



MANAAKITIA Ā TĀTOU TAMARIKI
**Children's
Commissioner**

Te Puna Wai ō Tuhinapo

OPCAT Monitoring Follow Up Report

Visit and Report Date: November 2022



Kia kuru pounamu te rongō All mokopuna* live their best lives

*Drawing from the wisdom of Te Ao Māori, we have adopted the term mokopuna to describe all children and young people we advocate for, aged under 18 years of age in Aotearoa New Zealand. This acknowledges the special status held by mokopuna in their families, whānau, hapū and iwi and reflects that in all we do. Referring to the people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from matters for their identity, belonging and wellbeing, at every stage of their lives.

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Executive Summary

Who we are

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

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

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

Judge Frances Eivers

Children's Commissioner

About this visit

OCC staff conducted an unannounced visit to Te Puna Wai ō Tuhinapo (Te Puna Wai) as part of a follow up visit work programme. The follow up visit assesses progress against the recommendations made as part of the previous full monitoring visit. The last full visit to Te Puna Wai was November 2021.

During the visit, residence staff outlined some serious concerns regarding staffing practice and residence operations. Whilst these concerns fell outside of the original scope of the follow up visit, OCC staff adapted the visit to ensure the concerns raised by multiple staff members were represented in this follow up report.

About this report

The report outlines the progress made against the recommendations from the last full visit in November 2021. It also addresses issues raised by staff with the monitoring team. It is worth noting that once the visit had concluded, the concerns raised were reported immediately to the Children's Commissioner who then raised them with the Chief Executive of Oranga Tamariki. This report formalises the concerns discussed verbally between the OCC and Oranga Tamariki.

About this facility

Facility Name: Te Puna Wai ō Tuhinapo

Region: Christchurch

Operating capacity: 40

Status under which mokopuna are detained:

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

Key Findings

- Overall, there has been limited to no progress made on the recommendations from our last visit in November 2021.
- There are high numbers of assaults on both staff and mokopuna and high use of the Secure Care Unit.
- Mokopuna are on 15–20-minute rotations out of their rooms in the Secure Care Unit which is a breach of their rights under Article 3 of the UN Convention to the Rights of the Child.¹
- There are significant staff shortages. Many staff are on mental health leave or ACC due to work-place injuries.
- Staff do not feel safe in the units. There is a lack of staff experience, training, and supervision.
- Staff teams work in silos and there is concern that complaints are not investigated according to process, are escalated when required, or kept confidential. This includes complaints raised by mokopuna via the Whāia te Māramatanga² process.
- Age and gender mixing is causing problematic dynamics in all units of the residence.
- Older mokopuna are not attending school and there is no alternative plan to fill in the time as part of the structured day.
- The interim management team are well liked and are making changes to bring teams back together.

Systemic Recommendations

1	Develop a national strategy to address recruitment and retention issues for staff across all residences. This should include researching reasons for retention issues by surveying staff on topics such as remuneration, rosters, training, and development opportunities. Address these reasons accordingly.
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¹ Convention to the Rights of the Child - [convention-rights-child-text-child-friendly-version.pdf \(unicef.org\)](https://www.unicef.org/convention-rights-child-text-child-friendly-version.pdf)

² Whakamana Tangata is a Māori centred practice approach which has relational, restorative and inclusive practice at its core. It focuses on preventative and restorative elements that encourage mokopuna to take responsibility for their actions and behaviour, enhance accountability, repair harm and restore mana.

Facility Recommendations

1	Safeguard mokopuna rights by allowing more time outside of bedrooms while in the Secure Care Unit.
2	Plan activity programmes that are age appropriate and offers suitable gender mixing opportunities.
3	Improve staff wellbeing by: <ul style="list-style-type: none"> • Having the right skills and training to support mokopuna escalated and potentially dangerous behaviors, • Maintaining appropriate staff numbers for safe practice.
4	All staff are trained in the full four week Te Waharoa training (recognising mental health needs, the effects of neurodiversities, managing concerning sexual behaviours, and trauma informed training could be useful additions).
5	All staff have the opportunity to access team and individual supervision.

