



MANAAKITIA Ā TĀTOU TAMARIKI

Children's
Commissioner

Aotearoa New Zealand's 7th Periodic Review under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Submission of the New Zealand Children's Commissioner (OPCAT
National Preventive Mechanism)

12 June 2023



Mihi (Acknowledgment)

Tuia te rangi e tu iho nei. Tuia te papa e takoto nei

Tuia ngā kōrero, tuia ngā wānanga, Kia mau, kia ita, kia kuru pounamu te rongo, mō te oranga o ngā mokopuna. Haumi e, hui e, tāiki e.

E aku rangatira, tēnā koutou katoa. Tēnā koutou e ngā mokopuna kua kōrero mai ki a mātou, kua whakapono ki a mātou. Ko a koutou kōrero ka tū hei kaiārahi i a mātou mahi katoa. E kore aku mihi e mutu ki a koutou ngā mokopuna.

E ngā kaimahi e tiaki ana i ā tātou mokopuna, ka rewa te pōtae ki a koutou.

E mohio ana ahau ki te mahi nui ki mua i a tātou ki te whakatikatika i ngā hē me ngā ngoikoretanga i te pūnaha. E kore e ārikarika te mihi ki a koutou katoa.

Weave together the sky and earth. Weave together the thoughts and knowledge. Hold firm, be committed and steadfast so that all children can live their best lives. Be united, draw together! Affirm!

I would like to thank my esteemed leaders, the mokopuna who spoke to us to, who trusted us with your kōrero. Your voice is our guide in everything we do.

My deepest thanks.

To those who take care of our mokopuna, I salute you.

I understand there is a lot of work ahead of us all as we address the wrongs and failures of the system.

My thanks knows no end.

Introduction

1. The Children's Commissioner (OCC) welcomes the opportunity to provide this written submission to the United Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Committee).
2. The OCC is an independent Crown entity¹ and has statutory responsibility to raise awareness, and understanding, of the United Nations Convention on the Rights of the Child (the Children's Convention) and to advance and monitor application of it by State departments and Instruments of the Crown.²
3. The OCC is a designated National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OCC's functions are outlined in the [Crimes of Torture Act 1989](#) (COTA).
4. This submission is for the Committee's seventh periodic review of New Zealand under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the State Report dated 16 March 2020.³ This submission is provided in response to the Committee's List of Issues Prior to Reporting (LOIPR) to the New Zealand Government dated 9 June 2017.⁴
5. This report will focus specifically on mokopuna (children and young people aged under 18 years) and is structured against the items listed in the LOIPR. It sets out proposed recommendations at page 29 for the Committee to consider when formulating its Concluding Observations.
6. The OCC is one of five NPMs in New Zealand, with activities coordinated by the Central NPM; Te Kāhui Tika Tangata (the Human Rights Commission). Other NPMs may provide individual submissions under their respective mandates, which the OCC supports.
7. The OCC notes positive progress from the New Zealand Government in protecting and upholding human rights, including key developments and legislative changes listed in the State Report.⁵ However, there continue to be issues of concern for mokopuna, which are detailed in this submission.
8. Contact details: C.Burrage@occ.org.nz

¹ [Crown Entities Act 2004](#).

² Refer to para 20 of this report.

³ CAT/C/NZL/7.

⁴ CAT/C/NZL/QPR/7.

⁵ CAT/C/NZL/7, para 5.

Background

Te Tiriti o Waitangi/The Treaty of Waitangi

9. Te Tiriti o Waitangi (Te Tiriti) is the founding legal document of New Zealand, which was signed between the British Crown and Māori rangatira (chiefs) in 1840.⁶ Te Tiriti affirmed the pre-existing rights of Māori and provided authority for the Crown and its subjects to reside in New Zealand.
10. Te Tiriti guaranteed that Māori would continue to exercise tino rangatiratanga⁷ (absolute authority) over their peoples, whenua (lands), resources, kāinga (homes, villages) and taonga (including mokopuna Māori⁸) in accordance with tikanga Māori (Māori laws and customs), whilst also providing kāwanatanga⁹ (governance) obligations on the Crown to govern its peoples under its own laws.
11. The intention of Te Tiriti was that two systems would operate simultaneously and share power and authority as equals, with details of the relationship to be negotiated over time.¹⁰
12. Te Tiriti further guaranteed Māori equal citizenship rights and privileges, placing obligations on the Crown to ensure equity for Māori alongside other New Zealanders.¹¹
13. Te Tiriti is the constitutional framework and context within which international human rights, standards and guidance (including the CAT) must be applied and interpreted. This approach is fundamental to upholding the human rights of all mokopuna in New Zealand, especially mokopuna Māori (Māori children and young people), and is affirmed and reinforced under Articles 18 and 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
14. Mokopuna Māori therefore have unique rights as tangata whenua (indigenous peoples) in accordance with tikanga Māori, as treaty partners, and as indigenous children. Mokopuna Māori have human rights as indigenous children under domestic and international law, including Te Tiriti, UNDRIP and the Children's Convention.

⁶ For more details see [Meaning of the Treaty | Waitangi Tribunal](#).

⁷ Tino rangatiratanga is interpreted as "absolute authority, including freedom to be distinct peoples, right to territorial authority, and the right to exercise autonomy and self-government." 2014. *Whaia te Mana Motuhake Report on the Māori Community Development Act Claim*, Waitangi Tribunal, page 2.

⁸ 2021. *He Pāharakeke, he Rito Whakakikīnga Whāruarua Oranga Tamariki Urgent Inquiry* (WAI 2915), page 26.

⁹ *Ibid*, pages 35-36. Kāwanatanga describes the Crown's right to govern the country which is neither absolute, nor exclusive, but includes "power to make law for peace and good order" and to "pursue the policy agenda upon which they were elected to office".

¹⁰ 2014. *Waitangi Tribunal He Whakaputanga me te Tiriti: Report on stage 1 of the Te Paparahi o te Raki Inquiry* (Wai 1040), page 529.

¹¹ Article 3 of Te Tiriti o Waitangi.

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15. However, historic and ongoing systemic inequities and structural racism experienced by mokopuna Māori is evidence of the continued breaches of Te Tiriti and failure of the Crown to honour the promises of partnership it gave to Māori.
 16. Mokopuna Māori remain disproportionately represented in places of detention, abuse and harm statistics, rates of use of force (restraint) and secure care (seclusion), solitary confinement, use of less than lethal devices, rates of suicide, poor mental health outcomes, and youth offending rates, among other indicators.
 17. The ongoing systemic inequities experienced by Māori in places of detention are also detailed in reports from other NPMs, reiterating that for as long as Te Tiriti continues to be breached and colonial systems and structures remain unchanged, Māori (particularly mokopuna Māori) will continue to be placed at risk of torture and other cruel, inhuman or degrading treatment or punishment.
 18. Amending the Crimes of Torture Act 1989 to include explicit obligations on the Government, as well as all NPMs, to actively uphold its obligations under Te Tiriti would help to address the ongoing systemic inequities experienced by Māori in places of detention. For reference, the Committee may wish to refer to the Te Tiriti obligations as expressed under s 7AA of the [Oranga Tamariki Act 1989](#) or s 6 of the [Children and Young People's Commission Act 2022](#).

New Oversight System and Legislative Changes

19. On 1 July 2023, the OCC will transition into a Children and Young People's Commission (the Commission), comprising a Board of up to six Commissioners. The [Children and Young People's Commission Act 2022](#) (the CYPCA) will replace the [Children's Commissioner Act 2003](#) (CCA).
20. The purpose of the new Commission is to promote and advance the rights, interests, and participation of children and young people and to improve their wellbeing within (without limitation) the context of their families, whānau (extended family unit), hapū (sub-tribe), iwi (tribe) and communities.¹² The Commission will also have increased Te Tiriti obligations.¹³ The Children's Commissioner's NPM delegation will pass to the new Commission.
21. However, the Commission will not have powers to receive complaints, conduct investigations, and obtain any information necessary in relation to the [Oranga Tamariki Act 1989](#).¹⁴ This is a change in functions - under s 13 of the CCA, the OCC has these powers currently.
22. These changes resulted from the need for a body to monitor new National Care Standards¹⁵ and greater accountability mechanisms for Oranga Tamariki (Ministry

¹² Refer s 4 of the [CYPCA](#).

¹³ Refer s 6 of the [CYPCA](#).

¹⁴ Contrary to UN Committee on the Rights of the Child (CRC), General Comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, 15 November 2002, CRC/GC/2002/2.

¹⁵ [Oranga Tamariki \(National Care Standards and Related Matters\) Regulations 2018 \(LI 2018/111\) \(as at 01 May 2023\) Contents – New Zealand Legislation](#).

for Children) in the face of concerning experiences and outcomes for mokopuna in the care and protection (C&P) and youth justice (YJ) systems.

23. In 2019, Cabinet agreed to develop legislation aimed to strengthen and resource the Oranga Tamariki Oversight System in three areas: system-level advocacy for all mokopuna, complaints oversight and investigations, and independent monitoring of the Oranga Tamariki system.¹⁶
24. The Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Oversight Bill) aimed to deliver expanded, and more comprehensive, monitoring of Oranga Tamariki.
25. Since 1989, it has been the role of the Children's Commissioner to monitor the C&P and YJ systems. Successive Children's Commissioners had not been adequately resourced to deliver this, despite multiple recommendations from the Committee, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the Committee on the Rights of the Child.¹⁷
26. On 29 August 2022, the Oversight Bill became law, creating two separate Acts: the [Oversight of Oranga Tamariki System Act 2022](#), which came into force on 1 May 2023, and the CYPCA, which will come into force on 1 July 2023. The legislation must be reviewed within three years of enactment.
27. As noted in the Government's report to the Committee, Cabinet's original intent was to transfer oversight functions back to the Children's Commissioner, once they were established.¹⁸ However, this later shifted when drafting the Oversight Bill.
28. The two Acts establish a new Oversight System, which comprises Aroturuki Tamariki (Independent Children's Monitor),¹⁹ the Office of the Ombudsman (the Ombudsman), and the Commission. Monitoring of the Oranga Tamariki system will be undertaken by Aroturuki Tamariki, as a departmental agency of the New Zealand Government housed within the Education Review Office.²⁰ The Ombudsman is now solely responsible for receiving complaints from mokopuna in relation to the operation of Oranga Tamariki or care or custody providers, and for investigating those complaints.
29. The Commission will be responsible for advocating for and promoting the interests, rights, and wellbeing of all mokopuna, (including those in the Oranga

¹⁶ The Oranga Tamariki system is the system that is responsible for providing services or support to children, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989. Refer s9(1) of the [Oversight of Oranga Tamariki System Act 2022](#).

