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**KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA  
I TE TIRITI O WAITANGI**

**BEFORE THE WAITANGI TRIBUNAL**

**WAI 2915**

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**IN THE MATTER OF**                      **the Treaty of Waitangi Act 1975**

**AND**

**IN THE MATTER OF**                      **the Oranga Tamariki Urgent Inquiry**

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**BRIEF OF EVIDENCE OF GRÁINNE MOSS**

**10 December 2020**

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**CROWN LAW**

**TE TARI TURE O TE KARAUNA**

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## Introduction

1. I am the Chief Executive of Oranga Tamariki. I have previously given evidence both in the contextual hearings, and in this phase of the hearings.
2. When I presented at the Crown's first substantive day of hearing on 25 November, Judge Doogan asked me to reflect on my self-assessment of progress by Oranga Tamariki.
3. I have reflected on this, and want to outline my reply to this question today. In doing so, I will be providing my responses to the Tribunal's three questions guiding this urgent inquiry.
4. I'll also further elaborate on the intent of our concessions made at the November hearing.
5. I want to begin by noting that making these concessions was never going to be one off event. It is part of the honest self-reflection that we have underway as a Ministry and must continue, together with the Government as a whole. It is a journey that we must be accountable to our partners in, as it is only through them that we will know whether the actions we have and are taking, as carefully considered as they have been, are genuinely beginning to address the generations of harm and distress these failures have contributed to.
6. The feedback and discussions I have had since making these concessions reinforce to me just why it was so important to make them, and the significance making them has and will continue to have on every one of my staff and the tamariki, whānau and partners that we work with.

## **Why has there been such a significant and consistent disparity between the numbers of tamariki Māori and non-Māori children being taken into state care under the auspices of Oranga Tamariki and its predecessors?**

7. Disparity - by which I mean unequal and inequitable outcomes for Māori - is at the heart of this inquiry, and its impacts are at the heart of our work.
8. Disparity is manifested in a range of compounding and long-term issues, at the heart of which is deprivation, poverty, unstable employment and housing, poor health and education outcomes. As Pūao Te Ata Tū stated "There is no doubt that the young people who come of the attention of the Police and the Department of Social Welfare [Oranga Tamariki] invariably bring with them histories of substandard housing, health

deficiencies, abysmal education records, and an inability to break out of the ranks of the unemployed.<sup>1</sup>

9. It is still reflected across a range of key indicators today, including in employment, education, health and justice. For example, Māori unemployment is consistently near double that of non-Māori, 23.3 percent of tamariki Māori live in households that experience material hardship, Māori mortality rates are significantly higher at all age ranges and more than one in six Maori adult males have been imprisoned, compared with 1 in 40 for the general population.
10. To make the biggest difference in this disparity, we must collectively address the underlying causes. While changes in the care and protection system must be made to ensure we do not compound or enlarge the disparities, the fundamental causes of why some children need a care and protection system must also be addressed, or disparity will continue.
11. I also want to provide some further context for the concession I made about Pūao Te Ata Tū on behalf of the Crown on 25 November. As I said then, ‘The Crown has failed to fully implement the recommendations of Pūao Te Ata Tū in a comprehensive and sustained manner’.
12. There was some discussion on 25 November as to what recommendations of Pūao Te Ata Tū Oranga Tamariki is now implementing. In addition, the Tribunal has asked for a written submission on Oranga Tamariki’s progress on implementing each of the 13 recommendations of Pūao Te Ata Tū.
13. We will be responding to the request, but I wish to make some comments today on aspects of the Crown’s overall progress in implementing the findings of Pūao Te Ata Tū as part of my reflections in response to the Tribunal’s first question.
14. As my colleague Hoani Lambert set out in his second affidavit,<sup>2</sup> a number of the recommendations of Pūao Te Ata Tū were implemented in the immediate years after the report was published. Most notably, the Children, Young Persons and Their Families Act

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<sup>1</sup> Pūao te Ata Tū, preface, page 8

<sup>2</sup> Second Affidavit of Hoani Jeremy Lambert, 25 March 2020, Wai 2915 #A20

1989 was a direct response to Pūao Te Ata Tū. However, many of these were undone by subsequent changes to legislation and policy.