Progress on previous recommendations

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

Recommendation 1: Develop a nationwide package of trauma informed programmes to address criminogenic behaviour, alcohol and drug use, life skills, and cultural development.

Progress: Limited progress. There is clear recognition from residence management that the custodial environment should be a place of trauma informed rehabilitation. We were told that there is work happening at the National Office level to introduce new programmes, trainings, and ways of working with mokopuna and to ensure practice across all youth justice residences is consistent. One of the programmes of work is around developing a National Code of Practice for residences. The residence manager would also like to see a training programme targeted at working with mokopuna in custodial care. The idea has been socialised with Oranga Tamariki National Office.

There is a significant appetite amongst staff to increase training and gain more knowledge around how best to work with mokopuna in residences. However, there is also acknowledgement from all teams working in the residence that training, professional development and shifts in operating models are not possible right now with significant staff shortages and the fact that the sector is struggling to retain experienced staff. The focus right now is on having enough staff to cover shifts.

Recommendation 2: Develop practice tools to embed the use of Whakamana Tangata into everyday operations

Progress: No progress. The residence has a Kaiwhakaue employed who is available to assist staff with ensuring they are working in a trauma aware environment and applying the principles of Whakamana Tangata. We saw little evidence that suggested Whakamana Tangata was a 'way of being'. The units felt heightened and there were few instances of staff role-modelling pro-social engagement. There are high numbers of assaults both on staff and between mokopuna. Staff told us that de-escalation techniques are not working for the older cohort of mokopuna currently in Te Puna Wai and they are advocating for protective gear such as helmets, arm guards and riot shields to be held on site.

Recommendation 3: Review the Grievance process to be independent and impartial

Progress: No progress. This work is still progressing at a National Office level.

Some staff we spoke to expressed concern that complaints made at Te Puna Wai, both by staff and by mokopuna were not being put through the current Whāia te Māramatanga process correctly. Staff told us they have little confidence that complaints will be dealt with fairly, escalated when required or treated confidentially.

The OCC remains concerned that the current system is not independent of staff and that grievances are reviewed internally by the residence leadership team.

Recommendation 4: Revise templates to be functional, youth friendly, and available in other accessible formats and languages the Individual Care Plan and Admission Booklet.

Progress: No progress. The residence leadership team noted some good examples of admission booklets and Individual Care Plan templates in other residences. However, there has been no change of either of these documents since our last visit in November 2021.

Recommendation 5: Provide an open unit for females, with structured programmes and activities. The Secure Care Unit is not an appropriate alternative.

Progress: Complete. A female unit was re-opened at Te Puna Wai shortly after our visit in November 2021. The female unit was still in operation for this visit. We consider this recommendation closed.

Recommendation 6: Provide a single unit for all new admissions that can house both males and females to mitigate the risk of Covid-19 transmission.

Progress: Complete. At the time of our follow up visit, COVID-19 restrictions, isolation guidelines and general mandates have been relaxed. Mokopuna are tested for COVID-19 on admission to the residence. There were no cases of COVID-19 in the residence at the time of our visit and we consider this recommendation closed.

Recommendation 7: Reduce the number of use of force incidents and admissions to secure care.

Progress: No progress. The use of force and admissions into secure care remain high at Te Puna Wai. There is a Force Review Panel in place which is able to review all incidents where force has been deemed excessive and there is work being done at the National Office level to ensure there is opportunity to learn from incidents and develop positive practice.

Te Puna Wai have brought in the Ara Tikanga assessment which is based on behavioural assessment using the Te Whare Tapa Wha model. The model explores mokopuna admissions into secure care. However, this has not been rolled out as planned as the feeling is that you cannot effectively train a distressed workforce.