¹⁷ CRC/C/NZL/CO/6, para 12(a); CRC/C/NZL/CO/5, para 11(a); CAT/C/NZL/CO/6, para 9; CAT/OP/NZL/1, para 14.

¹⁸ CAT/C/NZL/7, para 296.

¹⁹ Aroturuki Tamariki was formally established on 1 July 2019 to monitor agency compliance with the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018. See: [Who we are | Aroturuki Tamariki | Independent Children's Monitor](#)

²⁰ Contrary to General Comment No. 2, the Paris Principles, expressed Cabinet intent, and findings of an independent review (2018. Beatie, S. *Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand*. Ministry of Social Development).

Tamariki system) and where needed, help mokopuna and their whānau navigate the system to facilitate the resolution of issues.²¹

30. All three agencies are required to work together to ensure the law is upheld, that services are being delivered effectively, and those services are improving experiences and outcomes for mokopuna.²²
31. The final report from the Royal Commission of Inquiry into Abuse in State Care and Faith-Based Institutions (the Royal Commission) is due mid-2024.²³ The OCC advocates for a review of the Oversight System following release of this report to ensure monitoring and oversight arrangements for mokopuna in the care system address the findings and recommendations of the Royal Commission.

Recent Concluding Observations from other United Nations Committees

32. In February 2023, the United Nations Committee on the Rights of the Child released its Concluding Observations on New Zealand's implementation of the Children's Convention.²⁴ This report raised concerns regarding the overrepresentation of mokopuna Māori in the YJ system, and among those who die by suicide in closed institutions.
33. It also recommended that the New Zealand Government develop an action plan to address the connections between offending and neurodisability, alienation from whānau, school and community, substance abuse, family violence, removal into state care and intergenerational issues, in order to reduce the disparity in the rates of sentencing, incarceration and survival in detention of mokopuna Māori.²⁵
34. The OCC refers the Committee to paras 28(e-g), 40(b), 43(a-e) of this report, which include specific recommendations on mokopuna within the C&P and YJ systems.
35. The OCC refers the Committee to the recent Concluding Observations from the United Nations Committee on the Rights of Persons with Disabilities,²⁶ which recommends eliminating the use of solitary confinement, seclusion, physical and chemical restraints, and other restrictive practices in places of detention. Mokopuna in places of detention continue to experience high rates of seclusion and restraint, which is detailed at paras 87-90.

²¹ Refer s 20(c) of the CYPCA.

²² Refer to s7 of the [Oversight of Oranga Tamariki System Act 2022](#).

²³ [What the Royal Commission is about | Abuse in Care - Royal Commission of Inquiry](#).

²⁴ CRC/C/NZL/CO/6.

²⁵ [UN Child Rights Committee publishes findings on Azerbaijan, Bolivia, Ireland, Mauritius, New Zealand, Oman and Sweden | OHCHR](#).

²⁶ CRPD/C/NZL/CO/2-3, para 30.

Impacts of COVID-19

36. COVID-19²⁷ impacted upon day-to-day operations in places of detention across the country.²⁸ Secure residences remained at reduced capacity for large parts of 2021-22 to ensure the Oranga Tamariki COVID-19 strategy could be enacted if a positive case was to present itself. This included holding whole units within residences vacant, having dedicated isolation wings, and staff having the ability to work in team 'bubbles' to ensure they had the capability keep themselves and mokopuna safe.
37. The OCC engaged in full monitoring visits and worked in line with government and facility guidelines and protocols to reduce the risk of spread of COVID-19.
38. The majority of facilities the OCC visited had comprehensive COVID-19 response plans in place, which included containment strategies to limit the spread of COVID-19.
39. Some of the key COVID-19-related impacts across facilities included: limited access to independent advocates; a national shortage for workers in places of detention was exacerbated by COVID-19; facilities are not fit-for-purpose (this was true prior to COVID-19) and did not have enough separate or multi-use spaces; access to off-site activities was reduced in some facilities; and opportunities for external facilitators to run youth-focused programmes was limited.²⁹

Article 2

List of Issues Para 3 – Rights of people in custody

40. While Oranga Tamariki has strengthened requirements under the National Care Standards as well as established processes to ensure mokopuna in secure residences are aware of their rights,³⁰ OCC monitoring of secure residences has found that mokopuna do not always understand their rights.³¹ This includes mokopuna understanding of their rights under the Children's Convention and CAT.
41. This lack of awareness and understanding of their rights by mokopuna may be exacerbated with the separate function of Oranga Tamariki oversight monitoring in residences (now done by Aroturuki Tamariki, see para 28) and the NPM function

²⁷ To respond to COVID-19, the New Zealand Government implemented an elimination strategy through an 'Alert Level' system of public health and social measures to limit the spread of COVID-19. Alert Level 1 was the lowest level and Alert 4 was the highest. See: [History of the COVID-19 Alert System | Unite against COVID-19 \(covid19.govt.nz\)](#).

²⁸ See 2020/21 [Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture \(OPCAT\)](#), page 16.

²⁹ See 2021. Puketai Care and Protection Residence – COVID Report. [OPCAT Care and Protection Residences | Office of the Children's Commissioner \(occ.org.nz\)](#)

³⁰ [Child statement of rights | Oranga Tamariki — Ministry for Children](#)

³¹ [OPCAT Care and Protection Residences | Office of the Children's Commissioner \(occ.org.nz\)](#); [OPCAT Youth Justice Residences | Office of the Children's Commissioner \(occ.org.nz\)](#).

that the OCC will continue to exercise as the Commission in respect of examining detention treatment and conditions in accordance with OPCAT.

42. The Oversight Agencies³² have committed to working collaboratively towards ensuring mokopuna understand the new Oversight System and the respective roles of each monitoring body, and how mokopuna can contact or make a complaint to relevant agencies.

List of Issues Para 4 – National Preventive Mechanism

Achievements and activities

43. OCC is responsible for monitoring four C&P and five YJ residences established under section 364 of the Oranga Tamariki Act 1989; 14 community-based remand care homes; one special purpose facility;³³ and five health and disability places of detention established specifically for the care of mokopuna, including youth forensic units and child and adolescent mental health units.³⁴
44. Between 2021-22, the OCC conducted 12 monitoring visits and 21 visits in 2020/21.³⁵ Between 2019-20, the OCC conducted seven onsite visits and eight visits 'virtually' by either video or phone call, due to Government enforced COVID-19 pandemic related restrictions. These virtual visits focussed solely on mokopuna experiences of lockdown in secure facilities, and how facilities responded to the COVID-19 environment.³⁶
45. Annual updates on the OCC's activities are published in the Human Rights Commission '*Monitoring Places of Detention*' reports.³⁷ Alongside individual reports of all facility inspections being published on the OCC's website, between 2015 – 2020, the OCC also published several thematic '*State of Care*'³⁸ reports under its s 13 mandate of the CCA to hear the voices of mokopuna and their experiences of the C&P and YJ systems.

³² Aroturuki Tamariki, the Ombudsman, and the Commission.

³³ Oranga Tamariki contracts Barnardos, a non-government organisation, to provide secure care and specialist therapeutic treatment for a small number of mokopuna with diagnosed harmful sexual behaviours.

³⁴ [Designation of National Preventive Mechanisms - 2020-go2845 - New Zealand Gazette.](#)

³⁵ Five visits were unannounced while seven were unannounced. For youth justice remand homes that the OCC had yet to visit, it was agreed with all stakeholders that the Team would announce its first visits before putting the facilities into its regular unannounced schedule.

³⁶ See 2021. Puketai Care and Protection Residence – COVID Report. [OPCAT Care and Protection Residences | Office of the Children's Commissioner \(occ.org.nz\)](#)

³⁷ [Monitoring Places of Detention \(tikatangata.org.nz\).](#)

³⁸ Refer to [State of Care 2015: What we learnt from monitoring Child, Youth and Family | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#); [State of Care 2016: What we learnt from monitoring Child, Youth and Family | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#); [State of Care 2017: A focus on Oranga Tamariki's secure residences | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#); [State of Care 2018: Maiea te Tūruapō - Fulfilling the Vision | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#); [State of Care: Supporting young people on remand to live successfully in the community | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#); [State of Care: Children with Offending Behaviour | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#)

Resourcing

46. The provision of adequate financial and human resources for NPMs constitutes an ongoing legal obligation of the Government under Article 18.3 of the OPCAT. Despite these obligations, historically the OCC has not been fully resourced to effectively undertake the OPCAT mandate and functions (refer para 25).
47. SPT's 2013 report, following their visit to New Zealand, noted OCC was inadequately resourced to carry out its NPM work, stating: *"Most of the components of the NPM have not received extra resources since their designation to carry out their OPCAT mandate which, together with general staff shortages, have severely impeded their ability to do so."*^{39 40}
48. To date, the OCC's NPM monitoring of Oranga Tamariki secure residences was undertaken in conjunction with its mandate under s 13 of the [CCA](#), through baseline funding. This is contrary to the SPT's basic principles,⁴¹ which state: *"where the body designated as NPM performs other functions in addition to those under OPCAT, its NPM functions should be located within a separate unit or department, with its own staff and budget."*
49. In 2020, the Children's Commissioner accepted new OPCAT designations from the Ministry of Justice.⁴² Some funding was provided via the Ministry of Social Development to increase staffing levels and New Zealand's 2023 Budget⁴³ allocated increased funding to establish and implement the new Commission and its incoming Board, alongside its NPM functions.
50. Between 2022/23 and 2023/24, the OCC has received \$1.64 million annually to undertake its NPM functions. Currently nine full-time equivalent staff are responsible for monitoring 34 places of detention, which is project to increase over time with the roll-out of another 16 community-based youth justice remand homes.
51. While the OCC welcomes this investment, it only allows the OCC to undertake the minimum requirements to be compliant with the OPCAT mandate, and does not allow for other preventive activities, including thematic work, educative or advisory functions. Further, this funding is not secure – each year the OCC is required to reapply for funding to meet ongoing cost pressures and capacity.