15. Other recommendations were about broader functions of government or the old DSW. Examples are recommendation 12 about reflecting Pūao Te Ata Tū in the TOR for the Royal Commission on Social Policy, or recommendation 8 on employment programmes for long term unemployed.
16. So it is not straightforward to assess the status of each of the 13 recommendations by referring to the letter of the recommendation.
17. But we can make an assessment of progress against the intentions of the recommendations as a whole. And that is what we will provide to the Tribunal in response to its request referred to above.
18. Against the intentions of Pūao Te Ata Tū, it is clear that Oranga Tamariki has made some progress, though arguably not fast enough. There are a range of areas where significantly more progress is needed. I turn to this within my observations in response to the Tribunal's second question.

**To what extent will the legislative policy and practice changes introduced since 2017 and currently being implemented change this disparity for the better?**

19. We accept, as we have stated previously, that Oranga Tamariki needs to keep changing and improving processes and practice. I deeply believe that Oranga Tamariki should work to understand and address the causes of disparity, however addressing disparities for tamariki and whānau Māori is a system-wide and societal challenge. I will work to use the levers and influence I have to support change, but the change required is broader than Oranga Tamariki.
20. Also Oranga Tamariki is not the entirety of the care and protection system. For example, the Family Court makes the Court orders under s78, and other provisions, which cause tamariki to be brought into care, Police have a substantial role in intervening in family harm and referring tamariki to us, and Reports of Concern come from the community and other professionals and institutions.

21. In the concessions I outlined on 25 November on behalf of the Crown, I said structural racism is a feature of the care and protection system. I want to explain what we mean by that.
22. By structural racism - often called institutional racism also – we mean as defined by Pūao Te Ata Tū: ‘a bias in our social and administrative institutions that automatically benefits the dominant race or culture, while penalising minority and subordinate groups.’<sup>3</sup>
23. Pūao Te Ata Tū further states that: ‘The fact is, though, that New Zealand institutions manifest a monocultural bias and the culture which shapes and directs that bias is Pakehatanga. The bias can be observed operating in law, government, the professions, health care, land ownership, welfare practices, education, town planning, the police, finance, business and spoken language. It permeates the media and our national economic life. If one is outside, one sees it as “the system”. If one is cocooned within it, one sees it as the normal condition of existence.’
24. More contemporary considerations of structural racism include in the Human Rights Commission’s 2012 discussion document where it described structural racism as occurring ‘when an entire network of rules and practices disadvantages less empowered groups while serving at the same time to advantage the dominant group’.<sup>4</sup>
25. These definitions reflect that structural racism is not confined to the care and protection system; it exists across government and the non-government sector, and across the economy and society.
26. In our concession, we have acknowledged structural racism exists and has a profound impact. It is my view that the reality of structural racism should be acknowledged and addressed everywhere. I am willing to lead and push as much change as I usefully can across the system, while owning the challenges within Oranga Tamariki. I know that I will need to work with others to do this, including specialist agencies such as the Human Rights Commission and Te Arawhiti, to ensure a collaborative and transparent approach to overseeing progress.

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<sup>3</sup> Pūao Te Ata Tū, page 19 and Appendix 3: The Faces of Racism

<sup>4</sup> Human Rights Commission 2012 Discussion Document ‘A Fair go for all? Rite tahi tatou katoa? Addressing Structural Discrimination in Public Services’, page 3 (citing State Services Commission also)