The OCC remain concerned that admissions to secure, use of force and the numbers of assaults occurring in the open units remains high. The use of seclusion of mokopuna runs contrary to international human rights law which prohibits its use for those under 18 years of age.³

Recommendation 8: Develop structured programmes and activities outside of school hours and particularly over the school holidays, that cater to different interests and abilities.

Progress: Limited progress. Staffing levels has had a large impact on residence operations. Recruitment and retention is a focus however, the lack of available staff has repercussions on activities like programmes outside of school hours. When we spoke to mokopuna, they said they are bored, and that this boredom leads to behaviours that are not ideal. Current staff told us they were over-worked, often completing double shifts and that they are close to burn-out. Many on the staffing rosters are on either ACC for work-related injuries (namely as a result of assaults) or mental health leave. There are many occasions where there is only the bare minimum of staff to safely cover the shifts across the open units. Due to the lack of staff, safety and security has become the focus rather than rehabilitation and equipping mokopuna for life outside of residence. This was further evidenced by the staff member in the programme co-ordinator role being seconded into a team leader operations role – leaving the programme co-ordinator role vacant.

³ Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, U.N. Doc. A/63/175 Annex (28 July 2008) (Manfred Nowak).

Most vocational activity is run as part of the structured school day. We saw mokopuna enjoying barbering and painting and decorating modules facilitated by Kingslea School. We were also told about courses relating to budgeting and simple financial management, interview preparation and CV writing. The agriculture based programme has not been operating since our last visit in November 2021 due to the staff shortage.

The residence has many connections with prospective employers. We were told of a situation where a mokopuna had gained employment in the community. They had worked hard during their interview preparation and performed well in the interview. They were extremely excited to learn they had been successful. However, the placement fell through as there was not enough staff available to escort the mokopuna to and from the shifts and to remain on-site while they worked.

Staffing numbers need to be addressed urgently to ensure mokopuna have access to vocational opportunity and to learn skills that will enable them to function pro-socially in the community once they leave residence.

Recommendation 9: Develop cultural programmes for mokopuna Māori to support their learning about their whakapapa, matauranga Māori and Te ao Māori.

Progress: Limited progress. Te Puna Wai have a Kaiwhakaue role employed. However, due to staffing shortages and many staff not available for work, the ability for the Kaiwhakaue to embed any cultural programmes, increase staff capability and capacity in their knowledge of Te ao Māori and Mātauranga Māori is limited. Te Roopu is not functioning at the moment.

Recommendation 10: Provide portable electronic devices with secure video calling software to maintain regular contact with whānau and external providers who are unable to visit site.

Progress: Limited progress. Phone booths are still not working effectively with the quality of calls are not acceptable. There is Audio Visual Link (AVL) enabled technology in the residence however this is used mostly for virtual court appearances.

It is important that mokopuna have regular access with whānau and those approved on their call lists. Phones need to have good sound quality so that conversations can be understood and the contact is meaningful.

Issues and Concerns

During our visit, staff at Te Puna Wai told us of their concerns for the residence. These have been documented separately to the progress on recommendations section to highlight the concern both from staff working at Te Puna Wai and OCC staff.

Staffing

Safety

Many staff said they do not feel safe. This includes staff who are highly experienced and who had been working in the residence for many years. Some staff said they are now starting to hesitate before opening the unit door which is something they have never felt before due to feeling unprotected, unsafe and anxious. Staff at Te Puna Wai are so concerned for their own physical safety that they requested the OCC advocate for personal safety equipment such as helmets, arm guards and riot shields to be held on site.

Staff told us that whilst de-escalation techniques work for the majority of the time (when applied correctly), there is a very small percentage of mokopuna who are causing the majority of the harm and where de-escalation techniques do not seem to work. Police call outs to the residence due to disorderly and dangerous behaviour is becoming more and more frequent.

The number of documented assaults on staff by mokopuna and between mokopuna has increased significantly since our last visit to Te Puna Wai in November 2021. There are many staff and mokopuna who have required hospital or on-going treatment for injuries and concussions.

