

Petition of Josiah Tualamali'i: Inquire into solutions for youth justice

Written submission to the Petitions Committee from the Children's
Commissioner

30 June 2023



Mihi | Acknowledgments

*Tuia te rangi e tū iho nei
Tuia te papa e takoto ake 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!*

Kei aku nui, kei aku rahi, tēnā koutou katoa e ngā mokopuna o te inamata, onamata me te anamata anō hoki. E mihi ana ki a koutou kua kōrero mai ki a mātou, kua whakapono hoki ki a mātou i roto i ngā tau. E ārahi ana koutou i a mātou mahi katoa. E kore aku mihi e mutu ki a koutou ngā mokopuna, ngā kaiārahi e tūtū mai ana.

E ngā kaimahi e tiaki ana i ā tātou mokopuna, ka rewa te pōtae ki a koutou. E mārāma ana ahau ki te mahi i mua i a tātou ki te whakatika i ngā hē me ngā ngoikoretanga i roto i te pūnaha. Mō te aha? Mō te oranga o ngā mokopuna te take. E kore e ārikarika te mihi ki a koutou katoa.

Nāku iti nei,



Kaikōmihana mō ngā tamariki o Aotearoa
Kaiwhakawā Frances Eivers

*Weave together the sky
Weave together the earth
Weave together the thoughts
Weave together the 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 children and young people of the past, present and future. My thanks to all of you who spoke to us and trusted us with your accounts over the years. You collectively guide us in everything we do. My deepest thanks to the children and young people as the upcoming generation of leaders.

To those who take care of our children and young people, I salute you. I understand there is a lot of work ahead of us all to address the wrongs and failures of the system. What for? For the purpose of our children and young people's wellbeing. To each and every one of you, my thanks knows no end.

Yours humbly,



Children's Commissioner
Judge Frances Eivers

Kupu taunaki | Recommendations

I support the petition of Josiah Tualamali'i that there is an inquiry into best practice youth justice interventions (preventions and responses), and I recommend this inquiry:

By Māori, for Māori, with Māori approaches under Te Tiriti o Waitangi

1. Be conducted in parallel with, and take into account, the findings of relevant Waitangi Tribunal inquiries, namely the WAI 2915 urgent inquiry into the consistency of Oranga Tamariki policies and practice with Te Tiriti o Waitangi (Te Tiriti) and the WAI 3060 inquiry into issues affecting Māori in the justice system. This is consistent with the Crown's obligations as a Treaty partner.
2. Advance and uphold the rights of all mokopuna Māori, consistent with Te Tiriti.

Children's rights

3. Advance and uphold children's rights, consistent with New Zealand's international legal obligations, especially those under the United Nations Convention on the Rights of the Child (Children's Convention), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the United Nations Convention on the Rights of People with Disabilities (UNCRPD).
4. Uphold New Zealand's obligations under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punish, as it specifically relates to the detention of mokopuna in police cells and youth justice residences.

Evidence base

5. Draw on the solid evidence-base regarding best practice youth justice interventions (preventions and responses) to support mokopuna, including:
 - 5.1. The voices and experiences of children and young people.
 - 5.2. Evidence on the underlying drivers of offending to inform youth justice interventions.
 - 5.3. By ensuring mokopuna are consulted and engaged with in the inquiry.
 - 5.4. Domestic examples and guidance such as:
 - 5.4.1. Oranga Tamariki's strategic partnership with Te Rūnanga-ā-iwi-o-Ngāpuhi, which has led to the development of the youth remand service, Mahuru.¹
 - 5.4.2. Te Kooti Rangatahi.
 - 5.4.3. Pasifika Courts.
 - 5.4.4. Previous reports.²

¹ Oranga Tamariki (21 July 2021) "[Strategic partnership with Te Rūnanga-ā-iwi-o-Ngāpuhi](#)" (Oranga Tamariki, Wellington).

² For example, see Ministry of Social Development (1988) [Puao-te-Ata-tu](#) (Ministry of Social Development, Wellington); and Waitangi Tribunal (2017) [Tū Mai te Rangī! Report on the Crown and Disproportionate Offending Rates](#)

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6. International examples and guidance such as the of youth justice prevention and intervention work in Canada³ and Finland.⁴
 7. The previous recommendations of my office in the following reports:
 - 7.1. *What Makes a Good Life for Tamariki and Rangatahi Māori?*
 - 7.2. *State of Care: Children with Offending Behaviour.*
 - 7.3. *The New Zealand Children's Commissioner's report to the United Nations Committee on the Rights of the Child (Sixth Periodic Review).*
 8. The detailed recommendations from:
 - 8.1. Professor Ian Lambie, Dr Jerome Reil, Judge Andrew Becroft and Dr Ruth Allen in *How we fail children who offend and what to do about it: 'A breakdown across the whole system'* (see Appendix 1).
 - 8.2. Professor Ian Lambie in *It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand* (see Appendix 2).

(Waitangi Tribunal, Wellington).

³ N Bala, P.J. Carrington and J.V. Roberts (2009) "Evaluating the Youth Criminal Justice Act after Five Years: A Qualified Success" in 51 Canadian J. Criminology & Crim. Just. 131.

⁴ Professor Tracey McIntosh (2021) [Imaging a world without prisons](#) (webinar, University of Auckland).

