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Revisiting the 2019 Oranga Tamariki inquiries: What did we learn, and what might that mean for the future of child protection in Aotearoa?

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ABSTRACT

Introduction: Widespread protests against Oranga Tamariki in 2019 led to six separate reviews of the agency in the following two years, the majority of which had a specific focus on tamariki and whānau Māori. Now that the dust has settled on those reviews, what can be learned by revisiting them?

Approach: This article addresses that question by analysing the key themes of each of the six reviews. It finds that there are areas of concern common to all six, but that there is a major split within the reviews on how to achieve the necessary long-term changes. Some of the reviews suggest that improvements can be made within the confines of the current system, while others suggest that only a more radical transformation will improve outcomes for tamariki and whānau Māori.

Conclusions: Understanding the underlying split between the reviews is important given the views of numerous child-protection researchers that more structural changes to the child-protection system are required if we are to address underlying problems. If the issues are more fundamental, then claims to reform may not only be inadequate, but they may also make the problem worse, by sustaining the systems which cause the underlying harms in the first place. The split in the approach of the reports reveals that it is not just "What do children and whānau need?" that matters, it is also the question, "Who gets to decide what children and whānau need?" Understanding these issues from a structural perspective remains crucial, and future reviews of the child-protection system which fail to grapple with those underlying problems are unlikely to lead to effective long-term change.

Keywords: Child protection; Oranga Tamariki; tamariki; whānau; Hawkes Bay case

In 2019, widespread protests against Oranga Tamariki, Aotearoa New Zealand's statutory child protection agency, once again led to an interrogation of the child protection system. At the centre of those protests was a case ("the Hawkes Bay case") involving the attempted removal of a newborn Māori baby from their mother. The case proved a flashpoint for those concerned about the state's treatment of Māori children and families within the system, leading to its description as a "sentinel event" of the type that often leads to reform in many countries across the world (Keddell et al., 2022, p. 2).

Six reviews of the child protection system were initiated following the Hawkes Bay case, five directly in response, and one

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subsequently initiated by the Minister for Children. This article revisits those reviews, analysing the common themes and differences to reveal a tension between approaches which favour reform from within, or ones which push for fundamental transformation. I argue there is an underlying difference between the reviews which viewed the relevant problems as policy issues and those which took a more structural approach, examining underlying causes. Re-examining the reviews sheds light on whether further changes to child-protection policy will be enough to meet the needs of Māori children and families, or whether the system as it currently exists will continue to fail them.

Background to the Oranga Tamariki reviews

Aotearoa New Zealand's child protection framework has its historical roots in English social policy changes in the 19th century (Hyslop, 2022). Hyslop (2022, p. 25) described how the emergence of a focus on children in poverty at the time of the industrial revolution "reflected a synergy between the requirements of the capitalist labour market and moral condemnations of economically marginalised people." His analysis shows how, despite the emphasis on lifting children from poverty, a focus on the structural drivers of economic deprivation have been largely absent for as long as child protection systems have existed (Hyslop, 2022). The modern child-protection system still largely deals with economically marginalised children and families, with recent analysis demonstrating the stark economic inequalities that still exist (Keddell et al., 2019). In Aotearoa New Zealand, the underlying economic factors which characterised the child rescue movement in Britain sat alongside the processes of colonisation, which included widespread confiscation and alienation of most Māori land by the early 20th century (Hyslop, 2022; Walker, 2004).

The practice context for the child-protection system emerged within that historical context. The modern Aotearoa New Zealand system is based on a *notify-investigate* model, in which families are notified to a centralised child-protection agency and then investigated, based on the information provided, despite such information frequently being of poor or inconsistent quality (Keddell, 2022). As Keddell (2022, p. 2) described, such systems "tend to become risk focused and this provides fertile ground for the reproduction of biases." This focus on risk is a central feature of an international trend towards more risk averse child protection systems (Gilbert et al., 2011). Aotearoa New Zealand has followed this trend, with the emergence here of a 'child-centred' system echoing developments overseas (Keddell, 2017). The term *child-centred* was a central feature of the most recent review of the child protection system prior to the six recent reports which are the subject of this article (Expert Panel, 2015). That review of the previous system in 2015 led to the creation of a stand-alone child-protection agency, now known as Oranga Tamariki.

Outcomes for children and young people in state care in Aotearoa New Zealand remain worse on average than those who are not in state care. For example, a recent study found higher rates of hospitalisation and mortality for children and young people who had been in state care, reflecting similar findings overseas (Pugh et al., 2023). Children and young people's subjective experiences are also often challenging, with, for example, significant gaps reported between the rights of care-experienced children and young people to participate in decisions about their care, and what those children and young people experience in practice (Kemp et al., 2022). Tamariki Māori (Māori children) are significantly overrepresented in the child protection system: according to the most recently published data, Māori children and young people are around 27% of the general population, but make up around 68% of children and young people in state care (Aroturuki Tamariki: Independent Children's Monitor, 2023).