27. In the concession on structural racism, I stated my and my organisation's absolute commitment to addressing racism in the care and protection system at all levels. I want to be clear that, although I wish we had confronted it earlier on, we are taking steps to address it.
28. Some examples of the changes we have underway include:
  - 28.1 Better understanding bias in the system through the work of our Evidence Centre exploring 'Factors Associated with Disparities experienced by Tamariki Māori in the care and protection system'.
  - 28.2 Improving our intake and assessment process to balance out any over reporting of tamariki Māori.
  - 28.3 Standing up new teams and functions since 2019 focused on our responsibilities under section 7AA and broader Treaty principles.
  - 28.4 Embedding the Mana Tamaiti objectives across the organisation and monitoring of it through the Section 7AA Quality Assurance standards.
  - 28.5 Developing and entering into strategic partnerships and Whānau Care partnerships, the latter of which is in the process of being renamed to better reflect Maatua Whaangai.
  - 28.6 With support from mana whenua, expanding the Kairaranga-ā-whānau roles from 42 to at least 62 across the country in 2021.
  - 28.7 Coaching and mentoring site and regions' staff in their application of Māori-centred practice.
  - 28.8 Ensuring all staff know and understand our Māori cultural framework and can apply it in their work.
  - 28.9 Addressing inequities in funding and supporting our Treaty partners' aspirations to design and deliver fit for purpose programmes and services for their communities.
  - 28.10 Continuing to lead the public sector by lifting the number and levels of Māori staff, currently at 26% (and Pacific Peoples at 11%) across our agency.

29. Taken together, this all represents an important body of work that should help tackle structural racism. This is particularly so given limited funding levels at the establishment of Oranga Tamariki
30. From the changes we are making, we are seeing promising results start to emerge. We have a significant body of research work underway to continue to monitor and oversee progress against priorities. Our Evidence Centre research shows, for example, that the disparities for Māori in the care and protection system are generally reduced when other socioeconomic and parent/child characteristics are considered.
31. However we know that more is needed, that we need to keep working to identify how structural racism manifests itself and identify further actions to tackle it. I echo Te Arawhiti's view that culture change is difficult to achieve, 'requires consistent and sustained effort, particularly on the part of the part of leadership, and multi-pronged interventions.' Aspects can occur quickly; others will take years of ongoing investment and reinforcing.<sup>5</sup> We are committed to stay on this journey for as long as it takes.
32. I also want to be very clear that in owning the institutional racism of the system, we are not saying our staff are racist. In a large institution, and with flexibility in how frontline staff work, there will be exemplary behaviour by some, and behaviour by others that does not meet our values and expectations. Where we identify exemplary practice, we will profile it to model it to others, and where we identify poor practice and behaviour, we will address it – but our concession on racism should be understood as specifically about the institutional racism that results from a system that began 'rooted in the values, systems and viewpoints of one culture only'.<sup>6</sup>
33. Significantly more Māori children are reported to the system by the community than non-Māori children are. We know that the fact of reporting does not necessarily equate to the actual risk to the child and this is why we are improving our intake and assessment process so that we can balance out any over reporting of tamariki Māori. Our evidence shows that as assessments move through the stages of the care and protection system, the disproportionality for tamariki Māori generally reduces.

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<sup>5</sup> Te Arawhiti, *Māori Crown Relations Capability Framework for the Public Service – Organisational Capability Component*

<sup>6</sup> Pūao Te Ata Tū para 46, page 19

34. We are working with partners to enable them to pick up more of the intake and assessment stage – this is a really promising area. You heard about some of the examples of how effective this work can be in the evidence of Katie Murray with Waitomo Papakāinga, and Tāmami Kruger and Kirsti Luke with their experiences with Matemateāone, also discussed in Melissa Pye’s evidence. You will hear more on this in the evidence of Kaye McDonald and Dee McManus-Emery today and tomorrow also.
35. I also made a concession on behalf of the Crown that historically Māori perspectives and solutions have been ignored across the care and protection system. I stated that to address this, we need to partner and engage with Māori so together we can deliver better outcomes for tamariki Māori.
36. I have previously said, as have a number of our witnesses, that we are committed to transferring power and resources to Māori; I want to be clear that I have never said iwi and Māori organisations don’t want that, as seem to be implied earlier in the hearings. We are led by our partners, going at the pace they want, and focusing on the areas of the system they are most interested in.
37. I believe our evidence has made it clear that we see partnering, in all forms that work for partners, as the way forward. We have many different types of relationships from strategic partnerships under section 7AA through whānau care, co-design of services, to contracting for services.
38. I want to take this opportunity to again state that Oranga Tamariki is absolutely committed to working in partnership with Māori at all levels, from site level arrangements through to national arrangements. In partnering, we take the lead from our partners to agree priorities and timeframes for action that reflect their aspirations and the needs and opportunities of their community.
39. We know partnering is what the Treaty requires, and it is the best practical path to achieving materially better results for tamariki and their whānau.

