

## Submission to the Social Services Committee: Responding to Abuse in Care Legislation Amendment Bill

As the independent advocate working for and with mokopuna<sup>1</sup> (children and young people), Mana Mokopuna<sup>2</sup> – Children and Young People's Commission makes the following submission on the Responding to Abuse in Care Legislation Amendment Bill (the Bill).

### Introduction

1. Mana Mokopuna supports efforts to improve protections for mokopuna and ensure safe, respectful environments that honour their rights and dignity, including when they are in secure residences and other environments when they are in the care of the State. This submission is focussed primarily on the proposed amendments to the Oranga Tamariki Act 1989 regarding:
  - universal searches on entry to secure youth justice residences;
  - search plans;
  - repeal of the ability to conduct strip searches; and
  - clarifying time limits on secure care.
2. We strongly welcome the fact that this Bill has been introduced with cross-Parliamentary support across the political spectrum. Maintaining this cross-Parliamentary support for future further steps that will be required to implement the wider recommendations of *Whanaketia*, the final report of the Abuse in Care Royal Commission of Inquiry will, in our view, be crucial.
3. Overall, we support the changes proposed in this Bill, given that if implemented in ways that are consistent with respecting and fulfilling children's rights, they should help to ensure greater safety of mokopuna in the care and protection and youth justice system.
4. However, as taonga, all mokopuna should experience policies and practices that are rooted in care, respect, and a vision for their future that prioritises their rights, voices and needs.

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<sup>1</sup> At Mana Mokopuna we have adopted the term 'mokopuna' to describe all children and young people we advocate for. 'Mokopuna' brings together 'moko' (imprint or tattoo) and 'puna' (spring of water). Mokopuna describes that we are descendants, and or grandchildren, and how we need to think across generations for a better present and future. We acknowledge the special status held by mokopuna in their families, whānau, hapū and iwi and reflect that in all we do. Referring to children and young people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from, matters for their identity, belonging and well-being at every stage of their lives.

<sup>2</sup> Mana Mokopuna – Children and young people's Commission is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and well-being of all children and young people (mokopuna) under 18 years old in Aotearoa New Zealand, including young persons aged over 18 but under 25 years if they are, or have been, in care or custody.

5. It is essential that the legislative changes in the Bill are considered within a broader children's rights-based framework that goes beyond immediate policy objectives, extends to implementation, and fosters long-term, meaningful change.
6. We advocate for the lived experience and voices of mokopuna who are within or who have been in this system to inform and guide every step of how the Bill's provisions are implemented in practice. We are very concerned that survivors of abuse in care, and care-experienced mokopuna have not been adequately consulted in the development of this Bill. Their voices should have been central to guiding the development of this Bill. We urge that the Select Committee prioritises hearing from survivors and mokopuna who are care experienced.
7. This Bill is part of a much wider conversation about the safety, rights, and dignity of mokopuna in Aotearoa New Zealand. We note that the suite of legislative changes proposed by the Bill are an initial legislative response to *Whanaketia*. Collective, deep intergenerational and systemic change is needed to address the findings and recommendations of *Whanaketia*, and to honour survivors of abuse and mokopuna. Decisions affecting mokopuna, including those in relation to the Bill, must transcend politics and reflect an enduring commitment from successive governments to uphold mokopuna rights and support outcomes that are focused on mokopuna wellbeing.
8. Additionally, we note that recommendation 35 from *He Ara Oranga - Report of the Government Inquiry into Mental Health and Addiction* remains a critical and unfulfilled call, which has direct intersections with the kaupapa of this Bill. The recommendation emphasises the need for a national discussion on beliefs, evidence, and attitudes about mental health and risk<sup>3</sup>. This is particularly important for children and young people, who are disproportionately affected by the stigma surrounding mental health and who data and evidence shows are facing some of the most significant systemic barriers to accessing appropriate support<sup>4</sup>. Engaging in this national dialogue can help foster environments where their mental health needs are better understood and addressed. It would ensure that policies and practices are informed by evidence and inclusive of young voices, promoting a mental health framework that genuinely supports their well-being and resilience. This is a kaupapa of significant and ongoing importance for mokopuna in the care and youth justice system.
9. This submission is grounded in Mana Mokopuna's responsibilities to monitor and promote the application of the United Nations Convention on the Rights of the Child (Children's Convention),<sup>5</sup> and informed by our experience – and the findings that Mana Mokopuna has made over many years – as a National Preventative Mechanism (NPM) under the Optional