³⁹ CAT/OP/NZL/ 1, paras 12-15.

⁴⁰ In their 2013 report, the SPT also stated: *"... the Children's Commissioner and IPCA [Independent Police Conduct Authority] reported that their funding was earmarked for statutory functions, which excluded NPM-related work. In this regard, the SPT was concerned to learn that the OPCAT mandate - an international obligation - was not considered by the State party to be a 'core function' of the bodies designated as the NPM. The SPT is also concerned that inadequate funding might be used - or might be perceived by the bodies themselves as being used - to pressurize components of the NPM to sacrifice their OPCAT related work in favour of other functions. Should the current lack of human and financial resources available to the NPM not be remedied without delay, the State party will inevitably find itself in the breach of its OPCAT obligations."*

⁴¹ CAT/OP/12/5.

⁴² Since 2019, the OCC has received an additional 24 places of detention to monitor, including remand homes and mental health units.

⁴³ 2023. New Zealand Government. Refer page 114. [B2 Wellbeing Budget 2023 - Support for Today, Building for Tomorrow - 18 May 2023](#).

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52. More funding is needed for the NPM function to be truly innovative, responsive, effective and result in meaningful changes for mokopuna in detention. The OCC welcomes the Government's recent investment into funding its NPM role, which is an ongoing obligation, and note that any future designations under OPCAT will need to be met with sufficient funding to support this.

List of Issues Para 5 – Violence against children

53. In 2020, a new ministerial portfolio Prevention of Family and Sexual Violence was established.⁴⁴ In December 2021, Te Aorerekura: National Strategy to Eliminate Family Violence and Sexual Violence (Te Aorerekura) was launched.
54. Te Aorerekura is a 25-year strategy supported by a series of Action Plans,⁴⁵ the first of which spans 2021-23. There are 6-monthly reports published on progress under the Action Plan. Te Puna Aonui⁴⁶ is responsible for the delivery of Te Aorerekura.
55. Te Aorerekura acknowledges the gendered nature of family violence and sexual violence and highlights the compounding effects of multiple forms of discrimination. Specifically, Te Aorerekura draws attention to the significant impact on wāhine Māori (Māori women) from intersections of racism, sexism, and colonisation.
56. While the original development of Te Aorerekura lacked input from mokopuna, the OCC supports recent progress towards targeted consultation with mokopuna to ensure approaches and services truly meet their needs.
57. New Zealand's 2023 Budget increased the funding of advocates for mokopuna who need to leave home due to violence, and specialists to support young people through Family Dispute Resolution processes. The 2023 Budget also made a commitment to accessible family violence and sexual violence services for disabled people, and an emphasis on Kaupapa Māori (Māori approach) specialist sexual violence services for whānau.⁴⁷

Violence following emergencies

58. Literature suggests *"violence against women and children, sexual violence and interpersonal violence escalate and intensify during natural disasters and emergencies like a pandemic"*.⁴⁸ New Zealand saw an increase in family violence during the COVID-19 pandemic, following international trends.
59. During the 2020 Lockdown, Police reported a 20% increase in family harm callouts.⁴⁹ In February 2023, New Zealand experienced emergency weather events

⁴⁴ [Prevention of Family and Sexual Violence | Department of the Prime Minister and Cabinet \(DPMC\)](#)

⁴⁵ There are 6-monthly reports published on progress under the Action Plan.

⁴⁶ Formerly referred to as the Joint Venture Business Unit, which became an Interdepartmental Executive Board.

⁴⁷ 2023. Office of the Children's Commissioner. [New initiatives welcome but we need to maintain momentum to lift families out of poverty | Office of the Children's Commissioner \(occ.org.nz\)](#)

⁴⁸ NZFVC, 2022 [FAQ part 1: Understanding the impacts of COVID-19 | New Zealand Family Violence Clearinghouse \(nzfvc.org.nz\)](#).

⁴⁹ 2020. Radio New Zealand. [Domestic violence calls to police increase in lockdown | RNZ News](#)

including Cyclone Gabrielle. Police reported that they saw a 60% increase in reports of family violence in the aftermath of Cyclone Gabrielle.⁵⁰

60. More work is needed to understand the impacts of national emergencies and natural disasters on family violence and any emergency guidelines or planning (including response or prevention strategies) must include the involvement of domestic violence services as a priority, as well as accurate reporting and training for staff involved in disaster response, and increasing access to counselling and support services for communities.

Gendered violence among young people

61. An emerging trend that researchers consider⁵¹ an issue for young people in New Zealand, and young women in particular, is degrading and violent acts such as slapping, spitting and strangulation being normalised as part of sex.⁵²
62. Addressing unhealthy and harmful relationships with mokopuna, and empowering mokopuna with strategies to implement healthy relationships despite the things they may have learned from whānau or social media, is integral to breaking the cycle of family violence in New Zealand.

List of Issues Para 6 – Child trafficking

63. The United Nations Committee on the Rights of the Child in its Concluding Observations (2023)⁵³ made specific recommendations relating to child trafficking and implementing the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC),⁵⁴ which the OCC supports.
64. These recommendations included: adopting a data-collection system covering all areas of the OPSC and disaggregated by form of exploitation and the age and gender of victims; a national action plan addressing all crimes as defined in the OPSC, ensuring it is responsive to the nature and root causes of the sexual exploitation of mokopuna; strengthening the coordination and cooperation between child protection stakeholders to improve the early detection and identification of mokopuna who are victims of all offences prohibited under the OPSC, taking into account acts that are perpetrated both online and offline, and ensure that they have immediate access to victim support services, including shelters; and ensuring that all crimes under articles 2 and 3 of the OPSC are

⁵⁰ <https://www.newshub.co.nz/home/new-zealand/2023/02/women-s-refuge-says-no-surprise-family-harm-up-60pct-since-cyclone-gabrielle.html>

⁵¹ This hypothesis is based on international evidence and trends in the absence of Aotearoa-based research and evidence: [Beres et al YHSR Report Final.pdf \(otago.ac.nz\)](#)

⁵² Melanie A. Beres, Louise J. Pearman-Beres, Poppy Johns, "Youth Healthy and Safe Relationships: A literature review." 2020. [Beres et al YHSR Report Final.pdf \(otago.ac.nz\)](#)

⁵³ CRC/C/NZL/CO/6, para 44.

⁵⁴ In 2011, the Government ratified OPSC and committed to combat sexual exploitation of children in New Zealand. In September 2015, through the adoption of the 2030 agenda for Sustainable Development, the Government re-committed explicitly to eliminate all forms of violence against children, including sexual abuse and exploitation. Refer Sustainable Development Goal Targets 5.2, 8.7 and 16.2.

investigated and that perpetrators, including legal persons such as corporations, are prosecuted and sanctioned for offences under the OPSC.

65. Robust oversight of the OPSC and cross-agency coordination is needed to ensure the effective implementation of these recommendations.

Article 10

List of Issues Para 14 – Training of enforcement personnel

66. Staff across multiple Oranga Tamariki secure residences have highlighted the lack of training they receive, whether it be from initial induction to a facility, or any ongoing training or development. In many cases, staff described feeling unequipped to support or manage the behaviours of mokopuna, particularly those with disabilities or high and complex needs who are regularly placed into care. This lack of training places both mokopuna and staff at risk and emphasises the need for adequate and more specialised training to be put in place as a safety and protective measure.
67. Oranga Tamariki has developed Te Waharoa training for staff working in secure residences.⁵⁵ However, OCC monitoring visits have found that often, as a result of staffing shortages, this training is significantly shortened in order to place staff 'on the floor' as soon as possible.⁵⁶
68. The State report notes that seclusion and restraint reduced as a result of Te Waharoa and a Māori-focused restorative practice approach, however, recent data indicates an increasing use of restraints and secure care.⁵⁷ This may be connected to the lack of adequate training that staff receive.
69. Additionally, Te Waharoa training does not cover how to respond to torture, ill treatment, or the OCC's OPCAT mandate.
70. The OCC notes that where mokopuna are detained in adult facilities, child-specific training is needed. The OCC refers the Committee to the Ombudsman's submission, which covers these issues in more detail.

List of Issues Para 15 – Less than lethal devices

Restraint chairs

71. Restraint chairs are still being used by the New Zealand Police for mokopuna as young as 13, despite being considered 'inherently degrading' and following

⁵⁵ CAT/C/NZL/7, para 88.