**To return to the Tribunal’s specific question as to what extent the legislative policy and practice changes introduced since 2017 and currently being implemented change this disparity for the better**

40. We have achieved change in a range of areas, including:



- 40.1 **Addressing the areas identified as priorities by the EAP**, particularly improving our Youth Justice residences and moving the focus to creating home-like environments for young people to connect them to positive models; we stood up an entire new transition from care programme, as young people leaving care were identified as particularly vulnerable in the transition from state care to adulthood.
- 40.2 **Strengthening the voice of the tamariki and rangatahi** – we have established the Youth Advisory Council and Voyce Whakarongomai, and established the Tamariki Advocate Voice of Children team to ensure that we hear directly from those most impacted by our day to day work as to their experiences of the care and protection system, and what changes they want to see; this also enables a direct pathway to receive and consider complaints and concerns from young people.
- 40.3 **Revaluating social work and social workers** – after decades of underinvestment, we have secured significantly more resourcing for social work; this means we have been able to reduce workloads, including caseloads, and improve technological support for our frontline. We addressed decades of poor pay and devaluing of social work; we have improved induction for new social workers considerably, and at the same time invested in better training for supervisors so they can continue to coach newer social workers, and to provide consistent supervision across sites.
- 40.4 **Strengthening whakapapa and whanaungatanga connections**, with dedicated roles, particularly the Kairaranga roles that we are expanding out rapidly and the Whānau Care work you heard about during the last hearing days. We've established the Partnering for Outcomes team to support strong regional and site-specific partnerships, and to develop options for greater decentralisation of services; we are working to increase our partnerships and to resource and support partners to connect tamariki and rangatahi with their home.
- 40.5 **Expanding support for caregivers** – we are seeking to lift the visibility and importance of the critical caregiving role, reflecting that these are New Zealanders – often whānau - who open their homes to nurture tamariki, to

provide positive models of whānau and provide love and care on behalf of the state and when tamariki can't be with their birth parents. As well as lifting financial support for a range of different kinds of caregiving, including outside of the State care system, we have enhanced our training for caregivers, provided support for trauma and access to specialist services.

40.6 **Resetting our monitoring and QA standards**, through our Mana Tamaiti objectives and reporting and monitoring of that, with strong QA processes behind this.

41. The changes are showing promising results we can build on. This includes a significant drop in the number of children coming into care, down 40%, with the number of babies entering care since 2018 down 50%. I believe that the numerous work streams and actions that we have stood up in three years of Oranga Tamariki add up to significant and positive progress.
42. But with all of this, and in other areas too, there is more work to do. We did not expect to have transformed the system within in three years. In 2017 when Oranga Tamariki was established the EAP and others, including the Children's Commissioner, all stated at least five years would be needed to effect the changes required. And I stressed in accepting my role that this needed to be understood as a seven-year journey, as I believe that is the minimum length of time needed to embed transformative change.
43. We understand however, that regardless of how long Oranga Tamariki has been in existence, the point is decades of hurt and pain compounded by the care and protection system. And Oranga Tamariki has compounded this hurt by the cases that we have got wrong. We accept responsibility for these.

**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?**

44. This question goes to the heart of this urgent inquiry.
45. I am pleased to have this opportunity to give you a sense of what I think could make the most difference. While there are many aspects of the broader system and of the outstanding needs I could comment on, I will confine my comments to areas of focus for Oranga Tamariki and invite your assessment and additions to these in your findings and recommendations.