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<sup>3</sup> [He-Ara-Oranga.pdf](#)

<sup>4</sup> See, for example, wait times: [FINAL-Wait-times-literature-review-November-2022.pdf](#) (at p.6).

<sup>5</sup> Children and Young People's Commission Act 2022, s21.

Protocol to the Convention against Torture (OPCAT).<sup>6</sup> Based on our OPCAT monitoring, we are clear that the extent of change needed to respect, protect and fulfil the rights of mokopuna in the care and protection and youth justice system remains significant.

10. We advocate for a children's rights approach to be taken to this Bill, which means:

- considering the changes proposed by the Bill within the wider contemporary operating context, including in particular the underlying drivers of how and why mokopuna end up in places of detention; and
- recognition that in Aotearoa New Zealand the care and protection and youth justice system operates within the historical and ongoing effects of colonisation.<sup>7</sup>

11. While we support the changes proposed in this Bill, they must be operationalised in ways that are holistic and uphold the dignity, rights, and well-being of mokopuna. The changes made by the Bill are a good start. However, more change is needed to fully address the range of ongoing concerns that persist about the rights and wellbeing of mokopuna in places where they are deprived of their liberty in care and protection and youth justice.

12. Mana Mokopuna continues to stand with other national and international advocates advocating for the phased closure of residences within the oranga tamariki system. This would see residences over time being replaced by smaller community-based homes, tailored to the needs of mokopuna and grounded in therapeutic, trauma-informed care that is coupled with wraparound support for families and whānau, and with power and resources devolved to iwi, hapū and whānau, and community organisations to provide care and protection and youth justice interventions – including prevention. There are already good practice examples in Aotearoa New Zealand that show what is possible in this regard, highlighting that this long-term change that shifts away from large-scale residences is achievable.<sup>8</sup> When it comes to Care and Protection Residences, the many proven community-based examples of care homes show that closure of larger scale Oranga Tamariki-run Care and Protection residences is imminently achievable if underpinned by genuine partnership and supported by the right level of investment.

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<sup>6</sup> Our OPCAT monitoring mandate extends to the following locations: five youth justice residences; four care and protection residences; one special purpose facility run by Barnardos; eleven youth justice community remand homes; five youth mental health facilities (three of which are in-patient youth facilities and two are youth forensic mental health units). From time-to-time we also engage in joint monitoring with other NPMs to provide a child-focused monitoring approach, such as with the Independent Police Conduct Authority and the Office of the Ombudsman. For more information, about our NPM function under OPCAT, go to: <https://www.manamokopuna.org.nz/monitoring/>

<sup>7</sup> [Colonisation context and impact | Practice Centre | Oranga Tamariki](#)

<sup>8</sup> See for example: [Mahuru: Ngāpuhi Iwi Social Services](#) and this evaluation: [Community-based remand homes](#) See also OPCAT reports for some of the community-run remand homes that Mana Mokopuna monitors (reports all available at: [Reports | Mana Mokopuna](#))

13. Moving away from residences to community-based placement options would help to address the 2023 recommendation from the UN Committee on the Rights of the Child that New Zealand:

“...repeal the practice of remanding children into police custody and reduce the proportion of children in secure youth justice 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”.<sup>9</sup>

### **OPCAT insights - systemic issues around searches and secure care**

14. Recent Mana Mokopuna OPCAT monitoring reports relating to residences in the care and protection and youth justice system have identified significant systemic issues that compromise the rights and safety, and therefore the dignity and development of mokopuna who are deprived of their liberty.
15. These issues are relevant to the changes to searches and secure care proposed in the Bill, and underscore the importance of:

**a) Investing in prevention measures to avoid the use of force and secure care and to keep mokopuna safe** – Mana Mokopuna OPCAT reporting shows that prevention measures are a critical to avoiding use of force and secure care. Prevention measures include, for example, having trained and skilled kaimahi, effective use of de-escalation techniques and active behaviour management, resourced and well-designed physical spaces, and mokopuna having their rights and needs met through things such as access to education, meaningful activity opportunities, positive engagement with their social worker, access to the natural world, play and recreation. These are all basic rights that mokopuna are entitled to under the UN Convention on the Rights of the Child and the National Care Standards. When there is an over-reliance on confinement and control measures in residences, our OPCAT monitoring has found that there is usually a failure to fulfil the basic rights of mokopuna and address their underlying needs; a reactive rather than planned approach to supporting mokopuna behaviour; and an emphasis on compliance over care and supporting the development and holistic wellbeing of mokopuna. In contrast, when places where mokopuna are deprived of liberty take a preventative approach using trauma-informed techniques, there is an emphasis on care over compliance, which facilitates healing rather than exacerbating harm.<sup>10</sup>

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<sup>9</sup> Concluding observations on New Zealand, February 2023, UN Committee on the Rights of the Child CRC/C/NZL/CO/6, para 43(b).

<sup>10</sup> See for further discussion: [2022/23 Annual report of activities under the Optional Protocol to the Convention against Torture \(OPCAT\) | Mana Mokopuna](#), page 42.

- b) Supporting whānau engagement with mokopuna** – Mana Mokopuna’s recent OPCAT report on an unannounced monitoring visit to Korowai Manaaki<sup>11</sup> illustrates how procedural and systemic barriers can limit accessibility of whānau visits, further straining the crucial relationships that contribute to mokopuna well-being. If implemented well – in ways that are trauma informed and consistent with mokopuna rights - the new, less intrusive search procedures under the Bill are an opportunity to support and even remove barriers to whānau visits. This would be positive to enable mokopuna relationships with their whānau, which is their right under Article 7 of the Children’s Convention.
- c) Consistent implementation of rights-based approaches to ensure holistic mokopuna rights fulfilment in care** – Mana Mokopuna OPCAT monitoring has found that despite intentions to uphold mokopuna rights, the application of rights-based practices in residences in the care and protection and youth justice system remains inconsistent, particularly in some areas, such as kaimahi practice around mokopuna safety and wellbeing, supporting young people to engage with their culture, participating in decision-making, and having their voices heard and taken seriously (including through complaints processes)<sup>12</sup>.



Getting treated different and people think its ok cause they already decided you don’t deserve anything else.”

(Mokopuna Māori, aged 14-16, Remand Home)<sup>13</sup>

## Searches

16. In terms of implementing the search provisions within the Bill, Mana Mokopuna calls for the following:

- a) Consistent implementation of search protocols** – Consistent application of search protocols will help to ensure mokopuna experience of full respect for their human dignity and the right to privacy. It will be important to clarify how these protocols apply to kaimahi as well as whānau, acknowledging concerns (as raised through Mana Mokopuna OPCAT monitoring of residences) that contraband is often introduced into youth justice settings by individuals other than whānau.<sup>14</sup> Kaimahi training and support, as well as robust systems for monitoring, reviewing and continually improving practice will be critical to supporting consistent implementation.

<sup>11</sup> Korowai Manaaki monitoring report | Mana Mokopuna

<sup>12</sup> Ibid, at p.7.

<sup>13</sup> “Without racism Aotearoa would be better” Mokopuna share their experiences of racism and the solutions to end it, p.16.

<sup>14</sup> Ibid, p.8.

- b) Focus on mokopuna rights and trauma-informed practices** – Under the Children’s Convention, the State has a clear duty to ensure the best interests of mokopuna are a primary consideration in all actions concerning them.<sup>15</sup> Prioritising mokopuna rights and the use of trauma-informed approaches during searches is central to meeting this duty in this context. In addition to respecting and fulfilling the rights of those living in youth justice residences, the rights of other mokopuna affected by the changes need to be upheld. For example, searches of visiting mokopuna, such as siblings, should be fully rights-consistent too, including being respectful and age-appropriate.
- c) Integration of mokopuna participation and voices** – Embedding mokopuna participation in decision-making and review processes will help to ensure their voices guide practices and policies at the systemic level, as well as decision-making in individual cases. This is consistent with their right to participation under Article 12 of the Children’s Convention.