Kupu whakataki | Introduction

**“There shouldn’t be situations where a young person needs to drop out of school or turn to illegal options just to provide food for their families”
(Rangatahi from Auckland)⁵**

1. I welcome the invitation, as the Children’s Commissioner, to provide a written submission on the petition of Josiah Tualamali’i. I support Josiah’s call for an inquiry into best practice youth justice interventions (preventions and responses) to support mokopuna.⁶ I recommend this inquiry take into account the findings of relevant Waitangi Tribunal inquiries, including WAI 2915 urgent inquiry into the consistency of Oranga Tamariki policies and practice with Te Tiriti and the WAI 3060 inquiry into issues affecting Māori in the justice system.
2. The inquiry must also uphold and advance children’s rights and draw on the extensive evidence base on effective prevention, intervention and responses to offending by mokopuna. My office has a long history of advocating for the rights and well-being of mokopuna, including those in the youth justice system and in places of detention. It is with this background knowledge and experience in listening to, and promoting, the views of mokopuna that this submission is made.
3. Whatever the approach to creating systemic change, youth justice interventions must be informed and guided by mokopuna experience and voice and the evidence available domestically and internationally. Evidence and community input must inform policy decision-making for effective practice change to occur in the justice system. I share the view that military-styled youth programmes are not an appropriate youth justice solution and mokopuna must be kept in their communities, whānau, hapū and iwi.⁷ To facilitate this, appropriate resource and wrap around support is required.
4. It is also important that such interventions are appropriate for mokopuna within the historical and constitutional context of Te Tiriti. Within the youth justice system, the Crown has a responsibility to give effect to Te Tiriti and the Treaty of Waitangi (the Treaty) to improve the wellbeing of mokopuna. Mokopuna Māori are disproportionately charged, convicted and sentenced in the youth justice system as a result of Te Tiriti-breaches and colonisation.⁸

⁵ Office of the Children’s Commissioner (2019) [What Makes a good life? Follow-up report: Views of children and young people in care or wellbeing](#) at 17.

⁶ Drawing from the wisdom of Te Ao Māori, we have adopted the term mokopuna to describe all children and young people aged under 18 years of age. This acknowledges the special status held by mokopuna in their 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, at every stage of their life.

⁷ Children’s Commissioner (2022) [Ten-year olds in ankle bracelets? That’s not us](#) (media release, Office of the Children’s Commissioner); and Office of the Children’s Commissioner (2023) *Aotearoa New Zealand’s 7th Periodic Review under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* at 22.

⁸ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: ‘A breakdown across the whole system’ Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 1.

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5. As the Children's Commissioner, I have a statutory responsibility to advocate for the interests, rights and welfare of all mokopuna in Aotearoa New Zealand. This includes advancing and monitoring the application of the Children's Convention by departments of State and other Crown instruments.⁹ Recognising the importance of mokopuna voice in decisions that impact them and upholding their participation rights, is central to realising all children's rights, in all circumstances, including in the youth justice system. I urge the Committee to ensure mokopuna themselves are able to engage with, and have meaningful input, into any inquiry into youth justice.
 6. In the youth justice system, and generally, mokopuna have the right to freedom from torture and the right to treatment that promotes their sense of dignity and worth, takes their age into account and aims at their defence.¹⁰ The Crown has an obligation to ensure mokopuna have all their rights upheld irrespective of placement in a youth justice residence.
 7. The state of the youth justice system has recently received criticism from the United Nations Committee on the Rights of the Child (the Committee). The Committee identified child justice as an area requiring urgent attention by Government, including a recommendation that the Government develop:¹¹

... an effective action plan aimed at eliminating the disparity in the rates of sentencing, incarceration and survival in detention of Māori children by addressing the connections between offending and neuro-disability, alienation from *whānau* (family), school and community, substance abuse, family violence, removal into State care and intergenerational issues.
 8. The Committee also recommended repealing the practice of remanding mokopuna in police custody, reducing the proportion of children in secure youth justice residences and raising the minimum age of criminal responsibility to 14 years for all children regardless of the offence type. These recommendations align with the youth justice system concerns I have previously made comment on and echo the work of my predecessors.

Te pae tata | Youth justice reform

9. The existing systems in Aotearoa New Zealand are failing children who offend.¹² The youth justice residences are not child-friendly nor child-appropriate — the act of placing mokopuna in these residences is like putting mokopuna in prisons. Prisons are colonial institutions of stone, concrete and wire and hold captive flesh, blood and whakapapa.¹³
10. Any inquiry into youth justice needs to take a by Māori, for Māori, with Māori approach under Te Tiriti, to address what changes are needed to advance and protect children's rights,

⁹ Children's Commissioner Act 2003, s 12(1)(f).

¹⁰ United Nations Convention on the Rights of the Child, Article 37 and Article 40.

¹¹ CRC/C/NZL/CO/6, paragraph 43(e).

¹² J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland).

¹³ Professor Tracey McIntosh (2019) "[Brief of Evidence for Contextual Hearing](#)" in Royal Commission of Inquiry at paragraph 57.

and also be based on robust evidence about effective prevention and responses to offending by children.

