



MANAAKITIA Ā TĀTOU TAMARIKI

**Children's
Commissioner**

Te Au rere a te Tonga
OPCAT Monitoring Follow Up Report
Visit Date: February 2023
Report Date: April 2023



Kia kuru pounamu te rongō

All mokopuna* live their best lives

*Drawing from the wisdom of Te Ao Māori, we have adopted the term mokopuna to describe all children and young people we advocate for, aged under 18 years of age in Aotearoa New Zealand. This acknowledges the special status held by mokopuna in their families, whānau, hapū and iwi and reflects that in all we do. Referring to the 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 wellbeing, at every stage of their lives.

Contents

Contents	3
Executive Summary	4
About this report	4
About this visit	4
About this facility	4
Key Findings	5
Progress on recommendations	7
Issues and Concerns	11
Appendix	14

Executive Summary

The role of the OCC

The Children's Commissioner is a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (OPCAT).

The New Zealand legislation is contained in the Crimes of Torture Act (1989). My role as a NPM is to visit places of detention, including residences run by Oranga Tamariki, to:

- Examine the conditions and treatment of mokopuna
- Identify any improvements required or problems needing to be addressed
- Make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing ill treatment.

Judge Frances Eivers
Ngāti Maniapoto, Waikato
Children's Commissioner

About this visit

OCC staff ("OCC") conducted an unannounced visit to Te Au rere a te Tonga (Te Au rere) in February 2023 as part of a follow-up visit work programme. The follow-up visit assesses progress against the facility recommendations made as part of the previous full monitoring report. The last full visit to Te Au rere was in December 2021.

About this report

The report outlines the progress made against the recommendations since the last full visit in December 2021. The report also highlights issues identified by OCC during the follow-up visit. These issues may not directly relate to the recommendations from the 2021 visit.

About this facility

Facility Name: Te Au rere a te Tonga

Region: Palmerston North

Operating capacity: 30

Status under which mokopuna are detained:

- Oranga Tamariki Act 1989 – s235, s238(1)(d) and s311.
- Criminal Procedure Act 2011 – s173 and s175.
- Corrections Act 2004 – s34A

Concluding Observations from the United Nations Committee on the Rights of the Child (2023)

In February 2023, the United Nations Committee on the Rights of the Child ('the UN Committee') released its Concluding Observations¹ for New Zealand's sixth periodic review on its implementation of the Children's Convention² and how the Government is protecting and advancing the rights of mokopuna in Aotearoa New Zealand.

The recommendations from the Concluding Observations inform the key findings and references to specific recommendations are made throughout the body of the report.

Key Findings

1. OCC found no evidence that mokopuna had been subjected to torture, cruel, degrading treatment, or punishment (ill-treatment) as per the OPCAT and the Crimes of Torture Act 1989. However, there are areas of concern that have been detailed in this report.
2. Overall, there has been very limited progress made on the recommendations from our last visit in December 2021 except for the renovation of the admission area.
3. Secure care and restraint practices continue to be used regularly within the residence and appear to be increasing.
4. The Youth Justice residence is not meeting the needs of mokopuna experiencing mental unwellness or those diagnosed with neurodiversity challenges.
5. The custodial system for mokopuna aged 17-20 is not fit for purpose – specifically those detained under the Criminal Procedure Act 2011 or the Corrections Act 2004.
6. The age mixing of mokopuna is creating significant negative dynamics within the units. This is a constant theme across all youth justice residences.
7. Management does not have a consistent approach to staff supervision and there is concern around the quality of supervision delivered.

¹ Refer CRC/C/NZL/CO/6. To see the Children's Commissioner report to the UN Committee, see: [NZ Children's Commissioner's Report to the UN Committee on the Rights of the Child - 2022 | Office of the Children's Commissioner \(occ.org.nz\)](#)

² [Convention on the Rights of the Child | OHCHR](#)

2021 Recommendations for progress review on this visit

Systemic Recommendations

1	Revise the Individual Care Plan templates to ensure they are functional, youth-friendly, and available in other accessible formats and languages.
2	Develop a nationwide package of training programmes that sits alongside the Te Waharoa Induction programme. Training programmes could include: <ul style="list-style-type: none"> • criminogenic risk factors, • alcohol and drug support, • mental health needs, • intellectual disability, • neuro-diversity, • life skills, and • cultural development/ capacity building.
3	The grievance process be reviewed to ensure independence and impartiality.
4	Liaise with the Ministry of Health regarding accelerated access to medical services for diagnoses when mokopuna are placed in residences.