### Search on entry

- 17. The Bill authorises universal searches for visitors, staff, and contractors using body imaging scanners. Mana Mokopuna supports this move to a less invasive means of searching.
- 18. While the introduction of universal searches goes some way to addressing the safety concerns identified as a result of recent OPCAT monitoring visits undertaken by Mana Mokopuna,<sup>16</sup> search practices - including those upon entry into youth justice residences - must only be undertaken in ways that are consistent with and uphold human rights, including the rights of mokopuna. This includes listening to mokopuna about how they experience the process and adjusting the process when needed to ensure respect for rights and human dignity at all times. We are very concerned that dogs are able to be used in any of the searches covered by the Bill, which might be frightening or intimidating for mokopuna. We recommend that further work is done to refine the situations in which dogs can be used as part of searches in residences, and that this is kept as limited as possible.

### Search plans

- 19. Requiring individual search plans for mokopuna is a promising proposal, enabling consideration of disability-specific needs, gender identity, trauma history and other aspects specific to individual mokopuna. Implementation, however, depends on accurate record-keeping and appropriate and timely pass-on of information through proactive communication, and relationships grounded in trust between mokopuna and kaimahi.

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<sup>15</sup> United Nations Convention on the Rights of the Child, Article 3. Article 3.3 provides: “States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

<sup>16</sup> See, for example [Korowai Manaaki monitoring report | Mana Mokopuna](#)

Implementation plans will need to be thorough and well thought through, and take into account mokopuna as whole people, considering their holistic situation, which will require resource, time and kaimahi with appropriate skills and experience.

20. In particular, search policies, procedures, and plans must be designed to provide reasonable accommodations and supports so that the mana of disabled mokopuna is upheld.

### **Strip searches**

21. Mana Mokopuna supports the removal of strip-searches. As is recognised by the Bill, alternative methods (such as scanner searches) exist to ensure safety without resorting to this dehumanising practice. We are pleased to see this provision included in the Bill, which would bring into effect a long-overdue change.

## **Secure care**

### **Immediate closure of all secure care units**

22. Mana Mokopuna advocates for zero seclusion practices and the closure of secure care units because:

- a) The practice of placing mokopuna into secure care goes against their human rights under the Children's Convention and the Convention Against Torture.<sup>17</sup> The Committee against Torture, the Subcommittee on the Prevention of Torture and the Committee on the Rights of the Child note that the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture.<sup>18</sup> The New Zealand government has been challenged by UN treaty bodies with oversight of each of these treaties about New Zealand's high usage of secure care on numerous occasions.<sup>19</sup> The concluding observations on New Zealand from the United Nations Committee Against Torture in 2023 recommend New Zealand should immediately end the practice of solitary confinement for children in detention.<sup>20</sup> Mana Mokopuna reiterates this call.

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<sup>17</sup> Children's Convention, Article 37; United Nations Committee on the Rights of the Child, General comment No.24 (2019) on children's rights in the child justice system, CRC/C/GC/24, paras g-h; Concluding Observations from the Committee Against Torture CAT/C/NZL/CO/7, para 38(h).

<sup>18</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/HRC/28/68, para 44.

<sup>19</sup> Concluding Observations from the Committee Against Torture CAT/C/NZL/CO/7, para 38(h), and The United Nations Standard Minimum Rules for the Treatment of Prisoners (unodc.org) Rule 45(2). See also Concluding Observations from the Committee on the Rights of the Child CRC/C/NZL/CO/6, para 42-43.

