



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

Supporting Young People on Remand to live Successfully in the Community

Office of the Children's Commissioner
MAY 2019

STATE OF CARE SERIES #7

BACKGROUND

In March 2018, Oranga Tamariki's National Youth Justice Management team proposed that the Office of the Children's Commissioner conduct a thematic monitoring review focused on the quality of Oranga Tamariki's practice with young people appearing in the Youth Court in respect of remand decisions, and their whānau.

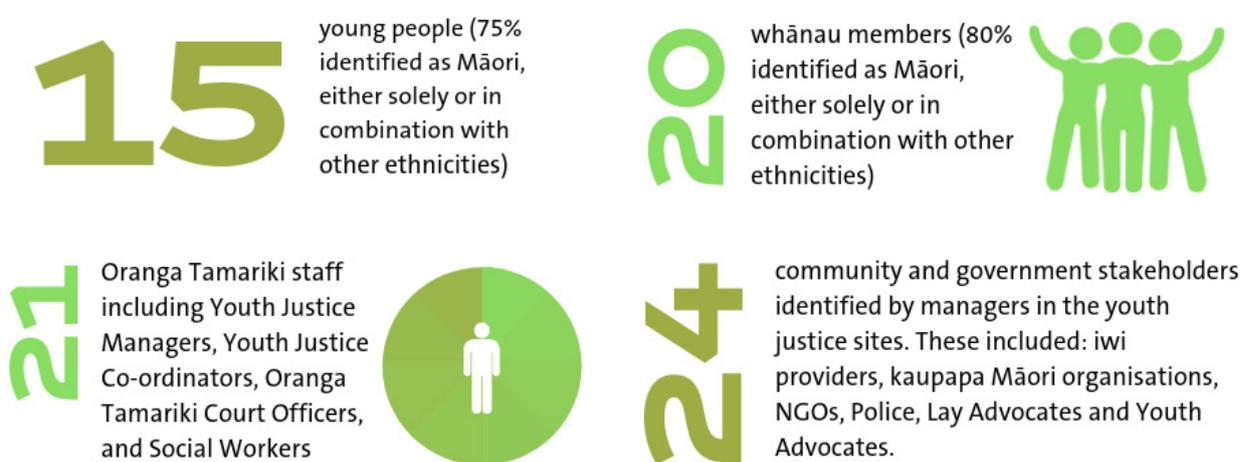
The review focused specifically on the extent to which Oranga Tamariki site practice with young people and their whānau can enable these young people to remain safely in their communities rather than being remanded into the custody of the Chief Executive of Oranga Tamariki and placed by the Chief Executive in a youth justice residence.

This overview report summarises our longer comprehensive workbook on "How Oranga Tamariki can enable young people on remand to live safely and successfully in their communities". These reports give pride of place to the voices of young people and their whānau, reflecting their experiences in the youth justice system.

Some of these experiences are not directly related to Oranga Tamariki practice alone. Nevertheless, as part of the wider culture within which Oranga Tamariki operates, we believe it is important to enable these perspectives also to be heard.

This report re-presents the recommendations made in our longer monitoring workbook and presumes the data collected there.

A breakdown of the individuals interviewed is given below.



INTRODUCTION

Something like 80% of the 140 young people in secure youth justice residences are on remand while waiting for the completion of their court case. Of these, a disproportionate number, at least 70%, are Māori.

Often the charges against these young people haven't been proved. But they nevertheless find themselves in a youth justice facility, sometimes for weeks, sometimes much longer. From 1 July 2019, when 17 year olds will be included in the youth justice system, the overall number will grow.

As one 16 year old male told the monitoring team from the Office of the Children's Commissioner, "In residence the young ones learn the tricks from the older ones. The talk is crime, crime, crime." And indeed, the evidence is clear. Custodial remand can lead to increased reoffending.

So if it's better for young people to be on bail in the community, how can Oranga Tamariki site practice better support these young people to enable them to remain safely in those communities?

Early intervention by care and protection services

The best way for young people to avoid the consequences of breaching bail is for them not to enter the youth justice system in the first place. This can be possible if services offering constructive support to the young person and their whānau are available as soon as children first come to Oranga Tamariki's notice.

But the monitoring team was told by many young people and whānau that their past involvement with care and protection services had been a poor experience. It had left them feeling distrustful of the whole system. Many whānau believed that if they had received the help they needed from care and protection when their children were younger, they would not be involved in the youth justice system today.

One member of the Police told the team of a concern that "early intervention is not happening often enough. Oranga Tamariki is contacting wider whānau too late. It is in the too hard basket. Whānau aren't interested. Early intervention is the key."

Early intervention with children and whānau can short-circuit the risk of "graduating" from care and protection to youth justice. Whānau can provide an environment that prevents these children moving through the system into youth justice.

Oranga Tamariki can't provide this support alone. An inter-agency response is required. The most effective support will come from Oranga Tamariki working in genuinely child-centred collaboration with Iwi, community agencies, Police, Education, Health, Housing, and those providing financial support. Agencies working together as soon as issues first come to notice are much more likely to resource a successful outcome.

