

At a glance

Te Kuku O Te Manawa

*Moe ararā! Haumanutia ngā moemoeā
a ngā tūpuna mō te oranga o ngā tamariki*



Report two of two

Office of the Children's Commissioner
November 2020



“Look, we’ve been controlled for so long, and it’s about time we took our own tino rangatiratanga back and took ownership.”

(WHĀNAU MEMBER)

“I’ve had situations where a mum has been wanting to continue to give her baby breast milk. You read all the literature, breast is best, and then we are removing these babies and saying, ‘no not for you, you can have formula.’”

(MIDWIFE)



“... do away with care and protection, give pūtea to us... part of this is about correcting the wrongs.... From my perspective it’s all about whānau, hapū, iwi taking control..”

(COMMUNITY SUPPORT PERSON)

From the Children’s Commissioner, Andrew Becroft

Like most New Zealanders, I want Aotearoa New Zealand to be the best place to be a child – where all children, no matter their background, grow up knowing they belong among loving and supportive families and whānau who have what they need to flourish. This goal lies at the heart of this report.

This review began with the troubling attempted removal of a newborn pēpi Māori in Hastings and the revelation that pēpi were five times more likely to be taken into care than non-Māori babies. Months of extensive review later, it has now resulted in this; the second report in a two part review. What drove our inquiry, and the full findings, are described in the full report and touched on here.

Central to our conclusions is the understanding that pēpi Māori deserve to be both safe, *and* with their wider whānau. It is not one or the other.

While of course there are times when children need to be away from their birth parents, the long-term harm from severing the connection between pēpi and their whānau, hapū and iwi is too great to allow the practice to continue.

What’s needed is a total transformation of the care and protection system, and a *by Māori for Māori* approach. This report provides useful recommendations for improving the system until that transformation is achieved, but ultimately, these are not destinations on their own. The *by Māori for Māori* approach is the ultimate goal.

I know this will be challenging to our old and established systems which still function on outdated, and even racist norms. But mokopuna Māori, both now and to come, rely on us to make the change. I am confident we are up to the challenge.

The full report, including my statement can be accessed here www.occ.org.nz/publications/reports/tktm-report-2



Children’s Commissioner
Te Kaikōmihana mō ngā Tamariki o Aotearoa





At a Glance

Removing pēpi from the care of their wider whānau must stop. The long-term harm from separating pēpi from their wider whānau is too great to allow this practice to continue.

When pēpi need to be cared for, either temporarily or permanently by someone other than their birth parents (and, if the changes in this report are implemented it is hoped that will occur less often over time), every aspect of the decision and placement should be managed *by Māori, for Māori*. The connection between pēpi and their whānau, hapū and iwi is fundamental to their wellbeing and should never be severed. Pēpi deserve to be, and must be, both safe, and with their whānau. It is not one or the other.

We undertook a review to answer the question:

What needs to change to enable pēpi Māori aged 0-3 months to remain in the care of their whānau in situations where Oranga Tamariki is notified of care and protection concerns?

After the wide-spread concerns regarding removal of pēpi arising from an incident in Hastings in 2019, other reviews were looking at what went wrong. We framed our review question to focus on the future and on what's needed to change to keep pēpi safe and in the care of their whānau. Years of research and evidence has consistently revealed the damage caused to tamariki Māori from being cut off from their whānau, hapū and iwi.

In January 2020 we published the first outputs of our review: a statistical snapshot of Oranga Tamariki data about pēpi aged 0-3 months in the statutory care and protection system, and a process map of the key decision points in the care and protection system that could lead to the state removing pēpi or tamariki from the care of their whānau.

Our first report, *Te Kuku O Te Manawa: Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi*, released in June 2020, presented the insights gained from interviews with mums and whānau who had experience with pēpi (aged 0-3 months) who had either been removed, or were at risk of being removed, from their whānau by Oranga Tamariki or its predecessor Child, Youth and Family.





From these interviews, as well as the statistical snapshot published in January 2020, we identified six areas for change that framed the interviews in the second report:

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

This second report, *Te Kuku O Te Manawa – Moe ararā! Haumanutia ngā moemoēa a ngā tūpuna mō te oranga o ngā tamariki* concludes our review.