I have previously argued that the concept of decolonisation provides a useful framework for understanding these issues, because the underlying problems which plague the child-protection system are tied to the broader context of colonisation (Fitzmaurice-Brown, 2022). While decolonisation has had a range of meanings in different countries at different times, in Aotearoa New Zealand the epistemological importance of the concept has been emphasised (Elkington et al., 2020). This reinforces the idea, originally articulated in a health context, that for Māori to flourish we must be able to 'live as Māori' (Durie, 2001). A decolonisation framework can help address child protection issues from a Māori perspective by highlighting the underlying loss of tikanga Māori (Māori customs and practices) that was, and is, central to colonisation, acknowledging the importance of Māori asserting our own ways of living, articulating the potential tensions in Crown–Māori partnerships, and placing responsibility for addressing the harms of colonisation on those who caused those harms in the first place (Fitzmaurice-Brown, 2022). As this article subsequently discusses, using decolonisation as an analytical tool can also shed light on underlying differences between the reviews of the child protection system conducted over the past five years. The following sections describes key features of each of those reviews.

The Professional Practice Group Review – The internal review

The Oranga Tamariki Professional Practice Group Practice Review (the *internal review*) was the first to be initiated following the Hawkes Bay case, in June 2019, just days after the incident was publicised (Martin, 2019). The internal review focused specifically on the circumstances leading to the case. It was led by a business unit within Oranga Tamariki, with oversight from an independent Māori expert appointed by Ngāti Kahungunu (though the extent to which the tikanga of Ngāti Kahungunu was able to influence the process was not made clear). The purpose of the review was to "examine the actions of Oranga Tamariki in relation to the baby's mother prior to, and immediately following, the birth of the baby" (Ministry for Children – Oranga Tamariki, 2019, p. 57). The terms of reference outlined three objectives (Ministry for Children – Oranga Tamariki, 2019):

1. To understand what has occurred from the perspective of the mother, father, whānau, Oranga Tamariki staff, iwi and other professionals involved.
2. To identify what can be learnt from a local and national perspective.
3. To promote restorative actions to address and strengthen local relationships and ways of working.

The review found that, while there were legitimate concerns for the safety of the baby, there was an over-reliance on historical information about the whānau (family) and limited work done to understand their current circumstances (Ministry for Children – Oranga Tamariki, 2019). Key decisions were made without an understanding of the care that the parents could provide, and before engaging with the mother, whānau and key professionals. Rationales for key decisions were not recorded, and neither the strengths nor the needs of the whānau were fully explored. Alternative options for the care of the baby were not sufficiently considered, and indications that the whānau were willing to work with Oranga Tamariki were ignored. Legislation relating to parents who have previously had a child removed was incorrectly applied (Ministry for Children – Oranga Tamariki, 2019).

The report stated that work to identify whakapapa (genealogical) connections for the baby was limited, and there was a perception that the whānau were "difficult to engage with" (Ministry for Children – Oranga Tamariki, 2019, p. 7). People who held relationships of trust with the whānau were largely ignored, and the impact of trauma on the parents was not sufficiently

accounted for, including the impact of the mother's previous child being removed by the same social worker (Ministry for Children – Oranga Tamariki, 2019). Oranga Tamariki staff failed to apply relevant legislation and policy, and the basis for applying for custody orders without notice was weak (Ministry for Children – Oranga Tamariki, 2019). The report found that, at times, Oranga Tamariki deferred to other professionals on decisions which rested with them. Key accountability mechanisms were not utilised effectively, with the report finding that "there is little evidence of critical engagement with a number of aspects of the work in this case" (Ministry for Children – Oranga Tamariki, 2019, p. 11).

The internal review recommended changes at both local and system-wide levels. At a local level, the key recommendation was to "take steps to ensure that the mechanisms designed to promote safe statutory practice and to ensure a culture of accountability, reflection, challenge and transparency are operating as intended within the site involved with this whānau" (Ministry for Children – Oranga Tamariki, 2019, p. 55). This was essentially a statement that the system was not broken, but was not operating effectively in this case. At a system level, recommendations included increased oversight of applications for without-notice custody orders, clarifying legislation, providing additional professional training and directing more resources to FGCs. New professional tools were recommended, and it was suggested that there could be greater alignment between operational policies and practice guidance, particularly relating to the agency's Te Tiriti obligations and to care permanency settings. Finally, work was recommended to "identify how best to articulate child-centred practice in the context of whānau" (Ministry for Children – Oranga Tamariki, 2019, p. 12).