By Māori, for Māori, with Māori approaches under Te Tiriti o Waitangi

11. A child right's approach in Aotearoa requires the simultaneous realisation of tangata whenua rights as embodied and affirmed in Te Tiriti and the Treaty. Adopting a Te Tiriti-centric approach is essential to improve the rights, interests and wellbeing of mokopuna Māori, within the context of their whānau, hapū, iwi and communities. Furthermore, giving effect to Te Tiriti and the Treaty accords with the UNDRIP.¹⁴
12. The provision of kāwanatanga under article 1 of Te Tiriti translates to a Crown obligation to uphold good governance, including in the sphere of governing the youth justice system. Good governance must also capture a co-governance working relationship with Māori, to align with the provision of tino rangatiratanga under article 2 of Te Tiriti. I call on the government to prioritise early prevention as an expression of good governance and co-governance to avoid the need for a youth justice system in the first place. The evidence is clear that the youth justice system is a moral and fiscal failure.¹⁵
13. The provision of tino rangatiratanga under article 2 of Te Tiriti affirms and guarantees Māori self-determination and agency over their taonga (material and non-material). Article 2 also establishes the provision of Crown protection of this Māori self-determination. Our mokopuna, our babies, our children are taonga that must be protected. By Māori, for Māori leadership is essential to realising this provision of self-determination and therefore finding effective youth justice solutions for mokopuna Māori and protection of these taonga.
14. The provision of ngā tikanga katoa rite tahi under article 3 of Te Tiriti affirms the equal enjoyment of all rights and privileges for all peoples. This provision is expressed through the values of participation, access, options, equality, and equity. These rights are supported by the Children's Convention, which provides mokopuna (and their whānau) with specific rights that must be upheld and implemented by the government.¹⁶ The administration of youth justice breaches this provision due to systemic racism resulting in disproportionate overrepresentation of mokopuna Māori in the youth justice system, as well as their poorer treatment and conditions compared to their non-Māori counterparts.¹⁷
15. The provision of te ritenga Māori under article 4 of Te Tiriti affirms and upholds the right of all individuals to practice Māori spiritual customs and religious beliefs without hindrance. It is essential that Crown systems acknowledge and respect this freedom of spiritual expression, including within the youth justice system, ensuring that Māori spiritual customs and beliefs are valued, respected and protected for all mokopuna.

Children's rights

16. The current legislation and operational practices in the youth justice system present large inequities for mokopuna, particularly mokopuna in state care, and allow harmful practices

¹⁴ United Nations Declaration on the Rights of Indigenous Peoples, Articles 3-5.

¹⁵ I Lambie (2002) [The prison pipeline: Why early intervention is the best solution](#) IJBPE Vol 3: Issue 9 at 33.

¹⁶ United Nations Convention on the Rights of the Child, Article 4.

¹⁷ Office of the Children's Commissioner (2023) *Aotearoa New Zealand's 7th Periodic Review under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* at 17.

to occur in breach of children's rights.¹⁸ It is essential for the government to uphold the Children's Convention, as well as acting on the recommendations of the Committee. Priority recommendations from the Committee include raising the minimum age of criminal responsibility (MACR) and the closure of state residences.

17. Many mokopuna have shared with the OCC that they participate in crime to provide the basics for their families. Youth justice is not rooted in individual issues, it is systemic in nature. The Committee has raised poor standards of living and poverty as a concerning issue that disproportionately affects Māori and Pasifika.¹⁹ To address youth justice the State must address poverty as a significant root cause.
18. The administration of child and youth justice was raised as an urgent area of concern by the Committee. It commended the amendments to the Oranga Tamariki Act 1989 and the advancement of the rights of mokopuna Māori, however the Committee relayed deep concern about:²⁰
 - a) The persistent overrepresentation of Māori children in State care,²¹ including [...] incidents of harm disproportionately experienced by these children;
 - b) Allegations that children in secure residential care facilities are often denied the opportunity to have their opinions heard in decisions about their placement, and experience injuries from the use of restraints by staff, are subjected to bullying and unsanitary conditions, and lack access to a fair and effective complaints procedure;
 - c) The lack of data on the needs and experiences of children with disabilities in the care system.
19. The Committee urged the state to repeal the practice of remands into police custody and reduce the proportion of children in secure youth justice residences who are on remand. To achieve this, investment and resource in the development of community-based residences and strengthening the availability and use of non-custodial measures is required.²²
20. Based on the Children's Convention and recommendations of the Committee, it is evident that the adoption of community-based residences aligns with international law and rights-based practice.

Evidence base

Underlying drivers of offending

21. Evidence shows that child offending does not occur in a vacuum — there are usually underlying drivers of offending. In the vast majority of cases, youth offending was preceded by significant child welfare concerns as a result of care and protection needs not being

¹⁸ United Nations Convention on the Rights of the Child, Articles 2-4, 37 and 40.

¹⁹ CRC/C/NZL/CO/6, paragraph 35.

²⁰ CRC/C/NZL/CO/6, paragraph 27.

²¹ The Committee throughout the Concluding Observations refer to State Care as a broad term which encompasses both the care and protection system and the youth justice system.

²² CRC/C/NZL/CO/6, paragraph 43(b).

met.²³ These concerns for child welfare are typically exacerbated by entry into the youth justice system.

**“This is supposed to be a safe place but you never know, someone could come up behind you and punch you, stab you.”
(Mokopuna in youth justice residence)²⁴**

22. In some instances, further harm is perpetuated to the welfare of children.²⁵ Change is immediately required to ensure mokopuna are protected and kept safe within the youth justice system. The current system does not keep all mokopuna protected and safe. Youth justice residences must be closed, replaced with community and whānau-based alternatives where mokopuna can live in a family-like arrangement with the necessary support they require.²⁶ What is required moving forward is a life course approach to addressing drivers of offending.²⁷

1) Poverty

23. While poverty is not a precursor to child offending, poverty is a fundamental risk factor.²⁸ For example, there is a substantial correlation between you housing deprivation and engagement with Oranga Tamariki.²⁹ Efforts to reduce child offending require early intervention and addressing sociostuctural issues such as poverty and homelessness. Until the rights of all mokopuna to an adequate standard of living and a warm safe home are realised, agencies will continue to reactively respond to crisis interventions.³⁰

2) Education

24. School suspensions, expulsions, and multiple enrolments (school transience) have been identified as factors associated with offending.³¹ The inquiry needs to consider what changes

²³ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland).

²⁴ Office of the Children's Commissioner (2022) [Te Maioha OPCAT Monitoring Report](#) at 12.