To complete this report, we gathered new evidence – we interviewed more parents and whānau as well as midwives, community support people, and Oranga Tamariki staff; we looked further at what the data can (and cannot) tell us about the experiences and outcomes of pēpi in the statutory care and protection system; and, we conducted an environmental scan of relevant rangahau and mātauranga Māori to provide a te ao Māori perspective. We also looked at what immediate changes to statutory social work practice and legislation are necessary to support better outcomes for pēpi and their whānau, and considered the broader context to inform our recommendations for this report.

Over the past six years (to June 2019), an average of 265 babies, of which 171 were pēpi Māori, were taken into state custody each year, and the trend over this period showed planned (with notice) removals have declined while urgent (often without notice) removals had increased overall. While the numbers may seem small, the immediate and intergenerational impact on pēpi and their whānau, hapū and iwi is immense.



More recently, the year to June 2020 showed a decrease in decisions made to remove babies under three months into state custody (151 total babies), while reports of concern remained stable. Oranga Tamariki has moved at pace to address some of the issues identified in the *Practice Review Into The Hastings Case*, and this has already resulted in a reduction in the number of babies coming into care under section 78 orders. In July 2020, Oranga Tamariki published its first report on section 7AA,¹ outlining the range of work underway to improve outcomes for tamariki and rangatahi Māori, their whānau, hapū and iwi.

At the heart of our review are the voices of whānau who have direct experience of having statutory social workers making decisions about who can care for their pēpi. Parents and whānau shared a wide range of experiences. Regardless of whether pēpi remained with their whānau or were removed, the processes and treatment they experienced have left deep scars. The systems, policy and practice in the current care and protection system are causing harm to the very pēpi and whānau the system is set up to support and protect.

Summary of all findings

Stepping back to consider this review in a wider context, we conclude:

- > Māori are not well served by current systems, and the impacts of colonisation, socio-economic disadvantage and racism are well entrenched and still evident today.
- > The statutory care and protection system continues to reproduce inequities for pēpi, tamariki and rangatahi Māori.
- > There is a lack of evidence and trust that incremental change can deliver for Māori, as it has not done so over the past 30 years.
- > Now is the time for a true commitment to transfer power and resources to *by Māori, for Māori* approaches – this is the best option for real change, recognising Māori as best placed to care for their own.

¹ Oranga Tamariki, "Improving outcomes for tamariki Māori, their whānau, hapū and iwi: Section 7AA Report" (July 2020).



From our engagement with whānau, midwives community support workers and Oranga Tamariki staff we heard:

- > There is an urgent need for more services and supports for whānau, and for these to be *by Māori, for Māori*.
- > There is a need to end the practice of forcibly removing pēpi from the care of their wider whānau.
- > Urgent changes are required to the current statutory care and protection system to end racism and take a wider view of whānau wellbeing.
- > Some Oranga Tamariki staff identified some positive changes in management and practice beginning to emerge, such as the recently established Kairaranga-ā-whānau roles, and the role of individual practice leaders in modelling and supporting reflective practice.
- > Many whānau, and those that work with them, do not trust the statutory care and protection system. Trust and understanding are critical, and without this foundation incremental improvements to the current care and protection system are unlikely to lead the necessary change.
- > The statutory care and protection system needs to be narrowed in scope to specific statutory functions, with iwi and Māori resourced to make decisions and provide care and support to whānau.
- > The care and protection system extends beyond Oranga Tamariki to other government agencies, including but not limited to, Health and Justice. Any new approach to the care and protection of pēpi must address the problems and injustices perpetuated by the system as a whole.

From our review of statistics and data we learned:

- > Inequities in statutory care and protection for pēpi are stark and persistent.
- > The current statistical oversight of the statutory care and protection system is insufficient.

From our discussion of mātauranga Māori, we learned:

- > Understanding what whānau means leads us to strengthen and support whānau to maximise their ability to retain care of their pēpi.



- > Understanding what whakapapa means leads us to ensure pēpi maintain their whakapapa connections, even when they are cared for either temporarily or permanently outside of their immediate birth parents.
- > Understanding what whanaungatanga (relationships) means leads us to support and resource authentic kaupapa Māori ways of working that emphasise and strengthen relationships, connections, and attachments within and between whānau and the people who support them.
- > There are existing models and initiatives based on mātauranga Māori that demonstrate that Māori knowledge, history and culture provide strong and successful foundations for *by Māori, for Māori* approaches.
- > Māori have their own solutions that work, as demonstrated by Te Kōhanga Reo and Whānau Ora. When resourcing and decision-making is transferred to Māori, transformative change is possible.