Each of these suggested changes involved modifications to existing processes, with recommendations mostly endorsing current system settings. The deeper causes of deficiencies were largely ignored. The tension, for example, between child-centred and whānau-centred practice was framed as a failure to articulate how these two imperatives could sit together, rather than whether they were compatible at all.

Ko Te Wā Whakawhiti, it's time for change – The Whānau Ora Review

The Whānau Ora review, released in February 2020, went further in its conclusions. Led by a team of predominantly Māori researchers, the terms of reference for the review said it was being launched because of continued inaction by the state to respond to inter-generational harm towards whānau Māori, including the forced removal of children. The review was stark in its eventual findings, concluding that the child protection system "simply does not work for any of the stakeholders involved" (Whānau Ora Commissioning Agency, 2020, p. 67).

The Whānau Ora report described the historic hostility towards Māori whānau groupings, stating that "attitudes towards the care of Māori children and whānau were deeply entwined with colonial criticisms of Māori socio-economic structures" (Whānau Ora Commissioning Agency, 2020, p. 23). The gradual decline of tikanga Māori in relation to whānau was described as a result of both urbanisation and government policy throughout the 20th century. There was little acknowledgment during that time, the report stated, that tamariki Māori might have unique cultural needs. Removing children from their families "became the commonly accepted response to cases of abuse and neglect" (Whānau Ora Commissioning Agency, 2020, p. 31). The report described how sufficient resources were never provided during attempts to rectify these issues in the late 1980s. While the more whānau-centred reforms of that period were positive, they were never properly funded, and the families who were expected to take on additional responsibilities as a result of

the reforms were also those most vulnerable to the wide-sweeping welfare changes which followed shortly afterwards, in the early 1990s (Whānau Ora Commissioning Agency, 2020).

The report highlighted how funding decisions continued to be tightly controlled in the 30 years since the Children, Young Persons and Their Families Act 1989 was passed. It discussed the concerns of Māori social workers during this time who, for example, criticised the lack of consideration for tikanga in statutory child protection processes. It highlighted how multiple reviews of child protection policy failed to address underlying issues, taking particular aim at the White Paper of 2012 (Ministry of Social Development, 2012), which was said to be "notable for its determined rejection of an analysis of the social determinants of child abuse" (Whānau Ora Commissioning Agency, 2020, p. 36). It drew a distinction between approaches which prioritise whānau support and the emphasis on child-centredness in the Expert Panel report (2015). This clash, between whānau support and child-centredness, was said to be central to many of the problems plaguing the system.

The trauma, not just for individuals but spanning across generations, of having a child taken away by Oranga Tamariki was said to be the most common insight that emerged throughout the inquiry. The report spoke of whānau living in fear of being reported to Oranga Tamariki, and their worry about "having a record" with any government agency, which many of them felt powerless to address (Whānau Ora Commissioning Agency, 2020, p. 49). Whānau said that the methods used by Oranga Tamariki were unwarranted, and many spoke about a perception that it was "virtually impossible" (Whānau Ora Commissioning Agency, 2020, p. 56) to have children returned once they had been removed. The report said that many people shared stories of Oranga Tamariki social workers who had no knowledge of, and very little empathy for, whānau Māori (Whānau Ora Commissioning Agency, 2020).

The report made recommendations under three headings: *tino rangatiratanga*, *wrap-around support* and *connecting to who we are*. The emphasis on tino rangatiratanga (Māori self-determination) reflected "a clear and unambiguous message from whānau for "'by Māori, for Māori, with Māori' services and solutions" (Whānau Ora Commissioning Agency, 2020, p. 62). Wrap-around support included support with housing, financial and legal issues, mental health, trauma counselling, alcohol and drug issues, parenting, literacy and numeracy supports. "Connecting back to who we are" involved connection with whakapapa and tikanga Māori. The report stated that hapū and iwi could play a pivotal role "as repositories of cultural knowledge" in reconnecting whānau (Whānau Ora Commissioning Agency, 2020, p. 64). It also highlighted three action points for immediate change: directing resources towards whānau support, undertaking a more comprehensive review of Oranga Tamariki systems and practices, and establishing a "by Māori, for Māori, with Māori" funding authority.

He Take Kōhukihuki: A matter of urgency – The Chief Ombudsman's review

A report by the Chief Ombudsman in August 2020 approached the issue from a more technical perspective. The Ombudsman's review looked at the issue of urgent custody orders (known as section 78 orders) awarded by the court without giving notice to a child's parent or parents (Boshier, 2020). Analysis was conducted of 74 cases between 2017 and 2019 involving newborn babies, with the review finding that in all 74 cases, every section 78 order was applied for without notice being given to the parents. Over the same period, 94% of all section 78 orders (i.e., not just those relating to newborns) were granted on the basis of a without-notice application (Boshier, 2020). Far from being an

exceptional occurrence, applying for section 78 orders without giving notice to whānau had become routine.