²⁵ See Independent Children's Monitor | Aroturuki Tamariki (March 2023) [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations: Reporting Period 1 July 2021 – 30 June 2022](#); and Oranga Tamariki (March 2023) [Safety of Children in Care Annual Report: July 2021 to June 2022](#).

²⁶ Children's Commissioner (21 June 2023) [“New Oranga Tamariki investigation a time to make once in a generation change”](#) (media release, Office of the Children's Commissioner); and Oranga Tamariki (13 May 2022) [“Youth Justice Community Homes”](#) (Oranga Tamariki — Ministry for Children, Wellington).

²⁷ I Lambie (2002) [The prison pipeline: Why early intervention is the best solution](#) IJBPE Vol 3: Issue 9 at 33.

²⁸ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 141.

²⁹ T Fleming, D Archer, T King-Finau, F Ormerod, T.C Clark (2021) [Health and Wellbeing of young people who have been involved with Oranga Tamariki: Home and Housing](#) (The Youth19 Research Group, The University of Auckland and Victoria University of Wellington, New Zealand).

³⁰ United Nations Convention on the Rights of the Child, Article 27.

³¹ Oranga Tamariki Act 1989, s 14(1)(e).

are needed within the education system to keep children engaged with education, including when children are in State care.³²

25. Research shows that children who had stand-downs or suspensions before the age of 10 had a higher tendency to engage in offending behaviour. Children expelled from any school by the age of 14 were more likely to reoffend, with 85% of those previously expelled before age 14 offending again between ages 14 and 18.³³ Additionally, frequent changes in school enrolment by age 10 increased the odds of offending as a child. Offending by children aged 10-14 triggers the s 14(1)(e) care and protection referral under the Oranga Tamariki Act 1989.
26. There is a worrying repetition of exclusionary practices by schools, such as the placement of students into Alternative Education (Alt Ed). A recent report from the Education Review Office highlighted that Alt Ed students experience worse outcomes than other young people from comparable circumstances who remained in mainstream schools. One in six young people in Alt Ed have been in the care of Oranga Tamariki (OT), which raises concern that those within the OT system are nine times more likely than other students to be referred to Alt Ed.³⁴
27. Within the systemic approach to child offending, mokopuna are frequently disengaged from education and there are significant difficulties in reengaging them.³⁵ Mokopuna have a right to education and need to be actively engaged and supported to have an inclusive and holistic education to address the issues of inequity that presently exist.³⁶ The under-resourcing of the education system (alongside other systems) hinders more effective prevention and early intervention efforts with children and their whānau.³⁷

3) Disability

28. There is a lack of research into the prevalence of learning disability and neurodiversity amongst mokopuna in the youth justice system. However, anecdotal evidence suggests that neurodiverse mokopuna are significantly over-represented in the youth justice system.³⁸ There are measurably significantly greater incidences of neurodisabilities among children in custody compared with the general population.³⁹

³² See Voyce Whakarongo Mai (August 2022) [Children in State Care: Thematic Report to the United Nations Committee on the Rights of the Child](#) (report, Voyce Whakarongo Mai).

³³ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 8.

³⁴ Education Review Office Education Evaluation Centre and Social Wellbeing Agency (2023) [An Alternative Education? Support for our most disengaged young people](#).

³⁵ Office of the Children's Commissioner (2020) [State of Care: Children with Offending Behaviour](#).

³⁶ United Nations Convention on the Rights of the Child, Article 28.

³⁷ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 156.

³⁸ N Lynch (2016) [Summarising the contributions of participants at the 2016 Neurodisabilities Forum](#) (report prepared for forum hosted by Faculty of Law, Victoria University of Wellington in conjunction with Dyslexia Foundation of New Zealand in Wellington).

³⁹ N Hughes, N et al. (2012) *Nobody Made the Connection: Neurodisability in the youth justice system* (Office of the Children's Commissioner for England).

29. For example, while there are no population prevalence data available in Aotearoa, it is estimated that about 1800 mokopuna could be born with fetal alcohol spectrum disorder (FASD) each year based on 3% of all mokopuna born. Oranga Tamariki do not collect data on the prevalence of mokopuna with FASD in the youth justice system, but it is estimated this figure could sit at about half of those mokopuna.

30. There are many ways that the youth justice system fails disabled children. For example:⁴⁰

[T]here have been breaches of [HN]'s rights on account of his disability, both under the CRC and the CRPD. Three significant ways in particular in which that has happened, common to most cases of young people in the Youth Justice system who have a disability, are the lack of access to appropriate supports and services, the often long-term detention in Youth Justice facilities, as well as significant delays in resolving the proceedings.

31. Any inquiry into the youth justice system needs to consider the accommodations and supports needed to uphold the rights of mokopuna whaikaha under the Children's Convention and the UNCRPD to ensure access to the appropriate resources required to meet mokopuna needs.⁴¹

4) Mental health

32. Unmet mental health needs of mokopuna have also been identified as factors associated with offending. Children who have offended showed signs of trauma and extreme distress, including low mood and anxiety, self-harming, suicidal ideation and behaviour, anger, aggression and behavioural difficulties.⁴²

33. Lambie et al. (2022) report that 16.2% of those who offended as both a child and youth who had self-harm or suicide indicators, compared to 2.2% of the 'both' group without those indicators.⁴³ Similarly, the rate of youth-only offending in the whole cohort was around 9.6%; among those who had had self-harm or suicide indicators reported, it was 32.4%.⁴⁴

34. Mokopuna Māori are priority group of children requiring additional support as a cohort that disproportionately died by suicide in youth justice institutions.⁴⁵ Mokopuna have a right to life and to the highest standard of health and medical care attainable, and any loss of life in any youth justice institutions is totally unacceptable.⁴⁶

35. Mokopuna should not end up in the youth justice system due to the failure to meet their health needs. This concern carries over into the adult criminal justice system, which has been

⁴⁰ [New Zealand Police v HN](#) [2021] NZYC 364 at [83].