From our consideration of statutory social work practice, we found:

- > The existing legislation, practice guidance and professional standards for culturally responsive practice are not being consistently implemented and/or followed as intended.
- > Urgent changes to statutory care and protection practice need to be undertaken immediately to prevent further harm, including having independently facilitated Family Group Conferences, ensuring assessments are based on current (not only historical) information, and stopping hospital-based removals of pēpi.

From a targeted review of the Oranga Tamariki Act 1989 we found:

- > There are immediate amendments to the Oranga Tamariki Act that could be made to stop additional harm for pēpi, including repeal of section 18A–18D “Subsequent child” provisions.
- > There are improvements to the Oranga Tamariki Act that could prepare the way for the fundamental change required, including explicitly incorporating Te Tiriti o Waitangi, and explicitly offering a pathway for transferring power and resource to Māori.



We concluded that transformational change is needed

Now is the time for a true commitment to transferring power and resources to *by Māori, for Māori* approaches – this is the best option for real and transformational change.

On the basis of this evidence, we concluded that to keep pēpi in the care of their whānau, Māori must be recognised as best placed to care for their own; this involves *by Māori, for Māori* approaches that are enabled by the transfer of power and resources from Government to Māori.²

We set a vision for the change required: that tino rangatiratanga is guaranteed and realised through Te Tiriti o Waitangi so that all whānau Māori can achieve their own moemoeā for their pēpi, tamariki and rangatahi.

The statutory care and protection system impacts tamariki and rangatahi as well as pēpi. We have not analysed all the challenges or issues for tamariki and rangatahi. However, inequities continue to be stark for all Māori in the statutory care and protection system. We cannot, nor would we want to, design a system to match the needs of one age of children, in this case pēpi. For these reasons, the implications of our recommendation of *by Māori, for Māori* approaches necessarily stretch to include all pēpi, tamariki and rangatahi Māori.

Māori have the skills and knowledge to design, develop and deliver supports and services to their own. The mātauranga Māori concepts shared in this report demonstrate that authentic Māori solutions, grounded in whakapapa, whānau and whanaungatanga are possible. Kaupapa Māori models and Māori infrastructure exist to support these solutions, and the examples of Te Kōhanga Reo and Whānau Ora demonstrate this change can happen at scale and be transformational.

This change could begin to address the complex issues resulting from the impacts of colonisation on generations of whānau Māori. It could ensure that all pēpi and tamariki Māori are cared for and grow up safe in the arms of their whānau, hapū and iwi. With the right support, Māori can build on the existing models and knowledge to create kaupapa Māori approaches to care and support for whānau.

This will require courageous leadership to do the right thing. It will also require the transfer of power and resourcing from government to Māori, prioritising mātauranga Māori and working with kaupapa Māori models for sustainable change.

² When we say 'Māori' in this context, it includes hapū, iwi and Māori organisations.



We make four recommendations for change

We make four recommendations, each with a number of specific actions.

Our first and overarching recommendation is intended to start a very important process: enabling transfer of power and resources so that iwi and Māori organisations can design, develop and deliver authentic kaupapa Māori support and services themselves. The nature of *by Māori, for Māori* approaches is for Māori to determine, and we therefore limit our recommendations to outlining a process to initiate this accordingly.

Our remaining three recommendations address the need for immediate action to ensure concurrent improvements, so the existing system can better support pēpi and their whānau during the transition to *by Māori, for Māori* approaches. These bottom up, immediate changes are designed to mesh with, and support the longer-term transfer of, resources and power to enable *by Māori, for Māori* approaches.

Immediate improvements to stop harm now include:

- > urgent changes to social work policy and practice to improve the experience for pēpi and whānau;
- > increases to the resourcing of iwi and Māori organisations to enable them to provide the services and supports whānau need to successfully care for their pēpi;
- > improvements to how the current system works with Māori, including changes to guiding legislation, contracting, data collection and working with other agencies.

These changes will contribute to much-needed improvements in the standard and delivery of statutory social work services while paving the way for the transition to *by Māori, for Māori* approaches.