The Ombudsman concluded that while legislation, policy and practice was generally sound, there were nevertheless significant gaps, the biggest of which was a lack of guidance on section 78 orders without notice (Boshier, 2020). This was criticised as "a serious failing in the context of the ministry's routine reliance on such applications as a way to establish safety for pēpi [Māori babies]" (Boshier, 2020, p. 18). A strong theme of the review was inconsistency. While Oranga Tamariki was generally found to have sufficient tools, those tools were not applied consistently, with (for example) Oranga Tamariki failing in its legal obligation to facilitate family-centred decision-making mechanisms in over half of the cases examined. Staff were found to be hesitant towards new ways of working and frequently failed to take clear opportunities to plan and act early with whānau when concerns were raised during pregnancy. In 77% of the cases reviewed, the ministry was aware of the mother's pregnancy and the related concerns more than 60 working days before the birth of the child. Without-notice orders were nevertheless applied for in every case (Boshier, 2020).

The report found Oranga Tamariki frequently failed to comply with its obligations regarding decision-making oversight. A total of 77% of case files contained no evidence of consultation between social workers and solicitors, 64% did not include the required meetings with professionals, and half contained inadequate notes (Boshier, 2020). Where good planning did occur, it was often the result of individual efforts rather than systemic support. The Ombudsman made a range of recommendations intended to address these issues. He said that while a number of systemic issues were identified, he was encouraged by "some evidence of good practice" (Boshier, 2020, p. 11). His report noted that the ministry had a number of tools and mechanisms which broadly reflected the principles of the relevant legislation, which could support best practice if operationalised. In short, the system was not beyond saving.

Te Kuku o Te Manawa – The Children's Commissioner's Review

The Children's Commissioner's review had two parts, released in June and November 2020. Part One focused on Māori families who had experienced having a baby removed, or whose baby had been at risk of removal, while Part Two included whānau, midwives, community workers and Oranga Tamariki staff. The inquiry adopted a research design "informed by kaupapa Māori" (Office of the Children's Commissioner, 2020a, p. 18), with participants interviewed by Māori interviewers and recruited through Māori organisations. One question drove the review: "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?" (Office of the Children's Commissioner, 2020a, p. 14).

Te Kuku o Te Manawa Part One

Te Kuku o Te Manawa Part One identified five key themes:

1. I am a mum first.
2. The system is harmful.
3. Statutory social workers have all the power and control.
4. The statutory care and protection system and other agencies have hurt my whānau.
5. We need good support.

From those themes, six areas of change were identified. The first was that the system needs to recognise the role of mums as te whare tangata (the house of humanity) and treat them and their pēpi (babies) humanely. Whānau stated that they were not treated

with empathy and did not know about their rights, or felt their rights were not respected. The second key area for change was that unprofessional social work practice is harming mums, whānau and pēpi. Some of the experiences mothers recalled were horrific—one spoke, for example, about being forced by a social worker to have an abortion (Office of the Children's Commissioner, 2020a, p. 53). They also spoke about feeling like they were under constant surveillance once they came to the attention of Oranga Tamariki. The third area for change was that whānau need the right support from the right people, upholding tikanga Māori and considering the long-term wellbeing of whānau, hapū and iwi (Office of the Children's Commissioner, 2020a).

The fourth area for change related to racism and discrimination. There was a strong feeling among participants that having a certain name changed the way they were treated by Oranga Tamariki. The fifth area identified was that the organisational culture of the child-protection system needed to support parents and whānau to nurture and care for their pēpi. Mums and whānau felt like they were excluded from the lives of their children when those children were removed, in direct contradiction with relevant legislation. Some mums described feeling like they had been pushed to breaking point so that social workers had a rationale for removing their children. The sixth area for change was that the system needed to work in partnership with Māori so that they may exercise tino rangatiratanga. Aside from reflecting Te Tiriti o Waitangi, this was because whānau did not trust the current system.

Te Kuku o Te Manawa Part Two

In his foreword to part two, the Children's Commissioner stated, "it is unlikely that Oranga Tamariki, or any other iteration of it, can deliver care and protection interventions and services in a way that will be most effective for tamariki and whānau Māori" (Office of the Children's Commissioner, 2020b, p. 6). The final conclusion of the second report was 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" (Office of the Children's Commissioner, 2020b, p. 13). To achieve that, a new vision would be required: "that tino rangatiratanga is guaranteed and realised through Te Tiriti o Waitangi, so that all whānau Māori can achieve their own moemoeā [vision] for their pēpi, tamariki and rangatahi" (Office of the Children's Commissioner, 2020b, p. 104). Four recommendations for change were made:

1. That the 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.
2. That Oranga Tamariki immediately act 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.
3. That 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.
4. That the Minister for Children and Oranga Tamariki leadership act to improve the legislation and mechanisms in the current system to better work with Māori, both in the short and longer-term.