⁴¹ See also Voyce Whakarongo Mai (August 2022) [Children in State Care: Thematic Report to the United Nations Committee on the Rights of the Child](#) (report, Voyce Whakarongo Mai) at 15; and Talking Trouble (2018) [Youth Voices about Youth Justice](#).

⁴² J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 61.

⁴³ At 7.

⁴⁴ At 7.

⁴⁵ CRC/C/NZL/CO/6, paragraph 42(d).

⁴⁶ United Nations Convention on the Rights of the Child, Article 6 and Article 24.

criticised for inadequately addressing health needs or not enabling adequate access to health care.⁴⁷

5) Colonisation and racism

36. For mokopuna Māori, overrepresentation in the justice system is a consequence related to intergenerational impacts as a result of Te Tiriti-breaches.⁴⁸ The losses of independent infrastructure, language and culture through deception, theft and legislation by colonists throughout the 19th century have resulted in intergenerational poverty and trauma faced by mokopuna Māori.

“They arrest us for nothing. They pull up with millions of cop cars and there’s only one of us they have a warrant for, but they come up, straight up and smashed me. Kneeing me, telling me to put my hands towards my back but I couldn’t because he had my hand. They are racist as.”

(Rangatahi male in contact with the youth justice system)⁴⁹

37. The disproportionate representation of mokopuna Māori is an ongoing repercussion of colonisation and modern-day systemic racism. Racism is an explicit tool of control and perpetuates colonisation.⁵⁰

6) Pipeline to prison concerns

38. The pipeline to prison is a well-known phenomenon recognising social factors exist to create a pathway of vulnerable cohorts of people into prison. Poverty, marginalisation and racism make up elements of the *soft pipeline* with the poor and marginalised being grossly over-represented in overall prison statistics.⁵¹ The *hard pipeline* to prison additionally includes those who have been in state care and those who have been excluded from the compulsory education system.⁵²
39. Children who have offended (between the ages of 10 and 13 years) are at increased risk of long-term offending and a range of adverse outcomes.⁵³ Efforts targeted at early intervention are necessary to avoid children being funnelled into the pipeline to prison.

a) Overrepresentation of distinct groups of mokopuna

40. As stated previously, mokopuna Māori are disproportionately overrepresented in the youth justice system. Māori have long been significantly overrepresented at all stages of the

⁴⁷ National Health Committee (2010) *Health in Justice: Kia Piki te Ora, Kia Tika!—Improving the health of prisoners and their families and whānau: He whakapiki i te ora o ngā mauhere me ō rātou whānau* (Ministry of Health, Wellington).

⁴⁸ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: ‘A breakdown across the whole system’ Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 1.

⁴⁹ Office of the Children’s Commissioner (2019) [What Makes a Good Life for Tamariki and Rangatahi Māori?](#) at 3.

⁵⁰ Professor Tracey McIntosh (2019) “[Brief of Evidence for Contextual Hearing](#)” in Royal Commission of Inquiry.

⁵¹ At paragraph 33.

⁵² At paragraph 35.

⁵³ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: ‘A breakdown across the whole system’ Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 24.

criminal justice system as a whole, which is attributed to successive generations exposed to Te Tiriti-breaches.⁵⁴

41. Māori children and young people have nearly three times higher odds of offending compared to their non-Māori peers, and their offences are perceived as more serious.¹ Despite comprising approximately 15% of the population, Māori account for 37% of those proceeded against by the police, 45% of people convicted, and 52% of the prison population.⁵⁵ The prolonged stays of young Māori in secure youth justice residences while awaiting court processes have raised major concerns.
42. To a slightly lesser degree, mokopuna Pasifika and disabled mokopuna are also overrepresented among those who offend.⁵⁶ The nature of offending behaviour can be different between ethnic cohorts and this requires deliberate and culturally responsive approaches. It is demonstrated that culturally specific approaches are more suitable than a blanket approach.⁵⁷
43. Issues such as poverty, socio-economic challenges, educational underachievement, and trauma are seen more in these communities. Additionally, the cohort of Pasifika youth in the youth justice system are often disconnected from their culture, families, and extended families. This highlights again, the need of rehabilitative, cultural and suitable approaches which meet their cultural needs.
44. Specific factors significantly contribute to the heightened probability of individual mokopuna entering the prison system in their adult lives. As described below, another factor is care-experience.

b) The impact of the State care system

45. Reducing the overrepresentation of Māori children in child welfare, offending, and youth justice is crucial to improving social justice and equity. While Māori children are disproportionately represented in offending statistics, culturally appropriate approaches to meet their needs are lacking. Although there are initiatives targeting Māori overrepresentation throughout the criminal justice pipeline, iwi-based, local, community, and Non-Governmental Organisation (NGO) solutions are limited in scale.⁵⁸ To effectively address this issue, a strategic partnership combining the strengths of both iwi and the government is required, with an interdependent, kaupapa Māori approach leading the way.
46. Individuals who have spent time in state residential care exhibit a strong correlation with increased likelihood of imprisonment.⁵⁹ Reports indicate that those who have been in such

⁵⁴ At 1.

⁵⁵ Ministry of Justice (2023) "[Hāpaitia te Oranga Tangata](#)" (Ministry of Justice, Wellington).

⁵⁶ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 54; and Office of the Children's Commissioner (2020) [State of Care: Children with Offending Behaviour](#).