⁵⁶ [OPCAT Youth Justice Residences | Office of the Children's Commissioner \(occ.org.nz\)](https://www.occ.org.nz/OPCAT-Youth-Justice-Residences)

⁵⁷ CAT/C/NZL/7, para 89.

recommendations made to the New Zealand Police that they be abolished and replaced with less restrictive methods.^{58 59}

72. In 2020, restraint chairs were used three times on mokopuna with one incident involving a 13-year-old. Between 2015 and 2020, New Zealand Police strapped 38 mokopuna into restraint chairs, some more than once.⁶⁰ Recent data on the use of restraint chairs, and other restrictive practices, was not made available by the New Zealand Police. The use of restraint chairs is symptomatic of wider problems within the youth mental health system and lack of mental health crisis support for mokopuna.⁶¹

Spit hoods

73. Between 2016 and 2020, the New Zealand Police used spit hoods on 117 mokopuna, using the hoods 129 times in total, with seven mokopuna placed in them more than once. Almost 70 uses were on mokopuna Māori, including one aged just nine years old in 2018.⁶² The Committee may wish to request recent statistics on this matter. In the OCC's view, the use of spit hoods on mokopuna is an unacceptable and degrading practice.

Pepper spray of mokopuna

74. Between 2017 and 2021, more than 480 mokopuna aged 17 years old and under, were pepper sprayed by the New Zealand Police.⁶³ The Committee may wish to request recent statistics on this matter.
75. The use of pepper spray on mokopuna is unacceptable and poses serious health risks to mokopuna in contravention to Article 37(a) of the Children's Convention and Article 16 of the CAT.

Article 11

List of Issues Para 18 – Pre-trial detention

76. Mokopuna appearing before the Youth Court are currently subject to one of five remand options set out in section 238 of the Oranga Tamariki Act 1989 when they are awaiting their hearing or sentencing.⁶⁴
77. Oranga Tamariki has acknowledged that current options are no longer fit-for-purpose and require reform, which is currently being reviewed under the

⁵⁸ Shalev, S. 2017. Seclusion and Restraint: Thinking Outside the Box. New Zealand Human Rights Commission.

[Solitary Confinement in New Zealand | Thinking Outside The Box](#)

⁵⁹ 2012. Independent Police Conduct Authority. [Review of young persons in Police detention \(ipca.govt.nz\)](#)

⁶⁰ 2021. Radio New Zealand. [Police strapped 38 youth in restraint chairs in 5 years: 'We must do better' | RNZ News.](#)

⁶¹ 2021. Media release. Office of the Children's Commissioner. [Some stark injustices in our youth justice system need fixing – and here's how | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#)

⁶² 2021. Radio New Zealand. [Spit hoods used on 117 children, young people by police | RNZ News](#)

⁶³ 2022. Stuff. [More than 480 children and young people pepper sprayed by police | Stuff.co.nz](#)

⁶⁴ Aside from release, the five options include bail, custody of parents or others, detention in the Oranga Tamariki Chief Executive's custody, police custody, or transfer to a youth unit of a prison.

Residential Care and Other Matters Amendment Bill (the Residential Bill).⁶⁵ The OCC welcomes these reforms to ensure that Oranga Tamariki upholds its obligations under Te Tiriti and s 7AA of the Oranga Tamariki Act, as well as support mokopuna to remain with their family, whānau, hapu or iwi on remand wherever possible.

78. Additionally, for mokopuna, time on remand is not counted towards 'time served' when they are sentenced (unlike in the adult jurisdiction). Many mokopuna are spending in excess of 60 days on remand and can then spend up to six additional months on a Supervision with Residence order when sentenced through the Youth Court.⁶⁶
79. Approximately 20% of mokopuna appearing before the court are placed in a secure residence.⁶⁷ The OCC recalls the United Nations Committee on the Rights of the Child recommendation (2023)⁶⁸ to repeal the practice of remanding mokopuna into police custody and reduce the proportion of mokopuna in secure YJ residences who are on remand, including by investing in the development of community-based residences and strengthening the availability and use of non-custodial measures.

The use of Police cells to hold mokopuna on remand

80. Under s 238(1)(e) of the Oranga Tamariki Act 1989, the Youth Court can remand mokopuna in adult Police cells pending Oranga Tamariki finding suitable facilities for the detention of the mokopuna in safe custody. Despite advocating⁶⁹ for this option to be removed and repealed, it remains an option.
81. In 2018, almost 200 mokopuna were held in Police cells for periods of more than 24 hours: in some cases, up to seven days.⁷⁰ There were almost twice as many mokopuna in Police cells for more than 24 hours than there were in 2014; and is estimated that 70-80% of those held in Police cells were mokopuna Māori.⁷¹
82. Between December 2022 to January 2023, 34 mokopuna remained in Police custody under section 238(1)(e). These 34 mokopuna included one 13-year-old,⁷² eight 14-year-olds, seven 15-year-olds, eight 16-year-olds, and 10 seventeen-year-olds.⁷³ Of the 34 mokopuna, seven were held for less than 24 hours, 17 for

⁶⁵ 2023. Oranga Tamariki. Consultation Document. [Remand.pdf \(orangatamariki.govt.nz\)](#)

⁶⁶ A Supervision with Residence order is the highest tariff order available to the Youth Court under the Oranga Tamariki Act 1989 (s311). These orders can be for a period of up to six months with an early release considered at the two thirds mark.

⁶⁷ Section 239(1) sets the criteria for making an order under s.238(1)(d): the Court must be satisfied that the young person is likely to abscond, commit further offences or, that detention is necessary to prevent the young person from interfering with the investigation into the offending.

⁶⁸ CRC/C/NZL/CO/6, para 43(b).

⁶⁹ 2018. Position Brief. Office of the Children's Commissioner. [Youth-Justice-Police-cells-June2018.pdf \(occ.org.nz\)](#)

⁷⁰ More recent data was not made available by the New Zealand Police.

⁷¹ 2019. JustSpeak. [JustSpeak statement of support for Hands Off Our Tamariki](#)

⁷² A 13-year-old cannot be detained in Police custody under section 238(1)(e) of the Act. As soon as this error was realised, they were immediately moved from Police custody.

⁷³ Data provided by Oranga Tamariki in February 2023.

more than 24 hours less than two days, five for between two and three days, and four for three days.

83. Remand of mokopuna in police cells is harmful and an inappropriate custodial environment for mokopuna. Being held in a Police cell for extended periods can quickly lead to physical, mental, and emotional harm for a young person, and a real risk of self-harm. However, there is no limit on the amount of time mokopuna can be held in Police custody under s 238(1)(e).
84. In practice this is reviewed every 24 hours, but mokopuna can, and have been, held in Police cells for several days at a time. This may occur where mokopuna are arrested on a Friday, with the next court day scheduled for Tuesday or Wednesday, or where there are no alternative facilities available.
85. Remand in Police cells is a breach of mokopuna rights under Article 37(a) of the Children's Convention.⁷⁴ The option of remanding mokopuna in police cells should be repealed forthwith. This would place the onus firmly on Oranga Tamariki to provide mokopuna and whānau focussed places of safety for mokopuna who may need to be temporarily detained. This would particularly benefit mokopuna Māori, given 70% of mokopuna held in Police cells are Māori.⁷⁵

Strip searches

86. Between July 2020 and January 2021, Oranga Tamariki conducted 41 strip searches of mokopuna in YJ residences.⁷⁶ The practice of strip searching mokopuna is inherently degrading and all powers to do so should cease immediately, replaced with alternative and less invasive options that respect privacy, including bodily and psychological autonomy, and personal dignity.

List of Issues Para 19 – Solitary confinement

“...the restraints are, like sometimes they like actually try to hurt you”⁷⁷

87. OCC monitoring consistently highlights concerns regarding the ongoing use of restraint and seclusion in detention.⁷⁸
88. Restraint is often used excessively, inappropriately, and has resulted in harm and injury to mokopuna, including for those who witness it.⁷⁹ Between January 2015 and March 2021, mokopuna were restrained 3,572 times in YJ residences operated by Oranga Tamariki and placed in seclusion 6,518 times. Mokopuna in C&P

⁷⁴ See also CRC/C/NZL/CO/6, para 43(b).

⁷⁵ 2018. Office of the Children's Commissioner. [Oranga Tamariki Act 1989 - Limiting the use of Police cells | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](https://www.childrenandyoungpeople.org.nz/oranga-tamariki-act-1989-limiting-the-use-of-police-cells)

⁷⁶ | 2021. [Newshub. Oranga Tamariki strip-searching children in Youth Justice | Newshub](https://www.newshub.co.nz/story/oranga-tamariki-strip-searching-children-in-youth-justice)

⁷⁷ Mokopuna quote from a Monitoring Visit to Te Au Rere a te Tonga Youth Justice Residence (2020). Refer to [OPCAT Youth Justice Residences | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](https://www.opcat.org.nz/youth-justice-residences)

⁷⁸ Official Information Act 1982 Report Releases. Office of the Children's Commissioner. [OIA Releases » Office of the Children's Commissioner \(occ.org.nz\)](https://www.oia.govt.nz/releases)

⁷⁹ Shalev, S. 2020. [Seclusion and Restraint: Time for a Paradigm Shift](https://www.apo.org.au/publications/seclusion-and-restraint-time-for-a-paradigm-shift). New Zealand Human Rights Commission. NZ Solitary Seclusion and Restraint: Time for a paradigm change (apo.org.au)

residences were restrained 1,844 times and placed in seclusion 2,151 times over the same period.⁸⁰

89. The seclusion of mokopuna, in all settings, runs contrary to international human rights law which completely prohibits its use with mokopuna under 18 years of age⁸¹ and is contrary to Article 37(a) of the Children's Convention.
90. The OCC is advocating for the practices of restraint and seclusion to cease, and to be replaced with therapeutic models of care for mokopuna in detention.