The report described what an approach to care and protection based on mātauranga Māori (Māori knowledge) might look like, emphasising three concepts—whānau, whakapapa and whanaungatanga. Māori

wellbeing models were highlighted, such as Mason Durie's (1998) *Te Whare Tapa Wha* and Rangimarie Pere's (1988) *Te Wheke* model, and existing Māori solutions to similar issues, such as Te Kohanga Reo and Whānau Ora, were provided as blueprints for the necessary changes (Office of the Children's Commissioner, 2020b).

Suggested short-term changes included having Family Group Conferences (FGCs) run independently, basing all assessments on up-to-date information, stopping hospital-based removals of babies and stopping without-notice removals of babies. To achieve this, social worker caseloads needed reducing, Oranga Tamariki recruitment and supervision processes needed improving, and ongoing training programmes needed to be developed (Office of the Children's Commissioner, 2020b, p. 86). The report also recommended changes to the Oranga Tamariki Act 1989, such as simplifying the Act's principles, incorporating Te Tiriti o Waitangi, and offering a pathway for the transfer of power and resources to Māori (Office of the Children's Commissioner, 2020b). Overall, the report found Māori were not well served by current systems, with colonisation continuing to have an impact. Further incremental change would not deliver the required shifts (Office of the Children's Commissioner, 2020b).

He Pāharakeke, He Rito Whāruarau – The Waitangi Tribunal inquiry

An inquiry by the Waitangi Tribunal, a standing commission of inquiry empowered to investigate alleged breaches of Te Tiriti o Waitangi, was released in April 2021. The Waitangi Tribunal inquiry was based on three key questions (Waitangi Tribunal, 2021):

1. Why has there been such a significant and consistent disparity between the number of tamariki Māori and non-Māori children being taken into state care under the auspices of Oranga Tamariki and its predecessors?
2. To what extent will the legislative, policy and practice changes introduced since 2017, and currently being implemented, change this disparity for the better?
3. What (if any) additional changes to Crown legislation, policy or practice might be required in order to secure outcomes consistent with Te Tiriti/The Treaty and its principles?

The Tribunal's report focused first on the key Tiriti/Treaty principles at stake, starting with the guarantee of tino rangatiratanga over kainga (homes/villages) in Article 2. The Tribunal stated that both tamariki and whānau were crucial aspects of kainga, and therefore the subject of Article 2. The following passage is quoted in full due to the impact it would have on the rest of the Tribunal's analysis (Waitangi Tribunal, 2021, p. 12):

> The disparity has arisen and persists in part due to the effects of alienation and dispossession, but also because of a failure by the Crown to honour the guarantee to Māori of the right of cultural continuity embodied in the guarantee of tino rangatiratanga over their kainga. It is more than just a failure to honour or uphold, it is a breach born of hostility to the promise itself. Since the 1850s, Crown policy has been dominated by efforts to assimilate Māori to the Pākehā way. This is perhaps the most fundamental and pervasive breach of Te Tiriti/The Treaty and its principles.

The Tribunal based their analysis on five additional Tiriti/Treaty principles: partnership, active protection, equity, options, and redress. Regarding partnership, the Tribunal reiterated that Māori have the right to choose how they organise themselves, "and how or through what organisation they express their tino rangatiratanga. This requires the Crown to be willing to work through the structures Māori prefer, whether through iwi, hapū and

whānau or any other organisation" (Waitangi Tribunal, 2021, p. 18). Active protection, the Tribunal stated, "requires the Crown to focus specific attention on inequities experienced by Māori and, if need be, provide additional resources to address the causes of those inequities" (Waitangi Tribunal, 2021, p. 19).

The principle of equity was used to illustrate that the goal should be that tamariki Māori do not enter into state care at all, not that they enter at an equivalent rate to non-Māori. The Tribunal said, "consistency with Te Tiriti/the Treaty and its principles will not be achieved simply by reducing disparities to a point where the number of tamariki Māori in State care is proportionate to the number of Māori in the wider New Zealand population" (Waitangi Tribunal, 2021, p. 22). The principle of options requires not only the availability of a range of services, but also the need to ensure they are resourced. The Tribunal noted that this principle "will require the Crown to constructively engage with those currently engaged in the provision of services to Māori whānau and with those seeking to build and restore the strength of whānau" (Waitangi Tribunal, 2021, p. 23). Finally, the Tribunal discussed the principle of redress, reiterating that where principles of Te Tiriti/The Treaty are breached, the Crown must provide redress. They stated that "the case for substantial redress is obvious" (Waitangi Tribunal, 2021, p. 25).