Rec 1: Government [Prime Minister and Cabinet] commit to transferring power and resources, from Government, to enable *by Māori, for Māori* approaches that keep pēpi Māori in the care of their whānau

Rec 2: Oranga Tamariki to act immediately to stop harm from occurring and improve the experience for pēpi Māori and whānau in the current care and protection system through urgent changes to social work policy and practice

Rec 3: Oranga Tamariki change the contracting process and increase funding and support to iwi and Māori organisations to deliver better services now, and to support and resource a transition pathway to *by Māori, for Māori* approaches

Rec 4: Minister and Oranga Tamariki act to improve the legislation and mechanisms in the current system to better work with Māori, both in the short and longer-term

Detailed recommendations

1. Government [Prime Minister and Cabinet] commit to transferring power and resources, from Government, to enable *by Māori, for Māori* approaches that keep pēpi Māori in the care of their whānau.

The decision to embark on significant changes to government systems that honour tino rangatiratanga can only be directed by the most senior representatives of the government, the Prime Minister and Cabinet. And it is this leadership from the Crown that can initiate and invite iwi and Māori partners to begin this process.

The objective would be agreement to progress *by Māori, for Māori* approaches, where Māori lead the transition from a system dominated by state intervention to approaches where whānau, hapū and iwi are the decision makers in all areas relating to the wellbeing of pēpi. This requires the state to honour Te Tiriti o Waitangi and relinquish power and resource to its Treaty partner to determine themselves what system, services and supports are needed for pēpi and their whānau.

Honouring and embedding Te Tiriti o Waitangi into this approach will enable an equal relationship between the government agency and iwi and hapū Māori and support the vision of Māori to exercise tino rangatiratanga in all matters relating to the care of their pēpi. The Waitangi Tribunal (Wai 2915) findings may provide further guidance.

The initial agreement would need to set out timelines for transfer of power and resources to iwi and Māori organisations to enable the establishment and growth of *by Māori, for Māori* approaches to delivering services and supports to pēpi, tamariki and rangatahi Māori and their whānau.

As iwi and Māori organisations define a new landscape for *by Māori, for Māori* approaches, what is needed from the statutory care and protection system will shift. The size and scope of statutory care and protection system will need to be closely examined.

Steps we recommend in this process include:

- 1.1. Ministerial level partnership with iwi and Māori leadership, agreeing to establish *by Māori, for Māori* approaches to the current statutory care and protection system.



- 1.2. The agreement outlines the process and provides timelines for enabling, resourcing and transferring power to *by Māori, for Māori* approaches.
- 1.3. Funding is provided to iwi and Māori organisations to enable them to participate fully in this process – starting now, and audited to show how resources and funding are allocated annually.
- 1.4. Commissioning an independent process, in line with Te Tiriti o Waitangi, to determine what the future role of the statutory care and protection system should be, for both Māori and non-Māori.

2. Oranga Tamariki to act immediately to stop harm from occurring, and improve the experience for pēpi and whānau, in the current statutory care and protection system through urgent changes to social work policy and practice.

There are significant concerns about statutory social work practice in the current system. In many cases, statutory social work practice has caused harm to whānau and the care and protection system has failed to support positive outcomes for whānau. The overall standard and delivery of statutory care and protection services to Māori needs to improve across the board. In particular, the system must provide whānau with the necessary services and supports to enable them to maintain care of their pēpi.

We recommend Oranga Tamariki urgently undertake the following actions to stop harm now:

- 2.1. Prevent the use of without notice removals of pēpi from mums and whānau, by ensuring all practical steps are taken, with mums and whānau, to determine care plans for pēpi at the earliest opportunity, in order to support pēpi to remain in the care of their whānau.
- 2.2. Stop the practice of removals of pēpi from a hospital maternity ward, birthing unit or other similar place by Oranga Tamariki, in order to respect te whare tangata and the needs of pēpi to bond, breastfeed (when possible) and have a calm, trusted and safe environment.
- 2.3. Delegate the roles and functions of Care and Protection Coordinators so that all Family Group Conferences for pēpi are coordinated and facilitated independently of Oranga Tamariki.



- 2.4. Ensure all statutory assessment decisions give proper and sufficient weight to the current situation of whānau while giving consideration to relevant previous history and circumstances.
- 2.5. Ensure Oranga Tamariki social workers adhere to all current legislative, policy and professional Social Workers Registration Board requirements by undertaking actions to:
 - > ensure social worker caseloads are at a level that allow them time to establish meaningful relationships, understand the context of each case, and support whānau to care for their pēpi
 - > strengthen and implement existing recruitment, retention, mentoring and supervision policies and practices that address interpersonal, institutional and structural racism and support staff to work effectively with pēpi Māori, their whānau, hapū and iwi
 - > implement an ongoing training and coaching programme, to support the roll-out of the new Māori-centred Practice Framework, and enable consistent and high quality practice.