<sup>20</sup> Concluding Observations from the Committee Against Torture CAT/C/NZL/CO/7, para 38(h)



- b) Secure care of mokopuna Māori runs contrary to Te Tiriti o Waitangi, given that mokopuna are taonga and they, and their mana, should be actively protected.<sup>21</sup> The majority of the Youth Justice and Care and Protection residence population continue to whakapapa Māori,<sup>22</sup> and Mana Mokopuna has observed through its OPCAT monitoring that the majority of mokopuna in secure care whakapapa Māori. This disproportionate number of mokopuna Māori in secure care is inconsistent with their rights as Māori under Te Tiriti o Waitangi<sup>23</sup> to equity and equal outcomes, as well as with their rights to non-discrimination under the Children's Convention.<sup>24</sup>
- c) The disproportionate number of children and young people with disabilities and neurodiversity within Oranga Tamariki residences<sup>25</sup> means that these young people are at higher risk of experiencing secure care, which is also inconsistent with their rights under the United Nations Convention on the Rights of Persons with Disabilities. In addition to trauma-informed practice, these mokopuna need and have the right to appropriate support that responds to disability-related needs, including medication management.
- d) Secure care and seclusion can be avoided through prevention and de-escalation techniques, investment in residence environments (for as long as residences remain a placement option), and the ongoing building of professional capability of the children's workforce. Emphasis should be placed on the recruitment and ongoing training and professional development of staff, as well as the development of alternative community placements.
- e) Mana Mokopuna OPCAT monitoring reviews of secure care logbooks and discussions with mokopuna and kaimahi reveal that secure care is often used for reasons not aligned with regulations, such as banging on windows. The potential for secure care to be used punitively or in other ways that are harmful to mokopuna or contrary to their rights adds a further reason for why it is better not to have it as an option.

23. Mana Mokopuna does not support the use of secure care for any mokopuna due to the harmful mental health and wellbeing impacts that it can cause. These impacts are described in Mana Mokopuna's OPCAT monitoring reports.<sup>26</sup> Based on our OPCAT monitoring

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<sup>21</sup> Te Tiriti o Waitangi, Article 2.

<sup>22</sup> [Overview | Oranga Tamariki — Ministry for Children](#)

<sup>23</sup> Te Tiriti o Waitangi, Article 3.

<sup>24</sup> Children's Convention, Article 2

<sup>25</sup> Up to 87% of the cohort in secure Care and Protection and Youth Justice residences are disabled, neurodiverse, or have mental health conditions. Oranga Tamariki, Regulatory Impact Statement: Search powers in secure Care and Protection and Youth Justice residences

<sup>26</sup> [Monitoring of Places of Detention in Aotearoa | Mana Mokopuna](#)



findings which are documented in our published OPCAT reports, we have numerous concerns for mokopuna who have time in secure care or who are left alone and locked in bedrooms in residences, including that they:

- are deprived of a routine
- experience barriers to maintaining whānau relationships
- are not able to exercise their right to an education
- are deprived of social interaction with their peers
- are often not informed of their rights to access their lawyers, advocates and whānau
- have protracted periods time alone with their thoughts – including when they may have unmet mental health needs and pre-existing trauma
- experience a lack of trauma-informed support or intervention with appropriately trained kaimahi
- feel dehumanised, for example by kaimahi looking through flaps to ‘check on’ mokopuna.

24. Mana Mokopuna endorses the statement in Oranga Tamariki’s rapid review of secure residences that:

“Every parent knows that children need structure and predictability. Boredom is the enemy of good conduct even in the best conditions. These children are no exception. Every young person in Oranga Tamariki care must receive not only access to the schooling that is their right and also a well-designed programme aligned to their unique needs and profiles, whether on remand or not.”<sup>27</sup>

25. Failing the closure of secure care units, we recommend undertaking a rigorous practice review nationwide of the use of secure care and seclusion, taking into account the findings and recommendations of *Whanaketia*.<sup>28</sup>

26. We advocate for this practice review to include:

- Specific attention to the treatment and experiences of mokopuna Māori in secure care.