⁵⁷ See the examples of Te Kooti Rangatahi and the Pasifika Courts. See also Chief District Court Judge Taumaunu (11 November 2020) "Transformative Te Ao Mārama model announced for District Court".

⁵⁸ I Lambie (2018) [It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand](#) (Office of the Prime Minister's Chief Science Advisor, Auckland, New Zealand).

⁵⁹ Royal Commission of Inquiry (2022) [Care to Custody: Incarceration Rates](#) (Abuse in Care Royal Commission of Inquiry).

care are typically five to nine times more likely to be incarcerated compared to those who have not. Moreover, Māori individuals with a history of state care in their childhood are approximately four to seven times more likely to receive a custodial sentence compared to their matched cohort. Non-Māori individuals with a state care background tend to face even higher odds, being around 15 to 24 times more likely to receive a custodial sentence than their matched cohort.

47. The impact of child welfare on offending is crucial. Despite the early identification of child welfare concerns, the system inadequately addresses them, focusing primarily on targeting children's behavioural needs rather than addressing the underlying issues that may have caused such behaviour. This approach represents a "watch and wait" stance, neglecting the benefits derived from early intervention for whānau.⁶⁰
48. Child offending proceedings are marked by numerous missed opportunities, as stakeholders observe significant delays, limited collaboration, and inadequate oversight within child welfare and Family Court processes.⁶¹ Despite the diverse needs of children spanning multiple services, agencies rarely exhibit coordinated efforts.⁶² Furthermore, the provision of effective assistance to children and families often hinges on the dedication and availability of individual professionals involved in a case, rather than the existence of systemic processes to ensure consistent support.

Domestic evidence

49. I urge the Committee to recognise the findings and outcomes of pre-existing models and co-governance examples to inform the youth justice inquiry into best practice youth justice interventions. Mokopuna deserve youth justice interventions (preventions and responses) that are tailored, contextualised and localised to their specific circumstances and needs.
50. There are several examples to draw upon and which demonstrate positive youth justice approaches to working with children who offend. These range from judicially-led approaches, such as Te Kooti Rangatahi and the Pasifika Courts, and co-governance models, such as the relationship between Oranga Tamariki and Ngāpuhi which led to the implementation of Mahuru as a youth remand service.

International evidence

51. As demonstrated by international academic literature and international reviews into youth-focused justice approaches, punitive models of justice are ineffective and breach the Children's Convention.⁶³

⁶⁰ Oranga Tamariki Act 1989, s 208.

⁶¹ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland).

⁶² See Oranga Tamariki (2022) *Oranga Tamariki Action Plan* (Oranga Tamariki – Ministry for Children, Wellington).

⁶³ Hutchinson, Terry "Making the fun stop: Youth justice reform in Queensland." *Deakin Law Review* 19.2 (2014): 243-274. See also the Optional Protocol on the Convention Against Torture.

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52. The global wave and impact of settler colonialism is also apparent with indigenous populations disproportionately targeted by the colonially imposed construct of the justice apparatus. It is clear that a new approach is needed here in Aotearoa.
53. I urge the Committee to recognise the findings of cross-jurisdictional research and reforms in formulating appropriate solutions to implement best practice justice interventions for mokopuna in Aotearoa. Cross-jurisdictional examples to draw guidance from include:
- 53.1. **Canada:** Between 1997 and 2015, Canada had an 86% reduction in the number of young people sentenced to youth custodial facilities.⁶⁴ This resulted from legislative transformation and the operationalisation of community-based sanctions prioritising adequate resource allocation, staff training, system cultural change, alternative community and extrajudicial sanctions, and emphasis on rehabilitation and reintegration.⁶⁵
- 53.2. **Finland:** An essential part of decarceration strategies included the introduction of medial guidelines on crime reporting, including undertakings not to sensationalise crime.⁶⁶

Kupu whakakapi | Conclusion

54. Child welfare efforts tend to be reactive and heavily focused on the child in isolation of whānau. These efforts typically do not invest the adequate time and resource for wrap-around support required for a holistic and child-centred approach that also prioritises support to the child's whānau support. This approach aligns with the obligations set by s 7AA of the Oranga Tamariki Act, namely the mana tamaiti principle to support, strengthen and assist whānau Māori to care for their mokopuna to prevent the need for them to enter care or youth justice.
55. In closing, I add my support to the comments and calls for change collectively expressed by my predecessors. Deterrent and punitive responses to youth offending are ineffective — the answer instead lies in a combination of prevention and restorative justice pathways.⁶⁷ Immediate focus, efforts and resource allocation to preventative and restorative justice responses is required.
56. Restorative justice solutions in particular will provide a holistic approach and response to offending by mokopuna, where whānau and community - including iwi, police, and other

⁶⁴ In 1997, Canada's youth custodial facilities held 3825 sentenced youths. Eighteen years later, this number was 527—an 86 per cent reduction.

⁶⁵ N Bala, P.J. Carrington and J.V. Roberts (2009) "Evaluating the Youth Criminal Justice Act after Five Years: A Qualified Success" in 51 Canadian J. Criminology & Crim. Just. 131. See also the Youth Criminal Justice Act 2003: According to Webster et al. (2019) the Youth Criminal Justice Act 2003 sought to address public desire for stricter penalisation of young people that had offended, however, rather than strict measures, the Act endorsed rehabilitation and reintegration and sought to restrict the use of custodial sentences.

⁶⁶ Professor Tracey McIntosh (2021) [Imaging a word without prisons](#) (webinar, University of Auckland).

⁶⁷ A. J. Becroft (August 2006) *A paper presented to World Congress of International Association of Youth and Family Judges and Magistrates in Belfast* (Association's Winter 2007) as cited in K.B. Evans (2012) *The intensive monitoring group and youth justice* (Doctoral dissertation, Auckland University of Technology).

agencies - work collaboratively to wrap support around those mokopuna and their whānau that might be at risk. Restorative justice provides accountability, and healing for all involved.