List of Issues Para 20 – Mokopuna in places of detention

91. Of significant concern across all settings where mokopuna are detained is the overrepresentation of mokopuna Māori, and disabled and Pacific mokopuna, high use of restraint and seclusion, poor complaints processes, lack of staff training and persistent staffing shortages, and the facilities themselves not being child-friendly, therapeutic or fit-for-purpose.
92. Across all secure residences, there is a lack of a nationally-led strategy to meet the legislative requirements under s 7AA of the Oranga Tamariki Act 1989, imbed Te Tiriti, and uphold the rights of mokopuna Māori.
93. The OCC has observed significant variation across New Zealand in terms of engagement and partnerships with tangata whenua and how Oranga Tamariki is exercising its duties under s 7AA.⁸² Often this has occurred based on individual relationships.
94. A recent report from Aroturuki Tamariki found that only 13% of mokopuna Māori in care had connections to key people from their marae (traditional meeting place), hapū or iwi. Only 9% of plans for mokopuna Māori included contact arrangements with those key people. Only 5% of plans considered the views of hapū or iwi. There was a 10% decrease in the proportion of mokopuna Māori being supported to connect with their marae, hapū or iwi, from 39% to 29% between 2021-22. The report also noted a lack of connection and consultation outside the immediate whānau.⁸³
95. The objectives established under s 7AA, which imposes obligations on the Chief Executive of Oranga Tamariki to recognise and commit to the principles of Te Tiriti and in particular for mokopuna Māori through whakapapa (ancestral connections/genealogy) to remain in the care of their whānau, hapū and iwi, is yet to be realised.
96. For disabled mokopuna in detention, there is insufficient data on the prevalence and outcomes for this group. A 2022 study found that mokopuna with Fetal Alcohol Spectrum Disorder (FASD) were 19 times more likely to be incarcerated

⁸⁰ Data provided by Oranga Tamariki (2022).

⁸¹ 2008. Nowak, M. Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment. U.N. Doc. A/63/175 Annex.

⁸² [Strategic partnerships with Māori | Oranga Tamariki — Ministry for Children](#).

⁸³ 2023. Aroturuki Tamariki. [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations](#). Reporting Period 1 July 2021 – 30 June 2022.

than those without; up to two-thirds of 'young offenders' would have been positively screened for Attention Deficit Hyperactivity Disorder; and mokopuna incarcerated in a YJ residence were seven times more likely to have a hearing loss than a matched control population.⁸⁴

97. These issues largely remain unchanged through years of monitoring, despite repeated recommendations, escalation within agencies, publishing reports, thematic inquiries, and media statements.

Care and protection (C&P) residences

“...If a young person gets put in here... the moment they walk in here their innocence just gets ripped away from them and tossed in the trash.”⁸⁵

98. Care and protection residence models in Aotearoa New Zealand are outdated and more akin to prisons than a place of safety and care for mokopuna.
99. OCC monitoring of C&P residences in the last CAT reporting cycle has identified some areas of positive practice, such as education and activities, access to primary health care, the presence of independent advocates, some positive relationships with staff, good access to whānau (including through Facetime),⁸⁶ as well as opportunities for both staff and mokopuna to learn about te ao Māori (a Māori worldview) through introduced roles such as the Kaiwhakaako.^{87 88} Some facilities were also actively emphasising de-escalation techniques and delivering care based on te ao Māori principles.⁸⁹
100. However, OCC continues to see variation in social work practice; inadequate support, training and supervision of social workers and care staff; examples of restrictive practices and concerning staff behaviour;⁹⁰ high use of restraint and seclusion; extended length of stay; poor transition planning; a flawed and biased grievance (complaints) system (see para 152-157); lack of child-friendly processes; lack of cultural support in some residences; and lack of support for mokopuna with significant mental health and high and complex needs.⁹¹

⁸⁴ Lambie, I. (2020). [What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand](#). Auckland, NZ: Office of the Prime Minister's Chief Science Advisor.

⁸⁵ Quote from young person at a care and protection residence. See 2020/21 [Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture \(OPCAT\)](#), page 19.

⁸⁶ 2020/21 [Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture \(OPCAT\)](#).

⁸⁷ The Kaiwhakaako role supporting mokopuna with reconnection back into their community, whānau, hāpu and iwi by linking whānau to tikanga and mātauanga Māori.

⁸⁸ [Epuni Residence OPCAT Monitoring report | Office of the Children's Commissioner \(occ.org.nz\)](#)

⁸⁹ [Whakatakāpokai-report-march-2022 | Office of the Children's Commissioner \(occ.org.nz\)](#)

⁹⁰ Such as lacking professional boundaries. See, for example: [Epuni Residence OPCAT Monitoring report | Office of the Children's Commissioner \(occ.org.nz\)](#)

⁹¹ Monitoring Reports: Care and Protection Residences. Office of the Children's Commissioner. [Care and Protection Residence reports from July 2021 to March 2022 | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#); and 2022. Newshub. [Oranga Tamariki: Damning reports reveal shocking levels of self-harm, suicide attempts in care facilities | Newshub](#).

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101. OCC has observed a lack of overarching strategic focus or leadership, or therapeutic model of care in these facilities to provide tailored care solutions to mokopuna.
 102. OCC has consistently highlighted concerns for mokopuna safety and abuse, including from staff, other mokopuna, and themselves as well as repeatedly raising serious concerns regarding the C&P system to the UN Committee on the Rights of the Child through previous UN reporting cycles.⁹²
 103. Since as early as 1994,⁹³ and to the present, the OCC has advocated for the Government to phase closure of large institutional C&P residences in favour of small, bespoke, well-resourced, community homes that can provide the level of therapeutic care mokopuna need.⁹⁴ ⁹⁵ This view was similarly shared by the Committee on the Rights of the Child in their Concluding Observations (2023), which recommending investing in the development of community-based residences.⁹⁶
 104. In 2015 the Ministry of Social Development's Expert Panel Report⁹⁷ stated *"evidence and experience show that the propensity of large-scale institutions to cause harm to vulnerable children generally outweighs the security and safety benefits."* Oranga Tamariki has committed to replacing residences with smaller community-based options, but this is yet to be achieved.⁹⁸
 105. The OCC has observed frequent long-term stays in C&P residences for mokopuna with complex needs, which was regularly raised by staff, mokopuna, and advocates alike. The main reason given for lengthy stays included difficulties finding placements in the community and being able to wrap the right community-based supports and resources around mokopuna and their whānau. This is in breach of the rights of mokopuna under the Children's Convention, Te Tiriti, and the principles under the Oranga Tamariki Act 1989.
 106. Some mokopuna were inappropriately placed in the first instance, and were stuck in a facility unable to thoroughly assess and address their needs or provide adequate care. Some mokopuna were not informed that they were going into residence, and in some cases misled about where they were going. For example, one mokopuna told OCC staff that when they asked where they were being taken,

⁹² Refer to <https://www.childrenandyoungpeople.org.nz/publications/submissions/childrens-commissioners-views-on-priorities-for-children-in-new-zealand/> ; [Supplementary report to the United Nations Committee on the Rights of the Child | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#) ; [INT_CRC_NG0_NZL_22410_E.pdf \(ohchr.org\)](#)

⁹³ 2004. Barrington, J. *A Voice for Children*. The Office of the Commissioner for Children in New Zealand 1984–2003. Page 30.

⁹⁴ 2017. Office of the Children's Commissioner. [State of Care 2017: A focus on Oranga Tamariki's secure residences | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#)

⁹⁵ 2018. Office of the Children's Commissioner. [State of Care 2018: Maiea te Tūruapō - Fulfilling the Vision | Office of the Children's Commissioner \(childrenandyoungpeople.org.nz\)](#)

⁹⁶ CRC/C/NZL/CO/6, para 43(b).

⁹⁷ 2015. Expert Panel Final Report Investing in New Zealand's Children and their Families. Ministry of Social Development. [investing-in-children-report.pdf \(msd.govt.nz\)](#)

⁹⁸ 2021. Office of the Children's Commissioner. [Decision to close residences strongly welcomed | Office of the Children's Commissioner \(occ.org.nz\)](#)

they were told they were going on a camp. This type of practice is not appropriate and mokopuna have the right to be fully informed about their care.⁹⁹

107. In OCC's 2019 State of Care report, [*A Hard Place to Be Happy \(2019\)*](#), mokopuna spoke about the challenges of living in a secure residence, asking not to be locked up or taken long distances away from their whānau and not to be excluded from information and decisions about their lives. Mokopuna also spoke about the importance of living in places that are like normal homes where they can do things for themselves.
108. The majority of C&P residences have been described as unwelcoming, dated, cold, dark, and dreary. Physically, they are like a prison for mokopuna. Considering mokopuna can have lengthy stays in these facilities, it is unacceptable that mokopuna under State care can have substandard living conditions.

Closure of a C&P residence following serious incidents

109. In 2021, C&P residence Te Oranga was closed following serious public allegations of staff mistreatment of mokopuna.¹⁰⁰
110. The OCC supported the decision to close this residence. While the facility transitioned to closure, the OCC undertook a monitoring visit which highlighted the importance of communication to mokopuna about what was happening.¹⁰¹
111. Mokopuna said they were not regularly informed with what was happening or why, and their transition plans were not well communicated. The OCC hopes that lessons can be taken from the mokopuna experience and that future closures are carefully planned and well communicated to lessen any negative impact on mokopuna.