Facility Recommendations

1	Reduce the numbers of restraint and admissions to secure care.
2	Ensure all Individual Care Plans are signed by mokopuna, dated, and completed to a consistent standard, ensuring mokopuna and whānau involvement.
3	Develop a therapeutic model of care for Te Au rere, which aligns with the principles of Whakamana Tangata ³ and Te Tiriti o Waitangi ⁴ .
4	Renovate the admission area to be welcoming.
5	Provide additional sensory training for staff, as well as equipment and a dedicated therapeutic space for sensory modulation.
6	Provide appropriate supervision including cultural supervision to all staff.

³ Whakamana Tangata is Māori informed, restorative practice model adopted for use in all youth justice residences. It focuses on working with rangatahi in a relational and restorative way based on the values of Mana, Tapu, Ara Tikanga, Piringa and Mauri Ora.

⁴ For the purpose of this report, the principles of Te Tiriti o Waitangi that OCC expect to see is that mokopuna and whānau are at the heart of decision making and that Oranga Tamariki facilitate the restoration of familial connection and explore whakapapa. All practice acknowledges mokopuna as Rangatira in their care journey, recognises their mana, and supports culturally appropriate treatment for past trauma.

Progress on 2021 facility recommendations

Progress on the facility recommendations from the OPCAT report dated December 2021 are assessed to have made good, limited, or no progress.

Recommendation 1: Reduce the numbers of restraint and admissions to secure care.

Progress: No progress.

Restraints and admissions to secure care continue to be used regularly by Te Au rere. Mokopuna are taonga under Article 2 of Te Tiriti o Waitangi and the use of secure care breaches this Article.

The seclusion of mokopuna, runs contrary to international human rights law which prohibits its use on those under 18 years of age.⁵ Seclusion and secure care practice was noted in New Zealand's sixth periodic review on its implementation of the Children's Convention. The Concluding Observations noted concern regarding restraint practice and allegations of bullying⁶.

From OCC discussions with Te Au rere staff, it appears that the following issues arise in terms of use of secure care:

- that the continued use of secure care and restraint practice is reflective of the complex needs of mokopuna. The residence is providing care to many mokopuna experiencing mental health distress with limited interventions provided by specialist mental health services. Secure care is currently being used to manage the behaviour of many mokopuna who need intensive mental health support⁷.
- that there is currently not enough space across all units to separate mokopuna into different areas to alleviate clashing dynamics and reduce heightened behaviours.
- Staff report that they exhaust all other options before using restraints and secure care however there appears to be insufficient support to enable staff to exercise this because:
 - There is limited ability to use de-escalation or self-regulation strategies
 - there is little to no sensory equipment which help mokopuna de-escalate and self-regulate.

⁵ Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, U.N. Doc. A/63/175 Annex (28 July 2008) (Manfred Nowak).

⁶ Refer CRC/C/NZL/CO/6. 27(b)

⁷ This was reflected in the review of secure care logbooks that show mokopuna who have identified and diagnosed mental health needs within their individual plans, are regularly admitted into secure care (albeit for short periods of time).

- there has been a decrease in planned recreational and vocational activity normally run outside of school hours (often by community organisations) following the COVID lockdowns. Mokopuna report being bored.
- the increase in the age of mokopuna placed in the residence is detrimental to safe operations.
- The retention and training of staff is identified as a contributing factor to the regular use of secure care. Personnel changes impact across residence operations. Te Au rere recently lost several experienced staff and that new staff are still developing their ability to apply alternative strategies and techniques to defuse and de-escalate complex behaviours. Their inexperience is leading to quick decisions in assessing the grounds for admission to secure care⁸ without first trying all other methods to de-escalate situations.

The Children's Commissioner urges Oranga Tamariki to eliminate the practice of secure care and use of force and those alternative options to manage mokopuna behaviour are operationalised.

Recommendation 2: Ensure all Individual Care Plans (ICPs) are signed by mokopuna, dated, and completed to a consistent standard, ensuring mokopuna and whānau involvement.

Progress: Limited progress.

Mokopuna have the right to be involved in decisions that affect them⁹. OCC found the recently updated format of the ICPs is mokopuna friendly, as it is written in plain language, and uses more colourful imagery than the older version. There is also space for mokopuna to sign their plans. However, there is inconsistency in the use of the new template, with the older format still being used for some mokopuna.