Discussing the impacts of colonisation, the Tribunal stated that "the disparity cannot be considered simply the result of conditions 'external' to Oranga Tamariki and its predecessors" (Waitangi Tribunal, 2021, p. 96). While partly a legacy of colonisation, it was also due to the Crown's failure to honour its guarantee of tino rangatiratanga over kainga. They said that this assurance "is nothing less than a guarantee of the right of Māori to continue to organise and live as Māori. From this guarantee flows the fundamental right of Māori to care for and raise the next generation" (Waitangi Tribunal, 2021, p. 96).

The Tribunal then criticised several specific aspects of the child-protection system, including the notify-investigate model of practice, a lack of cultural competence among staff, variable social work practice and insufficient monitoring.

The second part of the report focused on whether changes introduced since 2017 would be sufficient to address the breaches of Te Tiriti/The Treaty identified. One Crown argument throughout the hearings was that recent reforms would reverse systemic inequalities for Māori. The Crown pointed to a recently introduced vision statement: "Our vision for tamariki Māori, supported by our partners, is that no tamaiti Māori will need state care" (Waitangi Tribunal, 2021, p. 151). The Tribunal said that "while we endorse that vision statement as consistent with Te Tiriti/The Treaty and its principles, we are not convinced that the legislative and policy changes introduced in 2017 will be sufficient to realise it" (Waitangi Tribunal, 2021, p. 151).

The Tribunal noted that a key feature of the current system is that those tasked with deciding what is in the best interests of Māori children are typically not Māori themselves. They criticised the individualistic nature of key aspects of the legislation, highlighting a tension between the child-centric provisions of the law and a more collective Māori worldview. Attempts at reform previously were noted as "slow, partial, [and] vulnerable to political currents of the day" (Waitangi Tribunal, 2021, p. 154). As a result, the Tribunal concluded that "any attempts to reform the philosophy and operations of Oranga Tamariki within existing parameters will not succeed" (Waitangi Tribunal, 2021, p. 155).

As to what more might be necessary, the Tribunal's overarching recommendation was the establishment of a "Māori Transition Authority" for child protection. The Tribunal said "it is clear to us that Māori must lead and direct the transformation now required.

This is because the essential long-term solution lies in strengthening and restoring whanaungatanga" (Waitangi Tribunal, 2021, p. 178). Bold change was required because "piecemeal reform of Oranga Tamariki, no matter how well designed, will ultimately fail another generation of children" (Waitangi Tribunal, 2021, p. 179).

The Tribunal gave two caveats in their recommendation for wide-sweeping change. The first was that, while they endorsed a "by Māori, for Māori" approach, they did not support calls for the complete abolition of Oranga Tamariki. The Tribunal were sympathetic to claimants making these calls, but worried about the lack of capacity to replace the current system immediately. They were also wary of replacing one bureaucracy with another. "It seems to us, at least for the time being, some Māori communities may need access to specialist services that Oranga Tamariki or Crown agencies can provide" (Waitangi Tribunal, 2021, p. 182). A Māori Transition Authority, which could balance the need for transformation with the need for immediate support from the Crown, was designed to bridge the gap between the short-term and longer-term changes required (Waitangi Tribunal, 2021).

Hipokingia ki te Kahu Aroha – The Ministerial Advisory Board Report

The final report was that of the Oranga Tamariki Ministerial Advisory Board (the Board), which was established to provide advice on Oranga Tamariki from a Māori perspective. While their initial report was written three months after the release of the Waitangi Tribunal report, it made only a cursory mention of that inquiry, and no mention of the recommendation to establish a Māori Transition Authority. It is unclear why such little attention was given to that report.

The Board were asked to report on how Oranga Tamariki was progressing in its relationships with families, whānau, hapū, iwi and Māori, its professional social work practices and its organisational culture (Oranga Tamariki Ministerial Advisory Board, 2021). The Board noted that Oranga Tamariki (and its predecessors) has tended to default to reactive processes to address immediate concerns, which over time has blurred its responsibilities. They stated that the Crown has assumed the lead role in supporting tamariki and whānau without knowing how to be effective in this, and, as a result, has undermined the role of communities, particularly hapū and iwi, in developing their own solutions (Oranga Tamariki Ministerial Advisory Board, 2021). Their report made three recommendations:

1. That in order to lead prevention of harm to tamariki and their whānau, collective Māori and community responsibility and authority must be strengthened and restored.
2. That in order to work collaboratively with Māori, community organisations and other government agencies, the purpose of Oranga Tamariki must be clarified.
3. That a national Oranga Tamariki Governance Board should be established to oversee the diversity and depth of changes needed.