Youth Justice (YJ) Residences

112. OCC monitoring of YJ residences in the last CAT reporting cycle has identified some areas of positive practice, such as education and activities provision and relationships with education staff; some positive relationships between mokopuna and staff; access to external advocacy organisation Voyce Whakarongo Mai; as well as high capability amongst kaimahi Māori (Māori staff) to integrate kaupapa Māori approaches, speak Te Reo Māori (Māori language), and bring in external providers or mentors.
113. However, there remain multiple ongoing and serious concerns, including the high use of restraint and seclusion; restrictive practices and concerning staff behaviour;¹⁰² lack of support for mokopuna with mental wellbeing issues or high

⁹⁹ 2022. Puketai Care and Protection Residence. [Puketai Monitoring Report | Office of the Children's Commissioner \(occ.org.nz\)](#)

¹⁰⁰ [Oranga Tamariki closing care and protection residence \(newsroom.co.nz\)](#)

¹⁰¹ [Te Oranga Care and Protection Residence report | Office of the Children's Commissioner \(occ.org.nz\)](#)

¹⁰² 2021. Te Au rere a Tonga Residence. [OPCAT Youth Justice Residences | Office of the Children's Commissioner \(occ.org.nz\)](#). This report highlighted serious concerns around staff swearing, bullying, inciting fights, supplying cannabis, hitting, and humiliating young people.

and complex needs; flaws with the behavioural management system (BMS)¹⁰³ (which are inappropriate for neurodiverse mokopuna, promotes favouritism, and is applied inconsistently); inadequate staff training and supervision; variable facility standards; and leadership and staff culture issues.¹⁰⁴ ¹⁰⁵ COVID-19 lockdowns placed significant pressure on already inadequately managed and resourced facilities. This has, not surprisingly, coincided with a cohort of mokopuna who have been out of education and pro-social activities for several years, and whose families often live in circumstances of economic deprivation. There has also been a recent increase of serious youth offending post COVID-19 lockdowns.

114. Recent visits have found increasing numbers of assaults and violence¹⁰⁶ ¹⁰⁷ on both staff and mokopuna, disproportionately high use of seclusion, restraints, and safety concerns, and increased absconding and breakouts.¹⁰⁸ The OCC has observed a concerning increase in contraband entering residences, makeshift weapons, and an overall increasingly 'prison-like' environment.
115. This has been worsened by significant staffing shortages (including not meeting minimum safe staffing ratios), lack of staff experience, training, and supervision, and staff burnout and retention issues. Age-mixing of younger mokopuna with older mokopuna has also increased tensions in YJ residences (refer para 141).
116. If these issues are not addressed urgently, the current situation in YJ residences could amount to a breach of Article 16 of the CAT.
117. In some residences, the OCC heard complaints were not investigated according to process, escalated appropriately, or kept confidential. This included complaints made by mokopuna themselves, which is a serious breach of their rights to privacy under Article 16 and 40(2)(b)(vii) of the Children's Convention as well as Principle 33 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹⁰⁹ The OCC's concerns regarding the complaints process is further outlined at para 152.
118. Whakamana Tangata,¹¹⁰ a restorative approach in secure residences, is yet to be fully embedded, due to lack of staff training. As a result, some staff are not equipped to de-escalate behaviours, leading to heightened units and increased admissions to the secure care unit.

¹⁰³ BMS is a rewards-based system designed to try to motivate positive behaviour of mokopuna as well as manage challenging behaviour.

¹⁰⁴ See [OPCAT Youth Justice Residences | Office of the Children's Commissioner \(occ.org.nz\)](#); [Te Au rere a te Tonga OPCAT Monitoring report | Office of the Children's Commissioner \(occ.org.nz\)](#); [Te Puna Wai ō Tuhinapo Monitoring Report | Office of the Children's Commissioner \(occ.org.nz\)](#).

¹⁰⁵ 2021. RNZ. [Korowai Manaaki security problems: Staff failing to do 'basic work', report finds | RNZ News](#)

¹⁰⁶ 2023. NZ Herald. [Staff member injured, youth assaulted at youth justice facilities - NZ Herald](#); 2023. Newshub. [Staff member stabbed with makeshift weapon at Rolleston youth justice facility after five teenagers escape onto roof | Newshub](#)

¹⁰⁷ 2023. NZ Herald. [The inside story of New Zealand's youth justice residences - NZ Herald](#)

¹⁰⁸ [Youths spend hours on roof of justice facility after breaking out of unit | Stuff.co.nz](#)

¹⁰⁹ Adopted by the United Nations General Assembly resolution 43/173 of 9 December 1988.

¹¹⁰ Whakamana Tangata is a Māori centred practice approach which has relational, restorative and inclusive practice at its core. It focuses on preventative and restorative elements that encourage mokopuna to take responsibility for their actions and behaviour, enhance accountability, repair harm and restore mana.

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119. The OCC has found high numbers of mokopuna with disabilities, neurodiversity, mental health and addictions, and other high and complex needs in YJ residences. While Oranga Tamariki does not collect data on the prevalence of mokopuna with FASD in the YJ system, estimates put this number conservatively around 50%.¹¹¹
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120. These mokopuna are more likely to be restrained, secluded, have difficulty transitioning back into the community, have higher reoffending rates, and do not receive the necessary specialist support or accommodations. Staff in these residences have repeatedly raised concerns at the lack of training or resources to support these mokopuna.¹¹³
121. The OCC's [State of Care: Children with Offending Behaviour](#) (2020) report outlined several key issues with the approach to child offending: the system is complex and poorly understood; a lack of consistent and effective collaboration between agencies; initial early intervention is lacking; mokopuna are frequently disengaged from education and there are significant difficulties in reengaging them; culturally focussed responses are poor; and strategic leadership is needed.
122. OCC has advocated for the least restrictive option in the YJ system and for keeping mokopuna in their communities with their whānau, hapū and iwi.¹¹⁴ Oranga Tamariki has committed¹¹⁵ to moving away from institutional YJ residences towards smaller, community-based YJ and remand homes, operated by Oranga Tamariki with community partners, including iwi and non-governmental organisations.¹¹⁶ OCC supports this approach, but it is yet to be realised.

Mokopuna under the Corrections Act 2004 in YJ residences

123. Mokopuna aged 17-20 sentenced to terms of imprisonment in YJ residences under the [Criminal Procedure Act 2011](#) or detained under the [Corrections Act 2004](#) have significantly less opportunity to participate in offsite activities and their rights, particularly when held in secure care, are negatively impacted due to the different legislation justifying their detention.¹¹⁷
124. Mokopuna detained under s34A of the Corrections Act are denied access to educational off-site visits, and rehabilitation, and are subject to highly restrictive

¹¹¹ 2015. Ministry of Health. Taking Action on Fetal Alcohol Spectrum Disorder (FASD): A discussion document. Wellington. Taking Action on Fetal Alcohol Spectrum Disorder (FASD) : A discussion document (health.govt.nz)

¹¹² 2020. Oranga Tamariki. [Children and young people with impairments \(orangatamariki.govt.nz\)](#)

¹¹³ [NZ Children's Commissioner's Report to the UN Committee on the Rights of the Child - 2022 | Office of the Children's Commissioner \(occ.org.nz\)](#); 2022. Monitoring Visit to Te Au Rere a te Tonga Youth Justice Residence. [Te Au rere a te Tonga OPCAT Monitoring report | Office of the Children's Commissioner \(occ.org.nz\)](#).

¹¹⁴ State of Care report 7 [State of Care report](#). This is also a requirement under s208 of the Oranga Tamariki Act 1989.

¹¹⁵ Oranga Tamariki. [Youth Justice Community Homes | Oranga Tamariki — Ministry for Children](#).

¹¹⁶ 2015. Expert Panel Final Report Investing in New Zealand's Children and their Families. Ministry of Social Development. [investing-in-children-report.pdf \(msd.govt.nz\)](#)

¹¹⁷ The priorities and processes of Corrections staff, including Case Managers, is not informed by the best interest principles outlined in the Oranga Tamariki Act 1989, nor the requirements set out in section 7AA, as Corrections' primary focus is public safety.

practices.¹¹⁸ Currently, these mokopuna receive day-to-day care from Oranga Tamariki, yet Corrections maintain responsibility for sentence management, progress reporting, escorts, psychological assessments, and making decisions regarding contact and phone calls. This is despite Corrections staff not being physically located near these mokopuna or having an established relationship with them, unlike Oranga Tamariki staff who provide their daily care.

125. Further, the priorities and processes of Corrections staff, including Case Managers, is not informed by the best interest principles outlined in the Oranga Tamariki Act 1989, a child-centred approach, nor the requirements set out in s 7AA, as Corrections' primary focus is public safety.
126. This creates difficulties for residence staff applying two different sets of regulations and two groups of mokopuna in the same residence being treated differently.
127. International rights guidance¹¹⁹ is clear that all mokopuna alleged as, accused of, or recognised as having infringed criminal law should always be treated in a manner consistent with the promotion of the child's sense of dignity and worth.¹²⁰ All rights apply to all mokopuna, regardless of what jurisdictionally-based detention they are placed under.
128. Of particular concern, decisions regarding secure care, including timeframes and release are made by Corrections and covered by the legal protections of the Corrections Act as opposed to the Oranga Tamariki Act.
129. Section 370 of the Oranga Tamariki Act stipulates that no child or young person shall be kept in secure care for a continuous period of more than 72 hours, or on more than three consecutive days (whether continuously or not), unless an approval has been granted through the Youth Court. This provision, and the right to challenge this decision is not available to mokopuna placed under s 34A of the Corrections Act.
130. Under s 58 of the Corrections Act, the segregation period (seclusion) may last for up to 14 days (which meets international definitions of solitary confinement) and is revoked by the Prison Manager. This is contrary to Article 37(a) of the Children's Convention and in the OCC's view, meets the definition of cruel, inhuman, or degrading treatment or punishment under Article 16 of the CAT.
131. The current legal provisions have not been considered in the context of international rights obligations.
132. The OCC advocates for legislative changes to ensure Oranga Tamariki take responsibility for all aspects of care for mokopuna under s 34A of the Corrections Act, including plans and Parole Board proceedings, to reduce Corrections involvement and ensure equitable treatment.

¹¹⁸ This includes, for example, a higher level of scrutiny regarding access to visitation and phone calls.