Recruitment and Retention

We heard from staff most, and sometimes all shifts are understaffed. Often staff work additional hours to ensure there are the minimum number of staff to operate the residence. Staff said there is a significant recruitment drive happening, but the number of people applying are small.

Staff are concerned that that even if new staff were recruited, the training is not appropriate and the levels of experience of those applying is low. Staff told us that not all new staff receive the full Te Waharoa⁴ induction programme simply because they are needed to staff the units as soon as they are on-boarded.

In addition, there is a lack of supervision and the on-going training that normally occurs in residences, is constantly postponed or just does not take place. Staff cannot be taken from the units to attend trainings because there is not enough staff to backfill.

⁴ Te Waharoa is the comprehensive induction programme for all staff working in Youth Justice Residences.

The levels of experienced staff are that low, that we were shown documentation which outlined if an incident in a unit was to take place and the right response team was not immediately available, staff were to wait until they could arrive. This has the potential for harm to both mokopuna and staff if behaviours were to become violent. Staff in the unit did not feel safe enough or trained well enough to immediately intervene.

Staff training and supervision is critical to both the safety and wellbeing of staff, but also in retaining staff.

Practice

Some staff we spoke to told us they had witnessed breaches in the Oranga Tamariki 'Code of Conduct' regarding professional practice, boundaries and staff conduct. We were told of examples that included contraband being brought into the unit for mokopuna to use (cell-phones and vapes), allowing access to social media, threats of physical violence if mokopuna did not behave and inappropriate language between staff and to mokopuna. We witnessed conversations whereby staff mentioned 'hot dates' which prompted inappropriate language and questions from mokopuna.

We heard from senior staff members that base practice needs to be restored at Te Puna Wai. Currently very few staff model pro-social behaviour, conversations and attitudes. Mokopuna do not respect staff or their environment with staff suggesting that mokopuna are the ones who run the units.

High use of force and Secure Care

Male and Female mokopuna

Staff told us that having both an older cohort of mokopuna and both male and female mokopuna is proving problematic for Te Puna Wai. Currently male and female mokopuna do not mix and this separation is causing behavioural challenges across all units in the residence. This has recently resulted in males and female purposefully engaging in behaviours they know will result in an admission to secure care to see their 'girl/ boyfriends'. They are then refusing to leave secure care to maintain contact with each other. Mokopuna are doing this by continuing to threaten violence and harm if they are returned to their open unit.

Staff said that there has been little planning about how to manage males and females in the residence and no strategic thinking about how to allow mixing (as would happen in the outside world) in a safe way with staff who can role model good relationships. Staff also said that heightened behaviours across the units has been going on for so long, that finding a safe way to let the male and female mokopuna mix, seems an unlikely scenario.

Due to the constant admissions into secure, both for meeting other mokopuna and due to high levels of violence and threats of violence in the units, force is used regularly to maintain order and escort mokopuna to the Secure Care unit.

Mokopuna have 15-20min rotations out of their rooms

Mokopuna in the Secure Care Unit are currently on 15-20 minute rotations out of their rooms, meaning that mokopuna spend very large amounts of their time in secure confined to their bedroom. There is little access to the common areas which is a breach of Article 3 of the UN Convention to the rights of the Child⁵.

Staff said there is also no therapeutic care for mokopuna when they are in Secure Care as the risk of assault on staff is high. This is due to current dynamics between certain mokopuna, and the lack of available staff to effectively manage multiple and often complex behaviours mokopuna are presenting.

The limited time out of rooms is also a challenge for the Care Team as the limited time they have to engage with mokopuna in therapeutic interventions is not enough nor are they able to engage with mokopuna in their own Individual Care Plans.

Age mixing is problematic

Older cohort are refusing to go to school

Te Puna Wai currently has a large proportion of older mokopuna. Many staff we spoke to said mokopuna were refusing to enter into the school programme as they were over 16 years old and not legally compelled to attend formal education.