The Board argued for an increase in prevention services, stating that over time many of these services could be provided by Māori. They noted that while the Oranga Tamariki Act 1989 provided a platform for partnerships with Māori, the lack of a co-ordinated Māori partnerships strategy was limiting the agency's effectiveness. There was also a strong focus on improving social work practice. The Board also said the purpose of Oranga Tamariki needed to be clarified, recommending a restrengthening of the influence of social work, especially at national office (Oranga Tamariki Ministerial Advisory Board, 2021, p. 32). They described a lack of clarity on whether recently reduced caseloads genuinely reflected an increased workforce capacity, and described the need

for a return to the original intention of FGCs, noting they were no longer perceived as whānau-led.

The Board noted that "the Oranga Tamariki system continues to allow poor and even damaging behaviour and practice by some Oranga Tamariki employees" (Oranga Tamariki Ministerial Advisory Board, 2021, p. 43), proposing a new governance entity to monitor and address those issues. The Board also stated that the place of Oranga Tamariki within the broader government system needed to be clarified. Overall, however, it was felt that these changes could be made within existing structures. In contrast to the conclusions of some of the earlier reports, the Board concluded that "Oranga Tamariki remains necessary, [and] accordingly, transformation within Oranga Tamariki is equally necessary" (Oranga Tamariki Ministerial Advisory Board, 2021, p. 11).

What are the common themes, and where do the reports differ?

One issue which all six reports agreed on was the need for wider support for whānau before they come to the attention of Oranga Tamariki. The need for that support was framed differently in different documents, but across the reports there was relative consensus that whānau who come to the notice of Oranga Tamariki are almost always in need of assistance in ways that are beyond the powers of the agency currently. This matters because it is important that advocates for reform, even those who favour more radical shifts, do not lose sight of the fact that there are important changes which can be made immediately. The fact that all six reports raised common areas of concern is important, as it makes it clear that there are obvious areas of change which the state must commit to addressing immediately.

The reports differed, however, on several other issues. The current legislative and policy framework was addressed very differently, with the six reviews diverging on whether that framework required fundamental change. The internal report, Ombudsman's report and Advisory Board report suggested that current legislation and policy is not fundamentally broken, but staff lack the support to apply it consistently. The Children's Commissioner's report and the Waitangi Tribunal report suggested more fundamental change was needed.

The reports also differed on the impact of a child-centred policy orientation. All six reports mentioned the failure of Oranga Tamariki to engage with whānau effectively, but the Waitangi Tribunal report, for example, went further, suggesting that a reversion to a child rescue model of practice was responsible for many of the issues faced by whānau in contact with the system today. All six reports discussed social work practice, but there was no consensus on the extent and impact of practice issues. The emphasis within the Board's report on reform-from-within implied an acceptance that improving the current system was the best way to address practice issues, but the Children's Commissioner expressly stated the opposite, labelling current practice as often being unprofessional and inhumane.

Understanding this difference of approach is important because we should not be satisfied with claims of reform if more fundamental changes are required. As noted earlier in this article, multiple authors have highlighted the need to focus on underlying structural factors driving negative child protection outcomes, whether those be socioeconomic inequalities (Keddell et al., 2019), issues of bias (Keddell, 2022), or longer-term challenges such as neoliberalism (Hyslop, 2022) and colonisation (Fitzmaurice-Brown, 2022). The case for a structural approach to reform is clear, with the common theme among these critiques being that a failure to do so will mean that underlying issues are ignored, or even made worse. In my view, the split between the reports reflects a split in the extent to which this reality has been grappled with. The Children's

Commissioner, Waitangi Tribunal and Whānau Ora agencies explicitly recognised this, while the internal report, Ombudsman's report and Advisory Board left broader issues largely unexamined.

The problem with the latter approach is that where underlying issues exist then claims to reform may not only be inadequate, they may also make the problem worse by sustaining the systems which cause the harms in the first place. To illustrate this dynamic, it may be useful to draw on examples from other contexts. Prison abolitionists, for example, have argued that claims to reform are a major part of what keeps prisons in place, with the discussion of their problems often leading to debate centred exclusively around reform rather than more fundamental changes (A. Y. Davis, 2003). As Davis (2003, p. 20) has described, "frameworks that rely exclusively on reform help to produce the stultifying idea that nothing lies beyond the prison."

More recently, similar questions have been asked in international jurisdictions about child-protection systems (or *family policing* systems, to use the term preferred by abolitionists) (Roberts, 2021). As Roberts (2021, p. 460) described, "trying to reform the system can strengthen it." She argued that those with an interest in transforming child-protection systems have much to learn from prison abolitionists, who have demonstrated that "reforms that correct problems perceived as aberrational flaws ... only help to legitimise and strengthen carceral systems" (Roberts, 2021, p. 463). Dettlaff and Boyd (2020, p. 257) argued that, in child-protection systems, "the elimination of racial disproportionality and disparities, and the harm they cause, will only be achieved when the forcible separation of children from their parents is no longer viewed as an acceptable form of intervention for families in need." Radical transformation, not incremental reform, is the goal of these approaches. Notably, this is not just about tearing down old systems, but also building new ones, as "an essential aspect of prison abolitionist theory is that eliminating prisons must occur alongside creating a society that has no need for them" (Roberts, 2021, p. 464). While opinions will vary on the extent to which these approaches directly apply to the Aotearoa New Zealand context, this latter sentiment should surely resonate.

