-2018.PDF>

²⁷ Royal Commission into Institutional Responses to Child Sexual Abuse (2017) Final Report: Identifying and disclosing child sexual abuse. Australia

²⁸ Attwool, N. (2010) Children in Care: A report into the quality of services provided to children in care. OCC.

system or WINZ) lets them down and gets in the way of having a good life.²⁹ Young people in State care talked about how they did not know what supports they were eligible to receive and only found out about the supports available through other young people.

“I’ve done all of these things, but nothing changes. Will all of Oranga Tamariki make a change? No little white lies” (Young person in State care).

We all too easily assume that there is a bright line, somewhere in the past, where abuse stopped or significantly reduced. Nothing we have seen shows this to be true. The Royal Commission needs to exercise its discretion broadly and widely to inquire into both historical and current abuse of children and young people in State care. This is to ensure that children and young people in State care are not only protected from current and future State abuse but are enabled to lead full and thriving lives.

²⁹ OCC & Oranga Tamariki report (2019): What makes a good life? Children and young people’s views on well being

CONCLUSION

We must act now to prevent another generation of children and young people being failed by a State care system that should have protected them. The State must listen, apologise, make reparations and ensure transformational change. Transformation requires systems-change which demonstrably ensures that outcomes and experiences of children improve.

Generations of families and whānau have been let down, and continue to be let down, by the State systems that should be supporting them. With great respect, the Office of the Children's Commissioner submits that the Royal Commission has an obligation to ensure that its recommendations focus on systems-change, informed by the experiences of those abused in State care. This means our current generation of children and young people, particularly Māori, can be freed from abuse and neglect at the hands of the State, and supported to thrive.

Judge Andrew Becroft

Children's Commissioner

Te Kaikōmihana mō ngā Tamariki o Aotearoa

6 November 2019