57. If we as a country can save one child from a life crime, we save the whole country. Be bold be brave, make a difference so that every mokopuna, every child may live their best life and enjoy the excitement of youth with mana and dignity for themselves, their whānau and their community.

Nāku noa, nā



Judge Frances Eivers
Kaikōmihana mō ngā Tamariki | Children's Commissioner
Manaakitia a Tātou Tamariki | Office of the Children's Commissioner

Summary of recommendations from Professor Lambie et al. on the child offending system⁶⁸

1. Address sociocultural factors

- Participants pointed to socioeconomic and structural inequalities associated with many child welfare concerns and child offending outcomes. These require sustained, cross-party and all-of-government action to 'raise these people out of the poverty blights that they're in'.
- Conceptualising children's antisocial/offending behaviour in context of the hardship they and their families typically experience may serve to lead to a more accurate, empathetic public response to these children, in turn promoting social change and support for evidence-based policies.

2. Assistance must be coordinated and collaborative

- Ensure earlier and more holistic assessment of children's and families' needs. For example, requiring a comprehensive assessment of a child's welfare, cultural, educational, and physical health needs, as well as the needs of the family more generally, following a certain number of child welfare notifications, may promote families getting support sooner as well as the assistance they actually require.
- Improve coordination and collaboration between agencies, ministries and community and iwi leadership to provide effective and culturally appropriate assistance to families when child welfare concerns first come to notice, to reduce the risk of these escalating (e.g., strengthening parenting through support, addressing health and education issues and supporting socioeconomic needs). Improved coordination and collaboration may occur in the form of initiatives like the Children's Teams or SWiS, or iwi and community-led initiatives.
- School suspensions, expulsions and multiple enrolments were associated with offending: it is critical for children to remain at school, despite the significant challenges this no doubt entails for teachers, peers and school resources. Clearly, schools need to be sufficiently resourced to ensure that the needs of these children can be adequately addressed.

3. Address resource shortages

- Increase funding for the education and child welfare system to ensure the needs of children and whānau can be effectively addressed (e.g., via allowing for more learning

⁶⁸ J Reil, I Lambie, A Becroft & R Allen (2022) [How we fail children who offend and what to do about it: 'A breakdown across the whole system' Research and recommendations](#) (Michael and Suzanne Borrin Foundation, New Zealand Law Foundation and University of Auckland) at 14: see table 3.

supports and targeted education services, social workers, FGC coordinators, lawyers, psychologists, youth workers, mentors, specialist caregivers). For example, an increase in social workers may reduce individual caseloads, thus allowing more comprehensive support of the needs of children and families, alongside a commitment to funding iwi-based and other more appropriate initiatives to transition away from Oranga Tamariki involvement.

- Prioritise early intervention instead of reactive practices within Oranga Tamariki (e.g., ensuring smaller caseloads for care and protection social workers and balancing resources to care and protection work, relative to youth justice work).
- Simplify the access of resources to meet care and protection needs, both within and beyond Oranga Tamariki (e.g., pool of money more readily available for evidence-based interventions for children).
- Increase access to programmes and initiatives supporting the systemic needs of children and families. In addition to families whose needs have met the statutory threshold, it is critical that such programmes are available to children and families whose needs have not (yet) escalated to this threshold. Examples of such programmes mentioned by participants include FFT, MST and locally developed programmes. While both FFT and MST generally cater to young people at risk of (re)offending aged over 10 years, adaptations to both programmes to cater to younger children have been developed and found to be effective in supporting the needs of children and families (Heriot & Kissouri, 2018; Swenson & Schaeffer, 2014; Turner et al., 2017). It is particularly important that the efficacy of such programmes is evaluated locally and, where shown to be effective, that they are also available in non-urban regions.
- According to participants, greater investment is needed into community placements, such as iwi-led supports or supervised group homes, in which children can be supported while still living in their community and being able to see their families.

4. Address trauma

- Emphasise the importance of trauma-informed care in social work curricula and ongoing social work practice.
- Consider how access to trauma-informed psychological and other services are distributed according to the evidence of need.
- Apply evidence-based and culturally appropriate understandings of trauma and recovery, including kaupapa Māori and Pasifika-based approaches to intergenerational trauma.

5. Better uphold Te Tiriti o Waitangi principles

- Fully implement sections 4, 5, and 13 of the Act that mandate involvement and strengthening of whānau, hapū and iwi initiatives.
- Ensure culturally safe practice, which is structured by tikanga Māori (e.g., whakawhanaungatanga) and actively adheres to Te Tiriti o Waitangi obligations (e.g., by

ensuring participation, partnership, protection in all child welfare proceedings).

- Ensure local by Māori for Māori approaches allow for whānau/hapū/iwi to provide their own solutions for their own children's needs.
- Provide increased training to child welfare professionals, including those working in the Family Court, to be able to more effectively engage with children and families, and particularly those of Māori descent, and to more effectively support, rather than get in the way of, by Māori for Māori approaches.
- Increase the emphasis on culturally safe practice in social work training, legal competencies, and professional practice; such pursuits should consider the recommendations of Walker (2012).
- Increase the number of Māori Judges and kaupapa Māori processes in the Family Court.

6. Resource early assessment and therapy

- Consider provision of full cultural, health and educational assessments (e.g., Gateway assessments) and – more importantly - subsequent assistance to children in the Family Court whose families do not meet the statutory care and protection threshold, yet appear to have clear needs.
- Make increased use of s18AAA FGCs to determine and support the needs of children and families whose needs do not meet the statutory threshold.
- Provide funding for children to receive therapy (as previously provided in the Care of Children legislation) - currently the Family Court can recommend therapy for parents/carers but not for children.