Often 'the last person standing' for a young person is their mother. To support the young person, Oranga Tamariki must support their mother too. She, in turn, is likely to be caring for other children as well, often with few resources. To support the mother Oranga Tamariki will also need to connect with and resource the wider whānau, so they too can provide care and oversight.

Varied Family Group Conference practice

The monitoring team found that some young people and whānau had positive experiences with Oranga Tamariki generally and also, specifically, at Family Group Conferences. These young people felt they could voice their concerns at the conferences and actively participate to reach positive solutions.

But for many others it was a foreign and difficult experience. Rightly or wrongly, some young people, and whānau, felt “ganged up on” by the professionals whose hands held their future. This led them to disengage from the justice process and lose hope.

For Family Group Conferences to work there must be wide consultation with whānau. They need to be actively involved in decision-making. Family members also need to be present to provide support. One young man told the team, “I trust my mum to be my advocate and I’ll agree with whatever she agrees with”.

Times and venues for Family Group Conferences must make this active participation possible, rather than ruling it out. Young people and whānau felt conference coordinators didn’t always take the practical realities and constraints of whānau into account – things like work and childcare. As a result, decision-making could be left in the hands of external professionals alone, contrary to the intention of the Act.¹

Inconsistent social work practice

The team heard both praise and criticism of social workers. Those who listen, are consistent, and deliver what they promise were commended. These social workers help young people succeed.

But there are also those who did not engage well or whose performance appeared compromised. The young people felt these social workers didn’t take account of their particular needs and those of their whānau. People spoke of social workers who didn’t listen, didn’t visit, or who when invited failed to go to Family Group Conferences. This undermined trust in Oranga Tamariki and trust in the Youth Justice system.

The quality and continuity of relationships with social workers is a real issue for both the young person and their whānau. For many, having a social worker from the same cultural background, someone who understands the realities of their life, is an important element.

The monitoring team heard that young people and whānau want support from people who have lived experience of the Youth Justice system, people who can work with them in culturally appropriate ways and who understand them for who they are.

Oranga Tamariki will need to continue to build cultural capability and capacity throughout its workforce. This will enable it to respond to the cultural needs of the young people and whānau it works with, specifically Māori. This response will also find expression through growing strategic relationships with iwi and kaupapa Māori service providers.

¹See our State of Care report, “Fulfilling the Vision: Improving Family Group Conference preparation and participation”, 1 December, 2017, <http://www.occ.org.nz/publications/reports/state-of-care-2017-family-group-conferences/>

Appropriate bail conditions

The Courts, not Oranga Tamariki, determine bail conditions. Some young people were clear that their bail conditions set them up to fail. The team was told it is almost impossible not to breach 24/7 curfews.

“Cause you’ve broken the law”, one young person said, “you get told what to do. They should ask you what you think would work, ‘cause otherwise you won’t stick to it.” Bail conditions that won’t work just lead to another court appearance.

Many young people felt that in court there was little attempt to understand their perspectives. Bail conditions often reflected this. They believed 24/7 bail was driven by a desire to punish rather than to keep young people and the community safe.

Often, it seems that a curfew breach has little to do with offending. Young people told the team they breached their 24/7 curfew because they were bored, unhappy with their placement or trying to get away from tension at home.

Curfews also negatively affected whānau. When young people are confined to home, household dynamics are strained. Regular Police checks quickly become disruptive for family life.

Supported bail, on the other hand, gained strong approval from both young people and whānau. It offers structure, activity and a mentor, although after hours and weekends can be a challenge. Widening the scope and the time supported bail is available would be welcomed.

Bail that is either too stringent or goes on for too long without regular review are major factors in bail breach and reoffending. To help reduce bail breaches, bail terms should be carefully tailored to the needs and situation of each young person and their whānau.

More community placements available

We know that when young people are in unsuitable placements they are much more likely to breach bail or reoffend. Young people told the monitoring team that the most important thing to them is the support of their family. If they can’t be placed with whānau, they need to be close to them.

Once again, this points to an issue of capacity. There is simply not enough support for whānau, community based remand, specialist care, or community placement options available at present, although Oranga Tamariki is already in the process of developing more. This need to grow capacity is an increasingly pressing priority.

Support of young people experiencing the remand process in the Youth Court

The Courts are a separate branch of government and not the responsibility of Oranga Tamariki. Consequently, it would not be appropriate for this report to provide an analysis of Youth Court practice and operation. However, the team’s interviews did identify that young people can find court to be a significant element within their experience of the youth justice system.

The quality of Oranga Tamariki’s support has an especially formative effect – sometimes negative, sometimes positive - on how the court is experienced by young people and whānau in the remand decision making process. Some young people found their way through the Youth Court with the help of their Oranga Tamariki social worker, youth or lay advocate. When these people explained what was happening, when they listened to what the young person wanted and advocated for them, the Youth Court made much more sense. Where young people found the court experience negative, they felt alienated. Where they found it more positive, their understanding and participation were heightened.