46. I think the legislation should be reviewed to consider whether fundamental legislative overhaul is needed:
- 46.1 You have already heard from some of Oranga Tamariki witnesses that they would change sections of the Act or rework the whole. I agree both need consideration, to review whether inconsistencies have crept into the legislation from 30 years of changes.
- 46.2 I think ensuring the legislation is fit for purpose for 2021 and beyond would help cement some of the positive change that has been made but needs to be allowed to embed and be sustained.
47. I have given much thought to why the changes that did result from Pūao te Ata Tū were not sustained. Some of the reasons are out of the control of any department, particularly the changing economic circumstance and the political management of that.
48. But I think one reason was that the state over-centralised in the 1990s, and I think there are some important changes in government structure in recent months that can be utilised to mitigate against this risk for the future.
- 48.1 The recent reform of the Public Sector Act and the creation of cross department and portfolio leadership structures offers considerable opportunity in line with its purpose to ‘establish organisational forms and ways of working, including across public service agencies, to achieve better outcomes for the public’.
- 48.2 While these changes are still settling in, we look forward to taking up the opportunities it unlocks for greater collaboration across agencies and across budgets.
49. I believe decentralisation must remain an important focus; this supports the ongoing transfer of resources and decision making to Māori, and enables iwi/ hapū/ Māori collectives/organisations to focus on prevention through working with whānau well before they reach the point they come to our attention.
50. Following on from this, I think one option that could be considered is to specify a requirement to work with partners at the site and regional level with the support of regional governance and oversight arrangements, very much as Pūao te Ata Tū

recommendation for District Executive Committees. As well as providing legislative mechanisms to support devolution, this may be an effective way of cementing in change outside of government agencies so that changes in government direction could not be so easily undone in future.

### **Concluding comments**

51. To bring my response back to the starting question of how I would assess our progress overall, my frank assessment is that we are making considerable process in terms of process and structures, but we have ongoing work to do to ensure high standards of practice by all social workers and to build a system that is profoundly based on values that reflect the priorities of our Treaty partners.
52. In accepting this role, however, I made it very clear to Government that expectations needed to be managed – there was too much that needed addressing as a priority and that crowded out what should have also been priorities.
53. One of the reasons I chose to take the role on, despite the scale of change needed, was that the Iwi Chairs Forum and its advisors had inputted substantially to the discussion with Government as to what the new agency's priorities should be. Representatives from the Iwi Chairs Forum, and their advisors, had a role in helping to refine key aspects of the legislation, including the care and protection principles and aspects of section 7AA.
54. This remains a powerful example of partnership in action, and it gave me confidence that we would collectively be well placed to start to make the range and scale of changes needed. While some of our actions have challenged this since, I believe that the potential is still very much present. Evidence and appearances in the contextual and substantial hearings from some of our partners has reflected this. I have already outlined my commitment to work in partnership, to share resources and decision making so that we can together make the greatest impact in improving outcomes for tamariki and their whānau, and as quickly as possible.
55. To conclude my evidence today I want to provide you with a snapshot of the totality of our work. In the 12 months to 30 June 2020 we received 80,900 reports of concern, did 41,400 assessments or investigations and held 7,650 Family Group Conferences. 1,000 individual children and young people entered care and 1,450 exited care.

56. I also want to state that the failures you have heard about, and we have accepted, do not reflect the experience of all, or indeed of the majority. Ultimately there are many more experiences that are positive than negative from Oranga Tamariki social work, there are positive outcomes for tamariki and their whānau achieved through Oranga Tamariki support.
57. We have purposefully not put forward any care-experienced witnesses to come before the Tribunal to talk about their individual experiences with Oranga Tamariki, as we did not wish to ask young people who are still vulnerable and on pathways to positive lives to have to share the trauma of their backgrounds that brought them to us in the first place. Moreover their stories are not our stories to share.
58. I also think it is important to recognise those tamariki and rangatahi that have been in care and protection and are achieving great things. An example is those that are recognised by the Prime Minister's Oranga Tamariki Awards. That is what the outcomes from good social work can be and I would like to draw your attention to those. The goal is to reach the point when, through ongoing partnership and reciprocity, we are collectively confident all tamariki and rangatahi we work with are safe, loved and can reach their full potential. We seek that all tamariki Māori are able to thrive in their whānau, hapū and iwi, fully connected to their whakapapa and secure in their sense of belonging.



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Gráinne Moss

Date: 10 December 2020