3. Oranga Tamariki change the contracting process, and increase funding and support to iwi and Māori organisations, to deliver better services now, and to support and resource a transition pathway to *by Māori, for Māori* approaches

Clearly there is an urgent need for services and support to whānau that are *by Māori, for Māori*. This will require urgent policy changes that ensures contracts are flexible and enable iwi and Māori organisations to be fully resourced to design, develop and deliver the services that work for whānau.

These changes will support the capacity and capability building needed now within the sector. Equally, they will be critical to implementing *by Māori, for Māori* approaches.

- 3.1. Cost and fully fund high-trust contracts with iwi and Māori organisations to ensure they can design, develop and deliver holistic supports and services to pēpi and their whānau.
- 3.2. Fund iwi and Māori organisations to provide advocacy services to support whānau involved with the care and protection system.



4. Minister and Oranga Tamariki act to improve the legislation and mechanisms in the current system to better work with Māori, both in the short and longer-term

While Oranga Tamariki have the power to make many system improvements, the Minister for Children is required to lead legislative changes.

Some legislative change may be required to enable the system change to *by Māori, for Māori* approaches described in Recommendation 1. There are other immediate legislative amendments needed to prevent further harm in the short-term.

We recommend that the Minister for Children:

- 4.1. Undertake immediate amendments to the Oranga Tamariki Act 1989, including but not limited to the following:
 - > Repeal the subsequent child provision contained in sections 18A-18D.
 - > Remove references to 'at the earliest opportunity' in the purposes of the Oranga Tamariki Act section 4(1)(e)(i).
 - > Replace the word 'preference' with the word 'priority' in section 13 (2) (g), so that it is clear that priority must be given to placing a child or young person with a member of their wider family, whānau, hapū, iwi or family group.
 - > Strengthen the provision for sibling unity in section 13 (2)(g) so that a child or young person is placed with their siblings unless, because of exceptional circumstances, this is clearly impracticable.
 - > Simplify and harmonise the principles in sections 4, 4A, 5 and 13.
 - > Explicitly incorporate Te Tiriti o Waitangi into the Act, so that the Act is interpreted and administered to give effect to the principles of Te Tiriti o Waitangi.
 - > Amend section 7AA to oblige the Chief Executive and department to engage in 'genuine Treaty partnership' with iwi and Māori organisations in the delivery of care and protection services, with all necessary consequential amendments.

- 4.2. Seek Crown Law legal opinion and consult with Māori on other legislative changes needed to enable the transfer of power to *by Māori, for Māori* approaches, as outlined in Recommendation 1.

There are other areas within the current system that need to improve and evolve, both to better support whānau now, and to enable *by Māori, for Māori* approaches to state care and protection for Māori. These include many behind-the-scenes mechanisms and collaborative work with other organisations.

We recommend that Oranga Tamariki:

- 4.3. Increase transparency and accountability by proactive release of aggregated data about their activities and their impacts on pēpi and whānau, including inequities, using common statistical standards and practices. This needs to use timely, high quality ethnicity data, be designed with Māori, and comply with Māori data sovereignty principles.
- 4.4. Work with other social sector agencies to prioritise access to resources for pēpi and their whānau in areas of critical need, including but not limited to:
- > 'live in' support for pēpi and parents
 - > drug and alcohol rehabilitation services
 - > respite care services
 - > timely and resourced access to specialist services
 - > support for fathers and other male whānau members
 - > ongoing support services for mothers and whānau when pēpi are removed
 - > improved access services between whānau members and pēpi
 - > disability support services
 - > housing for pēpi and their whānau.

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- 4.5. Work with District Health Boards to develop policy regarding hospital stays and supports for mums and pēpi when care arrangements are still being confirmed, so that longer stays and greater support is available and without notice removals do not take place in hospitals.
 - 4.6. Work with Police to develop policy in relation to their role in conducting removals of children, so that the approach is humane and child-centred, and uses specially-trained officers.

We believe these steps will lead to the new daybreak that has long been envisioned by many³ – the realisation of tino rangatiratanga through Te Tiriti o Waitangi, and a future where Māori can achieve their own moemoeā for their pēpi, tamariki and rangatahi.

³ Department of Social Welfare *Puao-Te-Ata-Tu (Daybreak)* (Government Printing Office, Wellington, 1988).







MANAAKITIA Ā TĀTOU TAMARIKI

Children's
Commissioner