¹¹⁹ See for example, the Children's Convention, General Comment No. 24 (CRC/C/GC/24), the Havana, Mandela, Beijing and Bangkok Rules, among other instruments.

¹²⁰ Article 40, Children's Convention.

Mental Health Facilities

“Being inside here kind of feels like prison.... Like I just feel like, personally feel like trapped”¹²¹

133. In 2020, the OCC took on monitoring designations for mental health facilities where mokopuna are detained. Between 2021-22, OCC monitored three inpatient youth mental health facilities and identified a number of concerns: the physical environment of facilities are not adequately meeting the needs of mokopuna; mokopuna lacked the knowledge and general awareness on how to engage in the complaints process and had limited understanding of their rights; the use of seclusion and restraint was high in one facility;¹²² and opportunities for staff training were limited due to staffing shortages in the sector.
134. The OCC observed that voluntary¹²³ mokopuna were subject to restrictive practices as a result of being on a locked unit. The OCC has advocated for robust consent processes to ensure mokopuna are aware of their right to leave.
135. As a positive, OCC observed strong therapeutic interventions and models of care, positive mokopuna involvement in care and transition planning, good access to whānau, as well as positive staff culture, and relationships between mokopuna and staff.¹²⁴ Mokopuna Māori were also supported to establish connections within their hāpu and iwi, learn their whakapapa and learn about their world through a te ao Māori lens.
136. The [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#) (Mental Health Act) is currently under review. The OCC supports the reform process and expect changes to be consistent with the Children’s Convention and include consultation with mokopuna, ensuring specific focus on the needs of mokopuna receiving compulsory care.

Remand Homes

137. Between 2021-22, OCC monitored two remand homes, which were run by non-governmental partners. No major concerns were identified other than the lack of visibility from advocacy organisation Voyce Whakarongo Mai or an alternative independent advocate, knowledge around the grievance process, and general advocacy in community run remand homes. The OCC advocate for and support the move towards small, bespoke, community-based homes.

¹²¹ See 2020/21 [Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture \(OPCAT\)](#), page 23.

¹²² Staff said this increase is due to unsafe staffing levels, high occupancy and acuity, the physical environment and lack of de-escalation spaces. See [Regional Rangatahi Adolescent Inpatient Service Report January 2022 | Office of the Children’s Commissioner \(occ.org.nz\)](#)

¹²³ Being a voluntary patient means they agree to have treatment for their illness, they have the right to stop that treatment, and, if they are being treated in hospital, they have the right to leave at any time. Voluntary patients are sometimes called informal patients. See [What is the Mental Health \(Compulsory Assessment and Treatment\) Act? | Citizens Advice Bureau \(cab.org.nz\)](#)

¹²⁴ [Regional Rangatahi Adolescent Inpatient Service Report January 2022 | Office of the Children’s Commissioner \(occ.org.nz\)](#)

Mothers with Babies Units in Corrections Prisons

138. The Ombudsman holds the designations to monitor adult prisons, which includes Mothers with Babies Units (MBU) located in the women's prisons. The OCC has accompanied the Ombudsman to prisons with MBUs to focus on the treatment and conditions of babies in these facilities. Between 2022-2023, the OCC visited one MBU and found COVID-19 restrictions across prisons had ongoing impacts on daily operations.
139. Due to these restrictions mothers in the MBU could not mix or interact with other women in the low security self-care units, were restricted to staying within their unit, and their babies were unable to see their whānau or interact with other people. Some staff in the MBU did not have specialist training (including baby development and safety and maternal mental health) and there was a lack of access to child-care support. Complaints processes were also an issue.¹²⁵

Age-mixing

140. The 2019 amendments to the Oranga Tamariki Act 1989 mean 17-year-olds who commit offences are now included in the YJ system rather than the adult system.¹²⁶
141. The OCC welcomed this change, however, it has also resulted in practical challenges for secure residences with older cohorts mixing with younger mokopuna. Impacts have included mokopuna refusing to attend education, increased violence and aggression between mokopuna and towards staff and the 'schooling' of younger mokopuna in terms of normalising anti-social behaviours and some instances of older mokopuna sharing knowledge on how to 'commit crime better'. The OCC has observed 13-year-old mokopuna being held in the same units as 18 and sometimes 19-year-olds. Risk levels across all YJ residences are currently high – contributing to an extremely volatile environment. The age-mixing of mokopuna is amplifying negative dynamics within the units and staff report being ill-equipped to safely de-escalate mokopuna behaviours.
142. The Government is yet to remove its reservation to Article 37(c) of the Children's Convention.¹²⁷ While efforts are made to ensure mokopuna are separated from adults, the Government has noted that age-mixing is not always possible due to limitations of existing facilities or because it is necessary to avoid isolation.¹²⁸
143. Between 1 May 2015 and 1 April 2021, on average (per year) 228 mokopuna were admitted into an adult acute mental health inpatient service, adult forensic mental health service, or adult forensic intellectual disability service either voluntarily or under the Mental Health Act.¹²⁹ A recent report from Te Hiringa Mahara (Mental

¹²⁵ 2021. Department of Corrections. [The Lived Experience of Women in Prisons - OFFICE OF THE INSPECTORATE \(corrections.govt.nz\)](https://www.corrections.govt.nz/the-lived-experience-of-women-in-prisons)

¹²⁶ This includes minor traffic offences (not punishable by a prison term) and does not include Schedule 1A offences that are transferred to the District or High Court. Refer [Oranga Tamariki Act 1989 No 24 \(as at 01 May 2023\), Public Act Schedule 1A Specified offences for young persons aged 17 years – New Zealand Legislation](#)

¹²⁷ CRC/C/NZL/CO/6, para 6.

¹²⁸ CAT/C/NZL/7, para. 203

¹²⁹ Data provided by Ministry of Health (2022).

Health and Wellbeing Commission) found that one in four young people admitted to inpatient care is admitted to an adult service.¹³⁰

144. Between 1 April 2015 and 30 April 2019, on average (per quarter) 42 mokopuna (38 males and 4 females) were held in adult prisons. The highest number of males and females in adult prisons during this period was 50 and 7 respectively.¹³¹
145. Following changes to the Oranga Tamariki Act 1989,¹³² these numbers reduced to an average of 8 mokopuna and no mokopuna between 1 May 2019 and 1 May 2021. The OCC are pleased to see this reduction, as no mokopuna should ever be placed in adult facilities.

Scope of places of deprivation of liberty

146. A recent IHC report¹³³ found students attending New Zealand's residential specialist schools (RSS) in the years 2017-2021 were, on average, between 3,000-6,000 times more likely to be restrained by teachers and support staff compared to a mainstream school. Historically, segregated settings for disabled people have led to higher levels of abuse for disabled people.¹³⁴ To date, the Royal Commission have found over half of those abused in state care were disabled, and Māori were disproportionately represented in those who were sent to these schools.¹³⁵ Māori continue to be overrepresented in current RSS rolls.¹³⁶
147. Despite this, the Ministry of Education is currently considering whether to make it easier for students to be enrolled in RSS.
148. In September 2022, the United Nations Committee on the Rights of Persons with Disabilities recommended the New Zealand Government withdraw the proposal to change the entry requirements for RSS. The Committee strongly emphasised that New Zealand invest more in inclusive education and eliminate the use of physical restraint in places of detention, which the OCC strongly support.
149. The IHC report further noted *'the reality for the disabled children and young people in RSS is that they are essentially in residential home care with no standards or monitoring in place.'* At present, the only legislation covering the boarding part of a RSS is the [Education \(Hostels\) Regulations 2005](#). These Regulations are perfunctory and do not discuss the wellbeing of the students or ensure that they have a voice in their education or maintaining connections to their whānau.

¹³⁰ 2023. Mental Health and Wellbeing Commission. [Te Huringa: Mental Health and Addiction Service Monitoring Reports | Mental Health and Wellbeing Commission \(mhwc.govt.nz\)](#)

¹³¹ Data provided by the Department of Corrections.

¹³² Amendments to the Oranga Tamariki Act 1989 in 2019 mean 17-year-olds who commit minor offences are now included in the Oranga Tamariki Youth Justice (YJ) system rather than the adult system. As listed in Schedule 1A.

¹³³ 2022. [IHC Report - Physical Restraint RSS.pdf](#)

¹³⁴ Refer [Disability and mental health | Abuse in Care - Royal Commission of Inquiry](#)

¹³⁵ Refer [Psychiatric care and care of Deaf and disabled people | Abuse in Care - Royal Commission of Inquiry](#)

¹³⁶ 2022. Press Release. Education for All. [An Open Letter On The Plans To Expand Enrolments In Residential Specialist Schools | Scoop News](#)

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150. Additionally, specialist disability residential homes and out of home care group homes for mokopuna under Oranga Tamariki care¹³⁷ lack independent oversight and currently do not fall within OCC's OPCAT mandate.
 151. The SPT's draft General Comment on Article 4 of the Convention notes that defining places of deprivation of liberty must take a broad approach, and that special boarding houses or schools, as well as social care homes may constitute places of detention.¹³⁸ The OCC advocate for oversight of these facilities under OPCAT to ensure mokopuna in specialist schools and social care homes are not subject to torture or cruel, inhuman, or degrading treatment or punishment.