7. Have time to understand what's happening and do something

Ensure the Family Court is more adequately resourced:

- Increases in child welfare professionals and available court time may reduce delays for children and families.
- This may also result in more comprehensive assessment of children's needs (i.e., via a more diverse range of the right people getting alongside the child and family) – and, more importantly, a requirement for effective, sustained assistance and intervention to be promptly made available.
- Judges may benefit from being able to spend more time familiarising themselves with cases, thus gaining greater understanding of children's and families' needs, or from information being presented in more coherent forms.

8. Conduct legislative review

- Introduce more stringent timeframes in care and protection legislation (e.g., stipulate FGCs to be held within 21 days, as opposed to the many months it is currently taking).
- Consider amending legislation to require more regular reviews of care and protection cases. This may increase oversight over children's wellbeing and serve to hold professionals to account regarding the implementation and continuity of plans. This may

also ensure the continuity of plans in cases of frequently changing social workers.

- Consider increased legislative powers for the Family Court to hold responsible agencies or ministries to account for the implementation of FGC plans.

9. Commit to whānau/family participation and decision-making

- Involve lay advocates and communication assistants to support informed whānau participation and decision-making.
- Provide training to Judges and lawyers to more effectively communicate with families in the Family Court and include them in decision-making.

10. Make changes to the Family Court

- Roll out across NZ the judicially initiated 'crossover' courts (for youth offenders with care and protection issues and Family Court proceedings). Also use the crossover approach in the Family Court for all children in that court with offending issues.
- Consider the suggestions for change (e.g., Family Court proceedings able to be held on Saturdays once a month to enable whānau to attend; ability to hold proceedings on marae) in the Boulton et al. (2020) report.
- Implement the detailed recommendations in the Office of the Children's Commissioner's Children with offending behaviour (2020b).
- A recommendation arising from these findings may be to implement a specialised child welfare court, which may emulate the therapeutic Youth Court model. In other words, such a court may:
 - Involve Judges with a special interest in these cases and who are skilled to effectively engage with children and whānau.
 - Hold hearings more regularly than seems to be currently possible in the Family Court.
 - Have the same Judge presiding over cases and require all professionals involved in cases to regularly attend court hearings. This is likely to ensure greater oversight and accountability over the implementation of plans.
 - Emphasise the routine involvement of lay advocates and communication assistants to support families and ensure informed participation.
 - Emphasise the specialist assessment of the needs of children, for example, having a youth forensic nurse for initial evaluations; a clinical or behavioural psychologist present to provide clinical input or counselling plans; educational advisors etc.
 - Be embedded in culturally appropriate practices.
 - Have the same resources as available in the Youth Court (e.g., ready access to assessments, therapy, mentors).
 - Consider legislative tools to increase accountability of Oranga Tamariki if child welfare practices and plans are not sufficiently adhered to.

11. Enhance child offending referrals

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- Provide training to professionals coming into contact with children who have offended to ensure more thorough understanding of child offending processes, which response may best support children's needs, and the roles and responsibilities of professionals and agencies involved. This may increase professionals' willingness to work together and reduce interagency conflict (e.g., between Oranga Tamariki and police).
 - Update the Child Offender Manual so recommended actions align with current law and are clearer for staff.
 - Simplify/streamline Family Court paperwork (e.g., s14(1)(e) applications).
 - Consider the development of an evidence-based assessment tool that allows frontline police officers to determine how best to respond to children who have offended.
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Appendix 2

Summary of recommendations from Professor Lambie on principles underpinning desistance⁶⁹

| Eight principles to underpin desistance | |
|---|--|
| 1. Be realistic | It takes time to change entrenched behaviours and the problems that underlie them, so lapses and relapses should be expected and effectively managed. |
| 2. Favour informal approaches | Labelling and stigmatising children and young people as “offenders” runs the serious risk of establishing criminal identities rather than diminishing them, so it should be avoided as much as possible by favouring informal measures. |
| 3. Use prisons sparingly | Stopping offending is aided by strong and positive social ties, by seeing beyond the label “offender” and by reducing or avoiding contacts with other ‘offenders’. Prison makes all of these things much more difficult. |
| 4. Build positive relationships | Like everyone else, offenders are most influenced to change (and not to change) by those whose advice they respect and whose support they value. Personal and professional relationships are key to change. |
| 5. Respect individuality | Since the process of giving up crime is different for each person, criminal justice responses need to be properly individualised. One-size-fits-all approaches run the risk of fitting no-one. |
| 6. Recognise the significance of social contexts | Trying only to “fix” offenders can’t and won’t fix reoffending. Giving up crime requires new networks of support and opportunity in local communities and a new attitude towards the reintegration of ex-offenders. |
| 7. Mind our language | If the language that we use in policy and practice causes both individuals and communities to give up on offenders, if it confirms and cements the negative perceptions of people who have offended as risky, dangerous, feckless, hopeless or helpless, then it will be harder for those people to give up crime. |
| 8. Promote “redemption” | Criminal justice policy and practice has to recognise and reward efforts to give up crime, so as to encourage and confirm positive change. For ex-offenders, there has to be an ending to their punishment and some means of signalling their redemption and re-inclusion within their communities. |

⁶⁹ I Lambie (2018) [It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand](#) (Office of the Prime Minister's Chief Science Advisor, Auckland, New Zealand) at 30: see table 3. Note these principles are based on Scottish justice system research.



MANAAKITIA Ā TĀTOU TAMARIKI

Children's
Commissioner