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<sup>27</sup> [Secure-residence-review.pdf](#) page 44

<sup>28</sup> Whanaketia – Through pain and trauma, from darkness to light | Abuse in Care - Royal Commission of Inquiry

- The extent, consistency, and quality of implementation of Whakamana Tangata.<sup>29</sup>
- The consistency of de-escalation and regulation practice across residences, for example hui whakapiri.<sup>30</sup>
- Consistency of mokopuna knowing and drawing on their rights and entitlements. This includes, for example, their right to talk to their lawyer, social worker, and whānau.

27. If secure units continue to be used, we note that they require upgrading. In particular, we note that it will be important to:

- upgrade specific residences;
- increase the number of professional kaimahi with the capability and training to adequately and effectively meet mokopuna needs when in secure units, with a specific focus on meeting these needs; and
- ensure regular opportunities for mokopuna to exercise their rights to recreation and play, to the environment (including access to sunshine, fresh air), meaningful engagement with their social workers, access to education, meaningful activity, and other resources required to appropriately meet mokopuna rights and needs.

28. We note that the Bill amends section 370(1) of the Oranga Tamariki Act: time limits on (mokopuna) detention in secure care. Given our position outlined above, we advocate that if secure care is to be continued to be used, the time limitation on a mokopuna being in secure care for a continuous period should be much lower than 72 hours or on more than three consecutive days. We note that the Bill removes references to a continuous period of more than 72 hours, however, from a children's rights perspective, this doesn't go far enough, and should therefore go further (that is, specify a much shorter time period) if it is to truly align with the intent of the Bill, to "drive change for survivors and for all those engaged in the current care system".<sup>31</sup>

## Use of force

29. We acknowledge that the law currently allows for the use of force in residences to ensure immediate safety. However, use of force is inconsistent with children's rights and should be

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<sup>29</sup> [Whakamana-Tangata-Evaluation-Report.pdf](#)

<sup>30</sup> Hui Whakapiri is a process used to restore mana and to balance mauri ora when tapu has been breached and when relationships and connections have been impacted/damaged. For discussion of this is a Youth Justice setting see [Whakamana Tangata Evaluation report](#) page 23.

<sup>31</sup> See: General Policy Statement included as part of the Explanatory Note to the Bill [Responding to Abuse in Care Legislation Amendment Bill 97-1 \(2024\)](#), Government Bill – New Zealand Legislation

avoided. Mana Mokopuna OPCAT monitoring of Oranga Tamariki residences highlights that kaimahi must be appropriately trained with the skills and capability to build rapport with mokopuna, and to be able to de-escalate situations safely, avoiding the use of force.

30. As long as the use of force is permitted within the residence context, kaimahi must be trained to ensure that they can use other methods of de-escalation first, and that any use of force is of absolute last resort and always safe for mokopuna. Any instance of the use of force must be accompanied by thorough reporting, regular review, and alignment with best practice standards.<sup>32</sup> Robust systems need to be in place to monitor compliance and accountability in this space of practice so that mokopuna rights and needs can be met in all circumstances.

### **Time frames for secure care**

31. The clarification of timeframes for judicial oversight to resolve existing ambiguity is welcome. However, as noted above, the use of secure care must align with children's rights under the Children's Convention, requiring further review of the use of practices which are not consistent with a children's rights approach, such as seclusion.

## **Conclusion**

32. While Mana Mokopuna supports the changes proposed in the Bill, we do caution that their contribution to upholding and safeguarding the rights of mokopuna should not be overestimated.
33. First and foremost, families and whānau should be the safe and nourishing spaces for their mokopuna to thrive, and should be supported in this vital role of caring for mokopuna. For mokopuna who are in the care and youth justice system, support for them and their families and whānau should be wraparound, holistic and tailored to specific needs, in ways that meet mokopuna rights, with a preventative focus so that long-term positive outcomes for mokopuna in the care of their families and whānau can occur and be enduring.
34. Nevertheless, we trust that the points raised in this submission will help to ensure the proposed changes are implemented in ways that will uphold mokopuna rights.

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<sup>32</sup> [Korowai Manaaki OPCAT Monitoring Report.pdf](#) p. 18; [Te Puna Wai ō Tuhinapo OPCAT monitoring report](#) | Mana Mokopuna p.23.