List of Issues Para 25 – Complaints

152. The OCC has repeatedly heard concerns from mokopuna in secure residences about the Oranga Tamariki Whaia Te Maramatanga (Grievance) Process. Whilst mokopuna know about the process, and it is generally well advertised throughout the units, some mokopuna are reluctant to use it.
153. Making suggestions or complaints is still seen as 'snitching' by some and are referred to as 'snitch forms'. The current process is not independent of staff as mokopuna often have to make their complaint to the people who provide care and have oversight over both their care and the complaint.¹³⁹
154. The current process may decrease the likelihood of mokopuna making complaints due to the lack of accessibility, independence, and impartiality. They may also perceive a risk of punishment, retribution, or sanction due to lack of anonymity.
155. Some residences have been looking to develop alternative options for raising complaints, including through Swift Resolution Processes (for low level issues) or electronic forms (which would allow anonymity).¹⁴⁰ The OCC support these initiatives and expect such developments to be implemented across all residences.
156. Mokopuna have access to independent advocates (Voyce Whakarongo Mai) and can escalate complaints to a Grievance Panel if they are not satisfied with the outcome from the internal process. The OCC's interviews with mokopuna and staff, review of quarterly grievance reports, and receipt of multiple escalated grievances indicate that the Grievance process remains unsatisfactory.
157. The new Oversight System removes OCC's powers to respond to escalated grievances, which are now transferred to the Ombudsman (refer para 28). The OCC intends to work closely with the Oversight Agencies to ensure children's rights are upheld in the resolution of issues or grievances.

¹³⁷ Under s364 of the [Oranga Tamariki Act 1989](#).

¹³⁸ Refer [CAT/OP/GC/R.1 \(ohchr.org\)](#)

¹³⁹ [Te Puna Wai ō Tuhinapo Monitoring Report | Office of the Children's Commissioner \(occ.org.nz\)](#)

¹⁴⁰ 2022. [Whakatakapakai-report-march-2022 | Office of the Children's Commissioner \(occ.org.nz\)](#)

Article 15

List of Issues Para 32 – Intersex mokopuna

158. The United Nations Committee on the Rights of the Child in its Concluding Observations (2023)¹⁴¹ made specific recommendations relating to the rights of ira tāngata (intersex) mokopuna, which the OCC supports.
159. Specific recommendations included: prohibiting non-urgent and non-essential medical or surgical treatment of intersex mokopuna before they are of sufficient age or maturity to make their own decisions and provide free, prior and informed consent; ensuring independent oversight of decision-making to ensure medical treatments for mokopuna with intersex traits who are unable to consent are necessary, urgent and the least invasive option; providing redress to victims of non-urgent and non-essential treatment, including appropriate compensation; and ensure that all intersex mokopuna and their whānau have access to community-based psychosocial and peer support.

Conclusion

160. The OCC is available to assist the Committee with any requests for further information arising from this report and look forward to engaging with the Committee throughout this reporting cycle.

Nāku noa, nā

Judge Frances Eivers

Ngāti Maniapoto, Waikato

Te Kaikōmihana mō ngā Tamariki o Aotearoa | Children's Commissioner

¹⁴¹ CRC/C/NZL/CO/6, paras 24(a) and 25.

Recommended Actions

The Committee may wish to recommend the Government:

Te Tiriti

1. Ensure Te Tiriti o Waitangi and partnership with Māori is the foundation of all legislation, processes, and policies, with specific focus on all agencies currently undergoing legislative reforms.
2. Amend the Crimes of Torture Act 1989 to include specific obligations on the State and NPMs to operate in accordance with Te Tiriti o Waitangi.
3. In conjunction with amendments to the Crimes of Torture Act 1989, the State develop an action plan to ensure all places of detention are compliant with Te Tiriti o Waitangi.

New Oversight System

4. Review the Oranga Tamariki Oversight System following release of the final report from the Royal Commission to ensure monitoring and oversight arrangements for mokopuna in the C&P system address the findings and recommendations.

COVID-19

5. Evaluate how places of detention cared for mokopuna in secure residences during COVID-19 and apply lessons learned to improve policies and practice.

Rights of people in custody

6. Ensure all mokopuna in places of detention are informed of their rights, in a format that is child-friendly and accessible to them.

National Preventive Mechanism

7. Ensure the OCC are allocated ongoing resourcing to effectively carry out its OPCAT mandate.

Violence against children

8. Reiterate the Committee on the Rights of the Child's recommendation¹⁴² that the State Party invest in culturally-specific, community-based initiatives to equip families and communities to prevent and respond to cases of child abuse, neglect and violence, in coordination with civil society organisations. Consultation with mokopuna should be undertaken in developing these initiatives.

¹⁴² CRC/C/NZL/CO/6, para 24(e).

Child trafficking

9. Reiterate the Committee on the Rights of the Child's recommendation¹⁴³ that the State Party establish a comprehensive data collection system covering all areas of the OPSC; adopt a national action plan, which also addresses the root causes of child exploitation; and strengthen coordination between child protection stakeholders.

Training of enforcement personnel

10. Ensure full completion of the Oranga Tamariki Te Waharoa training for all staff prior to working with mokopuna. Urgently address the factors that prevent this from occurring, such as short staffing or operational pressures.
11. Ensure all places of detention where mokopuna are detained receive training that covers the OPCAT mandate, torture and ill treatment, and the OCC's role as an NPM.

Less than lethal devices

12. Immediately remove the powers to use spit hoods, pepper spray, and restraint chairs on mokopuna in all settings.

Pre-trial detention

13. Review the use of pretrial detention on mokopuna who are arrested and deprived of their liberty and remove the option to use police cells to hold young people on remand after first Youth Court appearance, and repeal s 238(1)(e) of the Oranga Tamariki Act 1989.
14. Immediately remove the powers to conduct strip searches of mokopuna in all settings.

Solitary confinement

15. Eliminate the use of all types of seclusion and restraint of mokopuna, in all settings.

Children in places of detention

16. Urgently address the inequities experienced by mokopuna Māori in the C&P and YJ system by resourcing by Māori, for Māori approaches to protecting the wellbeing of mokopuna before they enter the C&P and YJ system, and during.
17. Prioritise (as a matter of urgency) the phased closure of all secure C&P residences, keeping mokopuna with whānau where possible and replacing large residences with smaller community-based options, to be used when necessary. Ensure mokopuna are kept fully informed throughout this process.
18. Prioritise the phased closure of all YJ residences and replace with smaller community-based options, devolving power and resources to iwi and community organisations, to develop tailored models.

¹⁴³ CRC/C/NZL/CO/6, para 44(a-d).

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19. In line with s 7AA obligations, develop (as a matter of urgency) strategic partnerships with iwi and Māori organisations to improve outcomes for mokopuna Māori who come to the attention of Oranga Tamariki.
 20. Develop and resource strategies to urgently address the overrepresentation of mokopuna Māori, as well as Pacific mokopuna and disabled mokopuna, particularly those with FASD and neurodiversity, who come to the attention of Oranga Tamariki.
 21. Develop a strategy to approach and understand child offending behaviour in an Aotearoa New Zealand context.
 22. Made legislative amendments to ensure Oranga Tamariki are responsible for all aspects of mokopuna care for those under s 34A of the Corrections Act, including plans and Parole Board proceedings, to reduce Corrections involvement with mokopuna as much as possible, ensuring equitable treatment.
 23. Strengthen mental health services and programmes for mokopuna by allocating sufficient resources for early intervention support, developing therapeutic community-based mental health services, and increasing the number of qualified professionals to meet mokopuna mental health needs.
 24. Separate younger mokopuna from older mokopuna where they are residing in the same YJ residences.
 25. Amend the OCC's OPCAT designations to include residential specialist schools and specialist care homes for young people under s 364 of the Oranga Tamariki Act 1989.
 26. Ensure that reforms to the Mental Health Act involve and consider the needs of mokopuna.

Complaints

27. Review the Oranga Tamariki Whaia Te Maramatanga Grievance process to be independent, confidential, and impartial and provide a clear, child-friendly, and timely mechanism for keeping mokopuna informed of progress.
28. Ensure mokopuna are informed of their ability to make a complaint to the Oversight Agencies.

Intersex mokopuna

29. Reiterate the Committee on the Rights of the Child's recommendation¹⁴⁴ relating to the treatment of intersex mokopuna.

¹⁴⁴ CRC/C/NZL/CO/6, para 25(b-c).

Glossary

Hapū	To be pregnant, conceived in the womb, the kinship clan, clan, sub-tribe
Ira tangata	Intersex person
Iwi	Strength, bone and the extended kinship group, the tribe
Kāinga	Home, village, settlement
Kaimahi Māori	Māori staff
Kāwanatanga	Government, rule, authority, governorship
Kaupapa Māori	Māori approach, topic, customary practice, institution, agenda, principles, ideology - a philosophical doctrine, incorporating the knowledge, skills, attitudes and values of Māori society
Marae	The open area in front of the whareniui, traditional meeting places of Māori
Mokopuna	Children and young people under the age of 18 years
Rangatira	Chief
Taonga	Treasured things
Tangata whenua	Indigenous peoples, people born of the whenua, i.e. of the placenta and of the land where the people's ancestors have lived and where their placenta are buried
Te Ao Māori	A Māori worldview
Tino rangatiratanga	self-determination, sovereignty, autonomy, selfgovernment, domination, rule, control, power
Tikanga Māori	Māori methodology or rules, the first law of Aotearoa
Te Tiriti o Waitangi	The founding legal document of Aotearoa New Zealand, signed in 1840
Wāhine	Women, female, feminine

Whakapapa	Genealogy, the family lines of whānau that connect to ancestors and the natural world
Whenua	Homeland
Whānau	Means both to birth, and the extended family unit (in an inter-generational sense), that a pēpi (baby) is born into and through which their whakapapa, family lines, connects them with their ancestors

Key Terms

Aroturuki Tamariki	Independent Children's Monitor
CCA	Children's Commissioner Act 2003
CYPCA	Children and Young Person's Commission Act 2022
Oranga Tamariki	Ministry for Children
OCC	Office of the Children's Commissioner
Te Hiringa Mahara	Mental Health and Wellbeing Commission
Te Kāhui Tika Tangata	New Zealand Human Rights Commission



MANAAKITIA Ā TĀTOU TAMARIKI

Children's
Commissioner