Returning to the Oranga Tamariki reports, the ultimate solution to the challenges presented differed sharply. The internal review, the Chief Ombudsman report and the Board report all stated that the problems they identified would be best addressed through changes to the current system. The Whānau Ora report, the Children's Commissioner and the Waitangi Tribunal, on the other hand, all said that efforts to address such deep-rooted problems within the confines of the current system would inevitably lead to failure. They stated that only "by Māori, for Māori" solutions could truly address the underlying issues, and that those solutions (at least in the long term) could only be found outside the current state-run system. That was the only way in which Te Tiriti could be upheld and tino rangatiratanga achieved. Acknowledging the challenge of balancing this long-term vision with the need for short-term change, the Waitangi Tribunal proposed the creation of a Māori Transitional Authority to pave the way for a system grounded in tino rangatiratanga.

What happens next, and who gets to decide?

The elephant in the room here remains the question of state power. This is not a case of two groups coming together and debating an issue on equal terms; the state retains the power to decide what happens next. This was demonstrated once the six reports had been released. In a 2021 Cabinet paper outlining proposed next steps, the Minister for Children rejected the recommendation from the Waitangi Tribunal to create a Māori Transition Authority (K. Davis, 2021). He accepted the preference of the Board for reform from within, stating that this would still be in line

with many of the recommendations of the Tribunal. Rather than accepting the Tribunal's central recommendation, he stated a desire "to act quickly to address the known issues in the care and protection system and increase our focus on prevention" (K. Davis, 2021, p. 9). At the same time as rejecting the Tribunal's central recommendation, the Cabinet paper stated the Minister's proposals were in line with "the principles and the articles of the Treaty" (K. Davis, 2021, p. 11). It was said the proposals would enhance rangatiratanga, as "the actions in this paper seek to enable Māori to have more ownership of the care and protection system" (K. Davis, 2021, p. 11). The Minister's comments, in which he directly contradicts the Waitangi Tribunal, but nevertheless states that his proposals comply with Te Tiriti/The Treaty, are a reminder of the Crown's ultimate authority here.

The exercise of that authority illustrates a broader question about whether Māori interests can ever be served within current state structures. The reports discussed in this article are ostensibly about child protection, but they are also about rangatiratanga, decolonisation and constitutional transformation. Many of the reports are silent on broader questions such as the role of Te Tiriti o Waitangi, the authority of Māori communities to care for our own, and the place of tikanga as it relates to Māori children and families. Debates about child protection must take note of these contexts, because beneath the question of "What do children and whānau need?" lies the question of "Who gets to decide what children and whānau need?" That is not just a policy question, it is a constitutional one. In my view, a focus on decolonisation is one way to address these issues, as this emphasises the need for a long-term shift of power to Māori from the Crown (Fitzmaurice-Brown, 2022).

There are lessons to be learned from international contexts. The abolitionist perspective referred to earlier may be one such example, but questions relating to Indigenous self-determination and child protection are also being asked closer to home. In Australia, for example, debate continues over whether recent legislative changes enabling delegation of certain child-protection functions to Aboriginal-Controlled Community Organisations will truly be enough to advance Indigenous self-determination—if such delegations still occur within an overarching Western legal and policy framework (Krakouer, 2023). This strongly resembles similar debates in Aotearoa New Zealand. This is not to suggest that lessons from abroad can automatically be transplanted into our own context, but the experiences and insights from advocates overseas, especially Indigenous ones, could help strengthen the case for more structural and transformative approaches back home.

The areas of consensus within the Oranga Tamariki reports suggest we should know where to start with the question of what to do. Wraparound support for whānau who come to the attention of Oranga Tamariki, for example, is a clear area in which even those who disagree about underlying approaches nevertheless agree on what would help in the short term. The areas of disagreement within the reports, however, and the Crown's subsequent response, suggest the broader question of "Who gets to decide" remains unresolved. There is a clear need to take a more structural approach to child-protection reform, interrogating the underlying causes of poor outcomes rather than assuming those outcomes can be improved within current policy paradigms. The differences between the six recent reports provide a stark example of how the assumptions underpinning reviews of the child-protection system can lead to significantly different conclusions. Sooner or later, these questions will be asked again, further reviews will be conducted, and the child-protection system will again be put under the spotlight. Whether through decolonisation, abolition or through other analytical approaches, it is imperative that those undertaking future reviews grapple with these problems as structural issues. For

as long as they do not, the problems which have plagued the child-protection system for decades are likely to remain in place.

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