Although the format of the individual plans has been updated, OCC is concerned with the following:

- that some mokopuna said they had little to no involvement in their plans, in particular, with regards to their transition from the residence back into community¹⁰.
- that despite mokopuna having self-identified goals for while they are in residence and for their transition, their ICPs do not evidence that their views and aspirations are taken into account.

⁸ S370 Oranga Tamariki Act

⁹ Article 12 [Convention on the Rights of the Child | OHCHR](#), and Article 2 Te Tiriti o Waitangi

¹⁰ Refer CRC/C/NZL/CO/6 27(b), 40(b)

- that in reviewing a sample of ICPs, OCC saw a lack of detail, which is concerning. OCC would expect to see detail regarding needs, assessments and plans to address the needs taking into account past trauma, triggers and relevant behaviour management strategies.
- There was little evidence of whānau involvement in mokopuna plans¹¹.

OCC was told that the ICPs are moving to better align to the “All About Me Plans”¹² so that information from residences can be built into case notes and inform on-going assessments completed by Oranga Tamariki site social work staff. The streamlining of plans and assessments along with stronger collaboration with site social workers regarding transition planning is required.

It is reassuring to hear that the Team Leader Clinical Practice position has been filled. This role is crucial to strengthening both the planning and collaboration with site social workers, and leading therapeutic practice

Recommendation 3: Develop a therapeutic model of care for Te Au rere, which aligns with the principles of Whakamana Tangata and Te Tiriti o Waitangi.

Progress: No Progress.

Given the disproportionate representation of mokopuna Māori in places of detention it is imperative that models of care focus on tino rangatiratanga, Manaakitanga, and Kaitiakitanga to provide options for care that are steeped in matauranga and te ao Māori.¹³

There is no evidence that Te Au rere has a therapeutic approach to care for mokopuna. The lack of a therapeutic approach means:

- that the care provided is reactive and focused on operational safety needs.
- there is regular use of secure care and a high number of restraint holds used in the residence.
- that staff admit Te Au rere cannot adequately care for mokopuna with very high and complex needs in a way that promotes the mana of mokopuna and establishes them as taonga.

¹¹ Refer CRC/C/NZL/CO/6 28(d)

¹² All About Me plans are the plans developed by Oranga Tamariki site social workers to address identified needs [All About Me plan | Practice Centre | Oranga Tamariki](#)

¹³ Article 2 Te Tiriti o Waitangi

The issues are:

- An inconsistent application of the Whakamana tāngata model. Some staff OCC spoke to could articulate the principles behind Whakamana Tangata¹⁴, however others described a more punitive and authoritative mindset towards daily operations that did not exemplify the model in practice.
- At the previous visit OCC were told that the Te Tiriti o Waitangi 7AA project team, who were focused on improving the cultural competency of the residence, had been paused due to COVID-19. This project needs to be reinstated if the residence is to build cultural competency in te ao and matauranga Māori, build connection with mana whenua, whānau, hāpu and iwi and start to work in a collaborative way to reduce the disproportionate -representation of mokopuna Māori in state care and who are deprived of their liberty¹⁵.

Despite this, some mokopuna said they felt supported to learn about their culture, particularly through the education programme at Te Au rere. OCC also observed some staff taking a lead in speaking te reo Māori with mokopuna and being open about sharing their whakapapa, encouraging mokopuna to do the same, and giving mokopuna the opportunity to be Rangatira in their own journeys in order to provide hope for the future.

Recommendation 4: Renovate the admission area to be welcoming.

Progress: Good progress.

During the 2021 visit, OCC found the admission area to be dark and intimidating. The admission area was being renovated at the time of this follow-up visit and is due to be completed in April 2023. From what had been completed, OCC saw an improvement in the environment, and it was bright, clean, with appropriate amenities for initial admission. OCC looks forward to seeing the completion of this area at the next monitoring visit.

Recommendation 5: Provide additional sensory training for staff, as well as equipment and a dedicated therapeutic space for sensory modulation.

Progress: No progress.

There is lack of staff training, sensory items, and safe 'break away' spaces within the residence to self-regulate and de-escalate challenging behaviour. These are the main reasons for the regular use of secure care.

¹⁴ The five Whetuu or principles behind Whakamana Tangata are Mana, Mauri Ora, Piringa, Tapu, and Te Ara Tikanga.