The programme run by Kingslea School provides most of the structured activity facilitated in residence. Therefore, mokopuna who are choosing not to attend means that they have very little to do during the day. As noted in the progress on recommendations, vocational and skills-based learning is also not occurring. Mokopuna are bored and their boredom is manifesting in challenging behaviours for staff.

Dynamics of the units with mixed aged groups

During our visit, the dynamic on all the units was unsettled. There had been a serious incident during the weekend prior to our arrival and all mokopuna knew about what had happened. Staff were on edge and mokopuna were pushing boundaries. We saw numerous instances where mokopuna were testing staff patience, not co-operating with simple instruction, and disengaging from school activity.

⁵ Convention to the Rights of the Child - [convention-rights-child-text-child-friendly-version.pdf \(unicef.org\)](https://www.unicef.org/convention-rights-child-text-child-friendly-version.pdf)

Staff told us that the dynamics of having older mokopuna has had significant impact on residence operations and they do not feel supported by management (either at a residence or Oranga Tamariki National Office level) to cope with mokopuna aged 17-19 years old. Staff said they have felt un-supported through the legislation change to the Oranga Tamariki Act 1989⁶. Managing unit dynamics for 13- to 19-year-olds is very difficult and staff believe how this should be operationalised was not well thought through with the legislation change.

Some staff also told us that some mokopuna feel unsafe and did not want to be taken to other units due to threats, intimidation, and violence.

Teams work in silos

There is a disconnect between management and operations

Staff felt that the leadership group were closed off to the rest of the staff working in the residence and this has resulted in communication breakdowns and barriers. Staff work within their own teams and, before the interim managers arrived, had very little cross team engagement. Staffing constraints contribute to teams working in silos and staff describe the residence as in 'survival mode'. There has not been an office day (where all staff come together) for approximately eight weeks. Staff told us these should be happening weekly to ensure everyone is aware of risks, can share good practice and can receive consistent communications from management.

Complaints

Adding to the disconnect, many staff said that they did not feel confident that senior managers would investigate complaints fairly, be escalated where necessary or that they would remain confidential. Staff extended this concern for the Whāia te Māramatanga process and complaints made by mokopuna.

The OCC are very concerned that complaints may not be investigated appropriately at Te Puna Wai. If the Whāia te Māramatanga process is not being followed, this inhibits the right for mokopuna to have their voice and complaints heard in a safe and confidential way and may constitute ill-treatment.

Lack of therapeutic intervention and care planning

Due to a constant staffing struggle and the residence operating in 'survival mode', therapeutic models of care, care planning and promoting rehabilitation for mokopuna is not happening. Case leaders are unable to make informed therapeutic decisions because mokopuna are heightened, there are regular threats of assault, there are actual physical assaults and mokopuna are essentially running the units. Staff in the units told us they do

⁶ This change in legislation relates to the raising the age that is covered within the youth jurisdiction. The change occurred in July 2019 which allowed most 17 year olds and those deemed too vulnerable for youth units within adult prisons, to be held in custody within youth justice residences.

not have the right tools to mitigate risk and to work in a trauma informed way. The environment is not right for therapeutic models of care or clinical input. Case planning and transition planning are not happening.

Appendix

Gathering information

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

Method	Role
Interviews and informal discussions with mokopuna (including informal focus groups) with mokopuna	
Interviews and informal discussions with Te Puna Wai ō Tuhinapo staff	<ul style="list-style-type: none"> • Residence Manager • Residence Manager Operations • Clinical Practice Lead • Team Leaders Operations • Case Leaders • Shift Leader • Youth Workers
Documentation	<ul style="list-style-type: none"> • Serious Event Notifications • SOSHIs • Grievance Panel quarterly reports • Reports of Concerns
Observations	<ul style="list-style-type: none"> • Unit routines • Activities and Education (Options program) • Mokopuna engagement with staff and each other • Mealtimes • Shift handovers • Internal and external environment