Interviews with a limited number of young people who had been subject to Youth Court process highlighted the need for vigilance by all participants in court, Oranga Tamariki, Police, Youth Advocates, and Judges, to ensure young people understand what is happening and are encouraged to fully participate in the proceedings that are about them.

The experience of those who subsequently progressed to Te Kooti Rangatahi and the Pasifika Court was positive. They found these environments child-centred, supportive and engaging. They said they understood what was happening to them.

Even though these courts can provide better experiences for young people, some actively told the team they avoided them. They said this was because they felt disconnected from their culture. Others felt awkward and recognised they would be held more accountable by kaumātua, kuia or other elders.

Young people had a more positive experience when whānau and professional adults were present. But this isn't always easy for whānau. One mother said, "It's hard to get to court. They need an after-hours court to cater for parents".

Working better with partner agencies

It is clear that the changes proposed by the monitoring team can help Oranga Tamariki support young people and their whānau better. Effective support will translate into a reduction in remands in youth justice facilities, bail breaches and reoffending. Young people who have offended, their whānau, and the community as a whole will benefit.

But Oranga Tamariki cannot effect the necessary changes alone. One monitoring team member summed things up well. "We undertook this review to look at Oranga Tamariki's practice and processes. But even if Oranga Tamariki had the best practice in the world, unless other players – iwi, kaupapa Māori, education, health and so on – unless they come to the party, positive change won't happen".

It is also clear that implementing these changes will require significant resourcing.

More well-resourced partnerships with kaupapa Māori community organisations and iwi social services help to fill out this picture. These partnerships presume genuine co-design with these providers. They also presume they have autonomy and the resources to set in place the services they know to be best for their own tamariki.

These services will need to be genuinely child-centred, placing children and young people's needs, rights and views at the heart of any initiative, and always seeing them in the context of their whānau.

Partnerships will be varied and may include supported bail, day programmes and care placements for young people, along with a range of tailored services to meet the needs of whānau. They should also provide good access to specialist mental health services for young people.

A number of people spoke of a lack of mentors and supported bail opportunities to meet the specific needs of young women. More generally, partnerships that assist young people's transition from youth justice residence to whānau, community, education and independence would help immeasurably.

Some of these partnerships already exist. Others are in train. But more has to be done to ensure the necessary responses are in place.

RECOMMENDATIONS

RECOMMENDATION ONE:

Improve cultural capacity and capability

That Oranga Tamariki:

- a) builds the cultural capability and capacity of its workforce, at all levels from front line to management, to accurately reflect the cultures and cultural needs of the young people and whānau they work with, specifically Māori
- b) builds strategic relationships with iwi and kaupapa Māori social services, resourcing them sufficiently to ensure there are more services available that are effective for young people on bail or detention in the community, and for their whānau
- c) encourage and support organisations, specifically iwi and kaupapa Māori social services, to become accredited to provide services for young people on bail or detention in the community, and for their whānau.

RECOMMENDATION TWO:

Improve engagement and relationships with young people and their whānau

That Oranga Tamariki:

- a) Shifts to a more child centred approach where services and the system better enable young people and their whānau, who are involved with the youth justice system, to live safely in their communities. This includes:
 - i. minimising changes of social worker, thereby promoting stronger working alliances with young people and their whānau
 - ii. working with partner agencies to ensure that youth justice processes, interventions and plans reflect the needs and wishes of young people and their whānau
 - iii. working with partner agencies ensuring that young people and their whānau are enabled to be active, informed and empowered participants at all stages of the youth justice process.

RECOMMENDATION THREE:

Work more effectively with partner agencies to provide earlier intervention and timely youth justice responses

That Oranga Tamariki:

- a) works with partner agencies to improve delivery of effective prevention and early intervention services.
This includes:
 - i. strengthening coordination between care and protection and youth justice services
 - ii. improving responses to children, aged 10-13, who offend, and their whānau
 - iii. working proactively to ensure that children, most of whom are already known to care and protection services, do not enter the youth justice system
 - iv. providing sufficient resources and support to whānau, hapū, iwi and wider family groups to ensure they receive the help they need to care for their young person.

- b) works with partner agencies to ensure that:
 - i. the needs of young people entering the youth justice system are responded to at the earliest possible stage
 - ii. information is proactively gathered and shared with partner agencies, young people and their whānau, to enable whānau and/or community placements wherever possible.

- c) gives greater priority, where it is within their power, to address delays in the youth justice system. This includes reducing the length of residential remands, so that youth justice services are delivered in a way that is consistent with young people's time frames and understanding (as per s5(1)(b)(v) of the Oranga Tamariki act 1989).²

RECOMMENDATION FOUR:

Increase whānau and community placement options

That Oranga Tamariki:

- a) strengthens its whānau search, engagement and support processes, to enable more young people to be cared for in their communities by whānau

- b) significantly increases the number of community based remand and specialist care options, located close to whānau and staffed by trained, experienced personnel who are skilled in working with young people.

²That provision will come into force from 1 July 2019, although a variation of this provision currently exists in s5(f) of the Act

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