¹⁵ Refer CRC/C/NZL/CO/6. 40(b)

This is in direct conflict with the Children’s Convention¹⁶, and Article 2 of Te Tiriti o Waitangi and ensuring the active protection of mokopuna as taonga.

By allowing mokopuna to get so heightened that they then become a danger to themselves or others¹⁷, goes against the purposes and principles of the Oranga Tamariki Act 1989 – specifically to protect mokopuna from suffering harm¹⁸ and to promote the well-being and best interests of mokopuna.¹⁹

Mokopuna noted there has been no additional sensory items made available to them and told us having stress balls and fidget toys were good when they needed to listen for long periods of time. Mokopuna also said these resources are a good way for them to self-manage feelings of anxiety.

The leadership team recognises the concerns raised by staff regarding training and the impact this has on mokopuna. The leadership team explained they are taking steps to address it by adopting a structured approach based around therapeutic interventions. For example, a senior psychologist has been employed and has been tasked with working with staff to develop effective behavioural management plans, as well as train staff to be more responsive to the presentation of trauma and develop effective strategies to manage this.

The Children’s Commissioner is concerned that therapeutic interventions and staff training regarding the recognition, understanding and management of trauma is yet to have a positive impact on mokopuna. This must be urgently addressed by Oranga Tamariki and the Children’s Commissioner will seek out of report cycle updates from the Chief Executive.

Recommendation 6: Provide appropriate supervision including cultural supervision to all staff.

Progress: No progress.

Professional supervision is a requirement for all Oranga Tamariki staff who work directly with mokopuna²⁰. Guidance states that Oranga Tamariki support regular one-on-one supervision and clinical supervision to maintain professional practice. Cultural supervision is also essential for identity, belonging, and connection for mokopuna. Although Te Au rere has a supervision policy in place, it was reported to OCC by some staff that it is not effective, for several reasons:

¹⁶ [Convention on the Rights of the Child | OHCHR](#) Article 37(a)

¹⁷ Thus meeting the grounds for secure care admission under s370 of the Oranga Tamariki Act 1989.

¹⁸ S4(1)(b)(i) of the Oranga Tamariki Act 1989

¹⁹ S4A(1)& (2) of the Oranga Tamariki Act 1989

²⁰ [Professional supervision | Practice Centre | Oranga Tamariki](#)

- it is not occurring as part of regular practice. Team Leaders are required to provide individual supervision for their staff, however the care team did not always see the value of supervision due to it not being a priority and the lack of support from management to complete it.
- the quality of relationships with team leaders is a barrier to receiving quality supervision. Although, there were daily staff debriefs, not everyone was getting the 1-1, high-quality supervision required for their role. External supervision was only provided to staff with professional qualifications who are required to participate in supervision to maintain their professional registrations.

Supervision at Te Au rere falls short of the operational expectations outlined by internal Oranga Tamariki policy. The Children's Commissioner is concerned that consistent, safe, child-centred practice and the correct application of policy is not being monitored as part of supervision practice standards²¹. This is impacting on the care and treatment of mokopuna. Ensuring mokopuna are treated fairly and consistently is a right, and professional supervision needs to be prioritised.²²

²¹ [Professional supervision | Practice Centre | Oranga Tamariki](#)

²² Refer CRC/C/NZL/CO/6. 28(e)

Issues and Concerns

In addition to the monitoring of the progress of recommendations, staff and mokopuna discussed other issues with OCC that are worth noting within this report.

A mix of ages is creating operational risk

OCC was concerned to observe the negative impact of age mixing within the residence. The ages of mokopuna in Te Au rere at the time of the follow-up visit ranged between 14 and 19 years old. This mix of mokopuna were held across two units within the residence.

Staff reported that:

- the age mixing occurs because there is a lack of space across the residence to appropriately house, and at times separate mokopuna.
- the older cohort have a level of influence over the younger mokopuna and have been 'schooling' them in how to commit crime 'better'.
- they feel intimidated by the older cohort of mokopuna. Staff told OCC the aim is to get through their shifts unharmed.
- they are struggling to meet the developmental and behavioural needs of mokopuna. Staff said they do not have the appropriate training to work with mokopuna with the wide range the presenting developmental and mental health needs.

Mokopuna are treated differently depending on their legal status

Mokopuna detained in youth justice residences under the Criminal Procedure Act 2011²³ and the Corrections Act 2004²⁴ have significant limitations on the off-site activity they can be involved in since they are not sentenced under the Oranga Tamariki Act 1989 and its specific provisions for mokopuna under the age of 18 years. . This means that there are severe limits on what vocationally focused programmes mokopuna with district and high court matters can attend other than those offered through Kingslea School.

The Children's Commissioner is concerned about the disparity of treatment between mokopuna that are detained under the Criminal Procedure and Corrections Acts against those detained under the Oranga Tamariki Act. Duty of care for all mokopuna in Youth Justice residences lies with Oranga Tamariki and therefore all should have equitable access to activity and protection of rights. The Children's Commissioner therefore seeks an urgent

²³ Mokopuna who have court matters progressing through the District of High Courts can spend their remand period in a youth justice facility due to their age or level of vulnerability. Refer S173, 174 and 175 of the Criminal Procedure Act 2011.

²⁴ Mokopuna who have been sentenced through the District or High Courts can spend some or all of their sentence in a youth justice facility due to their age and level of vulnerability. Refer s34A of the Corrections Act 2004.

update on how this disparity of treatment is being addressed in the Residential Care and Other Matters Amendment Bill.

The current legal provisions have not been considered in the context of international rights obligations²⁵. Ara Poutama is responsible for the development and management of mokopuna plans however, Oranga Tamariki hold custody rights and provide day-to-day care. The Children's Commissioner acknowledges Oranga Tamariki cannot change the current provisions but does advocate for Oranga Tamariki to consider legislative change as part of the Residential Care and Other Matters Bill so that mokopuna detained under the Criminal Procedure and Corrects Acts can access equitable treatment.

Mokopuna are unable to access the mental health support they require

Both the leadership team and staff working in units are concerned at the inability for some mokopuna to access specialist mental health support services.

Te Au rere leadership team provided OCC with access to individual level information to highlight the range of mental health needs for current mokopuna. The file assessment revealed that twelve mokopuna had an identified mental health need and three were being prescribed controlled medication to address these needs. The leadership team are concerned that while the Forensic Mental Health Team will prescribe medication and offer practice points to manage mokopuna need, residence staff are largely left trying to figure out what will work best for mokopuna.

Residence staff across the board acknowledge the pressures the community mental health teams are experiencing but are concerned that the lack of capacity and the high threshold for referral is leading to several mokopuna not being able to access the resources and therapy they require. Therapy to not only address the underlying causes of their offending, but to achieve personal wellbeing. OCC were told that of the last seventeen referrals made to community mental health services, only eight mokopuna were accepted.

The lack of ability to respond to these complex needs, in addition to the lack of training and de-escalation resource, is leading to higher rates of mokopuna experiencing mental distress with needs remaining unmet. OCC saw evidence of mokopuna with diagnosed or suspected diagnoses of mental health needs regularly being admitted into secure care – even if these admissions were for relatively short periods of time.

The Children's Commissioner recommends that Oranga Tamariki as a matter of priority works with Te Whatu Ora to develop effective supports for mokopuna experiencing mental

²⁵ 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.

health distress²⁶ and that significant training packages are delivered in all residences to up-skill staff working directly with mokopuna.

²⁶ These can include (but are not limited to) visual presentations and Oranga Tamariki screens for suicide, mental health and substance abuse. [SACS, Kessler and Suicide screens \(SKS\) | Practice Centre | Oranga Tamariki](#)

Appendix

Gathering information

OCC gather a range of information and evidence to support our analysis and develop our findings in our report. These collectively form the basis of our recommendations.

Method	Role
Interviews and informal discussions with mokopuna (including informal focus groups) with mokopuna	
Interviews and informal discussions with Te Au rere staff	<ul style="list-style-type: none"> • Mokopuna (wāhine/ female unit only) • Residence Manager • Residence Manager Operations • Programme Coordinator • Team Leader Clinical Practice • Team Leaders Operations • Senior Psychologist • Quality Lead • Case Leaders • Shift Leader • Youth Workers
Documentation	<ul style="list-style-type: none"> • Grievance quarterly reports • Secure care register • Secure care logbook • Daily logbook • Mokopuna Care Plans and All About Me plans • Serious Event Notifications • SOSHI reports
Observations	<ul style="list-style-type: none"> • Unit routines • Activities and Education (Options program) • Mokopuna engagement with staff and each other • Mealtimes • Shift handovers • Internal and external environment